

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

WORKERS' COMPENSATION COURT
APPELLATE DIVISION

THOMAS J. SHANNAHAN)

)

VS.)

W.C.C. 04 - 06369

)

CITY OF CENTRAL FALLS)

DECISION OF THE APPELLATE DIVISION

OLSSON, J. This matter is before the appellate division on the appeal of the petitioner/employee from the decision and decree of the trial judge denying the employee's original petition for workers' compensation benefits for a mental injury. The trial judge found that the employee failed to prove by a preponderance of the credible evidence that he sustained a work-related injury on or about May 6, 2004, arising out of and in the course of his employment. After conducting a *de novo* review, we affirm the decision of the trial judge and deny and dismiss the employee's appeal.

The trial judge denied the employee's original petition at the pretrial conference, and a timely claim for trial was made. At trial, the employee, Thomas J. Shannahan, testified, and the deposition transcript of Dr. John Ruggiano, a psychiatrist, was admitted into evidence. The employer presented the testimony of John P. Kuzmiski, Sandra Salisbury, Elizabeth Crowley, and Raymond P. Cooney.

The employee testified that he had worked for the City of Central Falls for fifteen (15) years under three (3) different mayors, and his job became difficult in January 2004 when newly

elected Mayor Charles Moreau took office. Mr. Shannahan was the director of the public library in Central Falls at the time of his alleged injury in May 2004. He was an unclassified employee and did not have any contract of employment. He stated that as director of the library, he was responsible for directing and supervising employees, following the directives of the library's boards of trustees, writing grant applications, and generating annual reports. He explained that the City of Central Falls Free Public Library has a unique structure because the building, known as the Adams Library, is owned by a private foundation, but the collection of the library is owned by the City of Central Falls. Therefore, Mr. Shanahan was required to report to two boards of trustees – one for the Adams building, and one for the city.

The employee's troubles with Mayor Moreau and his administration began shortly after the new mayor took office and declined to sign checks payable to an independent contractor, Donald Twohig, until he was properly licensed and covered by workers' compensation insurance. Mr. Twohig had been doing work for the library since 1991 without any problem. There was an ongoing dispute over this issue because the Adams board informed the employee that they had liability insurance that would cover Mr. Twohig, but the mayor continued to insist upon licensing and workers' compensation insurance. Mr. Twohig was eventually brought into compliance with the mayor's requests and received payment, albeit delayed, from the city for the work that he did in the library. However, the city's policies regarding independent contractors changed, and Mr. Twohig was no longer allowed to work at the library. This upset the employee because he relied on Mr. Twohig a great deal.

The employee also testified that he was very upset by questions raised by the administration regarding whether the library was properly complying with the city's competitive bidding policy. The employee was adamant that he complied with the city's policy, but was

distressed that city officials required additional paperwork after Mayor Moreau took office. The employee testified that he confronted the city board of trustees for the library about these difficulties. Additionally, an individual named John Burns, with whom the employee had a long-standing contentious relationship, was appointed to the city board of trustees for the library. With this addition to the city board, the ongoing disputes over payment to independent contractors, and the city board's questioning of the employee's job performance, the employee felt that the city board was "ganging up" on him, and that the mayor's actions exceeded his authority under the city charter. Tr. 18. Therefore, at the city council meeting on April 12, 2004, the night that John Burns was appointed to the city board, Mr. Shannahan submitted his resignation, effective April 30, 2004.

On April 24, 2004, police officers conducted a "raid" of the library. The employee received a phone call at home that police were demanding computer passwords. He immediately went to the library, and when he arrived he encountered a police officer and a computer expert who wanted to search the library's computers. The employee asked the police officer for a search warrant, but he eventually gave the officer the passwords after the officer told the employee that he would be arrested if he did not comply. This made the employee feel upset, and it was his opinion that the raid was "a vindictive act." Tr. 28.

The employee learned from a phone call to the chief of police that Mayor Moreau had requested that an officer report to his office that morning. Prior to the chief arriving, the officer and the computer expert left the library. At that point, the employee resumed regular library operations. Mr. Shannahan testified that, shortly thereafter, he saw the mayor's car pull up to the library, and the police officer and the computer expert got out of the car and entered the library again. Joined by a sergeant, the officer and computer expert went down to the computer lab, and

the sergeant subsequently informed the employee that files were missing from the computer and that the library would have to be closed down immediately. The employee complied with the sergeant's directive, but he asked why the library had to be closed. He was informed that there was a criminal investigation underway, so the officers could not tell him anything more. The employee felt "devastated" by these events. Tr. 32. He stood at the door to tell patrons that the library was closed, and a reporter from a local newspaper informed him that he received a call that the library computers were being investigated in order to retrieve material that supported the previous mayor. Other media personnel arrived at the library, and the employee made comments to them expressing that he thought that the raid was "an effort to discredit everything [he] had done." Tr. 33.

After submitting his resignation on April 12, 2004, the employee planned to work for the library until April 30, 2004, but stayed on a few extra days to oversee the installation of some ornaments on the building. The employee's actual last day of work was May 6, 2004, when he arrived at work to find that the locks had been changed on his office, and an interim director was working in his place. Around this time, Mr. Shannahan was also experiencing some medical problems, and he testified that the cardiologist who reviewed the results of his tests thought he may have suffered a heart attack earlier in February 2004. On May 24, 2004, the employee underwent surgery involving angioplasty and placement of a stent in the right coronary artery. He subsequently received TDI benefits.

The only medical evidence admitted at trial was the deposition testimony and handwritten reports of Dr. Ruggiano, who saw Mr. Shannahan beginning July 15, 2004, several months after he had resigned from his position as library director. The employee first came to treat with Dr. Ruggiano based upon a referral from his attorney, Stephen Dennis, which was documented on an

initial contact form dated July 12, 2004. Dr. Ruggiano testified that the employee told him about his stressful work situation, including the dispute over payment to independent contractors, accusations that the employee failed to follow the competitive bidding procedures, accusations of responsibility for a stolen credit card, and accusations that the employee was doing work for the former mayor in the course of his employment with the city. Additionally, Dr. Ruggiano stated that, although he did not have the information in his notes, he recalled the employee mentioning police coming to the library to investigate files on library computers.

Dr. Ruggiano diagnosed the employee with “adjustment order with depression.” Pet. Exh. 2, p. 7. He opined that the adjustment disorder was caused “by the incident of the workplace.” Pet. Exh. 2, p. 8. He further stated that this disorder rendered the employee unable to work at his occupation, and that the cause of the inability to work was the stress at the workplace. All of these conclusions, the doctor noted, were to a reasonable degree of medical certainty.

Dr. Ruggiano continued to treat the employee over the next several months, and his diagnosis remained unchanged. Throughout those visits, he noted that the employee continued to feel frustrated and was having difficulty finding new employment. Dr. Ruggiano also acknowledged that he was aware of the employee’s heart attack prior to beginning treatment with the doctor, and he agreed that sometimes patients can experience post-heart attack depression. Dr. Ruggiano last saw the employee on January 21, 2005 when he noted that the employee was no longer disabled, but he also noted that although the employee was capable of working, he would be unable to return to the stressful situation of his previous employment.

The witnesses called by the employer each testified to their knowledge of the frustrating circumstances described by the employee that arose after Mayor Moreau took office in January

2004.¹ Ms. Elizabeth Crowley, the city clerk and purchasing agent since 1999, testified for the employer that she was in charge of record keeping and the purchasing process for the City of Central Falls. In that capacity, she was responsible for signing purchasing orders submitted by the employee on behalf of the library. She testified that business continued as usual with respect to purchasing through the transition from the previous mayor's administration to Mayor Moreau's administration, but when the statewide rules on purchasing and bidding changed, she sent a memorandum to that effect to all department heads, including Mr. Shannahan.

Mr. Raymond P. Cooney, the city solicitor for the City of Central Falls, testified that Mayor Moreau asked him to address concerns regarding independent contractors working in the library without the appropriate insurance coverage and the library's failure to comply with the bidding procedures, so Mr. Cooney initiated an investigation. Mr. Cooney testified that when he called Mr. Shannahan shortly after his discussion with the mayor, Mr. Shannahan told him that Mr. Twohig did not need workers' compensation insurance; Mr. Twohig was covered by liability insurance which Mr. Shannahan had presented to the finance director; the library did not have to comply with the city's bidding procedures because they received funds from the Adams trust rather than the city; and he did not know whether Mr. Twohig had an independent contractor license.

Mr. Cooney later discovered that the liability policy that Mr. Shannahan was referring to was a general liability policy for the library that did not cover Mr. Twohig in his capacity as an independent contractor. Additionally, Mr. Cooney spoke with Ms. Crowley who informed him

¹ Ms. Salisbury, an administrative assistant to the personnel and legal departments of the City of Central Falls, also testified on behalf of the employer, but the subject matter of her testimony is not pertinent to the instant appeal. She testified that, although Mr. Kuzmiski testified that the City of Central Falls was self insured until July 2003 when the Rhode Island Interlocal Risk Trust took over their workers' compensation coverage, the change actually did not occur until July 1, 2004. Injuries occurring prior to July 1, 2004 were paid for by a contingency fund set aside by the city, and Mr. Shannahan's alleged injuries which arose prior to July 1, 2004 would therefore be paid for by the city contingency fund. She also testified that it was the purchasing agent who made the decision to go into the trust.

that the bidding procedures were in fact binding on the library. These revelations were the impetus for calling a March 1, 2004 meeting so that the concerned parties could come to a common understanding about these issues. Mr. Cooney testified that at some point prior to the meeting, he had told Mr. Shannahan that Mr. Twohig should not be working at the library while these issues were unresolved, and he became irritated when he learned at the meeting that Mr. Twohig was still doing work at the library.

Mr. Kuzmiski, the director of finance for the City of Central Falls, testified that he drafted the agenda for the meeting on March 1, 2004 that he and other members of the mayor's administration, Mr. Shannahan, and members of both the city appointed and Adams boards for the library attended to discuss that the need for workers' compensation insurance coverage for all employees and independent contractors. At no point did this meeting or his other discussions with the employee address any discipline or threats of discipline against the employee.

Ms. Crowley testified that she was also present at the meeting on March 1, 2004 in order to explain the new purchasing procedures. Later, she received a letter from Mr. Shannahan on March 23, 2004 regarding purchasing issues and liability insurance. She did not know why Mr. Shannahan was asking her about liability insurance, but she reiterated the change in procedures in response to his inquiries about the city's purchasing policy.

Mr. Cooney testified that as a follow-up to the meeting he sent a letter on March 3, 2004 reiterating his concerns about insurance coverage and the bidding policies, but he never initiated nor was he ever aware of any disciplinary action against the employee. He also stated that he played a role in withholding payment from Mr. Twohig, but Mr. Twohig was eventually paid for his services and did eventually come into compliance with the licensing and insurance

requirements. He further testified that he was not present when the employee resigned on April 12, 2004, but he received word of the resignation shortly thereafter.

The trial judge denied and dismissed the employee's petition because he found that the employee failed to prove by a fair preponderance of the credible evidence that he sustained a work-related injury. In support of his decision, the trial judge concluded that "the employee has failed to prove he sustained a mental injury caused by emotional stress resulting from a situation of greater dimensions than the day-to-day emotional stress and tensions which all employees encounter daily without serious mental injury." Tr. 12. Specifically, the trial judge emphasized that the police raid on the library complained of by the employee occurred after the employee's resignation. He further noted that the employee's psychiatrist did not reference the incident.

The appellate division will not disturb a factual finding made by the trial judge unless the appellate panel finds that it is clearly erroneous. *See* R.I.G.L. § 28-35-28(b); Diocese of Providence v. Vaz, 679 A.2d 879 (R.I. 1996). Furthermore, the appellate division will only conduct a *de novo* review of the evidence when a finding made by the trial judge is first determined to be clearly wrong. Grimes Box Co. v. Miguel, 509 A.2d 1002, 1004 (R.I. 1986). In this case, we have conducted a *de novo* review of the evidence because the trial judge mischaracterized the testimony of Dr. Ruggiano when he commented that, "the act the employee alleged was the matter which caused him to suffer a mental injury was not referenced as the stressor by the psychiatrist." Tr. 12. However, after conducting this review, we agree with the holding of the trial judge and affirm his judgment denying and dismissing the employee's petition.

Pursuant to R.I.G.L. § 28-34-2(36), in order to receive workers' compensation benefits for a purely 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.” This statute 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 stating, “[i]ndeed, 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. This heightened burden of proving that the stress in the workplace is greater than the usual day-to-day stress associated with employment is applied in cases, such as the present case, where there is a “mental injury produced by mental stimulus in which there are neither physical causes nor physical results.” Seitz, 437 A.2d at 1347.

In addition to the high standard set for the degree of severity of the event precipitating his incapacity, the employee must also meet the burden of proof that exists in any workers’ compensation case—that the injury is causally related to the employee’s work, or in other words, that the injury is one “arising out of and in the course of his or her employment, connected and referable to the employment.” R.I.G.L. § 28-33-1. It is the employee, not the employer, who bears the burden of proving both elements by a fair preponderance of the credible evidence. *See* Blecha v. Wells-Fargo Guard-Co. Serv., 610 A.2d 98, 102 (R.I. 1992).

In his first reason of appeal, the employee argues that the trial judge erred by misconstruing, misunderstanding, or misstating Dr. Ruggiano’s testimony. As already noted, the trial judge stated that Dr. Ruggiano did not reference the police raid, and he also quoted Dr. Ruggiano’s deposition testimony in which he said, “I can’t recall [it]. I didn’t make a note of it.” Dec. 12 (quoting Pet. Exh. 2, p. 7). However, upon review of the deposition, it is clear that

Dr. Ruggiano was aware of the police raid. The testimony quoted by the trial judge was given in the context of Dr. Ruggiano recalling that the employee mentioned the police raid, as indicated by the following exchange:

“Q: Did he give you any other information?”

“A: Yes. I don’t have it in the notes, but I recall him saying that during the workday one day, I think I remember him saying that police came into the library and just commandeered the computers to find out what was on there. It was very upsetting to the patient.

“Q: Did he tell you anything else about the incident with the police?”

“A: Yes, he did, but I can’t recall. I didn’t make a note of it.”

Pet. Exh. 2, p. 6-7. Clearly, the trial judge mischaracterized the testimony of Dr. Ruggiano when he said the doctor made no reference to the police raid.

However, this mischaracterization by the trial judge was harmless because there is sufficient evidence apart from this statement to support the trial judge’s finding that the employee failed to meet his burden of proof regarding the causal connection between the police raid and the alleged psychological disorder. With regard to whether the police raid rose to a compensable level under the standard of R.I.G.L. § 28-34-2 (36), the trial judge correctly emphasized that the employee admitted that there was no disciplinary action, threat to his employment, or warning that resulted from or was related to the police raid. Further, as the trial judge noted, the police raid of the library occurred after the employee voluntarily submitted his resignation to the city, so it is difficult to conceive of any way in which the police raid contributed to the employee’s departure from his employment with the City of Central Falls. Moreover, the employee acknowledges that the other stressors that arose after Mayor Moreau

took office did not rise to a compensable level. He argues, rather, that the police raid was the basis for his claim.

Dr. Ruggiano's statement of causal connection is too vague to substantiate the employee's claim that his psychological disorder and subsequent disability resulted from the police raid of the library. In his testimony, the doctor addressed the other stressors in the work place that arose after Mayor Moreau took office in detail and merely gave quick mention to the police raid. Dr. Ruggiano testified that he diagnosed the employee with an "adjustment disorder with depression." Pet. Exh. 2, p. 7. He stated that the adjustment disorder was, "caused by the incident of the workplace." Pet. Exh. 2, p. 8. There were many incidents discussed throughout Dr. Ruggiano's deposition, yet the least discussion was given to the police raid. Merely stating that some incident caused a disorder lacks the specificity needed to establish that the police raid caused the employee's disability. The doctor never clearly states that the police raid caused the employee's psychological disorder and resulting inability to work. Additionally, Dr. Ruggiano curiously phrased his statement of causation as the incident "of" the workplace, rather than the incident "at" the workplace, which further suggests that he was speaking of the general circumstances experienced by the employee rather than the specific incident of the raid. Therefore, the medical opinion in this case provided by Dr. Ruggiano's testimony is insufficient to establish the causal connection required for the employee to receive workers' compensation benefits.

The employee's second reason of appeal is that the trial judge erred by finding that the employer's witnesses had adequately explained the actions against the employee when the witnesses did not explain the reasons underlying the police raid on the library or the results of that raid. The testimony of Mr. Kuzmiski, Ms. Crowley, and Mr. Cooney addressed the

circumstances of the employee's work prior to his resignation, detailing the procedures of the City of Central Falls and the various conflicts that arose between the employee and city officials after the new mayor took office. At no time, either on direct or cross examination, were any of these witnesses asked about the police raid.

The employee, in his reasons of appeal and supporting memorandum, argues that the police raid, and not the various other difficulties which arose during Mayor Moreau's administration, were the cause of his stress. By noting that the testimony given by the several witness adequately explained the pre-resignation employment situation, the trial judge was addressing any factor that could potentially have contributed to the employee's claim, even though the employee based his claim on the police raid. A significant portion of the trial was devoted to eliciting evidence of the contentious circumstances of the employee's tenure with the City of Central Falls, so the trial judge was simply being diligent in his decision by addressing that evidence. It was the employee who chose to abandon those events as supportive of his claim, instead choosing to rely solely upon the police raid. Accordingly, the trial judge's well founded comment on those issues does not constitute an error on his part.

The employee also suggests that the trial judge was obligated to grant his petition because the employer did not proffer evidence contradicting the employee's account of, or providing an explanation for, the police raid. This assertion is without merit. In a petition for workers' compensation benefits, the petitioner, in this case the employee, bears the burden of proving his claim by a fair preponderance of the credible evidence. Blecha, 610 A.2d at 102. Accordingly, because the burden lies with the employee, there is no requirement that the employer offer any affirmative proof in contradiction of the employee's assertions.

The medical evidence is insufficient to establish the requisite causal connection between the police raid and the employee's disabling medical condition as diagnosed by Dr. Ruggiano because the doctor's statement of causation is vague and does not state specifically that the police raid caused the employee's disability. In addition, the employee had already voluntarily resigned from his position with the library prior to the police raid. The raid had no impact on his employment status. Therefore, we affirm the decision of the trial judge and deny and dismiss the employee's appeal.

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 Hardman, J. concur.

ENTER:

Olsson, J.

Connor, J.

Hardman, J.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

WORKERS' COMPENSATION COURT
APPELLATE DIVISION

THOMAS J. SHANNAHAN

)

)

VS.

)

W.C.C. 04-06369

)

CITY OF CENTRAL FALLS

)

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 March 30, 2007 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.

Connor, J.

Hardman, J.

I hereby certify that copies of the Decision and Final Decree of the Appellate Division were mailed to Stephen J. Dennis, Esq., and Michael J. Feeney, Esq., on