

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. G908007**

**DORI B. BURCHETT, EMPLOYEE**

**CLAIMANT**

**MCNEW FABRICATION, INC., EMPLOYER**

**RESPONDENT**

**NATIONAL AMERICAN INS. CO./ SEDGWICK  
CLAIMS MANAGEMENT SERVICES, INC., CARRIER/TPA**

**RESPONDENT**

**OPINION FILED DECEMBER 7, 2021**

A hearing was held before ADMINISTRATIVE LAW JUDGE KATIE ANDERSON, in Little Rock, Pulaski County, Arkansas.

Claimant was Ms. Dori Burchett, and she appeared *pro se*.

Respondents were represented by Mr. Zachary R. Ryburn, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held in the above-captioned claim on September 8, 2021, in Little Rock, Arkansas. A Prehearing Order was previously entered in this case on July 7, 2021. The Prehearing Order has been marked as Commission's Exhibit #1 and was made a part of the record without any objection from the parties.

**Stipulations:**

During the prehearing telephone conference and/or during the hearing, the parties agreed to the following stipulations. They read:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The Employer-Employee relationship existed on or around November 20, 2019, when Claimant alleges that she sustained a compensable mental injury when she received threats against her life while working for Respondent-Employer.

Issues:

The parties agreed to litigate the following issues, which were also modified at the hearing:

1. Whether Claimant sustained a compensable mental injury on or around November 20, 2019.
2. Whether Claimant is entitled to medical expenses.
3. At the hearing, the parties agreed to reserve the issue of whether Claimant is entitled to temporary total disability (TTD) benefits from November 14, 2019, to a date yet to be determined.
4. All issues not litigated herein are reserved under the Arkansas Workers' Compensation Act.

Contentions:

The following contentions were submitted by the parties:

Claimant contends that between October and November of 2019 while working for Respondent-Employer, Jeff McNew made several threats against Claimant's life that resulted in Claimant sustaining a compensable mental injury. Claimant contends she is entitled to payment for her medical treatment as a result of the injury. Claimant contends that she has not received any workers' compensation benefits for her alleged injury.

Respondents contend that the nature of Claimant's assertion is not compensable. The injury alleged is not an accidental injury. The injury alleged is a crime outside of the jurisdiction of the Arkansas Workers' Compensation Commission. There are no objective medical findings to support a compensable injury.

Summary of Evidence:

The record consists of the hearing transcript of September 8, 2021, and the exhibits contained therein. Specifically, the following exhibits have been made a part of the record without objection: Commission's Exhibit #1 included the Prehearing Order entered on July 7, 2021, and the parties' responsive filings; Claimant's Exhibit #1 was thirteen (13) pages in length and

consisted of one (1) medical record, documentary evidence, and a set of interrogatories from Respondents; Respondents' Exhibit #1 was eleven (11) pages in length and consisted of police reports and one (1) page of e-mail communication between Claimant and Respondents. Respondents submitted a post-hearing, two-page letter in support of their position, filed on September 17, 2021, which has been blue-backed and marked as Commission's Exhibit #2.<sup>1</sup>

Witnesses:

Dori Burchett (Claimant, used interchangeably herein) was the first witness to testify. Colleen Lampson also testified via Zoom at the hearing.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the evidence and other matters properly before the Commission, and after having had an opportunity to hear the testimony of the witnesses and observe their demeanor, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. I accept the above stipulations as fact.
3. Claimant failed to prove by a preponderance of the credible evidence that she sustained a compensable mental injury while working for Respondent-Employer on November 14th and 20th of 2019.
4. All other issues have been rendered moot.

**CASE IN CHIEF**

Hearing Testimony:

---

<sup>1</sup> The record was left open for ten (10) days at the conclusion of the hearing giving the parties the option to submit case law or other information in support of their positions. However, any post-hearing filing was optional and not required. Respondents submitted a two-page letter brief. Claimant did not submit any post-hearing information.

Claimant:

Claimant testified that she was born on February 23, 1966. Claimant stated that she graduated from high school and obtained two (2) years of community college training in bookkeeping. Claimant testified that, prior to working for Respondent-Employer, she worked for Haynes Machine Shop for seventeen years (17) as a secretary. In 2016, she began working as a secretary for Respondent-Employer, a welding operation, where her job duties including answering the phone, filing documents, and printing invoices. Claimant testified that she worked for Respondent-Employer from 2016 through November of 2019.

