

STATE OF TENNESSEE

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*Advisory Council on Workers' Compensation*

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January 14, 2013

Honorable Bill Haslam  
Governor  
State of Tennessee  
600 Charlotte Avenue  
First Floor, State Capitol  
Nashville, TN 37243

Honorable Ron Ramsey  
Lt. Governor and Speaker of the Senate  
State of Tennessee  
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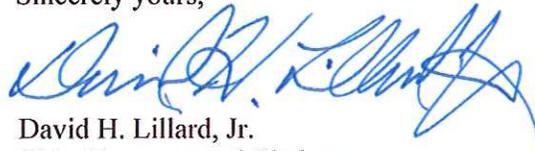
Re: **2012** Annual Report of Significant Tennessee Supreme Court Decisions on Workers' Compensation  
Prepared by the Advisory Council on Workers' Compensation

Dear Governor Haslam, Lieutenant Governor Ramsey and Speaker Harwell:

Pursuant to Tennessee Code Annotated §50-6-121(e), the Advisory Council on Workers' Compensation hereby submits an annual report reviewing significant Tennessee Supreme Court cases involving workers' compensation cases in 2012. If you or your staff have any questions or need further information regarding the report, please contact me at (615) 741-2956 or the Administrator of the Advisory Council, Lynn Ivanick, at (615) 741-4358  
[Lynn.Ivanick@tn.gov](mailto:Lynn.Ivanick@tn.gov).

This letter and the enclosed annual report will also be distributed via email to all members of the Tennessee General Assembly. Thank you for the continuing opportunity to be of service to each of you, the General Assembly and the People of Tennessee.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "David H. Lillard, Jr.", written in a cursive style.

David H. Lillard, Jr.  
State Treasurer and Chairman

CC: (w/enclosure)

Honorable Russell Humphrey, Chief Clerk  
Tennessee State Senate of the Tennessee General Assembly

Honorable Joe McCord, Chief Clerk  
Tennessee House of Representatives of the Tennessee Assembly

# STATE OF TENNESSEE

## *Advisory Council on Workers' Compensation*

<http://treasury.tn.gov/claims/wcadvisory.html>



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### 2012 SUMMARY OF SIGNIFICANT TENNESSEE SUPREME COURT WORKERS' COMPENSATION DECISIONS

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TREASURY DEPARTMENT  
STATE CAPITOL  
NASHVILLE, TENNESSEE 37243-0225

**David H. Lillard, Jr., State Treasurer, Chair**  
**Lynn Ivanick, Administrator**

## **Significant 2012 Tennessee Supreme Court Workers' Compensation Decisions**

### **INTRODUCTION**

Pursuant to Tennessee Code Annotated (“T.C.A.”) § 50-6-121(g), the Advisory Council on Workers' Compensation is required to issue this report reviewing significant Tennessee Supreme Court decisions involving workers' compensation matters for each calendar year. This report includes both the actual language in some instances and paraphrasing in others of those significant decisions and a few other decisions of particular interest or still pending review from the Tennessee Supreme Court Special Workers' Compensation Appeals Panel.

### **Full Court Review IN THE SUPREME COURT OF TENNESSEE**

#### **GERDAU AMERISTEEL, INC. v. STEVEN RATLIFF No. W2011-00381-SC-R3-WC - Filed June 7, 2012**

On two occasions in February and April of 2008, an employee viewed the bodies of co-workers who had died as a result of work accidents. On June 23, 2008, the employee was diagnosed with post-traumatic stress disorder (“PTSD”) caused by the two incidents. Exactly one year post diagnosis, the employee requested a benefit review conference. The employer filed a motion for summary judgment contending that the statute of limitations commenced on the date of the second accident and that the claim was therefore barred but added a complaint for the court to determine the amount of workers’ compensation benefits due if summary judgment was not granted. The employee contended that the statute did not begin to run until the date of his diagnosis and that his claim was timely.

The trial court granted the employer’s summary judgment motion. The court did properly hear other evidence and further determined that if the statute was tolled, the employee would be entitled to 20% impairment to the body as a whole as previously determined by the trial court. The employee appealed.

The Supreme Court reversed the judgment of the trial court and remanded the case for entry of a judgment consistent with the trial court’s alternative findings.

The Court reasoned that since the PTSD was not diagnosable before June 23, 2008, the statute of limitations period did not commence until the plaintiff discovered the injury that was the basis for the claim, so the statute of limitations was tolled until that time and therefore did not bar this claim. The Claimant’s doctor had testified at trial that the injured worker was “clinically diagnosable” for PTSD on June 23, 2008. To be more specific, the Court held that the limitations period for workers’ compensation cases pursuant to T.C.A. §50-6-203(b)(1) does not

commence until a plaintiff discovers or, in the exercise of reasonable diligence, should have discovered that he has a claim.

The judgment of the trial court was reversed and the case remanded for entry of judgment awarding Mr. Ratliff permanent partial disability of 20% to the body as a whole.

The full case may be viewed here: <http://www.tncourts.gov/sites/default/files/gerdauopn.pdf>.

**LACEY CHAPMAN v. DAVITA, INC.**

**No. M2011-02674-SC-R10-WC - Filed September 21, 2012**

An injured employee filed a request for assistance with the Tennessee Department of Labor and Workforce Development (“Department”). After approximately six months of inaction by the Department, the employee filed a complaint for workers’ compensation benefits against her employer in Circuit Court. The employer responded with a motion to dismiss, asserting that the trial court lacked subject matter jurisdiction because the parties had not participated in the benefit review conference process. The trial judge did not dismiss the complaint but ordered the case to be held in abeyance pending further orders of the court.

The employer filed a motion for interlocutory appeal pursuant to Rule 9 of the Tennessee Rules of Appellate Procedure, which the trial court denied. The Tennessee Supreme Court granted the employer’s Rule 10 application for extraordinary appeal.

The Supreme Court held that the trial court did not have subject matter jurisdiction of the case because the employee did not exhaust the benefit review conference process before filing suit as required by T.C.A. § 50-6-203 (2008). The judgment of the trial court was reversed, and the employee’s complaint was dismissed without prejudice.

The Court determined that a trial court does not have subject matter jurisdiction of a workers’ compensation case until the plaintiff employee has exhausted the benefit review conference process. The failure of the Department to respond to a request for assistance does not excuse the employee from complying with the benefit review conference process before filing suit. The Court stated in its opinion, “As part of the Reform Act of 2004, the legislature decided that parties having a workers’ compensation dispute over injuries occurring after January 1, 2005, must exhaust an administrative process, called a benefit review conference, before filing suit.” Under Tenn. Comp. R. & Regs. 0800-2-5-.09(1) (2006), the Department rules promulgated pursuant to T.C.A. § 50-6-225, there are only five ways in which the benefit review conference is “otherwise exhausted” prior to its completion: 1. the issuance of an Order Denying benefits based upon non-compensability; 2. an Agreed Order signed by the parties settling the claim upon mediation; 3. issuance of an Impasse Report signed and dated by a Workers’ Compensation Specialist; 4. completing a Rule 31 private mediation if the Department fails to do so within 60 days of a request; and 5. the issuance of a signed written waiver by the Director of the Benefit Review Program or the Director’s designee.

The full case may be viewed here: <http://caselaw.findlaw.com/tn-supreme-court/1612785.html>

**TROY MITCHELL v. FAYETTEVILLE PUBLIC UTILITIES**

**No. M2011-00410-SC-R3-WC - Filed May 8, 2012**

An employee filed a workers' compensation claim for injuries sustained on the job. While conceding that the injury was employment-related, the employer denied workers' compensation benefits because the employee, while in a bucket lift, had removed his protective gloves, a violation of the employer's safety policy. A benefit review conference did not produce a settlement, and afterward, the employee filed suit. The trial court awarded benefits and the employer appealed, contending that the statutory defenses of willful misconduct and willful failure or refusal to use a safety appliance or device precluded recovery as defined by T.C.A. § 50-6-110(a) (2008). At trial, both parties agreed that the four-element test set out in *Nance v. State Industries, Inc.*, 33 S.W.3d 222, 226 (Tenn. Workers' Comp. Panel 2000), controlled the disposition of the claim. Additionally, all stipulated to the presence of three of the four elements identified therein as essential to bar recovery. Therefore, the only remaining element at issue was whether the employee's removal of his gloves while in the performance of his duties qualified as a willful failure to use a safety appliance.

The employee testified that because he had removed his gloves under similar circumstances on previous occasions, he did not believe that he was exposing himself to danger. The trial court awarded benefits to the employee, finding that the employee had not acted willfully, within the meaning of the law, because he had plausible explanations for the removal of his gloves.

The employer appealed. After oral argument before the Panel, but before the Panel filed its opinion, the case was transferred to the full Court. Historically, even though the Tennessee Workers' Compensation law creates a system in which employees can recover benefits for their injuries arising out of and in the course of employment without regard to fault (T.C.A. § 50-6-103(a)), there are circumstances wherein an employee cannot recover. Those include claims barred by T.C.A. § 50-6-110(a) disallowing compensation if an employee's willful misconduct or intentional self-inflicted injury, intoxication or illegal drug usage was the cause of the injuries. The willful failure or refusal to use a safety device or to perform a duty required by law prevents compensation as well. It is the employer's burden to prove that the injuries were caused by the above circumstances. Further, if disobedience of a rule is tolerated by an employer, it cannot then use a violation of that rule as a defense. The Court found that because the evidence established that the employee admitted his knowledge of a regularly enforced safety rule, understood the rationale for the rule, and willfully failed to comply, the injuries he suffered were not compensable. The judgment of the trial court was reversed and the case dismissed.

Justice Holder dissented and indicated that the lack of a valid excuse for failure to use a safety appliance does not amount to a finding of "willfulness" under prior case law. Previously, the willful misconduct defense required that an employee's misconduct contain "an element of perverseness" to deny the employee workers' compensation benefits. *Nance*, 33 S.W.3d at 227. She elaborated that although "perverseness" may not be the most modern or the most easily understood term, it did assist courts in determining what kind of misconduct could be classified as willful. This employee's conduct may rise to the level of negligence or recklessness, but the removal of his gloves when he assumed he was in a safe zone should not be deemed perverse or

willful misconduct. Justice Holder concluded that the evidence did not preponderate against the trial court's judgment.

The full case may be viewed here:

<http://www.tncourts.gov/sites/default/files/mitchelltopncorr.pdf>

**ROGER DALE WILLIAMSON v. BAPTIST HOSPITAL  
OF COCKE COUNTY, INC.**

**No. E2010-01282-SC-WCM-WC - Filed February 28, 2012**

An employee with ten years of experience as a certified nursing assistant sustained an injury to his shoulder while moving a patient. As a result of the injury, he was no longer able to perform his job nor hold any of the jobs he had held previously. Additionally, he could no longer perform many of his outside chores or other activities. Six months later, the employee returned to work with significant restrictions on the use of his right arm. The employer offered him a job as a phlebotomist, which offered a higher pay grade. After two weeks of on-the-job training, the employee notified the employer of his resignation, believing that he would be unable to handle the duties associated with his new position. He explained that he found it particularly stressful to draw blood from newborns, infants, and children, and was overwhelmed by fear of being unable to perform competently the requirements of a phlebotomist to the point where he broke down emotionally from the stress. When he made a claim for workers' compensation benefits, the trial court, accrediting the testimony of the employee, held that he did not have a meaningful return to work and applied a multiplier of six to the assigned impairment rating.

The employer appealed and the special workers' compensation panel modified the trial court's judgment, concluding that the evidence preponderated against the trial court's ruling that the employee had not made a meaningful return to work and reducing the award to one-and-one-half times the impairment rating.

The employee's appeal from the panel decision was granted, and the full court upheld the panel's decision because the court concluded that the evidence demonstrated that the employee did have a meaningful return to work. That conclusion was based on the fact that the employee's decision to resign was not based on his medical condition from his injury but rather was based on unfounded, albeit genuine, doubts, fears and anxiety. The court determined that a resignation based upon an unreasonable or otherwise unsubstantiated fear does not qualify as a denial of a meaningful return to work. Consequently, the employee was not denied a meaningful return to work and is limited to an award of one-and-one-half times the medical impairment rating.

The full case may be viewed here:

[http://www.tncourts.gov/sites/default/files/rogerwilliamson.opn\\_.pdf](http://www.tncourts.gov/sites/default/files/rogerwilliamson.opn_.pdf)

**WALTER WORD v. METRO AIR SERVICES, INC. ET AL.**

**No. M2011-02675-SC-R9-WC - Filed August 21, 2012**

Employee was injured and filed a claim for workers' compensation benefits. The employer argued that the award should have been capped at one and one-half times the anatomical

impairment in accordance with T.C.A. § 50-6-241(d)(1)(A) because the employee returned to work at the same job after recovering from his injury. The undisputed evidence was that employer was acquired by another corporate entity after the date of employee's injury. The Supreme Court and recent workers' compensation court panels have consistently held that the lower cap on disability awards does not apply when the pre-injury employer is purchased by or merged with another entity. *Barnett v. Milan Seating Sys.*, 215 S.W.3d 828 (Tenn. 2007); *Cook v. Gen. Motors Corp.*, No. M2010-00272-WC-R3-WC, 2011 WL 590456 (Tenn. Workers' Comp. Panel Feb. 16, 2011); *Day v. Zurich Am. Ins. Co.*, No. W2009-01349-WC-R3-WC, 2010 WL 1241779 (Tenn. Workers' Comp. Panel Mar. 31, 2010). The court held employer's argument to be without merit.

An interlocutory appeal was granted, however, to decide whether a trial court has subject matter jurisdiction over a workers' compensation case when the time stamp on the complaint is earlier than the time written on the Benefit Review Conference Impasse Report. The parties had attended a benefit review conference but were unable to reach agreement, so they were issued an impasse report dated the "20th day of October, 2011, 10:24 a.m." On the same day, the employee filed a complaint in the Wilson County Chancery Court seeking workers' compensation benefits. The complaint was filed at 10:22 a.m., two minutes before the impasse report purportedly issued. Also that same day, the employer filed a complaint based on the same facts in the Davidson County Circuit Court with a time stamp indicating a filing time of 10:23 a.m. Recognizing that this time preceded the time noted on the Report, the employer non-suited the original complaint and refiled it in the same court at 11:54 a.m.

The employer filed a motion to dismiss the employee's Wilson County complaint for lack of jurisdiction. At a hearing on the motion, the Wilson County Chancery Court found credible the affidavits employee filed, determined that it had subject matter jurisdiction, and denied the motion to dismiss. Thereafter, the trial court granted the employer permission to seek the interlocutory appeal, which was granted.

The court discussed the indignities created by the race to the courthouse which it has addressed before and again suggested that only legislative changes will resolve the matter. Although the evidence suggested that the clocks in the various jurisdictions were not synchronized and that the parties were truthful in their claims of having filed their respective suits post impasse, the court, nevertheless is bound to the actual numbers on the respective documents. Court records may not be impeached by extrinsic evidence absent fraud, inevitable accident, or surprise.

The court further indicated that it understood the arbitrary results that may occur due to the present state of the law and again indicated that is the legislature and not the courts that must resolve the issue of nonsynchronous clocks and races to the courthouse to achieve perceived advantages in differing jurisdictions. The judgment of the Chancery court was reversed and the lawsuit dismissed for lack of subject matter jurisdiction.

The full case may be viewed here: <http://caselaw.findlaw.com/tn-supreme-court/1610061.html>.

## **The Supreme Court of Tennessee** **Special Workers' Compensation Appeals Panel**

Appeals of trial court decisions in cases involving workers' compensation are referred directly to the Supreme Court's Special Workers' Compensation Appeals Panel for hearings. The panel reports its findings of fact and conclusions of law and such judgments automatically become the judgment of the full court in 30 days barring the grant of a motion for review. Tennessee Supreme Court Rule 51 and T.C.A. § 50-6-225(e). There were a large number of cases heard this year, just one of particular interest is outlined in detail below. Others are attached alphabetically in the appendix for your review with a brief note as to their subject matter. Those which have been granted full review will be on the Tennessee Supreme Court's 2013 calendar.

### **Panel case of particular note due to its recurring theme throughout the year**

#### **DAVID SMITH v. GERDAU AMERISTEEL, INC.**

**No. W2011-01399-WC-R3-WC - Filed September 5, 2012**

In this claim for workers' compensation benefits, the employee suffered a compensable back injury. The trial court awarded 85% permanent partial disability to the body as a whole and additional temporary total disability benefits, resulting in an award of 400 weeks of benefits. The employer appealed, asserting that the permanent partial disability award was excessive and that the trial court erred by awarding additional temporary total disability benefits.

The panel noted that the authorized treating physician provided no explanation for his impairment rating. The second physician to whom the employer sent the employee admitted in his testimony that he didn't properly follow the American Medical Association guidelines as required for assigning a proper impairment rating. The employee's chosen physician who conducted an independent medical examination ("IME") gave a more detailed explanation in his testimony of the method and reasoning used to arrive at his assigned impairment rating. Additionally, the physicians gave varying dates for the employee's maximum medical improvement. When the expert medical testimony differs, it is within the trial court's discretion to accept the opinion of one expert over another. *Hinson v. Wal-Mart Stores, Inc.*, 654 S.W.2d 675, 676-77 (Tenn. 1983). The trial court accredited the IME physician's testimony with respect to both the impairment rating and the maximum medical improvement date.

The panel pointed out that it would be improper for a reviewing court to use the benefit of hindsight as to an employee's lack of improvement over time as a basis for adopting an earlier maximum improvement date as suggested on appeal. Considering all the factors, the panel concluded that the evidence did not preponderate against the trial court's findings, so it affirmed the judgment of the trial court.

The full case may be viewed here: <http://www.tncourts.gov/sites/default/files/smithdopn.pdf>

## CONCLUSION

Pursuant to T.C.A. § 50-6-121(g), the Advisory Council on Workers' Compensation respectfully submits this report on significant Supreme Court decisions for the 2012 Calendar Year. An electronic copy of the report will be sent to the Governor and to the Speaker of the House of Representative, the Speaker of the Senate, the Chair of the Consumer and Employee Affairs Committee of the House of Representative, the Chair of the Commerce, Labor and Agriculture Committee of the Senate, and the Chair and Co-chair of the Special Joint Committee on Workers' Compensation, if so appointed. A printed copy of the report will not be mailed. Notice of the availability of this report will be provided to all members of the 108<sup>th</sup> General Assembly pursuant to T.C.A. § 3-1-114. In addition, the report will be posted under the Advisory Council on Workers' Compensation tab of the Tennessee Treasury Department website: <http://treasury.tn.gov/claims/wcadvisory.html>

Respectfully submitted on behalf of the Tennessee Advisory Council on Workers' Compensation,

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David H. Lillard, Jr., State Treasurer, Chair

## APPENDIX

This Appendix contains a list of the cases heard by the Supreme Court Workers' Compensation Appeals Panel in alphabetical order by case name with a brief recount of the subject matter following. Of particular note this year is the oft-recurring subject of competing physician testimony with the consistent finding that the trial court has, within its discretion, the right to determine which physician's testimony to accredit.

**MARIE AKINS v. WHIRLPOOL CORPORATION** No. M2011-01258-WC-R3-WC - Filed January 30, 2012. Post plant closure diagnosis of an injury alleged to have occurred while employed was determined to lack causation partially due to a notable increase of symptoms even after work duties had ceased. The trial court's judgment was affirmed.

**BRYAN E. BROWN v. VINTEC COMPANY ET AL** No. M2011-01308-WC-R3-WC - Filed July 27, 2012. Reconsideration is available for 400 weeks post Return To Work ("RTW") date and is not extended by later additional medical leave for treatment. T.C.A. § 50-6-241(a)(2) The trial court's judgment was affirmed.

**SANDRA M. BUTTREY v. ALTRIA GROUP, INC.** No. M2011-00661-WC-R3-WC - Filed April 24, 2012. If work activities aggravate or exacerbate a pre-existing condition resulting in

an anatomical change or advancement of the condition, it qualifies as a workers' compensation injury. Judgment of the trial court was affirmed.

**TIMOTHY BYROM v. RANDSTAD NORTH AMERICA, L.P. No. M2011-00357-WC-R3-WC - Filed March 8, 2012.** Idiopathic injuries are not covered under an employers' workers' compensation insurance. Judgment of the trial court was affirmed.

**JOHN J. CAMPBELL CO., INC. et al. v. JUAN BELTRAN No. W2011-01388-SC-WCM-WC - Filed August 17, 2012.** A trial court's judgment is reviewed de novo upon the record with no presumption of correctness. The evidence presented in the appeal of this reconsideration case did not preponderate against the judgment of the trial court wherein it determined the new impairment rating based upon increased symptoms and ratings from various physicians. Judgment of the trial court was affirmed.

