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Recent Developments: City of Frederick v. Shankle: Expert Testimony Denying a Statutory Presumption Is Inadmissible

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City of Frederick v. Shankle

Expert Testimony Denying a Statutory Presumption is Inadmissible

By Derek Rossillon

The Court of Appeals of Maryland held that expert testimony denying the presumption that there was a correlation between occupational stress and heart disease in police officers and firefighters is inadmissible pursuant to § 9-503 of the Labor and Employment Article of the Maryland Code. *City of Frederick v. Shankle*, 367 Md. 5, 785 A.2d 749 (2001). However, the court stated an expert is permitted to testify that for a particular individual, job stress was not a contributing factor to heart disease "if there is a sufficient factual basis for the conclusion." *Id.* at 15, 785 A.2d at 755.

Donald Shankle ("Shankle") worked as a police officer for the City of Frederick from 1974 to 1996. On April 2, 1996, Shankle filed a workers' compensation claim asserting the job stress he endured for the past 20 years resulted in heart disease. In May of 1996, Shankle underwent by-pass surgery. The Workers' Compensation Commission found that he suffered from a compensable occupational heart disease and awarded him benefits for two periods of temporary total disability. The City of Frederick ("City") sought judicial review of the board's decision.

Prior to trial in circuit court, the City took the deposition of Dr. Alan Wasserman ("Wasserman"), who would testify as an expert in cardiology. Although he never examined Shankle, Wasserman reviewed Shankle's medical records and determined that he had at least four of the five risk factors for heart disease. He further testified that the link between stress and the risk of coronary disease is "not accepted in the medical community." Wasserman rejected the presumption set forth in section 9-503, which states "being a policeman or fireman contributes to the development of the coronary artery disease."

In response to Wasserman's testimony, Shankle moved to exclude the doctor's deposition testimony as it misinterpreted Maryland law by disregarding the presumption established in the statute. The Circuit Court for Frederick County granted the motion, and as Wasserman was the City's only witness, they were left with no evidence to rebut the statutory presumption of compensability. As such, summary judgment was granted in favor of Shankle. The City appealed and the court of special appeals affirmed the circuit court's ruling. On writ of certiorari, the court of appeals upheld the lower courts' rulings.

The Maryland Workers' Compensation Act ("Act") "requires employers to pay certain workers' compensation benefits to covered employees who suffer disability resulting from an occupational disease." *Id.* at 8, 785 A.2d at 751 (quoting MD. CODE ANN., Labor and Employment § 9-502). However, an employer is only liable if the occupational disease that caused the disability is reasonably related to the type of work that the employee performs and the injury was incurred as a result of the employment. *Id.* Section 9-503 of the Act establishes a presumption that there is a correlation between job stress and heart disease with respect to fire fighters and police officers. *Id.* at 12, 785 A.2d at 753.

Past decisions have reaffirmed that the statute is a legislative determination of the correlation. *See Montgomery Co. Fire Bd. v. Fisher*, 298 Md. 245, 468 A.2d 625 (1983) and *Lovellette v. City of Baltimore*, 297 Md. 271, 465 A.2d 1141 (1983). "In furtherance of that determination, the Legislature has created a presumption of compensability when a fire fighter or police officer contracts heart disease." *Shankle, 367 Md.* at 12, 785 A.2d at 754 (citing *Lovellette* at 284, 465 A.2d at 1148). The court pointed out that the statute has a "Morgan-type" presumption, which is a formidable burden on the party against whom it operates. *Id.* at 12, 785 A.2d at 754. The legislative

intent of the statute mandates both the burden of production and the burden of persuasion remain fixed on the employer. *Id.*

However, the statute is not irrebutable in that an employee's occupation only has to be a factor to have the employee's disease be compensable. *Id.* at 13, 785 A.2d at 754 (citing *Montgomery Co. v. Pirrone*, 109 Md. App. 201, 674 A.2d 98 (1996)). The court stated that the City's main argument was based on a misinterpretation of the *Pirrone* case. *Id.* The City's understanding of *Pirrone* was "in order to rebut the legislative presumption, an employer must establish that the claimant's occupation as a fire fighter or police officer could not be a factor in causing the disease ...." *Id.* The correct interpretation of *Pirrone* suggests rebutting the legislative presumption requires an employer to offer evidence that the employee's disease is attributable to another cause outside of his occupation. *Shankle, 367 Md.* at 14-15, 785 A.2d at 755.

The court stressed that the evidence given to rebut a statutory presumption must be specific to the employee. *Id.* at 15, 785 A.2d at 755. For instance, it is permissible for the employer's expert to state that the employee's disease did not result from his employment as a police officer "if there is sufficient factual basis for the conclusion." *Id.* Testimony stating a police officer endured lower stress because he worked in an administrative capacity is admissible as it relates to the amount of job stress. *Id.* Testimony that simply denies the presumption is not admissible pursuant to Maryland Rules of Evidence 5-702 and 5-403. *Id.* at 15, 785 A.2d at 756.

Rule 5-702 allows testimony that "assist[s] the trier of fact to understand the evidence or to determine a fact in issue." *Id.* at 15-16, 785 A.2d at 755-756. Rule 5-403 permits the exclusion of relevant evidence if it could confuse or mislead the jury or is unfairly prejudicial. *Shankl, 367 Md. at.* at 16, 785 A.2d at 756. The court held Wasserman's testimony did not fulfill the requirements of Rules 5-702 and 5-403 as it could not assist the jury in determining causation. Moreover, such testimony could only confuse or mislead the jury. *Id.* As such, the court upheld the exclusion of Wasserman's testimony. *Id.*

The decision to exclude Wasserman's testimony demonstrated the court's commitment to abide by the legislative intent of the statute. Fire fighters and police officers have extremely stressful and dangerous jobs and many of them retire with lingering health problems. While many people have stress in their jobs, firefighters and police officers risk their lives to serve the public. Section 9-503 ensures public service employees that they will receive benefits for injuries sustained while on the job. In order to maintain a police force or fire squad, a city's employees must know they will be rewarded for their valor and compensated for their injuries. For this reason, the statute's rebuttable presumption is necessary.