

Case Law Update

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2023 Case Law Update

Fred Baker, Esq.

Knoxville

Cookeville

Nashville

Houston v. People Ready, Inc.

- U.S. District Court for Western District of TN, Aug. 1, 2022
- Facts: Employee was shot and killed on a job site, and Employee's mother brought a wrongful death action in federal court. Employer moved to dismiss on the grounds that the death arose out of and occurred in the course and scope of employment, arguing that the claim was barred by the Tennessee exclusive remedy rule. Employee's mother argued that the death arose from an "inherently private dispute" which is not covered under work comp law, and therefore tort claim not precluded.



Houston v. People Ready, Inc.

- Issue: Does exclusive remedy rule preclude the tort suit?
- Holding: Yes. The assault resulted from Employee's enforcement of work policies and therefore had an "inherent connection" to the employment. Since the death arose out of and in the course and scope of employment, the exclusive remedy is workers' compensation.



Jase Enterprises, LLC. v. Tennessee Bureau of Workers' Compensation

- Tennessee Court of Appeals, Aug. 8, 2022
- Facts: Company was assessed a penalty for failure to maintain workers' compensation insurance coverage. Penalty assessment was upheld but modified by ALJ after contested case hearing. ALJ decision was upheld by the trial court. The company argued that it was denied due process.



Jase Enterprises, LLC. v. Tennessee Bureau of Workers' Compensation

- Issue: Was the company afforded due process in these proceedings?
- Holding: Yes. According to the Court of Appeals, the company received sufficient notice and an opportunity to be heard. That the company lost does not mean it was denied due process.



Summers v. RTR Transportation Services

- Tennessee Special Workers' Compensation Appeals Panel, Oct. 28, 2022
- Facts: Employee was found dead next to her truck just off the roadway. Claim was accepted after investigation. Employee left a surviving spouse as the only dependent eligible for death benefits. Employer offered to pay death benefits periodically. Surviving spouse requested that death benefits and attorney's fees be paid in a lump sum. Attorney's fees were also requested on burial expenses.



Summers v. RTR Transportation Services

- Issues: (1) Should death benefits be paid in a lump sum?
(2) Should attorney's fees be paid in a lump sum?
(3) Should attorney's fees be paid on burial expenses?
- Holding:
 - (1) Death benefits should not be commuted to a lump sum, because dependent failed to prove commutation was in his best interests and that he could control the award.
 - (2) Attorney's fees should be commuted to lump sum since periodic payments impose administrative burdens on parties and lawyers.
 - (3) Attorney's fees should be awarded on burial expenses because underlying courts erred in analogizing burial expenses to medical expenses.



Food Lion, Inc. v. Wilburn

- Tennessee Special Workers' Compensation Appeals Panel, Jan. 11, 2023
- Facts: Employee suffered a compensable work injury in 2001, which resulted in a 2007 settlement with open medicals. Dr. Workman was one of the authorized doctors designated in the settlement agreement for future medicals. In 2019, Employer obtained an IME with Dr. Alexander, who opined that the conditions being treated by Dr. Workman were not work related. In 2020, Employer petitioned the trial court for an order relieving it from responsibility to pay for treatment by Dr. Workman.



Food Lion, Inc. v. Wilburn

- Issues:

- (1) Did Employer prove that the conditions that Dr. Workman was treating were not work related?

- (2) Is Employee entitled to attorney's fees?

- Holding:

- (1) No. Employer failed to prove that the conditions were not work related. Dr. Alexander's opinion did not rebut the presumption afforded to ATP Dr. Workman.

- (2) No. Employee is not entitled to attorney's fees. Even though Employer was seeking relief from the order to pay for Dr. Workman's treatment, Employer never actually denied any of that treatment and continued to pay for the care.



Mitchell v. AECOM d/b/a Shimmick Construction, Inc.

- WCAB, Feb. 7, 2023
- Facts: Employer was ordered to pay medical bills related to emergency treatment. Employer did not pay some of those expenses because provider did not submit them on proper billing forms.



Mitchell v. AECOM d/b/a Shimmick Construction, Inc.

- Issue:

(1) Does the provider's failure to submit expenses on proper billing forms relieve the Employer from responsibility to pay the bills?

(2) Should Employer be ordered to pay attorney's fees?

- Holding:

(1) No. The Employer still must pay the expenses even if the bills are not submitted on the right form.

(2) Yes. The Employer must pay attorney's fees because it failed to "furnish" appropriate medical care per a court order. "Furnish" includes not only the *authorization* of medical care but also the *payment* of the resulting medical expenses.



Acevedo v. Crown Paving, LLC.

- WCAB, Feb 14, 2023
- Facts: Employee collapsed while working in hot environment, struck his head, and was transported to Skyline Medical Center. Employee subsequently died in the hospital, and widow filed PBD asserting death claim. Skyline filed a motion to intervene to pursue payment of over \$700,000 in medical expenses.



Acevedo v. Crown Paving, LLC.

- Issue: Can a medical provider intervene and become a “formal party” to a workers’ compensation claim?
- Holding: No. Neither the CWCC nor WCAB can exercise subject matter jurisdiction over a medical provider’s claim for the payment of a medical bill, and there is no case law affirming the right of a medical provider to intervene in a workers’ compensation suit for purposes of pursuing a judgment for the payment of medical bills.



Earheart v. Central Transport, Inc.

- WCAB, Feb. 14, 2023
- Facts: Parties disputed whether employment termination was for cause and whether the Employee was entitled to TTD benefits. On the eve of the expedited hearing, the Employer voluntarily paid TTD benefits. In the court's order, the issue of attorney's fees was reserved for the compensation hearing.



Earheart v. Central Transport, Inc.

- Issue: Does the Employer's voluntary payment of TTD benefits prior to expedited hearing preclude the trial court from awarding attorney's fees?
- Holding: No. The trial court still has authority to order attorney's fees since this determination must be made based on the facts that existed *when the denial was made*.



McKim v. Stansell Electric Company, Inc.

- WCAB, Mar. 13, 2023
- Facts: Employee injured his shoulder and neck, and the Employee received authorized medical treatment for both. Shoulder surgeon placed Employee at MMI and referred him for neurosurgical evaluation and pain management. TTD benefits were terminated. The neurosurgeon and pain management notes do not address work restrictions, but neurosurgeon completed a written questionnaire stating that Employee was unable to work.



McKim v. Stansell Electric Company, Inc.

- Issues:

- (1) Is the questionnaire admissible?

- (2) Does the lack of medical restrictions in the medical notes preclude an award of TTD?

- Holding:

- (1) Yes. The questionnaire is admissible. WCAB was unpersuaded by Employer's argument that the regulations only allow questionnaires that specifically address medical causation and/or reasonableness and necessity of treatment.

- (2) No. The lack of restrictions in the notes do not preclude the award of TTD. While there is a regulation that requires medical reports to address work restrictions, that regulation is only aimed at consistent medical reporting. It does not give Employer grounds to deny TTD.



Cook v. Newton Nissan of Gallatin/Newton Ford, LLC.

- WCAB, Mar. 20, 2023
- Facts: Employee sustained a compensable left arm injury. Authorized orthopedist made direct referral to a physiatrist. The physiatrist evaluated Employee, recommended a trial of Voltaren gel and Cymbalta, and stated that if these do not work then he didn't know of anything else to provide. They didn't work, so the physiatrist referred her back to the orthopedist while also scheduling a three month follow up. Employee then saw another doctor, who made direct referral to pain management clinic. Employer gave panel including original physiatrist plus two doctors approximately 170 miles away.



Cook v. Newton Nissan of Gallatin/Newton Ford, LLC.

- Issue:

- (1) Was the referral to a pain management clinic an impermissible “second opinion”?

- (2) Was the panel defective?

- Holding:

- (1) No. The statutory prohibition on second opinions for pain management only limits the *Employee* from requesting a second opinion. It does not prevent a treating physician from making a referral.

- (2) Yes. According to majority of the court, including the original physiatrist invalidated the panel because he had no intent to offer additional treatment.



Nelson v. QVS, Inc.

- WCAB, Mar. 22, 2023
- Facts: Injured Employee was also the owner and president of the Employer. Carrier denied the claim and Employee filed a PBD. The Employee, in his capacity as the Employer, demanded that Carrier accept the claim and requested that Carrier hire separate conflict counsel. Counsel for Carrier denied request for separate conflict counsel. Employee filed motion to disqualify Counsel for Carrier, or in the alternative, for Carrier to retain independent counsel for Employer.



Nelson v. QVS, Inc.

- Issues:

- (1) Does the trial court have authority to issue an order disqualifying Counsel?

- (2) Did Employee prove a concurrent conflict of interest?

- Holding:

- (1) Yes. The trial court has authority to disqualify an attorney.

- (2) Yes. Employee proved the existence of a conflict of interest.

There was a clear conflict and Counsel was precluded from joint representation of both Insurer and Employer.





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We hope you enjoyed your first day of our conference. Please enjoy a reception immediately after this session in the Exhibition Hall



Agenda



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