

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE

**DIANE LANE v. RICH PRODUCTS and CONTINENTAL
CASUALTY COMPANY**

**Direct Appeal from the Chancery Court for Rutherford County
No. 98WC-1307, Hon. Robert E. Corlew, III, Chancellor**

**No. M2004-00566-WC-R3-CV - Mailed: February 18, 2005
Filed - May 18, 2005**

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel in accordance with Tennessee Code Annotated § 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. In determining whether pursuant to Tenn. Code Ann. §§ 50-6-241(a)(2) and 50-6-207(3)(F), the appellant was entitled to reconsideration benefits stemming from a 1997 injury when she was terminated following a subsequent injury to the body as a whole, the trial court found the claim to be prohibited by statute. The appellant contends the trial court erred in its statutory interpretation. We find no error and affirm the judgment of the trial court.

Tenn. Code Ann. § 50-6-225(e)(3) Appeal as of Right; Judgment of the Chancery Court Affirmed.

JERRY SCOTT, SR. J. delivered the opinion of the Court, in which WILLIAM M. BARKER, J., and J. S. (STEVE) DANIEL, SR. J., joined.

William Joseph Butler and E. Guy Holliman, Farrar, Holliman & Butler, Lafayette, TN, for the appellant, Diane Lane.

Michael L. Haynie, Manier & Herod, Nashville, TN, for the appellees, Rich Products and Continental Casualty Company.

MEMORANDUM OPINION

The facts of this case are basically undisputed. At the time of trial, Diane Lane was 43 years old, with a twelfth grade education and no other vocational training. She had been employed by Rich Products for almost twelve years as an assembly line worker. On December 16, 1997, Ms. Lane sustained an injury to her right shoulder while within the course and scope of her employment. Ms. Lane initially received a zero impairment rating from Dr. William Jekot and a seven percent impairment rating from Dr. David Gaw. The parties settled for 8.75% disability to the body as a whole. Dr. Jekot later testified that his initial rating was in error, increasing it to six percent. Ms. Lane returned to Rich Products with permanent restrictions

assigned only by Dr. Gaw. She was able to perform within the restrictions and missed no work days on account of the shoulder injury.

In September 2000, Ms. Lane sustained an injury to her neck. For this injury, she was assigned zero impairment by Dr. William Ledbetter and five percent impairment by Dr. Robert Landsberg. The parties settled for twenty percent disability to the body as a whole. Ms. Lane returned to work at Rich Products and continued working until she developed carpal tunnel syndrome in April 2001. For this scheduled injury, Dr. David Martin assigned zero impairment to her left arm and three percent to her right arm, with Dr. Landsberg assigning eighteen percent and twenty-one percent, respectively. The parties settled for impairment ratings of twenty percent to the left arm and forty percent to the right arm. After this third injury, Rich Products was unable to accommodate the prior restrictions assigned by Dr. Gaw, and Ms. Lane was terminated. On February 28, 2003, Ms. Lane filed a complaint for reconsideration of her vocational disability stemming from the 1997 shoulder injury. The trial court denied Ms. Lane's claim, holding that a petition to enlarge a previous award under Tenn. Code Ann. § 50-6-241(a)(2) is not the appropriate vehicle to use when a worker sustains additional injuries or additional anatomical impairment. This appeal followed.

In workers' compensation cases, review of the trial court's findings of fact is *de novo*, accompanied by a presumption of correctness unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2). Where questions of law are involved, appellate review is *de novo* with no presumption of correctness given to the lower court's judgment. Leab v. S & H Mining Co., 76 S.W.3d 344, 348 (Tenn. 2002). The issue on appeal is whether the trial court erred in its holding that as a matter of law and under the reasoning of Brewer v. Lincoln Brass Works, Inc., 991 S.W.2d 226 (Tenn. 1999) and its progeny, that a work-related injury causing additional anatomical impairment is a new and separate action for benefits, thus prohibiting an action for reconsideration benefits under Tenn. Code Ann. § 50-6-241(a)(2).

Ms. Lane maintains that she is entitled to seek reconsideration under Tenn. Code Ann. § 50-6-241(a)(2), which provides in pertinent part:

In accordance with this section, the courts may reconsider, upon the filing of a new cause of action, the issue of industrial disability. Such reconsideration shall examine all pertinent factors, including lay and expert testimony, employee's age, education, skills and training, local job opportunities, and capacity to work at types of employment available in claimant's disabled condition. Such reconsideration may be made in appropriate cases where the employee is no longer employed by the pre-injury employer and makes application to the appropriate court within one (1) year of the employee's loss of employment, if such loss of employment is within four hundred (400) weeks of the day the employee returned to work. In enlarging a previous award, the court must give the employer credit for prior benefits paid to the employee in permanent partial disability benefits, and any new award remains subject to the maximum established in subsection (b).

The issue presented before this Panel has been addressed not only by the Tennessee Supreme Court in Brewer, but also in Harris v. Magotteaux, Inc., 2001 WL 1607380 (Tenn. Workers' Comp. Panel 2001). In Brewer, the employee sustained a work-related injury to his back in December 1992. He returned to work in August 1993 at a wage equal to or greater than his pre-injury wage, subjecting his award to the 2.5 statutory cap under Tenn. Code Ann. § 50-6-241(a)(1). The employee continued working until he sustained a second injury to his back, resulting in his inability to remain in that employment. Following the second injury, the employee filed a petition to enlarge his previous award under Tenn. Code Ann. § 50-6-241(a)(2). The Tennessee Supreme Court dismissed the petition, holding that:

A petition to enlarge a previous award under § 50-6-241(a)(2) is not the appropriate vehicle to use when a worker sustains additional injuries or additional anatomical impairment. A § 241(a)(2) petition is proper when the injured worker attempts to return to work but the original work-related disability later renders the injured worker unemployable with the pre-injury employer. Section 241(a)(2) then allows the injured worker to receive a new industrial disability rating when the employer's attempts to accommodate the worker fail. The new disability rating is not limited by the § 241(a)(1) cap and is based on the worker's previous anatomical impairment rating. We hold that if the worker, however, sustains additional impairment, whether caused by a subsequent work-related injury or work-related aggravation injury or aggravation of the original injury, the worker must file a new claim for workers' compensation rather than attempting to enlarge a previous award under § 241(a)(2). Brewer, 991 S.W.2d at 229.

The Brewer decision was reiterated in Harris, which involved two separate work-related injuries to the same area of an employee's back. When he was unable to return to work following his second injury, the employee filed claims both for the subsequent injury and for reconsideration of the first injury. Citing the holding in Brewer, the Panel held that “[a]n employee may not enlarge a previous workers' compensation award when the employee sustains additional injuries.” Harris, 2001 WL 1607380 at *2. In making its determination, the Panel concluded that Tenn. Code Ann. § 50-6-241(a)(2) is controlled by § 50-6-207(3)(F), which states in pertinent part:

If an employee has previously sustained an injury compensable under this section for which a court of competent jurisdiction has awarded benefits based on percentage of disability to the body as a whole and suffers a subsequent injury not enumerated above, the injured employee shall be paid compensation for the period of temporary total disability and only for the degree of permanent disability that results from the subsequent injury. Id.

Ms. Lane argues that the Brewer holding does not prevent an employee from seeking reconsideration under Tenn. Code Ann. § 50-6-241(a)(2) when he suffers a subsequent injury,

but rather, Tenn. Code Ann. § 50-6-207(3)(F) merely prohibits a plaintiff from seeking an award in a reconsideration suit based on any *new* impairment or disability. Ms. Lane further contends that the two statutes are in conflict and that under the reasoning in Brewer, Tenn. Code Ann. § 50-6-241(a)(2) should control, as it was codified last. In Brewer, the Court stated that “[w]here two statutes conflict and cannot be reconciled, the prior act will be repealed or amended by implication to the extent of the inconsistency between the two statutes.” Brewer, 991 S.W.2d at 229. But, the Court then went on to state a basic rule of construction providing that “[s]pecific statutory provisions generally prevail over general provisions when there is a conflict between statutes.” Id. at 230. See also Five Star Exp., Inc. v. Davis, 866 S.W. 2d 944, 946 (Tenn. 1993). Therefore, although both Tenn. Code Ann. § 50-6-241(a)(2) and § 50-6-207(3)(F) apply when an employee initially sustains an injury to the body as a whole, § 50-6-241(a)(2) generally applies when an employee ceases to be employed by the pre-injury employer, while § 50-6-207(3)(F) specifically applies only when there is a subsequent injury to a non-scheduled member.

Further, statutory construction which places one statute in conflict with another must be avoided; therefore, we must resolve any possible conflict between statutes in favor of each other. Cronin v. Howe, 906 S.W.2d 910, 912 (Tenn. 1995). We must seek the most “reasonable construction which avoids statutory conflict and provides for harmonious operation of the laws.” LensCrafters, Inc. v. Sundquist, 33 S.W.3d 772, 777 (Tenn. 2000). We must presume that the legislature did not intend an absurdity. Kite v. Kite, 22 S.W.3d 803, 805 (Tenn. 1997). Statutes relating to the same subject or sharing a common purpose must be construed together (*in pari materia*) in order to advance their common purpose. Carver v. Citizen Utils. Co., 954 S.W.2d 34, 35 (Tenn. 1997). Additionally, in construing statutes courts must presume that the legislature has knowledge of its prior enactments and knows the state of the law at the time it passes legislation. Wilson v. Johnson County, 879 S.W.2d 807, 810 (Tenn. 1994).

In light of the above, we find that the provisions of Tenn. Code Ann. §§ 50-6-241 and 50-6-207(3)(F) may be interpreted harmoniously. Section 50-6-241(b) references within, the purpose and intent of Section 50-6-207(3)(F), stating in pertinent part: “. . . where an injured employee is eligible to receive permanent partial disability benefits, pursuant to § 50-6-207(3)(A)(i) and (F) . . .” By incorporating the language of Tenn. Code Ann. § 50-6-207(3)(F) into § 50-6-241, it is clear that the General Assembly intended the statutes to be considered *in pari materia*, rather than abrogating the prior statute by enactment of the later one.

Ms. Lane submits that Tenn. Code Ann. § 50-6-207(3)(F), when read with the workers’ compensation statute, is confusing and ambiguous and urges the Tennessee Supreme Court to clarify the proper intent and construction. Legislative intent is to be ascertained whenever possible from the natural and ordinary meaning of the language used, without forced or subtle construction that would limit or extend the meaning of the language. Schering-Plough v. State Bd. of Equalization, 999 S.W.2d 773, 775 (Tenn. 1999). If the language is ambiguous, the court must look to the statutory scheme as a whole, as well as legislative history, to discern its meaning. Owens v. State, 908 S.W.2d 923, 926 (Tenn. 1995). But, if the language is unambiguous, the court must apply its ordinary and plain meaning. Perrin v. Gaylord Entertainment Co., 120 S.W.3d 823, 826 (Tenn. 2003).

The Court examined the language of Tenn. Code Ann. § 50-6-207(3)(F) and its interplay with § 50-6-241 in **Parks v. Tennessee Mun. League Risk Mgmt. Pool**, 974 S.W.2d 677 (Tenn. 1998). There, the claimant sought workers' compensation benefits after sustaining a fourth back injury. The Court held that, "[a]n employee who has received compensation for prior injuries based on a percentage of disability to the body as a whole and is later injured shall be paid only for the degree of permanent disability that results from the subsequent injury." *Id.* at 678. In reaching its conclusion, the Court stated that, "[w]e believe the language of Tenn. Code Ann. § 50-6-207(3)(F) is unambiguous and that its meaning and its intended effect is clear. An employee who has received compensation for prior injuries based on a percentage of disability to the body as a whole and is later injured shall be paid only for the degree of permanent disability that results from the subsequent injury." *Id.* at 679. Likewise, in applying these well established rules of statutory construction, we find that the trial court correctly concluded that the plain language warrants strict adherence to the requirement of Tenn. Code Ann. § 50-6-207(3)(F) that an employee who suffers a subsequent injury shall be compensated only for the degree of permanent disability that results from that subsequent injury.

