STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. WORKERS' COMPENSATION COURT APPELLATE DIVISION

SUSAN J. TESSIER	)	
	)	
VS.	)	W.C.C. 02-01732
	)	
RHODE ISLAND HOSPITAL	)	

DECISION OF THE APPELLATE DIVISION

OLSSON, J. This matter is before the Appellate Division on the petitioner/employee's appeal from the decree of the trial judge which granted the employer's motion for summary judgment and dismissed the employee's original petition. After thorough review of the record and consideration of the arguments of the parties, we deny the employee's appeal and affirm the decree of the trial judge.

In her original petition, the employee alleges that she developed a psychological disorder as a result of her working conditions which resulted in disability from November 7, 2001 and continuing. The petition was denied at the pretrial conference and the employee claimed a trial. During the course of the trial, the employee testified and also presented the testimony of three (3) co-workers. On September 11, 2002, the employer filed a motion for summary judgment pursuant to Rule 56 of the Superior Court Rules of Civil Procedure. The

motion was argued by the parties and at the end of argument, the employee introduced the contents of her personnel file as well as an affidavit and reports of Dr. James A. Gallo, a psychiatrist who treated the employee. The trial judge reviewed the evidence submitted by the employee and then rendered a decision and decree in which he granted the employer's motion and dismissed the employee's petition. The employee then filed this appeal.

Ms. Tessier was employed by Rhode Island Hospital as a phlebotomist for about four and one-half (4 ½) years. She initially began working in some of the hospital's satellite offices, particularly the Rehoboth office. She acknowledged that she had had counseling sessions with her supervisor during that time regarding problems with interaction with fellow workers and patients. She asserted that she was forced to leave the Rehoboth office because of a problem with one (1) of the physicians there which had nothing to do with her job performance. Documents in Ms. Tessier's personnel file state that she walked off the job in June 1999 at the Rehoboth office because she was having an anxiety attack after she was questioned regarding a complaint by a patient that she was rude and unprofessional. The doctors in the office requested that she not return to their office. A note indicates that the employee was out of work from June 24, 1999 to July 30, 1999 due to an anxiety disorder.

Ms. Tessier then began working at Hasbro Children's Hospital on the lower level in the Pediatric area. Another phlebotomist, Debbra Grossman, worked on the same floor in the Pediatric-Oncology area. This area was generally busier

than the employee's office. Immediately, the employee began to have problems with Ms. Grossman. Ms. Tessier stated that Ms. Grossman constantly harassed her, questioned her work, told her what to do when, and repeatedly lodged unwarranted complaints against her with her supervisor, Linda Menard. She had several meetings with Ms. Menard and her union representatives regarding complaints made by patients as well as Ms. Grossman's complaints that Ms. Tessier was not doing her fair share of the work.

In June 2001, Ms. Menard called the employee in and told her that she was being moved to a floater position and she should report to the medical office building. Ms. Tessier told her that she could not change her job like that and Ms. Menard advised her that she had to go or she would not have a job. The employee refused to report to the new position and left work. She testified that she was very nervous and felt that she could not function. She remained out of work for twelve (12) weeks and received Temporary Disability Insurance benefits.

The employee returned to work in September 2001 in her former position at Hasbro. Ms. Grossman was still working there and the problems between them continued. Ms. Tessier stated that she attended six (6) meetings in six (6) days when she returned to work, all involving problems with Ms. Grossman. On November 6, 2001, the employee attended a meeting with Sheila Bailey from human resources, Linda Russolini from the union, Kevin Reddy, the union business agent, and Ms. Menard. The discussion again revolved around the interaction between the employee and Ms. Grossman. Ms. Tessier was told that

she had to check with Ms. Grossman every fifteen (15) minutes to offer assistance and then keep a log of when she checked with her for help. The employee testified that she felt humiliated that she had to follow such a procedure.

About four (4) hours after this meeting, she was called in by Ms. Menard and Ms. Bailey and told that she was terminated because she had threatened a co-worker. Documents in the personnel record indicate that another employee reported to Ms. Menard that she heard Ms. Tessier make statements in which she threatened to do bodily harm to Ms. Grossman. Security personnel retrieved Ms. Tessier's belongings and then escorted her from the building.

