

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT JACKSON  
(July 12, 1999 Session)

**FILED**

December 1, 1999

Cecil Crowson, Jr.  
Appellate Court Clerk

**DORIS HOWARD,**

Plaintiff/Appellee,

v.

**STERLING PLUMBING GROUP, INC.,**

Defendant/Appellant.

OBION CHANCERY

NO. 02S01-9811-CH-00107

Hon. William Michael Maloan,  
Chancellor

**FOR THE APPELLEE:**

**BRUCE MOSS**

Conley, Campbell, Moss, Smith  
317 South Third Street  
P. O. Box 427  
Union City, Tennessee 38281

**FOR THE APPELLANT:**

**DAVID A. HUGHES**

Ogletree, Deakins, Nash, Smoak  
& Stewart, P.C.  
600 Peachtree Street, Suite 2100  
Atlanta, Georgia 30308

**MEMORANDUM OPINION**

**Members of Panel:**

Justice Janice M. Holder  
Senior Judge F. Lloyd Tatum  
Senior Judge L. T. Lafferty

**AFFIRMED AND REMANDED**

**F. LLOYD TATUM, SENIOR JUDGE**

## OPINION

This workers' compensation appeal was referred to the Special Workers' Compensation Appeals Panel of the Supreme Court pursuant to Tennessee Code Annotated § 50-6-225(e)(3) (Supp. 1998) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

This worker's compensation suit was brought by Doris Howard, widow of Paul Howard, deceased, for the use and benefit of herself and the two minor children of the plaintiff, and Paul Howard, deceased. The trial court found for the plaintiff, holding that her husband, Paul Howard, suffered a compensable heart attack arising out of and in the course of his employment for the defendant. The court held that the heart attack resulted in the death of Mr. Howard and awarded benefits accordingly.

In its only issue, the defendant says that the plaintiff did not prove by a preponderance of the evidence "that the claimants heart attack was precipitated by physical activity or exertion or physical strain associated with claimant's job." After considering the record, we find that the judgment of the trial court must be affirmed.

Except for the medical evidence, there is no substantial conflict in the evidence. The plaintiff, the employee's widow, testified that Mr. Howard was 6'1" tall, 42 years of age, and weighed 168 pounds on October 10, 1995, when he died at work. He had high blood pressure and cholesterol.

On October 10, 1995, the deceased left home to go to work at approximately 6:10 p.m. He was a maintenance employee for the defendant. Later, he telephoned his wife, and they had a normal conversation, Mr. Howard was in a good humor and laughing. He told his wife that at that time he was cleaning.

Glen Page, testified that he worked in the maintenance department of the defendant corporation with Mr. Howard. They worked together on the evening of October 10, 1995. They weren't busy in the maintenance department, so they did some cleanup work involving sweeping. Mr. Howard was using a pushbroom that measured from 14 to 18 inches wide.

Mr. Page testified that sweeping with the pushbroom was not strenuous work and that he and Mr. Howard could take a break when they desired. Mr. Page was called to the telephone and was gone for about twenty minutes. When he returned, Mr. Howard was lying on the floor. He had turned blue, and the pushbroom was on the floor two or three feet from him.

Dr. Robert D. Dodds, II, a cardiologist, testified by deposition. On October 10, 1995, he was called in his capacity as the medical examiner for Obion County to observe Mr.

Howard, who had experienced cardiac arrest at work. Mr. Howard was dead on arrival at the emergency room of the hospital. Dr. Dodds viewed the body but did not examine him at that time. Instead, he ordered an autopsy. Before testifying, Dr. Dodds reviewed all medical reports, autopsy reports, and all other pertinent material in the case. Dr. Dodds was of the opinion that Mr. Howard died as a result of acute myocardial infarction. Dr. Dodds was of the opinion that the heart attack was the result of exertion superimposed on Mr. Howard's preexisting coronary artery disease. Dr. Dodds testified that a heart attack (acute myocardial infarction) can happen at rest but usually happens with exertion of some nature superimposed on preexisting coronary artery disease.

Dr. Dodds testified that Mr. Howard had critical blockage of arteries that supplied the dominant left ventricular muscular mass. He described the blockage as follows:

Q. So the two arteries that supply the blood to the heart muscle so that the heart would work, is that correct --

A. Yes, sir.

Q. -- were blocked to the rate of 90 percent in one and --

A. They were blocked sequentially 90 percent in the main, 90 percent in the circumflex, and 95 percent in the anterior descending, so you're talking about sequential blockage.

\* \* \* \* \*

A. Well, I may have led you a little bit astray. Those three arteries are deriving from one artery. You've got one artery that's 95 percent blocked. It gives rise to two other arteries, one of which is 95 percent blocked and one of which is 90 percent blocked.

\* \* \* \* \*

A. See what I'm saying? This is the forking phenomenon, the tree branch phenomenon.

Q. So the artery coming from the heart with the blood --

A. Was 90 percent blocked.

Q. -- was 90 percent blocked. It forks into two --

A. Two.

Q. -- and those two arteries --

A. 95. 95.

Q. -- going back to the heart so it will have blood to work with were 95 percent blocked, both of them.

A. Yes, sir.

Q. And that's the basis for your comments and opinions that it wouldn't take much to cause Mr. Howard to have a heart attack.

A. No, sir.

Q. Or, yes, sir, that's what is the basis?

A. Yes, sir, that's my statement. I'm sorry.

Dr. Dodd further explained that myocardial infarction is caused by the myocardial cells dying from lack of oxygen supply. When Mr. Howard had a fixed flow obstruction, his exercise caused the muscles to demand more oxygen, which could not be supplied because of the obstruction. The muscles became ischemic, and the cells began to break down, forming a clot that became the heart attack, which in turn caused the cells to die. It was Dr. Dodd's opinion that the exertion of pushing the broom was sufficient exercise to cause the heart attack.

Dr. Dodd testified that he agreed with an article written by Dr. Laurence A. Grossman in 1952 entitled "Myocardial Infarction Precipitated by Master's Two-Step."

Dr. Laurence A. Grossman, a cardiologist, also testified by deposition. He had reviewed all pertinent records and documents in this case. He testified that in his opinion, Mr. Howard died from a cardiac death. It was either a myocardial infarction or some sort of fatal arrhythmia but was most likely caused by myocardial infarction (another term for heart attack). Dr. Laurence testified that Mr. Howard's death was caused by long standing coronary heart disease of great severity and that pushing a broom would not contribute in any way to the heart attack. His opinion was based on the fact that this was not excessive or unusual labor. He testified that the extent of the blockage present in Mr. Howard's heart arteries could not develop in five years, and, thus, it was a disease of long duration. Dr. Grossman testified that regardless of what Mr. Howard was doing, his advanced degree of heart disease, and his past history of hypertension, caused his life to end. The heart attack could have occurred even when Mr. Howard was asleep. According to Dr. Grossman, exercise creates a demand for oxygen and, if the heart cannot keep up with the demand, the person has pain which can trigger arrhythmia "or something like that."

Dr. Grossman testified that he had written the article entitled "Myocardial Infarction Precipitated by Master's Two-Step." In this article, he concluded that exercise and exertion induced myocardial infarction. Dr. Grossman testified that, since the time of the writing of this article in 1952, much had been learned about the heart and that he had changed his opinion that exercise and exertion could induce myocardial infarction.

The rule with regard to these type cases is now firmly established. It is succinctly and clearly stated in Bacon v. Sevier Co., 808 S.W.2d 46 (Tenn. 1991):

Analyzed causationally, the heart attack cases may be categorized into two primary groups: those that are precipitated by physical exertion or strain (FN2) and those resulting from stress, tension, or some type of emotional upheaval. (FN3). When the precipitating factor is physical in nature, the rule is well settled that if the physical activity or exertion or strain of the employee's work produces the heart attack, or aggravates a preexisting heart condition, the resulting death or disability is the result of an accident arising out of and in the course and scope of the employment (citations omitted). It makes no

difference that the employee, prior to the attack, suffered from a preexisting heart disease, or that the attack was produced by only ordinary exertion or the usual physical strain of the employee's work (citations omitted). In other words, no extraordinary exertion or unusual physical strain need be established in order to obtain a recovery (citations omitted). The causational key to recovery or denial of benefits turns on whether the disabling heart attack is precipitated by the physical activity or exertion or physical strain of the employee's job (citations omitted). In those instances where physical exertion is thought to have precipitated the attack, there is invariably medical proof of some specific act, incident, or event that either did, could have, or might have set off the attack.

Id. at 49.

As did the trial judge, we accredit the testimony of Dr. Robert D. Dodds. We find that the preponderance of the evidence establishes that the sweeping of the employer's premises with a pushbroom, though not unusually strenuous, precipitated the fatal heart attack. We, therefore, hold that Mr. Howard died as the result of an accident arising out of and in the course and scope of his employment, even though he had a very serious preexisting heart disease.

The judgment of the trial court is affirmed, and the case is remanded for any further action that may be necessary. Costs are adjudged against the appellant.

\_\_\_\_\_  
F. LLOYD TATUM, SENIOR JUDGE

CONCUR:

\_\_\_\_\_  
JANICE M. HOLDER, JUSTICE

\_\_\_\_\_  
L. T. LAFFERTY, SENIOR JUDGE

IN THE SUPREME COURT OF TENNESSEE  
AT JACKSON

DORIS HOWARD,  
Plaintiff/Appellee,

vs.

STERLING PLUMBING GROUP, INC.,  
Defendant/Appellant.

) Obion Chancery  
) NO. 19766

) Hon. William Michael Maloan,  
) Chancellor

) NO. W1998-00338-WC-R3-CV  
)

**JUDGMENT ORDER**

**FILED**

December 1, 1999

Cecil Crowson, Jr.  
Appellate Court Clerk

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference.

Whereupon, it appears to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs will be paid by Defendant/Appellant Sterling Plumbing Group, Inc., for which execution may issue if necessary.

IT IS SO ORDERED this 1st day of December, 1999.

PER CURIAM