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

FILED

November 20, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

JOE RINES, Plaintiff/Appellant v. MAHLE, INC. and ROYAL INSURANCE COMPANY, Defendants/Appellees and SUE ANN HEAD, DIRECTOR, DIVISION OF WORKERS' COMPENSATION, TENNESSEE DEPARTMENT OF LABOR, Third-party defendant/Appellee	)	HAMBLEN CIRCUIT NO. 03S01-9509-CV-00101 Hon. William L. Jenkins

For the Appellant :

Richard Baker
Gilreath & Associates
P.O. Box 1270
550 Main Ave., Ste. 600
Knoxville, TN 37901

For the Appellee-- Mahle, Inc. and Royal Insurance Company:

Thomas L. Kilday
Milligan & Coleman
Nationsbank Bldg.
Ste. 301
109 S. Main St.
Greeneville, TN 37744

For the Appellee-- Second Injury Fund:

Charles Burson
Atty. General & Reporter
Dianne Stamey Dycus
Asst. Attorney General
1510 Parkway Towers
404 James Robertson Pk.
Nashville, TN 37243-0499

M E M O R A N D U M O P I N I O N

Members of Panel:

E. Riley Anderson, Justice
William H. Inman, Senior Judge
Joe C. Loser, Jr., Special Judge

AFFIRMED. **INMAN, Senior Judge**

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.

This appeal results from the refusal of the trial court to modify a judgment entered April 20, 1993 that the employee sustained no permanent disability as a result of a job-related injury in 1990 but was entitled to future medical expenses associated with any spinal fusion he elected to undergo.

The petition to modify was filed November 23, 1994. The plaintiff alleged that he "has increased disability from surgery performed by Dr. Wallace over and above that which he had when this matter was previously heard."

The defendants [hereafter "employer"] moved to dismiss, alleging that the "Court has no jurisdiction to entertain the Petition filed on behalf of the plaintiff or to award him any relief and, further, that neither the provisions of T.C.A. § 50-6-231 nor of Rule 60.02, TENN. R. CIV. P., are applicable herein."

Thereafter, the plaintiff announced that he was relying exclusively upon T.C.A. § 50-6-231, which provides:

> **50-6-231. Lump payments final -- Modification of periodic payments for more than six months.** -- All amounts paid by employer and received by the employee or the employee's dependents, by lump sum payments, shall be final, but the amount of any award payable periodically for more than six (6) months may be modified as follows:
>
> (1) At any time by agreement of the parties and approval by the court; or
>
> (2) If the parties cannot agree, then at any time after six (6) months from the date of the award an application may be made to the courts by either party, on the ground of increase or decrease of incapacity due solely to the injury. In such cases, the same procedure shall be followed as in § 50-6-225 in case of a disputed claim for compensation.

The trial court granted the motion to dismiss, holding that since there was no "award payable periodically for more than six (6) months" the statute was inapplicable.

On appeal the plaintiff argues that the award of future medical expenses qualifies as an "award payable periodically" within the purview of the statute, as contrasted to the argument of the employer that "an award payable periodically"

refers to an award of monetary benefits for disability and does not encompass medical expenses. The reported cases construing T.C.A. § 50-6-231 involved lump-sum awards per settlement, as in *Nails v. Aetna Ins. Co.*, 834 S.W.2d 284 (Tenn. 1992), or per commutation, as in *Underwood v. Zurich Ins. Co.*, 854 S.W.2d 94 (Tenn. 1993), or where the employee did not receive the benefits to which he was entitled, as *in Caldwell v. Servs. Int'l, Inc.*, No. 88-64-1 (Filed at Nashville, July 24, 1989), or where the award was payable periodically for less than six months, as in *Leaver v. Rudy Sausage Co.*, 333 S.W.2d 555 (Tenn. 1960).

As held in *Nelson v. Cambria Coal Co.*, 158 S.W.2d 717, 721 (Tenn. 1942), "[t]here must be some limitation upon the time for reopening a case once decided. " The statute affords plenary relief to an employee who has been awarded benefits for disability lasting longer than six months, it does not contemplate a reopening on the basis that even if no disability benefits were awarded, an award of future medical expenses nevertheless triggers the application. If this were the case, no judgment would ever be final in the absence of any express agreement but would be subject to reopening *ad infinitum*. This interpretation would effectively emasculate the statute and eliminate the finality of judgments.

Our review is *de novo* on the record accompanied by the presumption that the findings of fact are correct unless the evidence otherwise preponderates. T.C.A. § 50-6-225(e)(2). The presumption does not apply to conclusions of law, *Presley v. Bennett*, 860 S.W.2d 857, 859 (Tenn. 1993). For the reasons appearing, we affirm the judgment at the costs of the appellant.

_____
William H. Inman, Senior Judge

CONCUR:

_____
E. Riley Anderson, Chief Justice

_____
Joe C. Loser, Special Judge

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE

JOE RINES,	(	
	(	
Plaintiff-Appellant,	(	
	(	
	(	
v.	(	Hamblen Circuit, No. 92-CV-481
	(	S. Ct. No. 03S01-9509-CV-00101
	(	
MAHLE, INC., AND ROYAL INSURANCE COMPANY,	(	Hon. William L. Jenkins, Judge
	(	
Defendants-Appellees,	(	
	(	
and	(	
	(	
SUE ANN HEAD, DIRECTOR, DIVISION OF WORKERS' COMPENSATION, TENNESSEE DEPARTMENT OF LABOR,	(	
	(	
Third-Party Defendant/Appellee.	(	AFFIRMED.

JUDGMENT ORDER

This case is before the Court upon motion for review 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, which are incorporated herein 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.

Costs will be paid by plaintiff-appellant, for which execution may issue if necessary.

IT IS SO ORDERED this ___ day of November, 1996.

PER CURIAM

ANDERSON, J. - Not participating.