

**BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD**

**ERIN A. DIX** )  
                    Claimant )  
V. )  
                    ) )  
**STATE OF KANSAS** )                      Docket No. 1,068,283  
                    Respondent )  
AND )  
                    ) )  
**STATE SELF INSURANCE FUND** )  
                    Insurance Carrier )

**ORDER**

Claimant, by and through Stuart N. Symmonds, of Emporia, requests review of Administrative Law Judge William Belden's February 6, 2015 preliminary hearing Order. Nathan D. Burghart, of Lawrence, appeared for respondent and its insurance carrier (respondent).

The record on appeal is the same as that considered by the judge and consists of the March 5, 2014 preliminary hearing transcript; the May 7, 2014 preliminary hearing transcript; the December 15, 2014 deposition transcript of Douglas E. Wright, M.D., and exhibits thereto; and the February 4, 2015 preliminary hearing transcript and exhibits thereto, in addition to all pleadings contained in the administrative file.

**ISSUES**

This case concerns alleged psychological injury from separate events that occurred during one work shift on December 19 and 20, 2013. On December 19, a mentally ill patient tried to stab claimant, a nurse at Osawatomie State Hospital. On December 20, the same patient grabbed and twisted claimant's left ring finger. The judge found claimant failed to prove a compensable psychological injury and denied psychological treatment.

Claimant requests the preliminary hearing Order be reversed, arguing she sustained compensable post traumatic stress disorder (PTSD), which was Dr. Wright's diagnosis based on his multiple evaluations. Respondent maintains the preliminary hearing Order should be affirmed.

### FINDINGS OF FACT

Claimant worked at Osawatomie State Hospital as a psychiatric nurse. She had contact with dangerous psychiatric patients. Claimant's medical history is notable for prior diagnosis and treatment of bipolar disorder, depression and anxiety disorder. Claimant testified she was functioning and working normally prior to December 19, 2013.

On December 19, 2013, a patient was admitted to the hospital. Unfortunately, the patient had secreted away a knife in one of her socks. According to claimant, the patient was not thoroughly searched when admitted. The patient was placed in a room.

Around 11:40 p.m., claimant entered the patient's room to administer medication. Blood covered the floor and the patient was bleeding. The patient gestured to claimant for help. The patient's knife was behind her back. When claimant approached, the patient revealed the knife and tried to stab claimant in the chest. Claimant testified the knife cut through her shirt and the top part of her bra, but did not injure her. Claimant forcefully pushed the patient away. Claimant testified she injured herself by slipping on the bloody floor and hitting her left buttock on the bed footboard. Claimant testified her left buttock was bruised for about two weeks from hitting the bed so hard. A team of coworkers subdued the patient, who was next transported to a hospital for treatment. Immediately following the incident, claimant went to her office and notified her supervisor. She then took a short break, cried and smoked a cigarette before returning to work.

Approximately three hours later, on December 20, the patient returned to the facility. The patient was still combative and placed in a seclusion room. A team of coworkers forced the patient to a mattress on the floor. As claimant was closing the door, the patient charged her. Claimant raised her hands in a defense position. Claimant testified the patient stated, "I didn't get the deed done . . . . I'm going to kill you"<sup>1</sup> and grabbed claimant's left ring finger and twisted it hard enough for claimant to hear popping sounds. Claimant angrily pushed the patient's face onto the mattress. She told the patient to let go, lest she be smothered to death. After 45 to 90 seconds, the patient let go. Claimant testified she felt horrible because she wanted to hurt the patient.

Claimant continued to work because she was told to work a double shift. She did not complete her second shift. Around noon, claimant went home to try to recover from the events. Claimant testified only one coworker, a physician, showed any concern about what she had endured. When claimant returned home, she locked all the doors to her house, but was unable to sleep. The following day, claimant reported her sleeping problems to her supervisor. She was referred to the Employee Assistance Program who sent her to Southeast Kansas Mental Health Center.

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<sup>1</sup> P.H. Trans. (Feb. 4, 2015) at 34. The patient's discourse with claimant was expletive-laden.

Claimant was first seen at Southeast Kansas Mental Health Center on December 23, 2013. In addition to providing therapy, they referred claimant to her primary care physician to have her swollen finger examined.

On December 23, 2013, claimant was seen by Joanna Curl, P.A., at Community Health Center of Southeast Kansas. Claimant complained of insomnia, nightmares, flashbacks, anxiety, finger pain and swelling. She reported a history of depression and generalized anxiety disorder. Physical examination revealed tenderness and swelling at the left 4th finger PIP joint, slight tenderness at the DIP, limited flexion and extension and normal sensation. Left ring finger x-rays showed no fracture or dislocation. Ms. Curl assessed claimant as having seasonal pattern depression and acute PTSD. Claimant was taken off work until cleared by a physician. Claimant did not return to work for respondent.

Claimant completed an "Employee/Student/Volunteer Injury Report" on January 8, 2014, and an "Injured Employee's Report of Injury" on January 28, 2014. In both documents, the only physical injury claimant listed was her December 20 left ring finger injury. Unlike her later testimony, no physical injury was listed as occurring on December 19. In both documents, claimant attributed her PTSD to the attempted stabbing.

On February 12, 2014, claimant's treatment was transferred to Douglas Wright, Ph.D. Claimant testified Dr. Wright had her participate in exposure therapy in which she would drive to public places seven days a week to be exposed to people. In a letter to claimant's attorney dated March 19, 2014, Dr. Wright stated:

I have been asked in this report to distinguish whether the psychological trauma occurred from the first or second attack which occurred a couple hours apart. In the first attack Ms. Dix was threatened with a knife by a patient, and in the second attack the same patient physically assaulted her, seriously injuring Ms. Dix's finger. I am unable to distinguish these two events as separate traumas. From a psychological stand point this is one event. As part of Prolonged Exposure Therapy the trauma of focus is clearly defined with a specific start and end point. In Ms. Dix's case, the trauma began at the time the patient began to escalate, and did not end until Ms. Dix was off shift following both attacks. In other words both attacks are part of the same psychological trauma.

Additionally, I was asked whether or not Ms. Dix's psychological injury was linked to her physical injury. My answer to this is yes. Ms. Dix's psychological injury is linked to the trauma she encountered, which includes the attack where she suffered a physical injury. Additionally, a diagnosis of PTSD directly results in physical injury to the brain. Research has demonstrated that PTSD causes physical changes in the brain structure, including a loss of 5 to 10 % of grey matter. Therefore I believe PTSD itself can be classified as a physical injury in it's own right.<sup>2</sup>

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<sup>2</sup> *Id.*, Cl. Ex. 2 at 1.

On March 12, 2014, Amanda Denton, APRN, with Southeast Kansas Mental Health Center, addressed causation stating:

Erin's current psychiatric symptoms have clearly resulted from trauma secondary to being physically assaulted by a patient in her care and from being exposed to such violence as she describes a "blood bath".<sup>3</sup>

On May 7, 2014, a preliminary hearing was held. The parties agreed to send claimant to a psychiatrist or psychologist to address prevailing factor. Pursuant to the court's Order, claimant saw Kathleen Keenan, Ph.D., on June 30, 2014, for a neutral independent medical evaluation. Dr. Keenan took a history, reviewed medical records and performed an evaluation. Claimant reported anxiety, fear of crowds, depression and panic attacks. Dr. Keenan noted:

Ms. Dix states that, "I am bitter" regarding the fact that she was not debriefed, comforted, or supported by anyone following the incident. She states that, "All they're worried about is having to pay for PTSD for the rest of my life - - well, they should!" She adds, "They haven't taken good care of me." She states that her therapist, Dr. Wright, has told her that, "This may not have happened if I'd been debriefed," (i.e., she may not have developed PTSD).<sup>4</sup>

Dr. Keenan administered a battery of psychological and personality tests. Based on these tests, Dr. Keenan opined claimant's "anger and her feelings of being victimized by her employer, whether factually correct or not, in combination with her pre-existing psychiatric and personality factors, are the primary cause of her psychological symptoms at this time."<sup>5</sup> Dr. Keenan diagnosed claimant with chronic adjustment disorder, generalized anxiety disorder and bipolar disorder. Dr. Keenan stated these diagnoses, except the adjustment disorder, were preexisting and her evaluation did not support a PTSD diagnosis. Dr. Keenan recommended additional treatment for claimant's preexisting conditions only.

Dr. Wright testified on December 15, 2014. Dr. Wright specializes in treating trauma, including acute anxiety disorder, some adjustment disorders and post traumatic stress disorder. From February 12 to April 30, 2014, Dr. Wright saw claimant a total of six times and diagnosed her with PTSD. Dr. Wright recommended continued therapy and medication management.

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<sup>3</sup> *Id.*, Cl. Ex. 2 at 3.

<sup>4</sup> Keenan Report at 6.

<sup>5</sup> *Id.* at 17-18.

Dr. Wright testified he did not perform any type of testing for symptom magnification or psychological testing. He based his diagnosis on claimant's symptomatology and her presentation utilizing the DSM-IV TR.

In describing what he believed caused claimant's symptoms of neurological neurosis, Dr. Wright testified:

. . . I think what caused it was the attack, the assault, attempted attack, that took place on Ms. Dix. As I stated in my letter, where I see that as the physical injury is that there's a lot of research that shows post-traumatic or psychological trauma actually is a physical injury to the brain resulting in diminished gray matter of the brain. So that's the piece where I consider that to be a physical injury.<sup>6</sup>

Dr. Wright also testified claimant's trauma "was based on what she experienced at work."<sup>7</sup> He testified claimant did not sustain a physical or external injury from the December 19 event, other than possible PTSD changes to her brain. Dr. Wright testified the December 20 event resulted in the finger injury and possibility of PTSD changes to her brain. Dr. Wright attributed claimant's PTSD not to one event or the other, but rather to the "whole event" or "whole timeframe" that occurred over the two days.<sup>8</sup> When asked about prevailing factor, Dr. Wright testified the cause of claimant's PTSD was her trauma.

The February 6, 2015 Order states, in part:

Claimant failed to meet her burden of [proving] she sustained a compensable psychological injury from the initial incident of December 19, 2013. Although Claimant testified her clothing was damaged from the attack and Claimant sustained bruising to her left hip or buttock, there is no record of Claimant reporting this to any of the health care providers she saw or in the incident reports Claimant completed, and this testimony is not credible. The more credible incident reports and the histories of the health care providers indicate Claimant did not sustain a physical injury on December 19, 2013. The Court finds the more credible evidence proves Claimant did not sustain a physical injury on December 19, 2013. In addition, neither Dr. Wright, nor Dr. Keenan, thought the incident of December 19, 2013 was the primary factor compared to any other factor in causing the alleged psychological injury. The Court concludes Claimant did not establish the elements of a compensable psychological injury under *Heyen* for the first incident of December 19, 2013.

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<sup>6</sup> Wright Depo. at 9-10. Dr. Wright also testified it was "possible" claimant's reaction to the assaults resulted in reduction in her gray matter. *Id.* at 19.

<sup>7</sup> *Id.* at 9.

<sup>8</sup> *Id.* at 46-47.

Claimant also failed to meet her burden of proving she sustained a compensable psychological injury from the second incident of December 20, 2013. Claimant clearly sustained a physical injury to the left ring finger from that incident, but neither Dr. Wright, nor Dr. Keenan, thought Claimant's neurosis, whether post-traumatic stress disorder or chronic adjustment disorder, was directly traceable to the physical injury. Dr. Wright was unable to state the December 20, 2013 incident was the primary factor causing Claimant's post-traumatic stress disorder. Moreover, Dr. Wright did not perform any psychological tests or surveys, consider Claimant's preexisting psychiatric conditions or consider the possibility of symptom magnification. Dr. Keenan, the Court-appointed evaluating psychologist, performed an extensive series of tests, had a better understanding of Claimant's psychiatric history and considered the presence of symptom magnification. The Court finds the opinions of Dr. Keenan more credible than those of Dr. Wright on the issue of the cause of Claimant's condition, and concludes the incident of December 20, 2013, at the most, aggravated Claimant's preexisting psychological condition. An accident is not compensable if it aggravates, accelerates or exacerbates a preexisting condition. See K.S.A. 2011 Supp. 44-508(f)(2). The Court concludes Claimant did not meet her burden of [proving] the incident of December 20, 2013 was the primary factor causing Claimant's alleged psychological injury. Accordingly, Claimant's request for benefits is denied.<sup>9</sup>

Thereafter, claimant filed a timely appeal.

#### PRINCIPLES OF LAW

K.S.A. 2013 Supp. 44-501b provides that the burden of proof is on the claimant to establish his or her right to an award of compensation based on the whole record.

K.S.A. 2013 Supp. 44-508 provides, in part:

(d) "Accident" means an undesigned, sudden and unexpected traumatic event, usually of an afflictive or unfortunate nature and often, but not necessarily, accompanied by a manifestation of force. An accident shall be identifiable by time and place of occurrence, produce at the time symptoms of an injury, and occur during a single work shift. The accident must be the prevailing factor in causing the injury. "Accident" shall in no case be construed to include repetitive trauma in any form.

