

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Crystal Duckett-Burton, :  
Petitioner :  
 :  
v. : No. 133 C.D. 2013  
 : Submitted: November 8, 2013  
Workers' Compensation Appeal :  
Board (DPW-YDC New Castle), :  
Respondent :

BEFORE: HONORABLE DAN PELLEGRINI, President Judge  
HONORABLE RENÉE COHN JUBELIRER, Judge  
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY  
PRESIDENT JUDGE PELLEGRINI

FILED: December 4, 2013

Crystal Duckett-Burton (Claimant), *pro se*, petitions for review of an order of the Workers' Compensation Appeal Board (Board) affirming in part and reversing in part the decision of the Workers' Compensation Judge (WCJ) denying Claimant's claim petition because she failed to establish that she sustained a work-related injury, but awarding her medical costs for behavioral therapy. For the reasons that follow, we affirm the Board.

Claimant began working for the Commonwealth of Pennsylvania, Department of Public Welfare, New Castle Youth Development Center (Employer) as a Youth Development Counselor in October 2005. On November 6, 2008,

Claimant filed a claim petition with the Bureau of Workers' Compensation (Bureau) alleging total disability from October 28, 2008, as the result of exposure to a "hostile environment." Specifically, Claimant alleged that she suffered from headaches and anxiety attacks as a result of Employer allowing a resident who threatened her and attacked another employee to remain in her direct care.<sup>1</sup> Employer filed an answer denying the averments of the claim petition and evidentiary hearings were held before a WCJ.

Before the WCJ, Claimant testified that she treated with a psychologist as a result of work-related stress during her previous job and in 2006 after she began her employment with Employer. She explained that her position with Employer required her to work with adjudicated youth violent offenders in a secure treatment

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<sup>1</sup> The claim petition provides, in relevant part:

The Employer continuously exposed me to a hostile environment by allowing an assaultive resident to remain in my direct care after I informed them [sic] I did not feel comfortable caring for this resident who assaulted a staff member on 10-25-08, and threatened to shoot me on 10-27-08 which caused me to suffer from headaches, and have an anxiety attack on 10-28-08. The decision to leave the assaultive resident in my direct care was not a normal circumstance. Management always removes residents who assault staff to a different residence when assaults occur. I feel management used [this situation] to target me.

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Employer was aware of previous pre-existing health condition and reinforced the hostile environment due to continuous [ostracization] over a three year employment period with this employer.

(Claim Petition at ¶¶1, 4).

program. She testified that after witnessing a resident physically assault another staff member on October 25, 2008, she told the supervisor on duty at the time that she did not feel comfortable working with that resident and wanted him to be temporarily placed in another unit. She stated that on October 26 and 27, the resident, who was still present in her unit, made inappropriate statements to her and threatened to shoot her. Claimant testified that she informed her supervisor, Tracey Rankin (Rankin), on October 27 that the resident was creating a hostile work environment. She explained that she suffered from headaches as a result of these events, and that when she reported to work on October 28, 2008, she suffered an anxiety attack upon discovering that the resident was still in her unit. Claimant testified that, at this point, she again spoke to supervisor Rankin and obtained permission to meet with Human Resources regarding her concerns about the resident. Claimant confirmed that after meeting with Human Resources, the resident was ultimately removed from her unit, but she stated that this did not relieve her anxiety. Claimant acknowledged that verbal threats by residents were a daily occurrence at the facility, and that, generally, it was a difficult place to work, but stated that prior to this incident, she did not have any problems with any of the residents in her unit and never felt that her personal safety was in danger.<sup>2</sup>

William Joel Murray (Murray), a Program Director for Employer, testified that Employer's actions following the assault of the staff member on October 25, 2008, were consistent with Employer's policies and procedures. He stated that

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<sup>2</sup> Claimant also submitted the reports of Kathleen Leihgaber (Leihgaber), a licensed clinical social worker, and Dr. Ata Ulhaq, her treating physician, both of whom diagnosed her with depression. Claimant's treatment with Leihgaber included cognitive behavioral therapy.

Employer's counselors are subject to daily verbal threats by residents; that Employer dealt with such verbal threats on a case-by-case basis; and that Employer's responses to verbal threats ranged from ignoring them to implementing a room lockdown restriction. He further explained that removal of a resident to another unit was not typically Employer's response to a verbal threat "[b]ecause we'd be constantly moving residents." (April 17, 2009 Hearing Transcript at 15).

Rankin, Claimant's direct supervisor, confirmed that she spoke with Claimant on October 27, 2008, and testified that Claimant did not state that she was experiencing any physical symptoms as a result of the October 25 incident. Rankin further testified that when she left work on October 27, Claimant was conversing with the resident and counseling him. She stated that on October 28, Claimant was upset because the resident had threatened her and she requested that the resident be relocated to another unit. Rankin testified that in response to this request, she contacted the Unit Director and received approval to relocate the resident. She testified that the resident was relocated within one hour of Claimant's request, but Claimant remained upset and requested to go to Human Resources.

Kurt Jaeger (Jaeger), a Human Resources Analyst with Employer, testified as to Claimant's October 28 meeting with Human Resources. He explained that Claimant expressed that she was anxious and nervous due to the work environment and requested to take sick time, but that request was denied. He stated that Claimant did not return to work on October 29, and was ultimately placed on unpaid leave. Jaeger further testified that in order to return to work, Claimant would

need to participate in a conflict resolution, but that Claimant has never attempted to initiate this process.<sup>3</sup>

Finding Dr. Burstein's report to be credible and noting that Claimant's medical documentation did not establish that she had an inability to continue her employment, the WCJ held that Claimant failed to sustain her burden of proving a work-related injury. However, the WCJ found that "[C]laimant has sustained her burden of establishing that she may be in continuing need of behavioral therapy" and awarded Claimant payment for the costs of that therapy. (WCJ's December 31, 2009 Decision at 12). Claimant appealed the WCJ's determination that she failed to establish a work-related injury to the Board, and Employer filed a cross appeal alleging that the WCJ erred in awarding Claimant her behavioral therapy costs. The Board affirmed the WCJ's conclusion that Claimant failed to establish a work injury, explaining that "[a] 'hostile work environment' does not give rise to a work injury unless it were objectively abnormal for the given work environment," and that Claimant did not establish that the threats she experienced during the course of her work with troubled youth constituted an objectively abnormal work condition. (Board's December 12, 2012 Decision at 2-3). However, the Board reversed the WCJ's award of medical benefits to Claimant on the basis that "there can be no award of medical benefits if there has been no compensable work injury." *Id.* at 4.

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<sup>3</sup> Employer also submitted the report of Stuart S. Burstein, M.D. (Dr. Burstein), who conducted a psychiatric examination of Claimant on May 4, 2009. Dr. Burstein concluded in his report that Claimant had no work-related psychological or psychiatric disorder that would justify any psychotherapy, medication or other mental health intervention or any time off from work.

Claimant then filed the instant appeal,<sup>4</sup> in which she raises a number of issues but essentially contends that the evidence supported a finding that she suffered a compensable work injury.<sup>5</sup>

A claimant has the burden of establishing a right to compensation and proving all necessary elements to support an award in a claim petition proceeding. *PIAD Precision Casting v. Workers' Compensation Appeal Board (Bosco)*, 922 A.2d 967, 972 (Pa. Cmwlth. 2006). Disabilities caused by psychological/mental elements may be considered injuries which are compensable under the Workers' Compensation Act<sup>6</sup> if all the elements needed to establish such a claim are present. *Ryan v. Workers' Compensation Appeal Board (Community Health Services)*, 550 Pa. 550, 557-58, 707 A.2d 1130, 1133 (1998). As this Court has explained:

Three types of psychological injuries are compensable under the Act: (1) mental/physical—where a psychological stimulus causes physical injury; (2) physical/mental—where a physical stimulus causes a psychic injury; and (3) mental/mental—where a psychological stimulus causes a psychic injury. These categories require different standards of proof, the last being the most rigorous, requiring proof of abnormal working conditions.

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<sup>4</sup> Our review is limited to determining whether an error of law was committed, whether necessary findings of fact are supported by substantial evidence, and whether constitutional rights were violated. *Sysco Food Services of Philadelphia v. Workers' Compensation Appeal Board (Sebastiano)*, 940 A.2d 1720, 1272 n.1 (Pa. Cmwlth. 2008).

<sup>5</sup> Claimant raises 14 different issues in the “Statement of Questions Involved” section of her brief, but fails to address any of those issues individually in the three-page argument portion of the brief.

<sup>6</sup> Act of June 2, 1915, P.L. 736, as amended, 77 P.S. §§1-104.4, 2501-2708.

*Washington v. Workers' Compensation Appeal Board (Pennsylvania State Police)*, 11 A.3d 48, 52 n.2 (Pa. Cmwlth. 2011) (citing *City of Philadelphia v. Workers' Compensation Appeal Board (Brasten)*, 682 A.2d 875, 878 n. 4 (Pa. Cmwlth.1996), *aff'd per curiam*, 556 Pa. 400, 728 A.2d 938 (1999) (citation omitted)).

We agree with the WCJ and Board's conclusion that Claimant failed to meet her burden of proving that she had a work-related disability. There was substantial evidence establishing that Claimant did not have any compensable psychiatric disorder, namely, the report of Dr. Burstein, which the WCJ found credible.<sup>7</sup> Even if Claimant had proved that she suffered from a work-related disability, her claim petition would nonetheless fail because she presented no evidence of abnormal working conditions. The testimony established that the verbal threats experienced by Claimant were a daily occurrence at Employer's facility; that Employer acted in accordance with its policies in addressing Claimant's complaints; and that Employer ultimately honored Claimant's request to move the assaultive resident to another unit.

We also agree with the Board's conclusion that the WCJ erred in awarding Claimant payment for her behavioral therapy costs. In a workers' compensation matter, medical expenses, to be reimbursed, must be causally connected to a claimant's compensable injuries. *Koszowski v. Workers' Compensation Appeal Board (Greyhound Lines, Inc.)*, 595 A.2d 697, 700 (Pa.

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<sup>7</sup> The law is well-settled that the WCJ, as fact finder, has exclusive power over questions of credibility and evidentiary weight, and that such determinations are not subject to appellate review. *Potere v. Workers' Compensation Appeal Board (Kemcorp)*, 21 A.3d 684, 690 (Pa. Cmwlth. 2011).

Cmwlth. 1995). Thus, as the Board held, if there is no compensable injury, there can be no reimbursement for medical expenses.

Accordingly, the Order of the Board is affirmed.

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DAN PELLEGRINI, President Judge



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**ORDER**

AND NOW, this 4<sup>th</sup> day of December, 2013, the order of the Workers' Compensation Appeal Board, dated December 12, 2012, at No. A10-0081, is affirmed.

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DAN PELLEGRINI, President Judge

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OPINION NOT REPORTED

**CONCURRING OPINION  
BY JUDGE COHN JUBELIRER**

**FILED: December 4, 2013**

I concur in the result reached by the Majority because Claimant did not establish that she sustained a work-related psychological injury<sup>1</sup> or that she was unable to continue her employment and, therefore, did not satisfy her burden of proof on her Claim Petition. PIAD Precision Casting v. Workers' Compensation Appeal Board (Bosco), 922 A.2d 967, 972 (Pa. Cmwlth. 2008). However, I

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<sup>1</sup> The WCJ credited the testimony of Employer's expert, Dr. Burstein, that Claimant did not suffer from any work-related psychological or psychiatric disorder that would justify treatment or time off work. (WCJ Decision, Findings of Fact ¶ 26.)

respectfully disagree with the Majority's discussion regarding abnormal working conditions, which is merely dicta, because it does not mention our Supreme Court's recent decision in Payes v. Workers' Compensation Appeal Board (Pennsylvania State Police), \_\_ Pa. \_\_, \_\_ A.3d \_\_ (No. 50 MAP, filed October 30, 2013). In Payes, our Supreme Court stated that:

the abnormal-working-conditions analysis [does not] end[] when it is established that the claimant generically belongs to a profession that involves certain levels or types of stress. Otherwise, the court's analysis would not rest upon the unique factual findings of the case but rather on what a court or tribunal, in its subjective wisdom, determines is the quantity or quality of stress an employee should be able "to take," or what episode of stress is, in the tribunal's subjective determination, comparable to a different episode of stress, which may be expected to be tolerated by an employee.

Id. at \_\_, \_\_ A.3d at \_\_, slip op. at 19. I believe that the Supreme Court, in Payes, concluded that a claimant's profession and the levels of stress typical of that profession, by themselves, are not the deciding factors in abnormal working condition cases, but that we should examine "whether [the specific] incident alone, and not any purportedly comparable sets of incidents, was abnormal." Id. at \_\_, \_\_ A.3d at \_\_, slip op. at 20. I further believe that, had it been necessary to reach the issue of whether Claimant's injury was the result of an abnormal working condition, the facts of this case, where Claimant saw a coworker physically assaulted and had to continue to take care of the assailant, who also threatened to shoot Claimant, might be found to rise to the level of an abnormal working condition. However, because Claimant did not meet her burden of establishing a work-related injury and disability, it was not necessary to reach the issue of

whether the injury resulted from abnormal working conditions, and I, therefore, agree with the Majority's result.

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**RENÉE COHN JUBELIRER, Judge**