

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-002462-WC

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-98-00677

GINGER K. WEST; HON. ROGER D. RIGGS,
Administrative Law Judge; and
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * * **

BEFORE: COMBS, HUDDLESTON, and SCHRODER, Judges.

COMBS, JUDGE: The Lexington-Fayette Urban County Government ("LFUCG") asks us to review an opinion of the Workers' Compensation Board (Board) rendered September 10, 1999. Kentucky Revised Statutes (KRS) 342.290. We affirm.

Ginger West began working for the LFUCG Police Department in 1986. Between 1986 and 1989, she was a patrol officer. She was then transferred to the Narcotics Division and later to the detective bureau. Thereafter she was transferred to the Commercial Burglary Unit where she worked for two or three years until October of 1997. Near the end of her career, West

began to suffer with an intolerable level of anxiety and to experience severe hand tremors. As a result, she was assigned to light duty. West applied for disability retirement and left the police force on March 11, 1998.

On September 21, 1989, West and her partner were working as patrol officers. After receiving a call indicating that a man was screaming threats of violence in the middle of a residential street, West proceeded to the scene. As she was the first officer to arrive, she began to pursue the suspect. When West approached the man, he turned and attacked her. West's partner arrived and also became involved in the melee. Once the officers had the suspect adequately under control, West reached for her handcuffs. Capitalizing upon this opportunity to marshal his strength, the suspect was able to cast off both officers. He produced a knife and stabbed West's partner. West drew her weapon. As the suspect charged her, West fired three shots, killing the man.

Back at the station, West was noted to have suffered abrasions, scrapes, and scratches as a result of the assault. She was relieved of her regular duties and was assigned to the department's chaplain for two days following the shooting. Dr. Mike Neitzel, a psychiatrist associated with the University of Kentucky Medical Center, examined West and released her with a clean bill of health.

Three days following the assault, West was dispatched to a location on I-75, where she found a person gesturing wildly and walking in the roadway. The suspect was not responsive to

West's questions and eventually became confrontational. West testified that she became emotionally unable to deal with the situation and required back-up to handle the matter. After this incident, West was nervous and anxious for several days and experienced difficulty in sleeping. This condition seemed to resolve itself, however, and West had no additional problems for several years.

Sometime after her transfer to the detective bureau, West was dispatched to a scene involving domestic violence. She was confronted by a large woman involved in a verbal and physical altercation with her husband. The woman became progressively more violent and began to approach West in a menacing manner. West apparently panicked at the scene and again began to have trouble sleeping.

In October 1994, fellow officer Sergeant Phil Vogel accidentally discharged his gun, killing a young African-American suspect. This incident sparked several days of riots in Lexington and drew national media attention. Local media highlighted parallels between the 1994 incident and West's 1989 shooting of her assailant. The police department remained in a heightened state of readiness during this time, and all officers were required to work in full riot gear. West worked long hours during this time and testified that her anxiety level intensified.

In 1995, fellow officer Ed Lingenfelter was shot while placing a suspect in his cruiser. Soon after this incident, Officer Tim Russell was also shot in the line of duty. West

stated that she experienced flashbacks and increased anxiety at this point. She became irritable and withdrawn. By 1996, West had developed severe tremors. She began to experience flashbacks, nightmares, and panic attacks; she re-lived the 1989 assault and shooting on a regular basis. She began to experience intense chest pain. In 1997, Dr. Robert Granacher diagnosed West with post-traumatic stress disorder.

On April 13, 1998, West filed a claim for benefits under the Workers' Compensation Act. KRS Chapter 342. The administrative law judge (ALJ) dismissed her claim in an opinion and order rendered April 21, 1999. The ALJ determined that West's psychological condition was the result of the incident of September 1989 (the date of the assault and shooting) and that it was, therefore, barred by the statute of limitations and by Coslow v. General Electric Co., Ky., 877 S.W.2d 611 (1994). The ALJ also determined that if West's claim were instead analyzed as a cumulative trauma injury pursuant to Randall v. Pendland, Ky., 770 S.W.2d 687 (1989), the law in effect when she retired in 1998 would also bar recovery since the definition of "injury" (KRS 342.0011(1), effective December 12, 1996) would not encompass her condition. West appealed to the Board, which reversed and remanded. This appeal followed.

The Board concluded that West's condition is attributable to a series of traumatic events and not to a single, specific traumatic episode or event. Consequently, it determined, the claim is not governed by Coslow, supra, nor is it barred by limitations. With respect to this issue, it stated:

Our review of the evidence indicates that all three examining psychiatrists stated without contradiction that West's condition developed over time and as a result of a series of work-related, psychiatric, traumatic events of which the 1989 assault was simply the beginning. The expert medical testimony holds that West's post[-]traumatic stress disorder is the result not of a single traumatic event or accident but of many psychiatric traumas between 1989 and 1997. Therefore, we conclude that the case sub judice must be controlled by the principles established in Randall v. Pendland, supra, and Haycraft v. Corhart Refractories Co., Ky., 544 S.W.2d 222 (1976). . . .

We agree with the Board's assessment of the evidence and with its legal conclusion. However, we must consider whether West's post-traumatic stress disorder qualifies as an "injury" under the 1996 version of KRS 342.011(1) so as to remain compensable under that modification of the statute. As amended in 1996, KRS 342.0011(1) provides, in relevant part, as follows:

(1) "Injury" means any work-related traumatic event or series of traumatic events, including cumulative trauma, arising out of and in the course of employment which is the proximate cause producing a harmful change in the human organism evidenced by objective medical findings. "Injury" does not include the effects of the natural aging process, and does not include any communicable disease unless the risk of contracting the disease is increased by the nature of the employment. "Injury" when used generally, unless the context indicates otherwise, shall include an occupational disease and damage to a prosthetic appliance, but shall not include a psychological, psychiatric, or stress-related change in the human organism, unless it is a direct result of a physical injury.

(Emphasis added).

In his opinion and order, the ALJ addressed the emphasized phrase above as follows:

According to this definition . . . a specific exclusion was created whereby injury shall not include a psychological, psychiatric or stress related change in the human organism, unless it is a direct result of a physical injury. The post-traumatic stress disorder which resulted from the incident of September 21, 1989

was not a result of a physical injury but was a result of the emotional reaction which the police officer had to the circumstances of that date.

In its review, the Board rejected this interpretation of the evidence and controlling law as applied to the unique facts of this case. It concluded as follows:

In order to qualify as an "injury" under the above definition . . . West must demonstrate that her condition is some how connected to a "physical injury." Without question, a work-related assault qualifies as a traumatic event under Kentucky law. Blue Diamond Coal Co. V. Creech, Ky., 411 S.W.2d 331 (1967); Williams v. Nowak, Ky., 406 S.W.2d 408 (1966); Hansen v. Frankfort Chair Co., 249 Ky. 194, 60 S.W.2d 349 (1933). Because the assault on West occurred as one single "full-fledged fight" within a matter of minutes on September 21, 1989, and there was no sufficient "cooling off period" between West's scuffle with her assailant and his attack with the knife, we believe the total episode qualifies as a single traumatic event.

Certainly, West's post[-]traumatic stress disorder syndrome qualifies as a harmful change to the human organism. This harmful change is evidenced by the unanimous objective medical findings of all three physicians whose expert opinions are contained in the record. Since West's harmful psychiatric, psychological, and stress-related change is traceable to the 1989 assault and subsequent work-related traumatic events, we believe the totality of the evidence also compels a finding of proximate causation. See Larson's, Workers' Compensation, §6.60.

* * * *

[W]e acknowledge that since 1994 that category of work-related injury claims known as "mental-mental" by statute have been excluded by our Legislature as compensable unless associated with a "physical injury." [W]e interpret "physical injury" to mean "physical incident" based upon common usage of that phrase.

* * * *

Hence, for the purposes of KRS 342.0011(1), if a work-related traumatic event involves a physical incident resulting in either substantial physical pain or hurt to the worker's body, or any impairment of physical condition, a "physical injury" has occurred. Since West sustained cuts and abrasions during the 1989

assault and suffered soreness for several days thereafter, we believe the ALJ could have reasonably inferred that the petitioner experienced substantial physical pain even though the physical incident produced no impairment. Jackson v. General Refractories Company, Ky., 581 S.W.2d 10 (1979).

* * * *

We further hold that for purposes of Randall v. Pendland, supra, and Haycraft v. Corhart Refractories, supra, a claim involving a series of traumatic events ultimately resulting in a compensable psychological, psychiatric or stress-related change in the human organism may originate from a single "physical injury." The 1996 definition of "injury" set out above speaks in terms of "physical injury," not "physical injuries" even though the definition acknowledges that harmful change may result for a series of traumatic events. Therefore, West's claim would not be barred even though her subsequent traumatic episodes after September 1989 involve no specific physical incident and are purely "mental-mental" in nature.

We agree with the Board's conclusion that the psychological or psychiatric stress-related change in the human organism must originate with a work-related physical injury/incident in order to be characterized as an "injury" under the amended version of the statute. This interpretation comports with the language of the statute and is surely consistent with the beneficent purpose underlying the Workers' Compensation Act. See Newberg v. Weaver, Ky., 866 S.W.2d 435 (1993). Moreover, we agree with the Board's analysis that the work-related physical incident suffered by West (the 1989 assault) was of so severe and sufficient proportion to serve as the predicate of her resulting psychological trauma so as to trigger the statute. Hence, we affirm the Board under the precedent of Western Baptist Hosp. v. Kelly, Ky., 827 S.W.2d 685 (1992).

ALL CONCUR.

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