

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
May 17, 2006 Session

LARRY GARNER V. THE GOODYEAR TIRE & RUBBER COMPANY, ET AL

**Direct Appeal from the Chancery Court for Weakley County
No. 18276 W. Michael Maloan, Chancellor**

No. W2005-02229-SC-WCM-CV - Mailed July 26, 2006; Filed October 31, 2006

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Tennessee Supreme Court in accordance with Tennessee Code Annotated section 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. On appeal, the employer contends that the trial court erred in failing to dismiss this claim based on the statute of limitations. After carefully reviewing the record, we agree and reverse the judgment of the trial court.

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

J.S. (Steve) Daniel, Sr. J. delivered the opinion of the court, in which Janice M. Holder, J., and Joe C. Loser, Jr. Sp. J., joined.

Kirk L. Moore and Randy N. Chism, Union City, Tennessee, for the appellant, Goodyear Tire & Rubber Co.

James H. Bradberry, Dresden, Tennessee, for the appellee, Larry Garner.

Juan G. Villasenor, Assistant Attorney General, Nashville, Tennessee, for Defendants, Tennessee Department of Labor/Workforce Development and Sue Head, Director.

OPINION

I. Facts and Procedural History

Larry Garner suffered an injury to his low back October 28, 1999 while working within the scope and course of his employment with Goodyear Tire & Rubber Company ("Goodyear"). A workers' compensation lawsuit for his injuries was initiated and ultimately settled November 21, 2001, on the basis of 36% permanent partial disability to the body as a whole. This award exceeded 2½ times the medical impairment ratings.

On September 2, 2003, Mr. Garner initiated the present lawsuit against his employer, Goodyear, seeking reconsideration of the November 21, 2001, award of workers' compensation

benefits. Goodyear answered this complaint and denied that Mr. Garner was entitled to reconsideration under the provisions of Tennessee Code Annotated section 50-6-241(a)(2). On March 29, 2004, Mr. Garner sought an order allowing the amendment of his complaint which was granted by the trial court. This amended complaint set forth that he had had back surgery March 20, 2002, and continued to seek reconsideration of his disability benefits associated with the prior settlement. Goodyear answered again denying that reconsideration was appropriate. However, they admitted that Mr. Garner had sustained a back injury within the scope and course of his employment on December 17, 2001, but pointed out that Mr. Garner had received all workers' compensation benefits to which he was entitled. Goodyear thereafter pled that they were without knowledge or information to form a belief as to whether Mr. Garner was entitled to any other benefits. On May 5, 2004, Mr. Garner once again filed a motion to amend his complaint, this time seeking to add the Second Injury Fund as a party defendant and asserted that the cause of action was seeking a reconsideration of the previously awarded disability benefits. On June 18, 2004, the Second Injury Fund filed an answer and pled the statute of limitations. Goodyear also filed a second answer denying reconsideration and pled the statute of limitations. On March 17, 2005, Goodyear filed a Motion to Dismiss and/or a Motion for Judgment on the Pleadings, seeking to have the claim dismissed based on the statute of limitations. As a result of those pleadings, Mr. Garner obtained an agreed order May 23, 2005, allowing yet a third amended complaint. This third amended complaint pled for the first time that the basis of Mr. Garner's claim was a new work injury as opposed to a claim seeking reconsideration of the prior award of November 21, 2001. The trial court considered this third amended complaint dated May 23, 2003, to relate back to the initial filing of the complaint seeking reconsideration. Both Goodyear and the Second Injury Fund filed answers as well as motions to dismiss and a summary judgment motion based on the statute of limitations. On August 11, 2005, the trial court granted the Second Injury Fund's Motion to Dismiss and Motion for Summary Judgment, dismissing Mr. Garner's case based on the expiration of the statute of limitations. However, the trial court overruled Goodyear's similar motion. Thereupon the trial court proceeded to a trial of Mr. Garner's claim. At the conclusion of the trial, the trial court determined that Mr. Garner had suffered a work-related injury on December 17, 2001, and awarded Mr. Garner benefits on the basis of 64% to the body as a whole for permanent partial disability associated with this back injury against Goodyear.

