VIRGINIA:
IN THE WORKERS' COMPENSATION COMMISSION

Opinion by NEWMAN
Commissioner

May 17, 2018

ROYCE MUNKER v. CITY OF NORFOLK
CITY OF NORFOLK, Insurance Carrier
SEDGWICK CLAIMS MANAGEMENT SERVICES, INC, Claim Administrator
Jurisdiction Claim No. VA00001035404
Claim Administrator File No. B585300513000101853
Date of Injury February 3, 2015

Adam B. Shall, Esquire
for the Claimant.

Heather A. Mullen, Esquire
for the Defendant.

REVIEW by Commissioner Marshall, Commissioner Newman, and Commissioner Rapaport in Richmond, Virginia on March 9, 2018.

On December 13, 2016, we held that the claimant, a firefighter paramedic, proved his post-traumatic stress disorder (PTSD) qualified as a compensable occupational disease under Virginia Code § 65.2-400. On January 9, 2018, the Court of Appeals of Virginia reversed the award and remanded for a determination whether, in light of the definition of employment in Pocahontas Fuel Co. v. Godbey, 192 Va. 845, 66 S.E.2d 859 (1951), trauma the claimant experienced during his post-Hurricane Katrina relief efforts in New Orleans was "exposure outside of the employment" under Virginia Code § 65.2-400(B).

I. Material Proceedings

We recite the evidence only as necessary to address the issue on remand. The claimant worked for the City of Norfolk as a firefighter paramedic, a job that exposed him to numerous

traumatic events. During the period of his employment, but not as an employee of the City of Norfolk, the claimant twice traveled to New Orleans, Louisiana, to work as a paramedic, providing disaster relief to victims of Hurricane Katrina. The claimant testified that while in New Orleans, he was exposed to traumatic events, observing coffins floating in the water, and once being threatened by a looter with a gun.

The claimant filed a claim on October 15, 2015, alleging work-related PTSD for which he sought temporary total disability and medical benefits. In our December 13, 2016 Opinion, we found the claimant proved he suffered from the compensable occupational disease of PTSD. We reasoned that his medical providers:

> [C]learly pointed to the traumatic events he experienced during his eighteen-year career as a firefighter paramedic, a career that included two trips to participate in Hurricane Katrina relief. We note that but for the claimant's training as a paramedic, he would not have been called to serve in that rescue effort, and the traumas he experienced there were "intimately related to his service-connected activities." [Fairfax Cty. Fire & Rescue Dep't v. Mottram, 263 Va. 365, 375, 559 S.E.2d 698, 703 (2002).] Moreover, Ms. Widgeon-Hammonds' notes and testimony reference numerous specific work-related events, all of which occurred in the course of the claimant's work as a firefighter paramedic, and all of which contributed to his diagnosis of PTSD. Both Ms. Widgeon-Hammond and Dr Rhodes opined that PTSD is a natural risk of employment of a firefighter and paramedic. Thus, the nature of the claimant's occupation and the relationship between that occupation and the specific disease is clear.

(Op. 10.)

In finding the claimant's PTSD was an occupational disease under the Virginia Workers' Compensation Act, we considered both the traumas the claimant experienced during his career as a firefighter paramedic for the city as well as those he experienced during his relief work. Though his time in New Orleans was not during the course of his employment, we held that "but for the

claimant's training as a paramedic, he would not have been called to serve in [the post-Hurricane Katrina] rescue effort . . . ." (Op. 10.)

The employer appealed to the Court of Appeals of Virginia, arguing that "the Commission erred in determining that claimant's work in post-Hurricane Katrina relief efforts supported the finding that his PTSD is an occupational disease because the evidence demonstrated that claimant was not working for employer during those relief efforts." City of Norfolk v. Munker, No. 1058-17-1 (Va. Ct. App., Jan. 9, 2018). Consequently, the employer contended that exposures outside the claimant's employment necessarily contributed to his PTSD, thereby disqualifying it as an occupational disease. The Court of Appeals remanded to the Commission to address whether under the Supreme Court of Virginia's guidance in Godbey, the claimant's trauma experienced in his post-Hurricane Katrina relief efforts was "exposure outside of the employment" under Code § 65.2-400(B)."[1]

II. Findings of Fact and Conclusions of Law

We understand that this remand was mandated by our failure to adequately address the factual question of whether the traumatic events to which the claimant was exposed in

[1] Code § 65.2-400(B) provides, "A disease shall be deemed to arise out of the employment only if there is apparent to the rational mind, upon consideration of all the circumstances:

1. A direct causal connection between the conditions under which work is performed and the occupational disease;
2. It can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment;
3. It can be fairly traced to the employment as the proximate cause;
4. It is neither a disease to which an employee may have had substantial exposure outside of the employment, nor any condition of the neck, back or spinal column;
5. It is incidental to the character of the business and not independent of the relation of employer and employee; and
6. It had its origin in a risk connected with the employment and flowed from that source as a natural consequence, though it need not have been foreseen or expected before its contraction.

New Orleans were "exposure outside of the employment." An affirmative answer to that question would necessarily disqualify the claimant's PTSD as an occupational disease under subsection four of Virginia Code § 65.2-400(B).

Though the evidence establishes that the claimant was not working pursuant to his contract of employment while in New Orleans, this fact does not dictate whether those traumatic events occurred "outside of the employment." Rather, "employment" for the purposes of Virginia Code § 65.2-400(B) was defined by the Supreme Court in Godbey. Therein, the Court cited with approval the Commission's Opinion finding "[t]he word 'employment' as used in the … statute[2] is not used as it is elsewhere in the Act to describe the relation between employer and employee." 192 Va. at 852, 66 S.E.2d at 863 (citations omitted). Rather, employment in Virginia Code § 65.2-400(B), "refers to the work or process in which the employee has been engaged and not to his contract with an employer to engage in it." Id.

We understand Godbey to require us to consider *what* the claimant was doing when in New Orleans, not *for whom* he was doing it. Addressing the question in this light, we find the evidence compelling that the claimant was engaged in the same employment as that he performs for the employer. The claimant testified that when he worked for the city he "went on hazmat teams and technical rescue teams." (Tr. 23.) As a firefighter paramedic, he "would dress out, put on our fire gear, fight fires, [and] investigate hazardous situations." (Tr. 23.) As a paramedic, he would be in charge of an ambulance and "also go out and help the sick and injured." (Tr. 23.) He estimated that during his career, he went on eight to fifteen calls per twenty-four-hour shift.

[2] The Court was referring to Virginia Code § 65-42, the predecessor to Virginia Code § 65.2-400(B).

The claimant testified at hearing that during his "post-hurricane Katrina deployments" he was "doing EMS type work" and "paramedic work." (Tr. 56.) He worked in logistics, communications, and search and rescue, the same work he performed in his job as a paramedic for the employer. The claimant described two specific traumatic incidents that he shared with his therapist. During one incident, he was working in a truck on a bridge attempting to communicate with other members of the rescue effort. The other incident involved a search and rescue operation. Thus, during both of these incidents, the claimant was in the field performing the tasks necessary to be part of a rescue team.

We find instructive cases dealing with the issue of substantially similar employment for purposes of calculating a claimant's pre-injury average weekly wage. "In every situation where the commission is asked to determine whether two or more jobs are substantially similar, the commission must consider not only the particular job duties of each job, but also the general nature or type of employment of the two jobs." Creedle Sales Co. v. Edmonds, 24 Va. App. 24, 28, 480 S.E.2d 123, 125 (1997). Thus, "if the two jobs are of the same general class or nature, the wages may be combined even though all the duties of each job are not identical." Id. at 27, 480 S.E.2d at 125 (citing County of Frederick Fire & Rescue v. Dodson, 20 Va. App. 440, 444, 457 S.E.2d 783, 785 (1995). In Dodson, the Court of Appeals noted that:

> [a] straight quantitative approach, weighing the like duties against the distinct duties of two employments to reach a decision, will not always be determinative of the issue. Where, in cases like this one, all of a claimant's duties and skills in one job are utilized in the other job, which has a wider scope of employment, the general class of employment approach, focusing on the primary mission of an employee in both jobs, provides a more rational analysis for determining whether two employments are so related as to conclude they are substantially similar.

20 Va. App. at 444-45, 457 S.E.2d at 785. In agreeing that the claimant's two jobs were substantially similar, the Court noted that the claimant's jobs as an emergency medical technician and as a firefighter-paramedic were of the same general class, i.e., emergency/rescue, and that the claimant's skills as an EMT were utilized in her job as a firefighter paramedic. Similarly, in this case, the claimant's job with the employer as a firefighter paramedic and his relief work with FEMA involved emergency/rescue, and he used his skills as a firefighter paramedic in his job providing post-hurricane relief. Consequently, we answer the question posed by the Court of Appeals as follows: we find the claimant's "service post-Hurricane Katrina was 'the work or process' that he had 'been engaged' in, namely, labor as a firefighter paramedic."Munker, No. 1058-17-1. Therefore, his exposure to traumatic events while working in New Orleans was not exposure outside of his employment.

III. Conclusion

Accordingly, we find the claimant has proven he suffered from the occupational disease of PTSD. We have reviewed the parties Stipulated Order entered on June 2, 2017. Consistent therewith, an Award is entered for the payment of temporary total disability benefits at a rate of $934.78 beginning May 7, 2017, and continuing based upon a pre-injury average weekly wage of $1,402.17, and providing a credit for voluntary payments made pursuant to Virginia Code § 65.2-520.

Interest is payable on the Award pursuant to Virginia Code § 65.2-707.

An attorney's fee in the amount of $9,700 is hereby awarded to Adam B. Shall, for services rendered the claimant, to be deducted from accrued compensation.

This matter is hereby removed from the review docket.

APPEAL

You may appeal this decision to the Court of Appeals of Virginia by filing a Notice of Appeal with the Commission and a copy of the Notice of Appeal with the Court of Appeals of Virginia within 30 days of the date of this Opinion. You may obtain additional information concerning appeal requirements from the Clerks' Offices of the Commission and the Court of Appeals of Virginia.