

IN THE SUPREME OF TENNESSEE

AT NASHVILLE

<p>FILED</p> <p>October 22, 1999</p> <p>OVERTON CIRCUIT Cecil C. Crowson, Jr. Appellate Court Clerk</p>
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<p>GERALDINE GARRETT</p> <p style="padding-left: 40px;"><i>Plaintiff/Appellee</i></p> <p>vs.</p> <p>TOWN OF LIVINGSTON, TN and AETNA CASUALTY and SURETY COMPANY</p> <p style="padding-left: 40px;"><i>Defendant/Appellants</i></p>	<p>} } } } } } } } } } }</p>	<p>OVERTON CIRCUIT No. Below 7978</p> <p>Hon. John J. Maddux, Jr.</p> <p>No. 01S01-9805-CV-00098</p> <p>REVERSED</p>
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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 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 plaintiff/appellee, for which execution may issue if necessary.

IT IS SO ORDERED on October 22, 1999.

PER CURIAM

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

AT NASHVILLE
(MARCH 31, 1999 Session)

GERALDINE GARRETT,)	OVERTON CIRCUIT
)	
Plaintiff-Appellee,)	Hon. John J. Maddux,
)	Jr.,
)	Circuit Judge.
)	
VS.)	
)	
)	
TOWN OF LIVINGSTON,)	
TENNESSEE and AETNA)	
CASUALTY AND SURETY)	
COMPANY,)	
)	
Defendants-Appellants.)	

01S01-9805-CV-00098

FILED

October 22, 1999

Cecil Crowson, Jr.
Appellate Court Clerk

 For Appellants:

Robert M. Burns
Howell & Fisher
Nashville, Tennessee

 For Appellee:

T. Michael O' Mara
O'Mara & Johnson
Cookeville, Tennessee

MEMORANDUM OPINION

 Members of Panel:

Frank F. Drowota, III, Associate Justice
Thomas W. Brothers, Special Judge
Joe C. Loser, Jr., Special Judge

REVERSED

Brothers,
Judge

MEMORANDUM OPINION

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with T.C.A. § 50-6-225(e)(1). In this appeal, the employer, the Town of Livingston, Tennessee, questions the trial court's finding that the employee's heart attack was compensable under the Tennessee Workers' Compensation Act. As discussed below, the panel finds that the evidence preponderates against a finding that the employee's heart attack was an injury by accident arising out of and in the course of employment.

The claimant, Geraldine Garrett, is the widow of the employee, Chief of Police Howard Garrett, who died on April 29, 1996. At the time of his death, Mr. Garrett was employed by the Town of Livingston as Chief of Police.

Prior to his death on April 29, 1996, the day was an ordinary one for Howard Garrett. He was in a good mood, had no sudden confrontations or arguments with anyone, and made no arrests or traffic stops. There was testimony at trial that Garrett was concerned about the hiring of a new police officer. Garrett felt that his police force was undermanned and was anxious to hire another officer. Garrett was waiting on the result of a psychological examination for this new officer applicant on the day of this heart attack. Geraldine Garrett also explained that her husband, Howard Garrett, had been waiting for a week to a week and a half for the psychological exam results.

At the time of his heart attack, Howard Garrett was not in his office, nor was he in his patrol car; instead, his shift for the day had ended and he was at home planting beans in his garden.

Upon the evidence presented to the trial court, the trial judge found Mr. Garrett's death to have been causally related to his employment as chief of police in Livingston, Tennessee.

Appellate review is *de novo* upon the record of the trial court, accompanied by a presumption of the correctness of the findings of fact, unless

the preponderance of the evidence is otherwise. T.C.A. § 50-6-225(e)(2). This court is required to conduct an independent examination of the record to determine where the preponderance of the evidence lies. *Galloway v. Memphis Drum Service*, 822 S.W.2d 584, 586 (Tenn.1991); *Wingert v. Government of Sumner County*, 908 S.W.2d 921, 922 (Tenn.1995).

The trial court properly held that the Plaintiff was not entitled to rely on the rebuttable presumption of a compensable injury for a police officer created by T.C.A. §7-51-201(a)(1) because Mr. Garrett did not have or pass a pre-employment physical as required by law to rely on this presumption.

The issue to be determined by this appeal is whether the preponderance of the evidence supports the trial court's finding that Mr. Garrett's deadly heart attack was causally related to his employment and therefore compensable under our workers' compensation law.

There are generally two types of heart attack cases that are considered under our workers' compensation law:

1. Those that are precipitated by physical exertion or strain, and
2. Those resulting from stress, tension, or some type of emotional upheaval.

Stone v. McMinnville, 896 S.W.2d 548,552(Tenn.1995); *Bacon v. Sevier County*, 808 S.W.2d 46(Tenn. 1991).

In the present case we are only concerned with the second category since the allegation is that Mr. Garrett's heart attack resulted from stress, tension, or some type of emotional upheaval.

For a heart attack to be compensable when allegedly resulting from stress, tension, or some type of emotional upheaval, the heart attack must be immediately precipitated by a specific acute or sudden stressful event, rather than general conditions of employment. There must be a specific, climatic, identifiable event or a series of incidents of an unusual or abnormal nature before there can be a recovery. *Bacon v. Sevier County*, *supra*, at 52; *Stone v. McMinnville*, *supra*, at 552; *Benton v. City of Springfield*, 973 S.W.2d 936,937 (Tenn.1998); *Krick v. City of Lawrenceburg*, 945 S.W.2d 709, 713-14 (Tenn.1997). A heart attack resulting from worry, anxiety or emotional stress of a general nature is not

compensable. *Wingert v. Government of Sumner County*, 908 S.W.2d 921, 923(Tenn.1995); *Bacon v. Sevier County*, *supra*.

Our review of the record persuades us that the Plaintiff has not proven by a preponderance of the evidence that the heart attack suffered by Howard Garrett was precipitated either by physical strain, exertion or trauma connected with his employment, or was produced by some acute, sudden, and unexpected emotional distress directly attributable to the employment. The plaintiff has not shown a specific, acute or sudden stressful event immediately preceding the heart attack. Howard Garrett's concerns over the hiring of an additional police officer existed over a period of days preceding his heart attack, and therefore was neither acute nor sudden. The record does not reveal that there was a confrontation or heated discussion concerning this situation that precipitated this unfortunate occurrence. Without an identifiable work-related cause, there can be no recovery.

Accordingly, the judgment of the trial court is reversed and the case dismissed. Costs on appeal are taxed to the plaintiff-appellee.

Thomas W. Brothers, Special Judge

CONCUR:

Frank F. Drowota, III, Associate Justice

Joe C. Loser, Jr., Special Judge