

J. L. v. Prison Health Services

(May 19, 2008)

**STATE OF VERMONT
DEPARTMENT OF LABOR**

J. L.

Opinion No. 19-08WC

v.

By: Phyllis Phillips, Esq.,
Hearing Officer

Prison Health Services

For: Patricia Moulton Powden
Commissioner

State File No. X-61277

OPINION AND ORDER

Hearing held in Bellows Falls on February 12th and 13th, 2008.

APPEARANCES:

Jennifer Moore, Esq. for Claimant
Richard Hennesey, Esq. for Defendant

ISSUE PRESENTED:

Whether Claimant suffered a compensable psychological injury as a result of extraordinary work-related stress, and if so, to what benefits is she entitled.

EXHIBITS:

Joint Exhibits:

Joint Exhibit I: Medical Records
Joint Exhibit II: Supplemental Medical Records

Claimant's Exhibits:

Claimant's Exhibit A: Excerpt from Prison Health Services contract
Claimant's Exhibit B: Social Security Administration Explanation of Determination
Claimant's Exhibit C: Social Security Administration Function Report

CLAIM:

Temporary total disability benefits under 21 V.S.A. §642
Medical benefits under 21 V.S.A. §640(a)
Vocational rehabilitation benefits under 21 V.S.A. §641
Attorney's fees and costs under 21 V.S.A. §678

FINDINGS OF FACT:

Claimant's Personal and Medical History

1. Claimant obtained her GED in 1974 and has taken multiple college courses in the years since, most relating to accounting and bookkeeping. She has held a variety of jobs in her professional life, mostly administrative. With only minor gaps, she has been gainfully employed since her teenage years.
2. Claimant has a prior medical history of depression and anxiety. She was prescribed anti-depressants as a teenager, but took them for only a few days. She was not prescribed anti-depressants again until 1995, a year in which she divorced her husband, her mother died and she was injured in a motor vehicle accident that left her unable to work for a time. Claimant took anti-depressants for approximately 6 months to address her symptoms of anxiety and depression stemming from these events, and then stopped because she felt better.
3. Claimant has experienced intermittent episodes of depression and anxiety since 1995, all of which she has managed successfully with anti-depressant medications. At no time did these episodes cause panic attacks, keep her from leaving the house or render her unable to work.
4. Claimant also suffers from chronic low back pain stemming from a work-related injury in 1985. She controls her pain currently with non-narcotic analgesics. Previously she used narcotic pain medications, but weaned herself off these for fear of becoming overly dependent upon them. The medical records reflect that at times Claimant's low back pain interferes with her sleep.

Claimant's Work at Southern State Correctional Facility

5. Claimant began working at the Southern State Correctional Facility (SSCF), located in Springfield, Vermont, in November 2003, one month after the facility opened. At the time, Correctional Medical Services (CMS) held the contract with the State of Vermont Department of Corrections to provide medical services to the inmates at each of the state's nine correctional facilities. CMS hired Claimant to be a medical records clerk/secretary at SSCF.
6. In January 2004 CMS promoted Claimant to the position of Regional Administrative Assistant. This position involved both supervisory and administrative support responsibilities. Claimant supervised CMS' administrative assistants at all nine correctional facilities. Her job required her to collect and organize data from each site to be submitted to the state for auditing, and also to provide direct administrative support to her supervisors, Nancy Lawrence and Nancy Ellner. Claimant found the job challenging and stressful, but felt that she succeeded well in it.

7. As she had at times in the past, during her tenure as Regional Administrative Assistant Claimant experienced episodes of stress, anxiety and depressed mood, which her primary care providers, first Dr. Biboso and then Dr. Leppman, treated with anti-depressant medications. The medical records relating to these episodes do not cite any particular inciting event or trigger for Claimant's depressive symptoms, and they appear to have been relatively minor in both scope and degree. Notably, Dr. Leppman's November 15, 2004 note states that Claimant's depression was satisfactorily controlled with Zoloft, and reported that Claimant "is not having serious depression problems at this time, and is reliably and quite busily occupied, among other things, with her job . . . at SSCF."
8. In February 2005 Defendant became the new medical services contractor for the state's correctional facilities, the CMS contract having expired. As part of the transition, all CMS employees were required to reapply for employment with Defendant. In Claimant's case, there was no equivalent job for which to apply, as Defendant's organizational model did not include a Regional Administrative Assistant position. Instead, Claimant applied for and was hired as Program Manager to serve both the SSCF and Marble Valley (Rutland) correctional facilities.
9. Under Defendant's organizational model, the responsibility for providing medical services at each correctional facility in accordance with the state contract was split along clinical versus administrative lines between the Nurse Manager and the Program Manager. The Nurse Manager's responsibilities were primarily clinical and included training and supervising the nursing staff, ensuring that inmate "sick call" requests were addressed in a timely manner and that medications were safeguarded and dispensed appropriately, managing chronic care issues, and filling in when necessary for nurses who called in sick. The Program Manager's responsibilities were primarily administrative, and included ordering supplies and paying bills, completing payroll, coordinating medical staff scheduling, recruiting and interviewing potential hires, addressing personnel issues and generally managing the day-to-day activities of the facility's medical services program.
10. Significantly, in addition to managing the program's daily affairs, the Program Manager also was held accountable for ensuring compliance with various aspects of Defendant's contract with the state. For example, it was the Program Manager's duty to make sure that contractually required staffing levels were maintained and that inmate sick calls were addressed within the contractually required time frame. The state contract provided for costly penalties to be assessed on a daily basis in the event of non-compliance and with that in mind Defendant strenuously emphasized this aspect of the Program Manager's job.

11. The Springfield facility is different in many important respects from the other correctional facilities in the state and as a consequence Claimant's job as Program Manager at SSCF involved challenges not faced by her counterparts in other locations. For example:
 - SSCF is the only designated correctional facility in the state for inmates with special medical needs. It houses the largest concentration of inmates with chronic illnesses, such as diabetes, and maintains the largest infirmary for acutely ill inmates as well. It also is the only designated psychiatric unit in the state. There is an on-site dental clinic and an on-site x-ray. SSCF also is the medical records depository for all nine state correctional facilities.
 - Given its emphasis on serving inmates with special medical needs, SSCF's medical staffing requirements are significantly more extensive than they are at Vermont's other correctional facilities. In addition, providing appropriate medical care to the inmate population at SSCF requires that more outside medical consultants be retained and available.
 - Unlike other correctional facilities in the state, SSCF was built with a campus-type housing layout rather than a single, self-contained prison housing unit, which poses unique security issues for all staff, including medical services staff.
 - SSCF is the newest correctional facility in the state, having opened only one month before Claimant began working there. As such, its staffing needs were not yet fully understood and its own identifiable culture had not yet developed during Claimant's tenure there. With its emphasis on serving that portion of Vermont's inmate population with special medical needs, SSCF is also a high-profile facility, with much at stake for its effective and efficient operation.
12. Claimant testified that in her view the SSCF Program Manager position represented the culmination of years of training and experience. She was proud of her increased managerial responsibilities and pleased with the opportunity to be more than just support staff. She loved her job and took her responsibilities very seriously.
13. Although Defendant initially contemplated that Claimant would serve as Program Manager at both SSCF and at Marble Valley Correctional Center, it soon became apparent that Claimant's responsibilities at SSCF were so extensive as to preclude her from splitting her time with Marble Valley. Ultimately Defendant hired a full-time Program Manager for that facility.
14. Unlike the Program Managers at other facilities with similarly sized inmate populations, Claimant had no administrative support staff to assist her in fulfilling her Program Manager duties. Defendant initially had assigned a part-time administrative assistant to Claimant, but reallocated this position to another facility after only two weeks.

15. As noted above, Defendant's organizational model contemplated that in each facility the Program Manager and the Nurse Manager would work together to ensure that all inmates' medical needs were met appropriately and in accordance with the state contract. Unfortunately, Katie Aiken, the Nurse Manager at SSCF during Claimant's tenure, was inexperienced and lacked the necessary skills to be an effective member of the management team. Claimant's ability to meet her own job expectations suffered markedly as a result.
16. For example, Ms. Aiken often failed to provide Claimant with the clinical data Claimant needed to prepare the daily audit reports required by the state contract in a timely manner. When the reports were not filed on time, it was Claimant who was held accountable under the state contract, not Ms. Aiken.
17. Ms. Aiken's supervisory style, which was confrontational and unprofessional, also directly impacted Claimant's job performance. Clinical staff morale suffered under Ms. Aiken's management, and it became increasingly difficult to attract and retain nurses. Staffing shortages resulted, for which Claimant, as Program Manager, was held accountable according to the state contract. Claimant testified that on at least one occasion her supervisors "fudged" a staffing report so as to avoid incurring a contract penalty. This made Claimant most uncomfortable.
18. Ms. Aiken also was explosive towards Claimant. On one occasion she screamed so loudly at Claimant during a confrontation that a prison security guard came to investigate.
19. Claimant testified that Ms. Aiken did not train her nursing staff adequately and did not uniformly enforce important security regulations. She was aware of, but did not discipline, nurses who had improper contacts with inmates. She tolerated nurses who did not comply with the rules as to storing and dispensing narcotic medications, and then lied about the fact to a state Nursing Board investigator. This too made Claimant very uncomfortable.
20. Claimant received little support from management in her efforts to deal with Ms. Aiken's deficiencies. She had no authority herself to discipline Ms. Aiken and Ms. Aiken's supervisor, Nancy Lawrence, was reluctant to take any action.
21. Claimant's testimony as to the problems posed by Ms. Aiken's ineffectiveness as Nurse Manager was corroborated by that of Richard Frank, R.N. Mr. Frank worked in the state's correctional facilities system from 2002 until January 2006, first for CMS and then for Defendant. From 2002 until 2005, Mr. Frank was the out-of-state coordinator, responsible for ensuring timely medical clearances for inmates being sent from Vermont correctional facilities to out-of-state prisons. In that role, he had occasion to interface directly with the Nurse Managers at all of the state's facilities and therefore was well-qualified to compare and contrast Ms. Aiken's abilities with those of her peers elsewhere in the state. After the CMS contract expired, in 2005 Defendant hired Mr. Frank to be the Nurse Manager at the Marble Valley facility.

22. Mr. Frank was involved in the interview process leading up to Ms. Aiken's employment at SSCF. Because she had neither management nor corrections experience, Mr. Frank had recommended that she be hired as a charge nurse. When she was hired to be the Nurse Manager instead, Mr. Frank was asked to stay in close contact and mentor her.
23. Mr. Frank testified that SSCF was the only correctional facility in the state with an inexperienced Nurse Manager and that Claimant's job was made more difficult as a result. Mr. Frank testified that Ms. Aiken had poor time management skills, and therefore relied on Claimant to complete reports that were Ms. Aiken's responsibility to prepare. She was ineffective at training her nursing staff on such important issues as medical security and inmate interactions, to the point where Mr. Frank was asked at times to assume responsibility for this important function. On at least one occasion Mr. Frank personally observed Ms. Aiken to be unprofessional in her dealings with the nursing staff, and on a few occasions he witnessed her arguing with Claimant. Mr. Frank credibly testified that Ms. Aiken's explosive style and managerial inexperience contributed to the low staff morale and high staff turnover at SSCF as compared with the state's other correctional facilities.
24. Mr. Frank testified that both as a result of Ms. Aiken's disruptive presence and because of the unique characteristics of SSCF as the state's largest medical facility, Claimant's job as Program Manager was significantly more burdensome than that of Program Managers at the state's other correctional facilities. He stated that the stress level at SSCF was "palpable" whenever he entered the facility.
25. Claimant's testimony as to the stresses she encountered as Program Manager at SSCF also was corroborated by Dr. Leppman's testimony. In addition to being Claimant's primary care provider, Dr. Leppman is the medical director at SSCF. He is on-site at the facility one and a half days per week, and maintains frequent telephone contact with the staff there on other days. Dr. Leppman generally concurred with Mr. Frank's depiction of the stress level at SSCF, both as a result of the facility's unique role in the state's correctional system and as a result of Ms. Aiken's disruptive presence. He testified that although his own interactions with Ms. Aiken were not particularly difficult, he was aware that Ms. Aiken had personality conflicts with other medical staff employees, including Claimant.
26. Claimant testified that by June 2005 she was under so much stress that she was having heart palpitations, crying bouts and panic attacks. She had difficulty sleeping, and would lay awake thinking about all the tasks that she needed to complete at work. Claimant had been taking anti-depressant medications since May 2004, but testified that they were no longer working. Her symptoms were more extreme and intense than any she had experienced previously.

27. Matters came to a head on June 17, 2005, a Friday. Claimant had another argument with Ms. Aiken, during which Ms. Aiken stated that she was giving her notice and leaving. When Claimant relayed this information to Nancy Lawrence, their supervisor, Ms. Lawrence ordered Claimant to persuade Ms. Aiken to return to work. Claimant testified that she was shaking, crying and panicked, and felt that she could not take any more. She decided to resign and wrote a notice to that effect. The following Monday, June 20, 2005 Claimant was summoned to a meeting with Ms. Aiken and both of their supervisors, Ms. Lawrence and Ms. Ellner. When she entered the facility, she encountered Ms. Aiken, who was visibly angry. Claimant became frightened and left without attending the meeting. She has not been back since.

Claimant's Medical Course and Current Status

28. Claimant presented to Dr. Leppman, her primary care provider, on June 20, 2005, the day of the aborted meeting with Ms. Aiken and the supervisors. The tenor of Dr. Leppman's record of this office visit contrasted starkly with his November 2004 office note, in which he had stated that Claimant's depression was not serious and was adequately controlled with anti-depressant medications. This time Dr. Leppman reported that Claimant was feeling extremely stressed as a result of her job and noted that she was visibly anxious. As treatment Dr. Leppman prescribed increased dosages of anti-depressant medications.
28. As Claimant's primary care provider, Dr. Leppman has continued to observe and treat her psychological symptoms along with other general health issues that have arisen, including her chronic low back pain. Dr. Leppman testified that Claimant's mental health was markedly worse after June 2005 as compared with what he had observed on prior visits. Dr. Leppman described Claimant's psychological state as having been stable as of November 2004, her depression well controlled with anti-depressant medications. In his opinion, the circumstances of Claimant's job, and the attendant stresses it engendered, aggravated her pre-existing depression to the point where she was unable to work.
29. In March 2006 Claimant began treating with Dr. Salam, a psychiatrist. Dr. Salam's treatment notes reflect various possible diagnoses, including bipolar disorder, adjustment disorder with mixed depression and anxiety, and mood disorder. Claimant treated with Dr. Salam until January 2007. During this period Dr. Salam reported a variety of stressors in Claimant's life, including not only those related to the work environment at SSCF and its psychological aftermath but also financial pressures, worries about her children, and ongoing problems with chronic low back pain.

30. In June 2007 Claimant began treating with Dr. Edelstein, another psychiatrist, as Dr. Salam had moved away. Dr. Edelstein diagnosed recurrent depression, causally related to the work stress Claimant had encountered at SSCF. He acknowledged that Claimant was predisposed to recurrent bouts of depression by virtue of her traumatic childhood, her history of depressive episodes in the past and ongoing psychological stressors in her life, including family issues and chronic back pain. The episode of depression she experienced beginning in June 2005, however, was more intense, more severe and, for the first time in her life, disabling. In Dr. Edelstein's opinion Claimant's job was the most extraordinarily stressful issue facing her at the time of this major depressive episode. To his mind, therefore, work-related stress was what caused the episode to occur with such severity.
31. Dr. Edelstein testified that Claimant has responded well to changes in her anti-depressant medication regimen and that as of the last time he saw her, January 8, 2008, she no longer was temporarily totally disabled.
32. At Defendant's request, in January 2008 Claimant underwent an independent medical evaluation with Dr. Willmuth, a forensic psychiatrist. Dr. Willmuth disagreed with Dr. Edelstein's assessment that extraordinary work-related stress caused Claimant to suffer an episode of recurrent depression in June 2005. In her opinion Claimant suffered from bipolar disorder and experienced a manic episode in June 2005. According to Dr. Willmuth, Claimant's pre-existing susceptibility to depression and anxiety combined with certain aspects of her personality to render her unable to succeed in the demanding job she had taken on. Her inability to do so in turn fed her anxiety to the point where it became disabling. Simply put, in Dr. Willmuth's opinion Claimant found herself in a job that was not right for her and became overwhelmed by it.
33. Dr. Willmuth acknowledged in her testimony that work stresses likely contributed to the heightened state of anxiety and depression Claimant experienced in June 2005. She noted that a person's mental state represents a cumulative package of personality makeup, psychological history and concurrent life stressors. It is impossible to pinpoint one stressor as the cause of a depressive episode, therefore, because multiple stressors are always present. Thus, when asked if Claimant's work environment was the trigger for the episode of recurrent depression that began in June 2005, Dr. Willmuth had no answer.
34. Both Dr. Willmuth and Dr. Edelstein agreed that Claimant was unable to work as a result of her psychological condition from June 17, 2005 until January 8, 2008.
35. Claimant testified that although she feels capable of returning to work now, she does not intend to seek a managerial position, as she does not want to risk endangering her psychological health again. No evidence was submitted as to whether given her educational background and employment history Claimant is entitled to vocational rehabilitation benefits.

CONCLUSIONS OF LAW:

1. In workers' compensation cases, the claimant has the burden of establishing all facts essential to the rights asserted. *King v. Snide*, 144 Vt. 395, 399 (1984). He or she 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). 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 resulting disability, and the inference from the facts proved must be the more probable hypothesis. *Burton v. Holden Lumber Co.*, 112 Vt. 17 (1941); *Morse v. John E. Russell Corp.*, Opinion No. 40-92WC (May 7, 1993).
2. In the current claim Claimant alleges that the stress to which she was subjected at work caused a psychological injury that disabled her from working, a so-called "mental-mental" claim. For such a claim to be compensable, Claimant first must show that the workplace stress she faced was significant and objectively real. *Bluto v. Compass Group/Canteen Vending*, Opinion No. 11-02WC (February 25, 2002). In addition, she must establish that the stress was unusual or extraordinary, that it amounted to something "of significantly greater dimension" than that encountered by other similarly situated employees in the same general field performing the same or similar work. *Crosby v. City of Burlington*, 176 Vt. 107 (2003); *Bedini v. Frost*, 165 Vt. 167 (1996).
3. The Vermont Supreme Court has explained in some detail the basis for applying a stricter compensability standard to mental-mental claims than the one used for claims involving a physical injury. *Crosby, supra*; *Bedini, supra*. Suffice it to say, the Court has concluded that it is reasonable to place the burden on an employee "to deal with the normal strains of his or her occupation through training, temperament and experience." *Crosby, supra* at ¶23. It is only when those strains become extraordinary as compared with the control group of other similarly situated employees that a compensable claim results. *See Eggum v. County of Orange*, Opinion No. 9-05WC (January 20, 2005) (deputy court clerk subjected to greater stress than that experienced by similarly situated court clerks).
4. I find that Claimant has sustained her burden of proof here. She has established that the workplace stress she faced in her job at SSCF was both objectively real and extraordinary as compared with the stress encountered by the Program Managers at other correctional facilities. This was due not only to SSCF's unique position as the state's primary medical facility, but also to Ms. Aiken's inadequacies as Nurse Manager. The confluence of these two factors resulted in a perfect storm of extraordinary stress. Claimant faced a significantly greater workload than her counterparts at other facilities – more inmates with serious medical needs and therefore more staff to recruit, hire, retain and coordinate – at the same time that she had to cope with a co-manager who was inexperienced, ineffective and disruptive. Were those conditions not stressful enough, Claimant was forced to manage without either administrative support from below (as most other Program Managers had) or responsive supervisory backing from above.

5. I further find that the extraordinary work-related stress to which Claimant was subjected triggered her disability and precluded her from working from June 17, 2005 until January 8, 2008. The fact that this work stress occurred in the context of Claimant's pre-existing personality makeup, prior psychological history and consequent susceptibility to depression and anxiety does not shield Defendant from liability, any more than it would were this a physical injury claim rather than a psychological one. As the Supreme Court noted in *Bedini*, claimants with pre-existing psychological conditions can still receive compensation, so long as they show that their disability was triggered by extraordinary work-related stress. *Id.* at 170 and footnote 2.
6. I find that there is insufficient evidence from which to determine whether Claimant is entitled to vocational rehabilitation benefits. At a minimum, however, Defendant is obligated to conduct the appropriate screening and/or entitlement assessment in accordance with 21 V.S.A. §641 and Workers' Compensation Rules 30.0000 and 32.0000.
7. Claimant has submitted evidence of costs totaling \$1,128.70 and attorney's fees in accordance with her contingency fee agreement. An award of costs to a prevailing claimant is mandatory under 21 V.S.A. §678, and therefore these costs are awarded. As for attorney's fees, these lie within the Commissioner's discretion. I find that they are appropriate here, subject to the limitations of Workers' Compensation Rule 10.1220 – 20% of the compensation awarded or \$9,000.00, whichever is less.

ORDER:

Based on the foregoing findings of fact and conclusions of law, Defendant is ORDERED to pay:

1. Temporary total disability benefits from June 17, 2005 through January 8, 2008;
2. Medical benefits in accordance with 21 V.S.A. §640(a) covering all reasonably necessary medical services and supplies causally related to treatment of Claimant's June 17, 2005 injury;
3. Vocational rehabilitation benefits in accordance with 21 V.S.A. §641, subject to determination of entitlement under Workers' Compensation Rules 30.0000 and 32.0000; and
4. Costs of \$1,128.70 and attorney's fees in accordance with Workers' Compensation Rule 10.1220.

DATED at Montpelier, Vermont this 19th day of May 2008.

Patricia Moulton Powden
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.