

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

FILED
January 3, 1997
Cecil W. Crowson
Appellate Court Clerk

CONNIE DRENNON,)
Plaintiff/Appellee)
)
)
v.) No. 01S01-9510-CV-00184
)
)
WALDENBOOK, INC.,) HON. ROBERT E. CORLEW,
) CHANCELLOR
)
Defendant/Appellant)
_____)

FOR APPELLANT:

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FOR APPELLEE:

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MEMORANDUM OPINION

MEMBERS OF PANEL:

ADOLPHO A. BIRCH, JR., CHIEF JUSTICE, SUPREME COURT
JOHN K. BYERS, SENIOR JUDGE
WILLIAM S. RUSSELL, RETIRED JUDGE

AFFIRMED

RUSSELL, RETIRED JUDGE

This appeal from the judgment of the trial court in a worker's compensation case 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) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

THE CASE

Connie Drennon was working as a picker and packer for Waldenbook, Inc. on July 14, 1989 when she experienced a cracking noise in her neck when pulling boxes off a shelf and her back and legs began to hurt. She reported this immediately, but the employer contends that it was not reported to the right person. However, she was terminated on July 28, 1989, and on August 7, 1989, the company nurse was fully advised and completed an Employee's First Report of Work Injury. Thereafter, one Tammy Graham, an employee of KM Administration Services, which administered Waldenbooks workers' compensation claims, attempted to telephone the injured former employee. Failing to reach her by telephone, she wrote her a letter on August 17, 1989, which contained this language:

Pursuant to the Workers' Compensation Act, please be advised that K mart Corporation is offering the Panel of Physician(s) listed

below. This information is being submitted in the event further treatment is needed.

Dr. Robert Russell Dr. John McInnis Dr.
David Gaw

The injured employee testified that she was instructed by the company nurse to go to Dr. Richard P. Garvin when she reported the injury, and she went to him three times. She was seen by his associate, Dr. Smith, and he wrote her a prescription which she had filled at the Kmart Pharmacy pursuant to the instructions of the company nurse. The nurse told her that "it was under workmens' comp and they would pay for it". The pharmacy never billed the employee. Dr. Garvin saw Ms. Drennon first on August 7, 1989. In a letter to her counsel dated October 6, 1989, Dr. Garvin is listed as an approved physician. On November 26, 1989, Dr. Garvin's insurance clerk wrote Ms. Drennon that "Workman's Compensation" had denied payment of her \$288.00 bill and asked her to remit payment.

The appellee was also treated extensively by Dr. David Gaw, and that substantial bill was not paid by or for the employer.

All of these details regarding medical treatment, approved physicians and unpaid bills impact upon the single issue before us.

THE ISSUE

The issue is whether or not this suit was barred by the one year statute of limitations. The injury occurred on July 14, 1989, and suit was brought on August 7, 1990.

THE TRIAL COURT'S JUDGMENT

The trial court ruled that the statute of limitation did not bar the suit, that the injured employee was entitled to a judgment based upon 12% permanent partial disability to the whole body, unpaid temporary partial disability of 20% for 41 days, unpaid medical expenses in the amount of \$5,380.44, and all necessary future medical expenses.

CONCLUSION

It is well settled that the applicable one year statute of limitation does not run until one year from the last payment of medical expenses growing out of the on-the-job injury. Tennessee Code Annotated Section 50-6-203. Field v. Lowe, 415 S.W. 2d 340 (Tenn. 1967). The fact that the employer here did not pay the bills of the company designated physicians for treatment rendered within one year of the filing of suit upon a compensation claim clearly and properly reported, and when the approved physicians were identified by the employer and used by the injured employee, and where the trial court found that the injury was compensable and found that the bills of the physicians are owed by the employer and judgment entered accordingly, the statute of limitation is tolled during the time of such treatment. The law should not and does not reward a denial of liability improperly proclaimed and a refusal by an employer to pay its approved physicians for services rendered an injured employee by allowing the invoking of a statute of limitation that would not have applied if their payment obligation had been met.

The judgment of the trial court is affirmed. Costs on appeal are assessed to the appellant. The case is remanded for all

necessary purposes.

WILLIAM S. RUSSELL, RETIRED JUDGE

CONCUR:

ADOLPHO A. BIRCH, JR.,
CHIEF JUSTICE, SUPREME COURT

JOHN K. BYERS, SENIOR JUDGE

