

**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

CRISTINA R. KING, )  
 )  
 Claimant, )  
 )  
 v. )  
 )  
 CITIGROUP, )  
 )  
 Employer, )  
 )  
 and )  
 )  
 TRAVELERS PROPERTY CASUALTY )  
 COMPANY OF AMERICA, )  
 )  
 Surety, )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

**IC 2010-013380**

**FINDINGS OF FACT,  
CONCLUSION OF LAW,  
AND RECOMMENDATION**

Filed July 21, 2011

**INTRODUCTION**

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Michael E. Powers, who conducted a hearing in Boise on December 2, 2010. Claimant was present and represent by Jerry J. Goicoechea of Boise. Gardner W. Skinner, also of Boise, represented Employer/Surety. Susan Evans served as interpreter. Oral and documentary evidence was presented. The parties took two post-hearing depositions and submitted post-hearing briefs. This matter came under advisement on May 25, 2011.

**ISSUE**

By agreement of the parties at hearing, the sole issue to be decided is whether Claimant is entitled to benefits pursuant to Idaho Code § 72-451.

## **CONTENTIONS OF THE PARTIES**

Claimant worked at Employer's call center handling customer complaints and concerns regarding credit cards. Up until a short time before her alleged accident, Claimant, a Spanish-speaking Colombian native, was assigned to handle predominately Spanish speaking callers. That changed when Employer began outsourcing those calls and Claimant was required to take more English-speaking calls. As English is Claimant's second language, it was more difficult for her to communicate with the English-speaking callers. Claimant is a high achiever and this switch from Spanish to English created a certain level of anxiety and stress. She contends that a particularly rude and otherwise personally offensive phone call caused her to have a panic attack that led to severe depression. Claimant further contends that the phone call permanently damaged the physical structure of her brain making this a "mental-physical" claim that is compensable under Idaho Code § 72-451.

Defendants contend that this is a classic "mental-mental" claim that is barred by Idaho Code § 72-451. Claimant has failed to prove by clear and convincing evidence that she suffered any physical injury at the time of the disturbing phone call, or that the phone call was the predominate cause of her subsequent difficulties. Finally, there is no way to objectively prove that Claimant's brain was permanently damaged as the result of the call, and the literature relied upon by Claimant's expert does not support his causation opinion.

## **EVIDENCE CONSIDERED**

The record in this matter consists of the following:

1. The testimony of Claimant, her husband Pat King, and her friend Elizabeth Pancake.
2. Claimant's Exhibits A-G admitted at the hearing.

3. Defendants' Exhibits 1-14 admitted at the hearing.

4. The post-hearing deposition of Scott P. Hoopes, M.D., taken by Claimant on December 9, 2010.

5. The post-hearing deposition of Craig W. Beaver, Ph.D., taken by Defendants on March 21, 2011.

Claimant's objection at page 15 of Dr. Beaver's deposition is overruled.

During and after Dr. Hoopes' deposition, Defendants objected to portions of his causation opinions as not being previously disclosed. Defendants filed a motion to strike portions of the offending testimony or, in the alternative, be given additional time within which to depose their expert, after he has had a chance to review the literature relied upon by Dr. Hoopes in forming his opinions. On February 4, 2011, an order was filed denying Defendant's motion to strike, but granting them 45 days from the date of the order to depose their expert witness. Defendants' expert was then deposed, and his responses to Dr. Hoopes' causation opinions were thoroughly explored.

### **FINDINGS OF FACT**

1. Claimant was 55 years of age and resided in Meridian at the time of the hearing. She was born in Colombia and completed college there. She worked as an "insurance manager" until she moved to the United States in 2004. Claimant is a US citizen.

2. Claimant began working at Micron in 2005 as an operator, as she did not have a license to sell insurance in this country. She testified that she was a "leader" at Micron and "received awards." Claimant left Micron for what she considered to be a better job with Employer.

3. Claimant began working at Employer's credit card customer service call center in 2008. Initially, approximately 75% of Claimant's calls were from Spanish-speaking individuals. Claimant's job was to answer customer's questions and sell credit card-related products such as reward programs and disability protection. For the first two years of her employment, Claimant was the "top seller."

4. In February or March of 2010, Employer began the process of outsourcing its Spanish-speaking calls, so Claimant was required to handle around 75% of English-speaking calls. This created stress for Claimant, in that English is her second language and she felt much more confident in handling Spanish-speaking callers:

Well, some of the people didn't want to talk with me, just like the lawyer here that sometimes they don't - - it's hard to understand my accent by phone and say, well, I need to talk with someone in Spanish and I say I'm from Columbia [sic], you have patience with me I can help you. I am here to help you to get your solution to you problems and - - and it was good. It was a challenge, but it was good.

*Id.*, p. 17.

5. Claimant would become emotional after some of the English-speaking calls. On April 2, 2010, Claimant fielded a particularly upsetting call that she described at hearing as follows:

Q. (By Mr. Goicoechea): Okay. Okay. This case, your case is about an incident that took place on April 2<sup>nd</sup>, 2010, in the morning - - a few hours after you arrived at work. Can you tell us about that incident and what happened?

A. Well, this call was a little bit different, because the person who called was - - since the beginning of the call was yelling me [sic], loud, aggressive, and arrogant and he used bad words.

Q. Bad words?

A. Cursing.

Q. Okay.

A. Cursing. And mean and I was paralyzed in that - - I mean I was paralyzed. I didn't have answer [sic]. Nothing come [sic] to my mind. My heart

is start [sic] to beat very fast, I'm sweating, I hung up the phone and I started crying. I couldn't stand up from my chair. The manager come to me, because my partner and coworker informed them and he came to me and trying console [sic] me. He called for a medic, because I was passing out, I couldn't breathe and the paramedics came and take my blood pressure and they wanted to take me to the hospital - - took me to the hospital [sic]. I don't feel safety [sic]. I call my husband and I say come and pick me up, because I don't feel good. But my husband couldn't go inside of the Citigroup for security [sic].

Hearing Transcript, p. 18.

6. Claimant's husband, Pat, arrived shortly after the offending call. Claimant testified that because she was shaking and having difficulty walking, Claimant's general manager helped her down in the elevator to meet Pat. Pat was not allowed to enter Claimant's work area, so he waited downstairs for her. He assumed she would be brought down on a stretcher (paramedics were already at the scene and Pat saw them carrying a stretcher into the elevator), but Claimant walked with the help of her manager. Pat described Claimant's physical appearance this way:

She was pale. She was really pale. I have never seen her that white before, that - - and she was pale. She was shaking. She was just - - just really really [sic] shaking and I could tell that there was something physically wrong with her. I could tell that there was something wrong with my wife.

*Id.*, p. 103.

#### **Dr. Clinger**

7. Pat drove Claimant to the offices of Mark Clinger, M.D., a family practitioner with whom Claimant and her husband were both familiar. Dr. Clinger's office note indicates that Claimant was complaining of shortness of breath. "[H]ere for concerns about sudden onset of anxiety with feelings that she was "about to die." Defendants' Exhibit 6, p. 1. Dr. Clinger further noted that Claimant was experiencing a lot of stress at her job due to the switch from Spanish-speaking to English-speaking callers. Dr. Clinger indicated that paramedics were called

and Claimant's blood pressure was elevated at that time to 180/100 and her pulse rate was "in the 80's." It is presumed that Dr. Clinger obtained that information from Claimant.<sup>1</sup> Dr. Clinger recorded Claimant's blood pressure at 136/82 and her resting heart rate at 79.<sup>2</sup> Dr. Clinger conducted an examination which was essentially normal. He described her as being in no apparent distress, although she was anxious and tearful. Dr. Clinger ordered an electrocardiogram and a chest x-ray, both of which were normal. He diagnosed an anxiety state not otherwise specified and shortness of breath. He prescribed Celexa and Zanax, and stopped the amitriptyline he had prescribed the day before to help Claimant sleep. Dr. Clinger advised Claimant to return in two weeks, but she never did.

#### **Dr. Avery**

8. On April 6, 2010, Claimant saw D. Barton Avery, M.D., a family practitioner in Smithfield, Utah, that had been Pat's physician, and both Claimant and Pat had a great deal of faith in him. Dr. Avery believed that Claimant was transported by ambulance to an emergency room<sup>3</sup> where she was diagnosed with having a panic attack after the call at work. Dr. Avery noted that Claimant was experiencing stress related to the change in Spanish to English calls, and also reported neck pain and headaches as a result. Claimant's blood pressure was 112/62 and her pulse rate was 64 beats per minute. Dr. Avery diagnosed depression/anxiety, and continued her on Celexa and Xanax. Claimant testified that at the time she saw Dr. Avery on April 6, she was experiencing dizziness, nausea, sweating, shaking, diarrhea, and trouble breathing. However, Dr. Avery's April 6 and April 22 office notes do not mention any of those symptoms.

---

<sup>1</sup> The Ada County Paramedics Patient Care Record indicates that the call was cancelled because Claimant was refusing their services, and no vital signs were recorded. *See*, Defendants' Exhibit 12.

<sup>2</sup> These readings contradict Claimant's testimony that she was tachycardic and her blood pressure was high at Dr. Clinger's office. Further, Dr. Clinger found no objective evidence of any shortness of breath or shaking.

<sup>3</sup> As previously found, Claimant did not go to an emergency room in an ambulance and, in fact, refused treatment by the paramedics.

9. Claimant returned in follow-up with Dr. Avery on May 6, 2010. At that time, she was complaining of increasing episodes of anxiety. Claimant indicated that the Lexapro Dr. Avery prescribed was giving her double vision. Claimant told Dr. Avery of visiting an urgent care facility on May 3 with the chief complaint of anxiety. She informed the physician's assistant that the change from Spanish to English callers was causing her stress at work. A change in medication from Celexa to Lexapro was giving Claimant double vision, and the Celexa had given her headaches. At the time of her May 3 visit, Claimant's blood pressure was recorded to be 106/79 and her pulse rate was 58 beats per minute. Dr. Avery diagnosed depression with anxiety. He discontinued Lexapro, substituted Paxil, and continued her Zanax. Dr. Avery did not report any symptoms of dizziness, diarrhea, nausea, sweating, or shaking.

10. On May 17, 2010, Claimant called Dr. Avery and informed him that the Paxil was causing nausea, rapid heart rate, sweating, and insomnia. This is the first time those symptoms appear in any medical record since the incident at Employer's. Dr. Avery discontinued the Paxil and substituted Zoloft.

11. Claimant returned in follow-up with Dr. Avery on June 1, 2010. She informed him that she has done well until she starts to think about returning to work, then gets very anxious and breathes rapidly. Dr. Avery noted, "The problem has occurred again from her switching from Spanish-speaking sales to English-speaking sales. She claims that because of her poor English he [sic] has a difficult time selling anything in English."<sup>4</sup> Defendants' Exhibit 8, p. 33. Claimant's vital signs at this visit were a blood pressure of 122/80 and a heart rate of 82 beats per minute. Claimant was prescribed Flexeril for neck pain, the only physical complaint she reported at the time.

---

<sup>4</sup> Nonetheless, Claimant earned awards for achieving 230.62% of her goals for February 2010 and 221.00% of her goals for March 2010 during the time of the switch from Spanish to English calls. See, Claimant's Exhibit G, pp. 92-93.

## **Dr. Hoopes**

12. Claimant's counsel referred Claimant to Scott P. Hoopes, M.D., a psychiatrist, who first saw Claimant on June 21, 2010. Dr. Hoopes noted that Claimant was doing well in her job until the Spanish-speaking calls were outsourced. Claimant had been experiencing sleep disturbances, poor energy, poor concentration, increased weight gain, anhedonia (an inability to experience pleasure in acts which normally produce it), and self-critical thinking. Since April of 2010, Claimant also described five discreet panic episodes, occurring without warning, that included palpitations, sweating, shaking, shortness of breath, choking, chest pain, nausea, dizziness, faintness, fear of losing control, fear of going crazy, fear of dying, parasthesias, hot flashes, and chills.

13. Dr. Hoopes diagnosed major depressive disorder, single episode, severe without psychosis, and panic disorder secondary to the major depressive disorder, and obsessive-compulsive personality disorder traits. He attributed Claimant's psychosocial problems to "work stress." Dr. Hoopes prescribed medication and adjusted the same in two follow-up visits.

14. In an August 5, 2010 "To Whom It may Concern" letter, Dr. Hoopes wrote: "These events (the phone call) triggered a series of psychological and biological responses and ultimately lead to severe psychological consequences. . . . Ms. King's psychological responses to the triggering phone call included heart palpitations, sweating, shaking, shortness of breath, chest pains, and parenthesis [sic], nausea, dizziness and panic attacks. One or all of these conditions are considered biological, psychological, and organic events." Defendants Exhibit 7, p. 3. Dr. Hoopes did not mention any physical injury suffered by Claimant as a result of the phone call.



## DISCUSSION AND FURTHER FINDINGS

Due to the subjective nature of psychological injuries, in 1994 the Idaho State Legislature adopted Idaho Code § 72-451 which provides:

**Psychological accidents and injuries.** - - Psychological injuries, disorders or conditions shall not be compensated under this title, unless the following conditions are met:

(1) Such injuries of any kind or nature emanating from the workplace shall be compensated only if caused by an accident and **physical injury** as defined in section 72-102(18)(a) through 18(c), Idaho Code, or only if accompanying an occupational disease with resultant physical injury, except that a psychological mishap or event may constitute an accident where (i) it results in resultant physical injury so long as the psychological mishap or event meets the other criteria of this section, and (ii) it is readily recognized and identifiable as having occurred in the workplace, and (iii) it must be the product of a sudden and extraordinary event; and

(2) No compensation shall be paid for such injuries arising from conditions generally inherent in every working situation or from **personnel related action** including, but not limited to, disciplinary action, **changes in duty**, job evaluation or employment termination; and

(3) Such accident and injury must be the predominant cause as compared to all other causes combined of any consequence for which benefits are claimed under this section; and

(4) Where psychological causes or injuries are recognized by this section, such causes or injuries must exist in a real and objective sense; and

(5) Any permanent impairment or permanent disability for psychological injury recognizable under the Idaho workers' compensation law must be based on a condition sufficient to constitute a diagnosis using the terminology and criteria of the American psychiatric association's diagnostic and statistics manual of mental disorders, third edition revised, or any successor manual promulgated by the American psychiatric association, and must be made by a psychologist, or psychiatrist duly licensed to practice in the jurisdiction in which treatment is rendered, and

(6) **Clear and convincing evidence** that the psychological injuries arose out of and in the course of the employment from an accident or occupational disease as contemplated in this section is required.

Nothing herein shall be construed as allowing compensation for psychological injuries from psychological causes without accompanying **physical injury**.

This section shall apply to accidents and injuries occurring on or after July 1, 1994, and to causes of action for benefits accruing on or after July 1, 1994,

notwithstanding that the original worker's compensation claim may have occurred prior to July 1, 1994.

Emphases added.

An accident is defined as an unexpected, undesigned, and unlooked for mishap, or untoward event, connected with the industry in which it occurs, and which can be reasonably located as to time when and place where it occurred, causing an injury. Idaho Code § 72-102(18)(b). An injury is defined as a personal injury caused by an accident arising out of and in the course of employment. An injury is construed to include only an injury caused by an accident, which results in **violence to the physical structure of the body**. Idaho Code § 72-102(18)(c).

Emphasis added.

### **Dr. Hoopes' deposition testimony**

15. Dr. Hoopes was deposed by Claimant and opined that Claimant suffered a physical injury to her brain as the result of the stressful phone call. Dr. Hoopes, as previously indicated, is a psychiatrist. He is board-certified for life in that field and is licensed to practice psychiatry in Idaho. He obtained his medical degree in 1988 from the University of Utah and did his residency in psychiatry at Oregon Health Science University in 1992. He was a psychiatrist at the Mountain Home Air Force Base from 1992 to 1995, and has been in private practice since. He has done research and published articles. Complete information regarding Dr. Hoopes' qualifications may be found in his CV attached to his deposition transcript as Exhibit 1.

16. Dr. Hoopes' treatment of Claimant is discussed in findings of fact numbers 12-14 above. Dr. Hoopes relates Claimant's depression to her work:

Her depression and anxiety had onset at the time of a terribly difficult and taxing and distressing event at her work.

