

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

CHARLES JONES, DECEASED, TWENCE E. JONES, CLAIMANT,	:	APPEAL NO. C-080469 TRIAL NO. A-0611104
Plaintiff-Appellant,	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
WILLIAM MABE, ADMINISTRATOR, OHIO BUREAU OF WORKERS' COMPENSATION,	:	
and	:	
CITY OF CINCINNATI,	:	
Defendants-Appellees.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Plaintiff-appellant Twence E. Jones filed a claim for workers' compensation benefits arising from the death of her husband. He was a 20-year veteran of the Cincinnati Fire Department and was employed in that capacity at the time of his death. The Ohio Industrial Commission denied Jones's request for death benefits, and she appealed that decision to the court of common pleas. The case was tried without a jury, and the trial court concluded that a preponderance of the evidence failed to show that the death of Mr. Jones "arose out of and occurred in the course of his employment as a Cincinnati Firefighter."

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

In two assignments of error, Jones contests that determination on appeal.

Under Ohio's workers' compensation scheme, "any cardiovascular, pulmonary, or respiratory disease of a firefighter or police officer caused or induced by the cumulative effect of exposure to heat, the inhalation of smoke, toxic gases, chemical fumes and other toxic substances in the performance of his duty constitutes a presumption, which may be refuted by affirmative evidence, that such occurred in the course of and arising out of his employment."² To qualify for the statutory presumption, a firefighter must establish that the disease was "caused or induced" by exposure to the named toxins or hazards "in the performance of his duty."³ Absent evidence establishing that link, the presumption does not arise.

In this case, the parties each advocated different causes for Mr. Jones's death. Jones argued that the death had been caused by a myocardial infarction (MI). This position was supported by her expert witness, who testified that the MI had caused Mr. Jones's death and that the MI had been caused by his work as a firefighter.

Alternatively, the city argued that Mr. Jones's death had been caused by a pulmonary embolism (PE). This position was supported by the findings from the autopsy performed by the Hamilton County Coroner's office. It was also supported by the city's expert witness, who testified that the PE had caused Mr. Jones's death and that Mr. Jones had been at risk for a PE because of his history of deep venous thrombosis, his obesity, and his elevated cholesterol. The witness testified that the PE had nothing "to do with his duties as a firefighter" and that it had not been

² R.C. 4123.68(W).

³ Id.

“accelerated” by such duties. He further noted that the autopsy report indicated that the MI was “remote”—meaning that it had occurred more than six to eight weeks prior to death.

After considering this evidence, the trial court concluded that “each party’s expert opinion is of equal weight and credibility.” Therefore, the trial court continued, Jones had failed to establish by a preponderance of the evidence that the disease that caused her husband’s death had been caused or induced by work-related exposure.

Jones’s two assignments of error—that the trial court improperly failed to recognize the presumption under R.C. 4123.68(W) and that the trial court failed to consider whether Mr. Jones’s employment conditions had “accelerated or aggravated” his pre-existing condition—assume that the trial court accepted that Mr. Jones had died from an MI or as the result of related coronary-artery disease.

One expert testified that Mr. Jones’s death had been caused by a disease related to exposure to hazards as a firefighter, and the other testified that it had been caused by a condition wholly unrelated to such exposure. The trial court concluded that both opinions were of equal weight. Under these circumstances, Jones failed to establish the cause of Mr. Jones’s death by a preponderance of the evidence. Without establishing the cause of death by a preponderance of the evidence, Jones was not entitled to the statutory presumption. Further, any consideration of whether the MI or related coronary-artery disease had been accelerated or aggravated by Mr. Jones’s duties would have only become relevant if Jones had established that this was the cause of his death. We cannot conclude that the trial court’s decision was

against the manifest weight of the evidence.⁴ Jones's two assignments of error are overruled.

Therefore, we affirm the trial court's judgment.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HENDON, P.J., CUNNINGHAM and DINKELACKER, JJ.

To the Clerk:

Enter upon the Journal of the Court on June 24, 2009

per order of the Court _____.
Presiding Judge

⁴ *C.E. Morris Co. v. Foley Construction Co.* (1978), 54 Ohio St.2d 279, 376 N.E.2d 578, syllabus ("Judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence.").