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

FILED

September 19, 1997

Cecil Crowson, Jr.
Appellate Court Clerk

ALLEN L. BOOHER,	)	SULLIVAN CHANCERY
	)	C.A. NO. 03S01-CH-00017
Plaintiff-Appellee	)	
	)	
	)	
	)	
	)	
	)	
v.	)	HON. R. JERRY BECK
	)	CHANCELLOR
	)	
	)	
	)	
	)	
	)	
CITY OF BRISTOL,	)	
	)	
Defendant-Appellant	)	

JOHN RAMBO, Herrin, Booze & Rambo, Johnson City, for Appellant.

GREG HOLT, Seaton, Holt & Herrin, Johnson City, for Appellee.

M E M O R A N D U M O P I N I O N

Members of Panel:

Hon. E. Riley Anderson, Justice
Hon. William H. Inman, Senior Judge
Hon. Don T. McMurray, Special Judge

REVERSED AND DISMISSED McMurray, Special Judge

_____This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with T.C.A. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

The plaintiff, a police officer employed by the City of Bristol, brought a claim for workers' compensation benefits after he suffered a heart attack in his home on August 21, 1994. The trial court held that the plaintiff was entitled to benefits because of T.C.A. § 7-51-201(a)(1) which creates a presumption of a causal connection between plaintiff's employment and the heart attack. We find the evidence preponderates against the trial court's ruling and reverse the award of workers' compensation benefits.

_____The sole issue in this case is whether the City of Bristol presented competent medical evidence sufficient to overcome the statutory presumption found at T.C.A. § 7-51-201(a)(1), which states in pertinent part as follows:

> Whenever the State of Tennessee, or any municipal corporation or other political subdivision thereof that maintains a regular law enforcement department manned by regular and full-time employees and has established or hereafter establishes any form of compensation to be paid to such law enforcement officers for any condition or impairment of health which shall result in loss of life or personal injury in the line of duty or course of employment, there shall be and there is hereby established a presumption that any impairment of health of

> such law enforcement officers caused by hypertension or heart disease resulting in hospitalization, medical treatment or any disability, shall be presumed (unless the contrary be shown by competent medical evidence) to have occurred or to be due to accidental injury suffered in the course of employment ... . Such law enforcement officer shall have successfully passed a physical examination prior to such claimed disability, or upon entering governmental employment and such examination fails to reveal any evidence of the condition of hypertension or heart disease.

The relevant facts are undisputed. The plaintiff, was on vacation and had been off from work the entire week prior to his heart attack, which occurred on a Sunday morning. That morning, the plaintiff awoke, took a shower and got the newspaper. As he was reading the newspaper, he felt a sudden chest pain which he said felt like "a howitzer hit me right in the chest." His wife took him to the emergency room at Bristol Regional Medical Center, where it was determined that he had suffered a heart attack. He was treated by Dr. Pierre Istfan, who successfully performed an angioplasty on him several days later.

As noted above, the plaintiff relies on T.C.A. § 7-51-201(a)(1), commonly referred to as the "presumption statute," to supply the requisite causal link between his employment as a police officer and his injury. In order to rely upon the presumption created by the statute, plaintiff, Booher, must show that (1) he was employed by a regular law enforcement department; (2) he suffered from hypertension or heart disease resulting in hospital-

ization, medical treatment or disability in the course of employment; and (3) prior to the injury he had been given a physical examination which did not reveal the heart disease or hypertension. Krick v. City of Lawrenceburg, 945 S.W.2d. 709 (Tenn. 1997); Stone v. City of McMinnville, 896 S.W.2d 548, 550 (Tenn.1995).

The parties stipulated that Booher met prerequisites (1) and (3) above. The trial court found that the plaintiff's proof established that he also met prerequisite (2). Thus, with the aid of the statutory presumption, plaintiff presented a *prima facie* case, and the burden shifted to the City of Bristol to present competent medical proof that his injury was not causally related to his employment. Stone, supra, at 551.

