

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

February 27, 2012 Session

U.S. FOODSERVICE, INC. v. JOHN S. MEREDITH, JR.

**Appeal from the Chancery Court for Blount County
No. 2010-054 Telford E. Forgety, Jr., Chancellor**

No. E2011-02060-WC-R3-WC-MAILED-APRIL 30, 2012/FILED-AUGUST 16, 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. In this workers' compensation case, the employee experienced chest pain while at home in bed. He testified that he contacted his employer to be excused from work but was told he would lose his employment if he did not come to work. He reported for work and completed a full day of job responsibilities. Two days later, it was determined that he had suffered an acute myocardial infarction. A cardiologist testified that fifty percent of the damage caused by the heart attack was secondary to the delay in medical treatment. The employee sought workers' compensation benefits, contending that the instruction to report to work substantially worsened his injury. The trial court denied benefits, and the employee has appealed. We affirm the judgment.

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

THOMAS R. FRIERSON, II, SP. J., delivered the opinion of the Court, in which SHARON G. LEE, J., and LARRY H. PUCKETT, SP. J., joined.

Thomas H. O'Neal, Jeffrey D. Boehm, Chattanooga, Tennessee, for the appellant, John S. Meredith, Jr.

Laurel C. Ball and Joshua A. Wolfe, Knoxville, Tennessee, for the appellee, U.S. Foodservice, Inc.

MEMORANDUM OPINION

Factual and Procedural Background

Mr. John S. Meredith, Jr., an employee of U. S. Foodservice, Inc. (“Employer”), filed a claim against Employer for workers’ compensation benefits after suffering a heart attack in July of 2006. After a benefit review conference conducted on April 12, 2010 resulted in an impasse, Employer filed a petition for determination of rights and responsibilities in the Blount County Chancery Court disputing the compensability of Mr. Meredith’s alleged injury. In his answer and counter-petition, Mr. Meredith alleged that his heart attack “was seriously aggravated and complicated due to physically vigorous work activities that were required by [Employer],” causing him “to suffer additional permanent damage to his heart.” In response, Employer asserted that any vocational disability suffered by Mr. Meredith is the result of a pre-existing medical condition not causally related to his job with Employer. At trial, Mr. Meredith testified and also presented the testimony of his wife, Linda Meredith, as well as the depositions of his cardiologist, Dr. Stephen Monroe, and co-worker, Elisha Fowler. Employer presented the testimony of its driver training supervisor, Brian Foschino.

Mr. Meredith testified that his job duties for Employer consisted primarily of delivering food orders to restaurants, schools, and churches. His work day typically began around four o’clock in the morning and ended at approximately two o’clock in the afternoon.

Mr. Meredith testified that on the morning of July 27, 2006, he awakened at approximately one o’clock, experiencing significant chest pains. At approximately 1:30 a.m., he called Employer’s business office and spoke to Barbara Skinner, the night dispatcher, and indicated to her that he was in pain and was planning to go to the hospital. According to Mr. Meredith, Ms. Skinner told him that she had no one else to fill the position and that he was “going to have to work . . . if you don’t work, you don’t have a job.” As a result of this conversation, Mr. Meredith decided to postpone seeking medical treatment and went to work.

At the terminal where his truck was located, Mr. Meredith requested assistance from co-workers in hooking the trailer to his truck. He then began his regular route and completed his deliveries during the work shift. His symptoms of chest pain and nausea continued through the day. Mr. Meredith testified that he attempted to contact his supervisors, Brian Foschino and Benny Houser by telephone, leaving voicemail messages for each, but that he received no response. During the work day, Mr. Meredith also stopped for lunch at a sandwich shop in Chattanooga where his wife worked, but he was sick and unable to eat. He completed his route at approximately four-thirty in the afternoon.

Mr. Meredith's wife made an appointment for him to be seen by his primary care physician, Dr. Willis Greer, on the following day. After completion of his delivery responsibilities, Mr. Meredith called Employer's office, advising of the appointment and that he would not be coming to work the next day. He then returned home and spent the evening in a restless condition, sleeping intermittently.

Mr. Meredith testified that on July 28, 2006, he was examined by Dr. Greer, who diagnosed acid reflux and a viral infection. Mr. Meredith returned home and rested for the remainder of the day. During the morning of July 29, 2006, he continued to experience chest pain, and his wife transported him to the emergency room of Hutcheson Medical Center in Fort Oglethorpe, Georgia, where an electrocardiogram ("EKG") was performed. Mr. Meredith was immediately transferred to Erlanger Medical Center ("Erlanger") in Chattanooga.

While at Erlanger, Mr. Meredith was treated by Dr. Steven Monroe, a cardiologist with the Chattanooga Heart Institute. Dr. Monroe testified that the results of Mr. Meredith's EKG indicated that Mr. Meredith had suffered an ST elevation¹ acute myocardial infarction. Dr. Monroe characterized the myocardial infarction as "late presentation" and noted the development of "Q waves." He stated that Q wave development is usually associated with irreversible damage and explained that in the event of a myocardial infarction such as that experienced by Mr. Meredith, "treatment really needs to be instituted within six to twelve hours to preserve myocardial function. And without early treatment, you often have irreversible damage to the affected segment." Several medical procedures were performed at Erlanger, including the placement of a stent in the left anterior descending artery, and later a defibrillator was implanted. Dr. Monroe opined that due to the delay in treatment, Mr. Meredith had "already developed permanent injury to the anterior wall which has resulted in permanent heart failure" and that, as a result of the delay in treatment, Mr. Meredith experienced 50 percent overall impairment secondary to the heart attack.

The trial court issued its findings of fact and conclusions from the bench. The court determined that Mr. Meredith had failed to carry his burden of proof that he had sustained a compensable work injury. The trial court further found Mr. Meredith's claim for benefits to be barred by his failure to provide to Employer timely notice of his claim. Judgment dismissing Mr. Meredith's claim for benefits was entered in accordance with the court's findings. Mr. Meredith has appealed and contends that the trial's court's findings concerning compensability and notice were erroneous.

¹ "ST" refers to a specific segment of an EKG reading.

Standard of Review

We are statutorily required to review the trial court's factual findings "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." Tenn. Code Ann. § 50-6-225(e)(2). Following this standard, we are further required "to examine, in depth, a trial court's factual findings and conclusions." Crew v. First Source Furniture Grp., 259 S.W.3d 656, 664 (Tenn. 2008) (quoting Galloway v. Memphis Drum Serv., 822 S.W.2d 584, 586 (Tenn. 1991)). We accord considerable deference to the trial court's findings of fact based upon its assessment of the testimony of witnesses it heard at trial, although not so with respect to depositions and other documentary evidence. Padilla v. Twin City Fire Ins. Co., 324 S.W.3d 507, 511 (Tenn. 2010); Glisson v. Mohon Int'l, Inc./Campbell Ray, 185 S.W.3d 348, 353 (Tenn. 2006). We review conclusions of law de novo with no presumption of correctness. Wilhelm v. Krogers, 235 S.W.3d 122, 126 (Tenn. 2007). Although workers' compensation law must be liberally construed in favor of an injured employee, the employee must prove all elements of his or her case by a preponderance of the evidence. Crew, 259 S.W.3d at 664; Elmore v. Travelers Ins. Co., 824 S.W.2d 541, 543 (Tenn. 1992).

