

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

February 22, 2010 Session

**JOE LYNN HUGHES v. ROBERT BRENT d/b/a APARTMENT
MAINTENANCE SPECIALISTS, ET AL.**

**Appeal from the Law Court for Sullivan County
No. C38096 John S. McClellan, III, Judge**

No. E2009-01377-WC-R3-WC - Filed August 25, 2010

In this workers' compensation action, the trial court granted the employer's motion for summary judgment on the grounds that the employee's claim was barred by the statute of limitations, Tennessee Code Annotated section 50-6-203, because the employee had not filed a request for benefit review conference within one year of the date of injury. The employee, Joe Lynn Hughes, has appealed, contending that the statute was tolled by his timely filing of a request for assistance. We agree, reverse the grant of summary judgment, and remand the case to the trial court.¹

**Tenn. Code Ann. § 50-6-225(e) (2008) Appeal as of Right; Judgment of the Law Court
Reversed and Remanded**

DONALD P. HARRIS, SR. J., delivered the opinion of the Court, in which SHARON G. LEE, J., and SHARON BELL, SP. J., joined.

Anthony A. Seaton and Mary M. Renfro, Johnson City, Tennessee, for the appellant, Joe Lynn Hughes.

Ricky L. Apperson, Knoxville, Tennessee, for the appellees, Robert Brent, d/b/a Apartment Maintenance Specialists and American Zurich Insurance Company.

MEMORANDUM OPINION

Joe Lynn Hughes was injured as a result of falling from the roof of a building on March 21, 2007. He alleged that he was employed by Robert Brent at the time and that the injury arose from

¹ Pursuant to Tennessee Supreme Court Rule 51, this workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel for a hearing and a report of findings of fact and conclusions of law.

and in the course of his employment. Mr. Brent denied the claim, contending that Mr. Hughes was not his employee at the time the alleged injury occurred. On March 20, 2008, Mr. Hughes filed a request for assistance with the Tennessee Department of Labor (“Department”), seeking payment of medical expenses and temporary total disability benefits. On July 7, 2008, the Department issued an order directing Mr. Brent to pay medical and temporary disability benefits. Mr. Brent’s insurer issued a check to Mr. Hughes for temporary disability benefits on July 10, 2008.

On December 11, 2008, Mr. Hughes filed a request for a benefit review conference with the Department. A benefit review conference was held on February 9, 2009, and an impasse was declared on that date. Mr. Hughes filed this civil action on February 17, 2009. In his answer, Mr. Brent asserted that the claim was barred by the applicable statute of limitations, Tennessee Code Annotated section 50-6-203, because Mr. Hughes had not filed his request for a benefit review conference within one year of the date of the injury. Shortly thereafter, Mr. Brent filed a motion for summary judgment raising the same defense. Mr. Hughes admitted all of the facts alleged by Mr. Brent in support of the motion, but contended that the statute of limitations was tolled by his filing of a request for assistance within one year of the date of the injury.

The trial court held that the request for assistance did not toll the statute and granted Mr. Brent’s motion. Mr. Hughes has appealed from that decision, contending that the trial court erred by granting the motion for summary judgment.

Because this appeal presents a question of law only, we review the trial court’s conclusions de novo with no presumption of correctness. Gray v. Cullom Machine, Tool & Die, Inc., 152 S.W.3d 439, 443 (Tenn. 2004). The statutory law applicable to this case is contained in Tennessee Code Annotated section 50-6-203(b) which provides:

(1) In those instances where the employer has not paid workers' compensation benefits to or on behalf of the employee, the right to compensation under this chapter shall be forever barred, unless the notice required by § 50-6-202 is given to the employer and a benefit review conference is requested on a form prescribed by the commissioner and filed with the division within one (1) year after the accident resulting in injury.

(2) In those instances where the employer has paid workers' compensation benefits, either voluntarily or as a result of an order to do so, within one (1) year following the accident resulting in injury, the right to compensation is forever barred, unless a form prescribed by the commissioner requesting a benefit review conference is filed with the division within one (1) year from the latter of the date of the last authorized treatment or the time the employer ceased to make payments of compensation to or on behalf of the employee.

Mr. Brent did not pay benefits within one year of the date of the injury, either voluntarily or by order of the Department. He did pay benefits pursuant to an order of the Department, but the

order and the payment both occurred more than one year after the date of the injury. Mr. Hughes did not file a request for benefit review conference within one year of the date of injury. On the basis of those facts, Mr. Brent argues that the plain language of the statute bars the claim.

Mr. Hughes relies upon Welsh v. Universal Fasteners, Inc., 51 S.W.3d 196 (Tenn. Workers' Comp. Panel 2000). In that case, the employee alleged that he sustained a compensable injury in September 1996. The employer initially accepted the claim, but subsequently changed its position and denied the claim in November 1996. The employee filed a request for assistance approximately three weeks after the denial. The Department did not take final action until September 1997, when it issued an order denying the request. The employee filed suit in February 1998. The trial court found that the suit was barred by section 50-6-203 and dismissed the complaint. On appeal, the Workers' Compensation Appeals Panel reversed. The panel examined the administrative process established by Tennessee Code Annotated sections 50-6-236 through 240, and concluded:

A reading of the law which establishes the system of claims specialists, benefit review conferences, and informal early resolution of claims reveals a clear legislative intent to encourage injured workers to seek relief for their work-related injury disputes without the absolute necessity of employing expensive legal counsel. Our holding that a request for assistance of the Department of Labor suspends the statute of limitations will further that policy and help assure that unrepresented injured workers will not be taken advantage of while seeking the assistance of the claim specialist.

We conclude that the statute of limitations was suspended or tolled during the period of time between the "request for assistance" which amounted to a request for a benefit review conference on November 18, 1996, and the date the employee's claim was denied on September 19, 1997.

51 S.W.3d at 199-200. Based upon that holding, Mr. Hughes contends that the statute of limitations was tolled during the period his request for assistance was under consideration by the Department, and his request for benefit review conference and lawsuit were, therefore, timely filed.

Mr. Brent argues that the holding in Welsh is not applicable because Mr. Hughes's request for assistance did not "amount[] to a request for a benefit review conference." He points to the recent decision, Holland Group v. Sotherland, No. M2008-00620-WC-R3-WC, 2009 WL 1099275 (Tenn. Workers' Comp. Panel Apr. 24, 2009), in support of his position. In Holland Group, the Department, pursuant to a request for assistance, ordered the employer to provide medical treatment and temporary disability benefits. The employer then filed suit against the employee and the Second Injury Fund, seeking a declaration of the rights of the parties. Subsequently, the Department ordered the termination of disability benefits. The Second Injury Fund filed a motion for summary judgment on the ground the trial court did not have subject matter jurisdiction because the parties had not completed the benefit review process. The trial court agreed and dismissed the case. The case was appealed, and the Workers' Compensation Appeals Panel affirmed the action of the trial court. After

reviewing the Department's rules concerning the administrative process, the panel noted that "[t]he regulations are not ambiguous as to the difference between a Request for Assistance and a Request for a Benefit Review Conference." 2009 WL 1099275 at *3. Although Holland Group concerned the issue of exhaustion of the administrative process as a prerequisite for filing a workers' compensation lawsuit, and did not address the statute of limitations in any way, Mr. Brent argues that it effectively limited or overruled Welsh.

We note that the administrative process was changed substantially after Welsh, and before Holland Group.² Nevertheless, the underlying rationale for the former decision is still valid. The entire statutory scheme clearly favors, and now mandates in most instances, submitting disputed workers' compensation matters to the administrative process before they are submitted to the courts. An interpretation of section 50-6-203 which penalizes a worker for using that process is at odds with the purposes of the workers' compensation statute. We have determined that Holland did not overrule Welsh, and, therefore, that Mr. Hughes's filing of a request for assistance tolled the statute of limitations as to his claim. The payment of benefits on July 10, 2008, therefore, extended the limitations period for one year from that date. A request for benefit review conference was filed within that time.

Mr. Brent makes a second argument, based upon Chapter 1183, 2008 Public Acts. That act included a revision of Tennessee Code Annotated section 50-6-238(a)(1) which codified the holding in Welsh that the limitation period is tolled by the filing of a request for assistance. The revision applies to "injuries occurring on or after July 1, 2008." Mr. Brent contends that this demonstrates a legislative intent that tolling should not apply to injuries occurring prior to the effective date. Inasmuch as the language of the revised statute is consistent with the case law in existence at the time it was passed, this interpretation would require us to conclude, in effect, that the legislature intended to temporarily overrule Welsh, and then reinstate it for injuries occurring after July 1, 2008. We are unwilling to impose such an illogical construction upon the statute.

Based upon these considerations, we conclude that the trial court erred by granting Mr. Brent's motion for summary judgment. The judgment of the trial court is reversed. The case is remanded to the trial court for further proceedings on the merits of the claim. Costs are taxed to the appellees, Robert Brent d/b/a Apartment Maintenance and American Zurich Insurance Company, for which execution may issue if necessary.

DONALD P. HARRIS, SENIOR JUDGE

² Tennessee Code Annotated sections 50-6-236, 238 and 239 were amended by Chapter 962, 2004 Public Acts. As a consequence of those changes, the Department made extensive revisions to the rules applicable to requests for assistance and requests for benefit review conferences in 2006.

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ORDER

This case is before the Court upon the motion for review filed on behalf of Robert Brent d/b/a Apartment Maintenance Specialists and American Zurich Insurance Company pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(B), 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.

It appears to the Court that the motion for review is not well-taken and is, therefore, denied. The Panel's findings of fact and conclusions of law, which are incorporated by reference, are adopted and affirmed. The decision of the Panel is made the judgment of the Court.

Costs are assessed to Robert Brent d/b/a Apartment Maintenance Specialists and American Zurich Insurance Company, for which execution may issue if necessary.

PER CURIAM

SHARON G. LEE, J., not participating