

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

**FILED**

April 22, 1998

Cecil W. Crowson  
Appellate Court Clerk

ANTHONY JOHNSON,	)	GRUNDY CHANCERY
	)	
Plaintiff/Appellee	)	NO. 01S01-9706-CH-00125
	)	
v.	)	HON. JEFFREY F. STEWART,
	)	CHANCELLOR
THE TRAVELERS INSURANCE	)	
COMPANY, a Non-Resident Corporation)	)	
	)	
Defendant/Appellant	)	

**For the Appellant:**

David C. Nagle  
Suite 407 James Building  
735 Broad Street  
Chattanooga, TN 37402

**For the Appellee:**

James S. Stephens  
P.O. Box 220  
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**MEMORANDUM OPINION**

**Members of Panel:**

Justice Adolpho A. Birch, Jr.  
Senior Judge John K. Byers  
Special Judge Hamilton V. Gayden, Jr.

AFFIRMED

BYERS, Senior Judge

## OPINION

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 issue in this case is whether the plaintiff forfeited the right to have the defendant pay for future medical expenses, if any are required, for a compensable injury for failure to have an annual physical examination as provided for in the settlement of the plaintiff's compensation claim against the defendant.

Under the circumstances in this case, we find the plaintiff has not forfeited this right.

The relevant part of the settlement order, which was entered on December 7, 1993 in the trial court provided:

“The defendant has paid all of the plaintiff's medical bills to date, which total \$63,298.23. In addition to the medical benefits heretofore provided to the plaintiff, the defendant shall continue to pay all reasonable and necessary medical and hospital expenses for medical care and treatment, which is directly related to the aforesaid work related accidental injury provided such medical treatment is performed by or prescribed by Dr. Thornton Perkins, an orthopaedic specialist in Chattanooga, Tennessee, or another physician mutually selected by the parties under the procedure set forth in the Workers' Compensation Act. The duty of the defendant to continue to provide the aforesaid medical benefits to the plaintiff shall be contingent upon the plaintiff being examined at least one (1) time annually by Dr. Thornton Perkins or such other mutually selected physician. The failure of the plaintiff to undergo the annual examination by Dr. Perkins or such other physician as the parties may select under the procedure set forth in the Workers' Compensation Act shall result in the plaintiff forfeiting his rights to receive such future medical treatment and shall terminate the defendant's obligation to provide the same.”

On December 9, 1995, the plaintiff filed a “petition to enforce settlement agreement” in which he alleged the defendant had refused to pay for medical treatment as required by the order of December 7, 1993.

The trial court held a hearing on the petition on September 10, 1996 at which no testimony was taken. The matter was presented to the court on statement of counsel.

The record is necessarily sparse on the proceeding and the relevant matters are contained in the pleadings. From this we find the order of settlement was filed December 7, 1993, that the petition to enforce the settlement agreement was filed on December 9, 1995, and that the trial judge held a hearing on the petition on September 10, 1996 and entered an order thereon on February 4, 1997. Further, we

find from the pleadings that the plaintiff did not seek an examination until the spring of 1995 and that he then contacted his own physician (unidentified in the record) for an examination. The defendant refused to pay for this examination because the plaintiff had not been seen within one year by Dr. Thornton Perkins, the physician furnished the plaintiff by the defendant initially, or by a physician mutually agreed upon by the plaintiff and the defendant.<sup>1</sup>

The defendant asked to be exonerated from the obligation of paying future medical bills by reason of the failure of the plaintiff to have an annual exam in accordance with the terms of the agreement.

The trial judge found as follows:

- “1. Because of the ambiguity of the requirement in the Final Order that the Plaintiff make himself available annually for medical evaluations and that the Plaintiff having asserted through his attorney that he had until the following year to see a doctor and that there is reasonable grounds for misconstruing the Order.
2. The Court finds that the Plaintiff has materially complied with the responsibilities under the Final Order and is entitled to resumption of medical benefits; and
3. The Defendant is ordered to make such medical benefits pursuant to Tennessee Workers Compensation, available to the Plaintiff as ordered by prior.”

