

**STATE OF VERMONT  
DEPARTMENT OF LABOR AND INDUSTRY**

David Eggum	)	Opinion No. 42-04WC
	)	
	)	By: Margaret A. Mangan
v.	)	Hearing Officer
	)	
County of Orange	)	For: Michael S. Bertrand
	)	Commissioner
	)	
	)	State File No. U-10365

**APPEARANCES:**

Vincent Illuzzi, Esq., for the Claimant  
Andrew A. Boxer, Esq., for the Defendant

**RULING ON DEFENSE MOTION FOR SUMMARY JUDGMENT**

In this mental-mental claim, the defense moves for judgment as a matter of law, contending that claimant cannot demonstrate that the stresses in his workplace were unusual and extraordinary and that they were significant and objectively real. See *Crosby v. City of Burlington*, 2003 Vt 107.

Summary judgment is appropriate when the moving party has demonstrated that there are no genuine issues of material fact and it is entitled to judgment as a matter of law. V.R.C.P. 56(c); *Kelly v. Town of Barnard*, 155 Vt. 296, 299, (1990). In determining whether a material fact exists, the opposing party is entitled to all reasonable doubts and “all properly supported allegations presented by the opposing party [are regarded] as true.” *Hodgdon v. Mt. Mansfield*, 160 Vt. 150 at 158-59 (1992).

To recover for a mental-mental claim under Vermont law, a claimant must prove that his work caused him unusual or extraordinary stress, *Crosby v. City of Burlington*, 2003 VT 107. Such a standard provides for an “objective inquiry into the cause of the injury.” *Bedini v. Frost*, 165 Vt 167 (1996). One’s subjective perception of stress due to a legitimate personnel action, such as hiring, firing or disciplinary action is not compensable. See *Bluto v. Compass Group*, Op. No. 11-02WC (2002).

Claimant alleges that he suffered panic attacks because of unusual stress in his job as Deputy Court Clerk. Defendant alleges that any workplace stress claimant encountered was usual for the type of work he was doing. Further, it argues that claimant’s most severe reaction was from a personnel decision, not a compensable event.

Claimant has produced a medical opinion from a psychiatrist. Bradley McClure, M.D., who diagnosed claimant with panic disorder from work related stress. In a sworn statement, Mary Kennedy, former Orange County Court Clerk, described claimant's working conditions as "extraordinarily stressful." These two opinions create genuine issues of fact as to the degree of workplace stress, precluding judgment as a matter of law.

Therefore, the defense motion for summary judgment is DENIED.

Dated at Montpelier, Vermont this 22<sup>nd</sup> day of September 2004.

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Michael S. Bertrand  
Commissioner