

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. section 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. The employer's insurer contends the evidence preponderates against the trial court's finding that the employee's fatal heart attack arose out of his employment. As discussed below, the panel has concluded the judgment should be affirmed.

The claimant, Peggy Skaggs, is the widow of Charles R. Skaggs, deceased. At the time of his death, Mr. Skaggs was employed by the First Baptist Church of Morristown as Maintenance Supervisor. On August 8, 1994, following several hours of manual labor at the church, he developed severe neck pain and numbness and tingling in his hands and arms. Mrs. Skaggs, also a church employee, called an ambulance. He was taken to Ft. Sanders Hospital, where he died on August 10, 1994.

According to the Death Certificate, death was caused by (1) heart attack, (2) coronary artery disease and (3) sudden cardiac death. The cause of the heart attack was confirmed by a medical doctor, who testified by deposition, "I believe the activity (he) engaged (in) may indeed have precipitated the onset of his myocardial infarction." The doctor conceded on cross-examination that undiagnosed pre-existing coronary artery disease may have been a contributing cause.

The trial judge found the employee's heart attack to have been caused by physical exertion at work, thus compensable. Appellate review is de novo upon the record of the trial court, accompanied by a presumption of correctness of the findings of fact, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. section 50-6-225(e)(2).

A heart attack is compensable, as an accidental injury, if it can be shown by competent evidence that the attack was precipitated by physical exertion or stress at work. Downen v. Allstate Ins. Co., 811 S.W.2d 523 (Tenn. 1991). The key, it has been held, to the recovery or denial of benefits is whether the heart attack is precipitated by the physical activity and exertion of the employee's work. Wingert v. Government of Sumner County, 908 S.W.2d 921 (Tenn. 1995). Moreover, an employee's death or disability resulting from a heart attack is causally related to his employment and therefore compensable,

even though the employee suffered from pre-existing heart disease. Rogers v. Shaw, 813 S.W.2d 397 (Tenn. 1991).

While there is some evidence the employee in this case may have rested and smoked a cigarette shortly before the onset of pain, it is undisputed that his work shortly before that involved physical exertion; and the medical proof is persuasive in favor of a finding of causation between that physical exertion and the fatal heart attack. Consequently, the evidence fails to preponderate against the findings of the trial judge.

The judgment is accordingly affirmed and the case remanded to the Circuit Court of Hamblen County for such further proceedings, if any, as may be appropriate. Costs on appeal are taxed to the defendant-appellant.

Joe C. Loser, Jr., Judge

CONCUR:

E. Riley Anderson, Associate Justice

Roger E. Thayer, Judge

IN THE SUPREME COURT OF TENNESSEE

FILED
February 21, 1997
Cecil Crowson, Jr.
Appellate Court Clerk

AT KNOXVILLE

PEGGY J. SKAGGS,)	ROANE CIRCUIT
)	No. 95-CV-0008
Plaintiff/Appellee,)	
)	
vs.)	Hon. Ben K. WEXLER
)	Judge
)	
)	03S01-9603-CV-00029
PREFERRED RISK MUTUAL)	
INSURANCE COMPANY,)	
)	
Defendant/Appellant)	

JUDGMENT ORDER

This case is before the Court upon the entire record, including the order of referral to the Special Worker' Compensation 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 act and conclusions of law are adopted and affirmed, and the decision of the Panel is made the Judgment of the Court.

Costs on appeal are taxed to the defendant/appellant, Preferred Risk Mutual Insurance Company, and sureties, Hodges, Doughty & Carson, for which execution may issue if necessary.

02/21/97

