IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS= COMPENSATION APPEALS PANEL
AT KNOXVILLE
May 23, 2002 Session

CHARLES R. RAPIER v. JONES BLAIR PAINT

Direct Appeal from the Chancery Court for Bradley County
No. 01-022 Jerri S. Bryant, Chancellor

Filed September 27, 2002

No. E2001-02915-WC-R3-CV

This workers= compensation appeal has been referred to the Special Workers= Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann.' 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. The trial court dismissed the complaint finding the action was barred by the one year statute of limitations and because plaintiff=s condition was not work-related. Judgment of the trial court is affirmed.

Tenn. Code Ann. ' 50-6-225(e) (1999) Appeal as of Right; Judgment of the Chancery Court is Affirmed

THAYER, SP. J., delivered the opinion of the court, in which ANDERSON, J. and BYERS, SR. J., joined.

Jimmy W. Bilbo, of Cleveland, Tennessee, for Appellant, Charles R. Rapier.

David C. Nagle, of Chattanooga, Tennessee, for Appellee, Jones Blair Paint.

MEMORANDUM OPINION

Plaintiff, Charles R. Rapier, has appealed from the trial court=s action in dismissing his complaint. The court held the action had not been timely filed and was barred by the statute of limitations. The court also ruled plaintiff had failed to establish his condition was causally related to the accident in question.

Basic Facts

Plaintiff, a forty-nine-year-old high school graduate, was employed by defendant, Jones Blair Paint, as an outside sales representative calling on paint contractors and industry officials in a certain territory.

On October 31, 1996, while driving from Cleveland, Tennessee, to Chattanooga, he was stopped in traffic on Interstate 75 and was struck in the rear by another vehicle. He described the impact as minor in nature although he had some temporary injury to his neck, back and right knee. About one week later, he testified he began to feel Afunny@ and he went to a walk-in clinic where he collapsed. He described the collapsing spell as Alosing muscle tone. It=s just like your brain turns off the switch and you just collapse. And you know you=re going to, you just can=t control it.@ This problem continued for some period of time until a doctor gave a diagnosis of narcolepsy (inappropriate sleep) and cataplexy (loss of all muscle tone). Medication has controlled a lot of the problem but plaintiff has to be careful in recognizing warning signs. Plaintiff has continued to work for the paint company in the same job and no workers= compensation benefits were ever paid as all medical expenses involved in the diagnosis and treatment of his condition was processed by the insurance carrier providing general health coverage.

This proceeding for workers= compensation benefits was filed on January 16, 2001, which was four years and two and one-half months after the automobile accident.

As to plaintiff=s knowledge about the diagnosis and it being causally related to the accident, he testified on cross-examination that a Dr. Randall Brewer in Athens first told him of the diagnosis sometime during 1997. At another point, he admitted he was told by another doctor during April 1999 of the diagnosis and that it was probably caused by the auto accident in 1996.

Expert Medical Evidence

All of the medical evidence was presented to the trial court by deposition.

Dr. Martha H. Hagman, an internal medicine physician, testified the plaintiff=s condition was moderately severe and that it was a permanent condition where medication would always have to be taken. She gave an impairment rating of somewhere between 39 and 50 percent and had released him to return to work. At one point during her testimony she said the auto accident could have caused the condition but she could not say with certainty that it was caused by the accident. On cross-examination, she further stated that she could not state within a reasonable degree of certainty what caused the condition.

Dr. James M. Dodson, a clinical psychologist in training to be board certified in sleep medicine, testified he saw plaintiff during October 1999 because he was having some memory problems. He was aware of the diagnosis and gave an opinion that since plaintiff did not have symptoms of narcolepsy and cataplexy before the accident, he could say within a reasonable degree of medical certainty the auto accident caused the condition. Defendant objects to this conclusion as being beyond the witness=s qualifications and expert knowledge.

Dr. Robert F. Marcum, a pulmonary specialist with experience with sleep problems, concurred with the diagnosis made by previous doctors and testified he discussed same with plaintiff during September 1998 after seeing him on several visits. He wrote a letter to plaintiff=s counsel stating that narcolepsy was a very complex condition and that most of the time

individuals with this condition had been shown to have some kind of predetermined genetic predisposition to the condition. He also stated in the letter that there were some reports of stressful situations inducing the presentation of narcolepsy. He concluded the letter by saying he did not feet that he could offer an opinion (on causation) that the attorney would need. He then referred plaintiff to Dr. Farber.

