

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

PETER MATTRESS,	:	APPEAL NO. C-100590
Plaintiff-Appellant,	:	TRIAL NO. A-0906614
vs.	:	<i>JUDGMENT ENTRY.</i>
UNIVERSITY OF CINCINNATI,	:	
and	:	
ADMINISTRATOR, OHIO BUREAU OF WORKERS' COMPENSATION	:	
Defendants-Appellees.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Peter Mattress appeals the trial court's judgment denying him the right to participate in the workers' compensation fund for the additional conditions of disc protrusion/herniation at L4-5 and L5-S1, bilateral foraminal stenosis at L4-5 and L5-S1, and bilateral radiculopathy at L5-S1. We affirm the judgment of the trial court.

In September 2000, Mattress, who was an employee of the University of Cincinnati, was injured while lifting a box in the course of his employment. His claim for a lumbosacral sprain was allowed. In 2009, Mattress filed a motion with the Bureau of Workers' Compensation ("BWC") for allowance of the additional conditions of disc protrusion/herniation at L4-5 and L5-S1, bilateral foraminal

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 11.1.1.

stenosis at L4-5 and L5-S1, and bilateral radiculopathy at L5-S1. Participation for the additional conditions was denied at all administrative levels.

Mattress appealed to the Hamilton County Court of Common Pleas, and the case was tried to the court. At trial, Mattress testified about his original injury and the subsequent treatment that he had received. The depositions of Daniel Buchanan, D.C., and Bruce Siegel, M.D., were also entered on Mattress's behalf. Both Buchanan and Siegel testified that Mattress had disc protrusion/herniation at L4-5 and L5-S1, bilateral foraminal stenosis at L4-5 and L5-S1, and bilateral radiculopathy at L5-S1, and that the conditions had been aggravated and accelerated by the injury that he had suffered in September 2000.

The deposition of Stephen Haverkos, M.D., was offered into evidence on behalf of the BWC and the University of Cincinnati. Haverkos agreed that Mattress had disc protrusion/herniation at L4-5 and L5-S1 and bilateral foraminal stenosis at L4-5 and L5-S1, but he denied that Mattress had bilateral radiculopathy at L5-S1. Haverkos stated that, in his opinion, Mattress's conditions had not been caused by or aggravated by the September 2000 injury. The trial court denied Mattress's appeal and concluded that Mattress was not entitled to participate in the workers' compensation fund for the additional conditions.

In his sole assignment of error, Mattress asserts that the trial court erred when it denied his request to participate in the workers' compensation fund for the additional conditions. To establish his right to participate in the workers' compensation fund for the additional conditions, Mattress had "to show by a preponderance of the evidence, medical or otherwise, not only that his injury arose out of and in the course of his employment but that a direct or proximate causal relationship existed between his injury and his harm or disability."² Mattress

² *Fox v. Indus. Comm.* (1955), 162 Ohio St. 569, 125 N.E.2d 1, paragraph one of the syllabus.

contends that, as a result of erroneous evidence rulings by the trial court, the court's judgment was not supported by competent, credible evidence.³

Mattress first challenges the trial court's decision to allow into evidence a collective exhibit that contained various medical reports, test results, and correspondence that had been gathered by the Ohio Attorney General's office during discovery. The exhibit was provided to and reviewed by Haverkos. Mattress objected to the exhibit, claiming that some of the documents in the exhibit were hearsay or irrelevant or had not been authenticated. Although Mattress acknowledged that some of the documents were admissible, when she objected to the exhibit, Mattress's counsel claimed that she was unable to specify which documents within the exhibit were objectionable because the documents were not separately identified or indexed.

We review a trial court's admission or exclusion of evidence for an abuse of discretion.⁴ Haverkos's report, which was also entered into the record during his deposition, listed the records in the exhibit that he had referred to in arriving at his opinion. And the trial court stated that it was "aware of the records upon which Dr. Haverkos based his opinion." Indeed, some of the documents that Haverkos relied on appear also to have been relied on by Mattress's expert witnesses. Given Mattress's counsel's acknowledgement that some of the documents were admissible and absent specific objections to specific documents in the exhibit, we conclude that the trial court did not abuse its discretion when it allowed the admission of the exhibit.

Mattress also contends that Haverkos's testimony should have been stricken by the trial court because it was based on evidence that was erroneously admitted by the court. Because we have concluded that the trial court did not erroneously admit

³ See *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, 376 N.E.2d 578, syllabus.

⁴ See *State v. Sage* (1987), 31 Ohio St.3d 173, 180, 510 N.E.2d 343.

the records upon which Haverkos based his opinion, we conclude that the trial court did not err when it allowed his deposition testimony into evidence.⁵ And contrary to Mattress's contention, Haverkos's opinions were not conclusory or inadequately established. Haverkos stated in his deposition his reasons for concluding that Mattress did not have bilateral radiculopathy. And he also stated his reasons for concluding that the disc protrusion/herniation at L4-5 and L5-S1 and the bilateral foraminal stenosis at L4-5 and L5-S1 had not been caused by or aggravated by the injury that Mattress suffered in September 2000. Mattress's challenges to Haverkos's opinion with respect to how long Haverkos had reviewed the records and when he had examined Mattress went to the weight to be accorded Haverkos's opinions.

Finally, Mattress challenges the trial court's denial of his objections to questions posed to Buchanan during cross-examination that suggested that Mattress had had treatment for drug and alcohol abuse, had been charged with domestic violence, had had another injury to his back after the September 2000 injury, and had sustained yet another back injury while serving in the military prior to the September 2000 injury. When Mattress filed his objections to the questions posed during Buchanan's deposition, he contended that the evidence was not relevant and that the questions were not based on evidence in the record. But questions about Mattress's previous injuries and previous drug use were relevant to the history upon which Buchanan based his opinions. And the evidence of Mattress's prior drug abuse and other injuries was elicited during the defense's cross-examination of Mattress. Hypotheticals based on this evidence were proper. There was no evidence presented of alleged domestic violence by Mattress. But to the extent that it was error to allow the question about domestic violence, we conclude that the question did not affect the outcome of the trial. And having reviewed the entire record, we

⁵ See Evid.R. 703.

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conclude that the trial court's denial of Mattress's claim for additional conditions was not against the manifest weight of the evidence.

Therefore, we affirm the trial court's judgment.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., SUNDERMANN and CUNNINGHAM, JJ.

To the Clerk:

Enter upon the Journal of the Court on May 18, 2011

per order of the Court _____.
Presiding Judge