

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

FILED
August 30, 1999
Cecil Crowson, Jr.
Appellate Court
Clerk

IMOGENE DIXON)
)
Plaintiff-Appellant,)

TENNESSEE CLAIMS)
COMMISSION)
NO. 03S01-9810-BC-00111)

vs.)

THE HONORABLE)
MICHAEL S. LACY,)
COMMISSIONER)

STATE OF TENNESSEE)
Defendant-Appellee.)

For the Appellant:

John T. Milburn Rogers
100 South Main Street
Greeneville, TN 37743

For the Appellee:

John Knox Walkup
Attorney General and Reporter
Michael E. Moore
Solicitor General
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Nashville, TN 37243-0488

Mailed July_____, 1999

MEMORANDUM OPINION

Members of Panel:

Justice William M. Barker
Special Judge Howell N. Peoples
Special Judge Joe C. Loser, Jr.

AFFIRMED

PEOPLES, Special Judge

OPINION

This appeal has been referred to the Special Workers' Compensation Panel of the Supreme Court in accordance with Tennessee Code Annotated §50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. The Tennessee Claims Commission dismissed the

Appellant's claim for workers' compensation benefits finding the claim was barred by the statute of limitations, by her failure to timely file her Notice of Appeal, and alternatively, that she had failed to prosecute the claim for more than one year after it was filed. We affirm.

I

Imogene Dixon sustained a work-related injury on February 15, 1993, when a mentally disabled patient assaulted her at Greene Valley Development Center. Ms. Dixon filed a claim for workers' compensation benefits and received temporary total disability benefits and the Division of Claims Administration (DCA) paid her medical bills. On June 17, 1993, she was released to return to work without a medical impairment rating and with no limitations on her activities. On September 10, 1993, DCA sent Ms. Dixon a letter denying her claim and advising her that she had ninety (90) days from September 10, 1993 in which to file an appeal with the Tennessee Claims Commission. After that letter, the State made one payment on March 8, 1994 for medical services she had received on February 15, 1993.

According to the record, Ms. Dixon filed her notice of appeal with the Tennessee Claims Commission on January 14, 1997. On December 16, 1997, the State filed a Motion to Dismiss and/or for Summary Judgment based upon the statute of limitations. The motion was supported by the affidavit of Monica Fuqua¹, a claims examiner with DCA, and a memorandum of law.

On December 31, 1997, a response was filed on behalf of Ms. Dixon

¹ Ms. Fuqua swore: (1) she handled Ms. Dixon's claim; (2) the denial letter sent to Ms. Dixon on September 10, 1993 included appeal forms and explained that she had 90 days to file her appeal with the Tennessee Claims Commission; (3) Ms. Dixon began sending doctor's bills to the Division of Claims Administration in 1994 that were denied as unauthorized; (4) the last payment of workers' compensation benefits was March 8, 1994, for a bill incurred on February 15, 1993; and (5) on November 7, 1995, attorney Ken Bailey called to see if DCA had received Ms. Dixon's appeal papers and was informed by Ms. Fuqua that neither DCA nor the Claims Commission had any record of an appeal. A copy of the letter of denial dated September 10, 1993 was attached to the affidavit.

which denied the action was barred by the statute of limitations and denied the appeal was not timely filed. A Memorandum of Law in Support of Claimant's Response to Defendant's Motion to Dismiss and/or for Summary Judgment was also filed. The memorandum alleged that the defendant had misstated facts in its pleadings, claimed the notice of appeal was filed by mailing it on December 7, 1993, and requested that the defendant's motion be denied and the matter set for trial on the merits. No affidavit was filed in support of the response. On December 31, 1997, Ms. Dixon also filed a request for an oral hearing of the Motion to Dismiss and/or for Summary Judgment.

On February 13, 1998, an Order of Dismissal was entered which denied the request for oral argument. The Commission found that Ms. Dixon failed to file her claim for workers' compensation benefits within one year as required by T.C.A. §50-6-203, failed to file her notice of appeal with the Claims Commission within ninety days as required by T.C.A. §9-8-402(b), and that, even if timely filed, the claim should be dismissed pursuant to T.C.A. §9-8-402(b) "because no action was taken in the prosecution of this claim within one year of the filing date."

On March 12, 1998, counsel for Ms. Dixon filed a Motion to Set Aside Dismissal pursuant to Rule 60.02 and Rule 59.04 of the Tennessee Rules of Civil Procedure. With the motion, the affidavits of attorney John T. Milburn Rogers² and Christi Lee Rader Bolton³, a paralegal in his office, were attached

² Mr. Rogers swore: (1) he first became acquainted with Ms. Dixon in August 1993; (2) he noted the matter on his calendar one week before the filing date of December 9, 1993; (3) he prepared a rough draft of a complaint which he usually filed in workers' compensation cases, then noted a particular form had been provided to Ms. Dixon by DCA and thereafter, on December 7, 1993, he dictated a letter of transmittal, notice of appeal, and affidavit for Ms. Dixon to execute; (4) Ms. Dixon came to his office that same afternoon and executed the affidavit; (5) he gave Ms. Bolton instructions to mail the letter and enclosure to the Tennessee Claims Commission "as required by law"; and (6) he had conversations with

with copies of draft complaints.

The State filed a response to the motion, with affidavits⁴, placing into issue the statements made in the affidavits of Ms. Bolton and Mr. Rogers.

On August 17, 1998, The Tennessee Claims Commission denied Ms. Dixon's motion to set aside the Order of Dismissal stating, "Although these documents aver that Claimant's Notice of Appeal was executed and mailed in December of 1993, they do not provide evidence that the Notice of Appeal was received by the Claims Commission within ninety days of the September 10, 1993 denial notice from the Division of Claims Administration as required by Tennessee Code Annotated §9-8-402(b). Although the copy of Claimant's Notice of Appeal appears to have been executed in December of 1993, it was not filed with the Claims Commission until January of 1997, approximately 22 months after the statute of limitations expired."

II.

This case comes before the Court in the posture of a summary judgment. The standard of review is that provided for Rule 56 of the Tennessee Rules of Civil Procedure. We must "take the strongest legitimate

agents or employees of DCA about Ms. Dixon's claim during the years 1994 through 1996.

³ Ms. Bolton swore: (1) she was a paralegal who began working exclusively for attorney Rogers in early 1993; (2) she prepared a letter of transmittal of Ms. Dixon's notice of appeal with an affidavit of Ms. Dixon which was executed on December 7, 1993; (3) she prepared a rough draft of a complaint prior to December 7, 1993, but was instructed by Mr. Rogers to utilize the forms furnished by the State; (4) Mr. Rogers spoke with employees or agents of the State during the years 1994, 1995 and 1996 attempting to negotiate a settlement of the claim; and (5) based upon the foregoing facts, it would have been her business practice, habit, custom and routine to have forwarded Ms. Dixon's affidavit and notice of appeal to the Tennessee Claims Commission on December 7, 1993.

⁴ Ms. Margie Douglas swore: (1) she is the Administrative Clerk for the Tennessee Claims Commission and her duties include entering or supervising the entry of all complaints, claims and notices of appeal upon receipt by the Tennessee Claims Commission; (2) Imogene Dixon filed a Notice of Appeal from Denial of Claim on January 14, 1997; and (3) there is no complaint or notice of appeal filed by or on behalf of Ms. Dixon before January 14, 1997. A second affidavit of Ms. Fuqua was filed in which she stated, "On August 19, 1994, I noted in the file that Ms. Stidham had denied authorization for a myelogram and a CT scan was denied because the file was closed, that the claimant's therapy bills dated March 24, 1994 were denied, and that plaintiff was notified of the denial and the appeal process."

view of the evidence in favor of the nonmoving party, allow all reasonable inferences from that evidence in its favor, and discard all countervailing evidence.” Byrd v. Hall, 847 S.W.2d 208, 210-211 (Tenn. 1993). “If, after applying this standard, we find that there are no genuine issues of material fact and the moving party is entitled to a judgment as a matter of law, we must affirm the grant of summary judgment.” Jones v. City of Johnson City, 917 S.W.2d 687, 689 (Tenn. App. 1995), *cert. denied* 1996.

III.

On appeal, Ms. Dixon asserts the Commission erred in granting the defendant’s motion for summary judgment because of the existence of a material issue of fact concerning whether the appeal was timely filed. She also asserts that the defendant should be estopped from asserting the statute of limitations where it led Ms. Dixon to believe that she had a pending claim.

Whether there is a material issue of fact depends on whether placing a notice of appeal or a complaint in the United States mail constitutes the “filing” of such a document.

Tennessee Code Annotated §9-8-402 governs the filing of claims before the Tennessee Claims Commission. It requires a claimant to give written notice of a workers’ compensation claim to the DCA. The notice must recite the circumstances upon which the claim is based. The claim is barred if the notice is not given within the statute of limitations applicable to similar claims filed in the courts. DCA must investigate and attempt to grant or deny the claim within 90 days after receipt. “If the claim is denied, the division shall so notify the claimant and inform the claimant of the reasons therefore and of the right to file a claim with the Claims Commission within ninety (90) days of the date of the denial notice.” T.C.A. §9-8-402. Pursuant to this code section, Ms. Dixon should have filed her notice of appeal with the Tennessee Claims Commission within 90 days from September 10, 1993 which would have been December 9, 1993. Ms. Dixon’s Notice of Appeal from denial of a claim was

not received by the Clerk of the Tennessee Claims Commission until January 14, 1997.

Proceedings before the Tennessee Claims Commission are governed by the Tennessee Rules of Civil Procedure. T.C.A. §9-8-403. With regard to filing documents with the courts, Rule 5.06, T.R.C.P., provides: “The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court The clerk shall endorse upon every pleading and other papers filed with him in an action the date and hour of the filing.” The Rules do not define “filing.” In Fanning v. Fly, 42 Tenn. (2 Cold.) 486 (1865), the Court said, “A paper is said to be filed, when it is delivered to the proper officer, and by him received to be kept on file; and papers put together and tied in bundles, are called a file.” (citations omitted) 42 Tenn. at 488. In Dooley v. Dooley, 980 S.W.2d 369 (Tenn. App. 1998), defendant’s counsel had mailed an answer to a petition for contempt to opposing counsel without filing the answer with the clerk of the court. The Court held that such action did not “constitute a ‘filing’ of the answer which would waive personal jurisdiction.”

Counsel for Ms. Dixon cites no authority (and we are aware of none) for the proposition that placing a notice of appeal in the mail constitutes the “filing” required by T.C.A. §9-8-402. Thus, it is not material that an issue of fact exists over whether the notice was timely mailed to the Tennessee Claims Commission. It is clear that it was not timely received and endorsed by the clerk of the Commission, therefore, it was not timely filed.

The one year statute of limitations on workers’ compensation claims expires one year after the employer’s last voluntary payment of benefits. Ogden v. Matrix Vision of Williamson County, Inc., 838 S.W. 2d 528 (Tenn. 1992); Union Carbide Corp. v. Cannon, 523 S.W. 2d 360 (Tenn. 1975). Assuming the statute of limitations on Ms. Dixon’s claim began to run when the defendant made its last payment of medical benefits on March 8, 1994, she could have timely filed her claim with the Tennessee Claims Commission on or before March 8, 1995. The claim was not received and filed by the Clerk of the Commission until January 14, 1997, more than twenty-two (22) months after the statute of limitations expired.

Counsel for Ms. Dixon also argues that the defendant is barred by estoppel from relying on the statute of limitations. It is contended that he engaged in conversations concerning Ms. Dixon's claim with employees and agents of the defendant after the time for filing her notice of appeal had passed. The defendant in this case is a public agency. In order for estoppel to apply, there must be "evidence of affirmative conduct on the part of the state inducing the plaintiff to act to his detriment." Carpenter v. State, 838 S.W.2d 525, 528 (Tenn.1992). The exact nature of the statements of employees and agents of the State that would constitute estoppel are not set forth in the affidavits filed on behalf of Ms. Dixon. Therefore, the necessary evidence of affirmative conduct is not shown and the argument fails.

Finally, counsel for Ms. Dixon asserts that the claim was diligently prosecuted because he had "conversations concerning the claim" with employees or agents of the defendant after it was filed, but he does not specify the content of those conversations. The affidavits filed by Monica Fuqua on behalf of the defendant show the only action taken by employees or agents of the defendant after September 10, 1993 was to deny the claim. We are unable to find any evidence in the record, other than the filing of the notice of appeal, that the claim was prosecuted as required by T.C.A. §9-8-402(b).

The judgment of the Commission is affirmed. Costs are taxed against the Appellant and her surety.

Howell N. Peoples, Special Judge

Concur:

William M. Barker, Justice

Joe C. Loser, Jr., Special Judge

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IMOGENE DIXON) TENNESSEE CLAIMS
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COMMISSION)
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) THE HONORABLE
) MICHAEL S. LACY,
STATE OF TENNESSEE,) COMMISSIONER
)
Defendant-Appellee.)

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 facts and conclusions of law are adopted and affirmed and the decision of the Panel is made the Judgment of the Court.

Costs on appeal are taxed to the appellant, Imogene Dixon and John T. Milburn Rogers, surety, for which execution may issue if necessary.

08/30/99