

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT NASHVILLE  
November 25, 2013 Session

**JENNIFER GRAY v. ZANINI TENNESSEE, INC.**

**Appeal from the Chancery Court for Franklin County  
No. 19,092 Jeffrey F. Stewart, Chancellor**

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**No. M2013-00762-WC-R3-WC - Mailed February 26, 2014  
FILED APRIL 1, 2014**

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The trial court dismissed the employee's workers' compensation action because the employee had failed to exhaust her administrative remedies prior to filing suit as required by Tennessee Code Annotated section 50-6-203(a)(1) (2008). The employee's 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 in accordance with Tennessee Supreme Court Rule 51. We affirm the judgment of the trial court.

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

DONALD P. HARRIS, SP.J., delivered the opinion of the Court, in which SHARON G. LEE, J. and PAUL G. SUMMERS, SR.J., joined.

Jerre M. Hood, Winchester, Tennessee, for the appellant, Jennifer Gray.

Frank Thomas and Leighann D. Ness, Nashville, Tennessee, for the appellee, Zanini Tennessee, Inc.

**OPINION**

**Factual and Procedural Background**

The employee, Jennifer Gray, began working for Zanini Tennessee, Inc. ("Zanini"), a manufacturing concern, in March 1999. In February 2007, she developed bilateral carpal tunnel syndrome. Zanini accepted the injury as compensable. On January 20, 2009, Ms. Gray reported a gradual shoulder injury to Zanini.

On July 13, 2009, Zanini filed a request for a benefit review conference with the Department of Labor and Workforce Development. That request refers only to carpal tunnel syndrome, with an injury date of February 26, 2007. A “Benefit Review Conference Standard Discovery Form” completed by counsel for Zanini stated that Zanini disputed the compensability of the shoulder claim. Zanini’s “Position Statement” submitted to the benefit review conference specialist on August 11, 2009, stated, “It is also [Zanini’s] position that [Ms. Gray] has not suffered a work-related injury with regard to her shoulders. . . . [Zanini] would also like to attempt to settle [Ms. Gray’s] claims related to her shoulders on a doubtful and disputed basis.”

The benefit review conference was held on August 11, 2009, and an impasse report was issued on August 28, 2009. The impasse report makes no reference to the alleged shoulder injuries. In Ms. Gray’s response to Zanini’s statement of undisputed facts, it was “admitted with the exception that counsel for [Zanini] agreed to remove the shoulder issue from the Benefit Review Conference held in August of 2009 and to deal with it at a later time[,]” and that “[t]he issue involving [Ms. Gray’s] shoulders was removed from discussion at [Zanini’s] counsel’s request.” In an affidavit filed in response to Zanini’s motion for summary judgment, Ms. Gray stated:

In August of 2009 the Benefit Review Conference referenced in the defendant’s Motion for Summary Judgment, defendant’s counsel specifically requested and stated that we would remove the issue of the shoulders for discussion at a later date and that we would concentrate on trying to settle the bi-lateral carpal tunnel syndrome issues along with the elbow problems. Therefore, the issue of shoulders was removed from consideration and discussion at that time and only a settlement discussion was held with regard to the bilateral carpal tunnel problems.

On November 20, 2009, the trial court approved a settlement of Ms. Gray’s carpal tunnel syndrome claim. The settlement documents make no reference to Ms. Gray’s alleged shoulder injuries.

Ms. Gray filed suit in the Chancery Court for Franklin County on April 8, 2010, alleging that she sustained gradual injuries to both shoulders. The petition refers to medical treatment received by Ms. Gray in June, July and November 2009, but does not set out a specific date of injury. Zanini filed a motion for a more definite statement and subsequently filed a motion for summary judgment, contending that Ms. Gray had failed to exhaust her administrative remedies as required by Tennessee Code Annotated section 50-6-203(a)(1). In the alternative, the motion asserted that Ms. Gray’s claim was barred because it had been filed more than ninety days after the issuance of the impasse report by the Department of

Labor and Workforce Development in violation of Tennessee Code Annotated section 50-6-203(g)(1). On December 17, 2010, the trial court entered an order denying Zanini's motion for summary judgment on the grounds that "issues of material fact still exist as to when [Ms. Gray] knew or should have known of her injury, and when that injury was diagnosed. Therefore, the Court refrains from making any finding as to whether any applicable statute of limitations has expired in this matter." The trial court also ordered Ms. Gray to request a benefit review conference concerning her shoulder injuries.

A benefit review conference, held on April 19, 2011, resulted in an impasse. Following the trial of this case on October 16, 2012, the trial court took the matter under advisement. Subsequently, the trial court became aware of Chapman v. DaVita, Inc., 380 S.W.3d 710 (Tenn. 2012), a decision which directly addressed the administrative exhaustion requirement. After additional briefing by the parties, the trial court ruled that there had been no benefit review conference concerning Ms. Gray's alleged shoulder injuries at the time this action was filed. In accordance with the holding in Chapman, the trial court found that it did not have jurisdiction over the subject matter at that time and the subsequent benefit review conference did not cure that defect. It therefore ordered that the complaint be dismissed.

Ms. Gray filed a motion "for a new trial and/or rehearing." That motion was denied by the trial court on April 26, 2013. This appeal followed.

### **Analysis**

We review findings of fact in a workers' compensation case "de novo upon the record of the trial court, accompanied by a presumption of correctness of the finding, unless the preponderance of evidence is otherwise." Tenn. Code Ann. § 50-6-225(e)(2) (2008). A trial court's conclusions of law are reviewed de novo with no presumption of correctness. Seiber v. Reeves Logging, 284 S.W.3d 294, 298 (Tenn. 2009).

Tennessee Code Annotated section 50-6-203(a)(1) provides that "[n]o claim for compensation under this chapter shall be filed . . . until the parties have exhausted the benefit review conference process provided by the division of workers' compensation." In Chapman, the employee/plaintiff filed a request for assistance with the Department of Labor and Workforce Development in September 2010. 380 S.W.3d at 712. The department did not act on her request for six months. As a result of the delay, she filed suit. Id. Her employer filed a motion to dismiss, asserting that she had not exhausted the administrative process as required by section 50-6-203(a)(1). Id. One day before the hearing on the employer's motion, the department entered an administrative order granting the employee the medical treatment she sought. Id. The trial court denied the employer's motion to

dismiss and stayed the action pending further orders of the court. Id. The Supreme Court granted the employer's Tennessee Rule of Appellate Procedure 10 application for an extraordinary appeal.

The Court found that there was "clear legislative intent that the administrative process cannot be circumvented and must be exhausted." 380 S.W.3d at 714. Until the administrative process is exhausted, a trial court cannot acquire jurisdiction. Id. at 712. The Court noted that Tennessee Code Annotated section 50-6-225 provides as follows:

(a) (1) Notwithstanding any provisions of this chapter to the contrary, in case of a dispute over or failure to agree upon compensation under this chapter, between the employer and employee or the dependent or dependents of the employee, the parties shall first submit the dispute to the benefit review conference process provided by the division of workers' compensation.

(2) (A) In the event the parties are unable to reach an agreement at the benefit review conference as to all issues related to the claim or the benefit review conference process is otherwise exhausted pursuant to rules promulgated by the commissioner, either party may file a civil action as provided in § 50-6-203 in the circuit or chancery court. . . .

. . .

Examining the rules promulgated by the Department of Labor and Workforce Development pursuant to this statute, the Court found that there were five ways in which the administrative process could be exhausted short of completion of a benefit review conference. Id. at 713. Pursuant to Tenn. Comp. R. & Regs. 0800-2-5-.09(1) (2006), these were:

(a) Issuance of a Benefit Review Report which indicates an Order Denying Benefits based upon non-compensability of the claim has been issued by a Workers' Compensation Specialist . . . [;]

(b) Reaching a mediated settlement, as evidenced by a signed document executed by the proper parties and the Workers' Compensation Specialist;

(c) Issuance of an impasse report signed and dated by a Workers' Compensation Specialist[;]

(d) Conducting and completing mediation by private Rule 31 mediator,

provided the Department has failed to conduct a [benefit review conference] within 60 days of receipt of such a request, pursuant to Tenn. Code Ann. § 50-6-239(c);

(e) Issuance of a written waiver signed by the Director of the Benefit Review Program or the Director's designee[.]

Id. Finding that none of those criteria had been met, the Court concluded that the trial court did not have jurisdiction over the subject matter of the claim and ordered the dismissal of the complaint. Id. at 715.

The trial court in this case found that a benefit review conference had not been held concerning Ms. Gray's alleged shoulder injuries prior to the filing of the action. That finding is amply supported by the evidence, including most notably Ms. Gray's admission that the parties specifically removed the shoulder claim from consideration at the benefit review conference. The trial court then found, correctly, that none of the five circumstances set out in Tenn. Comp. R. & Regs. 0800-2-5-.09(1) were applicable in this case. Based on those findings, the trial court concluded that it did not have subject matter jurisdiction and dismissed the complaint. That action was dictated by its factual findings and is consistent with the Tennessee Supreme Court's holding in Chapman. We therefore conclude that the trial court acted properly in dismissing the action.

### **Conclusion**

The judgment of the trial court is affirmed. Costs are taxed to Jennifer Gray and her surety, for which execution may issue if necessary.

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DONALD P. HARRIS, SPECIAL 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 Jennifer Gray and her surety, for which execution may issue if necessary.

PER CURIAM