

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE
October 24, 2011 Session

**DOYLE ALLEN CASTLE v. SULLIVAN COUNTY SHERIFF'S
DEPARTMENT**

**Appeal from the Circuit Court for Sullivan County
No. C3441 John S. McLellan, III, Judge**

No. E2011-00988-WC-R3-WC-FILED-FEBRUARY 15, 2012

Pursuant to Tennessee Supreme Court Rule 51, this workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel for a hearing and a report of findings of fact and conclusions of law. The employee, a sheriff's deputy, alleged that he sustained a mental injury as a result of a confrontation that occurred while he was serving an eviction warrant. His employer denied the claim and filed a motion for summary judgment, contending that the injury was not compensable because the alleged precipitating event was not unusual or abnormal for a deputy. The trial court granted summary judgment for the employer. On appeal, the employee contends that the trial court erred by concluding that there was not a genuine issue of material fact as to whether the incident in question was sufficiently extraordinary or unusual to support a mental injury claim. Because there is a genuine issue of material fact as to whether the injury qualified as extraordinary and unusual or was merely the result of stress ordinarily experienced in the line of duty, the judgment is reversed, and the cause is remanded for trial.

**Tenn. Code Ann. § 50-6-225(e) (2008) Appeal as of Right; Judgment of the Circuit
Court Reversed**

GARY R. WADE, J., delivered the opinion of the court, in which JON KERRY BLACKWOOD, SR. J., and E. RILEY ANDERSON, SP. J., joined.

Anthony A. Seaton, Amanda Inman Lowe, and Robert D. Bates, II, Johnson City, Tennessee, for the appellant, Doyle Allen Castle.

Daniel P. Street, Blountville, Tennessee, for the appellee, Sullivan County Sheriff's Department.

MEMORANDUM OPINION

I. Factual and Procedural Background

Doyle Allen Castle (the “Employee”) was employed by the Sullivan County Sheriff’s Department (the “Employer”) from August of 1997 until March of 2009. During this time, he worked both as a corrections officer and a patrol officer, worked for the local drug task force, and served in the warrants and process division. His last actual day of work was in October of 2008.

In June of 2008, the Employee was involved in an altercation as he assisted another officer in serving an eviction warrant. The occupant of the residence resisted and attempted to slam the door. The Employee forcibly entered the premises and, when the occupant “dove in behind the door,” the Employee wrestled him to the floor. Upon realizing that the occupant had been reaching for an AK-47 assault rifle, the Employee, describing the incident in his own words, “temporarily lost his ability to consciously exercise critical thinking skills and entered into a dissociative state.” In consequence, the Employee, who asserted that the occupant also tried to take his sidearm, admittedly used excessive force to further subdue the individual.

Several months later, on December 19, 2008, the Employee filed his first report of an employment-related injury. He described his condition and its cause as follows:

Dr. Morawski has been treating me for anxiety [and] depression for some time. Also for stress related issues [and] high blood pressure. She relates these to being caused by stress at work. I was referred to an outside psychiatrist [and] therapist to gain further treatment. I began seeing James Wilson [and] Kenneth Greenwood. Dr. Greenwood advised me that my condition was work related and had been heightened due to several traumatic events while on the job. [One] event was attempting service of a writ of possession [and] the Defendant attempting to get an AK-47 assault rifle and also my sidearm. The next event was dealing with a DOA that was very sad in the way it happened. On 12-16-08 at approximately 10:30, Dr. Kenneth Greenwood advised me that my condition was a direct result of events on the job.

(Emphasis added). In a statement provided to the Employer’s workers’ compensation investigator, the Employee recounted not only the June of 2008 incident but also other events which had taken place during the term of his employment and that he considered to have possibly contributed to his mental injury. The Employee testified by deposition and made reference to the various incidents in both his discovery deposition and to the physicians who conducted his examinations.

When the Employer denied the claim for workers' compensation benefits, the Employee filed suit. In response, the Employer filed an answer denying liability, and, later, filed a motion for summary judgment. The motion was supported, in part, by an affidavit of Sullivan County Sheriff's Department Captain Joey Strickler and excerpts from depositions of several others, including the Employee, Dr. Kenneth Greenwood, who was the Employee's treating psychiatrist, and Dr. Richard Salamone, his evaluating psychologist. The Employer asserted that the Employee had not sustained a compensable mental injury because (1) his condition had not been caused by an identifiable, stressful, work-related event producing a sudden mental stimulus, such as fright, shock, or excessive unexpected anxiety; and (2) the stresses which caused his condition did not qualify as extraordinary, but instead were ordinary stresses associated with the duties of a sheriff's deputy.¹ The Employee filed a response to the motion, supported by excerpts from his own deposition, as well as those of Dr. Salamone and Dr. Greenwood, indicating that he suffered from post-traumatic stress disorder ("PTSD") as a direct result of the June 2008 incident, and that there were genuine issues of material fact as to (1) whether his condition was triggered by the altercation in connection with the eviction;² and (2) whether that event was beyond the normal stresses of his duties as a deputy sheriff.

The trial court initially found that the Employee suffered from PTSD and accepted as true the medical testimony that the altercation in June of 2008 specifically caused a genuine mental injury. Because, however, it concluded that the event which caused the onset of the mental condition was not "extraordinary, abnormal and unusual in comparison . . . to the stress ordinarily experienced by an officer in the same duty," the trial court, relying on Gatlin v. City of Knoxville, 822 S.W.2d 587, 592 (Tenn. 1991) and Watley v. City of Murfreesboro, No. M2006-01451-WC-R3-WC, 2007 WL 3010636, at *2-3 (Tenn. Workers' Comp. Panel Oct. 16, 2007), granted the Employer's motion for summary judgment. The Employee appealed to this Panel, contending that the trial court erred by concluding that there was no genuine dispute of fact as to whether the altercation during the service of the eviction warrant was sufficiently extraordinary and unusual to support an award of benefits for a mental injury.

¹ The Employer's motion also raised the statute of limitations and notice as defenses; however, those matters are not at issue in this appeal.

² In his response to the Employer's motion for summary judgment, the Employee refers to the alleged "triggering" encounter as occurring in December of 2008. Because the first report of injury was not filed until December of 2008, the correct date appears to be June of 2008. Also, in his response to the Employer's motion for summary judgment, the Employee mischaracterizes this triggering event as a "drug raid" where he was "attacked . . . with a high powered rifle."

II. Standard of Review

Our review of a trial court's grant of summary judgment is a question of law. Hunter v. Brown, 955 S.W.2d 49, 50-51 (Tenn. 1997). In consequence, appellate courts attach no presumption of correctness to the decision of the trial court and must review the record de novo to determine whether the requirements of Rule 56 of the Tennessee Rules of Civil Procedure have been satisfied. In re Estate of Davis, 308 S.W.3d 832, 837 (Tenn. 2010). A trial court should grant a party's motion for summary judgment only when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Tenn. R. Civ. P. 56.04; Hannan v. Alltel Publ'g Co., 270 S.W.3d 1, 5 (Tenn. 2008); Byrd v. Hall, 847 S.W.2d 208, 214 (Tenn. 1993). The movant bears the ultimate burden of persuading the court "that there are no disputed, material facts creating a genuine issue for trial . . . and that he is entitled to judgment as a matter of law." Byrd, 847 S.W.2d at 215. If the motion for summary judgment is properly supported, then the burden shifts to the non-moving party to show that a genuine issue of material fact exists. Id. At the summary judgment phase, "it is not the role of a trial or appellate court to weigh the evidence or substitute its judgment for that of the trier of fact." Martin v. Norfolk S. Ry. Co., 271 S.W.3d 76, 87 (Tenn. 2008) (citing Byrd, 847 S.W.2d at 211).

Moreover, summary judgment is a measure that should be entered cautiously in certain kinds of cases. Blocker v. Reg'l Med. Ctr., 722 S.W.2d 660, 662 (Tenn. 1987). This is especially true as to workers' compensation claims because these matters almost always require proof of causation by expert medical evidence in the form of opinion testimony. Downen v. Allstate Ins. Co., 811 S.W.2d 523, 524 (Tenn. 1991). Finally, because summary judgment is inappropriate where there are disputed facts or where there is uncertainty as to whether facts are in dispute, "summary judgment is almost never an option in a contested workers' compensation action." Berry v. Consol. Sys., Inc., 804 S.W.2d 445, 446 (Tenn. 1991).

III. Analysis

Two types of mental injuries are compensable under Tennessee's workers' compensation law: those that have "been caused by either (1) a compensable physical injury, or (2) a sudden or unusual mental stimulus, such as a fright, shock, or even excessive, unexpected anxiety." Cutler-Hammer v. Crabtree, 54 S.W.3d 748, 754 (Tenn. 2001). In this instance, the Employee does not contend that his PTSD was caused by a physical injury. Further, while portions of the record might suggest that the Employee experienced more than one particularly stressful event during his employment as a law enforcement officer, a mental injury that is the result of gradual events occurring over an extended period of time is not a

viable workers' compensation claim.³ Gatlin, 822 S.W.2d at 592; see also Goodloe v. State, 36 S.W.3d 62, 66 (Tenn. 2001). In Jose v. Equifax, Inc., 556 S.W.2d 82, 84 (Tenn. 1977), the Supreme Court explained that even though recovery for mental injury is not precluded, the workers' compensation law "does not embrace every stress or strain . . . or every undesirable experience encountered in carrying out the duties of a contract of employment." Id. Our Supreme Court has adhered to this approach in other cases following the decision in Jose. See Beck v. State, 779 S.W.2d 367, 370 (Tenn. 1989) (allowing recovery because the event in question was not usual and normal); Mayes v. U.S. Fid. & Guar. Co., 672 S.W.2d 773, 775 (Tenn. 1984) (denying benefits because the events causing the injury fell "within the category of the usual stress and strain encountered" in the profession); Allied Chem. Corp. v. Wells, 578 S.W.2d 369, 372 (Tenn. 1979) (denying benefits in part because there was "no unexpected emotional stress directly attributable to employment" that caused the injury).

In Gatlin, where benefits were denied, our Supreme Court reaffirmed that in order for an employee to qualify for workers' compensation benefits for mental injuries, "the mental stimulus causing . . . injury must be fright, shock, or an acute sudden or unexpected emotional stress." Gatlin, 822 S.W.2d at 590. Moreover, the Court went a step further, holding that the alleged mental anguish "must be extraordinary and unusual in comparison to the stress ordinarily experienced by an employee in the same type duty." Id. at 592; see also Goodloe, 36 S.W.3d at 66 (holding that an injury was not compensable because the event that caused the injury was "not unexpected") (emphasis added). This standard does not encompass every "undesirable experience" that could be encountered on the job; rather, it only "includes traumatic experiences that are outside the normal bounds of the particular job in which the employee is engaged." Watley, 2007 WL 3010636, at *2.

The Employer's motion for summary judgment was supported, in part, by the affidavit of Captain Strickler and excerpts from the Employee's discovery deposition. In his affidavit, Captain Strickler stated that he was familiar with the duties "expected of an employee in the jobs performed by [Castle]" and with the experiences that a deputy "would . . . normally expect to encounter during the performance of [his] duties." In addition, Captain Strickler contended he was "familiar with the stress normally experienced by" a deputy, and listed sixty-nine types of stressful situations typically experienced by law enforcement officers such as the Employee, which included the following: getting into fights or altercations; confronting armed suspects; arresting armed suspects; breaking up fights; being near inmates with weapons; arresting uncooperative individuals; viewing violent and gory crime scenes;

³ Although the Employee identifies several alleged stressful and traumatic events that occurred throughout his employment with the Employer, the medical testimony establishes that the events of June 2008 triggered his PTSD.

working undercover; being armed and having to assume that others are armed; and, more specifically, forcing entry in eviction and arrest cases. Captain Strickler also expressed the opinion that subduing an individual who had attempted to arm himself with an AK-47 was ordinary and normal for an officer serving an eviction notice.

The Employer also submitted excerpts from the Employee's discovery deposition in support of its motion. When questioned, the Employee not only testified to the circumstances surrounding the incident in June of 2008, but also described other stressful events that he had witnessed or participated in while exercising his duties as a law enforcement officer. Some of these events dealt with shooting victims, as well as an automobile accident scene in which a fatality occurred. Other stressful situations involved violence or direct danger to the Employee. For example, the Employee testified that he had frequently engaged in physical altercations, including incidents which occurred while he was serving warrants. During his deposition, the Employee confirmed that he often had to physically restrain individuals, that he had been threatened on many occasions, and that he had also been called upon to break through a door in order to gain access for either an arrest or an eviction. The Employee further acknowledged that he had been trained to anticipate that those with whom he dealt were armed with weapons.

The Employee does not dispute either the assertions in Captain Strickler's affidavit or the accuracy of the excerpts of his deposition testimony. Instead, he points to other testimony in his deposition where he explained that he "never [before] had a knife or gun pulled on" him by an individual prior to the incident in June of 2008. While conceding that he had been attacked by a man with a screwdriver on one occasion, and, on another, had arrested a woman who was later found to have a gun in her purse, the Employee contends that the June 2008 eviction incident, where the occupant of the residence attempted to resist by the use of a weapon, was beyond any of his previous experiences as a law enforcement officer and, for that reason, qualifies as an "extraordinary and unusual" emotional stimulus under the test prescribed in Gatlin.

As support for his position, the Employee cites Pressley v. State, No. E2003-01133-WC-R3-CV, 2004 WL 73277 (Tenn. Worker's Comp. Panel Jan. 14, 2004), a case in which a female state trooper claimed that she had developed depression and PTSD as a result of three specific, unusual incidents which had occurred over a two-year period. Id. The Claims Commission denied her claim for workers' compensation benefits, "finding claimant's condition was of long duration and her mental condition was due to a gradual build-up of stress and was not compensable." Id. at *3. After reviewing the evidence, however, the Panel reversed, concluding that the evidence demonstrated that the employee's condition was directly related to three specific, identifiable events and that those events were unusual and extraordinary for a trooper and implicitly finding that there was no evidence to

the contrary. Id. at *4.

The Employer here presented evidence in support of its claim that the June 2008 event was neither an unusual nor extraordinary experience for a person in the Employee's job. The deposition testimony of the Employee, while corroborative in part, suggests otherwise. Although a seasoned officer, the Employee maintained that he had never before encountered an individual who had attempted to arm himself with a gun, and specifically an AK-47,⁴ during an arrest or an eviction. There is other evidence that the occupant attempted to gain possession of the Employee's sidearm. The Employee's claim was that none of his prior experiences in the line of duty compared to the circumstances he faced in June of 2008. Although the Employer presented the testimony of an expert who contended that the precipitating event was neither extraordinary nor unusual for a deputy sheriff in Sullivan County, that opinion does not necessarily prevail over the contrary claims of the Employee, also a trained law enforcement officer.

In Rumsey v. County of Humphreys, No. M1999-00026-WC-R3-CV, 2000 WL 157473, at *4-5 (Tenn. Workers' Comp. Panel Feb. 15, 2000), a deputy sheriff arrested a mentally ill man and, over a period of seven hours, was required to transport him to a variety of hospitals for evaluation. Id. at *1-2. During that period, the individual kicked and screamed continuously, resisting when entering or exiting the patrol car. At one point, he knocked the deputy down. Subsequently, the deputy was diagnosed with PTSD, which, according to the medical testimony, was a direct result of the circumstances surrounding his efforts to control the individual in his custody. Id. At trial, the sheriff testified that transporting mentally disturbed persons was a common duty for deputies in his department. Id. at *5. The trial court, however, found that the employee had sustained a compensable injury. The Panel affirmed, observing that although the task being performed by the deputy was not particularly unusual, the duration of the episode made this incident extraordinary in nature. Id.

To summarize, the record demonstrates that the Employee suffered PTSD as a result of an altercation with an individual he and another officer had been assigned to evict. During a forced entry, the individual attempted to gain access to a firearm but was unable to do so. When the Employee realized that the individual had tried, but failed, to reach an AK-47 assault rifle located behind the door, he admittedly used excessive force, apparently in retaliation for the attempt. While the Employee admitted that he treated every situation in his employment as if those with whom he was dealing were armed with weapons, and

⁴ An AK-47 is a gas-operated, magazine-fed rifle that is capable of automatic or semiautomatic fire. Merriam-Webster's Dictionary, available at <http://www.merriam-webster.com/dictionary/ak-47> (last visited Nov. 16, 2011).

acknowledged that on prior occasions, he had been forced to break down doors and shatter windows in order to carry out evictions, he described this incident as unlike any other he had faced in the exercise of his duties as a law enforcement officer and asserted that because he had never felt threatened prior to this occasion, this made the event in question extraordinary and unusual. As indicated, “summary judgment is almost never an option in a contested workers’ compensation action.” Berry, 804 S.W.2d at 446. There is medical evidence in the record which tends to support the theory of the Employee. While the appropriate standard is objective rather than subjective, as illustrated by the holdings in Gatlin, 822 S.W.2d at 592 (“extraordinary and unusual in comparison to the stress ordinarily experienced by an employee in the same type duty”) and Watley, 2007 WL 3010636, at *2 (“outside the normal bounds of the particular job in which the employee is engaged”), the trial court must examine not only the expert testimony concerning what is normal and ordinary for similarly-situated employees, but should also consider the testimony of the Employee to the contrary and any supporting medical evidence. Finally, any analysis in the workers’ compensation context “rests on the principle that . . . an employer takes an employee as it finds them.” Trosper v. Armstrong Wood Prods., Inc., 273 S.W.3d 598, 614 (Tenn. 2008). Because there is a genuine issue of material fact regarding whether the June 2008 incident qualifies by degree as extraordinary and unusual, the judgment granting summary judgment is reversed.

IV. Conclusion

There is a genuine issue of material fact as to whether the altercation during the eviction qualified as extraordinary or outside the realm of normal duties that law enforcement officers routinely face and are expected to handle. While the Employer submitted expert testimony suggesting the incident triggering the onset of PTSD was usual and ordinary, the Employee claimed otherwise and, in our view, is entitled to a trial on the merits. The judgment of the trial court is, therefore, reversed and the cause remanded for trial. Costs are taxed to the Employer and its surety, for which execution may issue, if necessary.

GARY R. WADE, JUSTICE

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v.
SULLIVAN COUNTY SHERIFF'S DEPARTMENT

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JUDGMENT

This case is before the Court upon the motion for review filed by the Sullivan County Sheriff's Department 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.

It appears to the Court that the motion for review is not well-taken and is therefore denied. The Panel's findings of fact and conclusions of law, which are incorporated by reference, are adopted and affirmed. The decision of the Panel is made the judgment of the Court.

Costs are assessed to the Sullivan County Sheriff's Department, for which execution may issue if necessary.