

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

October 9, 2001 Session

**JOYCE RAMSEY v. CITY OF DYERSBURG, ET AL.**

**Direct Appeal from the Chancery Court for Dyer County  
No. 99C305 Joe C. Morris, Chancellor**

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**No. W2001-01059-SC-WCM-CV - Mailed December 7, 2001; Filed February 7, 2002**

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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 appeal, the appellant contends the evidence preponderates against the trial court's finding that the claimant's husband's fatal heart attack arose out of and in the course of employment. As discussed below, the panel has concluded the judgment should be affirmed.

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

JOE C. LOSER, JR. SP. J., delivered the opinion of the court, in which JANICE M. HOLDER, J., and L. T. LAFFERTY, SR. J., joined.

John D. Burluson and V. Latosha Mason, Jackson, Tennessee, for the appellants, City of Dyersburg, Tennessee Police Department and TML Risk Management Pool.

Charles S. Kelly, Jr., Dyersburg, Tennessee, for the appellee, Joyce Ramsey, widow of George Harrell Ramsey.

**MEMORANDUM OPINION**

The relevant facts are undisputed. The claimant, Joyce Ramsey, is the widow of George Harrell Ramsey, who was employed as a police officer for the City of Dyersburg from June 8, 1970, until the time of his death on June 5, 1998. At the time of his death he was a lieutenant with the department and a shift supervisor. On June 4, 1998, while working his normal shift, an accident was reported on Volunteer Drive. He drove to the scene to assist another officer, Kenneth Luckett, who was working the accident. Because traffic was building up, he began directing traffic, which he continued to do for at least 45 minutes without relief.

Later that day, he was seen at the police station, sitting at his desk and reviewing reports.

He was also rubbing his shoulder and leg as he had done on other occasions. At about 4:30 p.m., he arrived at his wife's place of employment, where he sat in a recliner and asked Mrs. Ramsey to bring him something to drink. Mrs. Ramsey said he was pale, hurting and slept until 5:00 p.m. when they went home and ate supper. The decedent took his blood pressure medication and began vomiting around 9:00 p.m. He was taken to Dyersburg Hospital, where he died in the early hours of June 5, 1998. Mrs. Ramsey filed this action to recover death benefits under the Workers' Compensation Law, Tenn. Code Ann. § 50-6-101 *et seq.*

After a trial on the merits, the trial court found that the decedent's death resulted from a heart attack that occurred while he was working on June 4, 1998 and was precipitated by physical exertion at work. The trial court also concluded, implicitly, that the claimant was entitled to a presumption of compensability because the decedent was a police officer. The claimant was awarded benefits as provided by the above law.

For injuries occurring on or after July 1, 1985, appellate review is de novo upon the record of the trial court, accompanied by a presumption of correctness of the findings of fact, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2). The reviewing court is required to conduct an independent examination of the record to determine where the preponderance of the evidence lies. Wingert v. Government of Sumner County, 908 S.W.2d 921, 922 (Tenn. Sp. Workers Comp. 1995). The standard governing appellate review of findings of fact by a trial court requires the Special Workers' Compensation Appeals Panel to examine in depth a trial court's factual findings and conclusions. GAF Bldg. Materials v. George, 47 S.W.3d 430, 432 (Tenn. 2001). Conclusions of law are subject to de novo review on appeal without any presumption of correctness. Presley v. Bennett, 860 S.W.2d 857, 859 (Tenn. 1993).

Where the trial judge has seen and heard the witnesses, especially if issues of credibility and weight to be given oral testimony are involved, considerable deference must be accorded those circumstances on review, because it is the trial court which had the opportunity to observe the witnesses' demeanor and to hear the in-court testimony. Long v. Tri-Con Ind., Ltd., 996 S.W.2d 173, 177 (Tenn. 1999). The appellate tribunal, however, is as well situated to gauge the weight, worth and significance of deposition testimony as the trial judge. Krick v. City of Lawrenceburg, 945 S.W.2d 709, 712 (Tenn. 1997).

Under the Tennessee Workers' Compensation Law, injuries by accident arising out of and in the course of employment which cause either disablement or death of the employee are compensable. Tenn. Code Ann. § 50-6-103(a); McCurry v. Container Corp. of America, 982 S.W.2d 841, 843 (Tenn. 1998). An accidental injury arises out of one's employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury, and occurs in the course of one's employment if it occurs while an employee is performing a duty he was employed to do. Fink v. Caudle, 856 S.W.2d 952, 958 (Tenn. 1993). Except in the most obvious cases, causation may only be established through expert medical testimony. Thomas v. Aetna Life and Cas. Co., 812 S.W.2d 278 (1991). In a heart attack case, the required causal connection may be

established by (1) proof that the attack was precipitated by physical exertion or strain at work, (2) proof that the attack resulted from stress, tension or some type of emotional upheaval at work, or (3) proof that the victim was a law enforcement officer, in which case causation need not be proved unless the presumption created by Tenn. Code Ann. § 7-51-201(a)(1)<sup>1</sup> is rebutted by competent medical evidence. Perry v. City of Knoxville, 826 S.W.2d 114, 115 (Tenn. 1991).

The appellants argue the trial court erred in affording the claimant the benefit of a presumption applicable to police officers, because the presumption of causation was rebutted by competent medical evidence. Where the presumption that the attack arose out of the employment is rebutted by competent medical proof that there is not a substantial causal connection between the work of the employee and the occurrence upon which the claim for benefits is based, the presumption disappears. Krick at 709. In such case, the plaintiff must prove by a preponderance of the evidence that the heart attack was the result of an injury by accident arising out of and in the course of employment. Id at 713.

Dr. Hal M. Roseman is a medical doctor specializing in cardiovascular medicine. Dr. Roseman opined in his deposition that, from a review of the decedent's medical records, the decedent died from a heart attack directly related to atherosclerotic coronary disease caused by uncontrollable hypertension, a family history of coronary disease, morbid obesity and hyperlipidemia. He further affirmatively testified, based on reasonable medical certainty, that the heart attack was not caused by the decedent's activities at work on June 4, 1998. Dr. Roseman's testimony rebutted the statutory presumption.

Lieutenant Ramsey's primary care physician, Dr. Kashif Latif, also testified by form C-32 and deposition. Dr. Latif opined in his C-32 statement that the heart attack was causally related to stress at work and agreed with Dr. Roseman's opinion the decedent had numerous risk factors which could have contributed to his heart attack. In his deposition, Dr. Latif opined more likely than not the physical exertion at work on June 4, 1998 caused the attack. The trial court accepted Dr. Latif's

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<sup>1</sup> (a) (1) Whenever the state of Tennessee, or any municipal corporation or other political subdivision thereof that maintains a regular law enforcement department manned by regular and full-time employees and has established or hereafter establishes any form of compensation to be paid to such law enforcement officers for any condition or impairment of health which shall result in loss of life or personal injury in the line of duty or course of employment, there 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. Any such condition or impairment of health which results in death shall be presumed (unless the contrary be shown by competent medical evidence) to be a loss of life in line of duty, and to have been in the line and course of employment, and in the actual discharge of the duties of such officer's position, or the sustaining of personal injuries by external and violent means or by accident in the course of employment and in line of duty. 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.

opinion. When the medical testimony differs, the trial judge must choose which view to believe. In doing so, he is allowed, among other things, to consider the qualifications of the experts, the circumstances of their examination, the information available to them, and the evaluation of the importance of that information by other experts. Orman v. Williams Sonoma, Inc., 803 S.W.2d 672, 676 (Tenn. 1991). Moreover, it is within the discretion of the trial judge to conclude that the opinion of certain experts should be accepted over that of other experts and that it contains the more probable explanation. Hinson v. Wal-Mart Stores, Inc., 654 S.W.2d 675, 676-7 (Tenn. 1983).

From our independent examination of the record, we cannot say the trial court abused its discretion by accepting the opinion of the decedent's primary care physician. For that reason and because the evidence fails to preponderate against the judgment of the trial court, the judgment is affirmed. Costs are taxed to the appellant.

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JOE C. LOSER, JR.

IN THE SUPREME COURT OF TENNESSEE  
AT JACKSON

**JOYCE RAMSEY, Appellee v. CITY OF DYERSBURG, ET AL., Appellants**

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**JUDGMENT**

This case is before the Court upon Applicant'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 appellants City of Dyersburg, Tennessee Police Department, and TML Risk Management Pool for which execution may issue if necessary.

PER CURIAM

Holder, J., not participating