

2022 WL 12804806 (N.Y.Work.Comp.Bd.)

Workers' Compensation Board

State of New York

EMPLOYER: MUNICIPAL HOUSING AUTHORITY FO

Case No. G302 4744

Carrier ID No. 73107187-174 W204002

October 18, 2022

*1 State Insurance Fund
PO Box 66699
Albany, NY 12206
Date of Accident 5/17/2021

The Full Board, at its meeting held on September 20, 2022, considered the above captioned case for Mandatory Full Board Review of the Board Panel Memorandum of Decision filed March 18, 2022.

ISSUE

The issue presented for Mandatory Full Board Review is whether claimant sustained compensable psychological injuries.

The Workers' Compensation Law Judge (WCLJ) disallowed the claim.

The Board Panel majority affirmed the WCLJ.

The dissenting Board Panel member would establish the claim.

The claimant filed an application for Full Board Review on April 18, 2022, arguing that that the claim should be established for anxiety and depression.

The carrier did not file a timely rebuttal.

Upon review, the Full Board votes to adopt the following findings and conclusions.

FACTS

Claimant filed a C-3 (Employee Claim) on June 8, 2021, alleging that she was employed as an Assistant Housing Manager with a municipal housing authority and had “been having anxiety with being moved to a new department within my company.” Claimant stated: “I was moved to a department that is very demanding and I don't have the knowledge to run the department.” Claimant indicated that she stopped working and first sought treatment on May 17, 2021. The carrier controverted the claim.

In a May 22, 2021, report, Dr. Shivdasani stated that he had been in contact with claimant since May 13, 2021, “about excessive stress and anxiety due to the work related environment.” According to Dr. Shivdasani, claimant's anxiety was “directly related to stress in her work environment.” Dr. Shivdasani reported that claimant “was complaining of excessive nervousness, heart palpitations and lack of sleep thinking about the JOB all the time.” Dr. Shivdasani recommended that claimant begin taking [Xanax](#) and take a leave of absence from work beginning May 17, 2021.

In a July 9, 2021, report, claimant's treating licensed clinical social worker, Karyn Morra, indicated that she performed an initial intake/evaluation of the claimant on June 29, 2021. According to LCSW Morra, claimant reported that she had been out of work due to a workers' compensation injury and that when she returned to work, she was trained by a supervisor via a Zoom call. Claimant was required to train other workers but had difficulty doing that. Claimant believed she required more training, but when she asked if she could have more training, "they said we went over things but I needed more training and I started having anxiety." LCSW Morra diagnosed [panic disorder](#), general anxiety disorder, and [major depressive disorder](#), and found that those conditions were causally related to claimant's employment.

By a decision filed July 30, 2021, the WCLJ found prima facie medical evidence for [panic disorder](#), general anxiety disorder, and [major depressive disorder](#), and continued the case.

*2 Claimant was examined by the carrier's consulting psychologist, Dr. Porter, on August 26, 2021. According to Dr. Porter, claimant reported returning to work with her employer in October 2020, in a new department and with a new supervisor. She was taught her duties via a Zoom call. She was placed in a supervisory role, overseeing three people, and was tasked with training her subordinates on things she herself did not know. This caused her to have anxiety, feel weak and incompetent, and to experience a racing heart, inability to breathe, and crying spells. Dr. Porter diagnosed [adjustment disorder with depressed mood](#) and [panic disorder](#), which he believed were causally related to her employment based on the history related by the claimant.

At a hearing on September 14, 2021, testimony was taken of the claimant and two employer witnesses. Claimant testified that she had worked for the employer since 2001. When she returned to work in October 2020 after having knee surgery, her employer was understaffed, and she was moved to the admission's department. Her new supervisor trained her via a Zoom call "on three different things" (Hearing Transcript, 9/14/21, pp. 4-5). During that training, she "was able to take notes and didn't have any issues with learning those three things" (p. 5). She was subsequently placed in a supervisory role with three people under her. She was "running the admission's department which requires like eight different things in the department that needs to be done and I have to train my staff" (pp. 5-6). One of the employees she had to train had "four things that she was required to do" (p. 6). Claimant had to train the employee how to do those four things, but claimant had not been trained on three of those things. During a later training session, claimant was told by the person doing the training that "she just wanted us to observe and she gave us a sheet afterwards, I don't learn like that, I have to be able to take my notes on how I perceive and how to do things for me to comprehend it and it started causing anxiety because she's saying I need to train her on this and I can't train her on this" (pp. 6-7). She emailed her supervisor advising that she needed to be trained on billing so that she could train another employee, but her supervisor responded that claimant already had the training, which caused claimant to have anxiety and for her heart to race. Claimant has had two panic attacks, both during Zoom meetings with her supervisor. On the first occasion, her "heart was racing, nervous feeling, crying, I literally had to leave" (p. 7). The second panic attack occurred on the Friday before she stopped working. Her supervisor was able to calm her down by telling her "to relax, sit back, take deep breaths and calm down[.]" and claimant was able to finish her work that day. Claimant testified that the next day, "Saturday morning, I woke up, I ran around doing my errands and I came home and thinking about going to work on Monday, I had an anxiety attack. I couldn't breathe, I was nauseous, my heart was racing, I'm trembling, I'm shaking" (p. 8). The next day, Sunday, she spoke to her doctor and he prescribed anxiety medicine and advised her to tell her employer she was not coming to work because her job was causing her anxiety. During the weekend she had been thinking about having to train a new employee on Monday, but did not "know how to train her, 'cause I don't know how to do it" (p. 9). She was given a "sheet" to assist her in training the employee, but she was not able to "learn like that" (id.). Claimant stated:

