IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AUGUST 1998 SESSION

FILED

March 1, 1999

Cecil Crowson, Jr.
Appellate Court Clerk

RALPH WARREN,	)	
	)	
Plaintiff/Appellee,	)	Decatur Circuit
	)	
v.	)	No. 02S01-9801-CV-00007
	)	
TML INSURANCE POOL,	)	Honorable Julian P. Guinn
	)	
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:

Senior Judge John K. Byers
Special Judge F. Lloyd Tatum
Special Judge Paul R. Summers

REVERSED AND DISMISSED **TATUM, Special Judge**

OPINION

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.

In his complaint, the plaintiff charges that his "hypertension and heart problems" were caused or aggravated by stress of working as a law enforcement officer. After finding that "the record does not reveal any single triggering incident that would necessarily bring this case within the purview of § 7-51-201 of the Tennessee Code Annotated," the trial court found "[t]here is, however, a series of events, any one of which standing alone would have sufficed." The defendant stipulated that plaintiff suffered permanent and total disability to the body as a whole and the court entered judgment in favor of the plaintiff accordingly. On this appeal, the defendant, Tennessee Municipal League, presents issue attacking the trial court's finding that plaintiff's hypertension and heart disease were causally related to his employment as a police officer.

Plaintiff began his employment with the City of Parsons, Tennessee Police Department in 1975 and was promoted to Chief of Police in 1992. On September 25, 1995, while en route to patrol the industrial park in Parsons, plaintiff fell asleep at the wheel of his patrol car and it left the roadway. Plaintiff awoke when the automobile was on the shoulder, and thus there was no accident or injury. Plaintiff was experiencing chest pain and had experienced chest pain for years prior to this occurrence. On October 3, 1995, he sought medial attention for chest pain.

The plaintiff was first diagnosed with hypertension in 1977. He was hospitalized in May, 1989 and underwent heart catheterization and angiography which showed significant heart artery blockage. His blood pressure was "moderately elevated," and he continued to have hypertension. Plaintiff was placed on medication for hypertension control and for heart artery blockage. Plaintiff was treated in 1989 by Dr. Joseph Blankenship and plaintiff returned to Dr. Blankenship on October 3, 1995.

Dr. Blankenship, a cardiologist, testifying by deposition, stated that hypertension has an effect on the heart in that it enlarges and damages the heart muscles, increases the risk

of heart attack and strokes, and tends to be a causative factor in the development of congestive heart failure. Dr. Blankenship was of the opinion that plaintiff probably was under job stress that aggravated his tendency to hypertension, but he also stated that he could not "medically" say that his illness and hospitalization in October, 1995 was or was not related to his work as a policeman. Dr. Blankenship also testified that smoking, obesity, and family history were additional risk factors present in plaintiff's medical history that would increase his risk of congestive heart failure and coronary artery disease. Plaintiff also had a family history of hypertension, which is a risk factor for heart diseases. Dr. Blankenship's records contained no history of any specific stressful or traumatic incident that occurred while plaintiff was working as a policeman for the City of Parsons. Dr. Blankenship testified that plaintiff's congestive heart failure would prevent him from returning to his former employment or any physically demanding occupation, if not well-controlled.

On October 2, 1996, plaintiff was seen for an independent medical examination by Dr. Pervis Milnor, Jr., a cardiologist, at the request of plaintiff's attorney. Dr. Milnor testified by deposition. He diagnosed plaintiff as having ischemic heart disease, chronic obstructive pulmonary disease, and as being obese. Plaintiff's blood pressure was normal because it was being controlled by medication. Dr. Milnor opined that plaintiff's hypertension and ischemic heart disease were "aggravated, if not precipitated, by stresses associated with his employment."

Dr. Milnor testified that cigarette smoking is the number one risk factor in causing ischemic heart disease and that family history and obesity play important roles as risk factors in ischemic heart disease. Plaintiff gave Dr. Milnor a history of smoking two to three packs of cigarettes a day, a family history of heart disease, and the plaintiff was an obese person. Plaintiff gave no history of any sudden or stressful event which caused him to have some type of specific response. The plaintiff described to Dr. Milnor many distressful experiences over a twenty-year period while working as a police officer. Dr. Milnor also testified that a person with the plaintiff's risk factors is a prime candidate for heart disease regardless of police work.

Dr. Laurence Grossman, a cardiologist, also testified by deposition. At the request

of defendant's attorney, Dr. Grossman reviewed the plaintiff's medical records, which he deemed adequate for forming an opinion on causation. He diagnosed the plaintiff with hypertension, coronary heart disease, and obesity. He opined that cigarette smoking was the main cause of the plaintiff's coronary heart disease and that other contributing factors were his hypertension, obesity, and family history. Dr. Grossman stated that the plaintiff's work as a police officer had no effect on his heart condition. He found that the plaintiff's hypertension was minor and not disabling and that it was of little significance in contributing to his coronary artery disease. Dr. Grossman noted that the medical records did not indicate any specific incident at work. Dr. Grossman testified that job stresses, even high pressure job stresses, have no effect on a person's cardiac condition.

Although the language employed by the trial judge in announcing his findings is not entirely equivocal, it appears that he made no attempt to apply the presumption created by Tenn. Code Ann. § 7-51-201(e)(1). The plaintiff insists that the presumption is effective in this case. He states that:

> The Appellant in this case contends that if any doctor testifies that the police officer's condition is not work-related, it rebuts the presumption and the Plaintiff cannot win. Such an interpretation of the Statute effectively repeals the Statute since it renders it worthless.

It is conceded that the prerequisites have been met so we must examine Tenn. Code Ann. § 7-51-201(a)(1) to determine whether the presumption is applicable in this case. We quote the pertinent portion of the statute:

> Whenever the state of Tennessee, or any municipal corporation or other political subdivision thereof that maintains a regular law enforcement department manned by regular and full-time employees and has established or hereafter establishes any form of compensation to be paid to such law enforcement officers for any condition or impairment of health which shall result in loss of life or personal injury in the line of duty or course of employment, 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 (emphasis added).

As previously stated, Dr. Grossman's testimony was to the effect that the plaintiff's hypertension and heart disease were not caused by stress suffered in the course of his

employment as a law enforcement officer.

In Krick v. City of Lawrenceburg, 945 S.W.2d 709, 712-13 (Tenn. 1997), a case similar to this one, the Supreme Court, in considering the above statute, stated:

> 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" (quoting Stone v. City of McMinnville, 896 S.W.2d 548, 550 (Tenn. 1995)). In other words, there must be "competent medical evidence" that there is not a substantial causal connection.
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> * * * * *
>
> 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.

As in the Krick case, supra, the testimony of Dr. Grossman rebutted the testimony of the other doctors, thereby destroying the presumption established under Tenn. Code Ann. § 7-51-201(a)(1), and the plaintiff was required to prove that his heart disease and hypertension were caused by injuries sustained in a job-related accident.

The plaintiff has made a list of a series of very stressful incidents that have occurred to him on a regular basis for the past twenty years. At the time the plaintiff fell asleep and drove his car off the road, he was on a routine patrol and had not been involved in any unusually stressful situations for more than a month prior to that time. It is well settled that the disabling condition must be precipitated by a specific, acute, or sudden stressful event. There is no indication that the incident of going to sleep is in any way related to plaintiff's condition.

The Supreme Court also held in the Krick case, 945 S.W.2d at 714:

> We have held that heart attacks are generally compensable as accidental injuries when they are precipitated by physical exertion or strain or a specific incident or series of incidents involving mental or emotional stress of an unusual or abnormal nature. Bacon v. Sevier County, 808 S.W.2d 46 (Tenn. 1991); Stone v. City of McMinnville, 896 S.W.2d 548, 550 (Tenn. 1995). The key to recovery in instances where it is alleged that physical activity caused the heart attack, is whether "the disabling heart attack is precipitated by the physical activity or exertion or physical strain of the employee's job." Id. at 552 (quoting Bacon, 808 S.W.2d at 50). In instances where the

> plaintiff asserts that emotional stress caused the heart attack, the disabling condition "must be immediately precipitated by a specific acute or sudden stressful event." Stone v. City of McMinnville, 896 S.W.2d at 552 (quoting Bacon, 808 S.W.2d at 52).

It is succinctly stated in Bacon v. Sevier County, 808 S.W.2d 46, 52 (Tenn. 1991), as follows:

> [I]t is obvious that in order to recover where there is no physical exertion, but there is emotional stress, worry, shock, or tension, the heart attack must be immediately precipitated by a specific acute or sudden stressful event, rather than generalized employment conditions. . . . A premium should be placed upon specificity and clarity in identifying that which constitutes the "accident" and upon demonstrating that such accident is directly attributable to the employment (citations omitted).

