

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE APRIL 1996 SESSION

FILED

June 20, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

CLARENCE W. LEE,)	HAMILTON CHANCERY
)	
Plaintiff/Appellant)	NO. 03S01-9512--CH-00130
)	
v.)	HON. HOWELL N. PEOPLES
)	CHANCELLOR
K-MART CORPORATION,)	
)	
Defendant/Appellee)	

For the Appellant:

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For the Appellee:

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MEMORANDUM OPINION

Members of Panel:

E. Riley Anderson, Chief Justice
John K. Byers, Senior Judge
William H. Inman, Senior Judge

AFFIRMED.

INMAN, 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 plaintiff claims to have suffered an injury by accident cognizable under the workers' compensation law when, on August 7, 1992, after 30 years of continuous employment, he was summarily relieved of his duties as manager of the K-Mart store in Hixson, Tennessee, demoted, and transferred to another store in Paris, Illinois. He alleged that he thereby sustained a sudden emotional injury resulting in total disability and unsoundness of mind.

The defendant admitted that it removed the plaintiff from its Hixson store and transferred him to a smaller store at a reduced salary. It denied that the plaintiff gave notice of a work-related injury, and averred that he filed an age-discrimination claim against it without alerting the court or the defendant that he was of unsound mind.

In course, the case was heard on the motion of the defendant for summary judgment, alleging the bar of the Statute of Limitations, TENN. CODE ANN. § 50-6-201, and the further allegation that the claim of emotional stress was not a compensable injury.

The underlying facts are not disputed. Mr. Lee's difficulties began with his departure from company policy in disposing of defective or damaged merchandise which was to be destroyed in accordance with the manufacturer's instructions. Instead, he secreted these goods in a locked trailer, later donating them to charitable, fund raising causes. A portion of the funds realized from the sale of the damaged or defective merchandise went into a "flower fund" controlled by Mr. Lee which he used to provide gifts and trips to certain employees. Upon the belated discovery of this scheme, Mr. Lee was interviewed extensively and warned that he should expect stringent disciplinary action. He was then 50 years of age, had been manager of the Hixson store for 12 years, and had relocated 17 times.

Mr. Lee was on vacation when the investigation began of his disposal of

damaged merchandise. He was alerted and, before returning to work, filed an EEOC complaint; after returning to work and being subjected to questioning about his deviation from company policy leading to his transfer and demotion, he filed another EEOC complaint, and in course filed an age discrimination suit in the United States District Court against the defendant, alleging that his transfer and demotion was discriminatorily occasioned by his age. He claimed that the defendant's asserted reason for transferring and demoting him was pretextual. This insistence was rejected by the court.

When informed of the decision to transfer him to Illinois, Mr. Lee testified that the stunning effect of what he considered to be punitive action panicked him. His mother, who was ill, resided with him. Moving her to Illinois posed problems, and time was of the essence since he was ordered to report for duty at the Illinois store in seven days. He began to drive aimlessly, and on August 10, 1992, the day his new job was scheduled to begin, he was admitted to a psychiatric hospital. He has since remained under psychiatric care.

This action was filed July 28, 1994, long after the passage of the one year from accrual of the cause of action. The Chancellor held that the statute was tolled "by his mental condition, by his psychological impairment." The Chancellor further found that while Mr. Lee had a substantial psychological impairment, the condition was not work-related within the purview of *Batson v. CIGNA Prop. & Cas. Co.*, 874 S.W.2d 566 (Tenn. 1994) and *Jose v. Equifax, Inc.*, 556 S.W.2d 82 (Tenn. 1977) and disposed of the case. The plaintiff appeals the dismissal of his case for the reason stated, and the defendant appeals the finding that the psychological impairments of Mr. Lee tolled the running of the statute. We are constrained to disagree with the conclusion that the running of the statute was tolled, for these reasons:

In September 1992, Mr. Lee discussed with his treating physician, Dr. Greer, the question of whether his depression was job-related. He elicited from his psychiatrist the opinion that his dysfunction was indeed job-related.

Mr. Lee conferred with his associates, Bryan Lane and Sue Whitaker, about

filing a workers' compensation claim. He employed counsel to file two EEOC complaints, and the federal court complaint seeking damages for age discrimination. He gave affidavits, statements, and sworn testimony; he was involved in a lawsuit with a neighbor over a boundary dispute. All of these incidents occurred more than a year before this action was filed. The record is replete with other evidence militating against Mr. Lee's claim of mental incapacitation which rendered him unable to realize that he had suffered a job-related injury, thus tolling the statute. See *Ogden v. Matrix Vision of Williamson County, Inc.*, 838 S.W.2d 528 (Tenn. 1982). For all these reasons, we find the evidence preponderates against the finding of the Chancellor that the psychological impairment of Mr. Lee tolled the running of the statute. TENN. R. APP. P., RULE 13(d); TENN. CODE ANN. § 50-6-201.

The bar of the statute thus precludes this action, and the issue of whether the August 7, 1992 incident resulted in a cognizable workers' compensation claim is pretermitted as unnecessary for resolution.

The judgment is affirmed at the costs of the appellant.

William H. Inman, Senior Judge

CONCUR:

E. Riley Anderson, Chief Justice

John K. Byers, Senior Judge