Claimant testified that while employed for Respondent-Employer, her boss, Mr. McNew, sexually harassed her and on or around November 20, 2019, made threats against her life. With regard to the threats on her life, Claimant testified that:

Q: Okay, okay. And based on your prehearing filings, during your time with McNew that you are alleging some incidences occurred that caused you a mental injury; correct?

A: Yes, ma'am.

Q: Can you tell me a little bit about that?

A: Well, I tried not to take him too serious, you know, because I didn't think that, you know, he really meant it, and I know that he did when he threatened to kill me.

Q: I'm sorry. Let me interrupt. You worked there for three years; correct?

A: From '16 to '19.

Q: Sixteen to '19. Okay. And at what point during that time did these incidences begin to occur?

A: In '19.

Q: Okay. So the last year you were there. So your prehearing information also says around November the 20th of 2019?

- A: Yes, ma'am. Between the 14th and the 20th.
- Q: Okay. Okay. Now, go ahead please. If you'll explain kind of the incidences that you're referring to that had an impact on you.
- A: Yes, ma'am. He threatened to shoot me - - kill me twice.  
...
- A: He just threatened to kill me, you know?
- Q: What kind of relationship did you two have? Was he your immediate boss?
- A: He was my boss.
- Q: Your boss. Okay.
- A: Yes.
- Q: All right. And had you-all gotten along up until this point?
- A: Somewhat, you know?
- Q: Okay. And was it - -
- A: He always had highs and lows and always kept me, you know, distraught because you never knew from one minute from the next. You know, he would tell you to do something one minute, then the next minute he would say that he didn't tell you to do it and that he did tell you to do it, and it was always chaos.
- Q: Okay. So how would - - would you describe him as a difficult employer or who would you . . .
- A: Very difficult.
- Q: Okay. All right. But you-all got along well enough until 2019; correct?
- A: I mean, it was up in the air.
- Q: Okay.
- A: You know, he would be hateful and - - you know, in ways and I just kind of blew it off, you know? But then the moment that he threatened to kill me, I took it very serious because he did it twice.
- Q: And that was on or around November the 14th?

A: Yes, ma'am.

Q: Okay. And what led up to that event?

A: Well, honestly, it was because I didn't have any - - he really basically had no use for me because I didn't have any more money to loan - - you know, to loan him, and he was just aggravated and angry.

Q: Okay.

A: And he thought that I was going to tell his ex-wife that he was going to keep her property since he paid her taxes and everything on her place and he was going to take it from her, and he said if you ever tell her that I will shoot you, I will kill you.

Q: Okay. So you were loaning him money personally or loaning his business money?

A: Both.

Q: Okay. All right. So that escalated into - -

A: Yes, ma'am.

Q: - - a situation that - -

A: Yes, ma'am.

Claimant further testified that she had not sustained any physical injuries as a result of the threats or harassment by Mr. McNew. Claimant explained that she “just stayed clear” of Mr. McNew after the threats were made on November 14th and 20th of 2019.

Claimant further testified that she voluntarily left work on November 20, 2019, and had not returned to work for Respondent-Employer or any other employer since that day. She explained that Mr. McNew arrived at her house later in the day on November 20, 2019, to ask her to return to work, but she declined.

On cross-examination, Claimant testified that since Mr. McNew had threatened her life, she had lived in fear of Mr. McNew, “never knowing where, you know, he [could] show up.” She

explained that she was afraid to leave her house. As a result, she sold her home and moved to an undisclosed location.

Claimant testified that Dr. Beard had taken her off work as a result of the work events on November 14th and 20th of 2019, and had diagnosed her with posttraumatic stress disorder (PTSD) and anxiety. However, Claimant testified that she did not have a copy of the medical report at the hearing.

With regard to whether Claimant was working, she testified that at the time of the hearing, she was unable to function as she used to, and her mental state prevented her from returning to any type of work.

When questioned further about the threats by Mr. McNew, Claimant stated that they were made at her place of employment and while she was working for Respondent-Employer. She also clarified that there were two (2) threats against her life, one on November 14th and one on November 20th.

Upon further examination by the Commission, Claimant testified that she saw Dr. Michael Beard, her primary care physician, for anxiety in December of 2019 after the alleged threats at work. Dr. Beard gave Claimant prescriptions for Buspirone, Effexor, and Zoloft, and he recommended counseling services. Claimant stated that she continued to see Dr. Beard on a monthly basis. Based on Dr. Beard's recommendation, Claimant also underwent therapeutic services by Stephen Pearson at Counseling Clinic, Inc. She stated that she attended therapy once or twice a week and that she had done so since December of 2019. She testified that at the time of the hearing, she was still seeing Mr. Pearson for her symptoms.

Claimant described her symptoms as an inability to focus on certain tasks, living in fear, and always looking over her shoulder. She explained that she was fearful of leaving her house or

answering the door when someone was outside. Claimant was, however, able to live alone, wash dishes, do laundry, and clean the house. However, she had several bad days a week when she could not get out of bed. Claimant stated that she was able to feed herself and care for her pet. Although Claimant could drive a car, she did not go out often, and she no longer participated in hobbies, such as gardening. Claimant testified that she recently sold her home, and one week prior to the hearing, she moved to Florida.

As for her past medical history, Claimant testified that she had not suffered from mental health issues prior to working for Respondent-Employer.

In sum, Claimant stated that she was a well-functioning adult before her experience with Mr. McNew and the threats he made against her.

On recross-examination, Claimant stated that at the time of the hearing, she was living with a friend in Florida. She was also closer to her sister, who also lived in Florida. Claimant stated that before she moved to Florida, she sold her house, her household items, and some of her personal belongings. She also sold a vehicle, a 2017 Mercedes SUV, because she could no longer afford to keep it. She did, however, keep her 2013 GL 450 Mercedes that she was currently driving.

Furthermore, Claimant stated that when she first went to Dr. Beard for her symptoms after the November 14th and November 20th events, she did not initially report to him what had happened at work when Mr. McNew threatened her. Specifically, she stated:

A: No, ma'am. He knew that I was - - well, at first when I went to Dr. Beard, you know, I just kind of told him how I was feeling and I didn't tell him - - I was too embarrassed to tell him that somebody threatened to kill me right away, you know, when I was telling him about the way that I was feeling. Then the next visit I, you know, told him. I said I need to tell you the truth is what happened - - you know, what happened. And he just kind of looked at me like, you know?



Once Claimant reported the alleged threats to Dr. Beard, Claimant testified that he took her off work at that point. However, as noted above, Claimant stated that she did not have those records with her on the day of the hearing.

Ms. Colleen Lampson:

Ms. Colleen Lampson was the second witness to testify. Ms. Lampson's testimony was via Zoom. Ms. Lampson testified that she was Claimant's sister. Ms. Lampson explained that since the November 14th and 20th events, her sister had "not been the same." She described Claimant's main symptom as depression and stated that Claimant had days when she would not get out of bed. Ms. Lampson testified that before the November 14th and 20th events, Claimant was a happy, strong, and independent woman. She was able to engage in regular daily activities, such as household chores, driving a car, and participating in hobbies. However, Ms. Lampson testified that since the November 14th and 20th events, Claimant had not been the same person, and she lacked the "desire to do anything."

On cross-examination, Ms. Lampson testified that she was visiting Claimant during the month of November of 2019. Although she did not recall the exact dates, during her visit, she witnessed the threats against Claimant both in Claimant's home and in her workplace.

When questioned regarding a pending theft and embezzlement investigation involving Claimant, Ms. Lampson testified that she was aware of the investigation when she visited Claimant in November of 2019. She also stated that she was aware that the investigation was ongoing at the time of the hearing. Ms. Lampson admitted that the threats allegedly made by Mr. McNew were related to the criminal investigation of Claimant. Lastly, Ms. Lampson stated that she was not quite sure when Claimant quit her job at Respondent-Employer, but she thought it was in December.

Upon questioning by the Commission regarding the nature of Claimant's relationship with Mr. McNew, Ms. Lampson testified that Mr. McNew called Claimant "24/7." He called her during work and after work hours. She confirmed that she was present with Claimant at work when she witnessed the threats by Mr. McNew against Claimant. Ms. Lampson also confirmed that Claimant did not have any mental health conditions or issues prior to November 14, 2019.

On recross-examination, Claimant testified that Dr. Beard, her general practitioner, was not a psychologist or a psychiatrist. She also confirmed that Mr. Peairson was neither a psychologist nor a psychiatrist. She admitted that Dr. Beard's opinion about Claimant not being able to return to work was an oral statement and not contained in a medical document. Claimant was unsure of the time period that Dr. Beard recommended that she remain off work but stated that she had not been unable to return to work since the November 14th and November 20th of 2019 events at work.

Claimant confirmed that there was an open investigation against her but stated that no formal charges had been filed. Claimant admitted that the allegations against her of theft and embezzlement allegedly occurred at Respondent-Employer's place of business. Claimant also stated that in December of 2019, she had filed a lawsuit against Mr. McNew after he refused to repay Claimant money that she had loaned to him. Thereafter, Mr. McNew filed charges against her. Claimant stated specifically that, "From 2016, '17, and '18, and '19, and in '19 when I didn't have any more money to give him, that's when all hell broke loose." Claimant testified that she and Mr. McNew had a similar relationship prior to November of 2019. Claimant stated that she had filed two (2) lawsuits against Mr. McNew; one for the money that he owed her pursuant to a promissory note, and a separate lawsuit for lost wages.

Medical Exhibits:

Medical records showed that on April 14, 2021, Stephen Pearison, LCSW, Clinical Therapist for Counseling Clinic, Inc. (“CCI”) authored a letter stating that Claimant had been undergoing individual therapy sessions at CCI since July of 2020, and that she had participated in nineteen (19) individual therapy sessions. Claimant was undergoing therapy services for support and treatment of posttraumatic stress disorder. The letter states that based on Mr. Pearison’s clinical observations, Claimant had “consistently displayed and reported symptoms indicative of her current PTSD diagnosis including: re-experiencing trauma due to triggering experiences, avoidance of possible triggers, hypervigilance, difficulty concentrating, anxiety, depression, and anhedonia.” Mr. Pearison’s letter further stated:

From the outset of her time in therapy, Dorothy has identified the time and experiences with her last employer as being the origin of her trauma symptoms. She reports being unable to continue her employment under conditions that were unsafe for her mental and physical health. Dorothy has talked at length during therapy about the causes for her trauma, including ongoing harassment, being threatened at gunpoint, and persistent verbal bullying by her employer. She has shared about feeling unsafe while at work due to the emotional and psychological abuse by her employer that was occurring on a regular basis throughout her time employed with that business. She continues to be triggered by the trauma she experienced, and her symptoms have prevented her from being able to pursue other employment.

Documentary Exhibits:

In a Faulkner County Sheriff’s Office Incident Report dated November 13, 2019, Claimant reported to the Sheriff that Mr. McNew had committed acts of terroristic threatening (threat of physical injury) against her. Specifically, the report states that Claimant alleged that “last week on 11/7/19 and 11/8/19 her boss (Jeffrey McNew) told her multiple times while at work ‘I will kill anyone who crosses me and I know where to hide the bodies.’ She stated that he said this to her face multiple times. She stated Mr. McNew owes her money and what he said to her concerns her. [Claimant] wanted to file a report to have something on record.”

In a second Faulkner County Sheriff's Office Incident Report dated November 25, 2019, filed by Jeffrey McNew, he alleged that Claimant had committed theft of property. Specifically, the report revealed that that Mr. McNew stated that his former employee (Claimant) had used his company debit card at several gambling establishments during the past month and that Claimant had been embezzling money from his company since she began working there in 2016.

In a third Faulkner County Sheriff's Office report dated November 27, 2019, Claimant reported that Mr. McNew had committed acts of terroristic threatening (threat of physical injury) against her. This report stated that the police were dispatched on a terroristic threatening call made by Claimant. Claimant reported that Mr. McNew had threatened to kill her "this past Thursday." Claimant stated that, "Mr. McNew said that if you tell my ex[-]wife that I paid her taxes on her house, I will kill you. [Claimant] also stated that Mr. McNew exclaimed, 'if anyone f---s with me about my ex[-]wife I will shoot them and they will never find the body.'" Lastly, the report revealed that Claimant "said that [Mr. McNew] has told her around 5 times that he will kill her. She advised it started about 3 weeks ago, and the last time was this past Thursday. [Claimant] said that after this past time she quit her job due to Mr. McNew threatening her."

