IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Patrice Mulqueen, Petitioner	:	
v.	:	No. 1832 C.D. 2009
	:	Submitted: February 26, 2010
Workers' Compensation Appeal Board (Stroudsburg Area School District), Respondent	:	

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE BROBSON **FILED:** May 26, 2010

Petitioner Patrice Mulqueen (Claimant) petitions for review of an order of the Workers' Compensation Appeal Board (Board), which reversed in part and affirmed in part a decision and order of a Workers' Compensation Judge (WCJ), granting her claim petition. For the reasons stated below, we now affirm.

Claimant filed a claim petition alleging she sustained a work-related injury to the low back and post traumatic stress disorder (PTSD) while in the course and scope of her employment with Respondent Stroudsburg Area School District (Employer) on September 29, 2006. At the time of her injuries, Claimant was employed as a special education teacher, working with tenth, eleventh, and twelfth grade learning support students. Claimant's job duties included teaching

six classes a day, with ten to fourteen students in each classroom. (Reproduced Record (R.R.) 32-34.) Employer filed a timely answer denying all material allegations. (R.R. 389.)

The WCJ conducted a hearing, during which Claimant testified as to two incidents that occurred in September 2006 while she was working for Employer. The first incident (the gun incident) occurred on September 4, 2006. On that day, which was approximately the fourth day of school, one of Claimant's students told her he had a gun. (R.R. 57-59.) She described the student as being "right in [her] face." (R.R. 61.)

The second incident (the blackboard incident) took place on September 29, 2006. Claimant testified that a student began pushing her against the blackboard while she was on the telephone. Claimant stated that the student pressed his chest against her elbow, thereby pushing her back against the blackboard. While the one student was pushing her against the blackboard, Claimant testified another student approached her, and she blocked him with her leg. Claimant testified that the students' actions made her feel like she was being attacked. Claimant indicated that she remembered putting her leg up high and making contact with one of the students in his chest. Claimant testified that the next thing she remembered she was sitting on top of one of the desks. Claimant testified that while she was sitting on the desk one of the students made a statement that she believed to be a threat to her life. (R.R. 43-44.) Claimant testified that after the blackboard incident she had trouble performing her work duties. (R.R. 56.) Claimant stated that in her twelve years of teaching, she has never had a similar experience such as these incidents. (R.R. 63.)

Claimant testified that after the blackboard incident she was unable to return to work. She experienced pain in her neck, back, and fingers as a result of the blackboard incident, and, consequently, she sought treatment with Ryan R. McGraw, D.C., a chiropractor, on October 5, 2006. (R.R. 64-66.) Claimant testified that following the blackboard incident, she also went to see her family doctor, who referred her to Ilan S. Levinson, M.D., a psychiatrist. (R.R. 67.) She testified that she had been seeing Dr. Levinson since 2003, who treated her for psoriasis. In addition to a monthly appointment with Dr. Levinson, Claimant testified that she sees a therapist every two weeks. She testified that "she cannot go back to work as a special education teacher because she is scared of groups of kids" and she does not "feel capable of returning to school to retrieve her belongings." (R.R. 390.)

Michael DiBilio, an assistant principal for Employer, testified on behalf of Employer at the hearing before the WCJ. Mr. DiBilio testified that his primary responsibility is to address issues relating to school discipline. Mr. DiBilio recalled the gun incident in September involving a student who told Claimant he had a gun. He testified that he conducted a search of the student and only found a item relating to the student's shop class – a metal box approximately eight or nine inches long, three inches wide, and an inch thick. Mr. DiBilio testified he was again called to Claimant's room on the day of the blackboard incident when a student wrote something on the blackboard[1] that caused another student to comment on the writing. When he first arrived in the classroom, based upon his conversation with Claimant, he believed that the two students had been engaging only in a verbal dispute. Later in the day, however, Claimant

[1] Claimant testified that a student has written the word "blood" on the blackboard.

communicated to Mr. DiBilio that she has become involved in a physical confrontation during the blackboard incident as described above. Mr. DiBilio testified that based upon Claimant's later conversation with him and a follow-up report written and submitted to him by Claimant, he did not believe that Claimant indicated at that time that she had felt threatened during the blackboard incident. (R.R. 111-130.)

Claimant presented the deposition testimony of Dr. Levinson, a board certified psychiatrist. Dr. Levinson's testimony is summarized below:

- He has been treating Claimant since October of 2003, when Claimant accompanied her adopted and foster children to their appointments with Dr. Levinson. (R.R. 166.)

- In 2003, he initiated a treatment with Paxil for Claimant's psoriasis lesions. (R.R. 166.)

- Over the years, he treated Claimant's depressive symptoms, anxiety symptoms, and attention problems. (R.R. 167.)

- During an office visit on October 11, 2006, Claimant talked about the "acute stress situation" relating to the incidents at Claimant's work place. At that time, Dr. Levinson diagnosed Claimant with acute stress reaction, which he treated with Paxil and Klonopin. (R.R. 167-169.)

- At Claimant's next office visit, two weeks later, Claimant reported being stressed out and not able to return to work. Claimant was worried and scared and had impaired sleep. Dr. Levinson continued to treat Claimant with Paxil and Klonopin. (R.R. 169.)

- At Claimant's November 8, 2006, office visit, Claimant was more confused and depressed and

saw no hope of returning to work because Claimant felt it was an unsafe work environment. Dr. Levinson noted that Claimant's speech was more rapid than previously and it was hard for Claimant to focus. Dr. Levinson directed that Claimant take two more weeks of medical leave. (R.R. 169-170.)

- At Claimant's next visit on December 6, 2006, Claimant reported flashbacks of the school incident and she became agitated when she picked up her son from another school because it reminded her of the incident. Claimant's sleep continued to be impaired. (R.R. 171.)

- At Claimant's January 4, 2007, office visit, Claimant had persisting symptoms, including flashbacks, nightmares, increased anxiety and avoidance behavior. She continued to refuse to go back to her work environment. (R.R. 171-172.)

With regard to the symptoms of PTSD, Dr. Levinson testified as follows:

Q: Doctor, could you just give the judge a brief synopsis of the symptoms that she's experiencing that are part of the criteria for [PTSD]?

A: She exhibits all the classical symptoms. First of all, in order to meet criteria for [PTSD] one must be exposed to a situation that put his own life or somebody else's life at risk, a situation that is very scary, and certainly she was exposed to a situation like this. The person have recurrence of the incident in the form of either nightmares, flashbacks or repeat thoughts about the incident, proliferation of the incident, and the person also has avoidance behavior; he tries to avoid any situation that remind him of the incident such as reading the news or watching television or situation that remind you of the incident avoid going to a place that remind him of the incident,

> and, of course, she has these symptoms as well. Sleep may be impaired or maybe symptoms of anxiety and depression. She suffered from all of the above.
>
> Q: Doctor, based upon your . . . history you've taken from the claimant and your diagnosis at any time since your October 11th, 2006, office visit would you have released the claimant to return back to the environment she was teaching in at Stroudsburg High School?
>
> A: No. I think this would have been a mistake; it would make her symptoms worse. The idea with [PTSD] is, perhaps, to expose the person to an environment that they perceive as safe, low stress, part-time work, but definitely not to the same Environment that generated the original stress.

(R.R. 171-173.)

Employer presented the deposition testimony of Larry A. Rotenberg, M.D., a board certified psychiatrist who performed an examination of Claimant on April 16, 2007. Dr. Rotenberg testified that he did not feel Claimant's symptoms supported a finding that Claimant has PTSD or any psychiatric disorder caused by the incidents at school. (R.R. 265-267.) Dr. Rotenberg testified, however, that a physical altercation such as the blackboard incident that occurred on September 29th could possibly cause a person to develop PTSD. (R.R. 278-282.) Dr. Rotenberg opined that it was possible that Claimant could have had a period following the blackboard incident during which PTSD did not appear. (R.R. 323.) Nevertheless, Dr. Rotenberg testified that he believed Claimant had a mood disorder in the form of a cyclothymic disorder, as opposed to PTSD, which is an anxiety disorder. (R.R. 262.) Dr. Rotenberg agreed at the time of his evaluation Claimant could not return to work due to her psychological condition. (R.R. 310.)

Dr. Rotenberg also noted that prior to the work incidents, Claimant had never been treated for any mood disorders. (R.R. 310.)

In a decision and order dated October 29, 2008, the WCJ concluded that Claimant satisfied her burden of proving that she sustained a work-related injury as a result of the blackboard incident, in the form of a cervical sprain/strain, a left knee sprain/strain, and an aggravation of lumbar facet syndrome,[2] as well as PTSD. The WCJ, however, concluded that only Claimant's work-related PTSD was disabling. (R.R. 393.) The WCJ found the testimony of Dr. Levinson to be more credible than the testimony of Dr. Rotenberg, based upon the observation that Dr. Levinson, as Claimant's long-standing treating psychiatrist, was more familiar with Claimant's condition. Additionally, the WCJ found Dr. Rotenberg's opinions less credible because the WCJ believed that Dr. Rotenberg based his opinions on an understanding of the incidents that varied from the testimony presented by Claimant and the histories described by Dr. McGraw, Dr. Gentilezza, and Dr. Levinson. (R.R. 393.)

