IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
June 25, 2007 Session

# EFRAM LAVANCE WATLEY v. CITY OF MURFREESBORO

**Direct Appeal from the Chancery Court for Rutherford County**
**No. 04-8750WC Robert E. Corlew III, Chancellor**

---

**No. M2006-01451-WC-R3-WC - Mailed - September 14, 2007**
**Filed - October 16, 2007**

---

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel in accordance with Tennessee Code Annotated § 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. In this case, the trial court found that the employee suffered from post-traumatic stress disorder as a result of witnessing a visually disturbing incident in the course of his job as a police dispatcher and awarded 15% permanent partial disability to the body as a whole. The employer has appealed, contending that the triggering incident was not beyond the normal stress associated with the employee's job and was therefore not compensable. The employee contends the trial court's award was inadequate. Because we find that the triggering event went beyond the normal stress level associated with the employee's job and that the employee does not have to be exposed to danger in order to recover for a purely psychological injury, we affirm the trial court's decision.

**Tenn. Code Ann. § 50-6-225(e) (Supp. 2006) Appeal as of Right; Judgment of the Chancery Court Affirmed.**

RICHARD E. LADD, SP. J., delivered the opinion of the court, in which WILLIAM M. BARKER, C.J., and CORNELIA A. CLARK, J., joined.

Richard W. Rucker for the appellant, City of Murfreesboro.

R. Steve Waldron for the appellee, Efram LaVance Watley.

## MEMORANDUM OPINION

### I. Factual Background

Mr. Watley ("Employee") was employed by the City of Murfreesboro ("Employer") as a police and emergency dispatcher beginning in 1989. He worked as a dispatcher for the majority of

the time he was employed by the city until he resigned in 2004.

The job of a dispatcher is to handle incoming requests such as 911 emergency calls, inbound calls to various police departments, and the requests of police officers. In addition, the dispatcher will alert various emergency responders when necessary. A certain level of stress accompanies the job. The number and type of calls can vary widely from day to day, and can deal with anything from shootings to cats stuck in trees.

The events giving rise to this claim occurred on July 8, 2003. In recent years, technological advances have given the dispatch office in Murfreesboro the ability to view video feeds from traffic cameras mounted around the city. On July 8th, the dispatch office received several reports of a train accident, but the precise location was unclear. Employee did not field these calls, but attempted to determine the exact location to alert emergency responders. He panned a traffic camera near the reported scene looking for the accident. He observed via the camera a young person who had been ejected from a truck through the front windshield; the body was resting on the hood of the truck with a large amount of blood surrounding it. Employee was immediately affected by the scene and directed the camera away. He described himself as being "disgusted" and "nauseous" at the sight of the accident. For the following few days, he could not get the accident out of his mind. He had trouble sleeping and experienced crying spells.

Within the week, Employee visited Dr. Steuber, a psychologist. Employee was on leave for thirty days before returning to light duty for thirty days, during which he did not dispatch calls. Thereafter, he returned to the dispatch office for about a year before resigning. He testified that he left because of the toll it was taking on him and because he could not get the incident out of his mind.

The trial court found that Employee had sustained a compensable injury, i.e. post-traumatic stress disorder and awarded 15% permanent partial disability to the body as a whole. Employer appeals that decision.

## II. Issues

The Employer contends that the trial court erred in finding that Employee's psychological injury a compensable event. The Employee contends that the 15% permanent partial disability awarded by the trial court is inadequate, and that the 2.5 multiplier cap does not apply.

## III. Standard of Review

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) (Supp. 2006). The reviewing court is required to conduct an independent examination of the record to determine where the preponderance of the evidence lies. The standard governing appellate review of the findings of fact

of a trial judge requires this "panel to examine in depth a trial court's factual findings and conclusions." *GAF Bldg. Materials v. George*, 47 S.W.3d 430, 432 (Tenn. Workers' Comp. Panel 2001). When the trial court has seen the witnesses and heard the testimony, especially where issues of credibility and the weight of testimony are involved, the appellate court must extend considerable deference to the trial court's factual findings. *Whirlpool Corp. v. Nakhoneinh*, 69 S.W.3d 164, 167 (Tenn. 2002); *Townsend v. State*, 826 S.W.2d 434, 437 (Tenn. 1992). When medical testimony is presented by deposition, this Court is able to make its own independent assessment of the medical proof to determine where the preponderance of the evidence lies. *Houser v. Bi-Lo, Inc.*, 36 S.W.3d 68, 71 (Tenn. 2001); *Cleek v. Wal-Mart Stores, Inc.*, 19 S.W.3d 770, 774 (Tenn. 2000). Our standard of review of questions of law is de novo without a presumption of correctness. *Perrin v. Gaylord Entm't Co.*, 120 S.W.3d 823, 826 (Tenn. 2003).

## IV. Analysis

It is undisputed that Employee suffers from post-traumatic stress disorder. Two psychiatrists and a psychologist testified to this fact, and no witness testified otherwise. Further, all three of these witnesses agreed that one cause of the injury, if not the only cause, was the July 8th incident. This does not end our inquiry, however, because not all mental injuries give rise to recovery in workers' compensation. *See Jose v. Equifax, Inc.*, 556 S.W.2d 82, 84 (Tenn. 1977).

A psychological injury must meet the traditional prerequisites of any workers' compensation claim: it must arise out of and be in the course of employment. Tenn. Code Ann. § 50-6-103(a)(1999). The phrase "arising out of employment" has been construed, with respect to mental injuries, to only include those injuries stemming from "an identifiable stressful, work-related event producing a sudden mental stimulus such as fright, shock, or excessive unexpected anxiety." *Goodloe v. State*, 36 S.W.3d 62, 65 (Tenn. 2001) (citing *Ivey v. Trans Global Gas & Oil*, 3 S.W.3d 441, 446 n.10 (Tenn. 1999)). This does not include every "undesirable experience" encountered in a job. *Goodloe*, 36 S.W. 3d at 66 (quoting *Jose*, 556 S.W.2d at 84). It only includes traumatic experiences that are outside the normal bounds of the particular job in which the employee is engaged. *Saylor v. Lakeway Trucking, Inc.*, 181 S.W.3d 314, 320 (Tenn. 2005); *Gatlin v. Knoxville*, 822 S.W.2d 587, 592 (Tenn. 1991). That is, the event "must be extraordinary and unusual in comparison to the stress ordinarily experienced by an employee in the same type duty." *Gatlin,* 822 S.W.2d at 592.

The Employer contends that the July 8th incident was not an extraordinary and unusual stressor because Employee's job as a dispatcher was a stressful one. All dispatchers have to deal with particularly difficult calls from time to time. As the front line of assistance to citizens, they are exposed to human emotions in their rawest forms. The record gives a sampling of such situations. Dispatchers are exposed to suicides, house fires in which people are trapped, fatal car accidents, and the like. Occasional, sometimes frequent, exposure to horrible events is necessary to assist citizens in distress. Traditionally, dispatchers are connected to the situation via telephone where they observe the situation aurally to extract necessary information and give appropriate instructions. Such exposure to people in desperate situations can be emotionally taxing, especially when that person

is relying on the dispatcher to send assistance and the dispatcher is conversing with the victim. The primary issue in this case is whether or not the incident in question is extraordinary and unusual when compared with the standard duties of a similarly situated employee.

The trial court implicitly held that the incident was extraordinary and unusual when it found that the injury was compensable. This panel must examine the record to determine where the preponderance of evidence lies, affording the trial court deference especially in matters of credibility. *Whirlpool*, 69 S.W.3d at 167. The issue to be determined in this appeal is whether or not the trial court was correct in comparing the stress level of the July 8th incident to the normal stress levels of the job and finding that the incident was outside the bounds of typical stress levels for a dispatcher.

We agree with the trial court's determination. The job of a dispatcher traditionally does include some stressful elements. However, visual exposure to an accident scene is not a normal occurrence for a person in this line of work. A dispatcher must deal with very difficult situations on the phone. However, the dispatcher is in a different position from police and other emergency responders, whose work takes place at crime and accident scenes. Exposure to sights, sounds and smells that would disturb an average person are an inherent part of such jobs. This is not the case for dispatchers such as Employee.

Police Lieutenant James Horn, who responded to the July 8th call, testified that anyone who was not a police officer would have been "shocked" by the scene in this case. While it was no more gruesome than an average traffic fatality, the scene involved a teenager, which "bothered" even Lieutenant Horn. He further testified that "anybody who is not used to seeing something like this would probably have a problem with it." From Employee's perspective, to receive a call on this incident would have been standard fare, but to actually observe it with his own eyes was unusual and extraordinary.

We therefore conclude that the evidence does not preponderate against the factual determination of the trial court the that the level of emotional distress was abnormal for a person in this line of work.

Employer also contends that exposure to danger is required to recover for a purely psychological injury. It is undisputed that Employee was in no actual danger by viewing the images on a monitor. Citing *Guess v. Sharp Mfg. Co. of Am.*, 114 S.W.3d 480, 487 (Tenn. 2003), the Employer argues that because there was no risk of physical injury, there can be no recovery. We disagree. The employee in *Guess* developed her psychological injury due to fear of physical injury rather than another type of traumatic event. *Id.* at 482. After being splattered with a coworker's blood, she feared she would contract HIV and subsequently developed post-traumatic stress disorder. *Id*. There was no actual evidence that the blood which she came into contact with "was infected with the [HIV] virus." *Id.* at 486. The Court refused to allow recovery because the injury had no "rational connection" to her employment. *Id.* The Court expressed an unwillingness to allow any overly worrisome person to recover. *Id* at 487. In that regard, *Guess* does not stand for the proposition that exposure to physical danger is necessary for a psychological injury to be compensable. Rather,

*Guess* requires that, when fear of physical harm is alleged to be the cause of a psychological injury, that fear must be reasonable under the circumstances.

This does not mean that all types of traumatic experiences must have an actual risk of physical injury in order to permit recovery. To the contrary, psychological injuries triggered by unusually stressful events which did not include any element of danger have been held to be compensable. *See, e.g., Jones v. Hartford Acci. & Indem. Co.*, 811 S.W.2d 516 (Tenn. 1991); *Craven v. Corr. Corp. of Am.*, No. W2005-01537-SC-WCM-CV, 2006 WL 3094121 (Tenn. Workers' Comp. Panel October 26, 2006). Therefore, Employer's contention is without merit.

Turning to the Employee's argument that the amount of the award was insufficient, we find that the evidence does not preponderate against the trial court finding of 15% permanent partial disability. Dr. West, one of the psychiatrists who examined the Employee, testified that Employee sustained an anatomical impairment of 15% to the body as a whole. Dr. Bell, who also examined Employee, opined that the impairment was between 25% and 50%.

Expert testimony is not the only factor to be considered when assessing vocational disability; all relevant evidence must be considered, including the traits of the employee and the types of work prohibited by his impairment. *Saylor*, 181 S.W.3d at 322 (citing *McIlvain v. Russell Stover Candies, Inc.*, 996 S.W.2d 179, 183 (Tenn. 1999)).

Dr. West testified that Employee should avoid occupations where violence is present. Employee notes that his pay decreased from $37,000 annually to $27,000 when he changed jobs. A present decrease in salary is but one factor in determining vocational disability. The end goal is to determine how much the employee's capacity to earn wages has been reduced. *Orman v. Williams Sonoma, Inc.*, 803 S.W.2d 672, 678 (Tenn. 1991) (citing *Corcoran v. Foster Auto GMC, Inc.*, 746 S.W.2d 452, 459 (Tenn. 1988)). The record demonstrates that Employee returned to work after 30 days, that he continued in his regular dispatching job for a full year before resigning, and that his ability to work elsewhere is not greatly impacted by the requirement that he avoid violence. Based upon our independent review of the record, we conclude that the evidence does not preponderate against the trial court's award of 15% permanent partial disability.

Because we have declined to increase the award of vocational disability, it is unnecessary to address Employee's second argument that the 2.5 multiplier cap is not applicable to his case.

## V. Conclusion

The judgment of the trial court is affirmed. Costs are taxed to the City of Murfreesboro and its surety, for which execution may issue if necessary.

_____

RICHARD E. LADD, SPECIAL JUDGE

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
JUNE 25, 2007 SESSION

# EFRAM LAVANCE WATLEY v. CITY OF MURFREESBORO

**Chancery Court for Rutherford County**
**No. 04-8750WC**

---

**No. M2006-01451-WC-R3-WC - Filed - October 16, 2007**

---

## 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 appeals 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 taxed to the City of Murfreesboro and its surety, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM