IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
November 30, 2005 Session

JEFFREY DEAN BLEDSOE v. CITY OF DICKSON-DEPARTMENT OF POLICE

Direct Appeal from the Chancery Court for Dickson County
No. 7160-01 George C. Sexton, Chancellor

No. M2005-00919-WC-R3-CV - Mailed - April 24, 2006
Filed - May 25, 2006

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Tennessee 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 Plaintiff, a thirty-seven year old police officer, suffers from mild hypertension, readily controlled by medication. He claims that the stress of his job causes his hypertension, and relies on the presumption created by Tennessee Code Annotated section 7-51-201(a)(1) to support this claim. The trial court held that this presumption was not rebutted and found that the Plaintiff retained a 3 percent anatomical disability owing to the hypertension. We find that the presumption was sufficiently rebutted, and that the evidence preponderates against a finding that the Employee's hypertension arose out of his employment. Accordingly, the judgment of the trial court is reversed.

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

WILLIAM H. INMAN, SR. J., delivered the opinion of the court, in which CORNELIA A. CLARK, J., and ROBERT E. CORLEW III, SP. J., joined.

Robyn Beale Williams, Nashville, Tennessee, attorney for Appellant, City of Dickson.

Tonya M. Crownover, Nashville, Tennessee, for Appellee, Jeffrey Dean Bledsoe.

MEMORANDUM OPINION

BACKGROUND

At the time of trial, in November 2004, the Plaintiff was thirty-seven years old, was six feet, four inches tall, and estimated that he weighed 240 pounds. He had been employed by the City of Dickson for fourteen years, following a three-year stint as a deputy sheriff for the county. His duties as a police officer generally consisted of responding to complaints, making arrests, and working accidents. A year and a half before the Employee's first hypertensive episode, he was promoted to detective for the vice-narcotics unit. The Employee is a high school graduate with some college credits for law enforcement classes.

Plaintiff had a physical examination in 1990, prior to his employment with the City of Dickson, including a blood pressure reading of 140 over 80.

The Employee testified that on March 30, 2000 while driving, he "felt like [he] was off balance, [he] felt like [he] was going to black out" and went to a local ambulance service where his blood pressure was taken. The reading was 172 over 118, higher than any prior reading. He continued on with his shift, but continued to feel "dizzy, and . . . intoxicated." The Employee's partner took him to the emergency room, where he was treated with medication and released. The Employee was told to follow-up with his family physician as soon as possible. The Employee reported the incident to his supervisor, Detective Don Arnold, although he did not realize his condition was work related at that time.

Within a few days the Employee saw his family physician, Dr. Peters, who prescribed a medication for high blood pressure, and recommended that he continue his exercise program and eat properly. Since the original diagnosis of hypertension, the Employee has primarily been treated by Dr. Sean Ryan, who prescribed various medications to treat the Employee's condition. Dr. Ryan referred the Employee to Dr. David Gibson, a cardiologist, who performed an EKG and stress test, which confirmed a hypertensive physiology, but showed no objective findings of blockages in his heart. The Employee testified that as of the date of trial he continues his medication, and that on some days he becomes "light headed" which he attributes to high blood pressure, usually when he is off-duty. The Employee does not smoke or abuse alcohol, and works out at a gym two to three times a week. He has no family history of high blood pressure or other cardiac issues. No one has suggested that he should find other employment.

The Employee's complaint, filed March 27, 2001, alleges that both the hypertensive episode he suffered on March 30, 2000, and the disease of hypertension, later diagnosed, occurred "as a result of the tension and pressure to which [he] was subjected during the performance of his duties as a police officer in the employ of the Defendant." The Employer contends that there is no causal connection between the Employee's work as a police officer and his hypertension.

The trial court held (1) that the Plaintiff was entitled to rely upon the statutory presumption of causation created by Tennessee Code Annotated section 7-51-201(a)(1)[1]; (2) that the Defendant failed to rebut the statutory presumption by competent medical evidence; and (3) that the Plaintiff is entitled to an award of 3 percent permanent partial disability to the whole body [12 weeks]. The Employer appeals, insisting that the court erred in finding that the statutory presumption applied to this case, and that it was not rebutted.

STANDARD OF REVIEW

In workers' compensation cases, this Court reviews issues of fact 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) (1999); *Jones v. Sterling Last Corp.* , 962 S.W.2d 469, 471 (Tenn. 1998). 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). When expert testimony differs, it is within the discretion of the trial judge to determine which testimony to accept. *Kellerman v. Food Lion, Inc.*, 929 S.W.2d 333, 335 (Tenn. 1996) . "However, where the issues involve expert medical testimony and all the medical proof is contained in the record by deposition, as it is in this case, then this Court may draw its own conclusions about the weight and credibility of that testimony, since we are in the same position as the trial judge." *Krick v. City of Lawrenceburg*, 945 S.W.2d 709, 712 (Tenn. 1997); *Bohanan v. City of Knoxville*, 136 S.W.3d 621, 624 (Tenn. 2004).

THE MEDICAL PROOF

Dr. Sean Ryan is board certified in internal medicine, and first saw the Employee on June 26, 2000. Dr. Ryan ran a series of tests to determine whether the Employee had a secondary cause for hypertension. He did not find any evidence of secondary hypertension. He saw the Employee a month later as a follow-up, finding that his blood pressure was lower and that the blood pressure medication seemed to be working. Dr. Ryan continued to treat the Employee on a monthly basis. The Employee reported that his blood pressure was higher while at work, and normal when at home. Dr. Ryan prescribed an anti-anxiety medication to help alleviate the Employee's chronic stress issues. He also placed the Employee on "light duty" work within the police department. His blood pressure stabilized over the next few months, which Dr. Ryan attributes to both the medications and the fact that the Employee's"light duty" position was less stressful than his normal duties at the

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[1] Tennessee Code Annotated section 7-51-201(a)((1) provides, in pertinent part:

[w]henever the state of Tennessee, or any municipal corporation or other political subdivision of the state that maintains a regular law enforcement department manned by regular and full-time employees and has established or hereafter establishes any form of compensation to be paid to such law enforcement officers for any condition or impairment of health which shall result in loss of life or personal injury in the line of duty or course of employment, there shall be and there is hereby established a presumption that any impairment of health of such 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.

department. Thereafter, the Employee returned to his normal duties. After a few months, his blood pressure began to rise and Dr. Ryan prescribed an additional medication which reduced the pressure to an acceptable reading. He last saw the Employee on May 12, 2004, and his blood pressure was 118 over 78, a satisfactory reading. He gave the Employee a permanent partial disability rating of 3 percent to the body as a whole "based on his need for continued medication for his blood pressure," and according to the AMA Guides. Dr. Ryan testified that the Employee's condition is permanent, and requires continued monitoring by a physician. He assessed no work restrictions, but believes that the high blood pressure is related to the chronic stress associated with the Employee's work as a police officer.

Dr. Hal Roseman, board certified in internal medicine and cardiology, performed an independent medical examination (IME) on the Employee in April of 2002.[2] Dr. Roseman testified that the Employee's medical records indicate that "Mr. Bledsoe, before the incident event of March 30, 2000 . . . had pre-existing hypertension."[3] Dr. Roseman noted that these records indicated that the Employee has "an unusual physiology that can be best characterized by increase of adrenaline levels." Dr. Roseman's review of the Employee's records revealed a number of cardiovascular risk factors, including hyperlipidemia and a history of anxiety. Dr. Roseman also classified the Employee as a "hot reactor, " which he defined as "a certain type of condition in which an individual overreacts by an explosion of adrenaline well beyond what the stress of the situation would call for." He concluded that the Employee's hypertension is more likely than not caused, aggravated or perpetuated by multiple factors including mild obesity,[4] metabolic syndrome, and his indicated reactivity to stress. Dr. Roseman opined that the Employee 's hypertension is not causally related to his work as a policeman. Dr. Roseman, and the Employee himself, do not believe that hypertension affects the Employee's ability to perform his job as a police officer.

Dr. Sean Ryan was deposed later and testified in regard to the opinions of Dr. Roseman. He took issue with Dr. Roseman's categorization of the Employee's pre-employment blood pressure reading of 140/80 as "pre-existing hypertension". Dr. Ryan argued that even under current standards, which are more stringent than when this reading was taken in 1990, 140/80 indicates a pre-hypertensive state, but not hypertension. Further, he contended that "[t]he determination of hypertension is made by at least two blood pressures on two separate occasions and more likely by

[2] Although not an issue raised on appeal, the Employee testified that he was not given a panel of doctors to choose from, pursuant to Tennessee Code Annotated section 50-6-204(a)(1)(4)(A), but was advised that "Dr. Roseman . . . [was] the only one that would see me".

[3] Dr. Roseman testified that he considers a reading of 140 over 80 hypertensive, particularly in a twenty-three year old, but admitted that some physicians consider anything under 140 over 90 to be a normal blood pressure reading. He cited at least one recent report that categorizes anything over 120/80 as an abnormal blood pressure reading. *See* U.S. DEPT. OF HEALTH AND HUMAN SVCS., THE SEVENTH REPORT OF THE JOINT NATIONAL COMMITTEE ON PREVENTION, DETECTION, EVALUATION AND TREATMENT OF HIGH BLOOD PRESSURE (2004).

[4] Dr. Roseman later conceded that Mr. Bledsoe's weight may have been incorrect in his records, and that Mr. Bledsoe is more likely at the upper limits of his expected weight, owing to a muscular build.

three to six blood pressures over a period of several months." The pre-employment reading is only one blood pressure reading, and the conditions under which the blood pressure was taken is not apparent from the records. Dr. Ryan also questioned Dr. Roseman's use of the term "hot reactor," which he had not heard of before reading Dr. Roseman's deposition. After doing some research on the term, Dr. Ryan found it is not commonly used in current medical literature (only twice since 1966, according to one source), and that Dr. Roseman may have defined the term incorrectly. Moreover, Dr. Ryan argued that metabolic syndrome does not cause hypertension itself, although it may be a component of the disease, and that Dr. Roseman incorrectly cited the criteria for metabolic syndrome. Dr. Ryan suggested that the Employee does not have metabolic syndrome, when the correct criteria are considered. Finally, Dr. Ryan contended that there is no evidence to support Dr. Roseman's opinion that the Employee suffers from generalized anxiety disorder.

Dr. Roseman was deposed again subsequently. In his follow-up deposition he asserted that secondary tests run by Dr. Ryan provided physical evidence that the Employee is a "hot reactor" because he has excess levels of adrenaline in his urine. Dr. Roseman admitted that the Employee does not meet the medical criteria for generalized anxiety disorder, but claimed to have used the term to mean that the Employee suffered from a state of generalized excess anxiety. Dr. Roseman also noted that Dr. Ryan bases his opinion on the assumption that stress or anxiety and hypertension are related, and argues that this link is unfounded. He also argued that a blood pressure reading of 140/80, in a twenty three year old physically fit male, is "reflective of a central hypertension at that time or at the very least pre-hypertension." Dr. Roseman further recognized that metabolic syndrome does not cause hypertension, and agreed that hypertension is a component of that syndrome. Dr. Roseman defended his use of the term "hot reactor," arguing that "anyone . . . involved in . . . the area of psychosocial stress . . . would be aware of this term." Dr. Roseman disagreed with Dr. Ryan's statement that police officers have generally stressful jobs, since this theory has not been scientifically proven, and he is aware of no medical literature linking any job stressors to hypertension. Dr. Roseman reiterated that he saw no link between the Employee's job and his hypertension, and that he did not believe the Employee suffers from any permanent injury or impairment.

Dr. Lucas S. Van Orden, a psychiatrist, saw the Employee on one occasion, on July 25, 2002. Dr. Van Orden evaluated the Employee and diagnosed him with adjustment disorder with anxiety, a mild psychiatric diagnosis. He testified that this condition is also called delayed post-traumatic stress disorder. Dr. Van Orden testified that he sees a number of emergency personnel in his practice, and that the chronic stress they are subjected to in their work life commonly results in hypertension and other similar problems. The disorder is gradual in nature, and is characterized by a hyper-vigilance or a sensitivity to real environmental stressors. Dr. Van Orden believes that there are physical responses to emotional stress, including increased blood pressure. Dr. Van Orden opined that the Employee's physical and emotional responses are consistent with a response to the stressors of his job as a police officer. He further described the disorder as an innate survival mechanism, and suggested that "a law enforcement officer would be in particular need for such a reaction and would be in jeopardy without it." He opined that the Employee's reaction becomes a conditioned response to the chronic stressors present in his line of work, and that his body deals with

these stressors with secreted adrenaline and raised blood pressure. Dr. Van Orden called this anticipatory anxiety. Dr. Van Orden testified that, in his opinion, the environmental stressors of the Employee's job are the cause of the his anxiety and hypertension. However, Dr. Van Orden did not assess any temporary or permanent disability to the Employee.

ANALYSIS

Tennessee Code Annotated section 7-51-201(a)(1) creates a rebuttable presumption entitling police officers to workers' compensation benefits, when an officer suffers injury or death due to hypertension or heart disease. For the statutory presumption to apply to the Employee in this case, he must show that:

> (1) he was employed by a regular law enforcement department; (2) he suffered from hypertension or heart disease resulting in hospitalization, medical treatment or disability in the course of employment; and (3) prior to the injury he had been given a physical examination which did not reveal the heart disease or hypertension.

Stone v. City of McMinnville, 896 S.W.2d 548, 550 (Tenn. 1995). The trial court found that the Employee was entitled to rely on the statutory presumption, since both Dr. Roseman and Dr. Ryan agreed that the 1990 blood pressure reading of 140/80 was indicative at worst of a pre-hypertensive condition, and since they both agree that a single blood pressure reading should not be used to diagnose this disease.

After a thorough review of the deposition testimony in this case, we disagree that the Employee's pre-employment physical did not "reveal *any evidence* of the condition of hypertension or heart disease." Tenn. Code Ann. § 7-51-201(a)(1) (emphasis added). The Employee's 1990 elevated blood pressure reading is clearly indicative of pre-hypertension. That pre-hypertension, particularly at such a young age, is affirmative evidence of the condition of hypertension prior to employment. Dr. Roseman's opinion, to a reasonable degree of medical certainty, is that "there is no relationship . . . nor any type of causative relationship between occupation, occupational stress, the so-called 'adrenaline surges' and is development or continued presence of hypertension." This testimony is sufficient to rebut the presumption of causation created by Tennessee Code Annotated section 7-51-201(a)(1).

Because the Employee failed to meet the requirements of section 7-5-201, he is required to introduce proof by a preponderance of the evidence, that his hypertension "arose out of and in the course of his employment". *Krick v. Lawrenceburg*, 945 S.W.2d 709, 713 (Tenn. 1997). The rationale of the Employee's claim, and the thrust of his medical proof, is based on the premise that stress associated with or inherent in his job caused his hypertension. In *Gatlin v. City of Knoxville*, 822 S.W.2d 587, 592 (Tenn. 1991), the Supreme Court defined the legal criteria for determining when stress causes a compensable injury, and concluded that the stress caused by the employment may not be usual stress, but must be extraordinary and unusual in comparison to the stress ordinarily experienced by employees in the same type of duty. The Court emphasized that "the ordinary stress

of one's occupation does not meet this standard because the emotional stress, to some degree, accompanies the performance of any contract of employment." *Houser v. BiLo, Inc.*, 36 S.W.2d 68, 72 (Tenn. 2001). The Employee must show that his hypertension was caused by a mental stimulus, such as sudden fright or shock, and not due to the typical stressors of his job. *See Bacon v. Sevier County*, 808 S.W.2d 46, 52 (Tenn. 1991). The Employee admits that his hypertensive episode on March 30, 2000 was not preceded by any sudden shocking or frightening event. The Employee failed to prove that his hypertension arose out of, or in the course of, his employment with the City of Dickson.

It necessarily follows that the Plaintiff's claim of a compensable injury must fail for lack of requisite proof. The judgment of the trial court is accordingly reversed. Costs of this appeal are assessed to the Employee, Jeffrey Dean Bledsoe, and his sureties, for which execution may issue if necessary.

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WILLIAM H. INMAN, SENIOR JUDGE

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
NOVEMBER 30, 2005 SESSION

JEFFREY DEAN BLEDSOE v. CITY OF DICKSON-DEPARTMENT OF POLICE

Chancery Court for Dickson County
No. 7160-01

No. M2005-00919-WC-R3-CV - Filed - May 25, 2006

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 will be assessed to the Employee, Jeffrey Dean Bledsoe, and his sureties, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM