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Tennessee Court of Workers' Compensation Claims  
and Workers' Compensation Appeals Board

Law

11-4-2015

## Moore, Robin v. Ingles Markets, Inc.

Tennessee Workers' Compensation Appeals Board

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**FILED**

**November 4, 2015**

**TENNESSEE  
WORKERS' COMPENSATION  
APPEALS BOARD**

**Time: 12:23 P.M.**

**TENNESSEE BUREAU OF WORKERS' COMPENSATION  
WORKERS' COMPENSATION APPEALS BOARD**

Robin Moore	)	Docket No.	2015-02-0193
	)	State File No.	47827-2015
v.	)		
	)		
Ingles Markets, Inc.	)		
	)		
and	)		
	)		
Stephen Seiferth	)	Docket No.	2015-02-0183
	)	State File No.	46930-2015
v.	)		
	)		
Ingles Markets, Inc.	)		
	)		
Appeals from the Court of Workers'	)		
Compensation Claims	)		
Brian K. Addington, Judge	)		

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**Affirmed and Remanded — Filed November 4, 2015**

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In these consolidated interlocutory appeals, the employees alleged respiratory injuries as a result of repeated exposure to pesticide sprayed in their work areas.<sup>1</sup> The employer provided an initial evaluation at an emergency room but did not provide a panel of physicians in either case. The employer subsequently denied the claims and any further workers' compensation benefits. Following expedited hearings, the trial court determined that the employees were entitled to a panel of physicians. Temporary disability benefits were denied. The employer has appealed. We affirm and remand the cases for any further proceedings that may be necessary.

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<sup>1</sup> These companion cases are factually and legally similar and, therefore, we have consolidated them for purposes of appeal. *See generally* Tenn. R. App. P. 16(b) ("When separate appeals involving a common question of law or common facts are pending before the appellate court, the appeals may be consolidated by order of the appellate court on its own motion or on motion of a party.").

Judge Marshall L. Davidson, III, delivered the opinion of the Appeals Board, in which Judge David F. Hensley and Judge Timothy W. Conner joined.

Judith A. DePrisco, Knoxville, Tennessee, for the employer-appellant, Ingles Markets, Inc.

Robin Moore, Bluff City, Tennessee, employee-appellee, pro se

Stephen Seiferth, Johnson City, Tennessee, employee-appellee, pro se

### **Factual and Procedural Background**

Robin Moore and Stephen Seiferth (collectively “Employees”) worked in the dairy department at Ingles Markets, Inc. (“Employer”).<sup>2</sup> They alleged that Employer installed pesticide sprayers in their work areas that sprayed “fly spray” in fifteen-minute intervals, resulting in their being exposed to airborne chemicals while at work. Employees claimed that they suffered a variety of respiratory and neurological problems as a result of the exposure, and they filed separate petitions to compel Employer to provide medical treatment, payment of past medical expenses, and temporary disability benefits.

After an expedited hearing was held in each case, the trial court ordered Employer to provide a panel of physicians to each Employee. The trial court denied temporary disability benefits in each case. Employer has appealed.

### **Analysis**

In each notice of appeal, Employer contends that Employee failed to establish causation and that the “testimony indicated no further medical treatment is necessary: date of injury remains disputed.” However, we have been provided with no record of any testimony presented during the expedited hearings. Moreover, no statement of the evidence has been filed. Thus, the totality of the evidence introduced in the trial court is unknown, and we decline to speculate as to the nature and extent of the proof presented to the trial court. Instead, consistent with established Tennessee law, we presume that the trial court’s rulings were supported by sufficient evidence. *See Leek v. Powell*, 884 S.W.2d 118, 121 (Tenn. Ct. App. 1994) (“In the absence of a transcript or a statement of the evidence, we must conclusively presume that every fact admissible under the pleadings was found or should have been found favorably to the appellee.”).

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<sup>2</sup> Because transcripts of the hearings were not provided by the appellant in these cases, we have gleaned the facts from the pleadings and the trial court’s expedited hearing orders.

In addition, although Employer states in each notice of appeal that the “date of injury remains disputed,” there is no indication in either of the trial court’s orders that this issue was raised or decided at the expedited hearings and, without a transcript, we decline to speculate one way or the other. Further, Employer has not filed a brief or position statement explaining or otherwise developing this issue. As stated by the Tennessee Supreme Court, “[i]t is not the role of the courts, trial or appellate, to research or construct a litigant’s case or arguments for him or her, and where a party fails to develop an argument in support of his or her contention or merely constructs a skeletal argument, the issue is waived.” *Sneed v. Bd. of Prof’l Responsibility of the Supreme Court of Tenn.*, 301 S.W.3d 603, 615 (Tenn. 2010). Consistent with this settled principle, we decline to address the issue.

### **Conclusion**

For the foregoing reasons, the trial court’s decision in each case is affirmed. The cases are remanded for any further proceedings that may be necessary.

  
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**Marshall L. Davidson, III**  
**Presiding Judge**  
**Workers’ Compensation Appeals Board**



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	)	State File No.	46930-2015
v.	)		
	)		
Ingles Markets, Inc.	)		

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Appeals Board's decision in the referenced case was sent to the following recipients by the following methods of service on this the 4th day of November, 2015.

Name	Certified Mail	First Class Mail	Via Fax	Fax Number	Via Email	Email Address
Robin Moore					X	robinm10s@gmail.com
Stephen Seiferth					X	sts2384@hotmail.com
Judith DePrisco					X	judith@bcnattorneys.us
Brian K. Addington, Judge					X	Via Electronic Mail
Kenneth M. Switzer, Chief Judge					X	Via Electronic Mail
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