

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT NASHVILLE  
(July 20, 2000 Session)

**LANA PHELPS, INDIVIDUALLY AND AS NEXT FRIEND  
OF/GUARDIAN OF HER TWO MINOR CHILDREN, KURTIS TYLER  
PHELPS AND AMANDA LEE PHELPS V. TENNESSEE WOOLEN  
MILLS, INC. AND THE TRAVELERS INSURANCE COMPANY**

**Direct Appeal from the Chancery Court for Smith County  
No. 5787, C.K. Smith, Chancellor**

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**No. M1998-00666-WC-R3 -CV - Mailed - December 7, 2000  
Filed - January 10, 2001**

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 defendants, Tennessee Woolen Mills, Inc. and The Travelers Insurance Company appeal the judgment of the Chancery Court of Smith County, where the Trial Court granted partial summary judgment in favor of the plaintiff, Lana Phelps, finding that there were no material factual issues in dispute on the issue of causation and that the plaintiff was entitled to a judgment as a matter of law when the decedent, Joseph Phelps, sustained an injury by accident which arose out of and in the course of his employment at Tennessee Woolen Mills when he fell off a ladder and subsequently died of sudden cardiac death. The trial court incorporated its order of partial summary judgment in its final order awarding plaintiff a total recovery of one hundred forty-five thousand two hundred and four dollars (\$145,204.00). For the reasons stated in this opinion, we reverse the judgment of the trial court and remand this case for a hearing on the merits.

**Tenn. Code Annotated §50-6-225 (e)(1999) Appeal as of Right; Judgment of the Chancery Court; Reversed and Remanded.**

WEATHERFORD, SR. J., delivered the opinion of the court, in which BIRCH, J. AND RUSSELL, J. joined.

Janelle S. Eryan, Memphis, Tennessee, for the appellants, Tennessee Woolen Mills, Inc. and The Travelers Insurance Company

Bratton H. Cook, II, Smithville, Tennessee and Jacky O. Bellar, Carthage, Tennessee for the appellees, Lana Phelps, individually and as next friend/guardian of her two minor children, Kurtis

Tyler Phelps and Amanda Lee Phelps.

### MEMORANDUM OPINION

The decedent, Joseph Phelps, was employed by Tennessee Woolen Mills, Inc. on January 20, 1995 as an electrician. He was married to Lana Phelps and they had two minor children, Kurtis Tyler Phelps and Amanda Lee Phelps, at the time of Mr. Phelps' death at age 56.

According to Safety Manager, Roger Osborn's report at approximately 1:10 to 1:15 p.m., on January 20, 1995, Joseph Phelps was "engaged in the process of installing a folding machine in the finishing department on the second floor. In particular he was installing a metal support to which a folding machine would later be attached." Apparently, as described by workers in this area, Mr. Phelps was climbing up a ladder and about half way up when he fell. Judy Williams (sewing machine operator in the nearby area) observed Mr. Phelps falling via peripheral vision. Mrs. Williams also mentioned that she thought Mr. Phelps was carrying something in his hand.

At the time Mr. Phelps made impact with the floor, a loud "bang" occurred. Several employees responded to the area after hearing this noise. Sometime thereafter, employees began to perform CPR. Approximately five to ten minutes later the ambulance arrived and transported Mr. Phelps to University Medical Center. The report also stated that, "Mrs. Hardin was the first person to see Mr. Phelps on the floor [and stated] that he 'may have' hit his head on the hitch of a blanket truck in the near vicinity of the ladder."

Scott Giles, D.O., Emergency Medicine Physician, treated Joseph Phelps in the Emergency Room in Lebanon, Tennessee. Dr. Giles testified that Mr. Phelps essentially had no vital signs when he arrived at the hospital and none of their resuscitative efforts were successful. Mr. Phelps was pronounced dead approximately ten minutes after his arrival. Dr. Giles assessed Mr. Phelps cause of death as "sudden cardiac death" which is caused by a massive heart attack or "an arrhythmic event."

The plaintiff filed her complaint for workers' compensation benefits on April 19, 1995 alleging that the decedent sustained an accidental injury arising out of and in the course of his employment and as a consequence of the accident, plaintiff claimed that the decedent suffered a cardiac arrest which caused his death shortly after the accident.

On October 19, 1995, the plaintiff moved to amend her complaint to add that the decedent's sudden cardiac death was (1) an accidental injury which arose out of and in the course of his employment with Woolen Mills, and alternatively (2) an occupational disease pursuant to Tenn. Code Annotated §50-6-301 et seq. The trial court granted the motion by order entered November 22, 1995.

On April 20, 1996, plaintiff filed a motion for summary judgment, claiming that she was entitled to judgment for statutory benefits due them as a matter of law, and filed the deposition of

Scott Giles, D.O., and defendants' discovery responses.

The medical testimony of Scott Giles, D.O., indicated that the decedent's cause of death was sudden cardiac death. Dr. Giles did testify that "short of examining his body, I don't know that you can come up with a definitive cause" of why his heart stopped beating.

According to Dr. Giles, there are numerous causes of arrhythmia and myocardial infarction. Mr. Phelps was at the point of death when Dr. Giles first examined him and therefore, he was unable to obtain a social history or determine whether Mr. Phelps had risk factors for cardiovascular disease. The only history Dr. Giles obtained before treatment was from the ambulance crew that a co-worker had stated that the patient had complained of chest pain shortly before his collapse.

Dr. Giles stated that family history of heart disease, smoking, drinking, poor exercise habits, and stress can all contribute to a patient's heart disease and myocardial infarction. Dr. Giles testified that he did not think that Joseph Phelps' heart and lung functions would have ceased if he fell from a ladder and "struck his head quite severely." Furthermore, Dr. Giles testified that he examined Joseph Phelps' head and found no sign of open or closed head injury, and no "evidence of an accidental or traumatic sort of death."

Dr. Giles further testified: " I believe in general in the hypothetical condition, that stress does play a role in one's disease process, and therefore probably had some degree of bearing on Mr. Phelps' death. I do not believe it was the sole cause. I think it was possibly a minor contributing factor, just as his high blood pressure, lifestyle and age were all contributing factors." According to Dr. Giles, physical stress to which a person was not accustomed, would be a much more significant contributing factor than emotional or psychological stress. Dr. Giles did agree that simple stress as far as feeling like you are under the gun to perform within a time frame would also be a minor contributing factor because " that sort of thing increases the levels of adrenalin outflow to a certain extent".

Dr. Giles was presented with a hypothetical outlining Mr. Phelps' risk factors for sudden cardiac death including high blood pressure, family history of heart disease, smoking and job stress. Dr. Giles agreed that Mr. Phelps' averaging sixty-five and a quarter hours (65 1/4) per week, some weeks working as much as one hundred seventeen and a half hours (117 1/2), many weeks working eighty hours (80) during twenty-six (26) weeks of employment; having a beeper to be available for duty any other time; and having to take Xanax for stress and anxiety "certainly... could have" contributed to sudden cardiac death.

On July 25, 1996, defendants filed a Motion for Summary Judgment with various depositions and an Amended Response to plaintiff's Motion for Summary Judgment. On that day plaintiff also filed an Amended Motion for Summary Judgment.

On August 10, 1996, defendants filed an affidavit of Scott Giles, D.O. in which Dr. Giles

stated as follows:

4. Because of the circumstances surrounding Mr. Phelps' arrival at this hospital, I did not have an opportunity to learn his history or perform a physical examination upon him. However, in preparations for depositions which have occurred in furtherance of litigation on this case, I did have an opportunity to learn of Mr. Phelps' medical history. Mr. Phelps' medical history is significant for his smoking, his weight, and his age. These factors caused or contributed to the heart condition he was suffering from on January 20th, 1995, and said condition resulting in the death of Mr. Joseph Phelps.

5. It is my opinion, based upon a reasonable degree of medical certainty, that, Mr. Phelps' alleged fall from the ladder did not cause his cardiac arrest. Upon my examination of Mr. Phelps at his arrival at this hospital, I noted he did not suffer sufficient trauma to the head, body, and/or spine that would cause a cardiac arrest.

6. It is my opinion, based on a reasonable degree of medical certainty, that, given the facts I have learned subsequent to my treatment of Mr. Phelps, namely his activity at the time of his heart attack, the hours he worked, and the type of work he performed, that Mr. Phelps' cardiac arrest was not caused by job stress. Instead it is my opinion that it is more likely that his cardiac arrest was caused by his age, his weight, and his smoking.

