IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT MEMPHIS
September 29, 2020 Session

JOHN PEARSON v. MEMPHIS LIGHT GAS & WATER DIVISION

Appeal from Court of Workers' Compensation Claims
No. 2017-08-1117 Deana C. Seymour, Judge

No. W2020-00462-SC-WCM-WC – Mailed December 17, 2020;
Filed March 24, 2021

Plaintiff-Appellant John Pearson appeals the decision of the Court of Workers' Compensation declining to award him benefits for a spinal cord injury allegedly sustained during the course and scope of his employment. The trial court held that Mr. Pearson's claim was barred by the applicable statute of limitations and, alternatively, that he had failed to prove that his job installing streetlights was the actual and proximate cause of his injury. The appeal has been referred to the Special Workers' Compensation Appeals Panel for a hearing and a report of findings of fact and conclusions of law pursuant to Tennessee Supreme Court Rule 51. Because we conclude that Mr. Pearson filed his petition more than one year after he discovered his injury, the statute of limitations bars his claim. We therefore affirm the judgment of the trial court.

Tenn. Code Ann. § 50-6-225(a) (2014 & Supp. 2017) Appeal as of Right;
Judgment of the Court of Workers' Compensation Affirmed

ROBERT E. LEE DAVIES, SR. J., delivered the opinion of the court, in which HOLLY KIRBY, J. and DON R. ASH, SR. J., joined.

Steve Taylor, Memphis, Tennessee, for the appellant, John Pearson

Sean Antone Hunt, Memphis, Tennessee, for the appellee, Memphis Light, Gas, & Water Division

OPINION

Factual and Procedural Background

Plaintiff-Appellant John Pearson, age sixty-one, had been employed by Defendant-Appellee Memphis Light, Gas &Water Division (MLGW) for fourteen years at the time he filed his initial petition for workers' compensation benefits. At MLGW, Mr. Pearson drove a bucket truck throughout the city in order to repair and install streetlights which generally weighed between twenty-five and sixty pounds each. Mr. Pearson testified at trial that he installed approximately sixteen lights per day. Installing these streetlights required Mr. Pearson to lift and put a large mechanical arm into place to secure the streetlight, then replace an existing bulb. He testified that this often led him to "lift, bend, and twist on a daily basis."

In March 2014, Mr. Pearson first saw Dr. Glenn Crosby to address myelopathy that was causing his right leg to drag when he walked. After reviewing a previous MRI, Dr. Crosby determined that Mr. Pearson was suffering from "severe spondylosis at C4-5 with spinal cord compression and hyperintense lesion within the cervical cord itself[;] myelomalacia." Dr. Crosby recommended a cervical fusion at the affected vertebrae "to take the pressure off the spinal cord and prevent the myelopathic process from worsening." Mr. Pearson successfully underwent surgery on April 9, 2014, and his symptoms subsequently abated.[1]

In early 2016, Mr. Pearson began to experience problems that resembled those precipitating his earlier surgery. He testified at trial that he began having "pain, some tingling and numbness on the left side" and that these symptoms would surface intermittently before subsiding. Mr. Pearson testified that on one particular day, he was bowling and began to experience such severe symptoms that he thought he was having a stroke and went to the emergency room. After being informed this was not the case, Mr. Pearson visited Dr. Mohammed Assaf and reported that he began experiencing these

[1] Mr. Pearson also suffered a slip and fall at MLGW in January 2013 and previously brought a claim for workers' compensation benefits alleging that his myelopathy was aggravated by this accident. Memphis Light, Gas & Water Div. v. Pearson, No. W2018-01511-SC-WCM-WC, 2020 WL 1062871, at *5–6 (Tenn. Workers' Comp. Panel Feb. 26, 2020). A different panel of this court held that Mr. Pearson failed to sufficiently show that the slip and fall caused his neck condition and declined to award benefits on that basis. Id. at *10.

symptoms after both "lifting around forty pounds" and bowling. Dr. Assaf diagnosed Mr. Pearson with "cervical disk disease with radiculopathy," ordered an MRI, and referred him to Dr. Crosby for further evaluation.