Ms. Lane further urges this Panel to adopt a narrow interpretation of Tenn. Code Ann. § 50-6-207(3)(F), maintaining that under the Brewer application, it only precludes a petition to reopen when a subsequent injury is to the same part of the body or is a repetition of the first injury. However, the Brewer Court did not limit the holding to its facts. Additionally, Harris interpreted Section 50-6-207(3)(F) as limiting recovery whether the subsequent injury occurs to the same or a different part of the body. Courts are not authorized "to alter or amend a statute." *Gleaves v. Checker Cab Transit Corp., Inc.*, 15 S.W.3d 799, 802 (Tenn. 2000). Our interpretation must not render any part of a legislative act "inoperative, superfluous, void or insignificant." *Tidwell v. Collins*, 522 S.W.2d 674, 676-77 (Tenn. 1975). Legislative purpose is to be determined without a forced or subtle interpretation that would limit or extend the statute's application. *State v. Blackstock*, 19 S.W.3d 200, 210 (Tenn. 2000). The reasonableness of a statute may not be questioned by a court, and a court may not substitute its own policy judgments for those of the legislature. ***Mooney v. Sneed***, 30 S.W.3d 304, 306 (Tenn. 2000) (citing *BellSouth Telecomm., Inc. v. Greer*, 972 S.W.2d 663, 673 (Tenn. Ct. App. 1997)). "[C]ourts must presume that the legislature says in a statute what it means and means in a statute what it says there." *Id.* at 307. Therefore, we find that, given the foregoing principles of statutory construction, the plain language of Tenn. Code Ann. § 50-6-207(3)(F) does not require that the first and subsequent injuries involve the same part of the body.

Ms. Lane argues that it is illogical for an employee to be precluded from seeking reconsideration following a subsequent injury, while allowing reconsideration in cases of termination for misconduct. In support of her argument, Ms. Lane relies on ***Nizio v. Lockheed Martin Energy Systems, Inc.***, 8 S.W.3d 622, 624 (Tenn. 1999) and ***Young v. Caradon Better-Bilt, Inc.***, 30 S.W.3d 285, 288 (Tenn. 2000). We find this case distinguishable from *Nizio* and *Young*. Those cases dealt with the question of whether Tenn. Code Ann. § 50-6-241(a)(2) requires proof that termination was causally connected to the initial work-related injury as a precondition to obtaining reconsideration. In contrast, the present case raises the issue of whether Tenn. Code Ann. § 50-6-207(3)(F) controls when termination of employment

is due to a subsequent injury. Therefore, the Niziol holding and its progeny do not control in this case.

Ms. Lane's argument additionally conflicts with the decision in **Lay v. Scott County Sheriff's Dept.**, 109 S.W.3d 293, 299 (Tenn. 2003). There, the court held that so long as a return to work is offered, an employee who resigns for reasons unrelated to his injury may not escape the statutory cap. See also Hardin v. Royal & Sunalliance Ins., 104 S.W.3d 501, 506 (Tenn. 2003) (holding that a trial court may reconsider a previous workers' compensation award when an employee resigns, but that the trial court may only increase the award if the resignation is reasonably related to the employee's injury); and **Hill v. Wilson Sporting Goods Co.**, 104 S.W.3d 844, 848 (Tenn. Workers Comp. Panel, 2002) (holding that appropriateness of allowing reconsideration of industrial disability must be evaluated under the facts and circumstances of each workers' compensation case, applying the standards of reasonableness). Further, Tenn. Code Ann. § 50-6-241(a)(2) provides that the employee is entitled to reconsideration in *appropriate* cases, permitting judicial discretion (emphasis added).

Workers' compensation law is a creature of the General Assembly, and any change in its structure must come from that body and not from the courts. Aerosol Corp. of the South v. Johnson, 435 S.W.2d 832, 836 (Tenn. 1968); Lindsey v. Hunt, 387 S.W.2d 344, 345 (Tenn. 1965). Circumstances under which benefits are paid depend solely upon statutory authority. Leatherwood v. United Parcel Service, 708 S.W.2d 396, 399 (Tenn. Ct. App. 1985). Given the present language of the statutes, we find that the trial court's interpretation is fair and reasonable and provides the only way to avoid a conflict, to allow a harmonious operation of the law, and to effectuate the legislative intent.

Consequently, we affirm the holding of the trial court. Costs on appeal are taxed to the appellant, Diane Lane.

JERRY SCOTT, SENIOR JUDGE

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DIANE LANE v. RICH PRODUCTS, ET AL.

**Chancery Court for Rutherford County
No. 98WC-1307**

No. M2004-00566-SC-WCM-CV - Filed- May 18, 2005

JUDGMENT ORDER

This case is before the Court upon the motion for review filed by the plaintiff-appellant, Diane Lane, 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-appellant, Diane Lane, and her surety, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM

Barker, J., not participating

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