IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
April 6, 2004 Session

RHONDA CARY v. THE LOCAL GOVERNMENT WORKER'S COMPENSATION FUND, ET AL.

Direct Appeal from the Chancery Court for Obion County
No. 22,880 William Michael Maloan, Chancellor

No. W2003-02339-WC-R3-CV - Mailed August 10, 2004; Filed September 22, 2004

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated Section 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. The issues presented to the trial court were: (1) whether the employee gave proper notice of her injury to employer pursuant to Tennessee Code Annotated Section 50-6-201 and 202; (2) whether the employee sustained an injury by accident arising out of her employment with defendant on May 1, 2000; (3) whether the employee retained any permanent anatomical impairment as a result of the alleged work injury. As discussed below, we affirm the trial court.

Tenn. Code Ann. § 50-6-225(e) (2000 Supp.) Appeal as of Right; Judgment of the Chancery Court Affirmed

ALLEN W. WALLACE, SR.J., delivered the opinion of the court, in which JANICE M. HOLDER, J. and E. RILEY ANDERSON, J., joined.

Michael L. Mansfield, Jackson, Tennessee for appellants, The Local Government Workers' Compensation Fund and The Obion County Board of Education.

Bruce Moss, Union City, Tennessee for appellee, Rhonda Cary.

MEMORANDUM OPINION

FACTS

Employee filed her complaint in this case on May 1, 2001, seeking workers' compensation benefits for an injury which she allegedly sustained during the course and scope of her employment with employer Obion County Board of Education. Specifically, employee alleged that on May 1, 2000,

she suffered a heart attack arising out of and during the course and scope of her employment with employer. Employer in this case filed its answer to plaintiff's complaint on June 15, 2001, in which it denied that employee had suffered a work-related injury within the meaning of the Tennessee Workers' Compensation Act while employed by employer. It further affirmatively alleged that employee failed to give proper notice of her claim to employer and that if employee did sustain a work-related injury within the meaning of the Workers' Compensation Act, she retained no permanent disability as a result.

Employer filed its notice of wage statement on July 2, 2001, which showed employee's average weekly wage for the fifty-two (52) weeks preceding the alleged date of injury to be $709.38, which the parties stipulated resulted in a compensation benefit rate of $472.92. After employer took the discovery deposition of Dr. Hal Dodd in connection with this matter on May 16, 2003, employee filed a pleading styled "Supplement to Deposition of Dr. Dodd of May 16, 2003" on or about July 21, 2003.

Employee was forty-three years old at the time of trial. She has obtained a bachelor degree and a master degree in education. In addition, she has taken some courses toward her "30 over" certification, which is something less than a doctorate degree but is a more advanced level of study than a master degree. She has taught school for 23 years and taught special education for 15 years. Special education students were classified as "resource" children, who had some measure of emotional or learning disability. These students were not regarded automatically as disciplinary problems, but usually required a teacher to repeat instructions numerous times. Employee also described how the children she taught would become more difficult to manage as they got older as a result of the stigma attached to being classified as a special education student.

On May 1, 2000, employee arrived at the school at approximately 7:15 to 7:20 a.m., and began her teaching duties at 7:50. She had complained to Principal Ronnie Yoes that she was not feeling well and had attempted to obtain a substitute teacher that morning but had been unsuccessful. Mr. Yoes offered to assist employee in obtaining a substitute and employee told him she would "try to ride it out" and went to her classroom. Sometime prior to approximately 9:50 a.m., she had to discipline a child who was being talkative and disruptive. She moved him to three different locations and eventually placed her hand on his shoulder and told him to "sit down in the seat and behave, you know, act right." After doing this she began to notice indigestion like symptoms, and asked Ms. Lupita Berner, her assistant, to go find her some antacid. While Ms. Berner was attempting to find some antacid employee determined it was something more serious and went to the principal's office to lie down. Employee then requested Ms. Michelle Bell to transport her to the office of Dr. Hal Dodd, a cardiologist in Union City. When she arrived at Dr. Dodd's office she was having severe chest pains, and Dr. Dodd administered nitroglycerin and aspirin. An initial EKG was essentially normal, but a repeat EKG approximately 15 minutes later showed the very early stages of a myocardial infarction. She was transported to a hospital in Martin and was administered a "clot busting" drug; Lopressor, to slow her heart rate and heparin to "thin her blood." She was then transported by helicopter to Baptist Hospital in Memphis, where she underwent cardiac catheterization by Dr. Brent Addington. Employee returned to work in August 2000, and took off

work in December 2000 until April 2001, to more fully recover. During this time and in February 2001, she underwent a second catheterization procedure which showed that employee's heart function had returned to normal. Employee returned to work full time on April 4, 2001, without physical restrictions, chronic medications, nor dietary restrictions.

