

COURT OF APPEALS OF VIRGINIA

Present: Judges Coleman, Fitzpatrick and Retired Judge Hodges*
Argued at Alexandria, Virginia

WILLIAM F. DELANEY, JR.

v. Record No. 1588-93-4

MEMORANDUM OPINION**
BY JUDGE SAM W. COLEMAN III
MAY 31, 1994

CITY OF FAIRFAX FIRE & RESCUE, ET AL.

FROM THE VIRGINIA WORKERS' COMPENSATION COMMISSION

Peter M. Sweeny (Peter M. Sweeny & Associates, P.C.,
on brief), for appellant.

Lisa C. Healey (Siciliano, Ellis, Dyer & Boccarosse,
on brief), for appellees.

The claimant, a fireman who briefly suffered from arrhythmia, causing him to miss work for one day, appeals a decision of the Workers' Compensation Commission denying him benefits. We affirm the commission's decision, finding that the presumption under Code § 65.2-402 is not applicable to claimant because the arrhythmia did not cause him to suffer a total or partial "disability."

On September 4, 1991, while William Delaney, a fire fighter, was working inside a burning house, he experienced heart palpitations. They continued for thirty minutes. After Delaney was taken to the hospital, Dr. Jeffrey Joseph diagnosed him as suffering from cardiac dysrhythmia. Dr. Joseph told Delaney to remain off work for one day. Delaney received a disability slip

*Retired Judge William H. Hodges took part in the consideration of this case by designation pursuant to Code § 17-116.01.

**Pursuant to Code § 17-116.010 this opinion is not designated for publication.

from Dr. Joseph for September 5 and September 6. Three days later, Dr. Peter Merdel examined the claimant and diagnosed him as having "benign arrhythmia or heart rhythm disturbance." Dr. Mendel opined that Delaney had a rapid heartbeat for a short duration (i.e. supraventricular tachycardia) but did not have "significant heart disease for the future." Despite Dr. Mendel's opinion that Delaney would be disabled for one to two weeks as a result of the heart condition, Delaney returned to work after one day's absence.

Delaney filed a claim for workers' compensation benefits pursuant to Code § 65.2-402. The commission held that Code § 65.2-402 was not applicable to Delaney's condition, finding that it was not a disease because it did not have a lingering or permanent aspect. The commission further found that Delaney suffered no disability because he was absent from work for only one day.

On appeal, the commission's findings of fact will be upheld when supported by credible evidence. Board of Supervisors of Henrico County v. Taylor, 1 Va. App. 425, 430-31, 339 S.E.2d 565, 568 (1986). The commission determined that Code § 65.2-402 was inapplicable because Delaney did not suffer a disability as defined under the section. Code § 65.2-402 creates a rebuttable presumption in favor of fire fighters and police officers that a causal connection exists between a claimant's respiratory disease, heart disease, or hypertension and his employment. See Fairfax County Fire & Rescue Dep't v. Mitchell, 14 Va. App. 1033,

1035, 421 S.E.2d 668, 670 (1992). While this presumption eliminates the need for a claimant who is a fire fighter to establish that his employment caused his disease, it does not relieve a claimant of the initial burden to prove the existence of a heart or respiratory disease that causes a disability. Code § 65.2-402(B) provides:

Hypertension or heart disease causing the death of, or any health condition or impairment resulting in total or partial disability of . . . fire fighters . . . shall be presumed to be occupational diseases, suffered in the line of duty, that are covered by this title unless such presumption is overcome by a preponderance of competent evidence to the contrary.

Id.

The commission's decision that Delaney did not suffer from a "disability" is based upon credible evidence. The commission based its finding on the fact that Delaney was diagnosed with a "benign arrhythmia or heart rhythm disturbance" lasting only thirty minutes. Arrhythmia is defined as "any variation from the normal rhythm of the heart beat." Dorland's Medical Dictionary, 133 (24th ed. 1965). Although Delaney had an irregular heartbeat for thirty minutes, which episode resulted in his being absent from work for one day, Delaney failed to establish that he had a disease, health condition, or impairment that rendered him

¹ For the presumption to apply, a claimant is required to prove both a disease and a disability. Because we hold that the claimant failed to establish a disability, we do not determine whether arrhythmia could be considered a disease under Code § 65.2-402.

totally or partially disabled.² Delaney was paid his salary
for
the one day he did not work. The one day that Delaney did not
work was as a "precautionary measure," rather than a period of
disability.

A disability is a physical or mental incapacity from an
injury or disease that prevents a claimant from earning
equivalent wages at his previous or otherwise similar
employment. See 2 Arthur Larson, The Law of Workmen's
Compensation § 57 (1994). "Disability from a disease has been
defined as the stage when the disease prevents the employee
from performing his work efficiently." Salyer v. Clinchfield
Coal Corp., 191 Va. 331, 338, 61 S.E.2d 16, 20 (1950).

Delaney presented no evidence that proved that he was
totally or partially disabled from performing his work as a
fire fighter other than during the thirty minutes of temporary
arrhythmia, nor did Delaney prove that he lost any earnings.
Accordingly, the commission's holding that the presumption in
Code § 65.2-402 had no application to Delaney's situation was
not error. Therefore, we affirm the commission's decision.

Affirmed.

² In holding that Delaney did not establish a disability
we decline to consider whether a period of incapacity longer
than thirty minutes resulting in lost wages constitutes a
disability. We only hold that in this case, Delaney has failed
to satisfy his burden of proof.