

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

**FILED**

**June 5, 1998**

**Cecil W. Crowson  
Appellate Court Clerk**

GEORGE ELLIOTT, )  
Plaintiff/Appellant ) No. 01S01-9710-CV-00222  
)  
)  
v. ) MONTGOMERY COUNTY CIRCUIT  
)  
CITY OF CLARKSVILLE, ) HON. JAMES E. WALTON, JUDGE  
Defendant/Appellee )  
\_\_\_\_\_ )

FOR THE APPELLANT:

STACY A. TURNER  
105 South Third Street  
Clarksville, Tennessee 37040

FOR THE APPELLEE:

W. TIMOTHY HARVEY  
121 South Third Street  
Clarksville, Tennessee 37040

MEMORANDUM OPINION

MEMBERS OF PANEL

JANICE M. HOLDER, ASSOCIATE JUSTICE, SUPREME COURT  
WILLIAM H. INMAN, SENIOR JUDGE  
WILLIAM S. RUSSELL, SPECIAL 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.

The appellant worked for the City of Clarksville as a policeman. He sued his employer, claiming that he had suffered a compensable stroke resulting in permanent impairment, and relied upon the presumption created by T.C.A. Section 7-51-201 that the alleged stroke was presumed to have occurred or to be due to accidental injury suffered in the course of employment.

The trial court found that officer Elliott was entitled to the rebuttable presumption created by said statute, that the City of Clarksville presented sufficient medical proof to rebut the presumption that Mr. Elliott's condition was work related, and that Mr. Elliott did not then establish by a preponderance of the evidence that he had sustained a permanent vocational disability as a result of a work related injury or activity. The trial court found that the plaintiff failed to establish by a preponderance of the evidence that his condition is causally related to his job, and dismissed the suit.

The only material factual dispute in the case is provided by the medical evidence. Dr. Blaise Ferraraccio saw the plaintiff one time for evaluation on referral from plaintiff's treating physician. He opined that the plaintiff had a stroke and retained a 5% impairment as a result. He testified that several factors contribute to causing strokes, and that hypertension is one of them. He did not believe that Mr. Elliott's job related activities caused the stroke.

Dr. Manuel Robert Weiss did not examine the plaintiff, but reviewed plaintiff's medical records. He opined that plaintiff had not had a stroke and did not retain any permanent impairment. He further testified that regardless of whether Mr. Elliott had suffered a stroke, or simply a transient ischemic attack, that his condition was not caused by his job activities.

The evidence did not establish a significant physical or emotional event at work related to plaintiff's illness. Plaintiff was sitting at his desk writing routine reports when his hand and legs felt unusual.

The trial court concluded and found as fact that the plaintiff's condition was not the result of his job, and dismissed his suit.

We review the findings of fact of the trial judge under a presumption of correctness. T.C.A. Section 50-6-225 (c)(2). The evidence in this case does not preponderate against this presumption.

The presumption created by T.C.A. Section 7-51-201 must be overcome by affirmative evidence that there was not a substantial causal connection between the work of the police officer plaintiff and the complained of health problems. Coffey v. City of Knoxville, 866 S.W. 2d 516, 519 (Tenn. 1993); Perry v. City of Knoxville, 826 S.W. 2d 114,115 (Tenn. 1991). The defendant has presented such evidence, credited by the trial judge. The presumption in this case, as was found by the trial judge, had been overcome.

Issues of notice and statute of limitations are rendered moot.

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

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WILLIAM S. RUSSELL, SPECIAL JUDGE

CONCUR:

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JANICE M. HOLDER, ASSOCIATE JUSTICE

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WILLIAM H. INMAN, SENIOR JUDGE

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GEORGE ELLIOTT,	}	MONTGOMERY CIRCUIT
	}	No. C9-790 Below
Plaintiff/Appellant	}	
	}	Hon. James E. Walton,
vs.	}	Judge
	}	
CITY OF CLARKSVILLE,	}	No. 01S01-9710-CV-00222
	}	
Defendant/Appellee	}	AFFIRMED.

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 Plaintiff/Appellant and Surety, for which execution may issue if necessary.

IT IS SO ORDERED on June 5, 1998.

PER CURIAM