



**TENNESSEE BUREAU OF WORKERS' COMPENSATION
IN THE COURT OF WORKERS' COMPENSATION CLAIMS
AT MURFREESBORO**

BRANTOURIS GLENN, Employee,) Docket Nos. 2022-05-0070A, B, C
v.)
)
JAMESON INDUSTRIES, LLC, ACME RESOURCES, INC., and) State File No. 800721-2022
DANIEL ZARLENGA, Employers,)
)
And)
)
AMGUARD INS. CO., Carrier.) Judge Dale Tipps
)

EXPEDITED HEARING ORDER GRANTING MEDICAL BENEFITS

The Court held an Expedited Hearing on February 21, 2023, on whether Mr. Glenn is entitled to medical and temporary disability benefits. Amguard also raised the issue of whether it had coverage for the date of Mr. Glenn's accident. For the reasons below, the Court holds that Mr. Glenn is likely to prevail at a hearing on the merits that he is entitled to medical treatment. However, he has not shown at this time that he is entitled to temporary disability benefits. Further, the Court holds that it has no jurisdiction to address whether Amguard has a contractual duty to provide coverage or defense for Mr. Glenn's claim.

History of Claim

Mr. Glenn testified he began driving a dump truck for Jameson Industries in late Spring 2021. Around 2:00 p.m. on July 6, his first day back after the holiday weekend, he went to the storage unit to change trucks. He had to type a code into a number pad on the gate controller in order to leave. Mr. Glenn slipped while getting out of his truck and fell backwards against a concrete post next to the controller. He hit his left shoulder and heard a pop.

Mr. Glenn went home after the accident and called the business owner, Mr. Zarlenga, to tell him about the injury. Mr. Zarlenga told him he would arrange a doctor appointment, but Mr. Glenn did not hear from him until July 9, when Mr. Zarlenga sent him to a clinic. Mr. Glenn continued to have symptoms, so Mr. Zarlenga approved another visit, and the clinic ordered an MRI. Although it took months to get approval, Mr. Glenn eventually had the MRI, which showed a torn labrum.

Mr. Zarlenga repeatedly promised more medical treatment but never arranged it, so Mr. Glenn filed a Petition for Benefit Determination in January 2022.¹ Mr. Zarlenga then terminated Mr. Glenn's employment.

On cross-examination, AmGuard challenged Mr. Glenn on the date of the accident. It pointed out that the first clinic record of July 9 referred to an accident "yesterday," and that later medical records listed the injury date as July 8. However, Mr. Glenn said the records were incorrect and he asked the clinic to correct the error. He was adamant that he was injured on July 6 because July 4 was on a Sunday that year, the company was closed on July 5, and his accident happened on his first day back after the holiday.

Mr. Glenn acknowledged that, although the Dispute Certification Notice included temporary disability benefits as an issue, he was primarily requesting an orthopedic panel and medical treatment.

Jameson countered that Mr. Glenn is not entitled to benefits because the conflicting injury dates make it impossible for him to prove an identifiable time and date of the occurrence, as required by Tennessee Code Annotated section 50-6-102(12)(A). It also asserted that the mechanism of injury he described during the hearing is inconsistent with the medical records. Further, even if the Court orders a medical panel, Mr. Glenn has not established any period of disability that would entitle him to temporary disability benefits.

AmGuard also contended that Mr. Glenn did not present sufficient evidence that he suffered an injury "identifiable by time and place of occurrence." In the alternative, it argued that the weight of the evidence showed that the accident occurred outside of its policy period, as it canceled Jameson's coverage on July 8. AmGuard therefore requested a declaratory judgment that it is not responsible for any benefits owed to Mr. Glenn.

Findings of Fact and Conclusions of Law

To grant Mr. Glenn's request, he must prove he is likely to prevail at a hearing on the merits. Tenn. Code Ann. § 50-6-239(d)(1) (2022); *McCord v. Advantage Human Resourcing*, 2015 TN Wrk. Comp. App. Bd. LEXIS 6, at *7-8, 9 (Mar. 27, 2015).

¹ Mr. Zarlenga told Mr. Glenn that he did not have workers' compensation insurance.

The first element Mr. Glenn must prove is that his alleged injury arose primarily out of and in the course and scope of his employment. This includes the requirement that the injury is caused by a “specific incident . . . and is identifiable by time and place of occurrence.” Further, he must show “to a reasonable degree of medical certainty that [the incident] contributed more than fifty percent (50%) in causing the . . . disablement or need for medical treatment, considering all causes.” “Shown to a reasonable degree of medical certainty” means that, in the opinion of the treating physician, it is more likely than not considering all causes as opposed to speculation or possibility. Tenn. Code Ann. § 50-6-102(12)(A)-(D).

Applying these principles to the facts of this case, Mr. Glenn described a specific, work-related incident: he fell and hit his shoulder on a concrete post. The date and time of that incident is contested however, as AmGuard presented evidence that it occurred on July 8, while Mr. Glenn testified that it was July 6.

AmGuard relied on medical records, the first of which was dated July 9 and stated that the accident occurred “yesterday.” That date of injury, July 8, was carried on through the later records. AmGuard also offered a recording of a July 9 conversation between Mr. Zarlenga and an AmGuard employee about his insurance coverage.² Near the end of the recording, Mr. Zarlenga said, “So I had a claim yesterday, so that’s not going to be covered no matter what?”

Mr. Glenn, on the other hand, insisted the injury occurred on July 6, and gave a credible explanation for why he remembered it so distinctly. He further testified that the date in the clinic records was incorrect and said he contacted the clinic to try to get them to correct the error. He also said that he filled out an intake sheet with the correct date that was not included in those records. Mr. Glenn also pointed out that he used July 6 when he filed his Petition for Benefit Determination, long before anyone was aware that this date might fall within AmGuard’s coverage period.

The Court observed Mr. Glenn to be calm, self-assured, steady, and reasonable, which are behaviors indicative of credibility. *Kelly v. Kelly*, 445 S.W.3d 685, 694-695 (Tenn. 2014). He was generally believable and, notwithstanding Jameson’s unsupported skepticism about the mechanism of injury, his description of his work accident was consistent and unrebutted.

However, while Mr. Glenn seemed credible, he did not present any other proof to corroborate his claim of a July 6 injury, despite identifying witnesses with that knowledge in his discovery responses. It is quite possible that he was an imperfect historian when

² The Court took Mr. Glenn’s hearsay objection to this recording under advisement. After careful consideration, it holds that the recording is admissible under Tennessee Rules of Evidence Rule 803(1.2)(A) (2022) as a statement offered against Jameson that was Mr. Zarlenga’s own statement in his representative and individual capacity.

describing his injury to the clinic, and medical records are often susceptible to errors and variation. But without more information, the Court is left with conflicting injury dates and insufficient evidence of the correct one. If Mr. Glenn wishes the Court to find his injury date was July 6, he must show he is likely to establish that date at trial. After careful consideration, he has not yet met this burden.

Does this mean that Mr. Glenn is not entitled to medical treatment? No. He testified convincingly that he suffered a workplace accident the week of July 4, 2019. The Court is unaware of any reason why a question about the exact date of an otherwise undisputed accident should bar a claim unless the date is relevant to an issue such as notice or statute of limitation.³ Under these circumstances, the Court finds that uncertainty over the specific date of injury does not prevent Mr. Glenn from showing he is likely to prove an identifiable incident. *See Hannah v. Senior Citizens Home Assistance Serv., Inc.*, 2022 TN Wrk. Comp. App. Bd. LEXIS 15, at *11-13 (Mar. 28, 2022) (Evidence did not preponderate against a finding of an “identifiable work incident,” despite medical records documenting “different timelines” as to when the symptoms began, where the employee consistently described how the injury occurred). Therefore, Jameson must give Mr. Glenn a panel of orthopedic specialists.

Further, Jameson failed to give Mr. Glenn a panel of physicians and has provided no treatment for over a year. The limited clinic treatment it paid for did not relieve Jameson of its obligation to offer a panel of physicians as contemplated in Tennessee Code Annotated section 50-6-204(d)(1) and Tennessee Compilation Rules and Regulations 0800-02-01-.06(1) (February, 2022). *Hawes v. McLane Co., Inc.*, 2021 TN Wrk. Comp. App. Bd. LEXIS 30, at *9 (Aug. 25, 2021). Therefore, the Court refers this case to the Compliance Program for investigation and possible assessment of a civil penalty. *See* Tenn. Comp. R. & Regs. 0800-02-01-.06(2). Upon its issuance, a copy of this Order will be sent to the Compliance Program. *See* Tenn. Comp. R. & Regs. 0800-02-24-.03 (March, 2015).

Turning to temporary total disability benefits, Mr. Glenn must prove (1) he became disabled from working due to a compensable injury; (2) a causal connection between his injury and his inability to work; and (3) his period of disability. For temporary partial disability benefits, Mr. Glenn must show that his treating physician returned him to work with restrictions that Jameson either could not or would not accommodate. *See Jones v. Crenco Leasing and Sales*, 2015 TN Wrk. Comp. App. Bd. LEXIS 48, at *7, 8 (Dec. 11, 2015). Because he presented no proof of total or partial disability, nor proof of medical causation, he is not likely at this time to prevail on a claim for temporary disability benefits at a final hearing.

³ This is especially true for an expedited hearing where the burden of evidence is reduced and the employee may marshal additional evidence of the correct date for a later hearing.

Finally, regarding AmGuard’s request for declaratory judgment, the Appeals Board recently addressed a similar issue in *Acevedo v. Crown Paving, LLC*, 2023 TN Wrk. Comp. App. Bd. LEXIS 7 (Jan. 27, 2023). There, the issue was whether the Court of Workers’ Compensation Claims had subject matter jurisdiction over a medical provider’s claim for payment of a medical bill. Finding that it did not, the Board observed, “The court’s purpose is to perform ‘the adjudicative function within the bureau of workers’ compensation.’” Tenn. Code Ann. § 50-6-102(8). Moreover, “the scope of Tennessee’s Workers’ Compensation Law is legislatively limited to the rights and obligations of employees and employers. Tenn. Code Ann. § 50-6-103.” This is a change from previous law, where the same courts exercising jurisdiction over workers’ compensation cases also heard cases involving other legal claims such as contract disputes and personal injury claims. *Id.* at *15-17.

The same analysis applies here. AmGuard seeks a ruling on its contractual obligations to defend and indemnify Jameson, which exceeds the scope of this Court. Its request for declaratory judgment is therefore denied.

Even if the Court had jurisdiction, making a coverage determination at this stage would be improper. The expedited hearing is interlocutory and, therefore, involves a lesser standard of proof than the preponderance of the evidence standard a court would normally apply in a declaratory judgment action.

IT IS, THEREFORE, ORDERED as follows:

1. Jameson shall provide Mr. Glenn with a panel of orthopedic specialists and medical treatment made reasonably necessary by his July 2019 injury under Tennessee Code Annotated section 50-6-204.
2. Mr. Glenn’s request for temporary disability benefits is denied at this time.
3. This case is referred to the Compliance Program for consideration of the imposition of a penalty regarding Jameson’s failure to timely provide a panel of physicians or medical treatment.
4. AmGuard’s request for declaratory judgment is denied.
5. This case is set for a Status Hearing on May 17, 2023, at 9:00 a.m. Please call toll-free at 855-874-0473 to participate. Failure to call might result in a determination of the issues without your further participation. All conferences are set using Central Time.
6. Unless an interlocutory appeal of the Expedited Hearing Order is filed, compliance with this Order must occur no later than seven business days from the date of entry

of this Order as required by Tennessee Code Annotated section 50-6-239(d)(3). The Employer must submit confirmation of compliance with this Order to the Bureau by email to WCCCompliance.Program@tn.gov no later than the seventh business day after entry of this Order. Failure to submit confirmation within seven business days may result in a penalty assessment for non-compliance. For questions regarding compliance, contact the Workers' Compensation Compliance Unit via email at WCCCompliance.Program@tn.gov.

