IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
April 16, 2012 Session

BRYAN E. BROWN v. VINTEC COMPANY ET AL

Appeal from the Chancery Court for Rutherford County
No. 01-2969WC Robert E. Corlew, III, Chancellor

No. M2011-01308-WC-R3-WC - Mailed June 21, 2012
Filed July 27, 2012

The employee sustained a compensable injury to his lower back in August 1999. He returned to work in August 2000. He had back spasms related to the injury in May 2001 that caused him to be off work until August 2001. Thereafter, he worked until December 2008, when he was permanently laid off due to economic conditions. The settlement of his workers' compensation claim, which was approved by the trial court in July 2001, was based on the two-and-one-half times impairment cap, Tenn. Code Ann. § 50-6-241(a), and preserved his right to seek reconsideration on loss of employment. Following the December 2008 layoff, he filed this petition for reconsideration. His employer contended that reconsideration was time-barred by section 50-6-241(a)(2) because his loss of employment occurred more than 400 weeks after he returned to work in August 2000. The employee argued that his correct return to work date was in August 2001, and his petition was therefore timely. The trial court agreed with the employer, for whom judgment was entered, and the employee has appealed. We affirm the trial court's judgment.[1]

Tenn. Code Ann. § 50-6-225(e) (2008) Appeal as of Right;
Judgment of the Chancery Court Affirmed

WALTER C. KURTZ, SR. J., delivered the opinion of the Court, in which CORNELIA A. CLARK, C.J., and E. RILEY ANDERSON, SP. J., joined.

James S. Higgins, Nashville, Tennessee, for the appellant, Bryan Brown.

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[1] Pursuant to Tennessee Supreme Court Rule 51, this workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel for a hearing and report of findings of fact and conclusions of law.

Charles E. Pierce and Julie Cochran Fuller, Knoxville, Tennessee, for the appellees, Vintec Company and Travelers Insurance Company.

MEMORANDUM OPINION

Factual and Procedural Background

In 1985, Bryan E. Brown ("Employee") began working for Vintec Company, a manufacturer of automotive components. Within four years, Employee was promoted to line supervisor. He injured his back in August 1999. Vintec accepted the injury as compensable. Dr. Arthur Cushman, a neurosurgeon, was his treating physician. Dr. Cushman performed a surgical repair of the L4-5 disk. In August 2000, he released Employee to return to work in a light duty capacity, and in November 2000, he released Employee to full duty and assigned a permanent impairment rating of 8% to the body as a whole.

Employee testified that after his initial return to work in August 2000, Dr. Cushman prescribed additional physical therapy and pain management injections. Employee missed work while receiving physical therapy. In May 2001, Employee had severe muscle spasms at work and was transported to an emergency room. Dr. Cushman took Employee off work until late July 2001. Employee received additional temporary total disability benefits from Vintec during that period. In July 2001, the trial court approved a settlement of Employee's workers' compensation claim against Vintec based on the two-and-one-half times impairment cap.[2] Vintec was in a seasonal shutdown in July, and Employee took two additional weeks of vacation time before returning to work in August 2001. Employee continued to work at Vintec until December 2008, when he was permanently laid off due to economic conditions. On May 15, 2009, he petitioned for reconsideration of his July 2001 settlement pursuant to Tennessee Code Annotated section 50-6-241(a)(2). The petition named Vintec, Travelers Insurance Company (Vintec's workers' compensation insurer), and Johnson Controls, Inc. (Vintec's parent company) as defendants.

Johnson Controls filed a motion for summary judgment based on three grounds. First, it asserted that it was not a proper party to the reconsideration action because it was not a party to the 2001 settlement. Second, it asserted that Employee's petition was not entitled to reconsideration under section 50-6-241(a)(2) because his loss of employment occurred more than 400 weeks after his August 2000 return to work. Finally, it asserted that the

[2] In 2004, the Workers' Compensation Act was amended to reduce the cap on permanent partial disability benefits to one-and-one-half times the impairment rating for injuries that occur after July 1, 2004. Tenn. Code. Ann.§ 50-6-241(d)(1)(A) (2008 & Supp. 2011).

petition was barred by the one-year statute of limitations because Vintec ceased to exist in May 2002 when it merged into Hoover Universal, Inc., citing section 50-6-241(a)(2).

Vintec and Travelers Insurance filed a separate motion for summary judgment based upon Johnson Controls' second and third arguments.

Employee responded to the motions for summary judgment by asserting that his return to work occurred in August 2001, which was within 400 weeks of his December 2008 layoff and that Johnson Controls had been his employer throughout his tenure at Vintec. Employee asserted that the one-year statute of limitations under section 50-6-241(a)(2) had not been triggered by the merger of Vintec into Hoover because the merger did not result in a loss of employment by his pre-injury employer.

The trial court granted Johnson Controls' motion because it had not been a party to the 2001 settlement.[3] It otherwise denied the motions.

The trial of this case took place in April 2011. The trial court issued its decision from the bench and found for Employee on the corporate control issue. More importantly for this appeal, it found that Employee had returned to work for purposes of section 50-6-241(a)(2) in August 2000. His loss of employment in December 2008, therefore, occurred more than 400 weeks after his return to work, and he no longer had a right to seek reconsideration of his July 2001 settlement.

The trial court stated:

> The problem . . . is that . . . there was never a restart of that return-to-work date. The fact that Mr. Brown was off work, even the fact that he received temporary disability payments, I can't find would restart that right return-to-work date. And given that circumstance, I think we're hopelessly over the 400-week time period. I think, then, respectfully it's my duty to find that Mr. Brown, unfortunately, is not entitled to reopen.

The trial court also made an alternative finding that, in the event Employee's right to seek reconsideration had not expired, he had sustained a 44% permanent partial disability to his body as a whole, inclusive of the 2001 settlement, due to his 1999 injury. Judgment was entered in accordance with the trial court's findings.

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[3] This dismissal is not raised on appeal.

The sole issue raised on appeal by Employee is that the trial court erred by finding that his return to work occurred in August 2000, and therefore his loss of employment occurred outside the 400-week window.

Standard of Review

The standard of review of the trial court's findings of fact is de novo upon the record of the trial court accompanied by a presumption of the correctness of the findings, unless the preponderance of evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (2008). The trial court is given considerable deference regarding issues of credibility and the weight afforded to witness testimony when the trial judge saw and heard the witnesses. Madden v. Holland Grp. of Tenn., Inc., 277 S.W.3d 896, 900 (Tenn. 2009). When the issues involve expert medical testimony 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 regarding those issues. Foreman v. Automatic Sys., Inc., 272 S.W.3d 560, 571 (Tenn. 2008). A trial court's conclusions of law are reviewed de novo upon the record with no presumption of correctness. Seiber v. Reeves Logging, 284 S.W.3d 294, 298 (Tenn. 2009).

Analysis

Tennessee Code Annotated section 50-6-241(a)(2) states in pertinent part:

> In accordance with this section, the courts may reconsider, upon the filing of a new cause of action, the issue of industrial disability. . . . The reconsideration may be made in appropriate cases where the employee is no longer employed by the pre-injury employer and makes application to the appropriate court within one (1) year of the employee's loss of employment, *if the loss of employment is within four hundred (400) weeks of the day the employee returned to work.*

Tenn. Code Ann. § 50-6-241(a)(2) (emphasis added).

Employee asserts that the phrase "the day the employee returned to work," as used in section 50-6-241(a)(2), should be construed as the date of the employee's "meaningful return to work." Employee asserts that his return to work in August 2000 was not meaningful, because Dr. Cushman took Employee off work in May 2001 for a period of time after his hospitalization for back spasms, and Employee did not go back to work until August 2001.

Employee therefore asserts that his "meaningful return to work" was in August 2001, putting him within the 400-week limitation for reconsideration.

