

**FILED**

FEB - 9 2009

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

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION I

**FILED**  
COURT OF CIVIL APPEALS  
STATE OF OKLAHOMA

FEB - 6 2009

PONCA IRON & METAL, INC.,  
OWN RISK #11794,

Petitioner,

vs.

JACKIE WILKINSON and THE WORKERS'  
COMPENSATION COURT,

Respondents.

MICHAEL S. RICHIE  
CLERK

W.C.C.# 2006-9565X

Case No. 106,164

PROCEEDING TO REVIEW AN ORDER  
OF THE WORKERS' COMPENSATION COURT

HONORABLE CHERRI FARRAR, JUDGE

SUSTAINED

R. Dean Lott,  
Larry C. Brawner,  
BRAUNER LAW OFFICE,  
Oklahoma City, Oklahoma,

For Petitioner,

James G. Devinney,  
Ponca City, Oklahoma,

For Respondents.

OPINION BY ROBERT DICK BELL, PRESIDING JUDGE:

¶1 Petitioner, Ponca Iron & Metal, Inc. (Employer) seeks review of an order of the Workers' Compensation Court awarding Respondent, Jackie Wilkinson (Claimant), temporary total disability (TTD) benefits and medical care and denying Employer's statute of limitations defense. The trial court's order is sustained.

¶2 Claimant's job duties with Employer encompassed continuous computer keyboard use and filing. Her employment was terminated on December 18, 2005. On August 18, 2006, Claimant filed a Form 3 alleging she sustained cumulative trauma injuries (carpal tunnel syndrome) to both hands and arms with a date of last exposure on December 18, 2005. Employer denied receiving proper notice of the claim and that the injury arose out of or in the course of Claimant's employment. In addition, Employer asserted Claimant's claim was barred for failure to file the claim within the six month statutory time period set forth at 85 O.S.Supp.2005 §43(A).

¶3 The trial court found Claimant sustained a work-related injury to her left and right hand and left arm arising out of and in the course of her employment with Employer. The court further found Claimant was entitled to medical treatment and temporary total disability (TTD) benefits from August 13, 2006, and continuing, not to exceed fifty-two (52) weeks. Employer appealed the order to a three-judge panel of the Workers' Compensation Court (Panel) which affirmed the trial court's order,

with one modification to the interest rate. Employer then sought review by the appellate court. The Court of Civil Appeals, Division 2, in Appellate Case No. 104,690 (unpublished opinion), reversed and remanded the case to the trial court with instructions to address the statute of limitations defense. On remand, the trial court denied Employer's statute of limitations defense holding this section "unreasonably singles out employees who have been terminated and have sustained cumulative trauma injuries. The law is in direct conflict with the general two year statute of limitations for cumulative trauma injuries and arbitrarily puts an unfair burden on these claimants." Employer now seeks review of this order.

¶4 Employer argues the trial court erred in denying its statute of limitations defense because §43(A) clearly bars Claimant from any recovery for her alleged work-related injuries since her claim was not filed within six months of the date of her termination from employment. This raises an issue of statutory construction and thus presents a question of law. We review questions of law *de novo*. *Conaghan v. Riverfield Country Day Sch.*, 2007 OK 60, ¶7, 163 P.3d 557, 560. Under a *de novo* review, this Court has plenary, independent and non-deferential authority to address legal issues. *Id.*

¶5 Section 43(A) provides:

A. The right to claim compensation under the

Workers' Compensation Act shall be forever barred unless, within two (2) years after the date of accidental injury or death, a claim for compensation is filed with the Workers' Compensation Court. Provided however, a claim may be filed within two (2) years of the last medical treatment which was authorized by the employer or the insurance carrier or payment of any compensation or remuneration paid in lieu of compensation. Provided further however, with respect to disease or injury caused by repeated trauma causally connected with employment, a claim may be filed within two (2) years of the date of last trauma or hazardous exposure. Provided, further however, in the case of asbestosis, silicosis or exposure to nuclear radiation causally connected with employment, a claim may be filed within two (2) years of the date of last hazardous exposure or within two (2) years from the date said condition first becomes manifest by a symptom or condition from which one learned in medicine could, with reasonable accuracy, diagnose such specific condition, whichever last occurs. The filing of any form or report by the employer or insurance carrier shall not toll the above limitations. *Post-termination injury claims shall be filed within six (6) months of termination of employment, provided that nothing herein shall extend any limitation period set forth in this section.*

(Emphasis added).

¶6 On review, Employer contends the trial court erred in denying its statute of limitations defense because the last sentence of §43(A) clearly limits a terminated employee's time within which to file a workers compensation claim to six months after the termination date. Claimant argues this language should be interpreted as only applying to injuries sustained by a claimant after said claimant is terminated

from employment, *e.g.* when a terminated employee is injured while cleaning out his or her desk, vacating the premises and/or returning to the workplace to collect his or her final paycheck. The divergence of these arguments demonstrates the ambiguity of this language.

¶7 The Oklahoma Supreme Court recognizes where an ambiguity exists as to legislative intent, the appellate courts invoke the construction which is most reasonable. *LeFlore v. Reflections of Tulsa, Inc.*, 1985 OK 72, ¶28, 708 P.2d 1068, 1075. Under §43(A), the word “termination” in the phrases “post-termination injury claims” and “termination of employment,” is not a defined term. Thus, if this Court accepted Employer’s argument, it is conceivable all unemployed claimants, regardless of whether this termination was voluntary or involuntary, would fall under the phrase “termination of employment” and thus, be affected by the shortened limitations period.

¶8 Instead, we find the Legislature enacted this language to curtail retaliatory workers' compensation claims filed by terminated employees. We therefore hold the last sentence of §43(A) applies only to workers’ compensation claims filed by claimants for injuries sustained after termination from employment.

¶9 Claimant also argues this last sentence of §43(A) is a special law for limitation of civil actions prohibited by Art. 5, §46 of the Oklahoma Constitution. We have

previously determined this language is ambiguous. “When a statute is susceptible to more than one construction, it must be given that interpretation which frees it from constitutional doubt rather than one that would make it fraught with fundamental-law infirmities.” *Tate v. Browning-Ferris, Inc.*, 1992 OK 72, ¶18, 833 P.2d 1218, 1229. Based on our interpretation of the subject sentence, we need not address constitutional argument.

¶10 For the reasons discussed herein, the order of the trial court denying Employer’s statute of limitations defense is sustained.

¶11 SUSTAINED.

BUETTNER, J., dissents, and

ADAMS, J., concurs specially with opinion.

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COMPENSATION COURT,

Respondents.

ADAMS, J., concurring specially:

¶1 I concur in the majority opinion but write separately to emphasize the basis for those conclusions. The statutory language in question is susceptible of at least two meanings. Parsed grammatically, the adjective phrase "post termination" modifies either the noun "injury," in which case the interpretation we adopt in the majority opinion holds, or it modifies the noun phrase "injury claims," in which case the interpretation urged by Employer applies.

¶2 Although at first glance, it might appear questionable whether an injury that occurred after the employment relationship had "terminated" could arise out of and

in the course of a claimant's employment, such claims have been recognized in Oklahoma. In *Leonhardt Enterprises v. Houseman*, 1977 OK 51, 562 P.2d 515, a case where the employee was injured on the employer's job site shortly after quitting, the Court recognized the general principle that even after the employment relationship has technically ended, the employee is considered within the course of employment for a reasonable period while finishing his or her affairs and leaving the premises. This principle has been applied where the injury occurred on the employer's premises when the former employee returned to pick up a final paycheck and/or return company property. *Solo Cup Company v. Pate*, 1974 OK 131, 528 P.2d 300; *Cyrus v. Vierson & Cochran, Inc.*, 1981 OK CIV APP 40, 631 P.2d 1349.<sup>1</sup>

¶3 As recognized by the majority opinion, the interpretation suggested by Employer raises some significant issues whether this language constitutes a "special law" in violation of Article 5, Section 46 of the Oklahoma Constitution. It is not apparent that the interpretation we place on this language implicates those issues, and we appropriately opt for that interpretation.

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<sup>1</sup>Similar fact circumstances have been the source of significant litigation in other states as well. See Arthur Larson, *Larson's Workers' Compensation Law*, Matthew Bender & Co., Inc. (2007), § 26.