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

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| TOMMY FREEMAN, | ) | |
| | ) | |
| Plaintiff, | ) | MADISON CHANCERY |
| | ) | |
| v. | ) | HON. JOE C. MORRIS, |
| | ) | CHANCELLOR |
| MADISON COUNTY SHERIFF'S | ) | |
| DEPARTMENT, | ) | NO. 02S01-9704-CH-00034 |
| | ) | |
| Defendant. | ) | |



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For Defendant:
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MEMORANDUM OPINION

MEMBERS OF PANEL:

JANICE M. HOLDER, JUSTICE
HEWITT P. TOMLIN, JR., SENIOR JUDGE
CORNELIA A. CLARK, SPECIAL JUDGE

REVERSED AND DISMISSED CLARK, SPECIAL JUDGE

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 of findings of fact and conclusions of law. The issues presented by this appeal are whether the trial court erred in finding that the statutory presumption created by Tenn. Code Ann. § 7-51-201 applied to plaintiff and whether or not the defendant's medical proof overcame the presumption. The panel concludes that the judgment of the trial court awarding benefits should be reversed and the case dismissed for the reasons stated herein.

Thomas Freeman ("plaintiff") was employed by the Madison County Sheriff's Department in 1971. He served as a deputy for a year and then was promoted to the rank of Captain. He stayed in the rank of Captain until 1991, when he was appointed Assistant Chief Deputy. He had been appointed to the position of Chief Deputy at the time of trial. In the early days following his promotion to Captain, plaintiff assumed supervisory duties along with his regular duties. However, as the department grew he began to delegate more of the regular duties and moved into a more supervisory role. With the promotion to Assistant Chief Deputy, he assumed even more of a supervisory and administrative position. Since 1991, his job duties have been primarily that of supervisor and he was not required to go out on patrol or do things such as working on accidents as part of his regular job duties.

In November, 1994 plaintiff begin to experience symptoms of a heart attack while sitting at his desk at work. Nothing out of the ordinary occurred on the job either on that day or in the time period before that. He was subsequently treated for a heart attack at a local hospital and was diagnosed with coronary artery disease. He underwent quintuple bypass surgery thereafter. He retumed to work on a gradual basis and is now working full time in his former position as Chief Deputy. Plaintiff was fifty-one years old at the time of his heart attack.

The medical proof consisted of the testimony of several physicians by deposition, which testimony is summarized as follows:

Dr. James Crenshaw, a cardiologist, testified that he was called to the emergency room to examine plaintiff, after plaintiff was admitted complaining of chest pains and suffering from an acute myocardial infarction. Following Dr. Crenshaw's examination,

the diagnosis of heart attack was confirmed by an electrocardiogram. On the following day plaintiff underwent a heart catheterization which showed severe blockage in essentially all of his vessels. Dr. Crenshaw recommended coronary artery bypass and referred him to Dr. John Matthews, a cardiovascular surgeon.

Dr. Crenshaw testified that in his opinion the three major causative factors were: (1) cigarette smoking (The record reflected that plaintiff smoked one and a half packs per day for approximately thirty years); (2) his sedentary lifestyle; (3) a mild elevation of his cholesterol level. Dr. Crenshaw further testified that there is no direct proof that stress is a causal factor of heart disease.

Dr. John Matthews performed the quintuple bypass operation. He testified that the most likely causes of plaintiff's heart disease was his cigarette smoking history. Dr. Matthews further stated that there was no good data that shows a strong correlation between stress and heart attack.

Dr. Pervis Milnor, Jr., a Memphis cardiologist, did not treat plaintiff, but reviewed medical records developed by Drs. Crenshaw and Matthews as well as data supplied by plaintiff's counsel. Dr. Milnor did not examine plaintiff nor did he review the depositions of Drs. Crenshaw and Matthews, notwithstanding the fact that they had been in existence for nine months to a year and a half at the time Dr. Milnor was supplied data pertaining to plaintiff. Dr. Milnor testified that he agreed with the impact on heart disease of the major factors outlined by Drs. Crenshaw and Matthews—namely, substantial cigarette smoking for a long period of time and elevated cholesterol. However, Dr. Milnor voiced the opinion that the stress of being a law enforcement officer could have caused a more "rapid progression" of plaintiff's heart disease. However, Dr. Milnor conceded that he was unable to cite any authority or research that had been conducted that would support this speculation.

The chancellor found that the proof established the three prerequisites necessary to establish the presumption that the coronary artery disease was an accidental injury suffered in the course of employment and that the presumption had not been rebutted by defendant's medical proof. The chancellor concluded by finding that plaintiff had suffered a compensable injury and had sustained a fifty percent permanent partial

disability to the body as a whole.

In workers' compensation cases, the scope of review of this Panel on issues of fact is *de novo* upon the record in the trial court. These findings of fact come to this court with a presumption of correctness, and unless we find the preponderance of the evidence is otherwise, must be affirmed. T.C.A. § 50-6-225(e)(2) (Supp. 1997). However, where the issues of fact involve expert medical testimony and the medical proof is presented in the record by depositions, as in this case, this court may then draw its own conclusions about the weight and credibility of that testimony, inasmuch as we are in the same position as the trial judge to make this evaluation. Orman v. Williams Sonoma, Inc., 803 S.W.2d 672, 676-77 (Tenn. 1991).

**I. The Statutory Presumption Issue.**

Plaintiff relies upon the statutory presumption of causation contained in T.C.A. § 7-51-201(a)(1) in his efforts to establish that his heart disease was an accidental injury that he suffered during the course of his employment by Madison County. The statute establishes "a presumption that any impairment of health of [a] law enforcement officer caused by hypertension or heart disease resulting in hospitalization, medical treatment or any disability, shall be presumed (unless the contrary is shown by competent medical evidence) to have occurred or to be due to accidental injury suffered in the course of employment."

In order to have the benefit of this presumption plaintiff is required to show that (1) he was employed by a regular law enforcement department; (2) he suffered from hypertension or heart disease resulting in hospitalization, 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. Stone v. City of McMinnville, 896 S.W.2d 548, 550 (Tenn. 1995), Krick v. City of Lawrenceburg, 945 S.W.2d 709, 712 (Tenn. 1997). After these prerequisites have been established, the presumption exists and the burden of proof shifts to the defendant. 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." Stone, 896 S.W.2d at 550.

In the case before us defendant has conceded that plaintiff in all likelihood would be able to prove that the first two prerequisites have been satisfied. However, defendant contends that plaintiff failed to come forth with proof to establish that he had undergone a physical examination that showed him to be free of heart disease. In regard to this third element, the only proof that plaintiff presented at trial below was part of a medical record pertaining to his hospitalization at Jackson-Madison County General Hospital, dated January 24, 1979, where he was hospitalized and treated for abdominal pain and diagnosed as having a possible duodenal ulcer. The document presented reflected a type of physical examination by his treating physician, Dr. Thomas Ballard, relative to his complaints of stomach pain. It does not indicate any tests seeking to ascertain whether or not plaintiff had heart disease. In light of this and in light of the fact that plaintiff did not present any testimony that he had been given a physical examination upon the beginning of his employment by defendant, we hold that the third prerequisite as required by the statute has not been established. This issue is accordingly resolved in favor of defendant.

**II. The Matter of Causation.**

Our disposition of this issue is controlled by the recent opinion of our Supreme Court styled Krick v. City of Lawrenceburg, 945 S.W.2d 709 (Tenn. 1997), written by now Chief Justice Anderson. In that case, the plaintiff, Larry Krick, had worked as a police officer for the City of Lawrenceburg for some twelve years. Once during a routine patrol, he and another officer answered a call at a residence where a woman was allegedly being held hostage. The plaintiff was forced to kick down the door in order to gain access to the house, not knowing what he would encounter. After an exhaustive search of the house they found the woman, uninjured and safe. Krick became "nervous" and "tense" following this experience, and thereafter suffered shortness of breath and chest pain. He was later hospitalized and diagnosed with coronary artery disease and later underwent quadruple bypass surgery. Krick sought workers' compensation benefits from the City of Lawrenceburg, relying upon the statutory presumption that his coronary disease arose out of and in the scope of his employment. Following an adverse ruling by the trial court, the city appealed to the Special Workers' Compensation Appeals Panel who found that the evidence preponderated against the finding that plaintiff's coronary

artery disease arose out of his employment. The plaintiff's motion for full court review was granted and the Panel was subsequently affirmed.

While we have already disposed of the statutory presumption in the case *sub judice*, the Krick court noted that the plaintiff had established the three prerequisites necessary to create the presumption that the coronary artery disease was an accidental injury suffered in the course of employment. The court concluded that the next issue to be decided was whether the record contained competent medical evidence that there was not a substantial causal connection between Krick's work as a police officer and the coronary artery disease. The full court held that the Special Panel was correct in finding that there was not a substantial causal connection and affirmed that defendant had overcome the presumption of causation.

The Krick court stated:

> As the Special Panel recognized, once the presumption of causation established by Tenn. Code Ann. § 7-51-201(a)(1) is rebutted by the defendant, it disappears, and the plaintiff must prove, by a preponderance of the evidence, that his condition resulted from an injury by accident arising out of and in the course of his employment. Thus, Krick was required to prove that his heart disease was an injury by accident.

The Krick court held that the defendant had successfully rebutted the plaintiff's occupational presumption and this court has held that the plaintiff in this case failed to establish the occupational presumption. In either case the burden shifts to the plaintiff to prove by a preponderance of the evidence that his condition resulted from an injury arising out of and in the course of his employment.

The summary of the medical evidence in this case has already been recited. We are of the opinion that the evidence preponderates against a finding that plaintiff's heart disease in the case at bar arose in the course and scope of his employment. The medical evidence fails to establish a causal connection between the conditions of plaintiff's work and his coronary artery disease. The evidence that we have reviewed above establishes that his disease was primarily caused by smoking one and a half packs of cigarettes per day for at least twenty if not thirty years, a sedentary lifestyle, and a mild elevation of cholesterol level. The physician who thought that stress might be a factor stated that he

had no knowledge of any study that suggested a correlation between the development of arteriosclerotic process and stress in jobs like or similar to law enforcement.

Furthermore, in cases where plaintiff asserts that an emotional stress caused the heart attack, the disabling condition must be immediately precipitated by a specific acute or sudden stressful event. Stone, 896 S.W.2d at 552, quoting Bacon v. Severe County, 808 S.W.2d 46, 49-52 (Tenn. 1991).

Accordingly, we are of the opinion that the evidence and the record preponderates against the trial court's finding that plaintiff sustained a compensable injury by accident. The judgment of the trial court is reversed and the case is dismissed. Costs in this cause on appeal are taxed to plaintiff for which execution may issue if necessary.

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CORNELIA A. CLARK, SPECIAL JUDGE

CONCUR:

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JANICE M. HOLDER, JUSTICE

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HEWITT P. TOMLIN, JR., SENIOR JUDGE

IN THE SUPREME COURT OF TENNESSEE

AT JACKSON

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| TOMMY FREEMAN, | ) | MADISON CHANCERY |
| | ) | NO. 49999 |
| Plaintiff/Appellant, | ) | |
| | ) | Hon. Joe C. Morris, |
| vs. | ) | Chancellor |
| | ) | |
| MADISON COUNTY SHERIFF'S DEPARTMENT | ) | NO. 02S01-9704-CH-00034 |
| | ) | |
| Defendant/Appellee. | ) | REVERSED AND DISMISSED. |

FILED

February 2, 1998

Cecil Crowson, Jr.
Appellate Court Clerk

JUDGMENT ORDER

This case is before the Court upon 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 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 will be paid by Appellant, and Surety, for which execution may issue if necessary.

IT IS SO ORDERED this 2nd day of February, 1998.

PER CURIAM

(Holder, J., not participating)