

FILED

June 16, 2017

**TN COURT OF
WORKERS' COMPENSATION
CLAIMS**

Time 1:12 PM

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

DARLENE NOEL,

Employee,

v.

EAN HOLDINGS, LLC

Employer,

And

**FARMINGTON INS. CO.,
Insurance Carrier**

Department of Labor

**Docket Nos.: 2016-08-0054
2016-08-0069**

**State File Nos.: 45760-2015
9570-2015**

DOI: 01/16/15 & 01/23/15

EMPLOYER'S APPEAL BRIEF

COMES NOW, the Employer, by and through counsel, Moore, Ingram, Johnson, and Steele, LLP, and file this, its brief in support of its appeal of the Trial Court's Order Denying EAN's Motions to Terminate Medical Treatment, that was filed on May 18, 2017. For the reasons cited below, the Employer asserts that the trial Court was in error in refusing to grant the Employer's unopposed motion.

FACTS

The Employee has alleged that an injury occurred on January 16, 2015, when she was struck by a door while assisting another employee. She testified that the door struck her between her neck and left shoulder. The employee who opened the door also testified to where the Employee was hit. The Trial Court incorrectly identified the Employee as working for Alamo at the time of the injury. The Employee was actually working at an

Enterprise rental location at the time of the alleged injury. The Employee admitted to a prior injury to her shoulders and knees, but maintains that the injury at issue in this action is for complaints of pain in her neck, going into her shoulders and is separate and distinct from the prior injury. A panel of physicians was ordered to be provided for this injury and treatment was begun with Dr. Keith Williams, who diagnosed only degenerative issues in the Employee's back.

The Employee has also alleged an injury occurring on January 23, 2015. This alleged injury was also considered by the Court at the Expedited Hearing on November 7, 2016, at which time the Employee testified that she was walking towards a set of automatic sliding glass doors. The doors apparently malfunctioned and did not open completely, causing her to walk into one of them. A panel of physicians qualified to treat head injuries was ordered by this Court on November 29, 2016 and a panel, was provided. The Employee chose Dr. Allen Nadel and she was seen by him on March 14, 2017. At the time of that appointment, the Employee's headaches had admittedly resolved and neck pain was her only complaint. Additionally, the Employer sent a questionnaire to Dr. Nadel to complete and he indicated that the complaints of the Employee were not work-related.

Based upon the questionnaire response and the medical records received to date, the Employer filed its Motion to Terminate Medical Treatment for both dates of injury. No response to the Motion was filed by either the Employee or her attorney. The Court reached a decision on the Motion without oral argument and issued its Order on May 18, 2017.

ARGUMENT

The Employee in a worker's compensation suit has the burden of proving every element of their case by a preponderance of the evidence. Elmore v. Travelers Ins. Co., 824

S.W.2d 541, 543 (Tenn. 1992). Furthermore, a workers' compensation claimant must establish by expert medical testimony that they are injured and that there exists a causal relationship between the injury and the claimant's employment activity. Excel Polymers, LLC v. Broyles, 302 S.W.3d 268, 274 (Tenn.2009).

Specifically, the causal relationship between the claimed injury and the work-related activity must be established by a preponderance of the expert medical testimony. Lambdin v. Goodyear Tire & Rubber Company, 468 S.W.3d 1, 9 (Tenn. 2015). However, the mere notation in a medical record that a patient described an on-the-job injury is insufficient to prove work-relatedness when the record does not contain a specific expert medical opinion causally linking the described work incident to the injury the patient sustained. Munyan v. PCL Industrial Construction Co., 2016 WL 3361124, *3 (TNWCClaims May 18, 2016) citing Cullum v. K-Mac Holding Corp., No. 2014-07-0006, TN Wrk. Comp. App. Bd. LEXIS 7, *12 (2014).

Moreover, Rule 4.02(B) of the Practice and Procedures of the Tennessee Court of Workers Compensation Claims, clearly states in relevant part that, "If a non-dispositive motion is opposed, a response to the non-dispositive motion **must** be filed and served on all parties or their counsel....If no opposition is filed, the motion **will** be considered unopposed."(emphasis added) In the matter now before this Court, no response was filed by the Employee or her attorney. The Trial Court noted in its Order that the motions were being considered unopposed. Despite the unopposed nature of the motion, and the clear lack of any medical evidence contrary to the medical opinions provided by the Employer, the Trial Court denied the Employer's motion in incorrectly continued to impose its Order upon the Employer, requiring it to unjustly pay for continuing medical treatment when all medical

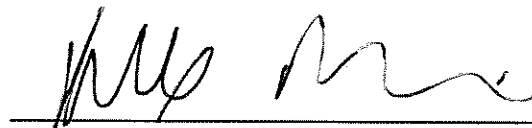
evidence presented to the Court indicates that the treatment is not work-related. No medical evidence has been presented by the Employee that contradicts the opinions of Drs. Nadal and Williams. As such, the Court cannot continue to maintain that the Employee is likely to prevail at a hearing on the merits, as required to continue enforcement of its prior Order.

CONCLUSION

Therefore, for the reasons cited above, the Employer would ask this Court to overturn the decision of the Trial Court and find that the ordered medical treatment should rightly be terminated.

Respectfully submitted,

MOORE INGRAM JOHNSON & STEELE, LLP

A handwritten signature in black ink, appearing to read 'Alex B. Morrison', is written over a horizontal line.

Alex B. Morrison, BPR #: 28096

Charles E. Pierce, BPR #: 25637

Attorney for Employer

Cedar Ridge Office Park

408 N. Cedar Bluff Road, Suite 500

Knoxville, Tennessee 37923

(865) 692-9039