IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Jennifer Close,	:	
Petitioner	:	
	:	
v.	:	No. 1296 C.D. 2009
	:	Submitted: December 18, 2009
Workers' Compensation Appeal	:	
Board (Philadelphia Park	:	
Racetrack),	:	
Respondent	:	

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge
HONORABLE KEITH B. QUIGLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE PELLEGRINI FILED: January 8, 2010

Jennifer Close (Claimant) appeals from the order of the Workers' Compensation Appeal Board (Board) reversing the decision of the Workers' Compensation Judge (WCJ) granting her workers' compensation benefits for a mental-mental workplace injury resulting from an armed robbery in which she was held up at gunpoint while working as a manager at the Center City Turf Club (Employer).

Claimant was employed as a manager for Employer, an off-track betting facility with a restaurant and bar in Center City, Philadelphia. Her responsibilities included the operations of the restaurant and bar facility, oversight

of the tellers, admissions, hiring and firing of staff, handling of cash, and accounting for money collected. At 11:00 p.m. on Sunday, July 3, 2005, at the end of the evening shift, Claimant was carrying a sack of money that she had removed from the self-service ticket machines down a stairwell to her office on a lower level to process when a man approached her on the stairs and pulled out a gun. She handed him the sack of money, but the robber dropped the money and spent approximately two minutes gathering it together. While doing so, he kept the gun pointed at Claimant's head and threatened to shoot her if she moved. After the robber fled, Claimant pressed one of several silent alarms in the facility, and a co-worker called the police.

Claimant completed her shift and returned to work the next night despite being given the opportunity by management to take some time off. However, she gradually became more and more stressed, no longer wanted to be at her job, had increasing difficulty with interpersonal relationships, and kept wondering which customers were carrying guns. When she worked evenings, she tried to leave as early as possible, even closing down the business early on some nights to the anger of the customers. That November, there was another armed robbery at Employer's business. Claimant was not working that day, but the knowledge that there had been another robbery increased her anxiety. She broke down at work, cried to her manager, felt she would explode, and thought she would die while at work. Her manager allowed her to take a leave of absence until January when she would be transferred to a different jobsite. She worked at the new jobsite until March 3, 2006, when she suffered a panic attack at work. Her doctor wrote a note excusing her from work, and she has never returned to work.

In January 2006, Claimant consulted her doctor and was treated weekly with acupuncture in an attempt to relieve her anxiety. In March or April 2006, he recommended that she begin treatment with a psychiatrist, who persuaded her to take Zoloft to decrease her anxiety and increased her dosage of Xanax, which she had used previously. Despite her medications and treatments, she continues to have recurring nightmares about getting shot, has difficulty sleeping, feels intimidated by crowds, suffers from panic attacks, and has problems with intimacy. She was diagnosed with post-traumatic stress disorder caused by the armed robbery, a diagnosis that is not being challenged on this appeal.

Before the WCJ, medical evidence was presented, which resulted in the WCJ's finding that Claimant suffered from post-traumatic stress disorder caused by the armed robbery. Employer also presented testimony from several employees concerning the incident as well as the frequency of robberies at Employer's various locations. Thomas Burke, the general manager of the Center City facility, testified that there had been several robberies at the Center City and other facilities since July 2005. To protect employees from robbers, managers such as Claimant were trained on steps to take in a robbery. Additionally, the facility had a security system, surveillance cameras and panic alarms, including a panic alarm clip that managers carried with them. The reason for the panic alarms was that the facility was very similar to a bank, with tellers and large amounts of cash moving around.

Lance Morrell, the director of security whose job was to oversee all security at Employer's off-track betting facilities, testified that there had been

numerous robberies, both armed and unarmed, at the facility, and that managers were trained to deal with the robbers. One of the robberies was an armed robbery of Brinks guards. Since the July 2005 robbery in which Claimant was held up, additional security measures were implemented precluding managers from carrying money in stairwells or on the floor. Pablo Dishman, the vice president of off-track operations, testified that the majority of security measures at the facility were to prevent robberies and that managers were trained to deal with robbers. The WCJ accepted the testimony of Messrs. Burke, Morrell and Dishman as credible but determined that their testimony did not show that Claimant was employed in an inherently dangerous position where robberies were to be expected. The WCJ, however, found that Claimant had fully recovered from her injuries as of June 16, 2006, due to a note in the psychiatrist's records indicating that Claimant's husband stated that she was back to her old self.

