

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

FILED
August 19, 1997
Cecil W. Crowson
Appellate Court Clerk

RONALD GRANT MERRIMAN,)
Plaintiff/Appellant) No. 01S01-9610-CH-00221
)
) DEKALB COUNTY CHANCERY
v.)
) HON. VERNON NEAL, CHANCELLOR
)
DEKALB COUNTY HIGHWAY DEPARTMENT)
and)
AETNA CASUALTY INSURANCE COMPANY)
Defendant/Appellee)
_____)

FOR THE APPELLANT:

CHRISTOPHER L. CANTRELL
301 North Public Square
Smithville, Tennessee 37166

FOR THE APPELLEE:

WILLIAM B. JAKES, III
ALICE MARGARET ESSARY
HOWELL & FISHER
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Nashville, TN 37201

MEMORANDUM OPINION

MEMBERS OF PANEL:

LYLE REID, ASSOCIATE JUSTICE, SUPREME COURT
WILLIAM H. INMAN, SENIOR JUDGE
WILLIAM S. RUSSELL, RETIRED JUDGE

AFFIRMED

RUSSELL, SP. J.

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated Section 50-6-225 (e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

This claim arises out of an alleged back injury to Ronald Grant Merriman, an employee of the DeKalb County Highway Department, which is claimed to have occurred from operating a jack-hammer on April 10, 1991. Suit was not filed until October 18, 1994. The statute of limitations was relied upon as a defense, and the suit was dismissed upon that ground. There apparently was no notice of the claimed injury until this suit was filed, but because that fact was not set out as a defense in the Answer the trial court did not predicate dismissal on that ground.

The appellant seeks to avoid the bar of the statute of limitations with the contention that the insurance carrier for the employer paid medical bills growing out of his back injury in April of 1991. Mr. Merriman says that his back became sore from operating a jack-hammer, and that he submitted the resultant medical bills "within 24 hours of his injury".

Merriman was injured on the job in 1988; suffering hip, knee

and ankle injuries when he fell from his tractor while bushhogging and was run over. He settled that case by court decree on October 31, 1990, receiving, inter alia, "that medicals will remain open pursuant to Tennessee Code Annotated Section 50-6-101 et seq". Subsequent medical bills have been paid under the 1988 injury claim number.

Merriman was under the care of Dr. Francisca V.G. Lytle, M.D., an orthopaedic surgeon, both for the 1988 injuries and thereafter. Dr. Lytle's record concerning a treatment to the employee on April 30, 1991, reflects that at that time (20 days after the claimed injury at issue) Mr. Merriman was complaining of lower back pain, spinal bone; and cited as the cause the 1988 tractor accident in his description of the injury (making no reference to having hurt his back while operating a jack-hammer). He also recorded that he had pulled a muscle in his back in 1985-1986.

To further support the thesis that the claim for back problems caused by jack-hammer use is time barred we note these entries by Dr. Lytle upon his visit on April 30, 1991:

Patient complains of about a years duration of low back pain and he points to the lumbosacral junction. The pain is there when he wakes up in the morning and it is made worse by his work which involves working a jack-hammer on the road. Recently he has changed back to running a bushhog.

* * * * *

I suspect patient has a chronic lumbar sprain because of the type of work that he does which requires him to stand using a jack-hammer during the day.

Again, Dr. Lytle's record entry on this patient dated April 30,

1991 reads:

Referred by: [Dr.] Hooper
Complaint: back - per Dr. Hooper his problem stems from the tractor accident.

Aetna claims people paid Mr. Merriman's medical bills in 1991-1993 upon the premise that they were for treatments growing out of the 1988 accident and had been decreed in the settlement of that case. The exact dates of the payment do not appear in the evidence. Mr. Merriman ceased working for this employer in February of 1993. The complaint was filed on October 18, 1994. There is no evidence that a medical bill of Mr. Merriman for the alleged back injury on April 10, 1991 was paid during the year immediately before this suit was filed.

Tennessee Code Annotated Section 50-6-203 reads:

Limitation of time. - The right to compensation under the Workers' Compensation Law shall be forever barred, unless within one (1) year after the accident resulting in injury or death occurred the notice required by Sec. 50-6-202 is given the employer and a claim for compensation under the provisions of this chapter is filed with the tribunal having jurisdiction to hear and determine the matter; provided, that if within the one (1) year period voluntary payments of compensation are paid to the injured person or the injured person's dependents, an action to recover any unpaid portion of the compensation, payable under this chapter, may be instituted within one (1) year from the time the employer shall cease making such payments, * * *.

No payment was made within the critical year, by mistake or otherwise. A payment was made by mistake after this suit was filed and the statute of limitations plead; but we do not need to analyze that action to determine its legal effect because it is established law that the voluntary payment of benefits after the statute of limitations has expired does not revive the employee's

cause of action Olden v. Matrix Vision of Williamson County, Inc.,
838 S.W. d 528 (Tenn. 1992).

The evidence in this case clearly supports the judgment of
the trial court that this suit is time barred, and we affirm that
judgment. Costs on appeal are assessed to the appellant.

WILLIAM S. RUSSELL, SPECIAL JUDGE

CONCUR:

LYLE REID, ASSOCIATE JUSTICE

WILLIAM H. INMAN, SENIOR JUDGE

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

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RONALD GRANT MERRIMAN,	}	DEKALB CHANCERY
	}	No. 94-135 Below
<i>Plaintiff/Appellant</i>	}	
	}	Hon. Vernon Neal,
vs.	}	Chancellor
	}	
DEKALB COUNTY HIGHWAY	}	No. 01S01-9610-CH-00221
DEPARTMENT and AETNA	}	
CASUALTY INSURANCE CO.,	}	
	}	
<i>Defendants/Appellees</i>	}	AFFIRMED.

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 will be paid by Ronald Grant Merriman, Principal, and his Surety, for which execution may issue if necessary.

IT IS SO ORDERED on August 19, 1997.

PER CURIAM