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WORKERS' COMPENSATION
APPEALS BOARD

TENNESSEE BUREAU OF WORKERS' COMPENSATION
WORKERS' COMPENSATION APPEALS BOARD

Reginald Miller, Sr.	)	Docket No. 2018-06-0225
	)	
v.	)	State File No. 3595-2018
	)	
Logan's Roadhouse, Inc., et al.	)	
	)	
	)	
Appeal from the Court of Workers'	)	
Compensation Claims	)	
Joshua D. Baker, Judge	)	

Affirmed in Part, Vacated in Part, and Remanded
Filed November 15, 2018

This interlocutory appeal involves an employee who suffered injuries when he passed out and struck his head in the kitchen of the restaurant where he worked. The employer denied the claim, asserting the employee's injuries were idiopathic and not compensable. The trial court found the employee was likely to prevail at trial and ordered the employer to pay medical expenses admitted into evidence over the employer's objection. The trial court also ordered the employer to provide medical treatment with an unauthorized physician selected by the employee, but denied the employee's request for temporary disability benefits. The employer has appealed. We affirm the trial court's conclusion the employee is likely to prevail at trial in establishing his injuries are compensable. We further hold the trial court erred in overruling the employer's objection to the admission of the disputed medical bills and vacate the portion of the court's order requiring the employer to pay those bills. Finally, we hold the trial court did not err in ordering the employer to provide medical treatment, but we modify the court's order to permit the employer to provide a panel of physicians. 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.

John W. Barringer, Nashville, Tennessee, for the employer-appellant, Logan's Roadhouse, Inc.

Reginald Miller, Sr., Portland, Tennessee, employee-appellee, pro se

Factual and Procedural Background

Reginald Miller, Sr. ("Employee"), a sixty-four-year-old resident of Portland, Tennessee, was employed by Logan's Roadhouse, Inc. ("Employer"). Employee alleges that on January 8, 2018, he was working in Employer's kitchen while a co-worker was cleaning the ovens using a chemical cleaner. Employee asserts that the fumes from the oven cleaner combined with the heat of the ovens caused him to become dizzy and pass out. When he fell, he hit his head on some shelves. Employer declined to provide workers' compensation benefits based upon its belief that Employee's injuries were idiopathic and did not arise primarily out of the employment.

Following his fall, Employee was transported to a hospital where he complained of headaches and neck pain. He reported he briefly lost consciousness, fell, and, after waking up and trying to get up, fell again. He was diagnosed with a laceration of his scalp and a contusion to his left elbow. A CT scan revealed no evidence of intracranial injury, and x-rays of his elbow showed mild degenerative changes. The laceration on his head was repaired with staples, and he was instructed to follow up with his primary care physician to have the staples removed.

Employee saw his primary care physician, Dr. Jack Patterson, on January 10, at which time he reported he had fallen and complained of ongoing headaches, vertigo, and memory loss. He told Dr. Patterson he had been diagnosed with a concussion at the emergency room. Dr. Patterson gave Employee a work excuse through January 15, when he was to return to have the staples removed from his head.

Employee returned to Dr. Patterson as scheduled, complaining of headaches, decreased strength in his left arm, numbness in the back of his head, and balance problems. Dr. Patterson ordered a follow-up CT scan to rule out intracranial bleeding and physical therapy for Employee's shoulder pain. The CT scan was normal.

Employee returned to Dr. Patterson three days later with ongoing complaints. Dr. Patterson noted that Employee had been disabled for some time due to unrelated conditions and that this was the first visit at which Employee had notified his office that his complaints were work-related.

Employee continued to see Dr. Patterson over the next several months, reporting headaches, memory loss, vertigo, numbness, and anxiety, among other problems. Dr. Patterson indicated he had been asked about causation and impairment to which he responded that he was not qualified to provide an opinion. He referred Employee to an orthopedic physician for his complaints of back pain with shooting pain down his legs. He also referred Employee to a neurologist, indicating he would defer to that physician's opinion regarding whether Employee's vertigo and headaches were related to his work accident.

Employee saw Dr. Chaitanya Malempati, an orthopedist, for his back complaints and was diagnosed with lumbar radiculopathy and degenerative disc disease. He also saw Dr. Wesley Chou, a neurologist, complaining of headaches, dizziness, inability to focus, confusion, numbness and weakness on the left side of his face, and double vision. Lab tests were normal, as was an MRI of Employee's brain. The record does not contain an opinion regarding causation from either Dr. Malempati or Dr. Chou.

Employee filed a petition for benefits and submitted various medical bills to which Employer objected, asserting Employee had failed to authenticate the documents or lay a proper foundation for their admission into evidence. The trial court found Employee would likely prevail at trial on the issue of causation and overruled Employer's objection to the admissibility of the medical bills and ordered Employer to pay the submitted bills. The court also ordered Employer to provide ongoing medical care with Dr. Patterson. Employer has appealed.

Standard of Review

The standard we apply in reviewing a trial court's decision presumes that the court's factual findings are correct unless the preponderance of the evidence is otherwise. *See* Tenn. Code Ann. § 50-6-239(c)(7) (2018). When the trial judge has had the opportunity to observe a witness's demeanor and to hear in-court testimony, we give considerable deference to factual findings made by the trial court. *Madden v. Holland Grp. of Tenn., Inc.*, 277 S.W.3d 896, 898 (Tenn. 2009). However, "[n]o similar deference need be afforded the trial court's findings based upon documentary evidence." *Goodman v. Schwarz Paper Co.*, No. W2016-02594-SC-R3-WC, 2018 Tenn. LEXIS 8, at *6 (Tenn. Workers' Comp. Panel Jan. 18, 2018). Similarly, the interpretation and application of statutes and regulations are questions of law that are reviewed *de novo* with no presumption of correctness afforded the trial court's conclusions. *See Mansell v. Bridgestone Firestone N. Am. Tire, LLC*, 417 S.W.3d 393, 399 (Tenn. 2013). We are also mindful of our obligation to construe the workers' compensation statutes "fairly, impartially, and in accordance with basic principles of statutory construction" and in a way that does not favor either the employee or the employer. Tenn. Code Ann. § 50-6-116 (2018).

Analysis

Employer raises several issues for our review, asserting the trial court erred: (1) in finding Employee was likely to prevail at trial in establishing causation; (2) in finding Employee was entitled to medical treatment at Employer's expense; (3) in ordering Employer to pay unauthorized medical expenses; (4) in admitting medical bills into

evidence over Employer's objection; and (5) in concluding Employee's injury was not idiopathic.[1]

I.

As an initial matter, we note that Employer cites Tennessee Code Annotated section 50-6-217(a)(3) (repealed 2017) in support of its position on appeal. Section 50-6-217(a)(3) authorized us to reverse or modify a trial court's decision if the rights of a party were prejudiced because the findings of the trial judge were "not supported by evidence that is both substantial and material in light of the entire record." However, as we have observed on numerous occasions, this code section was repealed effective May 9, 2017.[2] Consequently, as noted above, the standard we apply in reviewing the trial court's decision presumes that the trial judge's factual findings are correct unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-239(c)(7).

II.

Causation/Idiopathic Injury

Employer first argues that Employee's injuries are idiopathic, as there is no medical proof to establish his loss of consciousness was caused by his working

[1] The record contains what purports to be a "Joint Statement of the Evidence." However, as this was a decision made on the record, there was no testimony to recite or summarize in a statement of the evidence. Rather, the document filed by the parties discusses the facts of the case, the arguments of the parties, the issues on appeal, and the actions of the trial court. Thus, the document filed by the parties was unnecessary, as its contents are readily available from the record. *See Edwards v. Fred's Pharmacy*, No. 2017-06-0526, 2018 TN Wrk. Comp. App. Bd. LEXIS 9, at *11-12 (Tenn. Workers' Comp. App. Bd. Feb. 14, 2018). Moreover, it does not appear that the statement of the evidence was approved by the trial judge as required by Tenn. Comp. R. & Regs. 0800-02-22-.02(1) (2018).

