IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
March 26, 2012 Session

DANA AUTOMOTIVE SYSTEMS GROUP, LLC ET AL. v. LARRY EVANS

Appeal from the Circuit Court for Gibson County
No. H3729 Clayburn Peeples, Judge

No. W2010-00656-WC-R3-WC - Mailed July 3, 2012; Filed August 2, 2012

An employee developed carpal tunnel syndrome. Before receiving medical treatment for that condition, he accepted an offer from his employer to resign in exchange for a lump sum payment of his retirement benefits. The offer was unrelated to the work injury. The trial court granted the employer's motion for partial summary judgment, finding that Tennessee Code Annotated section 50-6-241(d)(1)(A) (2008) limited the employee's award of benefits to one and one-half times the anatomical impairment in light of his voluntary retirement. On the date scheduled for trial, the trial court declined to hear evidence or permit an offer of proof concerning the voluntariness of his retirement and the extent of his vocational disability. Judgment was entered awarding permanent partial disability of one and one-half times the medical impairment. The employee has appealed. We vacate the judgment and remand the case to the trial court for a determination on the merits of the case.

Tenn. Code Ann. § 50-6-225(e) (2008) Appeal as of Right;
Judgment of the Circuit Court Reversed; Case Remanded

JANICE M. HOLDER, J., delivered the opinion of the Court, in which DONALD P. HARRIS, SR. J., and TONY A. CHILDRESS, SP. J., joined.

Jeffrey P. Boyd and Laura Ann E. Bailey, Jackson, Tennessee, for the appellant, Larry Evans.

William F. Kendall, III, Jackson, Tennessee, for the appellees, Dana Automotive Systems, LLC, and Hartford Casualty Insurance Company.

MEMORANDUM OPINION

Factual and Procedural Background

Larry Evans was a supervisor for Dana Automotive Systems ("Dana"), a manufacturer of automotive parts. In June or July 2007,[1] Dana held a meeting and offered a group of its workers, including Mr. Evans, the option to receive payment of accrued retirement benefits in a lump sum in exchange for a voluntary resignation. If he did not accept the offer, he could remain employed and receive monthly benefit payments at retirement. Mr. Evans accepted the lump-sum buyout offer on July 24, 2007, and retired effective August 16, 2007.

Prior to his retirement, Mr. Evans sought treatment from Dana for symptoms of carpal tunnel syndrome. On August 13, 2007, Dana presented Mr. Evans with a panel of physicians from which Mr. Evans selected Dr. James Lanter, an orthopaedic surgeon. Mr. Evans consulted Dr. Lanter on August 23, 2007. Dr. Lanter diagnosed Mr. Evans with bilateral carpal tunnel syndrome and performed surgery on Mr. Evans' hands on October 5 and November 30, 2007. Dr. Lanter released Mr. Evans from his care in January 2008, assigning 3% permanent impairment to the left arm and 4% to the right arm.

Mr. Evans obtained a medical evaluation from Dr. Apurva Dalal, who assigned an impairment of 10% to each arm. Dana initiated the Medical Impairment Registry (MIR) process. See Tenn. Code Ann. § 50-6-204(d)(5) (2008). Dr. Heather Gladwell performed the evaluation and opined that Mr. Evans retained a 5% impairment to each arm. Dr. Gladwell's report was approved by the Department of Labor and Workforce Development.

Mr. Evans requested a benefit review conference, which was held on January 13, 2009. Dana filed this action in the Circuit Court for Gibson County after the parties reached an impasse at the benefit review conference. A trial was scheduled for March 3, 2010.

Dana filed a motion for partial summary judgment, contending that Tennessee Code Annotated section 50-6-241(d)(1)(A) (2008) limited Mr. Evans' award to one and one-half times his impairment rating. The motion was supported by the discovery deposition of Mr. Evans and an affidavit of Ann Wallsmith, Dana's Human Resources Manager. Ms. Wallsmith's affidavit stated that Mr. Evans signed a "Voluntary Resignation Form" indicating that he intended to retire effective October 1, 2007, and that Mr. Evans later changed his form to retire effective August 16, 2007. Mr. Evans did, in fact, retire on August 16, 2007.

