IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT NASHVILLE

FILED

November 25, 1996

Cecil W. Crowson
Appellate Court Clerk

ANNE H. LAWRENCE, Plaintiff-Appellant	)	DAVIDSON CHANCERY
	)	No. 01S01-9511-CH-00199
v.	)	
	)	HON. ROBERT S. BRANDT, CHANCELLOR
L.M. BERRY COMPANY and ITT HARTFORD INSURANCE COMPANY Defendants/Appellees	)	

FOR APPELLANT:

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FOR APPELLEES:

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MEMORANDUM OPINION

MEMBERS OF PANEL:

JUSTICE ADOLPHO A. BIRCH, JR., ASSOCIATE JUSTICE, SUPREME COURT
JOHN K. BYERS, SENIOR JUDGE
WILLIAM S. RUSSELL, RETIRED JUDGE

AFFIRMED

RUSSELL, RETIRED JUDGE

This appeal from the judgment of the trial court in a workers' compensation case has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated Section 50-6-225 (e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

THE CASE

The middle aged appellant had a supervisory position as a unit manager for L.M. Berry Company. She was a long-time competent employee. During 1991 she suffered from several serious health problems, including an appendectomy and the surgical removal of a kidney.

In 1992 she developed serious hypertension, being hospitalized and unable to work for three weeks. Shortly thereafter the company added an evening shift and she was transferred to it and given additional duties.

A new position as senior unit manager on the evening shift was created and the appellant hoped to be appointed to it. At a meeting held on June 29, 1992, it was announced that the position was being given to another person. The appellant contends that this meeting brought about the hypertension and depression for

which she seeks compensation.

The trial court found that the meeting was a normal business meeting; that most of the people there were long time associates and had warm relationships with each other; that there was no yelling, cursing, or anything else out of the ordinary; and that no one singled out the appellant for any criticism.

The appellant shortly thereafter was so stressed that she could no longer work. The trial court found that this stress had built up over a long time from a multiplicity of causes, and did not qualify as a compensable injury, so her case was dismissed.

THE ISSUES

The appellant contends that the trial court erred in holding that she did not suffer an injury by accident and/or an occupational disease, and that the court further erred by denying her post trial motion for a reconsideration and alteration of the court's judgment.

THE APPLICABLE LAW

Applicable case law is clear that "accident" implies that the injury must partake of the unusual, or fortuitous. Meade Fiber Corp. v. Stames, 247 S.W. 2d 989 (Tenn. 1923); Benjamin Shaw Co. v. Musgrave, 222 S.W. 2d 22 (Tenn. 1949). An injury by accident, per Tenn. Code Ann. Sec. 50-6-102 (a)(5), does not embrace every stress or strain of daily living or every undesirable experience encountered in the workplace. Allied Chemical Corporation v. Wells, 578 S.W. 2d 369 (Tenn. 1979). To be compensable there must be shown a causal connection between a claimed injury and the

nature of the employment. McCann Steel Co. v. Carney, 237 S.W. 2d 942 (Tenn. 1951).

While a severe anxiety neurosis occasioned by a loud, angry and ugly confrontation with her employer qualified as compensable in the case of Jones v. Hartford Acc. & Ins. Co., 811 S.W. 2d 518 (Tenn. 1991); the trial judge found no such factual predicate in this case. The same result is reached when applying the rule of Jose v. Equifax, Inc., 556 S.W. 2d 82, 84 (Tenn. 1977) that in proper cases a mental stimulus such as fright, shock or even excessive, unexpected anxiety could amount to an "accident" sufficient to justify an award for a resulting mental or nervous disorder. The trial court found no such factual predicate here.

Our review is de novo upon the record of the trial court, accompanied by a presumption of correctness of the findings below, unless the preponderance of the evidence is otherwise. T.C.A. Sec. 50-6-225 (e)(2) (1991). This standard of review requires this court to weigh in depth the factual findings and conclusions of the trial court. Humprey v. David Witherspoon, Inc., 734 S.W. 2d 315 (Tenn. 1987).

CONCLUSIONS AND JUDGMENT

We hold that the trial judge's findings of fact are well supported and not contrary to the weight of the evidence; and that the trial judge did not err in denying the Rule 60.02 motion, as fraud was not proved.

The judgment of the trial court is affirmed. Costs on appeal

are assessed to the Plaintiff.

WILLIAM S. RUSSELL, RETIRED JUDGE

CONCUR:

ADOLPHO A. BIRCH, JR.
ASSOCIATE JUSTICE, SUPREME COURT

JOHN K. BYERS
SENIOR JUDGE

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ANNE H. LAWRENCE,	)	Davidson Chancery
	)	No. 93-1885-III
Plaintiff/Appellant,	)	
	)	
	)	Hon. Robert S. Brandt,
VS.	)	Chancellor
	)	
	)	
L.M. BERRY COMPANY and ITT HARTFORD INSURANCE COMPANY,	)	No. 01-S-01-9511-CH-00199
	)	
	)	
Defendants/Appellees.	)	Affirmed.

JUDGMENT ORDER

This case is before the Court upon a motion for review pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(B), 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 motion for review is not well-taken and should be denied; 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 the plaintiff/appellant, Anne H. Lawrence, and her surety, for which execution may issue if necessary.

IT IS SO ORDERED this 25th day of November, 1996.

PER CURIAM

Birch, C.J., Not Participating