

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT JACKSON  
April 24, 2017 Session

**JEFFREY SCOTT BECK v. CITY OF BROWNSVILLE, ET AL.**

**Appeal from the Chancery Court for Haywood County  
No. 2012-83 George R. Ellis, Chancellor**

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**No. W2016-01402-SC-R3-WC – Mailed June 15, 2017; July 18, 2017**

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Jeffrey Scott Beck (“Employee”) filed a workers’ compensation complaint claiming he suffered a back injury six months earlier during the course and scope of his employment with the City of Brownsville (“Employer”). Employer denied that the alleged injury arose out of his employment and maintained that Employee failed to give timely notice of the alleged injury. The trial court determined that Employee’s notice was untimely and that Employee’s excuse for not providing timely notice was unreasonable. The trial court also concluded that Employee failed to establish causation. Employee appealed. The appeal has been referred to the Special Workers’ Compensation Appeals Panel for a hearing and a report of findings of fact and conclusions of law pursuant to Tennessee Supreme Court Rule 51. Following our review, we affirm the trial court’s judgment.

**Tenn. Code Ann. § 50-6-225(e)(1) (2014) (applicable to injuries occurring prior to July 1, 2014). Appeal as of Right; Judgment of the Chancery Court Affirmed**

WILLIAM B. ACREE, JR., SR.J. delivered the opinion of the Court, in which ROGER A. PAGE, J., and PAUL G. SUMMERS, SR.J., joined.

William C. Sessions, III, Memphis, Tennessee, for the appellant, Jeffrey Scott Beck.

John D. Burleson and Matthew R. Courtner, Jackson, Tennessee, for the appellees, City of Brownsville, and TML Risk Management Pool.

## **OPINION**

### **Factual and Procedural Background**

In August 2010, Employee was hired as a fireman for the Employer. During his first year, a probationary period, Employee was warned on multiple occasions about his tardiness and performance issues related to putting on his fireman's gear in an expeditious manner. He was instructed to work with Lt. Robert Dancy in an effort to improve the time it took him to dress in fireman's gear.

On May 18, 2011, Employee and two other firefighters were engaged in a timed exercise of putting on the gear. Employee testified that he felt a "pop" in his lower back and a pain radiate down his leg when he grabbed his air pack, which weighed 20 to 30 pounds. Employee also testified that he did not tell anyone about the incident, and he thought he only pulled a muscle. Employee further testified that, based on his conversations with Captain Smith about "walking a thin line," he did not want a trip to the doctor to cause him to lose his job.

On Saturday, May 23, 2011, Employee left work to attend his stepson's graduation. When he returned to work Lt. Dancy noticed Employee walking with a hunched-over posture and asked Employee if his back was hurting. Employee told Lt. Dancy that his pain was caused by sitting on the bleachers at his stepson's graduation. On May 25, 2011, after informing Chief Foster about his observations, Lt. Dancy informed Employee that he could not return to work until his back was "a hundred percent."

Employee initially saw a chiropractor, but the treatment provided no relief. Next, he went to the emergency room believing he may have a

kidney stone. The emergency room staff referred Employee to Dr. Adam English, a primary care physician. Employee saw Dr. English on May 31, 2011. Dr. English testified that Employee gave no indication that his back pain was associated with his employment as a firefighter. Dr. English noted a history of disk herniation and referred Employee to Dr. Timothy Sweo, an orthopedic surgeon.

On June 3, 2011, Employee saw Dr. Sweo. Employee first spoke with Susan Martin, a nurse practitioner in Dr. Sweo's office. At that time, Employee complained of low back pain with no known injury. After unsuccessful conservative treatment, Dr. Sweo ordered an MRI which revealed herniated disks. Dr. Sweo then referred Employee to Dr. Robert Talac, an orthopedic spine surgeon. On July 8, 2011, Dr. Talac performed a microdiscectomy.

At no time did Employee give any of his health care providers a history of an on-the-job injury; and, although Employee provided doctors' excuses to his supervisors, he did not inform them his injury could be work-related. He also did not indicate when he planned to return to work.

In August 2011, Captain David Smith recommended that Employee be terminated based on his previous tardiness and performance issues and because the fire department had been working shorthanded for some time. Capt. Smith testified about Employee's tardiness and performance problems. He recalled that, in late May 2011, he noticed that Employee appeared to have back problems; however, Employee never told him that his back problem was caused by an injury at work. He testified that from May until Employee's termination in September 2011, he could not recall having face-to-face communications with Employee. Instead, Employee dropped off doctors' excuses indicating that he would be off work at certain times.

Chief Foster also testified that he was aware Employee was off work beginning in May 2011, and he recalled that the first doctor's excuse mentioned a kidney stone. According to Chief Foster, Employee never communicated in person, via email, text, or telephone that his medical problem was related to his employment. Chief Foster recalled meeting with Capt. Smith about Employee's employment issues. He testified that he made the decision to terminate Employee, whose probationary period had been extended due to his leave. Employee was terminated from employment on September 20, 2011, and during the termination meeting, he did not state that his back problem was related to his job.

On September 27, 2011, Employee filed a notice with the city clerk stating that he injured his back while doing air pack training for the Fire Department in May 2011. This was the first notice that Employee gave Employer regarding his alleged back injury.

Employee exhausted the benefit review process on September 12, 2012. On November 27, 2012, Employee filed a worker's compensation complaint alleging he sustained his back injury during the course and scope of his employment with Employer. In its response, Employer denied that Employee's injury arose out of his employment and denied that Employee gave proper and timely notice of the alleged injury.

The trial court found that Employee's notice to Employer approximately four months after his alleged injury failed to satisfy the statutory requirements of Tennessee Code Annotated section 50-6-201. The court further determined that Employee's excuse for not following the requirements was unreasonable. Finally, the trial court concluded that Employee failed to carry his burden of proof as to causation. Employee appeals, contending the trial court erred in ruling that Employee did not meet the statutory requirements of Tennessee Code Annotated Section 50-6-201 and that his excuse for not following the

statutory requirement was unreasonable. As well, Employee argues that the trial court erred in ruling that Employee failed to carry the burden of proof for causation. The appeal has been referred to the Special Workers' Compensation Appeals Panel for a hearing and a report of findings of fact and conclusions of law pursuant to Tennessee Supreme Court Rule 51.

### **Standard of Review**

We review findings of fact in a workers' compensation case 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. Tenn. Code Ann. § 50-6-225(e)(2) (2014) (applicable to injuries occurring prior to July 1, 2014). "When the trial court has heard in-court testimony, considerable deference must be afforded in reviewing the trial court's findings of credibility and assessment of the weight to be given to that testimony." *Tryon v. Saturn Corp.*, 254 S.W.3d 321, 327 (Tenn. 2008) (citing *Whirlpool Corp. v. Nakhoneinh*, 69 S.W.3d 164, 167 (Tenn. 2002)). "When the issues involve expert medical testimony that is contained in the record by deposition, determination of the weight and credibility of the evidence necessarily must be drawn from the contents of the depositions, and the reviewing court may draw its own conclusions with regard to those issues." *Foreman v. Automatic Sys. Inc.*, 272 S.W.3d 560, 571 (Tenn. 2008) (citing *Orrick v. Bestway Trucking, Inc.*, 184 S.W.3d 211, 216 (Tenn. 2006)). We review the trial court's conclusions of law de novo upon the record with no presumption of correctness. *Seiber v. Reeves Logging*, 284 S.W.3d 294, 298 (Tenn. 2009)(citations omitted).

### **Analysis**

In this appeal, Employee challenges the trial court's rulings that he failed to give timely notice and that he failed to prove causation.

Because notice is a threshold issue, we first examine Employee's claim that he gave timely notice.

It is well settled that "[a]n employee who fails to notify his employer within thirty days that he has sustained a work-related injury forfeits the right to workers' compensation benefits unless the employer has actual notice of the injury or unless the employee's failure to notify the employer was reasonable." *Banks v. United Parcel Serv., Inc.*, 170 S.W.3d 556, 560-61 (Tenn. 2005) (citing Tenn. Code Ann. § 50-6-201(A) (1999 & Supp. 2004)).

The purpose of the notice requirement is to provide the employer "the opportunity to make a timely investigation of the facts while still readily accessible, and to enable the employer to provide timely and proper treatment for the injured employee." *Jones v. Sterling Last Corp.*, 962 S.W.2d 469, 471 (Tenn. 1998) (citing *Puckett v. N.A.P. Consumer Electronics Corp.*, 725 S.W.2d 674, 675 (Tenn.1987)). "In the absence of actual knowledge of the injury by the employer . . . or reasonable excuse by the employee for not giving notice, the statutory notice to the employer is an absolute prerequisite to the right of the employee to recover benefits." *Id.* at 471-72 (citing *Aetna Cas. & Sur. Co. v. Long*, 569 S.W.2d 444, 449 (Tenn.1978)). The employee has the burden of proving that the required notice was given or excused. *Id.* at 472.

In the instant case, Employee does not contend that he gave Employer notice of his alleged work injury within thirty days of its occurrence. Thus, we must consider whether Employer had actual knowledge of the injury or whether Employee had a reasonable excuse for failing to provide Employer with notice.

Employee asserts that Employer had actual knowledge of his back injury. His position is based on Lt. Dancy's testimony that he observed

Employee moving slowly on the day of his stepson's graduation and on Chief Foster's directive not to return to work until he was "one-hundred percent." Employee's argument is undermined, however, by his own responses to Lt. Dancy. Lt. Dancy specifically asked Employee what was wrong with his back, and Employee responded that he sat on the bleachers too long at graduation. He faults Lt. Dancy and Chief Foster for not pressing him further about the source of his back pain and for not offering instruction about workers' compensation policies and procedures. Employee admitted that he was aware of Employer's workers' compensation policy and notice requirement contained in the employee handbook provided to him when he was hired. He further admitted that he did not give notice that his back injury was work-related until September 2011. Even if Employer was aware of Employee's back pain, nothing in the record indicates that Employer knew Employee injured his back during the course and scope of his employment or that his back pain was related to such an injury. Therefore, Employee's argument that Employer knew his injury was work-related is without merit.

Employee also suggests that he did not give notice of his injury within thirty days because he was initially unsure whether he had strained a muscle or was suffering from a kidney stone. The record reflects that Employee first went to a chiropractor for a possible muscle strain. When the treatment proved unsuccessful, Employee went to the emergency room with complaints of a kidney stone. The emergency room referral eventually led Employee to an orthopedic surgeon who determined that Employee had two herniated disks. According to his own testimony, Employee knew in June 2011 that he had herniated disks; but he did not inform Employer that the herniated disks could be work-related. For these reasons, we are not persuaded by Employee's claim that his failure to give timely notice was essentially excused by a delay in diagnosis.

Finally, we consider whether Employee's excuse for failing to give timely notice was reasonable. Although Employee suggested various reasons for not giving his Employer notice, he primarily asserts that he did not give notice because he was afraid he would lose his job if he reported the back injury. The testimony establishes that Employee had several instances of tardiness, and he had performance issues relating to his inability to timely dress in fireman's gear. The warnings by his supervisors clearly communicated that Employee was "walking a fine line," and he could face termination. Employee believed that reporting his work injury could be the final straw. Employee expressed his fear of losing his job to some of the health care providers; however, the inquiry is not whether Employee had a reasonable fear of losing his job. Instead, the relevant inquiry is whether Employee's excuse for not timely reporting his work injury was reasonable. We agree with the trial court that Employee's fear of losing his job was not a reasonable excuse. As Employer points out, an employer may not fire an employee in retaliation for filing a workers' compensation claim. *See Thomason v. Better-Bilt Aluminum Products, Inc.*, 831 S.W.2d 291, 292 (Tenn. Ct. App. 1992). Accordingly, because Employee did not give timely notice and did not have a reasonable excuse for failing to do so, the evidence does not preponderate against the trial court's findings.

Because we have concluded that Employee failed to give Employer timely notice of his work injury, it is unnecessary to consider whether the trial court erred in determining that Employee failed to prove causation.

### **Conclusion**

We conclude that the trial court did not err in concluding that Employee failed to give timely notice of his alleged work-related injury and that his excuse for failing to give notice was unreasonable. The trial court's judgment is affirmed. Costs are taxed to Employee.



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WILLIAM B. ACREE, JR., SENIOR JUDGE

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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 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 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 are assessed to Jeffrey Scott Beck, and his surety, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM