IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
April 28, 2000 Session

STONEY McCARTER v. TRANSPORTATION INSURANCE COMPANY, ET AL.

Appeal from the Circuit Court for Shelby County
No. 98484-9 T.D. Robert L. Childers, Judge

No. W1999-00667-WC-R3-CV - Mailed December 1, 2000; Filed January 25, 2001

This workers' 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. The plaintiff, Stoney McCarter, appeals the judgment of the Circuit Court of Shelby County granting defendants' motion for summary judgment. The trial court held plaintiff's court-approved lump sum settlement was not entered into pursuant to Tenn. Code Ann. § 50-6-241(a)(1) and therefore could not be reopened pursuant to § 50-6-241(a)(2). For the reasons stated in this opinion, we affirm the judgment of the trial court.

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

W. MICHAEL MALOAN, SP. J., delivered the opinion of the court, in which JANICE M. HOLDER, J., and HENRY D. BELL, SP. J. joined.

Steve Taylor, Memphis, Tennessee, for the appellant, Stoney McCarter.

Carl Wyatt, Memphis, Tennessee, for the appellees, Transportation Insurance Company and Industrial & Mechanical Contractors of Memphis, Inc.

MEMORANDUM OPINION

The relevant facts are not in dispute. The plaintiff, Stoney McCarter, injured his back at work on September 4, 1997. He was treated by Dr. Edward Kaplan who assessed a two percent (2%) permanent anatomical impairment rating to the body as a whole. After a complaint and answer were filed, the parties entered into a court-approved settlement on February 12, 1998, for seven percent (7%) permanent partial disability to the body as a whole, payable in a lump sum. Plaintiff was laid off on January 6, 1998, and was no longer working for the defendant at the time of the settlement.

Plaintiff filed a new lawsuit to reopen the previous award on December 14, 1998. The new complaint alleges plaintiff underwent two back surgeries by Dr. Kaplan after the previous lump sum award and his impairment increased to at least ten percent (10%) solely due to the injury of September 4, 1997, and not due to a new injury.

Defendants filed a motion to dismiss or, in the alternative, for summary judgment based on the language of Tenn. Code Ann. § 50-6-241. The trial court granted the defendants' motion, holding the prior lump sum award was not subject to modification because the settlement was not entered into pursuant to Tenn. Code Ann. § 50-6-241(a)(1) and, therefore, the reopening provisions of Tenn. Code Ann. § 50-6-241(a)(2) were not available to the plaintiff.

ANALYSIS

Ordinarily, workers' compensation appeals are reviewed de novo on the record of the trial court, accompanied by a presumption of correctness unless the evidence preponderates against the findings of the trial court. Tenn. Code Ann. § 50-6-225(e)(2). In this case the trial court considered matters other than the sufficiency of the complaint, and therefore the defendants' motion must be reviewed as a motion for summary judgment. *Pacific Eastern Corp. v. Gulf Life Ins. Co.*, 902 S.W.2d 946, 952 (Tenn. Ct. App. 1995). A workers' compensation case appealed from a summary judgment order is not controlled by the *de novo* standard and is governed by the standard of review for summary judgments under Tennessee Rules of Civil Procedure, Rule 56, without attaching any presumption of correctness. *Clevinger v. Burlington Motor Carriers, Inc.*, 925 S.W.2d 518 (Tenn. 1996).

In the present case, the plaintiff submits that the trial court was in error in granting defendants' motion for summary judgment for two reasons:

> I. The reopening provisions of Tenn. Code Ann. § 50-6-241(a)(2) are not limited only to cases which meet the requirements of § 50-6-241(a)(1).
>
> II. The prohibition of modifying lump sum awards in Tenn. Code Ann. § 50-6-231 has been overruled by *Brewer v. Lincoln Brass Works, Inc.*, 991 S.W.2d 226 (Tenn. 1999).

I.

Tennessee Code Annotated § 50-6-241 provides, in part, as follows:

> Maximum permanent partial disability award for causes arising on or after August 1, 1992--Reconsideration of industrial disability issue.--(a)(1) for injuries arising on or after August 1, 1992, in cases where an injured employee is eligible to receive any permanent partial disability awards . . . , and the employer returns the employee to employment at a wage equal to or greater than the wage the employee was receiving

> at the time of injury, the maximum permanent partial disability award that the employee may receive is two and one-half (2 ½) times the medical impairment rating determined pursuant to the provisions of the American Medical Association Guides to the Evaluation of Permanent Impairment . . . . In making determinations, the court shall consider all pertinent factors, including lay and expert testimony, employee's age, education, skills and training, local job opportunities, and capacity to work at types of employment available in claimant's disabled condition.
>
> (2) In accordance with this section, the courts may reconsider upon the filing of a new cause of action the issue of industrial disability. Such reconsideration shall examine all pertinent factors, including lay and expert testimony, employee's age, education, skills and training, local job opportunities, and capacity to work at types of employment available in claimant's disabled condition. Such reconsideration may be made in appropriate cases where the employee is no longer employed by the pre-injury employer and makes application to the appropriate court within one (1) year of the employee's loss of employment, if such loss of employment is within four hundred (400) weeks of the day the employee returned to work. In enlarging a previous award, the court must give the employer credit for prior benefits paid to the employee in permanent partial disability benefits, and any new award remains subject to the maximum established in subsection (b).

The plaintiff submits his case may be reopened under Tenn. Code Ann. § 50-6-241(a)(2) although he does not comply with the requirements of § 50-6-241(a)(1): his award was more than two and one-half (2-1/2) times his anatomical impairment rating; and he did not make a meaningful return to work. Plaintiff argues § 50-6-241(a)(2) is broad in scope and allows a trial court to reconsider industrial disability in appropriate cases in which the employee is no longer employed by the pre-injury employer.

The panel finds that Tenn. Code Ann. § 50-6-241(a)(1) and (2) are not independent of each other. The clear statutory language of § 50-6-241(a)(2), "In accordance with this section, the courts may reconsider," indicates a legislative intent that the trial court reconsider only limited cases where the employee meets the requirements of § 50-6-241(a)(1).

The panel further relies on *Brewer v. Lincoln Brass Works, Inc.*, 991 S.W.2d 226, 228-9 (Tenn. 1999). In *Brewer,* the worker injured his back and underwent two surgeries. He returned to his employer at a wage equal to or greater than his pre-injury wage. He was assessed a fifteen percent (15%) anatomical impairment rating and received a lump sum award of thirty-seven and one-half (37-1/2%) percent permanent partial disability to the body as a whole, or two and one-half (2-1/2) times his anatomical impairment rating. In *Brewer*, the Tennessee Supreme Court discussed the relationship of § 50-6-241(a)(1) and (2).

> An employer's workers' compensation liability is capped at 2.5 times the anatomical impairment rating when the employer returns an injured employee to work at a wage

> equal to or greater than the wage at the time of the injury. Tenn. Code Ann. §50-6-241(a)(1). If, however, the employer's attempts to accommodate an injured worker become futile, the worker may file for increased benefits under Tenn. Code. Ann. § 241(a)(2). Pursuant to § 241(a)(2), a court may enlarge a worker's compensation award that was previously capped by the 2.5 multiplier in § 241(a)(1).

Brewer, 991 S.W.2d at 228-29.

Therefore, based upon the language in the statute and in *Brewer*, the panel concludes that the reopening provisions of Tenn. Code Ann. § 50-6-241(a)(2) are available only in cases that meet the requirements of § 50-6-241(a)(1).

II.

The plaintiff submits his award may be modified under Tenn. Code Ann. § 50-6-231 even though he received a lump sum award.

Tennessee Code Annotated § 50-6-231 states as follows:

> Lump payments final--Modification of periodic payments for more than six months.--All amounts paid by employer and received by the employee or the employee's dependents, by lump sum payments, shall be final, but the amount of any award payable periodically for more than six (6) months may be modified as follows:
>
> > (1) At any time by agreement of the parties and approval by the court; or
> >
> > (2) If the parties cannot agree, then at any time after six (6) months from the date of the award an application may be made to the courts by either party, on the ground of increase or decrease of incapacity due solely to the injury. In such cases, the same procedure shall be followed as in § 50-6-225 in case of a disputed claim for compensation.

The plaintiff attempts to avoid the clear language of Tenn. Code Ann. § 50-6-231 by asserting the applicability of *Brewer v. Lincoln Brass Works, Inc.*, 991 S.W.2d 226 (Tenn. 1999). In *Brewer*, the Tennessee Supreme Court was called upon to reconcile the apparent conflict of § 50-6-231, which prohibits modification of a lump sum award, with the provisions of § 50-6-241(a)(2), which permits an enlargement of an earlier award. In *Brewer*, the injured worker received a lump sum award, but subsequently lost his job when the employer's efforts to accommodate him failed. The Tennessee Supreme Court held:

> The language in § 241 provides an avenue for an enlargement of awards without regard to whether the original award was paid in lump sum or periodic payments. Section 241 was codified after the codification of § 231. Where two statutes conflict and cannot be reconciled, the prior act will be repealed or amended by implication to the extent of the inconsistency between the two statutes. *Steinhouse v Neal*, 723 S.W.2d 625, 627 (Tenn. 1987); *State v Moore*, 722 S.W.2d 367, 374 (Tenn. 1986). Specific statutory provisions generally prevail over general provisions when there is a conflict between statutes. Tenn. Code Ann. § 1-3-103; see also *Moore*, 722 S.W.2d at 374; *State v. Nelson*, 577 S.W.2d 465, 466 (Tenn. Crim. App. 1978). Accordingly, we hold that § 241(a)(2) controls over the provisions of § 231 to the extent the two statutes conflict. A petition under § 241(a)(2) is not prohibited in a case where the original workers' compensation award sought to be enlarged was paid in lump sum.

Brewer, 991 S.W.2d at 229-30.

The panel finds the Supreme Court in *Brewer* did not overrule Tenn. Code Ann. § 50-6-231 in its entirety but only "to the extent the two statutes conflict." Accordingly, the plaintiff's lump sum settlement is not subject to modification pursuant to Tenn. Code Ann. § 50-6-231. *Underwood v. Zurich Ins. Co.*, 54 S.W.2d 94, 98 (Tenn. 1993).

CONCLUSION

The judgment of the trial court is affirmed. Plaintiff/appellant, Stoney McCarter, is taxed with the costs of this appeal.

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W. MICHAEL MALOAN, SPECIAL JUDGE

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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 on appeal are taxed to the Plaintiff/Appellant, Stoney McCarter, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM