IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
December 4, 2018 Session

CLYDE JASON STAMBAUGH v. METROPOLITAN GOVERNMENT OF NASHVILLE & DAVIDSON COUNTY, ET AL.

Appeal from the Chancery Court for Davidson County
No. 17-345-I Claudia Bonnyman, Chancellor

No. M2017-02203-COA-R3-CV

The benefit board of a metropolitan government denied injured-on-duty benefits to a police officer with post-traumatic stress disorder. On a petition for writ of certiorari, the trial court upheld the benefit board's decision. Finding material evidence to support the action of the benefit board, we affirm the decision of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

ANDY D. BENNETT, J., delivered the opinion of the Court, in which FRANK G. CLEMENT, JR., P.J., M.S., and W. NEAL MCBRAYER, J., joined.

Jack L. Byrd, Nashville, Tennessee, for the appellant, Clyde Jason Stambaugh.

Lora Barkenbus Fox, Nashville, Tennessee, for the appellees, Metropolitan Government of Nashville and Davidson County and Metropolitan Employee Benefit Board.

OPINION

FACTUAL AND PROCEDURAL BACKGROUND

Clyde Jason Stambaugh filed a petition for writ of certiorari in April 2017 challenging the decision of the Benefit Board of the Metropolitan Government of Nashville and Davidson County ("Metro") denying his request for Injured-on-Duty ("IOD") benefits. Mr. Stambaugh, a career law enforcement officer, was hired by the Metropolitan Police Department ("the Department") on October 1, 2013. On March 21, 2014, he participated in the pursuit of an armed fugitive who was eventually shot and killed in a gun battle involving multiple officers. He returned to work on March 25, 2014.

According to Mr. Stambaugh's petition, he began experiencing emotional problems and nightmares soon after the shooting and "sought help and counseling from his pastor and others." He also went to Police Advocacy Support Services ("PASS"). On October 10, 2016, Mr. Stambaugh was experiencing suicidal symptoms and returned to PASS, where he was diagnosed with post-traumatic stress disorder ("PTSD") and referred for counseling. In the course of his treatment at PASS, Mr. Stambaugh recounted his history of abuse by his father during childhood and alcoholism; he had been sober since 2007.

Psychologist Norman Jones evaluated Mr. Stambaugh on October 24, 2016. His evaluation suggested PTSD. Mr. Jones referred Mr. Stambaugh for psychiatric intervention and completed a statement dated November 12, 2016, indicating that Mr. Stambaugh was currently unable to complete the duties of a police officer.

Dr. James Hughes, a clinical psychologist, tested Mr. Stambaugh on November 8, 2016, and interviewed him on November 17, 2016, for a Fitness for Duty evaluation at the request of the Department. Dr. Hughes concluded that Mr. Stambaugh was not fit for duty as a police officer and that he was suffering from a "severe and diagnosable mental disorder that is apparently trauma-related." He recommended that Mr. Stambaugh begin counseling with someone experienced in treating police officers suffering from trauma-related disorders. Furthermore, Dr. Hughes suggested consideration of a psychiatric referral. Dr. Gary Lee, a clinical psychologist, began treating Mr. Stambaugh on December 12, 2016.

After he was decommissioned from the police force, Mr. Stambaugh applied for an IOD pension. Alternative Service Concepts ("ASC"), Metro's contractor, denied Mr. Stambaugh's claim at the first level of review because the shooting incident was not considered extraordinary or unusual for the job and because the reviewers concluded that any injury resulted from the buildup of stress over time. The Department and the civil service medical examiner concurred with ASC's decision. Mr. Stambaugh appealed to the IOD committee of the Metro Benefit Board. That committee made no recommendation to the full benefit board; one member moved to uphold the ASC's recommendation to deny the claim, but the motion failed due to the lack of a second.

The benefit board met on April 4, 2017. A motion to uphold ASC's denial of benefits passed by a vote of five to three, with one abstention. Mr. Stambaugh then filed his petition for writ of certiorari in chancery court.

In a ruling entered on October 10, 2017, the chancellor upheld the decision of the benefit board. The court found "material evidence to support the board's decision to deny recognition of a psychological injury to the plaintiff in the line of duty." There was evidence that Mr. Stambaugh's "PTSD stemmed from childhood trauma and mental

disorders other than from the shooting incident." We will discuss the chancellor's order in more detail as relevant to our analysis of the issues presented.

On appeal, Mr. Stambaugh asserts that the trial court erred in denying his request to overturn Metro's final decision in which it denied his request for an IOD pension.

STANDARD OF REVIEW

We review the decisions of Metro's benefit board under the common law writ of certiorari. *Sloan v. Emp. Benefit Bd. of Metro. Gov't of Nashville & Davidson Cnty.*, No. M2017-01342-COA-R3-CV, 2018 WL 3999270, at *2 (Tenn. Ct. App. Apr. 30, 2018).[1] Review under the common law writ of certiorari entails a determination of whether the municipal agency acted illegally, arbitrarily, fraudulently, or in excess of its jurisdiction. *McCallen v. City of Memphis,* 786 S.W.2d 633, 638 (Tenn. 1990). In doing so, the court determines "whether there is any material evidence that supports the action of the administrative agency." *Laidlaw Envtl. Servs. of Nashville, Inc. v. Metro. Bd. of Health for Nashville & Davidson Cnty.,* 934 S.W.2d 40, 49 (Tenn. Ct. App. 1996).

Under the common law writ, "courts may not (1) inquire into the intrinsic correctness of the lower tribunal's decision, (2) reweigh the evidence, or (3) substitute their judgment for that of the lower tribunal." *State ex rel. Moore & Assocs., Inc. v. West*, 246 S.W.3d 569, 574 (Tenn. Ct. App. 2005) (citations omitted). The issue of "[w]hether or not there is any material evidence to support the action of the agency is a question of law to be decided by the reviewing court upon an examination of the evidence introduced before the agency." *Massey v. Shelby Cnty. Ret. Bd.*, 813 S.W.2d 462, 465 (Tenn. Ct. App. 1991) (citing *Hoover Motor Express Co. v. R.R. & Pub. Utils. Comm'n,* 261 S.W.2d 233 (Tenn. 1953)). With respect to conclusions of fact, Judge Cantrell described the proper analysis for a reviewing court: "'The function of the reviewing court is limited to asking whether there was in the record before the fact-finding body *any* evidence of a material or substantial nature from which that body *could* have, *by reasoning from that evidence,* arrived at the conclusion of fact which is being reviewed.'" *Id.* (quoting B. Cantrell, *Review of Administrative Decisions by Writ of Certiorari in Tennessee*, 4 MEM. ST. U. L. REV. 19, 29-30 (1973)).

[1] Applying the principles announced by our Supreme Court in *Tidwell v. City of Memphis*, 193 S.W.3d 555 (Tenn. 2006), this court held that Metro's benefit board's employment decisions were subject to the Uniform Administrative Procedures Act ("UAPA"). *Metro. Gov't of Nashville & Davidson Cnty. v. Metro. Emp. Benefit Bd.*, No. M2006-00720-COA-R3-CV, 2007 WL 1805151, at *4 (Tenn. Ct. App. June 22, 2007). Tennessee Code Annotated section 27-9-114, the statute interpreted as making the UAPA applicable to the benefit boards, was amended effective April 15, 2008, however, to exempt certain metropolitan counties, including Metro. *See* Tenn. Code Ann. § 27-9-114(c).

ANALYSIS

The issue in this case is whether the benefit board erred in denying Mr. Stambaugh a pension under § 3.29.040 of the Metro Code, which provides, in pertinent part:

> A member who is covered for a disability pension, who becomes disabled, as defined in Section 3.29.010, in the line of duty, shall be eligible to receive a disability pension, provided his disability is a direct result of an act occurring or thing done or risk taken which, as determined in the discretion of the board, was required of him in the performance of his duty as a metropolitan employee.

The benefit board, and the courts, have looked to workers' compensation law for guidance in interpreting the IOD disability provisions of the Metro Code. *Sloan*, 2018 WL 3999270, at *4; *Stromatt v. Metro. Emp. Benefit Bd. of Metro. Gov't of Nashville*, No. 01-A-01-9707-CH00354, 1998 WL 557610, at *6 (Tenn. Ct. App. Sept. 2, 1998). The Tennessee Supreme Court has set forth a two-part requirement for a mental injury to "arise out of employment." *See Gatlin v. City of Knoxville*, 822 S.W.2d 587, 591-92 (Tenn. 1991):

> [1] [I]t 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 gradual employment stress building up over a period of time. [2] In addition, the stress produced may not be usual stress, but must be extraordinary and unusual in comparison to the stress ordinarily experienced by an employee in the same type duty.

Id.

A. Identifiable stressful event, not gradual employment stress.

In its appellate brief, after setting out the relevant law, Metro quotes the following pertinent passage from the trial court's order upholding the decision of the benefit board:

> The plaintiff did not exhibit symptoms or have problems at work until over two years after the incident.
>
> There was proof from Norman Jones, a psychologist, that the plaintiff's illness stemmed from childhood trauma and mental disorders other than from the shooting incident. There is material evidence to support the board's decision to deny recognition of a psychological injury to the plaintiff in the line of duty.

Metro's brief contains no reference to other evidence to support this prong of the board's decision. Although the benefit board did not explain the reasons for its vote, the following excerpt from the transcript of the board's April 4, 2017 meeting contains the rationale presented by the ASC representative and the only discussion regarding the first prong of the analysis:

> MS. HAMPTON [ASC representative]: Well, I would just—if I—if I may: For the first criteria, it has to be a specific work incident. And because of the information that we got from the doctor, there were other things—not only this incident, but there were other things, personal, personal issues that were—that were going on with him. So we couldn't really say if that was something that causes PTSD *or if it was something from his past.* He did have an incident that was at work, for sure. He did have an incident.

(Emphasis added).[2]

The medical records from Norman Jones, dated October 24, 2016, state that Mr. Stambaugh "increased his level of distress over the past two years after a work related shooting in 2014." Mr. Stambaugh initially minimized the impact of the shooting, but as time went on he "began to recognize nightmares and re-experiencing symptoms." He "began to withdraw internally with episodes of greater emotional detachment from his family." Mr. Stambaugh reported "episodes of agitation and anger without outbursts." Watching training videos would cause him to re-experience flashbacks. Mr. Stambaugh "reached a point where he was unable to function in the workplace." According to Mr. Jones, Mr. Stambaugh "related a history of cumulative stress both in the workplace as well as recognizing the triggering of a history of abuse as a child by his biological father." He had been a sober alcoholic for nine years. Since the shooting, Mr. Stambaugh had been experiencing flashbacks, nightmares, depression, panic attacks, sleep distress, feelings of hopelessness, social isolation, and other symptoms.

Dr. Hughes, who performed a Fitness for Duty evaluation at the request of Metro, stated that Mr. Stambaugh had been "experiencing a wide range of psychiatric symptoms, the onset occurring soon after his involvement in an officer-involved shooting in which the suspect died." He further noted that Mr. Stambaugh's "conduct and performance record in public safety has apparently been exemplary and problem-free before these

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[2] This rationale is consistent with the reasoning contained in the administrative record to support ASC's denial of benefits:

> Did the event subject the employee to sudden mental stimulus such as fright, shock or excessive unexpected anxiety as opposed to gradual buildup of stress over time? THE MEDICAL RECORDS DOCUMENT MULTIPLE GRADUAL NON-WORK RELATED TRAUMATIC EVENTS FROM HIS CHILDHOOD TO ADULTHOOD. . . . THIS WOULD INDICATE[ ] A GRADUAL BUILDUP OF STRESS OVER TIME.

difficulties" and that "his personal life has been stable and positive until the reported symptoms began to disrupt his personal and social functioning."

Dr. Lee, Mr. Stambaugh's treating psychologist, noted that PTSD often presents with delayed onset, especially with law enforcement officers, who tend to try to "suck it up and go on." He stated:

> The perceived stigma associated with PTSD and the resulting assault it has on their self-concept, professional identity, and feelings of being "weak" are extremely difficult for first responders to handle or accept. Thus, many do not seek treatment for clinical symptoms until they become nearly incapacitated.

Dr. Lee wrote two letters stating his opinion that Mr. Stambaugh's "difficulties are a direct result of and directly related to the on duty shooting he was involved in [in] 2014."

The question we must answer then is, from a legal point of view, was Mr. Stambaugh's PTSD the cumulative result of his childhood trauma and the stress of the shooting? For the reasons discussed below, we have concluded that the answer must be "No."