Employer appealed the WCJ's decision to the Board. By order dated August 21, 2009, the Board reversed the WCJ's order, in part, concluding that Claimant had not sustained her burden of proof regarding her PTSD. The Board concluded that there was no competent medical evidence supporting the WCJ's determinations that Claimant suffered PTSD as a result of the blackboard incident on September 29th. Additionally, the Board concluded that there was no competent medical evidence to support a determination that Claimant suffered PTSD as a result of the earlier gun incident in September. Because the Board concluded that

[2] Employer has never disputed that Claimant was physically injured as a result of the blackboard incident.

Claimant failed to establish a work-related psychological injury, it declined to address Employer's argument that Claimant failed to establish abnormal working conditions. Claimant then filed the subject petition for review with this Court.

On appeal,[3] Claimant argues that the Board erred in reversing the WCJ's decision and order. Specifically, Claimant challenges the Board's holding that the medical expert testimony provided by Dr. Levinson was not competent to establish that her PTSD was caused by a work-related physical-psychic injury. Alternatively, Claimant argues that, contrary to the Board's conclusion, the evidence of record established that Claimant's PTSD constituted a work-related psychic-psychic injury that resulted from an actual, objective, abnormal working condition.

The courts have recognized that psychological or mental injuries related to employment may result in disability and thus may be compensable under the Workers' Compensation Act[4] (Act). *Ryan v. Workmen's Comp. Appeal Bd. (Cmty. Health Servs.)*, 550 Pa. 550, 707 A.2d 1130 (1998). "Our case law contemplates four types of compensable claims including: (1) physical-physical injuries, where a physical stimulus causes a physical injury; (2) psychic-physical injuries, where a psychic stimulus causes a physical injury; (3) physical-psychic

[3] Our standard of review in a workers' compensation appeal is limited to determining whether an error of law was committed, constitutional rights were violated, or whether necessary findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. § 704. We acknowledge our Supreme Court's decision in *Leon E. Wintermyer, Inc. v. Workers' Compensation Appeal Board (Marlowe)*, 571 Pa. 189, 812 A.2d 478 (2002), wherein the Court held that "review for capricious disregard of material, competent evidence is an appropriate component of appellate consideration in every case in which such question is properly brought before the court." *Wintermyer*, 571 Pa. at 203, 812 A.2d at 487.

[4] Act of June 2, 1915, P.L. 736, *as amended*, 77 P.S. §§ 1-1041.4, 2501-2708.

injuries, where a physical stimulus causes a psychic injury; and (4) psychic-psychic injuries, where a psychic stimulus causes a psychic injury." *RAG (Cyprus) Emerald Res., L.P. v. Workers' Comp. Appeal Bd. (Hopton)*, 590 Pa. 413, 418, 912 A.2d 1278, 1281, n.3 (2007).

Claimant first contends that she presented competent medical evidence that she suffered a physical-psychic injury. In a case where a claimant asserts she has sustained a disability from a physical-psychic injury, the claimant need not prove that she suffered a physical disability that caused a mental disability or that the physical injury continues during the life of the psychic disability. Rather, a claimant need only show that a physical stimulus caused a psychic or mental disability. *Donovan v. Workers' Comp. Appeal Bd. (Acad. Med. Realty)*, 739 A.2d 1156 (Pa. Cmwlth. 1999), *allocatur denied*, 563 Pa. 678, 759 A.2d 924 (2000). In this case, because the connection between the work injury and the mental disability is not clear, Claimant was required to offer unequivocal medical testimony in support of that causal connection. *Cromie v Workmen's Comp. Appeal Bd. (Anchor Hocking Corp.)*, 600 A.2d 677 (Pa. Cmwlth. 1991).

Here, the Board concluded that the WCJ erred in finding that Dr. Levinson's testimony was competent and, thus, determined Claimant had not satisfied her burden to prove causation. The Board reasoned that Dr. Levinson's opinion that Claimant developed PTSD was based on his knowledge of the earlier gun incident, where a student purportedly threatened to shoot "someone" with a gun, rather than the September 29, 2006, blackboard incident that resulted in physical injuries to Claimant. The Board deemed Dr. Levinson's testimony to be incompetent, because it believed Dr. Levinson based his opinion as to the causal

connection between Claimant's employment and her PTSD on an inaccurate history. (R.R. 411.)

A medical expert's opinion is not rendered incompetent unless it is solely based on inaccurate or false information. *Am. Contr. Enters. v. Workers' Comp. Appeal Bd. (Hurley)*, 789 A.2d 391, 396 (Pa. Cmwlth. 2001). Courts review a medical expert's opinion as a whole. *Id.* Unless an expert's opinion is based entirely on inaccurate information his opinion will not be be deemed incompetent. *Id.* Further, inaccurate information will not defeat the expert's opinion unless the opinion is based on the inaccurate information. *Id.* Medical testimony and evidence must be viewed as a whole, not as isolated expressions. *Terek v. Workmen's Comp. Appeal Bd. (Somerset Welding & Steel, Inc.)*, 542 Pa. 453, 668 A.2d 131 (1995). Not every statement of a medical expert "must be certain, positive, and without reservation." *Philadelphia Coll. of Osteopathic Med. v. Workmen's Comp. Appeal Bd. (Lucas)*, 465 A.2d 132, 134 (Pa. Cmwlth. 1983).

"Medical evidence is unequivocal if the medical expert, after providing a foundation, testifies that in his medical opinion he believes or he thinks the facts exist." *Armco, Inc. v. Workmen's Comp. Appeal Bd. (Carrodus)*, 590 A.2d 827, 829 (Pa. Cmwlth.), *allocatur denied*, 529 Pa. 636, 600 A.2d 955 (1991). "The mere fact that an expert does not have certain records before him or her or even all of the medical records on a given claimant in providing an expert opinion does not render the expert testimony incompetent but merely goes to the question of the weight to be accorded to such expert testimony." *Saville v. Workers' Comp. Appeal Bd. (Pathmark Stores, Inc.)*, 756 A.2d 1214, 1221 (Pa. Cmwlth. 2000), *allocatur denied*, 565 Pa. 658, 771 A.2d 1292 (2001). The WCJ, as fact finder, solely determines the weight of expert testimony. *Id.*

Claimant points to a specific part of Dr. Levinson's testimony, which she contends renders his testimony competent:

> Q: Doctor, we're here about incidents that took place at Stroudsburg School District, at her workplace, during the months of September of last year, of '06, and early October. Did the Claimant provide you a history of those incidents?
>
> A: Yes. She described an incident in which she was in class with special education kids. She was the only teacher over there when one of the problematic children over there who was quite a big person in his size started talking about having a gun and threatened to shoot people with it. She was later on approached by two to three of the children in the class setting. She pretended to be in very good control and not to encourage them to take any further step and was able to get them away from her and by the end of the incident she was left very traumatic -- traumatized and refused to go to work again.

(R.R. 167-168.)

We must agree with the Board's conclusion that this testimony is too vague to support a conclusion that Dr. Levinson was referring to the September 29, 2006, blackboard incident. Dr. Levinson never testified that he knew of any physical injuries sustained by Claimant on that date, let alone that those injuries – the physical stimulus – caused her PTSD. Consequently, because Dr. Levinson's testimony is based on an apparently inaccurate understanding of the September 29th blackboard incident and does not unequivocally connect Claimant's physical injury of September 29th to her alleged PTSD, we conclude that the Board did not err in opining that Dr. Levinson's testimony was not competent to support the WCJ's legal conclusion that Claimant proved her physical/psychic disability.

Claimant alternatively asserts that the evidence of record establishes that she sustained a psychological injury as a result of exposure to abnormal working conditions. We must reject this argument for two reasons.

First, Claimant appears to contend that she presented competent medical evidence that she suffered a psychic-psychic injury based upon the gun incident. The Board concluded that Claimant failed to meet her burden to establish a psychic-psychic injury because Dr. Levinson's testimony was incompetent on this matter as well. Again, we must agree with the Board that Dr. Levinson's testimony was incompetent to support a determination that Claimant suffered a psychic-psychic injury. Dr. Levinson's testimony was based on his belief that the student threatened to kill someone with a gun which led to Claimant's development of PTSD. To the contrary, Claimant never testified that the student threatened to shoot anyone. Rather, she testified that the student who claimed to have the gun never said he was going to use it or threatened to shoot her or another student. Dr. Levinson's opinion, therefore, is based upon an inaccurate history and is incompetent as to the issue of causation. Hence, there is no competent medical evidence relating the diagnosis of PTSD to the gun incident.

