

**IN THE COURT OF APPEALS 04/23/96**

**OF THE**

**STATE OF MISSISSIPPI**

**NO. 95-CC-00026 COA**

**SCOTT ELECTRIC COMPANY, INC. AND THE FIDELITY & CASUALTY COMPANY  
OF NEW YORK**

**APPELLANTS**

**v.**

**MELISSA DAWN SERIO AND MELANIE ROSE BROOKS, CO-EXECUTRIXES OF THE  
ESTATE OF PATTIE SMITH, DECEASED, DEPENDANT OF GEORGE EDWARD  
SMITH, DECEASED**

**APPELLEES**

**AND**

**NO. 95-CC-00086 COA**

**MELISSA DAWN SERIO AND MELANIE ROSE BROOKS, CO-EXECUTRIXES OF THE  
ESTATE OF PATTIE SMITH, DECEASED, DEPENDANT OF GEORGE EDWARD  
SMITH, DECEASED**

**CROSS-APPELLANTS**

**v.**

**SCOTT ELECTRIC COMPANY, INC. AND THE FIDELITY & CASUALTY COMPANY  
OF NEW YORK**

**CROSS-APPELLEES**

**PER CURIAM AFFIRMANCE MEMORANDUM OPINION**

**THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND**

MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. EUGENE BOGEN

COURT FROM WHICH APPEALED: CIRCUIT COURT OF WASHINGTON COUNTY

ATTORNEY FOR APPELLANTS:

R. H. BURESS, III

ATTORNEY FOR APPELLEES:

STEVEN NICK

NATURE OF THE CASE: CIVIL - APPEAL FROM DECISION AFFIRMING WORKERS'  
COMPENSATION COMMISSION DEATH BENEFITS AWARD

TRIAL COURT DISPOSITION: AFFIRMED

BEFORE THOMAS, P.J., BARBER, AND SOUTHWICK, JJ.

PER CURIAM:

This is an appeal from a Washington County Circuit Court judgment affirming an award of workers' compensation death benefits to the estate ("the estate") of Pattie Smith ("Mrs. Smith"). Mrs. Smith, who died during the pendency of this appeal, was the wife of the decedent, George Edward Smith ("Mr. Smith").

On January 23, 1990, Mr. Smith, an electrician employed by Scott Electric Co. ("Scott"), went on a service call at Hardee's Restaurant in Greenville for the purpose of servicing an electrical switch on a meat slicing machine. While momentarily out of sight of his co-worker, Jeff Cremeen, Mr. Smith collapsed. Within a short time thereafter, his body was discovered lying on the floor in a supine position with a pool of blood around his head. Mr. Smith was pronounced dead upon arrival at the hospital to which he was taken. The immediate cause of his death was identified on his death certificate as "sudden cardiac death."

Mrs. Smith filed a Petition to Controvert with the Mississippi Workers' Compensation Commission seeking death benefits available under Mississippi Workers' Compensation law. Scott and its compensation carrier, the Fidelity & Casualty Company of New York ("Fidelity"), defended the claim on the grounds that Mr. Smith's death was not caused by or related to his employment and was instead the result of a pre-existing condition. Applying the rebuttable legal presumption that

whenever an employee dies on the job, his death is presumed to have arisen out of and in the course and scope of his employment, *see, e.g., Nettles v. Gulf City Fisheries, Inc.*, 629 So. 2d 554, 556-57

(Miss. 1993), the administrative law judge found that Scott and Fidelity had failed to present sufficient credible evidence to rebut this "found dead" presumption. Accordingly, the judge awarded Mrs. Smith workers' compensation death benefits. However, he also apportioned those benefits 50% in lieu of his conclusion that Mr. Smith's pre-existing coronary disease risk factors "contributed to" Mr. Smith's death.

Both sides appealed to the Mississippi Workers' Compensation Commission. The Commission found that the judge correctly ruled that Scott and Fidelity had failed to produce sufficient evidence to overcome the "found dead" presumption. However, on the basis of its conclusion that no sufficient credible evidence existed showing that Mr. Smith had any form of pre-existing coronary artery disease at the time of his death, the commission found no basis for apportionment and awarded Mrs. Smith full benefits. A copy of the commission's order is attached to this opinion as Appendix "A". Subsequently, this appeal was taken to the Circuit Court of Washington County. Applying the "clearly erroneous and contrary to the overwhelming weight of the evidence" standard of review that governs appeals from findings and orders of the commission, *see Fought v. Stuart C. Irby Co.*, 523 So. 2d 314, 317 (Miss. 1988), the circuit court affirmed the commission's decision. A copy of the circuit court ruling is attached to this opinion as Appendix "B".

On appeal, our standard of review is no different than that which is applied by the circuit court. Because we also find that the conclusion that Mrs. Smith was entitled to full benefits was not

clearly erroneous and contrary to the overwhelming weight of the evidence, we affirm the circuit court's ruling.

We also find no merit to the estate's cross-appeal asking us to award its attorneys' fees pursuant to section 71-3-59 of the Mississippi Code. Because we find that Scott's and Fidelity's appeal was not without reasonable ground, we decline to make any such award.

**THE JUDGMENT OF THE CIRCUIT COURT OF WASHINGTON COUNTY IS AFFIRMED. STATUTORY DAMAGES AND INTEREST ARE AWARDED. COSTS ARE ASSESSED EQUALLY TO THE PARTIES.**

**FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, DIAZ, KING, McMILLIN, PAYNE, AND SOUTHWICK, JJ., CONCUR.**