

The Standards involving Psychological Work Injuries Under the Workers' Compensation Act

It is well settled that psychological and mental injuries may be compensable under the Workers' Compensation Act. These types of injuries are divided into three distinct categories and each one carries its own burden of proof. They include a mental condition that occurs during or after a physical event (**physical/mental injury**); for example, a worker's hand is torn off while handling chicken in a meat processing plant and she then becomes depressed by the disfigurement. There is also a mental condition that manifests itself in a physical way (**mental/physical injury**) such as severe work stress that causes gastrointestinal problems. Think of a race car driver with bleeding ulcers. Finally, there is purely psychological trauma (**mental/mental injury**) that results in a mental condition and it involves employees who sustain mental injuries as the result of a single event psychological trauma or a stressful working environment. The three distinct burdens of proof are outlined as follows.

I. Physical/Mental Standard

A worker who seeks to have a psychological injury recognized as work related is required to prove that his or her work-related physical injury caused the mental condition. County of Dauphin v. Workmen's Compensation Appeal Board (Davis), 582 A.2d 434 (Pa. Cmwlth. 1990). Importantly, the work-related **physical injury does not have to have been disabling**, i.e. caused a wage loss, and a claimant need only to prove that the physical stimulus resulted in a psychological issue. Bartholetti v. Workers' Compensation Appeal Board (Sch. Dist. of Phila.), 927 A.2d 743 (Pa. Cmwlth. 2007).

The limited nature of the physical stimulus is illustrated in New Enterprise Stone & Lime, Co., v. Workers' Compensation Appeal Board (Kalmanowicz), 59 A.3d 670 (Pa. Cmwlth. 2012). In New Enterprise Stone & Lime, Co., the claimant was driving a tractor trailer when he swerved to avoid being hit head-on by an oncoming vehicle. Despite his attempt to avoid a collision, the car struck his truck and the claimant witnessed the driver, who died upon impact, pressing up against the windshield and looking directly at him. After the incident, he was treated at the hospital for chest and wrist contusions and left shoulder discomfort. Eventually, the claimant began treatment for post-traumatic stress disorder (PTSD) and then filed a claim petition and alleged that he sustained PTSD, and the judge granted the claim by applying the physical/mental standard and reasoned the claimant's PTSD resulted from a triggering physical event. The Commonwealth Court affirmed that the case fell under the physical/mental standard.

II. Mental/Physical Standard

In cases where a physical injury arises from psychological stimulus such as stress, the claimant needs to establish that the work-related psychological stimulus caused the resulting physical injury. Old Republic Ins. Co. v. Workers' Compensation Appeal Board (Mascolo), 726 A.2d 444 (Pa. Cmwlth. 1999). The Court also explained that mental/physical injuries have two common elements: (1) psychological stimulus that causes a physical injury, which continues even after the stimulus is removed; and (2) a disability or loss of earning power, which is caused by the physical condition rather than by the psychological stimulus.

III. Mental/Mental Standard

When a claimant seeks to prove that a single event psychological trauma or stressful working environment resulted in a mental condition (mental/mental injury), he or she must prove either (a) that actual extraordinary events occurred at work which caused the trauma and that these specific events can be pinpointed in time, or (b) that abnormal working conditions over a longer period of time caused the injury. Gulick v. Workers' Compensation Appeal Board (Pepsi Cola Operating Co.), 711 A.2d 585 (Pa. Cmwlth. 1998).

Importantly, it is well established that the burden in a mental/mental case is very heavy, but that illegal activity is an abnormal working condition. Appellate courts have upheld the award of compensation to claimants, who were robbed and sexual harassed and were victims of paycheck theft by the employer. *See generally* Community Empowerment Association v. Workers' Compensation Appeal Board (Porch), 962 A.2d 1 (Pa. Cmwlth. 2008); Pa. Liquor Control Board v. Workers' Compensation Appeal Board (Kochanowicz), 108 A.2d 1 (Pa. 2014); and C. Hannah & Sons Construction v. Workers' Compensation Appeal Board (Days), 784 A.2d 860 (Pa. Cmwlth. 2001).

In 2013, the Supreme Court issued Payes v. Workers' Compensation Appeal Board (State Police), 621 Pa. 564, 79 A.3d 543 (2013), which involved a state trooper who killed a pedestrian after she jumped in front of the vehicle he was driving, and outlined a new standard for determining whether **a traumatic single event, mental/mental work injury** is compensable under the Act for employees who belong to a profession that involves certain levels or types of stress such as police officers and firefighters. Specifically, in Payes, the Supreme Court set for the following flow chart of burdens for determining if there is compensability in these cases:

- 1) if the claimant=s psychological injury has been objectively verified (presumably with expert testimony)

2) if the psychological injury has been traced to an identifiable source (such as a woman attempting to commit suicide by cop or being threatened with a knife or gun)

3) Whether that incident alone, and not any purported comparable sets of incidents, was abnormal.

The majority in Payes also explained that the abnormal working conditions analysis does not end when it is established that the claimant generically belongs to a profession that involves certain levels or types of stress. The Court also held that when an employer appeals a fact finder's award of claim in a single-event, psychological trauma case, it is its burden to show that the factual determinations were arbitrary and capricious.