

VIRGINIA:
IN THE WORKERS' COMPENSATION COMMISSION

02/22/99

**Affirmed by the Court of Appeals at
Record No. 0653-99-2 (December 28, 1999)(unpublished)**

LINDA L. HILL, Claimant

Opinion by DUDLEY
Commissioner

v. VWC File No. 187-04-27

TRAVELODGE, Employer
SELECTIVE INSURANCE COMPANY OF AMERICA, Insurer

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REVIEW on the record by Commissioner Tarr, Commissioner Diamond, and Commissioner Dudley at Richmond, Virginia.

The employer has requested Review of the Deputy Commissioner's June 22, 1998, Opinion awarding temporary total disability benefits and medical benefits.¹ The employer assigns error to the finding that the claimant proved a compensable injury by accident arising out of and in the course of employment. We reverse.

¹Upon consideration of the issues involved and the complete record developed at the Hearing, we find that oral argument as requested by the employer is unnecessary and would not be beneficial in this case. Barnes v. Wise Fashions, 16 Va. App. 108, 428 S.E.2d 301 (1993).

The claimant filed a Claim for Benefits on August 29, 1997, alleging post-traumatic stress from the "elevator shutdown trapping me in" on August 11, 1997. She did not allege a physical injury.

The claimant testified to being caught in the elevator for approximately two hours:

Pamela Gregory and myself got on the elevator and we pushed five. All of a sudden it just stopped, . . . I said Pam, something's wrong, and she said yeah, this thing's stuck. By that time both of us had really started sweating because there was only a light on in there. We started pushing the button, the emergency button. I guess about five or ten minutes later we heard Alice Sose calling to us asking us was we all right, and we kept telling her to get somebody to get us out. I guess maybe five or ten minutes later we could hear sirens coming. I guess over a period of time the fire department came in and they did something, and they jarred the door open a little bit, and they put a fan up so we could get some air. In between times Pam had just sat in the corner. They asked me to shake her to see was she conscious or was she breathing or whatever. . . . While we was in there, we were basically just shocked that something like this had actually happened and we couldn't get out without anyone coming to get us out. . . . Once [the elevator company] got there they closed the door again, and we both sat in there I guess hyperventilating or sweating or just shaking trying to wish that this nightmare was over with. Then the people went up and I guess about twenty, thirty minutes later the door opened and we both got out.

(Tr. at 8-9)

The claimant stated that:

I felt like my flesh was crawling. . . . I just felt like I was losing control of my feelings of everything. I just felt loss, numb. I felt sick to my stomach. I just felt scared. (Tr. at 11)

The claimant testified that when she got out of the elevator: "I was totally numb. I just couldn't believe that had actually happened to me. I was just lost. No sense of direction. I just wanted to get out of there." (Tr. at 12-13) Once at home, the claimant started having nightmares about her coworker calling for her. She stated that every time she closed her eyes, she would dream about the incident. The claimant testified that she spent her time at home, dealing with her emotions.

The claimant's father passed away on July 30, 1997, and she took vacation time through August 10, 1997. She denied having emotional difficulty or stress from her father's death, since he had been suffering from heart problems. The claimant "was more or less happy to get back . . . " to work, and she enjoyed the challenging aspects of being a supervisor (Tr. at 7).

Donald C. Harrington, director of finance and assistant general manager, testified that the elevator held a maximum of 15 passengers. Harrington stated that the claimant asked for additional time off on August 5, 1997, because of "the stresses placed on her by her family, she had to get away from. . . ." (Tr. at 77).

Diana A. Wright, desk clerk, testified that when the claimant exited the elevator:

"She said she was going to sue." (Tr. at 97). Wright stated that, earlier in the morning, the claimant said that her doctor told her that she was under a lot of stress.

The claimant sought treatment from Dr. Nicolas A. Emiliani, psychiatrist/addictionist, on August 14, 1997. Her chief complaints were "nightmares, traumatic experience at work, . . . flashback of being back in the elevator. . . ." Dr. Emiliani opined on August 25, 1997, that the claimant "suffered an acute Post-Traumatic Stress Disorder on her job on August 11, 1997 after she was trapped on an elevator for 2 hours. . . ." and removed her from work. On September 26, 1997, he informed the insurer that:

In terms of the death of Ms. Hill's father, I have no information since the presenting symptoms of her visit where [sic] strictly related to the PTSD, such as nightmares, traumatic experiences at work, insomnia, agitation [sic], flashback of being back in the elevator, etc. . . .

There were no other issues with Ms. Hill's psychiatric care other than the elevator incident . . .

For clarity, we recite some of the claimant's relevant medical history. Dr. A. W. Durrani, general practitioner, has treated her since 1981. Beginning in July 1982, Dr. Durrani prescribed various medications used to treat depression and anxiety. From May 6 through May 13, 1988, the claimant was hospitalized by Dr. Emiliani for severe dysthymic disorder, and her psychological evaluation showed a paranoid personality and significant depression. Her symptoms prior to admission included restlessness, agitation,

confusion, insomnia, and inability to function.

Dr. Durrani hospitalized the claimant from March 20 through March 22, 1993, for a chief complaint of "[i]nability to cope with life." He recorded that she was hostile, angry and revoltive. The claimant also had bad dreams and became nervous. Dr. Durrani noted agitation, depression, and an inability to function. On admission, he took a history that: "The patient also consulted Dr. Emiliani, psychiatrist, and it was decided that the patient cannot function outside and needs to have intensive psychotherapy and inpatient treatment" On discharge, Dr. Durrani diagnosed major depression with mild psychosis and severe psychosocial stressors.

On July 9, 1995, the claimant went to Southside Regional Medical Center complaining of "nervousness, (L) arm aching, unable to sleep - states under stress x 6 months." The attending physician diagnosed major depression and recommended follow-up with Dr. Emiliani. On July 19, 1997, the claimant returned to Southside Regional Medical Center for symptoms of "equilibrium off, nausea, light headed." At that time, the attending physician recorded a week-long worsening of symptoms and diagnosed benign positional vertigo.

If there is no physical injury, a strictly psychological injury must "be causally related to an *obvious sudden shock or fright* arising in the course of employment." [emphasis added]. Chesterfield County v. Dunn, 9 Va. App. 475, 477, 389 S.E.2d 180, 182 (1990), *citing* Burlington Mills Corporation v. Hagood, 177 Va. 204, 210-11, 13 S.E.2d 291, 293-

94 (1941). Post-traumatic stress disorder may be compensable as an injury by accident if proven to be causally related to the obvious sudden shock or fright. Hercules, Inc. v. Gunther, 13 Va. App. 357, 412 S.E.2d 185 (1991).

The Commission has awarded benefits in cases involving a psychological injury resulting from a sudden shock or fright. For example, in Hercules, a truck driver's post-traumatic stress disorder after an explosion at the power plant site was compensable. The employee was lifted off his feet and propelled into a barricade, and two of his friends were killed. In Tolley v. Daniel Construction Company, VWC File No. 106-49-88 (March 24, 1983), the employee suffered psychological trauma when a 100-pound charge of dynamite was set off unannounced 1,400 feet from his location. However, compare these cases with Mottram v. Fairfax County Fire and Rescue, VWC File No. 179-47-89 (November 25, 1997), where a paramedic supervisor's post-traumatic stress disorder, caused by talking to a fire victim, was not compensable. We found that the conversation was not "unexpected, shocking, or catastrophic. . . ." nor "so dramatic or frightening so as to shock the conscience. . . ."

The current claimant alleges psychological injury resulting from being trapped in a 15-passenger elevator for less than two hours. While we recognize the discomfort and anxiety experienced, we do not find that the event can be characterized as unexpected, shocking, or catastrophic. Once the fire department cracked the door open approximately one and one-half feet, the claimant could see daylight and talk to people. The rescuers

propped a fan on the floor to blow air through the opened space and gave the women oxygen. The claimant does not suffer from claustrophobia and did not require any immediate medical treatment after the incident. Moreover, witness testimony casts some doubt on her alleged sudden mental deterioration after the event. Despite Dr. Emiliani's diagnosis of post-traumatic stress disorder, we do not find that the incident was so dramatic or frightening as to be shocking. The weight afforded to the opinion of the treating physician may be diminished by other considerations. Williamson v. Wellmore Coal Company, 74 OWC 28 (1995).

Next, we address whether the claimant has proved that she suffers an occupational disease. To receive compensation for an ordinary disease of life, she must prove that the disease: 1) arose out of and in the course of the employment; 2) did not result from causes outside of employment; and 3) follows as an incident of an occupational disease, is an infectious disease or contagious disease contracted in the course of employment, or is characteristic of the employment and caused by the employment's peculiar conditions. *See* Virginia Code § 65.2-401.

We are not convinced by Dr. Emiliani's opinion regarding causation. The medical record reveals a long-term history of psychological problems, to which he has personal knowledge, but seemingly denies in making his current diagnosis. Further, this evidence shows a past history of depression, agitation, and insomnia. The claimant has received inpatient care and taken various medications to remedy her problems with life stressors. An

aggravation of an ordinary disease of life is not compensable under the Act. Ashland Oil Company v. Bean, 225 Va. 1, 300 S.E.2d 739 (1983).

In summary, we cannot conclude that, under these circumstances, the claimant suffered an "obvious sudden shock or fright," such as the explosion suffered by the employee in Hercules, or that her post-traumatic stress disorder qualifies as a compensable occupational disease. Accordingly, the Opinion below is REVERSED and benefits are denied.

This matter is hereby removed from the Review docket.

APPEAL

This Opinion shall be final unless appealed to the Virginia Court of Appeals within 30 days of receipt of this Opinion.

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