It results that we must hold that the presumption of causation established by Tenn. Code Ann. § 7-51-201(a)(1) is rebutted and rendered non-existent. Furthermore, we must hold that the disabling condition of the plaintiff was not immediately precipitated by a specific, acute, or sudden stressful event. We must, therefore, reverse the judgment of the trial court and dismiss the case.

We have conducted a de novo review of this case upon the record in the trial court with a presumption of correctness of the findings of the trial court. See Tenn. Code Ann. § 50-6-225(b)(2). However, we find that the preponderance of the evidence is against the findings and judgment of the trial court, and that the evidence preponderates against the finding that plaintiff's disabling condition grew out of or in the course of his employment for defendant.

The judgment of the trial court is reversed and the case is dismissed. Costs are adjudged against the plaintiff/appellee.

_____

F. LLOYD TATUM, SPECIAL JUDGE

CONCUR:

_____
JOHN K. BYERS, SENIOR JUDGE

_____
PAUL R. SUMMERS, SPECIAL JUDGE

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

RALPH WARREN,	)	
	)	
Plaintiff/Appellee	)	DECATUR CIRCUIT
	)	
v.	)	NO. 02S01-9801-CV-00007
	)	
TML INSURANCE POOL,	)	HON. JULIAN P. GUINN,
	)	JUDGE
Defendant/Appellant	)	

SEPARATE CONCURRING OPINION

I agree with the result reached by Judge Tatum in his opinion because the Supreme Court has held in *Benton v. City of Springfield,* 973 S.W.2d 936 (Tenn. 1998) and *Krick v. City of Lawrenceburg,* 945 S.W.2d 709 (Tenn. 1997), that competent medical proof to the contrary rebuts the presumption raised by Tenn. Code Ann. § 7-51-201(a)(1). I do not agree, however, with this rationale for rejection of the apparent intent of the legislature to recognize the stress related occupation of a police officer.

I categorize this approach as simplistic because all it takes to rebut the presumption under this rule is for one qualified medical witness to testify that in his or her opinion the stress of the officer's work did not cause the claimant's heart disease. This view would rebut the presumption in the face of any number of equally qualified witnesses testifying to the contrary.

Obviously, the rule being applied in these cases is the so called "bursting the bubble rule," which holds any rebuttable presumption is overcome by any evidence to the contrary. *See* John W. Strong, *McCormick on Evidence* § 344, at 462 (4th ed. 1992).

I believe that in the highly specialized area of expert testimony, which we have always described as speculative at best, the determination of whether there is evidence to the contrary sufficient to rebut the presumption should be based upon the quality of the evidence as determined by the trier of fact, who assesses not only the credibility of the witnesses but the weight to be given this testimony.

Under the rule, which we apparently now have, a witness whose credibility may be suspect or patently impeached can present competent evidence that there is not a

substantial causal connection between the stress of an officer's work and his heart disease. This testimony can overcome the presumption in the face of any number of competent, credible witnesses to the contrary. This creates a result which I do not believe the legislature intended in this area and which I am not certain the Supreme Court actually envisioned.[1]

I have this view because I believe competent evidence in the field of medicine means only that the witness who offers the evidence is found to be competent to testify and give an opinion on the matter in question. To make the evidence proof of the matter claimed, I believe the witness' testimony must be tested under the rules of credibility and accepted as such before it can have any tendency to overcome the testimony of other equally qualified witnesses to the contrary. Using this formula, the trier of fact can then determine if the presumption is overcome, and if it has, the determination of liability will then be resolved under the doctrine of *Krick* and *Benton*. That is, the claimant would have to show the cardiac event was as a result of some occurrence which immediately preceded the attack as those cases hold.

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John K. Byers, Senior Judge

[1] *See* John W. Strong, *McCormick on Evidence* § 344, at 463 "*Deviations from the theory [bursting bubble] in general*" (4th ed. 1992).

IN THE SUPREME COURT OF TENNESSEE
AT JACKSON

FILED

March 1, 1999

Cecil Crowson, Jr.
Appellate Court Clerk

RALPH WARREN,	)	DECATUR CIRCUIT
	)	NO. 2190
PLAINTIFF/APPELLEE,	)	
	)	HON. JULIAN P. GUINN,
v.	)	JUDGE
	)	
TML INSURANCE POOL,	)	S. CT. NO. 02S01-9801-CV-00007
	)	
DEFENDANT/APPELLANT.	)	AFFIRMED

JUDGMENT

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 will be paid by Plaintiff/Appellee, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM