

IN THE COURT OF APPEALS OF TENNESSEE
WESTERN SECTION AT JACKSON

VINCENT SPLAIN,

Petitioner/Appellee,

v.

CITY OF MEMPHIS,
W. W. HERENTON, Mayor, and
CITY OF MEMPHIS PENSION
BOARDS,

Respondents/Appellants.

Shelby Chancery No. 104120-1
C.A. No. 02A01-9511-CH-00259

Hon. Neal C. Small, Chancellor

FILED

July 10, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

MONICE MOORE HAGLER, City Attorney, and L. KENNETH McCOWN,
Assistant City Attorney, Memphis,
Attorneys for Respondents/Appellants.

DEBORAH GODWIN, Agee, Allen, Godwin, Morris & Laurenzi, Memphis,
Attorney for Petitioner/Appellee.

REVERSED

Opinion filed:

TOMLIN, Sr. J

Vincent Splain (“petitioner”) filed a petition for writ of certiorari in the Chancery Court of Shelby County against the City of Memphis, W.W. Herenton, Mayor, and the City of Memphis Pension Boards (“respondents” or by name) seeking judicial review of the denial by the pension boards of petitioner’s application for a line-of-duty disability pension. The chancellor reversed the board’s decision and awarded petitioner a line-of-duty disability pension. On appeal respondents have presented one issue for our consideration: whether the chancellor erred in reversing the decision of the board when there was material evidence to support it. For the reasons hereinafter stated, we reverse the judgment of the chancellor.

Petitioner was employed by the City of Memphis as a police officer from 1979 to 1993. He served as a patrolman in a cruiser on the 3:00 p.m. to 11:00 p.m. shift. Following a job-related injury to his leg and back in January 1993, petitioner

attempted to return to work, but was unable to do so, experiencing nausea, sleeplessness, and nightmares. Shortly thereafter, Dr. Richard G. Newhouse performed a psychiatric evaluation of petitioner and diagnosed him as suffering from post-traumatic stress disorder and major depression, recurrent, severe. Dr. Newhouse stated that he was of the opinion that petitioner would never be able to return to work as a police officer.

In July 1993, petitioner filed for a line-of-duty disability pension with the pension board. In order to qualify for such a pension, an applicant must satisfy the requirements of section 25-1(27) of the City of Memphis Code, which reads in pertinent part as follows:

Line-of-duty disability: A physical or mental condition arising as the direct and proximate result of an accident sustained by a participant, after he became a participant and while in the actual performance of duties for the city at some definite time and place without willful negligence on his part which totally and permanently prevents him from engaging in the duties for which he was employed by the city. The determination of the line-of-duty disability of a participant shall be made on medical evidence by at least two (2) qualified physicians.

The board referred plaintiff to two physicians, Dr. Ben Beatus and Dr. Robert Buchalter, for examination. In addition, the board utilized a private company to summarize the findings of the two doctors in order to assist the board in evaluating petitioner's application.

At the time petitioner was examined by Dr. Buchalter, he complained of severe insomnia, fatigue, nightmares, irritability, hostility, anxiety, and depression. Dr. Buchalter noted that petitioner related his symptoms "basically to the stress of his job which [petitioner] indicates has been worsening for the last couple of years." Dr. Buchalter diagnosed plaintiff with major depression, single episode. Dr. Buchalter was of the opinion that petitioner's primary cause of illness was job-related, and that he was permanently and totally disabled from his job.

Petitioner made many of the same complaints to Dr. Beatus. Dr. Beatus noted that petitioner suffered from irritability, sleeping on the job, problems with management, diminished interest in work, poor concentration, early morning awakening, insomnia, diminished appetite, weight gain, diminished libido, and fatigue. Petitioner stated he was suffering from “burn out” and that he felt disillusioned and increasingly cynical towards his superiors in his department. Dr. Beatus observed that petitioner had experienced several stressful incidents during his career. He diagnosed petitioner as having major depression chronic, with possible post traumatic stress disorder of slow onset.

Shortly thereafter, Dr. Newhouse filed an addendum to his initial diagnosis of petitioner wherein he detailed twelve specific examples of traumatic events that petitioner stated that he had experienced on the job from November 1979 to February 1991. Dr. Buchalter noted that the accumulation of these events had left petitioner medically disabled.

At the conclusion of the hearing, the board voted unanimously to deny petitioner’s request for a line-of-duty disability pension, but granted him an ordinary disability pension. Petitioner filed a petition for writ of certiorari pursuant to T.C.A. § 27-8-101 (Supp. 1995).

Without considering any evidence other than the record before the board, the trial court reversed the decision of the board and ordered it to award petitioner a line-of-duty retirement pension. The chancellor made no finding either way as to whether there was any material evidence to support the action of the board.

T.C.A. § 27-8-101 (Supp. 1995) provides that:

The writ of certiorari may be granted whenever authorized by law, and also in all cases where an inferior tribunal, board, or officer exercising judicial functions has exceeded the jurisdiction conferred,

or is acting illegally, when, in the judgment of the court, there is no other plain, speedy, or adequate remedy.

Review under the common law writ is limited to whether the inferior board or tribunal (1) exceeded its jurisdiction, or (2) acted illegally, arbitrarily, or fraudulently. McCallen v. City of Memphis, 786 S.W.2d 633, 638 (Tenn. 1990). If there is any material evidence to support the findings of the pension board, the board's decision must be upheld. See Davison v. Carr, 659 S.W.2d 361, 363 (Tenn. 1983).

On appeal, respondents contend that neither the petitioner nor the two examining physicians in their reports pointed to any one particular "accident" or event that petitioner sustained "at some definite time and place" to bring him within the requirements of section 25-1(27). Respondents also contend that there was material evidence in the record to support the board's decision, which would mandate that their decision be upheld. Petitioner contends that the term "accident" need not be singular in nature, but could encompass the repeated mental trauma he suffered on the job.

On several occasions our supreme court has considered the issue of whether a mental stimulus that results in a mental injury may be considered an "injury by accident" under the Tennessee Workers' Compensation Law. The leading case on stress-related injuries is Jose v. Equifax, Inc., 556 S.W.2d 82 (Tenn. 1977). In this case, the petitioner contended that he had been exposed to tremendous on-the-job pressure, resulting in a severe psychiatric illness and a habitual alcohol problem. In affirming defendant's motion to dismiss the complaint, the court observed:

In proper cases we are of the opinion that a mental stimulus, such as fright, shock or even excessive, unexpected anxiety could amount to an "accident" sufficient to justify an award for resulting mental or nervous disorder.

....

A liberal interpretation has been given to the statutory criteria of “injury by accident,” but this still does not embrace every stress or strain of daily living or in carrying out the duties of a contract of employment.

Id. at 84 (citations omitted). Jose has been followed in subsequent cases to create a threshold test that the mental stimulus causing a mental or physical injury must be fright, shock, or an acute sudden or unexpected emotional stress. See Gatlin v. City of Knoxville, 822 S.W.2d 587, 590 (Tenn. 1991). Although these cases deal with our supreme court’s interpretation of a section of the Workers’ Compensation Law, T.C.A. § 50-6-102(5) (Supp. 1995), the court’s logic and rationale is relevant to our consideration of the section of the City of Memphis Code in this case.

In this case, section 25-1(27) of the Memphis Code limits the range of compensable consequences justifying the line-of-duty disability pension similar to T.C.A. § 50-6-102(5). The language of the Memphis Code does not permit a line of disability pension for every employee who has suffered a job-related, disabling mental condition similar to that of the petitioner. It also requires the mental condition complained of to be the direct and proximate result of an accident occurring at some definite time and place.

Although petitioner identified several instances of job-related, stressful events that he had undergone during a twelve year period, neither petitioner, Dr. Beatus, nor Dr. Buchalter could point to a particular stressful event or “accident” that in their opinion was the direct and proximate result of his condition.

After reviewing this record, we are of the opinion that there was material evidence to support the action of the board in denying petitioner’s application for a line-of-duty pension, and that the board did not act arbitrarily, capriciously, or illegally.

As to petitioner's contention that the last sentence of section 25-1(27) dictates that both the diagnosis and the award of a line-of-duty disability should be left solely to the discretion of the two examining physicians, we find this contention to be without merit. It is the responsibility of the board to make the decision whether to award a pension based upon the medical evidence presented.

The judgment of the chancellor overturning the pension board's decision is reversed and the decision of the board is reinstated. Costs in this cause on appeal are taxed to petitioner, for which execution may issue if necessary.

TOMLIN, Sr. J.

CRAWFORD, P. J. (CONCURS)

HIGHERS, J. (CONCURS)