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

TIMOTHY YATES CARTER v. HAPPY TRUCKING COMPANY, INC. and STATE OF TENNESSEE DEPARTMENT OF LABOR WORKERS' COMPENSATION DIVISION SECOND INJURY FUND, JIM FARMER, DIRECTOR

Direct Appeal from the Chancery Court for Jackson County
No. 01-09, Hon. Charles K. Smith, Chancellor

NO. M2004-00357-WC-R3-CV - Mailed: February 18, 2005
Filed - May 17, 2005

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel in accordance with Tennessee Code Annotated § 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. The trial court found that the appellee was entitled to proceed with his lawsuit for reconsideration benefits stemming from a 1998 injury when he was terminated following a subsequent injury to the body as a whole, and awarded benefits. The trial court further found no liability on the part of the Tennessee Second Injury Fund. The appellant contends that the employee's claim for enlargement is prohibited by Tenn. Code Ann. §§ 50-6-241(a)(2) and 50-6-207(3)(F), and that the trial court erred in its statutory interpretation. For the reasons set forth below, we reverse the holding of the trial court.

Tenn. Code Ann. § 50-6-225(e)(3) Appeal as of Right; Judgment of the Chancery Court Reversed.

JERRY SCOTT, SR. J. delivered the opinion of the Court, in which WILLIAM M. BARKER, J., and J. S. (STEVE) DANIEL, SR. J., joined.

Lee Anne Murray, Feeney & Murray, PC, Nashville, TN, for the appellant, Happy Trucking Company, Inc.

William Joseph Butler and Debbie C. Holliman, Farrar, Holliman & Butler, Lafayette, TN, for the appellee, Timothy Yates Carter.

MEMORANDUM OPINION

The facts in this case are basically undisputed. At the time of trial, Timothy Carter was forty-three years of age, with an eleventh grade education. He has no significant vocational training and his work experience is primarily that of a commercial truck driver. Mr. Carter suffered two separate work-related injuries while employed by Happy Trucking, Inc. The first incident, a "lifting" injury to his neck and left arm, occurred on October 20, 1998. Mr. Carter was diagnosed with a ruptured disc and underwent surgery performed by Dr. Gregory Lanford, who assigned nine percent whole body impairment. Subsequently, Mr. Carter filed suit and the

parties settled for 33.7% disability. Mr. Carter recovered and Happy Trucking returned him to work in April 1999. On March 6, 2000, Mr. Carter suffered the second injury, a foraminal stenosis, which did not require surgery. On May 15, 2000, Mr. Carter sought workers' compensation benefits for the 2000 injury. Dr. Lanford released Mr. Carter on October 26, 2000, and assigned an additional impairment rating of five percent, based solely on this second injury. Additionally, Dr. Lanford increased Mr. Carter's permanent restrictions, resulting in his being unable to further perform his job duties. Happy Trucking terminated Mr. Carter on August 4, 2000, due to no work being available within the assigned restrictions following the second injury. On February 14, 2001, Mr. Carter filed suit, requesting that the trial court reconsider his award for the 1998 injury based on the fact he was unable to return to work after the 2000 incident. Happy Trucking moved for summary judgment, asking the trial court to dismiss Mr. Carter's complaint for reconsideration benefits. The trial court denied Happy Trucking's motion, allowing Mr. Carter to proceed with his suit for reconsideration of the 1998 injury. Further, the trial court awarded Mr. Carter an additional 24.83% vocational disability to the body as a whole for the initial injury, and 38% for the 2000 injury. The parties concede that there is no factual issue in dispute, but rather a question of law regarding our Supreme Court's interpretation of the reconsideration statute.

In workers' compensation cases, review of the trial court's findings of fact is *de novo*, accompanied by a presumption of correctness unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2). Where questions of law are involved, appellate review is *de novo* with no presumption of correctness given to the lower court's judgment. Leab v. S & H Mining Co., 76 S.W.3d 344, 348 (Tenn. 2002). The issue on appeal is whether the trial court erred as a matter of law, and in light of Brewer v. Lincoln Brass Works, Inc., 991 S.W.2d 226 (Tenn. 1999), and its progeny, in allowing Mr. Carter to maintain an action for reconsideration benefits under Tenn. Code Ann. § 50-6-241(a)(2), due to his termination following a subsequent work-related injury.

