

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

(November 15, 1999 Session)

**JAMES R. ROSENTHAL, SR. v. CITY OF DYERSBURG, ET AL.**

**Direct Appeal from the Circuit Court for Dyer County  
No. 96-197, 97-175 R. Lee Moore, Judge**

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**No. W1999-02699-WC-R3-CV - Mailed April 26, 2000; Filed June 16, 2000**

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This is an appeal by James R. Rosenthal, Sr., a police officer for the City of Dyersburg, Tennessee, who brought two suits against the City of Dyersburg and the Tennessee Municipal League Risk Management Pool for workers' compensation benefits. One suit was filed July 16, 1996, against the defendants alleging that the plaintiff had sick sinus syndrome that developed as a result of his employment for the City of Dyersburg. Another suit was filed on September 19, 1997, alleging that the plaintiff had vasodepressor syncope that grew out of his employment. In both cases, the plaintiff alleges that Tennessee Code Annotated § 7-51-201, hereinafter quoted, is applicable. These two cases were consolidated for trial and treated by both parties and the trial judge as one case. The trial court found in favor of the defendants, holding that the plaintiff was permanently and totally disabled but that the evidence did not establish that Tennessee Code Annotated § 7-51-201 was applicable. The court also found that the plaintiff failed to bear the burden of proof in establishing that he sustained an accidental injury growing out of and in the course of his employment. In his only issue, the plaintiff says that the trial court erred in holding that he is not entitled to the presumption of causation afforded by Tennessee Code Annotated § 7-51-201. We find that the judgment of the trial court must be affirmed.

**Tenn. Code Ann. § 50-6-225(e) (1999) Appeal as of Right; Judgment of the Circuit Court is Affirmed.**

TATUM, SR. J., delivered the opinion of the court, in which HOLDER, J., and ELLIS, SP. J., joined.

Anthony L. Winchester, Dyersburg, Tennessee, for the appellant, James R. Rosenthal, Sr.

John D. Burleson and Jeffery G. Foster, Jackson, Tennessee, for the appellees, City of Dyersburg, et al.

**MEMORANDUM OPINION**

The standard of review of factual issues in workers' compensation cases is de novo upon the record of the trial court with a presumption of correctness, unless the preponderance of the evidence

is otherwise. Tenn. Code Ann. § 50-6-225(e)(2). Under this standard, we are required to conduct an in-depth examination of the trial court's findings of fact to determine where the preponderance of the evidence lies. See Thomas v. Aetna Life and Cas. Co., 812 S.W.2d 278, 282 (Tenn. 1991). In making such a determination, this Court must give considerable deference to the trial judge's findings regarding the weight and credibility of any oral testimony received. All of the medical proof in this case was taken by deposition, so that all impressions of weight and credibility must be drawn from the contents thereof, and not from the appearance of witnesses or oral testimony at trial. Humphrey v. David Witherspoon, Inc., 734 S.W.2d 315 (Tenn. 1987). The plaintiff in a workers' compensation suit has the burden of proving every element of the case by a preponderance of the evidence. Talley v. Virginia Ins. Reciprocal, 775 S.W.2d 587, 591 (Tenn. 1989).

Tennessee Code Annotated § 7-51-201(a)(1) establishes:

a presumption that any impairment of health of [a] law enforcement officer caused by hypertension or heart disease resulting in hospitalization, medical treatment or any disability, shall be presumed (unless the contrary is shown by competent medical evidence) to have occurred or to be due to accidental injury suffered in the course of employment.

In order to rely upon the presumption, the plaintiff must show that: (1) he was employed by a regular law enforcement department; (2) he suffered from hypertension or heart disease resulting in hospitalization, medical treatment or disability in the course of employment; and (3) prior to the injury, he had been given a physical examination which did not reveal the heart disease or hypertension. Stone v. City of McMinnville, 896 S.W.2d 548, 550 (Tenn. 1995).

