

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
JUNE 2000 SESSION

**BARRY KING v. CITY OF BELLE MEADE, and
TML RISK MANAGEMENT POOL, INC.**

**Direct Appeal from the Chancery Court for Davidson County
No. 98-2173-I, Hon. Irvin H. Kilcrease, Jr., Chancellor**

**No. M1999-01432-WC-R3-CV - Mailed - July 17, 2000
Filed - September 27, 2000**

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel in accordance with Tenn. Code Ann. §50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. In this case, the employee contends the trial court erred in failing to award workers' compensation disability and/or medical benefits to the employee based upon his work-related hypertension and heart disease. As discussed below, the panel has concluded the trial court's dismissal of the employees workers' compensation claims should be affirmed.

Tenn. Code Ann. §50-6-225(e)(3) Appeal as of Right; Judgment of the Chancery Court Affirmed

Turnbull, Sp. J., delivered the opinion of the court, in which Drowota, J., and Loser, Sp. J., joined.

Daniel Carlton Todd, Nashville, Tennessee, for the appellant, Barry King.

Teresa Reall Ricks, Farrar & Bates, Nashville, Tennessee, for the appellees, City of Belle Meade and TML Risk Management Pool, Inc., Appellees.

MEMORANDUM OPINION

The employee, Barry King ("King"), was employed as a police officer for the City of Belle Meade

from January 1988 to September 1997. The City of Belle Meade is insured by TML Risk Management Pool, Inc. On January 6, 1988, prior to his employment as a police officer for the City of Belle Meade, King underwent a physical examination which failed to reveal any presence of hypertension or heart disease.

On August 12, 1995, King was diagnosed with an irregular heartbeat and high cholesterol. The following day, he was hospitalized with chest pains. King continued his duties as a police officer for the City of Belle Meade after his release from the hospital. Upon the advice of King's cardiologist nearly two years later, King was referred to and treated by Dr. Marcus C. Houston, M.D., for high blood pressure, high cholesterol, coronary heart disease, carotid artery obstruction, and a history of transient ischemic attacks since June 30, 1997.

On September 4, 1997, Dr. Houston suggested to King that he no longer continue to work as a police officer because the stress related to King's job as a police officer constituted a danger to King's health. On September 5, 1997, King terminated his employment as a police officer and submitted his First Report of Work Injury. King claims workers' compensation disability and/or medical benefits based upon his work-related hypertension and heart disease. He argues that job stress caused high blood pressure which in turn caused his heart disease. The employee insists he suffers an occupational disease under Tenn. Code Ann. section 50-6-301[6].

Subsequent to King's filing for workers' compensation, an independent health examination was conducted by Dr. Hal M. Roseman, M.D., who evaluated King's medical records, checked the calibration of King's blood pressure monitor, performed a physical examination of King, and had a psychological test of King performed. Dr. Roseman concluded to a reasonable degree of medical certainty that King's medical condition was not proximately caused by his employment as a police officer. Neither Dr. Roseman nor Dr. Houston can be characterized as a professional witness who commonly testify in worker's compensation cases.

Charles Vincent Perry, Jr., the Chief of Police for Belle Meade, testified that King's duties as a police officer for the City of Belle Meade consisted of general patrol duties, specifically as a DUI enforcement officer. King does not specifically claim that any particular incident or event in performing his duties as a police officer precipitated his hypertension or coronary heart disease.

From the above summarized evidence, the trial judge found that sufficient medical evidence rebutted the presumption, supplied by Tenn. Code Ann. §7-51-201(a)(1), that King's hypertension and heart disease were "accidental injur[ies] suffered in the course of employment." The trial court held that the employee failed to cite to a specific event or occurrence that precipitated his hypertension and heart disease.

ISSUES

Did the trial court properly find and conclude that the employee's heart disease is not compensable?

Did the trial court properly find and conclude that the employees hypertension was not compensable as an occupational disease?

STANDARD OF REVIEW

In a worker's compensation case, appellate review of factual issues 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. section 50-6-225(e)(2) (Supp. 1998); 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 finding of fact. Hill, 942 S.W. 2d, at 487. However, where the issues involve expert medical testimony, and all the medical proof is contained in the record by deposition, as it is in this case, then the appellate court may draw its own conclusions about the weight and credibility of that testimony, since we are in the same position as the trial judge. McIlvain v. Russell Stover Candies, Inc., 996 S.W.2d 179, 183 (Tenn. 1999) That medical proof by deposition must, of course, be reviewed in full light of and conjunction with any credibility findings of the trial court with reference to history or subjective symptoms. Such factual findings on issues of credibility of live witnesses by the trial court are entitled to considerable deference. Long v. Tri-Con Industries, LTD, 996 S.W.2d 173 (Tenn. 1999)

COMPENSABILITY OF HEART DISEASE

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

[T]here 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 is shown by competent medical evidence) to have occurred or to be due to accidental injury suffered in the course of employment. ... Such law enforcement officer shall have successfully passed a physical examination prior to such claimed disability, or upon entering governmental employment and such examination fails to reveal any evidence of the condition of hypertension or heart disease.

The presumption of Tenn. Code Ann. §7-51-201(a)(1) is rebutted when there exists "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." Krick v. City of Lawrenceburg, 954 S.W.2d 709, 712 (Tenn. 1997). Competent medical evidence exists when there is "a medical opinion provided by a competent medical expert." Benton v. City of Springfield, 973 S.W.2d 936, 937 (Tenn. 1998). King asserts that Dr. Roseman's classification of King's condition as one of a "hot reactor," treatable with various forms of psychological counseling, is not sufficient to rebut the statutory presumption. The trial court, however, considering Dr. Roseman's medical credentials, properly held that Dr. Roseman's analysis of King's emotional disposition to stressful events, along with King's prior smoking and family history of heart disease, was competent medical

evidence sufficient to rebut the presumption under Tenn. Code Ann. §7-51-201(a)(1).

Once competent medical evidence is shown to rebut the statutory presumption, the law enforcement employee “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 employment.” Krick, 945 S.W.2d at 713. “Injury” is defined under Tenn. Code Ann. §50-6-102(12) as “an injury by accident arising out of and in the course of employment which causes either disablement or death of the employee and shall include occupational diseases arising out of and in the course of employment which cause either disablement or death of the employee.” Tenn. Code Ann. section 50-6-301 is the statute under which a claimant must then show that his “occupational disease” arose out of and in the course of employment. Tenn. Code Ann. section 50-6-301(6) includes as an occupational disease: “Diseases of the heart, lung, and hypertension arising out of and in the course of any type of employment.”

Although King’s condition never precipitated a heart attack, cases dealing with heart attacks spurred on by work-related stress may be helpful in fashioning a decision in this case. Bacon v. Sevier County, 808 S.W.2d 46 (Tenn. 1991), categorized heart attack disabilities under workers’ compensation as “those that are precipitated by physical exertion or strain and those resulting from stress, tension, or some type of emotional upheaval.” Id. at 49. Disability resulting from physical exertion requires no showing that the physical exertion or strain involved in the duties under employment were unusual to the employment. Id. at 50-51. Heart attack disability resulting from mental or emotional stress, however, requires such a showing. The Bacon court held that “absent physical exertion or some acute, sudden or unexpected emotional stress directly attributable to employment, an industrial accident should not be deemed to have occurred, even though worry, anxiety or emotional stress of a general nature may have preceded the onset of the [heart attack].” Id. at 51 (quoting Allied Chemical Corp. v. Wells, 578 S.W.2d 369, 372 (Tenn. 1979)).

Gatlin v. City of Knoxville, 822 S.W.2d 587 (Tenn. 1991), follows a “threshold test that the mental stimulus causing a mental or physical injury must be fright, shock, or an acute sudden or unexpected emotional stress. ... We have limited the interpretation of [T.C.A. § 50-6-102(4), now T.C.A. § 50-6-102(12)(1999 Replacement Edition)], holding that worry, anxiety or emotional stress of a usual nature in a particular occupation are not sufficient to establish injury by accident.” Id. at 590. Gatlin is applicable in this case because it speaks to physical injuries in general, not just heart attacks, caused by mental or emotional stimuli.

