IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE
August 11, 2015 Session

WILLIAM IRETON v. HORIZON MENTAL HEALTH MANAGEMENT, LLC

Appeal from the Chancery Court for McMinn County
No. 2013-CV-108 Jerri S. Bryant, Chancellor

No. E2015-00296-SC-R3-WC-MAILED-OCTOBER 7, 2015
FILED-JANUARY 19, 2016

The trial court denied the employee's claim for benefits for his psychological injuries, depression and post-traumatic stress disorder ("PTSD"), finding that the injuries were not compensable because they did not arise out of the employee's employment with the employer. Specifically, the trial court applied an objective standard and determined that the stress which the employee claimed as the cause of his depression and PTSD was not unusual. The employee has appealed. Pursuant to Tennessee Supreme Court Rule 51, the appeal has been referred to the Special Workers' Compensation Appeals Panel for a hearing and a report of findings of fact and conclusions of law. We affirm the judgment.

Tenn. Code Ann. § 50-6-225(a) (2014) Appeal as of Right; Judgment of the Chancery Court Affirmed

PAUL G. SUMMERS, SR. J., delivered the opinion of the Court, in which GARY R. WADE, J. and BEN H. CANTRELL SR. J. joined.

Michael S. Shipwash, Knoxville, Tennessee, for the appellant, William Ireton.

Gregory H. Fuller and Julie Cochran Fuller, Brentwood, Tennessee, for the appellee, Horizon Mental Health Management, LLC

OPINION

Procedural Background

William Ireton ("Employee") allegedly suffered psychological injuries, depression and Post-Traumatic Stress Disorder (hereafter "PTSD"), following, and as the result of, a statement made by a speaker during a training seminar on September 27, 2012, at an annual conference held by his employer, Horizon Mental Health Management, LLC ("Employer"). Employer denied that Employee's injuries were compensable and denied his claim for workers' compensation benefits. The parties were unable to reach a resolution at a Benefit Review Conference. On April 22, 2013, Employee filed suit in the Chancery Court for McMinn County.

Prior to trial, the trial court granted, in part, Employer's motion in limine and excluded any causation testimony from Employee's treating psychotherapist, Advanced Practice Nurse Kate Hume. The trial court denied Employee's motion in limine and admitted into evidence Employee's prior medical records from Bellin Psychiatric Center and Amy Rosine, M.D. Following a trial on October 31 and November 12, 2014, the trial court determined that Employee's injuries were not compensable because they did not arise out of the employee's employment with Employer. Specifically, the trial court applied an objective standard and determined that the stress which Employee claimed as the cause of his injuries was not unusual.

Employee has appealed, contending first that the trial court erred in applying an objective standard to the determination of whether the event or stress which allegedly caused Employee's injuries was unusual and that Employee's psychiatric injuries were not compensable. Employee next contends that the trial court erred in excluding the causation testimony of his treating psychotherapist and, in admitting into evidence certain of his prior medical records.

Factual Background and Testimony

Employee testified live at trial. Employee was fifty-three years old at the time of trial. Employee completed high school and obtained a nursing degree in 1986, after which he became a Registered Nurse ("RN"). (Id.). Employee always had worked as an RN, and since 1986 had worked in psychiatric treatment units.

Employee was hired by Employer as a program director/nurse manager on May 1, 2010, and was assigned to Woods Memorial Hospital in Etowah, Tennessee. Employee was one of two employees of Employer, which had hundreds of employees, assigned to Woods Memorial Hospital. Employee was responsible for the hospital's ten bed psychiatric unit. Employee's responsibilities included preparing for regulatory agency inspections, staff education, staffing, and general day-to-day operations. In the beginning of 2012, Employee's position and title changed somewhat. Employee became a program director/community education manager. His duties also changed to entail off-site

marketing and inquiries to determine if patients would be appropriate for admission to the psychiatric unit at the hospital. According to Employee, his typical day included meeting with the treatment team, including the doctor and nurse manager, to discuss patients. Meetings include discussions of what they were doing, their progress, and discussion with patients' families. His day also included administrative meetings regarding the patient census and plans for the day; office work to address any staffing issues; patient status; and attending to marketing needs.

Employee underwent an initial orientation with Employer in Texas when he began working for Employer, but it did not involve any clinical training. He subsequently attended two annual conferences in 2011 and 2012. The 2012 conference was a three-day event in Texas. On the second day, September 27, 2012, Employee, along with other Horizon employees/program directors, attended a trauma-sensitivity care training seminar presented by Barbara Lang, also an employee of Employer. The first part of the two-part seminar concerned trauma care and how to handle patients. According to Employee's testimony, which the trial court credited, during this portion of the seminar, Ms. Lang stated to all of the attendees: *"I want you to put yourself in your patient's shoes and imagine how it would feel when you're asked, 'Have you ever been physically, emotionally, or sexually abused'?"*

Employee conceded that there was nothing unusual about being required to attend a training seminar such as this. Employee acknowledged that co-workers and peers were in attendance. However, Employee testified that the statement by Ms. Lang was not something that he had ever been taught before or required to do as a psychiatric nurse. Employee testified that during his time as a psychiatric nurse, he had taken thousands of patient histories and had performed thousands of patient assessments, but that he had only taken patient histories on rare occasions since 2006, including during his employment with Employer. Employee testified that, during his employment with Employer, he took perhaps ten patient histories,. According to Employee, in the course of taking a patient history and performing a patient assessment, he would ask the patient about family trauma, including abuse, but not about the details.

Employee also testified that it was not uncommon for a patient to present with a history of abuse and that a patient sometimes would tell you, as a nurse, that he or she had been abused. Employee denied having been trained to place himself in a patient's shoes, or having previously done so. In fact, Employee testified that he had been instructed to distance himself from patients and that, as a nurse in a crisis stability unit, you never placed yourself in the patient's shoes. According to Employee, you simply asked the question of whether the patient had experienced abuse and checked a box. Employee testified that there is a difference between being respectful and placing yourself in the patient's shoes. Employee did acknowledge that he previously had been taught empathetic listening and instructed to imagine himself going into a psychiatric unit. He testified, however, that this was not the same as placing oneself in the patient's shoes.

Employee testified that immediately upon hearing the statement made by Ms. Lang at the seminar on September 27, 2012, emotion overcame him; he became overwhelmed; he totally "freaked out"; he had flashbacks of when he had been raped as a child by an older cousin; and he had a flood of emotions and memories. Employee testified that he could see things from when he had been a child, but that he could not connect them. Employee ran to the bathroom and splashed water on his face, but he could not pull himself together. He then ran to his hotel room and took some nitroglycerine because he thought he was having a heart attack. Employee returned to the seminar but, according to his trial testimony, he was still freaked out, sick, nauseous, sweaty, confused, and dazed. Employee testified that he did not tell anyone, but rather he stayed to himself and was in what he described as a "zombie-like" state.

According to Employee, that evening he was quiet and disconnected; he could not concentrate, could not sleep, had nightmares and flashbacks, and cried. According to Employee, he was still numb the following day, and just tried to function. Employee testified that the flashbacks were of a prior sexual assault by a cousin, that had occurred when Employee was age eleven and the cousin was age seventeen. Employee testified that he had never sought psychiatric treatment for the assault, but had just put it away and that this had worked until he heard the statement by Ms. Lang. Employee denied having had prior flashbacks of sexual abuse. He testified that on this occasion, he felt that he was back in that prior situation and that he had a knife to his throat and was going to die.

Employee's last day of work was November 7, 2012; and Employee has not returned to work for Employer. Employee was initially seen by his family physician, Dr. Amy Rosine, in November 2012. According to Employee, Dr. Rosine had previously seen him for depression, which he has had on and off throughout his life. Dr. Rosine referred Employee for assessment; but before the assessment took place, he became suicidal and was admitted to the hospital for inpatient treatment. Employee then began treatment with Dr. Francis P. LeBuffe, a psychiatrist, and with Kate Hume, advanced practice nurse and psychotherapist, and was under their care with continuing treatment at the time of trial.

Employee admitted that he had undergone prior treatment for anxiety; depression; panic attacks; crying at work; and suicidal thoughts. According to Employee, subsequent to the September 27, 2012 seminar, he experienced emotional or mental problems unlike any he had ever before experienced. Employee testified that he no longer looks forward to the future, no longer enjoys his former hobbies of swimming and music; and he has not returned to work or applied for work. Employee testified that he is unable to work in any employment; he cannot concentrate; he does not drive; he is on seven to eight medications with side effects; and he cannot go out without crying.

Barbara Lang testified live at trial. Ms. Lang has been a registered nurse for forty-five years and has been board certified in mental health and psychiatric nursing since

1994. At the time of trial, she had worked for Employer for twenty years and was the Senior Vice President of Clinical Practice for Employer, responsible for regulatory compliance in approximately one hundred programs in thirty-seven states. Ms. Lang was also responsible for staff development, training, and patient care quality. Ms. Lang testified that she had training in the assessment and management of psychiatric patients and that she provided training to Employer's staff regarding the improvement of patient care. Ms. Lang testified that she had taken patient histories and that a part of the assessment of a patient is obtaining a history of any abuse. According to Ms. Lang, she expects a nurse assessing a patient to align with the patient, to understand the patient, and to develop a therapeutic alliance with the patient in order to make it possible for the nurse to discuss with the patient what is concerning the patient about the admission.

Ms. Lang testified that the September 2012 conference was an annual leadership conference that included sharing best practices and education for program directors. She presented two hours of education at the conference, the first hour of which was an overview of "trauma-informed" or "trauma-sensitive care." Ms. Lang defined trauma-informed care as having an awareness and understanding of the impact of abuse on behaviors in later life. She denied making, or having ever made, the specific statement attributed to her by Employee, but admitted to making similar statements in other training during which she would ask the attendees to imagine a patient entering the psychiatric unit. Ms. Lang testified that there was nothing unusual about this particular seminar and that she has given this same seminar over thirty times.

Michael Raisig testified live at trial. Mr. Raisig has a Bachelor's degree in sociology and psychology. He has extensive experience in the mental health field; however, he is not a nurse or a doctor. Mr. Raisig went to work for Employer in January 2012, as Vice President of Operations, and became Employee's direct supervisor in March 2012. According to Mr. Raisig, Employer is a healthcare management company that manages psychiatric units in acute care hospitals in thirty-seven states, and also has a couple of free-standing units. Mr. Raisig testified that, based upon his experience in the field of mental health care, there is nothing unusual about providing mental health treatment to persons with a history of abuse. Mr. Raisig further testified that most of Employer's program managers like Employee are RN's with significant inpatient management experience and that they do have some involvement in hands-on patient care.

Mr. Raisig testified that over one hundred persons attended the September 2012 seminar and that all of Employer's program directors had been invited. He described Ms. Lang's program or presentation as about being aware and sensitive to psychiatric patients who had experienced trauma. Mr. Raisig testified that the program covered various types of trauma assessment and treatment. Although he did not recall Ms. Lang making the statement attributed to her by Employee, Mr. Raisig did not deny that the statement had been made. He testified that there was nothing stressful, unusual or extraordinary about

her presentation. According to Mr. Raisig, Ms. Lang simply provided information, nothing new.

Employee's treating psychiatrist, Dr. Francis P. LeBuffe, testified by deposition. Dr. LeBuffe has been practicing psychiatry for forty-three years, and has been licensed in Tennessee for twenty-one years. He actively treats patients in a hospital setting in conjunction with a team of nurses and social workers, and he also consults. In addition, in his outpatient office he generally performs medication management for patients while someone else handles the psychotherapy aspect of the treatment. Dr. LeBuffe testified that he had worked with psychotherapist Kate Hume for fifteen years and that she was very accomplished.

Dr. LeBuffe had worked with Employee when Employee had been a charge nurse in a twenty-eight bed psychiatric unit at St. Mary's Hospital between 1999 and 2005. Dr. LeBuffe first began treating Employee, however, in November 2012, during Employee's hospital admission for depression, fearfulness, hallucinations and suicidal ideations. Dr. LeBuffe took a history and performed a physical and a mental state examination. According to Dr. LeBuffe, these were all consistent with major depression, quite severe, and PTSD, which was Employee's underlying condition leading to the depression and crisis.

Dr. LeBuffe testified that Employee related that he had a sudden onset of symptoms, including hallucinations, flashbacks and nightmares, along with fearfulness and depression, on September 27, 2012, after "he was directed to essentially imagine himself as a person who had been severely abused." According to Dr. LeBuffe, Employee described having been encouraged to actively imagine and empathize with what the experience of a child being abused would be. Dr. LeBuffe testified that this proved to be the triggering event in bringing back Employee's symptoms, but with considerable intensity from that time forward. (Dr. LeBuffe characterized the onset as sudden, abrupt, and intense. Dr. LeBuffe did not have any of Employee's medical/psychiatric records from prior to Employee's November 2012 hospitalization; and Dr. LeBuffe testified that he was unaware of Employee's treatment for anxiety, depression, or insomnia prior to September 27, 2012. Dr. LeBuffe's history from Employee, however, included a family history of depression; and Employee related considerable job stress due to difficulties between Employee and his new boss. Employee's history also included lifelong PTSD related to childhood sexual abuse by an older cousin. Dr. LeBuffe testified that he was aware that Employee previously had symptoms of PTSD, nightmares and flashbacks, and that Employee had previously been treated. Dr. LeBuffe understood from Employee, however, that while he previously had long periods of time with these symptoms, he had no extended periods when he was unable to work. He also was aware that Employee suffered from morbid obesity, anxiety and depression issues related to that condition. Dr. Lebuffe testified that he was unaware of Employee's other periods of symptoms, conditions or treatment.

Employee was again hospitalized in December 2012, in January 2013, in July 2013, in November 2013 and in June 2014. These hospitalizations were generally for suicidal ideations related to depression, hopelessness, nightmares, hallucinations, and flashbacks of abuse. Dr. LeBuffe also saw Employee for office visits beginning in February 2013 and continuing through May 2014. Dr. LeBuffe opined that Employee was unable to return to work for Horizon or to any gainful employment as of the time of the deposition, but that his long-term prognosis was good. He found Employee to be a good and compliant patient. Dr. LeBuffe did not agree with the opinion of Employer's evaluating psychiatrist, Dr. Alexander, that Employee was malingering. He testified that the pursuit of the diagnosis of malingering was inappropriate and that some of Dr. Alexander's test results were questionable.

Dr. LeBuffe testified that his treatment of Employee was related to Employee's experience at the September 27, 2012 seminar. As Dr. LeBuffe explained, Employee's depression and PTSD were caused by his prior child abuse; but the September 27, 2012 event precipitated a severe exacerbation of Employee's condition. Dr. LeBuffe did not rate Employee under the AMA Guides and expressed no opinion regarding maximum medical improvement or permanent impairment. He also assigned Employee no permanent restrictions.

Dr. LeBuffe testified that the responsibilities of a charge nurse in a psychiatric unit include taking patient histories and training to do the same. He further testified that in dealing with mental health patients, it is common to deal with patients who have experienced childhood traumas or abuse. According to Dr. LeBuffe, taking histories of patients who had such problems is an integral part of the job of a charge nurse in a psychiatric unit. It is not unusual to take the history of a patient who might have experienced sexual abuse. Dr. Lebuffe testified that while it is not unusual or extraordinary for a person in Employee's position to have received training, what he understood Employee had been asked to do on September 27, 2012 was somewhat unusual. According to Dr. LeBuffe, nurses are encouraged not to push people to describe their experiences, but rather to simply gather the information.

Kate Hume was Employee's treating psychotherapist and testified by deposition. The trial court excluded her testimony regarding causation, but permitted her testimony regarding diagnosis and treatment.

Ms. Hume is licensed in Tennessee as an Advanced Practice Nurse and has been board certified as a psychiatric mental health clinical specialist since 1997. She has worked in both private practice and in hospitals. In her private practice, she has a supervising physician. When she is working at Tennova Hospital, formerly St. Mary's Hospital, where Employee was hospitalized, Dr. LeBuffe serves as her supervising physician. However, her supervising physician only supervises her with respect to medications. Ms. Hume is not a medical doctor or psychiatrist, nor is she a vocational

expert.

Ms. Hume testified that Employee was referred to her by Dr. LeBuffe because of her expertise in PTSD. Ms. Hume first saw Employee on November 19, 2012, after he was discharged from the hospital. She obtained a history and performed a mental status examination. Employee presented with a history of his usual health until September 2012, when he attended work-related training which focused on the clinical management of trauma. Ms. Hume testified that Employee explained the training on September 27, 2012 as training that attempted to have nurses, who take physical histories of someone, switch roles and go into empathy. Employee related to Ms. Hume that he began having recurring nightmares, flashbacks, and awakening with a sense of someone on top of him. He presented as anxious, depressed, fearful, and with ideations of self-harm. Employee related that, while in the hospital, he heard the voice of his prior attacker; but he was not experiencing this at the time of this visit. Employee also related that he thought that one of his employers had been making sexual gestures or innuendos to him on the night of the training seminar, September 27, 2012.

Ms. Hume did not have Employee's medical or psychiatric records from prior to his November 2012 hospitalization. However, she was aware from her initial assessment, and later confirmed an awareness, that Employee had lifelong PTSD symptoms, prior periods of frequent nightmares, flashbacks, hypersubtle response, longstanding and unresolved trauma memories, and prior treatment with antidepressants.

According to Ms. Hume, Employee's problems included nightmares/night terrors; rectal hemorrhoids, which are a fairly common in male PTSD patients with a history of childhood sex abuse; panic attacks, which prohibited him from driving; shortness of breath and a feeling of being smothered; emotional lability; crying; hearing the voice of his abuser; rage discontrol; shame; transient paranoia; and, fear of crowds. Ms. Hume determined that Employee manifested classic, complex PTSD symptoms; her diagnosis was PTSD and major depression recurrence, severe, with and without psychotic features. She found no malingering and did not find Employee to be a narcissist or spurious. Ms. Hume relied upon the DSM-IV TR in diagnosing and treating Employee.

Ms. Hume planned for a variety of therapies and medications for Employee, as appropriate. She provided Employee with several types of psychotherapy, as well as some pharmacological management, although Dr. LeBuffe primarily handled the medications. She continued to see Employee two times per week, for one and one half to two hours each time, for a total of sixty to eighty visits.

Ms. Hume testified that Employee had been unable to return to work or any gainful employment as a consequence of the conditions for which she had been treating him; and he was not at maximum medical improvement as of her July 9, 2014 deposition. She testified that her long-term goal for Employee is resolution of PTSD symptoms and

hopefully a resumption of full occupation. She opined that PTSD has a very good prognosis, but that the treatment is long and protracted. According to Ms. Hume, Employee was honest and was a compliant patient. Ms. Hume was critical of the opinions of Employer's evaluating psychiatrist, Dr. Alexander, particularly regarding his determination that Employee was malingering, and his testing regarding the same.

Ms. Hume testified that Employee described the training on September 27, 2012 as "training that attempted to have nurses who take physical histories of someone to have them switch roles and go into empathy." She described the training as Employee "trying to be taught to be empathetic instead of the role of being a nurse, which is just to collect information and deliver that information to those who know what to do with it. And he got into a role play situation where he was an abused person." She testified that it was not the role of a floor nurse to empathize; a floor nurse was, according to Ms. Hume "basically a glorified secretary with … lots of nursing and medical information, but they do not do therapy," and they are not trained to do therapy. She testified that to have empathy takes a lot of training so that you as a nurse are not hurt and do not get secondary PTSD. According to Ms. Hume, when Employee was asked to empathize, this was something unusual for a psychiatric nurse. She testified that as a nurse, you are a reporter of information given by the patient. You are not a therapist.

Psychiatrist Dr. J. Sidney Alexander performed an independent examination of Employee at the request of Employer. Dr. Alexander testified by deposition.

Dr. Alexander has been a licensed psychiatrist in Tennessee since 1988. Since 2004, he has maintained a private practice and served as a general hospital consultant for various hospitals. In addition, since 1997, Dr. Alexander has served as a forensic psychiatrist; and this has comprised a substantial part of his practice over the past ten years. In performing a forensic psychiatric evaluation, as in this case, Dr. Alexander typically interviews the patient for three hours and performs one hour of testing.

Dr. Alexander obtained a history from Employee in which Employee "indicated that he had been to a seminar where sexual abuse was being discussed; presented, [sic] it was sensitivity type training." According to Employee's history, the presenter had asked the students to put themselves in the shoes of patients that they were interviewing; and Employee stated that he had never done that before. Employee expressed to Dr. Alexander that he had never before been asked to put himself into the shoes of another person when taking a sexual abuse history and that it had stimulated thoughts of his being sexually abused. Employee stated that this created tremendous tension and anxiety; he had chest pain; he took nitroglycerine; and he left the seminar and did not return. The seminar suddenly triggered Employee to begin to have symptoms of anxiety, and depression, that over time included panic attacks and tearfulness; and he felt that he could not go back to work. According to Dr. Alexander, Employee presented it as though this happened immediately.

Dr. Alexander testified that Employee gave him some inconsistent information regarding Employee's prior psychiatric history. According to Dr. Alexander, Employee told him that he had no prior psychiatric history, treatment or symptoms. Employee did report, however, a significant history of childhood sexual abuse by a cousin who was older. He also reported some physical discipline/abuse by his father, and to a lesser extent, his mother. According to Dr. Alexander, the effect of those events on Employee was to cause intermittent periods of nightmares, flashbacks, panic attacks at work, and crying. Employee's medical history obtained by Dr. Alexander included longstanding, severe obesity; restless leg syndrome; sleeping disorder; back problems; liver problems; congestive heart failure; and tachycardia, among other issues. As a result of Employee's cardiac problems, he experienced fatigue; inability to exercise; shortness of breath; gasping upon waking; chest pain; and chest discomfort. Employee had a medication history that included benzodiazepines for restless leg and insomnia, and antidepressants.

Dr. Alexander performed a variety of tests on Employee, including tests which, according to Dr. Alexander, provide insight into whether a patient is malingering. Based upon his review of records, interview of Employee, and testing of Employee, Dr. Alexander determined that Employee's Axis I diagnosis was malingering and that his Axis II diagnosis was personality disorder not otherwise specified, specifically borderline (persons who have a lot of mood and anxiety instability, usually based on traumatic childhoods) and narcissistic (a tendency to be self-absorbed) and histrionic (very emotional). Dr. Alexander opined that Employee did not suffer PTSD as a result of the September 27, 2012 seminar. According to Dr. Alexander, the seminar as described by Employee did not constitute a trauma as described in the DSM- IV TR for purposes of a diagnosis of PTSD. Dr. Alexander opined that Employee did not suffer permanent impairment as a result of the September 27, 2012 seminar. The seminar did not aggravate or advance any pre-existing condition that Employee had. Dr. Alexander opined that Employee had a number of confounding factors, including multiple medical problems, which temporarily disabled him. According to Dr. Alexander, although Employee had an impairment, it was not related to the seminar. Further according to Dr. Alexander, he could not assign an impairment rating to Employee because Employee had provided so much inaccurate information. Dr. Alexander further opined that maximum medical improvement was inapplicable to Employee because Employee did not suffer any impairment from the alleged trauma at the seminar.

Dr. Alexander disagreed with the opinions of Dr. LeBuffe and Ms. Hume regarding Employee's diagnosis and impairment, and with the opinion of Dr. LeBuffe regarding the cause of Employee's injuries.

Dr. Alexander testified that asking a medical care provider to empathize with a patient or to put himself in the shoes of a patient does not meet the criteria for a traumatic stressor. Rather, according to Dr. Alexander, this was a consistent, pervasive piece of training. Based on his own experience and on Employee's work history, Dr. Alexander

testified that there was nothing extraordinary or unusual about empathizing with patients or about a mental health nurse being asked to do so. According to Dr. Alexander, this was common and basic. The seminar was basic core material with which someone in Employee's position was well versed.

Analysis

The standard of review of issues of fact in a workers' compensation case is de novo upon the record of the trial court accompanied by a presumption of correctness of the findings, unless the preponderance of evidence is otherwise. Tenn. Code Ann. § 50-6-225(a)(2) (2014). When credibility and weight to be given testimony are involved, considerable deference is given the trial court when the trial judge had the opportunity to observe the witness' demeanor and to hear in-court testimony. Madden v. Holland Group of Tenn., 277 S.W.3d 896, 900 (Tenn. 2009). When the issues involve expert medical testimony that is contained in the record by deposition, determination of the weight and credibility of the evidence necessarily must be drawn from the contents of the depositions; and the reviewing court may draw its own conclusions with regard to those issues. Foreman v. Automatic Sys., Inc., 272 S.W.3d 560, 571 (Tenn. 2008). A trial court's conclusions of law are reviewed de novo upon the record with no presumption of correctness. Seiber v. Reeves Logging, 284 S.W.3d 294, 298 (Tenn. 2009).

Mental Injury

Employee contends that the trial court applied an incorrect legal standard in determining that his mental injuries were not compensable. Specifically, Employee contends that the trial court erred in applying an objective standard, rather than a subjective standard, to the determination of whether the stress which Employee asserts caused his mental injuries was unusual. We disagree.

The Tennessee Workers' Compensation Law, in effect at the time of Employee's injuries, defines "injury" to include "a mental injury arising out of and in the course of employment." Tenn. Code Ann. § 50-6-102(12) (2012). The statute further defines "mental injury" as "a loss of mental faculties or mental or behavioral disorder where the proximate cause is a compensable physical injury resulting in permanent disability, or an identifiable work-related event resulting in a sudden or unusual mental stimulus." Tenn. Code Ann. § 50-6-102(15) (2012). Thus, "a psychological injury must meet the traditional prerequisites of any workers' compensation claim: it must arise out of and in the course of the employment. Tenn. Code Ann. § 50-6-103(a)(1999)." Watley v. City of Murfreesboro, 2007 WL 3010636 at *2 (Tenn. Workers' Comp. Panel 2007).

With respect to the requirement that the injury arise out of the employment, our Supreme Court has consistently required that in order for an injury that is alleged to have been caused by a purely mental or emotional stimulus to be compensable, not only must it

have "resulted from an identifiable stressful work-related event that produced a sudden mental stimulus such as fright, shock, or excessive unexpected anxiety," Guess v. Sharp Manufacturing Co. of America, 114 S.W.3d 480, 484-85 (Tenn. 2003), but also "the stress produced may not be usual stress in comparison to the stress ordinarily experienced by an employee in the same type duty." Goodoe v. State, 36 S.W.3d 62, 66 (Tenn. 2001); Saylor v. Lakeway Trucking, Inc., 181 S.W.3d 314, 320 (Tenn. 2005) ("Rather the stress 'must be extraordinary and unusual in comparison to the stress ordinarily experienced by an employee in the same type of duty.'" (quoting Gatlin v. City of Knoxville, 822 S.W.2d 587, 592 (Tenn. 1991)); see also Houser v. Bi-Lo, 36 S.W.3d 68, 72 (Tenn. 2001) ("The injury must have resulted from an incident involving mental stress of an unusual or abnormal nature, rather than the day-to-day mental stresses and tensions to which workers in that field are occasionally subjected.") The test for a compensable injury alleged to have resulted from a purely mental or emotional stimulus is, thus, a two-part test: first, the injury must stem from "'an identifiable stressful, work-related event producing a sudden mental stimulus such as fright, shock, or excessive unexpected anxiety'"; and, second, "the event must be extraordinary in comparison to the stress ordinarily experienced by an employee in the same type of duty." Watley, 2007 WL 3010636 at *2; Castle v. Sullivan County Sheriff's Department, 2012 WL 475644 at **3-4 (Tenn. Workers' Comp. Panel 2012).

Employee contends the trial court applied the incorrect standard with respect to the second part of this two-part test. Employee contends that the trial court improperly applied an objective standard, when it should have applied a subjective standard taking into account the Employee's individual, pre-existing mental or psychological condition which may have predisposed him to reacting to the particular stress. However, this is not the law in Tennessee. By mandating that the event or stress be abnormal, extraordinary, or unusual "in comparison to the stress ordinarily experienced by an employee in the same type of duty," our Supreme Court has mandated the application of an objective test for this determination. Castle, 2012 WL 475644 at *6. The application of an objective standard is required even in cases such as that presently before us in which medical experts have opined that the Employee suffered PTSD stemming out of the particular event or stress. See Guess, 114 S.W.3d at 485.

Application of the objective standard to the determination of whether the event or stress was abnormal, extraordinary, or unusual is consistent with the Court's recognition that "the workers' compensation system 'does not embrace every stress or strain of daily living or every undesirable experience encountered in the duties of a contract of employment.'" Guess, 114 S.W.3d at 485 (citations omitted). It is further consistent with the prevailing approach taken by the courts of other states. See Eric M. Larsson and Jean A. Talbot, *Recovery Under Workers' Compensation Statute for Emotional Injury or Disease Caused by Work-Connected Stress Without Physical Cause or Result*, 45 COA 2d 341, §16 (Cum. Supp. July 2015) ("The courts have generally taken two approaches to determining the sufficiency of work-connected mental or emotional stress alleged to have

precipitated emotional injuries compensable under workers' compensation statutes: (1) a subjective approach, based on the peculiar individual perceptions of the injured worker; and (2) an objective approach, based on the likely perceptions of the average or normal worker. The practical difference between these two approaches lies in the degree of stress required for compensability. A subjective test is satisfied by ordinary or usual levels of stress, but an objective test calls for extraordinary or unusual levels of stress. Although still worthy of mention, *the subjective approach is fast becoming obsolete*." (Emphasis added)).

Contrary to Employee's contention, application of the objective standard to the determination of whether the stress was unusual is not inconsistent with the principle under Tennessee law that an employer takes an employee as it finds him. See Castle, 2012 WL 475644 at *6. This principle is not applicable to the determination of whether an event or stress was abnormal, extraordinary, or unusual. Rather it is only after the court first determines that an event or stress was abnormal, extraordinary, or unusual under the objective standard that the court then applies the principle that the employer takes the employee as it finds him to the determination of whether the abnormal, extraordinary, or unusual event or stress was, in fact, the medical/psychological cause of the employee's injuries. As the appellate court of one state has cogently explained:

> The court established a two-prong test to determine whether a stress-related injury is compensable. The first prong is set forth in paragraph two of the syllabus, wherein the court held: "[I]n order for an injury occasioned solely by mental or emotional stress to be compensable, the claimant must show that the injury resulted from greater emotional strain or tension than that to which all workers are occasionally subjected." In other words, the injury must result from "unusual" workplace stress. When considering whether work-related stress is "unusual," a court *must view the stress from an objective standpoint rather than from the position of the injured worker*. The test is an *objective* one, focusing on the stress experienced by all workers as a whole, not just on workers in a particular profession or occupation. To satisfy this test, the claimant must distinguish the job stress at issue from the normal, everyday stress that all workers experience from time to time. *The test relates to the stress itself, not to the worker's individualized or subjective response to the stress*.
>
> The *Ryan* court set forth the second prong of the test as follows: "Once a claimant has met this first test, he still must establish that the stress to which he * * * [sic] was subjected

> in his employment was, in fact, the medical cause of his injury." The claimant must demonstrate a "substantial causal relationship between the stress and the injury for which compensation is sought." *This component focuses upon the claimant's subjective response to the stress*. In general, the causal-relationship test poses a factual question and therefore is best left to medical experts and the trier of fact.

Bishop v. Ohio Bureau of Workers' Compensation, 768 N.E.2d 684, 689-90 (Ohio Ct. App. 2001) (citations omitted; emphasis added).[1]

The determination of whether a particular event or stress is abnormal, extraordinary, or unusual in comparison to the stress ordinarily experienced by an employee in the same type of duty is a question of fact. See Castle, 2012 WL 475644 at *6. In making this factual determination, "the trial court must examine not only the expert testimony concerning what is normal and ordinary for similarly situated employees, but should also consider the testimony of the Employee to the contrary and any supporting medical evidence." Id.

The event or stress in question was a statement made by another of Employer's employees, Barbara Lang, during one portion of her presentation on the second day of a three-day conference attended by Employee and approximately one hundred of his colleagues. Employee conceded that there was nothing unusual about being required to attend a training seminar such as this, and he acknowledged that his co-workers and peers were in attendance. According to Employee's own testimony, the statement made by Ms. Lang during her presentation was: "'*I want you to put yourself in your patient's shoes and imagine how it would feel when you're asked, 'Have you ever been physically, emotionally, or sexually abused'?*"[2] The statement was not made or directed to Employee individually. Rather, it was made to all one hundred plus of Employee's fellow employees in attendance at the conference. The statement was not made with respect to any specific patient or with respect to any specific incident of abuse, and the statement did not include any details regarding any type or incident of abuse. Rather, the statement was broad and general.

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[1] We recognize that under Ohio law, the objective test for determining whether the stress to which the employee was exposed was unusual requires that the courts compare that stress to the stress experienced by all employees, generally; whereas, under Tennessee law, the stress to which the employee was exposed is compared to that experienced by only those employees in the same type of duty or field as the employee. We, nonetheless, find the Ohio appellate court's differentiation between the application of the objective test and the subjective test highly instructive and consistent with Tennessee law as discussed supra.

[2] We note that the various healthcare providers who treated and evaluated Employee each testified to a different version of the statement/statements alleged by Employee to have caused his injuries. All of these versions appear markedly different in content and scope from the statement to which Employee himself testified. Because the trial court credited the testimony of Employee, we rely on his version of the statement for purposes of our analysis.

Employee also testified that in his experience as a psychiatric nurse, he routinely had taken patient histories and had performed patient assessments during which he had asked patients about family trauma, including abuse, though not about the details of the abuse. Employee also testified that it had not been uncommon in his experience for patients to present with a history of abuse and that patients had sometimes told him, as a nurse, that they had been abused. Similarly, Employee's treating psychiatrist, Dr. LeBuffe, testified that in dealing with mental health patients, it is common to deal with patients who had experienced childhood traumas or abuse, and that taking histories of patients who had such problems is an integral part of the job of a psychiatric unit charge nurse. According to Dr. LeBuffe, it is not unusual for a nurse to have taken the history of a patient who might have experienced sexual abuse.

We conclude that the evidence does not preponderate against the finding of the trial court that the stress to which Employee was exposed and which Employee alleges caused his injuries was not abnormal, extraordinary, or unusual when viewed under the objective standard. The evidence supports a finding that the stress which Employee contends caused his injuries, the statement made by Ms. Hume at the September 27, 2012 conference, was not abnormal, extraordinary, or unusual "in comparison to the stress ordinarily experienced by an employee in the same type of duty," or even in comparison to the stress ordinarily experienced by Employee himself in his capacity as a nurse working in a psychiatric unit. Accordingly, Employee's injuries, even though they may have resulted from his exposure to that statement, are not compensable. See Guess, 114 S.W.3d at 485.

Evidentiary Rulings

Employee also appeals from two evidentiary rulings by the trial court: 1) the trial court's exclusion of causation testimony from Employee's treating psychotherapist, Advanced Practice Nurse Kate Hume; and, 2) the trial court's admission into evidence of employee's medical records from Bellin Psychiatric Center and Amy Rosine, M.D. Based upon our ruling with respect to the non-compensability of Employee's injuries, these evidentiary issues are pretermitted.

Conclusion

The judgment is affirmed. Costs are taxed to William Ireton and his surety, for which execution may issue if necessary.

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PAUL G. SUMMERS, SENIOR JUDGE

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE

WILLIAM IRETON v. HORIZON MENTAL HEALTH MANAGEMENT LLC

Chancery Court for McMinn County
No. 2013CV108

No. E2015-00296-SC-WCM-WC-FILED-JANUARY 19, 2016

Judgment Order

This case is before the Court upon the motion for review filed by William Ireton pursuant to Tennessee Code Annotated section 50-6-225(e)(5)(A)(ii), 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.

It appears to the Court that the motion for review is not well taken and is, therefore, denied. The Panel's findings of fact and conclusions of law, which are incorporated by reference, are adopted and affirmed. The decision of the Panel is made the judgment of the Court.

Costs are assessed to William Ireton and his surety, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM

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