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

(July 20, 1998 Session)

DANNY E. RAY,	)	NO. 01S01-9710-CH-00223
	)	
Plaintiff/Appellant	)	MARSHALL CHANCERY
	)	
v.	)	
	)	HON. LEE RUSSELL
THE YASUDA FIRE & MARINE INSURANCE COMPANY,	)	CHANCELLOR
	)	
	)	
Defendant/Appellee	)	

For the Appellant:
Donald D. Zuccarello
Suite 206, Washington Square
222 Second Avenue North
Nashville, TN 37201

For the Appellee:
D. Brett Burrow
Suite 2600, The Tower
611 Commerce Street
P. O. Box 23890
Nashville, TN 37202-3890

M E M O R A N D U M O P I N I O N:

Members of Panel:

Judge Ben H. Cantrell
Senior Judge William H. Inman
Special Judge Joe C. Loser, Jr.

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.

I

The plaintiff seeks an enlargement of a prior award for workers' compensation benefits, as allegedly provided by T.C.A. § 50-6-241(a)(2). The defendant's motion for summary judgment was granted. Appeal from a summary judgment order in a workers' compensation case is not controlled by the *de novo* standard of review, but is governed by Rule 56, Tennessee Rules of Civil Procedure. *Downen v. Allstate Ins. Co*., 811 S.W.2d 523 (Tenn. 1991). Further, no presumption of correctness attaches to decisions granting summary judgment because they involve only questions of law; thus on appeal the reviewing court must make a fresh determination concerning whether the requirements of Rule 56 have been met. *Gonzales v. Alman Constr. Co*., 857 S.W.2d 42 (Tenn. 1993).

II

The petitioner suffered a sprained shoulder on November 11, 1994, during the course of his employment by Kantus Corporation. He sustained a seven percent permanent partial impairment as a result of the accident and returned to work after recuperation. His claim for benefits for partial permanent whole body disability was settled on the basis of 17.5 percent, or seventy weeks, arrived at by multiplying his anatomical impairment by 2.5, as directed by T.C.A. § 50-6-241(a)(1). The settlement was approved on June 30, 1995, upon the joint petition of Kantus Corporation and its insurer, The Yasuda Fire

and Marine Insurance Company of America, filed against the plaintiff. The judgment approving settlement recites (1) that the respondent was removing parts from a conveyor and strained his right shoulder resulting in a seven percent impairment, for which he was treated until April 19, 1995; (2) that the settlement based on 17.5 percent whole body disability is fair and just, (3) that it complies with the workers' compensation law, (3) that it is in the best interest of the respondent, and (4) that the petitioners are released from "any and all further claims to respondent for any workers' compensation benefits as a result of the accident and the injuries described above." The benefits were paid in a lump sum.

III

The Petition to Reconsider was filed December 17, 1996, alleging that the "petitioner was forced to take a permanent leave of absence in that Kantus Corporation informed Petitioner that there was no work available for petitioner," and that he has suffered a greater industrial disability since the loss of his employment for which he deserves permanent, partial disability pursuant to T.C.A. § 50-6-241(a)(2).

The respondent Yasuda Fire & Marine Insurance Co. filed a motion for summary judgment alleging accord and satisfaction based on the court-approved settlement and release.

The motion was resisted by the plaintiff on the ground that he was not advised by the court of his right to seek a reconsideration pursuant to T.C.A. § 50-6-241(a)(2).

The trial court made these findings:

(1) That the plaintiff was advised in open court that if the proposed settlement was approved he would not be entitled to further benefits;

(2) That the employer and its insurer are released from "any and all further claims by respondent as a result of the accident and injury;"

(3) That the provisions of 50-6-241(a)(2) were not explicated to the plaintiff.

IV

The motion for summary judgment was thereupon granted. The plaintiff appeals, and presents as the *sole* issue whether the Judgment approving the workers' compensation settlement "encompassed a term or condition where [he] waived or released his right for a reconsideration pursuant to T.C.A. § 50-6-241(a)(2)."

Parenthetically, we note that the plaintiff claims another injury which allegedly occurred on October 23, 1995, exacerbating the shoulder injury of November 11, 1994, for which he filed a suit seeking benefits. This suit is pending trial.

V

T.C.A. § 50-6-241(a)(2) provides:

> (2) In accordance with this section, the courts may reconsider upon the filing of a new cause of action the issue of industrial disability. Such reconsideration shall examine all pertinent factors, including lay and expert testimony, employee's age, education, skills and training, local job opportunities, and capacity to work at types of employment available in claimant's disabled condition. Such reconsideration may be made in appropriate cases where the employee is no longer employed by the pre-injury employer and makes application to the appropriate court within one (1) year of the employee's loss of employment, if such loss of employment is within four hundred (400) weeks of the day the employee returned to work. In enlarging a previous award, the court must give the employer credit for prior benefits paid to the employee in permanent partial disability benefits, and any new award remains subject to the maximum established in subsection (b).

At the outset, we hold summarily that the trial court is under no duty to advise a plaintiff in a workers' compensation proceeding that he/she may seek a reconsideration of the award. The plaintiff's argument that the settlement was merely a contract between him and his employer, and because the contract did not include a waiver of his right to seek a reconsideration there was no meeting of their minds and hence no binding contract, is not persuasive. We need not further belabor this point, which collapses the plaintiff's case.

VI

But in the same vein, the defendant's argument that the settlement constituted an accord and satisfaction is not persuasive. The appellant argued to the trial court, and to us, that the opinion of the Supreme Court in *Smith v. Coltharp Piano World, Inc.,* No. 02S01-9210-CH-00070 (Tenn. Sup. Ct, filed February 7, 1994 at Jackson), is controlling of the issue. In *Smith,* the plaintiff was injured in 1991, and filed a suit for benefits against Coltharp and its insurer, Liberty Mutual Insurance Company.