Second, Claimant failed to meet the burden to establish that abnormal working conditions existed. In a mental/mental disability claim, a claimant's burden of proof is twofold: (1) she must prove by objective evidence that she has suffered a psychiatric injury, and (2) she must prove that such injury is not simply a subjective reaction to normal working conditions. *Martin v. Ketchum, Inc.* 523 Pa. 509, 520, 568 A.2d 159, 166 (1990). This Court has held that evidence of an employee's subjective reaction to exposure at work to normal working conditions is not sufficient to establish an injury compensable under the Act. *Thomas v.*

Workmen's Comp. Appeal Bd. 423 A.2d 784, 789 (Pa. Cmwlth. 1980). Noting that "due to the highly subjective nature of psychiatric injuries, the occurrence of the injury and its cause must be adequately pinpointed." *Id.* at 788. The work-related injury must be caused by actual objective abnormal working conditions, as opposed to subjective, perceived, or imagined employment events. *Martin*, 523 Pa. at 517, 568 A.2d at 164.

The question of whether conditions rise to the level of abnormal working conditions requires a fact-sensitive inquiry into the specific employment situation, requiring a reviewing court's deference to the factual findings of the WCJ. *RAG (Cyprus)*, 590 Pa. at 425, 912 A.2d at 1286. The determination of whether a WCJ's factual findings establish abnormal working conditions is a *question of law*, which an appellate court may review. *Id.* at 426, 912 A.2d at 1286. Courts in considering whether working conditions are normal or abnormal cannot resort to a "bright line test or a generalized standard." *Id.* at 428, 912 A.2d at 1288. Rather a court must evaluate a claimant's specific work environment. *Id.* at 430, 912 A.2d at 1288. Here, the WCJ improperly determined as a *finding of fact* (rather than as a conclusion of law) that Claimant established abnormal working conditions.

Claimant first contends that incidents such as the gun and blackboard incidents generally are not the type of incidents that a special education teacher anticipates or foresees will occur during a work day; teachers do not expect to be threatened by a student claiming to be in possession of a gun or to be physically pushed up against a blackboard. The WCJ found that Claimant established that the two September incidents amounted to abnormal working conditions based solely

upon Claimant's testimony that in twelve years of teaching she had never experienced anything like these incidents. (R.R. 389.)

On the other hand, Mr. DiBilio testified that he typically has to handle five to seven incidents per school year involving students and alleged weapons. (R.R. 119-120.) He testified that training is available and has been provided to help teachers to deal with individuals with weapons or physical altercations. (R.R. 121.) He further testified that verbal altercations occur a couple times a week, and in a typical school year there are probably around twenty incidents that would involve about forty kids altogether. (R.R. 118-131.) Mr. DiBilio also testified that on occasion metal detectors are used to search students. (R.R. 137.)

In contrast to the fact-sensitive analysis our court requires, the WCJ here based his legal conclusion solely on Claimant's testimony regarding previous experiences. This single fact was insufficient as a matter of law to support the legal conclusion that Claimant's working conditions were not normal. Our Supreme Court has held that even life-threatening or traumatic experiences do not constitute abnormal working conditions if they are foreseeable as part of the claimant's employment. *City of Philadelphia v. Civil Serv. Comm'n.*, 565 Pa. 265, 276, 772 A.2d 962, 968 (2001). To recover benefits, Claimant was required to show that the incident in the classroom, which precipitated her psychological injury, was not part of her normal working conditions, *i.e.*, foreseeable as part of her employment. The fact that Claimant previously had not experienced a similar incident is not enough to demonstrate that such new incidents are abnormal.

The WCJ found Mr. DiBilio's testimony credible to the extent that it did not conflict with Claimant's testimony. (R.R. 392.) As indicated by Mr. DiBilio's testimony, Claimant has received training as a high school teacher on

how to deal with issues of violence and unruly teenagers. (R.R. 94.) Based upon Claimant's and Mr. DiBilio's testimony and in light of the established school training procedures and policies, the incidents that occurred in September 2006 in Claimant's classroom were, unfortunately, foreseeable and thus could be anticipated as part of the normal working conditions of her employment.

Because we conclude that Dr. Levinson's testimony was not competent to support a finding of causation as to either a physical-psychic injury or a psychic-psychic injury, and because we conclude that Claimant failed to prove abnormal working conditions, the Board did not err in reversing the WCJ.

Accordingly, we affirm the order of the Board.

P. KEVIN BROBSON, Judge

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O R D E R

AND NOW, this 26th day of May, 2010, the order of the Workers' Compensation Appeal Board is hereby AFFIRMED.

P. KEVIN BROBSON, Judge