

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

April 23, 2018 Session

VICTORY THAYER v. UNITED PARCEL SERVICE, ET AL.

**Appeal from the Circuit Court for Shelby County
No. CT-000058-16 Valerie L. Smith, Judge**

No. W2017-02153-SC-WCM-WC – Mailed June 11, 2018; Filed August 13, 2018

Victory Thayer (“Employee”) alleged that he sustained a compensable injury in 1997 in the course and scope of his employment with United Parcel Service (“Employer”). Employer and its insurer, Liberty Mutual Insurance Company (“Insurer”), filed a motion for summary judgment. The trial court granted their motion on the ground that the one-year statute of limitations barred Employee’s claim. Employee has appealed that decision. 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. We affirm the judgment.

**Tenn. Code Ann. § 50-6-225(e) (2014) (applicable to injuries
occurring prior to July 1, 2014) Appeal as of Right;
Judgment of the Circuit Court Affirmed**

WILLIAM B. ACREE, JR., SR.J., delivered the opinion of the court, in which ROGER A. PAGE, J. and DON R. ASH, SR.J., joined.

Steve Taylor, Memphis, Tennessee, for the appellant, Victory Thayer.

Garrett M. Estep, Memphis, Tennessee, for the appellees, United Parcel Service and Liberty Mutual Insurance Company.

OPINION

Factual and Procedural Background

Employee gave Employer timely notice of an eye injury occurring on January 16, 1997, as a result of a physical altercation with a coworker. On January 16, 1997, and again one week later, Employee received medical treatment from Dr. L.C. Sammons, Jr. Employer and Insurer investigated and denied the claim on February 3, 1997, as not arising from or occurring in the course and scope of employment. The next day, Employee contacted Insurer to ask about an appeal. Insurer directed Employee to contact the Tennessee Department of Labor, but Employee took no action at that time.

The bills from Dr. Sammons, for the medical treatment provided to Employee in 1997 prior to the denial of his claim, were not actually paid by Insurer until 1999. Employee received no further workers' compensation benefits related to the 1997 altercation. Employee did not file a Request for Benefit Review Conference, as provided under Tennessee workers' compensation law, until March 1, 2013.

On January 7, 2016, Employee filed this workers' compensation complaint, alleging that he was informed by a physician in January and February 2013 that he had permanent eye damage caused by the 1997 altercation. Employer and Insurer answered, asserting several affirmative defenses, including that Employee did not sustain an injury in the course and scope of his employment and that the one-year statute of limitations barred his claim. Employer and Insurer filed a motion for summary judgment, which the trial court granted. The trial court concluded that the failure of Employee to appeal the 1997 denial of his claim precluded his attempt to toll the statute of limitations and that his

claim was therefore time-barred.

Analysis

The standard of review for a trial court's ruling on a motion for summary judgment is de novo with no presumption of correctness. *Rye v. Women's Care Ctr. of Memphis, M PLLC*, 477 S.W.3d 235, 250 (Tenn. 2015). Summary judgment is proper when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Tenn. R. Civ. P. 56.04. The facts relevant to the statute of limitations issue are not disputed in this case.

For accidents or injuries occurring prior to July 1, 2005, Tennessee Code Annotated section 50-6-203(a) provided in pertinent part:

The right to compensation under the Workers' Compensation Law shall be forever barred, unless, within one (1) year after the accident resulting in injury or death occurred, the notice required by § 50-6-202 is given the employer and a claim for compensation under the provisions of this chapter is filed with the tribunal having jurisdiction to hear and determine the matter; provided, that if within the one-year period voluntary payments of compensation are paid to the injured person or the injured person's dependents, an action to recover any unpaid portion of the compensation, payable under this chapter, may be instituted within one (1) year from the latter of the date of the last authorized treatment or the time the employer shall cease making such payments, except in those cases provided for by § 50-6-230.

Tenn. Code Ann. § 50-6-203(a) (1999).¹ Citing this statute, the Supreme Court has stated: “When the employer makes voluntary payments of compensation *within the one-year statute of limitations period*, an employee may file suit within one year of the later of the last authorized medical treatment or the date an employer stops making voluntary payments.” *Dye v. Witco Corp.*, 216 S.W.3d 317, 321 (Tenn. 2007) (emphasis added). After a claim is time-barred, however, voluntary payments of compensation are of no effect and will not set in motion a new limitations period. *Id.*

In this case, we need not determine whether the claim was already time-barred when Insurer paid Employee’s medical bills in 1999. Employee’s one-year time period to commence proceedings to challenge the 1997 denial of his claim began, at the very latest, in 1999, when the last voluntary payments of compensation were made. Employee therefore had, at the very latest, until 2000 to request a benefit review conference to extend the time period for filing a suit to challenge the 1997 denial of his claim. *See* Tenn. Code Ann. § 50-6-203(b) (1999).² Employee did not request a benefit review conference until 2013. The one-year statute of limitations to challenge the 1997 denial of his claim had expired more than a decade earlier.

¹ The relevant statutory language did not change in any significant way between 1997 and 1999. This provision, as amended, currently appears at Tennessee Code Annotated section 50-6-203(b) (2014) (applicable to injuries occurring prior to July 1, 2014).

² This provision, as amended, currently appears at Tennessee Code Annotated section 50-6-203(b)(2) (2014) (applicable to injuries occurring prior to July 1, 2014).

Relying on *Oliver v. State*, 762 S.W.2d 562 (Tenn. 1988), Employee contends that the one-year statute of limitations did not begin to run until 2013 when allegedly his physician informed him that he had permanent eye damage caused by the 1997 altercation. In *Oliver*, the Supreme Court held that the statute of limitations was not triggered until the plaintiff was informed he had permanent damage as a result of a work-related accident twenty years earlier. *Id.* at 565. Employee also cites several panel decisions holding that the statute of limitations did not begin to run until the claimants were informed of the permanent nature of their work-related injuries. See *Moore v. Payless Cashways, Inc.*, No. W2002-00705-SC-WCM-CV, 2002 WL 31730912, at *2 (Tenn. Workers' Comp. Panel Nov. 26, 2002); *Moore v. Wal-Mart Stores, Inc.*, No. W2000-00719-WC-R3-CV, 2001 WL 303515, at *2 (Tenn. Workers' Comp. Panel Mar. 29, 2001); *Higginbotham v. Grinnell Corp.*, No. 02S01-9611-Ch-00101, 1997 WL 468963, at *2 (Tenn. Workers' Comp. Panel Aug. 18, 1997).

Oliver and the other cases cited by Employee are easily distinguishable from the present case because each involved a compensable work-related injury, whereas in this case, Employee's claim was denied two decades earlier because it did not arise from or occur in the course and scope of employment. Because Employee failed to timely challenge the 1997 denial of his claim, the discovery rule regarding permanency of the injury has no relevance. The fact that Employee learned his injury (allegedly relating to the 1997 altercation) was permanent in 2013 does not result in a new statute of limitations on his previously denied claim. The trial court correctly granted summary judgment in favor of Employer and Insurer on the ground that the statute of limitations barred Employee's claim.

Conclusion

The judgment of the trial court is affirmed. Costs are taxed to Victory Thayer, for which execution may issue if necessary.

WILLIAM B. ACREE, JR., SENIOR JUDGE

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**Circuit Court for Shelby County
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JUDGMENT ORDER

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

It is so ORDERED.

PER CURIAM

Roger A. Page, J., not participating