

**STATE OF VERMONT  
DEPARTMENT OF LABOR**

A. B.	)	Opinion No. 09-06WC
	)	
	)	By: Margaret A. Mangan
v.	)	Hearing Officer
	)	
Vermont Department	)	
of Corrections	)	For: Patricia A. McDonald
	)	Commissioner
	)	
	)	State File No. W-06709

Pretrial conference held on September 12, 2005  
Hearing held in Montpelier on December 9, 2005  
Record closed on January 5, 2006

**APPEARANCES:**

Stephen S. Ankuda, Esq. , for the Claimant  
Keith J. Kasper, Esq., for the Defendant

**ISSUE:**

Whether Claimant suffered a physical-mental or a mental-mental injury that arose out of and in the course of his employment with the Department of Corrections.

**EXHIBITS:**

Joint I: Medical Records

Defendant A: CV of Dr. Mann

**STIPULATION:**

1. At all times relevant to this action, Claimant was an employee and Defendant his employer within the meaning of the Workers' Compensation Act.
2. On October 20, 2004 Claimant suffered a compensable physical injury to his left arm.

3. Claimant alleges that he suffered a mental injury arising out of and in the course of his employment with Defendant on March 22, 2005.
4. On March 22, 2005, Claimant had an average weekly wage of \$972.18, resulting in an initial compensation rate of \$648.12.
5. On March 22, 2005 and thereafter, Claimant had five dependents within the meaning of the Act.
6. Claimant returned to full-time full-duty work with Defendant on July 11, 2005.

#### **FINDINGS OF FACT:**

1. Claimant began working for the Department of Corrections in 1998. In the hiring process he learned about risks inherent in the job, including the potential that offenders might try to harm themselves or the officers. Witnessing such an event is not unusual in the corrections setting.
2. Claimant worked the third shift. Beginning in 2003 he was the acting supervisor. He had to use force at least once a month with the offender population
3. In October of 2004 an offender, referred here as "A.M.," arrived at the Springfield facility. A.M. had a history of mental health issues and assaults. A.M. was under security restrictions because of an assault that morning.
4. Claimant escorted A.M., who was in handcuffs, back to his cell. According to established procedure, A.M. entered the cell while still in handcuffs. Claimant then locked the cell. Next, A.M. put his hands through the opening used for food trays to allow Claimant to remove the cuffs. After Claimant removed one handcuff, A.M. grabbed Claimant's arm and pulled. Claimant resisted. Soon help arrived to remove the grasp. The entire incident lasted less than a minute.
5. Initially Claimant had pain in his finger and elbow. After three days out of work he returned to work full time at a light duty capacity in the control room. He was unhappy in that job because he had no contact with offenders and no control over decision making.
6. Claimant filed assault charges against A.M, but the superintendent did not back him up by filing criminal charges. Consequently, Claimant feels betrayed.
7. Claimant returned to his regular job full duty in March of 2005.
8. A week or ten days later, on March 21, 2005, Claimant had another contact with A.M. without incident. Also that day he witnessed another offender stab himself with a small golf pencil. When Claimant saw the blood, he immediately called for medical assistance. He also requested that the mental health counselor

intervene. The counselor and Claimant did not agree on the appropriate steps to take.

9. Claimant left work worried. He was unable to sleep that night. The next day he was agitated, unable to face returning to work. He sought professional mental health care.
10. Over the next few months, he treated with his primary care physician Dr. Leppman and psychiatrist Dr. Grass.
11. By late May or early June Claimant felt ready to return to work. In late June he began a new job in Probation and Parole.

### Medical Opinions

12. Dr. Grass treated the claimant fourteen times over the months following the pencil-stabbing incident. He diagnosed Claimant with acute stress disorder and chronic posttraumatic stress disorder. He described “extreme traumatic stress that involved actual sublethal and threatened lethal injury to him and others. In the occasion and after these events, he experienced intense fear, helplessness and horror. Subsequently, he has re-experienced these traumas through recurrent, intrusive and intense recollections. He has nightmares about these experiences, there are episodes of feeling the events are recurring.”
13. Dr. Grass explained that Acute Stress Disorder (ASD) and Post Traumatic Stress Disorder (PTSD) are almost identical entities distinguished by time course. ASD occurs within four weeks of a traumatic event and lasts from two days to four weeks. PTSD can and often follows a traumatic event by more than four weeks. Sometimes it has a more delayed onset.
14. In this case, Dr. Grass opined that Claimant had a combination of ASD and PTSD, with the first event the handcuff incident in October 2004 and the second the pencil-stabbing incident in March of 2005. The symptoms Dr. Grass treated, he opined, were referable to both incidents. After the second incident, claimant could not function. Dr. Grass agreed that Claimant’s frustration with the facility contributed to his feelings of helplessness.
15. Dr. Leppman, who has been Claimant’s treating physician for decades, agreed that the arm injury created a situation that became worse with the incident in March 2005.
16. Dr. Steven Mann, a psychologist who evaluated and tested the Claimant for the defense in this case rejected the diagnoses of PTSD in favor for the diagnoses of adjustment disorder and undifferentiated somatoform disorder. He noted that Claimant’s initial psychological concerns emanated, not from the handcuff incident, but from the light duty work Claimant detested.

## CONCLUSIONS OF LAW:

1. In workers' compensation cases, the claimant has the burden of establishing all facts essential to the rights asserted. *Goodwin v. Fairbanks*, 123 Vt. 161 (1962). He must establish by sufficient credible evidence the character and extent of the injury and disability as well as the causal connection between the injury and the employment. *Egbert v. Book Press*, 144 Vt. 367 (1984).
2. 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).

### Physical Mental Injury Claim

3. Claimant alleges that he suffered a physical-mental injury. To prove such a claim, he must prove a causal connection between the handcuff/arm-pulling physical injury of October 2004 and the psychological condition that followed. See *Blais v. Church of Jesus Christ of the Latter Day Saints*, Opinion No. 30-99WC (1999); 3 Larson's Workers' Compensation Law § 56.03 (June 2005).
4. Claimant's theory is that an unbroken chain of events began with the arm-pulling incident that caused physical pain as well as psychological distress, followed by psychological stress from witnessing the pencil-stabbing incident in March 2005 which caused subsequent disability and the need for mental health.
5. Claimant and his experts are correct that a chain of work-related events exists here, but the nature of those events takes this claim out of the area of a physical-mental claim. Indeed, Claimant suffered a physical injury in October 2004 for which he has been compensated. However, the evidence shows that it was not that physical injury that provoked a psychological response, but Claimant's frustration with the light duty placement he had for months afterward. That placement was a bona fide personnel action taken to accommodate Claimant's physical limitations. Stress that followed is not compensable. See, *Bluto v. Compass Group/Canteen Vending*, Opinion No. 11-02WC (2002) (Stress from bona fide personnel actions, such as transfers or disciplinary actions, is not compensable.); *Wilson v. Quechee Landowners Assoc.*, 9- 87WC ( 1987); *Crosby v. City of Burlington*, Opinion No.43-99WC (1999). "The statute did not intend to provide redress to every employee unhappy with the business decisions a company must necessarily make, including decisions to hire, fire, reorganize, or reduce and reallocate its work force." *Mazut v. General Electric Co.*, Opinion No. 3-89WC (1990). There is no reason why the reaction to a light duty placement should be treated any differently from the other personnel actions cited.

6. Because the physical-mental injury claim fails, this action is compensable only if claimant has proven a mental-mental injury.

Mental-Mental Claim

7. Claimant can prevail on his claim that the psychological sequelae of the pencil-stabbing incident are compensable only if the stress was objectively real and of a greater dimension than the daily stresses encountered by other corrections officers. See *Crosby v. City of Burlington*, 176 Vt. 239 (2003); *Bedini v. Frost*, 165 Vt. 167, 678 A.2d 893 (1996).
8. The job of a corrections' officer is inherently stressful. Claimant knew from the outset that some offenders injured themselves and tried to hurt others. Seeing one stab himself with a pencil was not a more stressful event than events encountered by other employees as shown by Claimant's testimony as well as the opinions of clinicians.
9. Furthermore, there is serious doubt about the origin of Claimant's stress. Was it from seeing an offender hurt himself? Or was it from his frustration with the mental health worker who failed to follow Claimant's recommendation? The first instance is not an unusual stress. The second is analogous to non-compensable personnel actions because it involves necessary work place decision-making over which Claimant had no realistic authority. In either case, although work-related, the stress is not compensable.
10. It is not necessary to decide which medical diagnosis is the correct one to conclude that this claim fails on the issue of causation.

**ORDER:**

Therefore, based on the foregoing findings of fact and conclusions of law, this claim is DENIED.

Dated at Montpelier, Vermont this \_\_\_\_ day of February , 2006.

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Patricia A. McDonald  
Commissioner

Appeal:

Within 30 days after copies of this opinion have been mailed, either party may appeal questions of fact or mixed questions of law and fact to a superior court or questions of law to the Vermont Supreme Court. 21 V.S.A. §§ 670, 672.