

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

FILED

June 24, 1998

**Cecil W. Crowson
Appellate Court Clerk**

KEVIN CURTIS,)
Plaintiff/Appellant) No. 01S01-9607-CH-00131
) (No. 4499 below)
)
v.) GRUNDY COUNTY CHANCERY
)
GRUNDY COUNTY SHERIFF'S) HON. JEFFREY F. STEWART,
DEPARTMENT, et al) CHANCELLOR
Defendants/Appellees)
_____)

FOR THE PLAINTIFF/APPELLANT:

JEFFREY M. ATHERTON
FOX & FARMER
200 Franklin Bldg.
Chattanooga, TN 37411

FOR THE DEFENDANTS/APPELLEES:

WILLIAM A. LOCKETT
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801 Broad Street
Chattanooga, TN 37402

MEMORANDUM OPINION

MEMBERS OF PANEL

LYLE REID, ASSOCIATE JUSTICE, SUPREME COURT
JOSEPH C. LOSER, JR., RETIRED JUDGE
WILLIAM S. RUSSELL, RETIRED JUDGE

AFFIRMED

RUSSELL, SP. J.

This appeal in a workers' compensation case has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated Section 50-6-225 (e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

This case is before us on an interlocutory appeal. Kevin Curtis, then a deputy sheriff for Grundy County and a part-time fireman for the city of Tracy City, accidentally shot himself in the left hand while cleaning his pistol. He sued both the Grundy County Sheriff's Department and Tracy City for worker's compensation benefits on the theory that he was injured while contemporaneously working for both. Each defendant moved for summary judgment, which relief was denied Tracy City but granted to the Grundy County Sheriff's Department. A discretionary appeal from the dismissal of the Grundy County Sheriff's Department was granted.

The sole issue is whether or not there exists a material issue of fact on the question of whether Mr. Curtis was injured in the course and scope of his employment with the Grundy County Sheriff's Department. The ruling of the trial judge was predicated factually solely upon the contents of the deposition of the plaintiff, Mr. Curtis. Accepting that testimony as fact, in

the absence of any other testimony and/or affidavits concerning the controlling issue, we affirm the judgment of the chancellor that the subject injury did not occur in the course and scope of the plaintiff's employment by the Grundy County Sheriff's Department.

Mr. Curtis had a full-time position as a deputy sheriff. At the pertinent time his defined duty hours were from 6:00 p.m. until 6:00 a.m. He ended his last pre-accident shift at 6:00 a.m. on September 14, 1994, which was a Wednesday. The following day was his scheduled day off. He was actually not to report to work until the following Sunday. Plaintiff contends that when he was not on duty that he was subject to being called to duty.

For about two months prior to September 15, 1994, the date of this accidental injury, Mr. Curtis was also enrolled as a firefighter with the Tracy City Volunteer Fire Department, which organization provided him with a pager. At about 11:15 p.m. on September 15 he was paged to report for firefighter duty to the fire hall in the Tracy City municipal building. Upon reporting he was told that there was a structure fire in the neighboring community of Monteagle, and his group was standing by to respond should there be another fire there. The fire chief and about eight firefighters were present. The fire chief was cleaning his handgun. The plaintiff did likewise. After finishing and re-loading, the pistol was fired accidentally and the bullet penetrated the plaintiff's left hand.

To be compensable an injury must both arise out of and be in the course of the injured employee's employment. Thornton v. RCA

Service Co., 221 S.W. 2d 954 (Tenn. 1949). The phrase "in the course of" refers to time, place and circumstances; and "arising out of" refers to cause or origin. Brimhall v. Home Insurance Co., 694 S.W. 2d 931 (Tenn. 1985); Orman v. Williams Sonoma, Inc., 803 S.W. 2d 672 (Tenn. 1991).

This injury occurred while the plaintiff was off duty as a deputy sheriff. He decided to clean his handgun because the fire chief was cleaning his. There was no testimony that his law enforcement duties required him to clean his personally owned handgun on this occasion.

Being subject to a call to duty does not equate to being on duty, in the absence of such a call. Plaintiff's testimony does not establish that his injury arose in the course of his employment as a deputy sheriff.

The judgment of the trial court is affirmed. Costs on appeal are assessed to the appellant.

WILLIAM S. RUSSELL, SPECIAL JUDGE

CONCUR:

LYLE REID, ASSOCIATE JUSTICE

JOE C. LOSER, SPECIAL JUDGE

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KEVIN CURTIS

Plaintiff/Appellant

v.

GRUNDY COUNTY SHERIFF'S DEPARTMENT,
et al.

Defendants/Appellees

) Grundy Chancery No. 4499

)

) Hon. Jeffrey F. Stewart,

) Chancellor

)

) Supreme Court No.

) 01-S-01-9607-CH-00131

)

)

) AFFIRMED.

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 appellant, for which execution may issue if necessary.

It is so ordered this 24th day of June, 1998.

PER CURIAM

Reid, S.J., not participating