STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY

	)	State File No: J-08408
Betty Owen	)	
	)	By: Amy Reichard
	)	Staff Attorney
v.	)	
	)	For: Steve Janson
Bombardier Corporation	)	Commissioner
	)	
	)	Opinion No. 01SJ-99WC

RULING ON CROSS MOTIONS FOR SUMMARY JUDGMENT

APPEARANCES:

Thomas C. Nuovo, Esquire for Claimant Betty Owen
Glenn S. Morgan, Esquire for Defendant Bombardier, Inc.

ISSUE:

1. Whether, pursuant to V.R.C.P. 56(c), defendant Bombardier Corporation has demonstrated that there is no genuine issue of material fact and it is entitled to a judgment in its favor as a matter of law.

2. Whether, pursuant to V.R.C.P. 56(c), claimant Betty Owen has demonstrated that there is no genuine issue of material fact and she is entitled to a judgment in her favor as a matter of law.

PRELIMINARY PROCEDURAL COMMENT:

In the instant workers' compensation claim for unusual workplace stress, defendant Bombardier, Inc. has moved for summary judgment in its favor. In support of its motion, defendant maintains that the claim is precluded by the legal doctrines of collateral estoppel and/or res judicata. In the alternative, defendant argues that its alleged behavior did not create an unusually stressful workplace environment for claimant. In response, claimant opposes the defendant's motion contending that the doctrine of collateral estoppel is not applicable to the present case. Furthermore, claimant moved for summary judgment in her favor asserting that the evidence clearly demonstrates that she sustained a mental injury due to unusual stress in the workplace.

FINDINGS OF FACT (for purpose of these motions only):

1. At all times relevant to this case, claimant was an employee within the meaning of the Vermont Workers' Compensation Act. In addition, Bombardier, Inc. was an employer within the meaning of the Vermont Workers' Compensation Act.
2. Claimant was employed by defendant from 1982 until approximately October 20, 1995.

Initially, claimant was an assembler for defendant. Subsequently, in May 1993, claimant was promoted to the position of continuity technician.

3. In 1995, since claimant believed that another employee, Jacques Pelletier, was staring at her and following her and because she felt that defendant failed to adequately address this problem, claimant contacted legal counsel and filed suit against defendant and Mr. Pelletier. In her civil action, claimant alleged violations of the Fair Labor and Employment Act and she made a claim for intentional and negligent infliction of emotional distress. Contained within her Fair Labor and Employment Act claim, claimant specifically asserted allegations of sexual harassment, creation of a hostile work environment and retaliatory conduct. After a full trial, the jury returned a verdict in favor of the defendant.

4. In the instant workers' compensation claim, when determining whether an unusually stressful work environment caused claimant's mental impairment, the Department will only evaluate the events of October 1995.

5. Specifically, in October 1995 after conducting an efficiency study, defendant incorporated a new "line balance" into the assembler position. The implementation of the new system affected over 100 employees directly, as well as impacting the entire plant indirectly. It increased the amount of work to be performed by several employees and as a result of adapting to the new process, many employees fell behind in their work load.

6. Since claimant was "bumped" back to the position of assembler in 1995 due to a reduction in defendant's workforce, the new "line balance" process affected claimant's employment activities directly. In particular, claimant was assigned approximately 900 new minutes, which equates with an estimated 15 hours or two additional days worth of work in an eight day cycle.

7. On October 19, 1995, since claimant was falling behind in her work, a fellow employee, Sunee Roberts, was assigned to perform a portion of claimant's work duties. When claimant learned of this assignment, she became upset and confronted Ms. Roberts. Two additional employees, Michael Ralph and Gordon Murray, witnessed the altercation. Although the parties dispute the actual wording of claimant's statements to Ms. Roberts, this fact is not material to the resolution of these motions.

8. Immediately after confronting Ms. Roberts, claimant requested a meeting to discuss her employment duties. At the meeting, claimant explained that she was unable to keep up with her work assignments and, as a result, defendant agreed to perform a time study to evaluate claimant's movements.

9. The following day, October 20, 1995, as a result of her confrontation with Ms. Roberts, a meeting was conducted and claimant was issued a written warning, despite her immediate

supervisor's opinion to have her terminated. In the written warning, claimant's behavior was described as intimidating, threatening and hostile.

10. Defendant's standard procedure for issuing an employee a written warning is to conduct a meeting with the employee, his/her immediate supervisor and sometimes, Donald Robbins, the Assistant Human Resources Director, to discuss the situation. At this time, the employee is presented with the opportunity to explain his/her version of the subject event. Finally, the employee either signs the written warning, refuses to sign it or submits a written objection to the document.

11. Although the parties dispute whether other employees who engaged in verbal confrontations were always issued written warnings as a result of their behavior, this point of contradiction is reconciled by the testimony of Ms. Berglund, which was in fact submitted by the claimant, as Exhibit B, in support of her motion. The uncontradicted testimony of Ms. Berglund provides that, depending on the severity of the confrontation, a written warning can be issued to employees who engage in fights or arguments, especially when the altercation created an intimidating environment.

12. When claimant was tendered her written warning, Charlie Marceau, her immediate supervisor, as well as Ms. Berglund, Donald Roberts and Henry Dufresne, the employee relations committee representative, were all present at the meeting. During the course of the discussion, claimant became upset and asked if she could speak with Sunee Roberts, Gordon Murray and Mike Ralph to inquire about their version of the confrontation. Although this was an unusual practice, claimant was granted her request. After questioning her co-employees, claimant became even more upset. Those who observed her described her as acting nervous and fidgety. In addition, during the course of the meeting, claimant was very emotional. She was batting and blinking her eyes and crying. Eventually, claimant abruptly left the meeting, never to return to defendant premises.

CONCLUSIONS OF LAW:

1. Pursuant to V.R.C.P. 56(c), summary judgment shall be awarded to the party demonstrating that there is no genuine issue as to any material fact and it is entitled to judgme

nt as a matter of law.

V.R.C.P. 56(c). When both parties seek summary judgment, each is entitled to the benefit of all reasonable doubts and inferences in determining whether a genuine issue of material fact exists when the opposing party's motion is being judged. *Toys,*

Inc. V. F.M. Burlington Co., 155 Vt. 44 (1990).

COLLATERAL ESTOPPEL:

2. Defendant, relying upon the doctrine of collateral estoppel, asserts that claimant's workers' compensation case should be barred because the issue of unusual stress was already litigated in the civil action filed against the defendant.

3. The doctrine of collateral estoppel, or issue preclusion, prevents a party from relitigating an issue which was necessarily and essentially determined in a prior case between the same parties. *American Trucking Assn. v. Conway*, 152 Vt. 363 (1989). The following criteria must be satisfied in order for a court to apply collateral estoppel in a case: (1) preclusion is asserted against one who was a party or in privity with a party in the earlier action; (2) the issue was resolved by a final judgment on the merits; (3) the issue is the same as the one raised in the later action; (4) there was a full and fair opportunity to litigate the issue in the earlier action; and (5) applying preclusion in the later action in fair. *Trepanier v. Getting Organized, Inc.*, 155 Vt. 259 (1990).

4. After evaluating the preceding factors, it is apparent that the doctrine of collateral estoppel is improper and inappropriate in the instant matter. Although the parties in the two actions, the civil case and the workers' compensation claim, are identical, the issues which were resolved in the civil suit are clearly distinct.

5. The issues decided by the jury in the previous civil action were (1) that a co-employee did not sexually harass claimant and create a hostile working environment and (2) that her employer did not retaliate against her for filing a complaint of sexual harassment. Conversely, in the present workers' compensation claim, the issue to be decided is whether unusually stressful events in her workplace, encompassing only those incidents of October 1995 as previously described in Findings of Fact ¶ 5 through 11, caused claimant to sustain a mental injury. Although some of the facts to be proved in the two actions overlap, the issues presented to the fact finders are clearly different and, therefore, collateral estoppel cannot be utilized to preclude the workers compensation claim.

6. Furthermore, in this workers' compensation claim, since the issue presented before the Department is based upon the different requirements and standards of a specialized forum, the doctrine of collateral estoppel is nonapplicable. *See Trepanier, supra* at 265 (reasoning that a comparison of the legal standards and burdens of the two actions is

entirely appropriate when evaluating the doctrine of collateral estoppel). In workers' compensation cases, an injured employee need not show that the employer was negligent, only that he suffered "a personal injury by accident arising out of and in the course of his employment." *Bishop v. Town of Barre*, 140 Vt. 564 (1982). Whereas, in her civil action, claimant had the burden to prove that defendant acted either intentionally or negligently with respect to the alleged improper actions. As such, since the issue of unusual stress was never litigated based upon the standards and requirements of workers' compensation law, defendant's collateral estoppel argument must be rejected.

7. Finally, in its Motion for Summary Judgment, although defendant conjunctively incorporates the doctrine of res judicata, or claim preclusion, in its argument that the instant case should be dismissed, it appears that the only matter actually raised and discussed in the motion is collateral estoppel or issue preclusion. Accordingly, the doctrine of claim preclusion, or res judicata, need not presently be addressed.

UNUSUAL STRESS:

8. Since basing an award on the purely subjective perceptions of the mentally disabled employee would place an insurmountable burden on the defendant, greater objectivity is required when evaluating the compensability of a mental stress claim. *See Bedini v. Frost*, 165 Vt. 167 (1996). Therefore, in order to receive workers' compensation benefits for a mental injury resulting from workplace stress, a specific two part analysis must be employed. First, a claimant must demonstrate that the stresses in the workplace are significant and objectively real. *Gordon Little v. IBM*, Opinion No. 13-97WC (June 30, 1997); *Filion v. Springfield Electroplating*, Opinion No. 29-96WC (May 16, 1996). In addition, the claimant must show that his/her illness is actually a product of unusual or extraordinary stresses. *Id.*

9. Based upon the preceding legal inquiry for an unusual stress mental impairment claim, both parties have moved for summary judgment in their respective favors.

10. After applying the undisputed facts to the first element of the analysis, while giving claimant the benefit of all reasonable doubts and inferences, I conclude that the stresses claimant experienced in the workplace were significant and objectively real. Specifically, the increased work responsibilities that claimant acquired as a result of the new line implementation, as well as the issuance of a written warning, created significant and objectively real workplace stress for claimant. *See Mazut v. General Electric Co*, Opinion No. 3-89WC (Oct. 26, 1990) (finding that a claimant encountered significant and objectively real stress when, after being laid off from a previous employment position, he underwent an unfamiliar job transition and a substantial change in work environment).

11. Although the first factor of the analysis has been satisfied, the inquiry does not end. Claimant must also show that the stresses she experienced at work were of a significantly greater dimension than the daily stresses encountered by all employees. *Bedini, supra*. The submitted documentation and testimony, even when giving claimant the benefit of all reasonable doubts and inferences, does not sustain this burden.

12. First, the increased amount of work assigned to claimant during October 1995 as a result of the new line balance, clearly does not rise to the level of creation of an unusual stressor. As stated previously in Finding of Fact ¶ 5, the implementation of the new system affected several employees, not just claimant, by increasing their amount of work and causing them to fall behind in their work load. Indeed, when defendant assigned Ms. Roberts to assist claimant, it was attempting to relieve her stress, not to increase it. As such, this fact cannot be seen as creating an unusual stressor for claimant.

13. Additionally, neither the October 20th meeting nor the issuance of the written warning fall within the meaning of an unusual workplace stressor. Although claimant contends that other employees accused of fighting were not issued written warnings, this deviation in disciplinary action has already been clarified by the uncontested testimony of Ms. Berglund, explaining that employees who go beyond a simple verbal disagreement and create an intimidating environment, as was the alleged case with claimant, are issued written warnings. The fact that claimant was issued a written warning, even if perceived as unjustified by claimant, does not establish the existence of an extraordinarily stressful event. *See Bedini, supra* (concluding that a claimant cannot prevail in an unusual stress case solely on the basis of his/her subjective perceptions). Similarly, claimant's assertion that the October 20th meeting was an usually stressful environment must be rejected because claimant herself created the situation by requesting the confrontation with Sunee Roberts, Gordon Murray and Mike Ralph. Consequently, the evidence fails to demonstrate that claimant suffered workplace stress in a significantly greater dimension than the daily stresses encountered by all employees.

14. Although the workers' compensation system is remedial in nature, it still does not embrace every undesirable experience encountered by an employee in carrying out his/her employment duties. *Wilson v. Quechee Lakes Landowners Assn.*, Opinion No. 9-87WC (Nov. 4, 1987). As such, it is evident that claimant did not, as a result of an increased workload and the issuance of a written warning, experience unusual workplace stress.

ORDER:

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby ordered that:

1. Defendant Bombardier, Inc.'s Motion for Summary Judgment is GRANTED;

2. Claimant's Cross Motion for Summary Judgment is DENIED.

Dated at Montpelier, Vermont, this 4th day of January 1999.

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Steve Janson
Commissioner