In the similar and quite recent Krick case, the Supreme Court stated the following regarding the presumption statute:

> In order to overcome the presumption, "there must be affirmative evidence that there is not a substantial causal connection between the work of the employee so situated and the occurrence upon which the claim for benefits is based." ... In other words, there must be "competent medical evidence" that there is not a substantial causal connection.

Krick, supra, at 712 [citations omitted].

Thus, we must review the medical testimony to determine whether the City of Bristol has presented sufficient evidence to rebut and overcome the presumption.

Dr. Istfan, the treating physician, testified by deposition. He stated that the plaintiff's risk factors for heart disease and coronary artery disease which he documented in his discharge diagnosis were cigarette smoking (1½ to 2 packs a day since high school), obesity, hyperlipidemia, and elevated cholesterol levels. Dr. Istfan stated that he recognized occupational stress as a possible risk factor as well, although he did not list it as a factor in his diagnosis. He also deposed as follows:

> Q: Is it more likely that smoking, obesity and hyperlipidemia that you listed as his diagnosis was a primary causative factor in his — Mr. Booher's myocardial infarction?
>
> A: Again it's hard to say. I mean, it could have been the smoking alone or it could have been the stress of the job alone or it could have been the hyperlipidemia alone or it could have been the obesity alone. Or it could have been the most likely thing, a combination of everything. It's hard to say which risk factor played the major role.
>
> * * *
>
> Q: Okay. And you can't say, I think, from what you were telling Mr. Rambo that one of these factors contributes more so than another factor, can you? You can't measure that?
>
> A: In any individual person, no. No, it's very hard to decide in a particular person which — which risk

factor is — has played a bigger role than the other one.

Q: Okay, and within a reasonable degree of medical certainty, you can't say that Mr. Booher's stress alone didn't cause the heart attack, can you?

A: No. You can't. By the same token you can't say it wasn't something, one or the other risk factors.

The trial court noted in its memorandum opinion that "[t]he evidence offered by Dr. Istfan might be termed equivocal ... ." We agree that Dr. Istfan's testimony on causation is equivocal at best.

The City of Bristol presented the deposition testimony of Dr. Taylor Wray, a cardiologist. Dr. Wray's testimony can be fairly and succinctly summarized by the following set of questions and answers from his deposition:

Q: After reviewing [Dr. Istfan's] deposition, and I guess more importantly the medical records that you have, do you have an opinion as to the causal relationship between Mr. Booher's work and this myocardial infarction or heart attack that he suffered?

A: Yes, I do have an opinion.

Q: Can you tell us that opinion based on a reasonable degree of medical certainty?

A: My opinion, based on a reasonable degree of medical certainty, is that there's no relationship between his work and the heart attack he had in August 1994.

Q: Did you find from his medical history some factors that may be related to his heart attack?

A: Yes.

Q: Can you tell us what those are based on a reasonable degree of medical certainty?

A: He smoked two packages of cigarettes a day. He was obese. He had significantly elevated serum cholesterol level. And, also, there is some reference to his having a positive family history for coronary artery disease. Although the specifics of that are not spelled out in the records I have.

Q: Dr. Wray, in your opinion, based on a reasonable degree of medical certainty, do any of those items that you listed — do you attribute that heart attack to any or a combination of any of these?

A: I attribute the heart attack to a combination of all of those.

We find Dr. Wray's testimony unequivocal in refuting the statutory presumption that Mr. Booher's heart attack was causally related to his employment. Moreover, Dr. Wray affirmatively testified as to the causative factors he considered most likely to have precipitated the heart attack. This case is quite similar to three recent workers' compensation cases brought by law enforcement officials in which the plaintiff relied on the statutory presumption, and in which the court found the presumption effectively rebutted by competent medical testimony. Stone v. City of McMinnville, supra; Wingert v. Government of Sumner County, 908 S.W.2d 921 (Tenn.1995); Morgan v. City of Morristown, 1995 WL 635110 (Tenn. Oct. 26, 1995).

The following statement by the Stone court is equally applicable to the present case:

> This case is distinguishable from Coffey v. City of Knoxville and Perry v. City of Knoxville (both are cases in which police officers successfully invoked the statutory presumption of causation.) In Coffey, the expert medical testimony offered to rebut the presumption was excluded by this Court because it violated the prohibition of Tenn.R.Evid. 704. 866 S.W.2d 516. In Perry, the medical proof was too weak to overcome the presumption. 826 S.W.2d 114.

Stone, 896 S.W.2d at 552-553.

We are of the opinion that the medical proof introduced by the City of Bristol was sufficient to rebut and overcome the presumption found in T.C.A. § 7-51-201(a)(1). The presumption, therefore, disappears. As stated in Krick, supra:

> ... [O]nce the presumption of causation established by T.C.A. § 5-51-201(a)(1) is rebutted by the defendant, it disappears, and the plaintiff must prove, by a pre-ponderance of the evidence, that his condition resulted from an injury by accident arising out of and in the course of his employment. Thus [the plaintiff] was required to prove that his heart disease was an injury by accident.

Since we have found that the presumption has been effectively rebutted, the question becomes whether the plaintiff is entitled to recovery for his injury under the general rules governing workers' compensation cases. Stone, 896 S.W.2d at 552. The

general rule in heart attack cases is summarized by the Krick court as follows:

> We have held that heart attacks are generally compensable as accidental injuries when they are precipitated by physical exertion or strain or a specific incident or series of incidents involving mental or emotional stress of an unusual or abnormal nature. Bacon v. Sevier County, 808 S.W.2d 46 (Tenn. 1991); Stone v. City of McMinnville, supra. The key to recovery in instances where it is alleged that physical activity caused the heart attack, is whether "the disabling heart attack is precipitated by the physical activity or exertion or physical strain of the employee's job." Id. at 552, quoting Bacon, 808 S.W.2d at 50. In instances where the plaintiff asserts that emotional stress caused the heart attack, the disabling condition "must be immediately precipitated by a specific acute or sudden stressful event." Stone v. City of McMinnville, 896 S.W.2d at 552, quoting Bacon, 808 S.W.2d at 52.

Krick, pp. 713 and 714.

The plaintiff does not allege that work-related physical activity caused his injury. He does assert that occupational stress was a causative factor leading to the heart attack. The record clearly shows, however, that the plaintiff cannot demonstrate that his heart attack was immediately precipitated by a specific acute or sudden stressful event, work-related or otherwise.

Neither of the testifying physicians could say with a reasonable degree of medical certainty that any specific stressful

event was likely a precipitating factor of plaintiff's injury. The plaintiff testified that he was on vacation the full week prior to his heart attack, and that he was not thinking about work when he began feeling chest pain.

We find that the plaintiff has failed to establish, by a preponderance of the evidence, a causal connection between his employment and the unfortunate heart attack. Therefore, his claim must fail.

The appellee also insists that he is entitled to damages and expenses for a frivolous appeal. In view of our disposition of the case, such sanctions may not be imposed.

The evidence preponderates against the judgment of the trial court awarding workers' compensation benefits to the plaintiff. The judgment is reversed and the case dismissed. Costs on appeal are taxed and assessed to the appellee.

_____
Don T. McMurray, Judge

_____
E. Riley Anderson, Justice

_____
William H. Inman, Senior Judge

IN THE SUPREME COURT OF TENNESSEE

AT KNOXVILLE

ALLEN L. BOOHER,	)	SULLIVAN CHANCERY
	)	No. 14-185 B
Plaintiff/Appellee,	)	
	)	
	)	
	)	
vs.	)	Hon. R. Jerry Beck,
	)	Chancellor
	)	
CITY OF BRISTOL,	)	
	)	03S01-9702-CH-00017
Defendants/Appellee.	)	

JUDGMENT ORDER

This case is before the Court upon the entire record, including the order of referral to the Special Workers' 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 fact 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 appellee, Allen L. Booher, for which execution may issue if necessary.

09/18/97