



PSYCHOLOGICAL CLAIMS ARE ON THE RISE, NOW WHAT?

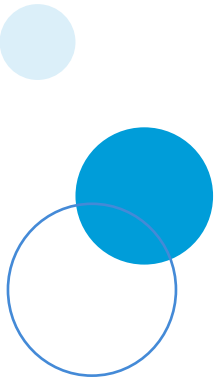
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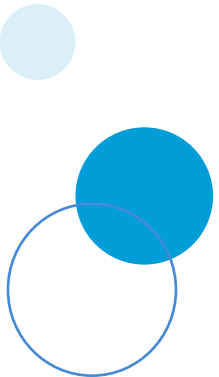
TYPES OF MENTAL STRESS CLAIMS IN WC

- ❖ Physical injury - Mental Stress
- ❖ Mental Stress - Physical Injury
- ❖ Mental - Mental



PSYCHOLOGICAL CLAIMS BY STATE

- ▶ Missouri - No physical injury required for mental stress claim.
- ▶ Illinois - must be able to be tied to a time, place, and cause.
No physical injury needed.



PHYSICAL INJURY-MENTAL STRESS

Standard of Causation: Was the work accident the prevailing factor in the development of the medical condition and disability?

- ❖ Example: Claimant, an OTR truck driver, is in a MVA and rolls his rig over a guard rail and down an embankment. He suffers multiple fractures and is now afraid to return to truck driving for fear of another accident.



MENTAL STRESS- MENTAL STRESS

Standard of Causation for Occupational Disease: Is the mental stress caused by extraordinary or unusual stress?

- Mental stress claim can not be based on termination, demotion or lack of promotion.
 - The stress exposure has to be extraordinary/unusual compared to the occupation.
- ❖ Example: Claimant alleges anxiety and depression from co-workers and supervisors yelling at him over a 5-year period at work on a constant basis.



MENTAL STRESS- PHYSICAL INJURY

- Less common in work comp
- Sometimes overlaps with civil actions for harassment, retaliatory discharge, discrimination, etc.

Standard of Causation: Was the mental stress the PF in the development of the medical condition and disability.

- ❖ Example: Claimant works long hours with many deadlines to meet in high pressure job as a surgeon, criminal lawyer, air traffic controller, WC claims rep, etc. and suffers a rash, heart attack, etc.





MISSOURI: PSYCHOLOGICAL CLAIMS



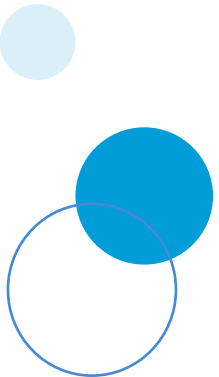
MO. REV. STAT. § 287.120- PSYCHOLOGICAL CLAIMS:

- Mental injury resulting from work-related stress does not arise out of and in the course of employment unless it is demonstrated that the stress was work related and *extraordinary and unusual*
- Work stress measured by *objective standards* & actual events
- Mental injury did not arise out of course of employment if it resulted from *disciplinary action, work evaluation, job transfer, layoff, demotion, termination, or any similar events by employer taken in good faith*



BRASWELL V. MISSOURI STATE HIGHWAY PATROL

- Claimant was Missouri State Highway Patrol trooper, witnessed other officers use taser on restrained individual
- Claimant mistook taser for service revolver. Claimant began experiencing emotional issues and received treatment for it
- Commission decided statute did not apply here because the case resulted from a traumatic event rather than work- related stress
- Event was in fact compensable under statute



JONES V. WASHINGTON UNIVERSITY

- ALJ found under § 287.120.8, Jones' mental injuries were not compensable because she could not prove that her stress was extraordinary and unusual
- ALJ improperly applied § 287.120.8, because Jones' claim did not arise from work-related stress, but from a physical assault which took place at work.
- Event included physical contact/impact of patient grabbing claimant's breast rather than from work-related stress.
- Physical injury - mental stress, not Mental stress causing mental injury



GEORGE V. CITY OF SAINT LOUIS

- Missouri Court of Appeals affirmed; Found Firefighter's PTSD is an occupational disease as a natural consequence of his employment
- Did not need to show job stresses were extraordinary and unusual compared to other firefighters of equal rank
- ***Section 287.067.5 enumerates certain diseases which are normally noncompensable but are compensable for firefighters if they are shown to have been directly caused by a firefighter's exposure to smoke, gases, carcinogens, inadequate oxygen, or psychological stress***
- Claimant's performance of his usual and customary duties as a firefighter was a substantial factor in causing his PTSD and exacerbating his depression.



MANTIA V. MO DEPT OF TRANSPORTATION

- Highway Patrol worker, 20+ years; Employee and her crew responded to the more serious accidents, which often included fatalities.
- To recover under section 287.120.8, a claimant must demonstrate "by objective standards and actual events" the amount of work stress endured was both "work related and was extraordinary and unusual." The claimant must also demonstrate that based on this work-related stress, he or she suffered a mental injury.
- There was no evidence presented in this case that Employee's work-related stress was objectively "extraordinary and unusual" as statutorily required. Employee undoubtedly found her employment to be extremely stressful.

CITY OF CLINTON V. ROBERT DAHMAN

- Court of Appeals Western District-filed May 30, 2023.
- Claimant was a police officer that responded to an active crime scene after another officer was fatally shot. Claimant diagnosed with PTSD.
- Resigned from the police department a short time after the incident.
- Claimant responded to domestic violence calls, made traffic stops, and secured hundreds of crime scenes prior to incident. The police officer that was shot and killed was a friend of the claimant on the force. Claimant heard other officer report traffic stop and state, “Shots fired. Officer hit.” At that point, claimant responded to scene and found the officer unconscious on the ground. Claimant feared for his safety at the accident scene because he was wearing protective gear just as the officer shot. Claimant thought the shooter could still be in the area and it was dark that night.

CITY OF CLINTON V. ROBERT DAHMAN

- This was first line-of-duty fatality in Clinton. Chief of Police testified that the shooting was “an unusual and extraordinary event for the City of Clinton Police Department.” Other officers were experiencing similar mental health issues after the shooting.
- City brought in counselors and crisis team to speak to police officers.
- Both mental health experts agreed on PTSD diagnosis.
- Both mental health professionals agreed the stress experienced was extraordinary and unusual. Employer expert concluded claimant did not have PPD associated with PTSD.

CITY OF CLINTON V. DAHMAN

ALJ, LIRC, and Court of Appeals held that Claimant showed by objective standards that stress was both extraordinary and unusual.

- How do you compare stress of claimant to others?
 - Compare claimant's level of stress with others in similar positions.
 - Claimant must demonstrate the events he experienced were what a reasonable (police officer) would experience as extraordinary and unusual stress.

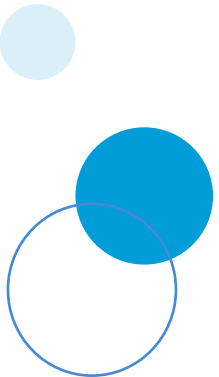


ILLINOIS: PSYCHOLOGICAL CLAIMS



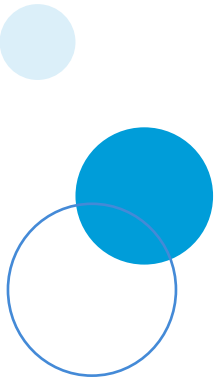
ILLINOIS PSYCHOLOGICAL CLAIMS

- Traditionally, in Illinois, mental injury or disability was only compensable under the Illinois Workers' Compensation Act if it was precipitated by physical contact or injury. *Diaz v. Comm'n.*
- Thus, Illinois was a strictly physical-mental state.
- *Until...*



PATHFINDER V. INDUSTRIAL COMM'N

- Claimant worked as a packager and assembler for the employer.
- Claimant taught another new co-worker how to use a punch press.
- She walked away once she was sure that her co-worker knew how to use it.
- She immediately heard screams coming from the machine.
- Claimant ran over and found that her co-worker had her hand caught in the press, severing her hand.



PATHFINDER V. INDUSTRIAL COMM'N (CONT'D)

- Claimant argued that she sustained severe psychological injuries as a result of what she saw.
- The employer argued that this was barred by 8(b)(7) of the Act which says that there must be objective conditions or symptoms proven.
- The Court held that the objective conditions or symptoms referred to the injury itself. Here, that was Claimant's traumatic injury of witnessing the severed hand, causing her to faint.
- The Court found that this was enough to find the subsequent mental health problems compensable.



AFTERMATH OF *PATHFINDER-MATLOCK*

- Court have held that a claimant can recover for mental-mental injuries if three factors are present: (1) the mental disorder arose in a situation of greater dimensions than the day-to-day emotional strain and tension which all employees must experience; (2) the conditions exist in reality, from an objective standpoint; and (3) the employment conditions, when compared with the non-employment conditions, were the major contributing cause of mental disorder. *Matlock v. Industrial Comm'n.*
- In *Matlock*, flight attendant was traumatized by passenger that attempted to blow up the plane and even introduced chemical contaminants into the plane.
- The Court held that she could recover using physical-mental, and mental-mental given that she suffered nausea and dizziness as physical symptoms, and she met the three above listed factors.



ADDITIONAL CONSIDERATIONS

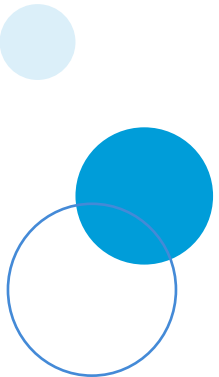
- **Police Officers and Firefighters:** Because they are continually exposed to traumatic events, Courts have found that they do not meet the three factors for mental-mental. *Ushman v. City of Springfield*; *Burney v. Jersey Comm. Hosp.*
- Mental injuries must be traced to a definite time, place, and cause which causes the severe, sudden emotional/psychological shock.
- Claims have been denied by the Court if a claimant does not seek immediate treatment for an alleged psychological injury for mental-mental as the effects must be “immediate” after the alleged specific traumatic event. *General Motors v. Industrial Comm’n*. Essentially, lack of immediate medical treatment makes it difficult for a claimant to show that the injuries are traceable to a definite time, place, and cause.



DEFENDING PSYCHOLOGICAL CLAIMS

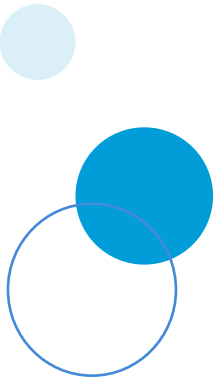
STEPS IN DEFENSE

- ▶ Define the question
- ▶ Records, records and more records!
- ▶ Engage the expert
- ▶ Choosing your expert...



THE PSYCHIATRIC IME-HISTORY

- Personal History
- Education
- Work History
- Past Medical/Surgical History/Medication/Allergies/ROS
- Past Psychiatric/Substance Use History
- Legal History
- Family History



EXPERTS

- **Psychiatrist** - medical doctor specializing in psychiatry
- **Psychologist** - focus psychotherapy, treat emotional and mental suffering in patients with behavioral intervention
- **Neurologist** - specialist in the anatomy, functions, and organic disorders of nerves and the nervous system
- **Neuropsychologist** - study of the relationship between behavior, emotion, and cognition alongside brain function Nurses
- **Social Workers/LCSW** - talk therapy and counseling
- **Nurse Practitioners** - may prescribe medications



CHALLENGES FOR FORENSIC PSYCHIATRY IME

- ❖ Diagnostic challenges with manual-based syndromes
- ❖ Lack of full longitudinal history
- ❖ No laboratory or imaging findings
- ❖ Everyone thinks they are a psychiatrist

THE PSYCHIATRIC IME

Clinician Evaluation

- ▶ First, Do No Harm
- ▶ Beneficence
- ▶ Confidential
- ▶ May seek collateral sources of information to provide good care, but care not withheld if the sources are not available

Forensic Examination

- ▶ Medical and psychiatric knowledge required to help answer a legal question
- ▶ Collateral sources of information are required
- ▶ Non-confidential
- ▶ Opinion may be harmful or at least not helpful

The logo for MVP Law is contained within a dark blue circle with a white border. The text 'mvp' is written in a lowercase, white, sans-serif font, with the 'm' and 'p' being significantly larger than the 'v'. Below 'mvp', the word 'LAW' is written in a smaller, uppercase, white, sans-serif font.

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QUESTIONS?