THE
NATIONAL LAW REVIEW

Fireman's Heart Attack Claim Fails

Friday, June 30, 2017

Article By
Lindsey D'Agnolo
Heyl, Royster, Voelker & Allen, P.C.
Workers' Compensation Resources

Labor & Employment
Litigation / Trial Practice
Illinois

In *Johnston v. Illinois Workers' Compensation Comm'n*, 2017 IL App (2d) 160010WC, the claimant was a 43-year-old firefighter who had been employed as a firefighter for approximately 15 years. In February of 2014, the claimant weighed 265 pounds and was six foot one inch tall. He smoked a pack and a half of cigarettes per day since the 1990s. Although the accident description testimony varied, the evidence generally showed the claimant went outside the firehouse on the morning of February 5, 2014, intending to shovel or snowblow the snow around his car. Whether he had actually performed any snow removal was debated. The claimant suffered a heart attack and was found outside by his co-workers. He had no memory of the events that took place.

The claimant alleged that he suffered an injury while shoveling snow from the fire department parking lot. The treating cardiologist testified that the claimant had severe preexisting coronary artery disease which was aggravated by the activity he was performing. He also testified generally that, based on his limited research, there appeared to be a correlation between coronary artery disease and a firefighter's occupational exposure. Thus, he testified that being a "firefighter" was a risk factor for coronary artery disease in addition to claimant's obesity, family history of coronary artery disease, and smoking history.

The employer's Independent Medical Exam (IME) physician testified that the claimant suffered from preexisting undiagnosed severe triple vessel coronary disease and that any activity on February 5, 2014, could have caused the heart attack. He testified that, among other risk factors, the claimant's 20 year history of smoking probably was the major cause of developing advanced atherosclerosis and that the underlying disease was caused by several risk factors, not his work as a firefighter.

The arbitrator determined that claimant's work as a firefighter did not accelerate or aggravate his underlying coronary artery disease. On appeal, the Commission and circuit court affirmed.

Section 6(f) of the Act provides that any condition or impairment of health of an employee employed as a firefighter, EMT, or paramedic which results from any bloodborne pathogen, lung or respiratory condition, heart or vascular condition, hypertension, tuberculosis or cancer resulting in any disability shall be *rebuttably presumed* to "arise out of" and "in the course of" the employment. For this section to apply, the employee must have been employed as a firefighter, EMT, or paramedic for at least five years at the time he or she files a claim.

The Appellate Court, Workers' Compensation Commission Division, mutually considered the amount of evidence necessary to rebut the presumption provided in section 6(f) that the firefighter's coronary artery disease "arose out of" and "in the course of" his employment. In determining whether section 6(f) involved a "strong rebuttable presumption," requiring "clear and convincing evidence" in order to rebut the presumption, the court determined it did not and that a respondent is only required to offer some evidence sufficient to support a finding that something other than claimant's occupation as a firefighter caused his condition. Once the employer rebuts the presumption, the trier of fact should consider the evidence as if the presumption never existed.

The court held the employer had successfully rebutted the presumption that the claimant's coronary artery disease arose out of and in the course of his employment as a firefighter when it offered evidence that claimant's

smoking history was a major cause of the coronary artery disease.

Further, the court ultimately held that the claimant did not suffer a work accident. Although the claimant argued that his coronary artery disease arose out of his employment with regard to section 6(f) presumption, he argued in the second part of his appeal that the cardiac event on February 5, 2014, was caused by his work activities on that day. Because there was inconsistent testimony on whether the claimant was actually shoveling/snowblowing snow on that day, the court determined the arbitrator's decision that claimant did not sustain a work accident was not against the manifest weight of the evidence. Of note here, the claimant did not present any evidence or argument that his occupational exposure over the years was a cause of his underlying coronary artery disease, and thus, the court did not consider that argument.

Interestingly, the lone dissenting justice argued that the section 6(f) presumption meant that the claimant's employment was a contributing factor to the underlying coronary artery disease. In order to rebut the presumption, the dissent argued that an employer must show that the employment was not a contributing cause of the coronary artery disease, i.e., that it did not aggravate or accelerate the condition. The dissent argued the employer had failed to rebut the section 6(f) presumption.

However, according to the majority, an employer who employs a firefighter, EMT, or paramedic who alleges that a certain condition named in section 6(f) was caused by their employment, has a lesser burden to rebut this presumption by presenting some evidence that the employee's condition could have been caused by something other than the job. If the presumption is rebutted, the case is tried as if no presumption ever existed. The burdens outlined in *Johnston* must be remembered when defending any case violating section 6(f). Moreover, employers must be aware of the additional risks faced by firemen.