

2024 WL 3468555 (N.Y.Work.Comp.Bd.)

Workers' Compensation Board

State of New York

EMPLOYER: NEW YORK CITY TRANSIT AUTHORITY

Case No. G325 9631

Carrier ID No. TA202200980 W848006

July 15, 2024

*1 NYC Transit Authority
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Date of Accident 4/17/2022

The Full Board, at its meeting held on June 11, 2024, considered the above captioned case for Mandatory Full Board Review of the Board Panel Memorandum of Decision filed on December 11, 2023.

ISSUE

The issue presented for Mandatory Full Board Review is whether this claim should be established for [post-traumatic stress disorder](#) (PTSD).

The Workers' Compensation Law Judge (WCLJ) established this claim for PTSD.

The Board Panel majority reversed the WCLJ and disallowed the claim.

The dissenting Board Panel member would affirm the WCLJ and find that the claimant has experienced stress greater than other transit workers.

The claimant filed an application for Mandatory Full Board Review, arguing that the dissenting Board Panel member properly assessed the claim and found that she was subjected to stress greater than that of a similarly situated worker. The claimant also objects to that part of the Board Panel majority decision that suggests that if the claimant had only followed "protocol," she would be fine, noting that this characterization ignores the claimant's testimony that she was initially told by the employer to not move her bus, and she only moved the bus when the person threatening her told her that if she didn't move, he would kill her.

In rebuttal, the self-insured employer (SIE) argues that the claimant has not met her burden of proof to show that the stress she experienced was greater than that experienced by similarly situated workers in the normal work environment.

Upon review, the Full Board votes to adopt the following findings and conclusions.

FACTS

On April 29, 2022, the Board received an Employee Claim (C-3) in which the claimant reported that she was injured while working as a bus driver on April 17, 2022. The claimant alleged that she has mental trauma because after she was involved in a motor vehicle accident with another person, that person came “in the bus” and said he was going to kill the claimant.

The SIE controverted the claim, raising defenses of no compensable accident in the course and scope of employment and no causal relationship.

Karyn Morra, an LCSW in Dr. Rombom's office, initially evaluated the claimant on May 2, 2022, and had a follow-up telemedicine appointment with her on May 13, 2022. In the attached report of psychological evaluation and consultation, LCSW Morra noted that the claimant reported that while she was working her route she got into an accident with another vehicle. The driver of that vehicle was very irate and yelled at her, using profanities and threatening to kill her. The claimant was scared because the “guy looked like he had something in his pocket.” The claimant left the scene and returned to the bus depot. The claimant reported that she has repeated, disturbing, and unwanted memories of the incident. She has nightmares and flashbacks of it, and suddenly feels like it is happening again. She becomes upset when reminded of the incident, and avoids situations that remind her of it. She reported difficulty sleeping, irritability, difficulty concentrating, and hypervigilance. She is depressed and reported loss of motivation. The claimant's prior history was listed as unremarkable. LCSW Morra diagnosed causally related [acute stress reaction](#) and psychological trauma, finding the claimant to have a temporary total disability.

*2 In a decision filed August 11, 2022, the WCLJ found prima facie medical evidence for an [acute stress reaction](#) based on LCSW Morra's May 13, 2022, report, and continued the case for the testimony of the claimant and two employer witnesses.

On August 23, 2022, Dr. Bienenfeld, the SIE's consultant in psychiatry, examined the claimant and submitted a report of the Independent Medical Exam on September 1, 2022. The claimant reported that on the date of the incident, the claimant's bus made contact with a car door. When she stopped the bus to talk to the person in the car, he got out and threatened to kill her. There were other people with the man, and he repeatedly stated that he was going to kill her. The claimant's supervisor came, and the claimant drove her bus back to the depot. The man followed her, and she feared for her life. The doctor found the claimant suffers from a mild causally related psychiatric disability and meets the criteria for PTSD.

At the hearing held on October 6, 2022, the claimant testified that she was involved in an incident at work on April 17, 2022, when the bus she was driving impacted the back door of a car. The driver of the car came onto the bus and told her he was going to kill her. He did not touch her or brandish any type of weapon that she could see. He was screaming and yelling at her. When she told the individual that the police were coming and she had to wait for her supervisor, he told her to leave, and he did not want the police there. When the claimant called in to report the incident, she told the supervisor that she was leaving and could not stay because the man was threatening her. As she drove to the depot, she saw the man following her; he followed her for 16 blocks until she turned into the depot. When questioned more about whether the man came onto the bus, the claimant stated that he did and was about a foot away from her. His passenger stood outside of the bus while the driver was yelling at her. When the man came onto the bus, he was pulling on the plexiglass partition while standing near the claimant. The claimant has not returned to work since the incident, and her treatment was stopped on June 28, 2022. The claimant alleged that she has had no other occasions to deal with irate passengers or pedestrians at work and stated that, “If they don't pay the fare, I never get into anything with my passengers” (Hearing Transcript, 10/6/22, p. 8). The claimant testified that she felt threatened due to this incident and continues to have nightmares regarding it.

An employer witness, J.S., also testified. He is a General Superintendent of Safety and Environment Management with the SIE, and he spoke to the claimant on April 17, 2022, after the incident. She reported that she was threatened by a motorist whose car was impacted by the bus. The motorist became irate and threatened the claimant. J.S. confirmed that in the 34 years he has worked for the employer, he has dealt with similar situations, and he would say that they are common occurrences.

*3 The SIE's additional witness was not present to testify and the WCLJ denied the SIE's request to adjourn for that witness' testimony. The WCLJ then heard summations and made a decision on the record. The WCLJ established the claim for PTSD,

noting that the SIE's consultant conceded causal relationship, and finding that in addition to being verbally threatened, the person got on the bus and was pulling the partition, which is more severe than a verbal altercation. The WCLJ authorized treatment; resolved C-8.1B objections in favor of the medical providers; found an average weekly wage of \$1, 744.83; made awards for various periods of lost time; and awarded an attorney fee of \$3, 300.00, as a lien on the awards. The WCLJ's findings were set forth in the decision filed on October 12, 2022, and the SIE filed an application for Board review.

The SIE requested that the WCLJ decision be reversed, and the claim be disallowed. The SIE argued that the claimant failed to demonstrate that the stress she experienced was greater than that of similarly situated employees. In support of its argument, the SIE relied on prior Board decisions in which stress claims were disallowed based on similar threats made by irate passengers on public transit *Matter of Manhattan & Bronx Surface Transit Operating Authority*, 2022 NY Wrk Comp G3054412 and *Matter of New York City Transit Authority*, 2022 NY Work Comp G2883921.

In rebuttal, the claimant requested that the decision be affirmed, asserting that there is competent medical evidence showing her PTSD developed as a result of an injury at work and therefore, the WCLJ was correct in establishing this claim.

LEGAL ANALYSIS

“[A] mental injury precipitated solely by psychic trauma may be compensable in workers' compensation” (*Matter of Guess v Finger Lakes Ambulance*, 28 AD3d 996 [2006], lv denied 7 NY3d 707 [2006] [citations omitted]). “[A] claim for work-related stress cannot be sustained absent a showing that the stress experienced by the affected claimant was greater than that which other similarly situated workers experienced in the normal work environment” (*Matter of Spencer v Time Warner Cable*, 278 AD2d 622 [2000], lv denied 96 NY2d 706 [2001] [citations omitted]). “This inquiry ... presents a factual issue for the Board to resolve and its determination, if supported by substantial evidence in the record as a whole, will not be disturbed” (*Matter of Kopec v Dormitory Auth. of State of N.Y.*, 44 AD3d 1230 [2007] [citation omitted]).

The Board was previously affirmed when it established a claim for post-traumatic stress and adjustment disorder that was filed by a cardiothoracic physician's assistant, who admittedly was familiar with the “difficult” personality of the surgeon with whom she was working, but experienced stress greater than that which normally occurs in similar work environments when the surgeon made threats of physical violence to the claimant (*Matter of Lucke v Ellis Hosp.*, 119 AD3d 1050 [2014]; see also *Matter of Smith v Albany County Sheriff's Dept.*, 82 AD3d 1334 [2011]).

*4 In contrast, the Board was also previously affirmed when it disallowed a claim for [post-traumatic stress disorder](#) with depression/anxiety that was filed by a convenience store manager, who was threatened by a customer with physical harm after the manager asked the customer to leave the store for using vulgar language while talking on a cell phone (*Matter of Casey v United Ref. Co. of Pa.*, 194 AD3d 1300 [2021]; see also *Matter of Rivenburg v County of Albany*, 187 AD3d 1282 [2020]).

As long as supported by substantial evidence, the Board's decisions regarding whether to establish or disallow a claim for mental injury have been affirmed, even where a “contrary determination would have been reasonable” (*Lucke*, 119 AD3d 1050 [2014] [internal citations omitted]; see also *Kopec*, 44 AD3d 1230 [[2007]).

Here, there is uncontroverted medical evidence of causal relationship and the claimant's testimony regarding the incident on April 17, 2022, is not in dispute. Specifically, the claimant stated that while she was working as a bus driver, she got into an accident with another vehicle and the driver of that vehicle came onto her bus and verbally threatened to kill her. The claimant also stated that when the man came onto the bus, he stood near her while pulling on the protective plexiglass partition near the driver's seat. She further stated that when she left the scene of the incident to go to the depot because the man was threatening her, she saw that the man was following her. While J.S. testified for the employer that these types of situations are common occurrences for transit workers, the claimant credibly testified that she has had no similar interactions with irate passengers or pedestrians at work, stating that, “If they don't pay the fare, I never get into anything with my passengers” (Hearing Transcript, 10/6/22, p. 8).

Based on the claimant's testimony that she experienced a credible threat of violence when an irate man came onto her bus, threatened to kill her, and then followed her to the bus depot, the Full Board finds sufficient evidence in the record that the claimant experienced stress that was greater than that which other similarly situated workers experienced in the normal work environment.

Therefore, the Full Board finds that the record supports establishment of this claim as an accidental injury for PTSD.

CONCLUSION

ACCORDINGLY, the WCLJ decision filed on October 12, 2022, is AFFIRMED. No further action is planned by the Board at this time.

Clarissa Rodriguez

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