STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY

David Eggum	)	Opinion No. 09-05WC
	)	
	)	By: Margaret A. Mangan
v.	)	Hearing Officer
	)	
County of Orange	)	For: Laura Kilmer Collins
	)	Commissioner
	)	
	)	State File No. U-10365

Pretrial conference held on July 6, 2004
Defense motion for summary judgment denied on September 22, 2004
Status conferences on October 5 and 25, 2004
Hearing held in Montpelier on November 23, 2004
Status conference on November 24, 2004
Record Closed on January 4, 2005

APPEARANCES:

Vincent Illuzzi, Esq., for the Claimant
Gregory A. Bullman, Esq., and Andrew C. Boxer, Esq., for the Defendant

ISSUES:

1. Did claimant suffer a compensable work-related mental injury?

2. If so, to what benefits is he entitled?

EXHIBITS:

Joint I: Medical Records

Claimant 2: Affidavit of Dr. McClure
Claimant 3: Claimant's affidavit
Claimant 5: Summary of payroll and timesheets
Claimant 6: Affidavit of Penelope Carrier
Claimant 7: Affidavit of Mary Kennedy

Defendant A: Letter from Sheriff McClure 7/19/04
Defendant B: Letter from Rodney Ackerman 7/24/04
Defendant C: Packet of payroll materials
Defendant D: Deposition of Darlene Moran

OVERVIEW:

This action arises out of claimant's work for the County of Orange as a Court Clerk, which he alleges caused him unusual stress entitling him to worker's compensation benefits for a mental-mental claim.

FINDINGS OF FACT:

1. Claimant was hired as a Deputy Clerk for the County of Orange Superior Court in November of 2001. He had no prior experience in that work. At the time he was hired, claimant worked with the Clerk Rodney Ackerman. The two were the only clerks in the superior court, although they agreed that a third person was needed two to three days a week, an addition they hoped to have within a year.

2. After a period of illness, Mr. Ackerman was diagnosed with a fatal condition in June of 2002. By July, he stopped performing many clerk duties that then fell to claimant. At times claimant needed to correct mistakes. At other times he needed to finish uncompleted tasks.

3. Claimant watched his supervisor deteriorate while attempting to encourage him, correct his work, and assure him he was not interested in taking his job. The summer of 2002 was stressful and depressing for the claimant.

4. In July 2002 claimant's workload increased because it was an election year for county, statewide and legislative offices. Claimant had not worked in the Clerk's office during an election before and had to find information from a variety of sources, including other court clerks, to handle myriad queries and requests for forms.

5. In July 2002, claimant was seen in the Urgent Care Clinic at the VA for migraine headaches.

6. By August 2002, Mr. Ackerman was not able to perform any of the clerk's duties, although he tried. He stopped going to the Clerk's office in September.

7. Mary Kennedy, former Court Clerk, provided some part-time assistance during the summer and fall of 2002, and then left for the winter. During her time working with claimant, she provided claimant with a partial tutorial on a Clerk's responsibilities and helped him with the backlog. Together, they got some, but not all, work caught up.

8. At about the time Mary Kennedy left, Darlene Moran was hired to work as a part-time Assistant Clerk. Claimant was responsible for training Ms. Moran.

9. The stress continued through the November election. Claimant felt overwhelmed. He struggled to complete work. At one point he was four months behind with mandatory reporting of statistics.

10. In November of 2002, the Attorney General's office asked claimant to convene a grand jury within 30 to 45 days because of a looming statute of limitations issue. Claimant sought help from other clerks about the procedure, requested funds, sought assignment of a judge and summoned grand jurors from a master jury list. The process was new, time consuming and stressful.

11. In December of 2002, claimant was named Acting Clerk and was formally assigned all clerk duties until Mr. Ackerman's return.

12. Mr. Ackerman's family accused claimant of trying to take his job.

13. Claimant was working 12-hour days in the Clerk's office, with 8 hours on Saturdays and Sundays.

14. In December 2002, claimant typed each envelope and mailed more than 1,200 notary public renewal applications.

15. Two assistant judges elected in November of 2002 took office on February 1, 2003. Both were new to the job. Claimant and the new assistant judges never developed a close working relationship.

