

VIRGINIA:
IN THE WORKERS' COMPENSATION COMMISSION

MATTHEW ARMSTRONG, Claimant

Opinion by WILLIAMS
Commissioner

v. VWC File No. VA00000044752

SEPTEMBER 2, 2010

PURDY BROTHERS TRUCKING COMPANY, INC., Employer
GREAT WEST CASUALTY COMPANY, Insurer

Matthew Armstrong
Claimant, *pro se*.

Scott C. Ford, Esquire
For the Defendants.

REVIEW on the record before Commissioner Diamond, Commissioner Dudley and Commissioner Williams at Richmond, Virginia.

The claimant has requested Review of the Deputy Commissioner's February 11, 2010 Opinion denying medical benefits and temporary total disability benefits. The claimant argues that he suffered a compensable injury by accident with corresponding psychological injury and disability. We AFFIRM.

The facts are voluminous in this case and we recite only those necessary to explain our agreement that the claimant failed to establish a compensable injury by accident as contemplated by the Virginia Workers' Compensation Act (Act).

The claimant filed claims in January 2009 alleging that he sustained a work-related motor vehicle accident on December 23, 2008 and suffered injuries to his back, shoulder and elbow and also post-traumatic stress disorder (PTSD). He sought medical benefits and temporary total

disability benefits from January 7, 2009 through September 13, 2009. The employer agreed that the motor vehicle accident transpired. However, it raised numerous defenses against the claim, including that no compensable injuries resulted from the motor vehicle accident.

At the hearing, the claimant testified that he worked as a tractor-trailer driver for the employer. He described that he was driving, at approximately 40 miles per hour, when another vehicle turned left in front of him. The claimant applied his brakes and swerved. He struck the other vehicle in the rear and the collision smashed the right fender and bumper of the tractor-trailer. The claimant denied that anyone was killed, or the other driver injured, due to the motor vehicle accident.

The claimant said that, at the moment of impact, his head jerked sharply forward. He said that he felt a sharp pain in his low back, top of his spine and shoulders. The claimant sought medical treatment on January 7, 2009 because over the “ensuing dates I started displaying symptoms of the post-traumatic stress.” (Tr. at 7).¹

The claimant acknowledged previously undergoing treatment in 1999 for a diagnosis of PTSD or other psychological condition. The condition resulted from a motor vehicle accident. He denied having an ongoing psychological condition after 2000 and before the 2008 accident. The claimant clarified that he claimed that he suffered PTSD or an acute stress disorder as a result of the accident.

Jerry Ryan testified that he worked as the terminal manager for the employer. He stated that he spoke with the claimant after the motor vehicle accident. Mr. Ryan understood from the

¹ The claimant testified to his employment efforts after the industrial accident. We do not recite this testimony and omit discussion of whether the claimant adequately marketed his residual work capacity since this issue does not impact the underlying denial of benefits.

claimant that he “was a little shook up” but was okay to complete the drive and did not require medical evaluation. (Tr. at 40). Mr. Ryan said that the claimant conveyed that his neck hurt and that he hoped he did not have PTSD.

The medical record reflects that the claimant has sporadically sought and received treatment for psychological issues since at least 1994. Most care was concentrated from March 1999 through January 2000.

On January 7, 2009, the claimant sought treatment from his family practitioner’s office. He informed Anne Schempp, certified physician’s assistant (PA-C), about the motor vehicle accident. The claimant described suffering no physical injuries, but having problems such as electrical shocks in his chest, poor judgment, a lack of concentration and mild confusion. He also conveyed that he had PTSD in the past with resolution. PA-C Schempp diagnosed the claimant as suffering a motor vehicle accident with possible psychological after effects. PA-C Schempp restricted the claimant from driving or operating heavy machinery and referred him to a psychiatrist. She recommended a follow up in ten days.

Dr. Raymond Alderfer, psychiatrist, examined the claimant on March 11, 2009. The claimant told him about having a motor vehicle accident the previous month and having memory problems thereafter. Dr. Alderfer concluded that the claimant was suffering very minor mental lapses probably related to anxiety and possibly triggered by the accident. Dr. Alderfer denied that the claimant suffered a significant head trauma. He did not recommend medication at this point.

Dr. Alderfer completed an Attending Physician’s Report on March 18, 2009. Dr. Alderfer indicated that the claimant sustained a motor vehicle accident on December 23, 2008 and suffered

an acute stress reaction due to the accident. Dr. Alderfer marked that the claimant was totally disabled from work since January 7, 2009. Dr. Alderfer needed to rule out PTSD.

On June 26, 2009, Dr. H. Nelson Gustin responded to the employer's counsel's questions. Dr. Gustin confirmed that his office saw the claimant on one occasion, January 7, 2009, and that no opinion was offered as to whether he suffered PTSD or any other mental disorder. Dr. Gustin wrote that a psychological evaluation was advised to rule out a mental disorder.

The claimant underwent a neuropsychological evaluation on August 7, 2009. Dr. Jeffrey Barth, Ph.D., noted that the claimant's self-reported symptoms such as poor attention, disorientation and absent mindedness could occur due to a head trauma. However, the claimant denied striking his head, and thus, cerebral injury was unlikely. Dr. Barth assessed that the claimant's reported emotional symptoms were suggestive of a pattern congruent with PTSD and this was supported by the claimant's post-accident behavior of distressing dreams, fear, insomnia and avoidance of driving. Dr. Barth concluded that the claimant's current neurocognitive functioning was generally intact, and that he could return to work from a neuropsychological perspective.

Dr. Alderfer advised on September 9, 2009 that he initially treated the claimant on February 26, 2009 for symptoms of an acute stress reaction following the motor vehicle accident. Dr. Alderfer referred the claimant to the neuropsychological clinic.

Dr. Bruce Cohen performed an independent medical examination of the claimant on October 15, 2009. Dr. Cohen concluded that the claimant had a longstanding history of having personality traits, and that, after the 2008 accident, he did not display the full symptoms of PTSD. Dr. Cohen assessed that the claimant did experience mild symptoms of impaired attention and concentration and absent mindedness after the accident. Dr. Cohen denied that the claimant

sustained a significant traumatic brain injury, although he was very fearful of having sustained one and unconsciously amplified the symptoms over time. Dr. Cohen causally related the symptoms of impaired attention and concentration and absent mindedness to the accident. Dr. Cohen advised that the claimant's pattern of self-doubt required reassurance that he was okay, and this was provided with the neuropsychological evaluation of August 2009.

Dr. Cohen responded to the employer's counsel's questions on November 12, 2009. Dr. Cohen agreed that the claimant "does not suffer" PTSD, "is not disabled from work," and "requires no future mental health treatment."

Dr. Barth advised on November 17, 2009 that he would defer to Dr. Cohen's conclusions on the issue of the existence, or non-existence, of PTSD.

The Deputy Commissioner found that the claimant did not prove a compensable injury by accident. He emphasized that the claimant presented for medical treatment "with no physical findings and self reported 'symptoms' of PTSD. Subsequent testing and evaluation, however, have confirmed that the claimant did not, in fact, suffer from PTSD or from any other physical or psychological injury resulting from the motor vehicle accident." (Op. at 5-6).

On careful Review, we agree with the lower denial.

There is no dispute that the claimant did not suffer any physical injuries as a result of the industrial accident. Hence, we consider whether he proved a compensable psychological injury.

The medical record reflects that, when the claimant sought treatment in January 2009, the evaluating health care professional concluded that he possibly suffered psychological effects from

the accident. The claimant did not seek additional treatment until March 2009.² At this point, Dr. Alderfer assessed that the claimant suffered an acute stress reaction. He recommended a neuropsychological evaluation. The claimant underwent this evaluation, approximately five months later, in August 2009. Dr. Barth found that the claimant's reported symptoms were suggestive of PTSD; yet regardless, his neuropsychological condition was intact. Lastly, Dr. Cohen opined that the claimant did suffer some mild psychological symptoms of impaired attention, impaired concentration and absent mindedness after the accident.

Hence, at most, the claimant proved that he may have suffered some minor, self-reported psychological symptoms that resolved, at the latest, by August 2009. Regardless, any mild emotional condition clearly did not rise to the level of PTSD and, furthermore, is not compensable under the Act.

A strictly psychological injury must be "causally related to a physical injury or be causally related to an obvious sudden shock or fright arising in the course of employment." Chesterfield Co. v. Dunn, 9 Va. App. 475, 477, 389 S.E.2d 180, 182 (1990). "[T]he types of precipitating events that give rise to purely psychological compensable injuries are consistently described as shocking, frightening, traumatic, catastrophic and unexpected." Anthony v. Fairfax Co. Dep't of Family Servs., 36 Va. App. 98, 103-04, 548 S.E.2d 273, 276 (2001) (citing Burlington Mills Corp. v. Hagood, 177 Va. 204, 209-11, 13 S.E.2d 291, 293-94 (1941)). The event must be something out of the ordinary in terms of the injured worker's employment duties and so dramatic or frightening as to shock the conscience. Tucker v. A & G Coal Co., VWC File No. 190-92-66 (July 16, 1999).

² We note that Dr. Alderfer referred to evaluating the claimant in February 2009 but the record does not contain office notes from this date.

The claimant's motor vehicle accident was not a sudden shock or fright as recognized in case law. The claimant worked as a tractor-trailer driver. A minor fender-bender while driving was not out of the ordinary for his routine working environment. Additionally, we do not find the described accident to be so dramatic or frightening as to shock the conscience. The claimant had no physical injuries and he completed his route after the accident without incident. There were no injuries to the other driver.

For these reasons, the Opinion below denying benefits is AFFIRMED.

This matter is hereby removed from the Review docket.

APPEAL

You may appeal this decision to the Virginia Court of Appeals by filing a Notice of Appeal with the Commission and a copy of the Notice of Appeal with the Virginia Court of Appeals within 30 days of the date of this Opinion. You may obtain additional information concerning appeal requirements from the Clerks' Offices of the Commission and the Virginia Court of Appeals.

cc: Purdy Brothers Trucking Company, Inc.
Great West Casualty Company