IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS COMPENSATION APPEALS PANEL
AT NASHVILLE
October 18, 2001 Session

JARRETT WILLIAM UTLEY v. BRIDGESTONE/FIRESTONE

Direct Appeal from the Chancery Court for Sumner County
No. 2000C-94 Tom E. Gray, Chancellor

No. M2001-00090-WC-R3-CV - Mailed - January 16, 2002
Filed - February 20, 2002

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) for hearing and reporting of findings of fact and conclusions of law. The employee appeals and contends the trial court erred (1) in finding his claim for a work-related repetitive injury was barred by the statute of limitations, and (2) in concluding that his injury on September 20, 1997 did not result in any permanent disability. We affirm the judgment of the trial court.

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

HOWELL N. PEOPLES, SP. J., delivered the opinion of the court, in which ADOLPHO A. BIRCH, JR., JUSTICE, and WILLIAM H. INMAN, SR. J., joined.

Mark A. Baugh, Bruce, Weathers, Corley & Lyle, Nashville, Tennessee, for the Appellant, Jarrett William Utley.

Terry L. Hill, Manier & Herod, Nashville, Tennessee, for the Appellee, Bridgestone/Firestone.

MEMORANDUM OPINION

BACKGROUND FACTS

William Jarrett Utley, age 52, worked for Bridgestone as a tire inspector from 1989 until November 24, 1997. In 1991, Utley began to have low back pain and was seen by a doctor furnished by the employer. In 1994, he again saw a company doctor about his back pain and was referred to Dr. Daniel L. Phillips who diagnosed lumbar radiculitis and back strain and placed him on medical restrictions, but he missed no work. In 1996, he returned to Dr. Phillips for treatment of his lower back, and was again placed on medical restrictions and referred for physical therapy. His back condition did not improve and he assumed he would have to learn to live with the pain. On September 20, 1997, he was lifting a tire when he experienced distinct pain running from his left buttock down and through his leg. He went to see Dr. Williams, his chiropractor, who had treated him for his low back condition, and was told he needed to see a neurosurgeon. Bridgestone then arranged for him to see Dr. William R. C. Stewart on September 26, 1997. Dr. Stewart diagnosed back sprain involving the piriformis muscle, and found no evidence of any nerve involvement or ruptured disc. He referred Utley to physical therapy, prescribed ice packs and Naproxen for control of pain, and imposed work restrictions. Dr. Stewart saw him again on October 3, 1997 and did another neurological examination that was entirely normal except for tenderness and discomfort. Dr. Stewart saw him again on October 15, 1997 and October 22, 1997 and the neurological examination was normal with no indication of a ruptured disc. Dr. Stewart last saw him on November 3, 1997 and released him to return to full work duty with no impairment and no restrictions. Bridgestone provided medical treatment and workers' compensation benefits until Utley returned to work. On November 26, 1997, Utley moved a table at home with his son and "the pain was excruciating." That same day, he went to see a chiropractor who determined that he had a ruptured disk for which he needed to see a neurosurgeon. Dr. Ronald T. Zellem subsequently did back surgery which did not alleviate his pain. On September 25, 1998, Utley saw Dr. Stanley Gilbert Hopp who performed a fusion at L4-5. Dr. Hopp testified by deposition that the proximate cause of the disk rupture appeared to be the activity of lifting the table at home. Dr. Stewart also testified by deposition that it was his "opinion that the injury later in the month of November was caused by the activity of lifting the table." Utley has not worked since November 26, 1997. Following the injury on November 26, 1997, Utley filed claims, and received benefits from his medical insurance and accident and sickness policies, that the injury of November 26, 1997 was non-employment related. The first time that Utley filled out an insurance form stating the injury was work-related was August 31, 1998.

The trial court found that (a) Utley had suffered a work-related injury on September 29, 1997, but that injury did not result in any permanent disability; and (b) Utley's claim, that his ruptured disk on November 26, 1997 was caused by repetitive trauma while working for Bridgestone, was not conveyed to his employer until the filing of this lawsuit on March 24, 2000; therefore, the claim was barred by the statute of limitations.

STANDARD OF REVIEW

Review of the findings of fact made by the trial court is *de novo* upon the record of the trial court, accompanied by a presumption of the correctness of the findings, unless the preponderance of the evidence is otherwise. TENN. CODE ANN. § 50-6-225(e)(2). *Stone v. City of McMinnville*, 896 S.W.2d 548, 550 (Tenn. 1995). The application of this standard requires this Court to weigh in more depth the factual findings and conclusions of the trial courts in workers' compensation cases. *Corcoran v. Foster Auto GMC, Inc.*, 746 S.W.2d 452 456 (Tenn. 1988). Conclusions of law are subject to *de novo* review with no presumption of correctness. *Ganzevoort v. Russell*, 949 S.W.2d 293 (Tenn. 1997). When the medical testimony is presented by deposition, as it was in this case, this Court is able to make its own independent assessment of the medical proof to determine where the preponderance of the evidence lies. *Cooper v. INA*, 884 S.W.2d 446, 451 (Tenn. 1994).

ISSUES

Utley presents his contentions on appeal as follows:

> "1. On September 20, 1997, Jarrett William Utley suffered an injury to his back in the scope and course of his employment with the defendant, which left him with permanent disability.
>
> 2. Jarrett William Utley's claim for worker's compensation benefits was timely reported to the Defendant and the Complaint for benefits was timely filed.
>
> 3. Plaintiff is entitled to permanent partial disability benefits for his vocational disability."

DISCUSSION

I.

Based on the testimony of Dr. Stewart, that the injury of September 20, 1997 resolved without causing any permanent impairment or limitations and that Utley was returned to full duties at Bridgestone on November 3, 1997, we find that the trial court did not err in finding that Utley sustained a work related injury on September 20, 1997 that did not result in any permanent disability.

II.

Utley first filed a lawsuit on September 16, 1998 alleging that he sustained injuries creating a substantial and permanent impairment lifting tires at work on September 20, 1997. No mention was made in that complaint about an injury on November 26, 1997 or about a claim for cumulative trauma to Utley's back. That suit was voluntarily dismissed. The present suit was

filed on March 24, 2000 alleging that, during the course and scope of his employment at Bridgestone, Utley was engaged in repetitive activity which injured his back and that the repetitive injuries as well as the September 20, 1997 accident "deteriorated Mr. Utley's back and continued to cause significant pain to Mr. Utley, which culminated with his inability to work and to perform tasks at home." This was the first notice to Bridgestone that Utley was claiming a cumulative injury. Utley maintains that he suffered an injury on September 20, 1997 from which he did not recover and from which his injury on November 26, 1997 naturally flowed. The statute of limitations for repetitive trauma injuries commences to run on the first day an employee is unable to perform his job because of his injury. *Lawson v. Lear Seating* Corporation, 944 S.W.2d 340, 343 (Tenn. 1997). In this case, the last day Utley worked was November 26, 1997, therefore, the statute of limitations would bar a suit for repetitive trauma filed after November 26, 1998. Utley attempts to use the savings statute to avoid the statute of limitations by claiming that the ruptured disk he suffered on November 26, 1997 was a natural consequence of the September 20, 1997 injury, but no medical testimony was offered to establish that fact. Dr. Hopp opined that, based solely on history,

> "it could be assumed that the patient sustained a partial tear of his disc September 1997 and completed the tear November 1997, resulting in the surgery by Dr. Zellem December 10, 1997. Dr. Zellem would be in a much better position to comment on the causation of this gentleman's injury that resulted in the surgery."

Dr. Zellem did not testify in the case. Dr. Hopp and Dr. Stewart both testified the November, 1997 injury was caused by lifting a table at home. We find no error in the determination of the trial court that the statute of limitations barred Utley's claim for the November 26, 1997 injury.

The third issue raised by Utley concerning his entitlement to permanent partial disability benefits is rendered moot by our disposition of the first two issues.

CONCLUSION

The judgment of the trial court is affirmed. Costs of the appeal are taxed against the Appellant and his surety.

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Howell N. Peoples, 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 will be paid by the Appellant and his surety, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM