

IN THE COURT OF APPEALS OF IOWA

No. 2-276 / 11-1499
Filed May 23, 2012

**VILLAGE CREDIT UNION
and CUMIS,**
Petitioners-Appellants,

vs.

DONNA BRYANT,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Michael D. Huppert,
Judge.

An employer appeals the district court decision affirming the ruling of the
workers' compensation commissioner awarding respondent temporary total
disability benefits for a mental/mental injury. **AFFIRMED.**

Stephen W. Spencer and Joseph M. Barron of Peddicord, Wharton,
Spencer, Hook, Barron & Wegman, L.L.P., West Des Moines, for appellants.

Jason D. Neifert of Neifert, Byrne & Ozga, P.C., West Des Moines, for
appellee.

Considered by Eisenhauer, C.J., Danilson, J., and Miller, S.J.*

*Senior Judge assigned by order pursuant to Iowa Code section 602.9206
(2011).

MILLER, S.J.**I. Background Facts & Proceedings**

Donna Bryant was employed as a teller/loan officer with Village Credit Union in Des Moines. Village is a small credit union that only had four employees in February 2007—Deborah Whittie, the CEO; Ruth Christensen, the loan manager; Holly Belieu, a teller primarily at the drive-up window; and Bryant, who mainly worked as a teller for people who came into the credit union.¹

On February 7, 2007, a man came into the credit union and asked for change. Bryant was helping him when he pointed a gun at her and asked for “[a]ll of it.” Bryant gave the man money and he left. She did not return to work for about one week. When Bryant returned to work she was told that if she felt uncomfortable with a customer, one of the other employees would help that customer. There were times when Bryant did ask one of the other employees to help a customer. Generally, Bryant was not left alone in the lobby area after the February 2007 robbery.

Bryant saw her physician, Dr. Joe Freund, on February 12, 2007. He noted the symptoms, “very fearful, crying, panic attacks, afraid of going out, not sleeping well.” He prescribed medication, and continued to treat her. Bryant began seeing a counselor, Stephanie McFarland. McFarland assessed Bryant as having a generalized anxiety disorder and post-traumatic stress disorder.

On April 24, 2007, a man entered the credit union who Bryant believed to be the robber from February 2007. She froze and Belieu approached him. The man swore at Bryant and Belieu and appeared to be agitated. Bryant and Belieu

¹ Village added a part-time employee, Leslie Fernandez, sometime in April 2007.

gave him money, and he left. Bryant did not see a gun on this occasion, but heard from Belieu that he had a gun. Bryant returned to work the next day, but shortly thereafter found herself alone in the credit union lobby. She overheard either Whittie or Christensen say, "it's a bad thing that happened, but we still have to go on," or words to that effect. Bryant became very angry, yelled at her co-workers, and then left. She did not return to work at the credit union. She officially terminated her employment on May 3, 2007.

Bryant continued to see Dr. Freund for anxiety and depression. She also continued to see McFarland for counseling. On July 27, 2007, she had an independent medical examination by Dr. C. Scott Jennisch, who gave the opinion Bryant suffered from post-traumatic stress disorder due to the two armed robberies. Dr. Jennisch stated Bryant should see a psychiatrist and continue with counseling services. He stated she could return to work, but not as a teller or in a similar type of occupation. On August 31, 2007, Dr. Jennisch gave the further opinion that Bryant could work someplace where she had scheduled appointments, rather than dealing with "random encounters with individuals off the street."

Bryant filed a petition seeking workers' compensation benefits on November 20, 2007. On December 21, 2007, she had an evaluation by Dr. Scott Eastin, a psychiatrist. He diagnosed her with post-traumatic stress disorder caused by the robberies. Dr. Eastin prescribed medication for Bryant. She has continued to see Dr. Eastin. On March 17, 2008, Dr. Eastin gave the opinion:

I believe she is able to return to many work environments at this time, although I believe putting her in an environment where

she is likely or expected to interact repeatedly with “random” individuals in public may exacerbate her symptoms at this point. Hopefully that will not be a permanent limitation.

