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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0072**

Nicholas Houchins,
Respondent,

vs.

Soo Line Railroad Company d/b/a Canadian Pacific,
Appellant.

**Filed June 24, 2019
Affirmed
Schellhas, Judge**

Hennepin County District Court
File No. 27-CV-16-15636

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(for respondent)

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Considered and decided by Schellhas, Presiding Judge; Jesson, Judge; and Tracy M.
Smith, Judge.

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant challenges judgment in favor of respondent's Federal Employer's
Liability Act (FELA) claims, arguing that the district court abused its discretion by

(1) excluding collateral-source evidence; and (2) denying its motion for a new trial or conditional remittitur. We affirm.

FACTS

This appeal involves respondent Nicholas Houchins's claims under FELA for injuries he allegedly sustained to his knees while employed by appellant Soo Line Railroad d/b/a Canadian Pacific (Soo Line). Prior to his employment with Soo Line, Houchins served as an infantryman in the United States Army, serving two tours of duty in Iraq. Houchins was honorably discharged from the army in December 2006, applied for Veterans Administration (VA) disability benefits, and began receiving disability benefits in January 2007. Two of the various conditions related to Houchins's disability benefits include a 10% disability rating for each knee due to "genu valgum" strains to both knees. According to Houchins, \$219.88 of his monthly benefits of \$1,319 are related to his knees.

In July 2008, Houchins began working for Soo Line as a conductor. Prior to beginning his employment, Houchins was required to undergo a medical examination administered by a Soo Line doctor who tested, among other things, his knees. Houchins passed the initial medical examination, and later passed full medical examinations in 2009 and 2014. In October 2015, a Soo Line employee backed a vehicle into Houchins. An orthopedic surgeon opined that Houchins sustained a hyperextension injury due to the accident, and Houchins has not returned to work with Soo Line as a conductor.

In October 2016, Houchins sued Soo Line, asserting his FELA claims. Soo Line maintained that Houchins was seeking to recover for the same injury twice, and that his receipt of monthly disability benefits provided him an incentive not to return to work. Soo

Line therefore moved in limine to admit evidence that “Houchins receives [VA] benefits in part relating to bilateral knee issues.” Houchins moved to exclude evidence about his disability benefits as collateral-source evidence. The district court denied Soo Line’s motion in limine, “unless [Houchins] testifies or argues that he suffers financial distress due to his inability to work caused by his injury, or otherwise opens the door to the admissibility of such evidence.” Soo Line stipulated to liability, and the case proceeded solely on the issue of damages. The jury awarded Houchins \$2 million in damages. Soo Line moved for a new trial or a conditional remittitur. The court denied Soo Line’s motions.

This appeal follows.

D E C I S I O N

I. Collateral-source evidence

Minnesota appellate courts review a district court’s evidentiary rulings for an abuse of discretion. *Doe v. Archdiocese of St. Paul*, 817 N.W.2d 150, 164 (Minn. 2012). A district court abuses its discretion when “its decision is based on an erroneous view of the law or is inconsistent with the facts in the record.” *Hudson v. Trillium Staffing*, 896 N.W.2d 536, 540 (Minn. 2017) (quotation omitted). An improper evidentiary ruling resulting in the erroneous admission of evidence will require a new trial only if it results in prejudice. *George v. Estate of Baker*, 724 N.W.2d 1, 9 (Minn. 2006).

The supreme court has recognized that the collateral-source statute “sets forth a general rule barring collateral source evidence.” *Kroning v. State Farm Auto Ins. Co.*, 567 N.W.2d 42, 46 (Minn. 1997). “The collateral source rule provides in general that compensation received from a third party will not diminish recovery against a wrongdoer.”

Hubbard Broad., Inc. v. Loescher, 291 N.W.2d 216, 222 (Minn. 1980). The collateral-source rule is also applicable in FELA cases. See *Eichel v. New York Cent. R. R. Co.*, 375 U.S. 253, 255–56, 84 S. Ct. 316, 317 (1963) (holding that, in FELA cases, collateral-source payments are inadmissible as bearing on extent or duration of disability); *but see Moses v. Union Pac. R.R.*, 64 F.3d 413, 416 (8th Cir. 1995) (holding that, in “limited kinds of situations,” when plaintiff alleges absence of collateral-source benefits and puts fact at issue by claiming emotional or financial distress due to lack of income, probative value of collateral-source evidence may not outweigh prejudicial effect of collateral-source evidence).

Soo Line argues that the district court abused its discretion by excluding collateral-source evidence of Houchins’s receipt of VA disability benefits because (1) the evidence should have been permitted to impeach Houchins; (2) the benefits related to a pre-existing injury; and (3) Houchins opened the door by complaining about poverty.

