

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

December 14, 2000 Session

**MARIE MOYERS, v. KEMPER INSURANCE COMPANIES, ET AL.**

**Direct Appeal from the Circuit Court for Jefferson County  
No. 16,774 Ben Hooper, II, Circuit Judge**

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**No. E2000-01729-WC-R3-CV - Mailed - February 8, 2001**

**FILED: April 17, 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 trial court found the plaintiff's husband suffered a fatal heart attack arising out of his employment with the defendant and entered judgment accordingly.<sup>1</sup> The trial court found the heart attack was caused by emotional stress rather than physical exertion. The defendant asserts the evidence preponderates against the finding of the trial court. We find the evidence does not support the judgment of the trial court. We, therefore, reverse the judgment of the trial court and dismiss this case.

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

JOHN K. BYERS, SR. J., delivered the opinion of the court, in which WILLIAM M. BARKER, J. and HOWELL N. PEOPLES, Sp. J, joined.

Steven H. Trent and Jennifer P. Keller, Johnson City, Tennessee, for the appellants, Kemper Insurance Companies and Performance Food Group.

Donald B. Oakley, Morristown, Tennessee, for the appellee, Marie Moyers.

**OPINION**

Review of the findings of fact made by the trial court is *de novo* upon the record of the

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<sup>1</sup> The defendant agrees the plaintiff's husband was working in the course of his employment at the time of his death. The defendant does not agree that the event arose out of the employment. See TENN. CODE ANN. § 50-6-102(a)(5); *Reeser v. Yellow Freight Sys., Inc.*, 938 S.W.2d 690, 692 (Tenn. 1997).

trial court, accompanied by a presumption of the correctness of the findings, 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. *See Corcoran v. Foster Auto GMC, Inc.*, 746 S.W.2d 452, 456 (Tenn. 1988).

In order to be eligible for workers' compensation benefits, an employee must suffer "an injury by accident arising out of and in the course of employment which causes either disablement or death." TENN. CODE ANN. § 50-6-102(a)(5). The phrase "arising out of" refers to causation. The causation requirement is satisfied if the injury has a rational, causal connection to the work. *Reeser v. Yellow Freight Sys., Inc.*, 938 S.W.2d 690, 692 (Tenn. 1997) (citations omitted); *Fink v. Caudle*, 856 S.W.2d 952 (Tenn. 1993).

### Facts

\_\_\_\_\_ Alfred Moyers, the deceased, was employed by the defendant as a truck driver. He was 60 years of age at the time of his death. He was the plaintiff's husband; they had no children.

Mr. Moyers died while participating in a "truck rodeo" held by the defendant. The annual truck rodeo, in which all of the defendant's drivers could participate, consisted of competing in activities associated with the duties of truck drivers. The rodeo included a written test, an inspection of trucks by the drivers to discover pre-arranged mechanical or operational defects and the driving of a truck through a marked layout for the purpose of demonstrating driving skills.

The performance of each driver was graded, and awards for 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> place were given. No penalties, demerits or administrative reaction to the performance of any drivers who had low scores in the contest were assessed.

The rodeo was described as mostly a picnic-type atmosphere where the drivers and their families could come together for a day of visiting with one another and eating food supplied by the sponsors of the rodeo.

The event, which gave rise to this case, occurred at the rodeo of October 18, 1997.<sup>2</sup> The deceased was the last driver scheduled to drive a truck, which was the last event of the rodeo. A witness testified the deceased did not participate in the trial inspection phase of the event. The inspection event—like the other two events—counted in the overall scoring for purposes of standing in the competition.

The deceased started through the driving event and had progressed through three stations on

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<sup>2</sup> The plaintiff had participated in previous rodeos.

the course. His truck then rolled into a building. The deceased was found slumped over in the cab of the truck. He was unconscious and never regained consciousness.

### **Medical Evidence**

Dr. Harry Bishop, a cardiologist who testified by deposition stated that he had been the deceased's doctor in 1986 when the deceased was having heart problems. Dr. Bishop testified Mr. Moyers had suffered a heart attack and had serious artery disease. Dr. Bishop last saw Mr. Moyers on January 15, 1987, and administered a stress test which showed no abnormal heart problems.

Dr. Bishop was shown the death certificate which showed the cause of death to be a myocardial infarction due to or the consequence of arteriosclerotic heart disease.<sup>3</sup> He opined that sudden physical or emotional stress could cause a heart attack.

The plaintiff proposed a hypothetical question to Dr. Bishop, which, if true, would show the deceased was under stress at the time he participated in the rodeo. Dr. Bishop expressed the opinion that the stress filled scenario described could cause a heart attack. Dr. Bishop further testified that if the deceased was not under stress as a result of his participation in the rodeo, his participation alone would not cause a heart attack.

Dr. Christopher Joseph Downs, a cardiologist, reviewed the health records of the deceased and was made aware of the events on the day of death. Dr. Downs expressed the opinion that physical stress in a person with heart attack risk, such as high cholesterol and triglycerides in the arteries can precipitate a heart attack. Dr. Downs expressed the opinion that no support exists for the view that emotional stress can precipitate a heart attack; he also stated he does not believe emotional stress will cause heart attacks.

Dr. Keith Pratt, an internist, testified by deposition; he reviewed Mr. Moyers' records. He had never treated Mr. Moyers.

Dr. Pratt expressed the opinion that Mr. Moyers was suffering emotional stress at the time of the rodeo and the stress caused him to suffer the fatal attack. Dr. Pratt testified he was told Mr. Moyers did not want to participate in the event—a situation which caused Mr. Moyers to experience emotional stress. Further, Dr. Pratt was of the opinion the competition itself would cause emotional stress and precipitate a heart attack.

### **Discussion**

The trial judge found the heart attack was precipitated by emotional stress rather than physical stress. The resolution of this case, therefore, turns on whether the evidence shows the deceased was at the time of his fatal heart attack under emotional stress sufficient to satisfy the

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<sup>3</sup> No autopsy was done on Mr. Moyers.

causation requirements necessary to support an award in this case.

A host of cases dealing with heart attack and similar events, i.e., strokes in the employment context, may be found in our case law. Obviously, each case must be decided on the facts thereof; however, two significant cases give direction in the decision process: *Bacon v. Sevier Count*, 808 S.W.2d 46, (Tenn.1991) and *Reeser v. Yellow Freight Sys., Inc.*, 938 S.W.2d 690 (Tenn.1997).

In *Bacon*, the Court held that in order to recover for a heart attack based upon emotional distress the worker must show the heart attack was precipitated by some acute, sudden, or unexpected emotional distress directly attributable to the employment. Further, the Court held that every stress or strain of daily living or every undesirable encounter experienced in carrying out the duties of an employment relationship is not embraced by the Workers' Compensation Act.

In *Reeser*, the Court found the under the factual situation—unusual road condition of ice and snow etc. over which Reeser had to drive—created an abnormal and stressful set of circumstances, which the medical witnesses testified could have contributed to the stroke suffered by Reeser.

This case must be determined within the context of *Bacon* and *Reeser*. Our review of the record satisfies us that the plaintiff has failed to carry the burden of proof to show the heart attack suffered by her husband arose out of his employment.

No evidence in this case shows the deceased was confronted by any sudden stressful event at the time of the occurrence. Indeed, to the contrary, the evidence shows the deceased was experiencing no stress at the time of his death.

Two of the deceased's fellow drivers and his widow testified the deceased was not acting any differently at the time of the event than he always acted—he was laughing and joking with the other participants and announced he was going to nap prior to driving in the event, which he did.

The testimony of Drs. Bishop and Pratt is the only relevant medical testimony on the issue of emotional stress.

Dr. Bishop testified that if the deceased was under stress as a result of driving in the rodeo, that could be a cause of the heart attack. On the other hand, Dr. Bishop was of the opinion that the participation in the rodeo would not cause the heart attack in the absence of stress. Based on the failure of the plaintiff to show the deceased was under emotional stress at the time of the occurrence, we adopt Dr. Bishop's opinion that the heart attack was not caused by the participation in the rodeo and hence did not arise out of the employment.

Dr. Pratt's determination that the deceased was under stress at the time of the heart attack is twofold. First, he based his finding of stress upon the unsupported statement of a third party that the deceased did not wish to participate in the rodeo. Second, he based the finding of stress on his opinion that stress would be inherent in the competition in the rodeo.

With regard to Dr. Pratt's first assumption, we can only say that the record is totally absent of any evidence that the deceased did not want to participate in the rodeo.

With respect to Dr. Pratt's second assumption, the record is likewise lacking in evidentiary support. None of the witnesses present at the event or who participated in the event testified that the deceased seemed stressed at the event. Furthermore, Dr. Pratt's opinion that the competition to win the event would cause stress seems an unlikely cause in this case. Each of the events—the written test, the inspection for defect in the truck and the driving event—were scored in the overall result. The evidence in this case indicates the deceased did not participate in the truck inspection event. This evidences a lack of interest in the deceased as to his final standing in the score. Therefore, we find the foundations for Dr. Pratt's opinion as to stress in both instances are without evidentiary support in the record and are not thus sufficient upon which to find the plaintiff satisfied her burden of proof with regard to causation.

We reverse the judgment of the trial court and dismiss this case.

The cost of this appeal is taxed to the plaintiff.

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JOHN K. BYERS, SENIOR JUDGE

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**JUDGMENT**

This case is before the Court upon motion of Marie Moyers 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 paid by Marie Moyers, for which execution may issue if necessary.

IT IS SO ORDERED.

BARKER, J., NOT PARTICIPATING