

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2018 MTWCC 1

WCC No. 2017-3929

TG

Petitioner

vs.

MONTANA SCHOOLS GROUP INSURANCE AUTHORITY

Respondent/Insurer.

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

Summary: While Petitioner was working as an aide at a high school, a special needs student hit her, and then hit and pinched her two days later, leaving bruises. Petitioner did not seek nor require medical treatment for her bruises, although, after they resolved, she reported increased neck and arm pain to her medical providers. The attacks caused PTSD, and aggravated her preexisting anxiety, depression, and pseudoseizures, resulting in her inability to work. Petitioner asserts that she suffered compensable physical injuries, and compensable physical-mental injuries in the attacks.

Held: Respondent is entitled to summary judgment on Petitioner's claims. Petitioner did not suffer compensable physical injuries in the attacks. Although she had bruising, she neither sought nor required medical treatment for her bruises, which resolved without any resulting disability. While Petitioner's treating physician for her fibromyalgia diagnosed increased neck and arm pain as a result of the attacks, his diagnosis was based entirely on Petitioner's subjective complaints of pain and was not substantiated by objective medical findings. Petitioner did not suffer compensable psychological injuries in the attacks. Petitioner's anxiety, depression, and PTSD are mental-mental conditions, and her pseudoseizures are a mental-physical condition. Neither mental-mental nor mental-physical conditions are compensable under the Workers' Compensation Act.

¶ 1 Respondent Montana Schools Group Insurance Authority (MSGIA) moves for summary judgment on the grounds that Petitioner TG did not suffer a compensable physical injury, and on the grounds that TG's anxiety, depression, and posttraumatic

stress disorder (PTSD) are mental-mental conditions and that her pseudoseizures are a mental-physical condition, neither of which is compensable under the Workers' Compensation Act. TG opposes the motion, arguing that the evidence shows she suffered a physical injury, and physical-mental injuries.

FACTS

¶ 2 TG worked as a paraprofessional in a special needs classroom for Helena Public Schools.

Preexisting Conditions

¶ 3 Before the incidents at issue in this case, TG had several preexisting conditions, including fibromyalgia, anxiety, panic attacks, depression, and pseudoseizures.

¶ 4 On June 16, 2015, TG saw Allen M. Weinert, MD, to follow up on her "fibromyalgia with diffuse body pain." Dr. Weinert noted:

She has put in for a job transfer to work with younger students [as] she relates that some of the disabled students that she works with in high school are quite violent and she has suffered injuries because of this. She relates that she does develop anxiety and panic attacks because of these exposures. She still has multiple fibromyalgia tender points, but is dealing with this with consistent exercise.

TG also complained of low-back pain. On physical examination, Dr. Weinert noted, *inter alia*, mildly and moderately reduced range of motion in her neck and shoulders, and "diffuse tender points" in her neck and upper back. Dr. Weinert continued her prescriptions, which included trazodone, Ultram, Neurontin, bupropion, Xanax, and Maxalt.

¶ 5 On September 18, 2015, TG went to the ER because she had five episodes of seizure-like activity. The ER physician thought that TG may have been having anxiety and panic attacks.

¶ 6 On September 23, 2015, TG saw Bryan Hilborn, DC. Dr. Hilborn noted slightly to moderately limited range of motion in her cervical, thoracic, and lumbar areas. Dr. Hilborn treated her with chiropractic adjustments.

¶ 7 On September 29, 2015, TG saw Katy J. Wessel, DO, for her seizure-like activity. Dr. Wessel witnessed an episode. Dr. Wessel noted that TG did not have tonic-clonic movements and thought it could be a pseudoseizure. However, Dr. Wessel was not convinced TG was having a panic attack. Thus, Dr. Wessel referred TG to neurology. Dr. Wessel restricted TG from driving because "if she had an episode like she had in our clinic today while driving, she would surely get in an accident."

Workplace Incidents

¶ 8 On October 7, 2015, a special needs student hit TG. On the Accident/Incident Report, TG wrote that the student “started to hit and kick. He hit me in the face and knocked my glasses off my face.” She checked the boxes stating her face and hands were injured in the incident. She suffered bruising from this incident.

¶ 9 The following day, MSGIA denied liability for this claim on the grounds that the “information currently available to this office indicates you have not sought medical treatment in relation to your 10/7/2015 claim. Based on this, we must respectfully deny your claim as it does not meet the requirements for a compensable injury under the Montana Workers’ Compensation Act.”

