

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON

FILED

September 27, 1999

Cecil Crowson, Jr.
Appellate Court Clerk

EMMA CROWE,)	
)	DYER CHANCERY
Plaintiff/Appellant)	
)	
v.)	NO. 02S01-9807-CH-00071
)	
DIOCESE OF MEMPHIS HOUSING)	
CORPORATION and VIRGINIA)	HON. J. STEVEN STAFFORD,
SURETY INSURANCE COMPANY,)	CHANCELLOR
)	
Defendants/Appellees)	

For the Appellant:

Justin S. Gilbert
The Gilbert Firm
300 E. Main Street, Suite 200
P. O. Box 2384
Jackson, TN 38302-2384

For the Appellee:

James D. Pugh
James F. Eggleston
100 North Main Street, Suite 3016
Memphis, TN 38103

MEMORANDUM OPINION

Members of Panel:

Justice Janice Holder
Senior Judge John K. Byers
Senior Judge F. Lloyd Tatum

AFFIRMED

BYERS, Senior Judge

OPINION

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.

Plaintiff filed a complaint for workers' compensation benefits on October 7, 1996, alleging severe psychological and emotional injury, or aggravation of same, arising out of her conditions at work. The trial court found that the statute of limitations had run on the plaintiff's claim prior to the filing of her complaint and dismissed the complaint. The court also made findings, for the record, that the plaintiff gave proper notice and that the plaintiff had failed to meet her burden of proving causation of a compensable injury.

We affirm the judgment of the trial court dismissing plaintiff's complaint for the reasons herein stated.

FACTS

The plaintiff worked successfully as manager of defendant's retirement home in Dyersburg from 1988 until October of 1994, when she was hospitalized for knee surgery unrelated to her work. During surgery she had an allergic reaction to medication and suffered a stroke. She remained unconscious for ten days and awoke disoriented, combative and extremely confused. She was placed on various psychotropic medications and recovered sufficiently to be released from the hospital and transferred to a rehabilitation center. She subsequently recovered sufficiently to attempt a return to work in December 1994 or January 1995 and worked until September 20, 1995.

After the plaintiff returned to work, her work habits and abilities never returned to their previous high level. Her supervisor, David Dudley Field, testified that there was a marked difference in how she conducted her business. She began experiencing difficulty relating to other people, doing the routine duties of her position, organizing her work and completing required paperwork. He testified that:

Q: Now when Ms. Crowe got back from being off because of her stroke and her knees, what kind of employee was Ms. Crowe at that time?

A: Ms. Crowe was a changed individual and not a good manager in my opinion.

Q: Okay. Give me some examples of what you're talking about.

A: Ms. Crowe started failing to do paperwork in a timely manner or correct manner such as employment of a staff. Time sheets sometimes had to be filled out by the secretary and sent in because we could not pay Ms. Crowe or other people unless we received a time sheet. Resident recertifications and/or the payment of a security deposit on a move-in was overlooked in some cases - - or at least in one case a security deposit and in other cases, recertification. And Ms. Crowe was unable to assist us with the preparation of a budget in that particular year . . . almost everything in the management description Ms. Crowe was having a problem dealing with after her operation.

He responded by telephoning her with complaints and sending her numerous memos pointing out her lapses.¹ He testified that he was generally considered to be a supervisor who "managed by memo."

On August 30, 1995, plaintiff suffered a seizure related to the prior stroke and was again hospitalized for two days. She then returned to work, but reported to her treating surgeon, Dr. Lynn Warner, that she was under extreme stress and was experiencing extreme anxiety. Dr. Warner wrote a "To Whom It May Concern" letter asking that she be off work for two months, and she was placed on sick leave effective September 20, 1995. As part of her job, she lived on the premises of the retirement home, and she continued to live there after she was placed on sick leave, while another employee assumed her duties. However, she continued to involve herself in the day-to-day operation of the facility.

At plaintiff's request, she had a meeting with the head of the Diocese on October 11, 1995. Plaintiff testified that she requested the meeting "to get David off my back . . . I had gone just about as far as I could go . . . so I wanted Brian to make the memos stop." She testified that during this meeting, the head of the Diocese told her that she might "find herself retired," which meant that "I would lose, first of all, in my profession, everything I had worked for, all the years experience, and I would lose my home, and my friends who were considered my extended family - - just everything. My retirement. Everything. I was shocked that he would behave like that."

¹Plaintiff testified that she received 39 such memos.

She testified that, although the head of the Diocese told her the memos would stop, and although she was still supposed to be on medical leave, David Field continued to send her memos about her work, and that, because the memos required answers, she was required to continue working, i.e., answering memos: "I sat up - - I would sit up hours, even weekends, trying to answer these memos . . . October 20th [1995] is the last day that I worked."

MEDICAL EVIDENCE

Dr. Lynn A. Warner, plaintiff's surgeon, testified by deposition and by copy of his November 4, 1997 letter to plaintiff's attorney, in which he opined that plaintiff was

"100% disabled due to her psychological state, and I see no reason to believe this will improve in the future. There is a table on page 301 of the 4th Edition of the AMA Guide to the Evaluation of Permanent Impairment, which would place her in Class 4 (marked impairment) due to mental and behavior disorder. These are impairment levels that significantly impede useful functioning. She might even qualify for Class 5, which is extreme impairment."

Dr. Warner testified that his practice is limited to general surgery and that he has never practiced psychiatry. He relied upon the report of psychologist Dr. Robert Kennon in forming his opinion as to the plaintiff's mental disability, because he is not trained in that field.

Dr. Kennon testified by deposition that he conducted an independent psychological evaluation on February 11, 1997. He testified that the plaintiff was 65 years old, pleasant and talkative, with an obvious sense of humor. She was observed to be very angry about her current situation and there was clear evidence of marked depressive symptomatology with associated irritability and anxiety. She reported to him that previously she had been very outgoing, but that since the stroke she had become withdrawn, avoidant of others, apathetic and suspicious. She had a great deal of unresolved anger regarding her vocational situation, which had caused her a great deal of emotional distress. She expressed anger freely throughout the examination and was quite frustrated by her loss of employment and living arrangements. She was experiencing crying spells, sleep disturbance with early morning awakening, weight loss, reduced appetite, feelings of helplessness, social withdrawal and generalized anxiety complaints.

We quote from his report of psychological assessment:

Review of the clinical personality patterns, yielded a clinically elevated protocol on the scale 4, histrionic personality pattern. Individuals with the similar protocols are prone to being over-reactive, oftentimes impulsive, highly emotional and are prone to responding behaviorally in a theatrical manner. Such individuals are frequently interpersonally attention seeking and cognitively flighty. They oftentimes integrate experiences poorly and that can result in scattered learning or thoughtless judgments. These individuals have a rather gregarious self-image and view themselves as rather sociable and enjoy pursuing a busy and pleasure oriented life. . . they can show signs of impetuosity and exhibit tendencies to be easily excited. It is entirely probable and likely that Ms. Crowe's personality structure has been consistent with a histrionic pattern of responding throughout the majority of her life. However, it should be noted that *since the onset of her stroke and subsequent hospitalization*, there is indication that there is organic personality syndrome. Classical to organic personality disorders, is the exacerbation of premorbid traits. Ms. Crowe does present with evidence of an exacerbation of *emotional lability, paranoia and suspiciousness.*" [emphasis added]

Dr. Kennon's diagnoses were (1) Major Depression, single episode, moderate to severe, without psychotic features, (2) personality change secondary to general medical condition [stroke], mixed, labile and paranoid type, and (3) histrionic personality traits. He opined that the major depressive episode was secondary to her loss of peer group, loss of employment, fearfulness, loss of independence, decline in physical health, and perceived conflict with her employer.

Dr. also Kennon testified that he reviewed the report of Dr. Rex Haire, psychologist, who had evaluated the plaintiff for the Tennessee Disability Determination Section. Dr. Haire diagnosed plaintiff as having organic personality disorder secondary to stroke - labile type - and found short-term memory deficits and reduction in concentration abilities and persistence.

Janis Green, Patient Advocate for Tennessee Protection and Advocacy, a non-profit, federally funded agency mandated by Congress to enforce disability laws, testified that she first met plaintiff in February, 1996, after plaintiff contacted the national organization in Washington, D.C., and that she has been involved with plaintiff continuously since then. The contacts occurred daily, sometimes 12 to 15 times a day, with plaintiff exhibiting hopelessness, crying, not feeling like she could go on.

CAUSATION

Tennessee has established a threshold test that, in workers' compensation cases, the mental stimulus causing a mental or physical injury must be fright, shock, or an acute sudden or unexpected emotional stress. Worry, anxiety or emotional stress of a usual nature in a particular occupation are not sufficient to establish an injury by accident. *Gatlin v. City of Knoxville*, 822 S.W.2d 587 (Tenn. 1991).

The trial court found the evidence showed that plaintiff was concerned about her job, that she had discussions with the defendant at a meeting in October of 1995, and that the threat of termination was given to her; however, that the threat did not produce the sudden mental stimulus such as fright, shock or extensive unexplained anxiety that would give rise to causation in this case.

Work-related stress arising from the after-effects of a *work-related physical injury* has been held compensable under *Batson v. Cigna Prop. and Cas.*, 874 S.W.2d 566 (Tenn. 1994). However, *Batson* is unhelpful to plaintiff, whose knee injury, surgery and stroke which caused psychiatric changes were not job-related.

Because we agree with the trial court that the plaintiff failed to meet the burden of proving the threshold issue of work-related causation of her disability, we affirm the dismissal of her claim on that ground. Therefore, we need not decide the additional issues she has raised on appeal, which are pretermitted.

The judgment of the trial court is affirmed at the cost of the appellant.

John K. Byers, Senior Judge

CONCUR:

Janice Holder, Justice

F. Lloyd Tatum, Senior Judge

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AT JACKSON

EMMA CROWE,)	Dyer County Chancery
)	No. 96C517
Plaintiff/Appellant,)	
)	S. Ct. No. 02-S-01-9807-CH-00071
v.)	
)	
DIOCESE OF MEMPHIS HOUSING)	Hon. J. Steven Stafford,
CORPORATION and VIRGINIA)	Judge
SURETY INSURANCE COMPANY,)	
)	
Defendants/Appellees.)	Affirmed

<p>FILED</p> <p>September 27, 1999</p> <p>Cecil Crowson, Jr. Appellate Court Clerk</p>
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JUDGMENT ORDER

This case is before the Court upon defendants' 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.

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

PER CURIAM

Holder, J., not participating