

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
April 2004 Session

**MARGARET J. BALLINGER v. DECATUR COUNTY GENERAL
HOSPITAL, ET AL.**

**Direct Appeal from the Circuit Court for Decatur County
No. 2663 C. Creed McGinley, Circuit Judge**

No. W2003-01358-WC-R3-CV - Mailed May 28, 2004; Filed June 30, 2004

This workers' compensation appeal has been referred to the Special Workers' Compensation Panel of the Supreme Court in accordance with Tennessee Code Annotated § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. Employee entered a court-approved settlement of her workers' compensation claim relating to an injury that occurred while she was in the course and scope of her employment. After the settlement, Employee sustained a new injury that arose out of the treatment she received for the injury encompassed by the settlement. The trial court granted summary judgment in favor of Employer, finding that Employee's injury was not a subsequent or second injury that is compensable under Tennessee Code Annotated section 50-6-208. We affirm the trial court's grant of summary judgment.

**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 E. Riley Anderson, J., joined.

James S. Higgins, Nashville, Tennessee, for appellant, Margaret Ballinger.

John Dean Burlison, Jackson, Tennessee, for appellees, Decatur County General Hospital and Virginia Insurance Reciprocal.

Juan G. Villasenor, Assistant Attorney General, Nashville, Tennessee, for appellee, Department of Labor, Second Injury Fund.

MEMORANDUM OPINION

FACTS

The facts of this case are not in dispute. On November 16, 1999, Employee entered a joint petition for approval of a settlement of her workers' compensation claim relating to a low back injury that occurred while she was in the course and scope of her employment with Decatur County Hospital. Said settlement provided for compensation based upon a seventy-two percent partial disability to the body as a whole, and also provided future medical treatment.

Under the settlement agreement, Employee agreed, as set out in the order of the Court, as follows:

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the agreement reached between the parties that all claims which the employee might have, now or in the future, under the Worker's Compensation law, for temporary and permanent disability, medical expenses, including future medical expenses, or any other benefit whatsoever under the Worker's Compensation Law of Tennessee, resulting from or connected with any injury or injuries arising from an accident which occurred on or about [January 24, 1997] or at any time while employed by the employer, be compromised, settled and satisfied by the payment of \$81,000 to the employee, including \$2,480.04 which has previously been paid for permanent partial disability, and the agreement of the insurer to be contingently liable for future medical expenses with the agreement that payments of authorized and approved medical expenses are to be made as set forth in Tennessee Code Annotated § 50-6-204 to Dr. William R. Schooley, or to whomever else he may refer her, for treatment related to the employee's alleged on the job injury and the same is hereby in all respects ratified, confirmed and approved. . . .

Subsequent to the above referenced settlement, Employee received further medical treatment for her injuries arising out of her injuries of January 24, 1997, the basis of the above settlement agreement. Due to pain from her injuries, a morphine pump was placed to help her low back pain. This procedure resulted in an allergic reaction to the morphine pump. She became ill and this caused her to have a severe cough and to vomit, resulting in a ruptured disc in her upper back at the C-6 level of the spine. Employee required surgery and other treatment for this injury.

ANALYSIS

The trial court granted Employer's Motion for Summary Judgment. Therefore, appellate review is controlled by Tennessee Rule of Civil Procedure 56. The pleadings and evidence must be viewed in the light most favorable to the party opposing the motion. Summary Judgment is to be rendered only when it is shown that there is no genuine issue to a material fact and that the moving party is entitled to a judgment as a matter of law. Tenn. R. Civ. P. 56; *Hilliard v. Tennessee State Home Health Serv., Inc.*, 950 S.W.2d 344, 345 (Tenn. Workers' Comp. Panel 1997); *Byrd v. Hall*, 847 S.W.2d 208 (Tenn. 1993). Rarely are such motions an option in workers' compensation cases. *Berry v. Consolidated Systems, Inc.*, 804 S.W.2d 445 (Tenn. 1991). Summary judgment should be granted

when a reasonable person could only reach one conclusion in considering the facts and the inferences drawn from those facts. *Carvell v. Bottoms*, 900 S.W.2d 23, 26 (Tenn. 1995); *Whitaker v. Whirlpool*, 325 S.W.3d 222, 228 (Tenn. Ct. App. 2000).

Employee argues that this is a new injury and relies principally upon *McAlister v. Methodist Hospital of Memphis*, 550 S.W.2d 240 (Tenn. 1977) and *Gonzales v. Methodist Hospital of Memphis*, 1993 WL 63571 (Tenn. Ct. App. March 9, 1993). These two cases are distinguishable from the case at bar in that the present case involves a court-approved settlement and a lump sum payment. Tennessee Code Annotated section 50-6-231 provides: "All amounts paid by employer and received by employee or the employee's dependents, by lump sum payments, shall be final."

In *Underwood v. Zurich Insurance Company*, 854 S.W.2d 94, 98 (Tenn. 1993), the court pointed out that lump sum judgments represent a risk to both parties: "The employee runs the risk that his disability may increase in the future and the employer runs the risk that the disability may decrease." Considering *Underwood* and Tennessee Code Annotated section 50-6-231, a court-approved lump sum settlement is a final resolution of the dispute absent very few exceptions. Both parties are bound and foreclosed by the entry of a valid decree approving a lump sum settlement. *Corby v. Matthews*, 541 S.W.2d 789 (Tenn. 1976); *Wooley v. Gould, Inc.*, 654 S.W.2d 669 (Tenn. 1983).

Employee argues that it would be against public policy to uphold a settlement agreement that releases an employer from any claims which result from or are connected with a work-related injury that occurred while employed by the employer. Employee further argues that it would be against public policy to permit an employer to release itself from liability for work-related injuries that have not been discovered or have not occurred. Contrary to Employee's argument, there are sound public policy reasons for allowing an employer to settle such future rights of an employee, otherwise an employer "may have less incentive to settle worker's [sic] compensation cases." *Nay v. Resource Consultants, Inc.*, 2000 Tenn. LEXIS 2, at *15 (Tenn. Workers' Comp. Panel Jan. 5, 2000).

In this case the Second Injury Fund of the State of Tennessee has been named as a party defendant. The Second Injury Fund was created by the legislature to encourage the hiring of the handicapped by relieving an employer who knowingly hires a handicapped person or retains an employee after discovering an employee has a physical disability, of part of the liability for workers' compensation benefits by shifting liability for payment of benefits to the Fund. *Brown v. John Martin Constr. Co.* 642 S.W.2d 145 (Tenn. 1982); *Arnold v. Tyson Foods, Inc.*, 614 S.W.2d 43 (Tenn. 1981). Employee's claim grew out of injuries she received on January 24, 1997. Employee's settlement agreement expressly covers future medical benefits for injuries resulting from or connected with the January 24, 1997 accident. Therefore, there is no compensable second injury for the purposes of the Worker's Compensation Act. Thus, we conclude this is not a proper case for the applicability of the Second Injury Fund.

A careful review by the Panel of the issues presented indicate this is a proper case for summary judgment. The trial court granted summary judgment in favor of Employer, finding that Employee's injury was not a subsequent or second injury that is compensable under Tennessee Code Annotated section 50-6-208. We affirm the trial court's grant of summary judgment.

CONCLUSION

The judgment of the trial court is affirmed. The costs of this appeal are taxed to the appellant, Margaret J. Ballinger.

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, Margaret J. Ballinger, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM