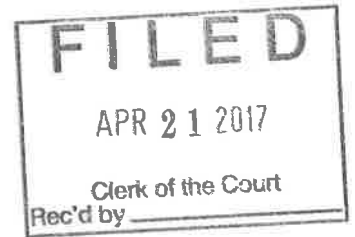


IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE

**DONALD RAY BROWN v. ZURICH AMERICAN INSURANCE
COMPANY**

Chancery Court for Sevier County
No. 14-12-397

No. E2016-00237-SC-R3-WC



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 are assessed to Donald Ray Brown and his surety, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM

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

February 13, 2017 Session

DONALD RAY BROWN v. ZURICH AMERICAN INSURANCE COMPANY

Appeal from the Chancery Court for Sevier County
No. 14-12-397 Telford E. Forgety, Jr., Chancellor

No. E2016-00237-SC-R3-WC – MAILED 3/17/2017



Donald Brown (“Employee”) filed this action, alleging that he sustained a compensable heart attack while working for Grand Eagle Company (“Employer”).¹ After a hearing on the merits, the trial court found that Employee had failed to satisfy his burden of proof that the heart attack was caused by an acute, immediate, stressful event. Judgment was entered for Employer. Employee timely filed a notice of appeal to the Supreme Court, and the appeal has been referred to the Special Workers’ Compensation Appeals Panel for a hearing and a report of findings of fact and conclusions of law pursuant to Tennessee Supreme Court Rule 51. We affirm the judgment.

Tenn. Code Ann. § 50-6-225(e)(i) (2014) (applicable to injuries occurring prior to July 1, 2014) Appeal as of Right; Judgment of the Chancery Court Affirmed

ROBERT E. LEE DAVIES, SR.J., delivered the opinion of the court, in which SHARON G. LEE, J., and JOHN W. MCCLARTY, J., joined.

William F. Byrne, Greeneville, Tennessee, for the appellant, Donald Ray Brown.

Andrew J. Hebar, Knoxville, Tennessee, for the appellee, Zurich American Insurance Company.

¹ Grand Eagle Company went out of business before the trial. Therefore, suit was brought against its insurer, Zurich American Insurance Company, in accordance with Tennessee Code Annotated section 50-6-102(11) (1999).

OPINION

Procedural Background

This is an appeal from the Chancery Court of Sevier County by Employee from a trial held on December 3, 2015. The trial court took the matter under advisement and issued findings and conclusions pursuant to a written judgment on January 7, 2016. The trial court found that Employee failed to carry his burden of proof in order to establish that the heart attack which he sustained in August 2000 was compensable under the Tennessee Workers' Compensation law. Employee properly perfected his appeal in this case on February 3, 2016.

Facts

Employee was an outside salesman for Employer and began working for a predecessor of Employer in 1987. In 1991, he was promoted to salesman and worked in that position until November 2001 when he was laid off from work by Employer. His job consisted of calling on clients and potential clients, as well as filling in on occasion for certain managerial employees.

In late July 2000, Employee began four days of making sales. On the fifth day, he took six customers in a camper to the Brickyard 400 in Indianapolis where he entertained those customers for four days. He returned home from Indianapolis and worked another four days straight. During this twelve-day period, the temperature was over ninety degrees. On August 10, 2000, Employee began his day by calling on clients for four hours. He returned to the office to go to lunch with his boss. At lunch, his boss told him that he needed to increase his sales. The conversation was not loud or argumentative. Employee returned from lunch and stayed at the office performing office work until 5:30 p.m. He drove home, walked up the steps to his house, and collapsed. Employee's wife arrived home about ten minutes later, found him in a confused state, and took him to the emergency room. Employee was diagnosed with a narrowed coronary artery. As a result, he underwent triple bypass surgery on August 12, 2000. Employee was not able to work for twelve weeks while he was undergoing rehabilitation; however, when he returned to work, he was only allowed to work half days based on the restrictions from his physician. Ultimately, he was laid off with a number of other employees in November 2001.

Employee's wife, Linda Brown, testified she and Employee had been married forty-eight years. She described Employee as one of the top salespeople for Employer; however, over time, she noticed he was depressed. A few months before his heart attack on August 10, 2000, she observed that Employee would have episodes where he would be short of breath.

Dr. Janet Lubus, an internist presently working at the University of Tennessee Medical Center, testified on behalf of Employee. Dr. Lubus began treating Employee in 2001 when Employee's physician, Dr. David Rankin, retired. According to Dr. Rankin's medical records, Employee reported having a great deal of stress at work several years prior to his heart attack. Dr. Rankin also diagnosed Employee with depression, but the records did not indicate whether it was job-related. Dr. Lubus confirmed that there was no acute or unexpected event prior to Employee's heart attack and that depression and anxiety, standing alone, do not trigger heart attacks.

Dr. Stephen Dill, board-certified in cardiovascular disease and internal medicine, performed an Independent Medical Examination for Employer and reviewed Employee's medical history. According to Dr. Dill, Employee suffered from coronary artery disease. Other than some depression and anxiety dating back to 1998 that was treated with medication, Dr. Dill found no meaningful history pertaining to Employee's heart attack in August 2000. Dr. Dill opined that the cause of Employee's heart attack was a narrowed coronary artery which was the result of a chronic, long-term process. Dr. Dill also confirmed there was nothing acute or traumatic that triggered Employee's heart attack.

Issue

On appeal, Employee raises a single issue of whether the trial court erred in finding Employee failed to prove the cause of his injury was work-related.

Analysis

Standard of Review

In workers' compensation cases, appellate courts "review the trial court's findings of fact de novo accompanied by a presumption of correctness unless the evidence preponderates otherwise." Wilhelm v. Krogers, 235 S.W.3d 122, 126 (Tenn. 2007). While the reviewing court must conduct an in-depth examination of the trial court's factual findings and conclusions, id. (citing Galloway v. Memphis Drum Serv., 822 S.W.2d 584, 586 (Tenn. 1991)), considerable deference must be afforded to the trial court's factual findings, Tryon v. Saturn Corp., 254 S.W.3d 321, 327 (Tenn. 2008). No similar deference need be accorded to the trial court's findings based on documentary evidence such as depositions. Glisson v. Mohon Int'l, Inc./Campbell Ray, 185 S.W.3d 348, 353 (Tenn. 2006). Likewise, there is no presumption of correctness to a trial court's conclusions of law. Seiber v. Reeves Logging, 284 S.W.3d 294, 298 (Tenn. 2009).

Causation

Heart attack cases may be categorized into two primary groups. In the first group are heart attacks precipitated by physical exertion or strain, and in the second group are

those resulting from stress, tension, or some type of emotional upheaval. Bacon v. Sevier Cnty., 808 S.W.2d 46, 49 (Tenn. 1991). “When the precipitating factor is physical in nature, the rule is well settled that if the physical activity or exertion or strain of the employee’s work produces the heart attack, or aggravates a preexisting heart condition, the resulting death or disability is the result of an accident arising out of and in the course and scope of the employment.” Id. Although it makes no difference that the employee, prior to the heart attack, suffered from a preexisting heart disease, the key to recovery or denial of benefits is whether the heart attack is precipitated by the physical activity or exertion or physical strain of the employee’s job. Id. at 49-50. “In those instances where physical exertion is thought to have precipitated the attack, there is invariably medical proof of some specific act, incident, or event that either did, could have, or might have set off the attack.” Id. at 50. In this case, there was no evidence of any physical exertion or strain which produced Employee’s heart attack.

Turning to the second category of cases—heart attacks produced by stress—the Tennessee Supreme Court has held where 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.” Id. at 52. While it is true that excessive and unexpected stress and worry which can be attributable to employment will justify an award of benefits, Reeser v. Yellow Freight Sys., Inc., 938 S.W.2d 690, 692 (Tenn. 1997), “the ordinary stress of one’s occupation does not because ‘[e]motional stress, to some degree, accompanies the performance of any contract of employment,’” Cunningham v. Shelton Sec. Serv., Inc., 46 S.W.3d 131, 136-37 (Tenn. 2001) (quoting Allied Chem. Corp. v. Wells, 578 S.W.2d 369, 373 (Tenn. 1979)). In other words, “[n]ormal ups and downs are part of any employment relationship and, as we have said on many previous occasions, do not justify finding an ‘accidental injury’ for purposes of worker[s]’ compensation law.” Bacon, 808 S.W.2d at 53. Accordingly, the well-settled rule in Tennessee is that physical or mental injuries caused by worry, anxiety, or emotional stress of a general nature or ordinary stress associated with an employee’s occupation are not compensable. The injury must be the result of an incident of abnormal and unusual stressful proportions, not the day-to-day mental stresses and tensions to which employees in that field are occasionally subjected. Cunningham, 46 S.W.3d at 137.

In this type of case, where the employee claims his heart attack was caused by stress or anxiety from work, expert medical evidence to establish the causal relationship is required. Bacon, 808 S.W.2d at 52. “[M]edical proof that the injury was caused in the course of the employee’s work must not be speculative or so uncertain regarding the cause of the injury that attributing it to the plaintiff’s employment would be an arbitrary determination or a mere possibility.” Tindall v. Waring Park Ass’n., 725 S.W.2d 935, 937 (Tenn. 1987).

In this case, Drs. Dill and Lubus agreed that there was no acute or unexpected event which triggered Employee's heart attack. According to Dr. Dill, the cause of Employee's heart attack was a narrowed coronary artery brought on by a chronic long-term process. Although Employee may have had depression and anxiety, Dr. Lubus found these conditions standing alone do not trigger heart attacks. While Employee argues the "unexpected" stress occurred at lunch where his supervisor told him he needed to increase his sales, this is not the type of extraordinary event contemplated in Bacon, 808 S.W.2d 46. Employee admitted there was no yelling by his boss when he requested that Employee increase his sales. Pressure to increase sales is an everyday occurrence, as is working outside in ninety-degree heat in Tennessee during the summer. We conclude that the evidence in this case supports the conclusion reached by the trial court that Employee's heart attack was not an injury that arose out of and in the course and scope of his employment.

Conclusion

The judgment of the trial court is affirmed. Costs are taxed to Donald Ray Brown and his surety, for which execution may issue if necessary.



ROBERT E. LEE DAVIES, SR. JUDGE