

FILED

MAR 26 2009

THIS OPINION HAS BEEN RELEASED FOR PUBLICATION BY ORDER OF
THE COURT OF CIVIL APPEALS COMPENSATION COURT

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION III

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

MAR 26 2009

CAMPBELL SPECIALTY CO., INC.,
and COMPSOURCE OKLAHOMA,

Petitioners,

vs.

STEPHEN HACKER and THE WORKERS'
COMPENSATION COURT,

Respondents.

MICHAEL S. RICHIE
CLERK

W.C.C.# 2008-4307Y

Case No. 106,572

CT. EN Banc - J. Black
J. Prigmore
J. Grove

TRIAL JUDGE: J. Leonard

PROCEEDING TO REVIEW AN ORDER OF A THREE-JUDGE PANEL
OF THE WORKERS' COMPENSATION COURT

VACATED

Steve A. Weeks,
McCLURE LAW FIRM,
Oklahoma City, Oklahoma,

For Petitioners,

J. Kord Hammert,
ATTORNEY AT LAW, P.C.,
Oklahoma City, Oklahoma,

For Respondents.

OPINION BY CAROL M. HANSEN, PRESIDING JUDGE:

¶1 Petitioner Campbell Specialty (Employer) and its insurance company filed this Petition for Review of an order of the three-judge panel of the Workers' Compensation Court which affirmed the trial court's award of compensation to Claimant, Stephen Hacker, for permanent partial disability for binaural hearing loss.

¶2 Claimant worked for Employer from March of 2005 until July of 2006 when he resigned. On April 11, 2008, Claimant filed his claim for compensation for hearing loss in the workers' compensation court. Employer raised a statute of limitations defense as set out in 85 O.S. 2005 Supp. §43. The general statute of limitations found in §43 is two years. However, there is a limiting section prescribing a statute of limitations stating, "Post termination injury claims shall be filed within six (6) months of termination of employment." Claimant filed his claim 16 months after he resigned.

¶3 The trial court denied Employer's statute of limitations defense and awarded Claimant compensation. It found the six month limitation of §43 did not apply to Claimant in that he "sustained a pre-termination injury, not a post termination

injury.”¹ It also found “reducing the period for filing a claim to six (6) months for those who would otherwise be entitled to a two (2) year statute of limitations but for the termination of employment results in an unconstitutional denial of equal protection through legislative enactment which relegates this claimant to a special class that is denied workers’ compensation as a consequence of the termination.” The three-judge panel affirmed without dissent.

¶4 In its petition for review, Employer again points out §43 addresses post termination *claims*, rather than post termination *injuries*, which it argues would not make sense. The subject of the sentence is “claims” not “injury.” Section 43 clearly addresses the issues presented here. Under this section Claimant’s action is barred.

¶5 Claimant argues on appeal the workers’ compensation court was correct in finding §43 was unconstitutional as a special law pointing to Art. V §46 of the Oklahoma Constitution.^{2,3}

¶6 In *Loyal Order of the Moose Lodge 1785 v. Cavaness*, 1977 OK 70, 563 P.2d

¹It is unclear how any claimant could sustain a post termination injury, *i.e.* an injury he sustained after he was no longer working for the employer, that would be covered.

²The Legislature shall not, except as otherwise provided in this Constitution, pass any local or special law authorizing:

(For) limitation of civil or criminal actions.

³On appeal, claimant abandons his argument §43 violates the equal protection clause of the United States Constitution.

143, the Supreme Court recognized the Legislature has wide latitude to create statutory classifications, but they must be reasonable. Citing this decision, the Supreme Court in *McCarroll v. Doctors General Hospital*, 1983 OK 54, 664 P.2d 382, held the classification of health care providers for the purpose of legislatively limiting the time within which an action against them may be brought, as set forth in 76 O.S. 1981 §18,⁴ has not been shown to be such an arbitrary exercise of legislative discretion or without any show of good cause as would compel this Court to declare it unconstitutional.

¶7 In defense of the constitutionality of §43, Employer emphasizes §43 differentiates between two classes of claimants who are *not* similarly situated. The two year limitation applies to claims filed during a claimant's employment while the six months limitation period applies to claims filed after a claimant is no longer employed with the company. This is a reasonable deferential in that after a claimant is no longer with the company, evidence of the circumstances could be stale or lost. Requiring an employer to meet a burden of producing evidence regarding a former employee, who has not been seen or heard from in almost two years, would likely be

⁴This section states: An action for damages for injury or death against any physician, health care provider or hospital licensed under the laws of this state, whether based in tort, breach of contract or otherwise, arising out of patient care, shall be brought within two (2) years of the date the plaintiff knew or should have known, through the exercise of reasonable diligence, of the existence of the death, injury or condition complained of

impossible.

¶8 Section 43 applies to this claim and it is not unconstitutional.

ORDER VACATED

MITCHELL, C.J., and JOPLIN, J., concur.