Both parties appealed to the Board. Claimant argued that her disability did not end on June 16, 2006, but rather continues to the present. Employer argued that the armed robbery was not an abnormal working condition for a manager at an off-track betting facility that regularly was robbed, thus precluding recovery for a mental-mental workplace injury. The Board agreed with Employer, ruling that an armed robbery was not an unexpected event at Employer's facility, and that the recurrence of robberies at that facility and at other facilities run by Employer showed that being held up at gunpoint was not an abnormal working condition for a manager there. Because Claimant's injury was not the result of an abnormal working condition, the Board concluded that she

could not, as a matter of law, receive workers' compensation benefits. This appeal followed.[1]

On appeal, Claimant contends that the Board erred in reversing the WCJ's determination that an armed robbery was an abnormal working condition for a manager in an off-track betting facility, and the Board erred in overturning the decision.[2]

In order to establish a right to compensation in cases where a psychological injury was caused by a psychological stimulus (mental-mental injury), a claimant must prove both that she suffered a psychological injury in the course of employment and that the injury was not the result of a subjective reaction to normal working conditions for that type of job. *Martin v. Kethcum, Inc.*, 523 Pa. 509, 568 A.2d 159 (1990); *City of Pittsburgh v. Workers' Compensation Appeal Board (Plowden)*, 804 A.2d 82 (Pa. Cmwlth. 2002). The claimant may establish this "heavy burden" in one of two ways: by showing that specific extraordinary events occurred at work or that there was a period of prolonged abnormal working

[1] Our review is limited to determining whether constitutional rights were violated, an error of law was committed, a practice or procedure of the Board was not followed, or the findings of fact are not supported by substantial evidence in the record. *Peterson v. Workers' Compensation Appeal Board (Wal-Mart)*, 938 A.2d 512 (Pa. Cmwlth. 2007). The determination of whether a claimant established an abnormal working condition is a question of law that is fully reviewable on appeal. *Davis v. Workers' Compensation Appeal Board (Swarthmore Borough)*, 561 Pa. 462, 751 A.2d 168 (2000).

[2] Claimant also argues that the WCJ erred in determining that her injury was healed on June 16, 2006, as this finding was based not on medical testimony, but only on a comment by her husband that found its way into her psychiatrist's notes. Because of the way we have resolved this issue of abnormal working conditions, we need not address that issue.

conditions. *Plowden*, 804 A.2d at 85; *U.S. Airways v. Workers' Compensation Appeal Board (Long)*, 756 A.2d 96 (Pa. Cmwlth. 2000). Whether working conditions were abnormal is a question of law fully reviewable on appeal. *Plowden*. "Furthermore, it is well established that psychological injury cases are highly fact-sensitive and for work conditions to be considered abnormal they must be considered in the context of the *specific* employment." *Id*. at 85 (emphasis in original). "Consequently, we deny compensation for injuries resulting from events that are expected in the relevant working environment." *Rag (Cyprus) Emerald Resources, L.P. v. Workers' Compensation Appeal Board (Hopton)*, 590 Pa. 413, 428, 912 A.2d 1278, 1288 (2007).

This Court was faced with a case similar to the present one in *McLaurin v. Workers' Compensation Appeal Board (SEPTA)*, 980 A.2d 186 (Pa. Cmwlth. 2009). In *McLaurin*, a Philadelphia bus driver was confronted by several hooded young men who refused to pay when they got on the bus. At the end of the route, they came up to the driver, and one of them pulled a gun on him. The driver pleaded with them not to shoot him, and eventually they disembarked. Following the incident, the driver began suffering from post-traumatic stress disorder and never returned to work. At his workers' compensation hearing, SEPTA presented the testimony of the overseer of new employee training, who explained that bus drivers were advised to expect dangerous passengers and given training with how to deal with them, including codes to be used when radioing for help and a silent alarm system. SEPTA also presented testimony that there were dozens of assaults on bus drivers each year, including two several months preceding the hearing where drivers were threatened with a gun. The driver countered that this testimony

showed that being assaulted with a gun was an abnormal working condition for a bus driver, as only two of more than 1,500 bus drivers had been involved in such incidents, a 0.13% chance.

On the basis of this testimony, the WCJ concluded that dangerous assaults occurred with enough frequency that they were not abnormal working conditions for Philadelphia bus drivers. This determination was upheld on appeal by both the Board and this Court. We held:

> McLaurin had the burden to prove by objective evidence that his injury was not a subjective reaction to normal work conditions. He offered no proof that the October 2006 incident represented something that a SEPTA bus driver could not anticipate. On the other hand, SEPTA offered evidence showing that such incidents did occur with enough regularity that handling of them had been built into the operators' training program. The WCJ therefore did not commit an error of law by holding that McLaurin's psychic injury was not the result of an abnormal work condition.

McLaurin, 980 A.2d at 191.

Just as in *McLaurin*, the present case deals with a job in which robberies are, unfortunately, not out of the ordinary as evidenced by the fact that Claimant's establishment had been robbed several times. Moreover, all managers, including Claimant, were trained on how to deal with armed robbers, tested periodically to ensure that they knew the proper procedures, and provided with silent panic alarm clips to carry on them. In short, Claimant worked at an establishment where robberies were anticipated occurrences, and while Claimant

was certainly faced with a dangerous and unpleasant work condition, she did not meet her heavy burden of proving that she was confronted with an abnormal work condition.

For the foregoing reasons, the order of the Board is affirmed.

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DAN PELLEGRINI, JUDGE

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Respondent	:	

O R D E R

AND NOW, this 8th day of January, 2010, the order of the Workers' Compensation Appeal Board, dated June 3, 2009, is affirmed.

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DAN PELLEGRINI, JUDGE