COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS **BOARD NO. 054641-95**

Roberta Noel	Employee
Local 170 Teamsters Federal Credit Union	Employer
Fidelity & Casualty Company of New York	Insurer

REVIEWING BOARD DECISION
(Judges Carroll, Levine and Maze-Rothstein)

APPEARANCES
Joseph F. Agnelli, Jr., Esq., for the employee
Paul M. Scannell, Esq., for the insurer

CARROLL, J. The employee appeals from a decision in which an administrative judge denied her claim for workers' compensation benefits for a myocardial infarction. The claim stemmed from an incident at work that the judge determined was not attributable to the nature, conditions, obligations or incidents of employment. The judge therefore concluded that the employee's heart attack did not arise out of her employment. We affirm the decision.

The employee worked as an office assistant, teller and loan clerk for a credit union. On June 15, 1995, the employee's supervisor informed the employee that she was applying for another job. The employee was upset by this information. She was fearful that a former supervisor, who the employee alleged was hostile to her, would once again be her supervisor. After leaving work, the employee had chest pains, shortness of breath and pain in her back. She was hospitalized for five days with a small myocardial infarction and remained out of work for several months. She attempted to return to work unsuccessfully in October, and has not returned to work since then. (Dec. 4-5.)

The employee filed a claim for temporary total incapacity benefits alleging that her heart attack was caused by the incident at work. She also claimed work-related

psychiatric incapacity. The judge denied the employee's claim at the § 10A conference. (Dec. 2.) The employee underwent a § 11A medical examination by a cardiologist, Dr. Gerald Evans, on March 5, 1997. (Dec. 5; Statutory Ex. 1.) Dr. Evans opined that the stress the employee experienced at work on June 15, 1995 might have triggered the small myocardial infarction. The actual cause of the employee's infarction, the doctor opined, was pre-existing coronary artery disease. The doctor also opined that the employee suffered from no cardiac symptomatology and no cardiac-related physical disability as of the date of the examination. (Dec. 5.)

The judge allowed additional medical evidence to address the employee's claim for psychiatric disability. The employee's expert psychiatrist diagnosed an adjustment disorder causally related to her work. He restricted the employee from returning to work at the credit union as of her last office visit on November 13, 1996. The doctor could not opine as to the employee's psychiatric disability as of the time of his deposition on July 29, 1997. (Dec. 6.)

Addressing liability for the myocardial infarction, the judge found as follows:

> The Employee was told by her supervisor that the supervisor applied for another job. That information was upsetting to the Employee and was the trigger for the Employee to experience a small myocardial infarction, which was causally related to preexisting coronary artery disease. The stress caused by the mere possibility that the Employee's supervisor might find another position, leave the credit union, and that a new supervisor would be appointed is not something attributable to the nature, conditions, obligations or incidents of employment.

(Dec. 7; emphasis in original.) The judge earlier had discredited the employee's testimony that for many years a former supervisor had been hostile to the employee. (Dec. 3-4.) The judge therefore concluded that the employee's heart attack was not a compensable personal injury within the meaning of the Act. The judge also denied the employee's psychiatric claim, because she did not credit the factual foundation of the treating psychiatrist's causal relationship opinion, which was based solely on the employee's testimony. (Dec. 7.)

On appeal the employee presses three issues, only one of which merits discussion.[1]

The employee argues that the judge erred as a matter of law in failing to find that the incident at work on June 15, 1995 was a compensable industrial injury. We disagree. The judge's conclusion, that the supervisor's telling the employee of her possible plans to get a new job did not arise out of the employment, was not arbitrary, capricious or contrary to law. In a case involving a myocardial infarction alleged to be work-related, the court in Korsun's Case, 354 Mass. 124 (1968), addressed a stressful incident -- an empty whiskey bottle that the employee found in his desk drawer after returning from a vacation. The employee experienced a fatal heart attack that night. Id. at 126. The court analyzed the case as follows:

> [W]e hold as a matter of law . . . that Korsun's emotional stress, although it may have resulted in his death, was not a 'personal injury' which is compensable under the Workmen's Compensation Act. Apprehension over the prospect of losing one's job does not arise 'out of the nature, conditions, obligations or incidents of the employment.' [Citation omitted.] Rather it is a state of mind which arises from the common necessity of working for a living. Social legislation designed to relieve the consequences of losing one's job is found elsewhere. [Citations omitted.] The added emotional stress, allegedly induced by the sight of an empty whiskey bottle in his desk drawer, where its presence was wholly unexplained, was, on the evidence, a personal idiosyncrasy and was not connected with his work.

Id. at 128.

In Fitzgibbons' Case, 374 Mass. 633 (1978), the court explained its holding in Korsun's Case, supra, by focusing on the limits of the underlying "personal idiosyncrasy" idea:

> It is also argued that the injury here [a corrections officer's suicide after ordering officer to transfer unruly inmate, which officer died as a result of ensuing disturbance] was caused by the employee's unwarranted guilt feelings and that the subjective nature of these feelings made them a personal idiosyncrasy, not a work-

[1] We summarily affirm the decision as to the employee's arguments regarding the psychiatric injury and the judge's findings on disability.

> related injury. Korsun's Case, 354 Mass. 124, 128 (1968). In Korsun's Case, however, there was a lack of evidence with which to connect the alleged precipitating event to Korsun's employment; in the present case, there was no such lack of evidence. Moreover, the fact that the guilt feelings might be subjective is insufficient to bring this case within the rule of Korsun's Case since the event triggering the guilt feelings is the relevant criterion in determining whether the injury is compensable.

Fitzgibbons' Case, supra, at 638-639. Likewise, in Kelly's Case, 394 Mass. 684 (1985), the court distinguished Korsun's Case in a mental injury context by again pointing to the lack of evidence with which to connect the alleged precipitating event to the employment. Id. at 688.

While mindful of the limits placed by later opinions on Korsun's Case, we nonetheless consider that the incident presented in this case -- the employee's supervisor stating to her that she might be leaving -- is governed by that case. As in Korsun's Case, in which there was a critical lack of evidence as to how the whiskey bottle ended up in the employee's desk drawer, the factual predicate for a finding of work-relatedness was also missing here; the judge wholly discredited the employee's testimony regarding numerous events over the course of many years indicating the former supervisor's hostility toward the employee. (Dec. 3-4.) It was the absence of this crucial history that rendered the employee's reaction to the prospect of her supervisor leaving and the former supervisor returning "a personal idiosyncrasy . . . not connected with [her] work." Id.

The decision is affirmed.

So ordered.

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Martine Carroll
Administrative Law Judge

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Susan Maze-Rothstein
Administrative Law Judge

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Frederick E. Levine
Administrative Law Judge

Filed: February 16, 2000