STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. WORKERS' COMPENSATION COURT
APPELLATE DIVISION

SANTA IADEVAIA	)	
	)	
VS.	)	W.C.C. 2005-03798
	)	
PROVIDENCE SCHOOL DEPARTMENT	)	

DECISION OF THE APPELLATE DIVISION

OLSSON, J. This matter is before the Appellate Division on the employee's appeal from the denial of her original petition for workers' compensation benefits alleging work-related stress resulting in disability on or about October 14, 2004. After a thorough review of the record and consideration of the arguments of the respective parties, we deny the employee's appeal and affirm the decision and decree of the trial judge.

The employee claimed a stress related injury arising out of her employment which caused an aggravation of her multiple sclerosis symptoms. An original petition for workers' compensation was filed and denied in a pretrial order dated August 5, 2005, and a timely claim for trial was made. During the trial, the employee was represented by counsel. After the trial decision was rendered, the employee filed her reasons of appeal *pro se*. An attorney presented the oral argument on her behalf, but did not file any documents in support of the appeal.

The employee and two (2) school department officials testified at trial, however, the only transcript provided to the Appellate Division was the trial judge's bench decision. In accordance with R.I.G.L. § 28-35-28(a), it is the responsibility of the appealing party to file with the court

"so much of the transcript of testimony and rulings as he or she deems pertinent." The failure to provide the full transcript can have adverse consequences. The "deliberate decision to prosecute an appeal without providing the Court with a transcript of the proceedings in the trial court is risky business. Unless the appeal is limited to a challenge to rulings of law that appear sufficiently on the record and the party accepts the findings of the trial justice as correct, the appeal must fail." 731 Airport Assocs., LP v. H & M Realty Assocs., LLC, 799 A.2d 279, 282 (R.I. 2002). We have attempted to address the reasons of appeal filed by the *pro se* employee without the benefit of a complete transcript as best we can.

The facts recited for purposes of this decision have been gleaned from the bench decision rendered by the trial judge. The employee testified that in October of 2004 she was employed by the Providence School Department as an assistant principal at Esek Hopkins Middle School. At the time, she had been employed by the Providence School Department for twenty-one (21) years; initially as a science teacher, and beginning in 1997 or 1998, as an assistant principal. Her duties included handling disciplinary actions involving conferences with students, parents, and teachers, working with multi-disciplinary teams to improve the curriculum, conducting teacher evaluations, and supervising other school functions.

The employee stated that her job required her to begin her day at 7:30 a.m. and work until 3:30 p.m., but that she would frequently work between ten (10) and twelve (12) hours per day. She thought her work would be categorized as "non-stop." (Decision at 4.) Typically, the employee would leave between 5:30 and 6:30 at night, although she stated that some days would require her to remain until 7:30 or 8:30. The employee had a one (1) hour duty free lunch break during the day, but she stated that she often worked through that in order to complete her work.

In the spring of 1999, the employee was diagnosed with multiple sclerosis (hereinafter "MS"). Her symptoms consisted of extreme fatigue, dizziness, weakness, and headaches. She was out of work for about two (2) months and then returned to work in the summer of 1999. Upon her return to work, she requested a number of accommodations, including utilizing a half hour of her lunch break in the morning to enable her to come to work later. The principal at the time granted the request. The employee left the Providence school system to work in South Kingstown in 2001 and 2002. She then returned to Providence, working under a different principal. The employee again requested morning flex time from the Providence School Department's Americans with Disabilities Act (hereinafter "ADA") accommodations committee to accommodate her extreme fatigue, which was most prevalent in the mornings, by allowing her to arrive at school between 7:30 a.m. and 8:00 a.m. The committee granted her request to arrive between 7:30 and 7:45 on an occasional basis.

The employee testified that during August and September of 2004, she felt that she was "being documented" for her late arrivals. (Decision at 6-7.) The employee produced written memos from the principal, C. Stephen Lauro, reprimanding her for coming in late and complaining of unprofessional conduct. The employee stated that when she started to receive these documents, she began to notice a negative effect on her health; she was getting a lot of headaches and a stiff neck and needed a walker. She stated that she was having difficulty sleeping and was experiencing low back pain caused by a lot of stress at work. The employee denied any other episodes or incidents during her life in September of 2004 which would cause an unusual amount of stress. In response to questioning as to testing she had requested for sexually transmitted diseases around that time, the employee indicated that she did not view it to

be a stressful event. She did acknowledge that in April 2004, her mother was hospitalized for an extended period of time.

The employee testified that on October 14, 2004, she called in sick due to severe headaches and a feeling of general sickness. She attempted to return to work in August of 2005, but was asked to leave because the note from her doctor did not fully release her to return to her regular job. On November 28, 2005, the employee returned to work at Springfield Middle School and was working from 7:30 a.m. to 3:30 p.m. It appears that prior to her return to work, she had been notified that her special morning flex time arrangement would not be allowed any longer. This resulted in the employee filing a complaint with the Human Rights Commission.

The only medical evidence submitted at trial was the depositions and records of Dr. Laura M. Ofstead and Dr. Howard L. Weiner, presented by the employee. Dr. Ofstead, who is licensed to practice medicine in Rhode Island and board certified in internal medicine, has been the employee's primary care physician since 1999. Dr. Weiner, licensed to practice in Massachusetts and board certified in neurology and psychology, oversaw the employee's treatment for MS.

Dr. Ofstead testified that she saw the employee for annual physical examinations and intermittently for any other physical complaints, as well as monitoring her MS. On October 13, 2004, the employee called the doctor's office and left a message which stated "work related stress would like to talk to you about having time off." (Pet. Ex. 5.) On October 18, 2004, Dr. Ofstead saw the employee for a sick visit caused by multiple symptoms related to work stress. It was the doctor's opinion that there was a direct correlation between the employee's symptoms and the increasing emotional stressors at work. Dr. Ofstead's assessment was that "her fatigue symptoms were consistent with an MS, multiple sclerosis, flare" and "thought she needed to be

out of work to try to recover from this episode." (Pet. Ex. 5 at 11.) The employee stayed out of work and continued under Dr. Ofstead's care and treatment. Dr. Ofstead testified that she allowed the employee to return to work on August 10, 2005, but recommended that it would be medically appropriate to start work later in the day.

On cross-examination, it was apparent from Dr. Ofstead's testimony that the majority of the employee's stress was caused by the conflict surrounding the approval of her accommodations, in particular that she be permitted to come to work later than 7:30 in the morning. The doctor agreed that the exacerbation of her MS symptoms was caused by "anticipating and stressing about a return to her work environment that she perceived would be potentially negative for her." (Pet. Ex. 5 at 26.) Dr. Ofstead described the employee as "frustrated" and admitted that the employee's frustration that her job was not being tailored in the way she wanted aggravated her MS. (Pet. Ex. 5 at 27-28.)

Dr. Weiner, who specializes in treating MS, testified that he has been treating the employee twice a year since 1999. He relayed a conversation he had with the employee in 2004 about "inflexibility in terms of her work hours or work times and a need for certain flex times," and noted that "the ability to have this or not have it was stressful for her." (Pet. Ex. 6 at 11.) He also noted a worsening of the employee's MS symptoms around this time, particularly fatigue and sensory problems in her hands, which he stated was consistent with increased stress levels in a patient. Dr. Weiner opined that "[t]here's no question that she was having more symptoms, and there's no question that she reported this in association with what was going on at work." (Pet. Ex. 6 at 18.) Dr. Weiner concluded that because he had no other explanation for the increased symptoms, it appeared to him that "they were somehow related." Id. He further noted

that much of the employee's disability or ability to work would be based on her perception of whether she could work or not.

On cross-examination, Dr. Weiner admitted that at a prior visit in April 2004 the employee was complaining of periods of dizziness and experiencing stress and worsening of symptoms due to her mother being in the hospital. Other factors that can worsen the symptoms of MS are exposure to heat and respiratory infections. Dr. Weiner also noted that in April 2005, the employee's MS symptoms seemed to be worsening due to stress about returning to the work environment.

The employer presented the testimony of Donald Zimmerman, the senior executive director of human resources for the school department and a member of the ADA committee reviewing the employee's request, and Dr. Frances Gallo, deputy superintendent, to contradict much of the employee's testimony. The transcript of the two witnesses' testimony was not in the record for review by the Appellate Division. From what we have gleaned from the trial decision, their testimony produced evidence contradictory to the employee's claims regarding the work hours required by her position and the so-called hostile work environment.

Mr. Zimmerman indicated that in 2004, the committee granted the employee's request, at least in part, and allowed her to occasionally start her work day up to fifteen (15) minutes late, provided that she would make up the time at the end of the day. Shortly after the school year started in the fall of 2004, the principal at the school where the employee was working complained that the employee was arriving late on a regular basis. In October 2004, the employee was informed that it was an essential part of her job to be present at the beginning of the school day, and therefore, the accommodation was withdrawn.

