

Archive – Summaries of Tennessee Cases on Workers Compensation Benefits Review Conferences

1. Workers Comp Benefits Review Process Must Be Exhausted Before any Lawsuit.

In Lacey Chapman v. Davita, Inc., 380 S.W. 3d 710 (Tenn. 2012), an employee filed a request for assistance with the Tennessee Department of Labor after her workplace injury. After about six months of inaction by the Department, the employee filed a complaint for workers' compensation benefits against her employer. On extraordinary appeal, the Court held that the trial court did not have subject matter jurisdiction because the employee did not exhaust the benefit review conference process required by Tenn. Code Ann. § 50-6-203.

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As noted in The Holland Group v. Audrey Sotherland, et al., 2009 WL 1099275, No. M2008-00620-WC-R3-WC (Tenn. April 24, 2009), parties who have a workers comp dispute involving injuries occurring after January 1, 2005 must exhaust an administrative mediation process (the benefit review conference). In this case, the employee has filed a "Request for Assistance" pursuant to Tenn. Comp. R. & Regs. 0800-2-5.01(13), but not a "Request for Benefit Review Conference" pursuant to to Tenn. Comp. R. & Regs. 0800-2-5.01(14). After the Tennessee Dept. of Labor and Workforce Development ordered medical treatment and benefits, the employer filed

suit against the employee and the Second Injury Fund, seeking reimbursement for the benefits paid. Because the parties had not exhausted the administrative mediation process, the trial court properly dismissed the suit for lack of jurisdiction.

2. Statutes of Limitations in Workers Comp Cases.

In Joe Lynn Hughes v. Robert Brent d/b/a Apartment Maintenance Specialists, et al., 2010 WL 3384972, No. E2009- 01377-WC-R3-WC (Tenn. Workers' Comp. Appeals Panel August 25, 2010), the Court of Appeals reversed the trial court's summary judgment in favor of the employer. Although the employee did not file a request for a benefit review conference within one year of the date of injury, the statute of limitations, Tenn. Code Ann. § 50-6-203, was tolled by his timely filing of a request for assistance. Holland Group v. Sotherland, No. M2008-00620-WC-R3-WC (Tenn. Workers' Comp. Panel Apr. 24, 2009) did not overrule Welsh v. Universal Fasteners, Inc., 51 S.W.3d 196 (Tenn. Workers' Comp. Panel 2000) (interpreting a "request for assistance" as amounting to a request for a benefit review conference for purposes of tolling statute of limitations). The 2008 legislative revision of Tenn. Code Ann. § 50-6-238(a)(1), codifying Welsh result and applying to injuries occurring on or after July 1, 2008 does not mean that the statute is not tolled with regard to injuries prior to the statute's effective date.

In Wayne Moran v. Fulton Bellows & Components, Inc., 2010 WL 3244873, No. E2009-01923-WC-R3-WC (Tenn. Workers' Comp. Panel Aug. 17, 2010), the employee filed suit 94 days after an impasse was reached at a benefit review conference. The trial court properly granted the employer's motion to dismiss on the basis of the 90-day statute of limitations, Tenn. Code Ann. § 50-6-203(g)(1) (2008). The report of the benefit review conference was "filed with the commissioner" of Labor and Workforce Development as required by the statute of limitations when the workers' compensation specialist generated a Benefit Review Conference

Report on the date of the impasse. The statute of limitations does not require a separate filing system physically located in the Commissioner of Labor's office under his direct control.

3. Mediated Settlement Of Workers Comp Case Void.

In Donny Ray Thompson v. City of Lawrenceburg, 2009 WL 3832819, No. M2008-02662-WC-R3-WC (Tenn. Nov. 17, 2009), the Court approved the decision of the Special Workers' Compensation Appeals Panel, holding that a mediated settlement was void. After the employer had appealed a trial court's decision regarding a Workers' Comp claim, the employer and employee participated in a Rule 37 mediation and reached an agreement to compromise the employer's portion of the claim. The Second Injury Fund was not a party to the settlement agreement. After the employer dismissed its appeal, the trial court granted the employee's motion that the Fund immediately begin paying its share of the judgment. On appeal by the Fund, the Supreme Court reversed that order and remanded the case. The mediated settlement was void because it was not approved by the trial court under Tenn. Code Ann. § 50-6-206(a) and it conflicts with the requirements of that section and Tenn. Code Ann. § 50-6-207(4)(A)(ii).

4. Settlement Not Set Aside on Appeal.

In Patricia Henderson v. Saia, Inc. et al., 318 S.W. 3d 328 (Tenn. 2010), the workers' comp appeal was initially referred to the Special Workers' Compensation Appeals Panel for a hearing and a report of findings of fact and conclusions of law per Tenn. Code Ann. § 50-6-225(e)(3). After oral argument, but before the Panel filed its opinion, the case was transferred to the full Court to consider a Tenn. R. Civ. P. 60.02 request to set aside a judgment approving a settlement. Affirming the trial court, the Court of Appeals found no basis for setting aside the settlement under Rule 60.02.

5. Release Did not Include Son of Company's Broker in Workers' Comp Case.

In George Ridenour v. Darrell Carman et al., 2013 WL 1097805, No. M2012-00801-COA-R3-CV (Tenn. Ct. App. March 15, 2013), an employee of a real estate and auction company was injured while assisting the company's managing broker on the broker's personal farm. The employee filed a workers' comp claim against the company and its insurer. The plaintiff also filed a common law tort action against the broker and the broker's son, who was called to assist after the injury occurred. The workers' comp action was settled. Per the court approved settlement agreement, the employee released the company and its insurer, as well as their subsidiaries, affiliates, officers, directors, employees, agents and representatives "from any and all further liability and indemnity, under the terms and provisions of the Workers' Compensation Law of the State of Tennessee, at common law or otherwise" After the settlement, the trial court granted the motion of the broker and his son for summary judgment, dismissing the tort claims on the grounds that the defendants were immune under the Workers' Comp Law, Tenn. Code Ann. § 50-6-108(a), and has received a full release in the settlement agreement. On appeal, the Court affirmed the dismissal of the tort claims against the broker, but reversed as to the son. The son was not an affiliate, officer, director, employee, agent or representative of the employer when the employee was injured and did not come within the terms of the release. A Workers' Comp claim is not the employee's exclusive remedy if a third party, other than the employer, causes an injury.

6. Employer's Subrogation Lien Sought after Workers' Comp Settlement Did Not Include Cost of Future Medical Benefits.

In Joshua Cooper et al. v. Logistics Insight Corp. et al., 395 S.W. 3d 632 (Tenn. 2013), an employee was injured at work due to the negligence of a third-party tortfeasor and suffered permanent

injuries requiring future medical care. The employee filed both a workers' compensation claim and a Chancery Court lawsuit against the third-party tortfeasor. The employer intervened in the lawsuit pursuant to Tenn. Code Ann. § 50-6-112 to protect its subrogation lien against any recovery from the tortfeasor. The employee settled the lawsuit with the third-party tortfeasor and voluntarily dismissed the case. Upon learning of the settlement, the employer moved to set the case for trial, asserting it was entitled to a lien against the settlement proceeds for the cost of future medical benefits that may be paid on behalf of the injured employee. The trial court granted a motion to dismiss for failure to state a claim. The Court of Appeals reversed, holding that the employee's future medical benefits were not too speculative and could be included in the employer's lien against the proceeds of the employee's suit against the third party tortfeasor. On appeal to the Tennessee Supreme Court, the Court noted as a preliminary matter that the Workers' Comp law "does not require an employee to obtain an employer's agreement before settling with a tortfeasor." Better practice, however, would have been for the plaintiffs in this case to obtain court approval of their settlement with the defendants in the Chancery Court action. On the main issue, the Court reversed, holding that the employer's subrogation lien under Tenn. Code Ann. § 50-6-112 does not include the cost of future medical benefits to which the injured employee may be entitled. The Court followed its prior decisions on the issue, *Hickman v. Cont'l Baking Co.*, 143 S.W.3d 72 (Tenn. 2004); *Graves v. Coker Cnty.*, 24 S.W.3d 285 (Tenn. 2000). Justice Koch, in dissent, acknowledged that the General Assembly should revisit § 50-6-112. Nevertheless, relying on a plain language analysis, a discussion of the purposes of the Workers Compensation program, and a criticism of the reasoning of *Hickman* and *Graves*, Justice Koch stated that an employer's credit is not a refund out of an employee's recovery under Tenn. Code Ann. § 50-6-112(c)(2), (3). Rather, it negates an employer's responsibility to pay additional benefits until the employee's net recovery from the third party tortfeasor is exhausted. Therefore, an employee

who recovers from a third party must use the net recovery to pay for future medical care until the net recovery is exhausted. The employer's liability would then recommence only after the employee exhausted the net recovery in paying for medical expenses from the injury.

7. Mediated Workers' Comp Settlement Upheld.

Christopher Furlough v. Spherion Atlantic Workforce, LLC, 397 S.W. 3d 114 (Tenn. 2013) involved a mediated workers' comp settlement. The Court reversed the Special Workers' Compensation Appeals Panel's dismissal of the appeal and also reversed the trial court's decision. The Panel erred in dismissing the appeal on procedural grounds: a court may not set aside a settlement as non-final, based on the court's determination that the SD-1 form was not "fully completed" in a case, where the settlement, involving an employee represented by counsel, was approved by the Department of Labor and the SD-1 form was submitted contemporaneously with the settlement agreement. The Court held that "when the Department of Labor approves a settlement, it implicitly approves the accompanying SD-1 form, and a court has no authority to set the settlement aside based on its independent finding that the SD-1 form was not 'fully completed.'" The Court further found that the parties had exhausted their administrative remedies through a mediated settlement at a benefits review conference. The Circuit Court did have jurisdiction to consider the employee's petition to set aside the Department of Labor-approved settlement. As for the merits of the petition, the Circuit Court erred in setting aside the settlement on two alternative grounds, that 1) although an attorney was present at the benefits review conference, the employee was not "represented" by counsel within the meaning of Tenn. Code Ann. § 50-6-206(c), and 2) the employee did not receive, substantially, the benefits provided by the Workers' Comp statutes. First, dissatisfaction with an attorney's representation does not mean that the employee was not "represented" at the benefits review

conference. Second, the petition was not timely filed after the Department's approval of the settlement, so relief under Tenn. R. Civ. P. 60.02(5) was not available in this case. Third, the Circuit Court could not grant relief under an alternative basis of inherent authority to set aside a settlement when it does not comply with applicable law. The employee failed to establish at least two of the three criteria for relief in an independent action collaterally attacking a final judgment. See *Jenkins v. McKinney*, 533 S.W.2d 275 (Tenn. 1976) (interpreting the "savings' provision" of Tenn. R. Civ. P. 60.02). The employee had other available and adequate remedies – he could have timely sought relief based on an alleged mistake pursuant to Tenn. R. Civ. P. 60.02 (1) or appealed the Department-approved settlement pursuant to Tenn. Code Ann. § 50-6-206(c)(2). Also, the employee was not without fault given that the facts at issue (whether the employee had walked off the job or had been terminated) was a matter the employee was in a position to know.

8. Unseemly Race to the Courthouse in Post-Impasse Workers' Comp Case.

Ceildeck Corporation v. Herbert Ivey, No. M2001-00096-WC- R3-WC (Tenn. November 15, 2011), involved a race to the courthouse after a Benefit Review Conference (BRC). The employee, a Dickson County resident, was allegedly injured in Davidson County. The employee and his employer participated in a BRC, but were not able to settle. The Workers' Comp Specialist declared an impasse at 10:27:19 a.m. The employee filed a Chancery Court complaint in Dickson County at 10:27 a.m. The employer filed its complaint in Davidson County at 10:28 a.m. Affirming dismissal of the employer's Davidson County complaint based on the doctrine of prior suit pending, the Court of Appeals held the employee had proven that it filed suit after 10:27:19 am, i.e. after the BRC was deemed exhausted pursuant to Tenn. Comp. R. & R. 0800-2-5-.09. The employee did not have to prove synchronization of the clocks of the BRC and the Davidson County Chancery Court Clerk, notwithstanding dicta in *S. Cellulose Prod., Inc. v. Defriese*, No. E2008-00184-WC-R#-WC, 2009 WL 152313 (Tenn. Workers Comp. Panel Jan. 22. 2009).