Mr. Carter responds that he is entitled to seek reconsideration under Tenn. Code Ann. § 50-6-241(a)(2), which provides in pertinent part:

> In accordance with this section, the courts may reconsider, upon the filing of a new cause of action, the issue of industrial disability. Such reconsideration shall examine all pertinent factors, including lay and expert testimony, employee's age, education, skills and training, local job opportunities, and capacity to work at types of employment available in claimant's disabled condition. Such reconsideration may be made in appropriate cases where the employee is no longer employed by the pre-injury employer and makes application to the appropriate court within one (1) year of the employee's loss of employment, if such loss of employment is within four hundred (400) weeks of the day the employee returned to work. In enlarging a previous award, the court must give the employer credit for prior benefits paid to the employee in permanent partial disability benefits, and any new award remains subject to the maximum established in subsection (b).

The issue presented here has been previously addressed not only by the Tennessee Supreme Court in Brewer, but also in Harris v. Magotteaux, Inc., 2001 WL 1607380 (Tenn. Workers' Comp. Panel 2001). In Brewer, the employee sustained a work-related injury to his back in December 1992. He returned to work in August 1993 at a wage equal to or greater than his pre-injury wage, subjecting his award to the 2.5 statutory cap pursuant to Tenn. Code Ann. § 50-6-241(a)(1). The employee continued working until he sustained a second injury to his back, resulting in his inability to remain in that employment. Following his second injury, the employee filed a petition under Tenn. Code Ann. § 50-6-241(a)(2) to enlarge his previous award. The Tennessee Supreme Court dismissed the petition, holding that:

> A petition to enlarge a previous award under § 50- 6-241(a)(2) is not the appropriate vehicle to use when a worker sustains additional injuries or additional anatomical impairment. A § 241(a)(2) petition is proper when the injured worker attempts to return to work but the original work-related disability later renders the injured worker unemployable with the pre-injury employer. Section 241(a)(2) then allows the injured worker to receive a new industrial disability rating when the employer's attempts to accommodate the worker fail. The new disability rating is not limited by the § 241(a)(1) cap and is based on the worker's previous anatomical impairment rating. We hold that if the worker, however, sustains additional impairment, whether caused by a subsequent work-related injury or work-related aggravation injury or aggravation of the original injury, the worker must file a new claim for workers' compensation rather than attempting to enlarge a previous award under § 241(a)(2). Brewer, 991 S.W.2d at 229.

The Brewer decision was reiterated in Harris, which is directly applicable to this case. Harris involved two separate work-related injuries to the same area of the employee's back. Thereafter, when he was unable to return to work following his second injury, the employee filed claims both for the subsequent injury and for reconsideration of the first injury. The Harris Panel, citing the holding in Brewer, concluded that "[a]n employee may not enlarge a previous workers' compensation award when the employee sustains additional injuries." Harris, 2001 WL 1607380 at *2. In making its determination, the Panel concluded that Tenn. Code Ann. § 50-6-241(a)(2) is controlled by § 50-6-207(3)(F), which states in pertinent part:

> If an employee has previously sustained an injury compensable under this section for which a court of competent jurisdiction has awarded benefits based on percentage of disability to the body as a whole and suffers a subsequent injury not enumerated above, the injured employee shall be paid compensation for the period of temporary total disability and only for the degree of permanent disability that results from the subsequent injury. Id.

Likewise, in the present case Mr. Carter suffered an initial injury which resulted in a worker's compensation award for permanent partial disability as a whole. He returned to work for Happy Trucking and suffered a subsequent work-related injury. After his second injury, Mr. Carter discontinued working and filed two separate lawsuits; one for reconsideration of his earlier injury and one for benefits stemming from the subsequent injury. Thus under the applicable case law, while Mr. Carter may file a new claim for benefits upon sustaining an additional injury, he may not enlarge his previous award.

Mr. Carter argues that the Brewer holding does not prevent an employee from seeking reconsideration under Tenn. Code Ann. § 50-6-241(a)(2) when he suffers a subsequent injury, but rather, Tenn. Code Ann. § 50-6-207(3)(F) merely prohibits a plaintiff from seeking an award in a reconsideration suit based on any *new* impairment or disability. Mr. Carter further contends that the two statutes are in conflict and that under the reasoning in Brewer, Tenn. Code Ann. § 50-6-241(a)(2) should control, as it was codified last. In Brewer, the Court stated that "[w]here two statutes conflict and cannot be reconciled, the prior act will be repealed or amended by implication to the extent of the inconsistency between the two statutes." Brewer, 991 S.W.2d at 229. But, the Court then went on to state a basic rule of construction providing that "[s]pecific statutory provisions generally prevail over general provisions when there is a conflict between statutes." Id. at 230. See also Five Star Exp., Inc. v. Davis, 866 S.W. 2d 944, 946 (Tenn. 1993). Therefore, although both Tenn. Code Ann. § 50-6-241(a)(2) and § 50-6-207(3)(F) apply when an employee initially sustains an injury to the body as a whole, § 50-6-241(a)(2) generally applies when an employee ceases to be employed by the pre-injury employer, while § 50-6-207(3)(F) specifically applies only when there is a subsequent injury to a non-scheduled member.

