

Ms. Hart was restricted in the use of her shoulder. He considered those restrictions in determining that a six-percent impairment rating for the distal clavicle resection was appropriate under the *American Medical Association Guidelines to the Evaluation of Permanent Impairment, 6th Ed.* He explained the rating in a detailed office note and included it on a “Form Medical Report” (C-30A).

In his deposition, Dr. Hutchison explained his reasoning. Namely, he saw two ways to rate Ms. Hart. First, he could use the *Guides*’s section that he did. Second, he could rate Ms. Hart for the labral tear and biceps tendinitis, what he called “the true injury she had at work,” and provide a three-percent impairment. Given those alternatives, Dr. Hutchison chose the six-percent rating because it was most “appropriate for the outcome she had.” He considered “everything [he] saw with Ms. Hart,” and “the FCE demonstrated, she had a significant impairment to her shoulder.” In summary, Ms. Hart had a normal shoulder before the injury, was able to “do whatever she wanted and it didn’t hurt,” but considering “where she ended up,” the six percent was appropriate. Finally, he testified that, “ultimately, we’re [doctors] giving our opinion. If it weren’t an opinion, you could just go to the book, look it up and wouldn’t need us.”

At the hearing, Ms. Hart argued that Dr. Hutchison’s “written opinion” is presumed correct under Tennessee Code Annotated section 50-6-204(k)(7) (2019), subject to rebuttal by a preponderance of the evidence. She said if Thyssen Krupp questioned the rating, it might have gotten another medical opinion. Instead, Thyssen Krupp asked the Court to take judicial notice that Dr. Hutchison improperly used the *Guides*, an approach forbidden by the statutory requirement that physicians provide impairment ratings. Ms. Hart specifically cited Dr. Hutchison’s testimony that without an expert opinion, a party would simply interpret the *Guides* on its own.

Thyssen Krupp countered that a three-percent rating represents the impairment related to Ms. Hart’s work-related injuries, the labral tear and the tendinitis. Thus, because the only work-related conditions were those diagnoses, Dr. Hutchison’s consideration of the distal clavicle resection was inappropriate. It specifically pointed to page 387 of the *Guides* that says a physician is to “use the diagnosis with the highest causally-related impairment rating for the impairment calculation.” Further, Thyssen Krupp argued that Dr. Hutchison used “pain” as a basis for assessing the higher six-percent rating, contrary to Tennessee Code Annotated section 50-6-204(k)(3) (A physician shall not consider complaints of pain in calculating impairment, even if the *Guides* allow it).

In her testimony, Ms. Hart detailed the “extremely brutal” course of her injury and treatment, noting both pain and limitations. She has continuing problems caring for her mother and tending to her farm but has returned to regular duty at Thyssen Krupp earning a higher wage than she did when injured.

Findings of Fact and Conclusions of Law

At a Compensation Hearing, Ms. Hart must establish all elements of her claim by a preponderance of the evidence. Tenn. Code Ann. § 50-6-239(c)(6). Here, Ms. Hart must establish by a preponderance of the evidence that the six-percent impairment rating is correct.

Under section 204(a)(1)(A), Thyssen Krupp must furnish Ms. Hart medical and surgical treatment “made reasonably necessary” by her injury. Dr. Hutchison’s treatment is presumed medically necessary because Ms. Hart chose him from a panel. Tenn. Code Ann. § 50-6-204(a)(3)(H). Further, Tennessee law has long followed “the rule that all the medical consequences and sequelae that flow from the primary injury are compensable.” *Rogers v. Shaw*, 813 S.W.2d 397, 400 (1991) *citing* 1 A. Larson, *The Law of Workmen's Compensation* § 13.11 (1990).

In *Sanchez v. Saturn Corp.*, No. M2003-01894-WC-R3-CV 2004, Tenn. LEXIS 711 (Tenn. Workers’ Comp. Panel Aug. 31, 2004), a Supreme Court Panel considered the medical consequences rule in context of a distal clavicle resection. There, the employee suffered a biceps tendon rupture. When the treating physician repaired it, he also resected the distal clavicle but did not provide a rating for the procedure. *Id.* at *4. So, the employee obtained a rating for the resection from another physician who said the resection was “part of the surgical procedure that [the treating physician] felt was necessary” to prevent pressure on the biceps. *Id.* at *9. Thus, the employee argued that, under *Rogers*, he should receive compensation for the resection because it was reasonably necessary to treat his biceps tendon rupture. *Id.* at *8.

However, the Panel affirmed the trial court’s denial of compensation, finding that the distal clavicle resection “was not reasonably required” medical treatment. Specifically, the Panel noted the treating physician “testified that the resection was not done to create more space for the biceps and, in fact, had nothing to do with the biceps rupture.” *Id.* at *9. Instead, the treating physician performed the distal clavicle resection incidentally “to prevent the [employee] from having any future trouble.” *Id.* at *3.

The opposite is true here. The authorized treating physician testified he *would not have performed* the distal clavicle resection *but for the work injury*. Additionally, he explained why he performed the procedure, specifically, to improve Ms. Hart’s loss of function due to the injury. It was not done solely because of pain complaints. Moreover, Dr. Hutchison’s opinion is the only expert opinion in the record. “Judges are not well-suited to second-guess a medical expert’s treatment, recommendations, and/or diagnoses absent some conflicting medical evidence or some other countervailing evidence properly admitted into the record.” *Scott v. Integrity Staffing Solutions*, 2015 TN Wrk. Comp. App. Bd. LEXIS 24, at *8 (Aug. 18, 2015).

Thus, unlike the *Sanchez* employee, Ms. Hart established by a preponderance of the evidence that the distal clavicle resection was reasonably necessary medical treatment. It follows then that she is entitled to compensation for the impairment resulting from it.

IT IS, THEREFORE, ORDERED as follows:

1. Thyssen Krupp shall pay Ms. Hart permanent partial disability benefits for a six-percent permanent partial disability to the body, a period of twenty-seven weeks, which at the stipulated weekly compensation rate of \$565.89 equals \$15,279.03. Ms. Hart's attorney is entitled to a twenty-percent fee of the award under Tennessee Code Annotated section 50-6-226(a)(1) in the amount of \$3,055.81. Ms. Hart may move the Court for an award of discretionary costs, unless the parties reach an agreement on the issue.
2. Thyssen Krupp shall pay future medical benefits under Tennessee Code Annotated section 50-6-204(a)(1)(A). Dr. Hutchison remains the authorized treating physician.
3. Thyssen Krupp shall pay \$150 costs to the Court Clerk within five business days under Tennessee Compilation Rules and Regulations 0800-02-21-.07 (May 2018).
4. Thyssen Krupp shall prepare and submit to the Court Clerk a Statistical Data Form (SD2) within ten business days of this order becoming final.
5. Absent an appeal, this order shall become final thirty days after issuance.

ENTERED June 25, 2020.



JUDGE ALLEN PHILLIPS
Court of Workers' Compensation Claims

APPENDIX

Exhibits

1. Deposition of Dr. Jason Hutchison
2. Collective Medical records of Dr. Hutchison and Dr. Mark Harriman
3. Final Medical Report (Form C-30A) of Dr. Hutchison

Technical record

1. Petition for Benefit Determination
2. Dispute Certification Notice
3. Request for Expedited Hearing
4. Withdrawal of Request for Expedited Hearing
5. Scheduling Order
6. Amended Scheduling Order
7. Motion to Continue
8. Order of Continuance
9. Second Order of Continuance
10. Post-Discovery Mediation DCN
11. Employee's Compensation Hearing Brief
12. Employee's Notice of Filing Proposed Exhibits
13. Pre-Compensation Hearing Statement
14. Employer's trial Brief
15. Notice of Filing C-30A

CERTIFICATE OF SERVICE

I certify that a copy of this Order was sent as indicated on June 25, 2020.

Name	Via Email	Service sent to:
Jonathan L. May, Employee's Counsel	X	jmay@forthepeople.com shaynes@forthepeople.com
Hailey David, Employer's Counsel	X	davidh@waldrophall.com smithj@waldrophall.com

Penny Shrum

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



Compensation Hearing Order Right to Appeal:

If you disagree with this Compensation Hearing Order, you may appeal to the Workers' Compensation Appeals Board or the Tennessee Supreme Court. To appeal to the Workers' Compensation Appeals Board, 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 thirty calendar days* of the date the compensation hearing order was filed. When filing the Notice of Appeal, you must serve a copy upon 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 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 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 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. A licensed court reporter must prepare a transcript and file it with the court clerk *within fifteen calendar days* of the filing the Notice of Appeal. Alternatively, you may file a statement of the evidence prepared jointly by both parties *within fifteen calendar 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 of the evidence 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. 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. The appealing party has *fifteen calendar days* after the date of that notice to submit a brief to the Appeals Board. *See the Practices and Procedures of the Workers' Compensation Appeals Board.*

To appeal your case directly to the Tennessee Supreme Court, the Compensation Hearing Order must be final and you must comply with the Tennessee Rules of Appellate Procedure. If neither party timely files an appeal with the Appeals Board, the trial court's Order will become final by operation of law thirty calendar days after entry. See Tenn. Code Ann. § 50-6-239(c)(7).

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: _____