On March 5, 1997, plaintiffs filed a second amended motion for summary judgment accompanied by the affidavits of Lana Phelps, Larry Stanley, and J. C. Walls Jr., M.D. as well as all other documents previously filed in support of summary judgment.

Dr. Walls disagreed with the statements that Dr. Giles made in his affidavit regarding Mr. Phelps' death. Dr. Walls stated that based upon life insurance company ideal weight guidelines, a person of 5 feet 11 ½ inches of medium build would be of normal weight at 185 pounds, and therefore, he did not consider Mr. Phelps' weight to be a contributing factor in his death.

Dr. Walls further testified:

Also, I disagree with Dr. Giles' stating that smoking, weight, or age "caused" a heart condition; these factors merely can contribute to cardiac heart disease. In my opinion it is ludicrous to state the last sentence of his Affidavit which says "instead it is my opinion that it is more likely that his cardiac arrest was caused by his age, his weight, and his smoking." The cardiac arrest or sudden cardiac death or whatever event occurred that caused Mr. Phelps' death was not caused by any of these factors. The smoking and his age would be contributing factors to any possible cardiac event. Likewise, it is my opinion that the number of hours Mr. Phelps worked and the strenuous type of work he performed were certainly contributing factors to the cardiac event that the evidence shows caused his

death. Some of the recognized cardiac heart disease risk factors are stress, age, male gender, hypertension, family history of premature cardiac heart disease, and smoking, all of which Mr. Phelps suffered from. The pre-employment physical that was conducted on Mr. Phelps documented the existence of a positive family history for coronary heart disease, as well as his elevated blood pressure of 170/88. In my opinion, this elevated blood pressure reading warranted follow-up for any employee who is required to work in a potentially dangerous environment, stressful environment, or be allowed to work in an environment where he was off the ground such as ladders as well as any employee being allowed to work large amounts of overtime. In my opinion, the exertion required of Mr. Phelps at work in climbing stairs, climbing a ladder, doing work above eye level and in working long hours, all aggravated or accelerated whatever underlying coronary heart disease that was in existence and contributed to the event that lead to his death.

The plaintiff, Lana Phelps, testified by deposition that her husband had complained of indigestion the night before his death, and that was based upon the meal that he had eaten. She also testified that he had complained frequently during the entire course of their marriage of having indigestion or heartburn. She stated that her husband was taking medication for an elevated blood pressure condition, and was also taking xanax prescribed for him for stress. According to Mrs. Phelps, her husband was in the process of assisting plant personnel with re-wiring the plant because an insurance company was going to inspect the wiring. She stated her husband was under a great deal of stress at work and constantly complained of this stress.

Co-worker, Larry Stanley, testified in his affidavit that: Mr. Phelps “had been under a lot of pressure from his bosses to hurry up and get a machine that had been moved into the plant operating”. Mr. Stanley had witnessed supervisors standing over Mr. Phelps’ shoulder wanting him to hurry up.

Defendants contended that Joseph Phelps’ death was not caused by his work, but due to natural causes. Mr. Phelps had complained of pain and/or indigestion the night prior to his injury. According to Ricky Lax, Joseph Phelps’ supervisor, on the day of his death, Joseph Phelps was “complaining of heartburn. He said it felt like heartburn.” According to another employee, Oscar Denson, on January 20, 1995, Mr. Phelps complained that “he had...a heavy weight on his chest. He said he had heartburn so bad he couldn’t stand it.”

Mr. Lax testified that Mr. Phelps was not under any stress at the time of his accident and that he had not set a deadline on the job and does not push his employees, but lets “them go at their own rate”. Furthermore, all overtime worked by his employees was voluntary.

On October 16, 1997, the Trial Court heard all pending motions and granted the plaintiff a partial summary judgment on the issue of causation. An order for partial summary judgment was

filed on December 23, 1997. On January 22, 1998, defendants filed a motion to alter or amend summary judgment as well as a motion for order granting interlocutory appeal, and the Court denied both motions by order of May 15, 1998.

On June 9, 1999, defendants filed a motion to set aside summary judgment and on June 14, 1999, at the hearing of this matter, defendants entered the recorded statement of Lifford Lee Lancaster, M. D., who opined that Mr. Phelps' heart problems and death were not work related. The Court denied defendants' motion to set aside summary judgment and to set aside the finding of causation as a matter of law prior to the hearing of this matter. After the hearing the Trial Court entered a judgment on November 27, 1999 awarding workers' compensation benefits to plaintiff and incorporating the order for partial summary judgment regarding causation.

### ANALYSIS

The standard of review on appeal of a grant of summary judgment is de novo upon the record without a presumption of correctness to determine whether the absence of genuine and material factual issues entitle movant to a judgment as a matter of law. *Finister v. Humboldt General Hospital, Inc.*, 970 S.W.2d 435, 437-438 (Tenn. 1998).

Tennessee Woolen Mills, Inc., and The Travelers Insurance Co. have presented one issue in this appeal:

I. Whether the trial court erred when it found that there was no disputed fact as to the cause of decedent's, Joseph Phelps' death; granted plaintiffs a partial summary judgment; denied defendants' Motion to Alter or Amend Summary Judgment; denied defendants' Motion to Set Aside Summary Judgment; and incorporated the Order of Partial Summary Judgment in the final judgment in the matter.

Rule 56.04 of the Tennessee Rules of Civil Procedure provides that summary judgment shall be rendered if the movant can "show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

The Court must view the evidence in the light most favorable to the non-moving party, draw all reasonable inferences in the non-movant's favor, and discard all countervailing evidence. The Court should grant a summary judgment only when both the facts and conclusions to be drawn from the facts permit a reasonable person to reach only one conclusion. *Shadrick v. Coker*, 963 S.W.2d 726,731 (Tenn. 1998) (citing *Byrd v. Hall*, 847 S.W.2d 208, 210-11 (Tenn. 1993)).

In *Berry v. Consolidated Systems, Inc.*, 804 S.W.2d 445 (Tenn. 1991), our Supreme Court stated: "[S]ummary judgment is inappropriate where there is a dispute as to the facts, or where there

is uncertainty as to whether there may be such a dispute. *See Evco Corporation v. Ross*, 528 S.W.2d 20, 25 (Tenn. 1975). Hence, summary judgment is almost never an option in a contested workers' compensation action." 804 S.W.2d at 446. *See also, Hilliard v. Tennessee State Home Health Services, Inc.*, 950 S.W.2d 344 (Tenn. 1997).

The record shows that the medical opinions as to the cause of Joseph Phelps' heart attack are in dispute. Dr. Giles opined that Joseph Phelps' death was caused by cardiac arrest, not trauma of any kind. Dr. Giles further opined that a family history of heart disease, smoking, drinking, poor exercise habits, and stress can all contribute to heart disease and myocardial infarction. In his deposition, Dr. Giles stated that stress was, at most, "possibly a minor contributing factor, just as his high blood pressure, lifestyle and age were all contributing factors" to Joseph Phelps' death. In his affidavit, however, Dr. Giles unequivocally opined that Joseph Phelps' "cardiac arrest was not caused by job stress." He concluded that it was more likely that his cardiac arrest was caused by his age, his weight, and his smoking. We find that Dr. Giles deposition testimony to be inconsistent with his subsequent affidavit as to whether job stress was a contributing factor in Mr. Phelps' death.

In addition plaintiff submitted the affidavit of Dr. Walls who disagreed with the conclusions in Dr. Giles' affidavit and found that job stress did contribute to the death of Mr. Phelps.

In this case there is a dispute as to the facts regarding causation or at the very least enough uncertainty as to whether there may be such a dispute so as to render this case an inappropriate one for summary judgment.

Therefore, after careful review of the record under this strict standard of review, it is the opinion of this panel the trial court's decision to grant partial summary judgment must be set aside. The medical evidence and lay testimony are sufficient to establish a genuine issue of material fact as to whether the deceased employee's death was causally related to his employment. And therefore, we remand this case to the Smith County Chancery Court for a hearing upon the merits.

Appellees shall be assessed the costs of this appeal.

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James L. Weatherford, Senior Judge





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

**LANA PHELPS, ET AL. v. TENNESSEE WOOLEN MILLS, INC., ET AL.**

**Chancery Court for Smith County  
No. 5787**

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**No. M1998-00666-WC-R3-CV - Filed - January 10, 2001**

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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 will be paid by the appellees, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM