

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT NASHVILLE  
April 21, 2008 Session

**LISA MILLER, ET AL. v. M & R CONSTRUCTORS, INC. a/k/a  
MILLWRIGHTS & RIGGERS**

**Direct Appeal from the Circuit Court for Smith County  
No. 6191-W John Wooten, Judge**

---

**No. M2007-01945-WC-R3-WC - Mailed - August 26, 2008  
Filed - September 26, 2008**

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated section 50-6-225(e)(3) for a hearing and a report of findings of fact and conclusions of law. This is a suit to recover workers' compensation death benefits. Employer denied that Decedent's cardiac arrest was caused by his employment. The trial court found the death to be work-related, and awarded benefits to the survivors. On appeal, Employer contends that the evidence preponderates against that finding. We disagree, and affirm the judgment.

**Tenn. Code Ann. § 50-6-225(e) (Supp. 2007) Appeal as of Right; Judgment of the Circuit  
Court Affirmed**

ALLEN W. WALLACE, SR. J., delivered the opinion of the court, in which CORNELIA A. CLARK, J., and DONALD P. HARRIS, SR. J., joined.

Gordon C. Aulgur, Nashville, Tennessee, for the appellant M & R Constructors, Inc.

Debbie C. Holliman and E. Guy Holliman, Carthage, Tennessee, for the appellee, Lisa Miller.

**MEMORANDUM OPINION**

**Factual and Procedural Background**

Gary Miller ("Decedent") was employed by M & R Constructors, Inc. ("Employer") as a construction laborer. His supervisor, Raymond McCoy, testified by deposition that Decedent "basically [did] a little of everything. He was a backhoe operator. He would finish concrete for us. He would use a torch. He would help erect steel cranes to hold the equipment, operate forklifts, he operated a crane a couple to times." Other employees testified that the job occasionally required Decedent to use sledgehammers and shovels and to assemble forms to be used for pouring concrete.

For part of the morning of May 23, 2005, Decedent worked with Jimmy Lawson, a co-employee. They assembled “two by six” boards to be used to form a concrete floor. This activity consisted of securing the boards with long screws, and spreading gravel alongside the boards. Lawson testified that he worked with Decedent for approximately three hours that morning. He was then directed to a different part of the job site. A second co-employee, Paul Harris, testified that he recalled seeing Decedent using a sledgehammer on the morning of his death. On cross-examination, however, he stated that he was not certain that it was the same morning. Mike Beardon, an employee of a subcontractor on the site, testified that he saw Decedent pouring concrete and using a shovel on that morning.

At eleven o’clock, or shortly thereafter, Decedent fell to the ground. Mr. Beardon, who was nearby, administered CPR. An ambulance was called. The records of the ambulance service reflect that the call was received at 11:28 a.m., and the ambulance arrived on the scene at 11:32 a.m. Decedent was taken to the emergency room of the local hospital. Efforts to revive him were unsuccessful. He was declared dead at 12:06 p.m.

An autopsy was conducted. This revealed that Decedent had 90% occlusion of the right coronary artery. The aorta was found to have moderate atherosclerosis. There was no damage to the heart muscle itself. These facts led both of the medical experts who testified to conclude that Decedent’s coronary artery disease caused an episode of ventricular tachycardia, or irregular heartbeat, which progressed to ventricular fibrillation, a deadly condition which caused his death. Decedent’s spouse, Lisa Miller (“Plaintiff”), brought this action on behalf of their two children, seeking death benefits under the workers’ compensation law. *See* Tenn. Code Ann. § 50-6-210(e)(2).

Dr. Roger Duke testified at trial on behalf of Decedent’s surviving dependents. Dr. Duke was an internal medicine specialist, practicing in Carthage. He testified that roughly 60% of his practice was related to patients with cardiac problems. Based upon his review of the available medical records and the statements of witnesses, Dr. Duke opined that the physical exertion of Decedent’s job had triggered the arrhythmia which ultimately led to his death. Dr. Duke stated that the medical literature “clearly point[ed] out” that physical exertion could incite such an event in a person with advanced coronary disease, such as Decedent.

Dr. David Hansen testified by deposition on behalf of Employer. He was a cardiologist practicing at Vanderbilt University Medical Center. Like Dr. Duke, he had reviewed all of the available medical records and other information concerning Decedent. He agreed that Decedent had sudden cardiac death as a result of arrhythmia. However, he did not consider Decedent’s physical exertion at or near the time of the event to have caused or contributed to his death. Dr. Hansen assumed that Decedent was returning to work from his lunch period at the time the death occurred. He agreed that sudden cardiac death could be triggered by “very heavy” physical labor, but did not consider any of the activities which Decedent had been observed engaging in that morning - operating a backhoe, raking, shoveling - to be sufficient to precipitate the event which occurred.

