

immediately notified SEPTA police, the Philadelphia police and her supervisor, Darryl Wade. Following the assault, Petitioner became fearful of returning to work and repeatedly requested that Employer transfer her. Employer terminated Petitioner when she exhausted her sick time.

As of October 3, 2007, Petitioner had been employed by SEPTA for 15 years, during which she was assaulted twice before. On October 11, 1994, Petitioner was working as a bus driver when she was robbed at gun point. Following the robbery, Petitioner became fearful of driving a bus and transferred to a cashier's position. On January 16, 1996, while working as a cashier, Petitioner was slashed with a knife across the back of her leg during an attempted robbery. Following the knife attack, Petitioner was transferred to a temporary position that did not require contact with the public. At the time of the 2007 assault, Petitioner had been working at the Frankford Transportation Center for approximately one month. Petitioner had chosen to work at this location because she did not perceive it to be a dangerous location.

Following the 2007 assault, Petitioner experienced vomiting and anxiety attacks. Petitioner saw her primary care physician, Dr. Eisner, who prescribed medication to calm Petitioner's nausea and vomiting. Dr. Eisner referred Petitioner to Dr. Shan, a psychiatrist, and Dr. Kristine Paulat, a psychologist. Dr. Shan prescribed Lexapro, an anti depressant and Xanax, an anti anxiety medication. Dr. Paulat treats Petitioner through talk therapy. Dr. Paulat diagnosed Petitioner with post traumatic stress disorder and panic disorder. Dr. Wolfram Reiger examined Petitioner at Employer's request. Dr. Reiger found that as a result of the 2007 assault, Petitioner sustained chronic post traumatic stress disorder.

Petitioner filed a claim petition on or about December 20, 2007, alleging that she sustained an injury in the course of her employment with SEPTA. Petitioner alleged that on October 3, 2007, she sustained work-related post traumatic stress disorder and panic disorder. Employer filed a Notice of Compensation Denial (NCD). The WCJ granted Petitioner's claim petition finding that Petitioner sustained her injuries due to abnormal working conditions.

The WCJ credited Petitioner's testimony and concluded that she sustained a work-related injury consistent with post traumatic stress disorder and panic disorder. WCJ Decision, Finding of Fact No. 7. The WCJ also credited the testimony of both Dr. Paulat and Dr. Reiger, but gave more weight to Dr. Paulat's testimony. *Id.* at No. 8. The WCJ found that Petitioner's injuries resulted from abnormal working conditions because it is abnormal for cashiers to be singled out and targeted while on their way into work. *Id.* at No. 9. In addition, the WCJ found that Employer failed to present any evidence that cashiers are at risk for robbery and theft and any evidence of the frequency of violent incidents in its industry. *Id.* at No. 10.

The Board reversed the WCJ's award of workers' compensation benefits, concluding that Petitioner had failed to demonstrate that her injuries resulted from abnormal working conditions. The Board determined that the 2007 assault was not an abnormal working condition because Petitioner had been assaulted two times before over the course of 15 years on the job. The Board further determined that the October 2007 assault did not constitute abnormal working conditions, but rather that such incidents were to be expected in Petitioner's line of work.

Petitioner maintains that the Board erred in reversing the WCJ's award of benefits for two reasons. First, Petitioner asserts that a life-threatening assault upon a cashier constitutes extraordinary and abnormal working conditions. Alternately, Petitioner asserts that the 2007 assault was a physical stimulus resulting in a mental injury.

Petitioner contends that the Board erred in finding that the 2007 assault did not constitute abnormal working conditions. When an employee alleges a psychiatric injury, she must prove that she was exposed to abnormal working conditions and that her psychological problems are not a subjective reaction to normal working conditions. *Babich v. Workers' Comp. Appeal Bd. (CPA Dep't of Corrections)*, 922 A.2d 57, 63 (Pa. Cmwlth. 2007). The burden of showing that a mental injury is not simply a subjective reaction to normal working conditions can be met by establishing "either (1) that actual extraordinary events occurred at work, which can be pinpointed in time, causing the trauma experienced by him; or (2) that abnormal working conditions over a longer period of time caused the mental injury." *U.S. Airways v. Workers' Comp. Appeal Bd. (Long)*, 756 A.2d 96, 101 (Pa. Cmwlth. 2000). "In classifying working conditions as normal or abnormal, we do not employ a bright line test or a generalized standard, but instead, consider the specific work environment of the claimant."¹ *Babich*, 922 A.2d at 63; *U.S. Airways*, 756 A.2d at 101 (because psychiatric injury cases are highly fact-sensitive, "in determining whether actual working conditions are abnormal, they must be considered in the context of the specific employment.").

¹ Whether a claimant has been subjected to abnormal working conditions so as to permit the claimant to recover benefits for purely psychiatric disability is a question of law subject to our plenary review. *US Airways*, 756 A.2d at 101.

In this case, Petitioner asserts that the 2007 assault is the abnormal working condition that precipitated her post traumatic stress diagnosis. As noted above, mental injury cases are highly fact sensitive and a finding that an employee's working conditions are abnormal requires that the WCJ consider the actual working conditions in the context of the specific employment. The WCJ properly considered the circumstances of Petitioner's working conditions finding that,

[w]hile other SEPTA cashiers may expect to have to confront individuals, who fail to pay fares or attempt to rob them, from the confines of their booth, and with SEPTA police in the vicinity, the Judge finds it abnormal for other cashiers in her position to expect to be singled out and targeted while on their way into work.

WCJ Decision, Finding of Fact No. 9. Further, the WCJ noted that Employer did not provide any testimony regarding the frequency of attacks upon its cashiers or employees in similar positions. *See McLaurin v. Workers' Compensation Appeal Bd. (SEPTA)*, 980 A.2d 186 (Pa. Cmwlth. 2009) (WCJ properly denied workers' compensation benefits where employer provided testimony and submitted incident reports regarding the frequency of violent assaults upon bus operators.)

The Board, however, erred in its analysis because it failed to determine whether the 2007 assault was abnormal in relation to Petitioner's current work context at that time, specifically, whether violent assaults are common occurrence for cashiers working at the Frankford Transportation Center. Rather, the Board relied upon two prior violent incidents involving Petitioner as evidence that a position as a SEPTA cashier is inherently dangerous. The first violent incident involving Petitioner occurred when she was a bus driver, not a cashier. The second incident, an attempted robbery and knife attack upon Petitioner,

occurred while she was working as a cashier, but in a different location than the 2007 assault. In addition, more than a decade separated the knife attack and the 2007 assault. The 2007 assault did not even occur while Petitioner was engaged in her duties as a cashier, but rather, Petitioner was assaulted while she was walking across the employee parking lot. The fact that Petitioner was attacked three times over the course of 15 years, while working in three separate locations and in two different positions, standing alone, is insufficient to establish that violent assaults are normal working conditions for SEPTA cashiers.²

Accordingly, we reverse the order of the Board.

BONNIE BRIGANCE LEADBETTER,
President Judge

² Because we have found that Petitioner experienced abnormal working conditions, we need not determine whether the 2007 assault constitutes a physical stimulus leading to mental injury.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Dena Williams, :
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 Petitioner :
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 v. : No. 2212 C.D. 2009
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 Workers' Compensation Appeal :
 Board (SEPTA and CompServices, :
 Inc.), :
 :
 Respondents :

ORDER

AND NOW, this 16th day of June, 2010, the order of the Workers' Compensation Appeal Board in the above-captioned matter is hereby REVERSED.

BONNIE BRIGANCE LEADBETTER,
President Judge