IN THE SUPREME COURT OF TENNESSEE
WORKERS' COMPENSATION APPEALS PANEL
KNOXVILLE, DECEMBER 1997 SESSION

LUCY B. ANDERSON, INDIV. & AS ADMIN. OF THE ESTATE OF BILLY JOE ANDERSON, DECEASED Plaintiff/Appellant	)	HAMBLEN CIRCUIT
V.	)	Hon. Ben K. Wexler, Circuit Judge
LENZING U.S.A. Defendant/Appellee	)	NO. 03S01-9704-CV-00036

For the Appellant:

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For the Appellee:

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M E M O R A N D U M O P I N I O N

Members of Panel:

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

AFFIRMED.

THAYER, Special Judge

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.

The appeal has been perfected by Lucy Anderson, widow and administratrix of the Estate of Billy Joe Anderson, deceased, from a ruling by the trial court that her claim for death benefits was not compensable as she failed to establish her husband's death was caused by his work activities.

At the time of his death, Mr. Anderson was 54 years of age, was six foot four inches tall and weighed between 260-280 pounds. He had been employed as a cutter operator with defendant, Lenzing U.S.A., for about six years but had worked a total of 21 years for the company. Plaintiff testified her husband was in good health, took no medication and never complained of chest pains. She said he smoked cigars sometimes but did not appear to inhale the smoke. She also stated he had no complaints before reporting to work on March 11, 1993. He was working the "C" shift which started at 12 midnight and ended at 7:00 a.m.

Arvine Taylor, decedent's shift supervisor, testified and described the duties of a cutter operator. The employer is engaged in the business of producing rayon fiber. As the material moves through the production line, it is called a "tow." A cutter operator is responsible for keeping the tow moving down the production line. If knots appear in the tow, the operator uses a knife and cuts the knot out. If the tow stops for any reason, the operator reels it back up on the machine and continues the process. Also, if co-workers spot a knot along the production line, a horn is sounded to alert the cutter operator. It appears a cutter operator has the responsibility of watching over several machines involved in this process.

On the night in question, the deceased was looking after four units on the production line. The evidence indicates that among the four machines, there were 42 breaks during the shift. Records showed there was a break on unit #2 at 5:25 a.m. and at 6:30 a.m., unit #4 and unit #1 were down. Supervisor Taylor told the court the records indicated it was an average night on the production line. He said it would normally take ten to fifteen seconds to remove a small knot and that there was very little physical exertion in cutting out a knot or resuming a tow if it was down.

Witness John Dye, a co-worker, was the last person to see Mr. Anderson prior to his death. He testified the deceased walked by his work station about 6:10 a.m. as he just happened to glance at the clock. At 6:30 a.m., he noticed the tow was down and went to check about the situation. He found Mr. Anderson lying down on the floor near his machines. No one could find a pulse or detect any breathing movements. He was taken immediately to Morristown-Hamblen Hospital where he was pronounced dead on arrival.

Plaintiff presented expert medical testimony from Dr. John H. Kinser and Dr. Keith E. Pratt. Both doctors testified by deposition and stated they had never seen or treated the deceased employee.

Dr. Kinser was a family practice physician and the medical examiner for Hamblen County. He executed the death certificate which indicated the cause of death was myocardial infarction. He testified he reviewed the medical records of defendant employer, depositions from two co-workers describing the decedent's work duties and a deposition of the plaintiff widow. From this information, he formed the opinion the fatal heart attack was caused by the work activities. Specifically, he responded, "In my opinion, it was caused by his physical activity and the added activities from these more than usual breakdown that he had during this period of time." When asked what specific physical activity caused the attack, he said "His operating his normal job, by pulling these tows up, getting them started back through his roller, ..."

Dr. Pratt, an internal medicine physician, testified he reviewed the same medical records and depositions and was of the opinion "the increased level of stress most definitely could have precipitated a myocardial infarction." He admitted the employee had some risk factors such as high blood pressure, mild obesity and elevated cholesterol level. At another point during his testimony he said the records did not indicate the work duties "necessarily encompass strenuous physical activity, but it appears to me that it would be a much more stressful environment."

Defendant employer presented witness Eddie Davis, who was the coroner for Hamblen County. He testified he came to the hospital emergency room after being called at about 7:00 a.m. He said it was his duty to see if there was any suspicions of foul play. He talked to hospital personnel and the plaintiff widow. He indicated a

nurse was present when he talked to plaintiff. He quoted plaintiff as saying her husband had a history of high blood pressure; that he was not taking his medication; and that he had been complaining of chest and arm pains for about a week and refused to see a doctor. Since there was nothing suspicious about the death, an autopsy was not ordered.

Defense witness Gerry Wilburn, a registered nurse, testified by deposition and stated she helped compile the emergency room record. She said plaintiff told her Mr. Anderson had a history of high blood pressure; that he would not take medication because it made him feel bad; and he complained of chest and arm pains for several weeks and refused any medical attention.

Plaintiff denied giving a history of information as stated by the coroner and the nurse but admitted she was very upset while at the emergency room. She did not remember ever seeing the coroner.

The employer's expert medical witness was Dr. George M. Krisle III, cardiologist, who testified by deposition and who had never seen or treated the deceased employee. He stated he had been in the cardiology field for about twenty years and only saw patients with cardiology problems. When the hypothetical causation question was asked, he responded by stating that Mr. Anderson had certain risk factors such as extra weight, high blood pressure, smoking and previous high cholesterol readings and that the emergency room record indicated he had been having symptoms for about two weeks. He felt these would be causative factors for a myocardial infarction. He stated he was of the opinion the work activity would not have caused the heart attack if what had been described to him was his customary and normal work assignment. He admitted that stress could cause a heart attack but the stressful event was usually due to something stunning, overwhelming, etc. He reiterated several times that his normal job activities would not generally be a cause of his heart attack.

The trial court took the issues under advisement and later filed a written opinion wherein he specifically found the expert medical testimony was in conflict and after considering all the evidence, he gave greater weight to the testimony given by the cardiologist than the other medical testimony. In considering the question of whether stress caused the heart attack, the court made findings that nothing unusual

had occurred during the work shift other than the performance of his normal job assignment. Accordingly, the court held plaintiff had failed to carry her burden of proof and the complaint was to be dismissed.

Plaintiff insists the trial court misapplied the law in reaching a decision and also gave undue weight to the testimony of Dr. Krisle.

Our review of the case is de novo 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).

An employee has the burden of proving every element of the case, including causation by a preponderance of the evidence. *Tindall v. Waring Park Ass'n,* 725 S.W.2d 935, 937 (Tenn. 1987). There is no presumption as to causation merely because an employee (not a policeman or fireman) is found dead at his post. *King v. Jones Truck Lines,* 814 S.W.2d 23 (Tenn. 1991).

In *Bacon v. Sevier County,* 808 S.W.2d 46 (Tenn. 1991), the Supreme Court summarized the many rules of law dealing with the recovery of benefits where an employee has suffered a heart attack which is causally related to the employment. In an exhaustive opinion citing numerous cases, the Court stated recovery of benefits depended upon the application of two distinct rules. The two rules are divided into two classes: (1) where the heart attack is caused by physical exertion or strain and (2) where the heart attack is caused by stress, tension or some type of emotional upheaval.

In our review of the expert medical testimony, we find the trial court was faced with somewhat conflicting theories as to whether Mr. Anderson's heart attack was caused by physical exertion or the stress of his employment. Dr. Kinser was of the opinion the physical exertion along with the ordinary stress of his work was the causative factor. On the other hand, Dr. Pratt and Dr. Krisle limit their opinions (which are different) to dealing only with stress and emotional upheaval. Thus, the trial court was confronted with which rule to apply in analyzing the facts of the case. We think it is apparent from the written findings that the court declined to accept the opinion of Dr. Kinser that physical exertion or strain was a causative factor. From our independent review, we find the greater weight of the evidence supports the trial court in applying the "stress" rules as opposed to the "physical exertion" rules.

In choosing which medical testimony to accept, the trial court may 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).

If there is conflicting medical testimony on causation of any injury, the trial judge has discretion to conclude that the opinion of a particular expert should be accepted over that of another expert and that one expert's testimony contains a more probable explanation than another expert's testimony. *Thomas v. Aetna Life & Cas. Co.,* 812 S.W.2d 278 (Tenn. 1991).

In order to recover when there is no physical exertion but there is emotional stress, worry, shock or tension, the heart attack must be immediately precipitated by a specific acute or sudden stressful event rather than generalized employment conditions. *Bacon, supra; Sexton v. Scott County,* 785 S.W.2d 814 (Tenn. 1990); *Helton v. Food Lion, Inc.,* 738 S.W.2d 626 (Tenn. 1987); *Allied Chemical Corp. v. Wells,* 578 S.W.2d 369, 372 (Tenn. 1979). Thus, the normal ups and downs are part of any employment relationship and do not justify finding an "accidental injury" for purposes of workers' compensation law. *Sexton, supra.*

In reviewing the case under the stress rules, the trial court found the deceased employee had been performing his normal and usual duties and that there was not any evidence of an event or specific incident of an unusual or abnormal nature that had occurred during the work shift. We also note that plaintiff's experts base their opinions on stress that occurs from general working conditions which is not sufficient to support a recovery of benefits. Since the medical evidence does not identify any specific traumatic event that led to the attack, we find the court correctly followed the law and the evidence does not preponderate against the findings of fact.

Therefore, the judgment of the trial court is affirmed. Costs of the appeal are taxed to plaintiff.

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Roger E. Thayer, Special Judge

CONCUR:

_____
E. Riley Anderson, Chief Justice

_____
John K. Byers, Senior Judge

IN THE SUPREME COURT OF TENNESSEE

AT KNOXVILLE

LUCY B. ANDERSON, INDIV. & ADMIN. OF THE ESTATE OF BILLY ANDERSON, DECEASED	)	HAMBLEN CIRCUIT
	)	No. 93-CV-350
	)	
	)	Hon Ben K. Wexler
Plaintiff/Appellee,	)	Judge
	)	
vs.	)	
	)	
LENZING U.S.A.	)	
	)	No. 03S01-9701-CH-00036
Defendant/Appellant.	)	

JUDGMENT ORDER

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation 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 on appeal are taxed to the plaintiff/appellant, Lucy B. Anderson. and B. Evelyn Anderson, surety, for which execution may issue if necessary.

03/03/98

This case is before the Court upon 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 paid by the plaintiff-appellant and sureties, for which execution may issue if necessary.

IT IS SO ORDERED this ____ day of June, 1997.

PER CURIAM

Anderson, J. - Not Participating

al to the Special Worker' Compensation 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 act 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 plaintiff-appellant, Vernon Harris and Gilbert and Faulkner. surety, for which execution may issue if necessary.

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