Both Coltharp and Liberty Mutual responded that the Liberty Mutual policy had been canceled on March 29, 1988. Indeed it had, but Liberty Mutual had neglected to inform the Commissioner of Labor of the fact, which effectively continued its coverage pursuant to T.C.A. § 50-6-407. When confronted with this management lapse, Liberty Mutual settled the claim for a lump sum and was thereupon released from all further or future liability.

But the case proceeded to trial against Coltharp, the employer, and Smith was awarded benefits for temporary and permanent disability and medical expenses. Coltharp's earlier motion to dismiss based on accord and satisfaction was overruled by the trial court, but was sustained by the Supreme Court,

Drowota, Justice, which held that the plaintiff had simply recovered twice for the same injury and disability, which is not permitted under the workers' compensation law.

Smith is clearly inapposite to the case at Bar, and the defense of accord and satisfaction is not relevant.

VIII

In the interest of terminating litigation, and judicial economy, we observe that T.C.A. § 50-6-231, although not pleaded, for the purposes of this case remains viable and dispositive. It provides:

> **50-6-231. Lump payments final - Modification of periodic payments for more than six months. -** All amounts paid by employer and received by the employee or the employee's dependents, by lump sum payments, shall be final, but the amount of any award payable periodically for more than six (6) months may be modified as follows:
> (1) At any time by agreement of the parties and approval by the court; or
> (2) If the parties cannot agree, then at any time after six (6) months from the date of the award an application may be made to the courts by either party, on the ground of increase or decrease of incapacity due solely to the injury. In such cases, the same procedure shall be followed as in § 50-6-225 in case of a disputed claim for compensation.

In *Nails v. Aetna Ins. Co.*, 834 S.W.2d 289 (Tenn. 1992), the plaintiff on June 7, 1990, settled a compensation claim based on a 55 percent permanent partial disability assessment. Payment was made in a lump sum. He returned to work as a store manager, but was terminated on November 30, 1990 because he could not perform his job. He filed a complaint on February 6, 1991 alleging a new injury, or an aggravation of his pre-existing condition, or in the alternative, sought to increase his previous lump sum settlement award. Nails insisted, *inter alia*, that the lump sum award should be modified or set aside, first because T.C.A. § 50-6-231 had been impliedly repealed by T.C.A. § 50-6-206, and,

secondly, that the judgment should be set aside under Rule 60.02, Rules of Civil Procedure. The Supreme Court, per Justice Anderson, held

> T.C.A. § 50-6-231 (1983 & Supp. 1991) provides that lump sum settlements are final, whereas periodic awards for more than six months are modifiable. All amounts paid by employer and received by the employee or the employee's dependents, by lump sum payments, shall be *final,* but the amount of any award payable periodically for more than six months may be modified . . . [Emphasis added]
>
> . . . . .
>
> This Court recognized in *Reams v. Trostel Mechanical Indus., Inc.,* 522 S.W.2d 170, 172073 (Tenn. 1975), that the language of T.C.A. § 50-6-231, which provides that lump sum awards are final, was impliedly repealed to the extent that it conflicted with T.C.A. § 50-6-206, which allows such settlements to be set aside under certain circumstances if application is made to the trial court within 30 days after the division of workers' compensation receipt of the judgment. Thus, if T.C.A. § 50-6-206 is not applicable by reason of its time constraints, *lump sum settlements are final.* Even if its provisions are applicable, the trial court must be shown that the settlement did not secure to the employee in a substantial manner the benefits of the Workers' Compensation Act. As we pointed out in *Corby v. Matthews,* 541 S.W.2d 789, 793 (Tenn. 1976), both the defendant and the plaintiff take a risk when they enter into lump sum settlements *because of their finality . . . . [emphasis added].*

T.C.A. § 50-6-241(a)(2) was enacted subsequent to *Nails. Prima facie,* section 2 thereof seemingly conflicts with T.C.A. § 50-6-231, but the Legislature, under familiar rules of construction, is presumed to have been aware of the existence of T.C.A. § 50-6-231 and was content to leave it undisturbed. Following *Nails,* we hold that the lump sum payment was final and foreclosed the issue. No Rule 60 motion was filed.

Finally, we observe that if T.C.A. § 50-6-241(a)(2) is not read in *pari materia* with other statutes, no judgment would become final until one year following loss of employment. It is doubtful that the Legislature intended this result. Since this court may affirm a judgment correct in result but rendered

upon different, incomplete, or erroneous grounds, *Duck v. Howell,* 729 S.W.2d 110 (Tenn. App. 1986), the judgment is affirmed at the costs of the appellant.

_____
William H. Inman, Senior Judge

CONCUR:

_____
Ben H. Cantrell, Judge

_____
Joe C. Loser, Jr., Special Judge

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

DANNY E. RAY,	}	*MARSHALL CHANCERY*
	}	*No. 9991 Below*
Plaintiff/Appellant	}	
	}	*Hon. Lee Russell*
vs.	}	*Chancellor*
	}	
THE YASUDA FIRE & MARINE	}	
INSURANCE COMPANY,	}	*No. 01S01-9710-CH-00223*
	}	
Defendant/Appellee	}	*AFFIRMED*

JUDGMENT ORDER

This case is before the Court upon 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 Memorandum Opinion of the Panel should be accepted and approved; 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 Plaintiff/Appellant and Surety, for which execution may issue if necessary.

IT IS SO ORDERED on October 12, 1998.

PER CURIAM