

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

April 23, 2018 Session

PAMELA LYLES v. TITLEMAX OF TENNESSEE INC., ET AL.

**Appeal from the Circuit Court for Shelby County
No. CT-004327-13 Mary L. Wagner, Judge**

No. W2017-00873-SC-WCM-WC – Mailed July 3, 2018; Filed September 14, 2018

Pamela Lyles (“Employee”) was employed by Titlemax of Tennessee, Inc. (“Employer”). On May 19, 2010, an armed robbery occurred, during which the offender brandished a handgun at Employee. Employee immediately began exhibiting symptoms of post-traumatic stress disorder (“PTSD”) and was diagnosed with PTSD no later than July 13, 2010. Employee filed a Request for Benefit Review Conference with the Tennessee Department of Labor on September 16, 2011, which resulted in an impasse. Employee brought suit and the trial court granted summary judgment in favor of Employer, stating that the statute of limitations barred her claim. Employee 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(a) (2014) (applicable to injuries occurring prior to July 1, 2014) Appeal as of Right; Judgment of the Circuit Court Affirmed

ROGER A. PAGE, J., delivered the opinion of the court, in which DON R. ASH, SR.J., and WILLIAM B. ACREE, SR.J., joined.

Steve Taylor, Memphis, Tennessee, for the appellant, Pamela Lyles.

Kyle I. Cannon, Memphis, Tennessee, for the appellees, Titlemax of Tennessee, Inc., and Insurance Company of State of Pennsylvania (NY).

OPINION

Factual and Procedural Background

On May 19, 2010, Employee was working at a Memphis Titlemax location. An armed robbery occurred, during which an individual entered the store, jumped over the desk, and brandished a gun at Employee while demanding money. Immediately following the incident, Employee was visibly shaken, crying, and distraught, and she remained so throughout the investigation by the Memphis Police Department. Afterwards, at her request, Employee was driven home by a manager who stayed with her until family arrived.

For several weeks after the incident, Employee experienced crying spells and nightmares. She remained distraught and shaken, but she also became nervous, depressed, and unable to focus. Due to her symptoms, Employee found that she was unable to carry out her job duties. She informed Employer of her symptoms and asked to be transferred to a different store to help her cope. Employee also voluntarily elected to be seen by a counselor provided by Employer.¹

On June 15, 2010, one month after the incident, Employee was first treated by the counselor who diagnosed her with post-traumatic stress disorder (“PTSD”) as a direct result of the armed robbery. The counselor communicated these findings to Employee and documented them. Employee was again treated by the counselor on June 29 and July 13, 2010, while still experiencing the same symptoms. At each of her three appointments, the counselor advised Employee that her mental and emotional symptoms were caused by the armed robbery and that her symptoms were a normal response to such an incident. After her July 13 appointment, Employee chose to stop seeing the counselor.

On September 10, 2011, Employee sought treatment from a clinical psychologist. During her first appointment with the psychologist, Employee reported that she was experiencing the exact same mental and emotional symptoms that she was experiencing immediately following the robbery.

On September 16, 2011, Employee requested a benefit review conference with the Tennessee Department of Labor. However, the conference, which was held on September 16, 2013, resulted in an impasse. Employee filed this workers’ compensation

¹ The record is void of any information about whether Employer paid for the counseling sessions. According to Employee, her regional manager told her that Employer offered a counseling service and that they wanted her to call.

case against Employer on October 7, 2013, in the Circuit Court of Shelby County, Tennessee. Employer answered, asserting as an affirmative defense that Employee's claim was barred by Tennessee's one-year statute of limitations. *See* Tenn. Code Ann. § 50-6-203(b) (2010). Employer then filed a Motion for Summary Judgment asserting that Employee's action was untimely.