¶ 10 On October 9, 2015, the student again became violent with TG. On the Accident/Incident Report, TG wrote that the student first hit her with an open hand in the gym. The student then slapped another student. Thus, TG decided to remove him from the gym. As they walked to the classroom, the student hit her again in the head, stomach, and breasts. The student also pinched her. TG could not get the student off her, and yelled for help. Three coworkers rescued her. TG reported injuries to her shoulder, upper arms, forearm, upper back, and lower back. She suffered bruising from this incident.

¶ 11 On October 13, 2015, MSGIA denied liability for this claim on the grounds that TG did not seek medical treatment for her alleged injuries.

¶ 12 TG continued to work until the Thanksgiving holiday, but did not return thereafter.

Medical Treatments Following the Workplace Incidents

¶ 13 On December 8, 2015, TG saw Nicole C. Clark, MD. Dr. Clark — who had previously treated TG for “significant anxiety and headaches” — noted, “This is a 55-year-old woman with episodes that are likely nonepileptic events related to her anxiety.” Dr. Clark also noted: “She has still been having significant anxiety. She has been attacked by students several times at work and she is fearful of being attacked again. She has taken medical leave off work right now bc she feels that she is unable to deal with that environment.” Dr. Clark also noted, “At the end of her visit she tells me that she is scared to go back to work and everyday she is supposed [to] go to work she gets nauseous and throws up just thinking about going back with that student who recently attacked her.”

¶ 14 On December 9, 2015, TG returned to Dr. Wessel because she was suffering from severe depression. Dr. Wessel wrote:

She was attacked at work again by a student as she teaches the special needs kids. She says it occurred in the end of Oct. sometime. She did an accident report at the school, but she does still have to work in the same classroom with him. When it occurred, the kid chased her and pushed her

up against a wall and was hitting her and pinching her. She says he started out in the gym and she ran and he caught her. She says she has not been able to go back to work since Thanksgiving as she has been sick and felt anxious to the point of vomiting and is unable to go to work.

Dr. Wessel also noted, “She has a long-standing history of anxiety and it has been extremely severe to her at times in her life to the point she is unable to work which is where she is currently.”

¶ 15 On December 9, 2015, Dr. Wessel wrote a letter taking her off work as a result of her psychological conditions, and opining that the cause of TG’s PTSD was the attacks:

Please allow [TG] to take medical leave due to her severe anxiety and depression. We are in the process of attempting to get it under better control. Please be willing to work with her as to when she will be able to return. In my professional opinion, she is also suffering from some post traumatic stress from some incidents that have occurred on the job.

¶ 16 On December 21, 2015, TG returned to Dr. Weinert. Dr. Weinert noted:

[TG] is a . . . school aide who returns for follow up of diffuse body pain with fibromyalgia with increased symptoms of neck and left arm pain since suffering an assault at work. The patient relates in late October she was attacked by a student who hit her about the [sic] and arms causing bruising. She denies any concussion. She relates suffering emotional trauma from this and began to develop what she describes as “seizures.” [They] seemed to be worse before she went to school and her primary care physician diagnosed her with PTSD and she has been off of work since November 23. She does have an appointment with a psychiatrist on January 6. The patient still relates a great deal of discomfort in the posterior neck and left arm. She denies any numbness or weakness in the arms. She has seen a neurologist for seizures and relates that one of her medical providers did describe her events as pseudoseizures. The patient relates that [they] seemed to be triggered by thoughts of going to work and she relates that she developed diarrhea and nausea and vomiting as well as diffuse body shaking.

Dr. Weinert’s physical examination was in all material ways identical to his physical examination on June 16, 2015: he noted mildly and moderately reduced range of motion in her neck and shoulders, and diffuse tender points in her neck and shoulder areas. While TG told Dr. Weinert she suffered bruising in the attacks, he noted, “No ecchymosis is evident about the shoulders or arms.” Dr. Weinert’s impressions included: “Fibromyalgia with diffuse tender points with recent exacerbation of neck and left arm pain related to an assault at work which appears to be soft tissue in nature”; depression and anxiety; and probable pseudoseizures. Dr. Weinert discontinued TG’s prescription for

Ultram because it lowers seizure threshold, and replaced it with a low dose of Norco. He refilled TG's prescriptions for Neurontin and trazodone. He did not make any other changes to her prescriptions.

¶ 17 On December 23, 2015, TG saw Elize Cline, NP. TG had undergone an EEG, which was normal. Cline noted, "her 'seizure' events described do not sound epileptic in nature as her eye movements are not abnormal, maintains consciousness and able to hear voices during events, is able to lower herself to the ground, and the pre-event shaking is not typical of seizures." Cline also noted, "She self-reports high anxiety, stress and 'PTSD' diagnosed by her [primary care physician] as the cause for many of her shaking events." Cline also noted, "She often has the episodes accompanied by extreme nausea and vomiting just before she leaves for work in the morning. She is very nervous about work as she has been assaulted many times by students."

¶ 18 On January 7, 2016, TG saw Connie O'Connor, MD, a psychiatrist. Dr. O'Connor noted that TG was having the seizure-like activity "once a month until she was 'attacked' by a student in October. She now has them once a week[,] especially when she thinks about going back to work." Dr. O'Connor understood that TG had been attacked by the student five times. Dr. O'Connor also noted that TG has "anxiety daily triggered by thoughts about going back to work," and, "[s]he has flashbacks twice a day and she avoids going back to school or talking about being attacked." Dr. O'Connor diagnosed TG with recurrent major depressive disorder, posttraumatic stress disorder, and non-epileptic seizures. Dr. O'Connor listed several causes of these conditions, including "an assault by a student in the workplace."

¶ 19 On January 26, 2016, Dr. Wessel released TG to return to work on February 2, 2016, for 4-5 hours per day.

¶ 20 TG returned to Dr. Weinert on March 2, 2016 for "follow up of fibromyalgia with neck and back pain related to an assault at work with PTSD." TG reported that she had not had any pseudoseizures since December 2015. However, TG also reported that she could not return to her time-of-injury job because of her anxiety and the physical efforts that are required to transfer students. Dr. Weinert noted that Dr. O'Connor had "significantly" modified her medications. Dr. Weinert's physical exam was nearly identical to his prior physical exams: he noted mildly restricted range of motion in TG's neck, and tender points in her neck and shoulders. Dr. Weinert's impression included, "Fibromyalgia with diffuse tender points with recent exacerbation of neck and left arm pain related to an assault at work which appears to be soft tissue in nature." Dr. Weinert discussed additional physical therapy, but TG decided to continue with the exercises previously provided by her physical therapist.

Claims in this Litigation

¶ 21 In her Petition for Hearing, TG alleges she suffered injuries on October 7 and 9, 2015. She seeks acceptance of her claims, and temporary total disability and medical benefits.

¶ 22 In its Response to Petition, MSGIA alleges there is no objective medical evidence that TG suffered any physical injuries on October 7 or 9, 2015. MSGIA also alleges that TG's psychological conditions are not compensable because they do not arise from a physical stimulus.

LAW AND ANALYSIS

¶ 23 This case is governed by the 2015 version of the Montana Workers' Compensation Act since that was the law in effect at the time of TG's alleged industrial injuries.¹

¶ 24 The Montana Supreme Court has explained:

[A]t the summary judgment stage, the court does not make findings of fact, weigh the evidence, choose one disputed fact over another, or assess the credibility of witnesses. Rather, the court examines the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits to determine whether there is a genuine issue as to any material fact relating to the legal issues raised and, if there is not, whether the moving party is entitled to judgment as a matter of law on the undisputed facts.²

When examining the evidence, the court is to draw all reasonable inferences in favor of the party opposing summary judgment.³

Issue One: Did TG establish that there are issues of material fact?

¶ 25 TG asserts there are issues of material fact. However, she does not point to any factual dispute; rather, she relies upon the same accident reports, medical records, and discovery answers as MSGIA, but asserts that MSGIA misinterprets the facts. However, "[a] mere disagreement about the interpretation of a fact or facts does not amount to genuine issues of material fact."⁴ Thus, there are no issues of material fact.

¹ *Ford v. Sentry Cas. Co.*, 2012 MT 156, ¶ 32, 365 Mont. 405, 282 P.3d 687 (citation omitted); § 1-2-201, MCA.

² *Andersen v. Schenk*, 2009 MT 399, ¶ 2, 353 Mont. 424, 220 P.3d 675 (citing M.R.Civ.P. 56(c) and *Corporate Air v. Edwards Jet Ctr.*, 2008 MT 283, ¶ 28, 345 Mont. 336, 190 P.3d 1111).

³ *Morrow v. Bank of America, N.A.*, 2014 MT 117, ¶ 24, 375 Mont. 38, 324 P.3d 1167 (citation omitted).

⁴ *Gliko v. Permann*, 2006 MT 30, ¶ 25, 331 Mont. 112, 130 P.3d 155 (citation omitted) (internal quotation marks omitted).

Issue Two: Did TG suffer a compensable physical injury on October 7 and/or 9, 2015?

¶ 26 Section 39-71-119(1)(a), MCA, defines “[i]njury” and “injured” as: “internal or external physical harm to the body that is established by objective medical findings” Section 39-71-119(2), MCA states:

An injury is caused by an accident. An accident is:

- (a) an unexpected traumatic incident or unusual strain;
- (b) identifiable by time and place of occurrence;
- (c) identifiable by member or part of the body affected; and
- (d) caused by a specific event on a single day or during a single work shift.

¶ 27 Section 39-71-407(3)(a), MCA, provides:

An insurer is liable for an injury, as defined in 39-71-119, only if the injury is established by objective medical findings and if the claimant establishes that it is more probable than not that:

- (i) a claimed injury has occurred; or
- (ii) a claimed injury has occurred and aggravated a preexisting condition.

(b) Proof that it was medically possible that a claimed injury occurred or that the claimed injury aggravated a preexisting condition is not sufficient to establish liability.

Section 39-71-407(10), MCA, states:

An employee is not eligible for benefits payable under this chapter unless the entitlement to benefits is established by objective medical findings that contain sufficient factual and historical information concerning the relationship of the worker’s condition to the original injury.

¶ 28 Section 39-71-116(22), MCA, defines “[o]bjective medical findings” as “medical evidence, including range of motion, atrophy, muscle strength, muscle spasm, or other diagnostic evidence, substantiated by clinical findings.”

¶ 29 In *Ford v. Sentry Casualty Co.* the court held that under these statutes, claimants are required to prove injury and causation through medical expertise or opinion, substantiated by objective medical findings.⁵

¶ 30 When reasonable inferences are drawn in TG’s favor, the evidence shows that TG suffered “internal or external physical harm to the body” on October 7 and 9, 2015, as a

⁵ *Ford*, 2012 MT 156, ¶¶ 44-49.

result of being hit and pinched. However, TG has not presented objective medical findings sufficient to establish that this physical harm was a compensable physical “injury” under the definitions in the Workers’ Compensation Act.

¶ 31 TG sought no medical treatment for her bruising, and does not contend that any medical treatment was necessary. While this Court agrees with TG that a bruise can serve as an objective medical finding for a physician, none of the medical providers TG saw in the months following the attacks witnessed her bruising, diagnosed bruising as an injury based upon their observations, stated she needed any treatment for the bruising, nor imposed any physical restrictions due to the bruising and its sequelae. Thus, TG has not established injury and causation with objective medical findings, i.e., she does not have medical evidence substantiated by clinical findings, as required by §§ 39-71-119(1)(a), - 407(3) and (10), MCA, and *Ford*. This Court has previously held that minor wounds for which the claimant did not seek medical treatment, that did not require medical attention, resolved on their own, did not result in any restrictions, nor cause any residual problems or disability, and which were not substantiated by objective medical findings, are not compensable injuries under the Workers’ Compensation Act.⁶

¶ 32 Moreover, there is insufficient evidence for this Court to find that TG suffered a compensable soft tissue injury, or aggravated her fibromyalgia, under the definitions in the Workers’ Compensation Act. In his record dated December 21, 2015, Dr. Weinert diagnosed “Fibromyalgia with diffuse tender points with recent exacerbation of neck and left arm pain related to an assault at work which appears to be soft tissue in nature.” However, Dr. Weinert did not substantiate his diagnosis with any objective medical findings of a new injury or an aggravation of her fibromyalgia. Dr. Weinert’s record shows that TG’s reduced range of motion in her neck and shoulders was unchanged from her previous visit, which was approximately four months before the attacks. Likewise, Dr. Weinert’s finding of “tender points” in her neck was unchanged. While TG reported that she suffered bruising in the attacks, the bruising had fully resolved by the time Dr. Weinert examined her. Dr. Weinert’s diagnosis is based entirely on TG’s subjective complaints of increased pain in her neck and arm, which is insufficient by itself to establish a compensable injury under the Workers’ Compensation Act.⁷

¶ 33 “Summary judgment is proper when a non-moving party fails to make a showing sufficient to establish the existence of an essential element of its case on which it bears

⁶ *Burgan v. Liberty Northwest Ins. Co.*, 2003 MTWCC 59, ¶¶ 33, 38 (ruling that claimant did not suffer a compensable physical “injury” due to an exposure to toxic gas because his symptoms, which included a bad taste in his mouth, a headache, an upset stomach, and a feeling of fullness in his lungs, resolved in a short period of time, did not require any medical treatment, and were not substantiated with any objective medical findings); *see also Collins v. State Comp. Ins. Fund*, 1994 MTWCC 8 (ruling that bumps, bruises, and minor rope burns were not compensable physical “injuries” under the Workers’ Compensation Act because they did not require medical treatment).

⁷ *See Ford*, ¶ 49 (“Claimants are required to establish injury and causation by objective medical findings.”).

the burden of proof at trial.”⁸ There is insufficient evidence in this case for this Court to find that TG suffered a compensable physical injury under the Workers’ Compensation Act. Accordingly, MSGIA is entitled to summary judgment on TG’s claim that she suffered a compensable physical injury on October 7 and/or 9, 2015.

Issue Three: Did TG suffer a compensable physical-mental injury on October 7 and/or 9, 2015?

¶ 34 The Montana Supreme Court has explained, “workers’ compensation claims involving emotional distress can be classified as ‘mental-mental’ (mental stimulus, mental consequence), ‘mental-physical’ (mental stimulus, physical consequence), or ‘physical-mental’ (physical stimulus, mental consequence).”⁹ Physical-mental injuries are compensable under the Workers’ Compensation Act, but neither mental-mental nor mental-physical claims are; § 39-71-105(6), MCA, states, in part:

It is the intent of the legislature that:

(a) stress claims, often referred to as “mental-mental claims” and “mental-physical claims”, are not compensable under Montana’s workers’ compensation and occupational disease laws. The legislature recognizes that these claims are difficult to objectively verify and that the claims have a potential to place an economic burden on the workers’ compensation and occupational disease system. The legislature also recognizes that there are other states that do not provide compensation for various categories of stress claims and that stress claims have presented economic problems for certain other jurisdictions. In addition, not all injuries are compensable under the present system, and it is within the legislature’s authority to define the limits of the workers’ compensation and occupational disease system.

To that end, § 39-71-119(3), MCA, states:

“Injury” or “injured” does not mean a physical or mental condition arising from:

- (a) emotional or mental stress; or
- (b) a nonphysical stimulus or activity.

¶ 35 As MSGIA points out, the Montana Supreme Court faced a factual situation similar to that in this case, and interpreted § 39-71-119(3), MCA, in *Yarborough v. Montana*

⁸ *Blacktail Mountain Ranch, Co. v. State, Dep’t of Natural Res. & Conservation*, 2009 MT 345, ¶ 7, 353 Mont. 149, 220 P.3d 388 (citation omitted).

⁹ *Stratemeyer v. Lincoln Cnty., (Stratemeyer II)*, 276 Mont. 67, 77, 915 P.2d 175, 180 (1996) (citation omitted).

Municipal Ins. Authority (MMIA).¹⁰ Yarborough was a firefighter.¹¹ As he approached a burning home, there was an explosion which sent out a fireball, causing second-degree burns to his face and hands.¹² These burns were “inconsequential” and resolved within two weeks.¹³ Yarborough returned to work, but thereafter resigned because he was suffering from increased depression, anxiety, and PTSD.¹⁴ His psychiatrist opined:

the traumatic events of the fire . . . aggravated and exacerbated Yarborough’s previous mental condition and added a new feature to his psychiatric diagnosis, that being Post Traumatic Stress Disorder. Because of this Post Traumatic Stress Disorder he was no longer able to continue his employment as a fire fighter because he experience[d] increased anxiety and revulsion and fear in dealing with fire situations.... I feel that Mr. Yarborough should be permanently restricted from working as a fire fighter because of the traumatic events of October 22, 1987, the consequent Post Traumatic Stress Disorder and exacerbation of his other mental conditions.¹⁵

