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

HENRY MITCHELL BRUMMITT, Plaintiff/Appellant v. LOCKHEED MARTIN ENERGY SYSTEMS, INC., Defendant/Appellee	))))))))))	ANDERSON CIRCUIT NO. 03S01-9707-CV-00089 HON. JAMES B. SCOTT JUDGE

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:

Justice Adolpho A. Birch, Jr.
Senior Judge William H. Inman
Special Judge Roger E. Thayer

AFFIRMED

INMAN, Senior Judge

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)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

The plaintiff alleged that he became totally disabled on account of anxiety and depression caused by several specific, acute and sudden stressful job-related incidents, all of which were denied by the defendant.

The trial judge found that the plaintiff's mental problems were the result of a "gradual build-up of stress caused by the plaintiff's overreaction to his work," and hence not compensable.

The plaintiff appeals the dismissal of his complaint.

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 finding, unless the preponderance of the evidence is otherwise. T.C.A. § 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 courts in workers' compensation cases. *See Corcoran v. Foster Auto GMC, Inc.,* 746 S.W.2d 452, 456 (Tenn. 1988).

I

The plaintiff is 58 years old. In June 1976 he was employed by the defendant's predecessor as a fire truck driver. Promotions came his way and in 1984 he was named maintenance officer of all the fire and guard facilities at the Y-12 plant in Oak Ridge.

Before going with Union Carbide the plaintiff quit his job as Fire Chief of the Kingston Fire Department because he believed that he was being asked to do things that were illegal or improper.

During his ten-year stint as maintenance officer, the plaintiff apparently performed his job satisfactorily. He testified that two events, one in 1993 and another in 1994, precipitated his breakdown.

Eight weeks before he left employment, the plaintiff protested to Mike Bradshaw, a superior, that he was being required to work "outside his chain of command." Bradshaw forcefully told him "read my lips, you don't work for no one but me." This conversation upset the plaintiff because he believed that he was being taken advantage of. Before this incident occurred, the plaintiff engaged in an argument with another employee - outside the "chain of command" - when he refused to cover a window with plastic, which experience had shown could not safely be done.

The plaintiff had difficulty sleeping, and consulted his family physician, who prescribed medication. He took two weeks vacation and returned to work until May 19, 1994, when he quit because of his inability to concentrate, his reveries of Bradshaw and others shouting at him, inability to drive his automobile, and general weakness.

His prior health history enters into the compensation equation. He had suffered from tension migraine headaches for five years, and his blood pressure was elevated, which occasionally required time off from work. He had heart problems which on occasion required treatment. Symptoms of depression developed in 1992.

A chief complaint involved the plaintiff's belief that he was asked to do too many jobs by too many people, which was on-going throughout his ten-year

work history. He was not ordered to do the various tasks - mostly of a relatively insignificant nature - but was merely asked, as were other employees.

II

Dr. Martin Gebrow, a psychiatrist, testified that he initially saw the plaintiff in May 1994, and diagnosed his condition as an "adjustment disorder with mixed features of depression and anxiety." Dr. Gebrow testified that "the stressors that he [the plaintiff] described and which I elicited from him are responsible for his diagnosis," and that one of these stressors was the "read my lips" incident. He attributed the plaintiff's depression to the demands of his job, and from the *AMA Guidelines* opined that the plaintiff was moderately impaired, and thus unable to perform any kind of work.

Cross-examination revealed that Dr. Gebrow was not aware that the plaintiff's family physician had diagnosed his depression two years before he was seen by Dr. Gebrow, and that his depression and anxiety were caused by many differing factors, including a family death, health problems, divorce, etc. Dr. Gebrow also was not aware of the plaintiff's coronary problems, which he conceded could cause the depression and anxiety. He likewise was unaware of the various instances whereby the plaintiff had off-job problems with store managers and similar episodes involving angry confrontations.

III

Causation of permanent injury must be proved by expert medical testimony in all but the most obvious cases. *Thomas v. Aetna Life & Cas. Ins. Co.*, 812 S.W.2d 278 (Tenn. 1991.)

In the case at hand, the treating psychiatrist, Dr. Gebrow, as we have stated, recognized that a number of factors could be involved in contributing to the plaintiff's condition. He testified that the plaintiff never related to him any

event involving fright or shock, or any event that qualified as sudden or unexpected stress as opposed to ongoing stress, and recognized that ongoing, continuous stress in the workplace can cause persons to develop depression and anxiety, which likely happened to the plaintiff. He stated that the cause of the plaintiff's anxiety disorder with depression, and anxiety adjustment disorder, was his feeling that he was overwhelmed at work, and that when he asked for help, he received none. Dr. Gebrow attributed little significance to the information concerning the dealings with Mr. Ruth in his diagnosis or treatment, nor was the event with Mr. Bradshaw an element in diagnosis or treatment; rather, he considered these as contributing factors, at most. Likewise, he recognized that the plaintiff's condition may have been caused by no such contributing factors, or other factors may have contributed to his condition, *i.e.,* the plaintiff's coronary situation, the death of his father and subsequent reaction thereto, the surgery performed on the plaintiff's mother, and the suffering of a stroke by the plaintiff's friend. Moreover, Dr. Gebrow conceded that the ordinary stresses of the plaintiff's job would include the same things that he feels caused Mr. Brummitt's mental condition - the amount of work to be done, the time to do the work, and the help to do that work.

