

**STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY**

)	State File No. P-20572
)	
Lisa Wilcox)	By: Margaret A. Mangan
)	Hearing Officer
)	
v.)	For: R. Tasha Wallis
)	Commissioner
Ethan Allen)	
)	Opinion No. 02-02WC

Hearing held in Newport on June 13, 14, 15, 2001
Record closed on October 22, 2001

APPEARANCES

Vincent Illuzzi, Esq. for the claimant
Andrew Boxer, Esq. for the defendant

ISSUE:

1. Did the claimant suffer a compensable work-related injury while Ethan Allen employed her?
2. Is this claim barred by the applicable statute of limitations?

EXHIBITS:

Joint Exhibit I:	Medical Records
Joint Exhibit Ia:	Problem List
Joint Exhibit II:	Transcript of the hearing
Claimant's Exhibit 1:	Letter from claimant to Silvestri dated August 5, 1999
Claimant's Exhibit 4:	North Country Hospital Occ. Health Form dated Dec. 30, 1998
Claimant's Exhibit 7:	Sexual Harassment Policy
Claimant's Exhibit 11:	Handwritten Notes of May 10, 1996 (Human Resources)
Claimant's Exhibit 12:	Curriculum Vitae of Claudia Zayfert, Ph.D.
Claimant's Exhibit 13:	Invoices for Legal Services and Costs
Defendant Exhibit B:	Attorney General Employment Discrimination Questionnaire
Defendant's Exhibit C:	Report of Robert M. Weiner, M.D.
Defendant's Exhibit D:	Additional Medical records (submitted with Proposed Findings)

BACKGROUND:

Claimant alleges that she suffered a mental injury in the course of her employment with Ethan Allen and as a result is entitled to temporary total, temporary partial and permanency benefits as well as attorney fees and costs. She alleges that the stress occurred from about May to September of 1996 through October 1999 when a supervisor and a co-worker sexually harassed her and when the supervisor retaliated by giving her unusually difficult work to do. The defense alleges that problems separate from work caused the claimant's mental condition. In the alternative, it argues that an unpopular incentive plan, and not harassment, caused the claimant's problems. Finally, the defense argues that the six-month provision in 21 V.S.A. § 656 bars any action based on the 1996 complaint.

FINDINGS OF FACT:

1. Judicial notice is taken of all official forms filed in this action and the exhibits listed above are admitted into evidence.
2. Claimant Lisa Wilcox was an employee and Ethan Allen her employer as those terms are defined in the Workers' Compensation Act and Rules.
3. Claimant began working for Ethan Allen in late January 1996. For about a month she rode to and from work with Richard Blanchard, her brother-in-law and supervisor on the night shift. When claimant got her own car, she stopped commuting with Mr. Blanchard.
4. Sometime in March of 1996 claimant drove Blanchard home because he needed a ride. During that ride, Mr. Blanchard asked the claimant to pull over to have sex with him. She refused and took him home.
5. In April or May of 1996 Blanchard made sexual advances toward the claimant at work. Claimant responded by telling her supervisor, Brian Courier, that Blanchard was bringing inappropriate family matters into the work place. She also spoke with Diane Choiniere in the Human Resource Department. Ms. Choiniere's record of that complaint mentions that Blanchard was bringing family matters into the workplace, but mentions nothing about sexual harassment. Blanchard was told that as a supervisory employee he was held to a higher standard than others and that he was not to bring family matters into the workplace. The harassment then stopped.
6. In September of 1996 claimant was moved to the day shift. At about the same time she started living with a co-worker, Anthony Sylvestri.
7. From September 1996 through April 1999 claimant worked on the day shift without incident at work.

8. In 1997 the claimant's uncle, who had abused her when she was a child, committed suicide. Claimant and Sylvestri had stopped by the uncle's home to pick him up that morning when they found him.
9. Also in 1997 Sylvestri began physically abusing the claimant. In July 1998 claimant ended that relationship, although the abuse continued. At times, when intoxicated, Sylvestri walked into her apartment uninvited. At one point she sought the assistance of local police to have him removed.
10. In the fall of 1998 Sylvestri suffered an injury that required medical attention and recuperation at home. The claimant allowed him to move into her apartment where she cared for him. When he had recovered from those injuries, he moved out.
11. On December 24, 1998 Sylvestri returned to the claimant's apartment where he "dropped kicked" and choked her.
12. On December 26, 1998 the claimant attempted suicide. Police took her to North Country Hospital where she was admitted overnight and released the next day.
13. On December 30, 1998 the claimant reported to work at Ethan Allen and went to the office of Wayne Lafleur, a supervisor. She detailed the abuse she had sustained at Sylvestri's hand and her suicide attempt. Lafleur took her to the nurse's office to report the suicide attempt and left claimant with the feeling that he would protect her.
14. From February to April of 1999 claimant sensed that her life had returned to normal. Sylvestri was operating a rip saw at one end of the rip saw line, while claimant was operating her rip saw at the other end of the line.
15. In April 1999 claimant was told that Richard Blanchard, the brother-in-law who had harassed her, would become her day shift supervisor.
16. At a bar one night, Sylvestri asked LaFleur to make the claimant his rip saw partner. Soon afterwards, that assignment was made. Sylvestri used the proximity to the claimant to touch her, deliberately brush up against her and tell her he was ready if she ever "got lonely."
17. On May 24, 1999 the claimant had an office visit with Megan Garrigan, a physician's assistant at the Orleans Medical Clinic. Because her sister, Richard Blanchard's wife, also worked at that clinic, claimant asked Garrigan not to record any complaint relating to Blanchard in the records. The chart mentions the claimant suicidal ideation and her inability to feel that people in her life truly cared for her. In May 1999, when Blanchard and Sylvestri were both working on the day shift with the claimant, Ms. Garrigan diagnosed depression. The records also reflect claimant's anxiety about a lump in her breast.

18. On August 5, 1999, at a friend's urging, claimant wrote a letter to Anthony Sylvestri complaining about the harassment. He recalls receiving the letter and throwing it away.
19. On September 19, 1999 while Sylvestri was still the claimant's partner, employees were told that the company was about to implement an incentive plan whereby employees would receive a base pay rate below what they were then earning with the ability to earn more depending on production. Then they were timed on certain tasks to determine realistic expectations. At that time, employees understood that the plan would not include the rough mill department where claimant was working.
20. Also in September of 1999 Sylvestri was removed as the claimant's ripsaw partner in response to a threat to sue from the claimant.
21. In October of 1999 employees learned that the incentive program would in fact include the rough mill department. Claimant was furious, believing that she would not be able to support her family.
22. Claimant consulted with an attorney, received phone calls at work from him and generally let people know about her dissatisfaction with the incentive program.
23. At one point, claimant was told that her work would be timed. She remains convinced that she was given perfect wood to cut for the timing trials, which would have taken less time to cut than the more typical courser grades of wood. However, I cannot accept as fact her belief that the trials were manipulated specifically to hurt her chances for an adequate paycheck.
24. On October 26, 1999, when claimant refused to be timed on wood she thought was perfect and therefore too easy, she was fired.
25. Two days later she filed an employment discrimination complaint with the Attorney General's office. She left blank an answer to a specific item on the questionnaire asking about sex discrimination. And nowhere in her handwritten notes accompanying the questionnaire did she mention any harassment by Sylvestri or Blanchard.
26. Garrigan noted that the claimant's depression worsened after her job was terminated and that she needed a medical health counselor.
27. In February 2000 the claimant began treatment with the Dartmouth Hitchcock Psychiatric Associates for extreme distress and has been treating there since.
28. Claimant's depression worsened after she left Ethan Allen. She experienced several stressors in her personal life, including her mother's illness, problems with ex-boyfriends and estrangement from her family.

Past History

29. This claimant is a survivor from abuse she endured as a child and as an adult, including sexual abuse by the uncle whose body she found in 1997 and abuse at the hands of her former husband and partners. She turned to drugs and alcohol for a time, then in 1995 found her first stable job, the one she had before she began working at Ethan Allen. At no time before February of 2000 did she seek or obtain psychiatric or psychological treatment.

Expert Medical Evidence

30. Claudia Zayfert, Ph.D. is a clinical psychologist at Dartmouth Hitchcock Psychiatric Associates (DHPA) in Hanover, New Hampshire. She has been treating claimant with others in her clinical practice since February of 2000. Her testimony in support of the claimant was admitted by deposition. Dr. Zayfert's specializes in the treatment of people with anxiety disorders and posttraumatic stress disorder (PTSD). She has evaluated hundreds of people with PTSD and has published a number of papers on the subject.
31. PTSD is a mental disorder that follows an extremely stressful traumatic event. The person with this disorder is preoccupied with memories of the event and experiences what professionals have labeled "intrusive symptoms" including dreams, flashbacks and physical reminders of the event.
32. Dr. Zayfert opined that the claimant has suffers from PTSD from sexual harassment on the job at Ethan Allen. That opinion is based on the history provided by the claimant, a review of the claimant's medical records and Dr. Zayfert's education, training and experience. In addition, the claimant suffers from panic disorder, generalized anxiety disorder, social phobia and depression. Although claimant had many traumatic events in her past, she was able to function until a final stressor overwhelmed her. In Dr. Zayfert's opinion, that stressor was the harassment by Sylvestri, which exacerbated harassment by Blanchard, the claimant's brother-in-law.
33. In Dr. Zayfert's opinion, the claimant could have worked at the time she was fired and could have continued to work up until her June 2000 evaluation. However, by the end of 2000, the claimant's condition had deteriorated to the point where she was no longer able to work.
34. Dr. Zayfert testified that Blanchard's becoming the claimant's supervisor is 1999 and Sylvestri's becoming her supervisor in 1999 could have been PTSD "triggers," but that the incentive system could also have been a PTSD trigger, "the straw that broke the camel's back." She was unfamiliar with the circumstances surrounding the claimant's job termination.

35. Robert Weiner, M.D., board certified in psychiatry and forensic psychiatry, has practiced and taught psychiatry for more than thirty years. He performed an examination of the claimant for the defense on November 30, 2000. During that evaluation, the claimant expressed anger toward the incentive system at Ethan Allen and sadness regarding her estrangement from her family. She also detailed her legal claims.
36. Claimant told Dr. Weiner that her suicide attempt followed harassment by her brother-in-law, yet medical records relate that attempt to her relationship with Sylvestri, several years later. In Dr. Weiner's opinion, the claimant suffers from depression, most likely related to her estrangement from her family and not to any events at Ethan Allen. Furthermore, he does not believe that the claimant has PTSD from any work experiences. In fact, he does not believe she suffers from PTSD, a condition he attributes to combat-like situations, not those experienced by this claimant.

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 (1963). The claimant 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).
3. To recover for a work-related mental injury, a claimant in Vermont must first 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). Second, the claimant must prove that her illness is actually a product of unusual or extraordinary stresses. See, *Bedini v. Frost*, 165 Vt. 167 (1996).
4. "[T]he aggravation or acceleration of a pre-existing condition can constitute a personal injury by accident under the Act." *Campbell v. Savelberg, Inc.* 139 Vt. 31, 35-36 (1980). Therefore, even if the claimant had a pre-existing, though undiagnosed, mental condition her claim would be compensable if work aggravated that condition.
5. In this case, if it were the significant and objectively real stress of the on-the-job harassment that caused the claimant's illness, this would be a compensable claim. However, stress from bona fide personnel actions is not compensable. See, *Wilson v. Quechee Landowners Assoc.*, 9-87WC (Nov. 4, 1987).

6. Although the medical evidence was presented as opposing opinions, it is not necessary to choose between them because there is essential agreement on causation. This claimant clearly suffers from a psychiatric condition that requires treatment. She had indeed been harassed on the job by Sylvestri. However, the convincing medical evidence proves that it was not that harassment, nor any behavior on the part of Blanchard, that was the aggravating factor here. It was the incentive program to which she had a dramatic objection.
7. Yet even that reaction to the incentive program did not aggravate claimant's mental condition to a point where it became disabling as shown by her expert's testimony that she was capable of working at the time she was fired. It would be impermissible speculation to conclude that stress at her job at Ethan Allen caused her current inability to work, especially in light of the long history of abuse and the personal stress she experienced after she left her job.
8. In sum, the evidence does not support the claimant's position that it was the work-related harassment that caused her mental condition. Consequently, she is not entitled to the benefits requested.
9. It is not necessary to address the statute of limitation defense.

ORDER:

THEREFORE, based on the Foregoing Findings of Fact and Conclusions of Law, this claim is DENIED.

Dated at Montpelier, Vermont this 29th day of January 2002.

R. Tasha Wallis
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.