

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS

BOARD NO. 067504-92

Janet Brooks
Rural Housing Improvement, Inc.
Liberty Mutual Insurance Co.

Employee
Employer
Insurer

REVIEWING BOARD DECISION

(Judges Maze-Rothstein, Carroll and Levine)

APPEARANCES

Sandra J. Jenkins-Bryant, Esq., for the employee on appeal
John Trefethen, Esq., for the employee at hearing
Richard E. McCue, Esq., for the insurer

MAZE-ROTHSTEIN, J. The insurer appeals a decision awarding ongoing compensation benefits for the employee's work-related emotional injury and her temporomandibular joint ("T.M.J.") condition. The insurer contends that the judge erred by: 1) ignoring non-work-related causes of the employee's complaints; 2) awarding benefits when the employee voluntarily resigned from her position with the employer and received unemployment benefits; and 3) awarding benefits for injuries causally related to bona fide personnel actions in direct contravention of G. L. c. 152, § 1(7A). We disagree, and affirm the decision.

Janet Brooks graduated from Fitchburg State College with a Bachelors Degree in Business Administration and Marketing in 1990. In November 1990, she commenced her employment with the employer, Rural Housing Improvement, Inc., as a Program Representative. At the time her health was excellent. (Dec. 5-6.) Her duties included: visiting tenants; inspecting apartments; answering and responding to phone calls; negotiating rents; communicating with landlords; updating the computer; recertifying cases and programs; preparing forms; scheduling inspections; dealing with

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property transfers; payment suspensions; and with repairs and fuel assistance. (Dec. 8-9.) By April 1992, the employee sought medical care for severe jaw and ear pain. She was diagnosed with acute stress syndrome and acute T.M.J. dysfunction caused by her heavy case load, which started at 185 cases and increased over time to 296 cases. The employee took a week off from work, was prescribed medications and received heat and ultrasound treatment. (Dec. 6.) In the fall of 1993, Ms. Brooks' travel decreased from two days to one day per week and her office duties increased. (Dec. 6-7.) In May 1994, the employer changed its procedures and programs, which resulted in an increased case load for the employee that included difficult clients with problems left over from a previous staff person. This coincided with a reappearance of the employee's T.M.J. symptoms and the new addition of headaches. As the employer's programs changed, more paperwork and difficult dealings with landlords resulted. (Dec. 7, 9.) The employee's symptoms would reach a crescendo when she had to meet deadlines and make monthly reports. (Dec. 7.) The employee informed her superior that she was unhappy with the volume of her caseload and the difficulty working with the landlords and tenants. (Dec. 10.) In November or December 1994, the employee learned that she would receive another significant caseload increase, with consequent increased stress and pressure. (Dec. 7, 9-10.) Upon arrival at her office on December 2, 1994, the employee had a myriad of complaints on her voice mail. (Dec. 7-8.) She submitted her resignation as a result, which became effective January 13, 1995. (Dec. 5, 8.) She has not worked since. (Dec. 5.)

The employee received unemployment benefits for the period from her leaving work until August 19, 1995. (Dec. 5.) During this period, the employee unsuccessfully sought work, and continued to be troubled by headaches, earaches and jaw pain. (Dec. 12.) In a June 9, 1995 report, the employee's treating dentist reported that her symptoms appeared around November, 1990 resulting from her work, dealing with a wide range of stressful situations and constant complaints. He opined that the stress of her employment

aggravated an underlying asymptomatic early T.M.J. derangement, which had over the years become chronic. (Dec. 14.)

The employee also suffered from emotional illness that she alleged was causally related to the employment. A psychiatrist evaluated her on September 22, 1995. He diagnosed 1. Post traumatic stress disorder; 2. Major depression; 3. Generalized anxiety disorder; and 4. T.M.J. disorder, all causally related to the workplace. He believed that her psychiatric disorders were totally disabling at that time. (Dec. 16-17.)

In the § 11 hearing on the employee's claims for physical injury (T.M.J. disorder) and emotional injury, the parties opted out of the § 11A medical examination. (Dec. 3.) See 452 Code Mass. Regs. § 1.10(7). The judge adopted the opinions of the treating dentist and consulting psychiatrist. (Dec. 14, 17.) He also relied on clinical medical records, which provided evidence of the employee's initial effort to treat her T.M.J. disorder. (Dec. 12, 15-16, 21.) The judge concluded that the employee's claim of a work-related T.M.J. disorder was meritorious. He found her totally incapacitated by her emotional disorder, which was causally related to her stressful employment. (Dec. 20.) The judge made the general findings:

I find that a series of events and incidents arising out of and in the course of Mrs. Brooks['] employment as Program Representative is the predominant cause of the claimant's mental and emotional disability.

I find that the series of events and incidents arising out of Mrs. Brooks['] employment as Program Representative is a major cause of the claimant's temporomandibular joint condition symptoms.

