

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

FILED March 5, 1999 Cecil Crowson, Jr. Appellate Court Clerk

RONALD UNDERWOOD,)	
)	
Plaintiff/Appellee)	RHEA CHANCERY
)	
v.)	NO. 03S01-9802-CH-00019
)	
ROBINSON MANUFACTURING)	HON. JEFFREY F. STEWART,
COMPANY, INC., and ARGONAUT)	CHANCELLOR
INSURANCE COMPANY,)	
)	
Defendants/Appellants)	

For the Appellants:

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For the Appellee:

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MEMORANDUM OPINION

Members of Panel:

Chief Justice E. Riley Anderson
Senior Judge John K. Byers
Special Judge Roger E. Thayer

AFFIRMED IN PART;
REVERSED IN PART

BYERS, Senior Judge

OPINION

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

Review of the findings of fact made by the trial court is *de novo* upon the record of the 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 court in a workers' compensation case. See *Corcoran v. Foster Auto GMC, Inc.*, 746 S.W.2d 452, 456 (Tenn. 1988).

The trial court found the plaintiff was 30 percent permanently and partially industrially disabled. The trial court further found that the defendant would be liable for any cost of a future bypass surgery.

The issues presented for review are whether the trial court erred in finding that the plaintiff's heart attack was precipitated by exertion from work; whether the trial court erred in finding that the plaintiff is industrially disabled; and whether the trial court erred in finding that the plaintiff is entitled to medical expenses incurred from a future bypass.

We affirm the judgment in part and reverse the judgment in part.

The plaintiff is 41 years old, has always worked as a laborer, and has no high school diploma or GED. The plaintiff works as a truck driver for the defendant. On the day he had his heart attack, he had worked eight or nine hours before he arrived at his destination. Though in the eight years he had worked for the defendant, he had never unloaded a truck without a hydraulic pallet jack, there was no pallet jack to be found, and the plaintiff had to unload his truck by hand, walking into his enclosed, unventilated truck, picking up boxes weighing between 25-75 pounds, and carrying them approximately 30-40 feet to another trailer. The temperature inside the two trailers was "well over a hundred."

After the plaintiff had carried about 10 boxes, he began having chest pains and began to vomit. He returned to his job, but the chest pain increased. He first

attempted to drive himself to the hospital, but he ended up radioing for an ambulance which took him to a local hospital before he was airlifted to a Chattanooga hospital. The plaintiff was diagnosed as having had a heart attack. The plaintiff underwent bypass surgery and returned to his same job driving a truck at the same pay rate approximately four weeks after the heart attack.

The plaintiff has regularly smoked cigarettes since he was 18 years old or younger. At the time of his heart attack, he was 40, overweight, had high cholesterol, and a family history of atherosclerotic disease, all risk factors for a heart attack. However, he has passed physicals every two years for the 12 years preceding this heart attack, including one less than a month before the heart attack. Against his doctors' advice, he still smokes cigarettes and occasionally eats fatty foods.

The trial court found the depositions of Dr. Hays and Dr. Graham to be "most significant," and Dr. Hays' testimony to be "unequivocating" and awarded benefits including medical expenses involved in another bypass surgery in the future.

_____The plaintiff relied on the deposition testimony of Dr. Leonard J. Hays, a cardiologist, who treated him at the Chattanooga hospital. Regarding the causation of the plaintiff's injury, Dr. Hays testified that the work "could have caused the heart attack;" "may have" contributed to it; could have played a role in precipitating it; could have triggered it; in all likelihood triggered it; and, had a rational causal relation to it. Finally, he testified that it was "probable" that the work precipitated the heart attack.

Dr. Hays conceded that the plaintiff had a significant coronary blockage which was a major contributing factor to the heart attack. He admitted that, other than the history he received from the plaintiff, there was no way to know whether the heart attack was really precipitated by the exertion. Dr. Hays stated that the heart attack "was made possible by [the plaintiff's] pre-existing coronary disease," and was more related to it than the exertion.

On the subject of industrial disability, Dr. Hays testified to the plaintiff's permanent heart damage. Using the *AMA Guides* for coronary heart disease, he found the plaintiff to have no impairment before the heart attack but a 10-30 percent impairment afterwards. He also recommended that Plaintiff should lift "less than 50 pounds." On cross-examination, Dr. Hays admitted the plaintiff had blood flow better

than before and narrowed the plaintiff's range of impairment to 25-29 percent.

However, Dr. Hays maintained that the plaintiff's impairment resulted from the heart attack.

Regarding future medical benefits, Dr. Hays testified that he "suspected [the plaintiff] probably will" require future surgery in 10-15 years. On cross, Dr. Hays stated that though the bypass surgery already performed had more to do with the coronary artery disease, it would be "difficult to answer" the question of whether any future bypass surgery would be precipitated by work. He further stated that Plaintiff's need for future treatment was related to "both" his employment as well as the risk factors and pre-existing condition.

The defendant primarily relied on the deposition testimony of Dr. Gordon D. Graham, a board certified cardiologist, who has never seen the plaintiff and who essentially reviewed Dr. Hays' reports to form his opinions. On the subject of causation, Dr. Graham testified that the plaintiff's heart attack was caused by the "rupture of a plaque within one of his main coronary arteries." He explained that in the plaintiff's late teens or early 20s, he probably began to develop some yellow streaking along his coronary arteries, "plaques," which filled with cholesterol, eventually ruptured, and caused blood clots which in turn caused a heart attack. Dr. Graham stated that risk factors present in the plaintiff's case accelerated the rupturing process. He further testified that the plaintiff's heart attack on that particular day was inevitable and that heart attacks happen at "random . . . throughout the day," noting that statistically heart attacks are more common in the early morning hours.

On cross-examination, Dr. Graham admitted that he did not know "whether it's simply he was going to have a heart attack that day" and the plaintiff just happened to be working, but that the plaintiff had a risk of a heart attack during that 24 hours, noting that "his heart attack occurred while he was unloading a truck. Why that happened specifically I don't know." When asked whether physical exertion can cause a heart attack, Dr. Graham stated that "physical exertion has been associated with heart attacks," but because heart attacks statistically occur most frequently in the morning, there was no real connection between physical exertion and heart attacks. Finally, Dr. Graham admitted that "it is speculative as to what makes that

plaque rupture at a given time . . . we purely speculate as to why that plaque on that day at that hour chose to rupture.”

Regarding the plaintiff's industrial disability, Dr. Graham testified that the plaintiff should lift less than 40-60 pounds because of the bypass surgery. Dr. Graham could only make assumptions and suppositions about the extent of impairment before the heart attack, but he opined that the plaintiff was Class 2 both before and after, even though the heart attack admittedly caused some “loss of pump function.” On cross-examination, Dr. Graham admitted that he had no laboratory tests to support his opinion that the plaintiff was impaired before the heart attack.

First, the defendants argue that the plaintiff's heart attack was inevitable and that he just happened to be at work. They say that the plaintiff's heart attack was not precipitated or caused by his work activities but by his heredity and lifestyle. Further, they say that the treating physician's testimony is to be given no more weight than the reviewing physician's testimony. *Krick v. City of Lawrenceburg*, 945 S.W.2d 709 (Tenn. 1997).

We find the evidence does not preponderate against the trial court's finding. If work exertion precipitates the heart attack, it is compensable, *Bacon v. Sevier County*, 808 S.W.2d 46 (Tenn. 1991) even if the employee suffers from a preexisting heart disease. *Tindall v. Waring Park Ass'n*, 725 S.W.2d 935 (Tenn. 1987). As long as an incident “could be” the cause, an award may be properly given. *Reeser v. Yellow Freight Sys., Inc.*, 938 S.W.2d 690 (Tenn. 1997). Dr. Hays' testimony that the exertion at work could have caused the heart attack is sufficient for such a finding.

Next, the defendants argue that the plaintiff is not industrially disabled because he now has less risk of a heart attack, better blood flow, and improved cardiovascular status. They point out that the plaintiff returned to the same job with the same pay. Further, they say that the plaintiff's impairment was the same before the heart attack as it was after the heart attack, according to Dr. Graham.

Dr. Hays and Dr. Graham both testified that the plaintiff now has a Class 2 impairment rating. Dr. Graham could only speculate as to the impairment rating before the heart attack because there was no evidence of the plaintiff's heart disease before the heart attack. Because the plaintiff was asymptomatic before the heart

attack, he could not have had a Class 2 rating before because such a rating requires symptoms. In any event, both experts agreed that permanent damage was done to the plaintiff's heart. Regardless of whether the plaintiff has the same job, his "market value" is diminished. We find the evidence supports a finding of vocational disability.

Finally, the defendants argue that the determination of liability for future surgery expenses is contingent upon expert testimony at the time the employee's condition requires surgery, if he does. *Helton v. State*, 800 S.W.2d 823 (Tenn. 1990). The determination of liability of the defendant must be made at the time a second surgery occurs, and the relationship of such surgery to the current heart attack must then be determined.

We affirm the judgment of the trial court in all things except the finding of a right to contingent and future medical costs, which is reversed. The cost of this appeal is taxed to the defendants.

John K. Byers, Senior Judge

CONCUR:

E. Riley Anderson, Chief Justice

Roger E. Thayer, Special Judge

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ROBINSON MANUFACTURING)	Hon. Jeffrey F. Stewart
COMPANY, INC. and ARGONAUT)	Chancellor
INSURANCE COMPANY)	
)	
Defendants-Appellants.)	

JUDGMENT ORDER

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 facts 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 appellants, Robinson Manufacturing Company, Inc. And Argonaut Insurance Company, and H. Richard Marcus, surety, for which execution may issue if necessary.

03/05/99