

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS COMPENSATION APPEALS PANEL
AT KNOXVILLE
FEBRUARY 28, 2002 Session

JOHN RAMSEY VS. FIRST TENNESSEE BANK

**Direct Appeal from the Circuit Court Blount County
No. L-11501 W. Dale Young, Judge**

Filed July 11, 2002

**No. E2001-01777-WC-R3-CV
Decided**

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel 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 a finding that his hernia was not compensable. We affirm.

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

HOWELL N. PEOPLES, SP. J., delivered the opinion of the court, in which WILLIAM M. BARKER, JUSTICE, and JOHN K. BYERS, SR. J., joined.

H. Douglas Nichol, Gillenwater, Nichol & Associates, Knoxville, Tennessee, for the Appellant, John Ramsey.

Robert R. Davis, Stokes, Rutherford, Williams, Sharp & Davies, Knoxville, Tennessee, for the Appellee, First Tennessee Bank.

MEMORANDUM OPINION

Facts

In 1996, First Tennessee Bank hired John Ramsey as a mail clerk. His duties included sorting mail, loading mail carts and pushing mail carts out to the truck for delivery. The mail trucks were made of steel and weighed about 450 pounds empty and 1,500 to 2,000 pounds when full of mail. In February 1998, Mr. Ramsey was placed on light duty by Dr. Robert Thompson for a pre-existing muscle disease, and told not to lift anything over 20 to 25 pounds. At that time, he had no problems in his groin area, nor did he have a hernia.

On April 13, 1998, Mr. Ramsey told his supervisor that he was having some pain and was going to have it checked out for a hernia. He had a previously scheduled appointment with Dr. Thompson, who told him that he had a hernia. An On the Job Injury Report was prepared and signed by Mr. Ramsey on April 15, 1998 listing the injury as a hernia in the left groin area that occurred "Feb – Apr" while moving and lifting heavy objects. Dr. Thompson testified that the hernia was caused by fascial breakdown, and was not related to the pre-existing muscle disease. On April 30, 1998, the hernia was surgically repaired by Dr. William Walters. Mr. Ramsey returned to work on June 7 or 8, 1998 on light duty and was advised not to do anything with mail carts. After a week or so, a co-worker asked him to get an empty cart. He attempted to pull one out that was wedged against other carts and developed severe pain in the left groin. A second report of injury was completed on June 18, 1998. Dr. Walters saw Mr. Ramsey on June 22, 1998 and testified that the mesh from the hernia repair probably shifted. Dr. Walters restricted Mr. Ramsey not to do any heavy lifting, standing or walking for extended periods of time. Mr. Ramsey was assessed an impairment from 10 to 19 percent to the body based on the American Medical Association (AMA) Guides.

Suit was filed on June 4, 1998 alleging “In February of 1998, and at all times material herein, Petitioner was an employee of the Defendant First Tennessee Bank . . .” The Petition, which mentions no other date, also alleged, “On the aforesaid date, during the course and scope of that employment, Petitioner sustained an injury, more specifically, an inguinal hernia.” When the trial of the case commenced, counsel for First Tennessee Bank announced that there was no lawsuit regarding a June 1998 injury and that “we are here to litigate the injury which was alleged in the complaint to have occurred in February or which, Mr. Nichol (Plaintiff’s counsel) will argue, occurred in April of 1998.” At the close of the plaintiff’s proof, Mr. Ramsey’s counsel made a motion to amend the complaint to “allege that the incident of June 18, 1998, was an aggravation of the hernia which occurred in April of ’98 and was also work-related and a continuation or aggravation of the original injury.” Counsel for First Tennessee Bank objected to the amendment and the trial court sustained the objection. After hearing all the proof, the trial court dismissed the action for failure to give notice of the injury and because Mr. Ramsey failed to prove elements required by statute for workers’ compensation claims for hernia.

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). Where the trial judge has made a determination based upon the testimony of witnesses whom he has seen and heard, great deference must be given to that finding in determining whether the evidence preponderates against the trial judge's determination. *Humphrey v. David Witherspoon, Inc.*, 734 S.W.2d 315 (Tenn. 1987). 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).

Issue

Mr. Ramsey presents the following questions for review:

1. Whether the trial court erred in ruling the Plaintiff/Appellant did not give proper notice of the alleged injury pursuant to T.C.A. § 50-6-201 or in the alternative T.C.A. §50-6-305?
2. Whether the trial court erred in finding that Plaintiff/Appellant's hernia was not compensable?
3. Whether the trial court erred in denying Plaintiff/Appellant's Motion pursuant to Rule 15 of the Tennessee Rules of Procedure to Amend his Complaint during trial to allege the strain of June 18, 1998, was an aggravation of the hernia, which occurred in April 1998?
4. Whether the trial court erred in ruling that any claim for injury due to the aggravation of the hernia occurring in June 1998 was barred by the statute of limitations?

Discussion

I.

If an employer has no actual knowledge of the injury, does not waive notice of the injury, and the employee has no reasonable excuse for failure to give notice, statutory notice is a prerequisite to the right of recovery. Tenn. Code Ann. §50-6-201; *Jones v. Sterling Last Corp.*,

962 S.W.2d 469, 471-2, (Tenn. 1998). (Counsel for Mr. Ramsey also cites Tenn. Code Ann. § 50 –6 –305 which concerns notice of contraction of disease and is not applicable to this case.) In this case, Mr. Ramsey did not tell his employer that he had suffered a hernia until April 13, 1998. He personally filled out a first report of injury on April 15, 1998 stating that the hernia occurred “Feb – Apr” while he was moving heavy objects. He told Dr. Larry Rahn on April 15, 1998 that he had the onset of left groin pain and intermittent swelling four to six weeks earlier when he was lifting at work. Mr. Ramsey’s petition for worker’s compensation benefits alleges an injury in February of 1998. There is no evidence that Mr. Ramsey did not learn of his injury until April 13, 1998 so as to justify his failure to give earlier notice. The evidence does not preponderate against the finding of the trial court on the issue of notice.

II.

The trial court held that Mr. Ramsey was barred from recovery because “Plaintiff failed to definitely prove to the satisfaction of the Court that a hernia appeared suddenly, that it was accompanied by pain or that the hernia immediately followed the accident.” In workers’ compensation claims for hernia, Tenn. Code Ann. §50 6-212(a) provides that

“it must be definitely proven to the satisfaction of the court that:

- (1) There was an injury resulting in hernia or rupture;
- (2) The hernia or rupture appeared suddenly;
- (3) It was accompanied by pain;
- (4) The hernia or rupture immediately followed the accident; and
- (5) The hernia or rupture did not exist prior to the accident for which compensation is claimed.”

The purpose of this section is “to remove as far as possible from the field of conjecture and speculation” claims made for work-related hernia. *Wood v. Edenfield Electric Company*, 211 Tenn. 295, 364 S.W.2d 908, 909 (1963). With Mr. Ramsey’s own evidence indicating that he

suffered the hernia sometime between February and April 1998, and not following any specific activity at work, we concur with the trial court that he has failed to satisfy the requirements of the statute.

III.

Counsel for Mr. Ramsey asserts that Rule 15 of the Tennessee Rules of Civil Procedure mandates that motions to amend be freely allowed when justice so requires. He asserts that the trial judge erred in denying his motion, made at the close of his proof, to allege that on June 18, 1998 Mr. Ramsey suffered a continuation or an aggravation of the hernia he previously sustained at work. A trial court must give a proponent of a motion to amend full chance to be heard, and consider the motion in light of the policy that amendments are to be freely allowed. If the motion is denied, the trial court must give an explanation for the denial. *Henderson v. Bush Bros. & Co.*, 868 S.W.2d 236, 238 (Tenn. 1993). In the present case, counsel for the employer made clear when the trial commenced on April 3, 2001, that there was no claim for a June 1998 injury and that the issue for trial was an injury in February or April 1998. Also, Rule 15 of the Tennessee Rules of Civil Procedure does not permit an amendment which would revive a claim barred by an appropriate statute of limitations. *Rainey Bros. v. Memphis & Shelby County*. 821 S.W.2d 938 (Tenn. App. 1991). The trial court stated that it was “under the opinion it’s barred from the statute of limitations and respectfully denies the motion to amend the pleadings at this point.” Amendments are properly denied where the futility of the amendment is clear and “granting it would prolong the litigation, but almost certainly not lead to a different ultimate result.” *Welch v. Thuan*, 882 S.W.2d 792 (Tenn. App. 1994). For the reasons stated below, we find the proposed amendment was futile, and that the trial court did not abuse its discretion in denying the amendment.

IV.

An aggravation of a pre-existing condition is a distinct new injury under workers' compensation laws. *Cambria Coal Co. v. Ault*, 64 S.W.2d 18 (1933). The cause of action for the aggravation on June 18, 1998 of Mr. Ramsey's pre-existing hernia was barred by the statute of limitations when it was asserted, for the first time, by a motion to amend during the trial on April 3, 2001. Although not advanced by counsel or the trial court, an additional basis for barring the claim is that Tenn. Code Ann. § 50-6-212 does not permit recovery for aggravation of a pre-existing hernia. *Matthews v. Hardaway Contracting Co.*, 179 Tenn. 98, 163 S.W.2d 59, 62 (1942)

Disposition

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

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 facts and conclusions of law are adopted and affirmed and the decision of the Panel is made the Judgment of the Court.

The costs on appeal are taxed to the appellant, John Ramsey, for which execution may issue if necessary.