

IN THE UTAH COURT OF APPEALS

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Nancy M. Wood,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Petitioner,)	
)	Case No. 20090440-CA
v.)	
)	
Labor Commission, Eastern Utah)	F I L E D
Broadcasting, and Workers')	(June 10, 2010)
Compensation Fund,)	
)	2010 UT App 154
Respondents.)	

Original Proceeding in this Court

Attorneys: Jay Barnes, St. George, for Petitioner
Alan L. Hennebold, Salt Lake City, for Respondent
Labor Commission
Floyd W. Holm, Salt Lake City, for Respondents
Eastern Utah Broadcasting and Workers' Compensation
Fund

Before Judges Davis, McHugh, and Voros.

DAVIS, Presiding Judge:

Nancy M. Wood seeks review of an order by the Utah Labor Commission Appeals Board (the Appeals Board) on remand after a prior decision from this court, denying benefits under the Utah Occupational Disease Act, see Utah Code Ann. §§ 34A-3-101 to -112 (2005 & Supp. 2009), for mental stress related to her employment.¹ Particularly, Wood contends that the Appeals Board's decision, which determined that Wood was not entitled to benefits because "Wood's work-related stress does not predominate

¹Wood's petition constitutes the third time she has sought review with this court. Because of the appellate history of this case, including two written opinions, we do not belabor the facts of the underlying matter again here. A complete recitation of the facts and procedural history of the case can be found in Wood v. Labor Commission, 2005 UT App 490, ¶¶ 2-4, 14, 128 P.3d 41, as well as Eastern Utah Broadcasting v. Labor Commission, 2007 UT App 99, ¶¶ 2-4, 15, 158 P.3d 1115.

over her non-work stresses," is not supported by substantial evidence. We affirm.

Pursuant to Utah Code section 63G-4-403(4), this court reviews agency decisions when "a person seeking judicial review has been substantially prejudiced [because] . . . the agency action is based upon a determination of fact . . . that is not supported by substantial evidence when viewed in light of the whole record before the court." See Utah Code Ann. § 63G-4-403(4)(g) (2008). "An administrative law decision meets the substantial evidence test when a reasonable mind might accept as adequate the evidence supporting the decision." Martinez v. Media-Paymaster Plus/Church of Jesus Christ of Latter-day Saints, 2007 UT 42, ¶ 35, 164 P.3d 384 (internal quotation marks omitted); see also Bradley v. Payson City Corp., 2003 UT 16, ¶ 15, 70 P.3d 47. Wood argues that there is not substantial evidence supporting the Appeals Board's decision because (1) the report of Dr. George Mooney, who conducted a psychological evaluation of Wood, was equivocal as to whether work-related or non-work-related factors were the predominant cause of her occupational disease; (2) the impartial medical panel improperly considered Wood's back pain and headaches as non-work-related factors when they should have been considered as work-related factors; and (3) there was other credible evidence before the Appeals Board that established that Wood's mental stress was predominantly work-related. Each of these arguments is addressed in turn.

I. Dr. Mooney's Report

Wood takes issue with the Appeals Board's reliance on the psychological report prepared by Dr. Mooney (the Mooney Report). Specifically, Wood contends that the Appeals Board should not have relied on the Mooney Report because it did not specifically identify whether work-related or non-work-related factors were the predominant cause of her occupational disease. After evaluating Wood, Dr. Mooney diagnosed her with a generalized anxiety disorder resulting from a number of factors, including "preexisting chronic anxiety, somatization and a tendency to convert emotional problems into physical symptoms, chronic back pain, stress intolerance due to encephalitis, and routine stresses at work." (Emphasis added.) At the conclusion of the report, Dr. Mooney was asked to answer the following question: "If the criteria in the Utah Occupational Disease Act have been met, what portion of [Wood's] stress is related to her work . . . and what portion is related to her nonemployment life?" Dr. Mooney responded, "Wood's anxiety appears to be multifactorial in nature Of these factors, the routine stresses from work are probably only a percentage of the total cause of her generalized anxiety disorder." (Emphasis added.) It is true

that in this regard, the Mooney Report is somewhat equivocal as to what percentage of the stressors were work-related as opposed to non-work-related. However, the opinions expressed in the Mooney Report, especially when taken together with the other substantial evidence considered by the Appeals Board, overwhelmingly support the Appeals Board's decision.