Mr. Pearson's MRI revealed "a left paracentral disc protrusion" at the C3-4 level, "resulting in high-grade stenosis of the left aspect of the central canal." Dr. Crosby reviewed the results and diagnosed Mr. Pearson with "a very large ruptured disc at C3-4 with spinal cord compression and myelopathic findings including ischemia in the cord itself." Similar to Mr. Pearson's previous spinal cord issue, Dr. Crosby recommended a cervical fusion at the affected vertebrae, which Mr. Pearson underwent on July 28, 2016.[2]

Following this surgery, Mr. Pearson's counsel sent Dr. Crosby a letter seeking an opinion on whether Mr. Pearson's injury at the C3-4 level was potentially work related. In the letter, Mr. Pearson's counsel posed a hypothetical wherein Dr. Crosby was asked to assume the following facts as true:

> That Mr. Pearson works for his employer in a position which required him to daily lift, bend, and twist on a repetitive basis. Overtime, Mr. Pearson began to experience pain in his cervical area together with pain, numbness, and tingling down his left arm, and walking abnormally. For the purpose of this hypothetical, you may assume that there is no off-work trauma.

Dr. Crosby responded in a letter dated September 8, 2016 that "[b]ased on the fact (*sic*) set forth in your hypothetical and assuming those facts to be true and further assuming there is no off-work trauma," he believed to reasonable degree of medical certainty that Mr. Pearson's injury was seventy-five to eighty percent related to his work. Mr. Pearson's counsel showed him Dr. Crosby's letter on December 19, 2016, and Mr. Pearson provided MLGW with notice of the injury two days later on December 21. Mr. Pearson then filed his initial petition for benefit determination on October 9, 2017.

On March 16, 2020, the trial court entered an order denying Mr. Pearson's claim for benefits. It held that Mr. Pearson's claim was barred by the one-year statute of limitations in Tennessee Code Annotated § 50-6-203(b)(1) because the date that Mr. Pearson discovered his injury was September 8, 2016—the date of Dr. Crosby's letter.[3] Since Mr.

[2] Dr. Crosby's notes refer to the surgery being on June 28, but he testified via deposition that this was a typo.

[3] The trial court's holding assumed that Mr. Pearson's counsel received the letter on the 8th.

Pearson filed his claim on October 9, 2017, he was therefore prevented from bringing suit. Alternatively, the court held that Mr. Pearson had failed to prove that his injuries were more than fifty percent related to his work for MLGW.

Mr. Pearson timely appealed. On appeal, he raises two issues: whether he gave MLGW timely notice of his injury and filed his claim within the statute of limitations period; and whether the repetitive nature of his work installing streetlights aggravated his preexisting neck condition such that he suffered a compensable injury.

Standard of Review

The standard of review for workers' compensation cases is governed by statute: "Review of the workers' compensation court's findings of fact shall be *de novo* upon the record of the workers' compensation court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise." Tenn. Code Ann. § 50-6-225(a)(2) (2014 & Supp. 2017). Even with this presumption, the reviewing court is still required to "conduct an in-depth examination" of those findings. Brantley v. Brantley, No. E2018-01793-SC-R3-WC, 2019 WL 5783908, at *2 (Tenn. Workers' Comp. Panel Nov. 6, 2019) (citing Wilhelm v. Krogers, 235 S.W.3d 122, 126 (Tenn. 2007)). "When the trial court has seen and heard the witnesses, considerable deference must be afforded the trial court's factual findings." Rodgers v. Rent-A-Center E., Inc., No. W2019-01106-SC-R3-WC, 2020 WL 4346759, at *3 (Tenn. Workers' Comp. Panel July 29, 2020) (citing Tryon v. Saturn Corp., 254 S.W.3d 321, 327 (Tenn. 2008)). However, "[n]o similar deference need be afforded the trial court's findings based upon documentary evidence." Batey v. Deliver This, Inc., 568 S.W.3d 91, 95 (Tenn. 2019) (alteration in original) (quoting Goodman v. Schwarz Paper Co., No. W2016-02594-SC-R3-WC, 2018 WL 468247, at *2 (Tenn. Workers' Comp. Panel Jan. 18, 2018)). The trial court's conclusions of law are reviewed *de novo* without a presumption of correctness. Foreman v. Automatic Sys., Inc., 272 S.W.3d 560, 571 (Tenn. 2008).

