

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

January 23, 2012 Session

STEPHEN VOWELL v. ST. THOMAS HOSPITAL ET AL.

**Appeal from the Chancery Court for Davidson County
No. 08-2521-I Claudia C. Bonnyman, Chancellor**

**No. M2010-02605-WC-R3-WC - MAILED JULY 18, 2012
FILED AUGUST 23, 2012**

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel for a hearing and a report of findings of fact and conclusions of law in accordance with Tenn. Sup. Ct. R. 51. An employee, who was rendered permanently and totally disabled following a compensable back injury, suffered severe depression after his employer informed him that his employment had been terminated. He filed suit in the Chancery Court for Davidson County seeking workers' compensation benefits. Following a bench trial, the trial court concluded that the employee's depression was compensable and, therefore, that the employee was entitled to receive medical benefits for treatment. The employer asserts on this appeal that the trial court erred by admitting the testimony of the employee's evaluating psychiatrist and that the award of benefits is inconsistent with Tenn. Code Ann. § 50-6-102(15) (2008 & Supp. 2011). We affirm the judgment.

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

WILLIAM C. KOCH, JR., J., delivered the opinion of the Court, in which WALTER C. KURTZ, SR.J. and J.S. "STEVE" DANIEL, SP.J., joined.

D. Randall Mantooh, Nashville, Tennessee, for the appellant, St. Thomas Hospital.

Brian Dunigan, Goodlettsville, Tennessee, for the appellee, Stephen Vowell.

MEMORANDUM OPINION

I.

Stephen Vowell worked at St. Thomas Hospital (“St. Thomas”) as a surgical assistant. He was injured on November 13, 2007, when he slipped on a wet floor while helping move a patient. The incident caused a disc herniation at the L3-4 level of his spine. As a result of the injury, Dr. Edward Mackey performed a surgical fusion of the L3 and L4 vertebrae.

Dr. Mackey assigned Mr. Vowell a 26% permanent anatomical impairment as a result of the surgical fusion. He also restricted Mr. Vowell from lifting more than two and one-half pounds frequently or ten pounds at any time. Dr. Mackey also opined that Mr. Vowell should alternate sitting and standing every twenty minutes and avoid stooping, bending, or twisting.

In July 2008, Dr. Mackey noted that Mr. Vowell was displaying symptoms of depression related to concerns about his ability to return to work in the future. Dr. Mackey prescribed Mr. Vowell an antidepressant. Dr. Mackey was familiar with the physical requirements of the job of a surgical technician and considered it unlikely that Mr. Vowell would be able to return to that work. In August 2008, Dr. Mackey determined that Mr. Vowell had reached maximum medical improvement and referred him to a pain management specialist.

On November 19, 2008, Mr. Vowell filed a complaint in the Chancery Court for Davidson County seeking workers’ compensation benefits. While this lawsuit was pending, Mr. Vowell continued to apply for other jobs but without success. In March 2009, Mr. Vowell experienced a “breakdown” after he learned that his employer-provided health insurance had been cancelled.¹ He was admitted to Middle Tennessee Mental Health Institute (“MTMHI”). Several days later, he was transferred to an intensive outpatient program at Skyline Medical Center (“Skyline”).

In September 2009, Mr. Vowell was evaluated by Dr. Scott Ruder, a psychiatrist, who determined that he had severe depression. While the record reflects that Mr. Vowell

¹Mr. Vowell later described his state of mind as follows:

I did have the breakdown after I found out about [being terminated] but it was not the same day, it was days later when the realization that you don’t have insurance, that you’ve been fired from the first job that you’ve ever been fired from in your life, you can’t provide for your family, you’ve always been the number one provider, and then all of a sudden it seems like, you know, I slipped and hit the floor, you know, all my future choices were taken away from me and I have to deal with what’s handed to me.

continued to take anti-depressant medication following his discharge from the Skyline program, there is no evidence that Mr. Vowell received counseling or psychotherapy.

The trial court conducted a bench trial on May 27, 2010 and August 31, 2010. Mr. Vowell asserted that he was entitled to workers' compensation benefits for both his back injury and his depression. While St. Thomas agreed that his back injury was compensable, it insisted that Mr. Vowell's depression was not compensable because it did not arise out of or occur in the course of his employment. The evidence at trial included the deposition testimony of Drs. Mackey and Ruder,² as well as the testimony of Mr. Vowell, a vocational rehabilitation counselor, and St. Thomas's Director of Worker's Compensation.

At the close of the proof, the trial court announced from the bench that it found that Mr. Vowell was permanently and totally disabled and that it allocated the entire liability to St. Thomas. In its amended final judgment entered on November 15, 2010, the trial court awarded Mr. Vowell a \$621,438.10 judgment against St. Thomas and directed St. Thomas to continue to provide Mr. Vowell appropriate medical treatment.

After St. Thomas perfected a timely appeal, the parties negotiated a settlement of Mr. Vowell's workers' compensation claims based on his back injury. At the parties' request, the case was remanded to the trial court for consideration of the settlement. On June 7, 2011, the trial court entered an order approving the parties' partial settlement and partial final judgment. This order approved a settlement in which St. Thomas agreed to pay Mr. Vowell \$269,652.50 for his claim for any permanent disability benefits, including his "alleged mental injury." St. Thomas also agreed to continue to provide Mr. Vowell future medical benefits for his back injury as provided in the amended final judgment. As a result of this settlement, St. Thomas reserved the right to appeal only two issues – whether the trial court erred by admitting and accrediting Dr. Ruder's testimony and whether the trial court erred by finding that Mr. Vowell sustained a compensable mental injury.

II.

Courts reviewing an award of workers' compensation benefits must conduct an in-depth examination of the trial court's factual findings and conclusions. *Wilhelm v. Krogers*, 235 S.W.3d 122, 126 (Tenn. 2007). When conducting this examination, Tenn. Code Ann. § 50-6-225(e)(2) (2008) requires the reviewing court to "[r]eview . . . the trial court's findings of fact . . . de novo upon the record of the trial court, accompanied by a presumption

²St. Thomas had filed a motion in limine prior to trial seeking the exclusion of Dr. Ruder's testimony on the grounds that it was untrustworthy. The trial court took the question under advisement and never expressly ruled on the motion. In light of the fact that the trial court relied on Dr. Ruder's testimony in its decision, it must have, at least implicitly, denied St. Thomas's motion in limine.

of the correctness of the finding, unless the preponderance of the evidence is otherwise.” The reviewing court must also give considerable deference to the trial court’s findings regarding the credibility of the live witnesses and to the trial court’s assessment of the weight that should be given to their testimony. *Tryon v. Saturn Corp.*, 254 S.W.3d 321, 327 (Tenn. 2008); *Whirlpool Corp. v. Nakhoneinh*, 69 S.W.3d 164, 167 (Tenn. 2002). However, the reviewing courts need not give similar deference to a trial court’s findings based upon documentary evidence such as depositions, *Orrick v. Bestway Trucking, Inc.*, 184 S.W.3d 211, 216 (Tenn. 2006); *Bohanan v. City of Knoxville*, 136 S.W.3d 621, 624 (Tenn. 2004), or to a trial court’s conclusions of law, *Seiber v. Reeves Logging*, 284 S.W.3d 294, 298 (Tenn. 2009).

III.

St. Thomas asserts that the trial court erred by admitting and considering Dr. Ruder’s testimony. It argues that Dr. Ruder’s expert opinions are untrustworthy because (1) he relied on subjective information provided by Mr. Vowell that was contained in the records of MTMHI and Skyline, (2) he did not administer his own psychological tests to Mr. Vowell, (3) he relied on incomplete medical records, and (4) he examined Mr. Vowell only once.

Trial courts perform an important gate-keeping role with regard to the admissibility of expert evidence. Their role “is to ensure that ‘an expert, whether basing testimony upon professional studies or personal experience, employs in the courtroom the same level of intellectual rigor that characterizes the practice of an expert in the relevant field.’” *Brown v. Crown Equip. Corp.*, 181 S.W.3d 268, 275 (Tenn. 2005) (quoting *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 152 (1999)).

To facilitate carrying out their role as gate-keepers, the Tennessee Supreme Court has provided trial courts with the following “non-exclusive” list of factors to be considered by a trial court in determining the admissibility of proffered expert testimony:

- (1) whether scientific evidence has been tested and the methodology with which it has been tested;
- (2) whether the evidence has been subjected to peer review or publication;
- (3) whether a potential rate of error is known;
- (4) whether, as formerly required by *Frye*, the evidence is generally accepted in the scientific community; and
- (5) whether the expert’s research in the field has been conducted independent of litigation.

McDaniel v. CSX Transp., Inc., 955 S.W.2d 257, 265 (Tenn. 1997). Eight years later, the Court added more factors to this non-exclusive list, including the expert’s qualifications and the “connection between the expert’s knowledge and the basis for the expert’s opinion.”

Brown v. Crown Equip. Corp., 181 S.W.3d at 274-75. The Court has also stated clearly and repeatedly that appellate review of the manner in which a trial court applies these factors to determine the admissibility of expert testimony will be reviewed using the “abuse of discretion” standard. *Brown v. Crown Equip. Corp.*, 181 S.W.3d at 273; *State v. Stevens*, 78 S.W.3d 817, 832 (Tenn. 2002); *McDaniel v. CSX Transp., Inc.*, 955 S.W.2d at 263-64.

While St. Thomas does not dispute Dr. Ruder’s qualifications as a psychiatrist, it takes issue with his methodology. It complains that Dr. Ruder arrived at his opinion without every record from MTMHI and Skyline regarding Mr. Vowell’s treatment. While the records Dr. Ruder received were summaries of Mr. Vowell’s initial complaints, treatment, and response to treatment, St. Thomas does not point to any specific inaccuracies or material omission that may have misled Dr. Ruder in his analysis.

St. Thomas also criticizes Dr. Ruder for basing his opinion on subjective information provided by Mr. Vowell. We agree that Dr. Ruder based his opinion, at least in part, on what Mr. Vowell told him. However, psychiatric evaluations, in large part, are based on the statements and conduct of the person being evaluated. St. Thomas presented no evidence that the statements Mr. Vowell made to Dr. Ruder were untrue or that they contradicted any other information in the record. Finally, counsel for St. Thomas vigorously cross-examined Dr. Ruder concerning his consideration of Mr. Vowell’s statements.

Dr. Ruder testified that he did not typically administer or rely upon psychological testing when conducting a forensic psychiatric evaluation, and St. Thomas presented no evidence that this represented a deviation from a professional standard. Similarly, we find no indication in the record that a psychiatric evaluation based upon a single interview conflicts with any established professional norm. We note that one-time evaluations concerning medical issues are routinely presented in workers’ compensation cases. *See, e.g., Crow v. Batesville Casket Co.*, No. M2005-02627-WC-R3-CV, 2007 WL 171802, at *3 (Tenn. Workers’ Comp. Panel Jan. 23, 2007). It is no doubt true that an evaluation based upon multiple contacts over a long period of time is often preferable to one based upon a single encounter. *See Orman v. Williams Sonoma, Inc.*, 803 S.W.2d 672, 677 (Tenn. 1991). However, that factor is more appropriately considered in relation to the weight of the opinion presented than to its admissibility, as are the other factors advanced by St. Thomas in support of its position on this issue. *Cf. Saylor v. Lakeway Trucking, Inc.*, 181 S.W.3d 314, 323-24 (Tenn. 2005). Therefore, we conclude that the trial court did not abuse its discretion by admitting and considering the opinion of Dr. Ruder.

IV.

St. Thomas further contends that the trial court erred by finding that Mr. Vowell sustained a compensable mental injury. This contention is based upon the language of Tenn. Code Ann. § 50-6-102(15), which defines a compensable “mental injury” as follows:

“Mental injury” means a loss of mental faculties or a mental or behavioral disorder where the proximate cause is a compensable physical injury resulting in a permanent disability, or an identifiable work-related event resulting in a sudden or unusual mental stimulus. A mental injury shall not include a psychological or psychiatric response due to the loss of employment or employment opportunities[.]

St. Thomas points to Dr. Mackey’s testimony that Mr. Vowell first displayed symptoms of depression in June 2008 due to concerns about his ability to return to work as a surgical technician. In addition, St. Thomas notes that Mr. Vowell’s admission to MTMHI occurred shortly after he learned that he had been terminated. In his discovery deposition, Mr. Vowell testified that his breakdown occurred when he “found out that [he] had been terminated.” Based upon that evidence, and similar statements in medical records and Dr. Ruder’s deposition, St. Thomas contends that Mr. Vowell’s mental problems were caused by his loss of employment and are, therefore, not compensable pursuant to the terms of Tenn. Code Ann. § 50-6-102(15).

The trial court based its decision that Mr. Vowell had sustained a compensable mental injury on *Bressler v. H & H Specialty Coatings, Inc.*, No. W2007-02902-WC-R3-WC, 2009 WL 605085 (Tenn. Workers’ Comp. Panel Mar. 9, 2009). The employee in *Bressler* sustained a physical injury that rendered him unable to return to his pre-injury job. *Bressler v. H & H Specialty Coatings, Inc.*, 2009 WL 605085, at *1-2. As a consequence of his inability to work and other stressors, he developed depression. *Bressler v. H & H Specialty Coatings, Inc.*, 2009 WL 605085, at *2. His employer argued, as St. Thomas in this case does, that the mental condition was not compensable in light of the statutory definition of “mental injury.” The panel rejected that argument, stating “[W]e believe the second sentence of Tennessee Code Annotated section 50-6-102(16)³ should be interpreted to apply only when the loss of employment or employment opportunities is the sole basis for the mental injury.” *Bressler v. H & H Specialty Coatings, Inc.*, 2009 WL 605085, at *5. The panel noted that this interpretation of the statute was consistent with *Goodloe v. State*, 36 S.W.3d 62 (Tenn. 2001). *Bressler v. H & H Specialty Coatings, Inc.*, 2009 WL 605085, at *4.

³Tenn. Code Ann. § 50-6-102(16) is now codified at Tenn. Code Ann. § 50-6-102(15).

We find the rationale of *Bressler* to be persuasive and consistent with the overarching purposes of the workers' compensation law. It has long been the case that mental conditions arising from compensable physical injuries are also compensable. *See, e.g., Batson v. Cigna Prop. & Cas. Cos.*, 874 S.W.2d 566, 569-70 (Tenn. Workers' Comp. Panel 1994) (contrasting gradually developing stress from the job with mental conditions arising from a physical injury). One of the many potential consequences of a work injury is the diminution or complete loss of the ability to earn a living, which can, in turn, cause depression. *See Coleman v. Lumberman's Mut. Cas. Co.*, No. W1998-00948-SC-WCM-CV, 2000 WL 236424, at *8 (Tenn. Workers' Comp. Panel Mar. 2, 2000); *Batson v. Cigna Prop. & Cas. Cos.*, 874 S.W.2d at 567. Consistent with the holding in *Bressler*, we have no difficulty in distinguishing Mr. Vowell's mental injury from one caused solely by a loss of employment, actual or prospective, such as the *Goodloe* plaintiff's. We therefore conclude that the trial court did not err by finding that Mr. Vowell sustained a compensable mental injury in this case.

V.

We affirm the trial court's judgment and remand the case to the trial court for whatever further proceedings, consistent with this opinion, may be required. We tax the costs of this appeal to St. Thomas Hospital and its surety, for which execution, if necessary, may issue.

WILLIAM C. KOCH, JR., JUSTICE

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JUDGMENT

This case is before the Court upon 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, which are incorporated herein by reference.

Whereupon, it appears to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs will be paid by St. Thomas Hospital and its surety, for which execution may issue if necessary.

PER CURIAM