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**McGrath v. State, Dep't of Pub. Safety, 123 Nev. Adv. Op. No. 15
(June 7, 2007)¹**

EMPLOYMENT LAW – WORKERS' COMPENSATION

Summary

Appeal from a district court order denying a petition for judicial review of the appeals officer's decision denying compensation, in a worker's compensation case. The Nevada Supreme Court affirmed the district court's order.

Disposition/Outcome

Affirmed. When a claimant alleges that a stress-related injury was caused by a gradual escalation of stress over a period of time, the injury is not compensable under Nevada workers' compensation law. Rather, NRS 616C.180,² indicates that a worker's compensation claimant must establish a causal relationship between her mental injuries and a discrete, identifiable, traumatic event in a time of danger.

Factual and Procedural History

Appellant Lori McGrath was an employee of respondent, the Nevada Highway Patrol (NHP), and the founder of NHP's K-9 program. McGrath alleges that she was the target of a campaign of harassment and abuse orchestrated by coworkers and superior officers. McGrath's specific allegations, while not directly relevant to this appeal, include the cancellation of the K-9 program in retaliation for McGrath's decision to file a complaint with the Equal Employment

¹ By Jeremy K. Cooper

² NRS 616C.180 specifies the circumstances under which injuries caused by job-related stress are compensable as follows:

1. Except as otherwise provided in this section, an injury or disease sustained by an employee that is caused by stress is compensable pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS if it arose out of and in the course of his employment.
2. Any ailment or disorder caused by any gradual mental stimulus, and any death or disability ensuing therefrom, shall be deemed not to be an injury or disease arising out of and in the course of employment.
3. An injury or disease caused by stress shall be deemed to arise out of and in the course of employment only if the employee proves by clear and convincing medical or psychiatric evidence that:
 - (a) He has a mental injury caused by extreme stress in time of danger;
 - (b) The primary cause of the injury was an event that arose out of and during the course of his employment; and
 - (c) The stress was not caused by his layoff, the termination of his employment or any disciplinary action taken against him.

Opportunity Commission, inappropriate sexual advances, and a series of groundless internal affairs investigations initiated by coworkers.

In December 2002, McGrath was diagnosed with severe stress-related mental and physical injuries. She suffered physical symptoms such as chest pains, exhaustion, weight gain despite loss of appetite, gastrointestinal issues, and ulcerations in her mouth and throat. McGrath and her physicians attributed these symptoms to an accumulation of stress from events occurring during August 2001 and December 2002. However, neither McGrath nor her physicians identified a distinct occurrence giving rise to the stress. Because of these stress-related injuries, McGrath states she was unable to resume her job at NHP until November 2003. During this time, McGrath lost a year's worth of pay and seniority.

In December 2002, McGrath took a leave of absence and filed a workers' compensation claim. The Sierra Nevada Administrators' claims adjuster denied her claim. The denial was affirmed by a hearing officer who determined that McGrath had failed to meet the statutory requirements of NRS 616C.180 for a compensable work-related stress claim. An appeals officer affirmed the hearing officer's decision. The appeals officer concluded that, pursuant to NRS 616C.180, McGrath's stress-related injuries did not arise "out of and in the course of [her] employment." The appeals officer concluded that McGrath's injuries were not compensable because they were not caused by stress that could be traced to a discrete, identifiable event in time of danger, as required under NRS 616C.180(3). Instead, according to the appeals officer, McGrath's injuries were caused by a "gradual mental stimulus" which is not compensable under NRS 616C.180(2).

McGrath filed a petition for judicial review. The district court denied McGrath's petition. McGrath appealed to the Nevada Supreme Court. The Court affirmed the district court's denial of McGrath's petition.

Discussion

Standard of Review

The Court limited its review to the appeals officer's interpretation and application of NRS 616C.180. The Court applied a plenary standard of review, rather than a deferential standard of review, because the review concerned an administrative ruling and its application of a statute.

The Court cited *Banegas v. SIIIS*, 117 Nev. 222, 225 (2001), ruling that "[w]hen a statute's language is plain and unambiguous, [the Court] will give that language its ordinary meaning" based on the presumption that the Legislature intended to use words in their usual and natural meaning. However, the Court added that when construing a statute, if there is more than one reasonable interpretation, the statute is ambiguous and it should be given a meaning that is consistent with what the Legislature intended, based on reason and public policy.

The plain, unambiguous language of NRS 616C.180 requires a claimant to identify a discrete, traumatic event that caused a stress-related injury. The Court stated that a claimant must show that a stress-related injury or disease falls under this definition by satisfying the three conditions, as set out in NRS 616C.180(3). Two of the required conditions were at issue in this case. McGrath must have demonstrated that she had a mental injury "caused by extreme stress in time of danger" and that the primary cause of the stress-related injury was an "event" arising

out of and during the course of her employment.³ The Court also noted that, pursuant to the definition of “an injury arising out of and in the course of employment,” NRS 616C.180(2) does not allow any ailment or disorder caused by any gradual mental stimulus. Thus, the statute bars compensation for such stress-related injuries, even if the aforementioned requirements are met.⁴

Time of Danger

NRS 616C.180(3)(a) requires a claimant to demonstrate that she suffered “a mental injury caused by extreme stress in time of danger.” The Court concluded that the statute’s plain language indicated that McGrath had to demonstrate that she suffered a sudden and tangible injury as the result of extreme stress at a time when she was exposed to harm. The Court held that the “appeals officer properly determined that McGrath’s status as a patrolwoman did not, on its own, prove that her injuries were caused by ‘extreme stress in time of danger’” because the record, did not contain evidence that McGrath’s injuries resulted from the extreme stress of a dangerous traffic stop. Furthermore, the mere fact that McGrath carried a firearm on patrol did not necessarily create a perpetual “time of danger.”

Event

McGrath contended that the “event” requirement of NRS 616C.180(3)(b) is ambiguous. The Court disagreed stating that the word “event” is generally defined as “a noteworthy occurrence or happening . . . an unusual or significant development”⁵ and, as such, the statute’s plain language does not permit a claim for stress built up over the course of multiple incidents. Rather, the plain language meaning requires a claimant to demonstrate that his or her stress was caused by a discrete, identifiable occurrence. Thus, when read as a whole, the statute provides that any “disease” that results from a “gradual mental stimulus” is not compensable. The “event” must be a sudden, tangible, traumatic experience.

Gradual mental stimulus

The Court found that the statute’s plain language distinguished between stress-related injuries brought on by a sudden occurrence or singular instance and those brought on by a gradual escalation of stress. NRS 616C.180(2) excludes from coverage stress-related injuries caused by “any gradual mental stimulus.”⁶ Accordingly, the Court concluded that NRS 616C.180 unambiguously required a claimant to identify a discrete, identifiable, traumatic occurrence that gave rise to stress.

Therefore, McGrath was not entitled to compensation because she did not establish a causal relationship between her mental injuries and a discrete, identifiable, traumatic event in a time of danger.

Conclusion

When a claimant alleges that a stress-related injury was caused by a gradual escalation of stress over a period of time, the injury is not compensable under Nevada workers’ compensation law. Rather, NRS 616C.180 indicates that a worker’s compensation claimant must establish a

³ NRS 616C.180(a) and (b).

⁴ NRS 616C.180(2).

⁵ WEBSTER’S THIRD INTERNATIONAL DICTIONARY 573 (1976).

⁶ NRS 616C.180(2).

causal relationship between her mental injuries and a discrete, identifiable, traumatic event in a time of danger.