

JOHN CRICHTON, Employee/Appellant, v. BUD MEYER TRUCK LINES, INC., SELF-INSURED/ADMIN. CLAIM SERVS., Employer, and BLUE CROSS & BLUE SHIELD OF MINN., BLUE CROSS & BLUE SHIELD OF TENN., BLUE CROSS & BLUE SHIELD OF WIS., and JACKSON-MADISON CNTY. GEN'L HOSP., Intervenors, and SPECIAL COMP. FUND.

WORKERS' COMPENSATION COURT OF APPEALS
MARCH 11, 1999

No. [REDACTED SSN]

HEADNOTES

CAUSATION - HEART CONDITION. Substantial evidence supported the compensation judge's determination that the employee failed to show that he had experienced unusual emotional stress at work prior to his myocardial infarction, or that either work-related emotional or physical stress was a substantial contributing causes of the onset of his myocardial infarction.

EVIDENCE - ADMISSION. Minn. Stat. § 602.01 is clearly a "statutory rule of evidence" as contemplated by the clear language of Minn. Stat. § 176.411, subd. 1. Accordingly, we conclude that the compensation judge was not required to follow or to consider the provisions of that statute in determining whether to admit into evidence the recording and transcription of the employee's July 18, 1995 statement.

Affirmed.

Determined by Wheeler, C.J., Johnson, J., and Hefte, J.
Compensation Judge: Rolf G. Hagen

OPINION

STEVEN D. WHEELER, Judge

The employee appeals from the admission into evidence of the employee's statement, taken July 18, 1995, and from the compensation judge's determination that the employee failed to prove either that the stress to which he was exposed in his job for the employer as an over-the-road truck driver was beyond the ordinary day-to-day stress to which all employees are exposed, or that the employee's job stress was a substantial contributing factor in the onset of the employee's heart attack on June 26, 1995. We affirm.

BACKGROUND

The employee, John Crichton, worked for the employer, Bud Meyer Truck Lines, as an over-the-road truck driver. On June 26, 1995, the employee suffered from preexisting

coronary artery disease and obstructive pulmonary disease, was 48 years of age, was 5' 7" tall and weighed 240 pounds, and had a 20-year history of smoking at least one and one-half packs of unfiltered cigarettes per day. On that date, the employee sustained a myocardial infarction resulting from total occlusion of the left anterior ascending artery of the heart while on the premises of Fleming Foods in Lubbock, Texas, in the course of his employment with Bud Meyer Truck Lines. He has not worked since that date. The employee filed a claim petition seeking workers' compensation benefits on February 28, 1997. He alleges that physical and emotional stress associated with his work duties for the employer were a substantial contributing cause of the onset of his heart attack. The employer and insurer denied primary liability, asserting that the cause of the heart attack was not work-related. (Judgment Roll; Findings, 4 - 7 [unappealed].)

The case came on for the first of three days of hearing before a compensation judge of the Office of Administrative Hearings on January 7, 1998. That day was consumed in preliminary motions, stipulations, and the marking and admission of evidence. Among the motions was a motion by the employee to exclude the transcript and tape of a recorded statement taken from the employee on July 18, 1995 by the insurer's claims representative, Byron Penton. (Exhs. 13 & 14.) Ruling on the motion was deferred until the end of the hearing. Live testimony, as well as various additional evidence, was received on March 24 and 25, 1998. At the close of the hearing, the compensation judge ruled on the motion to exclude the employee's July 18, 1995 statement and admitted both Exhibits 13 and 14.

The employee was born on October 4, 1946. He worked for a number of years in the field of automobile and truck repair until 1985 when began working as an over-the-road truck driver. He thereafter drove for various employers, and became a full-time truck driver working for the employer, Bud Meyer Truck Lines, on or about December 7, 1994. (T. 96; Finding 2 [unappealed].)