Dr. Gallo disagreed with the employee's assertion that she had to work ten (10) to twelve (12) hours a day on a regular basis to complete her job duties. She acknowledged that an assistant principal would have to work late on occasion to meet with parents, but this was not routine. She also noted that there was disagreement between the employee and the principal as to how to divide up the disciplinary cases in the school.

The trial judge found that the employee had failed to demonstrate by a fair preponderance of the credible evidence that she sustained a work-related injury arising out of and in the course of her employment. The trial judge noted that "it is incumbent upon the employee to establish a nexus, that is a direct relationship between the injury and symptoms, and would have been characterized as harmful stress." (Decision at 28.) He also found that although the employee did have an increase in her MS symptoms, he was not satisfied that the events alleged to have caused the stress increasing her symptoms would qualify as harmful stress under the terms of Seitz v. L & R Industries, Inc., 437 A.2d 1345 (R.I. 1981).

The Appellate Division's standard of review is narrowly delineated by statute. Section 28-35-28(b) of the Rhode Island General Laws states "[t]he findings of the trial judge on factual matters shall be final unless an appellate panel finds them to be clearly erroneous." *See also* Diocese of Providence v. Vaz, 679 A.2d 879 (R.I. 1996). In the present matter, we find that the trial judge was not clearly wrong in his conclusions.

After the employee filed her reasons of appeal *pro se*, an attorney entered his appearance on her behalf; however no amendment was made to the original reasons of appeal nor were any other supplemental documents filed. We will address the following issues which we believe the employee attempted to raise in her appeal. The employee primarily argues that the trial judge erred in finding she did not provide sufficient evidence of a nexus between her injury and her

employment. The employee also argues that the trial judge erred in finding that the circumstances surrounding her claim did not meet the standard set out in Seitz. We will discuss these issues each in turn.

It is well settled law that in order to collect workers' compensation benefits in Rhode Island, an employee is required to show an "injury from an accident arising out of as well as in the course of the employment." Di Libero v. Middlesex Const. Co., 63 R.I. 509, 516, 9 A.2d 848, 851 (1939). Although in some situations a disability resulting from a mental injury can lack physical trauma or physical manifestations, it has still been recognized as compensable in Rhode Island. An employee claiming a mental injury pursuant to R.I.G.L. § 28-34-2(36), must still establish a nexus between the injury and her employment, and furthermore 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 & Chem. Corp., 475 A.2d 213, 216 (R.I. 1984); Seitz v. L & R Indus., Inc., 437 A.2d 1345, 1351 (R.I. 1981).

The employee argues that the trial judge erred in finding that she did not establish a sufficient nexus between the aggravation of her MS symptoms and her employment as an assistant principal because the uncontradicted medical evidence proved that work-related stress resulted in an exacerbation of her MS. After reviewing the medical testimony introduced at trial, we agree with the trial judge that the employee did not establish a sufficient nexus between the two to prove her injury arose out of her employment.

The Supreme Court recognized in Rose v. Bostitch, Division of Textron, Inc., 523 A.2d 1221, 1222 (R.I. 1987), that even if there is uncontradicted evidence of physical injury from stress, the employee must still establish a nexus between the disabling condition and her work. In our reversal of the trial judge, we held that even if one gave credence to all of the employee's

evidence regarding her mental disability due to harassment by fellow employees, a sufficient nexus did not exist between her employment and her medical problems. Id. In affirming our decision, the Supreme Court observed that in Rose, the employee's own medical witnesses verified she had no complaints about her work and that the actual performance of her job had no effect on her mental state. Id.

Here, there was sufficient evidence for the trial judge to find that there was not a sufficient nexus and that the denial of the employee's request for accommodation was actually the major cause of stress which led to her injury. The employee did not complain about the job duties themselves, including reporting to work for 7:30 a.m. Instead, because of the employee's ongoing MS symptoms, she simply found it more difficult to do so and therefore requested accommodations from the school department, the denial of which ultimately caused her stress. This is supported by her doctors' opinions that the "she was upset, because she felt that the Providence School Department was not accommodating her," and that "her MS symptoms seemed to be worsening because she was stressing about returning to the work environment that she perceived as being potentially negative for her." (Pet. Ex. 5 at 27; Pet. Ex. 6 at 35.) Although Ms. Iadevaia also alleges other issues with the principal of the school, the medical evidence shows that the majority of her stress stemmed from her frustration with the denial by the ADA committee of her accommodation request and not from her actual work environment.

We would also note that the alleged stress did not aggravate the disease process itself, but rather the employee's emotional reaction to the denial of her accommodation requests caused an increase in her MS symptoms. Dr. Weiner stated that her MS is stable and her MRI studies do not show any advancement of the disease process. At one point, Dr. Ofstead recommended that

the employee seek counseling to enable her to better deal with her work situation and thereby lessen the potential effect on her MS symptoms.

