

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
March 25, 2003 Session

**TOMMY CAREY v.
CAMDEN CASTINGS CENTER, INC., ET AL.**

**Direct Appeal from the Circuit Court for Benton County
No. R.D.OCCV-421 C. Creed McGiley, Circuit Judge**

No. W2002-01367-WC-R3-CV - Mailed July 7, 2003; Filed August 18, 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. Section 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 this action barred by the statute of limitations. We affirm the trial court.

**Tenn. Code Ann. § 50-6-225(e) (2000 Supp.) Appeal as of Right; Judgment of the
Circuit Court Affirmed**

ALLEN W. WALLACE, SR.J., delivered the opinion of the court, in which JANICE M. HOLDER, J. and ROBERT L. CHILDERS, SP.J., joined.

George L. Morrison, III, Jackson, Tennessee, and Mary Dee Allen, Cookeville, Tennessee, for appellant Tommy Carey.

R. Scott Pietrowski, Jackson, Tennessee, for appellee, Camden Casting Center, Inc.

E. Blaine Sprouse, Assistant Attorney General, Nashville, Tennessee, for appellee Second Injury Fund

MEMORANDUM OPINION

FACTS

Tommy Carey, employee, was 62 years old at the time of trial and had worked for Camden Castings Center, Inc., employer, for 27 years. In 1994, employee had a bilateral total hip replacement. A workers' compensation action was filed, and the trial court awarded 70% to the body as a whole. Employee went back to work for employer as a safety officer. That same year, employee

was diagnosed by Dr. Carl W. Huff as having an impingement syndrome to his right shoulder. The office notes of Dr. Huff, dated April 28, 1994, indicated a moderate atrophy of the musculature of the right shoulder along with a decreased range of motion. In 1999, employee filed another claim against the employer for injury to his left shoulder and recovered 10.9% to the body as a whole for that injury. Then, in November of 1999, employee saw Dr. Huff again for pain to his right shoulder, and the same diagnosis was given as was given in 1994. Dr. Huff also opined on September 17, 2001, that, to a reasonable degree of medical certainty, employee's knee injury could not have been caused by his work activity with employer.

The employer's first report of work injury, filed August 3, 2000, shows the employee complaining of right shoulder and bilateral knee pain due to repetitive driving of a golf cart with a date of injury or occupational disease occurring on July 6, 1999, at 12:01 p.m. and a notice of injury given by the employee on August 1, 2000. Suit was filed in this case on October 2, 2000. After trial, the trial court entered its judgment denying compensation for the injury to employee's right shoulder. The court held that the plaintiff's claim was barred by the statute of limitations.

ANALYSIS

Appellate review is *de novo* upon the record of the trial court, accompanied by a presumption of the correctness of the findings of fact, unless the preponderance of the evidence is otherwise. Tenn. Code. Ann. § 50-6-225(e)(2) (2002 Supp.). To satisfy this standard of review, the reviewing court is required to conduct an independent examination of the record to determine where the preponderance of the evidence lies. *Williams v. Tecumsch Products, Co.*, 978 S.W.2d 932, 935 (Tenn. 1998). There is no presumption of correctness accompanying conclusions of law. *Union Carbide Corp. v. Huddleston*, 854 S.W.2d 87, 91 (Tenn. 1993).

In the case at bar, the trial court made a very detailed findings of fact on the statute of limitations issue. The employee insists that the trial court erred in not using the "last day worked" rule. The purpose of the "last day worked" rule was to fix a date certain when an employee knew he or she had sustained a work-related injury. *Central Motor Express, Inc. v. Burney*, 214 Tenn. 118, 377 S.W.2d 947 (Tenn. 1964). When a definite date of injury is known, i.e., when the employee knows the nature of his injury and files a written notice of work-related injury, there is no reason to use another date. The rationale of the "last day worked" rule is to benefit the employee who has not timely filed a first report of work injury because the nature of the injury was not known. That is not the case here. The employee gave notice of injury on August 1, 2000, alleging the injury to have occurred on July 6, 1999, and described his injury as required by Tenn. Code. Ann. § 50-6-202. It becomes obvious in this case, from the report of injury filed by employee, and the medical proof by his treating physician, Dr. Huff, that the employee knew the nature of his injury as of July 6, 1999.

In considering the employee's testimony, along with the testimony of other witnesses and the medical evidence, the court stated that "[t]he statute of limitations would bar this action by several years, as the Court sees it. Certainly he knew or should have known that he had a compensable injury back in '94 and '95, certainly no later than 1999. But I think the earlier dates actually are more

persuasive" After considering all of the relevant factors in this case, we find that the evidence does not preponderate against the factual findings upon which the trial judge determined that the plaintiff's claim for a right shoulder injury is barred by statute of limitations.

CONCLUSION

The judgment of the trial court is affirmed. The costs of this appeal are taxed to the appellant, Tommy Carey.

ALLEN W. WALLACE, SENIOR JUDGE

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JUDGMENT ORDER

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 on appeal are taxed to the Appellant, Tommy Carey, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM