

and subsequently notified him that his employment was to be terminated for just cause effective August 1, 2000.

{¶ 4} During the damages trial, plaintiff testified that she became fearful and anxious as a result of Blackshear's conduct and that she continued to feel anxious even after Blackshear was terminated. Plaintiff's witnesses included her husband, Bradley Jones, who had worked for defendant at the time of the incidents. Bradley Jones testified that prior to the sexual harassment plaintiff was a happy, outgoing, and healthy person. Both Bradley Jones and other former co-workers who testified agreed that plaintiff had enjoyed working at defendant's facility and that she became depressed, withdrawn, and nervous following the incidents.

{¶ 5} When plaintiff returned to work and experienced difficulties related to her anxiety, she sought treatment and used her personal leave, disability leave, and leave authorized by the federal Family Medical Leave Act (FMLA). Plaintiff also took several periods of leave during 2000 and 2001, that were related to an appendectomy, her marriage to Bradley Jones, and care for her mother. Plaintiff eventually consulted a licensed social worker and a psychiatrist to treat her symptoms.

{¶ 6} According to plaintiff, she was unable to return to work because her anxiety caused sleeplessness and an inability to concentrate which made her feel "unable to function." On October 10, 2001, defendant sent plaintiff a "return to work order" that notified her that her disability claim was "closed" and that she had exhausted her 12-week entitlement under FMLA. Defendant's order further advised plaintiff that her failure to return to work would "result in corrective action up to and including termination." On November 9, 2001, defendant accepted plaintiff's written resignation that was based upon the recommendation of her

physician. (Defendant's Exhibit E, p. 2.) That same month, plaintiff began to work part-time at Elmwood Nursing Home.

{¶ 7} Plaintiff maintains that Blackshear's conduct caused severe emotional trauma and an anxiety disorder that prevents her from returning to work for defendant. In contrast, defendant asserts that plaintiff's symptoms are largely the result of events that occurred before July 2000 and that plaintiff attempted to minimize the significance of those events during her evaluation by defendant's expert.

{¶ 8} Cynthia Evans, M.D., plaintiff's treating psychiatrist, testified regarding her evaluation of plaintiff that included a review of plaintiff's psychological history. Dr. Evans acknowledged that prior to the sexual harassment plaintiff had experienced several psychologically traumatic events that included incidents of molestation by a family member, rape, and domestic violence. Plaintiff's medical history revealed that prior to the incidents involving Blackshear, plaintiff had been treated for a variety of mental health issues including anxiety, a suicide attempt, and alcohol abuse. Dr. Evans testified that plaintiff's past traumas were significant because the psychological effect of traumatic events tends to be cumulative.

{¶ 9} Based upon her evaluation of plaintiff, Dr. Evans concluded that plaintiff experienced post-traumatic stress disorder (PTSD), an anxiety disorder that resulted from the sexual harassment that occurred at defendant's facility. Dr. Evans opined that plaintiff's symptoms of PTSD were particularly severe in that she experienced depression, panic attacks, nightmares, and significant weight loss. Although Dr. Evans testified that plaintiff was unable to return to her job with defendant as a result of her symptoms, she also stated that plaintiff functioned "fairly well" in her subsequent employment as a nurse's aide at

Elmwood Nursing Home and that having another job helped plaintiff cope with her anxiety.

{¶ 10} Defendant's psychiatric expert, Susan Friedman, M.D., testified that her opinions were based upon a four and one-half hour interview with plaintiff and a review of the relevant medical and counseling records. Dr. Friedman opined that plaintiff experienced PTSD as a result of the 1994 rape and that the incidents involving Blackshear did not cause PTSD. Dr. Friedman testified that plaintiff intentionally minimized the traumas and psychological symptoms that she experienced prior to the sexual harassment, including her recurrent nightmares, depression and alcohol abuse. According to Dr. Friedman, plaintiff's symptoms would be expected to improve after Blackshear was terminated.

{¶ 11} Upon review of the testimony and evidence, the court is persuaded that plaintiff suffered emotional trauma as a result of Blackshear's conduct. This court has previously recognized that placing a value on the emotional and psychological effect of sexual harassment is a difficult task and that the relevant case law provides little guidance in determining damages. See *Brill v. Bureau of Motor Vehicles* (Dec. 27, 2001), Court of Claims No. 1998-04590. In this case, the experts for both parties agreed that plaintiff will require future treatment including counseling and medication to resolve her symptoms of anxiety. However, regarding plaintiff's prognosis, neither expert was able to state with a reasonable degree of medical certainty either the length of time that plaintiff was likely to remain in treatment or when she would be able to return to full-time employment. The determination regarding what damages are attributable to the conduct of defendant's employee is further complicated by the fact that the injury involves aggravation of a pre-existing condition.

{¶ 12} "Courts have recognized that 'a defendant whose acts aggravate a plaintiff's preexisting condition is liable only for the amount of harm actually caused by the negligence.'" *Mallory v. Ohio Univ.*, 121 Ohio Misc.2d 64, 2002-Ohio-7406, ¶41, quoting *LaMoureaux v. Totem Ocean Trailer Express, Inc.* (1981), 632 P.2d 539, 544; W. Prosser, *Law of Torts* (4th Ed.1972), Section 52, at 318.

{¶ 13} Additionally, plaintiff's economic expert, John Burke, Ph.D., testified regarding the amount of plaintiff's lost income and loss of earning capacity based upon the income differential between plaintiff's employment with defendant and her part-time employment at Elmwood Nursing Home. Dr. Burke's calculations were also based on certain assumptions including the rate of inflation, the number of years that plaintiff would remain employed and the length of time before she was able to return to full-time work.

{¶ 14} Upon review of the totality of the evidence, and considering the credibility of the witnesses, the court finds that the symptoms that plaintiff experienced following the sexual harassment were the result of the cumulative effect of both Blackshear's conduct and the prior traumas. In considering the measure of damages attributable to defendant's conduct, the court concludes that the greater weight of the evidence does not support a finding that Blackshear's conduct was more significant than the other emotional traumas affecting plaintiff's pre-existing condition.

{¶ 15} Based upon the totality of the circumstances, the court finds that plaintiff is entitled to recover total damages attributable to the sexual harassment by defendant's employee in the amount of \$50,000 which includes, but is not limited to, past and future wage loss and pain and suffering. Accordingly, judgment

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