

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

Assigned on Briefs April 6, 2004 Session

DAVID B. CLONINGER v. CITY OF DYERSBURG, TENNESSEE, ET AL.

**Direct Appeal from the Chancery Court for Dyer County
No. 00C603 J. Steven Stafford, Chancellor**

No. W2003-01716-SC-WCM-CV - Mailed May 25, 2004; Filed August 31, 2004

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 Chancellor determined that the employer rebutted the statutory presumption that the employee's stroke arose out of his employment as a police officer, see Tenn. Code Ann. § 7-51-201(a)(1) (1998), and that the employee failed to establish that the stroke arose out of his employment. After reviewing the record and applicable authority, we conclude that the evidence in the record does not preponderate against the Chancellor's findings. We therefore affirm the judgment.

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

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

W. Lewis Jenkins, Jr., and Mark L. Hayes, Dyersburg, Tennessee, for the Appellant, David B. Cloninger.

John D. Burluson and Latosha Mason Dexter, Jackson, Tennessee, for the Appellees, City of Dyersburg, Tennessee, and TML Risk Management Pool.

MEMORANDUM OPINION

Background

On April 26, 2000, the employee, David B. Cloninger ("Cloninger"), age 53, a police officer for his employer, the City of Dyersburg ("City"), suffered a stroke and was taken to Methodist

Hospital in Dyersburg. After Cloninger later filed a claim for workers' compensation benefits, the following evidence was presented at trial.

Cloninger testified that he began working as a police officer for the City of Dyersburg in 1991. Early in 1998, Cloninger, while still a patrol officer, began working in the evidence locker and as the senior training officer. In July of 1998, Cloninger was made the "evidence and property technician" and was placed in charge of reforming the department's evidence locker so that it could earn accreditation from the Commission on Accreditation for Law Enforcement Agencies ("CALEA").

Cloninger's duties as the evidence and property technician included maintaining the record of all seized property and evidence, and ensuring that all property and evidence seized was stored in compliance with Departmental, State, Federal, and OSHA standards. He was subject to changing schedules and was "on-call" 24 hours per day. Cloninger stated that the requirements caused him greatly increased levels of stress and required that he work significant amounts of overtime and take work home with him.

Judy Cloninger, the employee's wife, testified that her husband's new position had taken an emotional and physical toll.¹ On April 25, 2000, her husband came home from work and stated that he did not feel well. She noticed that his speech was "sluggish" and that he did not appear "sharp." The next morning, Cloninger told her that he felt fine and went to work. At 9:00 a.m., Cloninger telephoned to inform her that he was going to Nashville. Around noon, Judy Cloninger called her husband, who answered the phone and spoke incoherently before hanging up. Mrs. Cloninger called the police dispatcher and then called her husband again. After determining that her husband was still in Dyersburg, Judy Cloninger again called the police dispatcher, who called an ambulance. Cloninger was then taken to the emergency room and treated for a stroke.

Cloninger's direct supervisor, Captain Mark Grant, testified that Cloninger had asked for additional help with his evidence locker responsibilities and that the department had assigned officers to assist him. Grant told Cloninger that he could work overtime as needed to make progress towards CALEA accreditation, but he did not recall Cloninger reporting significant overtime. Cloninger's time sheets, which were made an exhibit at trial, revealed that Cloninger worked a 40-hour work week on average, with occasional overtime that never exceeded ten additional hours.

Dyersburg Police Chief Bobby Williams testified that he pressured Cloninger to complete the CALEA accreditation process. Williams also stated, however, that he placed the same pressure on anyone whom he assigned a task. Chief Williams stated that if Cloninger failed to report overtime, he would be in violation of police department policy.

¹She stated that her husband brought work home with him almost every night, that he worked more hours than he had worked as a patrol officer, and that he was unable to relax or enjoy his hobbies.

Dr. Terri Edwards-Lee, a neurologist, testified that she treated Cloninger at Methodist LeBonheur Healthcare Jackson Hospital from April 26, 2000, until June 14, 2000. Dr. Edwards-Lee stated that when she treated Cloninger immediately after the stroke, he was suffering from hypertension, but that he had only borderline hypertension prior to the stroke. Dr. Edwards-Lee believed that Cloninger's stroke was related to his employment as a police officer. She stated that recent medical literature supported a conclusion that law enforcement officers suffer a higher risk of stroke than the general population and that the higher risk is associated with additional stress. Dr. Edwards-Lee admitted, however, that she could not state with medical certainty what caused the stroke. She also said there was no evidence that an incident of extraordinary exertion or a stressful event caused Cloninger's stroke.

Dr. Hal M. Roseman, a cardiologist, testified that he was retained by the City to perform an independent medical examination ("IME") on Cloninger and to prepare a report of his conclusions. Dr. Roseman stated that Cloninger had several risk factors that had caused the stroke, including mild obesity, genetic predisposition for hypertension, alcohol consumption, and tobacco usage. Dr. Roseman stated that the primary cause of Cloninger's stroke was chronic hypertension, which "was well established . . . before 1990." Additionally, he stated that an MRI had revealed that five or six areas of Cloninger's brain may have been damaged by small strokes prior to the massive stroke of April 26, 2000. Dr. Roseman opined that Cloninger suffered from hypertension for at least fourteen years prior to the stroke on April 26, 2000, and that Cloninger's steroid use had also enhanced the risk of stroke. Dr. Roseman concluded that Cloninger's work-related stress as a police officer did not increase the risk of stroke and did not cause or aggravate the stroke.

Dr. Martin Wagner, a neurologist, testified that the City retained him to perform an independent medical examination and that Cloninger appeared but refused to cooperate with an examination. Cloninger left and Dr. Wagner then prepared a report based on Cloninger's medical records and medical history. He stated that Cloninger's numerous risk factors for stroke included hypertension that had been untreated for 20 years, high cholesterol, mild obesity,² history of chronic tobacco use, and steroid use. Dr. Wagner cited blood pressure tests in Cloninger's medical records that revealed hypertension dating back to 1993 and small "strokelettes" that appeared on Cloninger's MRI scan. Like Dr. Roseman, Dr. Wagner stated that these "strokelettes" may have taken years to develop and could have gone unnoticed by Cloninger. Dr. Wagner stated that Cloninger's employment as a police officer did not cause or aggravate Cloninger's stroke on April 26, 2000.

Connie Cardwell, a registered nurse, testified that she was an emergency room technician on April 26, 2000, and that she attended to Cloninger when he reached the hospital. She stated that while treating Cloninger, she asked Cloninger and his wife for medical information and that most of the responses to her questions came from Cloninger's wife. Cardwell noted on the patient assessment form that Cloninger suffered from hypertension "ten years ago" and that he had been taking steroids of unknown types for three to four years.

² Contrary to the testimony of Drs. Roseman and Wagner, Dr. Edwards-Lee testified that given Cloninger's large musculature, he was not obese.

After hearing the evidence and reviewing the depositions, the Chancellor determined that the City had rebutted the statutory presumption in Tenn. Code Ann. § 7-51-201(a)(1), that Cloninger had failed to establish causation, and that Cloninger did not meet the statutory requirements of an occupational disease as defined in Tenn. Code Ann. § 50-6-102(12). The Chancellor specifically found that there was no evidence that a specific stressful event precipitated the stroke and dismissed the case. Cloninger appealed.

Standard of Review

In a workers' compensation appeal, we review questions of fact de novo upon the record of the trial court, accompanied by a presumption of the correctness as to the trial court's findings, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (Supp. 2003); Clark v. Nashville Machine Elevator Co., 129 S.W.3d 42, 46 (Tenn. 2004). The trial court's determinations as to the credibility of witnesses are accorded great deference. Clark, 129 S.W.3d at 46. However, where witnesses testify by deposition, this Panel may draw its own conclusions regarding witness credibility. Id.

Analysis

The employee, David Cloninger, contends that the Chancellor erred in holding that his stroke was not work-related. He argues that the City failed to rebut the presumption of causation applicable to law enforcement officers under Tennessee Code Annotated section 7-51-201(a)(1), and that he produced sufficient evidence to establish causation. The City argues that its medical proof rebutted the statutory presumption of causation and that the Chancellor properly found that Cloninger failed to establish that any incident of extraordinary exertion or any stressful event caused the stroke.

The Workers' Compensation Act and our case law have developed the following general principles relating to causation. To be eligible for workers' compensation benefits, an employee must suffer an "injury by accident arising out of and in the course of employment . . ." Tenn. Code Ann. § 50-6-102(12) (Supp. 2003); see also Clark, 129 S.W.3d at 46-47. An injury "in the course of" employment means that the injury took "place while the employee was performing a duty he or she was employed to perform." Clark, 129 S.W.3d at 47. An injury "arising out of" employment refers to causation and means that there was a causal connection between the employment and the resulting injury. Id.

A principle specific to this case is that in Tennessee, cardiovascular injuries may be compensable if they "arise out of" the course of employment. Id. These injuries include (1) those that are precipitated by physical exertion or strain, and (2) those resulting from a specific, acute, or sudden mentally stressful event. Id. (citing Bacon v. Sevier County, 808 S.W.2d 46, 49 (Tenn. 1991) (involving a heart attack)); see also Houser v. Bi-Lo, Inc., 36 S.W.3d 68, 72 (Tenn. 2001) (applying the above-quoted rule in a case involving a stroke).

As the parties observe, however, there is a statutory presumption of causation in cases where the employee is a law enforcement officer:

there shall be . . . a presumption that any impairment of health of . . . law enforcement officers caused by **hypertension** or heart disease resulting in hospitalization, medical treatment or any disability, shall be presumed (unless the contrary is shown by competent medical evidence) to have occurred or to be due to accidental injury suffered in the course of employment.

Tenn. Code Ann. § 7-51-201(a)(1) (1998) (emphasis added). Where the employer rebuts the statutory presumption by production of competent medical evidence, however, the burden to establish causation shifts to the party claiming workers' compensation benefits. Ferrell v. Cigna Property & Cas. Ins. Co., 33 S.W.3d 731, 734 (Tenn. 2000).

We begin by first determining whether the Chancellor correctly found that the City rebutted the statutory presumption of causation under Tennessee Code Annotated section 7-51-201(a)(1). The City presented the expert medical depositions of Dr. Roseman, a cardiologist, and Dr. Wagner, a neurologist. These doctors stated Cloninger's stroke was the result of his numerous risk factors, such as chronic hypertension, genetic predisposition, tobacco usage, alcohol consumption, and mild obesity. Dr. Roseman stated that the types of changes in the brain's blood vessels that led to the type of stroke Cloninger suffered could not have occurred in the period of time that Cloninger worked in the evidence locker. Moreover, Dr. Wagner simply stated that "stress does not cause strokes."

The Chancellor specifically found that the expert medical testimony of these two doctors rebutted the presumption of causation. After reviewing the testimony and the evidence in the record, we conclude that the evidence does not preponderate against the Chancellor's finding.³ We therefore affirm the Chancellor's finding that the employer rebutted the statutory presumption of causation under Tennessee Code Annotated section 7-51-201(a)(1) (1998).

We must next consider whether Cloninger established causation by proving that his stroke arose out of his employment. In Bacon, the Supreme Court held that for a heart attack caused by emotional stress, and not physical exertion, to be compensable under the Workers' Compensation Act, the employee has the burden of demonstrating that "a specific acute or sudden stressful event, rather than generalized employment conditions" precipitated the heart attack. 808 S.W.3d at 52. The Court has explained that "excessive and unexpected mental anxiety, stress, tension, or worry attributable to the employment can cause injuries sufficient to justify the award of benefits." Reeser v. Yellow Freight Sys., Inc. 938 S.W.2d 690, 692 (Tenn. 1997). The Court has also emphasized, however, that "the ordinary stress of one's occupation does not meet this standard because '[e]motional stress, to some degree, accompanies the performance of any contract of employment.'"

³ In reviewing this evidence, we likewise conclude that the record does not preponderate against the Chancellor's finding that the employee failed to establish an occupational disease.

Houser, 36 S.W.3d at 72 (brackets in original) (quoting Allied Chem. Corp. v. Wells, 578 S.W.2d 369, 373 (Tenn. 1979)).

These standards are illustrated in several cases involving strokes suffered by employees. In Reeser, the Court held that an employee who suffered a stroke after driving a truck through conditions that were “horrendous,” “terrible,” and “extremely hazardous” had established causation because the stroke was reasonably attributable to work. 938 S.W.3d at 693. In Houser, however, the Court held that the employee’s stroke did not arise out of employment where the employee was a grocery store manager who suffered a stroke upon becoming irate after receiving delivery of excess stock. 36 S.W.3d at 72. The Court reasoned that if “day-to-day mental tensions to which workers . . . are occasionally subject” were deemed compensable under the workers’ compensation system, then “workers’ compensation coverage would become as broad as general health and accident insurance, which it is not.” Id.

In this case, the Chancellor specifically stated that Cloninger failed to prove the requirement of “specific acute or sudden stressful event,” and was precluded from receiving workers’ compensation benefits for his stroke.⁴ The record demonstrates that Cloninger suffered work-related stress as a result of being assigned to the evidence locker and being responsible for achieving accreditation. He worked longer hours, took work home, and asked for additional help. Dr. Edwards-Lee testified as to the potential for causation between police officer job stress and the risk of stroke; however, Drs. Roseman and Wagner disagreed with that opinion, as well as her opinion that work-related stress could have caused Cloninger’s stroke. Dr. Edward-Lee conceded, and it is undisputed in the record, that no “specific acute or sudden stressful event” precipitated the stroke and that Cloninger did not allege that he suffered any stress greater in the days before the stroke than any other time. In fact, the trial court found that the stroke occurred nearly three months after the accreditation of the evidence locker had been achieved in “late January, early February 2000.” Additionally there is no other evidence in the record that would satisfy the element of causation.

After reviewing the record, we conclude that the evidence does not preponderate against the Chancellor’s finding that Cloninger failed to establish causation.

Conclusion

After reviewing the record and applicable authority, we conclude that the evidence in the record does not preponderate against the Chancellor’s decision. We therefore affirm the judgment. Costs on appeal are taxed to the appellant, David B. Cloninger, and his surety, for which execution shall issue if necessary.

E. RILEY ANDERSON, JUSTICE

⁴ In making its determination as to causation, the Chancellor relied on the following language from Bacon: “A premium should be placed upon specificity and clarity in identifying that which constitutes the ‘accident’ and upon demonstrating that such accident is directly attributable to the employment.” 808 S.W.2d at 52.

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No. 00C603**

No. W2003-01716-SC-WCM-CV - Filed August 31, 2004

ORDER

This case is before the Court upon the motion for review filed by David B. Cloninger 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.

It appears to the Court that the motion for review is not well-taken and is therefore denied. The Panel's findings of fact and conclusions of law, which are incorporated by reference, are adopted and affirmed. The decision of the Panel is made the judgment of the Court.

Costs are assessed to David B. Cloninger, for which execution may issue if necessary.

PER CURIAM

Anderson and Holder, JJ
Not Participating