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

FILED

May 8, 1998

Cecil W. Crowson
Appellate Court Clerk

THURMAN D. VAN WINKLE,	)	RUTHERFORD CHANCERY
	)	
Plaintiff/Appellee	)	NO. 01S01-9709-CH-00190
	)	
	)	HON. JAMES K. CLAYTON, JR.
BRIDGESTONE U.S.A., INC.,	)	CHANCELLOR
	)	
Defendant/Appellant	)	

For the Appellant:

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M E M O R A N D U M   O P I N I O N

Members of Panel:

Justice Janice M. Holder
Senior Judge William H. Inman
Special Judge William S. Russell

REVERSED and
DISMISSED

INMAN, Senior 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 to the Supreme Court of findings of fact and conclusions of law.

The plaintiff alleges that he suffered a heart attack attributable to the demands of his job and therefore compensable within the purview of the Workers' Compensation law. The words "heart attack," as alleged, are generically used and are generally referable to any sudden adverse cardiac condition; in the case at Bar, the plaintiff suffered a myocardial infarction.[1]

The trial court found that the "petition for workers' compensation benefits should be sustained," and that the plaintiff had a 60 percent permanent impairment,[2] presumably attributable to his heart condition.

The employer appeals, questioning the finding that the plaintiff's heart problem is work-related. Review of the findings of fact made by the trial court is *de novo* upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise. TENN. CODE ANN. § 50-6-225(e)(2), *Stone v. City of McMinnville,* 896 S.W.2d 548, 550 (Tenn. 1995).

Background

[1]An infarct is a region of dead or dying tissue which is the result of a sudden obstruction to the blood circulation supplying the involved part, usually by a clot. A myocardial infarct is a region of dead or dying tissue in the muscle of the heart which is the result of an obstruction to the blood supply usually by a clot lodged in a coronary artery.

[2]The judgment refers to a letter containing a "Finding of Facts" but this letter is not in the record. We thus have no findings to review under the appropriate standard, RULE 13(d), T.R.A.P., which requires a presumption of correctness. We therefore have conducted a *de novo* review with no presumption.

The plaintiff is 63 years old with a sixth grade education, qualified only for manual labor. He began working at Bridgestone in 1972.[3] He had suffered from hypertension for several years, which was controlled by medication, and had been monitored for high cholesterol and triglycerides for a long period. He had been advised by his physician that he had substantial heart attack risk factors that needed to be controlled. He had no history of heart problems.

The Occurrence

On June 19, 1992, the plaintiff was working in the parts department at Bridgestone. He worked the evening shift and his job involved the return of items used that day to the shelves in the storeroom. He began work at noon and began experiencing symptoms at 4:30 p.m. when a "pain shot all the way down my arm, and I broke out in a cold sweat and got so weak I couldn't hardly walk." A nurse was called and he was driven to a local hospital. After one week he was admitted to Parkview Hospital, where surgery was performed. He was released in course, and then retired.

About two weeks before his heart attack the plaintiff returned to work following a strike at Bridgestone. Although he testified that the parts room was a 'mess,' the proof is clear enough that there was nothing unusual about the parts or storeroom area after the strike and there was no stress, strain, hostility or animosity in the workplace. The plaintiff's job required him to carry parts about the work area, including using the stairways. In short, the record does not indicate that anything out of the ordinary occurred on June 19, 1992. There is no evidence whatever of a specific acute or sudden stressful event.

The Medical

[3] His counsel told the Court that "Mr. Van Winkle worked at Bridgestone for virtually his entire adult life, about 20 years," which may be treated as hortatory, since Mr. Van Winkle was forty years old when he commenced working for Bridgestone.

The plaintiff was either seen, or examined, or treated by a host of physicians. His initial treatment was afforded by Dr. Ripley, and later by Drs. Whitfield, Brown, Waldo, Carlson and Ross.[4] Thirty months after his heart attack, he consulted Dr. K. P. Channabasappa in Chattanooga, a non-board certified cardiologist.[5]

Dr. Channabasappa first saw the plaintiff on August 19, 1994, "for his continued medical care." The history taken revealed that on June 19, 1992 the plaintiff had a heart attack and was given "medication to dissolve his blood clot in his arteries." He underwent a pulmonary arteriogram and "then had a 99 percent of blockage in the right coronary artery." He testified that "on that day when he had that heart attack, it seems they were all on strike."[6]

When asked if the "circumstances of his work" more probably than not causally contributed to the heart attack, Dr. Channabasappa replied

> "I believe *to a certain extent* that stress . . . precipitated his heart attack."

When asked about "those stress circumstances that he described to you involving the difficulties with the Union and the strike," the witness replied

> " . . . *this might have* precipitated his heart attack."

On cross-examination, the witness conceded that the blockage in his coronary artery "does not happen overnight," and is not a consequence of work. He agreed that stress "didn't cause the blockage."

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[4]Not otherwise identified.

[5]Who, as we gather and deduce, was amenable and sympathetic to the quest of the plaintiff.

[6]This statement is inaccurate. The plaintiff had been working for about a month, post-strike. For whatever reason this mistaken assumption was not corrected and the witness was not cross-examined about it.

Dr. Laurence Grossman was employed by the defendant to review the data on the plaintiff and render a relevant opinion. He has practiced cardiology since 1947, and founded the Cardiology Group at St. Thomas Hospital in Nashville. He is board-certified and a Professor of Cardiology. He reviewed a litany of medical records appertaining to the plaintiff. He testified that "there was no question" but that the plaintiff's long-standing hypertension and elevated cholesterol and triglycerides were "big factors in causation of this" [heart attack]. He testified that the physical demands of the plaintiff's job *"played absolutely no role"* in his heart attack. He further elaborated that exhaustive studies showed that job strain was not correlated to coronary heart disease.

Analysis

The burden of proving that his heart disease was an injury by accident is upon the plaintiff. An occupational disease is an injury by accident, T.C.A. § 50-6-102(a)(5), and the plaintiff's heart disease is considered to be an occupational disease if it arose out of and in the course of employment. *Krick v. City of Lawrenceburg,* 945 S.W.2d 709 (Tenn. 1997). But *Krick,* a definitive work on a subject previously rife with divergent decisions, squarely holds that

> " . . . heart disease arises out of employment only if (1) the disease can be determined to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment, (2) it can be fairly traced to the employment as a proximate cause, (3) it has not originated from a hazard to which the worker would have been equally exposed outside of the employment, (4) it is incidental to the character of the employment and not independent of the relation of employer and employee, (5) it originated from a risk connected with the employment and flowed from that source as a natural consequence, though it need not have been foreseen or expected prior to its contraction, and (6) there is a direct causal connection between the disease and conditions under which the work is performed. T.C.A. § 50-6-301."

Forerunner cases such as *Bacon v. Sevier County,* 808 S.W.2d 46 (Tenn. 1991), *Stone v. City of McMinnville,* 896 S.W.2d 548 (Tenn. 1995), and a host of others, are authority for the principles expressed in summary form in *Krick,* that the ordinary requirements of the job or the day-to-day stresses inherent in employment do not satisfy the statutory requirements for proof of a job-related injury. Moreover, the testimony of Dr. Chanabasappa, on whom the plaintiff relies, is simply too equivocal, especially when contrasted to the testimony of Dr. Grossman. His statements "I believe to a certain extent," and "this might have precipitated" are tentative and certainly not very weighty. Moreover, the witness did not - perhaps could not - articulate how a blood clot, likely months or years in formulation, could medically or justiciably be attributed to the circumstances of the plaintiff's work.

The evidence preponderates against the judgment of the trial court, which is reversed, and the case is dismissed at the costs of the appellee.

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William H. Inman, Senior Judge

CONCUR:

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Janice M. Holder, Justice

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William S. Russell, Special Judge

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THURMAN D. VAN WINKLE,	}	*RUTHERFORD CHANCERY*
	}	*No. 95WC-854 Below*
Plaintiff/Appellee	}	
	}	*Hon. James Clayton, Jr.,*
vs.	}	*Judge*
	}	
BRIDGESTONE U.S.A., INC.,	}	*No. 01S01-9709-CH-00190*
	}	
Defendant/Appellant	}	*REVERSED AND DISMISSED.*

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/Appellee, Thurman D. VanWinkle, for which execution may issue if necessary.

IT IS SO ORDERED on May 8, 1998.

PER CURIAM