*3 If they gave us the sheet and they were doing the training and I could put my notes to the sheet that she's saying and that would help me to learn it, but if you just give me a sheet and say follow these instructions, I don't process it like that and I didn't feel confident for me to be able to train someone else if I'm not feeling confident in it and I'm getting — (id.). She has been out of work since May 17, 2021. People from work texted her, asking how she was doing, but she did not respond because it made her think about her job, which caused anxiety.

On cross-examination, claimant testified that she had been an assistant housing manager for at least five years. Prior to being out of work due to her [knee injury](#), she was an assistant manager in the recertification department, where she supervised three or four employees. During the last training she attended before being put in her new position, which was via Zoom, the instructor told them not to take notes and that she would give them materials after the training. Claimant tried to take notes during that training, but could not keep up.

The employer's lease housing director testified that she supervises claimant's direct supervisor. She testified that claimant received training for her new duties from a third-party training company, and in-house from her immediate supervisor. Claimant was provided with one-on-one support. The employer has five or six assistant housing managers. There was a disciplinary action pending against the claimant when she went out of work on May 17, 2021. On cross-examination, the lease housing director testified that claimant's direct supervisor would meet with claimant once every week and provide "one-on-one support for whatever training needs are, you know, present at that time" (p. 21). She was never advised that claimant was having any issues with the training. The staff that claimant supervised would receive the same training that claimant would receive.

Claimant's direct supervisor testified that her job title is assistant director for the lease housing and administration program. She became claimant's supervisor in October 2020. When asked whether claimant's job changed when she returned to work in October 2020, her supervisor responded that, "[t]he job description in itself did not change, the Housing Authority in itself had a conversion in different programs, um, so some items changed as far as one of the regulations that we have to follow now, but the job itself did not change" (p. 26). She provided one-on-one training to the claimant. She became aware that claimant was having some challenges learning new tasks, and she shared with claimant some tips on organization and time management. She was not aware of claimant having taken a training where she was not able to take notes. When training is provided by outside parties, employees are given guides that go step-by-step through what is taught in the training. Those guides are provided either before or after the training. Claimant was having "some challenges that were escalating as far as performance was concerned and...[a] verbal warning was issued..." (p. 29). She was not aware of a particular incident that occurred on May 17, 2021. Prior to the time she stopped working, "a verbal warning [had been] issued and there was the start of a disciplinary action" (id.).

*4 On cross-examination, claimant's direct supervisor testified that the employer was short-staffed at the time claimant returned to work in October 2020. Claimant's job changed when more staff was hired, and claimant was responsible for supervising more people. She had a scheduled meeting with claimant every week. In addition to that regular meeting, claimant would also call, email, or come into her office "as needed and the support would be provided ACCORDINGLY" (p. 36).

On re-direct, claimant's direct supervisor testified that claimant's job duties were not essentially different from those of other employees in the same job title. Most of claimant's subordinate employees would take the same training that claimant took.

In a decision filed September 20, 2021, the WCLJ noted that the claimant waived the opportunity to cross-examine Dr. Porter, and continued the case.

LCSW Morra was deposed on October 6, 2021, and testified that claimant reported being in a training where she was instructed not to take notes and the instructor went too fast for claimant to be able to take notes. Claimant provided a history of having "voiced to her supervisor in March that she felt overwhelmed and that she felt she wasn't a good fit for the position, and her supervisor responded that she believed in her and that she felt she was a good fit for the role" (Deposition, LCSW Morra 10/6/21, p. 5). Claimant reported falling behind in her work and having to work evenings and weekends to keep up. At one point, claimant's vehicle went into the shop, and she had to rely on others to get to and from work, and could not work extra hours, which made it difficult to complete all her work. As a result, she was given a verbal warning by her supervisor for not answering emails fast enough, which increased her anxiety and psychological distress. According to claimant, at one point one of the employees she supervised needed training in billing and claimant reached out to her supervisor for assistance, but her supervisor responded that claimant had already been trained in billing. However, that was the training during which claimant was unable to take notes and she felt that she was not adequately trained in that area, and claimant "felt overwhelmed and distressed knowing that her staff person needed a training and that she wasn't able to help her with it" (p. 7). Claimant reported

that her supervisor did not provide any assistance training her subordinate employee with respect to billing, as she had requested. LCSW Morra believed that claimant developed [panic disorder](#) and major [depressive disorder](#) as a result of work stress.

On cross-examination, LCSW Morra testified that the “circumstances [of claimant's job] are not unusual” (p. 14). According to LCSW Morra, claimant “became so overwhelmed by her workload and felt that she was inadequately trained, this is what led to the psychological distress” (p. 15).

By a decision filed October 27, 2021, the WCLJ disallowed the claim, finding that “claimant's work-related stress was not greater than that which usually occurs in the normal work environment. The claimant's stress was created as a direct consequence of a personnel decision taken in good faith by the employer.”

*5 The claimant requested administrative review, arguing that she “was not a similarly situated employee as falls under Section 2(7) in that while she was out on another injury, she returned to a different environment, one that was restricted and need[ed] additional training. When [she] asked for more training, she was denied.”

In rebuttal, the carrier argued that the record supported the WCLJ's finding that the stress experienced by claimant was no greater than that experienced by similarly situated employees.

LEGAL ANALYSIS

“Pursuant to [Workers' Compensation Law § 2\(7\)](#), a psychic injury based upon work-related stress is not compensable if it is ‘a direct consequence of a lawful personnel decision involving a disciplinary action, work evaluation, job transfer, demotion, or termination taken in good faith by the employer’ (see [Matter of Grace v Bronx Mun. Hosp. Ctr.](#), 272 AD2d 799 [2000]). The case law makes clear that ‘direct consequence’ means that the personnel decision at issue was aimed at or targeted the claimant (see [Matter of DePaoli v Great A & P Tea Co.](#), 94 NY2d 377 [2000])” ([Matter of Spencer v Time Warner Cable](#), 278 AD2d 622 [2000], lv denied 96 NY2d 706 [2001]).

“[A] mental injury precipitated solely by psychic trauma may be compensable in workers' compensation” ([Matter of Guess v Finger Lakes Ambulance](#), 28 AD3d 996 [2006], lv denied 7 NY3d 707 [2006] [citations omitted]). “[A] claim for work-related stress cannot be sustained absent a showing that the stress experienced by the affected claimant was greater than that which other similarly situated workers experienced in the normal work environment” ([Matter of Spencer v Time Warner Cable](#), 278 AD2d 622 [2000], lv denied 96 NY2d 706 [2001] [citations omitted]). “This inquiry ... presents a factual issue for the Board to resolve and its determination, if supported by substantial evidence in the record as a whole, will not be disturbed” ([Matter of Kopec v Dormitory Auth. of State of N.Y.](#), 44 AD3d 1230 [2007] [citation omitted]).

Here, claimant contends that her injuries were caused by work stress resulting from her employer's failure to provide sufficient training for claimant to be able to do her job. Claimant argues that the stress she experienced was not the same as other similarly situated workers because she, unlike other workers, was required to undertake a position in a new department with new duties, utilizing a new system, and had to learn those duties and that system all at once, via Zoom. However, the credible testimony of the employer's witnesses reflects that claimant was provided training by a third-party and that the training was also provided to her subordinate employees. The record further reflects that claimant was also provided one-on-one support from her direct supervisor. Her direct supervisor testified that in addition to a regularly scheduled weekly meeting with the claimant where claimant was provided one-on-one support, claimant would also contact her supervisor by telephone, email, and in-person to discuss issues that claimant was encountering. It is clear that claimant experienced a great deal of stress as the result of her perception that the training provided by her employer was not always suited for the way that she prefers to learn, and as a result she did not believe she received sufficient training to adequately perform her job. However, the credible evidence in the record reflects that the employer, and in particular claimant's direct supervisor, attempted to provide claimant with adequate training and support to allow her to perform her job effectively.

*6 Therefore, the Full Board finds that the stress experienced by the claimant was no greater than that which other similarly situated workers experienced in the normal work environment. The claim is disallowed.

CONCLUSION

ACCORDINGLY, the WCLJ's decision filed on October 27, 2021, is AFFIRMED. The claim is disallowed and closed.

Clarissa Rodriguez
Chair

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