

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

November 3, 2000 Session

CAROLYN SUE MOORE v. WAL-MART STORES, INC.

**Direct appeal from the Chancery Court for Dyer County
No. 98C 83 Robert L. Childers, Judge by interchange**

No. W2000-00719-WC-R3-CV- Mailed February 2, 2001; Filed March 29, 2001

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel in accordance with Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. The employer contends this claim is time barred by the statute of limitations and notice provisions and that the award to the workers' scheduled member was excessive. As discussed below, the panel concludes that the judgment of the trial court should be affirmed in all respects.

**Tenn. Code Ann. § 50-6-225(e) (2000) Appeal as of Right; Judgment of the
Chancery Court Affirmed**

C. CREED MCGINLEY, Sp. J., delivered the opinion of the court, in which JANICE M. HOLDER, J., JOE C. LOSER, JR., SP. J, JOINED.

Jeffrey P. Boyd and Jay L. Johnson, Jackson, Tennessee, for the appellant, Wal-Mart Stores, Inc..

Jeffrey L. Lay, Dyersburg, Tennessee, for the Appellee, Carolyn Sue Moore

MEMORANDUM OPINION

The claimant, Carolyn Sue Moore, commenced this civil action on February 6, 1998, for recovery of benefits under the Tennessee Workers' Compensation law. After a trial on the merits on November 16, 1999, the trial judge found that the action was not time barred by the statute of limitations and the employer had been given appropriate notice. The court awarded the employee sixty percent (60%) vocational disability to the left leg.

At the time of trial Ms. Moore was 57 years of age with a tenth grade education. She had

obtained a G.E.D. certificate. Her vocational history was unremarkable, consisting primarily of unskilled labor. At the time of trial she had worked for seven years as a sales associate in the garden center at Wal-Mart and continued to work there after her injury with considerable difficulty.

On March 22, 1996, Ms. Moore was lifting lawn mowers from a pallet to another sales associate when she twisted her knee and fell. She struck her left knee on the pallet and her right knee on the concrete floor. She reported her injuries to appropriate supervisory authorities and also completed an accident report. She was referred to Dr. Stewart for medical care who referred her to an orthopedic surgeon, Dr. Carl Huff. She saw Dr. Huff twice. On her initial visit, April 10, 1996, Dr. Huff's medical impression was internal derangement and chondromalacia of the left knee. On her return visit to Dr. Huff on May 6, 1996, his impression was that her condition had resolved and he released her without restrictions. At that time, Dr. Huff opined that she had suffered no permanent anatomical impairment.

After Ms. Moore was released by Dr. Huff she continued to perform her normal work activities but her condition continued to deteriorate. Her normal work activities made her condition worse. Ms. Moore requested through her supervisors additional medical treatment as a work related injury which was denied by the appellant. She then pursued a course of medical treatment through her group insurance coverage that eventually resulted in surgery being performed on her left knee by Dr. James Thomas Craig on September 23, 1997. Additional surgery on her left knee was performed by Dr. Randall Holcomb on April 7, 1998. Ms. Moore had not missed work as a result of this injury until the surgery performed by Dr. Craig on September 23, 1997.

Our review is *de novo* upon the record of the trial court, accompanied by a presumption of correctness of the trial court's finding of fact, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2). This standard requires this tribunal to examine in depth a trial court's factual finding and conclusions. The reviewing court is not bound by a trial court's factual findings but instead conducts an independent examination of the record to determine where the preponderance of the evidence lies. Galloway v. Memphis Drum Serv., 822 S.W. 2d. 584 (Tenn. 1991). Where the trial judge has seen and heard the witnesses, especially if issues of credibility and weight to be given oral testimony are involved, considerable deference must be afforded those circumstances on review, because it is the trial court which had the opportunity to observe the witness's demeanor and to hear the in-court testimony. Long v Tri-Con Ind., Ltd., 996 S. W. 2d 173 (Tenn. 1999). The appellate tribunal, however, is as well situated to gauge the weight, worth and significance of depositions testimony as the trial judge. Walker v. Saturn Corp., 986 S.W. 2d 204, 207 (Tenn. 1998).

The appellant insists that the claimant's action is barred by the statute of limitation provisions contained in T.C.A. § 50-6-203. They insist that suit must be filed within one year of March 22, 1996 (the date of the accident) or the action is time barred. This position cannot be supported in logic or law. The statute of limitation does not begin to run until, by reasonable care and diligence, it is discoverable and apparent that a compensable injury has been sustained. Livingston v. Shelby Williams Indus., Inc., 811 S. W.2d 511 (Tenn. 1991). It is the date on which the disability manifests

itself to a person of reasonable diligence, not the date of the accident which triggers the running of the statute of limitations. Jones v. Homes Indem. Ins. Co., 679 S.W.2d 445, 446 (Tenn. 1984). It is disingenuous for the appellant to suggest that the claimant should have known that she had a compensable injury when their own panel physician had released her without restriction and assigned no permanent disability. In this case the trial court made a factual finding that Ms. Moore did not discover, using reasonable care and diligence, that she had a permanent compensable injury until surgery was performed by Dr. Craig on September 23, 1997. This finding is clearly supported by the evidence. This action was filed on February 6, 1998, which is well within the statute of limitation.

The appellant next argues that the claimant failed to give adequate statutory notice to the employer as required by T.C.A. § 50-6-201. This technical argument is advanced by the defendant with the same persuasiveness as its statute of limitation argument and fails under the same logic. The record is replete with notices that were given to Wal-Mart starting immediately with the date of the accident on March 22, 1996, and continuing as her condition worsened until she was advised by supervisory personnel that her injury could not be claimed as work related. The record clearly supports that adequate statutory notice requirements have been complied with under the facts and circumstances presented at the trial of this case.

Finally, the appellant argues that the award of the trial court of sixty percent (60%) permanent partial disability to the left leg was excessive. It is clear that the trial court applied the appropriate criteria in assessing the vocational disability that Ms. Moore had sustained as a result of her injury. Ms. Moore's anatomical disability was established by expert medical proof with Dr. Craig opining five percent (5%) to the scheduled member and Dr. Holcomb opining two and one-half percent to three percent (2 ½% to 3%). All doctors assigned significant permanent restrictions. Ms. Moore's education and vocational background are limited. It is clear the Chancellor considered all of these factors in assigning her vocational disability. The Chancellor's findings are to be afforded a presumption of correctness unless the preponderance of the evidence is otherwise. The record supports his findings.

For the above reasons, the panel has concluded that the evidence fails to preponderate against the findings of the trial court, whose judgment is affirmed. Cost on appeal are taxed to the appellant, Wal-Mart Stores, Inc.

C. CREED MCGINLEY, SPECIAL JUDGE

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JUDGMENT

This case is before the Court upon 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, which are incorporated herein by reference;

Whereupon, it appears to the Court that the Memorandum Opinion of the Panel should be accepted and approved; 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 on appeal are taxed to the Defendant/Appellant, Wal-Mart Stores, Inc., for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM