IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

REBA RECTOR,	)	Putnam County Circuit
	)	No. NJ-6098
Plaintiff/Appellee	)	
	)	Hon. John Maddux,
v.	)	Judge
	)	
DACCO,	)	S. Ct. No. 01-S-01-9804-CV-00083
	)	
Defendant/Appellant	)	AFFIRMED

JUDGMENT ORDER

This case is before the Court upon motion for review pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(B), the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference;

Whereupon, it appears to the Court that the motion for review is not well-taken and should be denied; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Cost will be paid by defendant-appellant and surety, for which execution may issue if necessary.

PER CURIAM

Drowota, J., not participating

IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT NASHVILLE

FILED

January 15, 1999

Cecil W. Crowson
Appellate Court Clerk

REBA RECTOR,	)	PUTNAM CIRCUIT
Plaintiff/Appellee	)	NO. 01S01-9804-CV-00083
	)	
v.	)	
	)	
DACCO,	)	HON. JOHN MADDUX,
Defendant/Appellant	)	Judge

For the Appellant:
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For the Appellee:
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M E M O R A N D U M O P I N I O N

Members of Panel:

Frank F. Drowota, III, Justice
William H. Inman, Senior Judge
Joe C. Loser, Special Judge

AFFIRMED

INMAN, Senior Judge

O P I N I O N

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

The plaintiff alleged that she suffered "severe fright, shock, anxiety, and worry which has caused her to suffer nervous, emotionally (sic) and psychiatric consequences" as a result of assaults by a fellow employee on June 21 and June 29, 1995.

The defendant denied the allegations and specially pleaded that any alleged assault did not occur during the course and scope of employment and was therefore non-compensable.

The trial judge found that the plaintiff sustained a mental injury during the course and scope of her employment and awarded benefits for temporary total and permanent partial disability.

The defendant appeals, and assigns three errors which we restate as issues on appeal: (1) whether any work-related assault occurred, (2) whether the assault was motivated by ill will, anger, hatred, or personal motive of the fellow employee, and (3) whether the award of benefits for temporary total disability was justified.

Standard of Review

Review of the findings of fact made by the trial court is *de novo* upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2); *Stone v. City of McMinnville,* 896 S.W.2d 548, 550 (Tenn. 1995).

As will be seen, the credibility of the key players in the strange circumstances of this case is crucial, and on this issue we must defer to the judgment of the trial judge, who observed and evaluated the testimony of the witnesses. *See Humphrey v. David Witherspoon, Inc.,* 734 S.W.2d 315 (Tenn. 1987).

The Assault

The plaintiff, 52 years old, testified that after May 1, 1995, David Bailey came into Dacco Detroit and announced that he was acting foreman; that he "would pass my table, and tell me if I was standing up to shut up and sit down, or if he was going to the bathroom, he would tell me to shut up, if I was sitting down." She thought he made these statements "because he felt superior and disliked me," probably because he resented her asking for help on occasion.

She testified that Bailey continued his shut-up-sit-down tirade for three weeks, when she started meeting him in the aisle where he would say, "I'll knock you down, get out of my way or I'll knock you down." She was working in the warehouse on June 27, 1995, when Bailey stated to her that "I ought to knock you down," and "wouldn't it be embarrassing if I knocked you down and the other employees didn't know how you got down there?" She replied that it would, to which he responded that Jim Hall (President of Dacco) had a low opinion of her.

Continuing her narration about Bailey's conduct, she testified that on June 22, 1995, Bailey shoved her backwards because "he didn't like me." When she asked Bailey why he shoved her (after realizing that another employee, Ron Hembry, witnessed the scene), Bailey said that "Ron, didn't see a thing, I didn't lay a hand on you." Bailey and Hembry walked away and when she said, "Ron, you saw him shove me," he replied, "I didn't see a thing."

One week later, on June 29, 1995, Bailey, from close behind her, said that he "ought to knock me into the middle of next year," and when she replied, "I don't think so," replied, "No, maybe I'll take a knife and (sic) day to walk around the blood."

She then testified that Bailey went to Chris Whitaker's work table, where Bailey picked up a knife, which he handed to Whitaker. Later, she filed a report of Bailey's conduct with the Sheriff, and discussed the matter with Mr. Hall.

