

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

September 19, 2003 Session

**CHARLES R. NEWMAN v. THE CITY OF KNOXVILLE, ET AL.**

**Direct Appeal from the Chancery Court for Knox County  
No. 149824-3 Sharon Bell, Chancellor**

**Filed November 18, 2003**

**No. E2003-00841-WC-R3-CV**

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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. In this appeal, the employee insists the trial court erred in granting summary judgment in favor of the employer. As discussed below, the panel has concluded the trial court erred in granting the employer summary judgment.

**Tenn. Code Ann. § 50-6-225(e) (1999) Appeal as of Right; Judgment of the Chancery Court Reversed**

JOHN K. BYERS, SR. J., delivered the opinion of the court, in which E. RILEY ANDERSON, J., and ROGER E. THAYER, SP. J. joined.

J. Anthony Farmer, Knoxville, Tennessee, for the appellant, Charles R. Newman

James T. Shea IV, Knoxville, Tennessee, for the appellee, the City of Knoxville

Paul Summers, Attorney General and Reporter, E. Blaine Sprouse, Assistant Attorney General, for the appellee, Sue Ann Head, Administrator, Workers' Compensation Division, Tennessee Department of Labor, Second Injury Fund.

**MEMORANDUM OPINION**

Ordinarily, the standard of review in a workers' compensation case is de novo upon the record of the trial court, accompanied by a presumption of correctness of findings of fact, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2). However, when summary judgment has been granted in workers' compensation cases, review is governed

by Tenn. R. Civ. P. 56, which requires the court to review the record without a presumption of correctness to determine whether the absence of genuine issues of material fact entitles the movant to judgment as matter of law. The standard governing the assessment of evidence in the summary judgment context is well established. Courts must view the evidence in the light most favorable to the non-moving party and must also draw all reasonable inferences in favor of the non-moving party. Summary judgment should be granted only when both the facts and the inferences to be drawn from the facts permit a reasonable person to reach only one conclusion. Goodloe v. State, 36 S.W.3d 62, 65 (Tenn. 2001). Summary judgment is almost never an option in workers' compensation cases. Berry v. Consolidated Systems, Inc., 804 S.W.2d 445 (Tenn. 1991).

The trial court in this case found that the plaintiff's workers' compensation claim had already been settled through an Agreed Order the plaintiff entered into with the City of Knoxville following an injury suffered in the scope and course of plaintiff's employment. The trial judge therefore granted the defendant's summary judgment and dismissed the claim. The plaintiff argues that this case is not appropriate for summary judgment, and we agree.

### **Facts**

The plaintiff, Charles Newman, is a 58 year old police officer who, at all material times, was employed by the defendant, the City of Knoxville. On June 8, 1989, while on the job, the plaintiff suffered a cardiac episode diagnosed as a myocardial infarction. The plaintiff filed a workers' compensation claim, and in 1990 the plaintiff and the defendant settled the claim through an Agreed Order, providing the plaintiff with a lump sum payment, weekly workers' compensation benefits for time out of work, and a promise to pay all related medical bills. The Agreed Order provides, in pertinent part:

[T]he court finds that [employee] has sustained a hypertensive condition as a result of his employment with the Knoxville Police Department, and that this hypertensive condition has contributed to a slight myocardial infarction occurring on June 8, 1989, which require hospitalization and related medical care, and that the parties have agreed to compromise and settle [employee's] claim for work-related benefits on the basis of 20 percent permanent partial disability to the body as a whole.

\* \* \*

[T]he City of Knoxville shall be and stand forever discharged, except as to future medical expenses as hereinabove set forth, under the Compensation Act of Tennessee and ordinances all the City of Knoxville on account of the hypertensive condition.....

The plaintiff subsequently returned to work with the City of Knoxville. On or about March 21, 2000, the plaintiff reported that he sustained an "accidental injury" or an injury from an "occupational disease" while performing his duties as a police officer. This injury the plaintiff

reported is hypertension and coronary artery disease. These injuries have disabled the plaintiff to the extent that he will most likely never work again.

### **Medical Evidence**

The medical evidence in this case comes from the plaintiff's physician, Dr. Charles Bozeman. Dr. Bozeman testified that the stress of the plaintiff's job increased plaintiff's blood pressure causing progressive "endothelial damage" to plaintiff's arteries. Dr. Bozeman testified that the coronary artery disease that the plaintiff suffers from is related to the hypertension that the plaintiff has suffered for a long time. However, Dr. Bozeman also testified that this disabling hypertension and heart disease developed subsequent to the events that occurred in 1989. Further, Dr. Bozeman testified that if the plaintiff did not have hypertension, he would still probably have developed coronary artery disease at some time, but that the hypertension caused the coronary artery disease to develop sooner.

### **Discussion**

Because workers' compensation cases necessarily require proof of causation by expert medical evidence in the form of opinion testimony, summary judgment motions should be entered into with caution. Downen v. Allstate Ins. Co., 811 S.W.2d 523 (Tenn. 1991). Summary judgment is inappropriate where there is a dispute as to the facts, or where there is uncertainty as to whether there may be such a dispute, which is why summary judgment is almost never an option in workers' compensation cases. Again, courts must view the evidence in the light most favorable to the non-moving party and must also draw all reasonable inferences in favor of the non-moving party.

In the present case, there is a dispute as to what exactly the 1990 Agreed Order encompassed. That is, whether the Agreed Order covered the myocardial infarction or the plaintiff's hypertension, or both. There is also a dispute as to the relationship between the plaintiff's injury in 1989 and the hypertension and coronary artery disease that the plaintiff presently suffers from. The testimony of Dr. Bozeman is not sufficient to support summary judgment, and the plaintiff should be afforded the opportunity to present evidence that there is a difference between the myocardial infarction he suffered and the coronary artery disease he currently suffers from.

For the above reasons, the granting of summary judgment by the trial judge is reversed and the case is remanded for proceedings consistent with this opinion. Costs are taxed equally to the appellees.

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JOHN K. BYERS, SENIOR JUDGE



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**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 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 facts and conclusions of law are adopted and affirmed and the decision of the Panel is made the Judgment of the Court.

The costs on appeal are taxed to the appellees, The City of Knoxville, for which execution may issue if necessary.