IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
April 20, 2020 Session

KENNETH BRIAN COATES v. TYSON FOODS, INC.

Appeal from the Obion County Chancery Court
No. 32,758 William M. Maloan, Chancellor

No. W2019-00904-SC-R3-WC – Mailed June 10, 2020; Filed July 28, 2020

Kenneth Brian Coates ("Employee") worked as a feed mill supervisor for Tyson Foods, Inc. ("Employer"). On June 6, 2013, Employee was using a sledge hammer to help unload soybean meal from a railcar when he started to feel pain in his elbows. Employee sought treatment with his family physician, who diagnosed him with tennis elbow in both arms, and informed him that his symptoms may resolve. On December 23, 2014, Employee met with an orthopedic surgeon who recommended surgery. The surgery was performed on Employee's right elbow in January 2015 and on his left elbow in March 2015. Employee did not miss any work related to his injury until the date of his first surgery. Employee did not return to work for Employer following his surgeries. Employee filed a Request for a Benefit Review Conference with the Tennessee Department of Labor, which resulted in an impasse. Employee brought suit, and the trial court awarded him back temporary total disability benefits and permanent partial disability benefits. Relevant to the issues on appeal, the trial court determined that Employee's claim was timely filed and that he did not have a meaningful return to work. Employer has 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. We affirm the judgment.

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

ROGER A. PAGE, J., delivered the opinion of the court, in which ARNOLD B. GOLDIN, J. and KYLE C. ATKINS, J., joined.

Heather H. Douglas, Nashville, Tennessee for the appellant Tyson Foods, Inc.

Ricky L. Boren, Jackson, Tennessee for the appellee Kenneth Brian Coates.

OPINION

I. FACTUAL AND PROCEDURAL BACKGROUND

On June 23, 2015, Employee filed a Request for a Benefit Review Conference with the Tennessee Department of Labor, which resulted in an impasse. Employee filed this workers' compensation action in the Chancery Court of Obion County. The case proceeded to trial on February 20, 2019.

Testimony of Employee

Employee worked for Tyson Foods, Inc. as a supervisor at a feed mill. He supervised five to six employees, and also performed physical work himself. On June 6, 2013, Employee was helping unload soybean meal from a railcar. The meal "sets up like concrete," and Employee was using a sledge hammer to beat on the sides of the rail car. He testified that while he was swinging the sledge hammer, he "just started feeling pain in [his] elbows. And it was constant. It would not go away." Employee told his supervisor, Tim Laster,[1] about the pain "in conversation."

Employee testified that the pain did not get any better, and he went to see his family doctor, Dr. Bruce Smith, in August 2013. Dr. Smith gave him cortisone shots in each of his elbows. Employee told Dr. Smith that the pain was from using a sledge hammer at work. He further testified that he was told by Dr. Smith that the pain in his elbows might resolve itself. Employee saw Dr. Smith four times over the next year-and-a-half, but he did not improve.

On November 6, 2014, Employee filled out a "Team Member Statement of Injury or Illness" form with Employer. Employee stated on the form that he has tennis elbow in both arms from repeatedly swinging a sledge hammer and that the date of injury was June 2013. The form states "[i]f the injury was not reported on the date that it occurred, why

[1] The trial transcript refers to Mr. Laster as "Tim Lassiter." However, it appears from the record that this was a clerical error.

did you wait?" Employee responded on the form that he "[w]as told it may go away on its own, but hasn't." Employer initially provided Employee with a form to select an authorized treating physician, but Employee's claim was subsequently denied.

Employee saw Dr. Smith for the last time related to his elbows on December 14, 2014. At that appointment, Dr. Smith referred Employee to Dr. Phillip Hunt, an orthopedic surgeon. Employee met with Dr. Hunt on December 23, 2014, and Dr. Hunt performed surgery on Employee's right elbow in January 2015, and on his left elbow in March 2015. Prior to his surgeries, Employee had not missed any work related to his elbows and had continued working until the day of his first surgery.

Following his surgeries, Employee received letters from Employer related to his leave under the Family Medical Leave Act ("FMLA") and also spoke with Employer's human resources manager, LaShonda Cook. Ms. Cook informed Employee that his job was being posted in June 2015, after his FMLA benefits had expired. At that point in time, Employee still had restrictions and could not have returned to work. Employee also received letters ultimately extending his leave of absence through July 16, 2015. His leave had been extended because he provided the medical records necessary to extend his leave of absence. Employee's restrictions were lifted as of July 15, 2015. Employee then started working for Martin Farms in July 2015 as a farm hand. Employee testified that he did not return to Employer because his position had been filled, and he was told he "would be starting back at the bottom." When asked whether he did not want to return to Employer because he was not happy there, Employee responded "it was stressful."

Employee stated that he continues to have issues with his arms and elbows and has difficulty using wrenches, carrying his guns while hunting, and using a chain saw. He does not have any trouble driving the equipment at his new job.

Testimony of Tim Laster

Tim Laster, Employee's supervisor, also testified at trial. Mr. Laster confirmed that Employee oversaw five to six other workers and did physical work himself. In June 2013, Employee told Mr. Laster "[t]hat his elbow popped when he was beating on the railcar." Mr. Laster testified that Employee did not want to go to the nurse's station and fill out paper work because "[h]e thought it would be all right." Employee continued working and did not miss any work. However, Employee told Mr. Laster that his arm was hurting and he could hardly lift it up. Employee also told Mr. Laster that he was hoping it would get better. Mr. Laster estimated that Employer filled Employee's position four or five months after Employee left to have surgery.

Testimony of LaShonda Cook

LaShonda Cook, a Senior Human Resources Manager for Employer, also testified at trial. At the time of Employee's injury, she was a Complex Human Resources Manager for the facility where Employee worked. Ms. Cook testified that there is a difference between FMLA leave and Employer's leave of absence policy. Specifically, FMLA provides 480 hours of protection for the position an employee holds. Employer goes beyond that requirement and provides an employee with one year of leave that protects employment at Employer but not necessarily in the same position. Ms. Cook testified that those periods of time run concurrently. She further testified that an employee's medical provider sets the date range for the employee to be excused from work. As the end date approaches, Employer sends a letter to the employee reminding him or her of the date that the leave will end, including information on how the leave can be extended.

When Employee's FMLA leave was ending, Ms. Cook called Employee to inform him that Employer would be posting his position. She also sent him a letter providing that information in writing. Ms. Cook testified that Employee was not being terminated but that Employer was posting his position because there was only one feed mill supervisor and it was a critical position. Ms. Cook testified that she told Employee that when he returned, Employer would evaluate what positions were open at that time and what would be the best fit for him. Ms. Cook said that the goal of Employer is always to place a salaried employee back in a salaried position. Ms. Cook stated that when Employee's leave expired, he would have had a job at Employer in a supervisory role at the same grade and wage he had when he left, although it could have been in a different position. Ms. Cook testified that she did not tell Employee that he was going to have to start at the bottom and work his way up. Ms. Cook explained that Employee continued to submit information to extend his leave after receiving letters from Employer in March 2015 and May 2015, but he failed to provide any additional information to extend his leave of absence after receiving another letter from Employer in June 2015. She testified that Employee never sought to return to Employer.

Testimony of Gayle Ellegood

Gayle Ellegood manages the Occupational Health Services Department for Employer, which includes the medical management of workers' compensation claims. Ms. Ellegood testified at trial that Employee first reported an injury regarding his elbows in November 2014. Ms. Ellegood testified that Employee "was really hesitant to report." She said he told her that he had injured his elbows in June 2013 while swinging a sledge

hammer and had been receiving treatment from his personal physician.

Testimony of Dr. Apurva Dalal

Dr. Dalal, an orthopedic surgeon, testified by deposition. Dr. Dalal performed an independent medical examination on January 13, 2016, at the request of Employee's counsel. Dr. Dalal testified that Employee developed a ruptured tendon, referred to as "tennis elbow," in both arms when he was hitting a railcar with a sledgehammer. Dr. Dalal testified that Employee had a "modified Bosworth Procedure" on both elbows, during which "they cleaned out the tendon and sutured it back to the bone." Dr. Dalal testified that Employee reached maximum medical improvement on July 15, 2015. Employee told Dr. Dalal that he still had a lot of pain and limited use of his arms. Dr. Dalal's physical examination indicated severe tenderness and limitations on range of motion, although Employee still has a functional range of motion in both arms. Dr. Dalal provided a diagnosis of a tendon rupture at both elbows with residual impairment post-surgery. Dr. Dalal provided an impairment rating of five percent to each upper extremity.

Medical Records of Dr. Smith and Dr. Hunt

The parties stipulated to the medical records of Dr. Bruce Smith and Dr. Phillip Hunt. Dr. Smith's notes indicate that on August 9, 2013, he diagnosed Employee with tennis elbow in both arms related to his job. His notes from December 30, 2013, also show that Employee has tennis elbow in both arms that is "bothering him bad." His notes from February 26, 2014, continue to reference the pain related to tennis elbow in both arms. His notes from December 12, 2014, state that Employee "wants to quit hurting - they wake him up every night hurting." The notes indicate that Dr. Smith referred Employee to Dr. Hunt.

Dr. Hunt's notes indicate that he saw Employee on December 23, 2014. The notes from that appointment state that Employee's "elbows have been bothering him for over a year" and that he continues to take Aleve, which does not help, and has had three injections in each elbow. The notes state that Employee started having pain in both arms after the incident with the sledge hammer. Dr. Hunt's diagnosis at that visit was "bilateral tennis elbow." The notes state that Employee is "tired of putting up with the pain" and wants to proceed with surgery.

Decision of the Trial Court

Relevant to the issues on appeal, the trial court found that the statute of limitations did not begin to run until December 23, 2014, when Employee saw Dr. Hunt and learned

that his injuries necessitated surgery. Thus, the trial court held that Employee timely filed his Request for Benefit Review Conference on June 23, 2015. The trial court further held that Employee did not have a meaningful return to work because his termination was not voluntary or due to misconduct, and as a result his benefits are not subject to the 1.5 multiplier cap in Tennessee Code Annotated § 50-6-241(d)(1)(A) (applicable to injuries occurring on or after July 1, 2004, but before July 1, 2014).

II. ANALYSIS

Review of factual issues is de novo upon the record of the trial court, accompanied by a presumption of correctness of the trial court's factual findings, unless the preponderance of the evidence is otherwise. *See* Tenn. Code Ann. § 50-6-225(e)(2) (Supp. 2013). When the trial court has seen and heard the witnesses, considerable deference must be afforded the trial court's factual findings. *Tryon v. Saturn Corp.*, 254 S.W.3d 321, 327 (Tenn. 2008). No similar deference need be afforded the trial court's findings based upon documentary evidence such as depositions. *Glisson v. Mohon Int'l, Inc./Campbell Ray*, 185 S.W.3d 348, 353 (Tenn. 2006). Similarly, reviewing courts afford no presumption of correctness to a trial court's conclusions of law. *Seiber v. Reeves Logging*, 284 S.W.3d 294, 298 (Tenn. 2009). For injuries occurring prior to July 1, 2014, the workers' compensation law "is remedial in nature and must be given a liberal and equitable construction in favor of the employee." *Cantrell v. Carrier Corp.*, 193 S.W.3d 467, 472 (Tenn. 2006); Tenn. Code Ann. § 50-6-116 (2008).

A. Statute of Limitations

Employer argues on appeal that the trial court erred in holding that the statute of limitations for Employee's claim did not begin to run until December 23, 2014, when Employee saw Dr. Hunt. Instead, Employer asserts that the statute of limitations began to run at the date of injury, June 6, 2013, and thus Employee's claim, which was filed on June 23, 2015, is untimely.

In those instances, such as here, where an employer has not paid workers' compensation benefits, the right to compensation is barred unless the required notice[2] is given to the employer and a request for a benefit review conference is filed within one year "after the accident resulting in injury." Tenn. Code Ann. § 50-6-203(b)(1) (Supp. 2013).

[2] Notice has not been raised as an issue on appeal in this case.

The Supreme Court, however, has held that "the limitations period for workers' compensation cases pursuant to Tennessee Code Annotated section 203(b)(1) does not commence until a plaintiff discovers or, in the exercise of reasonable diligence, should have discovered that he has a claim." *Gerdau Ameristeel, Inc. v. Ratliff*, 368 S.W.3d 503, 508 (Tenn. 2012). As the Court explained in *Gerdau*, "[t]he statute of limitations commences to run at that time when the employee, by a reasonable exercise of diligence and care, would have discovered that a compensable injury had been sustained." *Id*. at 509 (internal citation omitted). "The question of whether the plaintiff has exercised reasonable diligence and care in discovering that he has a cause of action, however, is a question of fact." *Id.*

Here, the trial court determined that the statute of limitations did not begin to run until December 23, 2014, when Employee saw Dr. Hunt. We are required to give considerable deference to this factual determination by the trial court. *Tryon*, 254 S.W.3d at 327. We also are mindful that for this injury occurring prior to July 1, 2014, the workers' compensation law "is remedial in nature and must be given a liberal and equitable construction in favor of the employee." *Cantrell*, 193 S.W.3d at 472.

Employer has argued that the instant case is analogous to *Lyles v. Titlemax of Tennessee Inc.*, No. W2017-00873-SC-WCM-WC, 2018 WL 4440609 (Tenn. Workers Comp. Panel Sept. 14, 2018). In *Lyles*, the employee witnessed an armed robbery on May 19, 2010, and immediately began exhibiting symptoms of post-traumatic stress disorder (PTSD). *Id.* at *1. She was diagnosed with PTSD no later than July 13, 2010. *Id.* The employee, however, did not file a request for a benefit review conference until September 16, 2011. *Id.* The employee argued that, while she knew she suffered an injury due to the May 2010 armed robbery, she did not have knowledge that the injury was permanent until late February or early March of 2013, when she saw the results of a psychiatric evaluation indicating the injury was permanent. *Id.* at *3. The trial court rejected the employee's argument, holding that the claim was time-barred, and the Panel affirmed. *Id.* at *2, *4.

We, however find the instant case to be distinguishable from *Lyles*. As an initial matter, the instant case proceeded to trial where the trial judge had the opportunity to observe the witnesses and make credibility determinations, while *Lyles* was decided on employer's motion for summary judgment after the employee admitted to the employer's statement of undisputed facts. Moreover, Employee here testified that he believed, based on conversations with his treating physician, that his symptoms might go away on their own, and the trial court clearly credited his testimony. Although the employee in *Lyles* argued that she was not aware that her injury would not resolve, her lack of knowledge is different from Employee's belief in this case that his injury would resolve based on

conversations with his treating physician. Consequently, Employee continued treatment with his family doctor until he was referred to a specialist who recommended surgery, and he did not miss a day of work as a result of his injuries until his first surgery. In contrast, the employee in *Lyles* knew that, due to her symptoms, she was unable to carry out her job duties. Also, she stopped attending treatments with her counselor even though she was still experiencing the same symptoms.[3]

Reviewing the record as a whole, giving the required deference to the trial court's factual findings and construing the workers' compensation law liberally in favor of Employee, we hold that the evidence does not preponderate against the trial court's finding that the statute of limitations did not begin to run until Employee met with his surgeon in December 2014.

B. Meaningful Return to Work

Employer argues on appeal that Employee's permanent partial disability benefits are capped by the 1.5 multiplier in Tennessee Code Annotated section 50-6-241(d)(1)(A). Under that provision, the maximum permanent partial disability benefits that an employee may receive is 1.5 times the medical impairment rating if the pre-injury employer returns the employee to employment at a wage equal to or greater than the wage the employee was receiving at the time of the injury. Tenn. Code Ann. § 50-6-241(d)(1)(A) (applicable to injuries occurring on or after July 1, 2004, but before July 1, 2014). The Supreme Court has addressed whether an employee has a meaningful return to work, explaining:

> The circumstances to which the concept of "meaningful return to work" must be applied are remarkably varied and complex. When determining whether a particular employee had a meaningful return to work, the courts must assess the reasonableness of the employer in attempting to return the employee to work and the reasonableness of the employee in failing to either return to or remain at work. The determination of the reasonableness of the actions of the employer and the employee depends on the facts of each case.
> . . . . If [] the employee [] retires or resigns for personal reasons or other reasons that are not reasonably related to his or her workplace injury, the

[3] Employer also relies on *Bovee v. Home Depot USA, Inc.*, No. M2009-01645-WC-R3-WC, 2010 WL 3244886 (Tenn. Workers Comp. Panel Aug. 18, 2010). In that case, however, the employee had argued his claim was timely because it was gradual in nature. Employee has not made such an argument here.

> employee has had a meaningful return to work which triggers the [statutory cap].

Tryon, 254 S.W.3d at 328 (internal citations omitted).

The trial court found that Employee did not have a meaningful return to work because Employer posted his job and told him "he would have to start over." Employer argues that Employee was instead terminated after he failed to file any documentation in response to the letter from Employer extending his leave of absence through July 16, 2015. There was conflicting testimony at trial between Employee, who testified he was told he would have to "start from the bottom," and Ms. Cook, who testified that she made no such statement, and further testified that Employer would have attempted to place Employee in a position at the same grade and pay. The trial court credited Employee's testimony that he was told he would have to start over. Considering the deference that must be given to a trial court's assessment of in-court testimony, we affirm.

III. CONCLUSION

The judgment of the Chancery Court is affirmed. Costs are taxed to Tyson Foods, Inc., for which execution may issue if necessary.

_____

ROGER A. PAGE, JUSTICE

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

KENNETH BRIAN COATES v. TYSON FOODS, INC.

Chancery Court for Obion County
No. 32758

No. W2019-00904-SC-R3-WC – Filed July 28, 2020

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 Tyson Foods, Inc., for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM