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

WILLIAM H. STAGNOLIA, JR.,	)	
	)	
Plaintiff/Appellant	)	CAMPBELL CHANCERY
	)	
v.	)	NO. 03S01-9706-CH-00062
	)	
LINCOLN BRASS WORKS, INC.,	)	HON. BILLY JOE WHITE,
	)	CHANCELLOR
Defendant/Appellee	)	
	)	
v.	)	
	)	
DINA TOBIN, Director and Trustee, Second Injury Fund, State of Tennessee,	)	
	)	
	)	
	)	
Cross-Defendant/Appellee	)	

For the Appellant	**For the Appellee**	**For the Appellee**
William H. Stagnolia, Jr.:	**Lincoln Brass Works:**	**Second Injury Fund:**
Gary W. Ferraris	Janet L. Hogan	John Knox Walkup
2111 First Tennessee Plaza	HOGAN & HOGAN	Atty. Gen. & Reporter
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M E M O R A N D U M O P I N I O N

Members of Panel:

Justice Adolpho A. Birch, Jr.
Senior Judge William H. Inman
Special Judge Roger E. Thayer

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 T.C.A. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

Plaintiff filed suit in 1989 for work-related injury to his left hand and alleged a related psychiatric disability. By final judgment entered September 5, 1991, the trial court awarded accrued and future medical and psychiatric benefits and permanent partial disability to his hand but found he had failed to prove any permanent psychiatric disability. The judgment was not appealed.

On January 20, 1995, plaintiff filed this suit alleging that (1) under T.C.A. § 50-6-231 he was entitled to modification of the 1991 final judgment due to increased psychiatric impairment, or (2) in the alternative, he was entitled to benefits for a new accidental [psychiatric] injury which occurred on September 2, 1994.

The trial court found that plaintiff had failed to prove that he gave timely notice to the employer of a new work-related accident, had failed to prove a new compensable injury, and was barred from reopening the prior case for modification of the award owing to the doctrine of *res judicata* and the statute of limitations, since the denial of permanent psychiatric disability in that case was never appealed.

The plaintiff appeals, insisting that notice of a new injury was provided to the defendant in a letter to the employer from his doctor and by comments made by the plaintiff at work, and that a particular stressful incident at work was a sufficient mental stimulus to constitute a new psychiatric injury. Defendant insists the trial judge correctly decided those issues and correctly held that the denial of permanent psychiatric disability in 1991 was not subject

to reopening, and also argues for termination or limitation of its liability for continuing psychiatric care under the first judgment, contending that the medical experts cannot differentiate between work-related and non-work-related symptoms.

We affirm the judgment of the trial court.

Review of the findings of fact made by the trial court is *de novo* upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise. T.C.A. § 50-6-225(e)(2); *Stone v. City of McMinnville*, 896 S.W.2d 548, 550 (Tenn. 1995). The application of this standard requires this Court to weigh in more depth the factual findings and conclusions of the trial courts in workers' compensation cases. *See Corcoran v. Foster Auto GMC, Inc.*, 746 S.W.2d 452, 456 (Tenn. 1988).

In 1989 plaintiff lost four fingers of his left hand at work when a machine malfunctioned and cut them off. He received medical care for the hand and psychiatric treatment for post-traumatic stress. When he returned to work he was transferred to the Maintenance Department, where he worked on machinery only when it was inoperative. He was a trainee, but after four years' training, was not promoted to a permanent maintenance job because he had failed to develop the necessary skills.

In September 1994 the employer transferred him back to operating machinery. He worked for one and one-half hours, became upset, told a manager that he could not return to working on machinery because it terrified him, and left. He went to his psychiatrist, Dr. Robert Demers, who sent a letter to the employer on September 13, 1994 which advised:

> "It has come to my attention that Mr. Stagnolia has been required to resume operating machinery at Lincoln Brass and this has caused a

> resumption of symptoms of anxiety and depression initially brought on by his on-the-job injury on a press at Lincoln Brass. Therefore, he should immediately be taken off such machinery and resume his maintenance position. If this is not possible, then he should be placed on workman's compensation."

Since the plaintiff had already demonstrated an inability to perform the maintenance job, he was offered a job as janitor, which he refused.

Dr. Demers diagnosed post-traumatic stress disorder, exacerbated by the stress of returning to the work of machine operator. He opined that plaintiff's job transfer was the event that resulted in permanent psychological impairment, and that plaintiff has moderate impairment of his ability to concentrate, adapt, function socially, and perform daily activities. He assessed 45 - 50 percent permanent partial impairment.

Dr. Ben Burston, independent medical examiner, diagnosed post-traumatic stress disorder and adjustment disorder with depressed mood. He assessed 15 percent impairment. Significantly, he opined that the permanent psychiatric impairment arose when plaintiff first injured his hand in 1989, and that the job-change incident was merely a temporary exacerbation of that impairment.

The trial court held that Dr. Demers' letter to the employer and the employee's statement to a manager that he could not work on machinery were not sufficient notice of a claim for a new workers' compensation injury.

T.C.A. § 50-6-201 provides that in order to receive workers' compensation benefits, an employee must give notice of an injury to the employer within 30 days after sustaining the injury. *Aetna Casualty & Surety Co. V. Long*, 569 S.W.2d 444 (Tenn. 1978). Notice must be calculated reasonably to convey the message that the employee has suffered an injury arising out of and in the course of employment. *Masters v. Industrial*

Garments Mfg. Co., Inc., 595 S.W.2d 811 (Tenn. 1980). Although the plaintiff told a manager that he could not work on machinery, he did not inform the employer that he had sustained a new work-related accidental injury or intended to make a new workers' compensation claim. *See International Playing Card v. Broyles,* 381 S.W.2d 888 (Tenn. 1964). Therefore, we find the trial court properly dismissed plaintiff's claim for benefits for a new psychiatric injury for failure of the employee to provide timely notice.

Plaintiff contends in the alternative that he is entitled to modification of his prior award for increase in disability under T.C.A. § 50-6-231, which provides:

> "(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."

The trial court held this issue was *res judicata,* reasoning that no award for psychiatric disability was made in the first suit, the judgment was not appealed, and it had been fully paid prior to the filing of the new complaint. We agree. When an award for workers' compensation benefits has been paid in full, either by lump sum or because all periodic payments have been made, the award is not subject to modification under T.C.A. § 50-6-231. *Underwood v. Zurich Insur. Co.,* 854 S.W.2d 94 (Tenn. 1993); *Britton v. Combustion Engineering, Inc.,* NO. 03S01-9409-CH-00080 [Sp. Workers' Comp. Panel, Knoxville, 3/17/95, adopted and affirmed per curiam.]

Finally, the employer insists that medical benefits for continuing psychiatric care under the first judgment should be terminated or limited because the medical experts cannot differentiate between work-related and non-work-related symptoms.

The employer is required to "furnish free of charge to the employee such medical . . . treatment . . . as ordered by the attending physician . . . made reasonably necessary by the accident . . . as may be reasonably required;" T.C.A. § 50-6-204(a)(1); *Wilkes v. Resource Authority,* 932 S.W.2d 458 (Tenn. 1996). Generally it is premature for courts to limit or deny medical benefits at the time of trial, *Roark v. Liberty Mut. Ins. Co.,* 793 S.W.2d 932 (Tenn. 1990), since treatment ordered by physicians designated by the employer are presumed to be necessary and reasonable. *Clarendon v. Baptist Mem. Hospital,* 796 S.W.2d 685 (Tenn. 1990). However, whether an employee is justified in seeking additional medical services to be paid by the employer without consulting him depends upon the circumstances of each case. *Bazner v. American States Ins. Co.,* 820 S.W.2d 742 (Tenn. 1991).

In this case, the medical evidence indicates that the treating physician has treated the plaintiff for numerous psychiatric problems, some of which are work-related and many of which are not. The procedure to be followed in these situations is outlined in *Bazner, supra,* which holds:

> "[A]n employee is entitled to recover any reasonable and necessary medical expenses in the future which are incurred as a result of a compensable injury. If and when application is made for any such future medical expenses, the trial judge will at that time and under the evidence then adduced have to determine whether the employer or its insurance carrier is liable for the payment of such expenses. . . . application made for post-judgment medical expenses should be made by petition in the original action . . . [and] plaintiff must show a direct causal relationship between the need for medical treatment and plaintiff's on-the-job injury . . ."

In accordance with the holding of *Bazner,* we hold that the employer shall be responsible for only that future medical care for which the plaintiff has made application to the trial court and which has been determined by the trial court to be directly causally related to the compensable injury of 1989, and to be reasonable and necessary.

The judgment of the trial court is affirmed at the costs of the appellant and the case is remanded for all appropriate purposes.

_____
William H. Inman, Senior Judge

CONCUR:

_____
Adolpho A. Birch, Jr., Justice

_____
Roger E. Thayer, Special Judge

IN THE SUPREME COURT OF TENNESSEE

AT KNOXVILLE

WILLIAM H. STAGNOLIA, JR.	)	
	)	
Plaintiff/Appellant	)	CAMPBELL CHANCERY
	)	
vs.	)	No. 13,770
	)	Hon Billy Joe White
	)	Chancellor
LINCOLN BRASS WORKS, INC.	)	
	)	No. 03S01-9706-CV-00062
Defendant/Appellee	)	
	)	
	)	
vs.	)	
	)	
	)	
DINA TOBIN, Director and Trustee, Second Injury fund, State of Tenn.	)	
Cross-Defendant/Appelle	)	

JUDGMENT ORDER

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation 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 plaintiff/appellant, William H. Stagnolia, Jr., and Gary W. Ferraris, surety for which execution may issue if necessary.

06/02/98

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 the plaintiff-appellant and sureties, for which execution may issue if necessary.

IT IS SO ORDERED this ____ day of June, 1997.

PER CURIAM

Anderson, J. - Not Participating

al to the Special Worker' Compensation 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 act 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 plaintiff-appellant, Vernon Harris and Gilbert and Faulkner. surety, for which execution may issue if necessary.

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