

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION PANEL
AT KNOXVILLE

ANNA LUE McKAMEY,)
)
Plaintiff/Appellant)
v.)
)
RED KAP INDUSTRIES,)
)
Defendant/Appellee)

ROANE CHANCERY
June 25, 1996
Hon. Frank V. Williams, III
Chancellor **Cecil Crowson, Jr.**
Appellate Court Clerk
NO. 03S01-9505-CH-00053
(No. 92-129 Below)

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MEMORANDUM OPINION

Members of Panel:

Justice Penny J. White
Senior Judge William H. Inman
Special Judge Joe C. Loser, Jr.

AFFIRMED

INMAN, Senior Judge

_____This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with TENN. CODE ANN. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

The appellant suffered a stroke while working on an assembly line. Substantial disability resulted, which she alleges is compensable as being accident-related. The trial judge disagreed, and she appeals. Our review is *de novo*, with the presumption that the judgment is correct unless the evidence otherwise preponderates. TENN. CODE ANN. § 50-6-225(e)(2).

Mrs. McKamey is 49 years old, with limited skills and education. Her assembly-line job involved the sewing of shirt collar stays, which may be fairly described as repetitive and monotonous. On May 12, 1992, while working the 7:00 a.m. to 3:30 p.m. shift, she suffered a stroke shortly before the end of her shift which resulted in total vocational disability. She alleges that, like all other employees, she was expected to make production, with its attendant pressures and tensions, which caused or contributed to the stroke.

Causation is the dispositive issue. The proof revealed that Mrs. McKamey had been suffering from hypertension for years and had been regularly taking medication for that disease since 1988. She had smoked cigarettes since age 14; at the time of her stroke, she smoked more than twenty per day.

Responding to a hypothetical question, Dr. John Purvis, a neurosurgeon, testified that the sewing of hundreds of collar stays during a regular shift could be a contributory factor to the cerebral accident, depending upon a resolution of certain factors, those being arteriosclerosis and hypertension, the former being aggravated or caused by smoking which "played a part" and contributed to her pre-existing condition. The inducing causes of her stroke was the rupture of a blood vessel. After reviewing a videotape of the assembly-line workers, Dr. Purvis testified as

follows:

Q. Now then, Dr. Purvis, assuming those facts that I stated before you watched the videotape and assuming that the videotape depicts a lady doing the same job that Ms. McKamey did on the day of her stroke, in your medical opinion, Doctor, to a reasonable degree of medical certainty, was this kind of physical activity and level of exertion sufficient to cause Ms. McKamey's stroke?

A. I don't think that the -- and I don't think even when I've said that stress could produce this, I'm not really talking so much about the physical stress because I don't think this is a real heavy physical job. The stress may be more how that person feels about making production. It may be more of an internal stress than it would be -- I don't think the job itself was that hard that it would produce more than a moderate increase in blood pressure.

Q. Would that level of physical exertion, physical activity, be enough to aggravate the pre-existing condition that would precipitate her stroke?

A. It's not a matter of aggravation. It's just a matter of blood pressure rise, and I don't think that this type of job is of any more effort, let's say, than lots of housework would be which could -- someone could have a stroke. I think that it's just a matter that's -- as I said, it's dependent on two factors. The strength of the blood pressure wall at the point where it bled, and plus whatever rise in blood pressure there was. And any amount of physical activity will raise blood pressure some, but I don't think that that would -- mild activity, physical activity, that you could blame that for the stroke. I think that you could, depending on the personality of that person by stress and that is of trying to make production and what stress they put on themselves in trying to make that production, that that could raise the blood pressure, and it could raise it significantly. One of the things is that people that have hypertension like this are more sensitive to things that will raise their blood pressure.

Q. Emotionally?

A. Yes.

Q. I don't want to be splitting hairs and I apologize for that, but under our law that's what this case is going to boil down to, and I am almost finished, but as I understand what you said, and please correct me if I am wrong, you're saying that when you testified that this job caused or aggravated her previous condition to cause her stroke, you were concerned about the emotional stress and her nervous situation, not the physical exertion and the level of physical activity. Is that true?

A. Yes. I didn't think that her job was that physically demanding, you know, being a sewing job, but in certain people, it's stressful trying to make production. That's it primarily.

It is well-settled in this jurisdiction that "worry, anxiety, or emotional stress of a general nature" is not, in and of itself, sufficient to establish an injury by accident.

Cabe v. Union Carbide Corp., 644 S.W.2d 397, 399 (Tenn. 1983). See *Fink v.*

Caudle, 856 S.W.2d 952, 958 (Tenn. 1993) (holding that an injury by accident is one

which cannot be reasonably anticipated, is unexpected and is precipitated by

unusual combinations of fortuitous circumstances) and *Sexton v. Scott County*, 785

S.W.2d 814, 816 (Tenn. 1990) (holding that if recovery is to be allowed because of the physical results of stress, there must be a specific incident of stress which constitutes the accident). The Chancellor succinctly abridged the proof by observing that “if the plaintiff can recover for this, then virtually any stroke suffered on the job at any kind of work would be compensable.”

We cannot find the evidence preponderates against the judgment, which is affirmed at the cost of the appellant.

William H. Inman, Senior Judge

CONCUR:

Penny J. White, Justice

Joe C. Loser, Judge