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

**FILED**

**January 17, 1997**

**Cecil W. Crowson**
**Appellate Court Clerk**

| | | |
|---|---|---|
| KAREN JANE BAKER,<br><br>Plaintiff/Appellant | ) | DAVIDSON CIRCUIT |
| v. | ) | NO. 01S01-9605-CV-00098 |
| HCA HEALTH SERVICES OF TENNESSEE, INC., d/b/a CENTENNIAL MEDICAL CENTER,<br><br>Defendant/Appellee | ) | HON. BARBARA HAYNES JUDGE |

**For the Appellant:**
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**M E M O R A N D U M  O P I N I O N**

**Members of Panel:**

Chief Justice Adolpho A. Birch, Jr.
Senior Judge John K. Byers
Special Judge William S. Russell

**REVERSED and**
**REMANDED**

**BYERS, 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.

Plaintiff sought benefits for an occupational disease. The trial court granted defendant's summary judgment based on TENN. CODE ANN. § 50-6-306, finding that plaintiff failed to file her complaint within the one-year statute of limitations.

We reverse the trial court's decision and remand the case to the trial court for a hearing on the merits.

Plaintiff is a registered nurse who has worked for defendant for over twenty years. In the spring of 1992, while working as a post-anesthesia care unit (PACU) nurse, she began experiencing symptoms of what was diagnosed in the summer of 1992 as a sensitivity to latex. She was required to wear latex gloves and work around them daily, but because she wanted to continue to work, she tried, with the help of her employer, to avoid latex exposure at work. These efforts were unsuccessful, and she continued to have allergic reactions when she was near latex. Injury reports were filed by her supervisor on several occasions, including June 30, 1992, January 26, 1994 and March 31, 1994, when plaintiff had these allergic reactions to latex at work.

On April 5, 1994, plaintiff's physician told her that she could no longer work as a PACU nurse because of her allergy to latex, which was becoming more severe, and because she could not avoid exposure with that job.

In May, 1994, her employer placed her in a new position as admission assistant nurse, at the same wage, where she would not be in contact with latex. However, this position was eliminated In December, 1994 and she was then placed in an administrative position at a lower wage.

Plaintiff filed her complaint on November 14, 1994.

The trial court held:

> "Specifically, the Court finds that the undisputed facts in this case establish that the Plaintiff was told and knew, as early as July or August 1992, that she had developed an occupational disease (latex hypersensitivity), that this occupational disease was an incurable condition, that the occupational disease was caused by her exposure to latex at Centennial, and that her ability to do certain things at work in certain positions in the future would forever be affected.
>
> The Court is of the opinion that this undisputed knowledge triggered the running of the statute of limitations within TENN. CODE ANN. § 50-6-306, that the statute of limitations *was not otherwise tolled or revived* [emphasis added], and that the Plaintiff's Complaint is time-barred under the reasoning set out in *Adam v. American Zinc Co.,* 326 S.W.2d 425 (Tenn. 1959). Therefore, the Court is of the opinion that there are *no genuine issues of material fact* [emphasis added], that Centennial is entitled to a judgment as a matter of law, and that Centennial's motion shall be granted."

Plaintiff testified when deposed in January, 1995 that defendant " . . . paid and are still paying for my AeroBid inhaler and the chamber, the AeroBid chamber, which is a spacer you have to have with this." At oral argument, defendant did not deny the payment.

TENN. CODE ANN. § 50-6-203 provides:

> " . . . if within the one(1) year period voluntary payments of compensation are paid to the injured person . . . an action to recover any unpaid portion of the compensation . . . may be instituted within one (1) year from the time the employer shall cease making such payments . . ."

A workers' compensation appeal from a summary judgment is not controlled by the material evidence rule; it is governed by Rule 56, T.R.C.P. If any material evidence indicates that a genuine issue of material fact exists, summary judgment is inappropriate. *Blocker v. Regional Medical Center at Memphis,* 722 S.W.2d 660 (Tenn. 1987). Particularly in certain kinds of cases summary judgment should be entered cautiously, and this Court has previously emphasized that "questions involving the commencement of the statute of limitations in workers' compensation cases most often are factual in nature." *McLerran v. Mid-South Stone, Inc.,* 695 S.W.2d 181, 182 (Tenn. 1985); *Blocker, supra.* Any dispute over material facts or even an uncertainty as to whethere there are disputed material facts will render granting a summary udgment improper. *Price v. Mercury Supply Co., Inc.,* 682 S.W.2d 924, 929 (Ct. App. 1984). The response of the plaintiff to the motion for summary judgment alleges material facts, which, if true, would toll the running of the

statute of limitations.

We conclude that a genuine issue of material fact is presented and that the facts need to be more fully developed and considered before this case can be resolved; thus summary judgment was not appropriate.

We reverse the judgment of the trial court and remand the case for trial in accordance with this opinion. Costs are taxed to appellee.

_____
John K. Byers, Senior Judge

CONCUR:

_____
Adolpho A. Birch, Jr., Chief Justice

_____
William S. Russell, Special Judge

*IN THE SUPREME COURT OF TENNESSEE*

*AT NASHVILLE*

**FILED**

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| *KAREN JANE BAKER,* | } | *DAVIDSON CIRCUIT* |
| | } | *No. 94C-3691 Below* |
| *Plaintiff/Appellant* | } | |
| | } | *Hon. Barbara Haynes,* |
| *vs.* | } | *Judge* |
| | } | |
| *HCA HEALTH SERVICES OF TENNESSEE, INC., d/b/a CENTENNIAL MEDICAL CENTER,* | } | *No. 01S01-9605-CV-00098* |
| | } | |
| *Defendant/Appellee* | } | *REVERSED & REMANDED.* |

*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 will be paid by Defendant/Appellee for which execution may issue if necessary.*

*IT IS SO ORDERED on January 17, 1997.*

*PER CURIAM*