Though Employee opposed Employer's motion for summary judgment, she admitted to the Employer's Statement of Undisputed Facts in her response. Notably, Employee admitted that she knew immediately following the armed robbery that her mental and emotional symptoms were a direct result of the armed robbery. She also admitted that her counselor confirmed that the incident caused her symptoms and that the counselor diagnosed her with PTSD as early as June 15, 2010.

The trial court granted Employer's Motion for Summary Judgment finding that Employee knew no later than July 13, 2010—the date of her third treatment with the counselor—that her mental and emotional injuries were a direct result of the incident. Because Employee was required to file a Request for Benefit Review Conference within one year of the incident or knowledge of injury as a result of the incident, *see* Tennessee Code Annotated section 50-6-203(b)(1), the trial court concluded that Employee's filing on September 16, 2011, was outside the statute of limitations.

Analysis

A motion for summary judgment should be granted only when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” *Rye v. Women's Care Ctr. of Memphis*, 477 S.W.3d 235, 250 (Tenn. 2015) (quoting Tenn. R. Civ. P. 56.04). The appellate court must review the evidence in a light most favorable to the nonmoving party and draw all reasonable inferences in favor of the nonmoving party. *Staples v. CBL & Assocs.*, 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.*, 181 S.W.3d 330, 337 (Tenn. 2005).

Before addressing the merits of this appeal, we must first address Employer's contention that Employee's appeal should be dismissed for failure to comply with the requirements of Tennessee Rule of Appellate Procedure 27, which dictates the content of appellate briefs.² Indeed, Employee's brief omits “a concise statement of the applicable

² Employer also argues that Employee failed to comply with Rule 6 of the Rules of the Court of

standard of review” and fails to contain “appropriate references to the record.” Tenn. R. App. P. 27(a)(7). Even so, the brief includes appropriate citations to applicable authorities to make legitimate legal arguments before this Panel. Additionally, Employee references her affidavit for the factual basis of her claim, rather than the record; however, a copy of her affidavit is appended to the brief and also contained in the record. While Employee’s brief certainly has its shortcomings, we conclude that it meets the requirements of Rule 27, and we will, therefore, consider the merits of Employee’s appeal.

The issue before us is whether Employee timely filed her request for a benefit review conference, such that the instant lawsuit was timely filed. In workers’ compensation claims, the right to compensation is barred “unless the notice required by § 50-6-202 is given to the employer and a benefit review conference is requested on a form prescribed by the commission and filed with the division within one (1) year after the accident resulting in injury.” Tenn. Code Ann. § 50-6-203(b)(1).³ The armed robbery occurred on May 19, 2010; however, Employee did not request a benefit review conference until September 16, 2011. Therefore, unless the statute of limitations was tolled, the Employee’s claim was time-barred.

The Tennessee Supreme Court has held that “the limitations period for workers’ compensation cases pursuant to Tennessee Code Annotated section 203(b)(1) does not commence until [employee] 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). Under the discovery rule, “[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 (quoting *Bellar v. Baptist Hosp., Inc.*, 559 S.W.2d 788, 789-90 (Tenn.1978)).

Appeals. However, the Rules of the Court of Appeals, unlike the Rules of Appellate Procedure, have no application to proceedings before the Special Workers’ Compensation Appeals Panel. *See* Tenn. Sup. Ct. R. 51, § 1.

³ Tennessee Code Annotated section 50-6-203(b)(2) provides a different accrual date: when the employer has voluntarily paid workers’ compensation benefits within one year of the injury, the one-year statute of limitations begins to run on the date of the last authorized treatment or compensation payment. In this case, the parties agree that Employee did not receive any workers’ compensation benefits. While the record suggests that Employer paid for Employee’s treatment by the counselor, there is no documentation of payments. Neither party has argued that the statute of limitations should be calculated from the last payment date, but instead, both parties have operated under subsection (b)(1), applying to cases where the employer has not paid any workers’ compensation benefits.

Employee contends that, while she knew that she suffered an injury due to the May 2010 armed robbery, she did not have knowledge that that the injury she sustained was permanent at that time. According to Employee, she obtained a psychiatric evaluation from a psychiatrist, Dr. Randall Moskovitz, in late 2012 after her workers' compensation claim had already been filed. In "late February or early March of 2013," Employee claimed that she met with her attorney who showed her a letter from Dr. Moskovitz indicating that Employee's psychiatric injury was permanent. Employee asserts that it was not until she viewed this letter that she knew her injury was permanent, and therefore, she contends that her claim was not time-barred and summary judgment was not appropriate.

Employee analogizes her case to *Oliver v. State*, 762 S.W.2d 562 (Tenn. 1988). In *Oliver*, the employee suffered a compound fracture to his wrist while employed by the state. *Id.* at 563. The fracture was repaired through surgery, which relieved him of all pain and hardship. *Id.* In fact, the employee stated that "nothing led him to believe that he had any permanent damage as a result of the fracture" at the time of his injury. *Id.* at 565. Nevertheless, twenty years later he began to have severe pain and swelling in his wrist, and a doctor determined that he had a permanent disability stemming from his original injury. *Id.* Noting that "[u]ntil that time, [the employee] had no problems or limitations . . . and had no reason to expect or foresee any limitations or problems," our Supreme Court concluded that "[t]he statute of limitations was not triggered until [the employee] was examined . . . and learned he had a permanent anatomical change and impairment" *Id.*

Likewise, in *Cowan v. Knox County*, No. E2015-00405-SC-R3-WC, 2016 WL 722264, at *2 (Tenn. Workers Comp. Panel Feb. 24, 2016), an employee suffered a work-related accidental injury to his back in 2001. Following his injury, the employee was informed that he suffered a ruptured disc and was treated with epidural steroid injections, which he reported left him feeling normal and pain free. *Id.* However, ten years later, the employee's pain returned while he was showering, and eventually surgery was required. *Id.* Although the employer argued that the employee should have known the permanency of his injury in 2001, the trial court determined that the employee's claim was not time-barred, as "he had reason to believe that his injury had resolved as of July 2001." *Id.* at *6. The Workers' Compensation Panel, in an opinion adopted by the Tennessee Supreme Court, affirmed, noting that the evidence showed the employee's symptoms "completely and fully resolved following relatively brief conservative treatment" in 2001. *Id.* at *7.

In the instant case, Employee argues that the statute of limitations on her claim was similarly tolled until she was informed of the permanency of her condition in the 2012 letter from Dr. Moskovitz. However, unlike the employees in *Oliver* and *Cowan*,

Employee continuously experienced PTSD symptoms resulting from the armed robbery. She did not initially believe that her symptoms had resolved only to learn later that her injury was permanent. By Employee's own admission, she stopped attending treatments with her employer-provided counselor because she "hoped she would be okay" even though she was still experiencing the same symptoms. It is irrelevant that no one mentioned to her the permanency of her condition because she was, in fact, still suffering from the injury.

It is undisputed that Employee knew she had an injury from the first time she visited the counselor on June 15, 2010 and that the counselor diagnosed her with PTSD no later than July 13, 2010. Therefore, we conclude that the statute of limitations was not tolled and that Employee's workers' compensation claim became time-barred when she failed to file a request for Benefit Conference Review within one year of July 13, 2010, the date of her last treatment with the employer-provided counselor. Thus, the trial court did not err in granting Employer's motion for summary judgment.

Conclusion

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

ROGER A. PAGE, JUSTICE

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ORDER

This case is before the Court upon the motion for review filed by Pamela Lyles pursuant to Tennessee Code Annotated section 50-6-225(a)(5)(A)(ii), 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.

It appears to the Court that the motion for review is not well taken and is, therefore, denied. The Panel's findings of fact and conclusions of law, which are incorporated by reference, are adopted and affirmed. The decision of the Panel is made the judgment of the Court.

Costs are assessed to Pamela Lyles, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM

ROGER A. PAGE, J., not participating