As mentioned above, the general rule is that, to be compensable, the injury must "be caused by an identifiable stressful, work-related event producing a sudden mental stimulus . . . and therefore it may not be gradual employment stress building up over a period of time." *Gatlin*, 822 S.W.2d at 591-92. Thus, in *Splain v. City of Memphis*, No. 02A01-9511-CH-00259, 1996 WL 383297, at *1-2 (Tenn. Ct. App. July 10, 1996), a police officer applied for an IOD pension based upon problems diagnosed as major depression with possible slow-onset PTSD. The officer related his symptoms to the stress of the job. *Id.* at *1. The evaluating psychiatrist "detailed twelve specific examples of traumatic events that petitioner stated that he had experienced on the job from November 1979 to February 1991." *Id.* at *2. One of the evaluating physicians opined that "the accumulation of these events had left petitioner medically disabled." *Id.* The benefit board denied the officer benefits, but the trial court reversed the board's decision. *Id.* On appeal, this court reversed the trial court's decision because neither the petitioner nor the evaluating physicians "could point to a particular stressful event or 'accident' that in their opinion was the direct and proximate result of his condition." *Id.* at *3. *See also Sloan*, 2018 WL 3999270, at *8 (finding material evidence that officer's PTSD "did not stem solely from this one incident, but cumulative work stress and multiple traumatic events during her years with the fire department"); *Cheslock v. Bd. of Admin., City of Memphis Ret. Sys.*, No. W2001-00179-COA-R3-CV, 2001 WL 1078263, at *5 (Tenn. Ct. App. Sept. 13, 2001) (finding material evidence that the officer's PTSD "was not the result of an accident occurring at a definite time and place, but rather caused by a gradual build up of stress").

In the present case, however, the evidence is that Mr. Stambaugh was able to perform his police duties well until the shooting incident. Metro's "cumulative effect" argument is based upon the impact of Mr. Stambaugh's traumatic childhood, but Metro ignores an important rule of law applicable to an employee's prior history: "'An employer takes an employee as he finds him, and assumes the risk that an employee with a weakened condition may be aggravated by some injury which might not affect a normal person.'" *Cheslock*, 2001 WL 1078263, at *4 (quoting *Beck v. State*, 779 S.W.2d 367, 371 (Tenn. 1989)). Thus, in *Cheslock*, the court rejected the board's argument that the officer's "previous experiences of depression should be considered as contributing factors to his PTSD [arising after two incidents at work]." *Id.*

A similar argument was raised by the State and rejected by the Court in *Beck*, a case involving a driver's license examiner who was assaulted on the premises of the driver's license testing center and developed debilitating PTSD. *Beck*, 779 S.W.2d at 368-69. A psychiatrist testified that the examiner's PTSD was "linked to a rape she suffered ten years earlier and aggravated or 'jarred to a head' by the incident on August 7, 1987." *Id.* at 369. The State argued that "other factors," not just the August 1987 incident, caused the examiner's psychological impairment, but our Supreme Court disagreed:

> Though there was evidence that Plaintiff's psychological condition predisposed her to suffer a disability as a result of the attack, there was no evidence that Plaintiff's job performance was affected by her psychological condition before the assault, and there was medical testimony that Plaintiff's emotional impairment was the result of the August 7, 1987 incident. An employer takes an employee as he finds him, and assumes the risk that an employee with a weakened condition may be aggravated by some injury which might not affect a normal person.

Beck, 779 S.W.2d at 370-71. The Court rejected the State's argument and ultimately affirmed the decision of the Claims Commission awarding the driver's license examiner workers' compensation benefits. *Id.* at *371.

Under the first prong of the mental injury analysis, we find no material evidence to support a conclusion that Mr. Stambaugh's PTSD is not compensable.

B. "Extraordinary and unusual."

Metro quotes the following passage from the trial court's order pertinent to the second prong of the mental injury analysis:

> The Court must find there is material evidence to support the benefit board's decision that the 2014 shooting incident was not a sudden and

> extraordinary event but was expected in the plaintiff's line of work as a police officer. The administrative record reflects that the plaintiff had been in law enforcement over 15 years. He had been trained in the use of weapons by Metro and earlier by another law enforcement agency. On the day of the shooting incident, the plaintiff had his weapon available for use. Four other officers also had their weapons available and used them as required in their job.

As stated above, we do not know the basis of the benefit board's decision. At the hearing, Sergeant Hickman, a witness from the Metro police force, was questioned concerning how often police officers in the Department used deadly force:

> DEPUTY CHIEF HENRY [benefit board member]: Do you—do you know on average how many times an average police officer uses deadly force in their career? Do you have that information?
>
> SERGEANT HICKMAN: I don't have that information in front of me, Chief, no, sir. I'll (Unintelligible)—
>
> DEPUTY CHIEF HENRY: Just off the top of your head?
>
> SERGEANT HICKMAN: It's probably pretty low. You know, somebody brought up just a few minutes ago that some officers go an entire career without having to fire their weapon. I would say if you look at the numbers of our police department, the number of officers who've been involved in a shooting is probably very, very low. I would say probably less than 5 percent. I don't know the exact number. Cold Case tracks the officer-involved shootings. But it's a very small number of our officers who are actually involved in a shooting.
>
> DEPUTY CHIEF HENRY: So if you have had 1400 officers and 10 officer involved shootings a year, and two of those are deadly, then that would be probably less than 1 percent?
>
> SERGEANT HICKMAN: Yes, sir.

The evidence showed that, because of the GLOCK weapons used by the Metro officers, there was no way to know whose bullets killed the fugitive.

Under *Gatlin*, "the stress produced may not be usual stress, but must be extraordinary and unusual in comparison to the stress ordinarily experienced by an employee in the same type duty." *Gatlin*, 822 S.W.2d at 592. What does this mean? The available caselaw applying this prong is from the worker's compensation context, where there is a different standard of review.[3] Nevertheless, we find some guidance from

[3] In the workers' compensation context, review of findings of fact "shall be de novo upon the record of the workers' compensation 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(a)(2).

these cases. In *Stevenson v. State*, No. M2001-02522-WC-R3-CV, 2002 WL 31431499, at *1 (Tenn. Workers' Comp. Panel Oct. 31, 2002), the Court vacated a judgment of dismissal and remanded the case to the Claims Commission to determine whether the particular incident of breaking up a fight between inmates "fell within the normal stress involved in the prison setting or whether the stress was of an unusual or abnormal nature." The benefit board must decide whether the event is "extraordinary or outside the realm of normal duties that law enforcement officers routinely face and are expected to handle." *Castle v. Sullivan Cnty. Sheriff's Dep't*, No. E2011-00988-WC-R3-WC, 2012 WL 475644, at *6 (Tenn. Workers' Comp. Panel Feb. 15, 2012) (holding that there was question of fact regarding whether sheriff's deputy sustained a compensable mental injury as a result of a confrontation that occurred when he served an eviction warrant).

A prison warden was found to have suffered extraordinary and unusual stress in *Craven v. Corrections Corp. of America*, No. W2005-01537-SC-WCM-CV, 2006 WL 3094121, at *7 (Tenn. Workers' Comp. Panel Oct. 26, 2006). A member of the warden's staff was murdered by an inmate. *Craven*, 2006 WL 3094121, at *2. The warden subsequently developed PTSD. *Id.* at *4. The Court found that the stress "appears to be extraordinary and unusual because of Mr. Craven's familiarity with Mr. Steed and their unique employer/employee relationship." *Id.* at *7.

In the case before this court, there was evidence presented to the benefit board that perhaps five percent of Metro police officers employ their guns, approximately one percent in a fatal shooting.[4] In Mr. Stambaugh's case, he was near the fugitive as the man died. Mr. Stambaugh had been on the police force for fifteen years and had been trained in the use of firearms; he was carrying a firearm at the time of the incident. The "extraordinary and unusual" issue presents a question of fact. *Castle*, 2012 WL 475644, at *6; *Stevenson*, 2002 WL 31431499, at *1. Under the deferential standard of review applicable to factual questions under the common law writ of certiorari, the relevant question is whether there is "'*any* evidence of a material or substantial nature from which [the benefit board] *could* have, *by reasoning from that evidence*, arrived at the conclusion'" that the shooting incident experienced by Mr. Stambaugh was not extraordinary and unusual? *Massey*, 813 S.W.2d at 465 (quoting B. Cantrell, *Review of Administrative Decisions by Writ of Certiorari in Tennessee*, 4 MEM. ST. U. L. REV. 19, 29-30 (1973)). We conclude that there is material evidence to support such a conclusion. Therefore, we must affirm the board's decision.

[4] We do not consider the lack of certainty regarding which officer's gun actually killed the fugitive to be significant. All five of the officers fired their guns and the fugitive died.

CONCLUSION

The judgment of the trial court is affirmed, and this matter is remanded with costs of appeal assessed against the appellant, Clyde Jason Stambaugh, for which execution may issue if necessary.

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ANDY D. BENNETT, JUDGE