On October 31, 2008, Dr. Eastin further stated that Bryant was nearing maximum benefit from medication.

In April 2008, Bryant was hired by Wells Fargo to work with mortgage brokers. This job did not involve working with the public, but instead she would have worked with mortgage brokers through the computer or the telephone. Bryant testified that she was in training for this job when she had a major anxiety attack. She quit the job after about nine days because she felt she could not perform the work.

On Dr. Eastin’s recommendation, on September 22, 2008, Bryant began counseling with Craig Butterfield for post-traumatic stress disorder. Butterfield noted that she became less anxious, and more positive, as treatment progressed. On November 17, 2008, Butterfield agreed with statements by Bryant’s attorney that Bryant “will continue to improve over the upcoming months and that she may eventually get to the point where she is experiencing very few residual effects of these traumatic events.” Butterfield also agreed that Bryant should permanently avoid working in a banking environment, but she had the ability to perform some work, “provided that it is in more of a sheltered environment where she is not expected to deal with members of the public.”

An administrative hearing was held on November 18, 2008. The record was left open to permit depositions to be taken of Dr. Eastin and Butterfield. Dr. Eastin testified he believed Bryant would be on a regimen of medications for the

indefinite future. He stated that as to medication management, she was nearing maximum benefit. Butterfield testified that Bryant should permanently avoid working in a banking environment, or other jobs involving cash transactions. He stated that otherwise she could return to full-time employment.

In a written decision, the deputy workers' compensation commissioner noted that the employer conceded Bryant had proven medically that her anxiety and post-traumatic stress disorder were caused by the two robberies. The deputy found Bryant had shown legal causation because she had been subjected to an event of a sudden, traumatic nature that caused unexpected or unusual stress. See *Brown v. Quik Trip Corp.*, 641 N.W.2d 725, 729 (Iowa 2002). In the alternative, the deputy found that even if Bryant had not shown legal causation under *Brown*, she had established that she had been subjected to a magnitude of stress that exceeded that of other employees at the credit union, and of the credit union industry in general. See *Dunlavey v. Econ. Fire & Cas. Co.*, 526 N.W.2d 845, 858 (Iowa 1995).

Proceeding to the issue of benefits, the deputy found:

The record suggests that claimant will have some sort of permanent problems with her mental injury. However, no expert has found claimant to be at maximum medical improvement (MMI) regarding her injury. No expert has opined claimant has a permanent impairment. The record indicates claimant has not been able to return to substantially similar work following the second robbery until the time of hearing.

Because there is little evidence claimant has a permanent impairment or has reached MMI, healing period benefits, under Iowa Code section 85.34(1) are not appropriate, at this point, in this case. The record indicates that from the time of the second robbery until the time of hearing, claimant is entitled to receive temporary total disability benefits.

The deputy determined Bryant was entitled to a running award of temporary total benefits under Iowa Code section 85.33(1) (2007) from April 24, 2007, through April 27, 2008, and from May 8, 2008, until Bryant was found not to be temporarily totally disabled. On intra-agency appeal, the workers' compensation commissioner affirmed and adopted the deputy's decision.

The employer filed a petition for judicial review. The district court affirmed the commissioner's finding that Bryant had shown legal causation because she had been subjected to an event of a sudden, traumatic nature from an unexpected or unusual cause. The court also determined that the commissioner correctly concluded that if Bryant had not established legal causation under *Brown*, there was sufficient evidence in the record to support a finding of legal causation under *Dunlavey*.

On the issue of whether temporary total disability benefits should have been awarded, the district court determined the employer had stipulated prior to the administrative hearing that the case would involve only temporary benefits under section 85.33, and not permanent benefits under section 85.34. The court concluded there was substantial evidence in the record to support a finding that Bryant was entitled to a running award of temporary total benefits. The employer appeals the decision of the district court.

II. Standard of Review

Our review of decisions of the workers' compensation commissioner is governed by Iowa Code chapter 17A. Iowa Code § 86.26. We review the commissioner's decision for the correction of errors at law, not de novo. *Finch v.*

Schneider Specialized Carriers, Inc., 700 N.W.2d 328, 330 (Iowa 2005). We review the district court's decision by applying the standards of section 17A.19 to the commissioner's decision to determine if our conclusions are the same as those reached by the district court. *Univ. of Iowa Hosps. & Clinics v. Waters*, 674 N.W.2d 92, 95 (Iowa 2004).

III. Legal Causation

An employee who receives a purely mental injury arising from the employee's work may receive workers' compensation benefits. *Asmus v. Waterloo Cmty. Sch. Dist.*, 722 N.W.2d 653, 656-67 (Iowa 2006). Generally, the employee must provide proof of both medical causation and legal causation. *Id.* at 657. "Medical causation simply requires a claimant to establish that the alleged mental condition was in fact caused by employment-related activities." *Id.* Medical causation requires a causal connection between the mental injury and the employment. *Blanchard v. Belle Plaine/Vinton Motor Supply Co.*, 596 N.W.2d 904, 908 (Iowa Ct. App. 1999).

Legal causation "presents a question of whether the policy of the law will extend responsibility to those consequences that have in fact been produced by the employment." *Asmus*, 722 N.W.2d at 657. In Iowa, an employee must "establish that the mental injury was caused by workplace stress of greater magnitude than the day-to-day mental stresses experienced by other workers employed in the same or similar jobs, regardless of their employer." *Dunlavey*, 526 N.W.2d at 858; see also *Humboldt Cmty. Sch. v. Fleming*, 603 N.W.2d 759, 763 (Iowa 1999); *Blanchard*, 596 N.W.2d at 909.

A different standard is applied in those situations in which the mental injury can be readily traced to a specific event. *Asmus*, 722 N.W.2d at 657 n.1. “When a claim is based on a manifest happening of a sudden traumatic nature from an unexpected cause or unusual strain, the legal-causation test is met irrespective of the absence of similar stress on other employees.” *Brown*, 641 N.W.2d at 729. An employee may satisfy the requirement for establishing legal causation by showing the employee was subjected to events which were sudden, traumatic, and unexpected. *Id.*

In this case, the parties agreed that Bryant had sufficiently established medical causation for her mental injury. The employer, however, disputed whether she had proven legal causation. The application of the legal causation standard to a particular setting is a question of fact to be determined by the commissioner. *Asmus*, 722 N.W.2d at 657. On judicial review, we look to the record to determine if the commissioner’s decision is supported by substantial evidence. *Humboldt*, 603 N.W.2d at 764-65.

On the issue of substantial evidence, the Iowa Supreme Court has stated:

Evidence is substantial for purposes of reviewing the decision of an administrative agency when a reasonable person could accept it as adequate to reach the same findings. The fact that two inconsistent conclusions may be drawn from the same evidence does not prevent the agency’s findings from being supported by substantial evidence.

Asmus, 722 N.W.2d at 657 (citations omitted).

In *Brown*, 641 N.W.2d at 726, an employee working at a convenience store observed a shooting and had to clean up the blood. Six days later, the employee was the victim of a robbery where the offender threatened to shoot

him. *Brown*, 641 N.W.2d at 726. After these events the employee developed post-traumatic stress disorder, attributable to the incidents. *Id.* The Iowa Supreme Court found, “[t]hese events were sudden, traumatic, and unexpected,” and concluded the employee had met the legal causation test. *Id.* at 729.

We concur in the commissioner’s conclusion that the two robberies in the present case satisfied the test found in *Brown*. Bryant was subjected to two incidents which were of a sudden, traumatic nature, and were from an unexpected cause—an armed bank robber. In the first robbery, she observed a gun. In the second robbery, the robber was angry and excited. We conclude there is substantial evidence in the record to support a finding that Bryant established legal causation for her claim of mental injury. Because we are able to affirm the district court and the commissioner on the issue of legal causation under *Brown*, we will not discuss the issue of legal causation under *Dunlavey*.

IV. Temporary Total Disability Benefits

The employer contends the commissioner erred by awarding Bryant temporary total disability benefits under section 85.33(1), rather than healing period benefits under section 85.34(1). The employer asserts there is evidence Bryant has a permanent impairment, in that she will never be able to work in a bank again, or do work dealing with random members of the public. It claims she reached maximum medical improvement shortly after the April 2007 robbery because she was capable of returning to full-time employment, albeit at a different job. In the alternative, the employer claims Bryant reached maximum medical improvement on March 17, 2008, when Dr. Eastin stated, “I believe she

is able to return to many work environments at this time” The employer contends that significant improvement of Bryant’s condition is not anticipated.

The employer also claims the district court erred in finding there was a stipulation as to this matter. At the beginning of the administrative hearing, the deputy workers’ compensation commissioner stated:

Although it is circled as “disputed” in this particular case that the alleged injury is a cause of permanent disability, I’m going to cross that out with the parties’ okay, because as I understand it, Claimant is contending that she—well, that *she asserts and seeks a running award of temporary disability benefits* and, as a result, I really don’t have to make any sort of finding regarding whether or not the injury is a cause of permanent disability as, as I understand it, Claimant has not reached maximum medical improvement.

(Emphasis added.) The attorneys for the employer and Bryant agreed with this statement. The district court took this statement as a stipulation that Bryant had not reached maximum medical improvement.

On appeal, the employer asserts that it was merely agreeing that Bryant was seeking a running award of temporary disability benefits, and was not agreeing that she had not reached maximum medical improvement and was entitled to temporary disability benefits under section 85.33, rather than having sustained a permanent partial disability and was entitled to healing period benefits under section 85.34. We note that the deputy who presided at the administrative hearing did not treat the attorneys’ agreement with his statement as a stipulation regarding temporary disability benefits. The deputy carefully considered which type of benefits would be appropriate. After discussing healing period benefits and temporary disability benefits, the deputy concluded temporary disability benefits were appropriate in this case. We further note that

Bryant's arguments on this issue in her appellate brief are not based on a claim there was a stipulation as to the matters concerning which the employer asserts there was no stipulation. Therefore, we will not consider the employer's attorney's agreement with the deputy's statement as a stipulation on the matters as to which there exists a dispute concerning the extent of the parties' stipulation.

Temporary disability benefits are governed by section 85.33, while healing period and permanent disability benefits are governed by section 85.34. See *Mannes v. Fleetguard, Inc.*, 770 N.W.2d 826, 830 (Iowa 2009). Generally, "[t]emporary total disability compensation benefits and healing-period compensation benefits refer to the same condition." *Clark v. Vicorp Rest., Inc.*, 696 N.W.2d 596, 604 (Iowa 2005). The purpose of both of these benefits is to "partially reimburse the employee for loss of earnings while the employee is recuperating from the condition the employee has suffered." *Id.* "[A]n award for healing-period benefits or total temporary disability benefits are only temporary benefits and do not depend on a finding of a permanent impairment." *Bell Bros. Heating & Air Conditioning v. Gwinn*, 779 N.W.2d 193, 200 (Iowa 2010).

The type of benefit that is appropriate in a given situation depends upon whether the employee has a permanent disability. *Clark*, 696 N.W.2d at 604. "A person with a 'permanent disability' can never return to the same physical condition he or she had prior to the injury." *Armstrong Tire & Rubber Co. v. Kubli*, 312 N.W.2d 60, 65 (Iowa Ct. App. 1981). "Ordinarily, the determination of what label to place on temporary benefits must await the determination of whether some degree of permanent disability has been sustained by the

claimant.” *Pitzer v. Rowley Interstate*, 507 N.W.2d 389, 391 n.1 (Iowa 1993). Whether an employee has a permanent disability cannot be determined until the employee has reached maximum medical improvement. *Bell Bros.*, 779 N.W.2d at 201. Stabilization of the employee’s condition “is the event that allows a physician to make the determination that a particular medical condition is permanent.” *Id.* at 200.

