

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

KNOXVILLE, MARCH 1996 SESSION

**FILED**

**July 10, 1996**

**Cecil Crowson, Jr.**  
Appellate Court Clerk

BILLY CLEVINGER, )  
 )  
Plaintiff-Appellant, )  
 )  
vs. )  
 )  
BURLINGTON MOTOR CARRIERS, )  
INC., )  
 )  
Defendant-Appellee. )

Hawkins County,

Hon. Ben K. Wexler

No. 03S01-9508-CV-00092

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**MEMORANDUM OPINION**

Members of Panel:

**Penny J. White, Justice, Supreme Court**  
**William H. Inman, Senior Judge**  
**Joseph C. Loser, Jr., Special Judge**

**AFFIRMED**

**White, Justice**

This workers' compensation appeal from the Hawkins County Circuit Court has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated Section 50-6-225(e)(3) (1995 Supp.) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. For the reasons set forth below, we affirm the judgment of the trial court.

## I.

The plaintiff, Billy Clevinger ("employee"), is a resident of Hawkins County, Tennessee. The defendant, Burlington Motor Carriers, Inc., ("employer"), is a trucking company with its principal place of business in Indiana. The employee, who was hired in Tennessee, worked for the employer as truck driver.

On December 1, 1993, the employee was driving one of the employer's trucks from Kentucky to Arkansas. While traveling through Tennessee on the way to Arkansas, he was involved in a single vehicle accident. The employee was hospitalized for a short time due to injuries sustained in the accident. He then returned to his home in Hawkins County.

On December 28, 1993, the employee signed a document sent to him by the employer's claim adjustor entitled "Agreement to Compensation of Employee and Employer." The form contained the heading "Indiana Workers' Compensation Board, . . . Indianapolis, Indiana." The document included information concerning the date of injury, the type of injury (bruised left arm and strain of lower back), the place of injury, the employee's average weekly wage, and the amount the employee would be receiving as temporary total disability. The form also contained the declaration that "[w]e (employee and employer) have reached an agreement in regards to compensation for the injury sustained by said employee . . . ." The form further indicated that the "terms of the agreement . . . shall be payable . . . until terminated in accordance with the provisions of the Indiana Workers' Compensation/Occupational Diseases Acts." The employee

concedes that he signed the agreement and returned it to the account manager responsible for handling workers' compensation claims for the employer, who also signed it. The employee subsequently received benefits as set out in the agreement.

On April 22, 1994, the employee filed the instant workers' compensation claim in the Circuit Court for Hawkins County, Tennessee, seeking benefits under Tennessee law. The employer moved for summary judgment, asserting that the employee's execution of the agreement and receipt of payments made pursuant to Indiana law entitled it to a dismissal because the employee elected to receive benefits under Indiana law.

The trial court agreed with the employer and dismissed the case, holding that the "execution of the agreement [and] acceptance of workers' compensation benefits constitutes a showing that the [employee] made a binding election to receive benefits under Indiana law, which election precludes the awarding of benefits under Tennessee law." This appeal resulted. The sole issue is whether the employee made a binding election of remedies.

Ordinarily, this case would be reviewed de novo upon the record of the trial court, accompanied by a presumption of correctness unless the evidence preponderated against the findings of the trial court. Tenn. Code Ann. § 50-6-225(e)(2) (1995 Supp.). However, a workers' compensation case appealed from a summary judgment order is not controlled by the de novo standard of review; rather, it is governed by the standard of review for summary judgment disposition under Rule 56 of the Tennessee Rules of Civil Procedure. See Downen v. Allstate Ins. Co., 811 S.W.2d 523, 524 (Tenn. 1991). Thus, we review the record without attaching any presumption of correctness to the trial court's judgment. McCall v. Wilder, 913 S.W.2d 150, 153 (Tenn. 1995).

## II.

Our previous decisions regarding election of remedies are instructive. In Perkins v. BE & K, Inc., 802 S.W.2d 215 (Tenn. 1990), the employee, a Tennessee resident, was injured in the course and scope of his employment on a construction site in Virginia while working for an employer based in Florida. After the injury, the employee executed an “Agreement for Compensation” with the employer’s insurance carrier. This agreement set forth the employee’s name, his address in Tennessee, the name and address of the employer, the name of the employer’s insurance carrier, the date, place, nature and cause of the injury, the employee’s average weekly wage, and a provision that benefits would continue to be paid until terminated in accordance with the compensation laws of Virginia. Perkins v. BE & K, Inc., 802 S.W.2d at 216.

After receiving workers’ compensation benefits under the “Agreement for Compensation,” the employee in Perkins filed a workers’ compensation complaint in Tennessee. As in the present case, the employer filed a motion for summary judgment based on the agreement, contending that the claim was barred by the doctrine of election of remedies. The trial court agreed and granted the employer’s motion for summary judgment. The Supreme Court affirmed, holding as follows:

[T]he employee made an election to receive benefits under Virginia law and, therefore, is precluded from claiming benefits under Tennessee law.

...

The execution of the agreement, the acceptance of benefits, and the other circumstances of this case constitute a showing that the employee made a binding election to receive benefits under Virginia law, which election precludes the awarding of benefits under Tennessee law.

Perkins v. BE & K, Inc., 802 S.W.2d at 217. Accord True v. Amerail Corp., 584 S.W.2d 794 (Tenn. 1979)(employee executed a “Memorandum of Agreement as to Payment of Compensation,” a form similar to that involved in Perkins, and was precluded from pursuing benefits in Tennessee). Perkins also made it clear that “the circumstances of each case must be considered in determining whether the employee has made a binding election.” Perkins at 217.

Approximately two years after Perkins was decided, the Supreme Court again dealt with election of remedies in the context of workers' compensation in Hale v. Fraley's Inc., 825 S.W.2d 690 (Tenn. 1992). In Hale, the employee, a Tennessee resident, sustained a work-related injury in Virginia while working for a Virginia based employer. The employee subsequently executed two documents that acknowledged he had received workers' compensation benefits under Virginia law. The employee was never expressly advised that he was being paid under Virginia law. Hale v. Fraley's Inc., 825 S.W.2d at 691. He later filed suit in Tennessee seeking worker's compensation benefits. The employer argued that the employee was barred from receiving such benefits because he made a binding election to receive benefits under Virginia law. The Supreme Court disagreed, reasoning that the employee was not given an opportunity to make a knowledgeable and informed choice, but merely accepted the benefits that were tendered by the employer. Id. at 692. According to the Court, the employee "merely signed [the two] documents under circumstances where a reasonable person would expect to be required to execute a receipt." Id.

The most recent case involving the election of remedies question is Bradshaw v. Old Republic Inc. Co., \_\_\_\_\_ S.W.2d \_\_\_\_\_ (Tenn. 1996). In Bradshaw, the employee, a Tennessee resident, was working as a truck driver for a Tennessee employer when he sustained a work-related injury in Maryland. Unlike the employees in Perkins, Hale, and the present case, the employee in Bradshaw consulted a lawyer, who advised him that he could pursue a claim for workers' compensation benefits in either Maryland or Tennessee. Relying upon this advice, he sought benefits in Maryland. The Maryland Workers' Compensation Commission denied the employee's claim. One week later, he filed suit in Tennessee.

In summarizing the applicable law, the Court in Bradshaw observed:

[T]he Court has stated the general rule that an employee is precluded from making a benefits claims in Tennessee if, prior to filing that claim he or she: (a) affirmatively acted to obtain benefits in another state; or (b) knowingly and voluntarily accepted benefits under the law

of another state. In stating the general rule in these cases, the Court has not included in the first test (affirmative action to obtain out-of-state benefits) an element requiring an actual receipt of benefits. (Citations omitted).

...

While the receipt of benefits may be considered under the first test, it is not dispositive.

Bradshaw v. Old Republic Inc. Co., \_\_\_\_\_ S.W.2d at \_\_\_\_\_. The Bradshaw Court also identified three pertinent factors to be considered when determining whether there has been a binding election: (1) the prevention of vexatious litigation; (2) the prevention of forum shopping; and (3) the need to guard against unfair manipulation of Tennessee's legal system. Id. at \_\_\_\_\_.

Applying these factors to the facts in Bradshaw, the Court concluded that the employee was forum shopping and had actively sought benefits in another state, which proceeded to a decision on the merits. Id. at \_\_\_\_\_. Thus, his claim for benefits filed in Tennessee was barred.

### III.

Guided by the case law discussed above, we turn to the question of whether the employee's claim in the present case is precluded by the election of remedies doctrine. We find that it is. The agreement executed by the employee is virtually identical to the one executed in Perkins. As in Perkins, the agreement listed the employee's name and address in Tennessee, the name and address of the employer in Indiana, the name of the employer's insurance administrator, the date, place and nature of the injury, the average weekly wage and, importantly, a declaration that benefits would continue until terminated in accordance with the workers' compensation laws of Indiana.

Additionally, the employee in Perkins argued that, although he executed the agreement, he did not intend to be bound by or accept the law of Virginia as it related to benefits. The employee in the present case makes the same argument, and attempts to support it by relying upon the fact that the employer never informed him that he was

making an election of remedies. This argument makes too little of the fact that the employee signed an agreement to receive workers' compensation benefits under Indiana law. There is no indication that the employee did not have an opportunity to read and review the agreement prior to signing it, or to seek the advice of counsel before doing so. The agreement was clearly labeled, "Agreement to Compensation of Employee and Employer." Further, the form conspicuously identified the Indiana Workers' Compensation Board in its heading. It also provided that the employee would receive workers' compensation benefits "in accordance with the provisions of the Indiana Workers' Compensation/Occupational Diseases Acts." One who executes a document cannot be allowed to later claim that he was ignorant of its contents so long as there was an opportunity to read it prior to the signing. See Solomon v. First American Nat. Bank, 774 S.W.2d 935, 943 (Tenn. Ct. App. 1989); Teague Bros. V. Martin & Bayley, Inc., 750 S.W.2d 152, 158 (Tenn. Ct. App. 1987).

Finally, we note that Hale v. Fraley's is distinguishable from the present case because the employee in Hale merely executed what amounted to receipts acknowledging acceptance of payments. The employee in the present case, however, executed a clearly labeled agreement for compensation prior to receiving benefits. Therefore, like the Court in Perkins, we hold that the execution of the agreement, the acceptance of benefits, and all the circumstances of the case establish that the employee made a binding election to receive benefits under Indiana law, which precludes seeking an award of benefits under Tennessee law.

For the foregoing reasons, the judgment of the trial court is affirmed.

Costs will be paid by the appellant.

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Penny J. White, Justice

CONCUR:

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William H. Inman, Senior Judge

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Joseph C. Loser, Jr., Special Judge



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JUDGMENT ORDER

This case is before the Court upon motion for review pursuant to Tennessee Code Annotated Section 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, which are incorporated here by reference;

Whereupon, it appears to the Court that the motion for review is not well taken and should be denied; 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.

IT IS SO ORDERED this \_\_\_\_ day of April, 1996.

PER CURIAM