

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT KNOXVILLE  
May 23, 2002 Session

**DON BIRCHFIELD v. HARDWOOD FRAMES OF AMERICA**

**Direct Appeal from the Chancery Court for Bradley County  
No. 01-021     Jerri S. Bryant, Chancellor**

**Filed September 27, 2002**

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**No. E2001-02123-WC-R3-CV**

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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 dismissed the complaint finding the action was not filed within the one year period of the statute of limitations. Judgment of the trial court is affirmed.

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

THAYER, SP. J., delivered the opinion of the court, in which ANDERSON, J., and BYERS, SR. J., joined.

Jimmy W. Bilbo, of Cleveland, Tennessee, for Appellant, Don Birchfield.

Kent T. Jones, of Chattanooga, Tennessee, for Appellee, Hardwood Frames of America.

**MEMORANDUM OPINION**

Plaintiff, Don Birchfield, has appealed from the trial court's action in dismissing his complaint. The court ruled the action had not been filed within the one year period provided by the statute of limitations.

**Basic Facts**

Employee Birchfield was forty-one years of age and had completed the eleventh grade in school. He later obtained a GED certificate.

On October 15, 1998, while employed by the defendant, Hardwood Frames of America, he

was working on an assembly line when a load of wood pinned him against a metal buggy. He was sent to a medical facility, Health Works of Tennessee, where he was seen on several occasions. X-rays revealed a fracture in his right arm. He later saw Dr. Rickey Hutcheson for four visits from October 30, 1998 to February 5, 1999.

Birchfield testified he never returned to work after the accident because he was on strong pain medication and because he had constant pain in his elbow and some numbness in his hand. His employer paid for his treatment at Health Works and for seeing and being treated by Dr. Hutcheson. It was stipulated that the last payment of a medical expense was in August 1999.

During his employment career, he has had other workers' compensation claims with different employers and the record indicates he has other health problems for which he is being treated.

The complaint was filed on January 16, 2001, which was 27 months after the accident and over 16 months after the payment of a last medical expense.

### **Medical Evidence**

Dr. Rickey Hutcheson, an orthopedic surgeon practicing in Cleveland, Tennessee, testified by deposition. He stated he examined the x-ray which was taken at Health Works and thought it might be an old fracture. He said he had mild swelling and his elbow was bruised. After several visits he released him to return to light duty work but did not realize until later that he did not go back to work. On a later visit during November 1999, he said the employee could straighten his arm completely and seemed to not have as much pain. The doctor was of the opinion he did not have any permanent impairment.

Dr. Frank H. Wood, a family practice and emergency medicine physician practicing in McCoysville, Georgia, testified by deposition. He began seeing the employee on February 1, 1999 for some of his other health problems and he stated he was not given a history about any injury to his elbow until late October or early November 2000. He initially testified the employee had a 10 percent impairment as a result of the accident in question but admitted he had not looked at the AMA Guidelines for two to three years. He said he had been using the 1987 Edition and had never seen the 4<sup>th</sup> Edition. During the examination he was given the 4<sup>th</sup> Edition and changed his opinion several times concerning impairment. As we read the record, he appeared to finally settle on 60 percent impairment to the right arm or 30 percent to the whole body. Other questions and answers indicated he was fixing a percentage of disability rather than impairment to the body as he was considering the employee's age, education, job opportunities, etc.

### **Findings of Trial Court**

The trial judge was very troubled by the evidence of Dr. Wood and specifically found she could not rely on same. The complaint was dismissed because the statute of limitations had expired.

### Standard of Review

The case is to be reviewed on appeal *de novo* accompanied by a presumption of the correctness of the findings of fact unless we find the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2).

### Analysis

The only issue we must address is whether the trial court correctly held that the plaintiff's claim is barred by the one year statute of limitations.

Tennessee Code Annotated § 50-6-203 generally provides a claim must be filed within one year of the accident or within one year of the cessation of the payment of compensation benefits. Case law also establishes that the running of the statute is suspended until by reasonable care and diligence it is discoverable and apparent that an injury compensable under workers' compensation law has been sustained. *Ogden v. Matrix Vision*, 838 S.W.2d 528 (Tenn. 1992); *Norton Co. v. Coffin*, 553 S.W.2d 751, 752 (Tenn. 1977). Also, the voluntary furnishing of medical services is sufficient to toll or waive the statute of limitations. *Crowder v. Klopman Mills*, 627 S.W.2d 930 (Tenn. 1982).

Plaintiff contends he did not know he had a compensable injury until Dr. Wood advised he had permanent impairment during October to November 2000 and his action was timely filed within three months of receiving this information.

Defendant argues the claim is barred because there has been no change in his condition since the accident and his injury manifested itself as early as his first few visits to a medical facility in October 1998.

After a careful review of the record, we concur with the trial court that Dr. Wood's evidence as to medical impairment cannot be relied upon. Thus, there is no credible evidence in the record to support a finding the employee has sustained permanent disability. However, this would not bar an action timely filed for compensation benefits resulting from a temporary injury.

We find the employee knew he had injured his arm upon the occurrence of the accident; he was informed within a few days that an x-ray indicated a fracture; he declined to return to work because of his injury and the medication he was taking; he testified he was in constant pain with the injury and under his testimony his condition never changed at any point prior to the institution of suit. We also note that after leaving the medical providers furnished by the employer, he was treated for other problems for about one and a half years before he ever gave Dr. Wood a history of an elbow injury.

We find the claim was not timely filed and that the statute would bar any claim for compensation benefits.

Judgment of the trial court is affirmed. Costs of the appeal are taxed to the employee.

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ROGER E. THAYER, SPECIAL JUDGE

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This case is before the Court upon the motion for review filed by Don Birchfield, 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.

It appears to the Court that the motion for review is not well-taken and is therefore denied. The Panel's findings of fact and conclusions of law, which are incorporated by reference, are adopted and affirmed. The decision of the Panel is made the judgment of the Court.

Costs are assessed to the plaintiff, for which execution may issue if necessary.