

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2000-CA-000629-WC

PASCHALL TRUCK LINES, INC.

APPELLANT

v. PETITION FOR REVIEW OF A DECISION  
OF THE WORKERS' COMPENSATION BOARD  
ACTION NO. WC-95-14724

MARY CARBONE; HON. DONNA H. TERRY,  
ADMINISTRATIVE LAW JUDGE; AND  
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION  
AFFIRMING

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BEFORE: BARBER, BUCKINGHAM AND MILLER, JUDGES.

BARBER, JUDGE: The employer appeals an award of 30 percent permanent partial disability in this workers' compensation case. The appellee, Mary Carbone ("Carbone"), developed post-traumatic stress syndrome following a motor vehicle accident ("MVA") in which she was injured. The employer contends that the psychiatric condition did not arise out of a physical injury and is not compensable under KRS 342.0011(1). We disagree and affirm the Board.

Carbone and her husband drove for Paschall Truck Lines, Inc. On April 9, 1995, they were involved in a MVA during a blinding sandstorm. Carbone testified:

Well, we came into a sand storm, and the visibility was next to nothing. I hit a tractor-trailer in front of me, and from that impact, the entire cab busted loose off its frame . . . . I had gotten pinned behind the - the dashboard. My knees were up against the dashboard. And I had my seatbelt on, and this part of my body. . . that wasn't held, you know, went forward.

We had gotten hit four times from behind. . . . And everytime we got hit, it was . . . it was back and. . . forth and then, you know, the same thing which got repeated.

My wrist . . . I have trouble with my wrist occasionally.

. . . .

Right wrist, yeah, whenever - 'cause when I had the steering wheel, it - - the first impact, it went up against the windshield, . . . . My shoulder . . . and my knees. Both my knees. I have trouble with my knees now.

. . . .

And down into the right shoulder blade, you know, into the back.

Carbone was told there were 52 vehicles in the pile up. Nine people were under their trailer -- all fatalities. There were other fatalities as well. Carbone was taken by ambulance to the hospital where she was treated for multiple contusions and abrasions and admitted overnight. Carbone followed up with her family physician, Dr. Mintz, for her physical injuries. Carbone explained that during the second week of seeing him, Dr. Mintz "could see that I was upset about the accident, and he told me

that he wanted me to see somebody to talk about it. And that was Dr. Priori."

Dr. Priori performed a psychiatric assessment on May 23, 1995. Carbone was seen "because of the development of emotional symptoms following the involvement in a catastrophic traffic accident. . . ." Carbone was injured in the accident. Dr. Priori diagnosed post-traumatic stress disorder.

Dr. Erskine, the employer's evaluating psychiatrist, noted that Carbone had been "formerly intact." He stated that "[w]ith respect to the causal relationship between the patient's complaints and her auto injury, I feel that it was established that there was a causal antecedent series of events, (stemming from her auto accident of 4/9/95) responsible for the patient's condition. The version of KRS 342.0011(1)<sup>1</sup> in effect on the date of injury provides:

(1) "Injury" means any work-related harmful change in the human organism, arising out of and in the course of employment, . . . .  
"Injury" when used generally, unless the context indicates otherwise, shall include an occupational disease, 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.

The ALJ determined Carbone's psychological condition arising from the April 9, 1995 accident was compensable and awarded 30 percent occupational disability. The employer

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<sup>1</sup>Effective 12-12-96, KRS 342.0011(1) was amended. The amended version provides: "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." The remainder of the statute is unchanged.

appealed to the Board which affirmed. The Board concluded that the "phrase, 'physical injury' as used in the . . . [statute], means a physical incident resulting in a work-related harmful change in the human organism including a psychiatric disorder in the event it is directly attributable to a physical event."

In its statement of material facts, appellant states that Carbone "did not sustain permanent physical injury as a result of the April 9, 1995 accident." Appellant proceeds to argue that Carbone's psychiatric condition cannot be considered compensable, under KRS 342.0011(1), because "[t]here was no 'physical injury.'" Either appellant has grossly misstated the facts or has confused the concept of injury with occupational disability. KRS 342.0011(1) does not require that a physical injury result in permanent occupational disability, before a psychiatric condition can be considered compensable. "[T]he definition of 'injury' contained in KRS 342.0011(1) refers to any work-related harmful change in the human organism, and does not consider whether the change is occupationally disabling." Alcan Foil Prods., v. Huff, Ky., 2 S.W.3d 96, 101 (1999).

In Great Atlantic & Pacific Tea Company v. Sexton, 242 Ky. 266, 46 S.W.2d 87 (1932), a meat market employee contracted tularaemia. He became ill three days after dressing and skinning a shipment of rabbits. The employee did not cut himself while working; however, he had an abrasion on his finger from splitting kindling at home. At issue was whether he had sustained a compensable injury. Section 4880 of the Workmen's Compensation Act provided that an "injury . . . shall not include diseases

except where the disease is the natural and *direct result of a traumatic injury* by accident." Id. at 88, (Emphasis added).

In determining that the employee had sustained a compensable injury, the court explained:

In this case, appellee's injuries may be traced directly to his coming in contact with meats laden with tularaemia germs. The time, the place, and the cause of the injury are determinable with reasonable certainty. As an immediate result of the contact, symptoms peculiar to the disease manifested themselves.

. . .

This court . . . has consistently held that, where the language of the Compensation Act is ambiguous or of doubtful meaning, it should be liberally construed in favor of the employee, thus giving effect to its humane purposes.

Id., at 89-90.

This Court must follow the legislative directive that "[a]ll statutes of this state shall be liberally construed with a view to promote their objects and carry out the intent of the legislature, . . . ." KRS 446.080(1). We agree with Carbone that the legislature intended to exclude only "mental/mental" claims from coverage, and not claims such as this where there is a physical injury. To conclude otherwise would produce an absurd result, at odds with the humane purposes of the Workers' Compensation Act.

Myopic exactitude in the construction of statutes would produce many an unfortunate and unintended result. An interpretation that would produce an effect manifestly inconsistent with sound public policy is to be avoided unless it is utterly clear that the legislature actually so intended. The more unwise and unsound the result of a

literal construction appears to be, the more specifically must such an intention be expressed in the statute in order for the courts to be justified in construing it literally. This is merely a corollary of the rule that the courts will not give a strict literal construction to a statute if it would lead to an absurd or unreasonable conclusion. [citation omitted].

Frankfort v. Triplett, Ky., 365 S.W.2d 328, 330 (1963).

Here, we have an employee who was injured in a catastrophic MVA in the course and scope of her employment and developed post-traumatic stress disorder as a result. As the ALJ stated, the "instant situation is clearly not a mental/mental case in which a claimant developed psychological complaints as the result of perceived stress or other nonphysical cause." There was no evidence that Carbone's complaints were incident to anything but her employment. Carbone had no prior history of psychiatric treatment. Both Dr. Prior and Dr. Erskine diagnosed post-traumatic stress disorder arising from the April 9, 1995 incident. We affirm the Board's Opinion that Carbone's condition was compensable.

ALL CONCUR.

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