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

PATRICIA BALDWIN, Appellee
v.
WALDENBOOK COMPANY, INC., Appellant

Direct Appeal from the Chancery Court of Rutherford County
No. 97WC-881, Hon. Robert E. Corlew, III, Chancellor

No. M1999-01577-WC-R3-CV - Mailed - September 6, 2000
Filed - November 29, 2000

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel in accordance with the Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting findings of fact and conclusions of law. The employer contends the trial court erred in finding that the statute of limitations was tolled and that suit was timely filed. As discussed below, the panel has concluded that the judgment of the trial court should be affirmed, finding that suit was timely filed.

Tenn. Code Ann. § 50-6-225(e)(3) Appeal as of Right; Judgment of the Chancery Court Affirmed

Frank G. Clement, Jr., Sp.J., delivered the opinion of the court, in which Frank F. Drowota, III, J., and John A. Turnbull, Sp.J., joined.

Richard E. Spicer, Spicer, Flynn, & Rudstrom, PLLC, Nashville, TN, for the appellants, Waldenbook Company, Inc.

Scott Daniel, Murfreesboro, TN, for the appellee, Patricia Baldwin.

MEMORANDUM OPINION

There are two issues to be considered to determine whether suit was filed timely. One issue is whether there was but one compensable injury or two separate compensable injuries. If there was only one compensable injury, the suit was filed timely. If there were two separate compensable injuries, instead of one, then the issue is whether Travelers Insurance Company was authorized, as agent for Waldenbook, to act for and thereby obligate Waldenbook for matters pertaining to the injury(ies).

Patricia Baldwin ("Baldwin"), the employee/appellee, began working for Waldenbook Company ("Waldenbook"), the employer/appellant, in 1989. Baldwin's employment consisted of performing general tasks within Waldenbook's warehouse.

The first of the two incidents occurred on October 19, 1994. On that date Baldwin was loading books into a Gaylord[1] at Waldenbook when she felt her wrist pop. Baldwin's hand immediately began to swell and a ganglion cyst appeared. She reported the injury to Waldenbook immediately. A First Report of Work Injury was completed and filed. Waldenbook sent Baldwin to the nearest local clinic to have her injury examined and/or treated. The clinic recommended Dr. Renfro, a specialist, who provided conservative treatment until February 2, 1995, at which time he performed surgery in order to excise the ganglion cyst. After the surgery, Baldwin returned to work on light duty but continued to complain of wrist pain. Baldwin requested that she be permitted to see another doctor but the request was refused by KM. Though she had returned to work, Baldwin was still restricted to light duty when the second incident occurred.

The second incident occurred on May 18, 1995, when Baldwin felt the same wrist pop again. The wrist began to swell in the same place just as it did following the first incident in 1994. Baldwin promptly reported the incident to Waldenbook. Her symptoms were the same as before, only worse. She was authorized to receive further medical care and was treated by eleven doctors.

Though the 1995 incident was immediately reported to Waldenbook, and though Baldwin was authorized to be treated by several doctors as a result of this incident, neither Waldenbook nor Travelers ever filed a First Report of Work Injury for this so-called "second injury." The only "First Report" that was filed pertained to the 1994 incident, the so-called "first injury."

It is the May 18, 1995 incident which Waldenbook now insists is the second and separate compensable injury. Conversely, Baldwin insists the 1995 incident is merely an aggravation of the first and only injury, which occurred on October 19, 1994.

Waldenbook was self-insured from the time Baldwin first became a Waldenbook employee until February 1, 1995. While Waldenbook was self-insured, KM Administrative Services ("KM") served as a third-party administrator processing Waldenbook's workers' compensation claims. Travelers Insurance Company became the designated workers' compensation insurance carrier for Waldenbook on February 1, 1995, Waldenbook was no longer self-insured after that date and KM no longer administered their claims. Both Waldenbook (through KM) and Travelers paid Baldwin's medical bills. Her bills were paid through November 27, 1996.

On April 19, 1996, KM verbally informed Baldwin's attorney that the last voluntary medical

[1]A large box in which books are packed for shipping.

payment was made September 21, 1995;[2] therefore, the statute of limitations would run September 21, 1996. After the May 1995 accident, KM made no payments for further treatment of Baldwin's wrist and instructed Baldwin's attorney to deal with Travelers in the future. Baldwin's attorney contacted Travelers to inquire of the statute of limitations for Baldwin's claim. Travelers advised Baldwin's attorney that the statute would not run until November 27, 1997. Baldwin filed suit on June 26, 1997.

The trial court found that the payments made by Travelers tolled the statute of limitations and that suit had been timely filed. Specifically, the trial court held:

> Dealing first with the issue of the statute of limitations, the Court finds that due to payments voluntarily made by the employer or others on behalf of the employer, the statute of limitations was tolled and the suit was timely filed.
> . . . .
>
> Nonetheless, the Court finds that in making payments, Travelers was acting as agent of the employer, and because no first report of injury was ever submitted as to the second injury . . . , the Court finds that the voluntary payments are sufficient to toll the statute of limitations.

The standard of review is de novo with a presumption of correctness unless a preponderance of the evidence is otherwise. Oliver v. State, 762 S.W.2d 562 (Tenn. 1988).

Waldenbook argues there were two separate injuries. Waldenbook insists that payments made by Travelers were payments for the non-permanent 1995 incident. Thus, they assert that those payments do not toll the statute of limitations for the 1994 incident. We do not find Waldenbook's argument convincing.

Dr. David Gaw provided the only medical testimony. In his opinion, Baldwin retains a 12% permanent partial impairment to the right upper extremity *as a result of the October 19, 1994 injury*. (emphasis added). Dr. Gaw further testified that Baldwin "continued to have pain and problems with her wrist after October 1994; *she continued to have an ongoing aggravation of her condition*." (emphasis added).

Though the trial court did not make a specific finding as to whether there were one or two compensable injuries, we find from the evidence that there was but one compensable injury, which occurred in 1994, and that the 1995 incident was a continuation and aggravation of the injury sustained in 1994. This finding is based primarily on Dr. Gaw's medical testimony, that Baldwin "continued to have problems after October 1994. She continued to have pain. She continued to have an ongoing aggravation of her condition." The medical testimony provides sufficient competent

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[2]Though this was the last payment KM remitted, Travelers remitted payments through Nov. 27, 1996.

evidence to find that the 1995 incident was simply a flare-up of the original 1994 incident and that it was not a separate injury. Not only can an employer be "liable for a primary injury but the employer can also be liable for every natural consequence that flows from the primary compensated injury, unless the subsequent injury is the result of the claimant's own negligence or misconduct." Jones v. Huey, 357 S.W.2d 47, 48 (Tenn. 1962). An employer is liable for every natural consequence that flows from the primary compensated injury. Jones, 357 S.W.2d at 48.

This finding is further based on the fact that Baldwin reported the 1995 incident to her employer and the employer did not file a "First Report of Work Injury." The record shows that Baldwin reported the second incident immediately after it occurred. Further, she was sent to doctors for further treatment, as authorized by her employer, and her medical bills were paid, just as before. Though an employer is required to file a First Report of Work Injury whenever they become aware of a new compensable injury, neither Waldenbook, Travelers nor KM filed a First Report of Work Injury for the 1995 incident. Once an accident has been reported, an "employer or insurer has a clear duty to inform the injured employee adequately of its intentions regarding a claim so the employee can act in a timely manner." Blocker v. Regional Medical Center, 722 S.W.2d 660, 663 (Tenn. 1987).

Furthermore, Waldenbook had a duty to inform Baldwin that the 1995 incident was a separate injury if, in fact, they intended to treat it as such. An employer has a duty to inform an injured employee of its intentions regarding a claim. Blocker, 722 S.W.2d at 663. Since Waldenbook did not file a First Report of Work Injury for the 1995 incident, the evidence shows that the employer did not treat the 1995 injury as a separate event but a continuation of the first.

It is well established that suit must be filed within one year after the accident resulting in injury; however, the statute of limitations will be tolled until the last voluntary medical payment is made. Tenn. Code Ann. § 50-6-203. Voluntary payments include temporary total, medical services, or medical benefits. Norton v. Corthran, 553 S.W.2d 751, 752 (Tenn. 1977); Fields v. Lowe Furniture Corporation, 415 S.W.2d 340, 343 (Tenn. 1967).

Baldwin's medical expenses were paid by or on behalf of Waldenbook through November 27, 1996. Therefore, the statute of limitations would not have run until November 27, 1997. This suit was filed on June 26, 1997. Accordingly, the suit was timely filed.

A second issue is whether Travelers was the authorized agent to act for and on behalf of

Waldenbook, Baldwin's employer.[3] Appellant Waldenbook argues that no agency relationship existed between KM and Travelers; therefore, Travelers would be authorized to bind Waldenbook or KM for a claim that arose while KM was administering claims for Waldenbook. We disagree with both the conclusion and logic suggested by appellant.

A workers' compensation insurer is equated fully and completely with the employer. Perry v. Transamercia Ins. Group, 703 S.W.2d 151, 153 (Tenn. Ct. App. 1985); Tenn. Code. Ann. §50-6-102(4). Furthermore, an apparent agent can be established if: 1) the principal actually or negligently acquiesced in another party's exercise of authority; 2) the third party had knowledge of the facts and a good faith belief that the apparent agent possessed such authority; and 3) the third person relied on this apparent authority to his detriment. Rich Printing Co. v. McKeller Estate, 330 S.W. 2d 361, 376 (Tenn. Ct. App. 1959). Once an agency relationship has been established, the principal can be found liable for the acts of the agent. Roberts v. Iddins, 797 S.W.2d 615 (Tenn. Ct. App. 1990).

When Travelers took over the Baldwin claim, it took over as agent for Waldenbook, not KM. Thus, in order to bind Waldenbook for the acts or omissions of Travelers we only need to conclude that Travelers was an agent for Waldenbook. It is not necessary to determine whether Travelers was an agent for KM.

Travelers was Waldenbook's workers' compensation insurer when the 1995 incident was reported to Waldenbook. Therefore, Travelers was an authorized agent for Waldenbook. Perry, 703 S.W.2d at 153. The establishment of this agency relationship makes Waldenbook liable for representations made by Travelers regarding workers' compensation claims against Waldenbook. Roberts, 797 S.W.2d at 615.

Even if one were to argue that Travelers was not equated fully and completely with Waldenbook with regard to the 1994 incident or claim, because Travelers was not the insurer for Waldenbook in 1994, the argument would fail under the doctrine of apparent agency. Rich Printing Co., 330 S.W.2d at 376 (Tenn. Ct. App. 1959). Waldenbook acquiesced to Traveler's exercise of authority over the claim. It held Travelers out as its agent for the claim. Since Travelers was acting for and on behalf of Waldenbook when it was handing Baldwin's claim, Travelers therefore obligated Waldenbook by continuing to pay Baldwin's medical bills. Travelers further obligated Waldenbook when it treated the only claim it was handling as being a continuation of the 1994 claim.

Furthermore, Waldenbook is now estopped from asserting that the 1995 incident was a second injury. Waldenbook, by its actions and those of its agents clearly led Baldwin and her counsel to believe these incidents to be one compensable injury and one claim. Waldenbook is bound by the principle: "What I induce my neighbor to regard as true is the truth as between us, if

[3]Arguably, this second issue is immaterial if this panel is correct in its findings and conclusions concerning the first issue, that being our affirming the trial court and our finding that there was but one compensable injury.

he (she) has been misled by my asseveration." Dukes v. Montgomery County Nursing Home, 639 S.W.2d 910 at 912 (Tenn. 1982).

Accordingly, when Travelers was handling the claim, it was as if Waldenbook made the representations itself for Waldenbook is bound by Travelers representations. See generally Roberts, 797 S.W.2d at 615 (the principal is liable for the acts of its agent). Specifically, Travelers obligated Waldenbook when it told Baldwin that the statute of limitations for the claim was November 27, 1997.

For the record, we make no findings concerning whether Waldenbook or KM or Travelers have any liability to each other for the acts and/or omissions referred to herein.

The trial court decision is affirmed. Waldenbook is liable and Baldwin is entitled to receive compensation based upon a sixty percent (60%) vocational disability apportioned to her arm. All benefits should be paid in a lump sum.

Costs on appeal are taxed to the appellant, Waldenbook Company, Inc.

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FRANK G. CLEMENT, JR., SPECIAL JUDGE

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

PATRICIA BALDWIN v. WALDENBOOK COMPANY, INC.

No. M1999-01577-SC-WCM-CV - Filed - November 29, 2000

JUDGMENT

This case is before the Court upon Waldenbook Company, Inc.'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 paid by Waldenbook Company, Inc., for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM