pennsylvania
DEPARTMENT OF LABOR & INDUSTRY

Appeal Case: A20-0144
Opinion Mailing Date: 10/6/2021
Determination: Reversed

Opinion

ERIN SMITH v. WARWICK SCHOOL DISTRICT

Attached is a copy of an Opinion from the Workers' Compensation Appeal Board filed this date in the above-captioned case. An appeal to the Commonwealth Court of Pennsylvania may be taken by any party aggrieved by the Board's decision, provided such appeal is taken within (30) days after the mailing date of the Board's decision. The Board is not responsible for the filing or processing of further appeals to the Court. Further appeals may be filed in person or by mail (accompanied by U.S. Postal Services Form 3817) with the Prothonotary of the Commonwealth Court of Pennsylvania, 601 Commonwealth Avenue, Suite 2100, PO Box 69185, Harrisburg, PA 17106-9185. The Commonwealth Court may also be contacted at 717-255-1650 with questions related to a further appeal.

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Notes:

OPINION

WILDERMAN, COMMISSIONER:

Before the Workers' Compensation Appeal Board (Board) are the Appeals of Warwick School District (Defendant) and Erin Smith (Claimant) from the Decision and Order of Workers' Compensation Judge (WCJ) Thomas Kutz granting Claimant's Claim Petition. For the reasons stated below, we reverse the WCJ's Decision and Order.

On April 20, 2017, Claimant filed a Claim Petition alleging that on April 23, 2014 she experienced disabling injuries as a result of Defendant intentionally, recklessly, and/or negligently falsely accusing her of child abuse as a teacher. She sought total disability benefits from May 12, 2014 through February 1, 2015, and November 24, 2015, and ongoing.

On January 28, 2020, the WCJ issued a Decision and Order granting Claimant's Claim Petition.[1] The WCJ first concluded that Claimant provided timely notice of her work-related injury to Defendant, specifically her request for FMLA leave in May of 2014 indicating psychological issues. The WCJ also concluded that Defendant's discipline against Claimant in regard to her actions regarding a student constituted an abnormal working condition. Consequently, the WCJ concluded that Claimant had met her burden of proving that she sustained adjustment disorder with mixed anxiety and depressed mood as a result of that abnormal working condition. Furthermore, the WCJ concluded that Claimant had met her burden of proving that her injury caused her a wage loss and awarded benefits from the time she stopped working for Defendant in the spring of 2014, until the time she returned in February of 2015. The WCJ suspended

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[1] We note that on January 29, 2020, the WCJ issued an Amended Decision and Order, correcting an omission to Conclusion of Law #2 in his original Decision and Order.

her benefits after February of 2015 and found her fully recovered from her work injury as of November 9, 2016. Both Defendant and Claimant appeal.

Our scope of review is limited to whether the WCJ erred as a matter of law and whether necessary findings are supported by substantial, competent evidence. Bethenergy Mines, Inc. v. WCAB (Skirpan), 612 A.2d 434 (Pa. 1992). Substantial evidence is that relevant evidence a reasonable person might accept as adequate to support a finding. York Terrace/Beverly Enter. v. WCAB (Lucas), 591 A.2d 762 (Pa. Cmwlth. 1991). Additionally, on appeal, all inferences drawn from the evidence shall be taken in favor of the party prevailing before the WCJ. Krumins Roofing & Siding v. WCAB (Libby), 575 A.2d 656 (Pa. Cmwlth. 1990).

Defendant argues the WCJ erred in concluding that Claimant's circumstances constituted an abnormal working condition. We agree.

In order to receive benefits for a psychological injury, the claimant is required to establish by unequivocal medical evidence that she has a psychological condition, and that the psychological condition was caused by her employment. Lowe v. WCAB (Lowe's Auto Sales, Inc.), 619 A.2d 411 (Pa. Cmwlth. 1992). The Pennsylvania Supreme Court has classified psychological injuries as follows:

> For purposes of receiving workers' compensation benefits, the influence of the psychological element is divided into three discrete classifications: (1) the "mental/physical" injury where a psychological stimulus causes a physical injury; (2) the "physical/mental" injury where a physical stimulus causes a psychic injury; and, (3) the "mental/mental" injury where a psychological stimulus causes a psychic injury.

