

J. C. v. Passumpsic Savings Bank

(March 11, 2008)

**STATE OF VERMONT
DEPARTMENT OF LABOR**

J. C.

Opinion No. 08-08WC

v.

Phyllis Phillips, Esq.,
Hearing Officer

Passumpsic Savings Bank

Patricia Moulton Powden
Commissioner

State File No. X-56484

OPINION AND ORDER

Hearing held in St. Johnsbury on January 9th and 10th, 2008.

APPEARANCES:

Patricia Turley, Esq. for Claimant
Jeffrey Spencer, 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

Defendant's Exhibits:

Defendant's Exhibit A: *DSM-IV* Section 309.81, "Posttraumatic Stress Disorder"

Defendant's Exhibit B: Application letter and resume, January 15, 2004

Defendant's Exhibit C: Claimant performance evaluations

Defendant's Exhibit D: Cynthia Wheeler performance evaluations

Defendant's Exhibit E: Dr. Fine progress notes, 3/22/02

Defendant's Exhibit F: Dr. Fine progress notes, 4/2/03

CLAIM:

Temporary total disability benefits under 21 V.S.A. §642

Medical benefits under 21 V.S.A. §640(a)

Attorney's fees and costs under 21 V.S.A. §678

FINDINGS OF FACT:

1. Claimant is a native of St. Johnsbury, Vermont. She received an associate's degree from Endicott College and attended the University of Vermont.
2. Claimant's employment history is quite varied. She has held a variety of secretarial and administrative positions for numerous employers, both in Vermont and elsewhere, across a broad spectrum of businesses, including the ski industry, an oil exploration company, an international retailer and a university. Many of her jobs Claimant obtained through temporary employment agencies, which exposed her to constantly changing work environments and office settings. Claimant testified that she enjoyed the diverse nature of her work experiences. She liked meeting new people, learning new skills and addressing new challenges.
3. In October 1996 Claimant was hired through a temporary agency to work as a secretary/receptionist in the loan department at Defendant's main bank branch in St. Johnsbury. Her job duties included greeting customers from her seat at the department's front desk, sorting and distributing the department's mail, answering the phone, typing, filing and performing other secretarial and administrative support tasks for loan officers and loan department staff. Claimant's supervisor at the time was Karla Wilbur. Karla Wilbur's supervisor was Peter Crosby, a Senior Vice President.
4. Among the loan department personnel Claimant worked with was Cynthia Wheeler, the underwriting/loan supervisor. Ms. Wheeler was not Claimant's direct supervisor, but Claimant did have to work with her on one recurring task, that of typing up the weekly loan rate sheet for local realtors. Claimant prepared this sheet using information supplied by Ms. Wheeler.
5. In January 1997 Mr. Crosby offered Claimant a permanent full-time position, doing the same job she had been doing since October but now directly for the bank rather than through a temporary agency. Claimant accepted Mr. Crosby's offer on one condition, that Ms. Wheeler not be her direct supervisor. Claimant testified that she did so because she felt that Ms. Wheeler was a "mean-spirited person." Claimant testified that she had felt this way about Ms. Wheeler from the time she first started working at the bank in October 1996. Claimant also testified that she perceived from the beginning that Ms. Wheeler did not like her.
6. Claimant worked for three different supervisors during her tenure as loan department secretary/receptionist. From 1997 until some time in 1999, Karla Wilbur was her supervisor. Ms. Wilbur's performance evaluations of Claimant during that period were favorable. She had excellent attendance, worked with minimal direction and had excellent rapport with customers. Ms. Wilbur did note, however, that Claimant needed to focus on accuracy in her work and also that she needed to utilize voice mail better. In addition, Ms. Wilbur repeatedly suggested that Claimant focus on learning more about both the loan department and the bank in general so that she would be better able to answer basic questions and direct customer inquiries.

7. In 1999 both Ms. Wilbur and Mr. Crosby were promoted and Tom Robinson, a Vice President, became Claimant's supervisor. Cynthia Wheeler also was promoted, to the position of loan servicing department supervisor. As part of these promotions Ms. Wheeler moved to a new office situated directly across from Claimant's work station. Mr. Robinson's new office was next to Ms. Wheeler's.
8. Because Mr. Robinson was busy with his other responsibilities, he asked Ms. Wheeler to assist him with the task of supervising Claimant. Then, at some point in 2000 Mr. Robinson and Ms. Wheeler agreed that it made more sense for Ms. Wheeler to become Claimant's direct supervisor, and this change was implemented. Ms. Wheeler remained Claimant's direct supervisor for the duration of Claimant's employment.
9. As reflected in their testimony as well as their written performance evaluations of Claimant, both Mr. Robinson and Ms. Wheeler found Claimant to be proficient in some aspects of her job and needing improvement in others. Her attendance was good, she was polite and courteous to customers and cooperative with co-employees. She did an excellent job preparing documents and transcribing dictation. However, the deficiencies that Ms. Wilbur had noted in her early evaluations of Claimant persisted. For example, both Mr. Robinson and Ms. Wheeler counseled Claimant about making better use of voice mail so that she could perform her receptionist duties more efficiently and without having to leave her desk as frequently to deliver telephone messages. As Ms. Wilbur had suggested previously, they also advised Claimant to focus on learning to answer basic loan questions so that she could better respond to customer inquiries and direct their calls more specifically. At one point Ms. Wheeler suggested that Claimant compile a list of "frequently asked questions" so that together they could devise appropriate responses, but Claimant did not do so.
10. Both Mr. Robinson and Ms. Wheeler also counseled Claimant repeatedly that because she was the first point of contact for customers it was very important that she keep her desk as clean and neat as possible and refrain from eating or drinking while seated there. It also was important that Claimant minimize her time away from her desk so customers entering the department would be greeted properly. These concerns were recurrent themes in Claimant's annual performance evaluations throughout her tenure as loan department secretary/receptionist.

11. It is clear from Claimant's testimony that she did not take well to Ms. Wheeler's supervision. As noted above, Claimant perceived from the beginning that Ms. Wheeler did not like her and Claimant felt that because of this Ms. Wheeler often treated her unfavorably and with disrespect. Given the location of Ms. Wheeler's office directly across from Claimant's workstation, Claimant felt that Ms. Wheeler was constantly watching her and subjected her to far greater scrutiny than she did any of Claimant's co-employees. Claimant testified that Ms. Wheeler purposely took away tasks that Claimant did well and reassigned them to other employees. As to the remaining tasks, Claimant stated that "no matter what I did, it wasn't right." Claimant testified that Ms. Wheeler told her that Claimant's co-employees did not like her, and chastised her in front of them for mistakes that Claimant believed were not her responsibility. She testified that Ms. Wheeler reprimanded her for reading the mail before distributing it, even though she needed to do so in order to sort it properly. Claimant felt singled out as the only employee who was not allowed to eat or drink at her desk, and the only employee who could not participate in lunchroom birthday cake or pizza events because she was not allowed to leave her workstation. Claimant also testified to different treatment from Ms. Wheeler as to her ability to work through lunch on occasion so as to leave an hour earlier at the end of the day. While other employees were allowed to use their "combined time off" hours in order to do so from time to time, Ms. Wheeler denied Claimant's request to do the same. Claimant perceived that Ms. Wheeler's motivation for treating her in this way was that she wanted "total control of me" and that she "set me up to fail." Overall, Claimant testified that Ms. Wheeler treated her in a hostile, disrespectful and demeaning manner.
12. For her part, Ms. Wheeler testified that the supervisory decisions she made were not personally motivated at all but rather were required due to Claimant's role as the first point of customer contact in the loan department. Because Claimant worked at the front desk and not at a cubicle, it would be unseemly for customers to arrive and find her workstation untidy, for example. For the same reason, it would not do for Claimant to "work through lunch" by eating at her desk and thereby gain the right to leave an hour earlier at the end of the day, as her co-employees in cubicles might have been able to. Last, because the front desk had to be manned at all times, for Claimant to leave it – whether to deliver a written phone message, to chat with customers or co-employees or to attend a lunch room pizza break – was problematic. It meant that either the desk remained empty while Claimant was gone or that other employees had to be found to cover in her absence.
13. In January 2004 Claimant became so unhappy working under Ms. Wheeler's supervision that she contemplated leaving the bank altogether. She applied for an administrative position with another local employer, but did not get the job.

14. The deteriorating relationship between Claimant and Ms. Wheeler further worsened in June 2004, when Claimant's job duties changed as a result of a reorganization within the loan servicing department. Claimant's receptionist duties were reassigned to another employee, and Claimant assumed more loan processing functions instead. In particular, Claimant now was responsible for entering the loan department's daily "block balances." This task required Claimant to computer enter the data as to each day's lending transactions so that it could be faxed to the bank's processing center for overnight processing.
15. In preparation for and as part of the loan servicing department reorganization Ms. Wheeler asked all department employees, Claimant included, to keep a daily log of the job-related tasks they performed and the estimated time spent on each task. Claimant did not produce her log initially, and when she did so Ms. Wheeler criticized it in front of a co-employee as being incomplete. Claimant testified that once again, she felt singled out by Ms. Wheeler's criticism. Claimant testified that because many of the job functions were new to her she was not able to estimate accurately how much time each task would take, or how many tasks she could complete in a day. Nevertheless, Claimant testified that she felt tremendous pressure from Ms. Wheeler to complete the tasks within the time periods Claimant had estimated.
16. Claimant testified that Ms. Wheeler informed her of her new job responsibilities one afternoon in June 2004, in the presence of a co-employee and just before Claimant was to leave for the day for an appointment. Claimant felt that Ms. Wheeler handled the matter unprofessionally, given the significant changes to be implemented in Claimant's job. Claimant also testified that she received minimal training from Ms. Wheeler prior to assuming responsibility for performing the daily "block." Claimant testified that she was slow but accurate with this type of numerical data entry. She recalled an instance when Ms. Wheeler reprimanded her for her slowness, informing her that "nobody can go home until you finish" and that others could do the job much faster than Claimant could.
17. Claimant perceived that the loan department reorganization was a "sham" concocted by Ms. Wheeler to take away from Claimant those job responsibilities she enjoyed and was good at and replace them with duties for which she lacked skill or experience. The evidence does not support this perception, however. Both Ms. Wilbur and Mr. Robinson testified that the loan servicing department was reorganized in June 2004 and Ms. Wheeler's performance evaluation for that year reflected her role in that process.
18. Ms. Wheeler supervised Claimant's work product closely throughout the summer and fall of 2004, in Claimant's view much more so than she did with other employees. For example, Ms. Wheeler required Claimant to produce the files she had worked on throughout the day so that she could review them and document how much work Claimant had accomplished. Again, Claimant felt that Ms. Wheeler was singling her out for greater scrutiny without any justification for doing so.

19. In September 2004 Ms. Wheeler began meeting with Claimant on a weekly basis to review her progress on various job tasks. At Ms. Wheeler's request, Kim Towle, the bank's vice president of human resources, also attended. Ms. Towle testified that the purpose of the meetings was merely to keep track of Claimant's progress and help her keep up, not to take corrective action against her. Claimant testified that the meetings were not constructive and that she continued to feel that no matter what she did it was not right.
20. On November 9, 2004 Claimant presented to her primary care physician, Dr. Sharon Fine, complaining of atypical chest pressure. Claimant testified that she had been experiencing stress-related symptoms all summer long, including sleep deprivation, chest pains and hair loss. Dr. Fine concurred that Claimant's symptoms were indeed stress-related and referred her to Catherine Maier, a mental health counselor, for stress management.
21. On November 19, 2004, a Friday, Claimant left work feeling that she could not take any more. Ms. Wheeler had scheduled a weekly meeting with Claimant and Kim Towle for the following Monday or Tuesday, but Claimant felt that she was "at the end of her rope" and unable to attend. Claimant called Dr. Fine, who secured an immediate appointment for her with Catherine Maier, the mental health counselor she previously had recommended.
22. Claimant has not worked since November 19, 2004. Initially the bank placed her on medical leave, but ultimately terminated her employment effective December 1, 2005.
23. Ms. Maier first evaluated Claimant on November 22, 2004. Ms. Maier reported that Claimant was experiencing harassment in a "hostile work environment" caused by a supervisor who treated her with disrespect. As a result, Ms. Maier reported, Claimant felt emotionally battered and was exhibiting symptoms of depression and anxiety. Ms. Maier determined that Claimant was temporarily totally disabled from working, a conclusion with which Dr. Fine agreed. As treatment she recommended ongoing psychological counseling and medication.
24. Claimant has continued to undergo weekly counseling sessions with Ms. Maier since November 2004. For quite some time after November 2004 Claimant's symptoms did not abate and in fact appeared to worsen. She became socially withdrawn and agoraphobic, experienced anxiety attacks and nightmares and had difficulty focusing on even simple tasks. She felt unable to participate in recreational activities, such as skiing, that she had enjoyed and at which she had excelled throughout her life. More recently Claimant's symptoms have improved. She has been able to return to her volunteer ski patrol activities and feels more confident in social situations. She continues to suffer from nightmares and occasional panic attacks, however, particularly when confronted with memory triggers of her employment at the bank.

25. Ms. Maier has diagnosed Claimant as suffering from post-traumatic stress disorder (PTSD). According to the *Diagnostic and Statistical Manual of Mental Disorders (Fourth Edition)*, patients with PTSD develop characteristic symptoms following direct personal exposure to an extreme traumatic stressor involving actual or threatened death, serious injury or harm to one's physical integrity. These symptoms include recurrent and intrusive recollections of the event, recurrent nightmares, intense psychological distress or physiological reactivity when exposed to triggering events, diminished interest in previously enjoyed activities, detachment from others, anxiety and hypervigilance. Ms. Maier testified that Claimant exhibited many if not most of the symptoms associated with PTSD, all signs of intense fear, helplessness and horror. In her opinion, the traumatic stressors that gave rise to these symptoms consisted in the daily scrutiny, humiliation and bullying Claimant experienced working in a "hostile work environment" with a supervisor who "she perceived was harassing her."
26. Concurrent with Ms. Maier's counseling therapy, Claimant has treated as well with Dr. Veva Zimmerman, a psychiatrist. Dr. Zimmerman's treatment has included both counseling and medications. Contrary to Ms. Maier's diagnosis, Dr. Zimmerman has diagnosed Claimant as suffering from traumatic sleep disorder, somatization disorder and adjustment reaction with physical symptoms. The latter condition involves symptoms that are similar to those present with PTSD, but are caused by a triggering stressor that is not as extreme or life-threatening.
27. Claimant also has continued to treat on occasion with Dr. Fine, her primary care provider, who manages her other health issues. Dr. Fine believes that Claimant has not yet returned to the state of health she was in prior to November 2004. Neither she nor Ms. Maier has yet released Claimant to return to work.
28. None of Claimant's treatment providers has ever spoken directly with Ms. Wheeler or any other bank personnel as to the stressful work environment Claimant described and upon which they based their diagnoses. Thus, while all of them concur that Claimant truthfully described the hostile work conditions under which she labored exactly as she perceived them, none of them could testify to any independent verification of those conditions.
29. The record does supply some objective verification of Ms. Wheeler's supervisory style, and the stress it might have engendered among her subordinates, including Claimant. For example, Ms. Wilbur noted in one of her performance evaluations of Ms. Wheeler that she "needed to enhance her skills in giving negative feedback in a constructive way." In another performance evaluation, Mr. Robinson stated that Ms. Wheeler "has presented a couple of instances where people have felt it was the person and not the issue." And Ms. Wheeler herself acknowledged that she had "made employees cry" on occasion, although the record does not establish the particulars of those situations. Generally, however, Ms. Wheeler's performance evaluations were favorable and reflected steady growth in both supervisory responsibilities and leadership qualifications.

30. Ms. Wheeler admitted that her relationship with Claimant was “not an easy one,” and that at times she perceived Claimant’s demeanor to be “defensive.” Ms. Wilbur, Mr. Robinson and Ms. Towle all testified that in their experiences with Claimant she was resistant to change.
31. Claimant had no significant prior medical history of depression, anxiety or other psychological issues before November 2004. As is true for most people, there have been other psychological stressors in her life since that time, but none have impacted her in the way that her experience at the bank has. I find that the evidence establishes that Claimant’s perception of her work environment was so stressful as to result in a psychological injury.

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 employees performing 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.
4. With that standard in mind, the Commissioner previously has held that stress resulting from bona fide personnel actions is not compensable. *A.B. v. Vermont Department of Corrections*, Opinion No. 09-06WC (February 17, 2006). Thus, decisions to hire, fire, transfer, reallocate workforce resources or impose disciplinary action cannot be used by themselves to establish a compensable mental stress claim, no matter how inherently stressful these events might be. *A.B., supra*; *Minkler v. Town of Brattleboro*, Opinion No. 29-03WC (June 23, 2003); *Bluto, supra*.

5. The gist of Claimant's stress claim is that Ms. Wheeler misused her role as Claimant's supervisor to bully, demean and mistreat her. Were there sufficient objective evidence to establish that Ms. Wheeler's treatment of Claimant went beyond the reasonable exercise of her supervisory authority and trespassed instead into malicious, spiteful or morally reprehensible behavior, conceivably that could form the basis of a compensable claim. Certainly all employees must expect to deal from time to time with supervisors whose management style exasperates them, or with whom they simply do not see eye to eye. *Minkler, supra*. No employee, however, should have to subject him- or herself to behavior that is so malevolent or deliberately harmful as to undermine any legitimate managerial motive whatsoever.
6. Claimant has failed to establish that Ms. Wheeler's treatment crossed over that line. The supervisory actions and decisions of which she complained were based on legitimate policy considerations specific to her job duties and represented reasonable managerial responses to her job performance. And while certainly Ms. Wheeler might have delivered her message in a manner more conducive to Claimant's personality and work style, by itself her failure to do so is not so extraordinary or outrageous as to establish a compensable stress claim.
7. The stress to which Claimant was subjected may have been both significant and objectively real. It is not difficult to believe that when one's job duties necessitate differential treatment or when the quality of one's job performance is questioned, work-related stress might result. Having been precipitated by bona fide business and managerial considerations, however, stress of this kind is not so unusual as to be of a "significantly greater dimension" than that experienced by other similarly situated employees. Although work-related, it is not compensable. *A.B., supra*.

ORDER:

1. Claimant's claim for workers' compensation benefits is DENIED;
2. Because Claimant has not prevailed, she is not entitled to an award of attorney's fees or costs under 21 V.S.A. §678.

DATED at Montpelier, Vermont this 11th day of March 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.