

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

January 23, 2012 Session

LOJAC ENTERPRISES ET AL. v. LEONARD J. KANIPE

Appeal from the Circuit Court for Davidson County
No. 10 C 3001 Amanda McClendon, Judge

No. M2011-01525-WC-R3-WC - Mailed April 9, 2012
Filed May 10, 2012

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 a report of findings of fact and conclusions of law. The employee was injured on the job and was able to return to his pre-injury position. His initial workers' compensation claim was settled after a benefit review conference. As a part of his settlement he retained a right of reconsideration pursuant to Tennessee Code Annotated section 50-6-241(d)(1) (2008). Subsequently, he lost his employment. After an impasse at the benefit review conference, his employer filed this action to reconsider the employee's benefits in the county where the injury occurred. The employee then filed a similar suit in the county of his residence. The employee filed a motion to dismiss the employer's action, contending that Tennessee Code Annotated section 50-6-241(d)(1)(B)(iv) does not permit an employer to file a reconsideration action. The employer contended that the statute did permit filing of a reconsideration action by an employer or in the alternative, the statute was unconstitutional. The trial court in the employer's case granted the motion to dismiss and found the statute constitutional. The employer has appealed. We affirm the judgment.

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

J.S. "STEVE" DANIEL, SP.J., delivered the opinion of the Court, in which WILLIAM C. KOCH, JR., J. and WALTER C. KURTZ, SR.J., joined.

Sarah H. Reisner and Michael L. Haynie, Nashville, Tennessee, for the appellants, Lojac Enterprises and Road Contractors Mutual Insurance Company.

Cynthia A. Wilson, Cookeville, Tennessee, for the appellee, Leonard J. Kanipe.

Robert E. Cooper, Jr., Attorney General & Reporter; William E. Young, Solicitor General; Alexander S. Rieger, Assistant Attorney General, for the appellee, Tennessee Department of Labor and Workforce Development.

MEMORANDUM OPINION

Does Tennessee Code Annotated section 50-6-241(d)(1)(B)(iv) permit an employer to file a reconsideration action and if not is the statute constitutional ?

Tennessee Code Annotated section 50-6-241(d)(1)(A) (2008) provides that an employee who sustains a compensable injury to either the body as a whole or certain scheduled members and is able to return to work for his pre-injury employer at a wage equal to or greater than his pre-injury wage may recover a maximum permanent partial disability benefit of one and one-half times the anatomical impairment caused by the injury. Sections 241(d)(1)(b)(i) and (ii) provide that if such an employee loses his employment within a specified period of time, he is entitled to seek reconsideration of his permanent partial disability benefits. Section 50-6-241(d)(1)(B)(iv) sets out the method for seeking reconsideration:

(iv) To seek reconsideration pursuant to subdivision (d)(B)(i) or (d)(B)(ii), the employee shall first request a benefit review conference within one (1) year of the date on which the employee ceased to be employed by the pre-injury employer. If the parties are not able to reach an agreement regarding additional permanent partial disability benefits at the benefit review conference, *the employee shall be entitled to file a complaint seeking reconsideration in a court of competent jurisdiction* within ninety (90) days of the date of the benefit review conference. Any settlement or award of additional permanent partial disability benefits pursuant to reconsideration shall give the employer credit for prior permanent partial disability benefits paid to the employee. Any new settlement or award regarding additional permanent partial disability benefits remains subject to the maximum established in subdivision (d)(2) and shall be based on the medical impairment rating that was the basis of the previous settlement or award.

(Emphasis added).

The employer asserts in the alternative that if section 50-6-241(d)(1)(B)(iv) does not authorize the employer to seek reconsideration of the employee's benefits that the statute violates Article I, section 17 of the Tennessee Constitution, which provides, in pertinent part, "That all courts shall be open; and every man, for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial, or delay."

Factual and Procedural Background

Since this matter was decided by dispositive motion, there was no trial. The facts are taken from the pleadings. For the purposes of this appeal, those facts are not disputed. Leonard Kanipe injured his back in the course of his employment in Davidson County on August 20, 2008. He was able to return to work for his pre-injury employer, Lojac Enterprises. His workers' compensation claim for this injury was settled at a benefit review conference, and the settlement was approved by the Department of Labor and Workforce Development on July 31, 2009 in Nashville, Tennessee. Mr. Kanipe continued to have problems from his back injury, and ultimately resigned his employment as a result of those problems. He thereafter sought reconsideration of his settlement through the benefit review conference process which ultimately concluded in an impasse. Thereafter, Lojac Enterprises and Road Contractors Mutual Insurance Co. filed this action in Davidson County seeking the review of Mr. Kanipe's benefits. Mr. Kanipe filed his own action seeking reconsideration in Putnam County where he resides. Mr. Kanipe filed a motion to dismiss Lojac's reconsideration action with the trial court.

Mr. Kanipe's motion to dismiss contends that Tennessee Code Annotated section 50-6-241(d)(1)(B)(iv) permits only an employee to file a reconsideration action. In response, Lojac argued that the statute permitted the filing of such an action by the employer or argues in the alternative that, if the statute prohibits an employer from filing a reconsideration action, it is unconstitutional. The Attorney General and Reporter was notified of the constitutional challenge in accordance with Tennessee Rule of Civil Procedure 24.04. He was permitted to intervene in the case by an agreed order. The Attorney General took the position that the trial court did not have subject matter jurisdiction of an action by the employer to reconsider benefits of an employee under section 50-6-241(d)(1)(B)(iv), and further asserted that the statute was constitutional.

After a hearing, the trial court granted Mr. Kanipe's motion and dismissed the complaint. It further held that section 50-6-241(d)(1)(B)(iv) was constitutional. Lojac has appealed, contending that the trial court incorrectly interpreted the statute, or in the alternative, that the statute is unconstitutional.

Standard of Review

This appeal raises only questions of law. “The interpretation of a statute and its application to undisputed facts involve questions of law.” *Seiber v. Reeves Logging*, 284 S.W.3d 294, 298 (Tenn. 2009). A trial court’s conclusions of law are reviewed de novo upon the record with no presumption of correctness. *Id.*; *Ridings v. Ralph M. Parsons Co.*, 914 S.W.2d 79, 80 (Tenn. 1996).

Analysis

Workers’ compensation is “a cause of action unknown to the common law, and one which is solely a creation of the General Assembly.” *Sowell v. Christy*, No. M2004-02186-COA-R3-CV, 2006 WL 568238, at *3 (Tenn. Ct. App. Mar. 8, 2006) (citing *Aerosol Corp. of the S. v. Johnson*, 435 S.W.2d 832, 836 (Tenn. 1968)). “When a statute creates a cause of action and designates who may bring an action, the issue of standing is interwoven with that of subject matter jurisdiction and becomes a jurisdictional prerequisite.” *Osborn v. Marr*, 127 S.W.3d 737, 740 (Tenn. 2004) (citing *Grom v. Burgoon*, 672 A.2d 823, 824 (Pa. Super. Ct. 1996)). The language of section 50-6-241(d)(1)(B)(iv) unambiguously authorizes only an employee to file a petition for reconsideration of a prior workers’ compensation award or settlement. Lojac insists that the language of that section must be read *in pari materia* with Tennessee Code Annotated sections 50-6-225(a)(2) (2008) and 50-6-203 (2008), both of which permit either an employer or employee to file an action to determine what benefits are due to an employee. We disagree.

“Statutes relating to the same subject or sharing a common purpose shall be construed together (“*in pari materia*”) in order to advance their common purpose or intent.” *Carver v. Citizen Utils. Co.*, 954 S.W.2d 34, 35 (Tenn. 1997). Lojac contends that sections 50-6-241(d)(1)(b)(iv), 50-6-225(a)(2), and 50-6-203 relate to the same subject matter, i.e., the procedures and requirements for filing a lawsuit under the workers’ compensation law. In its most general terms, that contention is correct. However, sections 50-6-225 and 50-6-203 are broader in scope, covering actions to determine compensability, assess permanent disability, initiate temporary disability or medical benefits, and to require payment of post-judgment medical expenses. Section 50-6-241(d)(1)(B)(iv), on the other hand, pertains solely to actions seeking reconsideration of a prior settlement or judgment where the employee has lost his employment. “Under the generally accepted rules of statutory construction, a special statute, or a special provision of a particular statute, will prevail over a general provision in another statute or a general provision in the same statute.” *Keough v. State*, ___ S.W.3d ___, ___, 2011 WL 6130538, at *4 (Tenn. 2011). Applying that rule here, we conclude that the trial court correctly held that section 50-6-241(d)(1)(B)(iv) does not permit an employer to file a reconsideration action.

Lojac insists that the trial court's interpretation of section 50-6-241(d)(1)(B)(iv) violates Article I, section 17 of the Tennessee Constitution, which provides, "That all courts shall be open; and every man, for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial, or delay." This section of our Constitution is sometimes referred to as the Open Courts Clause.

Lojac concedes that Tenn. Code Ann. § 50-6-241 specifically affords only employees the right to seek reconsideration. However, Lojac insists that construing this statute to prohibit employers from seeking reconsideration of an employee's benefits would violate Article I, Section 17 of the Tennessee Constitution. We disagree.

Reconsideration of disability benefits is a remedy afforded to the employee when the employee ceases to be employed by the pre-injury employer after the settlement of the employee's work-related injury with the right to return to work. This remedy, by statute, is the worker's remedy, not the employer's, and the General Assembly has the right to define, within constitutional limits, the extent of remedies available to the parties in workers' compensation cases.

The purpose of the workers' compensation laws is to provide financial and medical benefits to workers who have been injured on the job "in the most efficient, most dignified, and most certain form" possible. 1 Arthur Larson & Lex K. Larson, *Larson's Workers' Compensation Law* § 1.03[2](2009). The statutory remedies, defenses, and procedures provided by the workers' compensation statutes replace the remedies, defenses, and procedures that are associated with litigating common-law tort claims. These statutory remedies and procedures benefit employees because they provide employees with speedier and more certain relief than might otherwise be available through litigation. They also benefit employers by providing a process that does not have the expense and uncertainty of tort litigation and by providing statutory limits on liability exposure that are more manageable and predictable.

The General Assembly clearly has the power to replace common-law remedies with statutory remedies, as long as the statutory remedies are adequate substitutes for the common-law remedies. See *Nance v. Piano Co.*, 128 Tenn. 1, 10, 155 S.W. 1172, 1174 (1913); *Slover v. Union Bank*, 115 Tenn. 347, 350, 89 S.W. 399, 399 (1905). Because we find that the rights and remedies afforded to both employees and employers by the workers' compensation statutes are adequate substitutes to common-law tort remedies and procedures, we have concluded that Tenn. Code Ann. § 50-6-241 does not violate the Opens Courts Clause in Tenn. Const. art. I, § 17.

Although Lojac insists that the trial court's interpretation of section 50-6-241(d)(1)(B)(iv) violates Article I, section 17 of the Tennessee Constitution, the true gist of Lojac's argument is that section 50-6-241(d)(1)(B)(iv) is unconstitutional because it treats employers and employees differently. In our view, this argument is based upon equal protection principles, rather than access to the courts. Legislative actions that do not create a "suspect class" are reviewed under the "rational basis test." *Brown v. Campbell Cnty. Bd. of Educ.*, 915 S.W.2d 407, 413-14 (Tenn. 1995). Employers are not a suspect class. Therefore, the rational basis test is applicable. Under that test, "[i]n most instances the judicial inquiry into the legislative choice is limited to whether the classifications have a reasonable relationship to a legitimate state interest." *Doe v. Norris*, 751 S.W.2d 834, 841 (Tenn. 1988). Moreover, acts of the General Assembly are presumptively constitutional, and "we must indulge every presumption and resolve every doubt in favor of constitutionality." *Riggs v. Burson*, 941 S.W.2d 44, 51 (Tenn. 1997).

Our Supreme Court has previously determined that the system of caps and multipliers created by Tennessee Code Annotated section 50-6-241 serves a legitimate state interest. *See Brown v. Campbell Cnty. Bd. of Educ.*, 915 S.W.2d at 414-15. The existence of a method by which an employee may seek reconsideration of a "capped" settlement or award if he loses his employment is an important feature of that system, preventing unscrupulous employers from manipulating the system to the detriment of injured employees. *See Hardin v. Royal & Sunalliance Ins.*, 104 S.W.3d 501, 505 (Tenn. 2003), *superseded by statute on other grounds*, Act of May 20, 2004, ch. 962, § 11, 2004 Tenn. Pub. Acts 2346, 2350-53, *as recognized in Nichols v. Jack Cooper Transp. Co.*, 318 S.W.3d 354, 362 n.4 (Tenn. 2010). Within that framework, it is undoubtedly rational to permit the employee alone to determine whether or not it is in his interest to litigate in pursuit of a potential remedy. We therefore conclude that the trial court correctly held that Tennessee Code Annotated section 50-6-241(d)(1)(B)(iv) does not violate our state's Constitution.

Conclusion

The judgment of the trial court is affirmed. Costs are taxed to Lojac Enterprises and Road Contractors Mutual Insurance Company, and their surety, for which execution may issue if necessary.

J. S. "STEVE" DANIEL, SP.J.

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**Circuit Court for Davidson County
No. 10C3001**

No. M2011-01525-WC-R3-WC - Filed May 10, 2012

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 Lojac Enterprises and Road Contractors Mutual Insurance Company, and their surety, for which execution may issue if necessary.

PER CURIAM