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

FILED

October 21, 1998

Cecil Crowson, Jr.
Appellate Court Clerk

ELIZABETH A. WILSON, Plaintiff/Appellee v. WORTHCO, INC. (d/b/a McDonald's Store #5092) and LUMBERMENS MUTUAL CASUALTY COMPANY, Defendants/Appellants	)	OBION CHANCERY NO. 02S01-9712-CH-00113 HON. WILLIAM MICHAEL MALOAN, CHANCELLOR

For the Appellants:	**For the Appellee:**
Steven W. Maroney Waldrop & Hall, P.A. 106 S. Liberty Jackson, TN 38301	Jimmy C. Smith Conley Campbell Moss Smith 317 South Third Street P.O. Box 427 Union City, TN 38261

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

Members of Panel:

Senior Judge John K. Byers
Special Judge F. Lloyd Tatum
Special Judge Paul R. Summers

AFFIRMED

BYERS, Senior Judge

OPINION

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.

The trial judge found the plaintiff had suffered a compensable injury and entered a judgment in her favor of 50 percent vocational impairment to the body as a whole.

The defendant raises the following issues:

I. Whether the trial court erred in rejecting Defendant's Motion to Dismiss on grounds that the statute of limitations had expired prior to the filing of Plaintiff's claim.

II. Whether the trial court erred in finding that Plaintiff's alleged injury was compensable and not a non-compensable aggravation of a pre-existing condition.

III. Whether the trial court erred in finding that the Plaintiff sustained a fifty percent (50%) permanent partial disability to the body as a whole.

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 findings, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 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 court in a workers' compensation case. *See Corcoran v. Foster Auto GMC, Inc.,* 746 S.W.2d 452, 456 (Tenn. 1988).

FACTS

The plaintiff was 49 years of age at the time of the occurrence, has a 10th grade education, a degree as a nursing aid, and has experience in labor intensive work such as computer and automotive work, carpentry, brick and block laying, and other related work.

On July 3, 1991, her back was injured when a box of hamburger patties fell on her shoulder in the course of her work with McDonald's.

The employer sent the plaintiff to Minor Medical Clinic, which referred her to Dr. Morris Ray. Dr. Ray saw her for an extended period of time.

STATUTE OF LIMITATIONS

The defendant contends the plaintiff's claim is barred by the one year statute of limitations set out in Tenn. Code Ann. § 50-6-203. The defendant claims the statute of limitations began to run on November 3, 1992 because this was the last day medical services were provided by Dr. Ray and therefore the filing of the complaint by the plaintiff on January 18, 1994 came too late.

In determining when the statute of limitations begins to run under the provisions of Tenn. Code Ann. § 50-6-203, the Supreme Court has held that a claim for compensation is timely filed within one year from the last date the defendant has furnished medical services. *Blocker v. Regional Medical Ctr.,* 722 S.W.2d 660 (Tenn. 1987); *Norton Co. v. Coffin,* 553 S.W.2d 751 (Tenn. 1977); *Fields v. Lowe Furniture Corp.,* 415 S.W.2d 340 (Tenn. 1967).

The question of when the defendant last furnished medical services for the plaintiff in relation to the injury she received is in dispute. The defendant contends the last medical care by Dr. Ray was on November 3, 1992, while the plaintiff says she was seen by Dr. Ray for her back on May 11, 1993.

Dr. Ray was asked about the release of the plaintiff from treatment in his deposition, and he testified that at the November 3, 1992 visit he noted among other things, "I would suggest that she continue exercise and be as active as possible and see her back on an as needed basis."

For further discussion of the issue of whether the plaintiff was released from treatment on that date, the record reveals the following:

> Q. (BY MR. MARONEY) Can you tell us whether or not this lady was released on November 3, 1992?
> A. I did not give her a specific followup appointment as of that date. I left the option open that if she had something that developed that was different or concerned her or she wished to, I would be glad to see her back, so she was not terminated, she was released from being required or requested to return on a specific date.
> Q. As far as you were concerned, can you tell us whether or not you felt your treatment of this lady had ended on that date?
> A. I did not anticipate, unless something developed further, that I would do anything further or differently. The next step, if the pain were intolerable, would be to consider fusion, which I do not do and I had referred her to different orthopedic surgeons for their opinions on that and that would be carried out by them.
> Q. And this lady did at some point return to your office; is that right?
> A. That's correct.
> Q. When was that?
> A. She returned May 11, 1993.
> Q. And what did you see her for on that date?

> A. She had continued complaint [sic] of back and bilateral lower extremity pain, but her new complaint of several months duration was of progressively severe numbness in both hands and with waking numbness in both hands.

Dr. Ray on November 10, 1995 signed an affidavit which basically set out his view of when he released the plaintiff from care. This version is little different from his testimony in the deposition.

