

**March 14, 2017**TENNESSEE  
WORKERS' COMPENSATION  
APPEALS BOARD

Time: 3:00 P.M.

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

Ellen Wiles	) Docket No. 2016-05-0933
	)
v.	) State File No. 75113-2016
	)
Dillard's, et al.	)
	)
	)
Appeal from the Court of Workers'	)
Compensation Claims,	)
Robert V. Durham, Judge	)

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**Affirmed and Remanded - Filed March 14, 2017**

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The employee challenges the trial court's ruling that she did not present sufficient evidence at an expedited hearing to support an award of temporary disability benefits or reimbursement of medical expenses for her alleged work-related carpal tunnel syndrome. We affirm the trial court's decision and remand the case.

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.

Ellen Wiles, Murfreesboro, Tennessee, employee-appellant, pro se

James H. Tucker, Jr., Nashville, Tennessee, for the employer-appellee, Dillard's

**Memorandum Opinion<sup>1</sup>**

Ellen Wiles ("Employee"), an employee of Dillard's ("Employer") since June 2014, alleged she developed carpal tunnel syndrome while working as a clerk in women's apparel. She asserts that having to carry and organize clothes, maintain dressing rooms, price items, and other repetitive activities, caused her to develop carpal tunnel syndrome in her left hand. She reported her condition to her supervisor on August 8, 2016, and

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<sup>1</sup> "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.

followed up with a note to an office manager on August 15, 2016. Employer provided a panel of physicians from which Employee selected Dr. Frank Thomas to be her authorized treating physician.

Employee saw Dr. Thomas on August 22, 2016, and he noted that her symptoms started several months previously, possibly as a result of hyperextending her left arm to reach overhead. Employee maintained in her filings in the trial court and in her testimony at the expedited hearing that, while she experienced a pinching sensation in her left arm in April 2016 when she was maneuvering a clothing rack at work, she did not experience pain, tingling, or persistent numbness in her left hand until July 2016. She testified that she worked several days in a row in July and worked a particularly long shift on one of those days. She further stated she began experiencing persistent symptoms after that time. Nerve conduction studies performed on September 8, 2016 revealed left carpal tunnel syndrome. Addressing causation, Dr. Thomas stated in correspondence dated October 31, 2016, that there was a “greater than 51% likelihood that the symptoms and subsequent findings were related to the work event described.”

Employer denied the claim, asserting Employee failed to provide timely notice and had not suffered an identifiable work injury. As a result, Employee sought treatment with her primary care physician and was ultimately referred to an orthopedic surgeon for evaluation and treatment. The surgeon, Dr. Douglas Weikert, performed surgery on January 3, 2017.

Employer submitted medical records from Dr. Elizabeth Bray, Employee’s primary care provider, that predate Employee’s alleged work-related injury. Those records document a history of multiple health conditions, one of which was left carpal tunnel syndrome. Employee also has a history of diabetes for which she is evaluated regularly.

After an expedited hearing, the trial court concluded that Employee had provided proper notice and was entitled to a panel of physicians.<sup>2</sup> However, the trial court, relying upon the medical records reflecting a pre-existing history of left carpal tunnel syndrome, found Employee had not established she was entitled to temporary disability benefits or reimbursement of unauthorized medical expenses. Employee has appealed.

In her notice of appeal, Employee raises three issues: (1) that there were inaccuracies in her medical records that purportedly affected the trial court’s decision; (2) that she was entitled to reimbursement for “surgical treatment”; and (3) that she was entitled to temporary disability benefits. In her position statement submitted on appeal, Employee asserts that Dr. Bray’s medical records contain errors, that she mistakenly

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<sup>2</sup> Employer has not appealed the trial court’s conclusions that Employee provided timely notice and was entitled to a panel of physicians. Thus, we do not address those findings.

agreed to an incorrect treatment date at the expedited hearing, and that she was entitled to reimbursement of medical expenses and temporary disability benefits.

With respect to her argument that the medical records from her primary care physician contained errors, Employee submitted information from Dr. Bray concerning those alleged inaccuracies. However, this information was not available to the trial court for consideration, and we will not consider it on appeal. “Evaluating a trial court’s decision on appeal necessarily entails taking into account information the trial court had before it at the time the issues were decided by the court, as opposed to the potentially open-ended universe of information parties may seek to present on appeal following an adverse decision.” *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). Accordingly, “we will not consider on appeal testimony, exhibits, or other materials that were not properly admitted into evidence at the hearing before the trial judge.” *Id.* See also Tenn. Comp. R. & Regs. 0800-02-22-.04(1) (2015) (“Evidence not contained in the record submitted to the clerk of the workers’ compensation appeals board shall not be considered on appeal.”).<sup>3</sup>

With respect to Employee’s assertion that she is entitled to reimbursement of medical expenses and temporary disability benefits, she has provided no information or argument 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.

Accordingly, the trial court’s decision is affirmed. The case is remanded for any further proceedings that may be necessary.

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<sup>3</sup> Employer has likewise submitted new information on appeal that we have not considered.

**FILED**

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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 14th day of March, 2017.

Name	Certified Mail	First Class Mail	Via Fax	Fax Number	Via Email	Email Address
Ellen Wiles					X	wilesdavide@bellsouth.net
James H. Tucker, Jr.					X	jtucker@manierherod.com
Robert V. Durham, Judge					X	Via Electronic Mail
Kenneth M. Switzer, Chief Judge					X	Via Electronic Mail
Penny Shrum, Clerk, Court of Workers' Compensation Claims					X	Penny.Patterson-Shrum@tn.gov

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