

Affirmed

Bolch  
Bunn

NO. COA99-1232

NORTH CAROLINA COURT OF APPEALS

Filed: 3 October 2000

JANE WOOLARD, Widow, AND  
TRACY WOOLARD, Daughter of  
BRUCE W. WOOLARD, Deceased,  
Employee;  
Plaintiff,

v.

WEYERHAEUSER COMPANY,  
Employer;

SELF INSURED,  
Defendant.

From the North Carolina  
Industrial Commission  
I.C. No. 528176

IN THE OFFICE OF  
CLERK COURT OF APPEALS  
OF NORTH CAROLINA

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FILED

Appeal by defendant from opinion and award filed 9 June 1999 and from amendment filed 10 June 1999 by the North Carolina Industrial Commission. Heard in the Court of Appeals 15 August 2000.

*Whitley, Jenkins & Riddle, by Charles R. Hardee, for plaintiff-appellee Jane Woolard.*

*Teague, Campbell, Dennis & Gorham, L.L.P., by George H. Pender, for defendant-appellant.*

GREENE, Judge

Weyerhaeuser Company (Defendant) appeals an opinion and award of the Full Commission of the North Carolina Industrial Commission (Full Commission) filed on 9 June 1999, in favor of Jane Woolard (Widow of Bruce W. Woolard) and Tracy Woolard (Daughter of Bruce W. Woolard) (collectively, Plaintiffs).

The evidence shows that in March of 1995, Bruce W. Woolard (Decedent) was working for Defendant as a shift electrician. The

duties of a shift electrician were primarily technical, and this position was not "physically demanding." As part of Decedent's job duties, he also was a member of Defendant's "fire brigade." The fire brigade was an emergency response team, and members of the fire brigade were required to respond to fire alarms and extinguish fires on Defendant's premises. Decedent's primary duty as part of the fire brigade was to "pull switches for equipment in the area that the fire was in" and, if the fire was electrical, to "pull the switches or kill the power to that piece of equipment." When a fire alarm went off, the members of the fire brigade would stop their work and meet at a fire truck that was kept in a garage on Defendant's premises. The first person to arrive at the fire truck would be responsible for driving it to the location of the fire. The members of the fire brigade were not required to run or jog to the fire truck, and Defendant's policy was that the members of the fire brigade had until five minutes after the fire alarm went off to reach the fire truck.

Decedent's regularly scheduled shift was from 3:00 p.m. to 11:00 p.m.; however, on 24 March 1995, Defendant was operating on a "shutdown" schedule. During a "shutdown," which occurred approximately once a year, employees could volunteer to work additional hours to perform preventative maintenance on machinery. Because Defendant was operating on a "shutdown" schedule on 24 March 1995 and Decedent had volunteered to work additional hours, Decedent left home for work at approximately 6:45 a.m. Decedent then worked until approximately 12:00 p.m., when he left work to

attend a funeral. He returned to work at approximately 4:30 p.m. Sometime prior to 7:30 p.m., Decedent ate dinner with several of his co-employees in the "shift shack," which was an area of the workplace where Decedent often ate his meals.

At approximately 7:30 p.m., Decedent was in a co-employee's office with several other employees when the fire alarm went off. In response to the fire alarm, Decedent and other members of the fire brigade returned to the shift shack to retrieve their hats and proceeded to an exit door of the building. The exit door was approximately fifty yards from the garage where the fire truck was parked. After Decedent and Freddy W. Bullock (Bullock), a member of the fire brigade, exited the building, they saw Raymond Modlin (Modlin), a member of the fire brigade, approaching the fire truck. Bullock testified that Modlin was often the first person to arrive at the fire truck, and Modlin therefore often drove the fire truck. When Decedent saw Modlin, he stated to Bullock, "There comes the old man. . . . I'm going to aggravate him and beat him to the fire truck do [sic] I can drive." Decedent then continued moving toward the fire truck, which was approximately 35 yards from Decedent.

Decedent arrived at the garage before Modlin, and Decedent sat in the driver's seat of the fire truck. When Modlin arrived at the garage he got into the passenger's seat of the fire truck. After Decedent and Modlin were seated inside the fire truck, Decedent started the fire truck's engine; however, the engine stalled and Decedent had to restart it. Decedent then "revved the motor up" and

pulled the fire truck out of the garage. The fire truck's engine then suddenly "revved" again and the fire truck "took off right across the street" and crashed into a pipe rack. Several employees saw the crash and approached the fire truck. They saw Decedent "laying over the steering wheel" inside the fire truck. An emergency medical technician immediately arrived at the scene of the accident and Decedent was transported to the hospital, where he was pronounced dead.

In a statement given to Defendant subsequent to Decedent's death, Bullock stated that after Decedent saw Modlin, Decedent "ran to the . . . fire truck." In his testimony before the industrial commission, however, Bullock stated he did not know whether "you'd call [Decedent's actions] running," and "to [Bullock] it was a light jog." During cross-examination, Bullock described Decedent's movements as follows: "[A] light jog or a real . . . fast walk. It might have been a run, but it was a light run. I said he had ran but my interpretation of running is just a fast shuffle . . . like a jog." Additionally, Modlin testified he would describe Decedent's movements as Decedent approached the fire truck as a "hurried walk" or "slow jog." Fernie Harding Oliver, Jr., a co-worker of Decedent, testified it would be unusual for Decedent to be running or jogging while he was at work.

Deborah L. Radisch, M.D. (Dr. Radisch) testified she conducted the autopsy of Decedent. Dr. Radisch determined Decedent's cause of death to be arteriosclerotic cardiovascular disease. She testified that, assuming Decedent had run approximately 80 or 100

yards prior to his death, the exertion from this activity could have been a contributing factor to his death. She also testified that walking "at a quicker pace . . . [could] have been an overexertion which would have caused the heart attack given [Decedent's] preexisting heart condition."

John David Rose (Dr. Rose) testified he reviewed information regarding Decedent's medical history and the circumstances surrounding Decedent's death. Dr. Rose testified Decedent suffered from "coronary artery disease" and the cause of his death was "cardiac arrest." He stated regarding Decedent's activities on the day of his death that, from a cardiovascular standpoint, "the physical activities of walking at a fast pace or a slow jog for approximately 25 yards" would be classified as a "mild to moderate exertion." The exertion from this activity could have contributed to Decedent suffering a cardiac arrhythmia "[b]ecause that activity increases the work of the heart." Further, he testified that the effect of an "exertion" would be different for different people. A cardiac arrhythmia can also occur when a person is not "undergoing any stress at all . . . [and is] at rest."

In an opinion and award dated 16 June 1998 and filed on 9 June 1999, the Full Commission entered findings of fact consistent with the above-stated facts, including the following: "[t]he distance that [Decedent] either ran or jogged to the fire truck . . . was approximately 35 yards" and "[D]ecedent's heart attack was due to

unusual or extraordinary exertion."<sup>1</sup>

The Full Commission then concluded as a matter of law that Decedent's death "did result from a compensable injury by accident arising out of and in the course of his employment on March 24, 1995." The Full Commission, therefore, entered an award in favor of Plaintiffs.

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The dispositive issue is whether the Full Commission's finding of fact that "[D]ecedent's heart attack was due to unusual or extraordinary exertion" is supported by competent evidence.

A heart attack does not constitute an "injury by accident," within the meaning of the North Carolina Workers' Compensation Act, when an employee suffers the heart attack while "conducting his work in the usual way." *Cody v. Snider Lumber Co.*, 328 N.C. 67, 71, 399 S.E.2d 104, 106 (1991). An injury caused by a heart attack, however, may be compensable if "the heart attack is due to an accident, such as when the heart attack is due to *unusual or extraordinary exertion* or extreme conditions." *Id.* (citation omitted); *Jackson v. Highway Commission*, 272 N.C. 697, 700, 158 S.E.2d 865, 868 (1968) (heart attack caused by "extra exertion by the employee" may constitute "injury by accident").

In this case, Dr. Rose testified that "the physical activities of walking at a fast pace or a slow jog for approximately 25 yards"

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<sup>1</sup>Although the Full Commission characterizes this finding as a conclusion of law, it is more properly characterized as a finding of fact. *In re Helms*, 127 N.C. App. 505, 510, 491 S.E.2d 672, 675 (1997) (determination reached through logical reasoning from evidentiary facts is finding of fact).

would cause "mild to moderate exertion." Dr. Rose concluded that this mild to moderate exertion could have contributed to Decedent suffering a cardiac arrhythmia "[b]ecause that activity increases the work of the heart." Further, Dr. Radisch testified that walking "at a quicker pace . . . [could] have been an overexertion which would have caused [Decedent's] heart attack given [Decedent's] preexisting heart condition." This medical testimony is competent evidence to support the Full Commission's finding of fact that Decedent's heart attack resulted from "exertion." Additionally, testimony that it was unusual for Decedent to jog or run at work and that Decedent was not required to run or jog to the fire truck, considered in conjunction with evidence Decedent either ran or jogged approximately 35 yards to the fire truck, is competent evidence that the exertion experienced by Decedent was "unusual." See *Jackson*, 272 N.C. at 701-02, 158 S.E.2d at 868 (heart attack compensable if caused by "extra exertion"); *Cody*, 328 N.C. at 71, 399 S.E.2d at 106 (heart attack compensable if caused by "unexpected or unusual" event). As there was competent evidence to support that Decedent's heart attack was caused by an exertion and this exertion was unusual, the Full Commission properly found as fact that Decedent's heart attack was caused by "unusual or extraordinary exertion." Further, this finding of fact supports the Full Commission's conclusion of law that Decedent suffered an "injury by accident" within the meaning of the North Carolina

Workers' Compensation Act.<sup>2</sup> *Hemric v. Manufacturing Co.*, 54 N.C. App. 314, 316, 283 S.E.2d 436, 437-38 (1981) (appellate review of decision of Full Commission is limited to whether the record contains competent evidence to support the Full Commission's findings of fact and whether the findings of fact support the Full Commission's conclusions of law), *disc. review denied*, 304 N.C. 726, 288 S.E.2d 806 (1982). Accordingly, the opinion and award of the Full Commission is affirmed.

Affirmed.

Judges Edmunds and Smith concur.

Report per Rule 30(e).

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<sup>2</sup>Defendant argues the Full Commission "ERRED IN UNNECESSARILY DELAYING FILING ITS OPINION AND AWARD." The record shows the opinion and award of the Full Commission was dated 16 June 1998, and the opinion and award was filed on 9 June 1999. Defendant argues that because of this delay in filing, it should not be responsible for paying post-judgment interest for the period of 16 June 1998 to 9 June 1999. N.C. Gen. Stat. § 97-86.2, however, does not impose upon the Full Commission a time limit for filing its opinions and awards. N.C.G.S. § 97-86.2 (1999). Rather, this statute states "the insurance carrier or employer shall pay interest on the final award or unpaid portion thereof from the date of the initial hearing on the claim." *Id.* Defendant, therefore, must pay interest on the opinion and award of the Full Commission from the date of the initial hearing on Plaintiffs' claim, including the period of time between 16 June 1998 and 9 June 1999.