Ryan v. WCAB (Community Health Servs.), 707 A.2d 1130, 1133-1134 (Pa. 1998). Where a claimant alleges that she sustained a mental injury caused by a mental

stimulus, she must prove either that: (a) actual extraordinary events occurred at work which caused the trauma and that these specific events can be pinpointed in time; or (b) actual objective abnormal working conditions over a longer period of time caused the injury. Gulick v. WCAB (Pepsi Cola Operating Co.), 711 A.2d 585 (Pa. Cmwlth. 1998). An examination of abnormal working conditions must focus on the particular incident in question to determine whether that incident was a highly unusual and singular event, even where the claimant is employed in a stressful or dangerous position. Payes v. WCAB (PA State Police), 79 A.3d 543 (Pa. 2013). The existence of a compensable mental or psychic injury is, for the reviewing court, a mixed question of law and fact. Id.

Claimant testified she worked for Defendant as a special education teacher. (N.T. 8/4/17 at 10-15). She worked in a special education classroom and had four full-time aides and a therapeutic support staff person, who at the time was Jessica Shank. (N.T. 8/4/17 at 15). Claimant had a student in her classroom, J.E., who was autistic and had different self-stimming behaviors that weren't typical of other kindergartners. (N.T. 8/4/17 at 32). He would yell, scream, shout, run around the room, throw things, and pull things off the wall. (N.T. 8/4/17 at 32). She had regular meetings with the school psychologist, Lori Earle, and her principal, Jennifer Murphy, on managing J.E.'s behavior. (N.T. 8/4/17 at 32). It was discussed that the best way to control J.E.'s behavior was to allow him to go into the bathroom in the classroom and yell and scream with the door closed or cracked. (N.T. 8/4/17 at 35). The other option would have been to take J.E. upstairs to a padded room. (N.T. 8/4/17 at 36).

Claimant testified that there came a time when J.E. began yelling and screaming and Claimant led him by the small of his back into the bathroom so he could continue to

yell and scream. (N.T. 8/4/17 at 37). Claimant denied the allegation she dragged J.E. across the floor and shoved him into the bathroom or leaned her body and held the door shut during the incident. (N.T. 8/4/17 at 37). There also was an allegation Claimant put J.E. into the bathroom as punishment because he was afraid of the bathroom fan, which Claimant denied. (N.T. 8/4/17 at 37-38). Claimant only used the bathroom for safety, so J.E. would not harm himself or others, and to have a place to go to do his self-stimming behaviors. (N.T. 8/4/17 at 38). J.E. would stay in the bathroom for 15 seconds to two minutes, and it would calm him down and allow him to rejoin the classroom. (N.T. 8/4/17 at 38-39). Claimant shared her experience using the bathroom with Ms. Murphy and Ms. Earl and no one objected. (N.T. 8/4/17 at 39-40).

In April of 2014, Claimant had a series of meetings with Ms. Murphy and Melanie Calendar, an assistant superintendent. (N.T. 8/4/17 at 23-28). She was asked questions about the tone of the adult conversation in her classroom, planning a wedding celebration, eating food in the classroom, and making personal calls and texting in the classroom. (N.T. 8/4/17 at 29-30). She also was asked about J.E., and her disciplining him by putting him into the bathroom. (N.T. 8/4/17 at 30-31). Claimant was shocked she was being asked about her discipline of J.E., because Ms. Murphy knew exactly what had happened. (N.T. 8/4/17 at 42-43). She learned the allegation against her was Jessica Shank had called the ChildLine and accused her of child abuse. (N.T. 8/4/17 at 44). Claimant was extremely upset at the way everything was happening, not specifically the allegation itself. (N.T. 8/4/17 at 46-47). After the meetings, she had to go to a separate room in the building and was not allowed back to her classroom. (N.T. 8/4/17 at 48). She made an appointment with a doctor that afternoon because she was

extremely anxious and depressed. (N.T. 8/4/17 at 48). She was prescribed a medication and continued her medical treatment afterwards. (N.T. 8/4/17 at 49).

Claimant reported to the district office the next day and had an interview with Ms. Calendar, Ms. Murphy, Kathy Glacko, and Lisa Hockrider, the union president. (N.T. 8/4/17 at 49). Claimant was told all the other aides in the room, and the student, corroborated what had occurred, and Claimant was the only one who's story was different. (N.T. 8/4/17 at 51). Claimant denied that her aides had said that and later learned that their accounts were almost identical to hers. (N.T. 8/4/17 at 64). However, Claimant was dumbfounded and shocked she was being told everyone was accusing her of the abuse allegations. (N.T. 8/4/17 at 64). After her interviews, she was made to go into an office and have no contact with any aides, students, or teachers, and do her lesson plans. (N.T. 8/4/17 at 65). She believed everyone had already made the conclusion she had committed child abuse. (N.T. 8/4/17 at 66).

Claimant received a letter of discipline on April 29, 2014, which stated that the administration had reached a conclusion that she had inappropriately restrained and falsely imprisoned J.E. in the bathroom, and this was confirmed by the five adult witnesses and the student. (N.T. 8/4/17 at 68). The letter also indicated that her actions constituted cruelty against a student. (N.T. 8/4/17 at 70). Claimant did not agree with it, thought it was a lie, and she felt devastated and crushed. (N.T. 8/4/17 at 69). However, Claimant agreed other allegations not related to the child abuse in the letter were true, specifically that outside food was eaten in the classroom, personal phone calls were made, staff was texting, and inappropriate comments were made about the building principal handling situations. (N.T. 8/4/17 at 72). Claimant was

suspended for five school days without pay. (N.T. 8/4/17 at 76). As a result of the allegations, Claimant had to retain a defense attorney and meet with the local police department, but no charges were ever brought against her. (N.T. 8/4/17 at 78).

Claimant testified that she continued to be off of work by using sick leave and then being granted FMLA leave. (N.T. 8/4/17 at 84-86). Claimant also grieved the discipline letter and the case went to arbitration in August of 2014. (N.T. 8/4/17 at 87-88). Eventually the arbitrator ruled for Claimant, awarding her the pay she would have received for her five day suspension, and Claimant felt vindicated. (N.T. 8/4/17 at 94; 97). Claimant did not initially want to go back to school for the 2014/2015 school year because she was afraid of the administration and very anxious and nervous. (N.T. 8/4/17 at 93). However, she did return in February of 2015 because she did not have a choice and needed the income. (N.T. 8/4/17 at 93). She was placed in a gifted classroom, with no other adults in the room, and she was completely by herself with the children. (N.T. 8/4/17 at 94-95). Claimant completed the school year without incident and received a great summary evaluation. (N.T. 8/4/17 at 96). However, she continued to feel she was the "black sheep" and that others were talking about her and that she was being watched by the administration, and felt very uncomfortable. (N.T. 8/4/17 at 96).

Defendant presented the deposition of Jennifer Murphy, school principal for Defendant. (Murphy Dep. at 9). Ms. Murphy testified she was Claimant's immediate supervisor in the 2013/2014 school year and was aware of the student J.E. (Murphy at 13). Ms. Murphy testified that she did have a meeting in April of 2014 with Claimant after students had been removed because of J.E.'s behavior, which included the school

psychologist Ms. Lori. (Murphy at 14). However, Ms. Murphy denied ever discussing using the bathroom as a form of discipline for J.E. at this meeting. (Murphy at 14). Ms. Murphy had no knowledge Claimant was using the bathroom for discipline until Ms. Shenk reported her. (Murphy at 15). On April 22, 2014, Ms. Murphy had a meeting with Claimant about the allegations, and it was an ordinary meeting and had a tone of professionalism. (Murphy at 17-18). Ms. Murphy was not Claimant's principal or supervisor when she returned to work in February of 2015. (Murphy at 18).

Defendant also presented the deposition of Lori Earle, school psychologist for Defendant. (Earle Dep. at 9). Ms. Earle testified she did meet with Claimant about behavior issues she was having in her classroom. (Earle at 11-12). However, Ms. Earle was never told by Claimant that she was taking students into the bathroom to manage their behavior and never authorized that sort of discipline technique. (Earle at 12-14).

Defendant further presented the deposition of Jessica Shenk, who worked as a behavior health assistant in Claimant's classroom. (Shenk Dep. at 10). Ms. Shenk witnessed conduct by Claimant in the classroom she believed was inappropriate. (Shenk at 10). Specifically, Claimant would grab a student's chin and yell in his face, making the student cry. (Shenk at 11). She also witnessed Claimant use a student's fear of the bathroom as a threat and a punishment for not listening. (Shenk at 11). On three occasions, Claimant used the bathroom as punishment and put the student inside, held the door closed, and put the fan on. (Shenk at 12). Ms. Shenk reported this conduct to Child Protective Services, her supervisor, and the school principal. (Shenk at 12).

Defendant additionally presented the deposition of Melanie Calender, assistant superintendent of Defendant. (Calender Dep. at 10). Ms. Calender oversaw the investigation of Claimant over the child abuse accusations and met with her on three occasions. (Calender at 36-37). The four other adults in the classroom at the time were all interviewed and an investigation plan was made. (Calender at 37-40). The investigation concluded that on at least one occasion, but up to three, five adult witnesses and the student confirmed that he was inappropriately restrained and falsely imprisoned in the classroom. (Calender at 45). Ms. Calender testified that when Claimant was assigned to a district office after her discipline, she was permitted to come see her at any time, she would talk to others, go to lunch regularly, and all her interactions were cordial. (Calender at 20-21). Claimant was observed more frequently after April of 2014, as she was on an intensive support plan related to the discipline related to the child abuse allegations. (Calender at 26).

Defendant also presented the deposition of Mark Leidich, Director of Human Resources for Defendant. (Leidich Dep. at 8). Mr. Leidich testified that, based upon his experience and training, none of the actions that were initiated by Defendant against Claimant were unusual. (Leidich at 11). Specifically, he opined that complaints of child abuse, investigations into that child abuse, and the various types of discipline initiated against Claimant were not unusual. (Leidich at 11). He opined that there had been other teachers accused of child abuse in the past and grievances and arbitrations were common in school districts in general. (Leidich at 43). Mr. Leidich testified that Claimant's subsequent arbitration was a split decision, where the arbiter supported in

part what Defendant had done, but had them withdraw the punitive action. (Leidich at 38).

Defendant further presented the deposition of Andrew Klein, an independent special education consultant. (Klein Dep. at 8-9). Mr. Klein was retained as an expert in reviewing the actions involving Defendant's discipline of Claimant. (Klein at 23). Mr. Klein testified that there was nothing unusual about Defendant's actions towards Claimant after the child abuse allegation had been made. (Klein at 37). Specifically, they followed routine practices in initially putting her on administrative leave while the investigation was conducted, including conducting interviews. (Klein at 38). Mr. Klein testified that Defendant followed the statutory procedures they were required to abide by when a report of child abuse has been made against a teacher, and followed through in a proper investigation into the alleged incident. (Klein at 57-59).

Claimant introduced the April 29, 2014 Letter of Discipline authored by Ms. Calender and subsequently signed by Claimant. (Exhibit C-7). The letter listed various findings relating to the investigation made against Claimant, specifically stating she falsely imprisoned and inappropriately restrained a student, engaged in unprofessional and personal conversations in her classroom, and violated the use of food in the classroom guidelines by bringing a cake into the classroom. (Id.). The letter also specifically stated:

> Between April 1 and April 17th, 2014, and on at least one occasion and as many as three occasions, five-adult witnesses and a student (under the supervision of his parents) confirmed that you inappropriately restrained and falsely imprisoned [name redacted] in the classroom bathroom. False imprisonment is defined as, "a restraint of a person within a bounded area without justification or consent." Your actions also constitute cruelty against the student since the bathroom has one light switch that operates both the fan and light and the fan was a known trigger

> that increased stress and fear for the student. According to the regulations of the State Board of Education, cruelty is the "intentional, malicious and unnecessary infliction of physical or psychological pain upon human beings" (22 Pa. Code §237.7 - Definition of Statutory Terms). According to five adult witnesses, you prevented the student from exiting the bathroom on his own, by holding the door so that he could not leave the enclosed space. The adult witnesses indicate that, while you were preventing the student from leaving the bathroom, the student was saying, "No, no, I don't want to be in here!", "I am sorry, I won't do it again!", "Okay, okay, let me out!", "No, I will be good, I will be kind!", "I don't like the fan!". You were aware fear of the fan and other loud noises as it is part of his Specially Designed Instruction on the student's Individualized Education Program (IEP) and on student observation notes completed by Mrs. Lori Earle on 2/18/14. Further, it is clear that you used the classroom bathroom as part of a behavioral modification. It is found that you also threatened him with this inappropriate imprisonment on multiple occasions according to the adult witnesses. This adverse restraint/imprisonment is not part of his IEP of his specific Positive Behavior Support Plan. Finally, you failed to submit the requisite reports of your use of this restraint technique.

(Id.).

The WCJ accepted Claimant's testimony as credible. (Finding of Fact 10(a)). Specifically, the WCJ accepted Claimant's account that she had spoken to Ms. Murphy and Ms. Earle about the use of the bathroom as a safe place to put the disruptive student before the incident in question. (Id.). The WCJ accepted Ms. Shenk's testimony as credible, although rejected it for the inference that Claimant was inappropriate or engaged in cruel behavior towards the child in question. (Finding of Fact 10(b)). The WCJ accepted Ms. Calender's testimony as credible. (Finding of Fact 10(c)). The WCJ accepted Mr. Leidich's testimony as credible, specifically that what Defendant did when faced with a child abuse claim would not be unusual. (Finding of Fact 10(f)). The WCJ also accepted Mr. Klein's testimony as credible, specifically that Defendant did act in a usual and statutorily mandated fashion in its investigation of Claimant. (Finding of Fact 10(g)). The WCJ is free to accept or reject, in whole or in part, the testimony of any witness, including medical witnesses. Greenwich Collieries v.

WCAB (Buck), 664 A.2d 703 (Pa. Cmwlth. 1995). Determinations of credibility and weight to be accorded evidence are the prerogative of the WCJ, not this Board. Vols v. WCAB (Alperin, Inc.), 637 A.2d 711 (Pa. Cmwlth. 1994).

After careful review of the record, we determine the WCJ erred in concluding that Claimant's circumstances constituted an abnormal working condition. Because the WCJ proceeded under the classification that Claimant's psychological injury was considered mental/mental, she bore the burden of proving that it was the result of abnormal working conditions. Ryan; Gulick. Where a claimant alleges that she sustained a mental injury caused by a mental stimulus, she must prove either that: (a) actual extraordinary events occurred at work which caused the trauma and that these specific events can be pinpointed in time; or (b) actual objective abnormal working conditions over a longer period of time caused the injury. Gulick.

Instantly, Claimant alleged a series of abnormal events occurred at work, initiated by her being accused of child abuse for placing an autistic kindergarten student in a closed bathroom, being investigated for that incident, and ultimately being disciplined by being placed on five days of unpaid leave. The WCJ specifically concluded that the single finding in Claimant's letter of discipline that the use of the bathroom as punishment constituted "cruelty" against the student was unusual given the lack of evidence to support it and it, alone, created an abnormal working condition. We conclude that neither the series of events, nor the finding in the letter of discipline that Claimant's actions constituted "cruelty" against a child, rose to the level of abnormal working conditions.

Abnormal working conditions will not be found merely where ordinary events are found to have precipitated a psychiatric condition, but there must be a showing that those events were "highly unusual," "extraordinary," and not normally what an employee would be exposed to at the specific type of work. Payes; Gulick. Here, the credited evidence supports the fact that, although both Claimant and the WCJ disagree with the ultimate outcome of Claimant's discipline, the circumstances were not highly unusual, extraordinary, or not normally what a similarly situated employee would face.

The initiating event was Ms. Shenk, who was credited by the WCJ, witnessing conduct by Claimant in the classroom of placing a student into a closed bathroom, which Ms. Shenk believed was inappropriate, and reporting that conduct to her supervisor, the school principal, and Child Protective Services. Afterwards, Claimant was called into a meeting with various administrative personnel and questioned about the incident, along with other incidents in the classroom. The administration, as required by their own rules and the law, conducted a thorough investigation into the incident, and ultimately, disciplined Claimant with five days of unpaid leave as a result of not only the child abuse allegation, but other allegations that Claimant admitted were true, including outside food being eaten in the classroom, making personal phone calls and texting, and making inappropriate comments about the building principal.

Defendant introduced multiple witnesses, credited by the WCJ, who testified that these events were not highly unusual or extraordinary and that the Defendant acted properly in its actions towards Claimant. Mr. Leidich testified that complaints of child abuse, investigations into child abuse, and the various types of discipline initiated against Claimant were not unusual and common in school districts in general. Mr. Klein

testified that Defendant's actions towards Claimant after the allegation had been made were not unusual and they followed routine practices and statutory procedures in their investigation. Furthermore, Ms. Calender testified that a set investigation plan was followed and only after receiving corroboration from multiple witnesses in the room was discipline enacted against Claimant. Ms. Murphy further testified that an investigation was conducted with professionalism after receiving the allegation against Claimant.

Consequently, while the WCJ does not agree with the ultimate outcome of the investigation, specifically the finding that Claimant's actions towards her student were considered "cruel," that does not transform a normal, thorough investigation on the part of Defendant into something "abnormal." This type of situation was not completely out of the ordinary for a teacher to potentially experience, and the investigation was done with professionalism and through the proper procedures. There was no indication that this was a highly unusual event or handled in any unusual manner. Furthermore, the situation Claimant found herself in was partly initiated by her use of a seemingly questionable disciplinary procedure towards the student. While both Claimant and the WCJ disagree the discipline procedure towards the student was "cruel" or warranted the punishment Claimant received, not agreeing on the ultimate decision by the administration, obtained through the proper procedures, does not create an abnormal working condition.

Therefore, we must reverse the WCJ's conclusion that the circumstances amounted to abnormal working conditions. Consequently, we must then reverse the granting of the Claim Petition, as Claimant failed to meet her initial burden in a mental/mental case. We further note that Defendant's other arguments as to why the

WCJ should have denied the Claim Petition are deemed moot as a result of Claimant failing to meet her initial burden of proving abnormal working conditions.

Accordingly,[2]

[2] We note Claimant has cross-appealed and argued the WCJ erred in his suspension of her benefits and ultimate finding that she was fully recovered from her work-related injury on November 9, 2016. Because of our determination reversing the WCJ's granting of Claimant's Claim Petition, these issues are now moot.

ORDER

The Workers' Compensation Judge's Decision and Order granting Claimant's Claim Petition is hereby **REVERSED**.

BY THE BOARD:

David Wilderman, Commissioner

Order Date: 10/06/2021

CONCURRED IN BY:

Robert A. Krebs, Commissioner

Sandra D. Crawford, Commissioner

William I. Gabig, Commissioner

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Additional Defendants

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