

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

September 23, 2013 Session

TAMARA SIMERLY v. CRETE CARRIER CORPORATION

**Appeal from the Circuit Court for Rutherford County
No. 62538 Robert E. Corlew, III, Judge**

**No. M2013-00236-WC-R3-WC - Mailed November 25, 2013
Filed February 14, 2014**

Pursuant to Tennessee Supreme Court Rule 51, this 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. In this case the employee was an over-the-road truck driver attempting to make a delivery of refrigerated goods in Atlanta, Georgia. Because she was late, she was forced to wait 11 hours in her truck in high temperatures without air conditioning. She suffered a ruptured aneurysm as she exited the truck to complete the unloading process, which she alleged was caused by the high temperatures, anxiety, and emotional stress. Her employer denied the claim, and she filed suit for workers' compensation benefits in Rutherford County, Tennessee. The trial court found that the ruptured aneurysm was caused by the stress of work conditions and awarded 65% permanent partial disability. The employer has appealed. We affirm the trial court's judgment.

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

E. RILEY ANDERSON, SP.J., delivered the opinion of the Court, in which WILLIAM C. KOCH, JR., J. and DON R. ASH, SR.J., joined.

Andrew J. Hebar, Knoxville, Tennessee, for the appellant, Crete Carrier Corporation.

John D. Drake, Murfreesboro, Tennessee, for the appellee, Tamara Simerly.

OPINION

Factual and Procedural Background

Tamara Simerly (“Employee”) was employed as an over-the-road truck driver by Crete Carrier Corporation (“Employer”). Her job consisted primarily of delivering frozen/refrigerated goods from place to place. On June 10, 2010, she was scheduled to make a delivery from a location in Missouri to a warehouse in the Atlanta, Georgia area at five o’clock a.m. Because her truck had a governor that limited its speed to sixty-two miles per hour, Employee did not believe she would be able to arrive at the scheduled time and informed her dispatcher of that fact. She asked to drop her shipment off in Marietta, Georgia, so that a new delivery appointment could be arranged, but her request was declined. She arrived roughly one hour after the scheduled delivery time. Employees at the delivery warehouse, Americold, told her she would have to wait until a door became available to unload her truck. Unfortunately, this did not occur until roughly five o’clock in the afternoon, so Employee waited in and around her truck for about eleven hours. Due to a problem with a device called an auxiliary power unit (“APU”), the air conditioning in Employee’s truck did not function during this time. Employee testified that Americold did not provide a waiting area for drivers inside its facility. She went inside on three occasions to speak with Americold staff or to use the restroom. During the remainder of her wait she was in the cab of her truck. She wore “minimal” clothing and used water and wet rags to attempt to keep cool. She occasionally, unsuccessfully, tried to get the APU to provide air conditioning. A gauge on her dashboard stated that the temperature was one hundred forty degrees. Roy Nichols, a shop manager for Employer testified that the sensor for this gauge was located inside the front bumper of the truck. The parties stipulated that the low temperature in Atlanta on the date of Employee’s injury was seventy degrees, the high temperature was eighty-nine degrees and the mean temperature for the day was seventy-nine and one-half degrees.

Because Employer refused to allow a new delivery appointment, Employee became “a little upset” as she was waiting outside the Americold terminal. Hers was the only truck in the waiting area. Her surroundings were brick and asphalt, with no shade. At one point, she spoke with someone at Americold to request that a new delivery time be arranged. However, she was told that she would simply have to wait in her truck. She was alone in the cab of her truck as she waited and she sent a message to her dispatcher that waiting in the truck was “torture” and she needed to drop off her load so that she could get her APU repaired. She “was angry about it because it was getting hotter by the minute” in the truck.

When Employee was given clearance to unload her vehicle, she moved it to the designated door, then exited the truck for the purpose of releasing the fifth wheel and

lowering the “landing gear.” As she exited her truck, she felt a pain in the back of her head as if “somebody hit me in the back of the head with two two-by-fours all at once.” After securing the doors and lowering her trailer, she returned to the cab and called 911. Thereafter, she was taken to a local emergency room, then transported to Erlanger Hospital in Chattanooga. It was later determined that she had an aneurysm in her brain that had ruptured, causing a stroke. She made a claim for workers’ compensation benefits. Employer denied her claim, contending that the event was not causally related to her work. The parties stipulated that timely notice of injury was given, and that the administrative requirements of Tennessee Code Annotated section 50-6-203 (2008) were satisfied. Employee then filed this action in the circuit court for Rutherford County.

It is not disputed that Employee had an aneurysm, a weakness in the wall of a blood vessel in her brain. The aneurysm existed prior to June 10, 2010, and was not related to any work activity. On June 10, that aneurysm ruptured as Employee was exiting her truck, leading to bleeding in her brain and a stroke. Emergency surgery was performed to stop the bleeding. While Employee was hospitalized, she developed an infection known as MRSA (Methicillin-resistant Staphylococcus aureus), which extended her hospital stay.

Although there is no dispute that Employee had an aneurysm on June 10, 2010, the parties differ about the cause of the ruptured aneurysm. On behalf of Employee, Dr. C.M. Salekin, a neurologist, performed an independent medical examination. He opined that the rupture “was caused as a result of sudden high blood pressure induced by intense stress that she underwent while staying [ten] hours in the truck under extreme [heat] and without AC.” Dr. Salekin testified that Employee was “exposed to very unusual circumstances, very stressful physically, emotionally, mentally, because she was confined in the truck for 10 or 12 hours and the [air conditioner] was not working. So those stressful conditions can lead to increase in blood pressure and that can cause rupture of the aneurysm.” Dr. Salekin also found that Employee had sustained a permanent diminution of her left visual field, had weakness on the left side of her body, and post-traumatic stress disorder from the stroke. He opined that she suffered a 26% anatomical impairment. He testified that she was unable to drive a tractor-trailer and that she should avoid driving in heavy traffic.

Dr. Matthew Kodsi, also a neurologist, conducted a records review at the request of Employer, but did not physically examine the employee. Among the materials he reviewed were Employee’s discovery deposition and the evidentiary deposition of Dr. Salekin. Dr. Kodsi testified that the risk factor for a rupture of a pre-existing aneurysm is a sudden elevation of blood pressure, which can be caused by physical strain or other factors, and trauma to the head. He also stated that many aneurysms rupture with no identifiable event as a cause. He reported that he had never come across a ruptured aneurysm caused solely by heat exposure. Dr. Kodsi testified that the body’s natural

reaction to high temperatures, such as sweating and dilation of surface blood vessels, tended to lower blood pressure, and therefore reduce the likelihood for an aneurysm to rupture. He noted that Employee's physical activity at the moment the rupture probably occurred, while she was exiting her truck, was not strenuous enough to cause a spike in blood pressure that would lead to a rupture.

Dr. Kodsí agreed that emotional stress could cause an increase in blood pressure and cause an aneurysm to rupture. However, he noted that Employee did not state in her discovery deposition that she was "overly stressed" while waiting at the Atlanta terminal. In the absence of any specific physical or emotional stress, Dr. Kodsí opined that there was no clear link between any particular event of Employee's workday and the rupture of her aneurysm.

After her recovery, Employee worked for a short period of time for an audiology group in Chattanooga. Her job required that she drive to factories, where she administered hearing tests and returned the information gathered to the doctors who employed her. She left that job because the driving distances increased and she felt unsafe. The job also required her to have a commercial driver's license, which she was unable to renew due to the effects of her condition on her vision. She had previously applied, unsuccessfully, for a number of other jobs but made no applications after leaving the audiology job. She did not believe she was capable of performing any of the previous jobs she had held.

At the time the trial occurred, she was forty-five years old. She left school in the tenth grade and later obtained a GED. In addition to truck driving, she had worked as a waitress, sold advertising for a newspaper, and worked for a brake manufacturer.

The trial court found that there was sufficient evidence to find that the 11 hours of heat exposure in the truck in the parking lot with an inoperable air conditioner, the stress caused by the dispatcher's refusal to alter the delivery schedule both before she arrived late and after hours in the heat of the truck, and the stress of being required to stay with the truck by Americold contributed to the occurrence of the injury. It then found that Employee had sustained a 65% permanent partial disability as a result of the event. Employer has appealed, contending that the evidence preponderates against the trial court's finding of causation, and further that the type of stress alleged to have caused her injury was not sufficiently sudden or unusual to legally support the finding of causation.

Standard of Review

Courts reviewing an award of workers' compensation benefits must conduct an in-depth examination of the trial court's factual findings and conclusions. *Wilhelm v. Krogers*, 235 S.W.3d 122, 126 (Tenn. 2007). When conducting this examination, Tenn.

Code Ann. § 50-6-225(e)(2) (2008) requires the reviewing court to “[r]eview . . . the trial court’s findings of fact . . . 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.” The reviewing court must also give considerable deference to the trial court’s findings regarding the credibility of the live witnesses and to the trial court’s assessment of the weight that should be given to their testimony. *Tryon v. Saturn Corp.*, 254 S.W.3d 321, 327 (Tenn. 2008); *Whirlpool Corp. v. Nakhoneinh*, 69 S.W.3d 164, 167 (Tenn. 2002). However, the reviewing courts need not give similar deference to a trial court’s findings based upon documentary evidence such as depositions, *Orrick v. Bestway Trucking, Inc.*, 184 S.W.3d 211, 216 (Tenn. 2006); *Bohanan v. City of Knoxville*, 136 S.W.3d 621, 624 (Tenn. 2004), or to a trial court’s conclusions of law, *Seiber v. Reeves Logging*, 284 S.W.3d 294, 298 (Tenn. 2009).

Analysis

Causation

“Except in the most obvious, simple and routine cases,” a claimant in a workers’ compensation case must establish a causal relationship between the claimed injury and the employment activity by a preponderance of the expert testimony, as supplemented by the lay evidence. *Orman v. Williams Sonoma, Inc.*, 803 S.W.2d 672, 676 (Tenn. 1991). While causation must be proven by medical evidence and cannot be based upon speculative or conjectural proof, absolute certainty is not required. *Clark v. Nashville Mach. Elevator Co.*, 129 S.W.3d 42, 47 (Tenn. 2004); *see also Glisson v. Mohon Int’l, Inc./Campbell Ray*, 185 S.W.3d at 348, 354 (Tenn. 2006). “Benefits may properly be awarded upon medical testimony that shows the employment ‘could or might have been the cause’ of the employee’s injury when there is lay testimony from which causation reasonably can be inferred.” *Fritts v. Safety Nat’l Cas. Corp.*, 163 S.W.3d 673, 678 (Tenn. 2005) (quoting *Clark*, 129 S.W.3d at 47). Any reasonable doubt “concerning the cause of the injury should be resolved in favor of the employee.” *Whirlpool Corp. v. Nakhoneinh*, 69 S.W.3d at 168.

Furthermore, the trial court has the discretion to accept the opinion of one medical expert over that of another medical expert. *Cloyd v. Hartco Flooring Co.*, 274 S.W.3d 638, 644 (Tenn. 2008) (quoting *Orman*, 803 S.W.2d at 676). When making this determination, a trial court may consider, among other things, the qualifications of the experts, the circumstances of their examination, the information available to them, and the evaluation of the importance of that information by other experts. *Id.* Where, as here, the medical proof relevant to causation is presented by deposition, a reviewing court may draw its own conclusions about the weight and credibility that should be afforded by the evidence. *Glisson*, 185 S.W.3d at 353.

Employer first asserts that the evidence preponderates against the trial court's finding that Employee's ruptured aneurysm was caused by stresses at work. Specifically, Employer argues that Dr. Salekin's medical opinion "relies upon speculation and conjecture" and "relies upon facts that are speculative or unknowable." The foundation of this argument is that Dr. Salekin's opinion was based upon an assumption that Employee was engaged in physically unloading her truck at the time the incident occurred. This assumption is not borne out by Dr. Salekin's testimony which reads as follows:

Q. Is your opinion as to causation for [Employee] based upon the fact that she was unloading freight at the time she felt the pop [in the back of her head] and had the onset of the headache?

A. It happened while she was unloading, but it is not that she was unloading physically. She was mechanically controlling that. But at that time she felt a pop. And I believe there was a time when it was ruptured, but I would not – or I did not say that unloading the truck caused stress and that led to the rupture. I did not mean that. What I said, that she was exposed to very unusual circumstances, very stressful physically, emotionally, mentally, because she was confined to the truck for 10 or 12 hours, and the heat [sic] was not working. So those stressful conditions can lead to increase in blood pressure and that can cause rupture of the aneurysm.

Dr. Salekin repeatedly testified that he did not believe Employee's ruptured aneurysm was caused by physical exertion. Insofar as Employer's argument is premised upon that characterization of his testimony, we find that it is factually without merit.

As to the balance of the argument, that the evidence preponderates against the trial court's finding, the trial court chose to accept the opinion of Dr. Salekin over the opinion of Dr. Kodsi. When making this determination the trial court may consider the expert's qualifications, the circumstances of the examination and the information available to them.

Both doctors were neurologists and well qualified. Dr. Salekin however, personally examined the employee and spent over three hours with her. Dr. Kodsi did not interview the employee and only reviewed medical records and depositions. Because he personally examined the employee, Dr. Salekin was in a much better position to evaluate

the amount, the intensity, and the extent of the physical, emotional and mental stress the employee was exposed to during her eleven hour ordeal. As a result, Dr. Salekin had much more information available to him. Dr. Kodsí did agree that emotional stress could cause an aneurysm to rupture, however he did not think there was any specific physical or emotional stress.

