IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE JUNE 19, 2006 Session

RUBY GOOCH v. PARKER HANNIFIN CORPORATION, A/K/A/ PARKER SEALS

Direct Appeal from the Chancery Court for Wilson County
No. 04084 Charles K. Smith, Chancellor

No. M2005-01987-WC-R3-CV - Mailed - January 10, 2007
Filed - April 13, 2007

This is a workers' compensation appeal referred to and heard by 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. Prior to trial the parties settled the issue of permanent vocational impairment at 17% permanent partial disability to the body as a whole, which was subsequently court-approved. The defendant, Parker Hannifin Corporation, originally contended that the court erred in holding the defendant liable for plaintiff's milage to and from her residence or workplace and that of her medical provider due to the fact that the trips did not involve travel 15 miles or more in radius. The plaintiff having conceded the court's error in doing so, that leaves remaining the defendant's second contention, that being that the court erred in holding defendant responsible for what plaintiff's claim of unauthorized medical expenses in the amount of $39,037.25. We hold the court was correct, and therefore we affirm the trial court's decision.

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

CLAYBURN PEEPLES, SP.J., delivered the opinion of the court, in which ADOLPHO A. BIRCH, J., J., AND JEFFERY BIVINS, SP.J. joined.

Mary Dee Allen, Cookeville, Tennessee, for the Defendant-Appellant, Parker Hannifin Corporation, A/K/A/ Parker Seals.

Debbie C. Holliman and E. Guy Holliman, Carthage, Tennessee, for the Plaintiff-Appellee, Ruby Gooch.

MEMORANDUM OPINION

In June 2003 the plaintiff, who had worked for defendant for five years, suffered a work-

related injury to her right shoulder. At the time of her injury she notified her supervisor, after which defendant provided her a panel of physicians' names from which she could seek treatment. She chose Dr. Roy Terry from the panel.

Dr. Terry treated plaintiff on three or more occasions between June and November of 2003 for what he believed to be a neck injury. This treatment included several tests and a course of physical therapy. According to plaintiff's testimony, she notified a case worker for defendant that she was not happy with Dr. Terry's treatment but was not offered other medical treatment or another panel of physicians. During this time plaintiff continued to work in the employ of defendant in her usual job.

On November 11, 2003, Dr. Terry released her from his care with no restrictions. She was laid off by defendant a few days later.

Following her layoff, plaintiff found employment with the Aladdin Corporation, beginning work there in December of 2003. She claims to have had continuous pain and limited movement in her right shoulder, and as soon as her insurance became operative at Aladdin, she sought other medical treatment.

On March 4, 2004, she filed a workers' compensation complaint in the Wilson County Chancery Court. On April 15, 2004, defendant filed an answer denying all liability.

Nearly three months later, in June 2004, plaintiff sought treatment from a chiropractor with shoulder complaints. He referred her to a physician, who referred her to an orthopedic physician, a Dr. Gautsch, who recommended surgery.

Plaintiff then sought a second opinion from Dr. Robert Landsberg; he concurred with the surgery recommendation, and he performed surgery upon plaintiff on September 20, 2004.

The plaintiff did not advise defendant of any treatments she underwent after leaving the employ of defendant until November 11, 2004, when her attorney filed a motion to authorize further medical care. That motion was heard, and benefits were ordered, after which further treatment was administered. Both sides agree that the amount of charges involved were reasonable; therefore, the amount of those charges is not at issue. Defendant maintains, however, that it should not be held liable for unauthorized medical expenses incurred by plaintiff, because plaintiff failed to notify or consult with defendant prior to incurring them.

The trial court found that the plaintiff had, in fact, failed to notify defendant of her unauthorized medical treatment but that her failure to do so was justified because defendant had a duty to notify plaintiff of her rights to continuing medical treatment at the time of her layoff, and had failed to do so, and that further, the defendant, by filing an answer denying compensability of the claim, basically waived the right to complain of her unauthorized medical expenses. The court ordered defendant to pay those expenses. We agree.

In examining the trial court's decision we begin by acknowledging that for injuries occurring on or after July 1, 1985, appellate review is *de novo* upon the record of the trial court, accompanied by a presumption of correctness unless the evidence preponderates otherwise. *Tenn. Code Ann.* § 50-6-225(e)(2). Under this standard, a reviewing court is required to weigh in more depth the factual findings and conclusions of the trial court in a workers' compensation case. *Cleek v. Wal-Mart Stores*, 19 S.W.3d 770, 773 (Tenn. 2000).

When the trial judge has seen and heard witnesses' testimony, however, considerable deference must be accorded on review to the trial court's findings of credibility and weight given to

that testimony. *Townsend v. State*, 826 S.W.2d 434, 437 (Tenn. 1992). Thus, we are to presume the correctness of the trial court's findings unless the preponderance of the evidence is otherwise. *Humphrey v. David Witherspoon, Inc.*, 734 S.W.2d 315 (Tenn. 1987).

Bearing these principles in mind, we review the facts of this case. It is clear that Tennessee workers' compensation law provides that "[t]he employer or the employer's agent shall furnish free of charge to the employee such medical and surgical treatment . . . as may be reasonably required." *Tenn. Code Ann.* § 50-6-204(a)(1). Employees, however, have a concomitant duty to give notice of claims to employers. Our Supreme Court has held that "the intent of the statute was for the employee to certainly do no less than consult his employer before incurring the expenses called for by that statute if the employee expects the employer to pay for it." *Procter & Gamble, et al. v. West*, 310 S.W.2d 175 (Tenn. 1958). A counter view, said the Court, "would be against public policy." *Id,* at 178.

Our courts have consistently held, however that whether an employee is justified in seeking additional medical services to be paid for by the employer without consulting that employer depends on the circumstances of each case. *Dorris v. INA Insurance Company*, 764 S.W.2d 538 (Tenn. 1989). In the case *sub judice*, no dispute exists concerning the compensable nature of plaintiff's injury, so accordingly, we must examine the relevant facts to determine whether the applicable statutes and case law require that she should have sought prior approval before receiving for that injury.

It is clear from the evidence that defendant was aware that plaintiff had been injured and that she had received authorized treatment for that injury. The trial court heard evidence that plaintiff was dissatisfied with the treatment she had received, however, and that she had notified a representative of defendant company of that dissatisfaction. It is undisputed that in March of 2004 she filed a workers' compensation action against the defendant alleging an injury to her right shoulder seeking permanent disability benefits and that defendant filed an answer on April 15, 2004 denying all liability for her injury.

Having done so, defendant cannot now claim that plaintiff should have sought its authorization to receive further treatment. "An employer who denies all liability for an accident and injury claimed by an employee is in no position to insist upon the statutory provisions respecting the choosing of physicians." *CNA Insurance Company v. N. L. Transou*, 614 S.W.2d 335 (Tenn. 1981), citing *Paristyle Beauty Salon, Inc. v. Chandler*, 341 S.W.2d 731 (Tenn. 1960).

Once defendant denied all liability regarding plaintiff's claim, it could no longer rely upon the statutory scheme for choosing medical services.

Tennessee appellate courts have long followed the rule that the question of reasonableness of excuse for failure to give notice required by the workers' compensation statutes is one particularly for the trial judge and that where there is material evidence to support the trial court's finding then that finding is final. *Smith v. Tennessee Furniture Industries Inc.*, 369 S.W.2d 876 (Tenn. 1957). Here the trial court, after listening to all the proof, found the plaintiff was justified in her manner of seeking treatment and also justified in the manner in which she dealt with defendant with regard to the notice requirement.

We agree; there is no question that the expenses incurred by plaintiff were necessary, proper and reasonable for the treatment of her injury, and under the circumstance we hold that the employer may not complain about her lack of formally notifying defendant that she was seeking further

treatment.

The judgment of the trial court is affirmed, and costs are taxed to the appellant.

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CLAYBURN PEEPLES, SPECIAL JUDGE

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

RUBY GOOCH v. PARKER HANNIFIN CORPORATION A/K/A PARKER SEALS

No. M2005-01978-SC-WCM-CV - Filed April 13, 2007

ORDER

This case is before the Court upon the motion for review filed by Parker Hannifin Corporation a/k/a Parker Seals 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 Parker Hannifin Corporation, a/k/a Parker Seals, and its surety, for which execution may issue if necessary.

PER CURIAM