IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT KNOXVILLE
(June 30, 1998 Session)

WILLA DEAN VALENTINE,	)	COCKE CIRCUIT
	)	
Plaintiff-Appellee,	)	Hon. Richard R. Vance,
	)	Judge.
v.	)	
	)	No. 03S01-9712-CV-00138
HEEKIN CAN, INC.,	)	
	)	
Defendant-Appellant.	)	

For Appellant:

James T. Shea
Knoxville, Tennessee

For Appellee:

William G. Ball
Knoxville, Tennessee

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

Members of Panel:

William M. Barker, Associate Justice, Supreme Court
Joe C. Loser, Jr., Special Judge
Roger E. Thayer, Special Judge

AFFIRMED

Loser, Judge

MEMORANDUM 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. section 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. The issue for review is whether the claim is barred by Tenn. Code Ann. section 50-6-203, a statute of limitations. As discussed below, the panel has concluded the judgment should be affirmed.

The trial court overruled the employer's pre-trial motion for summary judgment and, after a trial, found that the injury did not manifest itself until March of 1993 and awarded benefits to the injured employee. Appellate review is de novo upon the record of the trial court, accompanied by a presumption of correctness of the findings of fact, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. section 50-6-225(e)(2). It is undisputed that the action was commenced on June 23, 1993.

The employee or claimant, Valentine, was 50 years old at the time of the trial. She has a ninth grade education and has worked for the employer, Heekin, as a packing machine operator since 1984. In June of 1991, she twisted her neck and arm while pulling cans from the line. She immediately notified a supervisor but he did not complete a work related injury report because there was no visible evidence of injury. Instead, the employer filed a health insurance claim.

The next week, Valentine took a vacation, but continued to have neck and arm pain. She went to a medical clinic, where she received pain medication and a soft neck collar. She returned to work following the vacation, but her neck and arm still hurt, so she reported the injury to a plant manager, who attributed the problem to "old age" and refused to complete a work related injury report. Concerned with the financial strain of the copayment requirement of her health insurance coverage, the claimant spoke directly to the secretary who handled workers' compensation claims for the employer. The secretary, in her trial testimony, admitted the claim was mishandled, but testified also that she only designated claims as workers' compensation claims when instructed to do so by a supervisor.

In September of 1991, the claimant visited the company doctor, Dr. William Williams, because of persistent pain. Dr. Williams prescribed light duty work and put her arm in a sling. She visited a chiropractor in October of 1991. She returned to Dr. Williams in December of the same year and was referred to Dr. David Hauge, a neurosurgeon, who treated her conservatively until March 17, 1992, when he released her to return to work without restrictions. The record does not reveal that any of the doctors told her she was permanently impaired in 1991 or 1992.

She did return to work and worked continuously until March 17, 1993, when she again was injured at work. This time she immediately informed the secretary that she wanted the injury to be designated as a workers' compensation claim. However, the claim was denied by the supervisor because the form had the same diagnostic code as the 1991 injury. The claimant again reported to Dr. Williams and was referred to Dr. Hauge, who, in March of 1993, informed her for the first time that she had a permanent injury. The doctor later performed fusion discectomy and, on January 1, 1994, assigned a permanent impairment rating of eleven percent to the whole body.

A psychologist testified at trial that the claimant's verbal and clerical perception is in the lower one-third of the population, that she reads at the seventh grade level, and that she is in the fifth percentile with respect to clerical ability.

An action by an employee to recover benefits for an accidental injury, other than an occupational disease, must be commenced within one year after the occurrence of the injury. Tenn. Code Ann. section 50-6-224(1). However, the running of the statute of limitations is suspended until by reasonable care and diligence it is discoverable and apparent that a compensable injury has been sustained. Hibner v. St. Paul Mercury Ins. Co., 619 S.W.2d 109 (Tenn. 1981). It is the date on which the employee's disability manifests itself to a person of reasonable diligence - not the date of accident - which triggers the running of the statute of limitations for an accidental injury. Id. Thus, we must affirm the finding of the trial judge, unless the evidence

preponderates otherwise. It does not.

The judgment of the trial court is consequently affirmed. Costs on appeal are taxed to the defendant-appellant.

_____
Joe C. Loser, Jr., Special Judge

CONCUR:

_____
William M. Barker, Associate Justice

_____
Roger E. Thayer, Special Judge

IN THE SUPREME COURT OF TENNESSEE

AT KNOXVILLE

WILLA DEAN VALENTI NE,	)	COCKE CIRCUIT
	)	
Plaintiff-Appellee	)	No. 21,762
V.	)	
	)	
HEEKIN CAN, INC.	)	03S01-9712-CV-00138
	)	
Defendant-Appellant.	)	Hon. Richard R. Vance

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 defendant/appellant, Heekin Can, Inc. and James T. Shea, Iv, Surety, for which execution may issue if necessary.

09/04/98