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

FILED

November 25, 1996

Cecil W. Crowson
Appellate Court Clerk

PHILLIP L. PYRDUM,	)	
	)	
Plaintiff/Appellee,	)	**MARSHALL COUNTY**
	)	
VS.	)	**HON. TYRUS H. COBB**
	)	**CHANCELLOR**
TELEDYNE SYSTEMS COMPANY,	)	
INC., TELEDYNE LEWISBURG	)	**No. 01S01-9601-CH-00009**
(Assumed Name),	)	
	)	
Defendants/Appellants.	)	

FOR APPELLANTS:	**FOR APPELLEE:**
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MEMORANDUM OPINION

MEMBERS OF PANEL:

FRANK F. DROWOTA, III, JUSTICE
JOE C. LOSER, JR., SPECIAL JUDGE
CORNELIA A. CLARK, SPECIAL JUDGE

REVERSED **CLARK, SPECIAL JUDGE**

This worker's compensation appeal has been referred to the special worker's 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.

In this appeal, the employer contends that the chancellor erred in finding a causal connection between plaintiff's heart condition and any employment-related accident or injury. This panel concludes the judgment of the trial court awarding benefits should be reversed and the case dismissed, for the reasons stated below.

Plaintiff Phillip Pyrdum was fifty (50) years old at the time of the accident. He attended school to the 12th grade and has obtained his G.E.D. diploma. He had been employed by the Defendant Teledyne Systems Company, Inc. for 10 years.

On December 8, 1992, while performing his job as receiving clerk Plaintiff received a small box from G.E. Medicals containing glass vials of chemicals, two of which apparently were copper sulfate and nickel chloride. He opened the box not knowing the contents because there were no labels or warnings with the box. There were no fumes or smells coming from the box. When he reached inside the box to pull the styrofoam out he noticed that it was wet and the glass vials were broken. He got his fingers wet up to the second knuckles. Plaintiff took the package to receiving for inspection and returned to his station. He washed his hands 30 or 35 minutes after the episode, when he took a break or went to lunch. He was not concerned at that time.

About one week later Plaintiff began to feel sick and thought he was taking the flu or pneumonia. He had difficulty breathing. He began to take cold medicine, but he did not improve. About the 17th or 18th of December he obtained the explanation sheets for the chemicals that he had apparently been exposed to and learned the names of the chemicals and the possible effects of contact with skin.

On Dec. 21, 1992, he presented himself to Dr. Richard Thomasson, who placed him in the hospital. He was diagnosed then with severe high blood pressure and atrial fibrillation. His final diagnosis is hypertensive cardiomyopathy, or damaged heart because of high blood pressure.

Appellate review is de novo upon the record of the trial court, accompanied by a presumption of the correctness of the findings of fact, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. §50-6-225(e)(2). This tribunal is required to conduct an independent examination of the record to determine where the preponderance of the evidence lies. Galloway v. Memphis Drum Service, 822 S.W.2d 584, 586 (Tenn. 1991); Corcoran v. Foster Auto GMC, Inc., 746 S.W.2d 452, 456 (Tenn. 1988). We also make an independent assessment of the medical proof when medical testimony is in the form of depositions. Landers v. Firemen's Fund Insurance Company, 775 S.W.2d 355, 356 (Tenn. 1989).

An employee has the burden of proving every element of the worker's compensation case by a preponderance of the evidence. Tindall v. Wearing Park Association, 725 S.W.2d 935, 937 (Tenn. 1987). Causation and permanency must be shown by expert medical evidence except in the most obvious cases.

The court in this case was faced with conflicting medical testimony. The court received medical evidence consisting of the depositions of Dr. Thomasson, a family practice physician, and Dr. Lawrence Grossman, a cardiologist. The chancellor chose to rely primarily on Dr. Thomasson, plaintiff's treating physician, citing specifically his statement that "I honestly feel that exposure [to the chemicals] was a contributing factor." He did not accept Dr. Grossman's testimony because Dr. Grossman did not see, examine, or treat plaintiff, and because he believed Dr. Grossman was confused about the chronology of certain testing. Our own review of the record, however, convinces us the preponderance of the evidence is

otherwise.

In June 1992, plaintiff underwent a wellness examination performed by Blue Shield, and he became extremely alarmed when told during the exam that his blood pressure was very high and that he should immediately see a physician. As a result of this information plaintiff first went to see Dr. Richard Thomasson. At that time he complained of shortness of breath, left arm pain, and irregular heart beat. All test results were normal. Dr. Thomasson's June 1992 records indicate that plaintiff had complained of these symptoms for one and one-half years at that time. Plaintiff gave Dr. Thomasson a family history which included heart problems experienced by his father. Plaintiff also had been a smoker for twenty-nine years. Dr. Thomasson instructed plaintiff to keep a diary of his blood pressure.

In fact, June 1992 was the third time plaintiff had been treated prior to his injury for a hypertensive condition. In November 1991, before undergoing eye surgery, plaintiff experienced his first incident with high blood pressure. At that time his physician, Dr. Boone, prescribed Lopressor, which plaintiff took for only a couple of days before voluntarily stopping. In December 1991, during a national guard physical, it was determined that plaintiff had high blood pressure. He was required to see Dr. Fowler, the brigade doctor.

Dr. Thomasson's testimony reveals that plaintiff's symptoms of shortness of breath, left arm pain, and irregular heart beat after his exposure to chemicals in December 1992 are the same symptoms about which he complained in his June 1992 physical. Dr. Thomasson candidly admitted that he was not familiar with the chemicals to which plaintiff was exposed and that he did not actually know whether the chemicals caused plaintiff's December 1992 heart condition. His most affirmative response was that the symptoms he experienced were "consistent with" possible side effects listed in the medical literature for the chemicals to which plaintiff was briefly exposed. He believes "something catastrophic" happened that

corresponds to exposure to drugs. He testified he had "to assume" there was a relationship.

Dr. Laurence Grossman was the only cardiologist who testified in this case. He stated unequivocally that in his forty-seven years as a cardiologist he has never seen either of the chemicals in question cause any type of heart disease or contribute in any way to heart disease. He stated that the chemicals in question could not in any manner have aggravated any pre-existing heart condition. In his opinion, plaintiff's family history of coronary heart disease, his own hypertension, and his long habit of smoking were much more likely to have caused the heart disease diagnosed in December 1992. He did err in his initial statement about the date of the EKG. That error was brought to his attention during the deposition. However, he testified unequivocally that his opinion about causation did not change.

We have carefully reviewed the medical evidence in this case and conclude that the evidence preponderates against a finding that the cause of plaintiff's heart disease arises out of the exposure to chemicals as a part of his employment on December 8, 1992. The judgment of the trial court is accordingly reversed and the case dismissed. Costs on appeal are taxed to plaintiff-appellee.

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CORNELIA A. CLARK, SPECIAL JUDGE

CONCUR:

_____
FRANK F. DROWOTA, III, JUSTICE

_____
JOE C. LOSER, JR., SPECIAL JUDGE

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PHILLIP L. PYRDUM, Plaintiff/Appellee, VS. TELEDYNE SYSTEMS COMPANY, INC., TELEDYNE LEWISBURG (Assumed Name), Defendants/Appellants.	)	Marshall Chancery No. 8861 Hon. Tyrus H. Cobb, Chancellor No. 01-S-01-9601-CH-00009 Reversed.

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/appellee, Phillip L. Pyrdum, for which execution may issue if necessary.

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

PER CURIAM

Drowota, J., Not Participating