The employee acknowledged that disciplinary actions had been taken against her by the employer, but she refused to sign any of the documents and asserted that they were all untrue. In April 2001, a verbal warning which had been reduced to writing stated that she was being disciplined for displaying a poor attitude towards a co-worker and for making a decision regarding drawing blood when she should have checked with a physician. A written warning was issued to the employee for refusing to draw blood at 4:40 p.m. when her shift was not over until 5:00 p.m. Another written warning was issued in October 2001 for failing to assist Ms. Grossman when she was not busy on a certain day.

Three (3) co-workers, who were not phlebotomists but worked in the Pediatric area where the employee and Ms. Grossman worked, testified that they felt Ms. Tessier was a good worker and minded her own business. They signed a

petition to this effect because they felt that Ms. Tessier was being bullied or harassed by Ms. Grossman.

The affidavit and reports of Dr. Gallo reflect that he first evaluated her on January 31, 2002, over two (2) months after she was terminated. The history provided by the employee states that she was fired by a supervisor who did not like her, she was harassed daily, she had problems with a co-worker, and false accusations were made against her. The doctor found that the employee was suffering from a major depression, single episode, as a result of the conditions at work.

The trial judge concluded that, viewing the evidence presented in the light most favorable to the employee, the employee's case failed to meet the statutory standard for a compensable psychological injury set forth in R.I.G.L. § 28-34-2(36). On appeal, we are bound by the standard of review provided in R.I.G.L. § 28-35-28 which states that the trial judge's findings on factual matters are final unless an appellate panel finds them to be clearly erroneous. After careful review of the record in this matter, we find no merit in the employee's appeal.

The employee has filed five (5) reasons of appeal which generally allege that the trial judge made determinations of fact and credibility rather than apply a proper summary judgment analysis. Although we will acknowledge that some of the statements contained in the trial decision were not appropriate to a determination whether summary judgment should issue, we find that the trial

judge was correct in the ultimate decision to grant summary judgment for the employer.

Rule 56(c) of the Superior Court Rules of Civil Procedure provides that summary judgment shall issue when ". . . there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." In analyzing the evidence presented on a motion for summary judgment, the trial judge must view the facts in a light most favorable to the party opposing the motion. Westinghouse Broadcasting Co. v. Dial Media, 122 R.I. 571, 579, 410 A.2d 986, 990 (1980). The trial judge in the present matter recognized the standard to be applied and, despite some inappropriate comments on some of the evidence, ultimately rendered the correct decision on the motion.

If we view the evidence in a light most favorable to the employee, we must accept the employee's assertion that she felt harassed by Ms. Grossman's behavior towards her and the many complaints she filed against her; that she felt that the complaints and subsequent disciplinary actions taken by her supervisor were unjustified; that this harassment was condoned by her employer who failed to properly address the situation; that her union representatives improperly failed to assist her in resolving these problems; and that she developed a major depression as a result of these working conditions. Even if we accept this view of the evidence presented, the employer is still entitled to judgment as a matter of law.

In order to receive workers' compensation benefits for a mental injury, the employee must prove that the condition was

> ". . . 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).

In the case which initially set forth this standard for mental injuries, Seitz v. L & R Industries, Inc., 437 A.2d 1345 (R.I. 1981), the Rhode Island Supreme Court recognized the stressful nature of employment relationships.

> "Indeed, it is a rare situation in which some adverse interpersonal relations among employees are not encountered from time to time. Employers and managers must admonish their subordinates and correct perceived shortcomings." Id. at 1349.

Under the Seitz case and our statute, mental injuries resulting from difficulties getting along with co-workers or dissatisfaction with a supervisor's handling of personnel problems are not compensable. In the present case, the employee's testimony and that of her witnesses indicates that her working conditions were certainly stressful, however, they

> ". . . 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." Id. at 1351.

Viewing the evidence in the light most favorable to Ms. Tessier, we agree with the trial judge that her employment situation was not 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). Therefore, we conclude that the trial judge properly granted the motion for summary judgment and denied and dismissed the employee’s original petition.

Based upon the foregoing reasoning, the employee’s appeal is denied and dismissed and the decision and decree of the trial judge are 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

Sowa and Connor, JJ. concur.

ENTER:

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Olsson, J.

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Sowa, J.

_____
Connor, 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 January 14, 2003 be, and they hereby are, affirmed.

Entered as the final decree of this Court this day of

BY ORDER:

_____

ENTER:

_____
Olsson, J.

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Sowa, J.

_____
Connor, J.

I hereby certify that copies were mailed to Stephen J. Dennis, Esq., and James T. Hornstein, Esq., on

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