

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE
April 20, 2015 Session

WILLIAM STEVEN STILL v. CITY OF KNOXVILLE

**Appeal from the Chancery Court for Knox County
No. 1849262 Daryl R. Fansler, Chancellor**

**No. E2014-01841-SC-R3-WC-MAILED-JULY 31, 2015
FILED-AUGUST 31, 2015**

The employee, a police officer, was diagnosed with coronary artery disease after a routine stress test in February 2011. He sought workers' compensation benefits, asserting he was entitled to the presumption of causation created by Tennessee Code Annotated section 7-51-201(a)(1). His employer denied the claim. At trial, both sides presented expert medical testimony from board-certified cardiologists. The trial court found that the employer did not rebut the statutory presumption and awarded benefits. The employer has appealed. Pursuant to Tennessee Supreme Court Rule 51, the 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. Upon review, we conclude that the employer rebutted the statutory presumption and the evidence preponderates against the trial court's finding of causation. Therefore, we reverse the judgment.

**Tenn. Code Ann. § 50-6-225(a) (2014) Appeal as of Right; Judgment of the
Chancery Court Reversed**

DON R. ASH, SR.J., delivered the opinion of the Court, in which SHARON G. LEE, C.J., and DEBORAH C. STEVENS, SP.J., joined.

Jimmy Brown Johnson, Knoxville, Tennessee, for the appellant, City of Knoxville.

J. Anthony Farmer, Knoxville, Tennessee, for the appellee, William Steven Still.

OPINION

Factual and Procedural Background

The parties attended a Benefit Review Conference on March 12, 2013, but were unable to resolve their differences. The employee then filed this action in the Chancery Court for Knox County on March 21, 2013. The case was tried on May 7, 2014.

William Steven Still (“Employee”) was fifty-three years old on the date of the trial. He is a high school graduate and attended Northwest Mississippi Junior College for one year. He began working as a police officer for the City of Knoxville (“Employer”) in 1995. Prior to working for Employer, he had been a police officer in Memphis for twelve years and a park ranger in Mississippi for two years. In Knoxville, he started as a patrol officer. In 2004, he transferred to the Criminal Investigation Division (“CID”), where he worked one year in the property crimes section and five years in the violent crimes section. In 2010, he was promoted to Sergeant, where he supervised a squad of officers in the patrol division.

Employee was diagnosed with hypertension and diabetes in 1998. He also smoked half a pack of cigarettes per day beginning in 2001. In February 2011, he underwent a stress test revealing blockages in his coronary arteries. A different test in April 2011 revealed additional coronary artery disease. In June 2011, two stents were placed in an attempt to manage the condition. Employee was able to return to work within a few days of the June 2011 procedure. A subsequent stress test revealed that the stents had failed, and Employee underwent coronary bypass surgery in February 2012. He missed approximately two months of work. Shortly after he returned to work, he transferred to a position at the training academy, which required him to work five eight-hour shifts per week during daytime hours. His previous position had required four ten-hour days per week, on rotating afternoon and night shifts. After returning to work for Employer, Employee also worked part-time for the Knoxville Community Development Corporation (“KCDC”) as a patrol officer in area housing projects.

Employee testified that he was able to perform his job duties. He did have some concerns about his ability to engage in strenuous events which could arise during his work for KCDC. He testified that after his bypass surgery he had less energy and stamina. He stated he had previously been able to work “all day” at tasks such as repairing fences on his small farm. After the placement of the stents and bypass surgery, he could perform those activities for only one or two hours at a time. His wife, Joy Still, corroborated this testimony. On cross-examination, Employee testified he was under no medical restrictions at work.

Dr. Stephen H. Dill, a cardiologist, examined Employee on November 12, 2012, at the request of Employee’s attorney. Dr. Dill testified by deposition for the Employee. Attached as an exhibit to the deposition, Dr. Dill’s written report opined that hypertension “is considered a major risk factor toward the existence as well as progression of [coronary artery] disease. Hypertension would be one of several factors the patient has for progression of coronary artery disease. His other risk factors include

diabetes mellitus, family history, smoking, and hyperlipidemia.” He assigned permanent impairment of 18% to 20% to the body as a whole due to Employee’s hypertension and coronary artery disease.

During cross-examination, Dr. Dill stated that Employee’s vocation was not a major risk factor for hypertension or coronary artery disease. He described Employee’s hypertension as “idiopathic” or “essential.” Dr. Dill explained:

In a minority of occurrences there are specific identifiable reasons for hypertension. . . . When we don’t identify anything as a specific reason for having hypertension, it goes into that high-percentage category of essential hypertension.

He also indicated that “job stress, certainly, can and does have an effect as far as the progression of, and the stability, and the treatment of [hypertension].” In Employee’s case, Dr. Dill considered vocational stress to be “a factor,” but not the main factor, in the progression of Employee’s disease. He identified diabetes, smoking and hyperlipidemia as “main factors” in the progression of Employee’s disease. He further testified that Employee had a 10% anatomical impairment for hypertension as of the year 2000.

Dr. Hal Roseman, also a cardiologist, examined Employee at the request of Employer’s attorney on October 2, 2013. Testifying by deposition for the Employer, Dr. Roseman opined that Employee’s hypertension could be explained by several risk factors, including his gender, age, weight, history of smoking, family history, insulin resistance and diabetes, and uncontrolled lipid levels. Dr. Roseman noted that the onset of Employee’s hypertension occurred before he began working in the criminal investigation division, the most stressful period during his time as a police officer. He believed that Employee’s coronary artery disease was not directly related to his job. Dr. Roseman observed that Employee’s disease was “subclinical” at the time it was diagnosed in February 2011, the diagnosis was not preceded by any specific work event, and Employee’s heart function was normal. Consistent with the testimony of Dr. Dill, he testified that occupation is not generally regarded as a risk factor for hypertension, noting that stress reduction and anti-anxiety medications were not used to treat the condition. Dr. Roseman stated that Employee’s identifiable risk factors were “scientifically established as being actual causative factors of hypertension.”

Dr. Roseman further concluded that Employee’s job did not exacerbate his hypertension. In support of this contention, he pointed to medical records which showed that Employee’s blood pressure prior to 2010 was generally higher than after 2010, and the same records did not show a worsening of blood pressure over time. Dr. Roseman assessed Employee’s anatomical impairment as 11-14% to the body as a whole for coronary artery disease and 11% for hypertension.

During cross-examination, Dr. Roseman agreed that Employee had “essential” hypertension. He was unwilling to agree that “no cause, specific cause, can be identified” for “essential” hypertension. He stated that the “overall [syndrome] and its complexity has not been worked out to – absolutely with medical certainty to be fully defined.” However, he added “there are certain factors that have been correlated and associated and presumed causative of the disorder.” He agreed that medical science had yet to identify other risk factors. As an illustration, he stated that “there are some people that have obesity, but do not seem to get the condition of hypertension. And the reason for it is because of some of these unknown factors that are interacting with obesity.” He conceded that he had not eliminated environmental stressors as a potential cause of Employee’s hypertension. Dr. Roseman also testified that specific stressful events can cause acute episodes of hypertension. However, he pointed out that no national medical guidelines in either North America or Europe had found occupation to be an identifiable risk factor for hypertension or coronary artery disease. He concluded:

[Employee] has a plethora of factors that certainly based upon scientific data have been not only associative, but biologically tied and therefore causal of hypertension. And as such, from my standpoint, given the fact that we do not have occupation as an identifiable factor based upon the medical literature despite the unknowns known of hypertension, we have other factors that seem more likely candidates. Certainly, within scientific purity, we cannot claim with absolute certainty that work activities are not related. It’s just that at this particular time in our scientific history, we do not have indication that that is indeed the case.

The trial court took the case under advisement. It issued its findings and conclusions in a written Memorandum Opinion. The court found that Dr. Roseman’s deposition testimony was not credible, stating,

[T]his Court has never seen a medical doctor go to such great efforts to avoid a direct answer to a simple question. [Dr. Roseman] has taken the position that the cause of hypertension is unknown and uncertain but yet in this case, when hired by the Defendant, he can conclude that Plaintiff’s work had no bearing on the hypertension.

The trial court concluded that Employer had failed to overcome the presumption established by Tennessee Code Annotated section 7-51-201(a)(1). Accordingly, it awarded permanent partial disability benefits to Employee. Judgment was entered in accordance with those findings. Employer has appealed.

Analysis

The standard of review of issues of fact in a workers’ compensation case is de

novo upon the record of the trial court accompanied by a presumption of correctness of the findings, unless the preponderance of evidence is otherwise. Tenn. Code Ann. § 50-6-225(a)(2) (2014). When credibility and weight to be given to testimony are involved, considerable deference is given to the trial court when the trial judge had the opportunity to observe the witness' demeanor and to hear in-court testimony. *Madden v. Holland Grp. of Tenn. Inc.*, 277 S.W.3d 896, 898 (Tenn. 2009). When the issues involve expert medical testimony contained in the record by deposition, determination of the weight and credibility of the evidence necessarily must be drawn from the contents of the depositions, and the reviewing court may draw its own conclusions with regard to those issues. *Foreman v. Automatic Sys., Inc.*, 272 S.W.3d 560, 571 (Tenn. 2008). A trial court's conclusions of law are reviewed de novo upon the record with no presumption of correctness. *Seiber v. Reeves Logging*, 284 S.W.3d 294, 298 (Tenn. 2009).

Tennessee Code Annotated section 7-51-201(a)(1) provides:

Whenever . . . any municipal corporation . . . 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 that results 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 be shown by competent medical evidence, to have occurred or to be due to accidental injury suffered in the course of employment[.]

Tenn. Code Ann. § 7-51-201(a)(1).

The parties do not dispute that Employee satisfies the three criteria for application of the statutory presumption. He is a police officer who suffers from hypertension and heart disease which required medical treatment, and earlier medical examinations had not revealed those conditions. *See Bohanon v. City of Knoxville*, 136 S.W.3d 621, 624-25 (Tenn. 2004). To rebut the presumption, it is necessary for Employer to present "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." *Coffey v. City of Knoxville*, 866 S.W.2d 516, 519 (Tenn. Workers' Comp. Panel 1993) (citing *Perry v. City of Knoxville*, 826 S.W.2d 114, 115 (Tenn. 1991)). If the employer presents such evidence, it falls to the employee to "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." *Krick v. City of Lawrenceburg*, 945 S.W.2d 709, 713 (Tenn. 1997).

Employer argues that the testimony of Dr. Roseman rebutted the presumption and Employee thereafter failed to sustain his burden of proof. The trial court deemed Dr. Roseman's testimony not credible because the trial court found inconsistencies and unresponsiveness in his testimony and, therefore, concluded the presumption was not rebutted. Because the medical evidence in this case was presented by deposition, we are able to examine it independently and reach our own conclusions regarding weight and credibility. *Foreman*, 272 S.W.3d at 571.

Dr. Roseman testified that it was his opinion that Employee's coronary artery disease was not related directly to his profession as a police officer. During direct examination, he testified quite succinctly that Employee had numerous known risk factors for hypertension and heart disease. He explained that Employee's coronary condition was caused by his multiple risk factors, including poorly controlled hypertension, mild obesity, suboptimally controlled and treated hyperlipidemia or high cholesterol, his male gender, his family genetic pre-disposition of coronary artery disease, tobacco smoking, and diabetes. He further noted that occupation is not a recognized risk factor for heart disease. He specifically opined, "It is my opinion based upon a reasonable degree of medical certainty that [Employee's] coronary artery disease was not related directly to his profession as a police officer." In addition, he testified that Employee's job did not exacerbate his hypertension or cause it to progress.

Dr. Dill, on the other hand, testified that hypertension is a major risk factor in the development of coronary artery disease. On cross examination, Dr. Dill testified that he did not list Employee's job as a major risk factor in the existence and progression of the coronary artery disease. Pursuant to *Perry, Coffey, and Bohanon*, an employer is required to present affirmative evidence of the absence of a causal relationship between an employee's work and hypertension or coronary disease. In our view, Dr. Roseman's testimony was credible and presented the requisite affirmative evidence.

Because we conclude that Employer has rebutted the statutory presumption determining his injury is work-related, we must now examine the complete medical evidence regarding causation to determine where the preponderance lies. The Tennessee Supreme Court has previously explained:

[O]nce the presumption of causation . . . 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.

Krick, 945 S.W.2d at 713. Further, Tennessee Code Annotated section 50-6-301(a) (2011) defines the following factors to determine whether a disease arises from employment:

A disease shall be deemed to arise out of the employment only if:

- (1) It 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 workers 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 conditions under which the work is performed and the occupational disease. Diseases of the heart, lung, and hypertension arising out of and in the course of any type of employment shall be deemed to be occupational diseases.

Tenn. Code Ann. § 50-6-301(a).

The testimony of the expert witnesses vary in this matter. Dr. Dill did not consider Employee's work to be a "major" factor in the course of his disease. He also testified that, "Once you have hypertension, though, you know, job stress, certainly, can and does have an effect as far as the progression of, and the stability, and the treatment of it." He added, "[V]ocational stress, very definitely, has an exacerbatory effect on hypertension," and opined that it was a factor in the progression of Employee's disease. Dr. Roseman, as previously discussed, testified that generalized vocational stress had not been identified as a risk factor for hypertension or heart disease. He did concede to the existence of risk factors yet to be identified and admitted that he had not eliminated environmental stressors as contributing factors in Employee's case.

As in *Bohanon*, Employee cannot prevail if the statutory presumption is rebutted. Here, the insignificant contributory connection, to which both Drs. Dill and Roseman testified, between the Employee's occupation and hypertension does not reach a direct causal connection by a preponderance of the evidence as defined in Tennessee Code Annotated section 50-6-301. A review of the medical testimony presented in this case leads us to the conclusion that the trial court erred in its determination that the Employee's vocation contributed to his heart disease. We conclude that the evidence preponderates against the trial court's finding of causation.

Conclusion

The judgment of the trial court is reversed. The case is remanded to the trial court for any further necessary proceedings. Costs are taxed to William Steven Still and his surety, for which execution may issue if necessary.

DON R. ASH, SENIOR JUDGE

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AT KNOXVILLE

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**Chancery Court for Knox County
No. 1849262**

No. E2014-01841-SC-R3-WC-FILED-AUGUST 31, 2015

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 on appeal are taxed to William Steven Still and his surety, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM