

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

FILED

February 18, 1998

Cecil W. Crowson
Appellate Court Clerk

LARRY SIZEMORE,)
)
Plaintiff/Appellant)
)
v.)
)
CITY OF DICKSON,)
)
Defendant/Appellee)
)

DICKSON CIRCUIT
No. 01S01-9701-CV-00022
HON. ALLAN WALLACE,
JUDGE

For the Appellant:

DOUGLAS S. JOHNSTON, JR.
Barrett, Johnston & Parsley
Nashville, Tennessee

For the Appellee:

J. RUSSELL FARRAR
Farrar & Bates
Nashville, Tennessee

MEMORANDUM OPINION

MEMBERS OF PANEL

LYLE REID, ASSOCIATE JUSTICE, SUPREME COURT
WILLIAM S. RUSSELL, RETIRED JUDGE
W. MICHAEL MALOAN, SPECIAL JUDGE

AFFIRMED

MALOAN, SPECIAL JUDGE

This workers' compensation appeal from the Dickson County Circuit Court has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated §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 plaintiff contends the panel should reverse the trial court's grant of summary judgment. We conclude summary judgment to be appropriate and affirm the trial court.

The plaintiff, Larry Sizemore, is a policeman for the City of Dickson. He was on vacation for approximately two weeks when he sustained a heart attack while watching television at home on August 15, 1994.

The plaintiff filed suit for worker's compensation benefits specifically relying on the statutory presumption of compensability afforded law enforcement personnel in T.C.A. §7-51-201, which states:

...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 is shown by competent medical evidence) to have occurred or to be due to accidental injury suffered in the course of employment...

The defendant answered and denied the plaintiff had sustained a compensable injury. The defendant further filed a motion for summary judgment supported by portions of depositions of the plaintiff and of Dr. Taylor Malone Wray who gave the following testimony:

A. My opinion is there is no causal relationship between his work as a police officer and his subsequent heart attack.

Q. Do you have an opinion within a reasonable degree of medical certainty as to what did cause his heart attack?

A. Well, the heart attack was caused by coronary atherosclerosis, which is a buildup of fatty plaque in the heart arteries.

The plaintiff responded with the counter affidavit of Dr. Marshall Crenshaw which states, in part:

Mr. Sizemore's coronary artery disease developed in the setting of several risk

factors. He has a past history of tobacco usage. He has a past history of hypertension. He has a possible family history of coronary disease, and, of course, he is a male. All of these are known risk factors for coronary disease. Chronic stress is a known risk factor for the development of coronary artery disease, and is known to cause progression of disease in patients who are otherwise susceptible to it...

It is reasonable to conclude that, more probably than not, the chronic stress of Mr. Sizemore's job as a law enforcement officer was a cause in the development or exacerbation of his hypertension and coronary disease, culminating in the cardiac event of August 15, 1994.

Based on the above evidence, the trial court granted the defendant's motion for summary judgment and dismissed the plaintiff's lawsuit.

The review of a workers' compensation case is ordinarily *de novo* on the record accompanied by a presumption of the correctness of the findings of fact unless the preponderance of the evidence is otherwise. T.C.A. 50-6-225(3)(2) However, an appeal from a summary judgment order in a workers' compensation case is not controlled by the *de novo* standard of review, but is governed by Rule 56, Tennessee Rules of Civil Procedure, *Downen v. Allstate Ins. Co.*, 811 S.W.2d 523 (Tenn. 1991). Further, no presumption of correctness attaches to decisions granting summary judgment because they involve only questions of law; thus, on appeal the reviewing court must make a fresh determination concerning whether the requirements of Rule 56 have been met. *Gonzales v. Alman Constr. Co.*, 857 S.W.2d 42 (Tenn. 1993).

It is not necessary for the panel to consider whether the requirements of Rule 56 have been met (whether genuine issues of material facts exist and if the defendant was entitled to summary judgment as a matter of law) as the plaintiff admitted in his appellate brief and at oral argument that present case law¹ supports the trial court's grant of summary judgment. The plaintiff requests this panel to reverse the grant of summary judgment and remand the matter for the trial court to consider his condition as an occupational disease, T.C.A. §50-6-301. Having specifically pled a claim based on T.C.A. §7-51-201 and summary judgment entered against him, the panel may not remand the case to be reconsidered by the trial court on an issue not raised in

¹*Stone v. City of McMinnville*, 896 SW2d 548 (Tenn. 1995) and *Bacon v. Sevier County*, 808 SW2d 46 (Tenn 1991), which requires a specific physical or emotional incident which precipitated the heart attack.

the original pleadings or considered by the trial court. *Simpson v. Frontier Community Credit Union*, 810 S.W.2d 147, 153 (Tenn. 1991)

The judgment of the trial court is affirmed with costs taxed to the plaintiff and his sureties.

W. Michael Maloan, Special Judge

Concur:

Lyle Reid, Justice

William S. Russell, Senior Judge

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

LARRY SIZEMORE,)	DICKSON CIRCUIT
)	No. CV575 Below
Appellant,)	
)	Hon. Allen Wallace,
v.)	Judge.
)	
)	No. 01S01-9701-CV-00022
CITY OF DICKSON,)	
)	
Appellee.)	AFFIRMED.

FILED
February 18, 1998
Cecil W. Crowson
Appellate Court Clerk

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.

Costs on appeal are assessed to the appellant.

IT IS SO ORDERED this 18th day of February, 1998.

PER CURIAM

Reid, J. - Not participating.