

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
June 2000 Session

ANNA D. NICHOLSON v. WAL-MART STORES, INC.

**Direct Appeal from the Chancery Court for Montgomery County
No. 96-05-0049 Carol A. Catalano, Chancellor**

**No. M1999-01137-WC-R3-CV - Mailed - July 12, 2000
Filed - January 12, 2001**

The employee contends the trial court erred when it ruled that her claim was time barred, because the action was commenced within one year after cessation of benefits and because the employer waived its right to rely on the statutes of limitations.

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

LOSER, SP. J., delivered the opinion of the court, in which DROWOTA, J., and TURNBULL, SP. J., joined.

James C. Bradshaw, III and Stephen J. Zralek, Nashville, Tennessee, for the appellant, Anna D. Nicholson.

B. Chadwick Rickman, Knoxville, Tennessee, for the appellee, Wal-Mart Stores, Inc.

MEMORANDUM OPINION

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. As discussed below, the panel has concluded the judgment of the trial court should be reversed and the case remanded.

The employee or claimant, Nicholson, commenced this civil action on May 8, 1996, seeking recovery of medical and disability benefits under the Tennessee Workers' Compensation Law, for an injury that occurred in November, 1994. After a trial on the merits, the trial judge found that the claimant became aware that her injury was work related on April 25, 1995, thirteen days more than one year before the suit was filed, and concluded the action was therefore barred by Tenn. Code Ann. § 50-6-203. The court further found that there was no evidence of a voluntary payment of benefits

on behalf of the claimant by the employer, Wal-Mart, within one year of the date of commencement. The claimant contends the record does contain such evidence.

It is significant that the trial judge also found that the injured employee's claim for the employer's group health insurance benefits and employer's group short term disability benefits were denied on June 5, 1995 and June 24, 1995 respectively, because her injury was work related. It is also significant that the trial judge found that her claim for workers' benefits was not denied until August 9, 1995. We note that no issue is taken with respect to these three events, all of which occurred within one year of commencement of this civil action.

Appellate review of findings of fact by the trial court is de novo upon the record of the trial court, accompanied by a presumption of correctness of the findings, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2). This standard requires the panel to examine in depth the trial court's findings and conclusions. This tribunal is not bound by the trial court's factual findings but instead conducts an independent examination to determine where the preponderance of the evidence lies. Galloway v. Memphis Drum Serv., 822 S.W.2d 584 (Tenn. 1991). Conclusions of law are reviewed de novo on appeal without any presumption of correctness. Ivey v. Trans Global Gas & Oil, 3 S.W.3d 441 (Tenn. 1999).

At the time of the trial, the claimant was forty-eight years old. She has less than a tenth grade education and no specialized skills or training. Her working experience includes nothing which would require an understanding of the differences among different types of insurance or disability benefits.

The claimant was employed by the employer as a "soft lines processor." On or about November 24, 1994, she suffered a low back injury while hanging and processing clothing at work. During the following weeks, her pain became more severe and began to radiate into the legs. She consulted Dr. Tom Grabenstein, who ordered diagnostic testing and referred her to Dr. Vaughn Allen for evaluation. In a letter dated April 25, 1995, Dr. Allen reported to the referring physician that the claimant was experiencing pain secondary to degenerative lumbar spine disease. At trial, Dr. Grabenstein opined that the claimant's work aggravated her pre-existing lumbar spine disease, causing permanent structural changes in her spine. The claimant became aware that her injury was work related on the same date, April 25, 1995.

On or about June 5, 1995, the claimant received a letter from Wal-Mart Associates Group Health Plan denying medical coverage because her injury was work related. On June 24, 1995, the employer's short term disability carrier denied her claim for short term disability benefits for the same reason. It was not until August 9, 1995, that the employer filed a Notice of Denial of workers' benefits, and then because of the employee's failure to make a timely written report of the injury with the employer. The record shows that Wal-Mart Associates Group Health Plan made a voluntary payment of benefits on July 5, 1995, one month after it had denied coverage because the injury was work related and less than one year before suit was filed. Ms. Nicholson received an Explanation of Benefits showing Wal-Mart Associates Group Health Plan as the payer, but she testified at trial

that she believed it reflected a payment of workers' compensation benefits because her claim for workers' compensation benefits had not been denied and because her claim for medical benefits had been denied. We find in the record nothing which would indicate the trial judge did not consider Ms. Nicholson to be a credible witness.

Relying on precedent, the employee contends the employer is estopped from relying on the statute of limitations and that suit was filed within one year of the cessation of benefits. If the facts justify it, the courts will not hesitate to invoke the doctrine of equitable estoppel, Giles County Board of Education v. Hickman, 547 S.W.2d 944 (Tenn. 1977), or declare that an employer or its insurer has waived its right to rely on the statute of limitations as a bar to recovery of benefits. Humphreys v. Allstate Ins. Co., 627 S.W.2d 933 (1982). Negligent silence may work an equitable estoppel, and acts or conduct which are calculated to mislead, and do mislead, will work an equitable estoppel even where there is no intention to do so. Lusk v. Consolidated Aluminum Corp., 655 S.W.2d 917 (Tenn. 1983).

An action by an employee to recover benefits for an accidental injury must be commenced within one year after the occurrence of the injury. Tenn. Code Ann. § 50-6-224(1). However, if within such one year period the employer or its insurer makes voluntary payment of compensation benefits, the action may be commenced within one year after the cessation of benefits. Tenn. Code Ann. § 50-6-203; Threadgill v. Lexington Metal Products Co., 632 S.W.2d 550 (Tenn. 1982). The term "voluntary payments" includes the furnishing of medical services. Norton v. Coffin, 553 S.W.2d 751 (Tenn. 1977). Relying on Union Carbide Corp. v. Cannon, 523 S.W.2d 360 (Tenn. 1975), the employer insists the payment was not voluntary because it was paid as a group health benefit, not as a workers' compensation benefit. The circumstances of Cannon, however, are distinguishable from the present circumstances, particularly in that the employee in that case falsely represented to the health insurance carrier that her injury was not work related. We find in this record no evidence of such misrepresentation by Ms. Nicholson.

The Workers' Compensation Act expressly requires that it be given equitable construction and declares itself to be a remedial act. Tenn. Code Ann. § 50-6-116. Moreover, our Supreme Court has recently held that workers' compensation laws must be construed so as to ensure that injured employees are justly and appropriately reimbursed for debilitating injuries suffered in the course of service to the employer. Story v. Legion Ins. Co., 3 S.W.3d 450 (Tenn. 1999).

The panel concludes, for all of the above reasons, that the employer has waived its right to rely on the statute of limitations by its conduct or, alternatively, the action was commenced within one year after the cessation of benefits. The judgment of the trial court, dismissing the action, is accordingly reversed and the case remanded to the Chancery Court for Montgomery County for an award of benefits. Costs on appeal are taxed to the appellee.

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

ANNA D. NICHOLSON v. WAL-MART STORES, INC.

**Chancery Court for Montgomery County
No. 96-05-0049**

No. M1999-01137-WC-WCM-CV - Filed - January 12, 2001

JUDGMENT

This case is before the Court upon Wal-Mart Stores, 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 Wal-Mart Stores, Inc., for which execution may issue if necessary.

IT IS SO ORDERED.

DROWOTA, J., NOT PARTICIPATING