STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. WORKERS' COMPENSATION COURT
APPELLATE DIVISION

MICHAEL J. HEALEY	)	
	)	
VS.	)	W.C.C. 04-01993
	)	
AMGEN	)	

DECISION OF THE APPELLATE DIVISION

OLSSON, J. This matter is before the Appellate Division pursuant to the employee's appeal from the denial of his original petition alleging that he became disabled on January 14, 2004 due to severe stress arising out of conditions at his place of employment. The trial judge found that he failed to prove that his disabling condition was caused by "a situation of greater dimensions than the day-to-day emotional strain and tension which all employees encounter daily," as required by R.I.G.L. § 28-34-2(36). After a thorough review of the record in this matter, we find no error on the part of the trial judge and deny the employee's appeal.

In 2000, the employee began working for Wyeth Pharmaceutical as an HVAC/refrigeration technician. His job involved maintaining walk-in freezers, walk-in coolers, and rooftop air conditioning units. The employee continued working in this position after Amgen acquired Wyeth's facility in July 2002. In early 2003, Mr. Healey was promoted to lead technician in the HVAC department. He continued to perform his duties maintaining equipment, but was also responsible for assigning work and ensuring that preventive maintenance tasks and other job orders were completed by the other technicians in his department. He explained that

during 2003, he was asked by his supervisor, David Miner, to revise some of their preventive maintenance standard operating procedures (hereinafter "SOP") because they did not accurately reflect the tasks to be done on certain equipment.

Sometime in the fall of 2003, Allan Boisvert, a lead technician on the night shift, voiced concern to the employee and Mr. Miner, over an incorrect SOP regarding a particular type of air handler and informed them that he could not sign off on a certain section of the preventive maintenance work order because it stated that he had done work which he could not do on that air handler. Mr. Healey advised him that they were in the process of revising the SOP and it was okay to sign off on the current version for now. On October 15, 2003, Mr. Boisvert, in an e-mail to the employee, stated that he had been harassed and slandered at work, that his tires had been slashed, and that he was being discriminated against by Mr. Healey. He also accused the employee of falsifying the preventive maintenance orders in the past and pressuring other technicians to do the same.

Mr. Healey testified that his regular work hours were 7:00 a.m. to 3:30 p.m. and Mr. Boisvert worked from 7:00 p.m. to 7:00 a.m. They also worked in different buildings. Although Mr. Healey was Mr. Boisvert's supervisor, he acknowledged that he very rarely saw him.

The employee stated that he submitted the e-mail message from Mr. Boisvert to the human resources department. As a result, Trish Lovering and Allison Plympton, human resources department employees, individually interviewed all of the HVAC technicians, including the employee. The employee stated that the interviews concerned job duties, individual interpretations of the SOPs, and the alleged discrepancy between the SOPs and the facility's machinery. The employee admitted that their investigation did not inquire into Mr.

Boisvert's harassment claims. About a week or two (2) later, he learned that they had not found any problem and no action was being taken.

Apparently, Mr. Boisvert was not satisfied with the outcome of the investigation and sent subsequent e-mail messages to Thomas Spooner, the associate director for facilities and maintenance, and then to Amgen's home office in Thousand Oaks, California, alleging harassment and threats by co-workers, falsification of documents, as well as theft of company property. Consequently, in December of 2003, Jeff Dyer, the manager of the Human Resources department from the Amgen's corporate headquarters in Thousand Oaks, California, and Paul Bouffard, the senior security manager who oversaw several facilities including Rhode Island, interviewed the employee as well as the other HVAC technicians in the department.

The employee related that Mr. Dyer and Mr. Bouffard inquired as to whether he had stolen company property, used inappropriate language, or harassed Mr. Boisvert. The interview lasted approximately one and a half (1 ½) to two (2) hours. At the end of the questioning, Mr. Dyer gave Mr. Healey his business card and told him to call him if he had any questions. Mr. Healey indicated that during and after the interview he felt sick to his stomach because he felt his job was in jeopardy. He returned to work and continued to perform his regular job duties, but he described the atmosphere at work as very tense. Despite assurances from personnel in the human resources department that everything was okay, his stomach was in knots all the time and he had difficulty sleeping.

Mr. Healey indicated that the tone of the questioning from Mr. Dyer upset him the most, particularly because he was part of management. He acknowledged that Mr. Dyer and Mr. Bouffard did not conduct the interview in a hostile manner but he testified that he interpreted the questions to be accusatory. He felt that they believed the accusations made by Mr. Boisvert and

did not listen to him or provide him an opportunity to defend himself. Mr. Bouffard testified that the employee remained calm throughout the interview and conducted himself in a professional manner.

The employee also submitted the depositions and records of Dr. Douglas Foreman and Dr. Gina M. Geremia. Dr. Foreman, a family practitioner and the employee's primary care physician, testified that he saw Mr. Healey on January 13, 2004 for a regularly scheduled physical examination. During the course of that visit, the employee related that he was experiencing pressures at work due to accusations made by a co-worker which was causing at lot of emotional turmoil. The doctor diagnosed situational disturbance, stress reaction, anxiety and insomnia. Dr. Foreman recommended that he stay out of work for a month or so to collect himself and do what he needed to address his situation. On January 26, 2004, Mr. Healey received a letter from Amgen terminating his employment due to inappropriate behavior and integrity issues. Of note is the fact that the employee saw Dr. Foreman for a sick visit on December 18, 2003 and never mentioned anything about his work situation at that time.

Dr. Foreman referred the employee to Dr. Gina Geremia, a clinical psychologist, for counseling. After evaluating him on March 10, 2004, she arrived at a diagnosis of mild depression and generalized anxiety disorder which she attributed to the situation at work involving the accusations made by Mr. Boisvert. Mr. Healey continued the counseling sessions for about six (6) months or so. He obtained employment in July 2004 through the union hall.

The trial judge concluded that the employee had not established that he had sustained a compensable mental injury and disability as a result of work-related stress. He indicated that the employee's reaction to the situation at work was overly sensitive and out of proportion to the facts. Consequently, the trial judge denied the petition on the grounds that the employee had not

satisfied the statutory standard for a compensable mental injury as set forth in R.I.G.L. § 28-34-2(36).

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 of the evidence only after making an initial finding 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. After carefully reviewing the evidence presented in this matter and considering the arguments of counsel, we conclude that the trial judge's findings are not clearly erroneous.

In support of his appeal, the employee propounded thirteen (13) reasons of appeal. We will address numbers 1, 2, 5 and 13 together. The employee contends that the accusations made against him and the two (2) subsequent interviews by company personnel constituted the dramatically stressful stimuli necessary to establish a compensable mental injury. He takes issue with the trial judge's statements that he was not disabled due to stress, that he was exonerated of any wrongdoing, and that his reaction to the events at work was overly sensitive and out of proportion. Mr. Healey also argues that the reasonableness of the employer's conduct should not be a factor in determining whether the situation at work was of greater dimensions than the everyday emotional strain and tension experienced by all employees.

Pursuant to R.I.G.L. § 28-34-2(36), to receive workers' compensation benefits for a mental injury, an employee must demonstrate that the disabling condition resulted from "a situation of greater dimensions than the day-to-day emotional strain and tension which all

employees encounter daily without serious mental injury," a standard which essentially codifies the Rhode Island Supreme Court's decision in Seitz v. L & R Industries, Inc., 437 A.2d 1345 (R.I. 1981). In Seitz, the Rhode Island Supreme Court recognized the stressful nature of employment relationships in professing:

> "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. The stress of competitive enterprise is ever present and attendant upon all types of commercial and industrial activity." Id. at 1349.

In Seitz, the employee encountered confusing and abnormal work conditions after the sale and relocation of the corporate division by which she was employed. There were problems with telephone service, unavailability of records, untrained personnel, and lack of recognition of her authority by other employees. She was also required to perform janitorial and cleaning duties which had never been part of her position as office manager. The Court denied compensation for her disability resulting from the stress of the situation.

> "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." Id. at 1351.

The testimony in the present matter reveals that Mr. Healey actually saw only two (2) of the e-mail messages authored by Mr. Boisvert. The first e-mail, addressed to the employee and his supervisor, was dated October 15, 2003 and accused Mr. Healey of falsifying entries in the log books and on the work orders regarding preventive maintenance and intimidating new employees to do the same. It also accused the employee of telling other employees that Mr. Boisvert's actions almost resulted in the termination of everyone in the department. The second

e-mail, dated November 26, 2003, was inadvertently read by many employees in the department after a copy was left in a printer. This message was addressed to Thomas Spooner, the associate director for facilities and maintenance. The only direct accusation against Mr. Healey in this e-mail was that he told co-workers that Mr. Boisvert was trying to get the employee fired. We would note that Mr. Healey testified that he worked a different shift than Mr. Boisvert and very rarely saw him or spoke to him.

The missives from Mr. Boisvert resulted in two (2) rounds of questioning, initially from in-house human resources personnel, and then from human resources personnel from corporate headquarters as well as in-house security personnel. Significantly, all of the technicians in the department were questioned, as well as the management personnel. Mr. Healey was not singled out in any way. Mr. Healey never indicated that he was directly accused of any wrongdoing or misconduct, but he was asked whether he had used foul language or threatened a co-worker. A majority of the questioning concerned the procedures followed with regard to the preventive maintenance work orders and log books and the tracking of their inventory of tools.

Although Mr. Boisvert's complaints and the resulting interviews might not be considered an everyday occurrence in the workplace, the mere fact that such events were not regularly encountered as part of the employee's normal job duties does not automatically qualify the situation as the dramatically stressful stimuli required under the statute. Amgen was producing a federally approved prescription drug under strict quality control standards and procedures. It was faced with allegations of falsification of documents, which if proven to be true, could potentially subject the company to federal penalties, as well as raise questions perhaps as to the quality of its product. The company was compelled to thoroughly investigate the allegations.

Both Mr. Miner, the employee's supervisor, and Mr. Spooner, testified that there was some truth to Mr. Boisvert's contention that preventive maintenance documents were not completed properly. Mr. Miner acknowledged that there was some confusion in the meaning of the terms on some of the paperwork and a process had been initiated to make changes in the documentation so that everyone had a clear understanding of what was required. *See* pp. 133-135. Mr. Spooner testified that as a result of the investigation, it was found that certain paperwork was not properly completed, which would be a violation of company policy and procedures. However, it was also learned that sometime in the past, a supervisor in the HVAC department had consented to the manner in which the technicians were filling out the documents. Consequently, although the documentation was not being completed properly, it was found that the employees were not intentionally falsifying paperwork because the method they employed had been condoned by a previous supervisor. *See* pp. 207-208.

The only other allegations directed at Mr. Healey specifically were that he intimidated some newer employees and made comments to the effect that Mr. Boisvert was going to get all of the technicians fired. These comments are more consistent with the type of "adverse interpersonal relations" between co-workers referred to in Seitz than the type of "dramatically stressful stimulus" required to establish a compensable mental injury.

The employee contends that the trial judge erroneously considered the reasonableness of the employer's actions in determining whether the situation was beyond what an employee should be expected to tolerate. However, the Rhode Island Supreme Court has noted the conduct of the employer as a relevant factor in stress cases.

In Rega v. Kaiser Aluminum and Chemical Corp., 475 A.2d 213 (R.I. 1984), the Court, in granting benefits for a mental injury and disability, stated:

> "The crucial question is whether Rega's treatment by Kaiser 'exceed[ed] the intensity of stimuli encountered by thousands of other employees and management personnel every day. (Citation omitted.)
>
> "The evidence in this case establishes that the stimulus that precipitated the illness was the firing, rehiring, and deprivation of pension benefits just months before the pension was to become available. Rega has served his employer well for twenty-five years. The firing occurred on an hour's notice. The reason given, cutting back, was blatantly untruthful, in Rega's opinion, in view of the retention of many far-less-experienced and junior employees. Fairly soon after the firing, Rega was rehired to his old position and restored to all benefits except his pension. Then, after two months of indecision, he was finally told that at age forty-five, after twenty-five years of faithful service, he must 'start from scratch' to earn his pension." Id. at 216-217.

It was this series of actions by the employer which the Court found to be so reprehensible as to constitute a stressful situation of greater magnitude than employees are subjected to daily without serious mental injury.

In Moreno v. Nulco Mfg. Co., 591 A.2d 788 (R.I. 1991), an employee was "punching out" at the end of the work day when a supervisor took his lunch bag from him and searched it in front of several co-workers. When nothing was found, the lunch bag was returned to the employee with an apology. In denying the petition for compensation for disability caused by stress, the Rhode Island Supreme Court cited as factors that the employee was not accused of stealing, that his person was not searched, that an established company policy required that all employees be subject to search so that company property was not taken from the premises, and that all employees had been notified in writing of the policy. The Court concluded that, under the circumstances, the employee had suffered at most a "minor indignity." Id. at 790. The employer acted in a reasonable manner in carrying out a policy which had a rational basis.

In the present matter, Mr. Healey was not treated any differently than any of his co-workers during the course of the investigations and the two (2) sessions of questioning by company personnel. The interviews were conducted in a professional manner and Mr. Healey was free to leave at any time. He had the opportunity to freely respond to the issues raised during the questioning. Apparently, Mr. Dyer handed Mr. Healey his business card and told him to call if he had any questions. The employee testified that after these interviews he felt sick because he felt that his job was being threatened by the accusations made by Mr. Boisvert. However, mental distress resulting from worry over losing one's job is not compensable under the statute. The Rhode Island Supreme Court made this clear in Rega, *supra*.

> "The issue before us is not whether mental illness caused by worry over losing one's job is a compensable injury. Under Seitz, such disability would not be compensable." Rega, 475 A.2d at 216.

In his third reason of appeal, the employee contends that the trial judge was clearly wrong in finding that the employee failed to prove that he developed severe stress secondary to events occurring at work. However, the trial judge clarified this statement in the second finding in his decree when he stated that the alleged stress did not satisfy the statutory standard found in R.I.G.L. § 28-34-2(36). Therefore, we find this to be of no consequence. Similarly, the employee argues in his fourth reason of appeal that the trial judge erred in stating in his decision that Mr. Healey was exonerated from all wrongdoing, when in fact he was subsequently terminated. After the two (2) series of interviews of the HVAC employees, Mr. Healey testified that there was some feedback that everything was going to be okay and no one was going to lose their job. At the time when he stopped working on January 14, 2004, he had not been terminated and had no indication that his termination was imminent. Therefore, the termination did not trigger the disability.

The remainder of the employee's reasons of appeal contest the trial judge's limitation on the testimony of the employee, various co-workers and management personnel, as well as the exclusion of handwritten notes of Mr. Bouffard, the regional security director. Through the co-workers and management personnel, the employee apparently sought to provide more details as to the workplace atmosphere during the investigations and the causes of the investigation. The trial judge indicated that the effect of the investigations on other employees was not relevant to the employee's case. He further limited other testimony because it was apparently redundant or concerning additional background information as to the initiation of the investigations and details as to the work processes and preventive maintenance procedures and documentation. After reviewing the record and the representations of counsel, we find no error with the trial judge's rulings on these issues.

We also agree with the trial judge's exclusion of the handwritten notes of Mr. Bouffard. The trial judge noted that he was unable to understand the notes after glancing at them. Tr. p. 149. During his testimony, Mr. Bouffard was unable to state with any certainty the dates he recorded the notes. Some of the notations were topics to be addressed in the employee's interview and some were just Mr. Bouffard's impressions. Tr. pp. 163-170. Furthermore, the notes were initially marked for identification and counsel then attempted to have Mr. Bouffard clarify the notes. At the end of his testimony, counsel never moved for introduction of the notes as a full exhibit. Based upon the lack of certainty in Mr. Bouffard's testimony regarding the notes, we find no fault in the trial judge's initial ruling to only allow them to be marked for identification.

Based upon the foregoing discussion, 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

Bertness and Sowa, JJ. concur.

ENTER:

_____
Olsson, J.

_____
Bertness, J.

_____
Sowa, J.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. WORKERS' COMPENSATION COURT
APPELLATE DIVISION

MICHAEL J. HEALEY)
)
VS.) W.C.C. 04-01993
)
AMGEN)

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 May 2, 2005 be, and they hereby are, affirmed.

Entered as the final decree of this Court this day of

BY ORDER:

_____
John A. Sabatini, Administrator

ENTER:

_____
Olsson, J.

_____
Bertness, J.

_____
Sowa, J.

I hereby certify that copies of the Decision and Final Decree of the Appellate Division were mailed to Bernard P. Healy, Esq., and Diana E. Pearson, Esq., on

_____