MLGW's counsel acknowledged at trial that the date on the letter might not correspond exactly with the date of receipt but opined that even if it took "a couple of days or so for the mail to get there," Mr. Pearson's counsel still received Dr. Crosby's letter more than one year before a petition for benefit determination was filed. And during opening statements, Mr. Pearson's counsel appeared to acknowledge that he received the letter sometime in September 2016. In any event, Mr. Pearson does not challenge this specific finding on appeal.

Analysis

Tennessee Code Annotated §§ 50-6-201(b) and -203(b)(1) (2014 & Supp. 2017) provide that for a workers' compensation claim to be timely, the employee must both give notice to the employer within fifteen days of the injury and file a petition for benefit determination within one year of the same. With respect to the employer notice provision, the employee's injury occurs when the employee

> (1) Knows or reasonably should know that the employee has suffered a work-related injury that has resulted in permanent physical impairment; or
>
> (2) Is rendered unable to continue to perform the employee's normal work activities as the result of the work-related injury and the employee knows or reasonably should know that the injury was caused by work-related activities.

Tenn. Code Ann. § 50-6-201(b). Similarly, the one-year statute of limitations in subsection 203(b)(1) "begins to run when through the exercise of reasonable care and diligence it becomes discoverable and apparent that the employee sustained a compensable injury." Gerdau Ameristeel, Inc. v. Ratliff, 368 S.W.3d 503, 508 (Tenn. 2012) (quoting Mackie v. Young Sales Corp., 51 S.W.3d 554, 558 (Tenn. 2001)).

We note at the outset that the employer notice provision only operates to bar a claim if "the employer can show, to the satisfaction of the workers' compensation judge before which the matter is pending, that the employer was prejudiced by the failure to give the proper notice, and then only to the extent of the prejudice." Tenn. Code Ann. § 50-6-201(a)(3). The trial court concluded that while Mr. Pearson may have failed to comply with the employer notice, MLGW presented no evidence of any prejudice. Likewise, MLGW has not raised inadequate notice as an issue on appeal or made any arguments about notice. We therefore deem this argument waived and affirm the ruling of the trial court on this issue. Forbess v. Forbess, 370 S.W.3d 347, 356 (Tenn. Ct. App. 2011) (citing Tenn. R. App. P. 27(b)) (finding an issue waived by the appellee when not raised on appeal).

We then turn to the one-year statute of limitations. Unlike failure to provide adequate notice, failure to file a petition for benefit determination within one year of injury "forever bar[s]" compensation. Tenn. Code Ann. § 50-6-203(b)(1). Mr. Pearson argues that he first became aware of his injury on December 19, 2016, when his attorney showed

him Dr. Crosby's opinion letter. In support of his argument, Mr. Pearson relies on Livingston v. Shelby Williams Industries, Inc., 811 S.W.2d 511 (Tenn. 1991). In Livingston, the court tolled the running of the statute of limitations to when the employee was informed by a physician that his injury may be compensable. Id. * 515. Because the employee "suffered a continuing or gradual injury that originated almost three years before he was advised that he had a permanent back injury," the court held that the diagnosis was what made the existence of a compensable injury discoverable for purposes of the statute of limitations beginning to run. Id. (citing Osborne v. Burlington, Ind., Inc., Klopman Div., 672 S.W.2d 757 (Tenn. 1984); Imperial Shirt Co. v. Jenkins, 399 S.W.2d 757 (Tenn. 1966)).

Here, as in Livingston, it was Dr. Crosby's opinion that informed Mr. Pearson's attorney there was a compensable injury. Mr. Pearson instead argues that the date of discovery should be when his attorney relayed this information to him instead of the date Mr. Pearson's attorney first received the letter. Our case law makes clear that Mr. Pearson's attorney's receipt of Dr. Crosby's letter is treated just as if Mr. Pearson himself had received it. It is well established that "a person generally is held to know what his attorney knows and should communicate to him, and the fact that the attorney has not actually communicated his knowledge to the client is immaterial." Winstead v. First Tenn. Bank N.A., Memphis, 709 S.W.2d 627, 632 (Tenn. Ct. App. 1986) (quoting 7A C.J.S. Attorney and Client § 182). This rule has its roots in basic principles of agency law, which impute an agent's knowledge onto the principal when the agent is acting on their behalf. Tagg v. Tenn. Nat'l Bank, 56 Tenn. (9 Heisk.) 479, 485 (1872); Creative Rests., Inc. v. City of Memphis, 795 S.W.2d 672, 679 (Tenn. Ct. App. 1990) ("[A]n attorney is his client's agent.").

Our courts have addressed a similar issue before. In Bellar v. Baptist Hospital, Inc., the employee was treated for a back injury, and the doctor sent his findings that the employee had suffered a compensable injury to her attorney. 559 S.W.2d 788, 789 (Tenn. 1978). Before the employee's attorney told her of these results, she was seen by a separate doctor and personally informed that her injury had led to a permanent disability; the employee then filed a claim. Id. However, the Tennessee Supreme Court held that the statute of limitations had already run because the original doctor's diagnosis "had been conveyed to [the employee] through her attorney" more than one year prior and "[k]nowledge of facts learned by an attorney in the course of his employment will be imputed to his client." Id. (citations omitted). The same is true here. Mr. Pearson's attorney received Dr. Crosby's opinion that Mr. Pearson had sustained a compensable injury in September 2016. At that point, knowledge was imputed onto Mr. Pearson, and

he then had until September 2017 at the latest to file a petition. Instead, he waited until October 9, 2017 to do so. We therefore agree with the trial court that Mr. Pearson's claim is barred by Tennessee Code Annotated § 50-6-203(b)(1) because he filed his initial petition for benefit determination more than one year after he discovered he had suffered a potentially compensable injury.[4]

Conclusion

Because Mr. Pearson is deemed to possess the same knowledge that his attorney possesses, we hold that he discovered that his myelopathy could be work related in September 2016. By filing his initial petition on October 9, 2017, Mr. Pearson did not make a claim for workers' compensation benefits until more than one year after discovery. For the foregoing reason, we hold that Mr. Pearson's claim is barred by the statute of limitations. The judgment of the trial court is affirmed, and the case is dismissed. Costs on appeal are taxed against Plaintiff-Appellant John Pearson and his surety, for which execution may issue if necessary.

ROBERT E. LEE DAVIES, SENIOR JUDGE

[4] Because we conclude that Mr. Pearson did not file his initial petition until after the statute of limitations had run, his remaining arguments as to causation are pretermitted.

IN THE SUPREME COURT OF TENNESSEE
AT MEMPHIS

JOHN PEARSON v. MEMPHIS LIGHT GAS & WATER DIVISION

Court of Workers' Compensation Claims
No. 2017-08-1117

No. W2020-00462-SC-WCM-WC – Filed March 24, 2021

JUDGMENT ORDER

This case is before the Court upon the motion for review filed by John Pearson pursuant to Tennessee Code Annotated section 50-6-225(e)(5)(A)(ii), the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's 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 John Pearson, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM

HOLLY KIRBY, J., not participating