STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY

Raymond Gallipo	)	State File No. K-06051
	)	
v.	)	By: Margaret A. Mangan
	)	Hearing Officer
City of Rutland	)	
	)	For: R. Tasha Wallis
	)	Commissioner
	)	
	)	Opinion No. 22-00WC

Hearing Held in Montpelier on February 15, 2000
Record closed on February 15, 2000

APPEARANCES:

Andrew Jackson, Esq. for the claimant
John T. Leddy, Esq. for the employer/insurance carrier

ISSUES:

1. Whether the claimant suffered a compensable stress-related injury arising out of and in the course of his employment.

2. Whether claimant's medical treatment to date has been reasonable and necessary.

THE CLAIM:

1. Temporary total and partial disability compensation pursuant to 21 V.S.A. §§ 642, 646.

2. Medical and hospital benefits pursuant to 21 V.S.A. § 640.

3. Attorney's fees and costs pursuant to 21 V.S.A. § 678(a).

4. Permanent partial disability compensation pursuant to 21 V.S.A. § 648.

EXHIBITS:

Claimant's Exhibits:
1. A. Summary of testimony in superior court action
   B. Outline of acts of retaliation asserted by claimant in superior court action
   C. Copy of interrogatories
2. Curriculum vitae of William F. Frey, Ph.D.
3. Dates of service of treatment by Dr. Frey

4. Records from Peter C. Stickney, M.D.
5. Records from William Frey, Ph.D.

Defendant's Exhibits:

A. VLCT Claimant's Report, 9/19/96
B. Memo to all members of Dept from Chief Gerald Lloyd, 8/9/96
C. Letter from Raymond Gallipo to Chief Lloyd, 8/28/96
D. Memo to Gallipo from Chief Lloyd, 9/11/96 (2 pages)
E. Plaintiff's Verdict, Rutland Superior Court, 12/20/95 (6 pages)
F. Memo from Chief Lloyd to Capt. Dalto 9/11/96 and letter to Chief Lloyd from Wayne Babcock, 9/5/96
G. First Report of Injury, 9/16/96
I. Letter from Lawrence DellVeneri to Chief Lloyd, 7/25/96
J. Letters from DellVeneri to Lloyd, 9/14/96 and 9/17/96
K. Letter from Attorney Jackson to Dr. Frey, 4/8/97
L. Letter from Chief Lloyd to Wayne Babcock, 8/19/96 (2 pages)
M. Letter from DellVeneri to Wayne Babcock, 7/25/96
N. Curriculum Vitae of James C. Rosen, Ph.D.
O. Letter from Dr. Rosen to Attorney Leddy 9/24/98

STIPULATIONS:

1. Claimant was an employee within the meaning of the Act on the date of the alleged injury.

2. City of Rutland was an employer within the meaning of the Act on the date of the alleged injury.

FINDINGS OF FACT:

1. Claimant, Raymond F. Gallipo, has been employed by the Rutland Fire Department since 1962. He has a history of reading problems and was diagnosed with dyslexia by psychologist, Dr. Patricia Stone. Claimant actively embraces his religious beliefs.

2. The claimant testified that the shifts are 24 hours long with at least 8 personnel on a shift. All members of the shift are at the fire station together for 24 hours. In his more than 30-year experience, he saw firefighters lose their tempers and become angry with other firefighters. The language many of them used was rough and often crude.

3. In 1985 claimant was passed over for a lieutenant promotion. This led him to file a complaint in 1987 with the Attorney General's Office against the City of Rutland and Fire Chief Gerald Lloyd alleging discrimination. In January 1988, claimant filed a civil suit in the Rutland Superior Court against the City of Rutland and Fire Chief Gerald Lloyd alleging discrimination due to his religious practices and reading disability.

4. While the civil suit was pending, claimant received reprimand letters from Chief Lloyd, received job assignments traditionally assigned to younger or newer employees, and had

his badge marked number one taken away and replaced with a badge marked number eleven.

5. On December 20, 1995 the jury in the civil suit found that the defendant discriminated against claimant due to his religious practices and disability, and that the defendant retaliated against the plaintiff as a result of his filing the lawsuit.

6. Claimant asserts that after the verdict fellow firefighters "shunned" him by making derogatory jokes and using profane language in his presence regarding his religious practices and his filing a lawsuit. Claimant was unable to identify the names of these firefighters or when the incidents took place. Profane language was not aimed specifically at the claimant, but was used with all firefighters.

7. Claimant testified also that he was unable to perform his duties as "computer specialist" following the trial because his password was invalid, and no action was taken to correct this problem.

8. In July 1996, Chief Lloyd denied bereavement leave when claimant's son-in-law died of cancer. The union contract lists names of family members for which bereavement leave is appropriate; however, the contract does not specify son-in-law in its bereavement leave policy. Consequently, Chief Lloyd told claimant to take sick leave instead. The Fire Department on at least one prior occasion has allowed this policy to be modified to include a death not specifically covered in the union policy.

9. At all times relevant to this action, the claimant was a member of the firefighters union that held a contract with the City of Rutland with a grievance procedure. Although the claimant was familiar with the grievance procedure, he did not file a grievance based on any alleged heightened scrutiny, being "shunned" for religious beliefs, the denial of bereavement leave at the time of his son-in-law's death or any alleged refusal to be offered computer training.

10. On August 19, 1996 Chief Lloyd issued a memorandum stating that "[a]ll training and testing is mandatory for all firefighters of this department, by Vermont State statutes, and all members of this department who have not successfully completed Level I, Units 1-5, will be required to attend review classes and certification procedures."

11. The claimant had known for some time that all of Rutland's career firefighters would have to be certified at Level I certification. He had taken previous tests for which he had received help reading test questions from instructors.

12. Some of the senior firefighters, including the claimant, felt that it was an insult for them to be required to take such a test when they had been suppressing fires for decades. They were concerned that they might be terminated if they did not pass.

13. The claimant was concerned about the consequences of not completing or passing the firefighter certification course, a concern he expressed to Gerald Lloyd. In a follow-up memorandum to the claimant, Gerald Lloyd explained that firefighters who did not

successfully complete the test portion would be offered an opportunity "to challenge the test material on a second occasion prior to the compliance date."

14. Claimant was informed on September 13, 1996 that he and three other employees who had not completed the testing for the "Level I, Unit 1-5" were to attend a review session that day. On that date, claimant noticed that Mr. DellVeneri, who was to conduct the review session, was setting up a video camera. Mr. DellVeneri testified that the tape was for other employees who could not attend the session that day. He did not intend to film the claimant or anyone else in the class. The camera was set up to tape only the instructor. Before September 13, 1996, other training sessions at the Fire Department had been videotaped.

15. Claimant objected to the videotape and confronted Mr. DellVeneri, insisting that DellVeneri not tape the class. Claimant never asked and DellVeneri never said that claimant himself would be videotaped. An argument then ensued between claimant and Mr. DellVeneri stemming from the taping of the review session, but also including other matters. As a result, claimant alleges he felt symptoms of shaking, heart palpitations and nausea. He immediately left the work place, returned home, and then sought treatment at the Rutland Regional Medical Center where he was treated and released that day. Claimant has not returned to work since September 13, 1996.

16. On his First Report of Injury, the claimant stated " Instructor was going to video me taking a course. When I objected, he verbally attacked and berated me. …"

17. Claimant then sought treatment with his primary care physician, Peter C. Stickney, M.D. Dr. Stickney diagnosed claimant as "suffering from Severe Depression along with Post Traumatic Stress Syndrome [PTSD] as a result of his interchange between the City of Rutland and Fire Department." Dr. Stickney also asserts that claimant "suffered as a direct result of the stress of his job above and beyond the usual demands of his position." There was not a specific incident causing the claimant to see Dr. Stickney, but rather a global perception of prejudice against him. Claimant felt persecuted, intimidated and abused. The videotaping was the "final straw."

18. Dr. Stickney referred the claimant to a clinical psychologist, William F. Frey, Ph.D. Dr. Frey diagnosed claimant with "symptoms consistent with a generalized anxiety disorder, with somatization and sporadic panic attacks ... [and] mood fluctuations that suggest he is also depressed." Dr. Frey also stated that claimant's "symptoms appear to be related to the interpersonal stress he has experienced at work culminating in his reaction to this taping event." He did not believe that claimant met the criteria for a PTSD diagnosis. Dr. Frey explained that claimant worries on a constant basis in a way that is not within the norm. His pervasive worrying causes him to be anxiety prone. He worried about his wife's business. He worried about church functions. The constant worrying, Dr. Frey explained, is indicative of a more generalized anxiety that underlies claimant's style of interacting. Claimant distrusted individuals and, therefore, could not appreciate their motivation.

19. On April 17, 1998, claimant saw clinical psychologist, James C. Rosen, Ph.D., for an independent evaluation of his condition. Dr. Rosen is a licensed Clinical Psychologist and Professor of Psychology. After evaluating the claimant, Dr. Rosen noted that claimant feels that the other Fire Department employees do not understand his mental symptoms and otherwise have negative perceptions of the claimant because of his earlier lawsuit. In his September 24, 1998 report, Dr. Rosen noted claimant feeling that the Fire Chief continuously harassed him since he filed the discrimination suit over ten years ago. Significantly, during the meeting with Dr. Rosen, the claimant did not mention the videotape incident as a stimulus that triggered his symptoms.

20. Dr. Rosen's evaluation concluded that claimant does not have post traumatic stress disorder, nor depressive disorder. Dr. Rosen stated that despite the anxiety attack claimant suffered on September 13, 1996, claimant does not have a panic disorder. Dr. Rosen further concluded that claimant does not completely meet the criteria for a generalized anxiety disorder, although he does have some features of this disorder. Dr. Rosen's diagnosis is that claimant has an adjustment disorder accompanied by an unspecified anxiety disorder; the former being brought on by "perceived mistreatment on the job, loss of normal occupation, and frustration over legal/medical compensation claims." However, Dr. Rosen stated that the incident of September 13, 1996 "does not seem to be an unusual or extraordinary stress in any objective sense … ." He concluded that claimant was able to work sometime after June 1997. According to Dr. Rosen, claimant's inability to work stems from a "slowness to be realistic and the lack of compelling motivation."

CONCLUSIONS OF LAW:

1. "In workers' compensation cases, the claimant has the burden of establishing all facts essential to the rights asserted." *Goodwin v. Fairbanks, Morse Co.*, 123 Vt. 161 (1962). "The claimant must establish by sufficient credible evidence the character and extent of the injury as well as the causal connection between the injury and the employment." *Egbert v. The Book Press*, 144 Vt. 367 (1984).

2. "Where the causal connection between an accident and an injury is obscure, and a lay-person would have no well grounded opinion as to causation, expert medical testimony is necessary." *Filion v. Springfield Electroplating*, Opinion No. 29-96WC (April 12, 1996) (quoting *Lapan v. Berno's Inc*., 137 Vt. 393 (1979)). "There must be created in the mind of the trier of fact something more than a possibility, suspicion or surmise that the incidents complained of were the cause of the injury and the inference from the facts proved must be the more probable hypothesis. *Id*. at 5 (quoting *Burton v. Holden & Martin Lumber Co.*, 112 Vt. 17 (1941)).

3. In this case the claimant asserts that as a result of his successful jury verdict against the fire chief and the Rutland Fire Department in December 1995, he encountered a hostile and stressful work environment. According to the claimant, this hostile and stressful work environment caused him to sustain a mental injury.

4. In order to prevail in this mental injury claim, the claimant must satisfy a two-part test. First, he must prove that the stresses endured at work were significant and objectively real. *Gordon Little v. IBM*, Opinion No. 13-97WC (June 30, 1997); *Filion v. Springfield Electroplating*, Opinion No. 29-96WC (May 16, 1996). "Second, the claimant must show that his illness is actually a product of unusual or extraordinary stresses." See, *Bedini*, 165 Vt. 167 (1996); see also, *Crosby*, Opinion No. 43-99WC (June 23, 1999).

5. Greater objectivity is necessary in mental injury cases because the claimant's subjective impression that work-related stress caused [the] injury often forms the basis for the medical opinion that the injury was caused primarily by work-related stress." *Bedini v. Frost*, 165 Vt. 167, 678 A.2d 893 (1996). "Because a mental injury could have resulted from such diverse factors as social environment, culture, heredity, age, sex, family relationships, and other interpersonal relationship, as well as employment, a high degree of uncertainty exists in the diagnosis of cause. The unusual-stress standard permits a more objective inquiry into the cause of the injury." *Id*.

6. In a case such as this where the injury and cause are obscure, the trier of fact must weigh the medical evidence and draw inferences from that expert medical testimony. See generally, *Lapan v. Berno's Inc.*, 137 Vt. 393 (1979). Claimant's primary care physician, Dr. Stickney, is not a clinical psychologist and is not an expert on mental injuries; therefore, his diagnosis and opinion as to the cause of claimant's injury is not as convincing as the other expert testimony. On the other hand, Dr. Frey and Dr. Rosen are psychologists, and as such their respective opinions as to the nature and cause of claimant's injury are crucial to the outcome of this case.

7. These expert opinions must be viewed against the backdrop of the alleged stressors. The claimant identified four: First, the claimant testified that as a result of his successful civil suit, he was ostracized by the department and a source of ridicule among the other firefighters. Second, claimant suggested that the other employees knowingly used profane language in his presence in an effort to harass the claimant because of his religious beliefs. Third, the claimant testified that he volunteered for the position of "computer specialist", however, he was unable to perform this duty because his computer password was invalid. Finally, claimant alleges that the September 13, 1996 videotape incident and confrontation with Mr. DellVeneri was a significant and objectively real stressful incident that was significantly greater than that which the other employees endured.

8. Claimant's perception that his coworkers were shunning him seems to be intertwined with his allegation that their use of profanity was designed to harass him. Officer Mooney partially corroborated claimant's account when he testified that he was aware of negative feelings among the fellow employees regarding claimant's successful lawsuit. However, neither claimant nor officer Mooney could identify specific firefighters' names or particular instances when this "shunning" occurred. Without more specificity and objectivity, claimant cannot sustain his burden of proving that his sense of being ostracized was significant and objectively real. The facts amply support Dr. Rosen's conclusion that any mistreatment claimant felt was from his subjective perception, not objective facts.

9. Similarly, the claimant fails to offer any conclusive proof that the profane language was directed specifically at him, was a conscious effort to harass him, or was an objectively real stress. The claimant testified that in general the language used at the fire department is less than respectable. It cannot be concluded based on this evidence that the profane language was anything more than a normal, routine, albeit distasteful, practice. Even when the language was not directed to him, claimant interpreted its use as criticism and being shunned for his religious beliefs, when that was clearly not the case. Thus, claimant has not established that objectively real or significantly greater stress existed based on the language used by the other employees.

10. The problem claimant had with the computer is less clear. Despite the department and the chief's knowledge that claimant had no access to the computer, no effort was taken to correct claimant's computer problem. On the other hand, the work was not central to claimant's work as a fire fighter and no adverse consequences followed his lack of computer access. Consequently his failure to obtain access cannot be construed as a significant and objectively real stress. Claimant had other duties to perform in addition to this computer work. It was not the crux of his duties as a firefighter; therefore, his inability to perform on the computer is not substantial. This is especially obvious since the department took no action reprimanding or pressuring claimant regarding this matter. Claimant expressed his frustration with the computer situation. However, he did not produce evidence that proves that it was an unusual stress, significantly greater stress than what other firefighter employees experienced, that led to his mental illness.

11. At the hearing, the parties presented sharply contrasting versions of the videotaping incident. Despite the claimant's protestations and objections, however, there was no objective evidence that as a student in the class he would have been videotaped. He reacted to a perceived, not an objective, stressor. Furthermore, the credible evidence shows that the confrontation between DellVeneri and the claimant was no more than typical firehouse banter that became heated. Once again, that the situation was perceived as stressful stemmed from claimant's personal worries, not from objective facts. The videotaping incident was one that is typical in today's work world, including the Rutland Fire Department, where a lesson needs to be preserved for future viewing. All those in the class were to sit in a room where the instructor was to be videotaped. The claimant was not asked to endure a stress that was of a significantly greater dimension than the stresses encountered by similarly situated employees. Nor can the confrontation with the officer videotaping the lesson change this conclusion. It was the claimant who insisted that the class not be videotaped. He cannot now transfer the officer's refusal to comply with that request into a claim for a mental injury when such a confrontation was no more than ordinary stress created when one worker asked another not to do his job.

12. Finally, claimant suggests that the situations combined to create work place stress that for him was greater than the daily stresses encountered by other employees. However, the expert medical testimony does not support that theory even though the inference drawn from the conflicting testimony of Dr. Frey and Dr. Rosen is that the claimant does have an anxiety disorder of some kind. From that conclusion, the respective testimonies diverge regarding the exact nature and cause of the claimant's illness. Dr. Frey stated that it appears to be work related, while Dr. Rosen testified that the illness is caused by

claimant's subjective perception of mistreatment. In support of this claim, Dr. Frey stated that claimant has "symptoms consistent with a generalized anxiety disorder, with somatization and sporadic panic attacks ... [and] mood fluctuations that suggest he is also depressed." Dr. Frey also stated that claimant's "symptoms appear to be related to the interpersonal stress he has experienced at work culminating in his reaction to this taping event." That opinion supports the possibility of a work connection, but not the essential showing of probability.

13. The facts and medical opinions prove that claimant believes that he suffered a mental injury as a result of work place stresses that were of a greater dimension than the daily stresses encountered by all employees. However, the expert opinions in support of his claim raise no more than a possibility, surmise or speculation that the stresses meet our rigid standard for compensability under *Bedini*. Those opinions convince this trier of fact that the more probable hypothesis is that claimant's mental injury is a result of forces independent of the work place and not from work-related stresses and that were of a significantly greater dimension than the daily stresses encountered by other firefighters. *Id.; Burton,* 112 Vt.

14. Accordingly, this claim must be denied.

ORDER:

Based on the foregoing Findings of Fact and Conclusions of Law, this claim is DENIED.

Dated at Montpelier, Vermont, this 12th day of July 2000.

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R. Tasha Wallis
Commissioner