

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
March 22, 2010 Session

SUSIE TOMLINSON v. ZURICH AMERICAN INSURANCE

**Direct Appeal from the Chancery Court for Madison County
No. 65452 James F. Butler, Chancellor**

No. W2009-01350-WC-R3-WC - Mailed July 27, 2010; Filed August 30, 2010

The sole issue presented in this workers' compensation claim is whether a corporate transaction involving the sale of the employer amounted to a loss of employment for purposes of Tennessee Code Annotated section 50-6-241(d). The trial court found that it did and awarded permanent disability benefits in excess of one and one-half times the anatomical impairment. On appeal,¹ we affirm the judgment of the trial court.

**Tenn. Code Ann. § 50-6-225(e) (2008) Appeal as of Right;
Judgment of the Chancery Court Affirmed**

ALLEN W. WALLACE, SR. J., delivered the opinion of the court, in which JANICE M. HOLDER, C. J., and D. J. ALISSANDRATOS, SP. J., joined.

William B. Walk, Memphis, Tennessee, for the appellant, Zurich American Insurance.

Ricky L. Boren, Jackson, Tennessee, for the appellee, Susie Tomlinson.

MEMORANDUM OPINION

Factual and Procedural Background

Susie Tomlinson ("Employee") worked in a food processing plant in Jackson. She sustained compensable injuries to her right knee and left shoulder in February 2007. Her employer on the dates of both injuries was Pinnacle Foods Group, Inc. ("PFG, Inc."), which

¹ Pursuant to Tennessee Supreme Court Rule 51, this workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel for a hearing and a report of findings of fact and conclusions of law.

was wholly owned by a privately-held holding company known as Crunch Holding Corporation (“Crunch”). In April 2007, Crunch was acquired by the Blackstone Group, a private equity investment organization. After the acquisition, PFG, Inc. was merged with another subsidiary of Crunch to form PFG, LLC. PFG, LLC maintained the same federal tax identification number as PFG, Inc.

Employee returned to work following the acquisition and merger. These transactions had no discernible effect on her work situation, and she returned to the same job. After recovering from the second injury, she returned to work at the same location and at the same rate of pay. She was paid by PFG, LLC.

The trial court held that, as a result of the sale of the parent company, Employee was no longer employed by her pre-injury employer, and the caps contained in Tennessee Code Annotated section 50-6-241(d)(1)(A) did not apply. It awarded 30% permanent partial disability (“PPD”) to the body as a whole for the shoulder injury, and 45% PPD to the right leg for the knee injury. Employer appealed, asserting that trial court erred by failing to apply the one and one-half times impairment cap contained in section 50-6-241(d)(1)(A).

Standard of Review

This appeal presents a question of law only. A trial court’s conclusions of law are reviewed *de novo* upon the record with no presumption of correctness. *Ridings v. Ralph M. Parsons Co.*, 914 S.W.2d 79, 80 (Tenn. 1996).

Analysis

The parties agree that the corporate transaction in this case is similar to that considered by the Supreme Court in *Perrin v. Gaylord Entertainment Co.*, 120 S.W.3d 823 (Tenn. 2003) and *Barnett v. Milan Seating Systems*, 215 S.W.3d 828 (Tenn. 2007). In *Perrin*, the Supreme Court held that purchase of a pre-injury employer by another corporate entity was a “loss of employment” for purposes of Tennessee Code Annotated section 50-6-241 and therefore triggered the one-year period to petition for reconsideration of a capped settlement or award. 120 S.W.3d at 827. In *Barnett*, the Court was asked to reconsider and overrule *Perrin*. *Barnett*, 215 S.W.3d at 833. In declining to do so, the Court observed that the General Assembly has amended section 50-6-241 after *Perrin* was decided, but had chosen not to change the language relied upon in that decision. *Id.* In 2009, the legislature amended section 50-6-241 by enacting Public Chapter 364, essentially abrogating *Perrin* and *Barnett* for injuries that occur “on or after July 1, 2009.” Employer argues that, under the rationale of the *Barnett*, we should overrule *Perrin* and *Barnett* in light of the 2009 amendment to section 50-6-241.

This issue was before the Panel in *Day v. Zurich Am. Ins.*, No. W2009-01349-WC-R3-WC, 2010 Tenn. LEXIS 171 (Tenn. Workers' Comp. Panel Mar. 31, 2010), which arose from the same corporate transaction at issue in this case. In *Day*, the employer also argued that by enacting Public Chapter 364 the General Assembly expressed a clear preference that the purchase of employer or the holding company that owns employer does not constitute a "loss of employment" under Tennessee Code Annotated section 50-6-241(d). The employer contended that the General Assembly's policy preference should control rather than *Perrin* and *Barnett*. The Panel disagreed, stating that the General Assembly's "intent regarding retrospective application of the amendments is explicit and clear. The changes to the workers' compensation statute made by Public Chapter 364 are not applicable" to injuries occurring before July 2009. *Day*, 2010 Tenn. LEXIS 171, at *9. The Panel held that *Perrin* and *Barnett* controlled and affirmed the decision of the trial court. No motion for review was filed, and the Panel's opinion was adopted and affirmed by the Tennessee Supreme Court. *Day v. Zurich Am. Ins.*, No. W2009-01349-WC-R3-WC, 2010 Tenn. LEXIS 172 (Tenn. Mar. 31, 2010). We consider the Panel's holding in *Day* to be a binding precedent and therefore conclude that the ruling of the trial court was correct.

Conclusion

The judgment of the trial court is affirmed. Costs are taxed to the appellant, Zurich American Insurance, and its surety, for which execution may issue if necessary.

ALLEN W. WALLACE, SENIOR JUDGE

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

SUSIE TOMLINSON v. ZURICH AMERICAN INSURANCE

**Chancery Court for Madison County
No. 65452**

No. W2009-01350-WC-R3-WC - Filed August 30, 2010

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, Zurich American Insurance, and its surety, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM