STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

WORKERS' COMPENSATION COURT
APPELLATE DIVISION

PAULINE COVINGTON	)	
	)	
VS.	)	W.C.C. 2010-02120
	)	
RHODE ISLAND HOSPITAL	)	

DECISION OF THE APPELLATE DIVISION

OLSSON, J. This matter is before the Appellate Division on the employee's claim of appeal from the decision and decree of the trial judge in which he found that the employee failed to prove that she suffered a work related injury, specifically increased stress and depression, on June 18, 2009. The issue before the trial judge was whether the actions of the employer during the months preceding the employee's termination exceeded the intensity of stimuli encountered by thousands of other employees and management personnel every day, thereby satisfying the standard set forth in R.I.G.L. § 28-34-2(36). The trial judge determined that although the circumstances surrounding the employee's termination were unfortunate, they were not of greater dimension "than the day-to-day emotional strain and tension which all employees encounter daily without serious mental injury" and therefore, the employee did not suffer a compensable work-related injury. 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 only live testimony before the court was that of Ms. Pauline Covington ("employee") who was employed by Rhode Island Hospital ("employer") for over forty (40) years. In her original petition, she alleged that she suffered increased stress and depression due to changing working conditions which arose out of a discussion at a meeting on June 18, 2009. The employee began her employment at the hospital as a tray girl just before her sixteenth (16th) birthday, and completed the nursing program at Rhode Island Hospital in June, 1967. After completing the program, Ms. Covington worked for the employer as a staff nurse in the Surgical Intensive Care Unit. She worked in that position for six (6) months, and then moved to New Jersey. After seven (7) months in New Jersey, she returned to Rhode Island Hospital and maintained continuous employment there from July of 1968 until the time at issue.

The employee worked in the Surgical Intensive Care Unit for thirty-one (31) years, and she progressed from staff nurse, to assistant head nurse, to head nurse, and to other various positions within that department. She related that she cared for patients with a variety of injuries from trauma, gunshot wounds, knifings, head injuries, and car accidents, as well as patients who had undergone major surgeries. Ms. Covington asserted that she never suffered any emotional problems as a result of observing seriously injured patients, or even patient deaths.

In 1998, the employee transferred to a research nurse position, and she later became the Coordinator and Supervisor of Research in the Infectious Diseases Department. She worked in a research capacity until she left work in September of 2009. Her job duties included hiring and firing, evaluating staff members, educating the staff, and reviewing protocols. The research department routinely conducted clinical studies for pharmaceutical and other health care industry sponsors. There were two (2) permanent employees in the department, Ms. Covington and John

Perry, a part-time nurse. The employee's immediate supervisor was Dr. Leonard Mermel, the Director of Infection Control and Epidemiology.

Ms. Covington acknowledged that she knew the projects she worked on were independently funded, and that the continuation of her program relied upon funding that was independent of the hospital budget. In fact, the employee had an active role in recruiting projects so that there would be a continuous stream of projects and outside funding.

On June 18, 2009, the employee attended the quarterly finance meeting along with Dr. Mermel, Daniel Bryant, Mary Gasbarro, and Gina Johnson. This was a meeting that took place roughly every three (3) months, and the employee regularly attended these meetings. Mr. Bryant, Ms. Gasbarro, and Ms. Johnson were all members of the finance department. At one point during the meeting, the issue of funding for future projects came up, and it was discussed that funding was non-existent at the time. The group then began discussing options for cutbacks, and Mr. Bryant stated that Ms. Covington was the easiest to let go as compared to Mr. Perry because they only had to give her six months' notice of termination in lieu of severance.

The employee testified that she was talked about at this meeting as though she was not even present. When she questioned whether it was true that she could be let go without severance pay, Mr. Bryant stated there was a new policy that went into effect three (3) years prior, and he chastised her for not reading the policy. During this meeting there was also discussion of other potential jobs that may be open to the employee, including some in the endocrine department that was moving to East Providence. The employee related that she felt terrible after this meeting and told Dr. Mermel no one should be treated that way. During the following month she continued to work her regular hours and perform her normal duties.

On July 24, 2009, Ms. Covington met with Dr. Mermel, Mr. Bryant, and Sheila Bailey, a human resources representative. At that meeting, the employee was given a written notice of termination in the form of a letter dated July 24, 2009, which was introduced into evidence. The letter stated that she was being given "twenty-six (26) weeks working notice in lieu of severance payments," and her employment would be terminated on February 7, 2010. Ee's Ex. 2. On cross-examination, the employee admitted it was implied that if funding for another study subsequently came through before her termination date, then the notice of termination would be retracted. After the meeting, she did in fact continue to seek funding from outside companies until she went out on sick leave.