David Bailey testified that he was Operations Manager for Dacco, and that the events described by the plaintiff on June 21 or 22 did not occur. He testified that he was arrested for the June 29 incident, which he described as follows:

He walked into the warehouse area and saw the plaintiff talking to Whitaker for ten minutes. The other employees were also watching, and Bailey decided to "break it up." He said to the plaintiff "in a joking manner," "Are you not going to do anything today?" to which she responded "Why don't you take me to the box room and cut me?" Bailey "took that as a joke," and replied, "Reba, I'll put that knife in your belly and walk around you." He walked over to Whitaker, picked up his knife and said, "Chris, do my light work for me, cut Reba."

Ron Hembry denied any knowledge of the incident described by the plaintiff.

Jim Hall, President of the company, testified that the plaintiff had been troublesome on prior occasions. Because her husband was a supervisor, Hall gave instructions to the supervisors that "we didn't want any problem," and that "we want to do whatever she (the plaintiff) wanted to do and not have any conflict." He testified that Bailey told him, after being reminded, about the knife incident.

The trial judge made no finding that an assault occurred. He merely found that "on June 21 and 29, the plaintiff sustained a mental injury, as a result of an injury by accident arising out of and in the course of employment." While words do not constitute an assault, the shoving incident clearly does, if the plaintiff's testimony is credited. Tenn. Code Ann. § 39-13-101.

The Medical Proof

Dr. Kenneth Carpenter, a psychiatrist, saw the plaintiff on September 19, 1995. The history she gave to him was essentially equivalent to her testimony.

The treatment and evaluation of the plaintiff by Dr. Carpenter was along traditional lines. The Minnesota Multiphasic Personality Inventory indicated a post-traumatic stress disorder. Both he and Dr. Ronald Brown, a clinical psychologist, concurred in the diagnosis.

The plaintiff was hospitalized for ten days, with a variety of medications. Upon her release, she continued to be treated by a psychotherapist under the direction of Dr. Carpenter, who testified that her permanent impairment was in the seventy percent range, which he opined was job-related.

No other expert proof was offered.

The Issue of Compensability

In order for a mental injury by accident to arise from employment it must be caused by an identifiable, stressful work-related event producing sudden mental stimulus such as fright, shock or excessive unexpected anxiety. *Jose v. Equifax, Inc.*, 556 S.W.2d 82 (Tenn. 1977).

The events occurring in June, 1995 were described in detail by the plaintiff. That they were identified as stressful, and produced a sudden mental stimulus is hardly questionable; neither is it seriously disputed that the episodes resulted in excessive and unexpected anxiety.

But the appellant argues that the assault was committed solely to gratify Bailey's ill will, anger or hatred towards the plaintiff, and hence did not arise during

the course and scope of employment, as the principles enunciated in *Sandlin v. Gentry*, 300 S.W.2d 897 (Tenn. 1957), and cases cited, provide. While it may be passing strange that the incidents occurring in June 1995 could have escalated into a destructive force in the absence of personal ill will, there is little or no evidence of this fact other than the supposition of the plaintiff that "he must have disliked me."

Bailey testified that the entire episodic events were jocular, and that he harbored no ill will for the plaintiff, and felt no anger towards her. Given this testimony, we are unable to find that the evidence preponderates against the judgment.

The Issue of Temporary Total Disability

The appellant raises no issue with respect to the extent or permanence of the plaintiff's psychological disability, but questions the award for temporary total benefits, because she failed to give notice to her employer that she was "making a claim for work-related benefits."

The defendant acknowledges that the plaintiff called Mr. Hall, the President of her employer, and advised him of the problems with Bailey, and concedes that "this notice of an incident is sufficient to satisfy notice under the Workers' Comp Act if the plaintiff claims this is work-related."

In light of this concession, we need not further belabor the notice issue.

The plaintiff was awarded temporary total benefits from July 1, 1995 to June 23, 1996, the date on which she reached maximum medical recovery, according to Dr. Carpenter. According to the testimony of Ms. Lewis, the psychotherapist working under the direction of Dr. Carpenter, the plaintiff was depressed and confused, and had been so since July 1, 1995, and as of the date of trial, the plaintiff remained in need of treatment. While the issue may be close, we cannot find that the evidence militates against an award for temporary total benefits.

The judgment is affirmed at the costs of the appellant and the case is remanded.

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William H. Inman, Senior Judge

CONCUR:

_____
Frank F. Drowota, III, Justice

_____
Joe C. Loser, Jr., Special Judge