**DOYLE ALLEN CASTLE v. SULLIVAN COUNTY SHERIFF'S DEPT. No. E2011-00988-WC-R3-WC-Filed-February 15, 2012.** Summary Judgment was wrongfully granted when there existed a genuine issue of material fact as to whether the mental injury qualified as extraordinary or was of the type normally experienced in the line of work. The trial court was reversed and the case remanded for trial.

**MARY D. COLE v. MARVIN WINDOWS OF TENNESSEE No. W2010-02610-WC-R3-WC - Filed March 20, 2012.** To rebut the statutory presumption of correctness given to the Medical Impairment Rating ("MIR") physician's rating, one must show by clear and convincing evidence that the physician used an incorrect method or made an inappropriate interpretation of the American Medical Association ("AMA") Guidelines. Appellant failed to do so, and the trial court's judgment was affirmed.

**CAROLYN COLLIER v. LIFE CARE CENTERS OF COLLEGEDALE, ET AL No. E2011-01683-WC-R3-WC- Filed-OCT. 8, 2012.** Conflicting medical opinions are for the trial court to determine. For injuries occurring on or after July 1, 1992, the court is limited to awarding four hundred (400) weeks times the maximum weekly benefit except in instances of permanent total disability. Additionally, temporary total disability benefits paid to the injured worker shall not be included in calculating that maximum total benefit. Judgment of the trial court was modified down to that maximum award, but affirmed in all other aspects.

**SUE CROSS v. R & R LUMBER COMPANY, INC. No. E2012-00492-WC-R3-WC - Filed-12-26-12.** Employee's death was determined by one physician to be the result of physical activity in the workplace which aggravated a preexisting heart condition and thereby arose from and in the scope of employment. Another physician disagreed. The trial court has considerable discretion when choosing which expert to credit, and awarded benefits. The evidence presented on appeal did not preponderate against the trial court's findings, so its Judgment was affirmed.

**TIMOTHY D. CUNNINGHAM v. CITY OF SAVANNAH, TENNESSEE ET AL No. W2010-02411-WC-R3-WC - Filed February 28, 2012.** An incident in the workplace which precipitates the heart attack of a law enforcement officer, even if not fully diagnosed until several days later, is presumed a workers' compensation injury, T.C.A. §7-51-201(a)(1). The trial court's

judgment that 1) the employer failed to rebut that presumption and, 2) that the heart attack was causally related to the workplace (there were competing physician's testimony), was affirmed.

**DANA AUTOMOTIVE SYSTEMS GROUP, LLC ET AL. v. LARRY EVANS** No. W2010-00656-WC-R3-WC - Filed August 2, 2012. The trial court's judgment that the injured worker's benefits were capped due to his voluntary retirement was reversed and remanded for a trial to allow for proof as to the voluntariness of the retirement and the extent of vocational disability.

**DELTA FAUCET COMPANY v. JEFFREY NOLES** No. W2011-00383-WC-R3-WC - Filed May 11, 2012. Claimant alleged injury to his elbow and aggravation of pre-existing carpal tunnel syndrome ("CTS"). Judgment of the trial court awarding benefits to both was affirmed by a majority. Justice Childress dissented, indicating that the notice of the aggravation of the pre-existing CTS was insufficient, the judgment should have been reversed on that issue, and the cause remanded for trial on the issue amount of benefits due on the elbow injury.

**RONALD EADY v. COMMODORE EXPRESS, INC. ET AL** No. M2010-01439-WC-R3-WC - Filed March 8, 2012. An injured truck driver's claim of a work related back injury was denied since the injury complained of occurred as a result of the employee's attempt to assault his fellow driver. That action alone did not bar his claim, but the fact that he had so far departed from the duties and responsibilities of his job as a truck driver, had exited his employer's premises (the truck) and was on a personal mission, did indicate that he was no longer acting in the course of his employment. The evidence presented did not preponderate against the trial court's findings and the judgment was affirmed.

**LANCE ERICKSON v. SDI OF OAK RIDGE TURNPIKE, LLC** No. E2011-02427-WC-R3-WC- Filed-September 4, 2012. An employer who discharges an employee in retaliation for filing a workers' compensation claim has not provided a meaningful return to work and entitles the injured worker to the statutory maximum of six times the medical impairment. Judgment of the trial court was supported by the evidence and affirmed.

**ROCHELLE M. EVANS v. FORD MOTOR COMPANY** No. M2010-02254-WC-R3-WC - Filed - February 10, 2012. Voluntary resignation prohibits reconsideration of a workers' compensation settlement. The trial court's judgment was affirmed.

**GAIL FLY v. TRAVELERS INSURANCE ET AL** No. W2011-01215-SC-WCM-WC - Filed September 20, 2012. An employer is liable under the workers' compensation law for an aggravation of a pre-existing condition that occurs in the course of, and arises from, the employment if it advances the severity of the condition or amounts to a new distinct injury. However, if the aggravation merely increases pain surrounding a pre-existing condition, then it is not compensable. This applies whether or not the underlying condition is related to the employment. In this case, the evidence preponderates against finding the alleged injury compensable so the judgment of the trial court is reversed.

**BETTY FRANKLIN v. DURO STANDARD PRODUCTS CO., INC.** No. W2011-01212-WC-R3-WC - Filed July 30, 2012. In this claim for workers' compensation benefits, the trial

court awarded permanent partial disability benefits to the employee for hearing loss. Her employer has appealed, contending that the trial court erred by admitting the testimony of the employee's medical expert into evidence and by finding that her hearing loss was caused by her employment. The medical expert testified that there was no medical reason for the hearing impairment and no noise exposure outside the workplace to have caused the injury. The employer failed to introduce evidence to the contrary. The preponderance of the evidence supported, and the court affirmed the judgment of the trial court.

**STEPHEN D. GOOD v. SUNKOTE PLASTIC COATINGS CORPORATION ET AL No. M2012-00700-WC-R3-WC - Filed December 19, 2012.** An employee sought permanent and total disability stemming from his work injury. The trial court concluded that the employee sustained a compensable work-related injury and awarded 80% permanent partial disability benefits. The employer appealed, arguing that the evidence preponderated against the trial court's finding that the injury was compensable and that, even if the employee had proven a compensable injury, the evidence preponderated against the award of 80% permanent partial disability benefits. There were competing physicians' testimony and the trial court has discretion as to which to accredit. The trial court thoughtfully and carefully weighed the evidence, which supports and does not preponderate against the trial court's judgment. The trial court's decision was affirmed.

**LARRY KENNETH HALE v. INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA ET AL No. M2011-00504-WC-R3-WC - Filed - February 16, 2012.** The employee fell and struck both knees in the course of his employment. His left knee required surgery, and his right knee received limited medical treatment. The treating physician assigned 8% permanent impairment to the left leg. Employee's evaluating physician assigned 13% impairment to the left leg and 20% impairment to the right leg. The trial court adopted the evaluating physician's opinions and awarded 50% permanent partial disability to both legs. Employer appealed. The trial court has within its discretion the evaluation of the evidence to determine which competing physician's testimony is credible. The evidence did not preponderate against the trial court's judgment and same was affirmed.

