

OPINION

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

The appellants, St. Paul Fire and Marine Insurance Company and A. J. Metler Hauling & Rigging Company, Inc., contend that the preponderance of the evidence does not support the trial court's finding that there was a causal connection between the fatal heart attack suffered by Richard I. Bascko and his driving a tractor-trailer rig.

Review of the findings of fact made by the trial court is *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); *Stone v. City of McMinnville*, 896 S.W.2d 548, 550 (Tenn. 1995). The application of this standard requires this Court to weigh in more depth the factual findings and conclusions of the trial courts in workers' compensation cases. *Corcoran v. Foster Auto GMC, Inc.*, 746 S.W.2d 452, 456 (Tenn. 1988).

This case was tried upon stipulations and depositions of medical doctors. As relevant to this decision, the stipulations are as follows:

1. Richard I. Bascko died on October 15, 1993 while driving a tractor-trailer rig for A.J. Metler. The truck was found at 2:48 a.m. on October 15 and Mr. Bascko was unresponsive over the driver's wheel.

2. At the time of his death, Mr. Bascko had driven from Bowling Green, Kentucky (where he made a delivery on October 13, 1993) to Winnipeg, Canada, a distance of 1221 miles.
3. The accident report, filed as part of the stipulations, reports that the area of the single-vehicle accident was well lit and the road surface and weather conditions would be considered ideal for driving.
4. The sole issue for determination by the trial court was whether the heart attack Mr. Bascko suffered arose out of his employment.

Compensation is denied where the cause of death is a matter of speculation or conjecture, but “an employee’s death or disability which results from a heart attack that is causally related to his employment is compensable under the worker’s compensation act as arising out of and in the course of employment, although prior to the attack, he suffered from . . . heart disease and although the attack was produced by only ordinary exertion and usual strain of the employee’s work.” *King v. Jones Truck Lines*, 814 S.W.2d 23, 27 (Tenn. 1991) (citing *Flowers v. South Central Bell Telephone Co.*, 672 S.W.2d 769, 770 (Tenn. 1984)). See also *Bacon v. Sevier County*, 808 S.W.2d 46 ((Tenn. 1991).

The trial court noted that three doctors testified by deposition and stated that he found that Dr. Joseph W. Rubin was the most qualified of the three and that the other two doctors wavered on cross-examination. The trial court has the discretion to accept the opinion of one medical expert over another medical expert. *Kellerman v. Food Lion, Inc.*, 929 S.W.2d 333, 335 (Tenn. 1996); *Johnson v. Midwesco, Inc.*, 801 S.W.2d 804, 806 (Tenn. 1990). When the medical testimony is presented by deposition, as it was in

this case, this Court is able to make its own independent assessment of the medical proof to determine where the preponderance of the evidence lies. *Cooper v. INA*, 884 S.W.2d 446, 451 (Tenn. 1994); *Landers v. Fireman's Fund Ins. Co.*, 775 S.W.2d 355, 356 (Tenn. 1989).

Joseph W. Rubin, M.D., has specialized in thoracic and cardiovascular surgery for 29.5 years. He has been on the staff of the Medical College of Georgia since 1973 as a professor and as chief of the Section of Thoracic and Cardiac Surgery since 1987. He trains general surgeons who are board certified or eligible to be certified by the American Board of Surgery to do thoracic and cardiac surgery, and practices his specialty. He testified that he diagnoses and treats patients with conditions that would cause a heart attack day in, day out. He testified that the stress of driving the tractor-trailer more likely than not caused Mr. Bascko's heart attack. Daniel M. Slutzker, M.D., a cardiologist, testified that he did not think that stress was a factor "as being the actual trigger for the final pathway." Asked whether the ordinary physical exertion or stress of driving a tractor-trailer caused or contributed to the heart attack, he said stress is always a possible trigger. He testified that the cause of the heart attack was plaque rupture and that what causes plaque rupture is incompletely understood. Alan Lee Smuckler, M.D., also a cardiologist, testified it is a "stretch" to say the truck driving was a precipitating event, "but even if it was a triggering event, it's no more a triggering event than any other activity he would be doing on a daily basis." In his opinion, the underlying severe coronary artery disease was the cause of the heart attack "It's absurd to say that what he was doing at that time caused him to have a heart attack."

Of the three physicians who testified, Dr. Rubin had the most extensive professional credentials and resume, and we find no reason to disagree with the trial court's reliance on his opinion.

The judgment of the trial court is affirmed. The costs of the appeal are taxed to the Appellants.

Howell N. Peoples, Special Judge

William M. Barker, Justice

John K. Byers, Senior Judge

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE, TENNESSEE

**BRENDA K. BASCKO VS. ST. PAUL FIRE AND MARINE
INSURANCE COMPANY and A.J. METLER HAULING & RIGGING
COMPANY, INC.**

**Sevier Circuit Court for Sevier County
No. 98-346-III**

No. E1999-01230-WC-R3-CV -Decided May 25, 2000

JUDGMENT

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 facts 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 the defendants/appellants, St. Paul Fire and Marine Insurance Company and A. J. Metler Hauling & Rigging Company, Inc. and Deborah L. Fulton, surety, for which execution may issue if necessary.

05/25/00