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[1] The affidavits and pleadings reflect different dates for the meeting. For purposes of this opinion we will adopt Mr. Evans' assertion that the meeting occurred in June or July 2007.

Mr. Evans opposed the motion and submitted his own affidavit and an affidavit of a former co-worker concerning the circumstances of the meeting at which Mr. Evans was offered the voluntary retirement package. The employees at that meeting were told that they could accept the lump-sum retirement payout or they could continue working. If they continued working, they would receive monthly payments at the time of their retirement. Dana was in bankruptcy proceedings at the time of the meeting, and Mr. Evans and his co-worker feared that they would receive no retirement benefits if they did not retire and accept the lump-sum payment.

Mr. Evans asserted in his deposition that he had developed symptoms of carpal tunnel syndrome early in 2007 and that he had notified his supervisor, Richard Sharp, of his symptoms in January 2007. When Craig Davis replaced Mr. Sharp as Mr. Evans' supervisor in either May or June 2007, Mr. Evans also told Mr. Davis that his hands were bothering him. Mr. Evans was then provided a panel of physicians in August 2007. Mr. Evans asserted that his employer failed to provide medical treatment for his carpal tunnel syndrome before he made his decision to take the early retirement package in July.

Following a hearing on March 1, 2010, the trial court granted partial summary judgment and entered an order stating that the one and one-half times impairment cap applied. The order contained no other findings. On the scheduled trial date, March 3, 2010, Dana asserted that there was no need for any additional proof to be presented. Relying on the summary judgment, Dana asserted that the maximum permanent partial disability was one and one-half times Dr. Gladwell's impairment rating and that there were no other disputed issues. No further orders were entered.

Mr. Evans filed a notice of appeal, and the case was set for oral argument before the Special Workers' Compensation Appeals Panel. See Tenn. Sup. Ct. R. 51, § 1. After oral argument, the Panel determined that no final, appealable order had been entered reflecting the findings of the March 3, 2010 hearing. The appeal was stayed and the case remanded to the trial court for entry of an order disposing of several issues:

> (1) whether or not Larry Evans sustained a compensable injury as alleged; (2) if so, what, if any, permanent partial disability he sustained as a result of that injury; (3) whether or not he is entitled to future medical care for the injury pursuant to Tennessee Code Annotated section 50-6-204; and (4) the amount of attorney's fees, if any, to be awarded.

On remand, the trial court entered a final judgment. The order stated that the parties had stipulated[2] that Mr. Evans had sustained a compensable work injury on or about April 2, 2007, and that Mr. Evans had reached maximum medical improvement on or about January 29, 2008. The order stated that Dr. Gladwell performed an MIR evaluation and opined that Mr. Evans retained a 5% impairment to each arm. The trial court determined that the award was limited to one and one-half times the medical impairment rating and awarded benefits of 7.5% to each arm.[3] The trial court awarded future medical expenses, discretionary costs, and statutory attorney's fees to Mr. Evans.

The appeal was reinstated to the docket of the Special Workers' Compensation Appeals Panel. On appeal, Mr. Evans contends that the trial court erred by granting Dana's motion for partial summary judgment and by not permitting an offer of proof "regarding the remaining factual issues" before entering final judgment.

Analysis

Summary judgment is appropriate in a case in which there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Tenn. R. Civ. P. 56.04; Kinsler v. Berkline, LLC, 320 S.W.3d 796, 801 (Tenn. 2010); see Mills v. CSX Transp., Inc., 300 S.W.3d 627, 634 (Tenn. 2009) (explaining that a party may avoid summary judgment by "clearly stat[ing] a genuine issue of material fact"). In deciding a summary judgment motion, we take all facts in a light most favorable to the nonmoving party. Staples v. CBL & Assocs., Inc., 15 S.W.3d 83, 89 (Tenn. 2000). The standard of review is de novo with no presumption of correctness attached to the trial court's conclusions. Teter v. Republic Parking Sys., Inc., 181 S.W.3d 330, 337 (Tenn. 2005).