Dr. Sharon N. Farber, a neurologist, saw plaintiff on several occasions from August 1998 to April 1999. She was of the opinion the condition was not caused by the 1996 auto accident because plaintiff had described the impact as minor in nature and plaintiff had not sustained a real head injury. She said that usually there is major head injuries when an accident can be said to have caused the condition.

Standard of Review

The case is to be reviewed on appeal *de novo* accompanied by a presumption of the correctness of the findings of fact unless we find the preponderance of the evidence is otherwise. Tenn. Code Ann. ' 50-6-255(e)(2).

Analysis of Issues

First, we must determine if the trial court was correct in holding the claim was barred by the running of the one year statute of limitations.

Tennessee Code Annotated ' 50-6-203 generally provides a claim must be filed within one year of the accident or within one year of the cessation of the payment of compensation benefits. Case law also establishes that the running of the statute is suspended until by reasonable care and diligence it is discoverable and apparent that an injury compensable under workers= compensation law has been sustained. ***Ferrell v. Cigna Property & Cas. Ins. Co.***, 33 S.W.3d 731 (Tenn. 2000); ***Ogden v. Matrix Vision***, 838 S.W.2d 528 (Tenn. 1992); ***NortonCo. v. Coffin***, 553 S.W.2d 751, 752 (Tenn. 1977).

In the present action, suit was not instituted within one year of the accident and since no compensation benefits were ever paid, the question before us is whether the plaintiff timely filed this action within one year when he knew or in the exercise of reasonable diligence should have known that he sustained a compensable injury.

On appeal plaintiff argues it was not until December 18, 2000 that he was advised by Dr. Dodson, the clinical psychologist, that the 1996 auto accident probably caused his medical condition and that suit was filed the following month. When the psychologist gave his deposition he was located at a different office from where he saw and examined plaintiff and did not have access to those office notes and records. He testified from an undated letter which he had written to plaintiff=s attorney. In the deposition counsel for plaintiff kept referring to the

December 18, 2000 letter but when asked on cross-examination the date of the letter, the psychologist replied, AI wouldn=t be able to give you an honest answer.@

We must now observe that the legal question before us is when did the plaintiff become aware he had a compensable claim and not when his attorney found evidence of causation. We have carefully examined the record and find there is little, if any, evidence to support plaintiff=s argument on this issue. Plaintiff=s own testimony indicates he was aware of the diagnosis as early as 1997 and that the auto accident could have cause his condition as early as April 1999. His condition never changed throughout the long period of time from the date of the accident to the institution of suit except to improve with medication prescribed by the doctors. We therefore concur with the trial court that the statute of limitations had expired prior to the institution of suit on January 16, 2001.

The second issue deals with the finding of the trial court that the plaintiff=s medical condition was not related to the 1996 automobile accident. It is well settled that in a workers= compensation proceeding that as a general rule causation and permanency of an injury must be established by expert medical testimony**.** ***McCaleb v. Saturn Corp.***, 910 S.W.2d 412 (Tenn. 1994); ***Argonaut Ins. Co. v. Williams,*** 580 S.W.2d 784 (Tenn. 1979). Although plaintiff concedes in his brief that a psychologist is not competent to render an opinion as to causation and permanency of an injury in workers= compensation cases, it is insisted that this rule be reconsidered and that Dr. Dodson=s testimony be accepted by the Panel. We decline to accept this invitation. Any change in the rule should come from the Supreme Court or the legislature. There seems to be a great deal of difference in the practice of medicine (Tenn. Code Ann. ' 63-6-204) and the practice of a psychologist as defined by Tennessee Code Annotated ' 63-11-202, 203. Also, we find the admissible expert testimony in the case does not support plaintiff=s theory on the issue of causation of his medical condition. Therefore, we hold the evidence does not preponderate against the trial court=s conclusion that the opinion and testimony of the psychologist was not admissible and that causation of plaintiff=s medical condition was not related to the accident in question.

The judgment of the trial court is affirmed. Costs of the appeal are taxed to the plaintiff.

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ROGER E. THAYER, SPECIAL JUDGE

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ORDER

This case is before the Court upon the motion for review filed by Charles R. Rapier 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 Charles R. Rapier, for which execution may issue if necessary.

PER CURIAM