

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: October 31, 2014

CLAIM NO. 201301512

JARROD JONES

PETITIONER

VS.

APPEAL FROM HON. J. GREGORY ALLEN,
ADMINISTRATIVE LAW JUDGE

LEXINGTON-FAYETTE
URBAN COUNTY GOVERNMENT
and HON. J. GREGORY ALLEN,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING

* * * * *

BEFORE: ALVEY, Chairman, STIVERS and RECHTER, Members.

RECHTER, Member. Jarod Jones ("Jones") appeals from the May 22, 2014 Opinion and Order rendered by Hon. J. Gregory Allen, Administrative Law Judge ("ALJ"). The ALJ determined Jones failed to prove an injury as defined by the Act and

his claim is barred by the statute of limitations. Jones challenges both conclusions on appeal. We affirm.

Jones filed his claim against the Lexington-Fayette Urban County Government ("LFUCG") on October 7, 2013 alleging an injury as a result of an incident while responding to a robbery. He claims April 22, 2013 as the date of injury. However, the call to which Jones, a police officer, responded actually occurred on July 8, 2009.

Jones and another officer arrived at a Shell service station and entered. The other officer questioned a man in the station while Jones walked toward the back of the store, where he encountered a woman using an employee as a human shield. The woman did not follow Jones' commands and instead walked to the back door holding a gun to the employee's head.

Jones followed them outside where the woman fired a shot which did not strike him. He and another responding officer returned fire, striking the woman multiple times. After she fell to the ground, Jones approached her, kicked her gun aside, and checked to see if she had a pulse. At that point, Jones believed the woman was pregnant, but it was soon discovered she was wearing a pillow under her shirt. Jones had blood on his boot, but otherwise did not

have contact with the woman's blood. The woman ultimately died as a result of her wounds.

Jones testified he had no problems as a result of the incident until early in 2012, when he had nightmares and insomnia which caused him to be exhausted at work. He received counseling through the Employee Assistance Program ("EAP"). The EAP physician, Dr. Gary Patton, first told Jones he was experiencing post-traumatic stress disorder ("PTSD") in July, 2012.

The ALJ determined Jones failed in his burden of proving an injury as defined by the Act because he did not allege any physical trauma. The ALJ specifically found the mere checking for a pulse and Jones' boot coming in contact with the perpetrator's blood did not constitute a physical injury, requiring dismissal of the claim. Turning to the timeliness of the claim, the ALJ noted the event occurred on July 8, 2009 and all of the medical opinions relate his psychiatric complaints to the 2009 incident. Thus, the statute of limitations began to run in 2009. The ALJ further noted KRS 342.185 operates as a statute of repose to bar the claim. Finally, the ALJ rejected Jones' argument that payment of wages between 2009 and 2010, and again in 2012, tolled the statute of limitations. No petition for reconsideration was filed.

On appeal, Jones first argues the July 8, 2009 incident was clearly a traumatic event and, therefore, his psychological injury is compensable. He contends his actions of following the woman, shouting commands, being shot at and returning fire, and his response of sweating and increased pulse establish a physically traumatic event.

KRS 342.0011(1) states an "[i]njury . . . shall not include a psychological, psychiatric, or stress-related change in the human organism unless it is a direct result of a physical injury." "[I]n instances where the harmful change is psychological, psychiatric, or stress-related, it must directly result from the physically traumatic event." Lexington-Fayette Urban County Government v. West, 52 S.W.3d 564, 566 (Ky. 2001). In West, the Kentucky Supreme Court determined a "full-fledged fight in which a police officer and suspect are scuffling and rolling on the ground as an event that involves physical trauma, in other words, as a physically traumatic event." Id. at 567. Later, in Richard E. Jacobs Group, Inc. v. White, 202 S.W.3d 24 (Ky. 2006), the Court considered a police officer who alleged a psychological condition arising from the shooting of an armed assailant, coupled with his exposure to the assailant's blood and other bodily fluids while administering CPR. The Court explained:

There is no requirement that a physically traumatic event must cause physical harm as well as the mental harm for which compensation is sought. It may involve a physical exertion rather than an impact from an outside force. Performing CPR and first aid on an individual with multiple gunshot wounds clearly requires physical exertion. Therefore, it constitutes a physically traumatic event for the purpose of KRS 342.0011(1), and any mental harm that directly results is compensable. Id. at 27(internal citations omitted).

The only exertion alleged by Jones is following the suspect out the back door, firing his weapon and kneeling down to check her pulse after the shooting. In White, physical exertion in giving CPR was inextricably intertwined with exposure to the individual's blood, and the exertion was necessitated by the shooting. Here, Jones had no direct exposure to the perpetrator's blood as there was in White.

The ALJ correctly viewed this situation as most closely akin to the situation in Kubajak v. Lexington-Fayette Urban County Government, 180 S.W.3d 454 (Ky. 2005), where Officer Kubajak had not sustained a physical injury and was not involved in physically traumatic events. The officer's mental condition resulted from stress or emotional trauma of investigating the scenes of crimes involving extreme and graphic violence to others. His case was

essentially a mental/mental case. Mental/mental cases remain non-compensable under Kentucky law.

For Jones to prevail upon appeal, the evidence must compel a finding that there was a physical injury which directly led to his psychological condition. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). On review of the record, we cannot say the evidence compelled a finding in Jones' favor. The ALJ's factual findings are supported by Jones' testimony, which constitutes substantial evidence. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986). What Jones' request on appeal is for this Board to expand the meaning of "physical contact" beyond the plain meaning of the statute and beyond existing case law. We are not at liberty to do so. The legal conclusions drawn the factual circumstances of this claim are supported by current case law interpreting KRS 342.0011(1).

Jones next argues his claim is not barred by the statute of limitations because his symptoms did not immediately manifest. Rather, he sought treatment and asserted his claim once he was advised of the PTSD diagnosis. In essence, he argues Kentucky should adopt a discovery rule in cases where PTSD does not manifest within two years of the occurrence of the event that caused the condition. Jones further contends the pay he received while

placed on alternate duty during the investigation following the shooting and diagnosis of PTSD by Dr. Patton in 2012 tolled the statute.

The discovery rule is not applicable to injuries resulting from a specific trauma. Coslow v. General Elec. Co., 877 S.W.2d 611 (Ky. 1994). Jones was unequivocal in arguing the July 8, 2009 event was the cause of his PTSD, although he claims he had no symptoms until early 2012. However, Jones' claim was not filed within two years of the date of his injury as his Form 101 was not filed until October 7, 2013. Additionally, we note in Manalapan Mining Co., Inc. v. Lunsford, 204 S.W.3d 601 (Ky. 2006), a hearing loss claim had been filed more than two years after the claimant's exposure to hazardous noise had ceased. The claimant did not file a claim earlier because he was not diagnosed and informed by a physician the hearing loss was occupationally-related until thirty-three months after quitting work. The Supreme Court concluded in such circumstances the two-year period for filing workers' compensation claims in KRS 342.185(1) operates as both a period of limitation and repose. The Court determined the claim for exposure to occupational noise had, therefore, expired before the claimant became aware he had suffered a work-related injury.

While Jones was placed on alternative duty during the investigation of the shooting, the reassignment had nothing to do with psychological or physical disability. Rather, it was standard procedure for officers involved in shootings. Jones was adamant that he experienced no problems until 2012, more than two years after the shooting. Even if the salary paid in 2012 was considered to be payment of benefits, payment of benefits more than two years after an injury does not revive a claim. See Holbrook v. Lexmark International Group, Inc., 65 S.W.3d 908 (Ky. 2001).

Accordingly, the May 22, 2014 Opinion and Order rendered by Hon. J. Gregory Allen, Administrative Law Judge is **AFFIRMED**.

ALVEY, CHAIRMAN, CONCURS.

STIVERS, MEMBER, CONCURS IN RESULT ONLY.

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