(Dec. 21.) Thus, the insurer was obliged to pay ongoing § 34 benefits from the termination of the employee's unemployment benefits, on August 19, 1995. (Dec. 22.) For the period of the employee's unemployment benefits, January 14, 1995 until August 19, 1995, the judge ordered § 35 benefits be paid with a weekly earning capacity of \$224.00, consistent with the provisions of § 36B. (Dec. 21-22.)

The insurer's appeal raises issues of the causal relationship between the employee's work and her incapacity. It contends that the employee cannot be awarded § 34 benefits, because she voluntarily left work, received unemployment benefits for a period of time and looked for work. We do not consider that the employee's resignation bars her from receiving benefits as a matter of law. See Chinetti v. Boston Edison Co., 13 Mass. Workers' Comp. Rep. ___, (October 25, 1999). The findings were clear that the stress of dealing with difficult clients and landlords with constant complaints was overwhelming for the employee; that she would become tense and shake; her jaw would click; and that she had difficulty sleeping due to nightmares and a racing mind. (Dec. 7, 9, 12.) The judge, moreover, found that the employee was troubled greatly by headaches, earaches and jaw pain that continued while she was on unemployment compensation; that she was tearful and emotional while testifying about her work conditions. (Dec. 12.) The adopted medical opinions indisputably established causal relation between the employee's job and her complaints. (Dec. 14, 16, 18.) Findings will stand unless they are found to be so lacking in evidentiary support as to be arbitrary and capricious, or tainted by error of law. Harris v. Totten Pond Food Service, 7 Mass. Workers' Comp. Rep. 107, 109 (1993), citing Woolfall's Case, 13 Mass. App. Ct. 1070, 1071 (1982). The findings here adequately support the conclusion that the employee's physical and emotional impairments were attributable to the workplace.

The insurer next argues that non-work-related stresses in the employee's life were intervening causes of incapacity. Plainly, the judge did not see it that way. Nor do we consider that the evidence relied upon by the insurer, but not adopted by the judge, erases the requisite causal connections between the employee's work and her emotional and physical impairments as a matter of law. (Insurer's Br. 8-9.)

The insurer finally argues error in basing the employee's incapacity on events at work that were nothing but bona fide personnel actions, which fact should have barred the employee from recovery under § 1(7A). That section provides, in pertinent part:

Personal injuries shall include mental or emotional disabilities only where the predominant contributing cause of such disability is an event or series of events

occurring within any employment. . . . No mental or emotional disability arising principally out of a bona fide, personnel action including a transfer, promotion, demotion, or termination except such action which is the intentional infliction of emotional harm shall be deemed to be a personal injury within the meaning of this chapter.

While the findings do contain instances of bona fide personnel actions -- such as the changes in programs, the employee's road time, and transfer of other workers' caseloads to the employee -- these are not the only occurrences to which the judge tied the employee's incapacity. The work itself--e.g., the myriad complaints on her voice mail (Dec. 7-8), the difficult clients and landlords with whom the employee had to work (Dec. 7, 9,12), the stress of handling a huge caseload which became too heavy for her, but which was still increasing at the time of her resignation -- constituted a "series of events" at work that were the predominant cause of the employee's emotional impairment. (Dec. 21.) See G.L. c. 152, § 1(7A); Robinson's Case, 416 Mass. 454 (1993)(affirmed finding of workload circumstances and pressures as events).

Moreover, the insurer's argument regarding bona fide personnel actions has no force with regard to the employee's claim for physical impairment due to T.M.J. The § 1(7A) bona fide personnel action exclusion does not apply to that physical impairment. See Lavin v. Automotive Parts Warehouse, 10 Mass. Workers' Comp. Rep. 745, 748 (1996). Since the adopted dental opinion established that the employee had a pre-existing asymptomatic T.M.J. disorder, the judge appropriately analyzed the employee's T.M.J. disorder under the § 1(7A) "a major but not necessarily predominant" standard of causation applicable to industrial injuries that combine with pre-existing medical conditions. There was no error in the judge's conclusions that the employee had met her burden of proof for both her emotional and physical injuries.¹ The insurer shall pay the employee a fee of \$1,218.26. See G.L. c. 152, §13A(6).

¹ The T.M.J. and emotional conditions seem to have been treated by all parties as two distinct injuries as opposed to a physical injury that caused a mental injury. Compare Murphy v. Lawrence Gen. Hosp., 10 Mass. Workers' Comp. Rep. 263 (1996)(where physical/mental injury, § 1(7A) does not apply).

The decision is affirmed.

So ordered.

Susan Maze-Rothstein
Administrative Law Judge

Frederick E. Levine
Administrative Law Judge

Martine Carroll
Administrative Law Judge

Filed: December 13, 1999