

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F602502

JACQUELINE M. MURPHY,  
EMPLOYEE

CLAIMANT

GOLDEN CAKES, INC. (IHOP),  
EMPLOYER

RESPONDENT

NATIONAL FIRE INSURANCE COMPANY OF  
HARTFORD, INSURANCE CARRIER

RESPONDENT

**OPINION FILED NOVEMBER 13, 2007**

Hearing conducted before ADMINISTRATIVE LAW JUDGE MARK CHURCHWELL, in Little Rock, Pulaski County, Arkansas.

The claimant was Pro Se.

The respondents were represented by HONORABLE FRANK B. NEWELL, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held in the above-styled claim on September 25, 2007, in Little Rock, Arkansas. A Prehearing Order was entered in this case on August 14, 2007. This Prehearing Order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. A copy of this Prehearing Order was made Commission's Exhibit No. 1 to the hearing record.

The following stipulations were submitted by the parties in the Prehearing Order and are hereby accepted:

1. The employee/employer/carrier relationship existed at all pertinent times.

2. This claim has been controverted.
3. The claimant's average weekly wage was \$368.64.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited at the start of the hearing to the following:

Claimant:

1. Compensability of post-traumatic stress syndrome.
2. Unpaid medical expenses from St. Vincent Doctors Hospital, UAMS, Living Hope Institute, and Dr. Shea.
3. Temporary total disability compensation after January 11, 2006.

Respondents:

1. Compensability.
2. Entitlement to medical benefits.
3. Entitlement to temporary total disability benefits.

The claimant contends that she experienced post-traumatic stress syndrome as a result of an incident where an individual approached her for a loan while she was at work. The respondents contend that the claimant did not sustain a compensable injury while working for the respondent employer. The respondents contend that the

claimant cannot establish a compensable mental injury under Ark. Code Ann. § 11-9-113, and the claimant is therefore not entitled to an award of benefits.

The record consists of the September 25, 2007, hearing transcript and the exhibits contained therein.

#### **DISCUSSION**

In early January of 2006, the claimant was employed at the International House of Pancakes as a cashier/food server. At some point between 2:00 a.m. and 4:00 a.m. on Wednesday, January 4, 2006, an individual later identified as Cheryl Hodges entered the store and asked the claimant and a co-worker if she could borrow \$10.00 because she had been robbed. While the co-worker went upstairs to get the manager, the claimant loaned Ms. Hodges \$10.00 and took Ms. Hodges' driver's license as collateral for the loan. Before 5:00 Ms. Hodges called and asked if she could borrow \$12.00 more, and the claimant agreed. Ms. Hodges had agreed to repay the loan before 6:00 in the morning but never did so.

The claimant later contacted the police and advised them that she had been robbed. However, the claimant testified that when she explained to the police that Ms. Hodges had borrowed the money from the claimant and that Ms. Hodges had not paid the money back, the police advised the

claimant that there was nothing that the police could do about the loan.

The claimant testified that she last worked at the International House of Pancakes on January 11, 2006. Medical records presented at the hearing indicate that the claimant presented to the emergency room at UAMS on January 14, 2006, and again on January 22, 2006. The claimant was treated inpatient at UAMS and at the St. Vincent Health System's Living Hope Institute for the period between January 22, 2006, until her discharge on January 31, 2006. The claimant has also submitted treatment records from her regular treating physician, Dr. James Shea, for treatment between February 7, 2006, and May 31, 2007.

In order to prove the compensability of mental injuries, including post-traumatic stress disorder, Ark. Code Ann. § 11-9-113 provides in part:

(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.

My research indicates that the Arkansas Courts have never interpreted the meaning of the term "crime of violence" as used in Ark. Code Ann. § 11-9-113(a)(1). However, I note that Ark. Code Ann. § 5-42-203(b) states that:

(b) "Crime of violence" means any violation of Arkansas law where a person purposely or knowingly causes, or threatens to cause, death or physical injury to another person or persons, specifically including rape.

In the present case, I find that the claimant has failed to establish by a preponderance of the evidence that she has sustained post-traumatic stress disorder diagnosed by a licensed psychiatrist or psychologist consistent with criteria established by the most current addition of The Diagnostic and Statistical Manual of Mental Disorders. In reviewing the claimant's medical records, I see no diagnosis of post-traumatic stress disorder made by any of her treatment providers. Instead, I note that the history taken at UAMS on January 14, 2006, was of bipolar disorder, and this diagnosis appears consistent with the diagnosis of Dr. Shea in his records beginning on February 7, 2006.

Likewise, I note that the admitting diagnosis at Living Hope Institute on January 23, 2006, was bipolar disorder, and the final diagnosis on January 31, 2006, was schizoaffective disorder with pronounced psychosis and agitation.

I also find that the claimant has failed to establish by a preponderance of the evidence that her mental injury or illness at issue was caused by a physical injury to her body or occurred as the result of a crime of violence as required by Ark. Code Ann. § 11-9-113(a)(1). In this regard, I note that Ms. Murphy has never contended or presented any evidence indicating that she ever sustained any physical injury as an employee of the International House of Pancakes, and I find that the claimant has failed to establish that the loan she made to Ms. Hodges was a crime of violence within the meaning of Ark. Code Ann. § 11-9-113(a)(1). In this regard, neither the claimant's medical records nor her testimony indicate that Ms. Hodges caused or threatened to cause death or physical injury to the claimant at any point. To the contrary, the claimant's testimony indicates that the claimant made a loan to Ms. Hodges, took Ms. Hodges' driver's license for collateral, and later contacted the police to report a "robbery" when Ms. Hodges did not repay the loan. Under these circumstances, I must

conclude that neither the loan nor Ms. Hodges' failure to repay the loan constitutes a "crime of violence" within the meaning of the Arkansas Workers' Compensation Law.

For the reasons discussed herein, I therefore find that the claimant has failed to establish any of the elements necessary to establish a compensable mental injury under the requirements of Ark. Code Ann. § 11-9-113(a). Because the claimant has failed to establish that she has sustained a compensable mental injury, I must also respectfully deny her request for payment of medical expenses and temporary disability compensation in this claim.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The employee/employer/carrier relationship existed at all pertinent times.
2. This claim has been controverted.
3. The claimant's average weekly wage was \$368.64.
4. The claimant has failed to establish by a preponderance of the evidence that she sustained a compensable mental injury. Specifically, the claimant has failed to present any evidence indicating that a psychiatrist or psychologist diagnosed her with post-traumatic stress disorder. The claimant has also failed to establish by a

preponderance of the evidence that she sustained mental injury or illness as a result of a physical injury at work or due to a crime of violence at work.

5. Because the claimant has failed to establish that she sustained a compensable mental injury, the claimant's request for payment of medical expenses and temporary disability compensation must be denied.

**ORDER**

For the reasons discussed herein, this claim must be, and hereby is, respectfully denied.

IT IS SO ORDERED.

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MARK CHURCHWELL  
Administrative Law Judge