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TENNESSEE COURT OF
WORKERS' COMPENSATION
CLAIMS

TENNESSEE BUREAU OF WORKERS' COMPENSATION
IN THE COURT OF WORKERS' COMPENSATION CLAIMS
AT NASHVILLE

OSCAR LEITON VILLALOBOS, **Employee,** **v.** **STEVENS & SONS, INC.,** **Employer,** **and** **GREAT AMERICAN ALLIANCE INSURANCE COMPANY,** **Carrier.**	**Docket No. 2025-60-0790** **State File No. 28723-2024** **DOI: April 22, 2024** **Judge Lisa A. Lowe**

EXPEDITED HEARING ORDER GRANTING BENEFITS

In 2020, Mr. Leiton hurt his left ankle while working for Stevens & Sons. At the time, Argonaut provided coverage. In 2024, when Stevens & Sons' coverage changed to Great American, Mr. Leiton injured his left ankle at work again. He was recommended ankle replacement surgery, but the parties disputed whether the current need for surgery relates to the 2020 injury or the 2024 injury.

Mr. Leiton asked that the Court order Great American to pay for the surgery and pay attorney fees for an unreasonable denial. For the reasons below, the Court orders Great American to pay medical benefits including the surgery under the 2024 claim but declines to award attorney fees at this time.

Claim History

Mr. Leiton worked as a supervisor for Stevens & Sons. On September 9, 2020, he hurt his left ankle after boxes of doors fell on his foot. He underwent three surgeries, and Dr. Bethany Gallagher provided most of his authorized treatment. Dr. Gallagher fused Mr. Leiton's ankle, and he retained hardware to keep the ankle in place. Ultimately, Dr. Gallagher placed Mr. Leiton at maximum medical improvement on June 15, 2022. She initially released him to full duty work but later

gave general restrictions of not being on his feet too long, limited walking, and not going up and down stairs. The parties settled the case with open future medical benefits.

Mr. Leiton testified that he had more discomfort than pain in the years following the 2020 accident. He returned to his supervisor duties and performed them without incident for a two-year period. He did not seek treatment during that time.

On April 22, 2024, while walking on a pathway between a roller containing 60 doors and a machine, a co-worker started the rollers. The doors slammed into Mr. Leiton's left leg, breaking open the front of his shin area below the knee and exposing bone. He also tore a muscle in the back of his left calf, and his left ankle torqued, twisted, or bent. Mr. Leiton described the incident as violent, and he felt a hot burning sensation with intense ankle pain.

He received emergency treatment, and tests showed a tibia fracture and ankle fracture with a loose screw. Dr. Jonathan Cornelius treated Mr. Leiton's knee but referred him back to Dr. Gallagher for the ankle injury.

In response to a questionnaire and in an affidavit, Dr. Cornelius stated that the 2024 incident primarily caused an aggravation of Mr. Leiton's preexisting ankle condition and the current need for treatment. Dr. Cornelius testified that the 2024 incident caused an anatomic change in Mr. Leiton's ankle. He also deferred to Dr. Gallagher regarding causation of the ankle injury but agreed with her that the 2024 incident caused the current need for treatment.

Great American did not provide a panel of physicians for Mr. Leiton's ankle. Mr. Leiton returned to Dr. Gallagher, who diagnosed a fracture and recommended a multi-stage, left-ankle reconstruction. Argonaut paid for the first post-2024 visit with Dr. Gallagher, but then a dispute arose between Argonaut and Great American regarding responsibility for treatment.

In response to a questionnaire, Dr. Gallagher noted that the 2024 incident exacerbated Mr. Leiton's 2020 ankle condition and that the 2024 incident worsened his condition and caused increased symptoms and disability.

In her deposition, Dr. Gallagher testified that Mr. Leiton was "quite debilitated" after the 2024 injury. She could not say that the 2024 injury caused the

ankle collapse but that it did cause an increase or worsening of symptoms and disability. Dr. Gallagher said Mr. Leiton did not seek treatment in the two years from her release after the first injury until the 2024 injury. She didn't know if she could "pin" responsibility on the 2020 or 2024 injury. At his release from the 2020 injury, Dr. Gallagher anticipated additional treatment, including surgery, but testified that she had no reason to believe otherwise that his current need for treatment relates to the 2024 injury.

Findings of Fact and Conclusions of Law

At an expedited hearing, Mr. Leiton must show that he is likely to prevail at a hearing on the merits. Tenn. Code Ann. § 50-6-239(d)(1) (2026); *McCord v. Advantage Human Resourcing*, 2015 TN Wrk. Comp. App. Bd. LEXIS 6, at *7-8, 9 (Mar. 27, 2015).

Medical Benefits

An employer shall furnish medical treatment made reasonably necessary by a work injury. Tenn. Code Ann. § 50-6-204(a)(1)(A). Whether deemed an injury or an aggravation, the employment must, to a reasonable degree of medical certainty, contribute more than 50% to the need for treatment. *Id.* § 50-6-102(12)(C).

An employer takes an employee "as is" and assumes the responsibility of a pre-existing condition aggravated by a work injury that might not affect an otherwise healthy person. An employer may be liable for disability resulting from injuries sustained by an employee arising out of and in the course of his employment even though it aggravates a previous condition with resulting disability far greater than otherwise would have been the case. *Mace v. Express Servs.*, 2015 TN Wrk. Comp. App. Bd. LEXIS 19, at *9-10 (June 19, 2015).

An aggravation means an intensification or worsening of a preexisting condition, permanent or not, that contributes more than 50% in causing the need for medical treatment. *Edwards v. Peoplease, LLC*, 2025 Tenn. LEXIS 514, at *26 (Tenn. 2025). *Edwards* further held that to prove a compensable aggravation, the employee must establish "(1) that the work accident contributed more than fifty percent in causing the aggravation, and (2) that the aggravation, which was caused by the work accident, contributed more than fifty percent to disablement or the need for medical treatment." *Id.* at *27.

Stevens and Sons must take Mr. Leiton "as is" with a significant 2020 left ankle injury, which required three surgeries. Mr. Leiton was initially released to full duty but later given general restrictions of not being on his feet too long, limited walking, and not going up and down stairs. However, he returned to his supervisor position and had no problems completing his duties. He said that he had some pain and swelling after his initial release but experienced more discomfort than pain. Mr. Leiton did not require medical treatment in the two-year period between his release from the 2020 injury and the 2024 injury.

After the 2024 injury, Mr. Leiton testified that he experienced a significant increase in pain and swelling. Since his pain restricts him from going into the warehouse, he is unable to perform his supervisor's duties and now works in an office preparing reports. Mr. Leiton said he needs extensive ankle surgery and has been waiting more than two years to get it.

While some of Dr. Gallagher's opinions were not completely definitive, ultimately, she did find that the 2024 injury aggravated Mr. Leiton's preexisting ankle condition and caused an anatomic change, worsening of symptoms, and current need for treatment. Dr. Cornelius had the same opinion.

Based on the unrefuted medical opinions of Drs. Gallagher and Cornelius, and the testimony of Mr. Leiton, the Court finds he would likely prevail at a hearing that Great American must furnish reasonable, necessary, and related treatment, including left ankle surgery. Since Great American never provided Mr. Leiton with a panel of physicians, Dr. Gallagher is designated as the authorized physician for the 2024 injury.

Attorney Fees/Penalties

The Workers' Compensation Law permits awarding an employee's attorney fees in limited circumstances. Under subsection 50-6-226(d)(1)(B), the trial court, after finding benefits were owed at an expedited hearing, may award fees and expenses when an employer unreasonably fails to initiate medical benefits.

In this case, it was clear at the outset that in addition to injuring his tibia, Mr. Leiton also hurt his left ankle in the 2024 incident. When an employee sustains a work injury, the employer shall designate a group of three or more independent reputable physicians from which the employee shall select one to be the treating physician." Tenn. Code Ann. § 50-6-204(a)(3)(A)(i). Even though diagnostic tests revealed that Mr. Leiton sustained an ankle fracture after the 2024 injury, Great

American never provided him with a panel of physicians for an evaluation. Thus, the Court refers Great American to the Compliance Department for assessment of a penalty.

The Court finds it unacceptable that Mr. Leiton has been in pain and unable to undergo surgery because of a dispute between two carriers. Had Great American offered a statutory required panel, it could perhaps have relied on that panel physician's opinion on causation. "Parties and their lawyers cannot rely solely on their own medical interpretations of the evidence to successfully support their arguments." *Lurz v. Int'l Paper Co.,* 2018 TN Wrk. Comp. App. Bd. LEXIS 8, at *16 (Feb. 14, 2018).

Further, even though Dr. Gallagher initially exhibited a hesitancy to definitively apportion responsibility for surgery to either carrier. She ultimately testified that she has no reason to believe otherwise that the 2024 injury caused Mr. Leiton's current need for surgery

The Appeals Board has "previously provided several examples of situations in which it may be appropriate to award attorneys' fees . . . at an interlocutory stage," including:

> [W]here an employer relies on its own interpretation of medical evidence without seeking an expert medical opinion to support its interpretation, fails to take reasonable steps to investigate a claim before denying it, fails to consider evidence in favor of the injured worker, *and/or* declines to reconsider its denial of a claim in the face of newly-discovered countervailing evidence.

Harris v. Express Emp't Professionals, 2026 TN Wrk Comp App Bd LEXIS 40, *22-23 (emphasis in original).