It is undisputed that the plaintiff was employed by the City of Dyersburg as a police officer and that, prior to the injury, he had been given a physical examination which did not reveal heart disease or hypertension. The plaintiff does not contend that he suffered from hypertension but that heart disease resulted in his disabled condition.

The medical history of the plaintiff's disability is unusually complicated, but we will not unnecessarily burden this opinion by discussion of medical testimony that does not have a bearing on the crucial question as to whether the plaintiff's disability was caused by heart disease. The plaintiff testified that he had been working for the Dyersburg Police Department since 1989 and did not have prior heart disease or hypertension. During the time that he worked as a policeman, he had numerous stressful experiences that he described in his testimony.

In July, 1995, while playing cards with his wife and friends, he passed out. He had not worked that day. The plaintiff was hospitalized and, shortly thereafter, a pacemaker was installed. The plaintiff returned to work without incident until September, 1996, when he passed out at home in the bathroom. He testified that he was again hospitalized and diagnosed with neurocardiogenic vasodepressor syncope. He continued to pass out from four to six times a day, but, by the time of trial, he had been placed on a new medication that reduced his fainting episodes to two or three times

a week. He also takes a number of medications for hypothyroidism. He developed pericardial effusion during the course of his treatment, which required surgery to drain fluid from the pericardial sac around his heart. The pericardial effusion was under control with medication at the time of trial.

He did not recall any unusually stressful events that occurred shortly before the fainting episode on July, 1995, or the episode in September, 1996. He described an event that occurred when he answered a 911 call to a child who was not breathing and subsequently died. After escorting the little girl's funeral, he almost resigned his job as a policeman.

The plaintiff's wife, Lynnice Rosenthal, who is a registered emergency room nurse, corroborated the plaintiff's testimony. She testified that the incident involving the child occurred in February, 1995, and that this experience was very upsetting to the plaintiff.

After the pacemaker was installed in July, 1995, it was necessary for the plaintiff to have it reprogrammed, but he had no change in his lifestyle until September, 1996, when he passed out in the bathroom at home. A drug that the plaintiff took earlier, Florinef, caused hypothyroidism, but the buildup of fluid around the heart was remedied by surgery.

Dr. John Stephen Ashley, an internal medicine physician since 1992, was the plaintiff's treating physician. Dr. Ashley saw the plaintiff on July 13, 1995, and initially diagnosed the plaintiff with syncope and bradycardia with a history of asthma. Bradycardia is a heart rate under sixty (60) beats per minute, and syncope is a broad term for "passing out." Dr. Ashley testified that bradycardia is a form of heart disease. He thought that the plaintiff had some degree of sick sinus syndrome because of the plaintiff's low heart rate, but a treadmill test was performed which showed a chronotropic incompetence. This means that the heart rate does not speed up with exertion or anxiety. Testing confirmed bradycardia and chronotropic incompetence but did not give an etiology for syncope (passing out).

Dr. Ashley testified that a pacemaker was implanted, which would cause the heart to speed up with exertion and slow down with rest. After the pacemaker was implanted, the plaintiff became asymptomatic; his heart function was normal.

Dr. Ashley testified that he referred the plaintiff to Methodist Central Hospital in Memphis, Tennessee, where Dr. Porterfield diagnosed the plaintiff as having a vasodepressor syncope about one year after the pacemaker was implanted. It does not appear that Dr. Ashley tested the plaintiff for vasodepressor syncope prior to the installation of the pacemaker. A slow heart rate is a symptom of vasodepressor syncope. On June 11, 1997, Dr. Judy Spencer of Memphis found that the plaintiff had hypothyroidism.

Dr. Ashley testified that no historical information given to him by the plaintiff or his wife indicated that his work with the City of Dyersburg related to any of the physical conditions diagnosed. Dr. Ashley testified that he could not say that the plaintiff's work had a role to play in any of the conditions diagnosed. The plaintiff's wife was a registered nurse, known to Dr. Ashley,

and was an excellent medical historian. Dr. Ashley testified that the plaintiff had a history of syncopal episodes for two or three years prior to 1995.