On November 27, 2000, employee filed her first written notice that she was claiming the May 1, 2000, incident to be work related. She was advised to do so by Dr. Dodd.

The medical proof in this cause consisted of the testimony of Dr. Holbert B. Dodd, II, the treating physician who testified in person, and Dr. Hal M. Roseman, who testified by deposition. Dr. Roseman testified as an independent medical evaluator who testified from a review of the medical records and the deposition of the employee.

Dr. Dodd opined that the event of May 1, 2000, triggered her heart attack. Dr. Roseman opined the event of May 1, 2000, was coincidental, that the cause of employee's condition was her social history of smoking, a family history of heart disease and her high cholesterol level.

ANALYSIS

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 findings, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2); *Tucker v. Foamex, L.P.*, 31 S.W.3d 241, 242 (Tenn. 2000). The application of this standard requires this Court to weigh in more depth the factual findings and conclusions of the trial court in workers' compensation cases to determine where the preponderance of the evidence lies. *Vinson v. United Parcel Service*, 92 S.W.3d 380, 383-4 (2002). When issues of credibility of witnesses and the weight to be given their testimony are before the reviewing court, considerable deference must be accorded the trial court's factual findings. *Krick v. City of Lawrenceburg*, 945 S.W.2d 709, 712 (Tenn. 1997).

In order to be eligible for workers' compensation benefits, an employee must suffer an "injury by accident arising out of and in the course of employment which causes either disablement or death. . . ." Tenn. Code Ann. § 50-6-102(12) (2003 Supp.). The statutory requirements that the injury "arise out of" and occur "in the course of" the employment are not synonymous. *Sandlin v. Gentry*, 300 S.W.2d 897, 901 (Tenn. 1957). An injury occurs "in the course of" employment if it takes place while the employee was performing a duty he or she was employed to perform. *Fink v. Caudle*, 856 S.W.2d 952, 958 (Tenn. 1993). Thus, the course of employment requirement focuses on the time, place, and circumstances of the injury. *Hill v. Eagle Bend Mfg. Inc.*, 942 S.W.2d 483, 487 (Tenn. 1997).

In contrast, "arising out of" employment refers to causation. *Id.*; *Reeser v. Yellow Freight Sys., Inc.*, 938 S.W.2d 690, 692 (Tenn. 1997). An injury arises out of employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. *Fink*, 856

S.W.2d at 958. The mere presence of the employee at the place of injury because of the employment is not sufficient, as the injury must result from a danger or hazard peculiar to the work or be caused by a risk inherent in the nature of the work. *Thornton v. RCA Serv. Co.*, 221 S.W.2d 954, 955 (Tenn. 1949). Thus, "an injury purely coincidental, or contemporaneous, or collateral, with the employment . . . will not cause the injury . . . to be considered as arising out of the employment." *Jackson v. Clark & Fay, Inc.*, 270 S.W.2d 389, 390 (Tenn. 1954). Although causation in a workers' compensation case cannot be based upon speculative or conjectural proof, absolute certainty is not required because medical proof can rarely be certain, and any reasonable doubt in this regard is to be construed in favor of the employee. *Hill*, 942 S.W.2d at 487. Our courts have thus consistently held that an award of benefits may properly be based upon medical testimony to the effect that the employment could or might have been the cause of the worker's injury when, from other evidence, it can reasonably be inferred that the employment was the cause of the injury. *Id.*

In the present case there is no dispute that the employee's heart attack occurred in the course of her employment. The issue of dispute is whether the employee's heart attack arose out of the employment. In resolving this question we observe that, when analyzed causally, Tennessee's heart attack cases can be categorized into two groups: (1) those that are precipitated by physical exertion or strain, and (2) those resulting from mental stress, tension, or some type of emotional upheaval. *Bacon v. Sevier County*, 808 S.W.2d 46, 49 (Tenn. 1991). If the heart attack results from physical exertion or strain, it is unnecessary that there be extraordinary exertion or unusual physical strain. *Id.* Thus, it makes no difference that the heart attack was caused by ordinary physical exertion or the usual physical strain of the employee's work. *Id.* Nor does it matter that the employee suffered from preexisting heart disease, as an employer takes an employee as he finds him, that is, subject to preexisting physical defects and afflictions. *Id.*; *Coleman v. Coker*, 321 S.W.2d 540, 541 (Tenn. 1959).

In the case at bar, employee was confronted by a disruptive student. She had to move the child to a different location, and had to put her hand on the student to sit him down. After this incident, she noticed indigestion-like symptoms, and shortly thereafter sought medical treatment. Employee was at that time suffering from a myocardial infarction. Employer insists the credibility of Dr. Dodd is questionable and biased. However, Dr. Dodd testified in person. When a trial judge has seen the witness, especially when issues of credibility and weight to be given oral testimony are involved, considerable deference must be accorded those circumstances on review, because it is the trial judge who had the opportunity to observe the witness' demeanor and to hear in court testimony. *Long v. Tri-Con. Ind., Ltd.*, 996 S.W.2d 173, 177 (Tenn. 1999). It is further obvious from all the medical testimony that Dr. Dodd was extremely competent and successful in treating the employee. The trial court also has the discretion to accept one medical expert over another medical expert. *Kellerman v. Food Lion, Inc.*, 929 S.W.2d 333 (Tenn. 1996); *Johnson v. Midwesco, Inc.*, 801 S.W.2d 804, 806 (Tenn. 1990).

Employer in this cause insists the preponderance of the evidence is contrary to the trial court's award of 25% permanent partial disability. Dr. Dodd testified that in his opinion, following the AMA Guidelines, the employee had a 29% permanent partial impairment to the body as a whole. He based

this opinion on the fact that employee had muscular damage as evidenced by her enzymes level not being normal at all times. Even Dr. Roseman, the independent evaluator, testified that because employee had had a myocardial infarction she does have a 10% impairment.

Where medical testimony differs, it is within the discretion of the trial court to conclude that the opinion of certain experts should be accepted over that of other experts. *Henson v. Wal-Mart Stores, Inc.*, 654 S.W.2d 675, 676-77 (Tenn. 1983). Here the trial judge heard Dr. Dodd, the treating physician, testify in court and evaluated his testimony. The extent of vocational disability is a question of fact. *Story v. Legion Ins. Co.*, 3 S.W.3rd 450, 456 (Tenn. Workers' Comp. Panel 1999). Here the trial court's decision is supported by the evidence as to vocational disability, especially after giving due deference accorded to the trial court's factual findings, as we are required to so do.

Employer has raised, for the first time, before this Panel the issue of notice. When the failure to give notice as required by Tenn. Code Ann. Section 50-6-201, is pleaded, the burden is on the employee to prove that the notice was given, or that employee had a reasonable excuse for not giving it, or that the employer had actual knowledge. *Aetna Casualty and Surety Co. v. Long*, 569 S.W.2d 444 (Tenn. 1978).

There is no question employer had knowledge employee had a heart attack. Employee only learned from her physician the incident of May 1, 2000, caused the heart attack. The reasons for the notice requirement are (1) to give the employer an opportunity to make an investigation while the facts are accessible, and (2) to enable the employer to provide timely and proper treatment for the injured employee. *McCaleb v. Saturn Corp.*, 910 S.W.2d 412, 415 (Tenn. 1995). Employee gave written notice when she learned from her doctor of the causal connection between her work and the heart attack; employer did not plead lack of notice; and no prejudice has been argued or shown.

Therefore, on the basis of the record in this case, we cannot say the evidence preponderates against the finding of the trial court.

CONCLUSION

The judgment of the trial court is affirmed. The costs of this appeal are taxed to the appellant, The Local Government Workers' Compensation Fund, workers' compensation carrier for the employer, and Obion County Board of Education.

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ALLEN W. WALLACE, SENIOR JUDGE

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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 on appeal are taxed to the Appellants, The Local Government Workers' Compensation Fund, and the Obion County Board of Education, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM