

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

August 16, 2002 Session

STANLEY MOORE v. PAYLESS CASHWAYS, INC., ET AL.

**Direct Appeal from the Circuit Court for Shelby County
No. CT-002111-01 Rita L. Stotts, Judge**

No. W2002-00705-SC-WCM-CV - Mailed September 12, 2002; Filed November 26, 2002

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated § 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. The employee appeals the trial court dismissal of his claims by granting summary judgment in favor of employer, holding the action was barred by the statute of limitations. We reverse and remand.

**Tenn. Code Ann. § 50-6-225(e) Appeal as of Right;
Judgment of the Trial Court Reversed and Remanded.**

JOE H. WALKER III, SP. J., delivered the opinion of the court, in which JANICE M. HOLDER, J, and JOE C. LOSER, SP. J. joined.

Steve Taylor, Memphis, TN, for the Appellant, Stanley Moore.

Lori D. Parrish, Memphis, TN, for the Appellees, Payless Cashways, Inc., et al.

MEMORANDUM OPINION

Stanley Moore worked for Payless Cashways. During the course of his employment, on June 23, 1999, lumber accidentally fell on Mr. Moore. He was transported to the emergency room and treated by Dr. Bobo. He was paid temporary total benefits until released to return to work in September, 1999. He was followed by Dr. Bobo and Dr. Chen for reflex sympathetic dystrophy until released February 10, 2000. The last payment for medical treatment was made March 29, 2000, for treatment received February 10, 2000. Dr. Bobo was of the opinion that he had no permanent partial impairment.

Mr. Moore had obtained counsel at some point, who notified Mr. Moore in April 2000, that medical records indicated Mr. Moore had no permanent partial impairment, and the attorney was closing his file, that Mr. Moore could consult with another attorney.

Mr. Moore continued to have problems with his left upper and lower extremities. He obtained new counsel and a complaint was filed April 3, 2001.

Dr. Rizk evaluated the claimant and opined by letter dated June 11, 2001, that Mr. Moore has reflex sympathetic dystrophy which Dr. Rizk considers to be a permanent condition, and caused by his work-related accident.

Summary judgment was granted for the employer on the ground that the suit is barred by the statute of limitations found at T.C.A. § 50-6-203, and 224.

I.

Rule 56.04 provides that summary judgment is appropriate where: (1) there is no genuine issue with regard to the material facts relevant to the claim or defense contained in the motion, and (2) the moving party is entitled to judgment as a matter of law on the undisputed facts. See Staples v. CBL & Associates, Inc., 15 S.W.3d 83, 88 (Tenn. 2000); Bain v. Wells, 936 S.W.2d 618, 622 (Tenn. 1997). "Courts must view the evidence in the light most favorable to the nonmoving party and must also draw all reasonable inferences in the nonmoving party's favor." Staples, 15 S.W.3d at 89. "Courts should grant a summary judgment only when both the facts and the inferences to be drawn from the facts permit a reasonable person to reach only one conclusion." Id.

The trial court denied the motion for summary judgment by order entered July 30, 2001, stating: "It is the opinion of this Court that Defendants' Motion is not well-founded and should be and is hereby denied." Defendants filed for permission to appeal or for reconsideration.

On March 5, 2002, the trial court entered an order granting relief from the prior order, granting summary judgment in favor of the defendants and dismissing the complaint. The trial court made no findings of fact, thus the appeal comes with no presumption of correctness.

The panel finds that summary judgment was not appropriate in this case.

II.

A complaint for workers' compensation benefits must be filed within one year after the accident resulting in injury, T.C.A. § 50-6-203; or within one year after the occurrence of injury, T.C.A. § 50-6-224. It is well-settled that "the running of the statute of limitations is suspended until by reasonable care and diligence it is discoverable and apparent that an injury compensable under the workmen's compensation laws has been sustained." Livingston v. Shelby Williams Indus., Inc., 811 S.W.2d 511 (Tenn. 1991). It is the date on which the disability manifests itself to a person of reasonable diligence, not the date of the accident which triggers the running of the statute of limitations. Jones v. Home Indem. Ins. Co., 679 S.W.2d 445, 446 (Tenn. 1984). Ordinarily, the limitation period should not begin to run until a physician presents claimant with a diagnosis of his condition. Poore v. Magnavox Co., 666 S.W.2d 48 (Tenn. 1984).

Mr. Moore testified by affidavit. Mr. Moore was advised by Dr. Bobo that although he had sustained an injury in the work-related accident, he had sustained no permanent impairment.

Although he had been released in February, 2000 by Dr. Bobo, Mr. Moore was still having difficulty. He continued to suffer with problems from his left upper and lower extremities, and was eventually seen by Dr. Rizk in May and June of 2001, after he filed suit. Dr. Rizk determined from his examination that the work-related injuries were permanent in nature.

In Moore v. Wal-Mart Stores, Inc., 2001 Tenn. LEXIS 258 (Tenn. Workers' Comp. Panel 2001), a panel found it is disingenuous for the employer to suggest that the claimant should have known that she had a compensable injury when their own panel physician had released her without restriction and assigned no permanent disability. The trial court made a factual finding that Claimant did not discover, using reasonable care and diligence, that she had a permanent compensable injury until surgery was performed by Dr. Craig on September 23, 1997. The action was filed on February 6, 1998, which is well within the statute of limitation. That is, the statute did not begin to run until the permanency was discovered.

Another panel considered this issue in Higginbotham v. Grinnell Corp., 1997 Tenn. LEXIS 398 (Tenn. Workers' Comp. Panel 1997). What, then, constitutes a "probable compensable injury," so as to trigger the running of the statute of limitations? Where the worker sues for permanent disability, it is apparently the law that the worker is not charged with knowledge which will begin the running of the statutory period (in the absence of obvious conditions, such as amputations) until he knows both the ultimate diagnosis and that the condition is probably permanent.

In Jones v. Home Indemnity Insurance Co., 651 S.W.2d 213 (Tenn. 1983), the plaintiff was injured at work, was treated, and was advised by her physician that the injury was not permanent. The Court held that the statute began to run when the plaintiff's condition was diagnosed as a permanent injury.

In Oliver v. State, 762 S.W.2d 562 (Tenn. 1988), the plaintiff was not informed that he had permanent damage as a result of a work-related accident until some twenty years after the accident. A wildlife enforcement officer fell and broke his wrist and arm while working. The board of claims approved payment of his medical expenses. Some twenty years later, he began experiencing swelling and pain in his wrist. In an opinion authored by Justice Drowota, the Court found that the statute of limitations was not triggered until plaintiff was examined by another doctor and learned he had a permanent anatomical change and impairment of the left upper extremity. The statute did not begin to run until a doctor, almost twenty years after the accident, informed Plaintiff he had a permanent disability as a result of the work-related accident.

The panel concludes that the running of the statute of limitations is suspended until by reasonable care and diligence it is discoverable and apparent that an injury compensable under the worker's compensation laws has been sustained. In this instance, that time is when the claimant was informed that the injury is permanent, which was in June of 2001, after the suit was filed in April of 2001. The suit is therefore not barred by the statute of limitations.

Therefore, the judgment of the trial court is reversed, and the case remanded.

Costs of appeal are taxed to the defendants-appellees.

JOE H. WALKER III, SPECIAL JUDGE

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ORDER

This case is before the Court upon the motion for review filed by Payless Cashways and Zurich American Insurance Group pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(B), 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.

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 Payless Cashways and Zurich American Insurance Group, for which execution may issue if necessary.

PER CURIAM

Holder, J. - Not Participating