Because the psychiatrist attributed Yarborough’s increased anxiety, depression, and his PTSD to the explosion, and not his burns, the court held that Yarborough did not suffer a compensable injury, reasoning as follows:

Although Yarborough did suffer burns to his face and hands, no medical expert testified that Yarborough’s PTSD directly resulted from those physical injuries. Rather, the medical testimony linked Yarborough’s PTSD only to the house-fire explosion itself. Consequently, just as in *Stratemeyer II* and *Kleinhesselink*, Yarborough’s PTSD resulted from emotional or mental stress, and, therefore is a ‘mental-mental’ injury, excluded from the definition of injury as set forth under § 39-71-119, MCA (1987).¹⁶

¹⁰ 282 Mont. 475, 938 P.2d 679 (1997).

¹¹ *Yarborough*, 282 Mont. at 476, 938 P.2d at 680.

¹² *Id.*

¹³ *Yarborough*, 282 Mont. at 478, 938 P.2d at 681.

¹⁴ *Yarborough*, 282 Mont. at 476-77, 482, 938 P.2d at 680, 683-84.

¹⁵ *Yarborough*, 282 Mont. at 482, 938 P.2d at 683-84.

¹⁶ *Yarborough*, 282 Mont. at 483, 938 P.2d at 684 (citing *Stratemeyer II*, 276 Mont. at 79, 915 P.2d at 182, where the court held that a Sheriff’s deputy who suffered from PTSD after witnessing a teenager’s suicide did not have a compensable workers’ compensation claim because it was a mental-mental condition, and therefore not an “injury” under § 39-71-119(3), MCA; *Kleinhesselink v. Chevron, U.S.A.*, 277 Mont. 158, 163, 920 P.2d 108, 111 (1996), where the court held that a safety manager at a mine who suffered from depression, chronic fatigue, insomnia, nausea, headaches, muscle spasms, and digestive problems because his safety recommendations were ignored, resulting in deaths and injuries to miners, did not have a compensable workers’ compensation claim because these conditions were mental-mental and mental-physical conditions, which are excluded from coverage under the Workers’ Compensation Act).

¶ 36 This Court followed *Yarborough* in *Burgan v. Liberty Northwest Ins. Co.*,¹⁷ a case with facts similar to those in this case. Burgan was exposed to a toxic gas at work, which caused a headache, an upset stomach, a bad taste in his mouth, and discomfort in his lungs.¹⁸ This Court found that these were “minor physical symptoms not requiring medical care.”¹⁹ However, Burgan was extremely angered by the incident because he felt that his employer had needlessly endangered him, and was further angered by his employer’s dismissive attitude to his concerns.²⁰ His treating doctors opined that the mental stress of the gas exposure, and not his physical injuries, aggravated his preexisting PTSD, which precluded him from returning to work.²¹ Relying upon *Yarborough*, this Court concluded that Burgan’s mental condition was not compensable, explaining “claimant’s condition following the . . . incident was not attributable to any physical injury but rather was triggered by the emotional stress caused by the incident and subsequent interaction with his employer. His condition thus falls within the ‘mental-mental’ category articulated by the Montana Supreme Court.”²²

¶ 37 This case falls squarely under *Yarborough* and *Burgan* because there is no medical evidence linking TG’s anxiety, depression, seizure-like activity, or PTSD to her bruising or increased neck and left-arm pain, which she attributes to the attacks. Rather, the medical evidence establishes that it was the mental shock and fright from attacks, and not the resulting bruising and increased pain, that aggravated her anxiety, depression, and pseudoseizures, and caused her PTSD. Dr. Wessel and Dr. O’Connor are the only medical providers who opined as to the cause of TG’s PTSD, and as to the cause of the aggravation to her anxiety, depression, and pseudoseizures. Like the psychiatrist in *Yarborough*, and the physicians in *Burgan*, Dr. Wessel and Dr. O’Connor attributed TG’s psychological conditions to the mental shock and fright from the attacks, not the bruising and increased pain she alleges to have suffered in the attacks. Dr. Wessel attributed TG’s PTSD to the “incidents that have occurred on the job.” Dr. O’Connor opined that one of the causes of TG’s increased anxiety, depression, and non-epileptic seizures, and her PTSD, was “an assault by a student in the workplace.” In short, the medical evidence establishes that TG’s anxiety, depression, and PTSD are mental-mental conditions, and that her pseudoseizures are a mental-physical condition.

¹⁷ 2003 MTWCC 59.

¹⁸ *Burgan*, ¶¶ 12, 13.

¹⁹ *Burgan*, ¶ 33.

²⁰ *Burgan*, ¶¶ 15, 17, 26.

²¹ See, e.g., *Burgan*, ¶¶ 25, 26.

²² *Burgan*, ¶ 40; see also *Collins v. State Comp. Ins. Fund*, 1994 MTWCC 8 (ruling that claimant — a bartender who was shot at and suffered bumps, bruises, and rope burns during an armed robbery in which the robbers wore gorilla masks, and was thereafter the victim of a prank in which one of his co-workers came into their workplace wearing a gorilla mask — did not suffer compensable injuries because the physical injuries in the robbery were neither disabling nor required medical attention, and because “his various psychological symptoms (diarrhea, stress, sleeplessness, stomach problems, and nervousness) are the result of the psychological trauma of the robbery [and prank], not from rope burns or bruises.”).

¶ 38 Moreover, TG herself attributed the aggravation of her anxiety, depression, and pseudoseizures to the mental shock from the attacks, and not her bruising or increased pain. TG’s medical providers recounted TG’s statements in which she attributes her anxiety, depression, PTSD, and pseudoseizures to the emotional trauma of the attack and fear of another attack, not from the bruising suffered in the attack, or her increased pain. For example, Dr. Clark noted that TG reported that she “[wa]s fearful of being attacked again,” was “unable to deal with th[e] environment” at the school, was “scared to go back to work,” and was “nauseous and throws up just thinking about going back with that student who recently attacked her.” There is no indication in TG’s medical records that she attributed her PTSD, or the aggravation of her anxiety, depression, and pseudoseizures, to her bruising or increased pain.

¶ 39 TG argues that the attacks themselves were the physical stimulus for her PTSD, and the aggravation of her anxiety, depression, and pseudoseizures. Thus, she maintains that these are compensable physical-mental injuries under § 39-71-119(3), MCA. Nevertheless, the Montana Supreme Court rejected this same argument in *Yarborough*: “[W]e find unpersuasive Yarborough’s alternative argument that the house-fire explosion itself constituted the required physical stimulus.”²³ The court reasoned that the physical injuries must be the stimulus that causes the psychological condition: “Yarborough’s subsequent mental condition of PTSD did not arise from a physical stimulus, i.e. the burns to his hands and face, as required by § 39-71-119(3), MCA (1987).”²⁴ Since TG’s bruises and increased neck and arm pain were not the stimuli for her PTSD, nor for the aggravation of her anxiety, depression, and pseudoseizures, these conditions are not compensable physical-mental injuries.²⁵

¶ 40 In sum, the medical evidence conclusively establishes that TG’s anxiety, depression, and PTSD, are mental-mental conditions, and that her pseudoseizures are a mental-physical condition. Thus, these conditions are not compensable injuries under §§ 39-71-105(6) and -119(3), MCA. Accordingly, MSGIA is entitled to summary judgment on these claims.

²³ *Yarborough*, 282 Mont. at 481, 938 P.2d at 683.

²⁴ *Id.*

²⁵ Compare *Yarborough, with Peterson v. State Comp. Ins. Fund*, 1994 MTWCC 105 (ruling that claimant suffered a compensable physical-mental injury because the medical evidence showed that his low-back injury caused severe depression and somatoform pain disorder), and *Hall v. State Comp. Ins. Fund*, 1999 MTWCC 3 (distinguishing *Yarborough* on the grounds that claimant’s somatoform pain disorder was caused by her occupational disease, and not emotional shock of an event at work and, therefore, ruling it was a compensable physical-mental injury), and *McGee v. State Comp. Ins. Fund*, 1999 MTWCC 43 (distinguishing *Yarborough* on the grounds that claimant’s depression was caused or at least materially and permanently aggravated by his injury and was a compensable physical-mental injury).

ORDER

¶ 41 Respondent's Motion for Summary Judgment is **granted**.

¶ 42 Pursuant to ARM 24.5.348(2), this Order is certified as final and, for purposes of appeal, shall be considered as a notice of entry of judgment.

DATED this 25th day of January, 2018.

/s/ DAVID M. SANDLER
JUDGE

c: Charla K. Tadlock
Morgan M. Weber

Submitted: June 7, 2017