We also note that the Supreme Court held recently in Ivey v. Trans Global Gas and Oil, 3 S.W. 3rd (Tenn. 1999) that as “previously discussed in Gatlin, injuries that are completely mental in nature are compensable under workers’ compensation when they are caused by an identifiable stressful, work-related event that produces a sudden mental stimulus such as fright, shock, or excessive unexpected anxiety.” Id. at 447.

In Ivey, the court was faced with mental injury caused by the emotional shock and fright of the employee clerk being robbed at gun point.

The employer argues, however, even absent a sudden or acute episode of emotional stress, his claim is viable since it is based on his suffering an occupational disease (heart disease and hypertension) which he claims meets the criteria of Tenn. Code Ann. section 50-6-301.

An occupational disease is defined in Tenn. Code Ann. section 50-6-301 as

all diseases arising out of and in the course of 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 (emphasis added).

The trial court carefully analyzed the medical evidence and concluded that the

opinion of Dr. Roseman was most persuasive “that there is not substantial connection between the plaintiff’s work and his medical condition,” and “the medical evidence in the record preponderates against a finding that plaintiff’s medical condition is linked to his employment.”

In making a separate review of the deposition medical testimony, we cannot disagree. Dr. Houston, an internal medicine specialist, is expert and widely published in the area of the *treatment* of high blood pressure and its sequella. Dr. Roseman, a cardiologist, has special expertise on stress as a *cause* of high blood pressure and wrote his dissertation on the subject. In addition, Dr. Roseman had more information available to him in reaching his conclusion that generalized job stress as a policeman did not cause King’s heart disease. He sought and reviewed an examination and report of psychological tests, he reviewed records from all physicians who had seen or treated employee’s condition, he read all discovery depositions and Dr. Houston’s medical testimony. Dr. Roseman also discovered that King’s home blood pressure monitor was inaccurate and that Dr. Houston’s diagnosis of malignant and accelerated hypertension was based on those machine readings, self performed by King, rather than the readings taken Dr. Houston’s office which recorded no incidence of high blood pressure. It therefore appears in this instance Dr. Roseman’s opinion is entitled to greater weight.

We conclude that even if under the occupational disease law no sudden, unexpected, acute instance of stress is required, the employee has failed to prove that his disease “can be fairly traced to the employment as a proximate cause” Tenn. Code Ann. section 50-6-301 [2] or that it “originated from a risk connected with the employment and flowed from that source as a natural consequence” Tenn. Code. Ann. section 50-6-301[5]. In addition, the employee has failed to show by a preponderance “there is a direct causal connection between the conditions under which the work is performed and the occupational disease.” Tenn. Code Ann. section 50-6-301 [6].

HYPERTENSION AS A SEPARATE OCCUPATIONAL DISEASE

We have found no case construing Tenn. Code Ann. section 50-6-301 as it relates solely to hypertension. In particular, the question of whether hypertension, to be compensable as an occupational disease, must be the result of an identifiable stressful, work-related event that produces a sudden mental stimulus such as fright, shock, or excessive unexpected anxiety has not been addressed by the Tennessee Supreme

Court. The testimony in this case reveals there is a wide divergence in medical opinion as to whether stress is a proximate cause of hypertension as a disease. We choose to await an appropriate case to express an opinion on the issue since, as discussed above, the medical proof in this case preponderates in favor of a finding of lack of causation.

We affirm the trial court in dismissing the employee's claim for worker's compensation benefits whether arising from injury or occupational disease. Costs on appeal are assessed to the appellant, Barry King.

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

**BARRY KING, Movant v. CITY OF BELLE MEADE, TENNESSEE and
TENNESSEE MUNICIPAL LEAGUE, Respondents**

**Chancery Court for Davidson County
No. 98-2173-I Irvin H. Kilcrease, Jr., Chancellor**

No. M1999-01432-WC-WCM-CV - Filed - September 27, 2000

JUDGMENT

This case is before the Court upon Barry King's motion for review pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(B), 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 motion for review is not well-taken and should be DENIED; 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 assessed to Barry King for which execution may issue if necessary.

PER CURIAM

Drowota, J., not participating