The leading case on determining what may constitute an accident sufficient to justify an award in a mental or nervous disorder claim is *Jose v. Equifax, Inc.,* 556 S.W.2d 82 (Tenn. 1977). The Supreme Court expressed its disinclination to limit recovery to cases involving traumatic injury followed by mental distress, holding that a "sudden mental stimulus, such as fright, shock, or excessive unexpected anxiety," could amount to an accident sufficient to justify an award for resulting mental or nervous disorder, but that such recovery would not embrace every stress or strain of daily living, or every undesirable

experience encountered in carrying out the duties of a contract of employment. The Court, significantly, noted that workers' compensation coverage is not as broad as general, comprehensive health and accident insurance.

The Supreme Court in *Gatlin v. City of Knoxville,* 822 S.W.2d 587(Tenn. 1991), determined that the stresses of a police officer's occupation, confronting armed felons, operating undercover, and other dangerous activities, were not sufficient to provide workers' compensation benefits for stress resulting from that occupation:

> " . . . for a mental injury by accident or occupational disease to arise out of employment, it must be caused by an identifiable, stressful, work-related event producing a sudden mental stimulus, such as fright, shock, or excessive unexpected anxiety, and therefore may not be gradual employment stress building up over a period of time. In addition, the stress produced may not be usual stress, but must be extraordinary and unusual in comparison to the stress ordinarily experienced by an employee in the same type of duty."

After *Jose, supra,* the Court reviewed a number of cases involving mental disease or disability resulting from occupational events. In *Mays v. U. S. F. & G. Co.,* 672 S.W.2d 773 (Tenn. 1984), the Court held that the loss of key personnel and pressure placed on the plaintiff by his bonding company caused the claimant to experience stress and anxiety, but that those experiences fall within the category of the usual stress and strain encountered in the operation of a contracting business. This situation was held not to qualify as the kind of compensable mental stimulus, fright, or shock contemplated in *Jose, supra,* and *Clevenger v. Plexco,* 614 S.W.2d 356, 359, 360 (Tenn. 1981).

The plaintiff argues that the qualifying events for recovery were not having enough time to do normal work, not receiving enough help to do that work, an issue concerning layoffs, an argument with Mr. Ruth, and an argument with Mr. Bradshaw. The defendant correctly points out that the discussions

concerning layoffs were apparently derived from Dr. Gebrow's surmise, since the plaintiff and all other witnesses agreed that no layoffs had been planned or occurred which affected, in any way, the group in which the plaintiff worked, and that any issues concerning pendency of layoffs had been present for the eighteen years that the plaintiff worked for the defendant. It is also clear from the proof that not having enough time to do his work and not receiving enough help had been ongoing issues for the ten years he served as maintenance officer; moreover, the plaintiff's supervisor testified that this type of complaint was a common one.

The thrust of the plaintiff's argument is directed to the episodes involving Ruth and Bradshaw, alleged to have been stressful events which caused anxiety, and which were extraordinary. The plaintiff was unsure when this discussion with Ruth occurred, or what was said, but was sure that he became angry. The evidence is in dispute as to whether or not Mr. Ruth became angry at that time, but it is clear from the record that Ruth's conduct was standard and ordinary. The significance of this event may be marked by the fact that it was never mentioned to the treating psychiatrist in 2-1/2 years of treatment, and that it made no difference in the diagnosis or treatment of the plaintiff by his treating physician.

With respect to the episode with Mr. Bradshaw, the plaintiff was not sure when it occurred, but conceded that he initiated the meeting when he was angry. Strangely enough, this episode was not discussed with Dr. Gebrow until after depositions had begun, about two years later, and was not alleged in the complaint as grounds for relief.

The evidence does not preponderate against the judgment, which is affirmed at the cost of the appellant.

William H. Inman, Senior Judge

CONCUR:

Adolpho A. Birch, Jr., Justice

Roger E. Thayer, Special Judge

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE

HENRY MITCHELL BRUMMIT)	ANDERSON CIRCUIT	
	)	No. 95LA0120 T.D.. Below
Plaintiff/Appellant,	)	
	)	Hon. James B. Scott,
v.	)	Judge
	)	
	)	No. 03S01-9707-CV-089
LOCKHEED MARTIN ENERG SYSTEMS, INC.,	)	
	)	
Appellees.	)	Affirmed.

FILED

August 31, 1998

Cecil Crowson, Jr.
Appellate Court Clerk

JUDGMENT ORDER

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 on appeal are taxed to the plaintiff-appellant. IT IS SO ORDERED this ____ day of _____, 1998.

PER CURIAM

Birch, J. - Not participating.