A. Admissibility of benefits evidence as impeachment evidence

Generally, the “credibility of a witness may be attacked by any party.” Minn. R. Evid. 607. And, under well-established law, “a witness who has testified to material facts in a case may be impeached by showing that he has previously made statements relating to those facts which are contrary to his present testimony.” *Carroll v. Pratt*, 76 N.W.2d 693, 697 (Minn. 1956) (footnote omitted).

Houchins testified on direct examination that while he was in the army, his knees were “sore,” but that he “never had any specific injury” to his knees. He testified that his job as a yard conductor was a “physical job” that required him to work outdoors, walk

multiple miles on uneven rock, climb ladders on the side of rail cars, and squat down to connect air hoses. He testified that he had no problems performing his job duties before the incident on October 17, 2015. He maintained that, since the accident, his knee bends the “wrong way,” which has caused him to fall “multiple times”; he can no longer engage in physical recreation like he used to, such as, “go for a run; go play a full-court game of real basketball . . .”; play softball and participate in “mud runs”; and he can no longer play with his kids like he used to.

Soo Line claimed that Houchins’s testimony was inconsistent with his VA medical records, which “established” that he has “service-connected disabilities [related to his knees] that are permanent partial problems that are going to last,” and that he receives disability payments related to his knee problems. Soo Line argued that Houchins’s testimony denying pre-existing knee injuries was inconsistent with the VA’s award for knee-disability benefits, and that his testimony “opened the door by denying that he ever had a service-related condition or injury.” The district court disagreed and concluded that although Houchins “opened the door about the extent of the injury,” which would allow Soo Line to impeach with “documents available . . . that show that he was injured,” he did not open the door to impeachment with evidence related to “payments or compensation or entitlement to compensation.”

Soo Line argues that the district court should have allowed it to explore the alleged discrepancy between Houchins’s testimony and the VA assessment of his knees, and that the court abused its discretion by concluding that admission of Houchins’s VA disability benefits would violate the collateral-source rule. To support its argument, Soo Line cites

Kroning, which stated that “[t]he collateral source statute does not trump the Minnesota Rules of Evidence allowing impeachment.” 567 N.W.2d at 47. But *Kroning* is not a FELA case. Moreover, in *Kroning*, while recognizing the general rule that bars collateral-source evidence, the supreme court held that the “exception” set forth in Minn. R. Evid. 607 allows for the impeachment of witnesses with the admission of evidence of collateral-source payments “when a plaintiff, through either the use of misleading statements or outright false statements, falsely conveys to the jury that he or she is destitute or in dire financial straits.” *Id.* at 46–47. This holding is consistent with the holding in *Moses* that relates to FELA cases. 64 F.3d at 416.

Here, Houchins testified that while he was in the army, he never had a “specific injury” to his knees. He did not testify that he does not receive collateral-source benefits, nor did he claim emotional or financial distress due to lack of income. Houchins’s testimony did not open the door to the admission of collateral-source evidence based on an exception discussed in *Moses*. Soo Line argues that *Moses* “does not hold that there are only ‘two narrow exceptions’ to the collateral source rule in FELA cases,” and that “Minnesota courts have found collateral source evidence admissible in FELA actions beyond the alleged ‘two narrow exceptions.’”

We acknowledge that the exceptions to the collateral-source rule may not be limited to the two exceptions discussed in *Moses*. For example, the First Circuit Court of Appeals has allowed collateral-source evidence if the plaintiff opens the door, it is relevant to some other material issue in the case, its probative value is not outweighed by the danger of unfair prejudice, and an immediate prophylactic instruction is given as to the limited use

for which it was admitted. *Fitzgerald v. Expressway Sewerage Constr., Inc.*, 177 F.3d 71, 75–76 (1st Cir. 1999). But Soo Line presents no published Minnesota precedent to support its argument that the district court erred by not allowing the collateral-source evidence in the facts presented here.