On about June 12, 1995, the employee left his home at Alamo, Tennessee, to begin a trip for the employer to deliver loads to various destinations with his last stop scheduled for Fleming Foods in Lubbock, Texas. A friend, Ricky Sollis, went along on the trip to keep him company. After making a stop in California, the employee headed towards his stop in Texas. The employee testified that he purchased fuel in Eloy, Arizona, sometime on June 24, 1995 and slept for about five hours at Lordsburg, New Mexico. At about 10:30 a.m. on Sunday, June 25, 1995, the employee purchased fuel in El Paso, Texas. Later that day, sometime between 3:30 and 5:00 p.m., a little bit south of Pecos, Texas, the alternator in the employee's truck failed, rendering the truck inoperable. The employee testified that he was "a little upset" both because he was not sure he could make his delivery deadline at Fleming Foods due to the breakdown, and because the weather was hot and felt like it was over 100 degrees. The employee had recalled the temperature as 113 degrees. He called the employer to arrange for repairs. He testified that until the truck had been repaired, he waited in a rundown restaurant which had a fan but no air conditioning. He could not sleep in the truck as its air conditioning did not work while the truck's electrical system was inoperative, and he was unable to get a motel room. (T. 108-133, 229, 242-243.)

The truck was repaired by about 7:30 p.m., and the employee resumed the drive to

Lubbock, which was about 240 miles away. His schedule provided about 10 and one-half hours before he was due to arrive there, as he was not due to arrive in Lubbock until 6:00 a.m. the following morning. A fuel receipt in evidence confirms that he purchased fuel at about 11:20 p.m. at Big Spring, Texas, about 130 miles from Lubbock, having taken a longer route to Lubbock in order to stop at Big Spring, where there was an employer-authorized fuel facility. Under the employee's schedule, he still had about six and one-half hours before he was due to arrive in Lubbock. While he was at Big Spring, the employee contacted his dispatcher to inform him that the truck had been repaired, and to request that his load be rescheduled to permit him to get some sleep. He testified that he could not reach the dispatcher immediately, and had tried for "a couple of hours" by telephone before he was able to reach him. No rescheduling was authorized, and the employee testified that he was "a little upset," as well as tired and sleepy. Between Big Spring and Lubbock the employee experienced pains below his left breast which he initially thought were gas pains or heartburn. He testified that he arrived at Lubbock on Monday morning, June 26, stopping briefly at a fuel stop where he got some coffee, rested for a bit, and asked directions to Fleming Foods. (T. 133-139, 231-237.)

The employee testified that he arrived at Fleming Foods at about 6:00 a.m. on June 26. He testified that the temperature had not dropped since the previous afternoon, so that it remained extremely hot. On arriving, he noticed three gates. One was for cars and led to a company parking area. The next gate was closed. At the third gate, the employee parked his truck in the street before the guard shack, turned on his flashers, got out of his truck and went up to the window of the guard shack with his paperwork. One man was working in the shack, alone. When the employee handed him his paperwork, the guard became "real irate with me and real mouthy." He told the employee to take his "(expletives deleted) paperwork back to [his] truck and move it to the other side of the road." The employee testified that after moving his truck across the road he returned to the guard shack with his paperwork and spoke to the same male guard. He testified that the guard again yelled at him, this time demanding that he return to his truck and wait until he was notified that he could complete his delivery. The employee testified that he then turned around, took a few steps, and fell to the ground. He recalled that he was helped into the guard shack by a man and a woman and seated in front of an air conditioner. The woman gave him nitroglycerin pills and when these did not improve his symptoms, she called an ambulance which took the employee to the hospital. (T. 139-158, 238, 243.)

An emergency medical services report in evidence states that ambulance services were dispatched to assist the employee at 8:57 a.m. on June 26, 1995 and arrived at the scene at 9:07 a.m. The ambulance reached the hospital at 9:32 a.m. (Exh. B2.)

The employee's companion, Ricky Sollis, testified by deposition. Mr. Sollis agreed that, prior to the heart attack at Lubbock, Texas, the employee last slept at Lordsburg, New Mexico. He concurred with the employee's recollection that the temperatures through which he and the employee drove in Texas on the 25th and 26th of June, 1995 had been over one hundred degrees, and at times reached 113 degrees. His account was similar to that of the employee for the events up to the arrival at Big Spring, Texas. Unlike the employee, Mr. Sollis recalled that this stop had lasted no more than 15 minutes. (Exh. F.)