While the employee continued to work, she testified that she was experiencing gastrointestinal problems and other emotional episodes caused by the manner in which she was treated by the employer. From the period of July 24, 2009 to September 3, 2009, when she first saw her primary care physician, Dr. Mariola Nowak, regarding her symptoms, the employee testified that she was feeling worse and worse to the point where she could not concentrate enough to complete applications for other positions. After evaluating Ms. Covington on September 3, 2009, Dr. Nowak referred her to Mary J. Mercurio, a licensed mental health counselor, prescribed Prozac, and provided a note stating the employee cannot work for six (6) weeks. Ms. Covington then filed a request for a medical leave of absence with the employer and did not return to work.

The deposition and records of Ms. Mercurio were introduced into evidence. Ms. Mercurio began counseling the employee on September 14, 2009 and eventually diagnosed the employee's condition as a major depressive disorder caused by the loss of her job and the way she was treated during the events leading up to her termination. On cross-examination, Ms.

Mercurio testified that her termination and the events leading up to it were the sole cause of the employee's depressive condition, and that the other stressors she was dealing with such as the passing of her father, the passing of her son, and a recently diagnosed cerebral aneurysm, had no effect on her condition. Ms. Mercurio further testified that the source of the employee's depression is that she feels she was not treated with respect and she wants the supervisors to take responsibility for their actions. Ee's Ex. 3 at 16. She indicated that the employee did not inform her that prior to leaving the hospital she was offered the opportunity to apply for other available positions in the hospital. Ee's Ex. 3 at 18.

At the time of the trial in March 2011, the employee continued to see Ms. Mercurio and remained out of work on her advice, despite the employee's statement that she was feeling better since being out of work. The employee also saw Dr. Thomas Paolino, a psychiatrist, for medication management. Dr. Paolino prescribed an increased dosage of Prozac, as well as some medication to help with sleeping and anxiety.

As a result of a number of discussions between Ms. Covington and the human resources department at the hospital, a revised termination letter was sent to the employee dated April 9, 2010. This post-termination letter informed the employee that there was a mistake in her severance computation, and she was actually entitled to fifty-two (52) weeks of severance eligibility. In accordance with hospital policy for her position, the employee was given 26 weeks working notice in lieu of severance payments. Upon her termination on February 7, 2010, the employee was eligible to receive 26 weeks of severance payments, totaling Forty Thousand Five Hundred Ninety-four and 71/100 ($40,594.71) Dollars. The hospital immediately issued a check for the amount due retroactive to February 8, 2010 and commenced regular installment payments for the remainder. The employee stated that she still felt that she did not receive what she was

entitled to because she was unable to work for the full six (6) months of the work in lieu of severance payments period.

On cross-examination, Ms. Covington testified that she knew funding for her program was getting tight prior to the June 2009 quarterly finance meeting. She acknowledged that before she went out on sick leave on September 4, 2009, she continued to try to obtain funding to continue her employment. She attempted to apply for another position that came up in the hospital but was unable to complete the application because she felt ill and was having trouble concentrating. On September 4, 2009, the day she filed for her leave of absence, Dr. Mermel advised the employee that a research position would be open at Rhode Island Hospital or Miriam Hospital under a federal grant, but Ms. Covington declined the offer because she was not able to work in her present condition.

After hearing the live testimony and examining the documentary evidence, the trial judge entered a decree on May 31, 2011 finding that the employee failed to prove by a fair preponderance of the credible evidence that she suffered a work-related injury on June 18, 2009, arising out of and in the course of her employment. In his decision, the trial judge stated that

> "[t]he potential loss of one's job is a harsh reality of the employment landscape, one that unfortunately came to fruition for the employee. Certainly, the employer could have handled her release in a more respectful and sympathetic manner. However, its actions, though less than ideal, did not 'exceed the intensity of stimuli encountered by thousands of other employees and management personnel every day.' See Seitz, 437 A.2d at 1351."

Dec. at 7. The trial judge noted that the employee was given a full six (6) months' notice of her termination date, with the implication that should funding become available her job could be saved. The trial judge did not find any evidence that her position was terminated for any reason other than the lack of available funding.

Ms. Covington filed a claim of appeal from this decision. Our appellate standard of review is very limited and is clearly delineated in R.I.G.L. § 28-35-28(b), which dictates that "[t]he findings of the trial judge on factual matters shall be final unless an appellate panel finds them to be clearly erroneous." Furthermore, we are precluded from engaging in a *de novo* review of the evidence and substituting our judgment for that of the trial judge without first determining that the trial judge was clearly wrong. Diocese of Providence v. Vaz, 679 A.2d 879, 881 (R.I. 1996). 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 her original petition, Ms. Covington alleged that she suffered from increased stress and depression arising out of changing working conditions. With a lack of physical symptoms resulting from the injuries and a lack of physical stimulus causing the injuries, the employee must satisfy the standard for a mental injury set forth by the Rhode Island Supreme Court in Seitz v. L & R Industries, Inc., 437 A.2d 1345, 1351 (R.I. 1981), and further codified in the workers' compensation statute:

> "The disablement of an employee resulting […] 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 shall be treated as an injury…"

R.I.G.L. § 28-34-2(36).

The employee filed three (3) reasons for appeal, two (2) of which can be consolidated. In the first and second reasons for appeal, the employee alleges that the trial judge's decision was against the weight of the substantial credible evidence on the record because the credible evidence on the record supports the finding that the circumstances in which the employee was told of her job termination and the misinformation regarding her eligibility for severance

payments "exceed[ed] the intensity of stimuli encountered by thousands of other employees and management personnel every day." Seitz, 437 A.2d at 1351. In support of this contention, the employee argues that the trial judge's decision was contrary to the law because many of the elements the Rhode Island Supreme Court identified in Rega v. Kaiser Aluminum and Chemical Corporation, 475 A.2d 213 (R.I. 1984), as exceeding the intensity normally encountered in the workplace are present in this case as well. The employee relies on the facts that she was employed by the employer for a very long time, she received no warning before learning of her job termination, and she was misinformed regarding her eligibility for severance payments. After a review of the record and the relevant case law, we find that the facts of Rega are distinguishable.

In Seitz, the employee alleged an injury of psychological nature that arose out of the course of her employment during a period of approximately sixteen (16) days. 437 A.2d at 1345. The employee was a secretary to the vice president and general manager of Worcester Pressed Aluminum Corporation, and when one of the divisions was sold to L & R Industries, Inc. (the employer), a portion of the company, including the employee, moved to Rhode Island. Id. at 1346. When work commenced at the new location, the employee still performed her duties as office manager and secretary, however, she also had to do janitorial and cleaning work. The employee encountered difficulties in interpersonal relations with other employees in this new location, and after becoming so frustrated with the new situation, the employee terminated her employment. Id. The Court ultimately held in favor of the employer stating that the stressful period the employee complained of "…contained conditions that, though scarcely tranquil did not exceed the intensity of stimuli encountered by thousands of other employees and

management personnel every day." Id. at 1351. The Court stated that "[i]f a psychic injury is to be compensable, a more dramatically stressful stimulus must be established." Id.

In Rega, the issue before the Court was whether or not a nervous breakdown suffered by the employee was a work-related personal injury. 475 A.2d at 214. The employee was employed by Kaiser for 25 years, the last fifteen (15) years in various management positions. On July 3, 1975, he was given one (1) hours' notice that he was being laid off, which for a manager was a euphemism for termination. Id. At that time, Rega was nine (9) months shy of qualifying for company pension benefits. He was told that the termination was not related to his performance, but that Kaiser was simply cutting back. However, several new employees had recently started working in his department and others with less seniority were not terminated. Id. After his termination, the employee was told that his contributions to the pension plan would not remain invested, and he was paid back the money he had contributed. The employee began suffering from insomnia, he started losing weight, and he had mental difficulty with accepting his situation. Id. at 215.

Later in 1975, Kaiser rehired Rega, however, after some delay, he was told that he could not return to his previous status in the retirement plan, and that he would have to start from scratch to qualify for pension benefits. Id. Rega became increasingly upset and concerned he would be terminated again. The events culminated the week of January 6, 1977 when Rega suffered a nervous collapse. He was subsequently diagnosed with "chronic severe anxiety neurosis with severe depressive features." Id. at 215. The Court found that the actions of Kaiser exceeded the intensity of stimuli ordinarily present in the workplace and the circumstances satisfied the standard set forth in Seitz. Rega, 475 A.2d at 217. In finding that Rega sustained a compensable injury, the Court cited several factors including that the employee was employed

for a very long time by Kaiser, he was given one hour's notice of termination, the reason for termination was blatantly untruthful, and fairly soon after being rehired the employee was restored to all benefits except for his pension. Id. at 216-217.