Dr. Ashley testified that the etiology is unknown as to all of the diagnoses of the plaintiff. He testified that he could not exclude the plaintiff's employment as a possible cause of the plaintiff's ailments, because the etiology was unknown, and, therefore, nothing could be excluded.

Dr. Laurence A. Grossman, a cardiologist for over thirty (30) years and a professor of medicine at Vanderbilt University Medical School, gave a deposition on behalf of the defendant, in which he testified that he had examined the plaintiff, tested him, and reviewed all of the plaintiff's medical records. It was his opinion that the plaintiff did not have sick sinus syndrome but that the plaintiff's vasodepressor syncope was present, although undiagnosed, in July of 1995, and that this was the original cause of the plaintiff's syncopal episode at home while playing cards. This disease causes the heart to slow down, which led to an error in the original diagnosis and insertion of a pacemaker, which, according to Dr. Grossman, the plaintiff did not need. It was Dr. Grossman's opinion that the plaintiff's slow heart rate exhibited in July of 1995 was not a disease but was a symptom of this vasodepressor syncope, a disease of the nervous system and not of the heart. Dr. Grossman testified that plaintiff still suffers from vasodepressor syncope. Dr. Grossman testified that:

I saw no evidence of a sick sinus syndrome, as I reviewed all the hospital records. I didn't see periods where there were things that we usually put a pacemaker in for; where the heart stops beating or something like that. Usually with a sick sinus they get a degree of heart block, or they get periods in which they have sinus arrest. The sinus node doesn't discharge, and the heart doesn't beat. This man had slowing, and that's all. And that would strongly indicate to me, as a cardiologist, that he did not have the sick sinus syndrome.

The determinative issue before the trial court was whether the plaintiff's slow heart rate in July of 1995, which resulted in the implanting of a pacemaker, was caused by a heart disease or was merely a symptom of vasodepressor syncope, a disease of the nervous system first tested for and diagnosed a year later. The trial court accepted the well-reasoned opinion of Dr. Grossman, a cardiologist of long experience, over the opinion of an internal medicine physician. Thus, the trial court held that the plaintiff failed to establish the prerequisite that he suffered from the heart disease resulting in hospitalization, medical treatment, or disability, and the statutory presumption in favor of police officers created by Tennessee Code Annotated § 7-51-201 was not available to the plaintiff. We have thoroughly reviewed the medical testimony in this case, and we also accredit the testimony of Dr. Grossman in this regard.

Even assuming, arguendo, that we accepted Dr. Ashley's opinion that the plaintiff's disability was caused by heart disease, Dr. Grossman's testimony that the plaintiff's problem was not heart-related or connected to his work provided competent medical evidence sufficient to rebut the statutory presumption. The statutory presumption of § 7-51-201, once established, is present "unless

the contrary is shown by competent medical evidence.” Tenn. Code Ann. § 7-51-201(a)(1) (1998). Our Supreme Court has recently held that such competent medical evidence removes a law enforcement officer's disability from the purview of the statutory presumption. Benton v. City of Springfield, 973 S.W.2d 936, 937 (Tenn. 1998); Krick v. City of Lawrenceburg, 945 S.W.2d 709, 712-13 (Tenn. 1997). The presumption then falls away, and the plaintiff must prove causation by showing that he had heart problems that were immediately precipitated by a specific acute or sudden stressful event related to his employment. Benton, 973 S.W.2d at 937; Krick, 945 S.W.2d at 713-14. The plaintiff failed to carry his burden of showing a connection between a stressful work-related event and any heart condition.

It results that we find the issue to be without merit and affirm the judgment of the trial court.

Costs are adjudged against the plaintiff.

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**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 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 the Appellant, James R. Rosenthal, Sr., for which execution may issue if necessary.

**IT IS SO ORDERED.**

**PER CURIAM**