As set out above, Plaintiff’s theory is that Employee suffered sudden cardiac death which was triggered by physical exertion. For that reason, whether or not Decedent was returning from his

lunch break was a significant issue for the parties. McCoy, Employer's supervisor, testified that the normal lunch break on that job site was from 11:00 a.m. to 11:30 a.m. James Lawson testified that 12:00 p.m. was the normal lunch time. He also testified that he had seen Decedent just before he (Lawson) left the premises for lunch, and that Decedent had died before he returned. Lawson indicated some confusion about the time of day. Mike Bearden, who administered CPR to Decedent, testified that the event occurred immediately after lunch. Decedent's son testified that he retrieved Decedent's lunch box from the work site, and the box still contained his meal. The autopsy indicated that Decedent had no food in his stomach. Dr. Duke testified that this meant he had not eaten for at least four hours.

The trial court found that Decedent's death was caused by his work for Employer. Benefits were awarded to each child. Employer has appealed, contending that the trial court erred in finding that the death was work-related. The amount of benefits is not at issue on appeal.

### **Standard of Review**

The standard of review of issues of fact is de novo upon the record of the trial court accompanied by a presumption of correctness of the findings, unless the preponderance of evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (Supp. 2007). When credibility and weight to be given testimony are involved, considerable deference is given the trial court when the trial judge had the opportunity to observe the witness' demeanor and to hear in-court testimony. *Humphrey v. David Witherspoon, Inc.*, 734 S.W.2d 315, 315 (Tenn. 1987). A reviewing court, however, may draw its own conclusions about the weight and credibility to be given to expert testimony when all of the medical proof is by deposition. *Krick v. City of Lawrenceburg*, 945 S.W.2d 709, 712 (Tenn. 1997); *Landers v. Fireman's Fund Ins Co.*, 775 S.W.2d 355, 356 (Tenn. 1989). A trial court's conclusions of law are reviewed de novo upon the record with no presumption of correctness. *Ridings v. Ralph M. Parsons Co.*, 914 S.W.2d 79, 80 (Tenn. 1996).

### **Analysis**

Employer argues that the trial court erred in accepting the testimony of Dr. Duke, a general practitioner, over that of Dr. Hansen, a specialist. It notes the evidence supporting its theory that Decedent was returning to work from his lunch period, which undermines, though not completely, Dr. Duke's theory. It also points to the testimony of Mr. Lawson, which can be interpreted as stating that Decedent was operating the backhoe, a relatively sedentary task, at the time he last saw him.

In response, Plaintiff points out that, although Dr. Duke was a general practitioner, he had special training in heart issues, had treated many acute cases of cardiac arrest, and had additional relevant experience as an EMT prior to attending medical school. She also notes the evidence, particularly the stomach contents from the autopsy, which suggest that Decedent had not eaten lunch prior to his collapse and death. From that premise, she argues that it can be inferred that he had been performing work immediately prior to his death. In addition, the testimony of all co-workers supports the conclusion that the Decedent's job was strenuous.

The facts of this case bear some resemblance to *Clark v. Nashville Machine Elevator Co.*, 129 S.W.3d 42 (Tenn. 2004). In that case, the decedent was an elevator repairman who suffered a heart attack while driving home from work. The evidence showed that he had repaired twenty-two elevators in the two days prior to the incident, and that the job required him to carry a twenty-eight pound tool box, often up many flights of stairs, to perform his job. A cardiologist testified that exertion of this sort could have triggered the heart attack. However, because the employee had worked alone, there was no direct evidence concerning his work activities in the hours immediately preceding his death. The trial court found for the survivors and the Supreme Court affirmed. Writing for the Court, Chief Justice Drowota said: “In the final analysis, the key in cases such as this one is whether the evidence links the physical activities of the employment with the heart attack, not merely whether there is proof of physical exertion at the moment the heart attack occurred . . . .” *Id.* at 49.

In the present case, there is ample evidence that Decedent was engaged in strenuous physical activities during the morning preceding his death, including using a sledgehammer and shoveling gravel. Decedent collapsed near his work area, and he had not eaten prior to the time he collapsed. Considered together, these factors provide a rational basis for the conclusion that Decedent performed strenuous physical work within a short time before his death. Both doctors testified that cardiac arrest could be triggered by physical activity, although they disagreed somewhat regarding the level of activity necessary to do so. Mindful of both our obligation to resolve all reasonable doubts as to causation in favor of an employee, *Phillips v. A&H Constr. Co.*, 134 S.W.3d 145, 150 (Tenn. 2004), and of the presumption of correctness which attaches to the trial court’s findings, *Skinner v. CNA Ins. Co.*, 824 S.W.2d 164, 166 (Tenn. 1992), we conclude that the evidence contained in this record does not preponderate against the trial court’s finding that Decedent’s death arose from and in the course of his employment.

### **Conclusion**

The judgment of the trial court is affirmed. Costs are taxed to M & R Constructors, Inc., and it surety, for which execution may issue if necessary.

---

ALLEN W. WALLACE, SENIOR JUDGE

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
APRIL 21, 2008 SESSION

**LISA MILLER, ET AL v. M & R CONSTRUCTORS, INC. a/k/a  
MILLWRIGHTS & RIGGERS**

**Circuit Court for Smith County  
No. 6191-W**

---

**No. M2007-01945-WC-R3-WC - Filed - September 26, 2008**

---

**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 appeals 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 are taxed to M & R Constructors, Inc. and its surety, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM