IN THE SUPREME OF TENNESSEE

AT NASHVILLE

CLARICE TALLEY	}	*SUMNER CHANCERY*
	}	*No. Below 96C-324*
Plaintiff/Appellee	}	
	}	*Hon. J.O. Bond*
vs.	}	
	}	
	}	*No. 01S01-9807-CH-00143*
SUMNER COUNTY, TENNESSEE	}	
	}	*REVERSED AND*
Defendant/Appellant	}	*DISMISSED*

JUDGMENT ORDER

This case is before the Court upon 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 Memorandum Opinion of the Panel should be accepted and approved; 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.

Costs will be paid by plaintiff/appellee, for which execution may issue if necessary.

IT IS SO ORDERED on August 9, 1999.

PER CURIAM

IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT NASHVILLE

(March 31, 1999 Session)

CLARICE TALLEY, Plaintiff-Appellee, v. SUMNER COUNTY, TENNESSEE, Defendant-Appellant.	)))))))))	SUMNER CHANCERY Hon. J. O. Bond, Chancellor. No. 01S01-9807-CH-00143

For Appellant:

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For 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, Associate Justice
Thomas W. Brothers, Special Judge
Joe C. Loser, Jr., Special Judge

REVERSED AND DISMISSED Loser, Judge

MEMORANDUM OPINION

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel in accordance with Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. In this appeal, the employer, Sumner County, insists (1) the evidence preponderates against the trial court's finding that the employee suffered a compensable injury by accident, (2) the evidence preponderates against the trial court's finding that the employee's mental condition is one arising out of and in the course of employment, (3) the evidence preponderates against the trial court's award of temporary total disability benefits and (4) the trial court erred in awarding certain unauthorized medical benefits. As discussed below, the panel has concluded the judgment should be reversed and the case dismissed.

The employee or claimant, Clarice Talley, initiated this action to recover workers' compensation benefits for a claimed injury suffered on September 30, 1997 as a result of a meeting at work in which her supervisor, Dennis Petty, threatened to fire her because of mistakes that were made, in which Petty used vulgar language. She also alleged in her complaint that she was publicly humiliated two weeks later when an article appeared in the Gallatin newspaper concerning possible irregularities in the Sumner County payroll. In its answer, the employer denied that she had suffered a compensable injury and asserted that she had not given proper notice.[1]

After a trial on the merits, the trial judge found that the claimant suffered severe emotional trauma when, at the meeting, Mr. Petty accused her of violating a fiduciary responsibility to the county, awarded, *inter alia,* permanent partial disability benefits based on sixty percent, which award was converted to a money judgment of $86,157.60, temporary total disability benefits from December 1, 1996 to January 16, 1998, which award was converted to a money judgment of $22,077.84, lifetime medical benefits and discretionary costs of $1,371.60.

Appellate review is *de novo* upon the record of the trial court, accompanied by a presumption of correctness of the findings of fact, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2).

The claimant has been employed by Sumner County in various capacities since October of 1972. Since 1992, she worked in the finance department as the county's general payroll and employee benefits manager, under the supervision and direction of the finance director, Dennis Petty. Before 1992, Petty was a financial consultant to Sumner County and the claimant was supervised by the county executive, but the two worked together.

A few days before September 30, 1996, Petty received notice from the sheriff's department of problems with insurance premiums being paid by or for its employees. One such employee had been erroneously classified as full time,

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[1] The notice issue is not part of this appeal.

instead of part time, resulting in the employee's receiving benefits to which he was not entitled. It developed that the claimant had been notified of the employee's new classification in July of 1996, but had failed to make the appropriate adjustment to the benefits and payroll records.

On September 30, 1996, Petty, after learning of the erroneous classification, called a meeting of his department, consisting of the claimant, three others and himself. During the meeting, Petty informed the claimant and the others that he was "pissed" because of the misclassification of the sheriff's employee and told the claimant that if her work did not improve and she did not cease making errors in her work, her employment would be terminated.

Immediately thereafter, Petty, the claimant and Cheryl Thompson, one of the other employees of the finance department, met in the claimant's office for about fifteen minutes. At that meeting, Petty instructed the others that, in the future, Ms. Thompson would be responsible for reviewing all of the claimant's work for possible errors.

Later the same day, the claimant, while on a cigarette break in a hallway, asked Petty is she could speak with him in private. Petty agreed. The claimant testified that she asked him "why he did me that way", and that he replied that "it was the only fucking way he could get it through to me." Petty denied using the vulgarity, but the trial judge resolved the conflicting testimony in favor of the claimant. Everyone finished the work day and went home. However, the claimant has not returned to work since that day.

Thereafter, there appeared a series of newspaper articles exposing irregularities in the finance department. Although she was not mentioned in them, the claimant testified that she was "just devastated" when she read the articles.

In late October of the same year, without consulting her employer, the claimant began seeing a psychiatrist, Dr. William Varner. She told the doctor that she had been under a great deal of pressure at her job because of her "new" supervisor, Petty, with whom she had "verbal altercations" and who had criticized her work. Dr. Varner testified that the claimant had histrionic traits and found no evidence of any psychosis, that she was able to maintain her train of thought adequately, and that she had no problems with her cognitive functions, such as attention span, memory and problem solving. He did note that she was depressed and anxious and that her depression and anxiety were causally related to work related stress that had been building over a period of time.

The claimant was evaluated by another psychiatrist, Dr. John Griffin. Dr. Griffin diagnosed "major depression, non-psychotic, single episode" and he opined that her depression was not caused or related in any way to her employment with Sumner County or her meetings with her supervisor. He testified she was able to return to work with no restrictions, within a reasonable degree of medical certainty. He further opined, based on the claimant's history that her alcoholism and three failed marriages contributed to her "intermittent" depression over a period of years.

The claimant is fifty-sixth years old with a high school education and adequate office skills. Since leaving her job with Sumner County, she has worked as a bookkeeper for her husband's automotive repair business and her church.

Under the Tennessee Workers' Compensation Law, injuries by accident arising out of and in the course of employment which cause either disablement or death of the employee are compensable. Tenn. Code Ann. § 50-6-103(a); McCurry v. Container Corp. of America, 982 S.W.2d 841, 843 (Tenn. 1998). Occupational diseases arising out of and in the course of employment which cause either disablement or death of the employee are compensable. Tenn. Code Ann. § 50-6-102(a)(5).

An accidental injury is one which cannot be reasonably anticipated, is unexpected and is precipitated by unusual combinations of fortuitous circumstances. A. C. Lawrence Co. v. Loveday, 224 Tenn. 317, 455 S.W.2d 141 (Tenn. 1970). It is the resulting injury which must be unexpected in order for the injury to qualify as one by accident. R. E. Butts Co. v. Powell, 463 S.W.2d 707 (Tenn. 1971). "Injury" has been defined as including "whatever lesion or change to any part of the system (that) produces harm or pain or lessened facility of the natural use of any bodily activity or capability." Brown Shoe Co. v. Reed, 209 Tenn. 106, 350 S.W.2d 65 (1961). The Act does not treat diseases separately but includes occupational disease within the definition of injury by accident. Gatlin v. City of Knoxville, 822 S.W.2d 587 (Tenn. 1991).

A mental injury by accident or occupational disease arises out of employment if caused by an identifiable, stressful work-related event producing sudden mental stimulus such as fright, shock or excessive unexpected anxiety, and not by gradual employment stress building over a period of time. Jose v. Equifax, Inc., 556 S.W.2d 82 (Tenn. 1977). If mental illness naturally flows from an otherwise compensable physical injury, then disability resulting therefrom has been held compensable even though the physical injury may not have been disabling. Gluck Brothers, Inc. v. Pollard, 221 Tenn. 383, 426 S.W.2d 763 (1968). In all but the most obvious cases, both causation and permanency must be established by expert medical testimony. Wade v. Aetna Casualty and Surety Company, 735 S.W.2d 215 (Tenn. 1987). There is no claim of a physical injury in the present case.

In Batson v. Cigna Property and Cas. Cos., 874 S.W.2d 566, 569-70, a panel of our Supreme Court fairly and succinctly summarized the compensability of stress induced mental injuries as follows:

> This Court has been called upon many times to address whether mental disorders are occupational diseases or compensable accidental injuries under our workers' compensation statute. In the leading case, Jose v. Equifax, Inc., 556 S.W.2d 82 (Tenn. 1977), an insurance claims adjustor alleged that his psychiatric illness and alcoholism were attributable to on-the-job pressure and tension. The trial judge dismissed the complaint and we sustained that dismissal holding that:
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> In proper cases we are of the opinion that a mental stimulus, such

as fright, shock or even excessive, unexpected anxiety, could amount to an "accident" sufficient to justify an award for resulting mental or nervous disorder. Clarifying the Jose holding, we ruled in Allied Chemical Corporation v. Wells, 578 S.W.2d 369 (Tenn. 1979), that worry, anxiety and stress "within the bounds of the ups and downs of emotional normal human experience" are insufficient to support an award. 578 S.W.2d at 373 (citing 1B A. Larson, Workmen's Compensation Law, 7-152 (1978).

Relying on our holding in Jose, we declined to allow recovery for a chairman of the board, president, and sole stockholder of a construction company who suffered from acute anxiety reaction following serious business losses. In Mayes v. United State Fidelity and Guaranty Company, 672 S.W.2d 773 (Tenn. 1984), we held that "[t]he mental stimulus which precipitated the Plaintiff's anxiety is not the type envisioned in Jose" . . . but fell "within the category of the usual stress and strain encountered in the operation of a contracting business." 672 S.W.2d at 775.

Similarly in Henley v. Roadway Express, 699 S.W.2d 150 (Tenn. 1985), we rejected a claim made by a worker that the stress of third-shift work and lack of sleep had caused or aggravated a condition of depressive neurosis. We deemed that claim "beyond the reasonable limits of the statutory criterion of injury by accident" and not causally connected to employment. Using the same rationale we upheld the denial of an award in Gentry v. E. I. Dupont Nemours & Co., 733 S.W.2d 71 (Tenn. 1987), wherein a worker experienced stress when the recording of a personal phone call at work led the worker to confess an adulterous affair to her spouse. See also Cigna Property and Cas. Ins. Co. v. Sneed, 772 S.W.2d 71 (Tenn. 1989) (emotional problem suffered upon termination does not constitute compensable work-related injury).

Most recently in Gatlin v. City of Knoxville, 822 S.W.2d 587 (Tenn. 1991), we denied benefits to a police officer who alleged on-the-job stress had triggered his psychiatric condition which included depression, paranoia, and a major affective disorder. We reversed the trial court's award because the proof "[did] not meet the Jose test of an identifiable stressful event producing a sudden fright, shock, or excessive unexpected anxiety." 822 S.W.2d at 592. Thus we held definitively that "for a mental injury by accident or occupational disease to arise out of employment it must be caused by an identifiable, stressful, work-related event producing a sudden mental stimulus such as fright, shock or excessive unexpected anxiety, and therefore it may not be by gradual employment stress building up over a period of time." Id at 591-92.

In each of those cases the claimant attempted to recover solely for psychological disorders which arose from stresses on the job. Because they generally occurred gradually over time and not as a result of a sudden occurrence, we have declined to view the resulting mental disorder as arising out of a work-related accident as required by our statute. Additionally, these psychological conditions developed or enhanced by on-the-job pressures and stress and occurring separate and apart from any physical injury are largely noncompensable under our workers' compensation statutes.

The claimant here contends that she was shocked by the language used by Petty and anxious because he used not only the above language but the term "fiduciary", which she somehow took as an accusation of a crime, and relies on our Supreme Court's opinion in Black v. State of Tennessee, wherein benefits were awarded to an employee who suffered a heart attack, which medical proof established to have been precipitated by heated exchange with a supervisor over vacation time.

The present case is easily distinguishable from Black in that Ms. Talley did not suffer a heart attack. Heart attacks are often compensable when shown to have been precipitated either by physical exertion or by some specific event at work which caused acute emotional stress. See Krick v. City of Lawrenceburg, 945 S.W.2d 709 (Tenn. 1997); Black v. State, 721 S.W.2d 801 (Tenn. 1986); Cabe v. Union Carbide Corp., 644 S.W.2d 397 (Tenn. 1983).

Moreover, the claimant admitted that she on occasions used the same language that she says shocked her when used by her supervisor; and her testimony concerning her own use of such language was corroborated by other evidence. Additionally, neither her misunderstanding of the meaning of the word "fiduciary" nor shock resulting from the use of the other words is shown by the medical evidence to have been the cause of her mental disorder. The preponderance of the medical proof, considered in its most favorable light for the claimant, is that the usual stress and strain of her work contributed to her depression and anxiety. The conditions are therefore not compensable.

For those reasons, the judgment of the trial court is reversed and the case dismissed at the cost of the plaintiff.

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Joe C. Loser, Jr., Special Judge

CONCUR:

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Frank F. Drowota, III, Associate Justice

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Thomas W. Brothers, Special Judge