IN THE COMMONWEALTH COURT OF PENNSYLVANIA

David Latham, Petitioner	:	
v.	:	No. 2102 C.D. 2007
	:	Submitted: April 18, 2008
Workers' Compensation Appeal Board (City of Philadelphia), Respondent	:	

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE DAN PELLEGRINI, Judge
HONORABLE MARY HANNAH LEAVITT, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE LEAVITT FILED: June 17, 2008

David Latham (Claimant) petitions for review of an adjudication of the Workers' Compensation Appeal Board (Board) denying his claim for disability benefits under the Workers' Compensation Act (Act).[1] In doing so, the Board affirmed the decision of the Workers' Compensation Judge (WCJ) that Claimant's alleged psychological injury was not the result of abnormal working conditions. Finding no error, this Court affirms the Board's adjudication.

Claimant was employed as a truck driver by the City of Philadelphia (Employer) in its Streets and Sanitation Department. On October 29, 2003, Claimant filed a claim petition alleging that on September 25, 2003, he sustained "mental stress due to workplace harassment" after a meeting with his supervisors. Claimant sought

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

disability benefits for the closed period from October 16, 2003, to January 15, 2004, when he returned to work without restrictions. Employer denied that Claimant had sustained a work-related injury and the matter was assigned to a WCJ.

At a hearing before the WCJ, Claimant testified that when he reported to work on September 25, 2003, he was summoned to a meeting with his supervisor, Donald Carlton; Carlton's supervisor, Rudy Peck; and Claimant's union steward. Claimant's supervisors expressed concern with his practice of taking off work every second Friday, which coincided with Employer's paydays, in lieu of a normal vacation. According to Claimant, Peck "said that he believe[d] that there was some drug activity going on, and if he could find one person to testify against me, I would be fired." Notes of Testimony (N.T.), January 6, 2004, at 7-8. Claimant testified that Peck also said that "if he could prove that I was doing illegal activities on that job, I would be fired." *Id*. at 8. Claimant recalled Peck speaking with an angry tone during this exchange. Claimant stated that the meeting lasted approximately 15 minutes.

Claimant testified that he felt "hurt and angry" when he left the meeting and "very moody" at the end of the day. *Id*. He continued to work for another week and a half but eventually reached a point "where it just wasn't setting right with me. I wasn't at ease and I wanted to do harm." *Id*. at 9. Claimant indicated that he began hearing voices telling him to "take [Peck] out." *Id*. Claimant stopped working on October 16, 2003, and sought treatment from a psychiatrist and a therapist. Following a course of treatment, Claimant returned to work without restrictions on January 15, 2004.

Claimant testified further that he had no contact with Peck either before or after the September 25 meeting. He had no further discussions with Carlton about

the meeting or his use of vacation time. Claimant did not take any action through his union regarding the September 25 meeting.

Carlton, a District Manager for the Sanitation Department and Claimant's direct supervisor, testified for Employer. Carlton testified that he arranged the September 25 meeting after his own supervisor, Rudy Peck, asked Carlton why Claimant was permitted to take off work every pay Friday and remain at the work site for hours talking to his coworkers after he collected his paycheck. Carlton recalled that a few days before the meeting, he questioned Claimant "about possible illegal activity. Money lending or loan sharking … [and] basically informed him if he was doing it, that his job could be in jeopardy…." N.T., May 12, 2004, at 6. Carlton advised Claimant and his union steward of the September 25 meeting in advance of that date. Carlton testified that informal meetings are held with any employee suspected of engaging in illegal activity.

Carlton expressly denied threatening Claimant during the September 25 meeting or accusing him of loan sharking. Carlton recalled asking Claimant if he was involved in loan sharking, and informed him that if he was caught participating in that activity "his job would be at risk." *Id*. at 15. Carlton maintained on cross examination that he never said he believed that Claimant was involved in loan sharking, only that he asked Claimant if he was. Carlton did not recall Peck saying that Claimant would be fired if one person could be found to testify against him. Carlton further testified that the possibility of drug-related activity was never discussed, either before or during the meeting.

Peck, the Assistant Chief of Operations for the Sanitation Department and supervisor to both Carlton and Claimant, also testified on behalf of Employer. Peck stated that he became suspicious after he observed Claimant loitering around the

work area on one particular payday when he was scheduled to be off work. Upon further investigation, Peck discovered that Claimant had taken off every payday during the years 2002 and 2003. Peck first questioned Carlton, who informed Peck that he had never denied Claimant's requests to take off every second Friday because Claimant had accrued sufficient vacation time and always submitted a timely leave request slip.

Peck denied making any comment regarding drug activity to Claimant at the September 25 meeting. Peck did recall telling Claimant that "if [he] was doing something illegal that we will have him fired. If he's doing something illegal, he'd better stop." *Id*. at 32. Peck denied saying that he would fire Claimant if he could find one person to testify against him. Peck testified that he was not angry during the meeting but, rather, was "upset" because he "didn't want to see [Claimant] lose his job … [and] wanted to send a strong message." *Id*. at 33-34.

The WCJ reviewed the testimonial evidence and rendered the following pertinent findings:

> 34. In general, there is not a great deal of conflict between the testimonies of Claimant, Mr. Carlton, and Mr. Peck as to just what took place in their encounters, and all three are credible to that extent. I do credit the testimony of Mr. Carlton and Mr. Peck, over that of Claimant, that the question of drugs was not brought up at the September 25 meeting. I would also agree that what was said at the meeting was more of a strong suggestion of the possibility of illegal activity than an actual accusation of it ….
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> 35. Based on the record as a whole … I find that there has been no showing of abnormal working conditions or that Claimant's reaction was other than a subjective reaction to what conditions there were. I do not question whether the Claimant had a mood disorder or whether he needed treatment for it. Nor do I question whether he may have been experiencing stress.

> However, I do not think the working conditions can fairly be characterized as abnormal in the circumstances ….

WCJ Opinion at 6-7, Findings of Fact 34-35 (F.F. __); Reproduced Record at 8-9 (R.R. __). The WCJ noted that the fact pattern which attracted Peck's attention, with Claimant taking off only on paydays and then remaining on the job site for prolonged periods talking to other employees who had also just been paid, "might lead one to at least wonder whether Claimant had some financial reason to be dealing with the other employees on such a pattern of days." WCJ Opinion at 7, F.F. 35(e); R.R. 9. The WCJ held that Employer's handling of this peculiar situation by conducting a single informal meeting with Claimant could not be regarded as an abnormal working condition. Accordingly, because Claimant did not suffer a compensable mental injury, the WCJ denied his claim petition. Claimant appealed to the Board, and the Board affirmed. Claimant now petitions for this Court's review.

Before this Court,[2] Claimant argues that the WCJ erred in holding that he was not subjected to abnormal working conditions. Claimant contends that the WCJ capriciously disregarded competent evidence when he found that there was only a mere "suggestion" during the September 25 meeting that Claimant was involved in illegal activity. Claimant maintains that his supervisors actually accused him of loan sharking, and that such allegations are sufficient to establish abnormal working

[2] Appellate review in workers' compensation proceedings is limited to determining whether constitutional rights have been violated, an error of law has been committed, or Board procedures have been violated, and whether necessary findings of fact are supported by substantial evidence. *Davis v. Workers' Compensation Appeal Board (Swarthmore Borough)*, 561 Pa. 462, 473, 751 A.2d 168, 174 (2000). 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. *Leon E. Wintermyer, Inc. v. Workers' Compensation Appeal Board (Marlowe)*, 571 Pa. 189, 203, 812 A.2d 478, 487 (2002).

conditions under *Miller v. Workers' Compensation Appeal Board (New Wilmington Family Practice)*, 724 A.2d 971 (Pa. Cmwlth. 1999).

We address, first, Claimant's contention that the WCJ capriciously disregarded evidence that his supervisors accused him of loan sharking during the September 25 meeting. Claimant characterizes the following statement by Carlton as an admission in this regard: "I had to question [Claimant] about possible illegal activity. Money lending or loan sharking as it's called. And if he was doing so. And I basically informed him if he was doing it, that his job could be in jeopardy if he was caught doing it." Brief for Petitioner at 5 (quoting N.T., May 12, 2004, at 6). Similarly, Claimant cites an alleged admission by Peck that "he confronted [Claimant] and told him that if he finds out about any illegal activity, [Claimant] would be fired." *Id*. at 5 (quoting N.T., May 12, 2004, at 32).

The problem with Claimant's capricious disregard claim is that it rests upon a mischaracterization of the relevant testimony. The above-quoted statements simply do not reflect accusations against Claimant. Carlton, by his own admission, questioned Claimant about possible money lending or loan sharking and if Claimant was participating in that activity. Peck's statement, as recited by Claimant, is similarly conditional: Peck told Claimant that if he was involved in illegal activity he would be fired. We have reviewed the entire testimony of both of these witnesses and conclude that they merely advised Claimant of the consequences of illegal activity. The substantial evidence of record supports the WCJ's finding that there was, at most, only a suggestion that Claimant was involved in illegal activity. The WCJ did not disregard evidence that Claimant's supervisors actually accused him of loan sharking.

We are left, then, with the issue of whether or not Claimant was subjected to abnormal working conditions during the September 25 meeting. We agree with the WCJ and the Board that he was not.

To recover workers' compensation benefits for a mental injury, a claimant must prove by objective evidence that he has suffered a mental injury and that such injury is other than a subjective reaction to normal working conditions. *Davis v. Workers' Compensation Appeal Board (Swarthmore Borough)*, 561 Pa. 462, 473, 751 A.2d 168, 174 (2000).

> To meet that burden, the claimant must demonstrate either (1) that actual extraordinary events occurred at work, which can be pinpointed in time, causing the trauma experienced by him or her, or (2) that abnormal working conditions over a longer period of time caused the mental injury. …

U.S. Airways v. Workers' Compensation Appeal Board (Long), 756 A.2d 96, 101 (Pa. Cmwlth. 2000). (footnote, citations, and emphasis omitted). The claimant must produce evidence that the mental injury was caused by other than normal working conditions. *Philadelphia Newspapers, Inc. v. Workmen's Compensation Appeal Board (Guaracino)*, 544 Pa. 203, 207, 675 A.2d 1213, 1215 (1996). Whether the findings of fact support a conclusion that the claimant has been exposed to abnormal working conditions is a question of law that is fully reviewable on appeal. *Davis*, 561 Pa. at 473, 751 A.2d at 174.

Claimant falls far short of satisfying his high burden of proving that his mental injury was caused by "extraordinary events" at his workplace. *U.S. Airways*, 756 A.2d at 101. The WCJ correctly observed that there was nothing "procedurally remarkable" about the September 25 meeting which Claimant asserts was an abnormal working condition. WCJ Opinion at 6; F.F. 35(a); R.R. 8. Nor was

Claimant "hounded with a series of such proceedings." *Id*. The meeting was a single, informal event that lasted only 15 minutes. There was no shouting, use of obscenities or physical touching of any kind.[3] Instead, Claimant's supervisors diplomatically questioned Claimant about his use of vacation time and suggested that if he was engaging in illegal activity there would be consequences.[4] Such a meeting is hardly an extraordinary or abnormal event, nor was it even unreasonable when one considers Claimant's unusual practice of taking off work on every payday and

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[3] The absence of shouting, obscenities and physical touching distinguishes the present case from *U.S. Airways*. In that case, this Court held that the claimant established, with objective evidence, that her psychological injury was caused by a single extraordinary event at work after she was wrongfully accused of falsifying the time records of other employees. This Court summarized the evidence as follows:

> Employer's supervisory employees falsely accused [c]laimant [of] committing a wrongful act, intimidated her, threatened to terminate her employment, did terminate her employment despite their knowledge that the accusation was false, and then attempted to justify their action, again falsely accusing her of leaving work without permission. In addition, [claimant's supervisor] not only used profanities at [c]laimant but also physically abused her by pushing and touching her during the interrogation.

U.S. Airways, 756 A.2d at 102.

[4] The primary case on which Claimant relies, *Miller v. Workers' Compensation Appeal Board (New Wilmington Family Practice)*, 724 A.2d 971 (Pa. Cmwlth. 1999), is readily distinguishable from the case *sub judice*. In *Miller*, the claimant was employed as the manager of a medical office. She was suspended from her job after her employer accused her of overbilling insurers and keeping the excess payments. Claimant was threatened with prosecution and jail, and her employer demanded that she confess to the theft, even though she emphatically denied any wrongdoing. Ultimately, claimant prevailed on her workers' compensation claim because she

> was not injured by subjective worry over Employer's audit and investigation, but was rather injured by objective and abnormal work-place events, such as being accused of embezzlement in a situation which had been created by [one of her supervising doctors] who was himself at fault by inconsistently billing for patient medical services.

Miller, 724 A.2d at 975. If anything, the compelling facts in *Miller* illustrate the weaknesses in Claimant's case, since Claimant was never actually accused of wrongdoing and was never disciplined.

remaining at the job site for no apparently legitimate reason. In short, we agree with the WCJ that Claimant's reaction was a subjective reaction to normal working conditions and, therefore, any psychological injury he sustained was not compensable.

For all of the foregoing reasons, we affirm the adjudication of the Board.

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MARY HANNAH LEAVITT, Judge

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Workers' Compensation Appeal Board (City of Philadelphia), Respondent	:	

O R D E R

AND NOW, this 17th day of June, 2008, the order of the Workers' Compensation Appeal Board in the above-captioned matter, dated November 7, 2007, is hereby AFFIRMED.

MARY HANNAH LEAVITT, Judge