IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Cheryl Rusko,	:	
Petitioner	:	
	:	
v.	:	No. 273 C.D. 2013
	:	SUBMITTED: June 7, 2013
Workers' Compensation Appeal Board (Pouvoir Co.),	:	
Respondent	:	

BEFORE: **HONORABLE BONNIE BRIGANCE LEADBETTER,** Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE ANNE E. COVEY, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE LEADBETTER **FILED: July 19, 2013**

Claimant, Cheryl Rusko, petitions for review of an order of the Workers' Compensation Appeal Board (Board) that affirmed the decision of the Workers' Compensation Judge (WCJ) denying her claim petition for failure to establish that she gave Employer Pouvoir Co., timely and proper notice of her alleged work injury pursuant to Section 311 of the Workers' Compensation Act (Act).[1] We affirm.

Employed as a bookkeeper for Pouvoir Co., and as a personal assistant for the boss, Dr. David Alan, Claimant worked for Employer from May 2005 to May 2009. In August 2010, she filed a claim petition alleging that she

[1] Act of June 2, 1915, P.L. 736, *as amended*, 77 P.S. § 631.

sustained a psychological work injury on May 4, 2009, consisting of "anxiety, stress, depression with accompanying physical manifestations, *e.g.* sleeplessness, nausea." Claim Petition, Reproduced Record (R.R.) at 1a. Averring that she gave notice of the injury to Employer on the alleged injury date via personal notification to the office manager, Claimant sought total disability benefits from that date and into the future. Employer filed a timely answer, denying the material allegations.

In August 2011, the WCJ granted the parties' request that the matter be bifurcated for separate consideration of the issue of notice. Despite finding Claimant's testimony to be credible, the WCJ concluded that she failed to establish that she gave Employer timely and proper notice of an alleged work-related psychic injury as a result of abnormal working conditions when she told the office manager that she could no longer stand working for Dr. Alan. Instead, the WCJ concluded that Employer first received notice of Claimant's claim of psychic injury when she filed her claim petition in August 2010, over a year after she stopped working. The Board affirmed and Claimant's timely petition for review to this Court followed.

In pertinent part, Section 311 of the Act provides as follows:

> Unless the employer shall have knowledge of the occurrence of the injury, or unless the employe … shall give notice thereof to the employer within twenty-one days after the injury, no compensation shall be due until such notice be given, and unless such notice be given within one hundred and twenty days after the occurrence of the injury, no compensation shall be allowed.

Act of June 2, 1915, P.L. 736, *as amended*, 77 P.S. § 631. Further, pursuant to Section 312 of the Act, the notice must inform the employer that the claimant "received an injury, described in ordinary language, in the course of his employment on or about a specified time, at or near a place specified." 77 P.S. §

632. Whether a claimant has complied with the notice requirements is a question of fact for the WCJ. *Hershgordon v. Workers' Comp. Appeal Bd. (Pepboys)*, 14 A.3d 922, 925 (Pa. Cmwlth. 2011).

On appeal, Claimant argues that the WCJ erred in determining that she failed to give notice to Employer, noting that the record indicates that she had complained to the office manager about psychological stressors on previous occasions, such that the manager either knew or should have known of her psychic work injury from prior conversations. In support, she cites *Gentex Corp. v. Workers' Compensation Appeal Board (Morack)*, 611 Pa. 38, 23 A.3d 528 (2011) and *Kocher's IGA v. Workers' Compensation Appeal Board (Dietrich)*, 729 A.2d 145 (Pa. Cmwlth. 1999). In *Morack*, the Supreme Court determined that what constitutes adequate notice is a fact-intensive inquiry, taking into account the totality of the circumstances. 611 Pa. at 53, 23 A.3d at 537. The Court further stated that, in determining whether adequate notice was provided, multiple communications between an employee and an employer may be considered and that an employee need not give notice in a single communication. *Id*. In addition, it noted that the context of the communications is relevant in determining whether adequate notice was given. *Id*. at 52, 23 A.3d at 536. In *Dietrich*, this Court found that the employee provided sufficient notice because, "although claimant was not sure if her injury was work-related, she nevertheless notified employer of the injury and the possibility that it was work-related around the time of the injury." 729 A.2d at 149.

Here, Claimant maintains that she gave notice to Employer when she made the following declaration to the office manager on her last day of employment: "I'm done. This time I'm really done." Claimant's February 1, 2011

Deposition, Notes of Testimony (N.T.) at 17; R.R. at 27a. Providing context for her statement, Claimant testified that she went to the office manager after Dr. Alan's request that she change payroll records and her subsequent refusal. *Id*. at 16-17; R.R. 26-27a. The WCJ determined that Claimant's pronouncement was insufficient to constitute notice, 1) despite having found Claimant's testimony to be credible that she advised the office manager that she was done because Dr. Alan had made that day and her life a living hell; and 2) despite having acknowledged that she had complained about stress anxiety and work load during her employment. Finding of Fact No. 6(d). The WCJ did not conclude that these background factors transformed Claimant's simple pronouncement into notice of an alleged work-related psychic injury due to abnormal working conditions because there was nothing in her testimony to that effect. Instead, he determined that, "[a]t best, the claimant's statement can be interpreted as her stating to [the office manager] that she was leaving work because she could no longer stand working with Dr. Alan …." Finding of Fact No. 8. We agree.

Claimant's testimony was neither adequate to establish that she gave Employer notice of an alleged work-related psychic injury via her last-day declaration to the office manager nor sufficient to prove that Employer should have known of such an injury. Simply giving notice that one can no longer tolerate working with someone or that the person creates a stressful work environment is not the equivalent of giving notice that one's job has caused a work-related psychic injury. In addition, a claimant must inform an employer of an *injury* within 120 days, not merely notice of an *incident*. *Rawling v. Workmen's Comp. Appeal Bd. (Pittsburgh Bd. of Educ.)*, 414 A.2d 447, 449 (Pa. Cmwlth. 1980). As the record reflects, the context of the communications between Claimant and the office

manager indicates that Claimant advised the office manager that this latest incident with Dr. Alan was the proverbial last straw for her. Claimant did not indicate to the office manager that she was leaving due to an injury, such as the "anxiety, stress, depression with accompanying physical manifestations, *e.g.* sleeplessness, nausea" that she alleged in her claim petition. Claim Petition, R.R. at 1a.

Accordingly, we affirm.

BONNIE BRIGANCE LEADBETTER,
Judge

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O R D E R

AND NOW, this 19th day of July, 2013, the order of the Workers' Compensation Appeal Board is hereby AFFIRMED.

BONNIE BRIGANCE LEADBETTER,
Judge