

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
December 18, 2002 Session

TERESA L. CRISP v. LIBERTY MUTUAL INSURANCE COMPANY

**Direct Appeal from the Chancery Court for Fentress County
No. 00-61 Billy Joe White, Chancellor**

**No. M2002-01236-WC-R3-CV - Mailed - February 18, 2003
Filed - May 2, 2003**

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. In this appeal, the employee insists the trial court erred in summarily dismissing her claim for insufficient evidence of a connection between the employment and the State of Tennessee. As discussed below, the panel has concluded there is no genuine issue of material fact and that the employee's insurer is entitled to judgment as a matter of law.

Tenn. Code Ann. § 50-6-225(e) (2002 Supp.) Appeal as of Right; Judgment of the Chancery Court Affirmed

JOE C. LOSER, JR., SP. J., delivered the opinion of the court, in which ADOLPHO A. BIRCH, JR., J., and JOHN K. BYERS, SR. J., joined.

Michael A. Walker, Jamestown, Tennessee, for the appellant, Teresa L. Crisp

Joe M. Looney, Crossville, Tennessee, for the appellee, Liberty Mutual Insurance Company

MEMORANDUM OPINION

The employee or claimant, Ms. Crisp, initiated this civil action to recover workers' compensation benefits. The employer's insurer, Liberty Mutual Insurance Company, moved for summary judgment of dismissal pursuant to Tenn. Code Ann. § 50-6-115. The trial court granted the motion. The claimant has appealed.

Summary judgment is almost never an option in workers' compensation cases; Berry v. Consolidated Systems, Inc., 804 S.W.2d 445, 446 (Tenn. 1991). However, when there is no dispute over the evidence establishing the facts that control the application of a rule of law, summary

judgment is an appropriate means of deciding such issues as whether an action is barred by the applicable statute of limitations or by *res judicata*; whether a party has standing; or whether the court has jurisdiction. *Id.* at 446. The dispositive issue in this case involves the applicability of a rule of law to undisputed facts.

The standard of review on appeal of a grant of summary judgment is *de novo* upon the record without a presumption of correctness to determine whether the absence of genuine and material factual issues entitle the movant to a judgment as a matter of law. Goodloe v. State, 36 S.W.3d 62, 65 (Tenn. 2001) The movant must either affirmatively negate an essential element of the non-movant's claim or conclusively establish an affirmative defense; mere conclusory assertions that the non-movant has no evidence are insufficient; and if the movant does not negate a claimed basis for the suit, the non-movant's burden to produce evidence establishing the existence of a genuine issue for trial is not triggered and the motion for summary judgment must fail. If, however, the movant successfully negates a claimed basis for the suit, the non-movant may no longer simply rely upon the pleadings, but must then establish the existence of the essential elements of the claim or the non-existence of the defense. Finister v. Humboldt General Hosp., Inc., 970 S.W.2d 435, 438 (Tenn. 1998).

The claimant entered into a contract of hire with the employer, M & P Utilities, Inc., a Minnesota Corporation, while in the State of Missouri. She worked for the employer in several states before suffering a serious back injury while working in Colorado, where she was hospitalized for five days. She returned to her home state, Tennessee, after leaving the hospital and has received most of her medical care in Tennessee. The claimant rejected an offer to settle her workers' compensation claim under Minnesota law and sued for benefits under Tennessee law.

A worker who is injured outside the territorial limits of Tennessee is covered under the Act if, and only if, he or she would have been covered if the injury had occurred within the state and (1) the employment was principally localized within Tennessee or (2) the contract of hire was made in Tennessee. Tenn. Code Ann. § 50-6-115. Ordinarily, though, if an injury occurs in another state, benefits under the Tennessee Act are not recoverable unless it can be shown that the contract of hire was made in Tennessee. Perkins v. BE & K, Inc., 802 S.W.2d 215, 216 (Tenn. 1990).

The claimant argues that the statute should be construed to provide coverage under the circumstances of this case because the employer was qualified to do business in Tennessee when she was injured, is a licensed contractor in Tennessee, has had continual workers' compensation insurance in Tennessee since 1996, has bid for jobs in Tennessee for the past several years and the claimant presently works on one of them, has offered Tennessee workers' compensation to its employees injured in Texas, has established an office in Fentress County, the claimant's treating physicians are located in Tennessee, and Liberty Mutual Insurance Company has been providing Tennessee employers with workers' compensation insurance for decades.

Under the Tennessee Workers' Compensation Act, the right of an employee who suffers a work-related injury to recover compensation benefits from his employer is governed by the statutes

in effect at the time of the injury. Nutt v. Champion Intern. Corp., 980 S.W.2d 365, 368 (Tenn. 1998). Such statutes are part of the contract of employment and the rights and responsibilities of such injured employee and his employer can only be ascertained from a consideration of those statutes as construed by the courts. Hudnall v. S. & W. Constr. Co. of Tenn., Inc., 60 Tenn. App. 743, 451 S.W.2d 858, 861-862 (1969). The Act expressly requires that it be given “equitable construction” and declares itself to be a remedial Act. Tenn. Code Ann. § 50-6-116. Where, however, a statute is clear and unambiguous, the search for a legislative purpose need proceed no further than the language of the statute itself. Bryant v. Genco Stamping & Mfg. Co., Inc., 33 S.W.3d 761, 765 (Tenn. 2000). The statute applicable to the present controversy is plain and unambiguous, and it excludes coverage for the claimant’s injury.

The appellant further contends she should prevail because the employer has such contacts with Tennessee that the maintenance of her suit in the state would not offend traditional notions of fair play and substantial justice, citing International Shoe Co. v. Washington, 326 US 310, 316 (1945). The rule in that case provides for personal jurisdiction over non-resident defendants. The defendant here does not question our state’s jurisdiction over it. The issue before the court, however, is one of coverage, not personal jurisdiction. The Tennessee Workers’ Compensation Law simply does not provide coverage for an injury occurring outside its borders unless the contract of hire between the injured worker and the employer was made within its borders.

For those reasons, the judgment is affirmed. Costs are taxed to the appellant.

JOE C. LOSER, JR.

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JUDGMENT

This case is before the Court upon the motion for review filed by Teresa L. Crisp 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 Teresa L. Crisp, for which execution may issue if necessary.

BIRCH, J., NOT PARTICIPATING