There is a dearth of authority on determining what is meant by the word annually. The plaintiff asks us to construe annually to mean “yearly or once a year, but does not in itself signify what time in year,” as defined in Black’s Law Dictionary (5th ed. 1979).

From this, the plaintiff argues the agreed order of settlement of December 7, 1993 did not become final until June 7, 1994 and the plaintiff sought a medical exam in 1995, which was within the annual requirement of the agreed order according to the definition of annual by Black. We take it the plaintiff means that an examination at any time during the year of 1995 would fulfill the agreement.

The defendant, on the other hand, relies upon the case of *House v. John Bouchard & Sons Co., Inc.*, 495 S.W.2d 541 (Tenn. Ct. App. 1972). In *House*, the court found the word annually to mean “once per year for the ensuing year.” *Id.* at 547. Based upon this, the defendant agrees the plaintiff was required to be examined within the terms of the agreement at least once a year beginning in

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<sup>1</sup> The plaintiff averred in his petition that there had been no change in his physical condition from the time of the settlement.

December 1993 or at least between June 1994 when the order became final and June 1995.

The trial judge held the word annually is so vague that there were reasonable grounds for misconstruing the time requirement for an examination and that the plaintiff had substantially complied with the order.

We do not agree with the trial judge's determination that the word annually is so vague as to be beyond the common understanding<sup>2</sup> that it means within one year or 12 months and do not agree that this is a sufficient basis upon which to require continued medical obligations in this case by the defendant.

We do not, however, find the defendant should be relieved of the obligation to provide future medical expenses in this case based upon the matter in this record at this time. We reach this conclusion because of vagueness or uncertainty in the provisions governing the carrying out of the annual examination of the plaintiff.

The agreed order does not set out whose responsibility it is to set up the annual examination. The physician who is to do the annual physical examination practices in Chattanooga, and the plaintiff lives in Altamont in Grundy County. The requirement of the annual physician examination is as the defendant says that the purpose of the provisions for an annual examination was so that "Travelers (through its approved physicians) could regularly monitor the plaintiff's condition."

It is our view that the provision for the examination annually by the defendant's approved physician casts upon the defendant the obligation to arrange for the annual examination of the plaintiff by their approved physician and that the failure by the defendant to do so exonerates the plaintiff in this instance and preserves the terms of the agreement.

We hold therefore that the terms of the agreement have not been breached as claimed by the defendant and we hold the terms of the agreement are valid but that the matter of the annual examination must be carried out in the future in accordance with this opinion.

The cost of this appeal is taxed to the defendant.

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<sup>2</sup> Our recognized holidays such as New Year's Day which occurs on January 1 and Independence Day which occurs on July 4 are annual events which occur a year apart and which we say are annual occurrences.

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John K. Byers, Senior Judge

CONCUR:

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Adolpho A. Birch, Justice

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Hamilton V. Gayden, Jr., Special Judge

IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE

ANTHONY JOHNSON,	)	GRUNDY CHANCERY NO. 4381
	)	
PLAINTIFF/APPELLEE,	)	
	)	
v.	)	HON. JEFFREY F. STEWART,
	)	CHANCELLOR
	)	<b>Cecil W. Crowson</b>
	)	<b>Appellate Court Clerk</b>
THE TRAVELERS INSURANCE	)	
COMPANY, A NON-RESIDENT	)	S. CT. NO. 01S01-9706-CH-00125
CORPORATION,	)	
	)	
DEFENDANT/APPELLANT.	)	AFFIRMED.

**FILED**  
**April 22, 1998**  
**Cecil W. Crowson**  
**Appellate Court Clerk**

**JUDGMENT**

This case is before the Court upon 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 paid by Defendant, for which execution may issue if necessary.

It is so ordered this 22nd day of April, 1998.

PER CURIAM

BIRCH, J. NOT PARTICIPATING