

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

WORKERS' COMPENSATION COURT
APPELLATE DIVISION

PATRICIA VAN PETTEN

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VS.

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W.C.C. 01-02044

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RIPTA

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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 alleged that she developed a psychiatric disorder resulting in incapacity beginning July 27, 2000. After reviewing the record and considering the written and oral arguments of the parties, we deny the employee's appeal and affirm the findings and orders of the trial judge.

At the time of her testimony in August 2002, the employee was sixty-one (61) years old and had worked as a bus driver for RIPTA for thirteen (13) years. The drivers would bid on routes they wanted based upon their seniority. At the time of the alleged injury, the employee was working on a route that ran along Smithfield Avenue to Saylesville in Lincoln, Rhode Island, although at times, she would fill in on weekends on other routes.

The employee testified that in the afternoon on Wednesday, July 26, 2000, she was driving the bus on her regular route when a woman asked to get off the bus. Ms. VanPetten complied by stopping at the next bus stop. The woman slapped the employee's arm and punched her shoulder, stating that she had wanted to be dropped off in front of her house which was before the bus stop. After this encounter, the employee began to experience chest pain so she drove to the nearby Saylesville Fire Station at the end of her route. She walked into the fire station complaining that she felt faint and asked that someone take her blood pressure. While one of the firefighters took her vital signs, someone called the rescue and the employee was transported to the Fatima Unit of St. Joseph Hospital. The bus, which was then empty, was left at the fire station.

After spending several hours at the hospital and receiving some treatment, the employee left against medical advice and went home. She did not work on Thursday or Friday and saw her primary care physician, Dr. Gerald Marsocci, on July 31, 2000. Dr. Marsocci noted that the employee appeared to be under a significant amount of stress at work and was very emotional. She informed the doctor that she had experienced chest pain a few days ago and had gone to the emergency room. The doctor recommended that the employee return to the hospital for further testing and evaluation, in light of her condition. Ms. VanPetten had a history of hypertension and chronic obstructive pulmonary disease.

On August 1, 2000, the employee again went to the emergency room at St. Joseph Hospital. She informed the personnel there that she was experiencing some chest discomfort which had started about a week ago at work. Some testing was performed to rule out heart problems and other conditions. A psychiatric evaluation was done which noted that the employee complained of a very high stress level regarding her job and that she only had two and a half (2 ½) years until retirement. The evaluator's impression was that the employee suffered from anxiety and a personality disorder. Other records reflect that she was irritable, hostile and angry about being at the hospital.

Ms. VanPetten received some psychiatric treatment and returned to work on or about December 4, 2000, however, she left work again on December 17, 2000 after she became disoriented and lost in Kennedy Plaza while driving a bus. She continued with her treatment and again returned to work on or about February 4, 2001. After a few months, she could no longer take the stress and she left work for good on or about June 7, 2001.

The employee testified that she had a number of confrontations with abusive passengers during the course of her employment. On one (1) occasion, a passenger spit on her as he exited the bus. Another time, she was driving a bus on Broad Street and made an unscheduled stop to pick up a woman she saw running on the sidewalk with bags in her hands. When the employee mentioned to the passenger that she should try to get to the bus stop on time, the woman whispered in her ear words to the effect that she was on Broad Street and she

(the passenger) could have her (the employee) “done in” in a split second. Ms. VanPetten could not pinpoint when these incidents had occurred.

The employee admitted that she had been disciplined several times by management for verbally abusing passengers, although she denied that she was confrontational with passengers. She indicated to some of the medical service providers that she had been told by management that the passenger was always right and she had to just drive the bus and keep her mouth shut. She also stated that she had enjoyed her job until seven (7) years ago when a new director took over. She noted a lack of support for the drivers from managers and supervisors.

Dr. Thomas J. Paolino, a psychiatrist, evaluated the employee on October 23, 2001 for her application for long term disability benefits. Ms. VanPetten told him that she was anxious and depressed due to job-related stress and pressure, and that she had been verbally and physically abused by passengers. She informed him that in June 2001 she “just snapped” and could not take it any more. She was having difficulty controlling her emotions. Dr. Paolino concluded that she was significantly depressed and anxious with a great deal of anger and rage towards the passengers and her supervisors. He felt that she was unable to cope with the stresses of her job and concluded that she was totally disabled.

Dr. Steven A. Feldman, a psychiatrist, conducted an impartial medical examination of the employee on May 18, 2001 at the request of the trial judge. Ms. VanPetten told him that she had been told to keep her mouth shut and not talk back to the passengers or she would be fired. She indicated that this caused

her a great deal of stress because she was a person who told it the way it is. She explained that the stress was so bad that in July 2000 she reported to Fatima Hospital with chest pain. Dr. Feldman stated that the employee suffered from an anxiety attack because she was unable to “let off steam,” which was her method of coping with abusive or rude passengers. His diagnosis was adjustment disorder with anxiety. At the time of his evaluation, the employee had returned to work so he did not address disability.

The trial judge had denied the employee’s petition at the pretrial conference and the employee claimed a trial. After a full hearing on the merits of the case, he rendered a bench decision. In his decision, the trial judge reviewed all of the evidence presented and concluded that “. . . essentially this comes down to a credibility issue.” (Tr. 68) Noting that the alleged physical assault or contact by the passenger on July 26, 2000 is not documented in any record or report, except for the report of Dr. Paolino which is dated over a year later, the trial judge rejected the employee’s testimony regarding that incident. He further found that the employee’s confrontations with rude and abusive passengers were not of a greater dimension than the stress encountered by employees in similar jobs on a daily basis and therefore, her disability was not compensable under the Workers’ Compensation Act.

The employee has filed five (5) reasons of appeal in which she basically argues that the trial judge erred in finding that the stress she experienced as a result of the confrontations with passengers which she described did not satisfy

the standard for a compensable stress case as set forth in R.I.G.L. § 28-34-2(36) and the case of Seitz v. L & R Industries, Inc., 437 A.2d 1345 (R.I. 1981). We disagree.

Rhode Island General Laws § 28-34-2(36) provides that an employee is entitled to benefits for a disability arising 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 ”

Therefore, an employee is entitled to compensation benefits only if she can establish that her mental injury and disability is the result of some dramatically stressful stimuli. In the present case, the employee was unable to meet this standard of proof.

Although the employee attempted to persuade the trial judge that the incidents with abusive passengers were the cause of her anxiety disorder and depression, the evidence establishes that her psychiatric disorder was the result of her frustration at not being able to respond to those encounters and the perceived lack of support she received from management for her efforts to stand up to passengers or to correct them. The only medical service provider to whom Ms. VanPetten mentioned any of the specific incidents of abuse was Dr. Paolino, in October 2001. She testified that she felt she was under a great deal of pressure because she had been told she had to ignore abusive passengers and could not respond or she would be fired. She acknowledged that her personality

was such that she told it like it was. She told Dr. Feldman that she had been told by management to keep her mouth shut and this inability to respond to abusive or rude passengers caused her stress. She also complained about the new director who took office seven (7) years ago and his lack of support for bus drivers. She felt that her complaints about abusive passengers were not adequately addressed by management.

The employee's testimony and her statements to medical personnel describe a rather typical situation of conflict between management and employee regarding policies and procedures, rather than some out of the ordinary unforeseen events. Consequently, the employee did not satisfy the standard of proof.

The incidents of verbal abuse described by the employee are disturbing, but, unfortunately, not unusual for her occupation. One must consider the nature of the occupation in assessing what may be considered ". . . a situation of greater dimensions than the day-to-day emotional strain and tension which all employees encounter daily. . ." R.I.G.L. § 28-34-2(36). An event which may be typical for emergency room personnel in a hospital would not be a situation normally encountered by a secretary in an attorney's office. In an industry serving the public, encounters with rude and verbally abusive individuals are difficult to avoid. We agree with the trial judge that the incidents described by the employee did not constitute a situation of greater dimensions than those encountered by other bus drivers without causing serious mental injury.

The employee argues that the trial judge overlooked material evidence when he focused on whether the employee had actually been physically assaulted by a passenger in July 2000. In fact, the trial judge divided his analysis of the case into two (2) parts, due to the fact that the evidence presented two (2) theories for recovery. Rhode Island General Laws § 28-34-2(36) also provides that disability resulting from a mental injury “. . . caused or accompanied by identifiable physical trauma. . .” is compensable. Ms. VanPetten may have been eligible for benefits if she could establish that she was physically assaulted by a passenger and the incident was the cause of her mental injury and disability.

The trial judge concluded that the determination of whether a physical assault occurred was a credibility issue. Due to the fact that none of the medical documentation recorded on or near the date of the alleged incident contained any reference to a physical assault, the trial judge stated that he did not believe the employee’s testimony that such an assault occurred. Based upon our review of the record, we find no error in this determination.

The trial judge then proceeded to analyze the evidence under the so-called “mental-mental” provisions of the statute, requiring proof of a mental injury caused by emotional stress resulting from a situation of greater dimensions than that encountered by employees on a daily basis. He clearly referred to all of the incidents mentioned by the employee and concluded that they were not so dramatically stressful as to satisfy the statutory burden of proof for a “mental-mental” compensable injury. It is clear that he did not overlook or misconceive

any of the evidence presented and he properly analyzed the evidence under the two (2) applicable theories of recovery.

Based upon the foregoing, we deny and dismiss the employee's appeal and affirm the decision and decree of the trial judge.

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 Salem, JJ. concur.

ENTER:

Olsson, J.

Connor, J.

Salem, 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 June 24, 2003 be, and they hereby are, affirmed.

Entered as the final decree of this Court this day of

BY ORDER:

ENTER:

Olsson, J.

Connor, J.

Salem, J.

I hereby certify that copies were mailed to Gregory L. Boyer, Esq., and
Michael St. Pierre, Esq., on

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