

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

**FILED**

March 16, 1998

Cecil Crowson, Jr.  
Appellate Court Clerk

ROSEMARY LISZESKI, )  
)  
Plaintiff/Appellee )  
)  
v. )  
)  
ATHENS FURNITURE INDUSTRIES, )  
INC., )  
)  
Defendant/Appellant )

McMINN CHANCERY  
NO. 03S01-9703-CH-00035  
HON. EARL H. HENLEY,  
CHANCELLOR

**For the Appellant:**

David F. Harrod  
Carter, Harrod & Cunningham  
One Madison Avenue  
P.O. Box 885  
Athens, TN 37371-0885

**For the Appellee:**

Randy G. Rogers  
P.O. Box 507  
Athens, TN 37371-0507

**MEMORANDUM OPINION**

**Members of Panel:**

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

REVERSED and  
REMANDED

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.

The trial judge found the plaintiff's husband had died as the result of a heart attack while in the course and scope of his employment and awarded her survivors benefits under the Workers' Compensation Act.

We reverse the judgment of the trial court and dismiss the case.

Thomas Liszeski, the husband of the plaintiff, suffered a heart attack on August 10, 1995 while working in the furniture factory of the defendant. Mr. Liszeski died as a result of this on August 13, 1995.

No one was with Mr. Liszeski when he suffered the heart attack. He was found lying on the floor with a wound to his head.

At the time of the event, Mr. Liszeski was 47 years of age. His work consisted of operating a machine known as a router. The employee would lift a piece of wood that weighed less than eight ounces and place it on the machine to be cut. He would then stack the cut pieces into a pile.

There is, as is usual in cases of this nature, conflicting evidence amongst witnesses as to facts surrounding the event. These touch not only the condition of the employee before the event but also the circumstances and conditions surrounding his work.

The defendant offered testimony from a fellow employee of the deceased that the employee's wife said her husband was not feeling well prior to going to work and that he complained of pain in his chest. There was further testimony from fellow employees who testified the deceased did not look well before going to work and that the deceased said he did not feel well.

The plaintiff denied that she had said the deceased was not feeling well prior to going to work. Beyond this, the plaintiff called witnesses who testified they were present when the plaintiff talked to a fellow employee of the deceased and that they did not hear the plaintiff say the deceased was not feeling well.

The evidence in this record shows the work being done by the deceased was not strenuous work. The environmental evidence shows the ambient or outside

temperature at the time of this event was 83 degrees. The temperature inside the plant was said to be higher because of the use of machinery. The only testimony as to the inside temperature was an estimate by an employee that the temperature was 85 to 90 degrees in the plant. The record shows the area where the deceased was working was ventilated by a fan and an open door.

The medical evidence was given by two doctors -- Dr. Donald A. Leo and Dr. Howard Cohen. Dr. Leo who saw the deceased in the Athens Hospital testified the deceased suffered a heart attack which precipitated his death. Dr. Leo was of the opinion the deceased's work did not cause the heart attack.

Dr. Howard Cohen, a physician at the University of Tennessee Hospital, where the deceased was taken, followed the patient for the 3 days prior to his death.<sup>1</sup> Dr. Cohen's testimony is somewhat convoluted, primarily because of the manner in which the questions were asked.

All of the answers given by Dr. Cohen as to causation of the heart attack vis-a-vis the event were by necessity based upon hypothetical questions by respective counsel. In response to a hypothetical question, Dr. Cohen said the work in the factory could have contributed to the heart attack, but later said he could not say it did. Further, Dr. Cohen testified the heart attack could have occurred while the deceased was not at work and could occur, as posed by the question, while at home eating a sandwich or using a remote control.

Dr. Cohen summarized his findings thus: ". . . whatever happened to him, happened on the job. And that's pretty much all I can say. It happened to him while he was at work."

We review the findings of the trial judge *de novo* upon the record with a presumption of the correctness thereof. Tenn. Code. Ann. § 50-6-225(e)(2). We are required to review the evidence in depth to determine where the preponderance of the evidence lies. *Galloway v. Memphis Drum Serv.*, 822 S.W.2d 584 (Tenn. 1991).

The trial judge made no definitive finding of facts upon which the judgment is based. The judgment recites the deceased "sustained a heart attack arising out of and within the course and scope of his employment with the defendant."

---

<sup>1</sup> It appears the deceased was clinically dead before removal from Athens Hospital and was kept on life support for three days.

To recover compensation in the case of a heart attack, the plaintiff must show by competent proof that the work of the employee caused, precipitated, or contributed to the event. *Bacon v. Sevier County*, 808 S.W.2d 46 (Tenn. 1991); *Shelby Mut. Ins. Co. V. Dudley*, 574 S.W.2d 43 (Tenn. 1978); *Kingsport Press, Inc. v. Van Huss*, 547 S.W.2d 572 (Tenn. 1977).

There must be medical evidence to show the heart attack is caused by the employment. *Johnson v. Midwesco, Inc.*, 801 S.W.2d 804 (Tenn. 1990).

In reaching a conclusion, the trial judge may consider the medical testimony in context with the lay testimony surrounding the event to determine whether there is causation, *Thomas v. Aetna Life & Casualty Co.*, 812 S.W.2d 278 (Tenn. 1991), but an award may not be made even then when the medical evidence as to causation is speculative, *Singleton v. Procon Products*, 788 S.W.2d 809 (Tenn. 1990).

We conclude from the record that the evidence on causation weighed in the light most favorable to the plaintiff is at best speculative, and that the evidence preponderates against the finding of the trial judge.<sup>2</sup>

We reverse the judgment of the trial court and dismiss the case. The cost of the appeal is taxed to the plaintiff and the case is remanded to the trial court.

---

John K. Byers, Senior Judge

CONCUR:

---

E. Riley Anderson, Chief Justice

---

Roger E. Thayer, Special Judge

---

<sup>2</sup> We do not need to answer the other issues raised by the plaintiff as they are contingent upon the plaintiff recovering in this case.



IN THE SUPREME COURT OF TENNESSEE  
AT KNOXVILLE

**FILED**  
**March 16, 1998**  
**Cecil Crowson, Jr.**  
Appellate Court Clerk

ROSEMARY LISZESKI,	)	McMINN CHANCERY
	)	NO. 18,894
PLAINTIFF/APPELLEE,	)	
	)	HON. EARL H. HENLEY,
v.	)	CHANCELLOR
	)	
ATHENS FURNITURE INDUSTRIES,	)	S. CT. NO. 03S01-9703-CH-00035
INC.,	)	
	)	
DEFENDANT/APPELLANT.	)	REVERSED AND REMANDED

**JUDGMENT**

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 plaintiff, Rosemary Liszeski, for which execution may issue if necessary.

It is so ordered this \_\_\_\_\_ day of March, 1998.

PER CURIAM

ANDERSON, C.J., AND REID, J. NOT PARTICIPATING