

**IN THE COURT OF APPEALS 12/03/96**

**OF THE**

**STATE OF MISSISSIPPI**

**NO. 96-CC-00041 COA**

**DORIS BROOKS**

**APPELLANT**

**v.**

**PANOLA MILLS, INC. AND THE TRAVELERS INSURANCE COMPANY, A/K/A THE TRAVELERS COMPANIES**

**APPELLEES**

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND

MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. GEORGE C. CARLSON JR.

COURT FROM WHICH APPEALED: PANOLA COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

JOHN DAVID WEDDLE

DAVID WALKER

ATTORNEY FOR APPELLEES:

MARJORIE T. O'DONNELL

NATURE OF THE CASE: WORKERS COMPENSATION

TRIAL COURT DISPOSITION: CIRCUIT JUDGE AFFIRMED THE COMMISSION'S DECISION AFFIRMING THE ALJ'S DECISION.

MANDATE ISSUED: 5/29/97

BEFORE THOMAS, P.J., DIAZ, AND SOUTHWICK, JJ.

## DIAZ, J., FOR THE COURT

The Appellant, Doris Brooks, appeals a judgment of the Panola County Circuit Court affirming the decision of the Mississippi Workers' Compensation Commission. The commission found that Brooks' application for benefits was barred by the two-year statute of limitations and, thus, her claim was dismissed.

Brooks argues on appeal that the two-year statute of limitations was tolled when the employer, Panola Mills, Inc., paid her group disability benefits for her alleged work injury. Finding no merit to this issue, we affirm.

### FACTS

Doris Brooks was an employee of Panola Mills, Inc. on March 2, 1985. On this date, Brooks attempted to pick up a "bundle" and injured her back. She reported this work-related back injury, and medical benefits were paid to her. However, workers' compensation was not paid because she did not miss any work as a result of this injury. Brooks testified that she again experienced back pain in January 1987, when she attempted to pick up a stack of plastic bags at work. According to Brooks, she notified her supervisor, Emma Lovern, of the injury before leaving work that day and notified the plant nurse, Ann McKee, about one week later. However, the employer denies that notice was given to Emma Lovern or Ann McKee in relation to this injury. Brooks continued to work until July 14, 1987, when she took a leave of absence for her back pain and underwent surgery. Her medical bills were paid under the employer's group insurance plan, and Brooks returned to work on March 7, 1988. During her incapacitation, Brooks received group disability payments under the employer's group insurance carrier. The benefits to her ceased upon her return to work on March 7, 1988. On September 17, 1992, Brooks terminated her employment with Panola Mills, Inc. She filed a petition to controvert on February 28, 1994, alleging that in January 1987 she received an on-the-job injury, and she was entitled to workers' compensation benefits. The employer denied that Brooks was entitled to benefits, and the case was submitted to the administrative law judge. Judge Mounger found that Brooks' application for benefits was barred by the two-year statute of limitations and ordered the claim dismissed. The claimant requested review by the Mississippi Workers' Compensation Commission. The order of Judge Mounger was affirmed on May 15, 1995. Brooks appealed to the Panola County Circuit Court, and the ALJ's order was, again, upheld.

### DISCUSSION

It is uncontested that the employer paid Brooks group disability benefits under its group insurance plan. It is also uncontested that these payments ceased on March 7, 1988 upon her return to work. This payment, Brooks contends, was compensation for her work-related injury and was in lieu of workers' compensation benefits. Employer counters that Brooks never reported a work-related injury in 1987, and the payment of group disability benefits to her should not be construed to toll the statute

of limitations in workers' compensation cases. The relevant statutes read in pertinent part:

§ 71-3-3. Definitions.

(j) "Compensation" means the money allowance payable to an injured worker or his dependents as provided in this chapter, and includes funeral benefits provided therein.

§ 71-3-35. Limitation.

(1) No claim for compensation shall be maintained unless, within thirty (30) days after the occurrence of the injury, actual notice was received by the employer or by an officer, manager, or designated representative of an employer. If no representative has been designated by posters placed in one or more conspicuous places, then notice received by any supervisor shall be sufficient. Absence of notice shall not bar recovery if it is found that the employer had knowledge of the injury and was not prejudiced by the employee's failure to give notice. Regardless of whether notice was received, if no payment of compensation (other than medical or burial expense) is made and no application for benefits filed with the commission within two years from the date of the injury or death, the right to compensation therefor shall be barred.

Miss. Code Ann. § 71-3-3, -35 (1972).

Unlike findings of fact, we review questions of law *de novo*. Even so, we accord great deference to the interpretation of the commission when the law in question touches on its area of expertise. The Mississippi Code provides that an application for compensation will be barred if not filed within two years from the date of injury or from the last payment of compensation for the work-related injury. The record reveals that the last payment of group disability benefits was made on March 7, 1988. A close reading of the statutes reveal that if an injured worker receives compensation within two years of his application for benefits, the statute of limitations shall begin from the date of his last payment of compensation. Thus, even if we accept the Appellant's argument that these payments were "compensation," the two-year statute of limitations would have expired on March 7, 1990, and her application would still be barred. Therefore, we affirm the lower court's judgment.

**THE JUDGMENT OF THE PANOLA COUNTY CIRCUIT COURT IS HEREBY AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO THE APPELLANT.**

**FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, KING, McMILLIN, PAYNE, AND SOUTHWICK, JJ., CONCUR.**