16. In April 2003 claimant was seen at the Veteran's Administration Hospital (VA) for headaches. He reported work stressors, including filling in for an ill superior. A depression screen was positive.

17. Mr. Ackerman died in June 2003.

18. In September 2003, the job of Court Clerk, the job claimant had been doing, was opened for applications. Claimant applied for the job. He also asked for necessary training, but was told training would await the hiring decision.

19. Claimant began to have panic attacks in October 2003. He was hospitalized for four days for what was diagnosed as stress.

20. In December 2003, claimant learned that he would not be hired as the Court Clerk.

21. On December 29, 2003, claimant was taken out of work for a "disabling medical problem" identified as stress. However, he worked a few hours the next day to pay bills and generate payroll checks for county employees.

22. On January 2, 2004, the assistant judges suggested claimant take medical leave, after which he could return as Deputy Clerk.

23. Claimant worked two full days in January 2004 to help the new Clerk.

24. Claimant began treating with Bradley McClure, M.D. at the VA on January 5, 2004.

25. In May 2004 Dr. McClure released claimant to return to work, but in a different setting. Claimant then returned to a job he once had in the Orange County Sheriff's Department. In the course of that work, he has to go to the court from time to time. After one such visit, he was told he was never to go into the Orange County Courthouse beyond the entranceway. Shortly afterwards, claimant had a panic attack.

Similarly situated employees and level of stress

26. Mary Kennedy worked for the Vermont Judiciary for more than 20 years. She was Clerk in the Orange County Court from 1993 to 2001, a job that followed five years experience as Deputy Clerk. She opined, and I find, that claimant was under unusual stress on the job in the Clerk 's office because he had to cope with a coworker's illness, had to check Mr. Ackerman's work, had to work with less than cooperative, inexperienced, assistant judges, had an increase in workload, and had to deal with more pro se litigants and a case backlog. Claimant had started the job without experience and had little training.

27. Rodney Ackerman had eight years experience as a Court Clerk when claimant started working for him, a job that followed years as Mary Kennedy's assistant.

28. No Court Clerk experienced the stress claimant endured in terms of lack of training, workload, hours worked and the need to support an ill superior.

Medical Opinions

29. Bradley McClure, M.D., then a resident in psychiatry at the VA, treated claimant from January 2004 to May 2004. At the hearing, Dr. McClure opined that claimant's panic attacks and other psychological problems are related to his work related stress that began in June 2002. He opined that the delay between the onset of the stress and the panic attacks in October 2003 is not at all unusual. Like many others with panic attacks, claimant was able to work through a stressful period without symptoms, and then had the attacks when the stress started to subside.

30. Dr. McClure determined, and I find, that claimant was totally disabled from work from February 1, 2004 to May 12, 2004, when he began to work part-time for the Sheriff's Department. At the time of the hearing, claimant was still working only 20 to 25 hours per week.

31. Dr. McClure predicted that claimant would recover fully with no permanent impairment.

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). 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. This case falls in the category of workers' compensation claims called "mental-mental" because claimant alleges that his injury stems from workplace stress, not a physical injury. See *Crosby v. City of Burlington*, 2003 VT 107, ¶ 11.

4. To prove such an injury, claimant must prove: 1) the stress was objectively real; and 2) he experienced unusual or extraordinary stress greater than that experienced by similarly situated employees. Id; *Bluto v. Compass Group*, Opinion No. 11-02 (2002).

5. Stress from bona fide personnel actions, such as transfers or disciplinary actions, is not compensable. See, *Wilson v. Quechee Landowners Assoc*., 9-87WC (Nov. 4, 1987). The Workers' Compensation Act is not intended "to provide redress to every employee unhappy with the business decisions a company must necessarily make, including decisions to hire, fire, reorganize and reallocate its workforce." *Mazut v. General Electric*, Opinion No. 3-89 (1990).