In a July 29, 2021, e-mail communication that Claimant sent to Respondents' attorney, Claimant described being subjected to sexual harassment, threats of violence against her, verbal abuse, and unjust criticism while working for Respondent-Employer. In the e-mail communication, Claimant further described the impact of the bullying behavior on her physical and mental health. She also described the psychological impact of bullying that she experienced, including worry, lack of desire to leave the house, time off work, loss of interest in normal activities, risk for depression and anxiety, suicidal thoughts, and low self-esteem.

**ADJUDICATION**

A. Compensability:

Claimant contends that between October and November of 2019 while working for Respondent-Employer, her boss, Jeff McNew, allegedly made several threats against Claimant's life that resulted in Claimant sustaining an allegedly compensable mental injury, specifically posttraumatic stress disorder (PTSD) and anxiety. On the other hand, Respondents contend that the nature of Claimant's assertion is not compensable.; that the injury alleged is not an accidental injury; that the injury alleged is a crime outside of the jurisdiction of the Arkansas Workers' Compensation Commission; and that there are no objective medical findings to support a compensable injury

The claim for a mental injury or illness is governed by Arkansas Code Annotated section 11-9-113(a) (Repl. 2012), which provides:

(a)(1) A mental injury or illness is not a compensable injury unless it is caused by physical injury to the employee's body, and shall not be considered an injury arising out of and in the course of employment or compensable unless it is demonstrated by a preponderance of the evidence; provided, however, that this physical injury limitation shall not apply to any victim of a crime of violence.

(2) No mental injury or illness under this section shall be compensable unless it is also diagnosed by a licensed psychiatrist or psychologist and unless the diagnosis of the condition meets the criteria established in the most current issue of the Diagnostic and Statistical Manual of Mental Disorders.

On this record, I find that Claimant failed to prove the requirements necessary to establish a compensable mental injury under the statute. In this regard, Claimant has not provided evidence of a medical report of a psychiatrist or psychologist. Only one document was offered that was authored by a medical professional, which was from her clinical therapist, Mr. Peairson. Mr. Peairson's letter indicated that Claimant suffered from PTSD related to the November 2019 events

at work. Mr. Peairson is not a psychiatrist or a psychologist, but rather a licensed clinical social worker (LCSW). Claimant has therefore failed to establish that her mental injury or illness at issue was diagnosed by a licensed psychiatrist or psychologist and that the diagnosis of the condition met the criteria established in the most current issue of the Diagnostic and Statistical Manual of Mental Disorders, as required by Arkansas Code Annotated section 11-9-113(a)(2).

In sum, it is undisputed that Claimant did not suffer a physical injury; however, I find that Claimant may well have been a victim of a violent crime when her boss allegedly made threats against her life on November 14th and 20th of 2019, while at work. Nevertheless, she has failed to establish by a preponderance of the evidence that her mental injury or illness was diagnosed by a licensed psychiatrist or psychologist and that the diagnosis of the condition met the criteria established in the most current issue of the Diagnostic and Statistical Manual of Mental Disorders. Claimant has, therefore, failed to meet her burden of proof that she sustained a compensable mental injury of PTSD and anxiety as a result of the events of November 14th and 20th of 2019, while working for Respondent-Employer.

Having found that Claimant did not sustain a compensable mental injury, the remaining issue of Claimant's entitlement to medical benefits has been rendered moot and is not discussed in this Opinion. Accordingly, this claim for a mental injury is respectfully denied and dismissed in its entirety.

### **ORDER**

Claimant has failed to prove by a preponderance of the credible evidence that she sustained a compensable mental injury of PTSD and anxiety on November 14th and 20th of 2019, while at work, when Mr. McNew allegedly made threats against her life. Therefore, this claim for a mental injury is hereby respectfully denied and dismissed in its entirety.

**IT IS SO ORDERED.**

---

**KATIE ANDERSON**  
**ADMINISTRATIVE LAW JUDGE**