If an employee has a permanent disability, “the payments made prior to payment for permanency are healing period benefits.” *Clark*, 696 N.W.2d at 604 (citation omitted). Healing period benefits are payable

until the employee has returned to work or it is medically indicated that significant improvement from the injury is not anticipated or until the employee is medically capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of injury, whichever occurs first.

Iowa Code § 85.34(1); *Broadlawns Med. Ctr. v. Sanders*, 792 N.W.2d 302, 306-07 (Iowa 2010). Thus, healing period benefits run until the employee returns to work, is able to return to similar employment, or recuperates from the injury. *Pitzer*, 507 N.W.2d at 391. “The healing period may be characterized as that period during which there is a reasonable expectation of improvement of the disabling condition, ‘and ends when maximum medical improvement is reached.’” *Armstrong Tire*, 312 N.W.2d at 65.

On the other hand, “[w]hen an injury does not result in a permanent disability, the payments made are called ‘temporary total disability benefits.’” *Clark*, 696 N.W.2d at 604 (citation omitted). “Temporary benefits compensate the employee for lost wages until he or she is able to return to work, whereas

permanent benefits compensate either a disability to a scheduled member or a loss in earning capacity (industrial disability).” *Mannes*, 770 N.W.2d at 830.

The commissioner determined Bryant had not yet reached maximum medical improvement. Maximum medical improvement is related to “stabilization of the condition or at least a finding that the condition is ‘not likely to remit in the future despite medical treatment.’” *Bell Bros.*, 779 N.W.2d at 200. Prior to the time maximum medical improvement has been achieved, only temporary benefits are available. *Id.* at 201.

We conclude there is substantial evidence in the record to support the commissioner’s determination that Bryant had not achieved maximum medical improvement at the time of the administrative hearing. In Dr. Eastin’s deposition taken on January 19, 2009, he stated that regarding medication management, Bryant was nearing maximum benefit. Therefore, at that time she had not yet reached maximum medical improvement. In Butterfield’s deposition, taken on January 6, 2009, he testified that his opinion was not “a whole lot different” from his opinion in a letter he signed on November 17, 2008. In the letter he stated, “she will continue to improve over the upcoming months and that she may eventually get to the point where she is experiencing very few residual effects of these traumatic events.” Butterfield also stated that Bryant should permanently avoid working in a banking environment, but if she continued treatment with Dr. Eastin and counseling, “there is every reason to believe that Ms. Bryant will make nearly a complete recovery.”

Because Bryant had not yet reached maximum medical improvement, it would be premature to attempt to assess whether she had a permanent disability. See *id.* (noting “a claim for permanent disability benefits is not ripe until maximum medical improvement has been achieved”). For this reason, we find no error in the commissioner’s determination, “healing period benefits under Iowa Code section 85.34(1) are not appropriate, at this point, in this case.”

In the alternative, the employer claims an award of temporary total disability benefits to Bryant should have been limited because she could have returned to work with accommodations. Under section 85.33(1) temporary total disability benefits are payable, “until the employee has returned to work or is medically capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of injury, whichever occurs first.” Bryant had not returned to work at the time of the administrative hearing. Furthermore, there was substantial evidence in the record to show she was not yet capable of returning to employment that was substantially similar to her employment at the credit union. In the deposition taken of Dr. Eastin in January 2009, he testified that as of the hearing date, Bryant was not capable of returning to working in an environment where she was exposed to random members of the public, like she had been in her position as a bank teller. Butterfield testified that as of the hearing date, Bryant could not work as a bank teller. She also could not work in a job with access to considerable amounts of cash, or in a job where she had repeated interaction with the public. We

conclude Bryant was properly given a running award of temporary total disability benefits under section 85.33(1).

We affirm the decision of the commissioner and the district court.

AFFIRMED.