Q. (By Mr. Goicoechea): What was that, to your understanding?

A. That she had worked in a call center. That she had worked for some time as a Spanish-language call center person and had done well, had had accolades for her work and recognition, et cetera, that for various reasons within the organization she had been moved away from the Spanish language to English

language. English is her second language and her - - she's not terribly fluent. **And so this change was a very difficult one for her for many reasons.**

Q. Okay. You say it's a single episode. Could you explain that, please?

A. Absolutely. So in the course of her work she took a call. And this call was extremely abusive, angry, personally insulting, aggressive and angry. And it was in the context of that call that she experienced her first panic attack and the onset of her depression.<sup>5</sup>

Dr. Hoopes' Deposition, pp. 16-18. Emphasis added.

17. Dr. Hoopes described a body's typical responses to fight-or-flight situations in explaining why he believes the call to have caused Claimant's medical and psychological condition. When a person is faced with a threat, the adrenal gland is stimulated to release cortisol, which is then circulated throughout the body to help it prepare for the threat. The cortisol eventually circulates to the hippocampus located within the temporal lobes of the brain. When those cortisone receptors are stimulated by the cortisol, the hippocampus then provides a negative inhibitory force on the hypothalamus to limit, reduce, or end the distress threat mechanism. Studies have shown that the cortisol receptors can be damaged, "[a]nd when those cortisol receptors are damaged, then the hippocampus is no longer able to provide the downward inhibitory effect on the hypothalamus. And now we have a free-wheeling unmoderated stress response that is very damaging to many parts of the body." *Id.*, p. 24.

18. Dr. Hoopes testified that the stressful phone call resulted in violence to the physical structure of Claimant's body:

So it was the - - what I reviewed previously. So at that time it would have entailed a marked physiological cortisol hypothalamic pituitary axis response to that distress. That the acutely elevated levels of cortisol are capable of and do

---

<sup>5</sup> Claimant told Dr. Hoopes that she believed the onset of her depression was March of 2010. *See*, Dr. Hoopes' Deposition, p. 79.

damage key parts of the central nervous system, particularly the cortisol receptors in the hippocampus.

Q. (By Mr. Skinner). What evidence do you have, objectively, that such damage occurred to the hippocampus and these receptors?

A. So we have several things. First, the diagnosis - - I assigned the diagnosis of major depression, single episode because she had never experienced a depression prior to this event. And since then she has been continuously depressed in spite of reasonably aggressive treatment.

Q. I'm looking for objective evidence. Is there some measurable objective evidence by which you can show that there was some physical change to the hippocampus receptors?

A. Her depression. So depression has been associated, in the literature, as I mentioned, with reduction in the volume of the hippocampi and also with damage to the receptors.

So what we're really saying is that the depression and the panic is the clinical observable consequence of the disruption and damage to the central nervous system.

Q. Lets talk about those two things. You talked about reduction in the hippocampus and damage to the receptors. Let's talk about reduction in the hippocampus.

A. Yes, sir.

Q. Is there some way you can measure that objectively?

A. That is done - - that's called an FMRI or a PET scan study that has been done in populations.

Q. **Was it done in this case?**

A. **In a particular case it's not.**<sup>6</sup> These are population studies that compare an abnormal population with the normal population. This is standard procedure in medicine.

Dr. Hoopes Deposition, pp. 59-61. Emphases added.

19. Dr. Hoopes opined that with the severe level of Claimant's depression, there is a 95% chance that she has damaged her hippocampus. Regarding damage to the receptors, Dr. Hoopes testified that according to the literature, it is more probable than not that such damage occurred. Dr. Hoopes was vague in his deposition testimony regarding exactly upon what literature he was relying.

---

<sup>6</sup> According to Dr. Hoopes, the only definitive test to measure a reduction in Claimant's hippocampus would be comparative PET scans, which were not done in this case.

**Craig W. Beaver, Ph.D.**

20. Defendants retained Dr. Beaver, a clinical psychologist, to review Claimant's pre- and post accident medical records. Dr. Beaver is licensed to practice psychology in Idaho, Washington, and Oregon. He has a master's and Ph.D. in clinical psychology. Dr. Beaver completed a clinical internship in neuropsychology plus four more years of supervised training in that area. He was hired by St. Alphonsus Regional Medical Center to establish an inpatient/outpatient psychological and neuropsychological consultation service, and helped them set up their rehabilitation unit from 1984 to 1988. In 1986, Dr. Beaver was hired by Idaho Elk's Rehabilitation Hospital to help them design and establish an inpatient/outpatient brain injury rehabilitation program, and helped run the program until 2009 while also maintaining a private practice.

21. Dr. Beaver reviewed Claimant's medical records from both before and after the April 2, 2010 telephone call. He prepared a report (Defendants' Exhibit 13), and subsequently reviewed Dr. Hoopes' deposition transcript, as well as the actual articles referenced in that deposition. Dr. Beaver agrees with Dr. Hoopes' diagnoses as he did not actually see Claimant. He also generally agrees with Dr. Hoopes' description of the hypothalamic pituitary-adrenal axis (HPA) and glucocorticoid responders and receptors. He did not agree with Dr. Hoopes regarding the significance of a single phone call in causing violence to Claimant's body:

Q. (By Mr. Skinner): Dr. Hoopes testified in his deposition that he believes that Mrs. King suffered a reduction in the volume of her hippocampus as a result of a telephone call that is the subject of this case and he indicated he thought that was 95 percent probable. Do you agree with that opinion?

A. No.

Q. And can you explain why it is you do not agree with it?

A. Well, first of all, there is [sic] several parts to why I don't agree with that opinion. You know, one is that in the review articles there is a discussion that people that - - particularly the articles cite people that have been

exposed to prolonged chronic stressors can experience a change in the receptivity of the glucocorticoid that, then, influences the HPA system. But if you review those articles, first of all, they talk about when they do cite that they - - there could be some impact on that system, they talk about chronic stressors. That's the first thing. The second thing is that they do talk about how that system functions, but that's more true of how it functions, not necessarily an impairment or damage to that system. And the third thing is that even in the article that Dr. Hoopes has cited, when they talk about - - particularly the hippocampus being damaged in some way, they actually talk about that they know that the - - how this system operates and HPA system can be affected or changed in some way, but they are not really sure, according to these articles whether or not there is actually damage to the hippocampus and they suspect that what they have seen with a damaged hippocampus is more related to people that have had some other illness that has affected that system. So, given the review of those articles and also what I know about Mrs. King, is that there is nothing in those articles that would indicate that a single event, such as an upsetting phone call, would cause brain damage, specifically hippocampus damage. There is nothing in that literature that I reviewed or that I'm aware of in other literature, that would indicate that is - - reasonably could have occurred and certainly not in a 95 percent probability rate.

Dr. Beaver Deposition, pp. 10-11.

22. Dr. Beaver testified as follows regarding Dr. Hoopes opinion of probable damage to Claimant's corticoid receptors in her hippocampus:

I don't agree with that opinion. The literature - - the literature that Dr. Hoopes cited does talk about people that have recurring problems and, for example, with major depression, but they think that those people do have some differences in their receptor sites that make them more susceptible or inclined to depression and, in fact, they talked about how the anti-depressant medication - - they think that one of the primary ways that they work to help people with major depression is they work on those receptor sites. But having said that, again, there is nothing in that literature to indicate that a single event, such as what occurred or is reported to have occurred in April of 2010, would have caused permanent damage to her glucocorticoid receptor sites. There just isn't the support there in that literature.

*Id.*, p. 13.

23. Dr. Beaver testified that the single event of the offending telephone call did not cause violence to the physical structure of Claimant's body. Dr. Beaver believes the telephone

call may have played some role in the development of Claimant's depression and panic attacks, but was not the predominant cause over all other causes.

### **Analysis**

24. The leading Idaho Supreme Court case addressing Idaho Code § 72-451 is *Luttrell v. Clearwater County Sheriff's Office*, 140 Idaho 581, 97 P.3d 448 (2004). There, the claimant, who was a dispatcher, received an emergency 911 call involving a person who had stopped breathing. During the course of handling the call, the claimant suffered a psychological reaction to the stressful situation and could not complete the call. The claimant was transported to a hospital where she was diagnosed with anxiety and depression as well as sinus tachycardia. Follow-up examinations revealed that the claimant had suffered a "nervous breakdown" as a result of acute anxiety disorder and major depressive disorder. She filed a complaint alleging a compensable "mental-physical" case.<sup>7</sup> The Commission disagreed, finding the claimant's situation to be a classic "mental-mental" situation with no physical injury. The Court affirmed and offered the following guidelines for Idaho Code § 72-451 claims:

Luttrell claims her psychological reaction at work and subsequent diagnosis of sinus tachycardia constitutes a "physical-mental" claim and is compensable under I.C. §§ 72-102(17) and 72-451. In order for Luttrell to receive compensation, she must prove that her condition is an injury caused by an accident. The Worker's Compensation Act (Act) defines an "injury" as "a personal injury caused by an accident arising out of and in the course of any employment covered by worker's compensation law." I.C. § 72-102(17)(a). "Personal Injury" is an "injury caused by an accident which results in violence to the physical structure of the body." I.C. § 72-102(17)(c). Further, an "accident" is defined as "an unexpected, undersigned, and unlooked for mishap, or untoward event, connected with the industry in which it occurs, and which can be reasonably located as to time when and place where it occurred, causing an injury." I.C. § 72-102(17)(b).

---

<sup>7</sup> The claimant was contending her sinus tachycardia constituted the required physical injury.

In order to obtain benefits pursuant to Idaho Code § 72-451, a claimant must prove by clear and convincing evidence<sup>8</sup> that psychological injuries arose out of and in the course of employment from an accident or occupational disease.

The Court considered Luttrell's arguments that her sinus tachycardia was the physical injury she received and that such injury was caused by a work-related accident, and rejected both arguments. The Court affirmed the Commission's determination that the claimant's tachycardia or faster than normal heart rhythm, was nothing more than a psychological reaction to the call and a symptom of a psychological disorder, rather than a physical injury that caused a psychological disorder. Further, Claimant's heart rate returned to normal after she was removed from the stressful situation. The Court affirmed the Commission's finding that the claim represented a "mental-mental" claim where psychological injury resulted from psychological causes.

25. Claimant herein alleges two separate physical injuries resulting from the phone call. One is an alleged reduction in the volume of her hippocampus. The other is damage to the cortical receptors in her hippocampus.

### **Hippocampus**

26. As previously discussed, Dr. Hoopes has opined, based on selected literature he reviewed, that the stressful phone call resulted in a reduction in the size of Claimant's hippocampus. Dr. Beaver has opined to the contrary, based on his experience as well as reviewing the same article relied upon by Dr. Hoopes.<sup>9</sup> Because the actual articles are not in

---

<sup>8</sup> The *Luttrell* decision defines clear and convincing evidence as a degree of proof greater than a mere preponderance.

<sup>9</sup> Claimant argues that Dr. Hoopes' testimony and opinions should be given greater weight than those of Dr. Beaver because Dr. Hoopes is a medical doctor and Dr. Beaver is a psychologist without a medical degree. The Referee is not impressed, as Dr. Beaver has had a great deal of training and experience with issues regarding the brain and hippocampus. In fact, Dr. Beaver pointed out that two of the three articles relied upon by Dr. Hoopes were authored by psychologists. Both Dr. Beaver and Dr. Hoopes are equally qualified to provide expert opinions in this matter.



evidence, the Referee does not know first-hand what they convey, so it is difficult to determine whose rendition of their meanings to accept. After having carefully considered the reports and testimony of Drs. Beaver and Hoopes, the Referee is more persuaded by the opinions expressed by Dr. Beaver.

27. Dr. Beaver reviewed all Claimant's medical records from both before and after the telephone call. Dr. Hoopes had only reviewed Dr. Beaver's assessment and some notes from a counselor. Dr. Hoopes was apparently unaware that Claimant's blood pressure and heart rate were within normal limits within a very short time of the distressing call. Dr. Hoopes opined that there is a 95% chance that Claimant experienced a reduction in the volume of her hippocampus according to the literature. Even if accepted as true, there is no credible clear and convincing evidence that Claimant herself suffered such a reduction. No comparative PET scans exist to objectively measure such reduction in Claimant's hippocampus. To extrapolate what may or may not be represented in the articles reviewed by Dr. Hoopes regarding a reduction in size of the hippocampus in the general population to this particular claimant is certainly not proof by clear and convincing evidence that it did, in fact, occur.

### **Receptors**

28. Dr. Hoopes also opined that Claimant suffered damage to the cortisol receptors in her hippocampus as a predominant result of the telephone call. While there is a test that could objectively measure that damage, such test was not performed in this case. Dr. Hoopes relied upon the articles discussed above for the bases for his opinions. Dr. Beaver disagrees with Dr. Hoopes' opinion regarding damage to the cortisol receptors, and does not believe the literature relied on by Dr. Hoopes is supportive. Again, the Referee is more persuaded by the opinions expressed by Dr. Beaver. Even if the studies support Dr. Hoopes' opinion regarding cortisol

receptor damage in the general population, there is no clear and convincing evidence that such damage occurred in this particular claimant.<sup>10</sup>

29. The Referee finds that Claimant has failed to prove by clear and convincing evidence that she suffered violence to the physical structure of her body as a result of the disturbing telephone call on April 2, 2010.

30. As noted, the Referee finds that Claimant has failed to demonstrate that she suffered damage to the physical structure of her body as a consequence of the specific phone call she took on April 2, 2010. However, Claimant has also intimated that the physiological injuries proposed by Dr. Hoopes are causally related to the change in Claimant's job duties from handling mostly Spanish-speaking calls to English-speaking calls. Claimant's own testimony, as well as the history she gave to her treating physicians, indicate that it was this change in job duties that caused her stress and anxiety. She was worried about being able to continue with her awards and achievements (and, presumably, income), as well as her self-esteem. However, even if it be assumed that Claimant could demonstrate that she suffered physiological injuries as a consequence of this change in job duties, such a claim would not be compensable under the provisions of I.C. § 72-451. First, such a change in job duties would not constitute a "sudden and extraordinary event" as is required for a "mental/physical" claim. *See*, I.C. § 72-451(1). Second, I.C. § 72-451(2) expressly excludes claims arising from changes in duty:

No compensation shall be paid for such injuries arising from conditions generally inherent in every working situation or from a personnel related action including, but not limited to, disciplinary action, changes in duty, job evaluation or employment termination; and . . .

*See, Johnson v. Paradise Valley Fire District*, IC 2010-005195, filed June 7, 2010. Therefore, assuming, without deciding, that Claimant could demonstrate the existence of a physiological

---

<sup>10</sup> A similar problem faced Dr. Hoopes in *Georgiades v. Idaho Department of Environmental Quality*, IC-013881, filed July 7, 2006.

injury related to the aforementioned change in her duties, a claim for such an injury would not be compensable as a “mental/physical” claim under the provisions of I.C. § 72-451.

### **CONCLUSION OF LAW**

Claimant has failed to prove her entitlement to workers’ compensation benefits pursuant to Idaho Code § 72-451.

### **RECOMMENDATION**

Based upon the foregoing Findings of Fact, Conclusion of Law, and Recommendation, the Referee recommends that the Commission adopt such findings and conclusion as its own and issue an appropriate final order.

DATED this \_\_13<sup>th</sup>\_\_ day of July, 2011.

INDUSTRIAL COMMISSION

/s/  
Michael E. Powers, Referee

## CERTIFICATE OF SERVICE

I hereby certify that on the 21<sup>st</sup> day of July, 2011, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSION OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon each of the following:

JERRY J GOICOECHEA  
PO BOX 6190  
BOISE ID 83707-6190

GARDNER W SKINNER JR  
PO BOX 359  
BOISE ID 83701-0359

*Gina Espinoza*

**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

CRISTINA R. KING, )  
 )  
 Claimant, )  
 )  
 v. )  
 )  
 CITIGROUP, )  
 )  
 Employer, )  
 )  
 and )  
 )  
 TRAVELERS PROPERTY CASUALTY )  
 COMPANY OF AMERICA, )  
 )  
 Surety, )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

**IC 2010-013380**

**ORDER**

Filed July 21, 2011

Pursuant to Idaho Code § 72-717, Referee Michael E. Powers submitted the record in the above-entitled matter, together with his recommended findings of fact and conclusion of law to the members of the Idaho Industrial Commission for their review. Each of the undersigned Commissioners has reviewed the record and the recommendation of the Referee. The Commission concurs with this recommendation. Therefore, the Commission approves, confirms, and adopts the Referee’s proposed findings of fact and conclusion of law as its own.

Based upon the foregoing reasons, IT IS HEREBY ORDERED that:

1. Claimant has failed to prove her entitlement to workers’ compensation benefits pursuant to Idaho Code § 72-451.