When an employee has made a meaningful return to work, benefits are capped at one and one-half times the medical impairment rating. See Tenn. Code Ann. § 50-6-241(d)(1)(A). The question of whether an employee has had a meaningful return to work is a fact-intensive analysis. Williamson v. Baptist Hosp. of Cocke Cnty., Inc., 361 S.W.3d 483, 488, (Tenn. 2012). The focus of the inquiry is on "the reasonableness of the employer in attempting to return the employee to work and the reasonableness of the employee in failing to return to work." Newton v. Scott Health Care Ctr., 914 S.W.2d 855, 886 (Tenn. 1995).

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[2] The record on appeal does not contain any stipulations by the parties.

[3] The order also states that Dr. Dalal assigned a 10% impairment to each arm and that Dr. Lanter assigned a 3% impairment to the left arm and a 4% impairment to the right arm. Although the order does not indicate which impairment applies, the 7.5% impairment awarded is one and one-half times the impairment assigned by Dr. Gladwell.

Dana asserts that Mr. Evans voluntarily retired and that his failure to have a meaningful return to work resulted from reasons unrelated to his workplace injury. An employee who unilaterally resigns for reasons unrelated to his workplace injury cannot escape the statutory caps of Tennessee Code Annotated section 50-6-241. See Lay v. Scott Cnty. Sheriff's Dep't, 109 S.W.3d 293, 299 (Tenn. 2003). Dana also contends that Mr. Evans voluntarily resigned before he knew the full extent of his disability. A worker's voluntary resignation before the worker knows the full extent of the disability resulting from a work-related injury has been held to preclude the worker's claim that he did not have a meaningful return to work. Iacono v. Saturn Corp., No. M2008-00139-WC-R3-WC, 2009 WL 648962, at *6 (Tenn. Workers' Comp. Panel Mar. 12, 2009) (finding an employee's decision to retire was not reasonably related to his workplace injury when he retired before he knew the full extent of his injuries); see also Tryon v. Saturn Corp., 254 S.W.3d 321, 328-30 (Tenn. 2008) (collecting cases).

In response, Mr. Evans asserts that his resignation was not voluntary. Mr. Evans points to his affidavit and that of a co-worker stating that they were fearful of losing their retirement benefits if they continued working. He contends that he was coerced into voluntary retirement by the threat of the loss of his retirement benefits in the Dana bankruptcy proceedings. In addition, Mr. Evans' deposition reflects that he accepted the lump-sum retirement payout because his hands hurt. He contends that at the time he elected to take early retirement, he "did not think that [his] hands would ever get fixed."

With respect to the condition of his hands, Mr. Evans' deposition reflects that he provided notice to Mr. Sharp of problems with his hands in January 2007. After Mr. Davis replaced Mr. Sharp as Mr. Evans' supervisor in either May or June 2007, Mr. Evans again reported the problems with his hands. Dana provided Mr. Evans with a panel of physicians three days before the effective date of his retirement on August 16, 2007. Mr. Evans was not treated until August 23, 2007, and had carpal tunnel release surgery performed on his hands on October 5 and November 30, 2007.

Taking the evidence in a light most favorable to Mr. Evans, we conclude that Mr. Evans has presented sufficient evidence to demonstrate a genuine issue of material fact as to whether his retirement was reasonable under the circumstances. It is undisputed that he did not know the extent of his injuries at the time he was given the choice of retirement or continuing employment. The reasonableness of his choice, however, is a question of fact. Dana did not provide Mr. Evans with a panel of physicians until over a month after the company meeting detailing his retirement options. He was provided with the panel of physicians after he made his retirement election and only three days before his effective retirement date. Mr. Evans did not begin treatment until August 23, 2007, one week following the effective date of his retirement.

Mr. Evans' case is distinguishable from Iacono, in which a Special Workers' Compensation Appeals Panel held that an employee who retired before learning the full extent of his injury made a meaningful return to work. Iacono, 2009 WL 648962, at *6. In Iacono, the employee reported his shoulder injury to his employer, had surgery, and returned to work with work restrictions. Iacono, 2009 WL 648962, at *1. The work restrictions had a duration of four weeks. Iacono, 2009 WL 648962, at *2. The employee was offered early retirement before the work restrictions expired and had forty-five days to make his decision. Iacono, 2009 WL 648962, at *2. The employee's work restrictions would have expired before the employee had to make his decision. The employee retired immediately, before he knew whether he would be able to resume work with no restrictions. In Mr. Evans' case, he reported his condition to his supervisor, and his employer did not provide him with treatment options. At the time he elected to take early retirement, Mr. Evans "did not think that [his] hands would ever get fixed." Mr. Evans was not provided with any treatment options until several weeks after he made his retirement decision.

Having determined that material issues of fact exist concerning this issue, we reverse the trial court's grant of summary judgment. Kinsler, 320 S.W.3d at 801. Regrettably, we must remand this case to the trial court for a second time. In the interest of judicial economy and to speed the resolution of this case, we remand to the trial court with specific instructions for findings of fact and conclusions of law as to the following issues after a full hearing on the merits of the case:

1. the medical impairment rating applicable to Mr. Evans' injury;
2. whether the award of benefits is governed by Tennessee Code Annotated section 50-6-241(d)(1)(A) or by Tennessee Code Annotated section 50-6-241(d)(2) and the facts upon which the trial court relies to support that determination;
3. the extent of Mr. Evans' permanent impairment and the proper award of benefits;
4. if the trial court finds that Tennessee Code Annotated section 50-6-241(d)(1)(A) applies, alternative findings concerning the proper award of benefits pursuant to Tennessee Code Annotated section 50-6-241(d)(2) to permit this Court to resolve the case without further remand if the trial court is reversed on appeal; and
5. the total amount of costs and attorney's fees to be awarded.

We take this opportunity again to observe that workers' compensation cases must be expedited by giving them "priority over all cases on the trial and appellate dockets." Tenn. Code Ann. § 50-6-225(f)(1) (2008). The best practice, therefore, is to conduct proceedings that permit a trial court to make findings of fact and rule on the merits even when cases are resolved on a motion for summary judgment. Alternative findings prevent unnecessary delay

caused by a remand for further proceedings if a summary judgment is reversed. See Gerdau Ameristeel v. Ratliff, ___ S.W.3d ___, ___, 2012 WL 2045296, at *5 (Tenn. June 7, 2012); Barron v. Tenn. Dep't of Human Servs., 184 S.W.3d 219, 223 n.1 (Tenn. 2006).[4]

Conclusion

The judgment of the trial court is reversed and the case remanded to the trial court for findings of fact and conclusions of law consistent with this opinion. Costs of this appeal are taxed to Dana Automotive Systems, Inc., for which execution may issue if necessary.

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JANICE M. HOLDER, JUSTICE

[4] On March 3, 2010, two days after the trial court granted Dana's motion for summary judgment and on the date scheduled for a trial of the issues, Mr. Evans argued that he should be able to present additional evidence to support his position that the motion for summary judgment was not properly granted. Mr. Evans also requested permission to present evidence to enable the trial court to make an alternative ruling in the event that the trial court's ruling was reversed on appeal. The trial court declined both requests because of the dispositive nature of the motion for summary judgment. A trial court is not compelled to permit further evidence to be introduced after granting a motion for summary judgment. Both parties, however, are responsible for placing all evidence in the record that may provide the basis for a finding that material issues of fact exist and that granting a motion for summary judgment is inappropriate.

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No. W2010-00656-WC-R3-WC - Filed August 2, 2012

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 on appeal are taxed to the Appellee, Dana Automotive Systems Group, LLC, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM