

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT KNOXVILLE  
May 22, 2003 Session

**BOBBY J. LAXTON v. STATE OF TENNESSEE**

**Direct Appeal from the Tennessee Claims Commission  
No. 98000640 Vance W. Cheek, Jr., Commissioner**

Filed October 7, 2003

**No. E2002-02281-WC-R3-CV**

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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 Claims Commissioner sustained a motion for summary judgment in favor of the employer and held the action was not timely filed within the one year period of time allowed by the statute of limitations. The employee contends he filed the claim within one year of his becoming aware he was disabled to work. Judgment of the Claims Commission is affirmed.

**Tenn. Code Ann. § 50-6-225(e) (1999) Appeal as of Right; Judgment of the Tennessee  
Claims Commission is Affirmed**

THAYER, SP. J., delivered the opinion of the court, in which BARKER, J., and PEOPLES, SP. J., joined.

Robert A. McNeas III and Robert W. Knolton, of Oak Ridge, Tennessee, for Appellant, Bobby J. Laxton.

Paul G. Summers, Attorney General and Reporter, and Stephanie R. Reeves, of Nashville, Tennessee, for Appellee, State of Tennessee.

**MEMORANDUM OPINION**

The employee, Bobby J. Laxton, appeals from the trial court's action in sustaining a motion for summary judgment in favor of his employer, State of Tennessee. The Claims Commission held the action was not timely filed within the one year period of time required by the statute of limitations.

Facts

The employee, age fifty-three years at the time of the trial, began working for the Tennessee Department of Corrections in 1979 at Brushy Mountain Prison in Petros, Tennessee. He was employed as an emergency medical technician and was assigned duties in the prison hospital or medical clinic. He testified that on January 19, 1981, while near "D" Block in the prison, he started hurting bad and became very hot. He does not recall why he was in this area of the prison and has no knowledge of any involvement in any physical exertion or strain and/or any traumatic or stressful event. He was taken to the Methodist Medical Center in Oak Ridge, Tennessee, where it was determined he had suffered a heart attack. He was off work for several weeks and then returned to his regular duties as an emergency medical technician.

About five years later in 1986, his job duties changed from an emergency medical technician to a regular correctional officer. Also, that year he underwent heart bypass surgery and was off work for several months. Many years later in 1997 he had a second heart bypass surgery. His affidavit indicates that sometime between June - October 1997, while talking to his doctor, he became aware that his heart disease and condition would not allow him to continue to work. He applied for and was granted disability retirement benefits with the State and also began receiving Social Security Disability benefits.

On February 17, 1998, the employee filed a claim for workers' compensation benefits with the Division of Claims Administration, State of Tennessee, seeking benefits for his heart attack which occurred on January 19, 1981. The claim was denied and he appealed to the Tennessee Claims Commission. After reviewing the employee's deposition and a personal affidavit, the only supporting documents of the summary judgment record, the Commissioner determined the action was not timely filed and dismissed the claim.

#### Standard of Review

Usually, the review of a workers' compensation case is *de novo* on the record accompanied by a presumption of the correctness of the findings of fact unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2). However, an appeal from a summary judgment order is not controlled by the *de novo* standard of review provided by the Workers' Compensation Act but is governed by Rule 56, T.R.Civ.P.; *Downen v. Allstate Ins. Co.*, 811 S.W.2d 523 (Tenn. 1991). In workers' compensation cases, summary judgment should be entered cautiously as questions involving the commencement of the statute of limitations most often are factual in nature. Nevertheless, if the material facts are not in dispute, and it is apparent from the record that the moving party is entitled to judgment as a matter of law, summary judgment is appropriate. *McLerran v. Mid-South Stone, Inc.*, 695 S.W.2d 181 (Tenn. 1985).

#### Analysis

The only question on appeal is whether the Claims Commissioner was correct in holding the claim filed on February 17, 1998 for an injury occurring on January 19, 1981, was barred by the

running of the statute of limitations.

The employee seeks a reversal of the ruling upon several theories. First it is insisted that although the incident occurred in 1981, he was not aware of a compensable injury until 1997 and that his claim was filed within six months of acquiring this knowledge. Next, he contends the claim also falls under the occupational disease statutes and that the one year statute of limitations does not begin to run until “the beginning of the incapacity for work”. Lastly, it is argued that his claim results from a gradual injury and under the gradual injury rule, the statute does not begin to run until the employee becomes disabled to work.