[2] *See Bullard v. Facilities Performance Grp.*, No. 2017-08-1053, 2018 TN Wrk. Comp. App. Bd. LEXIS 37, at *5 (Tenn. Workers' Comp. App. Bd. Aug. 7, 2018); *Ledford v. Mid Georgia Courier, Inc.*, No. 2017-01-0740, 2018 TN Wrk. Comp. App. Bd. LEXIS 28, at *4 (Tenn. Workers' Comp. App. Bd. June 4, 2018); *Duignan v. Stowers Machinery Corp.*, No. 2017-03-0080, 2018 TN Wrk. Comp. App. Bd. LEXIS 25, at *8-9 (Tenn. Workers' Comp. App. Bd. May 29, 2018); *Ogden v. McMinnville Tool & Die, Inc.*, No. 2016-05-1093, 2018 TN Wrk. Comp. App. Bd. LEXIS 14, at *9-10 (Tenn. Workers' Comp. App. Bd. May 7, 2018); *Edwards v. Fred's Pharmacy*, No. 2017-06-0526, 2018 TN Wrk. Comp. App. Bd. LEXIS 9, at *5-6 (Tenn. Workers' Comp. App. Bd. Feb. 14, 2018); *Bowlin v. Servall, LLC*, No. 2017-07-0224, 2018 TN Wrk. Comp. App. Bd. LEXIS 6, at *6-7 (Tenn. Workers' Comp. App. Bd. Feb. 8, 2018); *Thompson v. Comcast Corp.*, No. 2017-05-0639, 2018 TN Wrk. Comp. App. Bd. LEXIS 1, at *12-13 (Tenn. Workers' Comp. App. Bd. Jan. 30, 2018); *Baker v. Electrolux*, No. 2017-06-0070, 2017 TN Wrk. Comp. App. Bd. LEXIS 65, at *5-6 (Tenn. Workers' Comp. App. Bd. Oct. 20, 2017); *Butler v. AAA Cooper Transportation*, No. 2016-07-0459, 2017 TN Wrk. Comp. App. Bd. LEXIS 54, at *5-6 (Tenn. Workers' Comp. App. Bd. Sept. 12, 2017); *Glasgow v. 31-W Insulation Co., Inc.*, No. 2017-05-0225, 2017 TN Wrk. Comp. App. Bd. LEXIS 51, at *11-12 (Tenn. Workers' Comp. App. Bd. Sept. 6, 2017).

conditions and, therefore, the proof is insufficient to establish his complaints arose primarily out of his employment. We are not persuaded.

An injured worker has the burden of proof on every essential element of his or her claim. Tenn. Code Ann. § 50-6-239(c)(6). However, at an expedited hearing, an employee need not prove every element of the claim by a preponderance of the evidence. Instead, he or she must come forward with sufficient evidence from which the trial court can determine the employee is likely to prevail at trial consistent with Tennessee Code Annotated section 50-6-239(d)(1). *McCord v. Advantage Human Resourcing*, No. 2014-06-0063, 2015 TN Wrk. Comp. App. Bd. LEXIS 6, at *9 (Tenn. Workers' Comp. App. Bd. Mar. 27, 2015).

To be compensable under the workers' compensation statutes, an employee must establish that the injury arose primarily out of and occurred in the course and scope of the employment. Tenn. Code Ann. § 50-6-102(14) (2018). The term "injury" is defined as "an injury by accident . . . arising primarily out of and in the course and scope of employment, that causes death, disablement or the need for medical treatment of the employee." *Id.* An idiopathic injury is one that has an unexplained origin or cause, and generally does not arise out of the employment unless some condition of the employment presents a peculiar or additional hazard. *McCaffery v. Cardinal Logistics*, No. 2015-08-0218, 2015 TN Wrk. Comp. App. Bd. LEXIS 50, at *9 (Tenn. Workers' Comp. App. Bd. Dec. 10, 2015) (internal citations and quotation marks omitted). "The focus is on the causal link between the employment and the accident or injury, rather than a causal link between the employment and the idiopathic episode." *Id.* at *11.

Applying these principles to this case, the question is not whether Employee's work environment caused him to pass out, but whether his work environment resulted in the injuries of which he complains. The crux of Employer's argument is that Employee's claim must fail because he has not established through expert medical proof that he passed out as a result of fumes and heat in Employer's kitchen. While it is true there is no expert medical opinion in the record at this point in the case addressing the reason Employee passed out, the absence of such proof does not require a reversal as Employer suggests. Rather, Employee must establish that the injuries he alleges are causally related to some hazard incident to the employment, regardless of whether that hazard is what caused Employee to pass out. To that end, there is no dispute Employee fell at work, struck some shelving, and suffered an injury to his head. While trying to get up, he fell again and struck his elbow. Moreover, Employee's testimony via an affidavit that his fall stemmed from the fumes from the oven cleaner coupled with the heat in the kitchen where he was working is uncontroverted. While the proof at this stage of the litigation is not overwhelming, we cannot say that the trial court erred in its assessment of this issue. Again, at this interlocutory stage of the case, Employee need not prove every element of his claim by a preponderance of the evidence as he must at trial. Thus, we affirm the trial court's determination of this issue.