The evidence presented in the matter before the panel does not satisfy the standard set forth in Seitz, and the facts of this case can be readily distinguished from those in Rega. Ms. Covington was an employee of the respondent for over forty (40) years. She took part in a finance meeting on June 18, 2009, the type of meeting she normally attended quarterly. Tr. at 14, 42. Budgetary concerns were addressed at that meeting, and Ms. Covington was aware that funding that was critical to the continuity of her program was running short. Tr. at 42. When Ms. Covington was terminated, she was given six (6) months' notice of that termination through a letter provided to her on July 24, 2009. Ee's Ex. 2.

The employer did make a mistake when providing information to Ms. Covington regarding her eligibility for severance payments. In the initial termination letter dated July 24, 2009, the employer stated that Ms. Covington was entitled to six (6) months' working notice of termination in lieu of severance pay; however, Ms. Covington was in fact entitled to six (6) additional months of actual severance payments in addition to the opportunity to continue working for six (6) months. The employer discovered the error and promptly informed Ms. Covington by letter dated April 9, 2010 and initiated payment of the six (6) months' severance pay that was owed. Tr. at 45-46.

This mistake does not equate to the situation in Rega. In Rega, when the employee returned to work, his job benefits, such as vacation and seniority, were restored as though there had been no interruption in his employment, except he was told he would have to start from scratch with regard to his pension eligibility. 475 A.2d at 215. In the present matter, Ms.

Covington eventually received all of the benefits to which she was entitled. In Rega, the employer gave the employee false reasons for his firing, whereas there was no evidence in the present matter that the reason for Ms. Covington's termination was any different than what she was told by her superiors, that is, lack of funding. Furthermore, Ms. Covington had the opportunity to apply for other positions within the hospital during the six (6) month notice period.

Our review of the Rega decision and the facts of this case reveal that the factors that led the Court to award benefits in Rega are simply not present in this case. Ms. Covington testified that she felt she was not treated well by her employer, and she felt she was treated without respect or dignity in the manner in which she was terminated. Tr. at 35. While this panel is sympathetic to the situation that Ms. Covington found herself in, the events that caused Ms. Covington's injury did not exceed the intensity of stimuli that all employees encounter daily without suffering serious mental injury. *See* Seitz, 437 A.2d at 1351; R.I.G.L. § 28-34-2(36).

In the third reason for appeal, the employee contends that the trial judge, in concluding that it was the loss of the employee's job which formed the basis of her disability from work, overlooked material evidence supporting a finding that it was the way in which the employee was treated in being informed of her job termination, as well as the misinformation regarding her eligibility for severance payments, that formed the basis of her disability from work. After a review of the record and the decision of the trial judge, we are satisfied that the trial judge did not overlook material evidence, and affirm the trial judge's ruling.

In the beginning of the trial judge's decision, he discusses the facts pertaining to the meeting at which the employee's job status was first discussed. Dec. at 2. The trial judge then entered into a discussion concerning the facts of this case compared to those in Rega, and he

found that the facts and circumstances presented here did not rise to the level of those in Rega. Dec. at 6-7. He noted that the employee was given a full six (6) months' notice of her termination date, the employee's job could be saved if funding came in, she was not mislead in the reasons why she was being terminated, and her supervisor even attempted to find her alternative employment. Dec. at 7. Finally, the trial judge did acknowledge that "…the employer could have handled her release in a more respectful and sympathetic manner[,]" and the actions of the employer were "…less than ideal[.]" Id.

The employee mischaracterizes the decision of the trial judge in stating that his conclusion was based strictly on the loss of the employee's job. *See* Appellant's Reasons for Appeal at 2. In his decision, the trial judge clearly evaluated all of the evidence before him, particularly the testimony as to the manner in which the employee was informed of her job termination as well as the misinformation regarding her severance eligibility. Accordingly, we find that the trial judge did not overlook or misconceive any evidence in arriving at his determination that the employee failed to establish that she sustained a compensable injury.

In conclusion, we find no error in the trial judge's decision to deny the employee's original petition and consequently, we deny the employee's claim of 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

Hardman and Ferrieri, JJ., concur.

ENTER:

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Olsson, J.

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Hardman, J.

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Ferrieri, J.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

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RHODE ISLAND HOSPITAL)

FINAL DECREE OF THE APPELLATE DIVISION

This matter came on to be heard by the Appellate Division upon the claim of appeal of the petitioner/employee and upon consideration thereof, the employee's 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 31, 2011 be, and they hereby are, affirmed.

Entered as the final decree of this Court this day of

PER ORDER:

John A. Sabatini, Administrator

ENTER:

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Olsson, J.

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Hardman, J.

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Ferrieri, J.

I hereby certify that copies of the Decision and Final Decree of the Appellate Division were mailed to Lewis J. Paras, Esq., and James T. Hornstein, Esq., on

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