In announcing his decision not to grant Goodyear's Motion to Dismiss on the grounds of statute of limitations, the trial court recognized that the pleadings failed to assert a cause of action based on a new injury until the amended complaint of May 23, 2005. However, the trial court concluded that by filing an answer April 30, 2004, in which Goodyear acknowledged that there had been a work-related injury December 17, 2001, it was clearly shown that Goodyear had knowledge of an injury even though it asserted that all workers' compensation benefits due Mr. Garner had been paid in relationship to that injury. The trial court concluded its findings by saying,

[t]his leads me to believe that the plaintiff has met the requirements of the statute in that the defendant has been put on notice of a claim and the events of the claim; therefore, I am going to deny the Motion to Dismiss in regard to the statute of limitations in regard to Goodyear Tire & Rubber. Now, in regard to the Second Injury Fund, the first time the Second Injury Fund was brought into the proceedings was May 5, 2004 . . . and it is not until the Amended Complaint of 2005 is filed that there

is anything in the record to put the Second Injury Fund on notice of a new injury date; there is certainly no amended answer filed by the Second Injury Fund to admit that they knew of a claim in a new injury date of 2001. So, the court finds that the Second Injury Fund Motion to Dismiss is . . . granted because the complaint as amended is not timely as to the Second Injury Fund.

Goodyear has appealed the trial court's action and asserts that the trial court was in error in failing to dismiss the complaint as being time barred under the applicable statute of limitations. Goodyear contends that the trial court misconstrued Rule 15 of the Tennessee Rules of Civil Procedure in allowing the third amended complaint to relate back to the original initiation of the action September 2, 2003. For the reasons stated herein, we agree and reverse the trial court's judgment.

II. Standard of Review

Review of the findings of fact made by the trial court 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). The reviewing court is required to conduct an independent examination of the record to determine where the preponderance of the evidence lies. The standard governing appellate review of the findings of fact of a trial judge requires this panel to examine in depth the trial court's factual findings and conclusions. GAF Bldg. Materials v. George, 47 S.W.3d 430, 432 (Tenn. Workers' Comp. Panel 2001). When the trial court has seen the witnesses and heard the testimony, especially where issues of credibility and the weight of testimony are involved, the appellate court must extend considerable deference to the trial court's factual findings. Whirlpool Corp. v. Nakhoneinh, 69 S.W.3d 164, 167 (Tenn. 2002). Our standard of review of questions of law is de novo without a presumption of correctness. Perrin v. Gaylord Entm't Co., 120 S.W.3d 823, 626 (Tenn. 2003). When medical testimony is presented by deposition, this court is able to make its own independent assessment of the medical proof to determine where the preponderance of the evidence lies. Cleek v. Wal-Mart Stores, Inc., 19 S.W.3d 770, 774 (Tenn. 2000).

III. Analysis

The determination of this case involves an issue of law, specifically, whether under Rule 15 of the Tennessee Rules of Civil Procedure the May 23, 2005, amended complaint can relate back to the filing of the original complaint September 2, 2003, for the purpose of meeting the applicable statute of limitations. We extend no presumption of correctness to the chancellor's determination of this issue as it is a question of law. Questions of law are reviewed de novo without presumptions of correctness. Perrin, 120 S.W.3d at 826.

Tennessee Code Annotated section 50-6-203(b)(1)(2) establishes that the statute of limitations for initiating workers' compensation actions is one year after the accident resulting in the injury or in the alternative, one year from the latter of the date of the last authorized treatment or the

time that the employer ceased to make payments of compensation to or on behalf of the employee. Our review of the record establishes that the statute of limitations commenced to run May 30, 2003, when the last benefit payments were made on behalf of Mr. Garner. Therefore, the statute of limitations would have expired May 30, 2004. The initial lawsuit filed September 2, 2003, had as its cause of action a reconsideration of the disability benefits awarded by the judgment of the court November 21, 2001. The record reveals that Mr. Garner ultimately lost his job February 17, 2003, because of his back injury, and an action filed for reconsideration under the provisions of Tennessee Code Annotated section 50-6-241(a)(2) requires those actions to be filed within one year of the employee's loss of employment. Therefore, his action for reconsideration was in fact timely under the specific statute of limitations provisions established for reconsideration.

Although Mr. Garner amended his complaint on numerous occasions, there were no assertions that the claim or cause of action was based on a new injury until the amended complaint of May 23, 2005. A review of the record reveals that Goodyear had knowledge of the December 17, 2001, injury, but all the pleadings which had been filed by Mr. Garner sought the advancement of a cause of action for reconsideration. In our opinion, Goodyear was, therefore, entitled to defend and answer only those causes of action that were pled.

The determinative issue in this appeal is whether the amended complaint of May 23, 2005, relates back to the original pleading filed. The time line which we have established clearly indicates that the statute of limitations would have run absent this amendment relating back to the original complaint September 2, 2003. The determination of whether an amendment relates back to the original pleading is controlled by Rule 15.03 of the Tennessee Rules of Civil Procedure which states, "Whenever the claim or defense asserted in amended pleadings arose out of the conduct, transaction or occurrence set forth or attempt to be set forth in the original pleading, the amendment relates back to the date of the original pleading." However, only those claims which relate back to the original pleadings are saved from the effects of the applicable statute of limitations. Where the amendment substantially raises a new cause of action, the amendment does not relate back to the original pleadings and the statute of limitations continues to run until the amendment is filed. Rainey Bros. Const. Co. v. Memphis & Shelby County Bd. of Adjustment, 821 S.W.2d 938, 941 (Tenn. Ct. App. 1991) (citing Energy Sav. Prods., Inc. v. Carney, 737 S.W.2d 783 (Tenn. 1987)).

Where an amendment does not seek to change a party or name a new party, courts are to determine whether the amendment relates back to the date of an earlier pleading according to the "virtually self-construing" language of Rule 15.03 of the Tennessee Rules of Civil Procedure. Hawk v. Chattanooga Orthopedic Group, P.C., 45 S.W.3d 24, 29 (Tenn. Ct. App. 2000). Therefore, if an amendment arises from the "conduct, transaction or occurrence" in the original pleading, the amendment relates back to the date of the original pleading and would avoid the effect of the statute of limitations. However, if the amendment does not arise out of the same conduct, transaction or occurrence as the original pleading, then it does not relate back to the original pleading and thus would be time barred if the statute of limitations period has expired. Id. at 31. The "conduct, transaction or occurrence" in the original pleading asserted a cause of action for reconsideration of a prior workers' compensation award. We conclude that the May 23, 2005, pleading asserting a new cause of action that did not arise out of the "conduct, transaction, or occurrence" in the original pleading.

Therefore, we hold that the trial court was in error when it failed to grant Goodyear's motion to dismiss the case as being time barred. We reverse the judgment of the trial court and remand the case for the entry of an order consistent with this opinion. Costs of this appeal are taxed against the appellee, Larry Garner, and his surety for which execution may issue if necessary.

J. S. DANIEL, SENIOR JUDGE

IN THE SUPREME COURT OF TENNESSEE
AT JACKSON

**LARRY GARNER v. THE GOODYEAR TIRE & RUBBER COMPANY, ET
AL.**

**Chancery Court for Weakley County
No. 18276**

No. W2005-02229-SC-WCM-CV - Filed October 31, 2006

JUDGMENT ORDER

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

It is so ORDERED.

PER CURIAM

Janice M. Holder, J., not participating