

Tennessee Workers' Compensation Update

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Penalties for Failure to Provide a Panel

[*Berdnick v. Fairfield Glade Community Club*](#)

Tennessee Workers' Compensation Appeals Board | May 18, 2017

Recently, the Appeals Board made a ruling in the *Berdnick v. Fairfield Glade Community Club* case. The Appeals Board reversed an Expedited Hearing Order awarding a panel, but referred the Employer for penalties.

Employee claimed to have suffered a back injury retrieving ice from the employer's ice machine. Employer denied the claim without providing a panel or other benefits, based on the Employee's prior history of back problems. Employee did not dispute a history of back problems.

The Employee requested an Expedited Hearing, and the Employer had the Employee examined by a physician of the Employer's choosing. The physician opined that the Employee's work did not contribute more than 50% in causing the employee's current condition. Following an expedited hearing, the Trial Court concluded that the employee had not established she was likely to prevail in proving a compensable injury and declined to award medical expenses and temporary disability benefits. Nonetheless, the Trial Court ordered a panel of physicians "for evaluation, and if necessary, treatment." The Employer appealed, asserting the award of medical benefits was error.

The Appeals Board agreed and reversed the Trial Court's decision. The Appeals Board noted that lay testimony may be probative on the issue of causation, but it is insufficient to meet an employee's burden of proof in the absence of medical evidence.

However, the Appeals Board noted: "We hasten to add that our resolution of this issue should not be viewed by employers or their insurers as license to skirt their obligations under Section 50-6-204 or Tenn. Comp. R. & Regs. 0800-02-01-.25, for to do so exposes them to distinct, and significant, risks." The Appeals Board noted the risks of failing to provide a panel to include: (1) losing control over the employee's medical treatment and being ordered to pay for medical expenses the employer would not otherwise have to pay; and (2) exposure to a penalty pursuant to 50-6-118(a)(11)-(12) (2016). The Board referred the Employer to the Penalty Unit for investigation and assessment of penalties for a failure to provide a panel.

For questions or more information, please contact one of [MGC's attorneys](#).

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