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

November 22, 2002 Session

SHERRY ELLEN CARWILE v. COMPASS GROUP, USA, INC., ETC.

Direct Appeal from the Chancery Court for Obion County
No. 21,871 William Michael Maloan, Chancellor

No. W2001-03163-WC-R3-CV - Mailed December 12, 2002; Filed February 13, 2003

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. In this appeal, the employer insists the trial court erred in admitting, over objection, certain medical expenses allegedly incurred by the plaintiff. As discussed below, the panel has concluded that proof that the expenses allowed were reasonable and necessary was not required where the employer failed to provide medical care as required by Tenn. Code Ann. § 50-6-204(a)(4)(A).

Tenn. Code Ann. § 50-6-225(e) (2002 Supp.) Appeal as of Right; Judgment of the Chancery Court Affirmed

JOE C. LOSER, JR., SP. J., delivered the opinion of the court, in which JANICE M. HOLDER, J., and JOHN K. BYERS, SR. J., joined.

Ronald L. Harper and R. Scott Harper, Memphis, Tennessee, for the appellant, Compass Group, USA, Inc., d/b/a Canteen Vending Services

Jay E. DeGroot, Jackson, Tennessee, for the appellee, Sherry Ellen Carwile

MEMORANDUM OPINION

This civil action was initiated by the employee or claimant, Ms. Carwile, to recover workers' compensation benefits, including reasonably necessary medical expenses, for a work related injury. At the conclusion of the trial, the trial court ordered, among other things, that the claimant recover any outstanding medical expenses incurred, pursuant to Tenn. Code Ann. § 50-6-204. The employer, Compass Group, USA, has appealed.

Appellate review is de novo upon the record of the trial court, accompanied by a presumption of correctness of the findings of fact, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (2002 Supp.). The reviewing court is required to conduct an independent examination of the record to determine where the preponderance of the evidence lies. Wingert v. Government of Sumner County, 908 S.W.2d 921, 922 (Tenn. 1995). Conclusions of law are subject to de novo review on appeal without any presumption of correctness. Nutt v. Champion Intern. Corp., 980 S.W.2d 365, 367 (Tenn. 1998).

The record reflects that the employer denied the employee's claim from the outset. When a covered employee suffers an injury by accident arising out of and in the course of his employment, his employer is required to provide, free of charge to the injured employee, all medical and hospital care which is reasonably necessary on account of the injury. Such care includes medical and surgical treatment, medicine, medical and surgical supplies, crutches, artificial members and other apparatus, nursing services or psychological services as ordered by the attending physician, dental care, and hospitalization. The only limitation as to the amount of the employer's liability for such care is such charges as prevail for similar treatment in the community where the injured employee resides. Tenn. Code Ann. § 50-6-204(a)(4)(A). The employer is required to designate a group of three or more reputable physicians or surgeons not associated together in practice, if available in that community, from which the injured employee has the privilege of selecting the treating physician or operating surgeon. Id. An employer who denies liability for an injury claimed by an employee is in no position to insist upon the statutory provisions respecting the choosing of physicians. GAF Bldg. Materials v. George, 47 S.W.3d 430, 433(Tenn. 2001).

Ordinarily, unless admitted by the employer, the employee has the burden of proving, by competent evidence, every essential element of his claim. Oster v. Yates, 845 S.W.2d 215, 217 (Tenn. 1992). The claimant must prove, among other things, that the medical and hospital expenses claimed were both reasonable and necessary, but where treatment is provided by a physician or other health care provider designated by the employer, it is presumed that such treatment was necessary and the charges reasonable. The employer has the burden of persuasion to the contrary. Russell v. Genesco, Inc., 651 S.W.2d 206, 211 (Tenn. 1983), overruling Phillips v. Fleetguard Div. of Cummings Engine Co., 480 S.W.2d 528 (Tenn. 1972) and any other cases to the contrary. Because the employer failed to meet its statutory obligation to provide medical and other care, we hold, under the above authorities, that it is in no position to object to the introduction into evidence of the expenses incurred by the claimant and that, under such circumstances, the employer implicitly approved the health care providers chosen by the employee. Thus, the presumption is applicable and the employer has the burden of proving the expenses were not reasonable and necessary. Our independent examination of the record reveals no evidence that the claimant's medical expenses were not reasonable or that the medical care provided was not reasonably necessary. To hold otherwise would effectively reward the employer for failing to fulfill a statutory requirement. The judgment of the trial court is therefore affirmed.

The employee contends the appeal is frivolous. When it appears that an appeal in a workers' compensation case is frivolous or taken solely for delay, the reviewing court may, upon motion of

either party or on its own initiative, award damages against the appellant and in favor of the appellee without remand, for a liquidated amount. Tenn. Code Ann. § 50-6-225; Tenn. Code Ann. § 27-1-122. We are unable to say the appeal is frivolous or taken solely for delay.

Costs are taxed to the appellant.

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JOE C. LOSER, JR.

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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 on appeal are taxed to the Appellant, Compass Group, USA, Inc., d/b/a Canteen Vending Services, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM