

RHODE ISLAND Lawyers Weekly

Woman gets comp benefits after assault by co-worker

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A woman was entitled to partial-incapacity workers' compensation benefits for the physical and mental harm she suffered after an altercation with a co-worker, a Workers' Compensation Court judge has ruled.

The employer argued that the female petitioner's injuries were not compensable because they were due to a private quarrel between employees that was not work related.

But Judge Edward P. Sowa Jr. disagreed and awarded partial benefits, attorneys' fees and costs to the petitioner.

"[The petitioner] was acting in the scope of her authority as a supervisor seeking a meeting with a fellow supervisor when [the assailant] instigated the quarrel and resulting assault," wrote Sowa.

"There was no evidence of a personal quarrel or vendetta that precipitated the confrontation," he said, "rather it was the actions and language of [the assailant] who had a track record regarding comparable incidents that was the precipitating cause."

The 27-page decision is *Mello v. City of Providence*, Lawyers Weekly No. 72-008-07.

Stephen J. Dennis of Providence represented the petitioner. George E. Furtado of Providence was counsel for the employer.

Workplace altercation

Petitioner Debra Gwen Mello was hired in 1983 by the City of Providence to work in the Department of Planning. Shortly afterward, she was transferred to the Department of Inspections and Standards and eventually became supervisor of codes and prosecution.

The petitioner held her new position until March 22, 2006, when she was fired in the wake of an altercation with a co-worker that had occurred two months earlier.

According to the petitioner, she had gotten sick at work in December 2005. She began vomiting in the office and became dizzy and was subsequently taken by ambulance to the hospital.

The petitioner had a doctor's note instructing her to stay home for three weeks, but she returned to work on Dec. 20 because her supervisor, Sam Shamoon, was going to London. The petitioner claimed Shamoon threatened to replace her if she was not at work while he was gone.

While Shamoon was gone, the petitioner took on extra supervisory responsibilities. During that time, on Jan. 6, an elderly employee came into her office crying over comments allegedly made to her by two co-workers, Linda Baccari and Jean Roy.

The petitioner then went to the building where Baccari worked, looking to speak to a supervisor in Baccari's division. Baccari allegedly directed a cutting remark at the petitioner in front of Roy, a group of inspectors and two customers.

According to the petitioner, she tried to respond firmly but calmly to Baccari, who began yelling and swearing at her. Co-workers later testified that Baccari had a long history of abusive, profane language and conflict in the workplace.

The petitioner allegedly asked Baccari and Roy to follow her into the back, away from the customers. There, an altercation ensued during which Baccari allegedly pushed the petitioner, causing her to hit her head, shoulder and

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petitioner also received treatment for headaches and back problems that she claimed arose from the incident. On March 22, 2006, the petitioner was terminated. She claimed that her termination letter cited the destruction of city property and a verbal and physical assault toward another employee. The petitioner subsequently filed an action in Workers' Compensation Court seeking partial-incapacity benefits for her injuries.

Physical-mental injury

Finding the petitioner's version of events more convincing than those of Baccari and the employer, Sowa ruled that the petitioner was indeed a victim of an assault.

Additionally, the judge found, "[t]he petitioner has also proven a physical (orthopedic) injury which was the exacerbating factor resulting in a period of disability not only for the physical problems but for the stress related occupational disease."

Turning to the issue of compensability, Sowa rejected the employer's argument that the assault was not work-related, but was simply a private quarrel between two employees.

"Factually that assertion is incorrect," said the judge, pointing out that the petitioner was acting in the scope of one supervisor seeking a meeting with another when Baccari — who had a history of comparable incidents — instigated the altercation and assault.

Sowa also rejected the employer's argument, which relied on the Rhode Island Supreme Court's 1986 *Amick v. National Bottle* decision, that because the petitioner had undergone treatment for stress-related issues in the past, she could not prove that this incident was the cause of her psychiatric disability.

Instead, the judge likened this case to *Price v. Bess Eaton*, a 1999 decision by the Appellate Division of the WCC.

"In *Price*, the employee had been functioning in her daily life, despite the effects of her prior experiences until the day of an altercation with her supervisor," said Sowa. "After that incident, she was unable to return to work at that place of employment. The court noted that even though the employee had recovered from [a] physical injury [suffered during the altercation], the physical injury caused a mental disorder which prevented the employee from returning to her former employment."

wa further quoted language from *Price* stating that "the mere fact that an employee has a history of psychological problems or treatment or has previously experience[d] events which may lead to a more fragile psyche, does not preclude the finding of a compensable psychic injury and disability."

In this case, said the judge, "[the petitioner] admittedly had a prior chronic depressive condition. However, she was still able to perform her job until the physical assault took place.

"This was not a mental-mental injury, but rather a physical-mental injury," Sowa continued. "The requirement of *Amick* relating to a direct and exclusive causal relationship is inapplicable."

Accordingly, Sowa ruled that the petitioner's injuries were indeed compensable and awarded partial-incapacity benefits as well as attorneys' fees and costs.

CASE: *Mello v. City of Providence*, Lawyers Weekly No. 72-008-07

COURT: Workers' Compensation Court

ISSUE: Was a woman who suffered physical injuries, anxiety and depression stemming from an altercation instigated by a co-worker entitled to partial-incapacity workers' compensation benefits?

DECISION: Yes, because the incident was work-related and because her psychic conditions were caused by the physical injuries she suffered during the assault

Eric T. Berkman, formerly a reporter for Rhode Island Lawyers Weekly, is a freelance writer.

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