IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
February 23, 2005 Session

JIMMY R. LYLE v. PASMINCO ZINC, INC.

Direct Appeal from the Chancery Court for Montgomery County
No. 2000-03-0052 Carol Catalano, Chancellor

No. M2004-00676-WC-R3-CV - Mailed - March 23, 2005
Filed - May 27, 2005

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 plaintiff alleged that he has a repetitive-stress job-related condition in his right knee diagnosed as degenerative arthritis. Surgery was performed September 18, 1997. After giving notice in July 1999, this action was filed on March 20, 2000. The trial judge concluded that the one-year statute of limitations precluded recovery and granted summary judgment. We affirm.

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

WILLIAM H. INMAN, SR. J., delivered the opinion of the court, in which FRANK F. DROWOTA III, C. J., and DONALD PAUL HARRIS, SR. J., joined.

Thomas R. Meeks and Gregory D. Smith, Clarksville, Tennessee, for appellant, Jimmy R. Lyle.

Dan L. Nolan and Michael R. McDonner, Clarksville, Tennessee, for appellee, Pasminco Zinc, Inc.

MEMORANDUM OPINION

The plaintiff alleged that he has a repetitive-stress job-related condition in his right knee caused by climbing stairs and stepping in and out of vehicles. His condition was diagnosed as degenerative arthritis, and surgery was performed on September 18, 1997. He filed this action for workers' compensation benefits on March 20, 2000 after giving notice in July 1999. The defendant filed a motion for summary judgment, pleading the bar of the one-year statute of limitations, which was granted. The plaintiff appeals, and presents for review the propriety of the dismissal of his case.

The Medical Proof

Dr. John Brothers, orthopedic surgeon, testified that he first treated the plaintiff in March 1994 for an injury to his right knee "some time in 1993." He saw the plaintiff again in April and May 1994, and in July 1996 when he continued to complain of pain in his right knee. The treatment continued in February and August 1997, with an arthroscopy in September 1997 which revealed a torn medial meniscus, then repaired. He was seen again in July 1999 complaining of pain in his right knee, but with "no history of any new acute injury." He opined that "it appeared to be from degenerative arthritis." The plaintiff was returned to work in October 1997, without restrictions, and the activities of his job, beginning in February 1997, aggravated the condition of his knee.

Dr. Frank Berklacich, orthopedic surgeon, testified that he first saw and treated the plaintiff on August 31, 2000, who complained of pain in his right knee. An osteotomy was performed - to correct bowleggedness - on May 1, 2001. He last saw the plaintiff August 23, 2001.

Pain was the predominant symptom in both knees, but more pronounced in the plaintiff's right knee. The plaintiff made no mention of a specific accident, only that his job was labor-intensive, and caused or contributed to the condition of his knee.

The plaintiff testified that after his surgery in 1997 he returned to work with no restrictions. To counter the motion for summary judgment he relies upon his response thereto, asserting that in his answer to interrogatories he stated in July 1999 he suffered "a second work-related injury," which "was a separate but related injury to the June 1997 injury to plaintiff's knee."

Neither the interrogatories nor the plaintiff's responses thereto are in the record.

Discussion

Our review is *de novo* with the presumption of correctness. ***Anderson v. Save-A-Lot, Ltd.***, 989 S.W.2d 277 (Tenn. 1999). We note that summary judgment is seldom authorized in workers' compensation cases, ***Berry v. Consolidated Systems Inc.*** 804 S.W.2d 445 (Tenn. 1991), simply owing to the essential nature of the proceeding. The posture of the case is unique, however, since the issue of the statute of limitations was tried as upon a merit hearing. The trial judge considered the evidence addressed by the parties and concluded that the statute of limitations of one year precluded a recovery since there was no genuine issue of material fact. ***Braswell v. Carothers***, 863 S.W.2d 722 (Tenn. Ct. App. 1993).

Repetitive stress injuries are accidental, within the purview of the workers' compensation laws, and a suit to receive benefits must be filed within "one year of the accident resulting in the injury." ***Brown Shoe Co. v. Reed***, 350 S.W.2d 65 (Tenn. 1961); Tenn. Code Ann. § 50-6-224. The nature of repetitive stress injuries does not admit of a beginning date, and for this reason the Supreme Court has decreed that the "last day worked" as the time of the accident resulting in injury and when the statute of limitations begins to run. ***Lawson v. Lear Seating Corp.***, 944 S.W.2d 340

(Tenn. 1997). It is not controverted that the plaintiff suffered from a repetitive stress injury to his knee and that the first day he was unable to work was September 18, 1997, nearly two and one-half years before he filed this action. The uncontroverted medical proof revealed that the plaintiff's condition was the result of repetitive stress with no new injuries between 1997 and 1999. The assertion in the appellant's brief that he suffered a new injury in 1999 has no support in the record. In light of the undisputed proof that the plaintiff became unable to work September 18, 1997, the one-year statute of limitations bars his claim and the judgment is affirmed at his costs.

_____

WILLIAM H. INMAN, SENIOR JUDGE

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION PANEL
AT NASHVILLE
February 23, 2005 Session

JIMMY R. LYLE v. PASMINCO ZINC, INC.

Chancery Court for Montgomery County
No. 2000-03-0052

No. M2004-00676-SC-WCM-CV - Filed - May 27, 2005

JUDGMENT

This case is before the Court upon the motion for review filed by Jimmy R. Lyle 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 Jimmy R. Lyle, and his surety, for which execution may issue if necessary.

DROWOTA, C.J., NOT PARTICPATING