The Court finds Great American's denial of treatment was unreasonable, as it failed to offer a panel and an evaluation, its decision was unsupported by expert medical evidence, and it ultimately ignored expert medical evidence (Dr. Gallagher's deposition testimony) and Mr. Leiton's deposition testimony, impermissibly delaying treatment. Given Amazon's unreasonable decision to deny medical benefits, the Court holds that Mr. Leiton is entitled to attorney fees. He shall submit documentation to support those fees, and Great American may respond. The Court will award the specific attorney fees in a separate order.

IT IS, THEREFORE, ORDERED as follows:

1. Great American shall provide reasonable, necessary, and related medical treatment with Dr. Bethany Gallagher, including the current recommended surgery.

2. Mr. Leiton shall submit documentation supporting an award for attorney fees and expenses. The specific amount will be addressed in a separate order

3. The Court will set this matter for a Status Hearing following Mr. Leiton's surgery.

4. Unless an interlocutory appeal is filed, compliance must occur by **seven** business days of entry of this order as required by Tennessee Code Annotated section 50-6-239(d)(3).

ENTERED September 21, 2026.

Lisa A. Lowe

JUDGE LISA A. LOWE
Court of Workers' Compensation Claims

APPENDIX

Exhibits:

1. Rule 72 Declaration of Oscar Leiton Villalobos
2. Settlement Documents, approved on November 23, 2022
3. Deposition Transcript of Dr. Jonathan Cornelius
4. Curriculum Vitae of Dr. Jonathan Cornelius
5. Medical Records Table of Contents, submitted by Great American
    a. Medical Records of Hughston Clinic Orthopaedics
    b. Medical Records of Vanderbilt University Medical Center
    c. Medical Questionnaires of Dr. Jonathan Cornelius (incomplete) and Dr. Bethany Gallagher, dated May 12, 2025
    d. Medical Questionnaire of Dr. Bethany Gallagher, dated January 15, 2025
    e. Affidavit of Dr. Jonathan Cornelius, dated July 17, 2025
6. Medical Records Table of Contents, submitted by Argonaut
    a. Medical Records of Vanderbilt University Medical Center
    b. Medical Records of Dr. Joseph Stinner
    c. Medical Records of Dr. Bethany Gallagher
    d. Deposition Transcript of Dr. Bethany Gallagher with exhibits
7. Collective Photos of the Rollers and Machine at Stevens and Sons

CERTIFICATE OF SERVICE

I certify that a copy of this order was sent as shown on September 21, 2026.

Name	Mail	Email	Service sent to:
Lauren Ray, Employee's Attorney		X	lray@forthepeople.com
Connor Sestak Employer's Attorney		X	csestak@morganakins.com

Penny Shrum

PENNY SHRUM, COURT CLERK
wc.courtclerk@tn.gov

Right to Appeal:

If you disagree with the Court's Order, you may appeal to the Workers' Compensation Appeals Board. To do so, you must:

1. Complete the enclosed form entitled "Notice of Appeal" and file it with the Clerk of the Court of Workers' Compensation Claims before the expiration of the deadline.
   - If the order being appealed is "expedited" (also called "interlocutory"), or if the order does not dispose of the case in its entirety, the notice of appeal *must* be filed *within seven (7) business days* of the date the order was filed.
   - If the order being appealed is a "Compensation Order," or if it resolves all issues in the case, the notice of appeal *must* be filed *within thirty (30) calendar days* of the date the Compensation Order was filed.

   When filing the Notice of Appeal, you must serve a copy on the opposing party (or attorney, if represented).

2. You must pay, via check, money order, or credit card, a **$75.00 filing fee** *within ten calendar days* after filing 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 filing 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 your appeal.**

3. You are responsible for ensuring a complete record is presented on appeal. If no court reporter was present at the hearing, you may request from the Court Clerk the audio recording of the hearing for a $25.00 fee. If you choose to submit a transcript as part of your appeal, which the Appeals Board has emphasized is important for a meaningful review of the case, a licensed court reporter must prepare the transcript, and you must file it with the Court Clerk. The Court Clerk will prepare the record for submission to the Appeals Board, and you will receive notice once it has been submitted. For deadlines related to the filing of transcripts, statements of the evidence, and briefs on appeal, see the applicable rules on the Bureau's website at https://www.tn.gov/wcappealsboard. (Click the "Read Rules" button.)

4. After the Workers' Compensation Judge approves the record and the Court Clerk transmits it to the Appeals Board, a docketing notice will be sent to the parties.

   If neither party timely files an appeal with the Appeals Board, the Court Order becomes enforceable. See Tenn. Code Ann. § 50-6-239(d)(3) (expedited/interlocutory orders) and Tenn. Code Ann. § 50-6-239(c)(7) (compensation orders).

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 INDIGENCY

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:_____