

Case Name: Phillip Kennedy v. BNSF Railway Corporation

Date Decided: October 30th, 2009

Originally Filed in: ()

Decided by: (State)

Court: Court of Civil Appeals of Oklahoma, Division No. 2

Judge: Judge Goodman

Citation: 2009 WL 5436000 (Okla.Civ.App. Div.2)

Background:

Plaintiff, Phillip Kennedy, filed suit against defendant, BNSF Railway Corporation, under FELA, Federal Employers' Liability Act, and LIA the Locomotive Inspection Act. Kennedy alleged knee, neck, and back injuries as a result of cumulative and repetitive trauma during his employment for BSNF as a locomotive engineer. At his deposition Kennedy asserted only knee injuries he contended were caused by getting on and off moving equipment, walking on ballasts, and riding in a rough seat. Kennedy was seen by Dr. Ogle and given Vioxx in October of 2001. An x-ray of Kennedy's right knee revealed a progressive degenerative change with no definite acute abnormality. Kennedy returned to Dr. Ogle in November asserting that his knee felt better and he would continue taking an anti-inflammatory for a recent foot injury. Kennedy ultimately had surgery on his foot. In June of 2002, Kennedy was involved in a car accident and continued to take anti-inflammatory, in August of 2003, Kennedy returned to Dr. Fike for left leg or knee pain. In July of 2006, Kennedy returned to Dr. Fike complaining of bilateral knee pain. Kennedy was diagnosed with degenerative joint disease and underwent a total knee arthroplasty in 2008. The record also indicates that Kennedy was morbidly obese since his 30s and excess weight was wearing out his joints. BNSF filed a motion for summary judgment claiming that both the FELA and LIA claims were barred under the (3) year statute of limitations because Kennedy knew or should have known his bilateral knee injury was work-related no later than October of 2001 and was required to file no later than October 2003. The trial court granted BNSF's motion finding that Kennedy had reason to know in 2001 his knee injury was related to his employment. Kennedy appealed.

Issue:

Did Kennedy have reason to know the knee injury he was treated for in 2001 was related to his work duties?

Overall Issues Discussed or Touched Upon in this Case:

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Held:

Kennedy asserted he did not learn that his knee condition was related to his employment until October 2006. In October 2006, the medical record indicates the Dr. opined his knee injury

was a direct result of his duties while working for the railroad. This Court found however, that whether his prior incidents of knee problems were sufficient to demonstrate when he should have or knew was related to his employment was an unresolved question of fact. The first reference to a bilateral knee problem did not arise until July 2006, the fact that Kennedy had been having problems with bilateral knees for a number of years and had been on anti-inflammatory, did not alone establish that Kennedy knew or with reasonable diligence, should have known, he suffered a cumulative injury to his knees which was caused by his work at the railroad. Accordingly this Court reversed the trial court's granting of summary judgment.

Comments:

In its decision, this Court cites a few cases in which the plaintiffs had experienced pain and did not file suit until a number of years after initially discovering pain or discomfort. As such, they are an illustration of the fact-specific inquiry of the discovery rule. Steve Gordon