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

FILED

September 30, 1997

Cecil Crowson, Jr.
Appellate Court Clerk

JOHN R. KREIS, INC., and NATIONAL AMERICAN INS. COMPANY, Plaintiffs/Appellees v. JANET ELIZABETH ARONS, surviving widow of LARRY MELVIN ARONS and NICHOLE LEE ARONS, a dependent minor child of Larry Melvin Arons b/n/f and mother, Janet Elizabeth Arons, Defendants/Appellants	)	KNOX CHANCERY NO. 03S01-9701-CH-00005 HON. SHARON J. BELL CHANCELLOR

For the Appellants:

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616 W. Hill Avenue
Knoxville, TN 37902

For the Appellees:

Rockforde D. King
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MEMORANDUM OPINION

Members of Panel:

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

AFFIRMED **INMAN, Senior Judge**

O P I N I O N

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.

Both parties filed motions for summary judgment in this case wherein the deceased was found dead in his truck, having died, according to the Certificate of Death, of "natural causes," not otherwise defined. The appellants conceded that the cause of death of their decedent, Mr. Arons, was unknown, and it was essentially upon this basis that the claim for benefits was denied. The surviving dependents of Mr. Arons appeal and present for review the propriety of summary judgment "when a worker is found dead at his post with no proof of the cause of death."

Mr. Arons was 44 years old when he died on November 19, 1993. The appellant is his second wife, to whom he was married in 1973. They had one child, Nichole, who was born in 1980.

Mr. Arons and his first wife had four children. The family was dysfunctional, with the father being completely estranged from these children for a variety of causes, apparently attributable to drug and alcohol abuse. His second marriage was not idyllic; he abused alcohol to the extent he required hospitalization and, on occasion, his wife sought an order of protection. He was an inveterate cigarette smoker -- forty to sixty per day for 15 years -- and his eating habits were unusual in that he ate only one meal--breakfast--each day, snacking on junk food thereafter.

His daughter, Nichole, was injured in a serious traffic accident on October 10, 1993 and his request for time-off from work was granted. He returned to work on November 3, 1993 and was found dead in his truck on November 19, 1993.

After he returned to work, the decedent performed his duties without incident. He was not required to load, unload, supervise or do anything except drive. He had not engaged in any strenuous activity and had no altercations. He had made no complaints about illness and had never been treated for cardiovascular disease.

The appellants initially alleged that the death of Mr. Arons was caused by a cardiovascular incident arising out of his employment while performing strenuous and stressful work during his *six weeks* employment. They later conceded that the cause of death was unknown, but insisted that in light of the circumstances, a presumption arose that Mr. Arons's death was causally related to his employment with the burden cast upon the employer to move otherwise. The appellee denied that Mr. Arons's death was causally related to his truck-driving job and filed a motion for summary judgment, supported by the affidavit of Dr. George M. Krisle, III, a cardiology specialist, that it was medically impossible to determine whether Mr. Arons' death was causally related to his work.

The appellee also filed the deposition of the plaintiff, Janet Arons, and the affidavit of Dr. Robert O. Martin in support of the motion for summary judgment.

Janet Arons testified concerning the dysfunction of her husband, his smoking and drinking habits and other tribulations of his life. *Dr. Martin* testified that he was a cardiologist, that he had reviewed all available records pertaining to the death of Mr. Arons and the circumstances of his lifestyle, and that it was medically impossible to determine whether or not the death of Mr. Arons was causally related to his work.

John R. Kreis, II, testified that he employed Mr. Arons on September 27, 1993, his duties being limited to driving a truck in the Knoxville area. He was off from work from October 17 through October 30, 1993 owing to his daughter's accident but returned to work without incident. On November 19, 1993, he was in radio contact with Mr. Arons most of the morning, who gave no indication whatever of any distress or problem.

The appellants tendered the affidavit of Dr. Francis Jones, a pathologist, in opposition to the appellee's motion and in support of their own motion for summary judgment. Dr. Jones testified that he had reviewed the pertinent records and was asked to assume that Mr. Arons made no complaints about illness and that he was merely sitting around drinking coffee and smoking cigarettes the morning of his death. He further assumed that Mr. Arons was a socially isolated man "who would come home from work wound up tighter than a spring" and whose personality type

made him prone to stress-induced cardiovascular events "arising from incidents which persons with a different personality would handle without exaggerated psychological reactions."

He further testified that coronary artery disease was "more likely" a factor in Mr. Arons' death and that the stress involved in driving a truck "could have precipitated the medical events causing his death." He opined that it is medically impossible to determine that Mr. Arons' death was not related to any type of trauma or work-related incidents which could have caused his death.

In *King v. Jones Truck Lines*, 814 S.W.2d 23 (Tenn. 1991), the employee became ill from what he believed was food poisoning. He was taken to a hospital *in extremis*, with an admitting diagnosis of atrial fibrillation and hypertension. He soon lost consciousness and suffered respiratory arrest with extreme low blood pressure. After removal to another hospital, his spleen, which was about five times the normal size, was removed. Mr. King never recovered and he died shortly. A death summary revealed splenic rupture, shock, intervascular coagulation, rheumatic heart disease and other ailments. The trial judge found that while the precise instrumentality of the cause of death was unknown, it was established that the decedent died of a ruptured spleen "which could not have resulted without some form of trauma." This finding was based on the testimony of Dr. Stern who said that a "heavy bump could cause rupture" if the spleen was diseased. Since there was no evidence of a "heavy bump," Dr. Stern's opinion was merely speculative.

The Court then took up the alternative theory of recovery that King's heart condition was aggravated by events arising out of his employment, pointing out that "the key to the recovery or denial of benefits is whether the heart attack is precipitated by physical activity and exertion of the employee's work." *King,* at 27. The Court went on to state:

> In earlier workers compensation cases, we have recognized a presumption, or an inference, that
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> > "where an employee is found dead at his post of labor, without direct evidence as to the manner of his death, an inference may arise of an accident springing out of and in

> the course of his employment." *Home Ice Co. v. Franzini*, 161 Tenn. 395, 32 S.W.2d 1032, 1033.
>
> In other words a *prima facie* case for the claimant is thus supported. When such a *prima facie* case is thus made out the burden shifts to the employer to produce evidence to overthrow such a *prima facie* case. *Shockley v. Morristown Produce & Ice Co.*, 158 Tenn. 148, 11 S.W.2d 900. *Milstead v. Kaylor*, 186 Tenn. 642, 212 S.W.2d 610, 613 (1948).
>
> However, in later cases, we refused to indulge in any such presumption in the absence of evidence of an accident or exertion on the job and medical proof of causation. *See Collins v. Liberty Mutual*, 561 S.W.2d 456 (Tenn. 1978) (no presumption that auto accident arose out of employment, where no corroborating evidence and death certificate reports apparent heart attack as cause of death); *Travelers Insurance Co. v. Evans*, 221 Tenn. 199, 425 S.W.2d 611 (1968) (mere presence of employee at employer's convention does not raise presumption that heart attack arose out of employment.
>
> In *R.E. Butts Co. v. Powell*, 225 Tenn. 119, 463 S.W.2d 707 (1971), we held that where "there is ample evidence to conclude that [the employee] was doing the work that he was employed to do at the time he suffered the attack which resulted in his disabling injury," the injury is compensable. Five physicians testified that the normal exertion of the deceased's job, which consisted of securing a loaded truck by throwing fifteen-pound chains over the stacked load, "could have" accelerated or aggravated his heart condition. We said: "There must still be an unexpected result, and there must still be an exertion--some exertion--capable medically of causing the collapse," *id.* at 709, and concluded that Powell's injury arose out of employment. *Id.* at 28.

The standard for summary judgment is that where there is no genuine issue of material fact, the movant is entitled to judgment as a matter of law. *Byrd v. Hall*, 847 S.W.2d 208 (Tenn. 1993). Since the issue at bar is whether Mr. Arons' death arose from employment, the appellants must prove a causal connection. *Bell v. Kelso Oil*, 597 S.W.2d 731 (Tenn. 1980). It is conceded that the cause of Mr. Arons' death is unknown.

The burden of proof of every element of the cause of action, including causation, is upon the claimant. *Tindall v. Waring Park Ass'n*, 725 S.W.2d 935, 937 (Tenn. 1987), and expert proof is required except in obvious cases. We find no proof in this record to countervail the proof adduced by the employer of a lack of causation. The affidavit of Dr. Jones is not sufficient, because he inferenced "stress-induced cardiovascular events arising from incidents" without describing such incidents, and we find no proof of such incidents in this record. Neither does he relate Mr. Arons' death to his employment with a reasonable degree of medical

certainty. His opinion that stress was a factor was predicated on the assumption that Mr. Arons had coronary artery disease, concerning which there is no proof whatsoever. There is no presumption as to causation merely because an employee is found dead at his post. *King, supra*; *Milstead v. Kaylor*, 212 S.W.2d 610 (Tenn. 1948).

The judgment is accordingly affirmed at the costs of the appellant.

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William H. Inman, Senior Judge

CONCUR:

_____
E. Riley Anderson, Justice

_____
Don T. McMurray, Special Judge

IN THE SUPREME COURT OF TENNESSEE

AT KNOXVILLE

JOHN R. KREIS, INC. and NATIONAL AMERICAN INSURANCE COMPANY	)	Knox County
	)	No.
	)	
Plaintiffs/Appellees	)	
	)	Hon. Sharon J. Bell,
vs.	)	Chancellor
	)	
JANET ELIZABETH ARONS, surviving widow of LARRY MELVIN ARONS, and NICHOLE LEE ARONS, a dependent minor child of Larry Melvin Arons b/n/f and mother Janet Elizabeth Arons	)	
	)	Supreme Court
	)	No. 03-S-01-9701-CH-00058
	)	
	)	Affirmed
Defendants/Appellants	)	

JUDGMENT ORDER

This case is before the Court upon 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.

Cost will be paid by defendants-appellants and surety, for which execution may issue if necessary.

It is so ordered this _____ day of _____, 1997.

PER CURIAM

ANDERSON, C.J., not participating