6. Claimant has met his burden. The stress of working with an ill supervisor for one who had limited experience himself at a time when workload was increasing was objectively real. A delay in the onset of severe symptoms is consistent with observations known in psychiatry, as Dr. McClure convincingly explained.

7. Furthermore, the stress claimant was under was unusual and greater than that experienced by similarly situated court clerks. Mary Kennedy proved this point with her persuasive testimony. Claimant experienced Mr. Ackerman's illness in a way that no one else in the court did. With limited experience and training, he had to cover for his supervisor, work long hours and try to train a new employee. This was happening at the same time as the court workload was increasing.

8. Claimant has also proven that he was temporarily, totally disabled from February 1, 2004 to May 12, 2004 and partially disabled from that date to the present. Therefore he is entitled to TPD until he reaches medical end result or resumes full time work.

9. As a prevailing claimant, he is awarded attorney fees of 20% of the total award not to exceed $9,000. 21 V.S.A. § 678(a); WC Rule 10.1220, and interest from the date those payments would have been made had the claim been accepted until paid. 21 V.S.A. § 664.

ORDER:

Therefore, based on the foregoing findings of fact and conclusions of law, defendant is ORDERED to adjust this claim, including paying claimant:

1. Temporary total disability benefits from February 1, 2004 to May 12, 2004;
2. Temporary partial disability benefits from May 12, 2004;
3. Attorney fees of 20% of the total award;
4. Interest as specified above.

Dated at Montpelier, Vermont this 20th day of January 2005.

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Laura Kilmer Collins
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.

Eggum v. County of Orange (March 7, 2005)

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RULING ON DEFENSE MOTION FOR STAY

After claimant prevailed in this mental-mental claim, the carrier moved for a stay pending its appeal to superior court. Regardless of the appeal, "[a]ny award or order of the Commissioner shall be of full effect from issuance unless stayed by the Commissioner…." 21 V.S.A. § 675(b).

To prevail on its request in the instant matter, defendant must demonstrate all four of these criteria: "(1) a strong likelihood of success on the merits; (2) irreparable injury if the stay is not granted; (3) a stay will not substantially harm the other party; and (4) the stay will serve the best interests of the public." *Gilbert v. Gilbert*, 163 Vt. 549, 560 (1995) citing *In re Insurance Services Offices, Inc*., 148 Vt. 634, 635 (1987) (mem); *In re Allied Power & Light Co*., 132 Vt. 554 (1974). The Commissioner has the discretionary power to grant, deny or modify a request for a stay. 21 V.S.A.§ 675(b); *Austin v. Vermont Dowell & Square Co*., Opinion No. 05S-97WC (1997) (citing *Newell v. Moffatt*, Opinion No. 2A-88 (1988)). The granting of a stay should be the exception, not the rule. *Bodwell v. Webster Corporation,* Opinion No. 62S-96WC (1996).

Claimant prevailed because of the strength of fact witnesses familiar with the normal stresses in a court clerk's office and because of medical evidence supporting his position that the causative stress predated the subsequent personnel actions. It is unlikely that a jury will view this evidence differently. Consequently, defendant has not met the first criterion.

With regard to the second criterion, defendant persuasively argues that claimant would not suffer irreparable harm if the medical benefits aspect of the order were stayed. Claimant's medical bills have been and will continue to be paid from another payor who will be reimbursed should the court affirm the decision made. The same cannot be said for the temporary and permanency benefits ordered because claimant had exhausted other sources or wage replacement such as sick time and vacation time.

Next, I cannot conclude that payment of the limited benefits ordered will substantially harm the defendant in this matter or that the best interests of the public would be served by a stay. In such a rare award of a mental-mental claim with an elevated burden of proof the best interests of the public would best be served by the affirmation that such a claim is compensable followed by prompt payment.

Therefore, a partial stay is GRANTED for the medical benefits aspect of the order.

The other requests for stay are DENIED.

Dated at Montpelier, Vermont this 7th day of March 2005.

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Laura Kilmer Collins
Commissioner