Claim Compensability

The applicable law with regard to the compensability of a claim filed pursuant to the Tennessee workers' compensation law was reviewed by the special workers' compensation appeals panel in Veler v. Wackenhut Services, No. E2010-00965-WC-R3-WC, 2011 WL 336465 (Tenn. Workers' Comp. Panel Jan. 28, 2011) as follows:

The workers' compensation statute in Tennessee permits recovery for injury "by accident arising out of and in the course of employment." Tenn. Code Ann. § 50-6-103(a) (2005). It is well-established that an injury must both "arise out of" as well as be "in the course" of employment in order to be compensable under the workers' compensation statute. Thornton v. RCA Serv. Co., 188 Tenn. 644, 221 S.W.2d 954, 955 (Tenn. 1949). The terms are not synonymous. Blankenship v. Am. Ordnance Sys., LLC, 164 S.W.3d 350, 354 (Tenn. 2005). "[T]he phrase 'in the course of' refers to time, place and circumstances, and 'arising out of' refers to cause or origin." Brimhall v. Home Ins. Co., 694 S.W.2d 931, 932 (Tenn. 1985). "[A]n injury by accident to an employee is 'in the course of' employment if it occurred while he was performing a duty he was employed to

do; and it is an injury ‘arising out of’ employment if caused by a hazard incident to such employment.” Travelers Ins. Co. v. Googe, 217 Tenn. 272, 397 S.W.2d 368, 371 (Tenn. 1965) (citing Shubert v. Steelman, 214 Tenn. 102, 377 S.W.2d 940, 942 (Tenn. 1964)). “An accidental injury arises out of one’s employment when there is apparent to the rational mind, upon a consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury.” Fink v. Caudle, 856 S.W.2d 952, 958 (Tenn. Workers’ Comp. Panel 1993); see also Cunningham v. Shelton Sec. Serv., Inc., 46 S.W.3d 131, 135-36 (Tenn. 2001). “[G]enerally, an injury arises out of and in the course of employment if it has a rational causal connection to the work and occurs while the employee is engaged in the duties of his employment” Hall v. Auburntown Indus., Inc., 684 S.W.2d 614, 617 (Tenn. 1985); see also Wilhelm [v. Krogers], 235 S.W.3d 122, [] 127; Fritts v. Safety Nat’l Cas. Corp., 163 S.W.3d 673, 678 (Tenn. 2005) (stating that when there is a causal connection between the conditions under which the work is required to be performed and the resulting injury, the injury arises out of the employment); Orman [v. Williams Sonoma, Inc.], 803 S.W.2d 672, [] 676.

“‘Except in the most obvious, simple and routine cases,’ a claimant must establish by expert medical evidence the causal relationship between the claimed injury and the employment activity.” Cloyd v. Hartco Flooring Co., 274 S.W.3d 638, 643 (Tenn. 2008) (quoting Orman, 803 S.W.2d at 676). The relationship is to be established by the preponderance of the expert medical testimony, as supplemented by the lay evidence. Id. “‘Although causation in a workers’ compensation case cannot be based upon speculative or conjectural proof, absolute certainty is not required because medical proof can rarely be certain’” Id. (quoting Clark v. Nashville Mach. Elevator Co., 129 S.W. 3d 42, 47 (Tenn. 2004)).

In the case at bar, the primary dispute between the parties is whether Mr. Meredith’s additional permanent injury stemming from a delay in treating his acute myocardial infarction arose out of his employment. With reference generally to a question of causation regarding

an employee's work-related heart attack, the Tennessee Supreme Court in Clark v. Nashville Machine Elevator Co., 129 S.W.3d 42 (Tenn. 2004) explained as follows:

In the present case, there is no dispute that the employee's heart attack occurred in the course of his employment. Rather, the dispute focuses on whether the employee's heart attack arose out of the employment. In resolving this question, we observe that, when analyzed causally, Tennessee's heart attack cases can be categorized into two groups: (1) those that are precipitated by physical exertion or strain, and (2) those resulting from mental stress, tension, or some type of emotional upheaval. Bacon v. Sevier County, 808 S.W.2d 46, 49 (Tenn. 1991). If the heart attack results from physical exertion or strain, it is unnecessary that there be extraordinary exertion or unusual physical strain. Id. Thus, it makes no difference that the heart attack was caused by ordinary physical exertion or the usual physical strain of the employee's work. Id. Nor does it matter that the employee suffered from preexisting heart disease, as an employer takes an employee as he finds him, that is, subject to preexisting physical defects and afflictions. Id.; Coleman v. Coker, 204 Tenn. 310, 321 S.W.2d 540, 541 (Tenn. 1959).

However, the analysis is different when the heart attack is caused by a mental or emotional stimulus rather than physical exertion or strain. In such cases, "it is obvious that in order to recover when 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." Bacon, 808 S.W.2d at 52. Thus, if a worker's heart attack is caused by a mental or emotional stimulus rather than physical exertion or strain, there must be a "climatic event or series of incidents of an unusual or abnormal nature" if a recovery is to be permitted. Id. Although "excessive and unexpected mental anxiety, stress, tension or worry attributable to the employment can cause injuries sufficient to justify an award of benefits," Reeser v. Yellow Freight Sys., Inc., 938 S.W.2d 690, [] 692, the ordinary mental stress of one's occupation does not because "emotional stress, to some degree, accompanies the performance of any contract of employment."

Cunningham v. Shelton Sec. Serv., Inc., 46 S.W.3d 131, 136-37
(Tenn. 2001).

Mr. Meredith presented expert medical evidence through the deposition testimony of Dr. Monroe regarding the issue of causation as follows:

Q Okay. And Dr. Monroe, you would agree, and as you stated in your letter, that there is absolutely no evidence that his employment can be directly related to causation of the heart attack itself?

A The employment as the cause of the heart attack?

Q Right.

A I have no way of determining that.

Q Okay[.] So you would agree that the employment itself did not bring about the heart attack on the Thursday when he began having symptoms?

A As the employment as the cause of the acute coronary syndrome, I can't make that determination, no.

Mr. Meredith specifically asserts that the delay in receiving appropriate and necessary medical treatment for his physical condition resulted in permanent heart damage for which Employer is responsible under the Tennessee Workers' Compensation Law. With reference to such delay, Dr. Monroe testified further:

Q Okay. Can you give us an opinion as to what percentage of the damage to his heart that you would attribute to the delay in treatment?

A As late as he presented and with his origin, original symptom complex and despite - - artery and the lack of recovery of anterior wall motion, at least 50 percent.

...

A You know, I believe that his delay resulted in permanent heart failure, LV systolic dysfunction and his symptom complex is based upon that chronic LV systolic dysfunction. And so - - I mean, I believe that at least 50 percent of his . . .

Q Okay.

...

Q Well, if you don't mind, the last statement you made, at least 50 percent, there was something - - you sort of trailed off.

A Well, I felt like I - - well, I was repeating - - it was a repetitive question, I thought. So, I felt that, you know, 50 percent - - at least, 50 percent is secondary to delay and presentation with an ST elevation myocardial infarction.

Dr. Monroe, however, was not able to determine when the additional heart damage occurred. He further testified as follows:

A And so, hypothetically, there could have been a lot of things that could have happened. But that's all hypothetical.

Q Right. The proximity in time from that additional delay from Friday morning, late Thursday evening until Saturday morning, if he had presented to you on Friday morning instead, would you have been in a better position to give him a better prognosis or less permanent damage to his - -

A It's really dependent upon when the inciting ST elevation MI started. If it started with a symptom onset, we still probably would not have had a significant improvement in systolic function because it'd already been a 24-hour time period delay.

Q But you're not able to state with any degree of medical certainty when that actually began because you didn't see him until Saturday morning?

A Correct. But his symptoms started Thursday morning.

Recognizing the imprecision of medical proof of causation in such cases, the Tennessee Supreme Court in King v. Jones Truck Lines, 814 S.W.2d 23 (Tenn. 1991) explained that "medical testimony that the normal physical exertion of employment could have or might have caused the acceleration or aggravation of a preexisting heart condition is sufficient to make out a prima facie case that the injury or death arose out of the employment." Id. at 29. Although the evidence supports a finding that Mr. Meredith's physical symptoms preceded his arrival at work on July 27, 2006, no medical testimony was

presented that Mr. Meredith's physical exertion or strain or any mental stress, tension, or emotional upheaval during the hours of his employment could have or might have caused an acceleration or aggravation of a preexisting heart condition. Accordingly, Mr. Meredith failed to establish that his acute myocardial infarction was causally related to his employment under generally recognized circumstances supporting a conclusion that the injury arose out of the employment.

The essence of Mr. Meredith's claim for an award of worker's compensation benefits is that his delay in seeking immediate medical attention and treatment for his physical condition was work-related due to his concern that a failure to report to work would result in his loss of employment. Mr. Meredith specifically argues that Employer's verbal instruction through Ms. Skinner that he would lose his job if he did not report to work caused additional injury which is compensable.

Mr. Meredith relies upon the case of Vanderbilt University v. Russell, 556 S.W.2d 230 (Tenn. 1977). In Russell, the plaintiff's wife had been employed as a licensed practical nurse by Vanderbilt University Hospital. Following her fall at work, Ms. Russell was taken to the hospital emergency room but refused to undergo treatment. Insisting that she was better and that her symptoms had abated, Ms. Russell remained on duty for the remainder of her shift. Two days following, she sustained another attack and eventually died of a stroke three days later.

In Russell, the Court concluded that the employee had not suffered a compensable workers' compensation injury. In reaching this conclusion, the Supreme Court answered in the affirmative the following question presented:

When an employee becomes helpless in the course of employment due to illness or other cause not related to his employment, is in dire need of medical attention or other assistance in order to prevent further injury and the employer has the ability to make such medical attention or other assistance available but does not do so, is such disability as results from this failure of the employer to be considered as having arisen out of and in the course of employment?

Id. at 231.

We conclude that as regarding the instant action, Russell is factually distinguishable, inapposite, and not controlling.

With reference to Mr. Meredith's attempt to establish a rational, causal connection between his delay in seeking immediate medical treatment for his physical condition and his employment, the evidence does not support a finding that Ms. Skinner, the night dispatcher, was Mr. Meredith's supervisor with authority to terminate his employment. Instead, Mr. Meredith's supervisors included Mr. Brian Foschino, Mr. Benny Houser, and Mr. Matt Bray. Despite Mr. Meredith's testimony that he attempted to contact Mr. Foschino and Mr. Houser by phone on July 27, 2006, through leaving a voice message, Mr. Foschino denied having spoken with Mr. Meredith on that day or having received any voicemail.

Based upon the foregoing analysis, we conclude that the evidence does not preponderate against the trial court's decision that Mr. Meredith failed to prove by a preponderance of the evidence that the delay-oriented, additional permanent injuries associated with his acute myocardial infarction arose out of his employment. Mr. Meredith simply failed to establish a causal connection between the conditions under which his work was to be performed and the resulting injury and failed to prove that his delay in receiving timely and necessary medical treatment with regard to his physical condition was work-related. We accordingly conclude that Mr. Meredith did not sustain a compensable injury under the Tennessee Workers' Compensation law.

Statutory Notice Requirements

By reason of the conclusions reached regarding causation and compensability, our adjudication of the issue concerning notice of injury is pretermitted.

Conclusion

The judgment of the trial is affirmed. Costs are taxed to the appellant, John S. Meredith, Jr., and his surety, for which execution may issue if necessary.

THOMAS R. FRIERSON, II
SPECIAL JUDGE

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE

U.S. FOODSERVICE, INC. v. JOHN S. MEREDITH, JR.

**Chancery Court for Blount County
No. 2010-054**

No. E2011-02060-SC-WCM-WC-FILED-AUGUST 16, 2012

ORDER

This case is before the court upon the motion for review filed on behalf of John S. Meredith, Jr. 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 John S. Meredith, Jr., for which execution may issue, if necessary.

PER CURIAM

Sharon G. Lee, J., not participating