

**BEFORE THE ARKANSAS WORKERS' COMPENSATION
COMMISSION**

CLAIM NO. F310834

JOHN M. SCARLETT, EMPLOYEE

CLAIMANT

**CITY OF PINE BLUFF,
EMPLOYER**

RESPONDENT

**ARKANSAS MUNICIPAL LEAGUE
WORKERS' COMPENSATION TRUST,
INSURANCE CARRIER**

RESPONDENT

OPINION FILED DECEMBER 30, 2004

Hearing before Administrative Law Judge Cynthia Estes Rogers on October 1, 2004, in Pine Bluff, Jefferson County, Arkansas.

Claimant represented by Mr. Kenneth A. Olsen, Attorney at Law, Little Rock, Arkansas.

Respondents represented by Mr. J. Chris Bradley, Attorney at Law, North Little Rock, Arkansas.

A hearing was held on October 1, 2004, to determine the compensability of the claim filed herein.

The parties stipulated to the existence of the employee-employer relationship on November 1, 2001. It was further stipulated that the claimant's earnings were sufficient to entitle him to weekly indemnity benefits of \$410.00 for temporary total disability and \$308.00 for permanent partial disability benefits.

Claimant contends that he was subjected to a hostile work environment such that the consequent stress caused him to have cardiovascular problems and a nervous breakdown, followed by deep depression, wherein he had suicidal tendencies. The claimant contends he is entitled to indemnity benefits.

Respondents controvert this claim, contending that the claimant's mental illness was not caused by physical injury to his body, and that claimant was not a victim of a crime of violence. Respondents further contend that the claimant's claim of injury has not been diagnosed by a licensed psychiatrist or psychologist such that the diagnosis meets the criteria established in the most current issue of the Diagnostic and Statistical Manual of Mental Disorders.

STATEMENT OF THE CASE

_____ Claimant is forty-five years old and was a police officer with the City of Pine Bluff, respondent-employer, for twenty years, advancing up through the ranks as time went by. He last worked in late 2001 and retired in 2002 as Assistant Chief of Police, after having held that position since February of 2000. Claimant contends that he was subjected to a hostile work environment such that the consequent stress caused him to have cardiovascular problems and a nervous breakdown, followed by deep depression, which caused him to have suicidal tendencies.

Claimant testified that during his years on the police force, he from time to time sought medical treatment for anxiety. He testified that it was generally after he

had been involved in a shooting incident, and the department required mandatory psychiatric counseling afterward. He testified that when he was working on the streets, he would be involved in many physical altercations, which he attributed to his size. He claimed that people were always looking to be combative with him, but that he “never backed down from anything.”

He testified that around age twenty-nine or thirty (around 1990), during which time he was working undercover in narcotics, he saw a cardiologist, Dr. Bruce Murphy. He stated that rather than feeling like one thing happened that triggered his need to see a cardiologist, he just stated that “I guess over time it builds up.” Claimant testified, and medical records indicate, that claimant saw Dr. Murphy sporadically over the following years and had certain diagnostic tests, but never actually was diagnosed with any type of heart condition.

Claimant testified that although he had been subjected to stressful and even dangerous, violent situations involving criminal suspects during his tenure as a police officer, it was the stress that he was under while he was assistant chief that caused his nervous breakdown and subsequent problems. Claimant contends that the police chief, claimant’s superior, was “freezing him out.” Claimant felt discriminated against and, in fact, filed a federal discrimination lawsuit, which was settled.

Claimant testified that after he was promoted to assistant chief in February of 2000, his level of physical stress and anxiety diminished at first, and things were good

for awhile. However, he testified that he then started having a lot of stress with his new position about one year into the job; this stress was emotional, rather than physical. Claimant testified that the department had received some sexual harassment and hostile work environment complaints; and based on department policy and federal law, he was assisting those officers who were filing complaints with their paperwork and through the appeals process. Because the police chief was the target of most of the complaints, claimant testified that he believed the chief became very unhappy with him for assisting the officers who were filing complaints and, therefore, began “freezing [claimant] out.”

Claimant testified that the chief began speaking to everyone in the office when he would arrive in the mornings, except claimant, and would go around the hall to avoid claimant’s office. Claimant then began receiving his assignments and job duties from patrolmen and secretaries - people at the lowest level in the chain of command, rather than from the chief directly. He testified that this began to wear on him after awhile. Claimant testified that he also began being “written up” by the chief with derogatory letters regarding his job performance. Claimant began fearing that he would lose his retirement.

Claimant testified that he began taking his stress out on his family and was constantly having chest pains. He testified that he was not thinking straight. He testified that he saw Dr. Tracy Phillips, and Dr. Phillips put him on medication for

two weeks and told him to see if he could stay at work. Claimant testified that this was in October of 2001. Medical records reflect that claimant saw Dr. Phillips on November 1, 2001, and November 27, 2001.

Regardless, claimant testified that within the first few days after he had begun taking the medication, he was out to dinner with his wife and the chief and assistant chief from White Hall at a restaurant. On the way back from eating, claimant testified that he remembered the chief and assistant chief, who were riding together, pulling up alongside of him and trying to wave him down. Claimant stopped, and the White Hall chief pulled him out of the car and asked him if he knew what he was doing. Claimant testified that he had apparently been driving through ditches and through yards.

Claimant testified that he does not remember much after that, other than sitting in the White Hall Police Department and being taken to the doctor later that day. He testified that that is all he can remember for basically the next year. He testified that he does not even remember his eldest daughter's wedding, which took place during the course of that year.

Claimant testified that there was never any kind of physical explanation found for what caused his breakdown. He believes that it was due to "stress over a long period of time that accumulated up to the end," which he attributes to his job and his aggressiveness on the streets. Claimant never returned to work for respondent-

employer and eventually retired from the department. Claimant testified that on June 1, 2004, he began working for Jefferson County as the planner and training coordinator for the Office of Emergency Management, the C-SEP Program for the chemical stockpile and emergency preparedness program, which is a federally-funded position. Claimant is seeking pay for the time he was off work without pay.

FINDING OF FACT

Claimant has failed to meet his burden of proving by a preponderance of the evidence that he sustained a compensable injury.

DISCUSSION

Whether claimant is claiming that he has suffered mental injury or illness due to the stress of his work *or* heart injury or illness as a result of the stress of his job, his claim is not compensable, either way.

First, Ark. Code Ann. § 11-9-113, entitled “Mental injury or illness,” states, in pertinent part, as follows:

(a)(1) A mental injury or illness is *not* a compensable injury *unless* it is caused by *physical injury to the employee’s body*, and *shall not* be considered an injury arising out of and in the course of employment or compensable *unless* it is demonstrated by a preponderance of the evidence; provided, however, that this physical injury limitation shall not apply to any victim of a crime of violence.

(2) No mental injury or illness under this section shall be compensable *unless* it is also diagnosed by a licensed psychiatrist or psychologist *and* unless the diagnosis of the condition meets the criteria established in the most

current issue of the Diagnostic and Statistical Manual of Mental Disorders.

[Emphasis added.]

The record is clear that claimant's alleged mental injury or illness was *not* caused by a *physical* injury, nor was he the victim of a crime of violence. He is contending that the *emotional* stresses present in his employment caused his condition. Further, claimant has not established that his mental injury or illness has been diagnosed by a licensed psychiatrist or psychologist where the diagnosis meets the criteria established in the most current issue of the Diagnostic and Statistical Manual of Mental Disorders. The claimant's claim is simply not compensable under § 11-9-113.

Next, Ark. Code Ann. § 11-9-114, entitled "Heart or lung injury or illness," states as follows:

(a) A cardiovascular, coronary, pulmonary, respiratory, or cerebrovascular accident or myocardial infarction causing injury, illness, or death is a compensable injury *only if*, in relation to other factors contributing to the physical harm, an *accident* is the *major cause* of the *physical* harm.

(b)(1) An injury or disease included in subsection (a) of this section *shall not* be deemed to be a compensable injury *unless* it is shown that the exertion of the work necessary to precipitate the disability or death was *extraordinary and unusual* in comparison to the employee's *usual* work in the course of the employee's regular employment or, alternately, that some *unusual and unpredicted incident* occurred which is found to have been the *major cause* of the *physical* harm.

(2) *Stress, physical or mental, shall not be considered in determining whether the employee or claimant has met his or her burden of proof.*

[Emphasis added.]

Claimant testified that in his past, he had had chest pains, requiring him to be examined by a cardiologist, Dr. Bruce Murphy. The medical records from Dr. Murphy offered into evidence show claimant to have no coronary disease, although he does take medication for hyperlipidemia. Dr. Murphy opined that he was sure claimant's random "oppressive pressure in his anterior chest" associated with shortness of breath was "stress related from the huge amount of stress this young fellow is under." Clearly, these medical findings do not support a compensable injury under Ark. Code Ann. § 11-9-114, as claimant's situation does not fit within subsections (a) or (b)(1); furthermore, stress, either mental or physical, "shall not be considered."

In this examiner's opinion, claimant has simply failed to prove by a preponderance of the evidence a compensable injury. As such, the above claim is respectfully denied and dismissed.

IT IS SO ORDERED.

CYNTHIA ESTES ROGERS
Administrative Law Judge