We find, as the trial court did, that Dr. Salekin's opinion was based upon the combination of stressful circumstances – frustration, anxiety, discomfort from excessive heat, confinement, and the like – preceding the actual rupture. The evidence in the record that those conditions existed is uncontradicted. Dr. Salekin's opinion is, therefore, based upon established facts and the evidence does not preponderate against the trial court's finding that employee's stress at work caused the rupture of the aneurysm.

Compensability of Stress-Related Injuries

Employer's second argument points to well-established law that injuries caused by emotional stress are generally not compensable, unless the stress is of an unusual or abnormal nature. Our Supreme Court outlined the applicable standard in *Goodloe v. State*, 36 S.W.3d 62 (Tenn. 2001):

A mental injury is compensable under the workers' compensation scheme when it results from an identifiable stressful, work-related event producing a sudden mental stimulus such as fright, shock, or excessive unexpected anxiety. *Ivey v. Trans Global Gas & Oil*, 3 S.W.3d 441, 446 n. 10 (Tenn.1999). However, "worry, anxiety or emotional stress of a general nature" is not compensable, *see Allied Chem. Corp. v. Wells*, 578 S.W.2d 369, 372 (Tenn. 1979), because the workers' compensation system "does not embrace every stress or strain of daily living or every undesirable experience encountered in carrying out the duties of a contract of employment." *See Jose v. Equifax, Inc.*, 556 S.W.2d 82, 84 (Tenn. 1977). Further, a mental injury that results from the accumulation of normal job-related stress is not compensable, *see Gatlin v. City of Knoxville*, 822 S.W.2d 587, 591-92 (Tenn.1991), because "[e]motional stress, to some degree, accompanies the performance of any contract of employment." *See Allied Chem. Corp. v. Wells*, 578 S.W.2d 369, 373 (Tenn. 1979). Thus, "the stress produced may not be usual stress, but must be extraordinary and unusual in comparison to the stress ordinarily experienced by an

employee in the same type duty.” *Gatlin v. City of Knoxville*, 822 S.W.2d at 592.

36 S.W.3d at 65-66. Although *Goodloe* concerned a mental injury, the same standard applies to physical injuries caused by mental or emotional stress. *Allied Chem. Corp.*, 578 S.W.2d at 372; *Reeser v. Yellow Freight Sys., Inc.*, 938 S.W.2d 690, 691 (Tenn. 1997).

Although the stress precipitating a mental or physical injury must be identifiable and unusual in order for that injury to be compensable, it is not required that the event be acute, momentary, or extraordinary. In *Reeser*, the employee suffered a stroke as a result of the stress of driving from Nashville to Memphis for four hours through “horrendous,” “terrible,” and “extremely hazardous” road conditions caused by an ice storm. 938 S.W.2d at 690-92. He had also driven in similar conditions on the previous day. *Id.* The trial court awarded benefits, and our Supreme Court affirmed, finding that evidence to be sufficient to sustain the trial court’s finding of causation. 938 S.W.2d at 693.

In the present case, Employee was working with a truck in which an important component, the auxiliary air conditioner, was not functioning. She had a delivery deadline that she could not possibly meet because of the speed-governing device on her vehicle. She communicated these facts to her superiors but was offered no relief. When she was unable to make timely delivery, she was forced to wait in hot, cramped conditions for ten to twelve hours. She made several attempts, through her employer and through her customer, to arrange an alternate delivery time, have the malfunctioning unit repaired, or wait in a less physically demanding environment. All those attempts were unsuccessful. She was in an unusually stressful situation, according to Dr. Salekin, and that stress caused her blood pressure to rise and rupture the aneurysm. After examining the evidence, we are unable to conclude that the evidence preponderates against the trial court’s decision.

Conclusion

The judgment of the trial court is affirmed. Costs are taxed to Crete Carrier Corporation and its surety, for which execution may issue if necessary.

E. RILEY ANDERSON, SPECIAL JUDGE

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

TAMARA SIMERLY v. CRETE CARRIER CORPORATION

**Circuit Court for Rutherford County
No. 62538**

No. M2013-00236-SC-WCM-WC - Filed February 14, 2014

JUDGMENT ORDER

This case is before the Court upon the motion for review filed by Crete Carrier Corporation pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(A)(ii), 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 Crete Carrier Corporation and its surety, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM

WILLIAM C. KOCH, JR., J., NOT PARTICIPATING