Statutory construction which places one statute in conflict with another must be avoided; therefore, we must resolve any possible conflict between statutes in favor of each other. Cronin v. Howe, 906 S.W.2d 910, 912 (Tenn. 1995). Courts must seek the most "reasonable construction which avoids statuary conflict and provides for harmonious operation of the laws." LensCrafters, Inc. v. Sundquist, 33 S.W.3d 772, 777 (Tenn. 2000). We must presume that the legislature did not intend an absurdity. Kite v. Kite, 22 S.W.3d 803, 805 (Tenn. 1997). Statutes relating to the same subject or sharing a common purpose must be construed together (*in pari materia*) in order to advance their common purpose. Carver v. Citizen Utils. Co., 954 S.W.2d 34, 35 (Tenn. 1997).

Further, in construing statutes courts must presume that the legislature has knowledge of its prior enactments and knows the state of the law at the time it passes legislation. Wilson v. Johnson County, 879 S.W.2d 807, 810 (Tenn. 1994). Consequently, we find that the provisions of Tenn. Code Ann. §§ 50-6-241and 50-6-207(3)(F) may be interpreted harmoniously. Section 50-6-241(b) references within, the purpose and intent of Section 50-6-207(3)(F), stating in pertinent part: ". . . where an injured employee is eligible to receive permanent partial disability benefits, pursuant to § 50-6-207(3)(A)(i) and (F) . . .." By incorporating the language of Tenn. Code Ann. § 50-6-207(3)(F) into Section 50-6-241, it is clear that the General Assembly intended the statutes to be considered *in pari materia*, rather than abrogating the prior statute by enactment of the later one.

Mr. Carter submits that Tenn. Code Ann. § 50-6-207(3)(F), when read with the workers' compensation statute is confusing and ambiguous, and urges the Tennessee Supreme Court to clarify the proper intent and construction. Legislative intent is to be ascertained whenever possible from the natural and ordinary meaning of the language used, without forced or subtle construction that would limit or extend the meaning of the language. Schering-Plough v. State Bd. of Equalization, 999 S.W.2d 773, 775 (Tenn. 1999). If the language is ambiguous, the court must look to the statutory scheme as a whole, as well as legislative history, to discern its meaning. **Owens v. State**, 908 S.W.2d 923, 926 (Tenn. 1995). But, if the language is unambiguous, the court must apply its ordinary and plain meaning. **Perrin v. Gaylord Entertainment Co.**, 120 S.W.3d 823, 826 (Tenn. 2003).

The Court examined the language of Tenn. Code Ann. § 50-6-207(3)(F) and its interplay with § 50-6-241 in **Parks v. Tennessee Mun. League Risk Mgmt. Pool**, 974 S.W.2d 677 (Tenn. 1998). There, the claimant sought workers' compensation benefits after sustaining a fourth back injury. The Court held that, "[a]n employee who has received compensation for prior injuries based on a percentage of disability to the body as a whole and is later injured shall be paid only for the degree of permanent disability that results from the subsequent injury." Id. at 678. In reaching its conclusion, the Court stated that, "[w]e believe the language of Tenn. Code Ann. § 50-6-207(3)(F) is unambiguous and that its meaning and its intended effect is clear. An employee who has received compensation for prior injuries based on a percentage of disability to the body as a whole and is later injured shall be paid only for the degree of permanent disability that results from the subsequent injury." Id. at 679. Likewise, in applying these well-established rules of statutory construction, we find that the plain language of Tenn. Code Ann. § 50-6-207(3)(F) warrants strict adherence to the requirement that an employee who suffers a subsequent injury shall be compensated only for the degree of permanent disability that results from that subsequent injury.