Mr. Sollis' recollection of the events at Fleming Foods in the morning of June 26, 1995 differed substantially from that of the employee. Mr. Sollis testified that he and the employee arrived at Fleming Foods at between 7:00 and 8:00 a.m. Upon arriving, the employee pulled the truck into a gate in front of the smaller of two guard shacks on the Fleming Foods property. He remained in the truck and a male guard came out of this guard shack. The employee told the guard that he needed his truck unloaded, and the guard "made a smart remark" and told the employee he would need to wait his turn. The employee remained in the truck and argued with the guard, becoming very angry and upset, but then moved the truck, parking along the side of the road. (Exh. F.)

Mr. Sollis recalled that he and the employee then waited in the truck for about two or three hours, but did not sleep. The employee "was sort of burping" and "said he felt sick." Finally, the employee decided he would get out of the truck and "see what was taking so long." He got out of the truck and started walking towards the larger of the two guard shacks, where two other guards were working. Mr. Sollis noticed that the employee was staggering and weaving, but managed to go into the guard shack, where he fell backwards into a chair. About 15 or 20 minutes later, a Fleming Foods worker came out to the truck and told Mr. Sollis that the employee was having chest pains and a heart attack. Mr. Sollis went to the guard shack where a female guard was giving the employee nitroglycerin. Then an ambulance was called and the employee was taken to the hospital. (Exh. F.)

A third distinct version of the events leading up to the employee's heart attack on June 26, 1995 was given by Elaine Nutt, sergeant of the security guards on duty at Fleming Foods that day. Ms. Nutt testified that only one guard shack was in operation at Fleming Foods on that date. Although a smaller guard shack at another gate had previously also been in use, manned by one guard, that gate was locked on June 26, 1995 as the smaller guard shack had been closed down in May 1995. Ms. Nutt testified that she normally worked weekdays beginning at 8:00 a.m., but sometimes was called on to fill in when other guards failed to show up for their scheduled shifts. She believed that she had probably worked on Sunday, June 25, as it was her recollection that the employee's truck had been parked near a railroad track down the road from Fleming Foods beginning about 3:00 p.m. on Sunday, June 25, 1995. According to her recollection, she asked the midnight shift guard to "keep an eye on that truck" and let her know if they ever came up to the guard shack to check in. (Exh. 9.)

Ms. Nutt testified that on Monday morning at 8:00 a.m. when she came on duty, the guard going off duty told her that the driver of the truck had never come up to check in. She testified that she then sent a Fleming Foods employee down to the truck at about 8:05 a.m. to see if the driver needed to be awakened and told that he could check in. The employee then came up to the guard shack at about 8:12 a.m. and entered the shack. He was "huffing" as though exhausted from the walk up to the shack. According to Ms. Nutt, the employee threw his papers down on the desk and said, "Here's my papers, now check me in." Ms. Nutt told the employee that he needed to go out of the shack and get into line behind three other drivers who were waiting at the window of the shack to check in. The employee argued with her for about three minutes, but she was adamant that he would need to wait his turn. (Exh. 9.)

Ms. Nutt testified that the employee then left the guard shack and went outside, where she observed him sit down on a cement block and wait. About twenty minutes later, one of the Fleming Foods workers told Ms. Nutt that the employee was sick and needed help. She went out to check on him and concluded that he was having a heart attack, having had one herself some months previously and recognizing his symptoms. She brought him back into the guard shack and seated him near the air conditioner, gave him a wet paper towel to wipe his face and, eventually, some nitroglycerin she had with her. Ms. Nutt testified that another guard, John Moreland, who was working with her in the guard shack, called the ambulance for the employee. Ms. Nutt was certain that Mr. Moreland, who started work at the same time she did that morning, had not had any conversation with the employee. (Exh. 9.)

Among the documentary evidence was the employee's driver's log, which was filled out by the employee with its last entry reflecting his status at 7:30 a.m. on June 26, 1995. According to the log, the employee was resting in the truck's sleeper berth from about 2:15 p.m. on June 24, 1995, to about 4:00 a.m. on June 25. He was then on duty, including time driving, until 2:15 p.m. on June 25, when the log again shows him resting in the sleeper berth until 7:00 a.m. on June 26, 1995, the morning of the heart attack. The employee testified that his log entries were largely inaccurate. (Exh. L; T. 226-227, 239-241.)

Also in evidence were certified copies of meteorological records from the National Climatic Data Center. These records reveal that on June 25, 1995 at Pecos, Texas, near where the employee's truck broke down, the maximum temperature reached was 92 degrees, with a recorded low of 69 degrees. At Lubbock, Texas, the temperature recorded at 7:50 a.m. on June 26, 1995 was 71 degrees, and had risen only to 74 degrees by 8:50 a.m., a few minutes before the ambulance was dispatched to aid the employee at 8:57 a.m. (Exh. 6.)

In the employee's statement taken on July 18, 1995, admitted over the employee's objections, the employee stated, among other things, that he had taken naps during an eight-hour layover near Pecos, Texas, while his truck was being repaired, that although a guard "got a little mouthy" when he parked in the wrong spot, he had not been uptight or upset about anything, and that he had not felt himself to be under a severe deadline, as "I had plenty of time when I got there." He characterized the weather as "warm." (Exh. 13.)

Following the hearings, the compensation judge found that the employee had failed to show that his myocardial infarction on June 26, 1995 was causally related to the employment. The employee appeals.

STANDARD OF REVIEW

On appeal, this court must determine whether the compensation judge's findings and order are "clearly erroneous and unsupported by substantial evidence in view of the entire record as submitted." Minn. Stat. § 176.421, subd. 1(3) (1992). Substantial evidence supports the findings if, in the context of the record as a whole, they "are supported by evidence that a

reasonable mind might accept as adequate." Hengemuhle v. Long Prairie Jaycees, 358 N.W.2d 54, 59, 37 W.C.D. 235, 239 (Minn. 1984). Where the evidence conflicts or more than one inference may reasonably be drawn from the evidence, the findings must be affirmed. Id. at 60, 37 W.C.D. at 240. Similarly, "[f]actfindings are clearly erroneous only if the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been committed." Northern States Power Co. v. Lyon Food Prods., Inc., 304 Minn. 196, 201, 229 N.W.2d 521, 524 (1975). Factfindings may not be disturbed, even though this court might disagree with them, "unless they are clearly erroneous in the sense that they are manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." Id.

Question of law. The issues on appeal in this matter also involve the interpretation and application of case law to undisputed facts. While this court may not disturb a compensation judge's findings of fact unless clearly erroneous and unsupported by substantial evidence in the record as a whole, Minn Stat. § 176.421, subd. 1(3) (1992), a decision which rests upon the application of the law to undisputed facts involves a question of law which this court may consider *de novo*.

DECISION

Job Stress and Causation for the Employee's Heart Attack

It is undisputed that the employee's myocardial infarction resulted from a total occlusion of the left anterior ascending artery of the heart, and that this in turn was causally related to the employee's preexisting non work-related coronary artery disease and obstructive pulmonary disease. The employee, however, alleged that the onset of his heart attack was also due in substantial part to the effects of work-related emotional stress, specifically, (1) concern over the need to meet his delivery deadline at Lubbock, Texas due to lost time while his truck was repaired, and (2) stress arising from an altercation with a security guard at Fleming Foods, and in substantial part to work-related physical stress from the effects of the physical demands of the job specifically including long hours of driving in extreme temperatures without adequate sleep.

The supreme court has established a two-part test for determining causation when it is claimed that physical injury resulted from workplace *mental or emotional* stress. The employee must prove both medical causation (that the mental or emotional stress is medically related to the employee's injury) and legal causation (that the causal relationship between the stress and the work-related injury is sufficient as a matter of law). Courtney v. City of Orono, 463 N.W.2d 514, 43 W.C.D. 571 (Minn. 1990). To prove legal causation, an employee must show that the stress experienced was "beyond the ordinary day-to-day stress to which all employees are exposed." Egeland v. City of Minneapolis, 344 N.W.2d 597, 36 W.C.D. 465 (Minn. 1984) (citing Lockwood v. Independent School Dist. #877, 312 N.W.2d 924, 926, 34 W.C.D. 305, 307 (Minn. 1981)).

While it is true that heart attack claims based on the *physical* demands of the employee's work activity need not demonstrate that the employment required extraordinary

exertion, it still must be shown that the physical demands of the employment were a substantial contributing cause of the injury and related disability. See, e.g., Stibbs v. Northwest Airlines, Inc., 277 Minn. 248, 152 N.W.2d 318, 24 W.C.D. 233 (1967); Peterson v. The Ruberoid Co., 261 Minn. 497, 113 N.W.2d 85, 22 W.C.D. 106 (1962).

To prove medical causation, the employee relied upon the medical opinion of Dr. Joseph D. Blankenship, the employee's treating cardiologist. Dr. Blankenship's opinion was based on a detailed hypothetical set of facts largely based on the testimony anticipated to be given by the employee and by Mr. Sollis. He was then asked whether "the stress of no sleep, the [truck's mechanical] breakdown, the delay en route to an ultimate destination, the heat at the location of the breakdown, and the ultimate argument at Fleming Foods" were a substantial contributing cause of the onset of the employee's myocardial infarction. Dr. Blankenship opined that the combination of all of these factors was a substantial contributing factor to the onset of the employee's heart attack. He further explained that of these factors the emotional stress at the time of the claimed altercation was the most significant. He believed that the employee's physical stress leading up to the time of the altercation with a security guard also had a role in making the employee more susceptible to the emotional stress associated with that altercation. (Exh. G at 51-52.)

Dr. Jack Shronts, M.D., who reviewed the medical records and examined the employee on June 11, 1997 at the request of the employer and insurer, gave the opinion that the employee's heart attack was solely the result of the progression of his underlying coronary artery atherosclerosis, and that the employee's reported symptoms of chest pain between Big Spring and Lubbock, Texas represented an unstable angina pectoris or crescendo angina condition which progressed to acute myocardial infarction. Dr. Shronts opined that none of the work-related physical or emotional stresses to which the employee testified were substantial contributing causes to this chain of events. (Exh. 8.)

The compensation judge found that while Ms. Nutt was apparently mistaken about the presence of the employee's truck near Fleming Foods on Sunday, June 25, 1995, her version of the events immediately preceding the employee's heart attack in the morning of June 26, 1995 was the most credible and persuasive. In his memorandum, the compensation judge states that under Ms. Nutt's version of the events, which he accepted, the verbal altercation between the employee and a security guard was not extremely stressful. The judge noted that there was also contradictory evidence as to whether the employee had slept between Lordsburg, New Mexico, and Lubbock, Texas, and that the employee's temperature estimates were significantly at variance with the climatological records in evidence. Finally, the compensation judge expressly noted that after the employee's truck had been repaired, about ten to twelve hours remained in which to complete about 240 miles of driving. Based largely on these considerations, the compensation judge found that the employee had failed to prove that he was subjected to emotional stress beyond the ordinary day-to-day stress to which all employees are exposed. He further concluded that, accordingly, Dr. Blankenship's opinion relating alleged physical and emotional work stress to the onset of the employee's myocardial infarction had an inadequate factual foundation.¹

¹ The hypothetical facts on which Dr. Blankenship's opinion was founded included, among

Given that the compensation judge's factual findings concerning the events which most likely preceded the employee's heart attack were based on his determination of the credibility of several witnesses, we find no reason to disturb his conclusion that the employee had not been exposed to any unusual or extraordinary stress. Even v. Kraft, Inc., 445 N.W.2d 831, 42 W.C.D. 220 (Minn. 1989). Since Dr. Shronts' opinion was based on a factual premise which more closely comported with the facts found most likely by the compensation judge, the compensation judge was not unreasonable in adopting his opinion and rejecting that of Dr. Blankenship, whose opinion was based on certain factual assumptions which the compensation judge had found to have been unlikely. Nord v. City of Cook, 360 N.W.2d 337, 37 W.C.D. 364 (Minn. 1985).

The employee also argues that the compensation judge committed clear error in accepting part of Ms. Nutt's testimony while rejecting other portions of the same testimony, specifically, that portion which would have placed the employee's truck near Fleming Foods on the afternoon of June 25, 1995. We disagree. The compensation judge was free to accept Ms. Nutt's testimony about the more dramatic events in which she was directly involved, even though her recollection was apparently in error in respect to when the employee's truck had first arrived near Fleming Foods. City of Minnetonka v. Carlson, 298 N.W.2d 763, 767 (Minn. 1980).

Admission of the Employee's Recorded Statement

other things, a recital of the testimony of the employee and/or Mr. Sollis that:

1) prior to the onset of the employee's myocardial infarction on June 26, 1996, the employee last had slept on June 24, 1995 at Lordsburg, New Mexico; and

2) when the employee's truck broke down in the afternoon of June 25, 1995, the temperature was hot, over one hundred degrees, although "there are records that will be put into evidence that may cause a dispute relative to just how hot it was at that location;" and

3) while waiting the five hours for the truck to be repaired there was no cool place cool to wait and the employee "during that period of time . . . was pacing back and forth . . . [as] he wanted the truck to be fixed in a hurry" because "he was very concerned about . . . whether he was able to get to his ultimate destination of Lubbock, Texas on time;" and

4) that when the employee arrived at Fleming Foods, the guard "was rude and mouthy and yelled at [the employee;] an argument ensued . . . [the employee] was very angry; that the veins in his neck pulsed out, his face was red;"

5) that the employee waited for a substantial period of time in his truck during which he continued to be very upset and angry, then got out of the truck to walk to the guard shack, staggered and fell. (Exh. G at 15-25.)

The employee argues on appeal that the compensation judge committed clear error in admitting the employee's prior statement taken on July 18, 1995. He contends that exclusion of this evidence was required pursuant to Minn. Stat. § 602.01,² which provides:

Any statement secured from an injured person at any time within 30 days after said injuries were sustained shall be presumably fraudulent in the trial of any action for damages for injuries sustained by such person or for the death of such person as a result of such injuries. No statement can be used as evidence in any court unless the party so obtaining the statement shall give to the injured person a copy thereof within 30 days after the same was made.

The employee contends that this provision must be applied in any hearing before a workers' compensation judge of the Office of Administrative Hearings.

In reviewing a compensation judge's evidentiary rulings, we are mindful of the latitude allowed in the conduct of a workers' compensation hearing. Minn. Stat. § 176.411, subp. 1, governing the conduct of a workers' compensation hearing, provides, in pertinent part:

Except as otherwise provided by this chapter, when a compensation judge makes an investigation or conducts a hearing, the compensation judge is bound neither by the common law or statutory rules of evidence nor by technical or formal rules of pleading or procedure.

At oral argument before this court, the employee conceded that, pursuant to this provision, statutory rules of evidence do not govern evidentiary questions at a workers' compensation hearing, but contended that the term "statutory rules of evidence" was intended to refer only to the provisions of the Minnesota Rules of Evidence. We disagree. We note, first, that the workers' compensation provision in substantially its present form long predates the adoption of the Minnesota Rules of Evidence. The limitation suggested by the employee thus could not have been intended by the legislature. Second, Minn. Stat. § 602.01 is clearly a "statutory rule of evidence" as contemplated by the clear language of Minn. Stat. § 176.411, subd. 1. Accordingly, we conclude that the compensation judge was not required to follow or to consider the provisions of that statute in determining whether to admit into evidence the recording and transcription of the employee's July 18, 1995 statement.

In addition, the employee has failed to show clear prejudice from the admission of

² Chapter 602 of the Minnesota Statutes is entitled "Competent Evidence," and contains three subdivisions, including the foregoing. The remaining two subdivisions deal with the nature of evidence which would be competent to prove the existence of a marriage and of evidence which would be competent to prove the existence of a corporation or a copartnership.

his July 18, 1995 statement. The compensation judge specifically notes in his memorandum that he gave this statement “very little weight” in reaching his factual findings in this case. (Mem. at 14-15.) Because substantial support is amply provided by the other evidence of record for the compensation judge’s findings in this case, and since the compensation judge gave this statement very little weight, we would here affirm even had we concluded that the admission of the statement was improper.