

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

FILED

June 29, 1998

Cecil Crowson, Jr.
Appellate Court Clerk

VICTOR A. WYNN,)	
)	
Plaintiff/Appellee)	SHELBY CIRCUIT
)	
v.)	NO. 02S01-9711-CV-00099
)	
PERMA-FIX and THE TRAVELERS)	HON. JOHN R. McCARROLL,
INSURANCE COMPANY,)	JUDGE
)	
Defendants/Appellants)	

For the Appellant:

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80 Monroe Avenue, Suite 500
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For the Appellee:

Richard L. Rikard
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MEMORANDUM OPINION

Members of Panel:

Justice Janice Holder
Senior Judge John K. Byers
Special Judge J. Steven Stafford

OPINION

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.

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); *Stone v. City of McMinnville*, 896 S.W.2d 548, 550 (Tenn. 1995). The application of this standard requires this Court to weigh in more depth the factual findings and conclusions of the trial court in a workers' compensation case. See *Corcoran v. Foster Auto GMC, Inc.*, 746 S.W.2d 452, 456 (Tenn. 1988).

The trial court found the plaintiff suffered from a heart attack and resulting disablement which arose out of and in the course and scope of his employment with the defendant. Further, the trial court found the plaintiff was totally and permanently disabled as a result of this work injury.

_____The defendants appeal and present the following issue:

"1. The issue for determination of this Court is whether or not the evidence in this cause preponderates against the findings of the trial court that Plaintiff sustained an injury arising out of and in the course and scope of his employment resulting in a permanent and total disability."

The judgment of the trial court is affirmed.

The evidence in this case was presented by the plaintiff, who testified in person, and three other witnesses who testified likewise. These other witnesses were the plaintiff's wife and Pat Townsend and Claude Hunt, both co-workers who testified that the plaintiff suffered pain in his chest on September 20, 1994 while at work. The plaintiff also presented the depositions of Dr. Bennett Rudorfer and Dr. Grady L. Saxton.

The defendant's proof consisted of the deposition of Patricio A. Ilabaca and the testimony of Tammy Boggs, whose official capacity with the defendant is not shown. Boggs introduced a packet of medical records from the plaintiff's personnel

file. The thrust of this was to show, apparently, that the plaintiff had a preexisting heart condition.

From all of this, we find the following facts and medical evidence.

FACTS

The plaintiff is a person of limited education. He has been employed by Perma-Fix since the 1980s doing general labor. On September 20, 1994, the plaintiff, then age 41, was working with toxic waste disposal. In this capacity, he was required to toss 55 gallon drums (some empty, some with solid residue) into the rear of a trailer. This was described as an extremely strenuous job.

On this night, the plaintiff began his shift at 3:00 p.m. (he was assigned the night shift because he suffered from heat cramps and exhaustion when he worked during the day). The crew was shorthanded on this night and the plaintiff had to do more than a one person job. He testified he began experiencing chest pains sometime after 7:30 p.m. on that night. The plaintiff continued to work until 9:00 p.m., at which time he said he felt like his chest was about to “tear open” and his arm was numb. At this time, he laid down in the break room and left work around midnight. A co-worker and supervisor both testified they witnessed the plaintiff’s pain on this night.

When he reached his house that night, the plaintiff blew his horn for his wife to help him inside. He was not able to sleep because of the pain. The next morning, the plaintiff’s wife took him to see Dr. Walker, his primary care physician. At this time, the plaintiff gave Dr. Walker a history of having occasional sharp chest pain for the past six weeks with sweating and shortness of breath (typically after walking), but he complained of very sharp chest pain on that day. He also told Dr. Walker that he had not been taking his hypertension medication for the past few months.

The plaintiff testified he had never felt chest pains like the ones he experienced on September 20, 1994. He further said he had experienced chest pains in the past, but he believed these were heat cramps. The plaintiff has not been back to work since September 20, 1994 and has not been released from doctor’s care. The plaintiff underwent bypass surgery in October 1994 and a second bypass surgery in March 1996. He had an emergency heart catheterization in

October 1996. The plaintiff still experiences chest pain and has been hospitalized several times.

MEDICAL EVIDENCE

Dr. Walker, the plaintiff's primary care physician, saw him on September 21, 1994. He injected the plaintiff with Toradol, gave him nitroglycerin tablets, and started him on other medication. Dr. Walker arranged for the plaintiff to undergo an E.K.G. later that day and it revealed that he had sustained a heart attack. Dr. Walker told the plaintiff to stay off work until he could see Dr. Jan Garrison, a cardiologist. Dr. Garrison saw the plaintiff and observed that his hypertension was "poorly controlled with patient off his medications." Dr. Garrison referred the plaintiff to Dr. Patricio A. Ilabaca, a thoracic and vascular surgeon.

Dr. Ilabaca testified by deposition. On October 19, 1994, Dr. Ilabaca performed a quintuple bypass surgery on the plaintiff and released him six weeks later. Dr. Ilabaca testified the plaintiff's first surgery was necessitated by obstructions in his heart and the fact that he had sustained a heart attack. In March 1996, he performed a triple bypass surgery on the plaintiff and again released him six weeks later. At this time, Dr. Ilabaca released him to return to work without restrictions.

Dr. Ilabaca testified there is no way to tell when the plaintiff sustained the heart attack by looking at the E.K.G. unless you can compare it to an earlier E.K.G. Dr. Ilabaca did believe the plaintiff's heart attack occurred at least 10 to 14 days prior to September 21, 1994, the date the E.K.G. was done on the plaintiff. Dr. Ilabaca stated the plaintiff had significant preexisting risk factors for coronary artery disease such as hypertension, hypercholesterolemia, obesity, and being male. He had no opinion on the cause of the plaintiff's heart attack, but he agreed that a person with coronary artery disease who does heavy physical labor will have an increased likelihood of having a heart attack. Dr. Ilabaca did not find permanent inability to work.

Dr. Grady L. Saxton, a cardiologist, testified by deposition. Dr. Saxton first saw the plaintiff in August 1995 when chest pains were radiating into his arm. He performed a catheterization which indicated severe coronary artery disease with

severe left ventricular dysfunction. Dr. Saxton testified you can only estimate the age of a heart attack from an E.K.G. with 60 percent reliability. He opined the most likely time of the plaintiff's heart attack was September 20, 1994 because of his work activities. Dr. Saxton believed the plaintiff's first heart attack compromised his condition and increased the likelihood of a second heart attack. He further testified the plaintiff could only engage in work that is sedentary so that he could rest when he had chest pain.

Dr. Bennett Rudorfer, a cardiologist, testified by deposition. Dr. Rudorfer testified E.K.G. testing can determine the age of a heart attack with significant reliability except in cases of acute changes. He opined the plaintiff most likely sustained the heart attack on September 20, 1994 due to his work activities and believed the plaintiff possibly could have avoided the heart attack if he had refrained from working. He stated the plaintiff had permanent impairment due to his condition of severe coronary artery disease with extensive bypass surgery. Dr. Rudorfer testified someone with a history of having a heart attack is at major risk to have a subsequent one. Dr. Rudorfer was of the opinion the plaintiff suffered "quite severe" permanent impairment as a result of the heart attack.

The evidence in this case shows with little contradiction that the plaintiff suffered a cardiac episode on September 20, 1994 while working for the defendant. The medical evidence shows this to be a heart attack.

It is clear also that the plaintiff had a preexisting underlying condition that pre-disposed him to have a heart attack while exerting himself, which he was doing at the time he experienced the pain he described.

The evidence in this case shows that the plaintiff, even if he had a preexisting condition, aggravated the condition and that the heart attack was precipitated by the work he was doing for the defendant at the time.

The lay testimony, accredited by the trial judge, and the medical testimony support the finding of the trial judge that the plaintiff suffered a heart attack in the course of his employment and that he is permanently totally disabled.

We affirm the judgment and tax the cost of this appeal to the defendant.

John K. Byers, Senior Judge

CONCUR:

Janice Holder, Justice

J. Steven Stafford, Special Judge

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AT JACKSON

VICTOR A. WYNN,

Plaintiff/Appellee,

vs.

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INSURANCE COMPANY,

Defendants/Appellants.

) SHELBY CIRCUIT
) NO. 72753 T.D.
)
) Hon. John R. McCarroll,
) Judge
)
) NO. 02S01-9711-CV-00099
)
)
) AFFIRMED

FILED

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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 will be paid by Appellants, and Surety, for which execution may issue if necessary.

IT IS SO ORDERED this 29th day of June, 1998.

PER CURIAM

(Holder, J., not participating)

