

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT KNOXVILLE  
May 24, 2001 Session

**JANICE MOORE v. YALE SECURITY, INC., ET AL.**

**Direct Appeal from the Chancery Court for Loudon County  
No. 9805 Frank V. Williams, Chancellor**

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**No. E2000-01757-WC-R3-CV - Mailed  
FILED: AUGUST 7, 2001**

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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 trial court found that this action was barred by the statute of limitations.

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

WILLIAM H. INMAN, SR. J., delivered the opinion of the court, in which WILLIAM M. BARKER, J. and JOHN K. BYERS, SR. J., joined.

J. Anthony Farmer, Knoxville, Tennessee, for the appellant, Janice Sue Moore.

David M. Sander, Knoxville, Tennessee, for the appellees, Yale Security, Inc., and Travelers Insurance Company.

**OPINION**

The plaintiff alleged, in her complaint filed December 15, 1999, that prior to and culminating on April 14, 1997, she sustained "bilateral arm injuries" for which she has been paid medical and disability benefits, but is entitled to additional benefits.

The answer of the employer is somewhat more specific. It is admitted that on or about April 14, 1997 the plaintiff complained of sustaining an injury to her *right* wrist for which she was treated and released. The answer then alleges that on or about March 9, 1999, plaintiff reported that she sustained an injury to her *left* wrist for which she was treated and released. The employer "has not elected to controvert liability for plaintiff's alleged left arm injury" and specially pleads the bar of the statute of limitation as to the injury to the right arm. The Chancellor applied the bar of the

statute, holding:

I think this woman knew in April of 1997 that she had sustained an injury . . . evident from the fact that she had surgery in 1997 . . .

Benefits for the disability to her left arm were awarded and are unquestioned in this appeal. Our review of the judgment sustaining the plea of the statute of limitation as to the action for benefits arising from the injury to the right arm is *de novo* with no presumption of correctness. Rule 13(d) T.R.A.P.

### **The Evidence**

The plaintiff is a 49 year old who did not complete the 10<sup>th</sup> year of school. In 1970 she was employed by Yale Security, Inc. and remains employed. She worked “all over the plant” doing assembly or production type jobs. In April 1997 she began experiencing pain and tingling in her right hand, with numbness, and sought treatment by Dr. Robert Koenig, an orthopedic specialist. Following a brief period of treatment, she was referred to Dr. Robert Ivy, also an orthopedic specialist, who recommended surgery which he performed in April 1997. She was released in July 1997 with no restrictions, and returned to her job. For a time, she testified that all was well, but her right arm and hand soon became painful. After two years, she returned to Dr. Ivy in March 1999 who performed surgery on her left wrist.

Dr. Ivy testified that he released the plaintiff in July 1997, and that he did not thereafter treat her right hand.

### **Analysis**

It is well settled that the date the employee’s disability manifests itself to a person of reasonable diligence, not the date of the accident, triggers the running of the statute of one year. Tenn. Code Ann. § 50-6-203(a); *Hibner v. St. Paul Mercury Ins. Co.*, 619 S.W.2d 109 (Tenn. 1987). In the case at Bar, the plaintiff testified that when she first returned to work in July 1997 her right hand “was doing okay,” but “after that” the “pain was coming back in my arm and hand here.” Thus it is that for more than two years the plaintiff admits she was aware of an ongoing problem with her right arm that the surgical procedure apparently did not correct. We do not necessarily agree that the triggering date was the date of the surgical procedure, but the point is not crucial in light of the fact that the pain reappeared more than 12 months before suit was filed, which to a person of reasonable diligence was notice of impending disability. *Hibner, supra*. The argument of the plaintiff that Dr. Ivy never informed her that she had or would have a disability is not dispositive. She knew, obviously better than he, that her right hand was painful and did not report this fact to Dr. Ivy for more than two years, and then only in conjunction with the problem she was experiencing with her left hand.

The judgment is affirmed at the costs of the appellant, Janice Sue Moore.

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WILLIAM H. INMAN, SENIOR JUDGE

IN THE SUPREME COURT OF TENNESSEE  
AT KNOXVILLE, TENNESSEE

**JANICE MOORE V. YALE SECURITY, INC. ET AL**  
**Loudon County Chancery Court**  
**No. 9805**

**No. E2000-001757-WC-R3-CV - Filed: August 7, 2001**

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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 facts 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 appellant, Janice Moore and surety, J. Anthony Farmer, for which execution may issue if necessary.

08/07/01