

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT NASHVILLE

September 22, 2008 Session

**DEAN LOCKRIDGE v. GOODYEAR TIRE & RUBBER COMPANY, ET AL.**

**Direct Appeal from the Chancery Court for Obion County  
No. 26739 William Michael Maloan, Chancellor**

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**No. W2008-00371-SC-WCM-WC - Mailed January 9, 2009; Filed May 13, 2009**

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This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel fo the Supreme Court in accordance with Tennessee Code Annotated § 50-6-225(e)(3) for a hearing and a report of findings of fact and conclusions of law. Employee alleged that he sustained injuries to both knees as a result of an accident at work. The trial court found that he had sustained an injury, but did not have permanent impairment or disability as a result of the injury. Employee appeals, contending that the evidence demonstrates that he sustained permanent disability. He also contends that the trial court erred by ordering that he was not entitled to future medical treatment for he knees. Employer contends that the trial court erred by finding that Employee sustained a compensable injury. We affirm the trial court's finding that Employee did not sustain a permanent disability, but conclude that the portion of the judgment concerning future medical treatment was premature, and modify the judgment accordingly.

**Tenn. Code Ann. § 50-6-225(e) (Supp. 2008) Appeal as of Right; Judgment of the Chancery Court Modified**

ALLEN W. WALLACE, SR. J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., J., and JON KERRY BLACKWOOD SR. J., joined.

Steven W. Maroney and Matthew R. West, Jackson, Tennessee for the appellant, Dean Lockridge.

W. Lewis Jenkins and Dean P. Dedmon, Dyersburg, Tennessee, for the appellees, Goodyear Tire & Rubber Company and Liberty Mutual Insurance.

**MEMORANDUM OPINION**

**Factual Background**

Dean Lockridge ("Employee") alleges that he sustained a compensable injury to both knees in "the early part of 2006." He notified Goodyear ("Employer") of the alleged injury on March 21, 2006. He testified that he felt pain in both knees while lifting a tire. The initial accident report apparently lists February 21, 2006 as the injury date. However, Employee testified that date was arbitrarily selected by the plant nurse, as he was unable to remember the specific date when the event occurred. He further testified that he could not point to a specific thing or event that injured his knees.

The record is unclear as to when Employee began working for Employer. It was not disputed that he did not work for Employer at all from November 2004 to November 2005. In addition, he missed thirty-eight days of work between November 2005 and March 21, 2006. Subsequent to his alleged injury, he was terminated for absenteeism.

Employee was initially treated by a physician on Employer's premises, Dr. Eason. This treatment consisted of anti-inflammatory medication and physical therapy. Employee was then provided with a panel of physicians. He selected Dr. Rommel Childress. Dr. Childress examined Employee on April 17, 2006. He prescribed an anti-inflammatory medication and recommended a home exercise program. Employer thereafter denied the claim. Employee had no additional medical treatment.

The medical evidence at trial consisted of the testimony of two doctors who conducted independent medical evaluations. Dr. Lawrence Schrader and Dr. Mark Harriman. Dr. Schrader's examination was performed on May 31, 2007. His opinions were placed into the record by means of a C-32. Employer thereafter conducted a cross-examination deposition pursuant to Tenn. Code Ann. § 50-6-235. Dr. Schrader's diagnosis was pre-patellar bursitis of both knees. He related this condition to Employee's "activities at work." This condition is not addressed in the AMA Guides. Dr. Schrader therefore based his impairment rating on other conditions which he considered to be similar to pre-patellar bursitis - trochanteric bursitis of the hip and a healed, non-displaced fracture of the patella. By analogy to those conditions, he assigned 7% anatomical impairment to each leg, which converts to 6% impairment to the body as a whole. Dr. Schrader suggested that Employee limit crawling and kneeling. On cross-examination, Dr. Schrader testified that he was not fully aware that Employee had not been working between November 2004 and November 2005.

Dr. Harriman examined Employee at the request of Employer on November 27, 2007. He testified by deposition. He stated that his examination of Employee was normal. He disagreed with Dr. Schrader's diagnosis of pre-patellar bursitis. He stated that pre-patellar bursitis would cause "swelling on the front of the kneecap." He did not find such swelling during his examination of Employee. He opined that Employee "probably just had some arthralgias, which is just some temporary knee pain." He assigned no impairment and placed no restrictions upon Employee's activities.

Employee was thirty-four years old. He had attended college for one and one-half years. Prior to working for Employer, he had mainly worked in factories. After leaving Employer, he

returned to a previous employer. He had worked as a substitute teacher, and had sought employment with the Postal Service. He testified that his knees caused him to have difficulty “sitting, standing up for an hour or two, for a long period of time. Standing up bothers me when I try to get up.”

The trial court found that Employee’s knee symptoms were caused by his work for Employer. However, it found that he had failed to sustain his burden of proof on the issue of permanency and awarded no disability benefits. It made an alternative finding that, if Employee had sustained a permanent injury, his PPD would be 15% to each leg. The trial court also found that Employee “had not received a permanent injury that required - that was permanent and needed future medical care.”

It therefore ruled that he was not entitled to future medical treatment under workers’ compensation.

Employee has appealed, alleging that the trial court erred by finding that he did not sustain a permanent disability and also by ruling that he was not entitled to future medical treatment. Employer contends that the trial court erred by finding that Employee sustained a work-related injury.

### **Standard of Review**

The standard of review of issues of fact is de novo upon the record of the trial court accompanied by a presumption of correctness of the findings, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (Supp. 2008). When credibility and weight to be given testimony are involved, considerable deference is given the trial court when the trial judge had the opportunity to observe the witness’ demeanor and to hear in-court testimony. *Humphrey v. David Witherspoon, Inc.*, 734 S.W.2d 315 (Tenn. 1987). A reviewing court, however, may draw its own conclusions about the weight and credibility to be given to expert testimony when all of the medical proof is by deposition. *Krick v. City of Lawrenceburg*, 945 S.W.2d 709, 712 (Tenn. 1997); *Landers v. Fireman’s Fund Ins. Co.*, 775 S.W.2d 355, 356 (Tenn. 1989). A trial court’s conclusions of law are reviewed de novo upon the record with no presumption of correctness. *Ridings v. Ralph M. Parsons Co.*, 914 S.W.2d 79, 80 (Tenn. 1996).

### **Analysis**

#### **Permanency and Causation**

Employee contends that the trial court erred by finding that he had not proven permanency. Employer contends that the trial court erred by finding that he had sustained a work injury at all. Both arguments involve purely factual issues.

Employee’s argument is based upon his own testimony, which is somewhat limited, and that of Dr. Schrader. Dr. Schrader testified that he considered the condition to permanent

because it had continued for over a year. He attributed Employee's condition to this "work activities," although, as Employer notes, his knowledge of those activities, and the period of time that Employee had performed them, was limited. In addition to Dr. Schrader's testimony, Employee testified that he continued to have symptoms at the time of trial.

Employer relies upon the testimony of Dr. Harriman. He gave a specific description of the clinical signs of pre-patellar bursitis and stated that Employee did not have these at the time of his examination. Dr. Harriman also had a somewhat better understanding of the work Employee had performed for Employer in the past, and the job he was doing at the time of his alleged injury. Obviously the trial court accepted the opinion of Dr. Harriman, which the trial judge may do.

In *Orman v. Williams Sonoma, Inc.*, 803 S.W.2d 672, 676 (Tenn. 1991), the Supreme Court discussed the issue of conflicting expert testimony:

When the medical testimony differs, the trial judge must obviously choose which view to believe. In doing so, he is allowed, among other things, to consider the qualifications of the experts, the circumstances of their examination, the information available to them, and the evaluation of the importance of that information by other experts.

We have reviewed the evidence in its entirety, consistent without our obligation to weigh the trial court's findings and conclusions in depth. *Humphrey*, 734 S.W.2d at 315. It is our conclusion that the trial court could have reasonably reached a different result. However, we do not find that the evidence preponderates against the trial court's decision.

### **Termination of Medical Benefits**

The trial court ruled that Employee was not entitled to receive future medical treatment under workers' compensation. As Employee notes, the statutory right to medical care is not dependent upon the existence of a permanent disability. *Wilkes v. Resource Authority of Sumner County*, 932 S.W.2d 458 (Tenn. 1996). Given the trial court's finding in this case, it is difficult to foresee a set of facts which would require Employer to provide medical care to Employee, but that question should be considered at the time such treatment is sought. *See, Bazner v. American States Ins. Co.*, 820 S.W.2d 742, 745 (Tenn. 1991); *Underwood v. Liberty Mut. Ins. Co.*, 782 S.W.2d 175, 176 (Tenn. 1989). The judgment of the trial court is, therefore, modified accordingly.

### **Conclusion**

The judgment is modified to provide that Employee is entitled to receive future medical care which is shown to be necessary for the treatment of this injury. The judgment is affirmed in all other respects. Costs are taxed one-half to the appellant, Dean Lockridge, and his surety, and one-half to the appellees, Goodyear Tire & Rubber Company and Liberty Mutual Insurance, for

which execution may issue if necessary.

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ALLEN W. WALLACE, SENIOR JUDGE

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AT JACKSON

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**JUDGMENT ORDER**

This case is before the Court upon the motion for review filed by Dean Lockridge, pursuant to Tennessee Code Annotated section 50-6-225(e)(5)(B), the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law.

It appears to the Court that the motion for review is not well-taken and is therefore denied. The Panel's findings of fact and conclusions of law, which are incorporated by reference, are adopted and affirmed. The decision of the Panel is made the judgment of the Court.

Costs are assessed one-half to the Appellant, Dean Lockridge, and his surety, and one-half to the Appellees, Goodyear Tire & Rubber Company and Liberty Mutual Insurance, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM

WILLIAM C. KOCH, JR., J., not participating.