IN THE CLAIMS COMMISSION OF THE STATE OF TENNESSEE
WESTERN DIVISION

FILED
FEB 12 2009
Tennessee Claims Commission
CLERK'S OFFICE

CLAUDETTE JACKSON,

Claimant,

CLAIM NO. S 20-057-931
Workers' Compensation

STATE OF TENNESSEE,

Defendant

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JUDGMENT

This matter came to be heard on December 10, 2008, before Nancy C. Miller-Herron, Commissioner, Tennessee Claims Commission, Western Division, at the Shelby County Courthouse in Memphis, Tennessee. Mr. Paul A. Robinson, Jr., Esq., represented the Claimant. Mr. P. Robin Dixon, Jr., Esq., represented the State of Tennessee.

Claimant, Claudette Jackson, brings this action against the State of Tennessee, hereinafter referred to as Defendant, to recover under § 9-8-307(a)(1)(K), Tenn. Code Ann., relating to workers' compensation claims by a state employee for injuries received during

the course and scope of her employment at the Tennessee Department of Human Services, hereinafter referred to as DHS.

Claimant alleges that on February 24, 2005, while she was working as a childcare specialist in her cubicle at DHS, her supervisor, Linda Carr, struck her on the arm, shoulder and/or neck. Jackson avers that as a result of the attack by Ms. Carr, she sustained physical and psychological injuries.

I.

FACT TESTIMONY

Claimant, Claudette Jackson, testified on her own behalf. Ms. Jackson testified that she is not currently employed. (Tr., p. 14, lines 22-23) She worked as a temporary employee for UT Health Works in the fall of 2008. (Tr., p. 15, lines 1-3; 8-10) From May, 2006, until December, 2007, she was a student at the University of Memphis. She graduated from the university in December, 2007. (Tr., p. 16, lines 9-18)

Jackson testified that she began working as a childcare specialist at DHS in 2002 or 2003. Her last day of work was March 2, 2005. (Tr., p. 17, line 12- p. 18, line 18)

Jackson testified that on February 24, 2005, at about 2:30 p.m., her supervisor, Linda Carr, came into her cubicle. (Tr., p. 18, line 23-p. 19, line 4) Jackson testified that Carr told her a client named Ms. Golden was still there. Jackson stated that she said to Carr, "[O]h well, what did I do now." (Tr., p. 19, lines 6-9) Jackson said Carr then struck her "across my left shoulder in my neck." [1] (Tr., p. 19, lines 9-10)

Jackson said Carr then "put her finger in my face and she told me didn't I tell you I was going to whip you." (Tr., p. 19, lines 20-21) Jackson noted Carr had said in a joking way on two or three prior occasions that she was going to whip Claimant. (Tr., p. 19, lines 22-24)

Jackson testified that she jerked up wanting to hit Carr back, but did not. (Tr., p. 23, lines 17-20) That's when Carr said, "I told you I was going to whip you, didn't I." (Tr., p. 23, lines 21-23) Carr then ordered her to see Ms. Golden. (Tr., p. 23, lines 22-23) Carr brought Ms. Golden back to Claimant's office and Claimant interviewed her. (Tr., p. 24, lines 2-7) Jackson testified that after her

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[1] On cross-examination, Claimant stated that Carr had made "one hard strike" between her neck and shoulder. (Tr., p. 41, lines 9-12) When she was asked whether she had mentioned her neck in an earlier deposition, Claimant stated, "[m]y left shoulder is where she hit me." (Tr., p. 43, line 9)

interview with Golden, Ms. Carr wanted to talk with her. (Tr., p. 24, lines 10-12)

When asked why Carr was angry with her that day, Jackson explained that while she was off from work with the flu, Ms. Golden had been talking with Carr about a problem she had because Jackson allegedly didn't issue a certain certificate on time. (Tr., p. 20, lines 6-18) As soon as Jackson returned to work, Carr had instructed her to straighten out Ms. Golden's problem. (Tr., p. 20, line 22- p. 21, line 1)

Jackson stated that after she talked with Carr, she told co-worker Verbaline Tucker that Ms. Carr had hit her in the neck. (Tr., p. 25, line 19-p. 26, line 11) Jackson stated she also told Joanne Merriwether and Carolyn Porter. Claimant said she also tried to report the incident with Carr to three supervisors, Emma Key, Hazel Jones and Cynthia Swift, but they were not in their offices. Jackson then left for the day. (Tr., p. 26, line 18-p. 28, line 9)

Claimant testified that the same evening, she told her father, Edmond Jackson, what had happened, a conversation overheard by her daughter. (Tr., p. 28, lines 14-19) Claimant testified she did not go to the doctor that night. (Tr., p. 29, lines 1-2)

Claimant testified she didn't call the police until the next day because she was "shocked" and "in a lot of pain." (Tr., p. 45, lines 6-7) She went on to say: "I didn't know what to do. I was afraid." (Tr., p. 45, line 10)

Claimant said she gave a police report over the phone. No one ever came to ask her about it. She said her former attorney handled it. (Tr., p. 67, line 20- p. 68, line 20)

Claimant stated that the next day she went straight to the office of supervisor Emma Key, but Ms. Key was not there. (Tr., p. 29, lines 12-13) As soon as Key arrived, Claimant reported what had happened. (Tr., p. 30, lines 1-3) Later that day, around 12:30 p.m., Claimant, Key and Carr met in Key's office. Jackson said Carr denied hitting her, but admitted that she jokingly said she was going to "whip me." (Tr., p. 30, lines 14-18) Claimant said Key directed her and Carr to write up the incident; Key also told them it would be reported to program director, Linda Williams. (Tr., p. 31, lines 16-22)

Claimant testified that on Monday, February 28, 2005, she also reported the incident to DHS security. (Tr., p. 69, lines 3-14)

Claimant said she tried to continue with her regular duties that day, but she was in pain. (Tr., p. 32, lines 3-6)

Claimant said when the swelling got worse over the weekend, so bad that she couldn't move her neck, she went to Saint Francis Hospital on Monday. (Tr., p. 32, lines 10-12) She had treated herself with Tylenol prior to going to St. Francis. (Tr., p. 32, lines 14-16)

At St. Francis, a physician told her she had "contusions to the upper and lower extremities and to my neck and shoulder." [2] (Tr., p. 33, lines 5-8) Claimant testified that the physician prescribed Percoset and recommended that she see her primary care physician and a physical therapist, if necessary. (Tr., p. 33, lines 9-13)

Claimant stated she did see her primary care physician, Dr. Marcia Bowden, on March 8, 2005. (Tr., p. 33, lines 16-22) Claimant stated that before she saw Bowden, she "couldn't stop crying." (Tr., p. 34, line 1) After she discussed what happened with Dr. Bowden, Bowden prescribed Zoloft. (Tr. p. 34, lines 4-12)

Claimant reported that when the swelling didn't go down, Dr. Bowden sent her to a physical therapist. (Tr., p. 34, lines 17-21) She said she subsequently hired an attorney who sent her to a chiropractor, Dr. Holliman, for treatment. (Tr., p. 35, lines 1-3) She

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[2] Also on cross-examination, Claimant read aloud from St. Francis hospital records indicating she had a contusion to her upper extremity, but mentioned no lower extremity contusions. (Tr., p. 49, lines 7-9; Ex. 1)

went to Dr. Holliman two or three times a week for awhile. (Tr., p. 35, lines 23-24) She stated that she started going to Dr. Holliman even before she had an automobile accident in the spring of 2007. (Tr., p. 36, lines 5-14)

When asked about her April, 2007 automobile accident, in which she was rear-ended on the driver's side, (Tr., p. 66, line 2) Claimant stated the pain "started back up" (Tr., p. 64, line 14) "from my left shoulder all the way down." (Tr., p. 64, lines 17-18) She conceded she did not go to the hospital or emergency room after the automobile accident. She was treated by Dr. Bowden. (Tr., p. 65, lines 10-15)

When asked whether she told Dr. Holliman about her automobile accident before he wrote his report in October, 2007, Claimant stated that Holliman "was aware of it at the time." (Tr., p. 45, line 24) She said she called his office and told his secretary. (Tr., p. 46, line 8) She said she was treated by another chiropractor for injuries she received in the auto accident. (Tr., p. 46, line 23-p. 47, line 1)

Claimant stated that Dr. Holliman's treatments for her workplace injury helped her, although her pain did not ever go away and at one point it got so bad she couldn't even walk straight. (Tr., p. 36, line 20-p. 37, line 2)

She said her work injury disturbed her sleep and prevented her from running and jogging. She also has difficulty bending and sitting and driving for long periods of time. (Tr., p. 37, lines 15-24)

Claimant testified that she continues to take Zoloft prescribed by Dr. Chris Waller, who is her current primary care physician. (Tr., p. 38, lines 1-18)

When asked whether she is still in pain, Claimant responded, "Absolutely, raging." (Tr., p. 39, lines 23-24) She stated it hurts in her lower spine, neck and the center of her back. (Tr., p. 40, lines 2-3)

Claimant testified that the injury has affected her social life. She had done a lot of things with her daughter and was active in the community; this has slowed her down. (Tr., p. 40, lines 15-21)

Claimant admitted that during the four months she worked under Ms. Carr, she made a number of errors in processing eligibility for childcare certification. (Tr., p. 51, lines 17-21) Claimant also

admitted she had problems with Ms. Carr prior to February 24, 2005. (Tr., p. 57, lines 1-5) Claimant said she had complained, in writing, about prior unprofessional conduct by Ms. Carr. She could not produce any copies, other than the one concerning the instant incident. (Tr., p. 55, line 1-p. 56, line 8)

Claimant admitted she did tell Defendant's expert, Joel Reisman, M.D., that "in the past on different occasions, I had some problems with—working with African-American women." (Tr., p. 58, lines 2-3) Claimant noted that when Dr. Reisman asked if she thought it was jealousy, she said, "yes." (Tr., p. 58, lines 10-11) She conceded she had had problems with female African-American co-workers when she worked at both Brother Industries and Shelby County Headstart. (Tr., p. 58, lines 17-21)

Claimant further conceded she told Reisman she had seen Ms. Carr in a mall in July or August, 2008, and felt Carr had gotten away with something. She said she didn't recall whether she told Reisman she did not experience anxiety or fear when she saw Carr. (Tr., p. 60, line 23-p. 61, line 10)

Claimant testified her curvature of the spine did not give her any problems prior to February, 2005. (Tr., p. 66, lines 11-16)

Edmond Jackson, Claimant's father, testified on her behalf. (Tr., p. 140, lines 22-24) Mr. Jackson testified that his daughter got hit at work. (Tr., p. 141, lines 10-13). He further testified that Claimant showed him the bruises on her left shoulder and he advised her to go to the Emergency Room. (Tr., p. 141, line 19-p. 142, line 16)

Mr. Jackson testified that after the incident, his daughter was "pretty nervous and upset over it." (Tr., p. 142, lines 17-20)

Claimant's mother, Margaret Jackson, also testified on her behalf. (Tr., p. 146, lines 10-12) Ms. Jackson said she talked to her daughter at around 10 p.m. on February 24, 2005; her daughter said her supervisor hit her (Tr., p. 146, lines 20-24) and that she was "hurting real bad." (Tr., p. 146, lines 17-18)

Ms. Jackson said she told her daughter to seek medical attention and to contact the police about the incident. (Tr., p. 147, lines 2-3) Ms. Jackson also testified that her daughter had nightmares following the incident. (Tr., p. 147, lines 14-15)

Kala Jackson also testified on her mother's behalf. (Tr., p. 149, lines 2-3) Kala Jackson said she remembers that her mother "was crying and she was saying her shoulder was in pain." (Tr., p. 150,

lines 1-2) She said this behavior "had been going on frequently." (Tr., p. 150, line 10)

Ms. Linda Carr testified on behalf of the State of Tennessee. She stated that she has worked at DHS since 1978. (Tr., p. 155, lines 15-20) Carr started as an eligibility counselor, but now holds the position of program coordinator. Her current position involves training new employees and doing refresher training with current employees. (Tr., p. 156, lines 6-19)

In February, 2005, Carr held the position of Field Supervisor I. Her primary responsibility was to supervise eligibility counselors. She indicated her new position was a promotion from the position of field supervisor. (Tr., p. 157, lines 1-21)

Carr testified that she began supervising Claimant around October, 2004. Carr stated that during the time she supervised Jackson, Jackson made several errors which resulted in underpayments to childcare providers. (Tr., p. 159, lines 6-11) Carr estimated there had been somewhere between four and six of these errors by the time of the alleged incident. (Tr., p. 159, lines 12-17) Carr stated she had talked with Claimant "in depth" about the errors. (Tr., p. 159, lines 20-21)

Carr was asked whether she hit or struck Ms. Jackson on February 24, 2005. She responded: "No sir. I did not." (Tr., p. 161, line 5)

Later when Carr was asked whether she ever told Jackson she was going to "whip her," Carr said she did not. (Tr., p. 166, line 17- p. 167, line 1)

Carr also was asked whether, during her 30-year tenure at DHS, she had ever been accused of hitting another employee; she said she had not. (Tr., p. 167, lines 5-9)

Carr testified that she had not been contacted by the police regarding this alleged incident and had not been reprimanded. In fact, she was promoted in May, 2005. (Tr., p. 174, lines 12-21)

Carr stated that prior to the alleged incident, Tashala Golden, one of Jackson's customers, had called her about expiration notices she had received indicating she was about to loose her childcare services. (Tr., p. 161, lines 17-24) Carr told Golden that Claimant was out of the office on sick leave; she assured Golden the problem would be fixed once Claimant returned. (Tr., p. 162, lines 1-5)

Carr testified that Claimant returned from sick leave on February 22, 2005. That day Carr talked with Claimant about the

Golden matter and directed her to send out the correct notices. (Tr., p. 163, lines 14-23) She also informed Claimant that Ms. Golden also wanted to be recertified. (Tr., p. 164, lines 1-4)

Carr stated that she was frustrated over the Golden matter, but was never angry about it and never even had a confrontation with Jackson about it. She said that made the accusations "all the more surprising and shocking." (Tr., p. 172, lines 5-8)

II.

MEDICAL AND EXPERT TESTIMONY

Joel A. Reisman, M.D., a board certified psychiatrist, testified by deposition on December 3, 2008. Dr. Reisman testified that he dealt with PTSD when he was in the military from 1966-1970. (Reisman Dep., p. 10, lines 10-16) He also treated Vietnam veterans and holocaust survivors for PTSD once he got out of the military. (Reisman Dep., p. 10, line 23-p. 11, line 4) Reisman is a member of the committee of the American Academy of Psychiatry and Law which deals with PTSD and of the International Society of Traumatic Stress Studies. (Reisman Dep., p. 11, line 8-p. 12, line 2) Reisman further testified that he has been doing workers' compensation and disability ratings for twenty years. (Reisman Dep., p. 13, lines 19-22)

He stated that he has been working with the Social Security Office of Hearings and Appeals for eleven years. (Reisman Dep., p. 14, lines 12-16)

Without objection, Dr. Reisman was offered as an expert in the area of PTSD. (Reisman Dep., p. 12, lines 3-8)

Reisman testified that he performed an independent psychiatric examination of Claimant. (Reisman Dep., p. 12, lines 11-15)

Dr. Reisman stated that a PTSD diagnosis involves "actual or threatened death or serious bodily harm." (Reisman Dep., p. 8, lines 1-2) He went on to explain that "if you don't have that type of trauma, then you don't have PTSD." (Reisman Dep., p. 8, lines 20-22) Dr. Reisman testified that, under the *Diagnostic and Statistical Manual* of the American Psychiatric Association, hereinafter referred to as DSM, a diagnosis of PTSD includes both the type of trauma, as explained above, and the individual's response to that trauma, which is "intense fear, harm, helplessness." (Reisman Dep., p. 9, lines 18-20) Under the DSM, physicians also look to see whether the patient is having flashbacks or nightmares, is attempting to avoid similar situations, has physical symptoms such as insomnia or headaches, and whether

the symptoms have lasted at least a month. (Reisman Dep., p. 9, line 22-p. 10, line 9)

Using the criteria outlined in the DSM-IV-TR, Dr. Reisman opined that Claimant is not suffering from PTSD. (Reisman Dep., p. 13, lines 10-13)

Dr. Reisman stated that Claimant told him her supervisor harassed her and threatened to whip her on a regular basis and that she also endured derogatory comments from her co-workers. (Reisman Dep., p. 18, line 23-p.19, line 2)

Dr. Reisman testified that Claimant told him that in February, 2005, Ms. Carr directed her to fix a problem with a client who had been trying to sign up for certification while Claimant was out on sick leave. Reisman said Claimant told him Carr hit her with a "closed fist with a ring of keys on it." (Reisman Dep., p. 19, lines 15-20)

Reisman said Claimant told him her initial reaction was to want to hurt Carr and to clinch her fist, but she continued her work. (Reisman Dep., p. 20, lines 2-4)

Dr. Reisman testified that Claimant told him she had previous problems working with African-American females because of their jealousy of her. (Reisman Dep., p. 21, line 22-p. 22, line 2)

Reisman testified that Claimant told him that she later saw Carr at the mall. This made her angry because she thought Carr "had gotten away with something." (Reisman Dep, p. 26, lines 2-5) He said this was not consistent with PTSD because it was not an anxious, fearful reaction. (Reisman Dep, p. 26, lines 8-13)

Reisman noted that in his examination of her, Claimant was able to focus and concentrate on her tasks. (Reisman Dep, p. 27, lines 14-16) Reisman stated the validity scales of the tests he gave Claimant indicated an "over reporting of physical symptomatology by her." (Reisman Dep., p. 30, line 1) He noted that "even her mildest pain she saw as intolerable and disabling." (Reisman Dep., p. 31, lines 19-20) He further noted that Claimant's description of her physical complaints "does not fit with what we know about the human body and how it works." (Reisman Dep., p. 33, lines 1-2)

Reisman noted that Claimant's description of the trauma is not a PTSD-type trauma and her reaction to it was not "intense fear or horror" as required for a PTSD diagnosis. (Reisman Dep., p. 33, lines 11-15)

Dr. Reisman testified that Claimant told him she had an automobile accident in April, 2007, which "aggravated her work-

related injuries" to her neck, shoulder and back. (Reisman Dep., p. 35, lines 6-13)

Chiropractor Mark Holliman testified live on behalf of Claimant. He testified that he has been practicing in Memphis since graduating from chiropractic college in 1995. (Tr., p. 73, lines 8-9) He stated he has worked in a multidisciplinary clinic, done peer review counseling and served as a high school physician for a local high school team while maintaining a full-time practice. (Tr., p. 73, line 10-p. 74, line 3) Dr. Holliman testified that he is licensed in Tennessee and is board certified as a disability analyst. (Tr., p. 74, lines 7-17) He emphasized that the disability analyst certification involves the AMA Guides. (Tr., p. 75, lines 1-4)

Dr. Holliman testified that he treated Claimant between June 16, 2005 and October 28, 2005, (Tr., p. 76, lines 14-15; p. 102, lines 2-3) and prepared a permanent impairment evaluation report in October, 2007. (Ex. 3)

The history he took from Claimant in June, 2005, indicated she had no back or neck problems prior to February 24, 2005, when her supervisor assaulted her from behind with a blow to the "upper left part of her back and neck." (Tr., p. 79, line 17-p. 80, line 1)

Dr. Holliman stated that when he examined Claimant she had range of motion deficits, muscle spasms, tenderness to compression and neurological implications. (Tr., p. 80, lines 13-20) Holliman testified that he treated Claimant on thirty-one visits. (Tr., p. 82, line 16)

Dr. Holliman testified that even after thirty-one visits, Claimant had residual problems which he identified in his report. (Tr., p. 83, lines 7-9) He stated she continues to have frequent pain in the left side of her neck, (Tr., p. 83, line 15) frequent pain in her upper back (Tr., p. 84, line 21) and intermittent pain radiating into her left arm (Tr., p. 85, lines 3-8). He testified Claimant also avoids activities of daily living to avoid triggering pain (Tr., p. 85, lines 17-18) and has difficulty moving from sitting to standing or lying down to a seated position. (Tr., p. 86, lines 7-11)

Dr. Holliman testified that he assigned an impairment rating based on Claimant's symptoms and radiological findings. (Tr., p. 86, lines 15-21; Ex. 4 for Identification Purposes Only) He stated that the radiological studies show that the ligament at C4 allows excessive motion resulting in sharp shooting pain. (Tr., p. 94, lines 2-15) He

testified the ligament could have been damaged by a blow to her shoulder. (Tr., p. 94, lines 16-23)

Dr. Holliman testified that he assigned a twenty-eight percent (28%) impairment to the body as a whole for the physical injury in her neck and back plus a twenty-seven percent (27%) impairment for the Post Traumatic Stress Disorder. The combined impairment rating was forty-seven percent (47%). (Tr., p. 96, line 15- p. 97, line 2)

Dr. Holliman testified that his charges of $7,765.00 for Ms. Jackson's treatment were reasonable and necessary. (Tr., p. 100, lines 8-11)

On cross-examination, Holliman testified that the post-traumatic stress disorder portion of the impairment rating was based on the records of Dr. Bowden and Dr. Dennie. (Tr., p. 104, lines 3-12) It should be noted, however, that Dr. Bowden's records never were provided to Defendants as requested. Holliman testified later that the impairment rating on PTSD came from Dr. Dennie. (Tr., p. 107, lines 19-23) Dr. Holliman testified he had not seen Dr. Reisman's report[3] when he formulated the permanent impairment rating. (Tr., p. 111, line 23-p. 112, line 11)

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[3] During the lunch recess, Dr. Holliman reviewed Dr. Reisman's report and addressed it in his testimony in the afternoon.

After a lunch recess during which Dr. Holliman reviewed Dr. Reisman's report, he was asked to read from page 9 which indicated that the MRI performed by Dr. Atkinson in June, 2008, was after her April, 2007 motor vehicle accident. (Tr., p. 120, lines 9-19) Holliman emphasized that the MRI he relied on was done in May, 2005. (Tr., p. 122, lines 6-8)

Dr. Holliman conceded that he didn't think there was a reference to Claimant's April, 2007 automobile accident in his October, 2007 report. (Tr., p. 134, lines 10-15) He further testified that Claimant's impairment existed before the April, 2007 accident. (Tr., p. 136, lines 6-12)

Deborah Dennie, Ph.D. testified via telephone on December 15, 2008. Dr. Dennie testified she received an online doctorate in human services, not counseling.

Dr. Dennie testified that she began treating Claimant in August, 2008. Dennie stated she began her evaluation of Claimant with the "River City Mental Health Assessment." Her treatment of Claimant included evaluation using a mini mental health exam and a depression scale, bioenergetics and transactional analysis.

Dr. Dennie stated that she spent six or seven hours with Claimant and saw her five times. Dr. Dennie stated that Claimant reported recurring nightmares about her encounter with her supervisor, anxiety over similar situations, and that she suffered from sadness and low energy. Dennie opined that Claimant was suffering from Post Traumatic Stress Disorder and noted that she had prepared a report about this.

Dennie testified during cross examination that she had not seen Dr. Reisman's report and did not know about the 2007 automobile accident.

III.

EXCLUSION OF DENNIE'S IMPAIRMENT RATING FOR CLAIMANT'S ALLEGED MENTAL INJURY

Dr. Dennie's report included the only impairment rating offered by Claimant for the alleged mental injury. Although Claimant testified that Dr. Marcia Bowden diagnosed post traumatic stress disorder, she did not present a report or deposition from Dr. Bowden. (Tr., p. 62, lines 5-13) In fact, Dr. Holliman testified that he relied on Dr. Dennie's impairment rating in giving his opinion on the permanency of Claimant's mental injury. (Tr., p. 107, lines 19-23)

Therefore, based on post-trial authority filed by the parties, the Commission did not consider Holliman's impairment rating for PTSD in reaching its decision. A whole line of Tennessee cases require expert medical evidence, not that of a psychologist, to establish the causation and permanency of a mental injury. *See, e.g., Cigna Property & Casualty Ins. Co. v. Sneed,* 772 S.W.2d 422, 424 (Tenn. 1989); *Henley v. Roadway Exp.,* 699 S.W.2d 150, 155 (Tenn. 1985). Of course, no specific numerical impairment rating need be given for a Claimant to qualify for an award for permanent partial disability. In this case, however, no testimony is offered by a medical doctor to establish that Claimant's mental health issues were caused by Carr's alleged attack in February, 2005.

It should be noted that even if Dr. Bowden's alleged diagnosis of PTSD had made it into the record, the Commission probably would have given more weight to the testimony of Joel Reisman, M. D., a noted authority on PTSD, who opined that Claimant was not suffering from PTSD, than to the testimony of Dr. Dennie, who got her doctorate in Human Services on the internet.

Dr. Holliman relied on his own treatment of Claimant, including radiological studies, in opining that the physical injury to her neck and

back resulted in twenty-eight percent (28%) impairment to the body as a whole. So the Commission still must make a finding on whether and to what extent this physical injury was caused by the alleged assault by Carr and, if so, what permanent disability remains.

IV.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commissioner has thoroughly reviewed the record in this case, including the testimony of the witnesses who appeared at the hearing of this cause, the testimony of those whose depositions were introduced for proof, the arguments of counsel and, indeed, the entire record as a whole. After carefully weighing the credibility of each of the witnesses, the Commissioner makes the following findings of fact.

The entire instant case turns on one issue: credibility, specifically the credibility of Claudette Jackson and Linda Carr. In many cases, the truth about what happened is a matter of perspective and opposing witnesses describing the same event may both be sincere and truthful. In this case, however, the stories told by these two women cannot both be true. Either Linda Carr went into Claudette Jackson's cubicle and punched her or she did not.

The Commission **FINDS** that she did not. The Commission would note that although Claimant testified that she told several co-workers about the assault the day it happened and met with a supervisor named Key about it the next day, she did not call Key or any of these co-workers to corroborate her story.

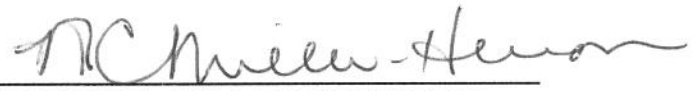
Most importantly, the Commission found Ms. Carr's testimony to be extremely straightforward and reliable.

The Commission **FINDS** that although Claudette Jackson had contusions when she arrived at St. Francis Hospital several days after the alleged incident and was treated by Dr. Holliman for problems with her ligament at C4, Claimant has not proved by a preponderance of the evidence that she sustained a work-related injury, either physical or mental, on the afternoon of February 24, 2005.

For the reasons stated herein, the Commission **FINDS** that Claimant has not proved that she suffered a physical or mental injury which arose out of her employment and that she, therefore, cannot be awarded compensation pursuant to § 9-8-307(a)(1)(K), Tenn. Code Ann.

Ms. Jackson's claim is, accordingly, **DISMISSED.**

IT IS SO ORDERED.



NANCY C. MILLER-HERRON
COMMISSIONER

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has this date been forwarded by first class postage to:

Mr. Paul A. Robinson, Jr., Esq.
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Ms. P. Robin Dixon, Jr., Esq.
Assistant Attorney General
Civil Rights and Claims Division
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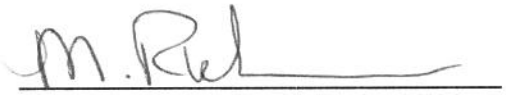
Nashville, TN 37202

on this the 12 day of February, 2009.



MARSHA RICHESON, CLERK