NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0174-13T4

DOROTHY RIZZO,

Petitioner-Appellant,

v.

KEAN UNIVERSITY,

Respondent-Respondent.

Argued May 7, 2014 – Decided June 11, 2014

Before Judges Lihotz and Hoffman.

On appeal from Department of Labor, Division of Workers' Compensation, Claim No. 2009-223611.

Richard J. Angelo argued the cause for appellant (Zager Fuchs, PC, attorneys; Mr. Angelo, of counsel and on the brief).

Michael Pushko, Deputy Attorney General, argued the cause for respondent (John J. Hoffman, Acting Attorney General; Melissa H. Raksa, Assistant Attorney General, of counsel; Mr. Pushko, on the brief).

PER CURIAM

Appellant Dorothy Rizzo appeals from the final judgment of the Division of Workers' Compensation (Division), in favor of Respondent Kean University, denying her workers' compensation claim based on a psychiatric disability arising from one

specific incident during the course of her employment. For the reasons that follow, we affirm.

I.

We discern the following facts and procedural history from the record on appeal. Appellant is fifty-six years old and was employed at Kean University (Kean) as an assistant professor in the Department of Social Work until April 2009. Appellant received tenure approximately seven years ago after completing a rigorous approval process. In addition to teaching a variety of social work classes, she has published an article on assessing social work programs. From approximately 2000 to 2004, appellant also served as the Director of Kean's undergraduate social work program.

On April 23, 2009, her last day of employment at Kean, appellant testified she was standing at her mailbox when a colleague asked her for computer help to register a student for classes. Unable to help solve the problem, appellant asked the current director of the undergraduate program, Dr. Josephine Norwood, for assistance. Although Dr. Norwood was busy initially, she later went to appellant's office and closed the door behind her; the two were then alone in the office and appellant was sitting at her computer facing the office door.

Appellant explained that Dr. Norwood then said "You know what you did" and that she did not like the tone of voice appellant used earlier. Appellant stated Dr. Norwood had kept her hand on the door and spoke in an uncharacteristic whisper. Appellant testified she started feeling sick and told Dr. Norwood several times to open the door and that she did not feel good, but Dr. Norwood replied, "I'm not done with you yet." Appellant tried to open the door, but Dr. Norwood slammed it shut, unwilling to open it, even when appellant called out for help. Eventually, was able to open the door and leave the room. Appellant perceived Dr. Norwood's actions as a threat of physical violence directed at her.

At trial, Dr. Norwood related a different series of events. According to Dr. Norwood she walked into appellant's office, appellant shut the door and sat down by her computer. Dr. Norwood stated she said to appellant, "Dorothy, you asked me to come in;" before she could finish speaking, appellant stood up from her chair and charged towards the door exclaiming, "Let me out of here!" Appellant then opened the door and ran out of the room; Dr. Norwood followed her, "puzzled" at what had happened.

Dr. Norwood testified she merely had her fingers on the door handle but did not block the door. She further stated she neither was holding the door closed nor doing anything to

preclude appellant from leaving the office, and as such, appellant was able to stand up and exit without interference. Dr. Norwood described the incident as a thirty-second exchange, during which she spoke calmly. Additionally, Dr. Norwood stated she is only five feet four inches tall, 130 pounds, compared to appellant, who is of larger stature; thus, she could not have threatened to overpower appellant.

Following the incident, appellant began seeing a psychologist, Dr. Margaret Pipchick, Ph.D., on a weekly basis, in May 2009, and did not return to work because of summer vacation. Three months later in August, as the fall semester drew nearer, appellant requested a leave of absence. Kean required appellant to see a Kean-appointed psychologist, following which the school granted appellant a leave of absence for the fall and spring semesters. Appellant later resigned because she felt she could no longer work.

On August 17, 2009, appellant filed a claim petition alleging a psychiatric disability as a result of the April 23, 2009 incident. The claim asserted, "[p]etitioner was confronted and trapped by a co-worker" and now "suffers from post-traumatic stress disorder; anxiety, and other psychological injuries." The State later filed an answer denying appellant's condition was the result of a compensable accident or occupational

exposure. Appellant later amended her claim petition, and in February 2012, she filed an amended verified petition for Second Injury Fund Benefits,[1] asserting total permanent disability.

In December 2012, appellant filed a motion to direct respondent to provide medical treatment with Dr. Pipchick and payment for her out-of-pocket medical expenses. On March 11, 2013, the trial court denied the motion and scheduled a bifurcated trial to determine compensability.

The workers' compensation judge heard three days of testimony from appellant, Dr. Norwood, and Dr. Pipchick in April and June 2013. During her testimony, appellant stated her brother had sexually abused her as a child. Dr. Pipchick supported appellant's testimony and elaborated that her brother trapped her in a closet. Dr. Pipchick believed appellant felt trapped when the office door was closed, bringing back the memories of her abuse. According to Dr. Pipchick, this is a very typical example of what happens to an adult who has been physically or sexually abused as a child. She further opined appellant was suffering from post-traumatic stress disorder (PTSD), which was triggered by this traumatic event. In

[1] Pursuant to N.J.S.A. 34:15-95, the Fund "is liable when a pre-existing condition combined with a work-related accident or disease renders a person totally and permanently disabled." Walsh v. RCA/Gen. Elec. Corp., 334 N.J. Super. 1, 6 (2000).

particular, she noted Dr. Norwood's position of authority, not her size, recreated the trapped feeling, triggering the PTSD. In conclusion, Dr. Pipchick expressed that she did not believe appellant would have had the same response to the door shutting episode had she not been sexually abused as a child.

At the conclusion of the trial, the judge ruled appellant had failed to prove a compensable workplace incident. Relying on Goyden v. State of New Jersey, 256 N.J. Super. 438 (App. Div. 1991), aff'd, 128 N.J. 54 (1992), the judge found sexual abuse, not the office incident, was the source of appellant's disability. Although the incident may have triggered appellant's response, it was not objectively stressful, and thus, the claim was not compensable.

II.

We defer to a judge of compensation's expertise in assessing the disability of an employee, "so long as the findings are supported by articulated reasons grounded in the evidence" in the record. Perez v. Capitol Ornamental Specialties, Inc., 288 N.J. Super. 359, 367 (App. Div. 1996) (citing Lewicki v. New Jersey Art Foundry, 88 N.J. 75, 88-90 (1981)). The scope of appellate review extends only to "whether the findings made could reasonably have been reached on sufficient credible evidence presented in the record,

considering the proofs as a whole, with due regard to the opportunity of the one who heard the witnesses to judge of their credibility." Close v. Kordulak Bros., 44 N.J. 589, 599 (1965) (citation and internal quotation marks omitted). The burden of proof is on the petitioner to prove by a "preponderance of evidence" that the link between the place of employment and the disease is "probable," but "need not prove that the nexus between the disease and the place of employment is certain." Magaw v. Middletown Bd. of Educ., 323 N.J. Super. 1, 11 (App. Div.), certif. denied, 162 N.J. 485 (1999).

Appellant argues on appeal that the workers' compensation court erred in finding the incident was not compensable because the objective, credible medical evidence in the record demonstrated a causal relationship between petitioner's diagnosis and the incident in question. We disagree.

New Jersey workers' compensation law requires employee compensation for "personal injuries" caused "by any compensable occupational disease arising out of and in the course of his [or her] employment." N.J.S.A. 34:15-31. "Compensable occupational diseases" are defined as including "all diseases arising out of and in the course of employment, which are due in a material degree to causes and conditions which are or were characteristic

of or peculiar to a particular trade, occupation, process or place of employment." N.J.S.A. 34:15-31(a).

In Goyden, we set forth five objective material elements that must be met for a worker's mental condition to be compensable. Goyden, supra, 256 N.J. Super. at 445-46. The first four elements require: (1) the working conditions were objectively stressful, (2) "the believable evidence must support a finding that the worker reacted to them as stressful[,]" (3) "the objectively stressful working conditions must be 'peculiar' to the particular work place," (4) "there must be objective evidence supporting a medical opinion of the resulting psychiatric disability in addition to the 'bare statement of the patient.'" Ibid. (quoting Saunderlin v. E.I. Du Pont Co., 102 N.J. 402, 412 (1986)). The fifth element is the workplace exposure must have been a "material" cause of the disability. Id. at 458 (citing Williams v. W. Electric Co., 178 N.J. Super. 571, 585, certif. denied, 87 N.J. 380 (1981)).

In Goyden, we rejected a State employee's claim for workers' compensation for his depression and other mental ailments, which he argued arose from the stressful conditions of his job as supervisor of records in the office of the Clerk of the Superior Court. Id. at 458-59. Although all parties agreed Goyden was disabled from depression, both the stress and

condition itself were caused by Goyden's compulsive personality and childhood trauma, not his workplace experience. Ibid. Because there were no "'peculiar' conditions which would be stressful to those without such a predisposition[,]" we did not award workers' compensation. Id. at 459.

Here, appellant challenges the judge's finding that the incident was not "objectively stressful." The judge found credible Dr. Norwood's testimony that she was not actually blocking the door or threatening appellant. Furthermore, the judge found the size disparity between appellant and Dr. Norwood could not render the incident objectively stressful. These findings support the judge's determination that the incident was not objectively stressful.

Appellant next argues the evidence from the medical professionals confirms a causal relationship existed between diagnosis and incident, which transforms appellant's subjective statements into an objective professional opinion. Appellant contends a medical professional's opinion establishes "objectivity," pursuant to Goyden and cites to Dr. Pipchick's testimony confirming the incident was a triggering event for appellant's PTSD. According to appellant, the conclusions of both medical professions is "believable evidence" to support the

assertion appellant found the incident stressful, as required by Goyden. Id. at 445.

However, this argument misses the point of Goyden; for compensability, there must be "'peculiar' conditions that would be stressful to those without such a [psychological] predisposition." Id. at 45. We fail to find an objectively stressful event. Instead, there was a brief meeting in an office with the door closed, a normal event in a work-place environment. From an objective perspective, we find no basis for a reasonable belief of being threatened or trapped in such a situation.

The judge's decision was consistent with the holding of Williams, supra, 178 N.J Super. at 582, which denied compensation based on a "subjective reaction to the work itself[.]" Although Williams permits the petitioner to assert work exposure as a contributing factor to an injury, the office interaction before us was clearly not peculiar, but rather typical to the workplace. See id. at 585. This standard was clarified by Brunell v. Wildwood Crest Police Dept., 176 N.J. 225, 238 (2003), which held that "peculiar conditions" means "there is attached to that job a hazard that distinguishes it from the usual run of occupations." A normal office interaction does not fit this description.

Here, the judge found appellant's history of childhood sexual abuse was in fact the true source of her disability; this finding is similar to Goyden, where the court found the appellant's compulsive personality and childhood problems caused his unfortunate reactions to his work environment. Id. at 458-59. Here, the testimony of Dr. Pipchick yields a similar analysis; she clearly stated that without the childhood sexual abuse, appellant would not have had the disabling response to the incident. Even though the incident may have "triggered" the appellant's PTSD, it did not cause the disability, and thus there is no basis for compensation.

We conclude the judge's factual findings are supported by the record evidence and the judge applied the correct legal principles in reaching his ultimate decision. Accordingly, we discern no basis to reverse.

Affirmed.