Tennessee Code Annotated § 50-6-203 is the general statute of limitations for workers’ compensation claims and it 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); *Norton Co. v. Coffin*, 553 S.W.2d 751, 752 (Tenn. 1977). Thus, under the last rule, it is the date that an employee’s disability manifests itself to a person of reasonable diligence, rather than the date of the accident, that triggers the statute of limitations. *McLerran v. Mid-South Stone, Inc.*, *supra*.

In the present action, there was an interval of seventeen years from the occurrence of the employee’s heart attack at work until his claim for benefits was filed. When asked as to why he waited so long, the following statements appear:

- Q. What caused you to wait so long, Mr. Laxton.  
A. I didn’t know about it.  
Q. What didn’t you know?  
A. I didn’t know I had a case or anything, no one had ever told me about anything about this.  
Q. Obviously you knew you had a heart problem; is that right?  
A. Oh, I knew I had a heart problem, yes ma’am.  
Q. Okay.  
A. See, any other times I’d always used my sick time, my own time, my comp time.  
Q. And you’d filed a worker’s comp claim before, hadn’t you - -  
A. (Interposing) Yes.

In reviewing the record in the most favorable light to the employee, it is clear that he does not claim his doctor recently told him his heart attack was work-related. His affidavit states that around August 1997 (and after a second bypass surgery) in discussing his condition about returning to work, he first learned he would be unable to return to work because of his heart disease and physical condition. His deposition testimony also indicated he had suffered other health problems

(diabetes and knee surgery) during the latter work years.

When the claim for benefits was first considered and denied by the Division of Claims Administration, his notice of appeal stated in describing his claim that he was relying on the statutory presumption set out in Tenn. Code Ann. § 7-51-201(a)(1) and that prior to going to work he had a physical examination which did not reveal any heart disease or hypertension. The State's response to this contention is that he was not entitled to the benefit of the statutory presumption as he was not employed as a law enforcement officer when he suffered the heart attack but was employed as an emergency medical technician in the prison hospital or clinic. The State also shows the statute was amended in 1986 to provide that the term "law enforcement officer" shall include correction security job classifications employees of the Department of Corrections.

We have carefully examined the record and cannot find any legal reason why the general statute of limitations should be suspended for the long period of time in question. The employee was well aware he had sustained a heart attack while working; he was aware it had affected his ability to work as he was off work for some period of time in 1981; his testimony indicated he was aware he continued to have heart problems throughout the many years that followed; he does not contend anyone ever told him his heart attack was work-related; and his legal position seems to narrow down to the fact he waited until he learned he was totally disabled before he filed his claim. We find the claims commission was correct in holding the general statute of limitations had expired.

Next, the employee argues his claim can also be classified as an occupational disease under the provision of Tenn. Code Ann. § 50-6-301 and that section 50-6-306 provides the claim can be timely filed within one year "after the beginning of the incapacity for work resulting from the occupational disease". While heart disease does fall under the statutory definition of an occupational disease under subsection 6, we do not find the language of the statute is sufficient to suspend the running of the limitations period until 1998. Cases interpreting this provision hold that the term "beginning of the incapacity" means the same as "the happening of the injury". See *Adams v. American Zinc Co.*, 326 S.W.2d 425 (Tenn. 1959); *Christopher v. Consolidated Coal Co.*, 440 S.W.2d 281 (Tenn. 1969). We do not find any merit to this contention as the employee was well aware of his injury in 1981 and knew it affected his ability to work.

Last, the employee contends his heart attack should be considered a gradual injury for the purpose of instituting suit. It is well settled law that in appropriate cases, a gradual injury may develop from repetitive work-related movements over a long period of time and that the accidental injury is considered to have occurred when the employee becomes disabled to work. *Barker v. Home-Crest Corporation*, 805 S.W.2d 373, 375 (Tenn. 1991); *Brown Shoe Company v. Reed*, 350 S.W.2d 65, 70-71 (Tenn. 1961). The employee has not cited any case where a heart attack has been considered a gradual injury. We are not aware of such a holding. The Claims Commissioner rejected this theory and we concur with this result.

### Conclusion

Considering the record in its most favorable light to the employee, we find the one year statute of limitations had expired before the institution of the claim in February 1998.

The judgment of the Tennessee Claims Commission is affirmed. Costs of the appeal are taxed to the employee.

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ROGER E. THAYER, SPECIAL JUDGE

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**JUDGMENT**

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

BARKER, J., NOT PARTICIPATING