BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

IN RE: BRENDA CAVORETTO	)	**DOCKET NOS. 15 23773 & 16 15078**
	)	
CLAIM NO. AQ-15969	)	**PROPOSED DECISION AND ORDER**

Tom M. Kalenius, Industrial Appeals Judge —Police Chief Brenda Cavoretto injured her spine and elbows when a body weighing 285 pounds was dropped onto her from an elevated truck bed. Ms. Cavoretto was struck while she held her arms out above her head. She fell to one knee and lifted the body up onto a gurney. In addition to her physical injuries, Ms. Cavoretto described Post Traumatic Stress Disorder due to attending to one of the most horrific crime scenes of her career.

The Department denied responsibility for bilateral ulnar neuropathies at the elbows and Post Traumatic Stress Disorder. The preponderance of the evidence was persuasive that the Department orders were incorrect. The Department orders dated September 28, 2015, and April 6, 2016, are reversed. The matters are remanded to the Department to allow bilateral ulnar neuropathies at the elbows and Post Traumatic Stress Disorder as proximately caused by the industrial injury of February 7, 2012, and to take such other and further action as is required by the law and the facts.

DISCUSSION

Ms. Cavoretto was the 39-year-old police chief of Coulee City when she was injured on February 7, 2012. Ms. Cavoretto is 5 feet 2 inches tall and weighed between 120 and 125 pounds. Ms. Cavoretto's 16-year work history in law enforcement included certifications by Washington, Idaho and Montana.

On February 7, 2012, Ms. Cavoretto provided aid to a battered woman. The victim had been beaten severely. The victim's face was extremely swollen and appeared to be cut from one side of her face across her eyes to the other. The victim told Ms. Cavoretto that her husband, Bob, had tied her to a chair, beaten and raped her for three days. Upon regaining consciousness, the victim freed herself and drove away. The victim told Ms. Cavoretto that she saw Bob's body hanging from the corral.

Ms. Cavoretto had arrested the husband-assailant on numerous occasions. Ms. Cavoretto testified that the assailant had threatened Ms. Cavoretto with ambush from a tree stand at his home. Ms. Cavoretto went through the house and observed a horrific scene. Ms. Cavoretto testified that there was blood where the victim had been beaten while tied to the chair.

Ms. Cavoretto waited in the barnyard for the coroner and fire fighters to bring a brush truck. Ms. Cavoretto explained that a brush truck is taller than a pickup truck by a few feet. Ms. Cavoretto

positioned the truck under the body, climbed onto the truck bed and cut the rope a few feet above the hangman's knot. The body was lowered onto the back of the truck. The fire fighters placed the corpse into a body bag and lowered the corpse. Ms. Cavoretto was positioned on the ground but reached out with both arms above her head to catch the body when the body fell, landing on her.

Ms. Cavoretto testified that when the 285 pound corpse fell onto her from the elevated height of the truck bed:

> It hurt all the way down to my mid-section, from my stomach all the way around. It felt like it was on fire. Just instantly hurt when he fell on me. And it just—it hurt. I thought, "Oh, great. I pulled something," or whatever. And so I didn't think a whole lot of it at the time. I thought, you know, "A heavy guy just fell on me. Of course, it's going to hurt." But I thought the pain would go away and it never did.[1]

Ms. Cavoretto's testimony was uncontroverted that she sustained neck, mid-back and low back symptoms after the industrial injury in February 2012. In June 2012, Ms. Cavoretto first complained of shooting pains down her arms and occasional tingling and numbness in the upper extremities, worse on the left. Ms. Cavoretto testified that the symptoms persisted. Both hands were numb, including at the ring and little fingers. Pain was present in her elbows and arms.

Ms. Cavoretto understood that the elbow symptoms were due to the neck conditions. Ms. Cavoretto reported symptoms in her arms, elbows and hands during an examination in September 2012. Following electrodiagnostic testing and MRIs, the presence of cervical, thoracic and lumbar spinal injuries were confirmed. In addition, the upper extremity symptoms persisted, including numbness in both hands, shooting pains down both arms and constant symptoms of the left upper extremity.

Bilateral Ulnar Neuropathy

Dr. Paul J. Allen, a physiatrist, treated Ms. Cavoretto between April 4, 2013, and November 5, 2015. Dr. Allen took a history that her left upper extremity was weak and numb, resulting in decreased functions. Further, Ms. Cavoretta indicated she was depressed and anxious. Dr. Allen took a history of the industrial injury and main complaints of neck, left upper extremity, low back and left lower extremity symptoms.

Dr. Allen reviewed cervical and lumbar MRIs performed on October 30, 2012. The studies depicted spondlyotic changes in the neck at C5-6 and significant lumbar degenerative disc disease

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[1] 10/20/16 Tr. at 20

at L4-5 and L5-S1. Nerve conduction studies performed on May 17, 2013, and March 12, 2015, indicated slowing across the ulnar nerve on the symptomatic left side and a significant slowing across the elbow bilaterally. Dr. Allen concluded there was significant slowing of the ulnar motor nerve across the elbow. Dr. Allen noted the left upper extremity pain was rated as an 8 out of 10, where 10 is the worst pain. The pain was constant and accompanied by weakness.

On July 31, 2013, Dr. Allen injected the left C6 area with a steroid but the symptoms returned within a few weeks. Dr. Allen noted that Ms. Cavoretto was right handed and had difficulty handling her firearm. Dr. Allen referred Ms. Cavoretto to a neurologist. Dr. Allen was advised that there was significant bilateral hand numbness that restricted her working as she did not feel comfortable carrying and handling a gun with the symptoms. The numbness was present when she drove and interrupted her sleep.

The MRI of the left elbow, taken on April 17, 2015, depicted mild to moderate joint effusion with subchondral edema, fluid in the bone and cystic changes in the bones by the elbow. The right elbow was not imaged.

Dr. Allen testified the clinical and objective findings were consistent with the complaints and symptoms.

Dr. Allen diagnosed bilateral ulnar neuropathies at the elbows proximately caused by the industrial injury. Dr. Allen noted on July 11, 2015, that he disputed the reading of the EMG study as normal. Dr. Allen testified that the EMG demonstrated ulnar neuropathy, particularly on the left side. The findings were a little softer on the right side but demonstrated and bilateral abnormalities of the ulnar nerve. Dr. James Kopp, an orthopedic surgeon, performed an independent medical examination on September 23, 2013. On examination, Dr. Kopp found numbness in the distribution of C6 corresponding to a radial nerve that corresponded to the innervation of the long and little finger. Dr. Kopp testified that the numbness in the little finger affected the ulnar nerve but that he did not diagnose bilateral ulnar neuropathy at the time of his examination based upon his clinical findings.

Dr. Kopp testified that the diagnosis of bilateral ulnar neuropathy was subsequently established and proven by EMG studies. Dr. Kopp learned of the EMG studies from reviewing the report of Dr. Kutsy, a neurologist who described the electrodiagnostic studies as indicating bilateral ulnar neuropathies.[2]

[2] Kopp Dep. at 25

Dr. Kutsy, a neurologist, testified that he examined Ms. Cavoretto on May 22, 2015. Dr. Kutsy testified that sprains and strains of the cervical thoracic and lumbar spine were accepted under the industrial claim. Dr. Kutsy diagnosed bilateral ulnar neuropathy greater on the left arm, both clinically and by electrical studies.

Neither Dr. Kutsy nor Dr. Kopp related the bilateral ulnar neuropathies to the industrial injury. Dr. Kopp relied on the AMA Guides to the Evaluation of Disease and Injury Causation, 2nd Edition, first published in 2014, after his examination. Dr. Kopp testified that the occupational factors listed in the learned treatise did not correlate sufficiently with the evidence of a sudden trauma when a 285-pound corpse landed on a 120-pound woman holding her arms outstretched and to shoulder level. Dr. Kopp denied the injury was of sufficient force and repetition to be a cause.

Dr. Kopp testified that he based his conclusion regarding causation on an assumption that 14 months passed between the industrial injury and the first report of symptoms of ulnar neuropathy. Dr. Kopp acknowledged that an independent medical examination report dated September 28, 2012, reported complaints of numbness throughout the bilateral extremities in a stocking glove distribution. Dr. Kopp testified that the pain diagram at that time included horizontal lines at the upper arm to the risk with numbness in left hand. Dr. Kopp compared that to the pain diagram during his examination on September 23, 2013, in which there was an indication of numbness from the neck down both arms ending at the hands.

Dr. Kutsy acknowledged that the claimant demonstrated abnormal conditions in her upper extremities at the time of his examination in May 2015 as well as in examinations conducted in 2012 and 2013.

Dr. Kutsy interpreted the 2013 electrodiagnostic study of the upper extremity as not demonstrating the presence of ulnar neuropathy. A repeat electrodiagnostic study in March 2015 noted the presence of ulnar neuropathy. Dr. Kutsy acknowledged he lacked the raw data from the 2013 EMG. Dr. Kutsy testified that he relied on the summary of the report and if those were the actual scores from the test he had no evidence to the contrary. Dr. Kutsy agreed that the 2015 electrodiagnostic studies verified the ulnar neuropathy in both elbows.

Dr. Kutsy was not able to tell when the condition manifested. Dr. Kutsy concluded that the ulnar neuropathy was idiopathic. Dr. Kutsy testified that the trauma must be of sufficient force to fracture bones, compress or pierce a nerve or cause significant swelling of the muscles around the nerve.

Dr. Amos, a physiatrist, was Ms. Cavoretto's treating physician between December 17, 2015, and September 2016. Dr. Amos learned that during work hardening in April 2012 Ms. Cavoretto first complained of numbness in her bilateral extremities.

On examination, Ms. Amos found a positive Tinel sign at the elbows on both sides, commented there was no pain behavior and noted weakness of the lower upper extremity and a decreased sensation bilaterally. Dr. Amos concluded that the claimant's clinical exam findings were consistent with the electrodiagnostic studies. Dr. Amos testified that the electrodiagnostic studies were the gold standard for diagnosing ulnar neuropathy of the elbow and that both were abnormal.

Dr. Amos diagnosed bilateral older neuropathy and related it to the industrial injury based upon the closeness time of the onset of the symptoms and by the objective clinical findings.

Post Traumatic Stress Disorder

Ms. Cavoretto denied mental health symptoms, treatment or conditions before the injury. Ms. Cavoretto denied nightmares, flashbacks with a racing heartbeat and night sweats previously. Following the industrial injury, Ms. Cavoretto found it hard to admit that she was feeling mental health symptoms. The Department allowed a major depressive disorder but denied Post Traumatic Stress Disorder.[3] Ms. Cavoretto testified that the post traumatic symptoms worsened without treatment. Ms. Cavoretto testified she:

> Felt very drained of energy, and I didn't want to think about what I saw. And as a policeman for years, you know, you go to bad calls and you see all sorts of things you don't want to think about. And so you kind of push them aside, and you go to the next call and you keep going.
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> This one, I tried that. And I continuously try to push this one to the side and not think about it, but it just keeps coming back up. I still vividly remember the scene and the day . . . A few times a week. Horrible nightmares involving the suspect . . . I have nightmares three or four times a week. And they always have him in them.
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> . . . Sometimes he shoots me. Sometimes he chases me around. Sometimes he lands on me. Sometimes he runs me over. But it's always Bob. He's like Freddy Krueger of my dreams. . . . It's horrible.
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> Probably a few months after the incident they go to be more and more. I had a couple previous to that. But I didn't think anything of it. Now it's like a constant situation.[4]

[3] 10/20/16 Tr. at 4
[4] 10/20/16. Tr. at 20-22

Dr. Douglas Robinson, a psychiatrist, conducted a mental status examination on March 16, 2016. Dr. Robinson testified that he took a personal, developmental, socioeconomic and emotional history. Dr. Robinson was informed of a May 2010 psychological screening and MMPI, the number one clinically validated personality assessment[5] that was administered prior to Ms. Cavoretto's serving as police chief. There was no mental health disorder found. Before the industrial injury in February 2012, Dr. Robinson agreed that there were no mental health symptoms or treatment. Dr. Robinson was informed that sprains of the cervical, thoracic and lumbar spine as well as depressive and anxiety disorders were accepted as related to the industrial injury. Dr. Robinson diagnosed only a panic condition with agoraphobia because he testified there was no evidence of depression, anxiety or posttraumatic stress disorder.

Dr. Robinson testified that Ms. Cavoretto described being depressed, anxious and not enjoying crowds or public places. Dr. Robinson testified that Ms. Cavoretto mainly complained of nightmares and sleep interruption.

Dr. Robinson reported that the nightmares typically involved the man whose corpse fell on her as she (Ms. Cavoretto) was trying to lower it to the gurney. Dr. Robinson further reported that the nightmares typically involved the corpse chasing Ms. Cavoretto, trying to shoot her and following her. Dr. Robinson testified that Ms. Cavoretto mentioned that the assailant had badly beaten and raped his wife right before Ms. Cavoretto was injured. Dr. Robinson reported that the assailant had been arrested by Ms. Cavoretto on four or five previous occasions involving domestic violence.

Dr. Robinson did not know that the assailant was notorious in that part of the state of Washington involving the police. Dr. Robinson did not have any reason to disbelieve that the assailant had set up a hunting stand in the tree at his house so he could snipe police officers as they approached. Dr. Robinson did not know that Ms. Cavoretto had to leave her car a quarter mile away and carefully walk to the house expecting to be shot by a sniper. Dr. Robinson did not know that Ms. Cavoretto discovered the assailant's body hanging from the neck in the corral and the corpse was six foot five inches and weighed 285 pounds. Dr. Robinson did not know that Ms. Cavoretto weighed no more than 130 pounds. Dr. Robinson did not know that Ms. Cavoretto cut the assailant's body down and that the corpse actually landed on top of Ms. Cavoretto.

[5] Bargreen Dep. at 15.

Dr. Robinson testified that the events of the industrial injury were

> [U]npleasant or horrifying in a certain sense but not of a characteristic likely to lead to PTSD . . . it was not reasonable for Ms. Cavoretto to feel like her life was threatened or [that] serious bodily harm would have occurred from her injury of February 2012.[6]

Dr. Robinson agreed that posttraumatic stress disorder requires that there be intrusive symptoms associated with the surrounding events, such as recurrent, involuntary intrusive memories or nightmares.[7] Dr. Robinson acknowledged that Ms. Cavoretto reported that during the nightmares she shook, her heart raced and she had night sweats. Finally, Dr. Robinson agreed that the criteria for posttraumatic stress disorder required the emotional response to last more than one month.

Dr. Amos disagreed with Dr. Robinson. Dr. Amos also took a history that the claimant reported difficulty with memory and concentration. Ms. Cavoretto was low in energy and motivation. Ms. Cavoretto had nightmares two or three times a week with pronounced anxiety accompanied by a racing heartbeat and night sweats. The claimant reported that she would ruminate about death and dead bodies and choking and other morbid content in which the assailant stalked her.

Dr. Amos wrote a letter to the claims manager on May 6, 2016, explaining that posttraumatic stress disorder treatment was required and that the treatment Ms. Cavoretto had received for her depression was not consistent.

Dr. Amos diagnosed posttraumatic stress disorder because there was no symptoms preexisting industrial injury and the symptoms started soon after the injury in 2012. Dr. Amos compared the criteria to the clinical findings and symptoms of Ms. Cavoretto and related the posttraumatic stress disorder to the industrial injury.

Owen Bargreen, a clinical psychologist, treated Ms. Cavoretto between May 22, 2015, and July 2016. Mr. Bargreen testified that he treated over 100 patients who had law enforcement careers and there was a stigma among police officers against seeking mental health treatment. Mr. Bargreen testified that treatment was delayed and inconsistent initially but was completed on a weekly basis for 90 days. Mr. Bargreen last evaluated Ms. Cavoretto on September 12, 2016. Mr. Bargreen diagnosed major depressive disorder and posttraumatic stress disorder, proximately caused by the industrial injury.

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[6] Robinson Dep. at 41.
[7] Robinson Dep. at 42.

Mr. Bargreen testified that Ms. Cavoretto's mental status improved but posttraumatic stress disorder, proximately caused by the industrial injury, persisted as of November 9, 2015. Mr. Bargreen testified that nightmares and flashbacks in which Ms. Cavoretto re-experienced the corpse falling on her and the stalking in her dreams by the assailant were not symptoms in the diagnosis of panic disorder with agoraphobia.[8]

DECISION

In Docket No. 15 23773, the claimant, Brenda L. Cavoretto, filed an appeal with the Board of Industrial Insurance Appeals on November 19, 2015. The claimant appeals a Department order dated September 28, 2015. In this order, the Department affirmed a Department order dated June 3, 2015, that denied responsibility for bilateral ulnar neuropathies at the elbows. The Department order was incorrect. The Department order dated September 28, 2015, is reversed. The matter is remanded to the Department to allow bilateral ulnar neuropathies at the elbows as proximately caused by the industrial injury of February 7, 2012, and to take such other and further action as is required by the law and the facts.

In Docket No. 16 15078, the claimant, Brenda L. Cavoretto, filed an appeal with the Board of Industrial Insurance Appeals on May 12, 2016. The claimant appeals a Department order dated April 6, 2016. In this order, the Department affirmed a Department order dated November 9, 2015, that affirmed a Department order dated August 6, 2015, that denied responsibility for Post Traumatic Stress Disorder. The Department order was incorrect. The Department order dated April 6, 2016, is reversed. The matter is remanded to the Department to allow Post Traumatic Stress Disorder as proximately caused by the industrial injury of February 7, 2012, and to take such other and further action as is required by the law and the facts.

FINDINGS OF FACT

1. On February 9, 2018, an industrial appeals judge certified that the parties agreed to include the Jurisdictional History in the Board record solely for jurisdictional purposes.

2. Brenda Cavoretto, a chief of police, sustained an industrial injury on February 7, 2012, when a body weighing 285 pounds fell onto her while her hands were outstretched above her head, proximately causing bilateral ulnar neuropathies at the elbows and Post Traumatic Stress Disorder.

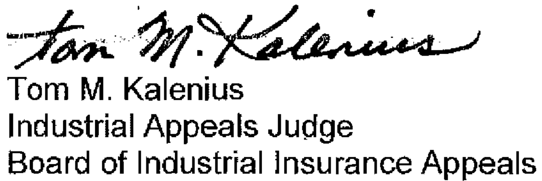
[8] Bargreen Dep. at 26.

CONCLUSIONS OF LAW

1. The Board of Industrial Insurance Appeals has jurisdiction over the parties and subject matter in these appeals.

2. The Department orders dated September 28, 2015, and April 6, 2016, are incorrect and are reversed. This matter is remanded to the Department to issue orders accepting bilateral ulnar neuropathies at the elbows and Post Traumatic Stress Disorder as proximately caused by the industrial injury of February 7, 2012, and to take such other and further action as is required by the law and the facts.

Dated: December 19, 2016



Tom M. Kalenius
Industrial Appeals Judge
Board of Industrial Insurance Appeals

Addendum to Proposed Decision And Order
In re Brenda Cavoretto
Docket Nos. 15 23773 & 16 15078
Claim No. AQ-15969

Appearances

Claimant, Brenda L. Cavoretto, by Williams Wyckoff & Ostrander, PLLC, per Douglas P. Wyckoff

Employer, Town of Coulee City, by Association of Washington Cities, per Brian Bishop, Program Coordinator

Retrospective Rating Group, Association of Washington Cities #00122, by Brian Bishop, Program Coordinator

Department of Labor and Industries, by The Office of the Attorney General, per Shawn W. Gordon

Hearing Testimony Considered

Claimant Witnesses

1. Brenda L. Cavoretto

Perpetuation Deposition Testimony Considered

The following depositions are published in accordance with WAC 263-12-117 with all objections overruled and all motions denied except as indicated below.

Claimant Witnesses

1. Paul J. Allen, M.D.
2. Deborah Amos, M.D.
3. Owen J. Bargreen, Ph.D.

Department Witnesses

1. James R. Kopp, M.D.
2. Roman Kutsy, M.D.
3. Douglas P. Robinson, M.D.

All rulings are affirmed.

The Department wanted to conduct independent medical examinations while the appeals were pending before the Board of Industrial Insurance Appeals. The claimant's counsel filed a Motion in Limine. During oral argument, the Assistant Attorney General argued that the examinations were to

be used to determine further treatment and the Department needs to have the ability to continue to try to seek the best treatment for the patient and the treatment of the patient needs to continue regardless of the litigation. Because the orders under appeal are not closing orders but are from orders that affirmed orders that denied responsibility, the parties were asked specifically what was the scope of the litigation and evidence they wished to present in these appeals. The claimant clarified that the direction to the Department should be to accept responsibility and take such other and further action as required by the law.[9]

[9] 10/7/16 Tr. at 7, 10/20/16 Tr. at 4