

**IN THE COURT OF APPEALS 08/06/96**

**OF THE**

**STATE OF MISSISSIPPI**

**NO. 95-CC-00694 COA**

**SANDERSON FARMS, INC. AND LIBERTY MUTUAL INSURANCE COMPANY**

**APPELLANTS**

**v.**

**ELIZABETH KEYS, KENDRICK KEYS, JAMES HANDY KEYS AND TOSHA KEYS,  
DEPENDENTS OF RUFUS DEWAYNE KEYS, DECEASED**

**APPELLEES**

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND  
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. BILLY JOE LANDRUM

COURT FROM WHICH APPEALED: JONES COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANTS:

RICHARD O. BURSON AND BRETT W. ROBINSON

ATTORNEYS FOR APPELLEES:

BILLY C. DOGGETTE AND GAYLON HARPER

NATURE OF THE CASE: WORKERS' COMPENSATION

TRIAL COURT DISPOSITION: REVERSED DECISION OF COMMISSION AND AWARDED  
DEATH BENEFITS TO APPELLEES

BEFORE BRIDGES, P.J., DIAZ, AND SOUTHWICK, JJ.

SOUTHWICK, J., FOR THE COURT:

Sanderson Farms, Inc. and its carrier, Liberty Mutual Insurance Company, appeal the circuit court's reversal of the Workers' Compensation Commission's decision to deny benefits to Keys' dependents. We find that credible, substantial evidence supports the Commission's decision and that the Commission committed no error of law. Consequently, we reverse the circuit court and reinstate the Commission's order.

## FACTS

Rufus Keys, a twenty-four-year-old, single man, died while he was in a hospital awaiting a heart transplant on December 11, 1991, three months after his last date of work at Sanderson Farms. Keys died from heart failure caused by arrhythmia, a disordered rhythm of the heart. His heart condition was diagnosed by his treating cardiologist as sarcoidosis.

Keys' job at Sanderson Farms required manual labor and exposure at times to cold air and dry ice from a freezer. Approximately fifteen months after Keys left his employment, his parents, sister, and son (collectively "the claimants") filed a petition to controvert. The claimants argued that Keys' heart condition first manifested itself while he was employed by Sanderson Farms, and that this condition was aggravated and/or accelerated by his employment. As a result, the claimants maintained that they were entitled to death benefits under the Mississippi Workers' Compensation Act. Sanderson Farms and its carrier denied any causal relation between Keys' employment and his heart condition or death.

On August 27, 1991, Keys consulted his primary care physician, Dr. B. R. Patel. Keys complained of wheezing and was diagnosed with acute asthmatic bronchitis with bronchospasm, a condition of which he had a previous history. Keys' last date of employment at Sanderson Farms was on September 6, 1991. One week later, Dr. Patel examined Keys again. This time, Keys complained of shortness of breath, a cough, a cold, and congestion, all of increasing severity. Dr. Patel determined that Keys was in congestive heart failure and admitted him into the hospital where Keys remained for five days. About two months later, Keys again suffered from congestive heart failure and was hospitalized until his death on December 11, 1991. During the three-month period preceding his death, Keys underwent extensive medical testing, observation, questioning, counseling and treatment.

After a hearing on the claimants' petition, the administrative judge found that the claimants had failed to prove a causal connection between Keys' underlying medical condition and his employment. The administrative judge further found that Sanderson Farms and its carrier were irreparably prejudiced as a result of claimants' failure to provide timely notice of a claimed causal connection. Based on these findings, the administrative judge entered an order, later affirmed by the full commission, denying the petition for death benefits. The circuit court reversed the full commission's order and awarded benefits.

## DISCUSSION

### 1. *Standard of Review*

We are reviewing the circuit court's reversal of the Commission's order. The circuit court sits as an intermediate court of appeals and is limited in its review. *Lanterman v. Roadway Express, Inc.*, 608

So. 2d 1340, 1345 (Miss. 1992). It must defer to the Commission's findings unless the Commission has committed prejudicial error. *Id.* Likewise, "[a]bsent an error of law, where credible substantial evidence supports the Commission's decision, this Court, as well as the circuit court, may not interfere." *Id.*

## 2. Causation and the Burden of Proof

The claimants bore the burden of proving by a fair preponderance of the evidence a causal connection between Keys' employment and his heart condition which resulted in death. Miss. Code Ann. §§ 71-3-3 & -7 (1972); *E.g. Hedge v. Leggett & Platt*, 641 So. 2d 9, 13 (Miss. 1994) (citations omitted). Mississippi law has recognized a rebuttable presumption of this causal connection when the decedent upon which a claim is based dies before having an opportunity to supply the necessary information demanded of his dependents. *E.g., Road Maintenance Supply, Inc. v. Maxwell*, 493 So. 2d 318, 320-22 (Miss. 1986).

This "found dead presumption," also known as "the unexplained-death rule," arises under three circumstances: 1) when the decedent is "found dead" at his place of employment, *e.g. Id.* at 320; 2) when the decedent "fell dead" in the presence of fellow employees, *e.g. United States Rubber Reclaiming Co. v. Stampley*, 508 So. 2d 673, 676 (Miss. 1987); or 3) when the onset of the injury or death occurred while the employee was on the job engaged in the duties of his employment and thereafter his "lips were sealed"--the employee was unable to provide necessary evidence prior to his death, *see, e.g., Johnston v. Hattiesburg Clinic, P.A. & St. Paul Fire & Marine Ins. Co.*, 423 So. 2d 114, 117 (Miss. 1982). The common thread among all three categories is the employee's inability to supply "missing evidence." When such evidence is present, there is no basis for any such presumption. *Chapman v. Hanson Scale Co.*, 495 So. 2d 1357, 1359 (Miss. 1986) (finding the presumption inapplicable where no need to resort to it because of a co-worker's eyewitness testimony explaining that employee fell and hit head against floor followed by doctor's testimony that death was caused by such a blow to the head); *Day Detectives, Inc. v. Savell*, 291 So. 2d 716, 723 (Miss. 1974) (holding that no presumption of causal relation arises in heart attack cases where the defendant lives). It should be stressed that the unexplained-death rule is designed for cases in which, by the nature of the facts, the claimant cannot reasonably be expected to furnish the usual evidence on cause of death. When this is not so, the presumption should not be expected to take the place of normal medical evidence establishing the nature of the injury and its relation to the death.

<sup>1</sup> Arthur Larson, *The Law of Workmen's Compensation*, § 10.32(a) (1995).

Here, it was reasonable to expect the claimants to supply the usual evidence on the cause of Keys' death. Keys was alive for three months after his last day of work at Sanderson Farms. For two of the three months, Keys was not hospitalized. Moreover, while he was hospitalized, the record provides substantial evidence that for much of that time he was coherent and able to communicate with the hospital staff. A hospital staff member described his mental status in a hospital report as "alert" and "oriented." This observation is substantiated by other hospital reports which were recorded at various times throughout the three months preceding Keys' death. For instance, in his consultation report, the

occupational therapist described Keys as "cooperative in answering questions," and the nutrition consultant described him as having "verbalized a good understanding" of his new diet.

Not only did Keys have the ability to talk to the hospital staff about his heart condition and his work environment, but he in fact did discuss such information with them. Moreover, the treating physicians over the course of three months had ample opportunity, and in fact did, perform many diagnostic tests, ask Keys questions about his medical history and work conditions, make observations of his condition, counsel him, and attempt to treat his condition. Both Keys' mind and body were able to provide the information needed to determine the issue of causation. The record provides hundreds of pages of clinical findings, diagnostic studies, doctors' notes, nurses' notes, and patient histories provided by Keys, all after his last date of work.

His primary care physician, Dr. Patel, obtained an extensive patient history of Keys. This history included information obtained from Keys regarding his symptoms, previous medical history, and reports on how he felt during and after work, as well as observations by the doctor himself. Dr. Carmichael, one of Keys' treating cardiologists, also obtained a complete medical and social history of Keys. Through his discussions with Keys, Dr. Carmichael learned about his employment background, symptoms Keys had experienced in childhood, his history of mild hypertension, and his job at Sanderson Farms. In addition, the nurse assessment report provided further history and information regarding Keys' symptoms, history, and work environment.

Because substantial, credible evidence demonstrates that Keys was able to provide the evidence needed to determine the issue of causation, we find that the circuit court erred in invoking the presumption. The presumption simply does not arise in these circumstances.

This conclusion, however, does not end our inquiry. We must next examine whether the claimants met their burden of proving a causal relationship between Keys' employment and his heart condition that resulted in death. The claimants presented lay testimony of Keys' cousin, sister, mother, and mother of his son in an attempt to prove causation. Keys' cousin, who also worked for Sanderson Farms on a different shift, testified that he never saw Keys sick until after Keys began working in the freezer. He testified that on one occasion, while he was working near Keys, he witnessed Keys leaning over and gasping for air. He also testified that Keys had told his supervisor that the dry ice he worked around made him sick.

Keys' mother, sister, and mother of his son all testified that Keys had no serious health problems prior to August, 1991 when he began to experience shortness of breath. Keys' mother testified that Keys complained that the cold air and dry ice from his employer's freezer caused his breathing problems. The mother of Keys' son testified that Keys' problems occurred mainly after he finished his shift at work.

The only medical evidence presented by the claimants was the testimony of Keys' primary care physician, Dr. Patel. Dr. Patel conceded that he had no special training in cardiology and that he was not an expert in cardiology. Nonetheless, he stated that Keys' heart condition was aggravated while he was at work. However, Dr. Patel never maintained that the alleged aggravation was *casually connected* to Keys' heart condition or death.

Dr. Carmichael, one of Keys' treating cardiologists, diagnosed Keys' condition as sarcoidosis, a

disease of unknown etiology. He testified that Keys' work activity and heart condition were not causally related. Dr. Carmichael further testified that any effect that Keys' work activities may have had on his condition would not in any way have altered the underlying heart condition, but would have only temporarily aggravated the symptoms. Dr. Carmichael's expert testimony is not inconsistent with the testimony offered by the claimants.

Another cardiologist, Dr. Stevan Allen Webster, testified that Keys' employment in no way contributed to his heart condition or death. He testified that Keys' sarcoidosis was rapidly progressive and that his work would not have accelerated the natural progression of the disease in any way.

After a careful review of the record, we find that credible, substantial evidence supports the Commission's decision and it contains no error of law. Accordingly, neither this Court nor the circuit court may interfere with its decision. *Lanterman*, 608 So. 2d at 1345. We therefore reverse the circuit court on the issue of causation. Because of our disposition of this case, we need not address the timeliness of the claimants' notice.

**THE JUDGMENT OF THE CIRCUIT COURT OF JONES COUNTY IS REVERSED AND THE ORDER OF THE MISSISSIPPI WORKERS' COMPENSATION COMMISSION IS REINSTATED. ALL COSTS OF THIS APPEAL ARE TAXED TO THE APPELLEES.**

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