Secondly, the employee argues that the trial judge erred in finding that the events which caused her injury did not rise to the level of harmful stress as defined by Seitz. We agree with the trial judge, assuming arguendo that the employee established a sufficient nexus between her injury and the work environment, her claim would still fail to meet this standard.

In Rhode Island, "mental injury nontraumatically caused must have resulted from a situation of greater dimensions than the day-to-day emotional strain and tension which all employees must experience." Seitz, 437 A.2d at 1349; *see also* R.I.G.L. § 28-34-2(36). In Seitz, the Supreme Court affirmed a denial of benefits to an employee for a mental injury arising out of her difficulties in interpersonal relations with co-workers during a problematic move of an entire company in three (3) days. The Court held that the environment, "though scarcely tranquil did not exceed the intensity of stimuli encountered by thousands of other employees and management personnel every day." Seitz, 437 A.2d at 1351. Similarly, in Jimmis v. General Dynamics Corp., W.C.C. No. 89-09078 (App. Div. 9/20/96), we also denied workers' compensation benefits to an employee who claimed a mental injury was caused by his relationship with his supervisor. There, we recognized that the circumstances at the work site were scarcely tranquil; however, we noted that "[e]mployers and managers must admonish their subordinates and correct perceived shortcomings." Id. (quoting Seitz, 437 A.2d at 1349).

The employee argues that the events surrounding her injury should meet this standard because of the hostile environment Mr. Lauro created by documenting her lateness and use of flex time. The trial judge found that the situations encountered by the employee did not qualify as traumatic stress. We agree. The employee was merely having difficulties with her supervisor.

She felt that his documentation of her actions which he perceived to be unprofessional was unjustified and created a hostile environment for her. Supervisors should be allowed to reprimand their employees when they feel it is necessary. Jimmis, W.C.C. No. 89-09078. We cannot find that these perceived incidents are "so out of the ordinary from the countless emotional strains and differences that employees encounter daily without serious mental injury." Seitz, 437 A.2d at 1349.

Additionally, the denial of her request by the ADA committee also fails to meet the Seitz standard. In Garrity v. Town of Warren, W.C.C. No. 04-01165 (App. Div. 12/19/06), we found that a police dispatcher could not collect workers' compensation benefits because although her job was stressful by its very nature, "[a]n 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." We found that the increased work load which the employee alleged was the cause of her enormous stress and mental injury was not distinguishable from her everyday duties which were stressful in nature. Id.

In the instant petition, the medical evidence suggests that the employee's injury stemmed from the stress of knowing she would still be expected to show up at 7:30 every morning despite her disability. Continually fulfilling this job requirement is not so out of the ordinary as to render her mental injury compensable; it was a part of her everyday duties. The trial judge found that it was not unreasonable for the ADA accommodations committee to deny her request because her arrival at 7:30 was just that, an essential function of her job. An employee should expect to have to perform the functions of her job, even if it is stressful.

Additionally, the employee argues that the trial judge erred in finding the employer's denial of her accommodations request was reasonable by failing to rely on the outcome of her

pending ADA complaint against the employer. In making such a finding, the trial judge specifically noted that he was not commenting on the legitimacy of the employee's outside claims. We agree with the trial judge that the denial was reasonable for the purposes of considering whether the stress that resulted gave rise to a workers' compensation claim. Any determination made in the pending ADA claim is immaterial to whether the employee experienced an injury compensable under the Workers' Compensation Act.

Based on the foregoing, we find no error on the part of the trial judge and we, therefore, deny and dismiss the employee's reasons of appeal and affirm the trial court's decision and decree. 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

Salem and Hardman, JJ. concur.

ENTER:

_____
Olsson, J.

_____
Salem, J.

_____
Hardman, J.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. WORKERS' COMPENSATION COURT
APPELLATE DIVISION

SANTA IADEVAIA)
)
VS.) W.C.C. 2005-03798
)
PROVIDENCE SCHOOL DEPARTMENT)

FINAL DECREE OF THE APPELLATE DIVISION

This cause came on to be heard by the Appellate Division upon the claim of 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 September 15, 2006 be, and they hereby are, affirmed.

Entered as the final decree of this Court this day of

PER ORDER:

_____
John A. Sabatini, Administrator

ENTER:

_____
Olsson, J.

_____
Salem, J.

_____
Hardman, J.

I hereby certify that copies of the Decision and Final Decree of the Appellate Division were mailed to Stephen T. Fanning, Esq., and Paul Gionfriddo, Esq., on

_____