IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
KNOXVILLE, DECEMBER 1998 SESSION

FILED

June 21, 1999

Cecil Crowson, Jr.
Appellate Court
Clerk

JEAN E. CARTER CIRCUIT	)	HAMBLEN
	)	
Plaintiff/Appellant	)	
	)	
V.	)	Hon. Kindall Lawson,
	)	Circuit Judge
MORRISTOWN-HAMBLEN HOSPITAL ASSOCIATION	)	
	)	
Defendant/Appellee	)	No. 03S01-9806-CV-00055

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:

E. Riley Anderson, Chief Justice
John K. Byers, Senior Judge
Roger E. Thayer, Special Judge

REVERSED and REMANDED. THAYER, Special 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.

The employee, Jean E. Carter, has appealed from the action of the trial court in dismissing her claim by sustaining a motion for summary judgment filed by the employer, Morristown-Hamblen Hospital Association. The circuit judge ruled the claim was barred because of the expiration of the one year statute of limitations.

The record indicates plaintiff was injured at work on June 24, 1992. The complaint for workers' compensation benefits was filed on September 16, 1997, which was over five years after the accident. It is apparent the accident was treated as a compensable claim as the insurance company had paid medical bills totaling $69,495.23 prior to the period of time in question and had also paid a total of $7,182.00 in temporary total disability benefits for the periods June 25, 1992 through July 20, 1992 and December 7, 1993 through May 1, 1994. Also a total of $16,791.13 in "temporary partial disability payments" had been paid to plaintiff for the period May 2, 1994 through February 18, 1996.

Defendant's motion for summary judgment is supported by the affidavit of Deborah Howard, an insurance claims adjuster. It establishes the last payment of benefits was during March 1996 and the last payment of a medical expense was on July 8, 1996 in the sum of $7.96 for medication purchased during December 1993.

Plaintiff responded to the motion by filing an affidavit, attaching letters which she had received from the insurance company and filing defendant's answers to interrogatories.

Her affidavit stated she was 72 years of age and had been employed as a registered nurse at the hospital; that she had sustained injuries to both knees and she was not aware there was a time limit requiring her to take any action concerning her claim; that she never thought about it being necessary to file a lawsuit; that the insurance company had paid her medical bills and had been paying her for her injuries; that the only time a suggestion was made concerning a period of time to take action was when she received the August 27, 1997 letter advising the time

period had expired and the insurance company would not be responsible for any further payments on her claim.

A letter dated April 1, 1996 from the insurance company to plaintiff stated her doctor had given her a 15% disability rating to the body and they were prepared to settle for 30% permanent impairment less certain benefits which had already been paid for a settlement offer of $26,483.16; and that the company was not accepting any responsibility for her left knee and they looked forward to hearing from her shortly regarding settlement of the claim.

She received a copy of a letter dated January 6, 1997 which the insurance company wrote to the hospital. This correspondence advised the hospital she had reached her maximum medical improvement and was no longer eligible to receive "temporary partial benefits" and that any such benefits already paid would be deducted from any final settlement.

The August 27, 1997 letter to her advised the last medical payment was on June 7, 1996 and the statute of limitations ran on July 7, 1997.

Ordinarily, the review of a workers' compensation case is de novo on the record accompanied by a presumption of the correctness of the findings of fact unless the preponderance of the evidence is otherwise. T.C.A. § 50-6-225(e)(2). However, an appeal from a summary judgment order in a workers' compensation case is not controlled by the de novo standard of review provided by the Workers' Compensation Act but is governed by Rule 56, T.R.Civ.P.; *Downen v. Allstate Ins. Co.,* 811 S.W.2d 523 (Tenn. 1991).

No presumption of correctness attaches to decisions granting summary judgment because they involve only questions of law; on appeal the reviewing court must make a fresh determination concerning whether the requirements of Rule 56 have been met. *Gonzales v. Alman Const. Co.,* 857 S.W.2d 42 (Tenn. 1993).

In workers' compensation cases summary judgment should be entered cautiously as questions involving the commencement of the statute of limitations most often are factual in nature. *Blocker v. Regional Medical Center at Memphis,* 722 S.W.2d 660 (Tenn. 1987); *McLerran v. Mid-South Stone, Inc.,* 695 S.W.2d 181, 182 (Tenn. 1985).

Plaintiff argues the summary judgment record creates an issue of fact regarding the commencement of the one year statute of limitations. The hospital responds by stating plaintiff's failure to take any legal action after payment of the last disability benefit during March 1996 and the last medical payment during July 1996, caused the claim to be barred one year after these payments were made.

While the general rule provides that suit for workers' compensation benefits must be filed within one year from the date of the accident or within one year from the voluntary payment of compensation (T.C.A. § 50-6-203 as the statutory language existed in 1992), factual circumstances may exist which results in the employer or insurance carrier being estopped to rely upon the statute or having waived the defense of the statute. *Humphreys v. Allstate Insurance Co.,* 627 S.W.2d 933 (Tenn. 1982).

In the *Humphrey* case, the employee was injured on July 25, 1977 and suit was not filed until March 11, 1980. On several occasions during the years 1978 and 1979 the insurance company wrote letters to the employee stating it would be willing to negotiate a settlement of the claim at any time. The last communication by the employee to the insurance company indicated it might be at least another year before the employee would be in a position to settle. A year passed without further communication. On appeal the Supreme Court held the insurance company was estopped to rely on the statute as it was aware they were dealing with an uneducated, inexperienced lay person who would not have expected the company to place a time limit upon settlement negotiations.

In examining the summary judgment record, we are required to view all affidavits in the light most favorable to the opponent of the motion and draw all legitimate conclusions of fact therefrom in that favor. *Keene v. Cracker Barrel Old Country Store, Inc.,* 853 S.W.2d 501 (Tenn. Ct. App. 1992); *Blocker v. Regional Medical Center at Memphis,* supra.

In the present action, we find the statute of limitations had been tolled by actions of the insurance company for a period of almost four years when communications between the parties ceased. Although there is no evidence of misrepresentation to the employee, we are of the opinion it is reasonable to conclude that an inexperienced lay person could after almost four years be lulled into believing

a settlement would be negotiated at some point in time without a time limit being involved. This does not mean the insurance company is stuck with a tolled statute. As pointed out in the *Humphrey* case, if the company desired to start the running of the statute, it could have so advised the claimant in clear language of its intention to invoke the statute during the course of correspondence to the claimant.

The burden of proof is on the moving party to show the absence of a genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Jones v. Home Indemnity Insurance,* 651 S.W.2d 213 (Tenn. 1983).

In construing the facts in the light most favorable to the opponent of the summary judgment motion, we find the requirements of Rule 56 have not been satisfied and that a material issue of fact does exist as to the commencement of the statute of limitations.

The judgment is reversed and the case is remanded for further proceedings. Costs of the appeal are taxed to defendant-appellee.

_____
Roger E. Thayer, Special Judge

CONCUR:

_____
E. Riley Anderson, Chief Justice

_____
John K. Byers, Senior Judge

FILED

June 21, 1999

Cecil Crowson, Jr.
Appellate Court
Clerk

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 on appeal are taxed to the defendant-appellee.

IT IS SO ORDERED this ____ day of _____, 1998.

PER CURIAM

Anderson, C. J. - Not participating.