

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

EDDIE BRANNON,)	
)	
Plaintiff/Appellee,)	McMINN COUNTY
)	
vs.)	
)	
PEN GULF, INC.,)	NO. 03S01-9906-CH-00053
)	
Defendant,)	
)	
RELIANCE INSURANCE COMPANY)	HONORABLE JERRI BRYANT
Defendant/Appellee)	
)	
TRAVELERS INSURANCE COMPANY)	Filed: July 12, 2000
)	
Defendant/Appellant.)	

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Travelers Insurance Company:**

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Eddie Brannon:**

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MEMORANDUM OPINION

Mailed: March 31, 2000

Members of Panel

Justice William M. Barker
Senior Judge John K. Byers
Special Judge Howell N. Peoples

REVERSED AND REMANDED

PEOPLES, SPECIAL JUDGE

OPINION

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. Travelers Insurance Company (hereafter "Travelers") appeals the granting of summary judgment dismissing Reliance Insurance Company (hereafter "Reliance") as a party defendant before trial. Travelers asserts that the trial court erred in finding that the last injurious exposure rule did not create an issue of whether Reliance, as a subsequent workers' compensation insurance carrier for Pen Gulf, Inc., may be liable for Eddie Brannon's injury.

An appeal from a summary judgment in a workers' compensation case is not governed by the *de novo* standard of review provided by Tenn. Code Ann. § 50-6-225(e)(3), but by Rule 56, T.R.C.P. *Downen v. Allstate Ins. Co.*, 811 S.W.2d 523, 524 (Tenn. 1991). No presumption of correctness attaches to decisions granting summary judgment because they involve only questions of law and the reviewing court must determine whether the requirements of Rule 56 have been met. *Gonzales v. Alman Const. Co.*, 857 S.W.2d 42, 44-45 (Tenn. 1993). Summary judgment is proper when the movant demonstrates that there are no genuine issues of material fact and that the movant is entitled to judgment as a matter of law. Rule 56.03, T.R.C.P. In considering a motion for summary judgment, the court must take the strongest legitimate view of the evidence in favor of the nonmoving party, allow all reasonable inferences in favor of that party, and discard all countervailing evidence. *Byrd v. Hall*, 847 S.W.2d 208, 210 (Tenn. 1993). "It is almost never an option in workers' compensation cases. In a summary judgment hearing, even where the parties have no right to a jury trial, the trial judge is not at liberty to weigh the evidence." *Hilliard v. Tennessee State Home Health Services, Inc.*, 950 S.W.2d 344, 345 (Tenn. 1997).

Eddie Brannon filed this action on March 23, 1998 to recover workers' compensation benefits for "bilateral carpal tunnel syndrome which was caused by the

repeated stress and trauma of his work in McMinn County, Tennessee, during the one year next preceding the filing of this suit.” (Complaint) The employer, Pen Gulf, Inc., was insured for workers’ compensation claims by Travelers until December 31, 1997. Reliance became the carrier for the period from January 1, 1998 through December 31, 1998. On August 20, 1998, Travelers filed its motion for summary judgment claiming that it had no liability because Reliance was the carrier when Mr. Brannon was last injuriously exposed to the hazards that caused his injury. On October 26, 1998, Reliance filed its motion for summary judgment claiming it had no liability because Mr. Brannon had been diagnosed with carpal tunnel syndrome in 1995 and he engaged in no activity or had no accident in 1998 sufficient to cause the condition for which he sued. Thus, both of these parties had represented to the trial court that there were no material disputed issues of fact.

The trial court reviewed the evidence provided in support of, and opposition to, the motions, including the deposition of Dr. Hytham Kadrie, the affidavit of Dr. Cauley Hayes, the medical records of Dr. Hayes, the medical records of Dr. Timothy Strait, and deposition, answers to interrogatories, and affidavit of Eddie Brannon. The trial court found that Mr. Brannon had been diagnosed with “possible carpal tunnel syndrome” in 1995 and said: “In determination of which insurance carrier is responsible for the disabling condition, the Plaintiff must experience an increase in the severity of his condition or an outright disabling condition before a subsequent carrier shall incur responsibility for the condition. Sweat v. Superior Industries, Inc., 966 S.W.2d 31 (Tenn. 1998).” Finding that Mr. Brannon was unable to demonstrate any anatomical change suffered after January 1, 1998, the trial court held that Travelers was the appropriate carrier. Summary judgment for Reliance was granted upon a “finding that there had been no injury by specific accident during the period of coverage of Reliance, nor had there been a specific injury sustained during the period of coverage of Reliance since there was no actionable anatomical change nor increase in severity of the condition; further finding no outright disabling condition and no increased permanent medical impairment during the course of coverage of Reliance.”

We are not called on to resolve the issue of which carrier may be liable to Mr. Brannon for workers' compensation benefits, but whether summary judgment for Reliance was appropriate. In resolving this issue, we note that Mr. Brannon filed sworn answers to interrogatories in which he stated: "During the regular course of my work at Pen Gulf, I had ongoing pain in my right hand for months, with pain in hand/fingers, fingers going numb/throbbing. Finally, on/about February, 1998, I sought medical treatment for this condition. I have also developed pain in my left hand as well." He attributed continuous daily activities of spray painting and sand blasting as the cause of his injury. Mr. Brannon reported the injury to his employer in February 1998, and was sent to Dr. Cauley Hayes, who diagnosed carpal tunnel syndrome. Mr. Brannon testified in his deposition that Dr. Hayes "give me a, I believe its in this, where he give me a thing showing work duties I could and could not do. Nothing that causes vibration, repetition and motion." He swore in answers to interrogatories that the last time he performed the activities that caused or aggravated his injury was March 1998. Mr. Brannon continued to work for Pen Gulf until he was terminated due to lack of work in May 1998.

In the case of *Lawson v. Lear Seating Corp.*, 944 S.W.2d 340 (Tenn. 1997), the Supreme Court adopted the "last day worked" rule to apply only to repetitive stress injuries, and held that the date of the accident was the date the employee was no longer able to work because of the injury. 944 S.W.2d at 342-3. The court referenced its opinion in *Barker v. Home-Crest Corp.*, 805 S.W.2d 373 (Tenn. 1991), which "held that because the employee suffered a new injury each day at work and since the cause of those injuries was constant, the accidental injury occurred on the date on which the employee 'could no longer perform her work.' *Id.* at 376. The date of the accident for purposes of ascertaining the commencement of the limitations period should be the same as the date of the accident for purposes of ascertaining which insurance company should pay benefits. We see no reason to distinguish between the two." 944 S.W.2d at 341.

A court could reasonably find that February, 1998 (the date he sought medical treatment for the pain) or March 1998 (the last date he performed the repetitive, vibratory activities) was the date Mr. Brannon was injured. Since Reliance was the workers'

compensation carrier in 1998, we reverse the summary judgment dismissing Reliance Insurance Co. and remand this case for further proceedings. The costs of this appeal are taxed one-half to Travelers Insurance Company and one-half to Reliance Insurance Company.

Howell N. Peoples, Special Judge

CONCUR:

William M. Barker, Justice

John K. Byers, Senior Judge

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE

**EDDIE BRANNON, Plaintiff v. PEN GULF, INC., TRAVELERS INS.
CO., (Respondent) and RELIANCE INSURANCE COMPANY,
(Applicant)**

Chancery Court for McMinn County
No. 19484

**No. E1999-01401-SC-WCM-CV
Filed: July 12, 2000**

JUDGMENT

This case is before the Court upon Reliance Insurance Company's motion for review pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(B), 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 motion for review is not well-taken and should be DENIED; 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 taxed one-half to Travelers Insurance Company and one-half to Reliance Insurance Company, for which execution may issue if necessary.

PER CURIAM

Barker, J., not participating