IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL

MILEY R. STRONG, ET AL. v. ROYAL INSURANCE COMPANY, ET AL.

Chancery Court for Davidson County
No. 96-3543-II

No. M1999-00411-WC-R3-CV - Decided - June 6, 2000

JUDGMENT

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference.

Whereupon, it appears to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs will be paid by appellant, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE

MILEY R. STRONG v. ROYAL INSURANCE COMPANY

Appeal from the Chancery Court for Davidson County
Carol McCoy, Chancellor

No. M1999-00411-WC-R3-CV - Mailed May 4, 2000
Filed - June 6, 2000

This worker's compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. §50-6-225 (e) (3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

Tenn. Code Ann. § 50-6-225(e) (1999) Appeal as of Right; Judgment of the Chancery Court Affirmed

WEATHERFORD, SR. J., delivered the opinion of the court, in which BIRCH, J., and GAYDEN, SP. J., joined.

J. Mitchell Grissim, Jr. and Harry L. Weddle, III, Nashville, Tennessee, for the appellant, Miley R. Strong.

James G. White, Nashville, Tennessee, for the appellee, Royal Insurance Company.

MEMORANDUM OPINION

The trial court found that this action was barred by the statute of limitations. Tenn. Code Ann. §50-6-230 and dismissed the action.

The sole issue on this appeal is whether employee/appellant filed his complaint for workers' compensation benefits within the time required by the statute of limitations, Tenn. Code Ann. §5-6-203. As discussed below, the panel has concluded that the trial court's judgment should be affirmed.

This action was initiated by employee Miley R. Strong, to recover workers' compensation benefits for an injury alleged to have occurred on or before November 13, 1995. The complaint was filed November 8, 1996.

The employee, Miley R. Strong, began working at Nissan Motor Manufacturing Corporation (Nissan) on October 1, 1984. Prior to going to work at Nissan, employee was a paint contractor and worked for a short time at a retail pizza store.

The employee testified that he hurt his left knee in 1989.

Prior to working at Nissan, the employee was an avid softball player and had no problems with his knees. The employee had arthroscopic surgery performed on his left knee by Dr. Lawrence in 1989. He later hurt his left knee playing softball in 1992. He developed knee problems again in 1993 and again underwent arthroscopic surgery by Dr. Emerson. When asked about the 1993 knee problem, employee testified:

> Q. Did you have any idea in 1993 that your work at Nissan was causing your knee injury?
> A. Not–not really. I kind of wondered. But like I said I was–I was active at that time playing ball.

In early 1995, his work at Nissan, particularly activities which involved bending and squatting, caused his knee to hurt.

On January 20, 1995, employee reported to the medical department at Nissan complaining about his left knee, and he filled out and signed an employee medical statement. He reported that he had been experiencing sharp pain and stone bruise type pains in his left knee off and on about 7 months and that the pain was getting worse. One of the questions on the employee medical statement asked if he knew of a certain job or combination of jobs that may have caused this problem. Employee answered "continuous walking and standing on concrete and crates, top coat." He did not list softball or any other sports activity.

In January, 1995, employee consulted an attorney in Murfreesboro, D. Russell Thomas, concerning a potential workers' compensation claim. Mr. Thomas wrote a letter to Nissan and informed them that employee's treating physician, Dr. Charles Emerson, has said that employee's knee condition is being aggravated by his work at Nissan. Mr. Thomas stated in his letter: "To the extent of any aggravation, whether or not the initial condition is caused from work, we believe that it creates a worker's compensation claim."

Mr. Thomas informed employee that if the condition of his knee was aggravated by his work at Nissan, then he had a compensable worker's compensation claim.

In January, 1995, employee was placed on restrictions limiting him to standing on a soft surface rather than a hard surface.

On February 20, 1995, Dr. Emerson wrote a letter to Mr. Thomas, employee's attorney. Dr. Emerson stated in his letter, "It is fair to say that because of his specific work demands at Nissan, the condition was aggravated by his work but not specifically the cause of his condition." The employee received a copy of Dr. Emerson's letter.

Employee asked Nissan to provide a panel of three physicians from which he could select a physician to treat his knee injury. He chose Dr. Frank Jones. On March 1, 1995, employee filled out a patient questionnaire for Dr. Jones and checked "yes" to the question, "Do you consider this problem to be caused by your work?"

Employee continued to work at Nissan until August 1, 1995. Because of restrictions imposed by Dr. Emerson, (no more than four hours working on his feet), employee's supervisor told him that Nissan did not have a job within those restrictions.

Employee began to see Dr. Burton Elrod on September 12, 1995. Dr. Elrod performed outpatient surgery on employee's left knee on November 13, 1995, and saw employee four other times with the last visit on August 20, 1996, when Dr Elrod felt that employee had reached maximum medical improvement.

Employee argues that as a result of the surgery, Dr. Elrod performed on November 13, 1995, damage was found that was not present at the time of his 1993 surgery by Dr. Emerson; and therefore, the earliest date at which the one year statute of limitations would begin to run is November 13, 1995.

We disagree with this contention. Tenn. Code Ann. §50-6-203 provides in part as follows: "(a) The right to compensation under the Workers' Compensation Law shall be forever barred, unless, within one (1) year after the accident resulting in injury or death occurred, the notice required by §50-6-202 is given the employer and a claim for compensation under the provisions of this chapter is filed with the tribunal having jurisdiction to hear and determine the matter.

The record shows that employee has experienced almost continual pain in his left knee, and he knew his pain was work related. The record further shows that employee was no longer able to work because of his injury on August 2, 1995.

Where the employee knew he had a disability from his employment over a year preceding the filing of the complaint, his right to worker's compensation benefits is barred by the statute of limitation. *Wilson v. Vestal lumber and Manufacturing Co.*, 378 S.W.2d 780 (Tenn 1964).

The Supreme Court in the case of *Lawson v. Lear Seating Corp.* 994 S.W.2d 340 (Tenn. 1997) established a clear point at which the limitation period begins to run by announcing the "last day worked" rule which applies only to repetitive stress injuries, i.e., the unexpected or unusual injuries that result from the ordinary or usual strain or execution of the employee's job.

The trial court specifically found that as of March 1, 1995, the employee considered his employment to have aggravated his previously injured knee and that his last day of work because of his knee was August 2, 1995. This action was filed on November 8, 1996.

The evidence fails to preponderate against the trial judge's findings.

The judgment of the trial court is affirmed. Costs on appeal are taxed to appellant.