Houchins testified that he never sustained a “specific injury” to his knees while in the army, so the district court allowed Soo Line to impeach Houchins with his VA medical records that showed “genu valgum” strains to both his left and right knees. Significantly, Soo Line’s expert, Dr. Gary Wyard, testified that the assessments conducted by the military “determined [Houchins] to have a permanent disability of his knee.” In fact, in violation of the court’s order barring the admission of collateral-source evidence, in response to a question on cross-examination asking why he was “being such an advocate for the defense,” Dr. Wyard said, “I think there is a social responsibility to doing these, and in my opinion when someone has consistently been taking money from the federal government - -.” Houchins never testified that he did not receive collateral-source benefits, nor did he claim emotional or financial distress due to lack of income. He therefore did not open the door to the admission of collateral-source evidence of his receipt of VA disability benefits. A contrary ruling would be inconsistent with the well-established collateral-source rule “that a plaintiff’s collateral sources of compensation cannot be inquired into as part of a defendant’s case, because of the danger that the jury may be inclined to find no liability, or to reduce a damage award, when it learns that plaintiff’s loss is entirely or partially covered.” *Moses*, 64 F.3d at 416; *see also Tipton v. Socony Mobil Oil Co.*, 375 U.S. 34, 36–37, 84 S. Ct. 1, 2–3 (1963) (establishing that plaintiff’s collateral sources of

compensation cannot be inquired into as part of defendant's case because of danger that jury may be inclined to find no liability, or to reduce damage award, when it learns that plaintiff's loss is entirely or partially covered).

Moreover, as the district court found, "the risk of prejudice that the jury might learn that Mr. Houchins was receiving payments is a dangerous one." The risk of prejudice was great particularly in light of the minimal portion of Houchins's disability payments that are related to his knees—\$219 of the \$1,319 in monthly benefits. We conclude that the court did not abuse its discretion by concluding that Houchins's testimony regarding the extent of his knee injuries while in the army did not open the door to the admission of impeachment evidence of his receipt of VA disability benefits.

Soo Line also contends that the district court abused its discretion by precluding Soo Line from showing the "dishonest[]" answers Houchins displayed on his employment forms. Specifically, Soo Line asserts that in disclosing his health history to Soo Line, Houchins "checked the 'no' box in 2009 and 2014 when asked whether he received military benefits." Soo Line argues that because "none of these responses were true," it should have been allowed to impeach Houchins with evidence that he receives VA disability benefits when he testified at trial that he honestly filled out Soo Line's employment forms. We disagree.

Again, Houchins did not testify that he never received VA benefits or that he was in financial distress. He therefore did not open the door to the content of the employment forms. Consequently, the admission of evidence that Houchins received VA disability benefits would have violated the collateral-source rule, as applied in FELA cases. And, as

Houchins points out, Soo Line questioned his honesty during cross-examination by showing him the VA medical records that diagnosed him with a knee condition, which tended to conflict with his testimony that he never had a “specific” knee injury while in the military. Dr. Wyard’s testimony also specifically questioned Houchins’s honesty. In light of the broad discretion afforded a district court in making evidentiary rulings, we conclude that the district court did not abuse its discretion by precluding Soo Line from showing the jury the answers on Houchins’s employment forms.

B. Admissibility of VA disability benefits as pre-existing-injury evidence

Soo Line claims that the district court should have allowed it to introduce evidence of Houchins’s VA disability benefits to show pre-existing injuries because the VA’s rating of Houchins’s knee problems as disabilities, and its payment of disability benefits related to the knee problems, demonstrate that the “VA believes Houchins to have suffered—and to still suffer—from knee injuries.” To support its claim, Soo Line cites *Kelsey v. Chicago, Rock Island & Pac. R.R. Co.*, 117 N.W.2d 559 (Minn. 1962). In that case, the supreme court affirmed the admission of evidence regarding the monetary settlement of a prior claim because of its relevance to the defendant’s arguments about the extent of a pre-existing injury. *Id.* at 563.

In this case, Soo Line’s reliance on *Kelsey* is misplaced because its argument conflicts with the rule discussed in *Eichel*, that collateral-source payments are inadmissible as bearing on the extent or duration of disability in FELA cases. 375 U.S. at 255–56, 84 S. Ct. at 317. Moreover, not only was *Kelsey* decided before *Eichel*, but it concerned the aggravation of a pre-existing injury and is not a FELA case. In contrast, Soo Line

acknowledges that it “did not claim that [Houchins] suffered precisely the same injury” at Soo Line as he did in the army. *Kelsey* therefore is distinguishable from this case, and the district court did not abuse its discretion by excluding evidence of Houchins’s receipt of VA disability benefits to show pre-existing injuries.

C. Admissibility of VA disability benefits due to alleged poverty testimony

Soo Line argues that because Houchins “opened the door by falsely conveying the extent of his allegedly dire financial straits,” the district court abused its discretion by barring Soo Line from raising VA disability benefits on cross-examination. Indeed, the supreme court has recognized that where a plaintiff “falsely conveys to the jury that he or she is destitute or in dire financial straits, the admission of evidence of collateral source payments received by the plaintiff is permitted.” *Kroning*, 567 N.W.2d at 46. This rule is consistent with the exception to the collateral-source rule, as applied in FELA cases, which allows a defendant to inquire into collateral sources “if a plaintiff is claiming emotional injury on account of financial stress following an accident.” *Moses*, 64 F.3d at 416 (citing *Cowens v. Siemens-Elema AB*, 837 F.2d 817 (8th Cir. 1988)).

In this case, on direct examination, the following exchange occurred between Houchins and his attorney:

- Q: What is your - - do you have a plan? What is your plan then now if the railroad won’t take you back?
A: If they will or won’t.
Q: If they won’t.
A: Continue going to school and find a way to provide for my family.
Q: And the associate’s degree is the program that you are on?

A: That's the program I'm on. I'm going to have to do more than that because I am not going to survive on that.
Q: Do you have any plans now with respect to going on maybe and getting a four-year degree, for example?
A: I - - yea, I mean, I can't survive - -
Q: You're doing - - you're doing well with - -
A: I'm doing well with what I have right now, yeah.

Soo Line characterized the above colloquy as testimony that falsely conveyed to the jury that Houchins was destitute or in dire financial straits, that the exchange opened the door to the admission of Houchins's receipt of VA disability benefits, and that, under *Kroning*, the district court should have permitted the admission of disability-benefits evidence. We disagree. Houchins said nothing about being upset, anxious, or distressed about his financial situation, nor did he testify that he was in dire financial straits. He testified that he is "doing well with what [he has] right now." Based on Houchins's testimony as a whole, we conclude that he did not open the door to the admission of collateral-source evidence of his receipt of VA disability benefits.

In sum, the record reveals that, mindful of FELA cases that have addressed the collateral-source rule, the district court thoughtfully analyzed the collateral-source issues. In light of the broad discretion afforded the court's evidentiary decisions, we therefore conclude that it did not abuse its discretion by excluding collateral-source evidence of Houchins's receipt of VA disability benefits.

II.

Soo Line challenges the district court's denial of its motion for a new trial or remittitur. "[T]he question of whether a motion for a new trial on the ground of excessive damages should be granted or whether the verdict should be reduced rests in the practical

judgment and sound discretion of the [district] court.” *DeWitt v. Schuhbauer*, 177 N.W.2d 790, 795 (Minn. 1970). A motion for a new trial should be granted if “the verdict is so contrary to the preponderance of the evidence as to imply that the jury failed to consider all the evidence or acted” under a mistake or from an improper motive. *Lamb v. Jordan*, 333 N.W.2d 852, 855–56 (Minn. 1983) (quotation omitted). Remittitur may be granted on the basis that “an excessive verdict appears to have been given under the influence of passion and prejudice” or “on the ground that the damages are not justified by the evidence.” *Busch v. Busch Constr. Inc.*, 262 N.W.2d 377, 400–01 (Minn. 1977).

“The discretion to grant a new trial on the ground of excessive damages rests with the [district] court, whose determination will only be overturned for abuse of that discretion” *Advanced Training Sys., Inc. v. Caswell Equip. Co., Inc.*, 352 N.W.2d 1, 11 (Minn. 1984). Likewise, the decision whether to grant a remittitur is within a district court’s sound discretion. *Bigham v. J. C. Penney Co.*, 268 N.W.2d 892, 898 (Minn. 1978).

A. New trial

“[T]he assessment of damages is the peculiar province of the jury.” *Schindele v. Ulrich*, 268 N.W.2d 547, 552 (Minn. 1978). In a civil case, the plaintiff has the burden of proving the amount of future damages by a fair preponderance of the evidence and to a reasonable certainty. *Pietrzak v. Eggen*, 295 N.W.2d 504, 507 (Minn. 1980). A district court may grant a new-trial motion due to “[e]xcessive . . . damages, appearing to have been given under the influence of passion or prejudice.” Minn. R. Civ. P. 59.01(e); see *Flanagan v. Lindberg*, 404 N.W.2d 799, 800 (Minn. 1987) (noting that jury’s award of

damages is “inadequate” if damages are “so . . . excessive” that they could “only have been rendered on account of passion or prejudice” (quotations omitted)).

Soo Line argues that the district court abused its discretion by denying its motion for a new trial because the jury’s “damages award was clearly provoked by jury passion and prejudice.” We disagree. Houchins testified that at the time of the incident, he was making “around” \$30 per hour, and that his annual salary in 2014 was about \$79,000. Since Houchins’s accident, the union renegotiated its collective-bargaining agreement with Soo Line, and consequently a conductor’s current salary is \$42.50 per hour. Houchins’s expert, Dr. Jerome Sherman, testified that with the recent conductor raise, if Houchins does not earn his associate degree, his future wage loss would be between about \$1.8 million and \$2 million, and if Houchins does earn his associate degree, his future wage loss would be between approximately \$1.6 and \$1.7 million. The court found that the jury’s award of \$2 million in damages was “based on the guidance of Dr. Sherman’s calculations.” Nothing in the record suggests that the jury’s verdict was influenced by passion or prejudice. *See Dailey v. Wiborg*, 366 N.W.2d 736, 737–38 (Minn. App. 1985) (rejecting argument that jury’s “passion and prejudice can be inferred from the size of the verdict” when in view of injuries and damages suffered, jury’s award is not manifestly and palpably contrary to evidence).

Soo Line contends that the jury’s verdict is contradicted by the evidence and reflects conjecture that Houchins would never again work for Soo Line, notwithstanding the fact that he did return to Soo Line and was working to obtain a college degree in human resources. Indeed, Houchins acknowledged that, at the time of trial, he was working at Soo

Line training new-hire conductors. But he also testified that the position was “temporary.” Moreover, on behalf of Soo Line, Jesse Ogren, a vocational rehabilitation counselor, corroborated Houchins’s testimony that the conductor-trainer job was “temporary” and further testified that he has seen cases in the past “where right before trial there will be some kind of temporary job” offered by the railroad. And Soo Line’s counsel acknowledged at trial that the position was “temporary” when asking a Soo Line employee if the “timing of this temporary position ha[d] anything to do with the pendency of this lawsuit.” To the extent that any evidence was conflicting, credibility issues were for the jury to resolve. *Tolzmann v. McCombs-Knutson Assocs.*, 447 N.W.2d 196, 198 (Minn. 1989).

Additionally, Soo Line’s argument appears to ignore the fact that the jury awarded damages, in part, for Houchins’s pain and suffering. The law is well settled that it is “for [the] jury to determine from all [the] evidence the amount [a] plaintiff should be compensated for . . . pain and suffering.” *Berg v. Gunderson*, 147 N.W.2d 695, 696 (Minn. 1966) (emphasis omitted). “[T]he assessment of damages is the peculiar province of the jury.” *Schindele*, 268 N.W.2d at 552. The jury is “in the best position to evaluate the evidence of [a] plaintiff’s pain, suffering, injuries, and losses.” *Nelson v. Henning*, 354 N.W.2d 35, 42 (Minn. App. 1984), *review denied* (Minn. Nov. 8, 1984).

Here, the jury heard evidence of the pain Houchins experienced when the accident occurred, and he testified about the physiological consequences of the accident, as well as the changes to his lifestyle. The evidence of pain and suffering, in addition to the evidence of future loss, reasonably supports the jury’s verdict and does not “shock the conscience.”

See Johnson v. Washington County, 518 N.W.2d 594, 602 (Minn. 1994) (stating that unless amount of damages “shocks the conscience,” a new trial is not warranted (quotation omitted)). We conclude that the district court did not abuse its broad discretion by denying Soo Line’s motion for a new trial. *See Raze v. Mueller*, 587 N.W.2d 645, 648 (Minn. 1999) (stating that “adequacy of the verdict rests within the discretion of the [district] court”) (footnote omitted)).

B. Remittitur

Soo Lines argues that, alternatively, the district court should have conditionally remitted the verdict. “A motion for remittitur requires that the district court consider all of the evidence and determine whether the verdict is within the bounds of the highest sustainable award under the evidence.” *Border State v. Bank of Greenbush*, 690 N.W.2d 326, 336 (Minn. App. 2004) (quotation omitted), *review denied* (Minn. Feb. 23, 2005). If a district court determines that the jury award is excessive, it may grant a new trial, but allow the party against whom the motion is directed to consent to remittitur in lieu of a new trial. *Runia v. Marguth Agency, Inc.*, 437 N.W.2d 45, 49–50 (Minn. 1989).

Here, Soo Line’s argument for a conditional remittitur again focuses on the assertion that the jury’s verdict fails to recognize that Houchins returned to railroad work, which reduced his “earning capacity losses by amounts he can and does earn.” But the jury heard evidence that Houchins was hired by Soo Line shortly before the trial commenced and that the job was temporary. The jury was free to draw its own conclusions from this evidence. Moreover, the jury heard evidence that Houchins’s temporary position at Soo Line paid substantially less than he would have earned as a conductor under the newly negotiated

collective-bargaining agreement with Soo Line. For all of the foregoing reasons, we conclude that the jury's verdict is reasonably supported by the evidence, and that the district court did not abuse its discretion by denying Soo Line's motion for a conditional remittitur.

Affirmed.