



FILED

March 10, 2017

**TENNESSEE
WORKERS' COMPENSATION
APPEALS BOARD**

Time: 10:50 A.M.

**TENNESSEE BUREAU OF WORKERS' COMPENSATION
WORKERS' COMPENSATION APPEALS BOARD**

Kine Gueye)	Docket No. 2016-08-0701
)	
v.)	State File No. 29588-2015
)	
Federal Express Corporation)	
)	
)	
Appeal from the Court of Workers')	
Compensation Claims)	
Robert V. Durham, Judge)	

Affirmed and Remanded - Filed March 10, 2017

The employee in this interlocutory appeal asserts that she is entitled to workers' compensation benefits for a variety of complaints she maintains are causally related to her employment. Following an expedited hearing, the trial court denied her request for benefits based on a finding she had not met her burden of proving she was likely to prevail at trial. The employee has appealed. The trial court's decision is affirmed and the case is remanded.

Presiding Judge Marshall L. Davidson, III, delivered the opinion of the Appeals Board in which Judge David F. Hensley and Judge Timothy W. Conner joined.

Kine Gueye, Cordova, Tennessee, employee-appellant, pro se

Jonathan May, Memphis, Tennessee, for the employer-appellee, Federal Express Corporation

Memorandum Opinion¹

Kine Gueye ("Employee") alleges that she sustained injuries resulting from her employment with Federal Express Corporation ("Employer") when several boxes came

¹ "The Appeals Board may, in an effort to secure a just and speedy determination of matters on appeal and with the concurrence of all judges, decide an appeal by an abbreviated order or by memorandum opinion, whichever the Appeals Board deems appropriate, in cases that are not legally and/or factually novel or complex." Appeals Bd. Prac. & Proc. § 1.3.

down a conveyor at the same time and caused her to fall backward on April 9, 2015. She reported an injury to her low back and the claim was accepted as compensable. Authorized medical treatment was provided with Dr. Arsen Manugian and temporary disability benefits were paid.

Employee's complaints immediately after the incident were of low back pain. Dr. Manugian's records reflect a history of Bell's palsy, complaints of headache, and numbness, tingling, and weakness in Employee's arms and legs. Dr. Manugian diagnosed Employee with a low back sprain, assigned work restrictions, and ordered a course of conservative care.

Employee testified that after returning to regular duty, she experienced increased pain and other symptoms. She returned to Dr. Manugian on May 11, 2015 with complaints of increasing pain in her lower back that radiated into her right buttock and thigh. Dr. Manugian ordered additional testing, including an MRI and, later, a bone scan, and placed her on work restrictions. At a follow-up visit on May 28, 2015, Employee complained of continuing symptoms, and Dr. Manugian documented having a "[l]ong discussion trying to explain to [Employee] that the area of spondylolysis was probably preexisting and the injury at work was not a significant contributing factor."

Employee continued to complain of pain and various other symptoms and, on June 18, 2015, Dr. Manugian included the following in his report:

At this point in time, I have had great difficulty and spent a significant amount of time trying to explain to Ms. Gueye that her grade 1 spondylolisthesis, which on bone scan is not active, was preexisting . . . to her injury; and she did aggravate her back with strain that at this point in time is better and will continue to do so if she does continue with her exercise program

She is having great difficulty appreciating and understanding the underlying preexisting spondylolisthesis. I have recommended she return back to regular duty, home exercises, and reevaluate one final time in a week and expected to be released at MMI. The symptoms of her leg, which she described and required an emergency room visit are not in direct relation to her back injury; and she is also having difficulties accepting this.

Employee returned to Dr. Manugian on June 25, 2015, complaining of low back pain and pain extending into her mid-thoracic and cervical area. She described having been involved in a rear-end collision because she could not lift her leg and apply force to the brakes of her vehicle. Dr. Manugian noted that he had another "long discussion" with Employee regarding her ongoing complaints and tried to "explain, in great detail, regarding the underlying preexisting spondylolisthesis that is not active on clinical

studies at present.” He released her to return to work with no restrictions and placed her at maximum medical improvement with no permanent impairment. She informed Dr. Manugian she wanted a second opinion and stated she had already seen another physician.

On August 11, 2015, Employee saw an unauthorized physician, Dr. Manuel Carro, with complaints of burning in both legs. After undergoing nerve studies, Employee returned to Dr. Carro, who noted that the objective testing was unremarkable. Employee also saw Dr. Jason Weaver, a neurosurgeon, on November 4, 2015 for complaints of headaches and numbness and tingling in her arms. He reviewed a head MRI for a possible Chiari 1 malformation² and noted she did not appear to have the malformation but did have a history of Bell’s palsy. Dr. Weaver did not recommend surgery.

Employee also treated with a neurologist, Dr. Lihong Shen, for a myriad of complaints, including headaches associated with blurred vision, slurred speech, and bilateral arm weakness and numbness. Employee also described back pain that radiated to both thighs and caused her to have leg weakness and numbness. Dr. Shen noted the character of the headaches was consistent with Chiari headaches and that her arm symptoms were consistent with carpal tunnel syndrome. At a December 9, 2015 appointment, Dr. Shen diagnosed Employee with headaches, weakness, “hereditary and idiopathic neuropathy,” compression of the brain, and tremor, and observed that Employee’s neurologic symptoms dated back to 2008 when medical records indicated she was seen for symptoms consistent with Bell’s palsy.

On March 11, 2016, Employee saw Dr. Tulio Bertorini, another neurologist, who evaluated her for her neurological complaints, observing that he was “not certain of organic etiology of this patient’s problems.” He noted that, “[o]ther than the tremor and unsteadiness, [he was] not impressed with her neurological examination.” Additional evaluations and tests revealed no objective cause of Employee’s multiple and evolving complaints. On September 1, 2016, Dr. Bertorini provided correspondence stating that there was “[n]o clear anatomical cause” for her complaints of generalized muscle weakness and dizziness.

The trial court conducted an evidentiary hearing at which Employee testified that her complaints of back pain, leg pain, headaches, neck pain, weakness, tremors, dizziness, and other symptoms were caused by her work injury on April 9, 2015. Despite being presented with medical records detailing evaluations and treatment for neurological symptoms as far back as 2008, she denied having suffered from any of these symptoms

² Chiari malformations are structural defects in the cerebellum that may cause obstruction of the flow of cerebrospinal fluid and can result in a multitude of symptoms. National Institute of Neurological Disorders and Stroke, <https://www.ninds.nih.gov/Disorders/All-Disorders/Chiari-Malformation-Information-Page> (last visited Mar. 8, 2017).

prior to the incident giving rise to this claim. After a review of the medical records and Employee's testimony, the trial court noted the absence of any medical opinion in the voluminous medical records causally linking her complaints to her employment and concluded Employee had failed to establish she was likely to prevail at trial. Accordingly, the court declined to award benefits.

Employee's notice of appeal states that she is "suffering lower back pain, generalized muscle weakness (M62.81), dizziness (R42), compression of brain (G93.5). These symptoms [sic] did stand [sic] on 04/09/15, after I fell at my work."³ However, Employee has provided no information regarding any issues she attempts to raise on appeal, and she has provided no argument, brief, or position statement setting out how the trial court erred in deciding the case. As stated by the Tennessee Supreme Court, "[i]t is not the role of the courts, trial or appellate, to research or construct a litigant's case or arguments for him or her." *Sneed v. Bd. of Prof'l Responsibility of the Supreme Court of Tenn.*, 301 S.W.3d 603, 615 (Tenn. 2010). Indeed, were we to search the record for possible errors and raise issues and arguments for Employee, we would essentially be acting as her counsel, which the law prohibits us from doing. It is unclear how Employee contends the trial court erred in resolving the case, and we decline to speculate.⁴

The trial court's decision is affirmed. The case is remanded for any further proceedings that may be necessary.

³ The apparent diagnosis codes were included by Employee on her notice of appeal without explanation.

⁴ Employee submitted a statement of the evidence on appeal, which did not comply with Tenn. Comp. R. & Regs. 0800-02-22-.02(2) (2015) or Appeals Board Practices and Procedures section 3.4. Accordingly, we did not consider it in rendering our decision. Likewise, we did not consider medical records submitted by Employee on appeal unless those records had been admitted as exhibits at the expedited hearing. *See Hadzic v. Averitt Express*, No. 2014-02-0064, 2015 TN Wrk. Comp. App. Bd. LEXIS 14, at *13 n.4 (Tenn. Workers' Comp. App. Bd. May 18, 2015) ("[W]e will not consider on appeal testimony, exhibits, or other materials that were not properly admitted into evidence at the hearing before the trial judge.").



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Appeals Board's decision in the referenced case was sent to the following recipients by the following methods of service on this the 10th day of March, 2017.

Name	Certified Mail	First Class Mail	Via Fax	Fax Number	Via Email	Email Address
Kine Gueye					X	kinegueye7@gmail.com
Jonathan May					X	jmay@LewisThomason.com
Robert V. Durham, Judge					X	Via Electronic Mail
Kenneth M. Switzer, Chief Judge					X	Via Electronic Mail
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