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Supreme Court, Appellate Division, Third Department, New York

In the Matter of LYNNE CUVA, Appellant,

v.

STATE INSURANCE FUND et al., Respondents.

WORKERS' COMPENSATION BOARD, Respondent.

November 17, 2016

Facts: The claimant, an employee of the Workers' Compensation Board in a supervisory program management position, was involved in an incident on March 7, 2013, during a discussion between claimant and a subordinate examiner. Claimant filed a workplace violence report which was unfounded by Human Resources Director. Claimant's bureau was backlogged and experiencing high turnover on the alleged date of accident. In April 2013, claimant was reassigned to a new unit. Claimant had a history of treatment for non-work-related anxiety, depression and PTSD and reportedly experienced increased symptoms. In January 2014 when claimant was reassigned she filed a workers' compensation claim alleging she felt threatened during the March 2013 encounter causing stress, panic attacks and digestive problems. Claimant stopped working in June 2014 as advised by her doctor due to ongoing mental health problems. Claimant alleged symptoms were due to being harassed by a coworker for filing a workplace violence complaint and being required to undergo a psychological evaluation. After a number of hearings, medical records being submitted, deposition testimony being conducted of claimant and carrier's consultant, the WCLJ found the claimant did not experience work-related stress greater than what is experienced in the normal work environment and the exacerbation of the claimant's prior condition did not arise out of the alleged March 7, 2013 or its aftermath. The Workers' Compensation Board affirmed and now the claimant appeals.

Holding: *Affirmed.*

Discussion: Mental injuries caused by work related stress are compensable if the claimant can establish that the stress caused the injury was greater than that which other similarly situated workers experienced in the normal work environment. In resolving that factual question, the Board's decision will not be disturbed as it is supported by substantial evidence. A witness testified to a different account of the alleged incident than that which the claimant testified to and the court credited the testimony of the disinterested witness over that of the claimant which it was within its right to do so. Also, evidence was submitted indicating that the claimant and the alleged aggressor had a good working relationship following the incident which discredited the testimony of the claimant. The presence of the Supervising Law Judge at the claimant's hearing did not give rise to an appearance of impropriety as there was nothing inappropriate in the supervisory observation and claimant failed to identify any basis for the presiding WCLJ's mandatory or discretionary recusal.

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