Admission and Payment of Medical Expenses

Next, we consider Employer's contention that the trial court erred in overruling its objection to the admissibility of employee's medical bills. The trial court did so, stating Employer "objected to [the] inclusion of medical bills in the record citing lack of foundation and insufficient proof of reasonabl[e] medical necessity as bases for the objection. The Court denies the objection." No explanation for the basis of the trial court's ruling was provided, and the court's decision was based upon a review of the record only.

We recently addressed a similar situation regarding the admissibility of medical bills. In *Eaves v. Ametek, Inc.*, No. 2016-03-1427, 2018 TN Wrk. Comp. App. Bd. LEXIS 53 (Tenn. Workers' Comp. App. Bd. Sept. 14, 2018), we concluded that the Tennessee Rules of Evidence apply to cases in which the trial judge makes a decision on the record, just as they apply when the court conducts a hearing. *Id.* at *7. In *Eaves*, as in this case, the injured worker offered medical bills into evidence without the requisite foundation and without any proof as to whether they arose from reasonable and necessary medical treatment. We concluded the trial court erred in admitting the bills and in ordering the employer to pay them. *Id.* at *9.

Consistent with our decision in *Eaves*, we conclude the trial court erred in overruling Employer's objection to the admissibility of the disputed medical expenses. Employee did not establish their admissibility pursuant to the Rules of Evidence. Moreover, Employee provided no evidence that the medical treatment was reasonable, necessary, or causally related to the work accident. Thus, we vacate that portion of the trial court's order requiring Employer to pay the medical bills at issue.

Medical Treatment

Finally, Employer argues the trial court erred in awarding medical benefits because there was no medical proof indicating Employee's treatment was necessary, reasonable, or causally related to his employment. As discussed above, Employee has presented sufficient proof for the trial court to find he will likely prevail at trial in establishing the compensability of his claim. Thus, he is entitled to reasonable and necessary medical treatment for those injuries. However, Employer also argues that, should Employee be entitled to medical care, it should be allowed to provide a panel of physicians rather than being required to provide treatment with Employee's primary care physician, Dr. Patterson. Under the circumstances, we agree.

When an employer denies a claim, as Employer did here, it does so at the risk that, if the claim is later deemed compensable, it may be required to pay for medical care with the physician of the employee's choosing. *See, e.g.*, *Ducros v. Metro Roofing and Metal Supply Co., Inc.*, No. 2017-01-0228, 2017 TN Wrk. Comp. App. Bd. LEXIS 62, at *10

(Tenn. Workers' Comp. App. Bd. Oct. 17, 2017) ("[A]n employer who does not timely provide a panel of physicians risks being required to pay for treatment an injured worker receives on his own."). Here, however, the issue is complicated by Dr. Patterson's statement that he is unqualified to provide an opinion regarding causation and impairment. The definition of "injury" requires the opinion of the authorized physician as to whether the injury is causally related to the employment. *See* Tenn. Code Ann. § 50-6-102(14)(D). Furthermore, with respect to impairment ratings, "[a]ll permanent impairment ratings shall be assigned by the treating physician or chiropractor." Tenn. Code Ann. § 50-6-204(k)(1) (2018).

Because opinions concerning causation and impairment are crucial responsibilities of an authorized physician, and because Dr. Patterson has indicated he is unable to provide such opinions, it would be inconsistent with these statutes to insist he be designated the authorized treating physician. Therefore, the portion of the trial court's order requiring Employer to provide medical care with Dr. Patterson is modified to permit Employer to provide Employee a panel of physicians consistent with Tennessee Code Annotated section 50-6-204(a)(3)(A)(i).

Conclusion

For the foregoing reasons, we affirm the trial court's finding that Employee is likely to prevail at trial in establishing his injuries are compensable. We further hold the trial court erred in overruling Employer's objection to the admission of medical bills and vacate the portion of the court's order requiring Employer to pay those bills. Finally, we hold the trial court did not err in ordering Employer to provide medical treatment made reasonably necessary by the work accident, but modify the court's order to permit Employer to provide a panel of physicians. The case is remanded.

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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 15th day of November, 2018.

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