**MELVIN HILL v. WHIRLPOOL CORPORATION ET AL No. M2011-01291-WC-R3-WC - Filed May 10, 2012.** The employee filed a complaint in the Chancery Court seeking workers' compensation benefits for his loss of hearing. Following a bench trial, the trial court concluded that the employee's hearing loss was caused by his exposure to noise at the workplace and awarded permanent partial disability benefits, medical expenses and discretionary costs. The employer raised two issues on appeal: 1. untimely notice; and 2. insufficient proof that the hearing loss was work-related since employee was a hunter and shooting could have been the cause. The panel found that the trial court did not err in crediting the medical expert's testimony which both eliminated causes other than the workplace and provided the date of diagnosis for notice purposes. The trial court's judgment was affirmed.

**TOMMY W. HOUSE v. NISSAN NORTH AMERICA ET AL No. M2011-01481-WC-R3-WC - Filed July 26, 2012.** The employee alleged that he suffered a compensable injury to his shoulder in July 2008. His employer contended that the employee's complaints were a continuation of a February 2006 injury to the same shoulder which was the subject of an earlier

settlement. In the alternative, the employer contended that any award of benefits should be limited to one-and-one-half times the anatomical impairment in accordance with T.C.A. § 50-6-241(d)(1)(A), because the employee resigned in April 2010 pursuant to a voluntary buyout program. A judgment awarding benefits was entered, and the employer appealed. The panel found that the employee had sustained a new injury since an anatomical change occurred of the pre-existing condition and not just increased pain. Additionally, it determined that the employee's resignation was recommended by his physician due to his physical injuries at work, and, therefore, the lower cap did not apply. The trial court's judgment was affirmed.

**SCOTT HOUSE v. YRC, INC. ET AL No. M2011-01535-WC-R3-WC - Filed June 22, 2012.** This was a reconsideration case. The employee settled his claim for one and one-half times the anatomical impairment in 2007. In 2008, his employer merged with a second company to form a new corporate entity. The employee continued to be employed by the new entity in the same location, working under the same collective bargaining agreement that he had been under prior to his injury. The trial court found that he had lost his employment for purposes of T.C.A. § 50-6-241(d)(1)(B) and awarded additional permanent disability benefits. The employer appealed, contending that the trial court erred by finding that a loss of employment occurred or, in the alternative, that the evidence preponderated against an award of additional benefits. The panel affirmed the judgment of the trial court since the law in effect on the date of injury allowed for reconsideration in a takeover/merger situation.

**KATHY JOHNSON v. YOON INVESTMENTS, L.L.C. ET AL No. M2011-01462-WC-R3-WC - Filed April 12, 2012.** The trial court found that the employee had sustained a compensable injury in October 2005 and that she was permanently and totally disabled as a result of the injury. It also found that the employee's hospitalization in 2009 was related to her work injury and ordered her employer to pay associated medical expenses. On appeal, her employer contends that the trial court erred by finding that the employee was permanently and totally disabled and that the 2009 medical expenses were related to her work injury. The panel found that unrefuted physician testimony concluded both employee's inability to return to the workforce and that the 2009 hospitalization was related to the 2005 injury. The judgment of the trial court was affirmed.

**PAMELA A. JONES v. VANDERBILT UNIVERSITY No. M2011-02250-WC-R3-WC - Filed October 12, 2012.** The employee suffered a work-related injury in 2004 and reached a settlement agreement with her employer. She filed a complaint arguing that the employer was required to pay for bilateral knee replacement pursuant to the settlement agreement. Employer alleged that the need for the requested medical treatment was not caused by the work injury. After a hearing, the trial court ordered the employer to pay for bilateral knee replacement. The employer appealed. The panel found that although there was conflicting proof, it was within the trial court's discretion to accredit the medical testimony which indicated that the injury caused an aggravation of a pre-existing condition resulting in the requested treatment being compensable. The Panel affirmed the judgment of the trial court.

**PHILLIP KEELE v. BATESVILLE CASKET COMPANY, INC. ET AL No. M2012-00034-WC-R3-CV - Filed October 12, 2012.** The trial court awarded the employee, a truck driver who fell while attempting to get in his truck, 60% permanent partial disability to the body

as a whole for injuries to his left knee and both shoulders. The employer appealed, asserting that the award was excessive and that the employee failed to prove that the injury to his right shoulder was work-related. Physician testimony that shoulders are not intended to be weight-bearing joints and the resultant tear of the right shoulder rotator cuff after the employee's use of crutches following work-injury related knee surgery provided causation. Additional testimony from the employee was found to be very credible by the trial court. The evidence did not preponderate against the trial court's judgment, which was affirmed.

**DANNEIL EDWARD KEITH v. WESTERN EXPRESS, INC. ET AL No. M2011-00653-WC-R3-WC - Filed - February 16, 2012.** The employee, a truck driver, was injured in the course and scope of his employment when his vehicle left the road and turned over. The employer denied his claim, contending that the accident and resulting injuries were the direct result of the employee's willful violation of the employer's safety rules. The trial court found that the employee had willfully and intentionally disregarded the safety rules and entered judgment for the employer. The employee appealed, contending that the trial court erred because the evidence did not establish the perverseness of his conduct, a necessary element of the misconduct affirmative defense. The trial court found the employee's testimony less than credible. The evidence did not preponderate against the trial court's judgment, which was affirmed.

**TINA KELLEY v. D & S RESIDENTIAL HOLDINGS, LP No. E2011-02392-WC-R3-WC- Filed-Sept. 4, 2012.** The employee, slipped and fell while performing her job responsibilities, did not return to work following the incident and was subsequently terminated. The employee received temporary total disability benefits but filed suit alleging that she was entitled to additional temporary total and permanent partial disability benefits. The trial court awarded the employee permanent benefits but capped the award at one and one-half times the medical impairment rating because the employee was not denied a meaningful return to work. The employee appealed, contending that the evidence preponderated against the trial court's finding that she had a meaningful return to work. She also contended that she was entitled to further temporary partial disability benefits. In response, the employer asserted that the impairment rating was excessive. The evidence showed that the employer offered employee work within her restrictions and she abandoned her employment. Because the evidence did not preponderate against the findings of the trial judge, the judgment was affirmed.

**ALTON B. KEPHART, JR. v. HUGHES HARDWOOD INTERNATIONAL, INC. ET AL No. M2011-01568-WC-R3-WC - Filed August 15, 2012.** The employee sustained a compensable injury to his lower back in August 2002 which was settled in May 2006 and included payment of future medical expenses for non-invasive treatment due to the injury. Thereafter the employee continued to be treated by his authorized treating physician. In 2009 the employer requested and the employee consented to an independent medical examination. Thereafter, the employer requested another independent medical examination. The employee declined. In April 2011, the employer filed a motion seeking to require the employee to submit to a medical examination pursuant to T.C.A. § 50-6-204(d)(1) and Tennessee Rule of Civil Procedure 35. The trial court denied the motion, and the employer has appealed. The evidence showed that the employee has submitted to numerous examinations, neurological and otherwise, requested by the employer. Further, the medical testimony showed that the proposed

examination would be immaterial to any issue concerning the employee's original injury. The trial judge did not abuse his discretion in finding the request for another independent medical examination unreasonable in light of all the circumstances. Therefore, the panel affirmed the judgment of the trial court.

**CHRISTOPHER BRYON JONES v. KIEWIT-ACT, A JOINT VENTURE and ZURICH AMERICAN INSURANCE COMPANY No. M2011-01202-WC-R3-WC - Filed May 10, 2012.** The employee appealed the trial court's denial of benefits for injuries to his right shoulder purportedly caused by a fall at work. The trial court denied the claim based on a finding that the employee's testimony was not credible and that he failed to establish that his injury arose out of and in the course of his employment. The employee also challenged the trial court's award of \$3,245.25 in discretionary costs to the employer. The evidence indicated the employee repeatedly withheld medical information in various venues when it was to his advantage and failed to mention the onset of immediate pain upon his fall at work until after he was laid off from that employment. The evidence did not preponderate against the trial court's judgment and it is therefore, affirmed.

**JEFF KING v. GERDAU AMERISTEEL US, INC. No. W2011-01414-WC-R3-WC - Filed July 30, 2012.**

An injured employee returned to work for his pre-injury employer. The employee was moved to a different area and worked fewer overtime hours because of his medical restrictions. The trial court held that the employee did not have a meaningful return to work pursuant to T.C.A. § 50-6-241(d)(1)(A) (2008) and awarded permanent partial disability benefits in excess of one and one-half times the anatomical impairment. The employer appealed. The panel held that the employee had a meaningful return to work since he was returned to a forty hour week on a full time basis at his hourly rate. It further found that overtime was part of average weekly wage and not part of hourly rate for purposes of return to work. In addition, it found that T.C.A. § 50-6-241(d)(1)(A) limited the employee's recovery to one and one-half times the anatomical impairment. The panel modified the judgment of the trial court as stated and remanded the case to the trial court for further proceedings consistent with its opinion.

**LOJAC ENTERPRISES ET AL. v. LEONARD J. KANIPE No. M2011-01525-WC-R3-WC - Filed May 10, 2012.** The employee was injured on the job and was able to return to his pre-injury position. His initial workers' compensation claim was settled after a benefit review conference and included his right of reconsideration. Subsequently, he lost his employment. After an impasse at the benefit review conference regarding the reconsideration, his employer filed a complaint to reconsider the employee's benefits in the county where the injury occurred. The employee then filed a similar suit in the county of his residence. The employee filed a motion to dismiss the employer's action, contending that T.C.A. § 50-6-241(d)(1)(B)(iv) does not permit an employer to file a reconsideration action. The employer contended that the statute did permit filing of a reconsideration action by an employer or in the alternative, the statute was unconstitutional. The trial court in the employer's case granted the motion to dismiss and found the statute constitutional. The employer appealed. The panel determined that the statute does not permit an employer to file a reconsideration claim, so the judgment of the trial court was affirmed.

**MARINE ACCESSORIES CORPORATION v. EDWINA WOODS No. E2011-01116-WC-R3-WC - Filed May 3, 2012.** The employee sustained a compensable back injury for which he was prescribed medication. Approximately five weeks after his injury, the employee died from gastrointestinal bleeding. His widow sought workers' compensation benefits, claiming that his death was compensable because it was caused by the medication he was prescribed for his work injury. The employer denied her claim, contending that the employee's death was not caused by the medication but was instead the result of esophageal varices caused by alcoholism and cirrhosis of the liver. The trial court held that the widow did not sustain her burden of proof, and she appealed. There was competing testimony by the physicians and medical experts which was within the discretion of the trial court to determine which to find credible. Accordingly, the evidence did not preponderate against the decision of the trial court and the judgment was affirmed.

**VICKI MARSH v. FARRAR HOLLIMAN AND MEDLEY ET AL No. M2011-00812-WC-R3-WC - Filed May 17, 2012.** The only issue before the trial court was the apportionment of liability between the employer and the Second Injury Fund. The employee had two compensable injuries prior to the injury that rendered her permanently and totally disabled. The trial court found that those injuries had caused 85% permanent partial disability. Based on that finding, it held the employer liable for 15% of the award and the Second Injury Fund liable for 85% of the award. The panel determined that the trial court incorrectly applied T.C.A. § 50-6-208(a)(1)(2008) and modified the award to assess a 70% disability rating to be paid by the employer for this last and final injury which resulted in employee becoming totally disabled. The panel did not disagree with the finding of permanent total disability, only the apportionment finding. When competing medical evidence is presented solely by deposition, the court may draw its own conclusions about the testimony's credibility and weight. The judgment of the trial court was affirmed as modified.

**MARVIN WINDOWS OF TENNESSEE, INC. v. JAMES GARDNER No. W2011-01479-WC-R3-WC - Filed June 8, 2012.** The employee was injured in 2007 and returned to work for his pre-injury employer. The employee's claim was settled in November 2007 and was subject to the one and one-half times impairment cap set out in T.C.A. § 50-6-241(d)(1)(A). In July 2009, the employee was diagnosed with cancer, and he took a medical leave of absence. The employee remained on leave for over one year. The employer's policy permitted one year of medical leave. When the employee was unable to return to work in July 2010, he was terminated pursuant to that policy. The employee then sought reconsideration of the November 2007 settlement. The trial court found that the employee was not eligible for reconsideration. The employee appealed, contending that the trial court's ruling was erroneous. The judgment of the trial court was affirmed.

**GEORGE McGOWAN v. STATE OF TENNESSEE No. W2011-00869-SC-WCM-WC - Filed February 15, 2012.** An employee was exposed to smoke as a result of a fire at his workplace. Testing revealed the presence of bullous emphysema, a dangerous condition caused by cigarette smoking. Surgery was required to treat that condition. The Claims Commission ruled that the smoke exposure at work had aggravated and advanced his preexisting lung disease and awarded permanent total disability benefits. The employer appealed, contending that the

evidence preponderated against the Commissioner's finding of causation. The panel agreed with the employer and reversed the Judgment of the Claims Commission.

**ERIC MILLER v. R. J. WHERRY & ASSOCIATES ET AL No. M2011-00723-WC-R3-WC - Filed September 19, 2012.** After the employee sustained a compensable injury to his lower back, the parties reached a settlement of the claim at a benefit review conference. As part of the agreement, the employer agreed to provide a job for the employee within his medical restrictions. The employer eventually decided not to rehire the employee after he failed to return to work. Thereafter, the employee filed a petition in the Circuit Court seeking reconsideration of his settlement. The trial court granted the petition and increased the disability award. On appeal, the employer takes issue with: 1. the trial court's adoption verbatim of the employee's proposed findings of fact and conclusions of law; 2. the trial court's conclusion that the employee was entitled to reconsideration; 3. the exclusion of evidence related to the employee's prior back problems; and 4. the claimed excessiveness of the award. The judgment of the trial court was affirmed.

**MOHAMUD HIRSI MOHAMED v. TAXI USA OF TENNESSEE, LLC d/b/a ALLIED CAR COMPANY ET AL No. M2010-02062-WC-R3-WC - Filed - February 10, 2012.** In this case, the plaintiff, a taxi driver injured in a motor vehicle accident, sought workers' compensation benefits from the taxi company that he alleged employed him. The trial court held that he was an independent contractor and dismissed the complaint. The plaintiff appealed. The judgment of the trial court was affirmed.

**VONETTA MOUSSEAU v. DAVITA, INC. No. W2010-02612-SC-WCM-WC - Filed February 21, 2012.** The employee, a registered nurse, injured her neck and lower back when she slipped and fell in a pool of water. She had surgical fusions of the cervical and lumbar spine. She continued to have serious symptoms for which she received numerous medications. Her treating physician testified that she was incapable of performing any nursing functions, including those that required only sedentary work. The trial court found her to be permanently and totally disabled. Her employer appealed, contending that the evidence preponderated against the trial court's finding on disability and that the employee had been offered a meaningful return to work. The judgment of the trial court was affirmed.

**RANDALL NORWOOD v. MAYTAG CORPORATION d/b/a MAYTAG JACKSON DISHWASHING PRODUCTS No. W2011-01477-WC-R3-WC - Filed April 30, 2012.** The employee contended that he struck his head against the casing of a conveyor belt, causing permanent and total disability due to a resulting cervical strain and mental injury. The employer denied that he sustained any permanent disability as a result of the incident. The trial court awarded 95% permanent partial disability benefits. The employer appealed, contending that the evidence preponderated against the trial court's finding. The panel affirmed the judgment of the trial court.

**LINDA PRINCINSKY v. PREMIER MANUFACTURING SERVICES, INC. ET AL No. M2011-00904-WC-R3-WC - Filed July 27, 2012.** This was the second appeal in this matter. In the first appeal, the Special Workers' Compensation Appeals Panel affirmed the trial court's judgment finding the employee permanently and totally disabled. The Panel held, however, that

the trial court's judgment should be reduced by the 272 weeks of benefits the employer had previously paid the employee. Therefore, the Panel remanded the case to the trial court for entry of a judgment consistent with its opinion. On remand, the trial court applied the 272-week credit as the Panel had directed. The trial court also reapportioned liability and modified the date on which the employee's permanent total disability benefits began to accrue. The trial court's modification effectively increased the employee's award from the 496.86 weeks it had awarded the employee in the original appeal to 697.14 weeks. The employer appealed, contending that the reapportionment of liability and the modification of the date upon which benefits accrued conflict with the mandate of the previous appeal. The panel concluded that employer's contentions were correct and reversed the trial court's judgment.

**BRIAN RAINES v. VOUGHT AIRCRAFT INDUSTRIES, INC. ET AL No. M2011-01171-WC-R3-WC - Filed August 17, 2012.** The employee filed for reconsideration of a 2006 workers' compensation settlement pursuant to T.C.A. § 50-6-241(d)(1)(B)(i) (2008). The settlement was based on a 2005 injury that resulted in a 12% anatomical impairment rating to the body as a whole. The employee made a meaningful return to work, and his recovery was therefore capped at 1.5 times the impairment rating—18%. The cited statute allows reconsideration when the employee is no longer employed by his pre-injury employer, as occurred in this case when his employer was acquired by another company in 2010. The trial court found the original settlement adequately compensated the employee for his vocational disability and declined to award additional benefits. The trial court's judgment was affirmed.

**LARRY A. RENFRO v. STARNET INSURANCE COMPANY No. E2011-00839-WC-R3-WC-Filed August 15, 2012.** A truck driver sustained a compensable back injury. After surgery, he returned to his pre-injury job for a year and was able to drive with the aid of narcotic medications prescribed to treat his back pain. He subsequently left his employment after results of an annual U.S. Dept. of Transportation ("DOT") medical examination determined that his use of the narcotics prohibited him from driving. The trial court found that the employee did not have a meaningful return to work and awarded benefits in excess of one and one-half times the anatomical impairment rating. The employer's workers compensation insurance carrier appealed, asserting that the employee's loss of employment was unrelated to his work injury and that the award should have been limited to one and one-half times the impairment. The trial court's judgment was affirmed.

**SAMMY T. ROBERTSON v. ROADWAY EXPRESS, INC. No. E2011-01384-WC-R3-WC-Filed- June 8, 2012.** The employee injured his lower back in 2005. In 2008, the trial court approved a settlement of his workers' compensation claim, which provided for future authorized medical treatment in accordance with T.C.A. § 50-6-204. In 2011, the employee's treating physician recommended a surgical procedure. The employer's medical utilization review provider determined that the medical necessity of the procedure was not documented, and the employer denied approval for the procedure. The employee appealed the decision to the Tennessee Department of Labor and Workforce Development ("Department"), and the Department's medical director did not overturn the utilization review decision. The employee then filed a petition in the trial court, seeking an order requiring the employer to authorize the surgery. The trial court granted the petition but denied the employee's application for attorney's fees. The employer appealed, contending that the trial court erred by granting the petition, that

the employee failed to exhaust his administrative remedy, and that the petition is barred by res judicata and collateral estoppel. The employee appealed the denial of an award of attorney's fees. The panel vacated the judgment of the trial court and dismissed the case without reaching the merits of the appeal.

**RON W. ROBINSON v. BRIDGESTONE AMERICAS TIRE OPERATIONS, LLC No. M2011-02238-WC-R3-WC - Filed November 21, 2012.** The employee injured his neck in the course of his employment in 2005. He returned to work for his pre-injury employer and settled his claim subject to the one and one-half times impairment cap. In 2009, the employer entered into a new collective bargaining agreement in which the hourly wages of all production workers were reduced. Thereafter, the employee sought reconsideration of his earlier settlement pursuant to T.C.A. § 50-6-241(d)(1)(B) (2008). The trial court held that the across-the-board wage reduction did not trigger the right to reconsideration and denied the employee's claim. The trial court's judgment was affirmed.

**CHRISTOPHER ALLEN SCOGGINS v. JENKINS MASONRY, INC. No. E2011-01176-WC-R3-WC-Filed June 27, 2012.** The employee acquired contact dermatitis, which caused a chronic skin condition of his hands and feet, due to his exposure to potassium dichromate in the workplace. The trial court found that he was permanently and totally disabled as a result of the condition. The employer appealed, contending that the evidence preponderated against the trial court's finding. The trial court's judgment was affirmed.

**CYNTHIA SIMMONS v. KEN-KEL MANAGEMENT, INC. ET AL No. W2011-01924-WC-R3-WC - Filed June 1, 2012.** An employee filed a motion requesting that a former employer be ordered to provide post-judgment medical treatment. After a hearing, the trial court granted the employee's motion. The former employer appealed, contending that the trial court erred in granting the employee's motion. The panel affirmed the trial court's judgment.

**JIM SINGLEY v. CHEROKEE INSURANCE COMPANY No. W2011-00862-WC-R3-WC - Filed April 23, 2012.** The employee sustained injuries to his right hip, knee, and ankle as a result of a fall while employed as a truck driver. Although he received medical treatment and briefly returned to work, the employee continued to have pain and eventually required knee surgery. After the employee recovered from the surgery, the employer was unable to return him to work. The treating physician assigned a permanent partial impairment of 2% to the right lower extremity. The employee's evaluating physician assigned a 13% impairment rating. The trial court awarded 45.5% permanent partial disability to the right leg. The employer appealed, asserting that the trial court erred by utilizing the evaluating physician's impairment rating and that the award of benefits was excessive. The trial court's award was affirmed.

