IN THE SUPREME OF TENNESSEE

AT NASHVILLE

FILED

February 15, 2000

Cecil Crowson, Jr.
Appellate Court Clerk

BENNY WAYNE RUMSEY	}	*HUMPHREYS CHANCERY*
	}	*No. Below 8470*
Plaintiff/Appellee	}	
	}	*Hon. Allen W. Wallace*
vs.	}	
	}	
	}	*No. M1999-00026-WC-R3-CV*
COUNTY OF HUMPHREYS AND HUMPHREYS COUNTY SHERIFF'S DEPARTMENT	}	
	}	
Defendant/Appellants	}	*AFFIRMED*

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, for which execution may issue if necessary.

IT IS SO ORDERED on February 15, 2000.

PER CURIAM

IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION

APPEALS PANEL

AT NASHVILLE

(November 12, 1999 Session)

FILED

February 15, 2000

Cecil Crowson, Jr.
Appellate Court Clerk

BENNY WAYNE RUMSEY, Plaintiff/Appellee, v. COUNTY OF HUMPHREYS AND HUMPHREYS COUNTY SHERIFF'S DEPARTMENT, Defendant/Appellants.	)	M1999-00026-WC-R3-CV HUMPHREYS CHANCERY NO. 8470 ALLEN W. WALLACE, CHANCELLOR

FOR APPELLANT:

Russell E. Reviere
Bradford D. Box
Jackson, Tennessee

FOR APPELLEE:

Charles L. Hicks
Camden, Tennessee

MEMORANDUM OPINION
MAILED:

Members of Panel:
Frank F. Drowota, III, Associate Justice
Samuel L. Lewis, Special Judge
Tom E. Gray, Special Judge

AFFIRMED

DROWOTA, J.

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) (1999) for hearing and reporting of findings of fact and conclusions of law. Appellate review of factual issues in workers' compensation cases is *de novo* with a presumption that the trial court's findings are correct, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (1999); Hill v. Eagle Bend Mfg., Inc., 942 S.W.2d 483, 487 (Tenn. 1997). When a trial court has seen and heard witnesses and issues of credibility and weight of testimony are involved, considerable deference is afforded the trial court's findings of fact. See Humphrey v. David Witherspoon, Inc., 734 S.W.2d 315, 315-16 (Tenn. 1987).

In this workers' compensation case, the employers, Humphreys County and the Humphreys County Sheriff's Department, appeal from a judgment of the Circuit Court of Humphreys County finding that the employee, Benny Wayne Rumsey, sustained a sixty-five percent permanent psychological vocational injury to the body as a whole. The employers take issue with the award and with the trial court's consideration of expert medical testimony on the ground that it was based on inaccurate factual assumptions. This panel finds that the evidence does not preponderate against the trial court's findings and affirms its decision.

I.

Benny Wayne Rumsey, the appellee, forty-nine years old, completed the eleventh grade before obtaining a high school equivalency certificate (GED) at the age of twenty-six. In the mid-seventies the appellee began a heating and air business with his brother. Since his brother passed away in the mid-eighties, the appellee has operated the business as a sole proprietor, except for a brief period when he entered into a partnership with his father-in-law. The appellee has received EPA-required training and certification dealing with the sale and use of Freon.

In 1991 the appellee began working for the Humphreys County Sheriff's Department as a dispatcher and a jailer. In 1992 he was promoted to the position of deputy. Although the appellee worked forty hours per week at the Sheriff's Department, he continued to operate his heating and air business on a full-time basis.

On February 28, 1994, while on duty at the Sheriff's Department, the appellee responded to a call involving a domestic disturbance. Accompanied by the Sheriff, Ronnie Toungette, the appellee entered a residence and encountered a mentally disturbed man acting in an unruly manner, including masturbating in front of his female relatives. The Sheriff and appellee attempted to subdue the man, who was fighting and kicking, and were eventually able to clothe and handcuff him. They then forcibly carried the man, who continued to physically resist, into the appellee's patrol car so that the appellee could transport him to the local hospital. During the ride the individual continued to scream so loud that the appellee could not use his radio and to kick at the appellee's seat and at the plexiglass partition in the car.

At the hospital the appellee waited thirty to forty minutes while the patient was evaluated. He was then instructed to transport the patient to the mental unit at the Springfield Hospital, where a mental health crisis team would meet him. Again, the patient kicked and screamed as the appellee placed him in the patrol car. Accompanied by the patient's mother, who rode in the front seat, the appellee drove sixty-five miles to the Springfield Hospital while the patient kicked and yelled during the entire ride, despite his mother's attempts to calm him. Upon arrival at the hospital, the appellee pulled the fighting patient from the car. During this process the patient knocked the appellee over, causing him to fall onto the curb.

Inside the facility, the appellee was asked to turn in his gun and wait in a room with forty to forty-five people who appeared to be mentally disturbed while the patient and his mother were taken into another room to be interviewed by a hospital employee. The appellee decided to enter the smoking area, where there were seventy to eighty mentally disturbed patients. As he attempted to smoke a cigarette, some of the patients pulled at his belt, gun holster and mace and "jerked the cigarettes" out of his pocket. The appellee left that room to enter another smoking area, but the patients followed him. One patient continued to "get in his face," waving his hands around the appellee's head.

After approximately ninety minutes, the appellee was tired of waiting and had "real bad feelings being in there." He called the Sheriff's dispatcher to get further instructions, and was told to wait while the mental health crisis team was contacted. After more than an hour, the appellee was instructed to transport the patient to the Clarksville Hospital. Again, the patient kicked and yelled while the

appellee wrestled to place him in the patrol car.

The receptionist at the Clarksville facility, even after making two phone calls, had no knowledge about the patient's arrival and was unable to instruct the appellee. The appellee, who at this point had been transporting the patient for over seven hours, had become quite upset. After fifteen minutes at the Clarksville hospital, the appellee began experiencing severe chest pain and believed he was having a heart attack. A nurse helped him to a bed and gave him nitroglycerin tablets. Hospital personnel gathered information on the appellee's medical history and placed him in intensive care. Although he did not suffer a heart attack, he remained hospitalized until March 3, 1994.

The appellee testified at trial that since the February 28 incident he has been constantly nervous and agitated. He has had nightmares almost every night about being "locked up" in the Springfield Hospital with mental patients. He wakes up fighting and frequently defecates in his bed. He suffers from chronic diarrhea and is constantly fatigued and depressed. The appellee testified that he has not had normal sexual relations with his wife since the incident and that he periodically has suicidal thoughts. At trial the appellee's wife also testified as to these symptoms.

The appellee was referred by his family physician to Dr. William M. Petrie, a psychiatrist, who began treating the appellee on March 24, 1994. Until that date the appellee had never received psychiatric care. Based upon the information provided to him by the appellee, Dr. Petrie diagnosed the appellee

as suffering from post-traumatic stress disorder and prescribed medications, including Valium, sleeping pills and Xanax for anti-depression. He opined that the disorder was a result of the stress felt by the appellee during the incident on February 28. Despite this diagnosis and the need for continuing treatment, Dr. Petrie released the appellee to return to work on April 11, 1994.

The appellee resumed his duties as a full-time deputy at the Sheriff's Department on April 11. He also began doing investigative work for the department, a job he enjoyed and at which he excelled. At trial Sheriff Toungette testified that although the February 28 incident made him aware that the appellee might react poorly to job pressures, he felt that the appellee performed well upon returning to work.

The appellee, however, testified that he was having trouble functioning as a Sheriff's deputy after the February 28 incident. He stated that he was constantly nervous and agitated while performing his duties. The appellee believes that a second incident aggravated his condition. On September 3, 1994, while placing a prisoner in "lock-up," the prisoner resisted and stabbed the appellee several times in the back with a small pair of scissors. Although the wounds were superficial and did not require stitches, the appellee testified that this incident exacerbated his anxiety and caused him to have more nightmares. Nonetheless, he continued to work for the Sheriff's Department until March 1995, when he quit following a disagreement with a sergeant.

The appellee testified that his heating and air business also suffered

because of his fatigue and anxiety. Due to nervousness, loss of short-term memory and a lack of confidence, he is unable to perform the work he had performed with ease up until the incident on February 28. The appellee stated that he cannot handle normal job calls and has "blown up" units he has tried to install. He requires his son's help to complete most projects and was forced to take a partner, Billy Rudolph, into his business because his ability and business reputation were declining. The appellee testified that he plans to sell the business to Mr. Rudolph because due to his mental instability he can no longer run the operation. Mr. Rudolph testified at trial that the appellee is unable to perform most of the work on job calls and that he uses the appellee as a "gopher," to retrieve tools and do simple tasks. The appellee's wife, who formerly assisted the appellee with duct work in the business, also testified that her husband's ability to perform job calls has markedly declined.

The appellee continued to see Dr. Petrie on a monthly basis. Dr. Petrie initially noted some improvement in the appellee's condition, but later believed that the appellee's stress disorder had worsened. He testified that the scissor-stabbing incident on September 3, 1994, had aggravated the appellee's symptoms. By deposition, Dr. Petrie testified that although he is unable to determine whether the appellee will recover from the disorder, he believes that the appellee's condition will inhibit him from holding certain types of employment due to anxiety, a lack of concentration, a loss of confidence and an inability to respond to ordinary work pressures. Dr. Petrie classified the appellee as a class four level of severity of psychiatric disability under the AMA Guidelines and assigned a fifty percent impairment rating to the whole person based on the Global Assessment of Functioning Guidelines.

After considering the live testimony of the appellee, his wife, his business partner and Sheriff Toungette, as well as the deposition of Dr. Petrie, the trial court found that the appellee had sustained a work-related injury by accident on February 28, 1994, that had caused a vocational disability of sixty-five percent to the body as a whole. We affirm in its entirety the judgment of the trial court.

II.

In workers' compensation cases, the plaintiff must prove, by a preponderance of the evidence, the existence of a work-related injury by accident. See Talley v. Virginia Ins. Reciprocal, 775 S.W.2d 587, 591 (Tenn. 1989). To be compensable, the plaintiff must prove that the injury: (1) arose out of his or her employment, and (2) occurred during the course of employment. See Anderson v. Save-A-Lot, Ltd., 989 S.W.2d 277, 279 (Tenn. 1999).

In this case the appellee's alleged mental injury clearly occurred in the course of his employment with the Sheriff's Department. This factor is determined by considering the time, place and circumstances of the injury. See Orman v. Williams Sonoma, Inc., 803 S.W.2d 672, 676 (Tenn. 1991). The appellee was on duty as a deputy while transporting the disruptive patient and incurring chest pains. The more crucial inquiry in this case is whether the alleged injury "arose out of" the appellee's employment. This requirement is generally satisfied "when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work [was] required to be performed and the resulting injury." See Anderson v. Save-A-Lot, 989 S.W.2d at 270; T.J. Moss Tie Co. v.

Rollins, 191 Tenn. 577, 581, 235 S.W.2d 585, 586 (1951). The focus of this inquiry is whether the employee was engaged in the duties of his or her employment and if the injury was "caused by a hazard incident to such employment." See Orman v. Williams Sonoma, Inc., 803 S.W.2d at 676; Hudson v. Thurston Motor Lines, Inc., 583 S.W.2d 597, 599 (Tenn. 1979).

Except in the most obvious, simple and routine cases, the plaintiff must establish the causal relationship between the injury and employment by expert medical evidence. See Hill v. Eagle Bend Mfg., Inc., 942 S.W.2d 483 at 487. Although causation cannot be based upon speculative or conjectural proof, absolute medical certainty is not required, and any reasonable doubt as to whether an injury "arose out of the employment" is to be resolved in favor of the employee. See White v. Werthan Indus., 824 S.W.2d 158, 159 (Tenn. 1992); Great American Indem. Co. v. Friddell, 198 Tenn. 360, 363, 280 S.W.2d 908, 909 (1955).

Moreover, an employee may recover workers' compensation benefits for an emotional injury arising out of employment by accident or occupational disease so long as the mental disorder is "caused by an identifiable, stressful, work-related event producing a sudden mental stimulus such as fright, shock or excessive unexpected anxiety." Anderson v. Save-A-Lot, Ltd., 989 S.W.2d at 280; Hill v. Eagle Bend Mfg, Inc., 942 S.W.2d at 488; Batson v. Cigna Property & Cas. Companies, 874 S.W.2d 566, 570 (Tenn. 1994); Gatlin v. City of Knoxville, 822 S.W.2d 587, 591-92 (Tenn. 1991). In addition, the stress produced may not be usual stress, but must be extraordinary in comparison to that ordinarily experienced by an employee in the same type duty. See Gatlin v. City of

Knoxville, 822 S.W.2d at 592.

The appellants argue that the appellee's emotional injuries are not compensable because they were not caused by an identifiable, stressful, work-related event sufficient to produce fright, shock or excessive unexpected anxiety. They submit that transporting mental patients is one of the appellee's typical duties as a Sheriff's deputy and that the stress he experienced while on duty on February 28, 1994, was not extraordinary or unusual for someone in his position. We disagree.

The evidence demonstrates that prior to the February 28 incident, the appellee had never seen a psychiatrist and had no history of mental disorders. Before the incident he did not experience the anxiety, nervousness, nightmares, severe diarrhea and loss of concentration that he currently endures. He has not returned to the pre-accident level of functioning that he once enjoyed. Dr. Petrie's unrebutted expert testimony opines that the appellee's mental disorder was attributable to the stress he endured on February 28 and that the disorder was aggravated by the work-related scissor-stabbing incident on September 3. This evidence establishes a compensable mental injury stemming from a work-related accident.

Furthermore, we conclude that not only did the appellee's duties on February 28, 1994, cause stress sufficient to produce excessive and unexpected anxiety, but that the duration of the episode caused an extraordinary stress atypical for a Sheriff's deputy. We acknowledge, as Sheriff Toungette testified,

that transporting mentally disturbed persons is a common duty for Sheriff's deputies. However for more than seven hours the appellee had to contend with an unruly patient, who screamed and physically resisted restraint during the entire episode. During the course of the day, the appellee delivered the patient to three different facilities; at each one his arrival was unexpected and he was told to wait. At the Springfield hospital he was harassed by several patients of the mental ward, who pulled at his belongings and "got in his face," despite efforts to extricate himself. Finally the appellee, after hours of anxiety, began to experience severe chest pains and was hospitalized for three days. The stress of this prolonged episode, combined with a lack of meaningful instruction from his dispatcher and superiors, produced a stressful, work-related event sufficient to cause acute anxiety. Accordingly, on considering the evidence under our de novo standard of review, we cannot say that the evidence preponderates against the trial court's finding that the appellee is entitled to recover benefits for the mental injury stemming from the work-related accident.

III.

The appellants next argue that Dr. Petrie's deposition should not be considered by this panel because in forming his expert opinion Dr. Petrie relied upon inaccurate facts in violation of Tenn.R.Evid. 703. We find this issue to be without merit.

Tenn.R.Evid. 703 provides:

> The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied

> upon by experts in the particular field in forming opinions or inference upon the subject, the factors or data need not be admissible in evidence. The court shall disallow testimony in the form of an opinion or inference if the underlying facts or data indicate a lack of trustworthiness.
>
> (emphasis added).

Focusing on the last sentence of the rule, the defendants argue that Dr. Petrie's testimony is untrustworthy because he was provided with wrong information concerning the incident that occurred on February 28. In his deposition, Dr. Petrie testified that he treated the appellee and rendered his diagnosis of post-traumatic stress disorder based upon an understanding that at the Springfield Hospital the appellee had been "locked-up" alone with the patient for an hour and a half, during which time the men continued to physically struggle. The defendants point out, and the appellee concedes, that contrary to Dr. Petrie's understanding, the appellee was never "locked up" with the appellee. Rather, the appellee was required to wait for more than two hours in the mental ward, in general, where he was surrounded by several mental patients.[1]

Admissibility, relevance and competency of expert testimony are matters that largely rest within the discretion of the trial court. See State v. Ballard, 855 S.W.2d 557, 562 (Tenn. 1993). The trial courts' ruling on these matters may be overturned only if this discretion was arbitrarily exercised or abused. See State v. Begley, 956 S.W.2d 471, 475 (Tenn. 1997).

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[1]At oral argument the appellee could not state how Dr. Petrie was provided with this mis-characterization of the event, although counsel opined that the erroneous information could have stemmed from a misunderstanding in talking with the appellee and his wife or by an error in the notes of the social worker who had performed an intake interview with the appellee. The record reveals that during treatment, the appellee has made frequent reference to nightmares in which he is locked up with the patient in Springfield, which also might account for the confusion.

Our research reveals one published case in which this Court upheld the trial court's disallowance of an expert affidavit, offered in conjunction with a motion for summary judgment, on the grounds that it was untrustworthy under Rule 703. In Seffernick v. St. Thomas Hosp., 969 S.W.2d 391, 393 (Tenn. 1998), the expert's affidavit was markedly inconsistent with his testimony in a later discovery deposition. The trial court observed that the affidavit and the deposition "cannot be reconciled, and that [the doctor's] opinions, are, fundamentally, untrustworthy." Seffernick, 969 S.W.2d at 392. This Court concluded that the trial court did not abuse its discretion in excluding the testimony pursuant to Rule 703. Seffernick, 969 S.W.2d at 393.

We conclude that the trial court did not err by considering Dr. Petrie's deposition. Unlike the expert testimony in Seffernick, no fatal inconsistencies render Dr. Petrie's testimony unreliable. Despite the mis-characterization of a "lock-up" with the patient, we agree with the appellee that the variation in facts is slight and does not substantially alter the information relied upon by Dr. Petrie. The proof before Dr. Petrie demonstrates that for over seven hours the appellee was forced to contend with a patient who screamed and physically resisted the appellee throughout. For more than two hours the appellee was confined in a hospital ward with at least forty to forty-five mentally disturbed people, some of whom harassed him, followed him, jerked at his belongings and "got in his face." He was not given meaningful support or instructions from his dispatcher or superiors at the Sheriff's Department. The prolonged ordeal culminated with the appellee's experiencing severe chest pains that required a three-day hospitalization. Dr. Petrie undoubtedly relied upon all of this information in treating the appellee and in rendering his diagnosis of post-traumatic stress

disorder. We conclude that the doctor's opinion is trustworthy and that the trial court did not abuse its discretion in considering it.

CONCLUSION

For the foregoing reasons, we affirm the judgment of the trial court finding that the appellee sustained a vocational disability of sixty-five percent to the body as a whole. Costs are taxed to the appellant.

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Frank F. Drowota, III, Justice

Concur:
Gray, Sp.J., Lewis, Sp.J.