Mr. Carter further urges this Panel to adopt a narrow interpretation of Tenn. Code Ann. § 50-6-207(3)(F), maintaining that under the Brewer application, a petition to reopen is precluded only when a subsequent injury is to the same part of the body or is a repetition of the first injury. However, the Brewer Court did not limit the holding to its facts. Additionally, Harris interpreted Section 50-6-207(3)(F) as limiting recovery whether the subsequent injury occurs to the same or a different part of the body. Courts are not authorized "to alter or amend a statute." Gleaves v. Checker Cab Transit Corp., Inc., 15 S.W.3d 799, 802 (Tenn. 2000). Our interpretation must not render any part of a legislative act "inoperative, superfluous, void or insignificant." Tidwell v. Collins, 522 S.W.2d 674, 676-77 (Tenn. 1975). Legislative purpose is to be determined without a forced or subtle interpretation that would limit or extend the statute's application. State v. Blackstock, 19 S.W.3d 200, 210 (Tenn. 2000). The reasonableness of a statute may not be questioned by a court, and a court may not substitute its own policy judgments for those of the legislature. **Mooney v. Sneed**, 30 S.W.3d 304, 306 (Tenn. 2000) (citing BellSouth Telecomm., Inc. v. Greer, 972 S.W.2d 663, 673 (Tenn. Ct. App. 1997)). "[C]ourts must presume that the legislature says in a statute what it means and means in a statute what it says there." Id. at 307. Consequently, we find that given the foregoing principles of statutory construction, the plain

language of Tenn. Code Ann. § 50-6-207(3)(F) does not require that the first and subsequent injuries involve the same part of the body.

Mr. Carter argues that it is illogical for an employee to be precluded from seeking reconsideration following a subsequent injury, while allowing reconsideration in the case of termination for misconduct. In support of his argument, Mr. Carter relies on **Niziol v. Lockheed Martin Energy Systems, Inc.**, 8 S.W.3d 622, 624 (Tenn. 1999) and **Young v. Caradon Better-Bilt, Inc.**, 30 S.W.3d 285, 288 (Tenn. 2000). We find this case distinguishable from Niziol and Young. Those cases dealt with the question of whether Tenn. Code Ann. § 50-6-241(a)(2) requires proof that termination was causally connected to the initial work-related injury as a precondition to obtaining reconsideration. In contrast, the present case raises the issue of whether Tenn. Code Ann. § 50-6-207(3)(F) controls when termination of employment is due to a subsequent injury. Therefore, the Niziol holding and its progeny do not control in this case.

Mr. Carter's argument further conflicts with the decision in **Lay v. Scott County Sheriff's Dept.**, 109 S.W.3d 293, 299 (Tenn. 2003). There, the Court held that so long as a return to work is offered, an employee who resigns for reasons unrelated to his injury may not escape the statutory cap. See also **Hardin v. Royal & Sunalliance Ins.**, 104 S.W.3d 501, 506 (Tenn. 2003) (holding that a trial court may reconsider a previous workers' compensation award when an employee resigns, but that the trial court may only increase the award if the resignation is reasonably related to the employee's injury); and **Hill v. Wilson Sporting Goods Co.**, 104 S.W.3d 844, 848 (Tenn. Workers Comp. Panel, 2002) (holding that appropriateness of allowing reconsideration of industrial disability must be evaluated under the facts and circumstances of each workers' compensation case, applying the standards of reasonableness). Further, Tenn. Code Ann. § 50-6-241(a)(2) provides that the employee is entitled to reconsideration in *appropriate* cases, permitting judicial discretion (emphasis added).

Workers' compensation law is a creature of the General Assembly, and any change in its structure must come from that body and not from the courts. Aerosol Corp. of the South v. Johnson, 435 S.W.2d 832, 836 (Tenn. 1968); Lindsey v. Hunt, 387 S.W.2d 344, 345 (Tenn. 1965). Circumstances under which benefits are paid depend solely upon statutory authority. Leatherwood v. United Parcel Service, 708 S.W.2d 396, 399 (Tenn. Ct. App. 1985). Thus, given the present language of the statutes, we find that that Mr. Carter's action for reconsideration benefits under Tenn. Code Ann. § 50-6-241(a)(2) is prohibited.

Consequently, we reverse the holding of the trial court and set aside the finding that Mr. Carter is entitled to an additional 24.83% vocational disability to the body as a whole for the initial injury. The award for the injury in 2000 is not challenged on appeal and is thus affirmed. Costs on appeal are taxed to the appellee, Timothy Yates Carter.

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JERRY SCOTT, SENIOR JUDGE

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JUDGMENT

This case is before the Court upon Timothy Yates Carter's motion for review 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 are incorporated herein by reference.

Whereupon, it appears to the Court that the motion for review is not well-taken and should be DENIED; 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 will be assessed to Timothy Yates Carter for which execution may issue if necessary.

PER CURIAM

Barker, J., not participating.