The "meaningful return to work" concept is used to determine whether an employee's maximum permanent partial disability award is limited to the lower caps under sections 50-6-241(a)(1) and (d)(1)(A), or whether an employee can seek reconsideration of a settlement that was limited by those caps. Williamson v. Baptist Hosp. of Cocke Cnty., Inc., 361 S.W.3d 483, 488 (Tenn. 2012); Tryon v. Saturn Corp., 254 S.W.3d 321, 328-30, 333 n.25 (Tenn. 2008). The cap on permanent partial disability benefits is now one-and-one-half times the impairment rating when an employee has the opportunity to return to work at his place of employment at the same or a greater wage; the cap on benefits is six times the impairment rating when an injured employee has not returned to his place of employment. Williamson, 361 S.W.3d at 488. If an employee has made a "meaningful return to work," the lower cap applies; if an employee has not made a "meaningful return to work," the higher cap applies. Id.

We conclude that the concept of a "meaningful return to work" used to determine the cap of an employee's permanent partial disability benefits under sections 50-6-241(a)(1) and (d)(1)(A) does not apply to the phrase "the day the employee returned to work" as used in section 50-6-241(a)(2).

The Special Workers' Compensation Appeals Panel has addressed the interpretation of this statutory language in Wells v. Nissan North America, Inc., No. M2007-02657-WC-R3-WC, 2009 WL 928281 (Tenn. Workers' Comp. Panel Apr. 7, 2009) (Koch, J.). In that case, the employee was injured in 1997. Id. at *1. She missed no work due to the injury, immediately returned to work, and continued to receive medical care while she worked. Id. She reached maximum medical improvement in June 2003. Id. She then settled her claim in October 2003 subject to the two-and-one-half times impairment cap in effect at that time. Id. In September 2006, she lost her employment for reasons unrelated to her work injury. Id. at *2. She then sought reconsideration of her settlement pursuant to Tennessee Code Annotated section 50-6-241(a)(2). Id. The trial court found that she had returned to work, for purposes of that section, within a few days of her 1997 injury. Id. Because her loss of employment occurred more than 400 weeks after that date, her right to seek reconsideration had therefore expired. Id.

On appeal before the Special Workers' Compensation Appeals Panel, she asserted that her return to work for purposes of section 50-6-241(a)(2) began when she reached maximum medical improvement, and that the 400 week period therefore began in June 2003. Id. The panel rejected her argument and affirmed the decision of the trial court. Id. at *3. The panel clearly held that the phrase "return to work" means precisely what it says: "The trial court's

determination that the four hundred week period began running on the day of or within a few days of the injury [when she returned to work], rather than on the date the employee reached maximum medical improvement, is consistent with the plain meaning of the statute." Id. The panel rejected any other interpretation as that would "improperly amend or alter this provision beyond its obvious meaning." Id. We conclude, as the Wells panel did, that the language of 50-6-241(a)(2) is unambiguous and therefore must be construed according to its plain meaning. The language of section 50-6-241(a)(2) refers to the actual date on which an employee returns to work for his or her pre-injury employer.

We note that injured employees are often permitted by their physicians to return to work under temporary limitations or restrictions as part of the recovery process. Employers often accommodate injured employees by providing alternative work within such temporary limitations or restrictions. However, employers are sometimes unable to accommodate an employee's permanent medical restrictions, or an employee may find that he is unable to perform his assigned job. See, e.g., Howell v. Nissan N. Am., Inc., 346 S.W.3d 467, 470, 472-73 (Tenn. 2011). Thus, it is not unusual for an employee to return to work many weeks or months before it can be determined whether or not the return is meaningful. See Lay v. Scott Cnty. Sheriff's Dep't, 109 S.W.3d 293, 299 (Tenn. 2003) (employee may be deemed to have made a meaningful return to work before reaching maximum medical improvement). We therefore conclude that "the day the employee returned to work," Tenn. Code Ann. § 50-6-241(a)(2) refers to the actual date on which an employee returns to work, rather than the date on which the return becomes "meaningful."

Based upon the plain meaning of Tennessee Code Annotated section 50-6-241(a)(2), we conclude that the evidence does not preponderate against the trial court's finding in this case.

Conclusion

The judgment of the trial court is affirmed. Costs are taxed to appellant Bryan Brown and his surety, for which execution may issue if necessary.

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WALTER C. KURTZ, SENIOR JUDGE

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JUDGMENT

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 Bryan Brown and his surety, for which execution may issue if necessary.

PER CURIAM