



SUMMARY JUDGMENT

IT'S NOT THAT EASY

Tennessee Workers' Compensation Forum | Summer 2023

Who We Are

**Feeney
&
Murray**

LEE ANNE MURRAY

CATHERYNE L. GRANT

TAYLOR R. PRUITT



Presentation Outline

A "summary" of the topics.

The Rule

The Burden-Shifting Framework

Responding

Hypothetical Cases

Appellate Practice

Final Notes



1.

THE RULE

WHAT DOES THE TEXT SAY



RULE 56.04

Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.



What The Text Says.

1. ONLY CERTAIN TYPES OF EVIDENCE

Pleadings, depositions, answers to interrogatories/admissions, and affidavits.

2. ISSUES MUST BE GENUINE

Address the substance of the fact.

3. FACTS MUST BE MATERIAL

Keep it short and simple; only what's necessary to win.



2.

THE BURDEN-SHIFTING FRAMEWORK

THE BRAXTON AND RYE STANDARDS



Burdens of Production

Do you bear the burden of proof at trial?

YES

- Employees making a *prima facie* case
- Employers relying on an affirmative defense

TWB Architects, Inc. v. Braxton, LLC

NO

- Employers relying on non-affirmative defense
- Employees challenging an affirmative defense

Rye v. Women's Care Center of Memphis, MPLLC



Braxton*

*TWB Architects, Inc. v. Braxton, LLC, 578 S.W.3d 879 (Tenn. 2019)

If the moving party bears the burden of proof at trial, that party must produce evidence that, if uncontroverted at trial, would entitle it to a directed verdict.



Rye*

*Rye v. Women's Care Ctr. of Memphis, 477 S.W.3d 235 (Tenn. 2015).

If the moving party does not bear the burden of proof at trial, that party must produce evidence which either: (1) negates an essential element of the nonmoving party's claim; or (2) demonstrates the nonmoving party's evidence at the summary judgment stage is insufficient to establish the nonmoving party's claim or defense.



CASES

Meaningful Return to Work Analysis Required More Facts

Holt III, John v. Quality Floor Coverings, LLC, 2022 TN WC App. 41
(Tenn. Workers' Comp. App. Bd. Dec. 14, 2022).

Stating What the Nonmoving Party "Believes" is Insufficient

Brock, Gregory v. Dollar General Corporation, 2022 TN WC App. 40
(Tenn. Workers' Comp. App. Bd. Nov. 29, 2022).



3.

RESPONDING

CREATING GENUINE ISSUES OF FACT



Moving Party Meets Its Burden

THE BURDEN SHIFTS TO THE
NONMOVING PARTY.

Nonmoving Party Must Respond

AND SHOW A GENUINE ISSUE
FOR TRIAL.



Read The Rule Again.

1. ONLY CERTAIN TYPES OF EVIDENCE

Pleadings, depositions, answers to interrogatories/admissions, and affidavits.

2. ISSUES MUST BE GENUINE

Address the substance of the fact.

3. FACTS MUST BE MATERIAL

Keep it short and simple; only what's necessary to win.



CASES

Medical Records, Standing Alone, Are Insufficient Proof

Sadeekah v. Abdelaziz d/b/a Home Furniture and More, 2021 TN Wrk. Comp. App. Bd. LEXIS 19
(Tenn. Workers' Comp. App. Bd. June 22, 2021)

PAs and Nurses Cannot Create a Genuine Dispute re: Causation

Dorsey v. Amazon.com, Inc., 2015 TN Wrk. Comp. App. Bd. LEXIS 13
(Tenn. Workers' Comp. App. Bd. May 14, 2015).

Adiole v. Logan Senior Care, LLC, 2019 TN Wrk. Comp. App. Bd. LEXIS 78
(Tenn. Workers' Comp. App. Bd. Dec. 16, 2019)



CASES

Circumstantial Testimony Can Create Genuine Dispute

LaGuardia v. Total Holdings USA, Inc., 2017 TN Wrk. Comp. App. Bd. LEXIS 73
(Tenn. Workers' Comp. App. Bd. Nov. 29, 2017).

Immaterial Issues Insufficient to Defeat Summary Judgment

King v. Kasai North America, Inc., 2019 TN WC App. 14
(Tenn. Workers' Comp. App. Bd. May 14, 2015).



4.

HYPOTHETICAL CASES

SO YOU WANT TO FILE A MOTION FOR SUMMARY JUDGMENT...

H

Y

P

O

S

NO. 1 - STATUTE OF LIMITATIONS

An employee reports an injury and is provided a panel, but does not seek medical treatment. After a year passes, no voluntary payments have been made on the claim.

NO. 2 - CAUSATION

In an otherwise compensable claim, the authorized treating physician opines the reported complaints are not work-related.



Questions to Ask

Prior to Filing or Responding

BURDEN

What is my client's claim or defense?

Does my client bear the burden of proof at trial on that claim or defense?

PROOF

What facts are necessary and sufficient to meet the burden of production?

What proof do I need to establish those facts?

PROCEDURE

What are the procedural prerequisites to filing the motion or response?



Step By Step

Hypo No. 1

1. What's the claim or defense?

STATUTE OF LIMITATIONS

2. What's the burden of production?

BRAXTON - NEED TO MAKE A PRIMA FACIE CASE

3. What's the prima facie case?

**NO PETITION, PAYMENT OR AUTHORIZED TX WITHIN
ONE YEAR FOLLOWING DOI**

4. What facts are material?

**DOI, DATE PETITION WAS FILED, NO PAYMENT OR
AUTHORIZED TX WITHIN ONE YEAR FOLLOWING DOI**

5. What proof do I need?

**PLEADINGS, INTERROGATORIES/ADMISSIONS OR
TESTIMONY FROM THE ADJUSTER**

6. What are the procedural requirements?

SCHEDULING ORDER, DATE FOR HEARING



Step By Step

Hypo No. 2

1. What's the claim or defense?

CAUSATION

2. What's the burden of production?

RYE - NONMOVANT CAN'T ESTABLISH CLAIM

3. What's the prima facie case?

TENN. CODE ANN. § 50-6-102(12)

4. What facts are material?

THE INJURY/COMPLAINTS, THE DOCTOR'S OPINIONS

5. What proof do I need?

PLEADINGS, INTERROGATORIES/ADMISSIONS OR TESTIMONY FROM THE EMPLOYEE, AND TESTIMONY FROM THE PHYSICIAN

6. What are the procedural requirements?

SCHEDULING ORDER, DATE FOR HEARING, NOTICE OF INTENT TO RELY UPON C-32 (IF NEEDED)



5.

APPELLATE PRACTICE

DEJA VU ALL OVER AGAIN



Standard of Review

DE NOVO

A FRESH DETERMINATION OF WHETHER
THE RULE HAS BEEN SATISFIED



6.

FINAL NOTES

MISCELLENEOUS PROVISIONS



Things To Note.

1. PRO SE LITIGANTS

Must provide them a copy of the law upon which the motion is based and state deadline/requirement to respond.

2. CONTINUANCES

Affidavit or no Affidavit?

3. MOTIONS TO DISMISS

If proof is submitted, it will be converted.



Questions?

Let us know.