

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

WORKERS' COMPENSATION COURT  
APPELLATE DIVISION

ARTECIA PRICE

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VS.

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W.C.C. 99-05327

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BESS EATON

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DECISION OF THE APPELLATE DIVISION

OLSSON, J. This matter is before the Appellate Division on the cross appeals of the respondent/employer and the petitioner/employee from the decision and decree of the trial judge granting the employee's original petition in part. The trial judge found that she sustained a work-related neck injury on January 29, 1999 resulting in a period of partial incapacity from January 30, 1999 to March 9, 1999. However, the employee's allegation that she also suffered a psychic injury due to the incident at work was denied. After careful review of the record and consideration of the arguments of the parties, we affirm in part and reverse in part the decision of the trial judge.

At the time of the alleged incident, the employee had been working for the respondent as an assistant manager for about six (6) months. Her duties included keeping the store and the bathrooms clean, putting away stock, making doughnuts and other pastries, working the counter and the drive-thru window, and supervising other employees. She worked anywhere from eight (8) to twelve (12) hours a day, five (5) to seven (7) days a week.

On January 29, 1999, Ms. Price punched in at 6:00 a.m. and began working at the counter. The manager, Frances St. Vincent, and a co-worker, Linda Hamel, were working at the drive-thru window. About fifteen (15) minutes after she began working, Ms. St. Vincent told the employee to leave the counter and get more bagels from the back room. When she delayed in following her instructions because she was busy waiting on customers, Ms. St. Vincent began questioning whether she was being insubordinate. When the employee did go to the back room to get the bagels, Ms. St. Vincent followed her and an argument ensued regarding a problem with Ms. St. Vincent's boyfriend. Ms. Price testified that Ms. St. Vincent swung at her several times, catching her on the left side of the neck twice. When she tried to walk by her, Ms. St. Vincent shoved her and told her not to walk away from her boss.

When the employee headed towards the telephone to contact Thomas Barklett, the district manager, Ms. St. Vincent yelled at her to stay off the telephone and get back to work. Despite experiencing pain in her neck, she continued to work her shift. She stated that she was afraid to leave because the other co-worker scheduled to work, Renee, had not arrived yet. When she went home later that day, she called Mr. Barklett and left a message.

The day after the incident, the employee worked her shift despite a lot of neck pain, but she was primarily supervising other employees. After work, she went to the emergency room at Women and Infants' Hospital and told them she was experiencing neck pain after being shoved by her supervisor at work. Ms. Price had been at the hospital on January 28, 1999 due to flu-like complaints. On the day of the incident, she had a tooth extracted after work and was taking Vicodin for pain.

In addition to her neck pain, the employee began to experience nightmares about the incident, sweating, anxiety, chest pains, fear of going outside and fear of strangers. She treated

with Dr. Randall Updegrave for her neck pain and sought treatment at the Kent County Mental Health Center for her psychological problems. Ms. Price testified that by May 1999, her neck pain had essentially resolved, but she could not return to work due to her psychological state.

The employee had a history of stressful incidents in her life, some allegedly involving physical assaults of some type. About six (6) years prior to the incident at work, she had received some treatment for post-partum depression after the birth of her son. In 1995 or 1996, Ms. Price was allegedly forcibly evicted from a rooming house on Cape Cod by three (3) men. In the summer of 1998, she sought counseling for problems with a physically abusive boyfriend. In December 1998, she allegedly was assaulted while being arrested for shoplifting in the parking lot of Wal-Mart in Warwick, Rhode Island. She had filed a complaint with the State of Rhode Island Commission for Human Rights regarding this incident. The employee asserted that she sought psychological help in February 1999 due to the effects of the incident at work. During the course of her counseling sessions, discussions later arose regarding her past problems.

Ms. Price explained that she had been having problems with Ms. St. Vincent since the beginning of December 1998. Ms. St. Vincent was apparently having an affair and had hired her boyfriend's son and his friend to work in the store. The perception among the other employees was that Ms. St. Vincent was showing them favoritism in the scheduling of work and other employees had their hours cut. When Ms. Price mentioned this to Ms. St. Vincent, she was told to mind her own business. Apparently, Mr. Barklett, the district manager, found out about the problem and spoke with Ms. St. Vincent. Ms. St. Vincent and her boyfriend threatened the employees that they would get whoever had spoken to Mr. Barklett. Ms. Price asked Mr.

Barklett to be moved to another store. As a result of threats made by Ms. St. Vincent's boyfriend, Ms. Price and another co-worker filed a complaint with the police.

Thomas Barklett, the district manager, testified that around noon on January 29, 1999, he received a telephone call from Ms. St. Vincent reporting that Ms. Price had been insubordinate that morning. He advised her to speak to Ms. Price about it. The employee left him a message that evening and he met with her at the store the next day around noon. Ms. Price told him that Ms. St. Vincent had yelled at her and shoved her; she never stated that she was punched or that she had been injured. Ms. St. Vincent told him that there had been no contact with the employee during the argument. On February 4, 1999, he called Ms. Price and she stated that she was having problems with her neck. At that time, he offered to transfer her to another store, but she declined. He noted that Ms. St. Vincent was fired by the company a few months later.

Linda Hamel testified that she was working at the counter the morning of January 29, 1999 and did not actually see the altercation. She stated that she heard the argument between Ms. Price and Ms. St. Vincent, but she never discussed the incident with the employee that day. Ms. Hamel related that she did notice that Ms. Price was having problems turning her neck and when she asked her about it, Ms. Price told her she had an infection in a tooth that was painful. The following day she told the employee she had not seen anything when she asked her if she had seen anything the day before. Ms. Hamel did indicate that another co-worker, Renee Gilbert, was present during the argument.

Renee Gilbert testified under subpoena. She stated that she arrived at work at 7:30 a.m. on January 29, 1999 and the argument occurred as soon as she walked in. She recounted that she witnessed the entire argument from the doorway to the back room. She asserted that there was no physical contact between Ms. Price and Ms. St. Vincent and that they both just walked away

from each other. She stated that she gave a statement to the police regarding the incident. Ms. Gilbert acknowledged that at the time of the incident she was a friend of Ms. St. Vincent and socialized with her outside of work, but they were no longer friendly.

The medical evidence consists of the records from Kent County Memorial Hospital, records from Women and Infants' Hospital, reports from University Oral and Maxillofacial Surgery Associates, Ltd., records of Rhode Island Hospital, records of Kent County Mental Health Center, the deposition and records of Dr. Randall L. Updegrove, the affidavit and report of Dr. John W. Hayes, the deposition and records of Karen M. Connors, the deposition and report of Dr. Alan A. Mark, and the deposition and records of Dr. Lillya Koyfman.

The hospital records reflect that on January 28, 1999, the employee was seen for complaints of body aches, nausea, decreased appetite and dizziness which started about two (2) weeks earlier. The diagnosis was bronchitis/myalgia and medication was prescribed. On January 29, 1999, the day of the incident, Ms. Price had a tooth extracted under local anesthesia according to records from University Oral and Maxillofacial Surgery Associates. On January 30, 1999 at about 11:35 p.m., the employee went to the emergency room at Women and Infants' Hospital complaining of a stiff neck, sore throat, earaches for two (2) weeks, dizziness, and back pain radiating up to her neck and the back of her head. There is a notation that she reported that she was pushed in the back at work. The diagnosis was a muscle strain.

It appears from the records that Ms. Price was seen at the clinic at Women and Infants' Hospital, as well as at Rhode Island Hospital on February 2, 1999. At Women and Infants', she reported that her boss had shoved her about five (5) times during an altercation at work on January 29, 1999 resulting in neck pain. The diagnosis was an acute cervical strain. In addition, the employee indicated that she was experiencing increased stress and requested a referral for

counseling. At Rhode Island Hospital on the same day, Ms. Price reported that she was suffering from severe neck pain after being hit by her boss several times during an altercation involving pushing and shoving. She underwent a course of physical therapy at the hospital until April 5, 1999.

Dr. Updegrave treated the employee for her physical injuries. He first saw the employee on February 26, 1999 and recorded a history that on January 29, 1999 she was punched two (2) to three (3) times about the upper chest and neck and shoved forcibly several times by her manager. She reported stiffness and soreness in the neck and upper back area as well as decreased sensation in both arms and the upper back. She denied any prior neck injuries. Dr. Updegrave indicated that Ms. Price likely had a cervicothoracic strain, but he was also concerned about possible symptom magnification.

An EMG and nerve conduction study was suggestive of root irritation syndrome at C6-7. A subsequent MRI of the cervical spine was within normal limits. As of May 11, 1999, Ms. Price continued to have complaints of pain in the neck and upper back, however, her physical examination was objectively normal. Although Dr. Updegrave recommended orthopedic evaluation due to her continued symptoms, he also stated that she “appears capable of regular work activities at this time based on her objective testing to date.” (Pet. Exh. 6, attach. Report 5/11/99)

The doctor testified that in his opinion the injuries and disability he diagnosed were caused by the incident on January 29, 1999 as described to him by Ms. Price. He noted that the possible symptom magnification may also have contributed to the disability.

Dr. John W. Hayes, an orthopedic surgeon, evaluated the employee on March 9, 1999 at the request of the employer. He recorded a history from Ms. Price that her manager struck her

on the back of the neck and on both shoulders on January 29, 1999. The physical examination revealed no objective findings. Dr. Hayes opined that the employee was capable of returning to her regular job without restrictions, but he noted that other issues would likely preclude a return to work.

Ms. Price saw several medical providers for her psychological problems. She was referred to Kent County Mental Health Center by Women and Infants Hospital after the incident at work. Karen M. Connors, a licensed clinical social worker employed by Kent County Mental Health Center, provided psychotherapy to the employee beginning on February 3, 1999. Ms. Price complained that she was anxious and fearful of going outside of her home since an incident at work a few days earlier during which her manager pushed or shoved her causing neck and shoulder injuries. Ms. Connors concluded that the employee suffered from adjustment disorder with mixed emotional features which had been triggered by the incident at work. She further stated that since the beginning of her treatment, the employee was not able to return to her former job at Bess Eaton.

Ms. Connors testified that the diagnosis was eventually changed to post-traumatic stress disorder, due in part to the employee's report of frequent nightmares involving the incident and a pre-occupation with recollections of the event. She maintained that Ms. Price was not able to return to her former employment.

During the course of her treatment, the incidents at Wal-Mart and on Cape Cod were discussed, as well as personal problems with Ms. Price's son and sister, who were both living with her. Ms. Connors explained that it was her opinion that the incident at Bess Eaton triggered the psychological symptoms Ms. Price began to experience in January 1999 because up to that point the employee had been functioning at work and in her personal life.

Dr. Mark, an osteopathic physician specializing in psychiatry, saw Ms. Price on one (1) occasion on March 5, 1999. He testified she told him that at the end of January she had an altercation with her manager at Bess Eaton during which the manager assaulted her. He indicated that she did not provide any details of what exactly happened. He also made reference in his report, to the alleged assault on Cape Cod. Dr. Mark noted that the employee appeared to be traumatized by these events and spoke with a flat affect about them. He testified she scored a fifty-five (55) on the global assessment of functioning scale which would be considered in the moderate range, indicating that she was functioning, but getting close to the non-functioning range.

In his evaluation report, Dr. Mark stated that Ms. Price would be out of work for one (1) month until her reevaluation. He prescribed an anti-depressant medication and recommended continuing psychotherapy with Ms. Connors. He attributed her disability to her physical pain and psychological pain caused by the incident at work.

Dr. Koyfman is a psychiatrist who saw the employee from April 30, 1999 to August 9, 2000. The doctor testified that her visits with the employee were limited to fifteen (15) minutes to discuss medication and symptoms. At their first visit, the employee discussed being assaulted by her manager at Bess Eaton and having nightmares since that time along with decreased appetite, difficulty sleeping, problems with memory, fear of going out, and feeling sad. Dr. Koyfman diagnosed the employee with adjustment disorder. Later, this diagnosis was changed to post-traumatic stress disorder (“PTSD”) due to lingering nightmares and flashbacks. She testified that the incident at Bess Eaton was the sort of incident that could cause PTSD. She acknowledged that she did not delve into the employee’s history in any detail due to the

limitations of the type of visits she had with the employee. She noted that the counselor, Ms. Connors, held more in-depth discussions with the employee.

The trial judge concluded that the employee had suffered a cervicothoracic strain as a result of being shoved during the confrontation with Ms. St. Vincent. He found that she was partially disabled due to her injury from January 30, 1999 to March 9, 1999, the date of Dr. Hayes' examination. The trial judge denied the employee's allegation that she sustained a psychic injury as a result of the altercation, stating that the incident did not meet the standards for a physical-mental or a mental-mental injury. Both parties filed appeals from this decision.

Pursuant to R.I.G.L. § 28-35-28(b), a trial judge's findings on factual matters are final unless found to be clearly erroneous. See Diocese of Providence v. Vaz, 679 A.2d 879 (R.I. 1996). The Appellate Division is entitled to conduct a *de novo* review of the record only after a finding is made that the trial judge was clearly wrong. Id.; Grimes Box Co., Inc. v. Miguel, 509 A.2d 1002 (R.I. 1986).

We will address the employer's eight (8) reasons of appeal first. Six (6) of those reasons of appeal (numbers 1, 2, 4, 5, 6, and 7) allege in one (1) form or another that the trial judge's conclusion that the altercation between the employee and Ms. St. Vincent involved shoving, rather than punching, is not supported by any competent evidence. The fourth reason of appeal alleges that there was no competent medical evidence to find a causal relationship between the "shoving" incident and a cervical strain. We disagree.

The employee testified that during the confrontation in the back room, Ms. St. Vincent swung at her and hit her twice on the left side of the neck, and then when she tried to get past her to return to the counter, Ms. St. Vincent shoved her. Mr. Bartlett stated that the employee told him that she was shoved. The history recorded in Dr. Updegrove's initial report states that the

employee was punched two (2) to three (3) times in the upper chest and neck and shoved forcibly several times. The emergency room report dated January 30, 1999 from Women and Infants' Hospital states that the "patient was pushed in the back at work." The clinic notes dated February 2, 1999 recount that the employee was involved in an altercation at work with her supervisor on January 29, 1999 and she was shoved about five (5) times. The emergency room report dated February 2, 1999 mentions an altercation involving pushing and shoving with a co-worker.

The trial judge was not convinced that the degree of physical contact between the employee and her supervisor was as significant as the employee described. He believed that her perception of the event was distorted by her prior involvement in other physical altercations. Although he did not reject her testimony in its entirety, the trial judge indicated that her description of the situation may have been somewhat exaggerated. As noted above, in statements to four (4) different medical providers and to her manager, the employee stated that she was shoved during the confrontation with Ms. St. Vincent. We find that these statements, combined with her own testimony, provided a sufficient basis for the trial judge to find that an incident occurred during which there was some pushing and shoving, but no direct punches were landed.

After finding that an incident occurred which involved some physical contact, the trial judge determined that the employee had sustained an injury as a result of that incident and a disability resulting from that injury. In arriving at this conclusion, the trial judge cited the opinions of Dr. Updegrave and medical reports from Women and Infants' Hospital and Rhode Island Hospital. Even with some variations in the exact nature of the physical contact, the diagnoses were basically consistent from the medical service providers. We believe that the

cumulative effect of this medical evidence is sufficient to provide a basis for the trial judge's finding that there was an injury and disability arising from this incident, even though it may have only involved shoving and pushing.

In the third reason of appeal, the employer contends that the trial judge failed to acknowledge and consider the testimony of Renee Gilbert, who allegedly witnessed the incident. However, the trial judge specifically mentioned the testimony of Ms. Gilbert in his review of the evidence. (Tr. decision, pp. 2-3) Ms. Gilbert testified that she saw the entire incident and there was no physical contact between the employee and Ms. St. Vincent. The trial judge apparently discounted this testimony when it was brought out that at the time of the incident, Ms. Gilbert and Ms. St. Vincent were friends who socialized together outside of work. Furthermore, the employee testified that Ms. Gilbert was not present when the altercation occurred, which she placed at about 6:30 a.m. Records revealed that Ms. Gilbert punched in at 7:30 that morning.

On appeal, great deference is accorded the trial judge's assessment of the credibility of witnesses and the weighing of that testimony. Poisson v. Comtec Information Systems, 713 A.2d 230, 233 (R.I. 1998). Given the discrepancies in the testimony, and taking into account the friendship between the witness and Ms. St. Vincent, it was certainly within the trial judge's discretion to not accept Ms. Gilbert's testimony as persuasive.

The eighth and final reason of appeal filed by the employer contends that the trial judge erred in awarding witness fees and costs related to the testimony of Ms. Connors, Dr. Mark and Dr. Koyfman regarding the employee's claim that she sustained a psychological injury. This issue will be resolved by our decision regarding the employee's appeal.

The employee has filed five (5) reasons of appeal arguing that the trial judge applied an incorrect standard for the burden of proof on her claim of a psychological injury and was clearly

wrong to find that she did not sustain a psychological injury as a result of the incident on January 29, 1999. In light of the trial judge's finding that an incident involving physical contact occurred between the employee and her supervisor which resulted in a physical injury, although a minor one, we find that the trial judge was clearly wrong to deny the employee's claim for a psychological injury.

Rhode Island General Laws § 28-34-2(36) provides the definition of a compensable mental injury:

“The disablement of an employee resulting from mental injury caused or accompanied by identifiable physical trauma or from a mental injury caused by emotional stress resulting from a situation of greater dimensions than the day-to-day emotional strain and tension which all employees encounter daily without serious mental injury shall be treated as an injury as defined in § 28-29-2(7).”

In discussing the compensability of mental injuries in Seitz v. L & R Industries, Inc., 437 A.2d 1345 (R.I. 1981), the Rhode Island Supreme Court noted three (3) categories of psychological injuries. The first type is a physical injury caused by a mental stimulus. In most instances, these claims are compensable. The second type is a psychic injury caused by physical trauma in which an employee develops a psychological disorder which is directly related to the effects of the physical injury sustained at work. These claims are also generally compensable, as long as there is proof of a causal connection. The third category of cases involves a mental injury caused by a mental stimulus when there is no physical cause or physical manifestation. After the Seitz decision was issued, the legislature amended the statute to incorporate the standard set forth in that decision for mental injuries in the above cited provision.

The trial judge in the present case concluded that the employee's claim did not fit into the physical-mental category, apparently because the physical injury was relatively minor and the

employee's psychological problem was due to a distorted perception of the event which came from her past experiences as the victim of several assaults. We must disagree with this conclusion.

The trial judge found that there was physical contact between the employee and her supervisor, which was initiated by the supervisor, and resulted in a physical injury. However, the trial judge downplayed the incident as not of sufficient intensity to trigger compensability.

“This court is of the opinion that the incident does not fall within the parameters of the stressors required by case law and statutory law and, therefore, any psychic injury related to the altercation was not of such intensity so as to trigger compensability within the meaning aforesaid. The primary thrust of the evidence establishes that it was Price's apprehension alone and not physical contact between the parties that caused any psychic injury and, therefore, the stressor must be viewed in the context of Seitz. The psychological evidence reviewed in detail by the court demonstrates that Price's life experiences, including the altercation at the workplace, impacted Price's belief that she has been victimized.” (Tr. decision, p. 9.)

The trial judge erroneously imposed a standard that the physical injury causing the psychological disorder must be of a certain severity in order to be categorized in the so-called “physical-mental” category set out in the statute and Seitz. As a result he evaluated the claim as a case involving mental injury caused by emotional stress of greater intensity than generally experienced by employees on a daily basis (the so-called “mental-mental” category). He then denied the claim because he believed that the employee had a more severe reaction to the situation due to the cumulative effect of her past experiences. We find that this analysis is faulty.

Rhode Island General Laws § 28-34-2(36) provides that the employer is liable for the “. . . disablement of an employee resulting from mental injury caused or accompanied by identifiable physical trauma. . . .” The trial judge found that there was some physical contact between Ms. Price and her supervisor which resulted in a minor physical injury. Although employees may be

required to tolerate stressful interpersonal relationships in the workplace, they cannot be expected to accept a physical assault on their person by their supervisor as part of the ordinary course of business. Such an assault, no matter how minor, is a traumatic event. Some people may be able to simply walk away from the situation, but others may develop a psychological disorder resulting from such a physical attack.

The record contains competent expert opinions from Dr. Mark, Dr. Koyfman, and Karen Connors (though not a doctor, she is a licensed social worker and thus capable of rendering expert opinion in this area), that the employee's psychological disorder and disability resulting therefrom, are directly related to the altercation with her supervisor on January 29, 1999.

Admittedly, due to the employee's past experiences, she may have been more susceptible to developing a psychological disorder and disability than a person without such a background. However, the mere fact that an employee has a history of psychological problems or treatment, or has previously experienced events which may lead to a more fragile psyche, does not preclude a finding of a compensable psychic injury and disability. The decision of the Rhode Island Supreme Court in Amick v. National Bottle, 507 A.2d 1352 (R.I. 1986), is often cited as the basis for denying benefits for a psychological disorder in such cases. Unfortunately, the holding in that case has been mistakenly interpreted and applied in an overly broad fashion.

The employee in Amick initially injured his back at home. Within a few months of that incident, he sustained further injury to his back on two (2) occasions at work. Approximately two (2) years later, he fell on stairs outside his home and again injured his back, as well as other parts of his body. He thereafter sought psychiatric help for depression. The treating psychiatrist testified that the employee's depression was caused by the series of back injuries and resultant disabilities, some of which occurred before the injuries at work and some after. The employee's

petition for payment of the bills for his psychiatric treatment was denied because the evidence did not establish that the employee's mental injury was caused by the effects of the work injury.

The Amick decision was simply based upon a failure of proof. The treating physician stated that the psychological disorder was precipitated by a sequence of physical traumas, rather than being triggered by the work injury. Amick does not preclude compensability simply because an employee has a past history of psychiatric treatment, or has experienced previous traumatic events which may make her more susceptible to psychiatric problems. So long as expert testimony is produced which establishes that the incident or injury at work triggered or precipitated the psychological disorder and disability, the claim should be compensable.

It is a well-settled principle in workers' compensation law that an employer takes its workers as it finds them, with whatever preexisting conditions or predispositions they may have. Clemm v. Frank Morrow Company, 90 R.I. 37, 153 A.2d 557 (1959). The medical evidence in the present matter establishes that the incident at work on January 29, 1999 was the event which triggered her psychological disorder and disability.

The employee was functioning in her daily life, despite any effect from her prior experiences, until the day of the altercation with her supervisor. After that incident, she was unable to return to work at that place of employment. We see no difference between this case and a situation in which an employee suffers the amputation of a finger in a machine, and thereafter is unable to return to work due to his fear of working around the machine again, even though he has fully recovered from his physical injury. A physical injury has caused a mental disorder which prevents the employee from returning to her former employment. Such a case falls within the physical-mental category and is compensable under our statute.

Based upon the foregoing discussion, we grant the employee's appeal and reverse the finding of the trial judge denying the employee's claim of a psychic injury. The testimony and opinions of Dr. Mark and Ms. Connors establish that the employee was unable to return to her job at the Bess Eaton store where the incident occurred due to the effects of her psychological disorder. Consequently, we find that the employee was partially disabled beginning January 31, 1999 and remains disabled.

In accordance with our decision, a new decree shall enter containing the following findings and orders:

1. That the employee sustained a cervicothoracic strain on January 29, 1999, arising out of and in the course of her employment with the respondent, connected therewith and referable thereto, of which the respondent had notice.

2. That the employee also sustained post-traumatic stress disorder as a result of an incident at work on January 29, 1999.

3. That the employee's average weekly wage is Three Hundred Sixteen and 63/100 (\$316.63) Dollars.

4. That the employee received some Temporary Disability Insurance benefits and Public Assistance benefits.

5. That the employee became partially disabled as of January 31, 1999.

6. That the employee was no longer disabled due to the cervicothoracic strain as of March 9, 1999, but she remains partially disabled due to post-traumatic stress disorder.

It is, therefore, ordered:

1. That the employer shall pay to the employee weekly benefits for partial incapacity from January 31, 1999 and continuing.