

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
July 26, 2001 Session

BILLY L. SEIVER v. PLUMBMASTER, INC., ET AL.

**Direct Appeal from the Chancery Court for Davidson County
No. 97-1557-III Ellen Hobbs Lyle, Chancellor**

**No. M2000-00514-WC-R3-CV - Mailed - September 17, 2001
Filed - December 6, 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. In this case, the employer and its insurer contend the claim is barred by Tenn. Code Ann. § 50-6-203, a one-year statute of limitation. The employee contends the award of permanent partial disability benefits based on 25 percent to the body as a whole is inadequate. As discussed below, the panel has concluded the judgment should be affirmed.

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

JOE C. LOSER, JR., SP. J., delivered the opinion of the court, in which FRANK F. DROWOTA, III, J., and HAMILTON V. GAYDEN, JR., SP. J., joined.

Kenneth M. Switzer, Nashville, Tennessee, for the appellants, Plumbmaster, Inc. and Cigna Insurance Company.

Joe M. Haynes and Russell E. Freeman, Goodlettsville, Tennessee, for the appellee, Billy L. Seiver.

MEMORANDUM OPINION

The employee or claimant, Seiver, age 65 and a high school graduate with experience in sales, was involved in a work-related car wreck on October 16, 1995, but did not file this civil action until May 7, 1997. The approved physician, Dr. Jack Miller, told the employer's insurer his condition was not related to the car wreck, which the insurer's representative told the claimant. The trial court found, based on the testimony of the claimant, which the trial court accredited, that the claimant did not know his back injury was work related until July 1997, when he learned it from Dr. Vaughan Allen. Appellate review of findings of fact is de novo upon the record of the trial court accompanied by a presumption of correctness of the findings, unless the preponderance of the evidence is

otherwise. Tenn. Code Ann. § 50-6-225(e)(2).

This tribunal is not bound by the trial court's findings but instead conducts an independent examination of the record to determine where the preponderance lies. Galloway v. Memphis Drum Serv., 822 S.W.2d 584, 586 (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 accorded those circumstances on review, because it is the trial court that had the opportunity to observe the witnesses' demeanor and to hear the in-court testimony. Long v. Tri-Con Ind., Ltd., 996 S.W.2d 173, 178 (Tenn. 1999).

An action by an employee to recover benefits for an accidental injury, other than an occupational disease, must be commenced within one year after the occurrence of the injury. Tenn. Code Ann. § 50-6-224(1). However, the running of the statute of limitations is suspended until by reasonable care and diligence it is discoverable and apparent that a compensable injury has been sustained. It is the date on which the employee's disability manifests itself to a person of reasonable diligence - not the date of accident - which triggers the running of the statute of limitations for an accidental injury. See Hibner v. St. Paul Mercury Ins. Co., 619 S.W.2d 109 (Tenn. 1981) and its progeny.

The appellants argue that the Hibner rule is inapplicable because the claimant suspected his injury was work related and had sought the advice of counsel within two months after the occurrence of the injury. It is settled law in this state that the causal connection required for a worker's compensation claim to be compensable may only be established by competent expert medical opinion. The only competent expert medical opinion the claimant and his attorney had until July 1997 was the opinion of Dr. Miller that the injury was *not* work related. The trial court, applying the reasonable care and diligence rule and accrediting the testimony of the claimant, found the beginning date for the running of the statute of limitation to be July 1997, when Dr. Allen informed the claimant his injury was work related. The preponderance of the evidence is not otherwise. We also hold that the retention of counsel does not trigger the running of the statute of limitation. Moreover, we find nothing in the law which would require an injured worker to initiate an action for benefits within one year from the time the injured worker suspects that an injury is work related. The issue is accordingly resolved in favor of the claimant.

The extent of an injured worker's permanent disability is a question of fact based on numerous factors, including the employee's age, skills and training, education, capacity to work, local job opportunities and the extent of the worker's medical or clinical impairment. Tenn. Code Ann. § 50-6-241(a)(1). From a consideration of those factors, to the extent they were established by the proof, we are not persuaded the evidence preponderates against the trial court's award of permanent partial disability benefits based on 25 percent to the body as a whole.

JOE C. LOSER, JR.

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

BILLY SEIVER, Respondent v. PLUMBMASTER, INC., ET AL., Applicants

**Chancery Court for Davidson County
No. 97-1557-II Ellen Hobbs Lyle, Chancellor**

No. M2001-00514-SC-WCM-CV - Filed - December 6, 2001

JUDGMENT

This case is before the Court upon Applicant's motion for review 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, which are incorporated herein by reference;

Whereupon, it appears to the Court that the motion for review is not well-taken and should be DENIED; 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 will be assessed to Plumbmaster, Inc., and Cigna Property & Casualty for which execution may issue if necessary.

PER CURIAM

Drowota, J., not participating