

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

FILED
September 5, 1996
Cecil W. Crowson
Appellate Court Clerk

GARY ALLEN FERRELL,)
)
Plaintiff/Appellant)
)
v.)
)
BATESVILLE CASKET COMPANY,)
INC. and KEMPER INSURANCE CO.)
)
Defendants/Appellees)

COFFEE CIRCUIT
Hon. Gerald L. Ewell, Sr.
Judge
NO. 01S01-9512-CV-00218
(No. 26,532 Below)

For the Appellant:

Othal Smith, Jr.
Stouffer Tower, Ste. 3121
611 Commerce St.
Nashville, TN 37203

For the Appellees:

Bryan Essary
Gideon & Wiseman
NationsBank Plaza, Ste. 1900
414 Union St.
Nashville, TN 37219-1782

MEMORANDUM OPINION

Members of Panel:

Justice Adolpho A. Birch, Jr.
Senior Judge John K. Byers
Special Judge William S. Russell

**AFFIRMED
AND DISMISSED**

BYERS, Senior Judge

_____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 trial court dismissed the plaintiff's complaint as barred by the statute of limitations. The plaintiff appeals this ruling.

We affirm the judgment of the trial court.

Plaintiff reported problems with swelling, pain and numbness in his right arm to his supervisor in June or July 1991. These problems occurred after using a pneumatic sander at work which plaintiff alleged was defective. He went to the company doctor about a week after he reported these problems to his employer. The company doctor advised him that his problems with his right arm were the result of his use of the pneumatic sander and further advised him to forever avoid using vibrating tools with his right hand.

Plaintiff continued to have the same problems with his right arm and experienced exacerbations of his pain whenever he used a vibrating tool. He continued to see physicians, by referral from defendants and on his own. No proof was offered as to whether the defendants had paid any medical expenses for the plaintiff in relation to his alleged injury within a year of his filing this complaint in March 21, 1994.

The trial judge held that there was no question in the court's mind that the plaintiff had known since June/July 1991 that he had a work-related injury and that the action was dismissed as barred by the statute of limitations.

Our review is *de novo* on the record, accompanied by the presumption that the factual findings of the trial court are correct. TENN. CODE ANN. § 50-6-225(e)(2).

TENN. CODE ANN. § 50-6-203 provides:

The right to compensation under the Workers' Compensation Law shall be forever barred, unless within one (1) year after the accident resulting in injury . . . 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 (1) year period voluntary payments of compensation are paid to the injured person . . . , an action to recover any unpaid portion of the compensation, payable under this chapter, may be instituted within one (1) year from the time the employer shall cease making such payments, except in those cases provided for by § 50-6-230.

The provisions of § 50-6-230 do not apply to these facts. The voluntary payment of medical bills of an injured employee by the employer or its insurer constitutes voluntary payment of compensation and tolls the running of the statute. *Chandler v. Travelers Ins. Co.*, 212 Tenn.199, 369 S.W.2d 390 (1963). However, there is no evidence in the record to show if any such payments were made in the year prior to plaintiff's filing of the complaint.

We affirm the judgment of the trial court and dismiss plaintiff's cause, with costs of the appeal to be taxed to plaintiff/appellant.

John K. Byers, Senior Judge

CONCUR:

Adolpho A. Birch, Jr., Justice

William S. Russell, Special Judge