STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. WORKERS' COMPENSATION COURT
APPELLATE DIVISION

HEIDI GARRITY	)	
	)	
VS.	)	W.C.C. 04-01165
	)	
TOWN OF WARREN	)	

DECISION OF THE APPELLATE DIVISION

OLSSON, J. This matter is before the Appellate Division on the petitioner/employee's appeal from the denial of her original petition in which she alleges that she experienced stress in her position as a police dispatcher which caused a sleep disorder resulting in partial disability from June 10, 2003 through January 21, 2004. After reviewing the record and considering the arguments of both parties, we deny the employee's appeal and affirm the decision of the trial judge.

The employee testified that after graduating from high school in 1988, she worked for nine (9) years as an emergency medical technician with a private ambulance company and rescue service. At the time of her testimony in June 2004, she had been working as a dispatcher for the town of Warren for eight (8) years, initially on a part-time basis on the night shift and then full-time. The dispatcher position was responsible for answering three (3) 9-1-1 lines, four (4) police lines, and one (1) fire department line, and dispatching the appropriate services by radio. She also was required to greet the public in a lobby area outside of her office when necessary. For the past five (5) years, Ms. Garrity worked alone on the day shift from 7:00 a.m. to 3:00 p.m.

She explained that in order to use the bathroom she would have to call an officer in off the road or take a portable radio with her.

The employee testified that during the early part of 2003, there was a significant amount of construction going on in the town, including sidewalks being replaced and repairs to the two (2) major routes in and out of town. During this time, she received several calls complaining about the construction, some of which were abusive and rude. In the spring of 2003, the town also experienced a shortage of police officers as a result of a number of officers out of work due to injury and some officers who had been sent to serve in Iraq. Morale in the department was down and at times, officers would argue with her about handling calls for assistance.

The employee stated that dealing with emergency situations such as fires, crimes, suicides, and car accidents was a regular part of her job. She acknowledged that her office was tied into the statewide 9-1-1 system and an operator in the state office would assist her if a call came in while she was busy with another call. She also admitted that pursuant to the collective bargaining agreement between her union and the town, only one (1) dispatcher was required to be on duty during the 7:00 a.m. to 3:00 p.m. weekday shift.

The employee testified that in June of 2003 she grew so frustrated with the lack of help that she left work. She treated with Dr. Curtis J. Mello for fatigue and depression. She also saw a psychiatrist and a psychologist. Ms. Garrity indicated that she had treated for sleep problems and depression prior to 2003. The employee returned to her regular job as a dispatcher on January 21, 2004 and was still working in that position throughout the trial.

The medical evidence presented by the parties consisted of the deposition and records of Dr. Curtis J. Mello, and the records of Dr. Thomas J. Paolino, Jr., Dr. Michael Friedman, Kevin J. Lourie, and Dr. Paul T. Marcaccio.

Dr. Mello, who is board certified in internal medicine, pulmonary medicine, and critical care medicine, has been Ms. Garrity's primary care physician since 1998. His records reveal that as early as 1999, the employee complained of chronic fatigue and insomnia. These complaints continued into 2002 despite a change in her work schedule from nights to days. From February to July 2002, Ms. Garrity saw Dr. Michael Friedman, a psychiatrist, for complaints of difficulty sleeping and stress at work. Dr. Friedman prescribed medication to address insomnia and a depressive disorder. As of July 2, 2002, the employee reported that she was sleeping well, had discontinued the medication, and was having no problems.

On June 9, 2003, the employee saw Dr. Mello for a sick visit. The doctor stated that she was "tearful" and very stressed. Her situation at work was particularly stressful; she was having difficulty sleeping; and she found that she had no patience with her two (2) children. Dr. Mello diagnosed severe depression and prescribed an anti-depressant. The doctor was aware that Ms. Garrity was employed as a police radio dispatcher, although he never provided a description of the specific job duties of her position. When he was questioned as to the cause of the severe depression, he responded as follows:

> "My opinion, based upon our conversation that day, was that she was having considerable amount of stress at work. It was apparently spilling over into home. I thought that the work was probably the precipitating event with the most certainty, and I'm trying to remember some of the conversation that went on but she seemed to be describing how stressful it was, how on demand they were, I guess working overtime and all these other things, that's my recollection." Pet. Ex. 2, p. 7.

Dr. Mello opined that the employee was incapable of performing her regular job duties at that point. Although her depression improved with the medication and being out of work, the chronic fatigue problem continued. Dr. Mello stated that the etiology of this problem was uncertain. Sleep studies done previously had not isolated the problem and the doctor referred her

for further evaluation by Dr. Paul T. Marcaccio. That evaluation on June 20, 2003 and additional testing failed to provide any further information as to the cause of the problem.

Ms. Garrity was referred to Dr. Thomas J. Paolino, a psychiatrist, for evaluation and treatment. The report of the initial evaluation on September 2, 2003, states that the employee related that she was unable to cope with stressors at work and stress from her two (2) children. With regard to the stress at work, she cited the construction in town, citizens yelling at her on the telephone and manpower problems in the department. Dr. Paolino diagnosed depressed insomnia and prescribed additional medications. In an application for medical leave dated November 24, 2003, the doctor noted that the problem had been building up for the last two (2) years and became disabling in June 2003.

While she was seeing Dr. Paolino, Ms. Garrity also saw Kevin J. Lourie, a mental health counselor, on a regular basis. His records reflect complaints from the employee regarding her work conditions, including the multiple radios to answer, the demands of the public, the police officers, the chief, and other departments, and generally too much work for one (1) person.

The employee returned to work, apparently of her own volition. Dr. Mello testified that he just remembered that she said she was going back to work.

The trial judge concluded that the employee had failed to present evidence that she sustained "a mental injury caused by emotional stress resulting from a situation of greater dimensions than the day-to-day emotional strain and tension which all employees encounter daily without serious mental injury." R.I.G.L. § 28-34-2(36). She noted that the employee's job as a police dispatcher was stressful by its very nature, but she did not sustained her burden of proof under the statute because she did not point to any unusual event or circumstance as the

cause for her stress. Accordingly, the trial judge denied and dismissed the employee's petition for benefits.

Pursuant to R.I.G.L. § 28-35-28(b), the Appellate Division must strictly adhere to the trial judge's findings on factual matters absent clear error. Diocese of Providence v. Vaz, 679 A.2d 879, 881 (R.I. 1996). The Appellate Division is entitled to conduct a *de novo* review only when a finding is made that the trial judge was clearly wrong. Id. (citing R.I.G.L. § 28-35-28(b); Grimes Box Co. v. Miguel, 509 A.2d 1002 (R.I. 1986)). If the record before the Appellate Division reveals evidence sufficient to support the trial judge's findings, the decision must stand.

The employee has filed two (2) reasons of appeal in which she argues that the trial judge erred in her application of the standard set forth in R.I.G.L. § 28-34-2(36) because she required the employee to prove she experienced some more stressful event or situation than other police dispatchers, rather than comparing her level of stress to all employees.

Disability resulting from a mental injury, without physical trauma or physical manifestations, is compensable in Rhode Island. However, pursuant to R.I.G.L. § 28-34-2(36), the employee must establish not only a nexus between the mental injury and her employment, but must identify some dramatically stressful stimuli that are not ordinarily present or expected in the workplace as the cause of the mental injury. Rega v. Kaiser Aluminum & Chemical Corp., 475 A.2d 213, 216 (R.I. 1984); Seitz v. L & R Industries, Inc., 437 A.2d 1345, 1351 (R.I. 1981). The statute provides as follows:

> "The disablement of an employee resulting from mental injury caused or accompanied by identifiable physical trauma or from a mental injury caused by emotional stress resulting from a situation of greater dimensions than the day-to-day emotional strain and tension which all employees encounter daily without serious mental injury shall be treated as an injury as defined in § 28-29-2(7)."

Although the Seitz case was decided prior to the enactment of R.I.G.L. § 28-34-2(36), the Rhode Island Supreme Court has stated that the amendment to the statute did not alter the prevailing law and merely codified the standard set forth in the Seitz opinion.

In the present matter, Ms. Garrity indicated in her testimony and in her complaints to her doctors that the stress at work was caused by abusive telephone calls from citizens regarding road construction in the town, arguments with police officers resulting from the shortage of personnel, and excessive demands of the position which she felt were too much for one (1) person. Dealing with a rude member of the public, enduring adverse relationships with co-workers and feeling overworked and overburdened by work responsibilities due to a lack of assistance, are all situations experienced by innumerable employees in a multitude of occupations. The stressors cited by Ms. Garrity are very similar to the circumstances presented in the Seitz case which involved strained interpersonal relationships with co-employees, increased job duties, and disrupted business operation due to moving a business to a new location. In that case, the Rhode Island Supreme Court concluded:

> "An analysis of the testimony in the case would clearly indicate that this stressful period contained conditions that, though scarcely tranquil did not exceed the intensity of stimuli encountered by thousands of other employees and management personnel every day. If psychic injury is to be compensable, a more dramatically stressful stimulus must be established."

Seitz, 437 A.2d at 1351.

Based upon the testimony in the record before this panel, we find that the stimuli cited by Ms. Garrity as the cause of her psychic injury are not so dramatically stressful or out of the ordinary as to establish a situation of greater dimensions than the everyday emotional strain and tensions experienced by employees on a daily basis.

The employee targets a comment by the trial judge in her decision that the job of a police dispatcher is stressful by its very nature due to having to handle emergency calls. Although a job may be stressful, such a description does not automatically qualify anyone performing that job who becomes disabled due to a mental injury to receive workers' compensation benefits. An employee must still establish a situation so out of the ordinary as to distinguish it from the everyday tension and stress inherent in that occupation. In the present matter, Ms. Garrity did not even mention the handling of emergency calls, or any one particular call, as a cause of her stress. She cited the working conditions of her job, rather than the work itself. Consequently, we find that the trial judge was not clearly wrong in her ultimate conclusion that the employee's mental injury and resulting disability were not compensable.

We would emphasize that this determination was not based in any way on credibility. It is clear from the medical records that the employee likely suffered from depression for a period of time due to difficulty coping with the situation at work. Unfortunately, our compensation system imposes stricter criteria for a mental injury as compared to a physical injury. Based upon the circumstances of Ms. Garrity's case, she was unable to satisfy those stricter criteria, despite the medical evidence establishing that she suffered from depression due to stressful conditions at work.

Consequently, the employee's appeal is denied and dismissed and the decision and decree of the trial judge is affirmed. In accordance with Rule 2.20 of the Rules of Practice of the Workers' Compensation Court, a final decree, a copy of which is enclosed, shall be entered on

Connor and Ricci, JJ. concur.

ENTER:

_____
Olsson, J.

_____
Connor, J.

_____
Ricci, J.

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FINAL DECREE OF THE APPELLATE DIVISION

This cause came on to be heard by the Appellate Division upon the appeal of the petitioner/employee and upon consideration thereof, the appeal is denied and dismissed, and it is:

ORDERED, ADJUDGED, AND DECREED:

The findings of fact and the orders contained in a decree of this Court entered on October 8, 2004, be, and they hereby are, affirmed.

Entered as the final decree of this Court this day of

BY ORDER:

_____
John A. Sabatini, Administrator

ENTER:

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Olsson, J.

_____
Connor, J.

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Ricci, J.

I hereby certify that copies of the within Decision and Final Decree were mailed to Conrad M. Cutcliffe, Esq., and Michael J. Feeney, Esq., on

_____