

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS COMPENSATION APPEALS PANEL  
AT KNOXVILLE  
OCTOBER 9, 2002

**ANDY R. GANN V. FLAGSTAR ENTERPRISES, INC.**

**Direct Appeal from the Jefferson County Circuit Court  
No. 16,947 - III Rex Henry Ogle, Judge**

Filed December 20, 2002

**No. E2002-00272-WC-R3-CV**

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This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel in accordance with Tenn. Code Ann. § 50-6-225(e) for hearing and reporting of findings of fact and conclusions of law. The appellant claims that the trial court erred in granting summary judgment that his claim for worker's compensation benefits was not timely filed as provided in T.C.A. § 50-6-203. We affirm.

**Tenn. Code Ann. § 50-6-225(e) (1999) Appeal as of Right; Judgment of the Jefferson County Circuit Court is Affirmed.**

HOWELL N. PEOPLES, SP. J., delivered the opinion of the court, in which WILLIAM M. BARKER, JUSTICE, and JOHN K. BYERS, SR. J., joined.

Douglas R. Beier, Evans & Beier, Morristown, Tennessee, for the Appellant, Andy R. Gann.

Pamela B. Johnson, Leitner, Williams, Dooley & Napolitan, Knoxville, Tennessee, for the Appellee, Flagstar Enterprises, Inc.

**MEMORANDUM OPINION**

Facts

The trial court on motion for summary judgment dismissed this case on the grounds that the petition for worker's compensation benefits filed by Andy R. Gann against his employer, Flagstar Enterprises, Inc. was not timely filed.

The following facts are undisputed:

- “1. On or about September 24, 1999, Plaintiff filed a complaint for worker’s compensation benefits alleging that on or about June, 1996, while in the course and scope of his employment, he witnessed a brutal and violent murder at the Defendant’s restaurant (Hardee’s), requiring Plaintiff eventually to need medical and psychological treatment.
2. On or about December 23, 1999, the Defendant filed an answer admitting that the Plaintiff was employed as a crew worker for Defendant in or about June, 1996, and that he was present and working on the evening of the homicide. The Defendant denied that Plaintiff sustained any injury by the accident which arose out of and in the course and scope of his employment. (The homicide actually occurred on or about May 6, 1996.)
3. In the Answer, the Defendant alleged that Plaintiff failed to give proper, statutory notice of the alleged injury, pursuant to T.C.A. 50-6-102. In addition, the Defendant alleged that the Plaintiff’s claim is barred by the statute of limitations, pursuant to T.C.A. § 50-6-203 and 224.
4. The Plaintiff testified under oath that he started drinking more heavily immediately after the May 1996 incident. The plaintiff testified that he had reached a peak of “pretty heavy” drinking basically six (6) months after the May 1996 incident.
5. The Plaintiff testified that he was written up by the Defendant, during the first six (6) months following the May 1996 incident, because “they caught me drunk.” The plaintiff alleges that he told his supervisor, Shane Ailey, that he was having problems and that he needed help. As additional facts, Plaintiff added the following testimony from his deposition: “I told him I was having problems. Q. Did you tell him you needed counseling, or what did you tell him? A. How do I know about counseling or anything. I never have been to counseling. All I told him, I needed help. I was having problems. I don’t know what that means I mean, I just knowed I was having problems and I needed help.”

The affidavit of William E. Conklin, Psy.D., clinical psychologist, was submitted in opposition to the motion for summary judgment. He stated: “Post Traumatic Stress Disorder is often very difficult to diagnose. Andy would not be capable of making such a self-diagnosis. His condition was not diagnosed until he was sent by his employer to me in April, 1999.” He said that he notified the employer’s manager of the diagnosis and its direct causal relation to the murder at Hardee’s. The deposition of Mr. Gann was also submitted in opposition to the motion. He stated that he started having nightmares right

after the incident; that five or six months later, he had sleeping problems where he could not sleep through the night. He testified that before the incident, he would drink a pint of alcohol or six beers on weekends. Six or seven months after the homicide, he was drinking five fifths of whiskey a week. Mr. Gann testified that he was written up for being drunk on the job (six months after the homicide) and that he asked the general manager for help at that time, but help was never provided.

### Standard of Review

The standard of review applicable to this case is set out in *Warrick v. Cheatham County Highway Dept.*, 60 S.W.3d 815 (Tenn. 2001) at 817 as follows:

Ordinarily, the standard of review in a worker's compensation case is *de novo* upon the record of the trial court, accompanied by a presumption of the correctness of the findings, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2). However, when summary judgment has been granted in a worker's compensation case, the standard of review is governed by Tenn. R. Civ. P. 56. *Downen v. Allstate Ins. Co.*, 811 S.W.2d 523, 524 (Tenn. 1991). Under Rule 56, a court must "review the record without a presumption of correctness to determine whether the absence of genuine and material factual issues entitle the movant to judgment as a matter of law." *Finster v. Humboldt Gen. Hosp. Inc.*, 970 S.W.2d 435, 437-8 (Tenn. 1998).

### Issue

Did the trial court err in finding that Mr. Gann failed to timely file his claim for worker's compensation benefits for stress related to witnessing a murder in the course and scope of his employment?

### Discussion

Mr. Gann contends that the time for filing his claim for worker's compensation benefits did not commence until he knew that he had a permanent disability, and that he filed his suit within one year after that date. Tenn. Code Ann. § 50-6-203 requires a claim for worker's compensation benefits to be filed within one (1) year after the accident resulting in injury. The Tennessee Supreme Court has stated the statute of limitations begins 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." *Ogden v. Matrix Vision of Williamson County, Inc.*, 838 S.W.2d 528, 530 (Tenn. 1992). Further, "the date the employee's disability manifests itself to a person of reasonable diligence, not the date of the accident triggers the statute of limitations." *Hibner v. St. Paul Mercury Ins. Co.*, 619 S.W.2d 109, 110 (Tenn. 1981). The statute of limitations and the time for giving notice of an injury is suspended until by reasonable care and diligence it is discoverable and apparent that an injury compensable under the Worker's

Compensation Act has been sustained. *Livingston v. Shelby Williams Industries, Inc.*, 811 S.W.2d 11 (Tenn. 1991); *Hawkins v. Consolidated Aluminum Corporation*, 742 S.W.2d 253 (Tenn. 1987). The commencement of the statute of limitations is a factual issue to be determined by the circumstances of each case.

Treating all the matters stipulated by the motion for summary judgment as true, the incident that gives rise to Mr. Gann's post traumatic stress disorder occurred May 1996. Mr. Gann began drinking heavily immediately after the incident and six months later his drinking had reached five fifths of whiskey per week. Approximately six months after the incident, he was written up by his supervisor for being drunk at work, and at that time, he asked his supervisor for help. Thus, by December 1996, Mr. Gann knew that, following the homicide at his place of employment, he had problems with nightmares, sleeping, and increasing alcohol abuse. Mr. Gann argues that he did not reasonably know until Dr. Conklin told him in April 1999 that he had a work-related injury. We concur with the trial judge that Mr. Gann knew, or should have known, by at least December 1996 that the homicide at Hardee's had caused mental distress that affected his ability to work. That he asked his employer for help demonstrates that he felt the employer had an obligation to provide help for the problems he was having. Certainly, the statute of limitations was triggered at that time, which was more than two and one-half years before the filing of the complaint in this case. Mr. Gann failed to timely file his action for worker's compensation benefits.

#### Disposition

The judgment of the trial court is affirmed. Costs of the appeal are taxed against the Appellant.

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Howell N. Peoples, 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 facts and conclusions of law are adopted and affirmed and the decision of the Panel is made the Judgment of the Court.

The costs on appeal are taxed to the appellant, Andy R. Gann, and its surety, for which execution may issue if necessary.