ENTERED February 27, 2023.



Judge Dale Tipps
Court of Workers' Compensation Claims

APPENDIX

Exhibits:

1. Indexed medical records
2. Rule 72 Declaration of Rosemarie Farrell
3. Notice of Cancellation of Workers' Compensation Insurance
4. Proof of mailing
5. NCCI screenshot
6. AmGuard cancellation notice
7. Rule 72 Declaration of Heidi Ruckno
8. Recorded conversation between Daniel Zarlenga and Heidi Ruckno
9. Mr. Glenn's responses to AmGuard's First Set of Interrogatories

Technical record:

1. Petition for Benefit Determination
2. Dispute Certification Notice
3. Request for Expedited Hearing
1. Motion to remand to mediation
2. Order of consolidation and remanding case to mediation
3. AmGuard's Pre-Hearing Statement and Motion for Declaratory Judgment
4. AmGuard's Witness and Exhibit List
5. Jameson's Pre-Hearing Brief
6. Jameson's Witness List
7. Jameson's Exhibit List

CERTIFICATE OF SERVICE

I certify that a copy of the Order was sent as indicated on February 27, 2023.

Name	Certified Mail	Email	Service sent to:
Chris Markel, Employee's attorney		X	cmarkel@markelfirm.com
Allen Callison, Employer's attorney		X	Allen.calleson@mgclaw.com
Jennifer Arnold, Carrier's attorney		X	jarnold@arnold-lawyers.com
Compliance Program		X	WCCompliance.Program@tn.gov



Penny Shrum, Clerk of Court
Court of Workers' Compensation Claims
WC.CourtClerk@tn.gov



Expedited Hearing Order Right to Appeal:

If you disagree with this Expedited Hearing Order, you may appeal to the Workers' Compensation Appeals Board. To appeal an expedited hearing order, you must:

1. Complete the enclosed form entitled: "Notice of Appeal," and file the form with the Clerk of the Court of Workers' Compensation Claims *within seven business days* of the date the expedited hearing order was filed. When filing the Notice of Appeal, you must serve a copy upon all parties.
2. You must pay, via check, money order, or credit card, a **\$75.00 filing fee within ten calendar days** after filing of the Notice of Appeal. Payments can be made in-person at any Bureau office or by U.S. mail, hand-delivery, or other delivery service. In the alternative, you may file an Affidavit of Indigency (form available on the Bureau's website or any Bureau office) seeking a waiver of the fee. You must file the fully-completed Affidavit of Indigency *within ten calendar days* of filing the Notice of Appeal. **Failure to timely pay the filing fee or file the Affidavit of Indigency will result in dismissal of the appeal.**
3. You bear the responsibility of ensuring a complete record on appeal. You may request from the court clerk the audio recording of the hearing for a \$25.00 fee. If a transcript of the proceedings is to be filed, a licensed court reporter must prepare the transcript and file it with the court clerk *within ten business days* of the filing the Notice of Appeal. Alternatively, you may file a statement of the evidence prepared jointly by both parties *within ten business days* of the filing of the Notice of Appeal. The statement of the evidence must convey a complete and accurate account of the hearing. The Workers' Compensation Judge must approve the statement before the record is submitted to the Appeals Board. If the Appeals Board is called upon to review testimony or other proof concerning factual matters, the absence of a transcript or statement of the evidence can be a significant obstacle to meaningful appellate review.
4. If you wish to file a position statement, you must file it with the court clerk *within ten business days* after the deadline to file a transcript or statement of the evidence. The party opposing the appeal may file a response with the court clerk *within ten business days* after you file your position statement. All position statements should include: (1) a statement summarizing the facts of the case from the evidence admitted during the expedited hearing; (2) a statement summarizing the disposition of the case as a result of the expedited hearing; (3) a statement of the issue(s) presented for review; and (4) an argument, citing appropriate statutes, case law, or other authority.

For self-represented litigants: Help from an Ombudsman is available at 800-332-2667.



NOTICE OF APPEAL

Tennessee Bureau of Workers' Compensation
www.tn.gov/workforce/injuries-at-work/
wc.courtclerk@tn.gov | 1-800-332-2667

Docket No.: _____

State File No.: _____

Date of Injury: _____

Employee

v.

Employer

Notice is given that _____
[List name(s) of all appealing party(ies). Use separate sheet if necessary.]

appeals the following order(s) of the Tennessee Court of Workers' Compensation Claims to the Workers' Compensation Appeals Board (check one or more applicable boxes and include the date file-stamped on the first page of the order(s) being appealed):

Expedited Hearing Order filed on _____ Motion Order filed on _____

Compensation Order filed on _____ Other Order filed on _____

issued by Judge _____.

Statement of the Issues on Appeal

Provide a short and plain statement of the issues on appeal or basis for relief on appeal:

Parties

Appellant(s) (Requesting Party): _____ Employer Employee

Address: _____ Phone: _____

Email: _____

Attorney's Name: _____ BPR#: _____

Attorney's Email: _____ Phone: _____

Attorney's Address: _____

** Attach an additional sheet for each additional Appellant **

Employee Name: _____ Docket No.: _____ Date of Inj.: _____

Appellee(s) (Opposing Party): _____ Employer Employee

Appellee's Address: _____ Phone: _____

Email: _____

Attorney's Name: _____ BPR#: _____

Attorney's Email: _____ Phone: _____

Attorney's Address: _____

** Attach an additional sheet for each additional Appellee **

CERTIFICATE OF SERVICE

I, _____, certify that I have forwarded a true and exact copy of this Notice of Appeal by First Class mail, postage prepaid, or in any manner as described in Tennessee Compilation Rules & Regulations, Chapter 0800-02-21, to all parties and/or their attorneys in this case on this the _____ day of _____, 20 ____.

[Signature of appellant or attorney for appellant]



**Tennessee Bureau of Workers' Compensation
220 French Landing Drive, I-B
Nashville, TN 37243-1002
800-332-2667**

AFFIDAVIT OF INDIGENCE

I, _____, having been duly sworn according to law, make oath that because of my poverty, I am unable to bear the costs of this appeal and request that the filing fee to appeal be waived. The following facts support my poverty.

1. Full Name: _____ 2. Address: _____

3. Telephone Number: _____ 4. Date of Birth: _____

5. Names and Ages of All Dependents:

Relationship: _____
Relationship: _____
Relationship: _____
Relationship: _____

6. I am employed by: _____

My employer's address is: _____

My employer's phone number is: _____

7. My present monthly household income, after federal income and social security taxes are deducted, is:

\$ _____

8. I receive or expect to receive money from the following sources:

AFDC	\$ _____ per month	beginning _____
SSI	\$ _____ per month	beginning _____
Retirement	\$ _____ per month	beginning _____
Disability	\$ _____ per month	beginning _____
Unemployment	\$ _____ per month	beginning _____
Worker's Comp.	\$ _____ per month	beginning _____
Other	\$ _____ per month	beginning _____

9. My expenses are:

Rent/House Payment	\$ _____ per month	Medical/Dental	\$ _____ per month
Groceries	\$ _____ per month	Telephone	\$ _____ per month
Electricity	\$ _____ per month	School Supplies	\$ _____ per month
Water	\$ _____ per month	Clothing	\$ _____ per month
Gas	\$ _____ per month	Child Care	\$ _____ per month
Transportation	\$ _____ per month	Child Support	\$ _____ per month
Car	\$ _____ per month		
Other	\$ _____ per month (describe: _____)		

10. Assets:

Automobile	\$ _____	(FMV) _____
Checking/Savings Acct.	\$ _____	
House	\$ _____	(FMV) _____
Other	\$ _____	Describe: _____

11. My debts are:

Amount Owed	To Whom
_____	_____
_____	_____
_____	_____
_____	_____

I hereby declare under the penalty of perjury that the foregoing answers are true, correct, and complete and that I am financially unable to pay the costs of this appeal.

APPELLANT

Sworn and subscribed before me, a notary public, this

_____ day of _____, 20 _____.

NOTARY PUBLIC

My Commission Expires: _____