Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: May 29, 2015

CLAIM NO. 201376150

CHRISTOPHER HOLT, DECEASED
NONA HOLT, ADMINISTRATOR PETITIONER

VS. **APPEAL FROM HON. WILLIAM RUDLOFF, ADMINISTRATIVE LAW JUDGE**

THE FRESH MARKET, INC.
HON. WILLIAM RUDLOFF,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING

* * * * * *

BEFORE: ALVEY, Chairman, STIVERS and RECHTER, Members.

RECHTER, Member. Nona Holt, Administrator of the Estate of Christopher Holt ("the Estate") appeals from the November 13, 2014 Opinion and Order and December 30, 2014 Opinion and Order on Reconsideration rendered by Hon. William J. Rudloff, Administrative Law Judge ("ALJ"). The ALJ

dismissed the claim upon finding the Estate failed to prove Holt suffered a work-related heart attack. It argues the ALJ used an incorrect standard in determining Holt's heart attack was not work-related and he erred by failing to make factual findings to determine whether the "positional risk" doctrine should have been applied to find the death work-related. For the reasons set forth herein, we affirm.

The Form 101 alleged that on July 9, 2013, Christopher Holt ("Holt") fell from a ladder, striking his head on the floor, causing significant injury and rendering him unconscious. A subsequent assessment indicated he was experiencing cardiac arrhythmia. Attempts to revive Holt were unsuccessful and he was pronounced dead at the hospital.

William O'Daniel, store manager at Fresh Market, Inc., testified by deposition on May 14, 2014. On July 9, 2013, he asked Holt to help him place five or six empty wicker baskets in the loft for storage. Holt climbed up the steps one time and O'Daniel handed the baskets to him. O'Daniel handed Holt the last basket and thanked him for helping. Holt began to descend and O'Daniel turned away and went to his desk. A few seconds later, he saw Holt on the floor. Holt did not appear to be breathing, so O'Daniel and another employee performed CPR.

The Certificate of Death completed August 8, 2013 listed the cause of death as acute myocardial ischemia due to thrombosis of the right coronary artery due to atherosclerotic cardiovascular disease and familial hypercholesterolemia. The certificate listed blunt impact of the head with skull fracture and obesity as significant conditions contributing to death but not resulting in the underlying cause.

Dr. Robert Hutchinson, Holt's treating physician since 2007, testified by deposition on April 15, 2014 and provided information concerning Holt's medical history prior to his death. Holt was diagnosed with hyperlipidemia as a child, and was not compliant with his cholesterol medication. He was also morbidly obese. About two weeks before his death, Holt visited Dr. Hutchinson and complained of atypical exertional chest pain. He returned a week later with the same complaints, and Dr. Hutchinson ordered a cardiac stress test. The test was abnormal and Dr. Hutchinson recommended a cardiac catheterization. He also prescribed nitroglycerin tablets which, according to Dr. Hutchinson, can delay the onset of severe symptoms when used swiftly upon the symptoms of a heart attack. Dr. Hutchinson also recommended Holt avoid activities which caused chest pain.

As to the cause of Holt's death, Dr. Hutchinson stated his coronary artery disease put him at risk of a heart attack and was the cause of the thrombosis. A thrombosis develops when there is a tear in a plaque and a clot grows, blocking the artery. Sheer force of the heart beating fast is a common cause of the tear in the plaque. Occasionally it will happen without a cause. Dr. Hutchinson indicated nitroglycerin could help during a cardiac event by dilating the coronary artery and allowing increased flow. However, if there is a complete blockage of an artery, and there is no associated spasm, it may not stop the event. Nitroglycerin would not affect the thrombosis. Aside from noting Holt's increased risk of heart attack due to his hyperlipidemia and obesity, Dr. Hutchinson offered no opinion as to whether Holt's work caused his death.

Dr. Douglas Ackerman, a pathologist at Jewish Hospital in Louisville, Kentucky, testified by deposition on June 9, 2014. He reviewed the autopsy report and histologic slides obtained at the time of the autopsy. He stated the cause of Holt's death was an acute ischemic eurythmic event due to occlusion of the right coronary artery. The clot, which shut off the right coronary artery, in and of itself caused sudden death. The rupture

of a plaque could occur at any time and could have occurred without any type of exertion. An increase in his heart rate would not have anything to do with a plaque rupture and formation of a thrombus. Based upon the degree of blockage in the three coronary arteries, Dr. Ackerman opined Holt was at very high risk for a heart attack. His heart was extensively damaged prior to the July 9, 2013 event from longstanding artery atherosclerosis and old myocardial infarctions. Dr. Ackerman did not disagree with the medical examiner's report, and opined the head trauma did not cause Holt's death. He stated the presence of blood in the ear canal "doesn't mean anything to me in terms of the heart function." He observed the blood around vessels in the cerebral cortex of the brain is typically associated with hypoxic insult such as a fatal erythema or a heart attack, and it was not connected to the head trauma from the fall.

Dr. John David Corl, an interventional cardiologist, testified by deposition on June 12, 2014. He stated the cause of death was ventricular fibrillation secondary to acute inferior posterior RV infarction. The cardiac stress test results indicated Holt had a high risk for a coronary event. In fact, Dr. Corl characterized Holt's coronary artery disease as "aggressive." Holt's

right coronary artery was 70% blocked when the plaque ruptured resulting in 100% occlusion from the thrombus. Dr. Corl noted an event could occur while an individual is sleeping or reading the paper. He indicated it would take significant exertion to increase the risk of an event. Dr. Corl did not believe the activity Holt was engaged in at work caused a significant change in risk and it was not close to the level of activity required in the stress test, which did not produce an event. Furthermore, Dr. Corl stated the impact to Holt's head had no bearing relative to the cause of death.

Dr. Corl noted the use of nitroglycerin would not have assisted Holt in this event. In a typical right ventricular infarction patient, nitrates will exacerbate the problem. In sum, Dr. Corl opined Holt's work was not the cause of the cardiac event but was merely where it happened. Holt was not placed at greater risk by his work. Dr. Corl opined Holt had the infarction while on the ladder, causing him to lose consciousness and fall. According to Dr. Corl, in the absence of the fall, the outcome would have been the same.

The ALJ found the opinions of Drs. Ackerman and Corl most persuasive. The ALJ summarized key portions of their opinions and found as follows:

> Based upon the sworn testimony in this case, and specifically on the persuasive and compelling medical evidence from both Dr. Ackerman, the pathologist, and Dr. Corl, the cardiologist, as covered in detail above, I make the determination that Mr. Holt's fatal heart attack could have occurred anywhere without any exertion being required. I further make the determination that the decedent Mr. Holt was before his fatal heart attack at high risk for mortality. I further make the determination that Mr. Holt's thrombosis was caused by severe aggressive three-vessel coronary artery diseases at a young age. I further make the determination that Mr. Holt's cause of death was ventricular fibrillation secondary to acute inferior posterior RV infarction and that the injury to Mr. Holt's head as a result of his fall has no bearing on his cause of death. In addition, I make the determination that Mr. Holt's employment with the defendant was unrelated to his medical emergency and that his place of employment just happened to be where the fatal events took place.
>
> For all of the above reasons, the persuasive, compelling, credible and convincing weight of the evidence, both lay and medical, in this case is against the plaintiff on the threshold issue of work-relatedness/causation, which compels dismissal of this claim.

The Estate filed a petition for reconsideration making the same arguments raised on appeal. The ALJ issued his Opinion and Order on Reconsideration on December 30,

2014 reaffirming his prior determination and denying the petition for reconsideration.

On appeal, the Estate first argues the ALJ applied an incorrect standard in determining whether the heart attack was work-related. It contends the ALJ improperly made an adverse determination on causation based solely on elevated pre-existing risk factors and the opinions of medical professionals that the fatal heart attack could have happened anywhere. The Estate asserts the totality of the evidence compels a finding the heart attack was work-related because of the temporal proximity between Holt's physical exertion and the onset of the thrombosis-driven heart attack.

Generally, a claimant has the burden of proving each of the essential elements of his claim. Burton v. Foster Wheeler Corp., 72 S.W.3d 925 (Ky. 2002). In rendering a decision, KRS 342.285 grants the ALJ as fact-finder the sole discretion to determine the quality, character, and substance of evidence. AK Steel Corp. v. Adkins, 253 S.W.3d 59 (Ky. 2008). The ALJ may draw reasonable inferences from the evidence, reject any testimony, and believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the same adversary party's total proof. Jackson

v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979); Caudill v. Maloney's Discount Stores, 560 S.W.2d 15 (Ky. 1977). Although a party may note evidence supporting a different outcome than reached by an ALJ, such proof is not an adequate basis for reversal on appeal. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974). The function of the Board in reviewing an ALJ's decision is limited to a determination of whether the findings are so unreasonable they must be reversed as a matter of law. Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000). The Board, as an appellate tribunal, may not usurp the ALJ's role as fact-finder by superimposing its own appraisals as to weight and credibility or by noting reasonable inferences that otherwise could have been drawn from the evidence. Whittaker v. Rowland, 998 S.W.2d 79 (Ky. 1999).

Medical evidence, while relevant and material, is not solely determinative in heart attack claims, but is merely an element of the totality of the circumstances which an ALJ must consider when determining whether the event was coincidental to or caused by the work. Hudson v. Owens, 439 S.W.2d 465 (Ky. 1969). *See also* Moore v. Square D. Company, 518 S.W.2d 781 (Ky. 1974). In Armco Steel Corp. v. Lyons, 561 S.W.2d 676 (Ky. App. 1978), the Kentucky Court of Appeals held Moore does not stand for the proposition a

heart attack is work-related merely because it occurs at work. Claimants are required to prove a work-connected cause from the totality of the circumstances.

In Thomas Earl Lee v. H.E. Neuman Co., 2000 SC-1037-WC (rendered August 23, 2001 and designated not to be published), the Kentucky Supreme Court summarized the law pertaining to heart attacks, stating:

> A heart attack is not viewed as being compensable simply because it occurs at work and is not viewed as being noncompensable simply because the worker suffers from pre-existing arteriosclerotic heart disease. What is required is that work must in some way contribute to causing it. Inland Steel Co. v. Johnson, Ky., 439 S.W.2d 562 (1969); Terry v. Associated Stone, Ky., 334 S.W.2d 926 (1960); Armco Steel Corp v. Lyons. Ky. App., [561] S.W.2d 676 (1978). Uncontradicted medical evidence is generally viewed as being dispositive of the matter to which it speaks, although it may be disregarded if the fact-finder gives a sufficient explanation for doing so. Com. v. Workers' Compensation Board [of Kentucky, 697 S.W.2d 540 (Ky. App. 1985)] For example, an ALJ may disregard an uncontradicted medical opinion with regard to causation where the opinion is based, not upon matter of which the physician has actual knowledge, but upon an inaccurate medical history that was given by the claimant. Osborne v. Pepsi-Cola, Ky., 816 S.W.2d 643 (1991). Furthermore, special rules apply with regard to the legal cause of a heart attack, with the result that even uncontradicted medical evidence is not dispositive of its legal cause. Hence,

> dispite[sic] the refusal of medical experts to testify that a heart attack that occurs after physical exertion at work is attributable to the work, the totality of the circumstances may support a finding that it is. Moore v. Square D Co., Ky., 518 S.W.2d 781 (1974). Likewise, even where medical evidence supports a claim that a heart attack is work-related, it is but part of the totality of the circumstances upon which a finding of legal causation is to be made. Hudson v. Owens, Ky., 439 S.W.2d 565 (1969).
>
> Id., slip opinion at p. 8-9.

In this instance, the ALJ summarized the evidence of record, and noted the events surrounding Holt's death. The ALJ indicated his decision was based upon the entirety of the evidence including both lay and medical evidence. Contrary to Holt's assertion, the ALJ did not limit the basis of his determination to the presence of pre-existing risk factors or the medical opinions that the heart attack could have happened anywhere. Although there was conflicting medical testimony on the issue of whether exertion or increased blood flow could cause the thrombus that occluded Holt's artery, causing the heart attack, the ALJ was well within his role as fact-finder in finding the opinions of Drs. Corl and Ackerman more persuasive. Dr. Corl opined very heavy exertion would be required to increase the risk of an event and did not believe Holt's

employment played a role in the cardiac event. O'Daniel's testimony indicated Holt climbed the ladder only one time and was handed five or six empty wicker baskets. Similarly, Dr. Ackerman indicated an increase in heart rate would not have anything to do with the plaque rupture which led to the clot that obstructed the coronary artery leading to death. The exertion involved was clearly not a heavy level of exertion. The evidence does not compel a finding the clot that obstructed the artery was caused by Holt's employment.

The Estate also argues the ALJ failed to address whether the heart attack, although deemed by the ALJ as not work-related, nonetheless was compensable due to the positional risk doctrine. The positional risk doctrine allows compensation when the employment places the employee in a position which increases the dangerous effects of an idiopathic fall. Indian Leasing Co. v. Turbyfill, 577 S.W.2d 24 (Ky. App. 1978). The Estate theorizes that the fall and head injury rendered Holt unconscious, eliminating his ability to take the nitroglycerin and survive the heart attack. The ALJ did not specifically address the positional risk doctrine. In order to adequately consider whether the positional risk doctrine applies, the Estate claims the ALJ was required to determine whether Holt possessed at the time of his death fast-acting

nitroglycerin tablets; what the purpose/effect of this prescription was and whether Holt understood the same; whether Holt's presence on the ladder was required by his job; and whether the fall from the ladder rendered him unconscious, and therefore unable to take the medication.

The factual situation here is distinguishable from Turbyfill. Mr. Turbyfill suffered a heart attack while standing atop a trailer. He fell 12 feet to the concrete below, and died immediately from the effects of the fall alone. Thus, his employment placed him in a position which increased the danger of an idiopathic fall. The fact Mr. Turbyfill's fall was caused by a non-work-related heart attack did not entirely extinguish the employer's liability.

Holt's situation is distinguishable because the ALJ specifically found the fall and resulting head injury had no bearing on the cause of death, a finding which is well-supported by the autopsy report and the opinions of Drs. Ackerman and Corl. Although the Estate argues Holt may have survived had he been able to take his nitroglycerin and the head injury prevented him from doing so, Dr. Corl testified nitroglycerin was contra-indicated, would not have helped, and would actually have exacerbated the problem. Dr. Hutchinson likewise acknowledged

nitroglycerin would not affect the thrombus or stop the event if there was a complete blockage. Because the ALJ determined the cardiac event caused the death, and the head injury did not contribute to the death, the positional risk doctrine has no application to this case. The ALJ's findings were adequate regarding the compensability of the injury.

Accordingly, the November 13, 2014 Opinion and Order and December 30, 2014 Opinion and Order on Reconsideration rendered by Hon. William J. Rudloff, Administrative Law Judge are hereby **AFFIRMED**.

ALL CONCUR.

COUNSEL FOR PETITIONER:

HON MATTHEW D ELLISON
300 W VINE ST #600
LEXINGTON, KY 40507

COUNSEL FOR RESPONDENT:

HON MARK BUSH
250 GRANDVIEW DR #550
FORT MITCHELL, KY 41017

ADMINISTRATIVE LAW JUDGE:

HON. WILLIAM RUDLOFF
PREVENTION PARK
657 CHAMBERLIN AVE
FRANKFORT, KY 40601