**JOE SISSOM v. BRIDGESTONE/FIRESTONE, INC. No. M2011-00363-WC-R3-WC - Filed June 20, 2012.**

The employee alleged that he injured his right shoulder while working for the employer. The trial court found that the employee's thoracic outlet syndrome stemmed from a congenital abnormality and not a work-related injury. The employee appealed. The panel affirmed the judgment of the trial court.

**DANNY SMITH v. NESTLE WATERS NORTH AMERICA, INC. ET AL** No. M2011-00908-WC-R3-WC - Filed August 23, 2012. After the employee sustained a compensable back injury, he filed a claim for workers' compensation benefits in the Chancery Court. During the bench trial, the trial court admitted, over the employer's objection, testimony from a physician selected through the Medical Impairment Registry ("MIR") stating that the employee's impairment arose from a work-related injury. The trial court thereafter awarded the employee permanent disability benefits based on a 6% impairment. The panel affirmed the judgment of the trial court.

**KENNETH STEWART v. WESTFIELD INSURANCE COMPANY** No. W2011-00327-SC-WCM-WC - Filed February 16, 2012. The appellant insurance company asserted that the employee failed to prove that his spinal infection was causally related to any work-place injury and that he also failed to provide the employer with timely notice of his injury. Based upon the panel's review of the record, they concluded that the expert medical proof established causation and that the evidence supported the trial court's finding that the employee gave timely notice of his injury. The panel affirmed the judgment of the trial court.

**SCOTT D. STRAIN v. MR. BULT'S, INC. ET AL** No. W2012-00232-WC-R3-WC - Filed November 29, 2012. An employee alleged that he sustained an injury to his back, had notified several people with his employer and had been told there was no workers' compensation insurance. His employer denied the claim and denied notice. The trial court found the injury to be compensable and awarded the employee 30% permanent partial disability benefits. The employer appealed contending that the evidence preponderated against the trial court's finding that the injury was compensable. On appeal, the employee asserted that the award of benefits was inadequate. After review of the record, including that of the employee's physician, the panel affirmed the trial court's judgment.

**RICKY SULLIVAN v. BEHLEN MANUFACTURING COMPANY, INC.** No. W2011-01677-WC-R3-WC - Filed July 19, 2012. The employee suffered a compensable back injury. The trial court awarded 80% permanent partial disability to the body as a whole. His employer appealed, asserting that the trial court erred by basing its award on the impairment rating of the employee's evaluating physician, by accepting the employee's testimony concerning his limitations in light of questions concerning his credibility, and by making an excessive award. The panel affirmed the judgment of the trial court.

**TETON TRANSPORTATION, INC. v. TODD WHITE** No. E2010-02522-WC-R3-WC- Filed Feb. 7, 2012. The employee alleged that he injured his back at work. His employer denied the claim. While the trial court found that the employee was not a credible witness, it found that he had sustained a compensable injury based upon the testimony of an independent lay witness and the treating physician. The trial court awarded 78% permanent partial disability benefits. The employer appealed, asserting that the evidence preponderated against the trial court's finding of compensability. The panel affirmed the judgment of the trial court.

**U.S. FOODSERVICE, INC. v. JOHN S. MEREDITH, JR.** No. E2011-02060-WC-R3-WC- Filed August 16, 2012. The employee experienced chest pain while at home in bed. He testified that he contacted his employer to be excused from work but was told he would lose his

employment if he did not come to work. He reported for work and completed a full day of job responsibilities. Two days later, it was determined that he had suffered an acute myocardial infarction. A cardiologist testified that fifty percent of the damage caused by the heart attack was secondary to the delay in medical treatment. The employee sought workers' compensation benefits, contending that the instruction to report to work substantially worsened his injury. The trial court denied benefits, and the employee appealed. The judgment of the trial court was affirmed.

**STEPHEN VOWELL v. ST. THOMAS HOSPITAL ET AL No. M2010-02605-WC-R3-WC - Filed August 23, 2012.** An employee, who was rendered permanently and totally disabled following a compensable back injury, suffered severe depression after his employer informed him that he had been terminated. He filed suit in the Chancery Court 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 asserted on appeal that the trial court erred by admitting the testimony of the employee's evaluating psychiatrist and that the award of benefits was inconsistent with T.C.A. § 50-6-102(15) (2008 & Supp. 2011). The judgment of the trial court was affirmed.

**STEPHEN WHEELER v. CLEO WRAP, INC. ET AL No. W2011-00336-SC-WCM-WC - Filed May 16, 2012.** The employee suffered a fractured wrist as a result of a workplace accident. He contended that he also sustained a neck injury and post-traumatic stress disorder from the accident. The trial court awarded benefits for the wrist injury only, and the employee appealed. The judgment of the trial court was affirmed.

**BOBBY JOE WILLIAMS, JR. v. CBT MANUFACTURING CO., INC. ET AL. No. E2011-01898-WC-R3-WC- Filed Sept. 4, 2012.** The employee filed suit for benefits, alleging that he aggravated a back injury while performing his job responsibilities. His employer contended that the incident resulted only in an increase in pain from a pre-existing injury and was not, therefore, compensable. At the conclusion of the evidence, the trial court found in favor of the employee and, using an 8% medical impairment rating and a multiplier of one and one-half times the medical impairment rating, awarded permanent partial disability benefits. The employer appealed, contending that the evidence preponderated against the trial court's finding that a compensable injury occurred and, alternatively, that the evidence preponderated against the trial court's finding that the employee was entitled to an 8% medical impairment rating. Because the evidence did not preponderate against the findings of the trial court, the panel affirmed the judgment of the trial court.

**TONY WAYNE WILSON v. BILL JENNINGS, INDIVIDUALLY AND D/B/A B & L CONSTRUCTION COMPANY AND WAYNE NEELEY No. E2010-02028-WC-R3-WC- Filed March 6, 2012.** The employee alleged that he was working as a carpenter for the defendant, Wayne Neeley, when he fell from the roof of a house and seriously injured his right ankle. Neeley denied that he was the employer and also denied that he was a subcontractor for the defendant, B & L Construction, the general contractor. The trial court held that the employee was employed by Neeley and that Neeley was a subcontractor of B & L Construction. Because Neeley did not have workers' compensation insurance, the trial court found B & L Construction

liable for workers' compensation benefits pursuant to T.C.A. § 50-6-113 and awarded both temporary total disability benefits and accrued medical expenses, but nothing else. On appeal, the employee contended that the trial court erred by failing to award permanent disability benefits and future medical benefits. In response, the defendant contended that the trial court erred by awarding temporary disability benefits. The panel held that the trial court properly awarded temporary total benefits, but erred by failing to award permanent disability benefits and future medical benefits to the employee. The judgment was confirmed in part, reversed in part and the case remanded for further proceedings consistent with the panel opinion.