II. The Impartial Medical Panel's Report

Wood also argues that the Appeals Board's reliance on the impartial medical panel's opinion (the Medical Panel Report) is flawed because certain factors relied upon by the medical panel, namely, Wood's back pain and headaches, were improperly characterized as non-work-related when they were actually work-related.² Wood further argues that because these factors were improperly characterized, the Medical Panel Report actually supports her contention that her mental stress was caused predominantly by her employment. We disagree.

Wood claims that the Medical Panel Report "relies upon Mrs. Wood's history of back pain and chronic headaches as two of three cited non-work related stresses." (Emphasis added.) This characterization of the Medical Panel Report is somewhat misleading. In making this claim, Wood's brief cites to the "conclusion" section of the report, which states as follows:

The panel members agree with George Mooney, Ph.D., that a percentage of [Wood's] current mental condition is attributable to her occupational exposure. There were stressors other than her job situation including chronic low back pain [that was] characterized as severe and worsening. Her

²Wood also contends that the Appeals Board should not have relied on the Medical Panel Report because the medical panel considered the wrong point in time, that is, it did not consider whether the mental stress arose from Wood's employment but only considered whether her current condition was caused by work-related factors. However, Wood never objected to the medical panel's report on that basis, nor did she file a motion for review when the administrative law judge expressly adopted the conclusions of the medical panel. "We have consistently held that issues not raised in proceedings before administrative agencies are not subject to judicial review except in exceptional circumstances." Brown & Root Indus. Serv. v. Industrial Comm'n, 947 P.2d 671, 677 (Utah 1997). Because this issue was not raised below and exceptional circumstances are not claimed now on appeal, we do not further address it.

MMPI suggests the presence of a personality type which may predispose her to stress and anxiety as a result of multiple stressors. She also suffered chronic headaches which were an additional stress. Taking this into consideration, the panel members agree that 50% of her current mental condition is attributable to the occupational exposure.

(Emphases added.)

It is true that the one-paragraph conclusion references only three factors, which it categorizes as non-work-related: back pain, headaches, and a personality predisposition to stress and anxiety. Of those three factors listed in the conclusion, Wood claims that two--the back pain and headaches--should have been characterized as work-related.³ As we understand her argument, Wood then reasons that if the back pain and headaches are properly characterized as work-related, two-thirds of the factors now fall into the work-related category, tipping the medical panel's original fifty/fifty determination so that it actually weighs in her favor.

If, as Wood suggests, these were the only non-work-related factors considered by the medical panel, her argument might have some merit. However, when the medical panel's conclusion is considered in the context of the entire six-page report--and not in isolation--it is evident that the medical panel also considered several other non-work-related factors, including, but not necessarily limited to, the Mooney Report, which diagnosed Wood with a generalized anxiety disorder resulting from a variety of factors and stated that Wood had been "treated for anxiety on a prolonged basis" following her 1986 hysterectomy; Wood's current mental health symptoms, including that "she becomes stressed very easily"; and Wood's medical history, including a hysterectomy, hypertension, a left foot fracture, generalized

³Wood contends that "[a]t least a portion of [her] headaches were caused by stress from her work and were thus work-related." While we agree that a portion of Wood's headaches appear to have been work-related, there is also evidence in the record that a portion of her headaches were non-work-related. For example, Dr. Mooney noted that Wood "was quite clear that the headaches began before the [1995] back injury." (Emphasis added.) Additionally, Wood's own physician acknowledged that her headaches became more intense after her 1999 hospitalization for viral encephalitis. Accordingly, we cannot say that any suggestion by the medical panel that the headaches were non-work-related is necessarily inaccurate.

allegations of fatigue and flu-like symptoms, and an episode of "viral encephalitis with residual emotional lability."

Moreover, even assuming that the medical panel erroneously characterized Wood's ongoing back pain as non-work-related, it is somewhat irrelevant given that Wood was compensated for her worker's compensation claims resulting from the 1995 back injury. In fact, Wood's prior compensation may be the reason the medical panel suggested that any subsequent back pain resulting from the original injury was not necessarily work-related; to treat it as work-related would essentially allow Wood to recover twice for the same injury.

Finally, even if Wood is correct that the medical panel's original fifty/fifty determination should actually weigh in her favor, that adjustment would not, under our deferential standard of review, necessarily require reversal. While it is true that the Appeals Board found the Medical Panel Report to be "particularly persuasive in view of the impartiality and expertise of the panelists, their access to all Mrs. Wood's medical records and medical opinions, and their personal examination of Mrs. Wood," it is not the only evidence upon which the Appeals Board relied. Rather, the Appeals Board considered the Medical Panel's Report as "[a]n additional significant opinion" that was "further evidence that Mrs. Wood's employment . . . did not constitute more than half of the stress causing her mental injury." (Emphases added) (internal quotation marks omitted). The other substantial evidence upon which the Appeals Board relied is discussed in more detail below.

III. Evidence Before the Appeals Board

Finally, Wood contends that there was other credible evidence before the Appeals Board establishing that her mental stress was caused predominantly by work-related factors. While it may be true that there are other facts in the record that support the opposite result of that reached by the Appeals Board, it is not our role to reweigh the evidence and determine whether, on balance, the outcome was correct. Rather, we are charged with determining whether there was substantial evidence supporting the Appeals Board's decision, that is, whether there is "that quantum and quality of relevant evidence that is adequate to convince a reasonable mind to support a conclusion." Bradley v. Payson City Corp., 2003 UT 16, ¶ 15, 70 P.3d 47 (internal quotation marks omitted). Substantial evidence is "more than a mere scintilla of evidence . . . though something less than the weight of the evidence." Martinez v. Media-Paymaster Plus/Church of Jesus Christ of Latter-day Saints, 2007 UT 42, ¶ 35, 164 P.3d 384 (omission in original) (internal quotation marks omitted).

In making its decision, the Appeals Board "considered all the evidence regarding the sources of stress which led to Mrs. Wood's anxiety disorder" and concluded that her "work-related stress, when compared to her non-work stress, is not the predominant cause of her occupational disease." (Emphasis added.) In the work-related column, the Appeals Board considered the following: Wood's job description and work environment, including her many responsibilities and long working hours; reports from her primary care physician, who opined that Wood's emotional state was "directly related to her stress from her working environment"; therapy notes from Wood's psychologist, who noted that Wood "was married to her job as much, if not more, than to her husband"; and Wood's "work-related back injury in 1995 that resulted in chronic pain for several years." (Emphasis added.)

In the non-work-related column, the Appeals Board considered Wood's medical history, including the 1986 hysterectomy, "which lowered her threshold for experiencing anxiety and resulted in prolonged treatment for anxiety";⁴ "increasing health problems" in the last five years of her employment; and a 1999 episode of "viral [encephalitis]⁵ which required hospitalization and left her with headaches, extreme fatigue, decreased memory, inability to function and residual emotional lability." The Appeals Board also considered stressors present in Wood's personal life, including that her husband had become permanently disabled in 1998 and that during roughly the same time period, one of her adult sons lived in her home with his children.⁶ Finally, the Appeals Board considered the Mooney Report, which noted Wood's

⁴Dr. Mooney noted that Wood's "history of anxiety . . . was attributed to irritability and anxiety resulting after the 1986 hysterectomy" and that "[p]rogress notes from her family doctor indicated that she was regularly taking [the anti-anxiety medication] Xanax, beginning at least in late 1991." (Emphasis added.)

⁵Although the Appeals Board refers to this as viral meningitis, it is clear from the context that the Appeals Board is referring to the 1999 episode of viral encephalitis, which was originally thought to be viral meningitis.

⁶Wood contends that these personal stressors should not be considered because they were not mentioned in or supported by the medical record. Wood cites no legal authority for the proposition that stressors can be established only by medical evidence, and we can think of no reason why the Appeals Board would not be allowed to consider personal, non-work-related stress in making its determination.

earlier history of anxiety and "view[ed] Mrs. Wood's personality and the stresses of her personal life as significant causes of her anxiety disorder," as well as the Medical Panel Report. In light of all the evidence before the Appeals Board regarding the sources of stress in Wood's life--and in light of the highly deferential standard of review--we conclude that there is substantial evidence supporting the Appeals Board's decision.

Affirmed.

James Z. Davis,
Presiding Judge

WE CONCUR:

Carolyn B. McHugh,
Associate Presiding Judge

J. Frederic Voros Jr., Judge