

Filion v. Springfield Electroplating (May 16, 1996)

STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY

Susan Filion) *File #: H-10771*
) *By: Barbara H. Alsop*
v.) *Hearing Officer*
) *For: Mary S. Hooper*
Springfield Electroplating) *Commissioner*
)
) *Opinion #: 29-96WC*

Hearing held at Montpelier, Vermont, on April 12, 1996.
Record closed on April 24, 1996.

APPEARANCES

Richard J. Windish, Esq., for the claimant
Keith J. Kasper, Esq., for the defendant

ISSUE

Whether the claimant suffered a compensable work injury as a result of stress prior to her leaving work for the defendant on November 23, 1994.

THE CLAIM

- 1. Temporary total disability compensation pursuant to 21 V.S.A. §642 from November 23, 1994, to the present, and on-going.*
- 2. Medical and hospital benefits pursuant to 21 V.S.A. §640.*
- 3. Attorneys' fees and costs pursuant to 21 V.S.A. §678(a).*

STIPULATIONS

- 1. Susan Filion was an employee of Springfield Electroplating within the meaning of the Vermont Workers' Compensation Act at all relevant times herein.*
- 2. Springfield Electroplating was an employer of Claimant at all relevant times within the meaning of the Act for the case at issue herein.*

3. *Liberty Mutual Insurance Company was the workers' compensation insurance carrier at the time of the Claimant's work-related disability (sic).*
4. *At the time Claimant allegedly became incapable of working, her average weekly wage was \$400.00, resulting in a compensation rate of \$264.00.*
5. *At the time of the alleged injury, Claimant had two dependents.*
6. *Claimant alleges that she suffered a mental injury arising out of and during the course of her employment due to work-related mental stress. Claimant alleges she was temporarily totally disabled from the date of her leaving Springfield Electroplating on November 23, 1994, through to and including the present.*
7. *Claimant was employed by Gobert File Co. for the period from September 18, 1995, to October 31, 1995, at the rate of \$340.00 per week.*
8. *Claimant also received \$539.00 during 1995 for her work as a self-employed tax preparer.*
9. *Claimant is seeking medical reimbursement in an undetermined amount, plus ongoing psychological treatment.*
10. *Claimant is also seeking attorney's fees in the amount of 20% of her past-due temporary total disability benefits pursuant to an approved workers' compensation attorney's fee lien.*
11. *The parties agree to Joint Medical Exhibit No. 1. The parties also agree to allow the deposition of Muriel Pinder to be admitted into evidence as Claimant's Exhibit 1.*
12. *The parties finally agree that the Department of Labor and Industry may take judicial notice of all forms filed in the above-referenced matter.*

EXHIBITS

- | | |
|-------------------------------|--|
| <i>Joint Exhibit 1</i> | <i>Medical record binder</i> |
| <i>Claimant's Exhibit I</i> | <i>Deposition of Scott Brown</i> |
| <i>Claimant's Exhibit II</i> | <i>Deposition of Muriel Pinder</i> |
| <i>Claimant's Exhibit III</i> | <i>Notice dated June 24, 1991, from Ray Blais to all employees</i> |

*Claimant's Exhibit IV October 8, 1990, letter from Nils Westberg
to Ray Blais*

For Identification "a" Typed notes of claimant

FINDINGS OF FACT

1. The above stipulations are accepted as true, with the exception of #3, which seems to imply that the claimant had a work-related disability. Since this is the issue to be resolved in this case, I presume that the parties did not intend this oversight. The exhibits, with the exception of "a" for identification, are admitted into evidence. Notice is taken of all forms filed in this matter. In the deposition of Muriel Pinder, the claimant moved for admission of the written statement of Ms. Pinder, which was marked as Deposition Exhibit #1. That statement is not admitted into evidence, both because the claimant did not provide it to the defendant in a timely manner and because the statement was hearsay.

2. The claimant began to work at the defendant in August of 1990. Although originally hired as a bookkeeper, she was assigned to the position of time clerk shortly after her arrival at the company. This entailed working closely in the shop with the men who did the actual plating, performing such tasks as customer service, pricing, quoting, complaints and mail runs. The claimant had prior experience in bookkeeping, although she had never done the kind of work she was asked to do as the time clerk.

3. The claimant testified that she enjoyed the job, and initially worked well with her coworkers. Ray Blais was the general manager of the shop, and his brother Paul was one of the men working under Ray. Both Paul and Ray were helpful to the claimant as she tried to learn her tasks in the new job. There were generally about six men working in the shop.

4. In order to do her job properly, the claimant needed to receive some paperwork on each job as it was completed. All of the witnesses agree that paperwork was a low priority for the men, and the claimant introduced evidence that confirmed that the company was trying to encourage the prompt production of paperwork. Specifically, both of the Blais brothers had incentive bonuses of \$250.00 a quarter if they met goals regarding paperwork.

5. The claimant testified that Paul Blais intentionally withheld paperwork from her in order to make her job more difficult. She would have to ask for assistance from Ray Blais in getting the work from Paul. She also averred that Paul would curse at her and yell at her for no reason. She denied initially any similar behavior on her part, but later conceded that she frequently "gave as good as she got."

6. The claimant also alleged that Paul Blais made sexual remarks and told lewd jokes with the specific intent to harass her. She claimed that Paul had once waved a flashlight that "looked like a male organ" at her. She stated that she tried to ignore him, but that he kept it up for 15 minutes. She also claimed that there were posters and pictures around the shop showing women in bikinis, and that Ray Blais had a photograph of a nude woman above his work station. She denied engaging in any sexual innuendo with her coworkers, and denied ever using profanity in the shop.

7. She testified that the men would tell "blonde" jokes in an effort to bother her. She responded that "it's bleached blondes that give us a bad name." The claimant indicates that this bothered Paul Blais, whose wife has blonde hair, so much that he did not talk to her for six months.

8. The claimant indicates that she was taken out of work by her physician in 1993 because she was having dizzy spells and was nervous. At times, on her way to work she would get so dizzy that she would have to stop. She would call the office, and someone would come to take her to work. The medical records reflect that the claimant reported to her physician, Pamela A. Vnenchek, M. D., that she was being picked on by her boss, and that she was having a very difficult time at work. Without making any physical findings, Dr. Vnenchek released the claimant from work, and urged her to seek another job. The claimant returned to work after the two week hiatus. There is no evidence that she sought medical attention again until the fall of 1994.

9. The claimant testified that she made many complaints to Nils Westberg, the owner of the business, about the offensive behavior of Paul Blais. Mr. Westberg's office was across the street from the shop. The only bathroom facilities for the claimant were also in that building, which also contained the general offices for the business. The claimant frequently ate lunch with the other female employees in the office building.

9. The claimant testified that there was stress in the shop in the fall of 1994, as Ray Blais was planning to retire after 48 years with the company. The employer had hired an outside person, Bernard Belcher, to take over as manager. The claimant alleges that Paul Blais was angry that he was not to

get his brother's job, and was even more difficult to work with as a result.

10. On November 22, 1994, an incident occurred that precipitated the claimant's departure from work, never to return. The claimant alleges that Paul Blais threw a heavy metal basket at her, striking her on her leg. There is no evidence to support this allegation.

11. The claimant claimed to make no outcry at the alleged assault. She said that she left the building to go to the office, where she reported the incident over the phone to a second owner of the company, Tim Callahan, who was in Connecticut. Upon instruction, she stayed at the main office until Mr. Westberg came in. Then there was a meeting with Mr. Westberg, Ray Blais and Bernard Belcher. Mr. Belcher denied seeing the incident as described by the claimant, and she accused Mr. Belcher of lying. She worked the rest of the day, and then went to see her doctor the next day.

12. The claimant has not returned to the employer since November 22, 1994. She has, in the interim, collected unemployment for various periods of time, worked in a temporary position with another employer for a period of about six weeks, and continued her independent work as a tax preparer.

13. The claimant has produced a very sparse medical record file, containing seven entries from her primary physician, only two of which predate November 22, 1994. She has also presented a few pages of records of treatments with Michael Schneider, Psy. D., for treatments from December 5, 1994, through January 25, 1995. Finally, there is evidence of some treatment constituting three visits in 1992 for stress reduction techniques at West Central Services, Inc., for treatment of a panic disorder. Although these records indicate that the claimant has received other treatment both from Dr. Vnenchek and other physicians, those records have not been produced for this hearing. Hence, the claimant's allegations of earlier treatments for stress cannot be corroborated. To the extent that the records exist and are admitted into evidence, they confirm only that the claimant has attributed her anxiety condition to the circumstances in the work place.

14. The claimant's testimony about the stresses she experienced at work is supported only partially and only by one other witness. Muriel Pinder testified by deposition in this matter, and confirmed that the claimant was regularly upset about the abuses she received at the hands of Paul Blais.

Ms. Pinder acknowledged that on two occasions at least the claimant made complaints to Mr. Westberg about Paul's behavior. It was Ms. Pinder's impression that nothing much was done about the complaints.

15. The claimant produced the deposition of Scott Brown, a former worker at the employer. Mr. Brown's work area was adjacent to that of the claimant. He testified that for the last year that the claimant worked for the employer, there was strain between her and Paul Blais. He indicated that it had not predated that time, and that he only witnessed two specific incidents between them. The first incident he witnessed involved a letter to Paul which had already been opened when he received it. There were angry words exchanged between Paul and the claimant. After that incident, he indicated that the atmosphere between the two was very tense.

16. The second incident was the one with the basket. Mr. Brown did not witness this incident, although he heard the claimant yelling at about the time of the incident, which is a direct contradiction of the claimant's testimony. Thereafter, he spoke with the claimant and with Mr. Belcher. The claimant appeared to him to be upset after the incident, but not crying.

17. Mr. Brown confirmed that there was ongoing stress involving the paper work, and that none of the men was good about getting his paper work in on time. He indicated that he had had a "minor altercation" with the claimant on occasion about his tardiness in getting in his work. He also indicated that the claimant engaged in profanity in her arguments with Paul Blais.

18. Paul and Ray Blais testified and, as might be expected, contradicted the bulk of the claimant's testimony. In particular, each denied any intent to cause the claimant distress by failing to file the required paper work. Ray testified that they both lost the bonuses they could receive if they got the paper work in on time. They agreed that the paper work was less important to them than doing the actual work and getting the product out, and it would have less a priority than the real work of the shop. Paul admitted that paper work was not his strong suit.

19. Paul specifically denied the flashlight incident. He denied using any profanity to the claimant, although he admitted to a number of arguments with the claimant and her use of profanity to him. He indicated that they had a personality conflict, and that he took her comment about bleached blondes to be aimed at his wife.

20. Paul brought with him to the hearing the bucket in question as a visual aid. The bucket was a large, heavy gauge wire container used to lower small

items into a dryer after plating. It was approximately two feet high with a diameter of about 18 inches. Empty, it weighed about 30 pounds, and it could not be lifted with more than 20 to 30 pounds of parts in it. On the date in question, Paul was drying parts when the claimant came out of her office to talk to Bernard Belcher. Paul continued to empty the bucket, and then swung it around to the platform, where it landed with a loud noise. Paul testified that the claimant jumped at the noise, but was four or five feet away from where he placed the bucket. He denied knowing the claimant was upset about the incident until some time later. He denied ever hitting or intending to hit the claimant with the bucket.

21. Ray testified that Paul and the claimant got along well for a number of years, and that their personality conflict only became really evident in the last several months before the claimant left. It was his opinion that they were simply too much alike. When things got bad, he would talk to Paul about it but not the claimant. He testified that she was too hot-tempered and "you couldn't talk to her." He testified that he did not treat her any differently because of her problems with Paul, and in fact that he had gotten along with the claimant pretty well.

22. Ray indicated that the claimant's dizzy spells and other medical issues predated her difficulties with Paul. He also testified that the claimant would confide in him, and that he felt that they had a pretty good relationship. He asserted that the paper work was occasionally late, but that no one was doing it intentionally. Finally, he denied ever having a photo of a naked woman over his bench, nor were there any pictures of women in bikinis.

23. Alice Nickerson testified that she worked in the office of the employer, starting two weeks after the claimant, and would on occasion fill in for the claimant. She and the claimant would eat lunch every day. She testified that the complaints about Paul started about a year before she left, sometime after the claimant was out of work for a few weeks in the summer of 1993. She indicated that the claimant told her that her earlier dizzy spells were due to low blood sugar.

24. Ms. Nickerson was aware of the claimant's talking with Mr. Westberg a few times. She did not know what the conversations were about. She could not confirm that the claimant was complaining about the working conditions in the shop.

25. Ms. Nickerson has held the claimant's position since she left. She

admits that the paper work is frequently late, but states that it is unintentional. She denies that Paul creates any problems, and indicates that he is just a coworker. She testifies that there are no nude pictures or calendars with bikini-clad women in the shop. Finally, she has never heard any off color jokes in the period she has worked in the shop.

26. The claimant has not presented any evidence regarding either her fee agreement with her attorney or the costs she has expended in the presentation of her claim.

CONCLUSIONS

1. In workers' compensation cases, the claimant has the burden of establishing all facts essential to the rights asserted. Goodwin v. Fairbanks, Morse Co., 123 Vt. 161 (1963). The claimant must establish by sufficient credible evidence the character and extent of the injury as well as the causal connection between the injury and the employment. Egbert v. The Book Press, 144 Vt. 367 (1984).

2. Where the causal connection between an accident and an injury is obscure, and a lay-person would have no well grounded opinion as to causation, expert medical testimony is necessary. Lapan v. Berno's Inc., 137 Vt. 393 (1979). There must be created in the mind of the trier of fact something more than a possibility, suspicion or surmise that the incidents complained of were the cause of the injury and the inference from the facts proved must be the more probable hypothesis. Burton v. Holden & Martin Lumber Co., 112 Vt. 17 (1941).

3. In claims involving mental stress with mental injury resulting, the claimant must show "both that the stresses in the workplace are significant and objectively real, and that her illness is a product of unusual or extraordinary stresses." Cardimino v. Bennington School, Opinion No. 81-95WC. In a long line of cases, the Department has held that an award based solely on the subjective impressions of the claimant would be an unfair burden on defendants, and hence unsupportable. See, e.g., Cardimino, supra; Mazut v. General Electric Co., Opinion No. 3-89WC; Lockwood v. Vermont Department of Corrections, Opinion No. 20-85WC. The Supreme Court has recently had the occasion to confirm the propriety of this rule. Bedini v. Frost, Supreme Court Docket No. 94-624 (Vt., March 15, 1996).

4. The claimant in this case has failed to establish that the stresses in her workplace were significant or objectively real. Specifically, her perception that Paul Blais and others were intentionally withholding paper work from her, a point she belabored excessively at hearing, is simply not

supported by the evidence. Her testimony about the bucket was frankly incredible in light of her description of the logistics. Taken in toto, her testimony lacked that credibility necessary to establish the truth of her claim. The clearly contradictory testimony of Alice Nickerson, whose experience of the same stressors lends credence to her words, does not suffer

from any of the biases so clear in the testimony of the Blais brothers, and counterbalances any nugget of credibility found in the claimant's story.

5. Moreover, even were I to find that the claimant suffered stress from delayed paper work and a personality conflict with a coworker, I would be unable, on the facts before me, to find that her illness was a product of unusual or extraordinary stresses. This is so because of the totally inadequate medical evidence produced on the claimant's behalf. Where a claimant's burden of proof is high, as it is in cases of mental injuries arising from stress in the workplace, it is inconceivable that a claimant would attempt to rely on such minimal and edited medical records as were produced in this case.

6. The claimant not having prevailed is not entitled to an award of fees or costs. Her attorney's failure to comply with Rule 10(d) and (g) therefore is irrelevant.

ORDER

THEREFORE, based on the foregoing findings of fact and conclusions of law, Susan Fillion's claim for workers' compensation benefits against Springfield Electroplating for injuries sustained up to and including November 22, 1994, is denied.

DATED at Montpelier, Vermont, this _____ day of May 1996.

*Mary S. Hooper
Commissioner*