

IN THE SUPREME OF TENNESSEE

AT NASHVILLE

**FILED**

December 20, 1999

Cecil Crowson, Jr.  
Appellate Court Clerk

<i>LUCY RUSSELL and</i>	}	
<i>KEITH RUSSELL, a minor</i>	}	<i>DEKALB CIRCUIT</i>
	}	<i>No. Below 7395</i>
<i>Plaintiff/Appellees</i>	}	
	}	<i>Hon. John J. Maddux, Jr.</i>
vs.	}	
	}	
	}	<i>No. M1998-00195-WC-R3-CV</i>
<i>RYDER INTEGRATED LOGISTICS,</i>	}	
<i>INC., and RYDER TRUCK</i>	}	
<i>RENTAL, INC.</i>	}	
<i>Defendant/Appellants</i>	}	<i>AFFIRMED</i>

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 appellant, Ryder Integrated Logistics, Inc., for which execution may issue if necessary.*

*IT IS SO ORDERED on December 20, 1999.*

*PER CURIAM*



## MEMORANDUM 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 of findings of fact and conclusions of law.

In this appeal, the employer, Ryder Integrated Logistics, Inc. ("Ryder"), contends that the plaintiffs' medical proof failed to demonstrate that Phillip Russell's ("Russell") fatal heart attack resulted from his employment. We disagree, for the preponderance of the evidence is not contrary to the judgement of the trial court; therefore, we affirm its decision.

On June 12, 1997, Russell suffered a fatal heart attack while on duty as a truck driver for Ryder. Russell complained of being dizzy and blind while he was backing the truck in a loading dock and requested that his partner, Ransom Bradley, call for medical assistance. An ambulance carried Russell to a hospital where he died that day.

Russell was forty-six (46) years old. Russell had suffered two previous heart attacks in 1992 and 1995. After he returned to work from the 1995 heart attack, Russell changed his driving route from a "long haul" route to a "local" route. Russell requested the local route because he found it less strenuous. The local route allowed him to spend each evening at home with his family and he could sleep six (6) or seven (7) hours each night as contrasted to the five hours "on" and five hours "off" which was required of him on the long haul route.

He drove the local route until June 1997, when Ryder created a new "long haul" route from Cookeville, Tennessee, to Roxboro, North Carolina. Russell and Bradley decided to try this route because it paid more money. They were on the third day of this new route when Russell's fatal heart attack occurred.

Dr. Edward E. Anderson, a licensed cardiologist, was Russell's treating physician after his 1995 heart attack. Dr. Anderson testified by deposition that "a stressful event that places a tremendous workload on the heart could be the final

precipitating event of a heart attack.” Dr. Anderson also stated that it was “entirely possible” that Russell’s new work routine was the precipitating event for his heart attack. Dr. Marcus C. Houston, board certified in internal medicine, opined by deposition that the progression of Russell’s preexisting heart disease was the cause of his fatal heart attack.

The trial court determined that Russell’s heart attack was precipitated by the several stressful incidents associated with a new “long haul” route Russell had started just three days prior to his heart attack and death. Accordingly, the court awarded Russell’s wife, Lucy Russell, and his son, Keith Russell, death benefits pursuant to Tenn. Code Ann. §§ 50-6-209 and 50-6-210.

Appellate review is de novo upon the record of the trial court, accompanied by a presumption of the correctness of the findings of fact, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (Supp.1998). In most workers’ compensation cases, the plaintiff must prove the element of causation by expert medical evidence. Orman v. Williams Sonoma, Inc., 803 S.W.2d 672, 676 (Tenn. 1991). When all medical expert testimony is contained in the record by deposition, an appellate court may draw its own conclusions about the weight and credibility since it is in the same position as the trial judge. Krick v. City of Lawrenceburg, 945 S.W.2d 709, 712 (Tenn. 1997).

In Black v. State, 721 S.W.2d 801, 803 (Tenn. 1986) the Supreme Court held that a heart attack was compensable where the heart attack occurred almost immediately after the plaintiff had engaged in a very heated argument with his superior. In Bacon v. Sevier County, 808 S.W.2d 46 (Tenn. 1991), the Supreme Court reiterated the rule for workers’ compensation cases involving stress related heart attacks; however, the Court stated, “if the cause or stimulus of the heart attack is mental or emotional in nature, such as stress, fright, tension, shock, anxiety, or worry, there must be a specific, climatic event or series of incidents of an unusual or abnormal nature if the claimant is to be permitted a recovery.” Id. at 52. The Court denied compensation in Bacon because the plaintiff did not prove a specific event or series of incidents as the precipitating cause of the heart attack. Id. at 53.

Dr. Anderson's testimony makes this case more than problematic for instead of opining that the stress "caused" or "could have caused" the heart attack, Dr. Anderson testified that it was "entirely possible" that Russell's heart attack was precipitated by the stress of his new work routine. Though Dr. Anderson further stated that "a stressful event that places a tremendous workload on the heart could be the final precipitating event of a heart attack"; expert testimony concerning causation is less than customarily required.

Although causation cannot be based upon speculative or conjectural proof, absolute medical certainty is not required, and reasonable doubt is to be extended in favor of the employee. Hill v. Eagle Bend Mfg., Inc., 942 S.W.2d 483, 487 (Tenn. 1997). Therefore, "[i]t is entirely appropriate for a trial judge to predicate an award on medical testimony to the effect that a given incident 'could be' the cause of the employee's injury, when the trial judge also has heard lay testimony from which it may reasonably be inferred that the incident was in fact the cause of the injury." Id. at 487; see also Orman, 803 S.W.2d at 676. Furthermore, since the medical testimony was by deposition, this Court may draw its own conclusions as to the credibility and weight of the testimony. See Krick, 945 S.W.2d at 712. As a result, it is incumbent on this Court to thoroughly examine the medical expert testimony along with other pertinent lay testimony to ascertain whether sufficient evidence of causation is in the record.

Though the plaintiffs' medical proof is marginal, both Lucy Russell and Ransom Bradley provided compelling testimony concerning the stress associated with the new "long haul" route. Their testimony established that Russell encountered several stressful incidents on the new route. First, the "long haul" route required the drivers to work five (5) hours on duty and five (5) hours off duty. Thus, the most sleep that either driver could get was about four and a half hours, (assuming they could get to sleep promptly and awaken promptly prepared to drive again). Second, the roads on the new route were mountainous and unfamiliar. Third, the traffic was heavier than the traffic on the local route. Fourth, the long haul route entailed increased time pressures which were not present on the local route. Finally, Russell's truck encountered mechanical problems which forced him to change trucks twice.



Each of these incidents added work related stress and each happened within a critical three (3) day period, during a difficult road trip. Furthermore, Russell's fatal heart attack occurred during the long haul trip, while Russell was still on the job. Based upon the foregoing, this Court finds that these incidents, and particularly their cumulative effect, constitute the unusual and/or abnormal stressful events and incidents contemplated in Bacon, 808 S.W.2d at 52.

Of substantial importance, this court notes that Russell's heart attack occurred on the third day of the stressful road trip, while he was on duty; thereby, contrasting Russell's case with that of the employee in Bacon. In Bacon the employee did not have his heart attack until eight days after he complained of general work-related stress and a stressful incident. See Bacon, 808 S.W.2d at 53. Furthermore, there is substantial evidence in this record of at least five stressful incidents and factors, the cumulative effect of which could be categorized as unusual and abnormal.

Following the rationale in Hill, we concur with the trial court finding that the expert medical testimony of Dr. Anderson, along with the lay testimony of Lucy Russell and Ransom Bradley, and particularly the five stressful factors and incidents identified with specificity above, established by a preponderance of the evidence that Russell's heart attack was caused by the stress of the new "long haul" route. See Hill, 942 S.W.2d at 487.

Accordingly, the judgment of the trial court is affirmed.

Costs are taxed to the employer-appellant, Ryder Integrated Logistics, Inc.

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Frank G. Clement, Jr., Special Judge

CONCUR:

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Frank F. Drowota, III, Associate Justice,  
Supreme Court

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Samuel L. Lewis, Special Judge