. . .

(f)(1) "Personal injury" and "injury" mean any lesion or change in the physical structure of the body, causing damage or harm thereto. Personal injury or injury may occur only by accident, repetitive trauma or occupational disease as those terms are defined.

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<sup>9</sup> ALJ Order at 4-5.

(2) An injury is compensable only if it arises out of and in the course of employment. An injury is not compensable because work was a triggering or precipitating factor. An injury is not compensable solely because it aggravates, accelerates or exacerbates a preexisting condition or renders a preexisting condition symptomatic.

...

(B) An injury by accident shall be deemed to arise out of employment only if:

(i) There is a causal connection between the conditions under which the work is required to be performed and the resulting accident; and

(ii) the accident is the prevailing factor causing the injury, medical condition, and resulting disability or impairment.

(3)(A) The words "arising out of and in the course of employment" as used in the workers compensation act shall not be construed to include:

(i) Injury which occurred as a result of the natural aging process or by the normal activities of day-to-day living;

(ii) accident or injury which arose out of a neutral risk with no particular employment or personal character;

(iii) accident or injury which arose out of a risk personal to the worker; or

(iv) accident or injury which arose either directly or indirectly from idiopathic causes.

...

(g) "Prevailing" as it relates to the term "factor" means the primary factor, in relation to any other factor. In determining what constitutes the "prevailing factor" in a given case, the administrative law judge shall consider all relevant evidence submitted by the parties.

(h) "Burden of proof" means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record unless a higher burden of proof is specifically required by this act.

In *Love*,<sup>10</sup> the Kansas Court of Appeals stated:

In order to establish a compensable claim for traumatic neurosis under the Kansas Workers' Compensation Act, . . . the claimant must establish: (a) a work-related physical injury; (b) symptoms of the traumatic neurosis; and (c) that the neurosis is directly traceable to the physical injury.

The Kansas Supreme Court in *Berger*<sup>11</sup> cautioned:

Even though this court has long held that traumatic neurosis is compensable; we are fully aware that great care should be exercised in granting an award for such injury owing to the nebulous characteristics of a neurosis. An employee who predicates a claim for temporary or permanent disability upon neurosis induced by trauma, either scheduled or otherwise, bears the burden of proving by a preponderance of the evidence that the neurosis exists and that it was caused by an accident arising out of and during the course of his employment.

#### ANALYSIS

This Board Member agrees with the result of the preliminary hearing Order. Claimant did not prove a physical injury on December 19. The judge had a first-hand opportunity to assess claimant's demeanor and testimony and found her not credible regarding whether she sustained a physical injury on December 19. Even if claimant had proved a physical injury on December 19, she did not prove her asserted PTSD is directly traceable to any physical injury.

Claimant proved a left ring finger injury occurring on December 20, but did not establish that her asserted PTSD was directly traceable to such injury. Claimant did not prove the prevailing factor requirement for either event.

As an aside, this Board Member does not agree claimant's injury was "solely" an aggravation, acceleration or exacerbation of a preexisting condition, such that K.S.A. 2013 Supp. 44-508(f)(2) precludes compensability. Nevertheless, the claim is not compensable for the aforementioned reasons.

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<sup>10</sup> *Love v. McDonald's Restaurant*, 13 Kan. App. 2d 397, Syl., 771 P.2d 557, rev. denied 245 Kan. 784 (1989). See also *Followill v. Emerson Elec. Co.*, 234 Kan. 791, 796, 674 P.2d 1050 (1984) ("[T]he obligation of an employer under K.S.A. 44-501 *et seq.* does not extend to mental disorders or injuries unless the mental problems stem from an actual physical injury to the claimant.").

<sup>11</sup> *Berger v. Hahner, Foreman & Cale, Inc.*, 211 Kan. 541, 550, 506 P.2d 1175 (1973).

**CONCLUSIONS**

For the reasons listed above, claimant did not prove a compensable psychological injury.

**WHEREFORE**, the undersigned Board Member affirms the February 6, 2015 preliminary hearing Order.<sup>12</sup>

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of March, 2015.

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HONORABLE JOHN F. CARPINELLI  
BOARD MEMBER

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Honorable William G. Belden

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<sup>12</sup> By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim. Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2013 Supp. 44-551(I)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.