The plaintiff testified she was not told by Dr. Ray that he was releasing her from care for her back on November 3, 1992. The record reflects that in August of 1993 the clinic, out of which Dr. Ray practiced, notified the plaintiff that the insurance carrier would not pay for any further treatment for the injury to her back.

There is nothing in the record to indicate the plaintiff was ever told by Dr. Ray or the defendant that she was released from care on November 3, 1992. There is no report by Dr. Ray introduced in this record informing the defendant of such release or finding any medical impairment rating for the injury.

The trial judge found that the plaintiff had no knowledge that Dr. Ray had released her from treatment on November 3, 1992 and that the plaintiff did not know until August 1993 that no more treatments or services would be furnished to the plaintiff. The record supports this finding.

The defendant argues that the trial court improperly imposed a requirement of actual knowledge on the part of the plaintiff of termination of benefits before the statute of limitations begins to run. In the case of *Nancy Evans v. Kayser-Roth Hosiery, Inc.,* No. 37, Roane County (filed at Knoxville Mar. 26, 1990), the Supreme Court held that the termination of benefits triggers the running of the statute of limitations if the employer knows the benefits have been terminated. Actual knowledge therefore seems to be the rule.

The question then becomes: whether the plaintiff had knowledge that medical benefits were terminated on November 3, 1992. We think not.

Dr. Ray testified he intended to terminate the treatment of the plaintiff for the back injury on November 3, 1992. However, there is no independent objective evidence in this record to show he communicated this to the plaintiff. He testified he advised her to return to him if there was need or, in medical parlance, “P.R.N.” Neither the insurance company nor McDonald’s introduced any evidence to show they had advised the plaintiff they were terminating further medical treatment. The

only evidence concerning a communication to the plaintiff of the termination of medical care was the showing that in August of 1993 the clinic where the plaintiff obtained care advised her that the insurance company would no longer pay for treatment for her back.

The knowledge that medical care was to be terminated was known by at least the insurance company and Dr. Ray, their selected physician. Neither of them communicated this to the plaintiff. The determination of when a person needs no further treatment for an injury or when no further treatment will be beneficial is a medical decision to be made by the treating physician. It is something beyond the ability of a patient to determine and the application of the "reasonably should have known" rule does not apply in such circumstances.

COMPENSABILITY

The plaintiff has spondylolisthesis, a degenerative disease, which had caused some problem for 25 years. Dr. Ray testified he could not find any evidence that the accident changed the anatomical condition of the plaintiff. The defendant says therefore that the accident only increased the plaintiff's pain and is thus not compensable under the holding in *Smith v. Smith's Transfer Corp.,* 735 S.W.2d 221 (Tenn. 1987), and various other cases which followed *Smith.*

We think, however, this case differs from *Smith* because Dr. Ray testified the plaintiff's injury caused the symptoms which she now has and was of the opinion that the plaintiff could have worked with the preexisting condition and that she cannot continue now in that type work. Further, Dr. Ray was of the opinion the work related injury triggered her current disability.

In *Hill v. Eagle Bend Mfg., Inc.,* 942 S.W.2d 483 (Tenn. 1997), the Supreme Court held:

> An employer is responsible for workers compensation benefits, even though the claimant may have been suffering from a serious pre-existing condition or disability, if employment causes an actual progression or aggravation of the prior disabling condition or disease which produces increased pain that is disabling.

The injury to the plaintiff is compensable.

EXTENT OF DISABILITY[1]

The trial court found the plaintiff 50 percent vocationally impaired to the body as a whole. The evidence shows that prior to the injury the plaintiff was capable of and did perform heavy physical work such as brick and block laying, etc. Since the injury, according to her testimony and the testimony of others, she can no longer do this type of work.

Dr. Ray determined the plaintiff had a seven percent medical impairment to the body as a whole as a result of spondylolisthesis. He testified the symptoms she now suffers were caused by the accident at work. Further, he testified she could no longer perform the type of work she had pursued during her working life. Based upon all of this, we find the evidence does not preponderate against the award of 50 percent to the body as a whole.

The judgment is affirmed. The cost of this appeal is taxed to the defendant.

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John K. Byers, Senior Judge

CONCUR:

_____
F. Lloyd Tatum, Special Judge

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Paul R. Summers, Special Judge

[1] The injury in this case occurred prior to 1992 and is not subject to the limitations of awards under Tenn. Code Ann. §§ 50-6-241(a)(1) and (b).

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ELIZABETH WILSON, Plaintiff/Appellee, vs. WORTHCO, INC. (d/b/a McDonald's Store #5092 and LUMBERMENS MUTUAL CASUALTY COMPANY, Defendants/Appellants.	)	OBION CHANCERY NO. 17,800 Hon. William Michael Maloan, Chancellor NO. 02S01-9712-CH-00113 AFFIRMED.

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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 Appellants and surety, for which execution may issue if necessary.

IT IS SO ORDERED this 21st day of October, 1998.

PER CURIAM