OAJ Workers' Compensation Section Article August 2013

Trying Our Sanity: Supreme Court Ruling Narrows Grounds For Psychiatric Conditions in Workers' Comp Claims

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As any plaintiff attorney knows, physical injuries seldom come without psychological repercussions. This is particularly true in the world of workers' compensation. Many workers draw a sense of self-worth from their ability to provide for their families and from contributing to society through vocational productivity. When an injury takes work away, people often find themselves with less self-esteem and too much idle time, which they often fill with thoughts of what they cannot do because of their injuries. When you add in some (often well-founded) feelings of paranoia that employers are surveilling them to allege fraud, and throw in some frustration caused by a slow-moving state agency that often keeps treatment from proceeding efficiently, you can begin to see why so many claimants end up with psychiatric allowances. And while state law has always made sure the bar is a bit high when adding a psychiatric condition to a claim, the recent Ohio Supreme Court decision *Armstrong v. John R. Jurgensen Co.*[1] may have turned it into a pole vault.

The rule of thumb in Ohio law is that an injury is a compensable workers' compensation claim if it is sustained "in the course of" and "arising out of" one's employment. To oversimplify decades of case law into one sentence, this basically means a worker has to prove that the injury is causally related to the employment. However, the Ohio Revised Code makes it clear that, when seeking a psychiatric condition, the sole fact that one's work caused his psychiatric diagnosis is not sufficient. Perhaps this is for the better, as a recent Gallup poll reported that 70% of Americans are unhappy with their current jobs, and assumedly this depresses a lot of them. And many of this article's readers will surely attest that at times, their careers have brought them to the brink of a whole litany of anxiety disorders. Thus, starting with the 1986 amendment, the Ohio Revised Code provided that a psychiatric condition is not an "injury" for the purposes of workers' compensation, *except* where the claimant's psychiatric conditions "have arisen from an injury or occupational disease." R.C. 4123.01(C)(1), 1986 version. "Injury or occupational disease," therefore, was interpreted to mean a physical (non-psychiatric) injury or occupational disease. So the psychiatric condition had to be linked to the occurrence of a physical injury of some type in order to be compensable. This led to such curiosities as the Court granting a fully-compensable psychiatric allowance to a claimant who was traumatized by witnessing a physical injury to a third party coworker from afar [2], while a

[1] Armstrong v. John R. Jurgensen Co., Slip Opinion No. 2013-Ohio-2237.

[2] Bailey v. Republic Engineered Steels, Inc., 91 Ohio St.3d 38 (2001). "The plain reading of the statute reveals that the intent of the General Assembly is to limit claims for psychiatric conditions to situations where the conditions arise from an injury or occupational disease. However, R.C. 4123.01(C)(1) does not specify who must be injured or who must sustain an occupational disease."

bank teller was denied a psychiatric condition after being personally confronted and traumatized by armed bank robbers (because no one was physically hurt in the robbery[3]). In 2006, Senate Bill 7 addressed this oddity by clarifying that the psychiatric condition must arise from an injury or occupational disease "sustained by that claimant," which eliminated the "spectator" situation. Still, though, this did not resolve the strange distinction that would allow our bank teller to be compensated while off work treating for PTSD, had she only stubbed her toe during the robbery[4].

Thus was the setting for *Armstrong v. Jurgensen*. In this case, the claimant truck driver was involved in a violent work-related motor vehicle accident, but was lucky enough to escape with relatively minor physical injuries. The Court described the accident thusly:

> *…Armstrong observed a vehicle approaching from behind with increasing speed. Armstrong braced for a collision, afraid he was going to be seriously injured. The approaching vehicle struck [Armstrong's] dump truck from behind, pushed it forward, and came to rest "basically underneath" the dump truck. After the collision, Armstrong was in shock.*

The claimant then saw fluid leaking from the vehicles and ran from the scene, fearful of an imminent explosion. As he fled, "Armstrong then noticed that the other driver was not moving and that blood was coming from his nose; he suspected the driver was dead….he was distressed to learn, while in the emergency room, that the other driver had, in fact, died."

Armstrong's claim was allowed for cervical strain, thoracic strain, and lumbar strain, and Armstrong was later diagnosed with posttraumatic stress disorder caused by the event. He then sought an additional allowance for PTSD, which was granted administratively and then appealed, eventually finding its way to the Supreme Court. Under the state of the law at that point, the PTSD would seem to qualify – Armstrong undoubtedly was involved in a compensable work accident that was physical in nature, and as a result, he developed PTSD. However, the employer had a different take on it, based on a differing interpretation of the word "injury." The employer argued that when R.C. 4123.01 says a psychiatric condition must result from a qualifying injury, the word "injury" does not refer to the injurious incident as a whole, but rather to an individual physical diagnosis resulting from the incident. Thus, because the PTSD was not

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[3] McCrone v. Bank One Corp., 107 Ohio St.3d 272 (2005). "And yet this same injury – posttraumatic stress disorder – would be fully covered under the statute if only the bank robber had been considerate enough of appellee's compensation position to have shoved her during the robbery so that she could stub her toe and acquire the physical element that is deemed so essential to her right of recovery." *Alice Robie Resnick, J., dissenting.*

[4] See for example Jones v. Catholic Healthcare Partners, Inc., 2012-Ohio-6269, where a hospital clerk was taken hostage, held at gunpoint for nearly half an hour, and told approximately fifteen times that she was going to be killed, but apparently *still* would not have gotten her posttraumatic stress disorder allowance were it not for the fact that, during the episode, she had also broken her wrist ("None of the various appellate court cases cited by Appellant…involve the denial of coverage to a claimant suffering **both a covered physical injury** and a psychiatric condition resulting from the same workplace incident." [emphasis added]). See also footnote 3, for Justice Resnick's comments on the "stubbed toe."

a result of the allowed strains, but rather of the horror and shock of the car accident itself, the PTSD did not result from an "injury…sustained by that claimant." Armstrong responded that the word "injury" from R.C. 4123.01 (C)(1) should be read as embracing "the entire episode or accident giving rise to a claimant's physical injuries." The Supreme Court ultimately sided with the employer, stating:

> *Armstrong undisputedly suffered compensable injuries as a result of the accident, and his PTSD undisputedly arose contemporaneously as a result of the accident. For Armstrong's PTSD to qualify as a compensable injury under R.C. 4123.01(C)(1), however, more is required; he must establish that his PTSD was causally related to his compensable physical injuries and not simply to his involvement in the accident.*

The Supreme Court reasoned that "injury," in the context of R.C. 4123.01(C) must be read as focusing on the resulting physical harm, not on the cause or means underlying the harm. The Court then delved into a rather esoteric and cloudy dissection of the word "injury" as used in the statute:

> *R.C. 4123.01(C) requires that an injury be "received in the course of, and arising out of, the injured employee's employment." The phrase "in the course of" relates to the time, place, and circumstances of an injury, and "arising out of" contemplates a causal connection between the injury and the employment…The "injury," however, is distinct from those conditions. While the cause and underlying circumstances are relevant to the question of compensability, once the prerequisites to coverage are met, it is the resultant harm that constitutes the "injury" received or sustained by the claimant, and it is from that harm that the claimant's psychiatric condition must arise.*

Thus, the Court concluded the "injury" is the resulting physical harm, rather than the incident itself. But is this interpretation really so obvious? When an injured worker fills out a BWC-authored *First Report of Injury* form, the claimant is asked to provide the "Date of Injury," meaning the date that the accident occurred, not the date the conditions arose. For example, the injured worker could have injured his leg on 1/1/13 and then developed a lumbar strain due to gait changes on 4/1/13, but the date of injury is still the date of the original incident (1/1/13). The newly-developed lumbar strain is a new *condition* (described in workers' compensation parlance as a flow-through), but it is not a new *injury*. In fact, if the recently-developed diagnosis was considered to be a new *injury* rather than a new *condition*, then a new workers' comp claim would be established with a *new date of injury*, and it would be treated as a separate incident. Similarly, when a doctor is asked to fill out a BWC-authored C-30 *Request for Medical Information* form, he or she is asked for the "history of the injury," and later is asked to give a causal relationship between "the history of the injury" and the diagnosis. Doesn't this suggest that the injury is the incident itself, and the diagnosis is the condition that results from the incident? Obviously these forms were not written by the legislature or the Supreme Court, and I certainly do not intend to imply that they should be controlling when interpreting statute. But

when everybody on both the employer and claimant side consistently refers to the incident itself as the "injury" and the resulting diagnoses as the "conditions," it has to raise some eyebrows when the Supreme Court says it means exactly the opposite.

In any event, if we wanted more clarity on when a psychiatric condition is compensable, we got it. But is this a just (or logical) result? The legislature has acknowledged that it is sometimes the nature of the incident itself, rather than the resulting physical damage, that causes the related psychiatric conditions. As part of the 2006 amendments in Senate Bill 7, the legislature provided that a psychiatric condition is a compensable injury not only when it has arisen from a physical injury but also "where the claimant's psychiatric conditions have arisen from sexual conduct in which the claimant was forced by threat of physical harm to engage or participate." While I am in no way comparing the distress from a fatal car accident to the life-altering trauma of a sexual assault, doesn't this amendment represent legislative acknowledgment that it is sometimes the traumatic nature of an incident itself (regardless of whether there were any resulting lacerations or contusions) that causes the resulting psychiatric disability? No matter how hard the Supreme Court wrangles with the meaning of the word "injury," it seems that the legislature has already tried to limit psychiatric allowances to those resulting from strictly physical conditions and found that to be an unworkable blanket rule.

Though fairness is subjective, I know I can't be the only one who sees the result of *Armstrong* as fundamentally unfair. Take for example two truck drivers who both survive fatal accidents and both develop PTSD primarily from witnessing gruesome deaths. One breaks both legs during the crash, but even after the legs mend, he still cannot bring himself to get back into the truck, due to nightmares, flashbacks, and panic attacks, until undergoing a year of psychotherapy. The other, who emerges more or less unscathed, also cannot bring himself to get back into the truck, finds himself suffering the same debilitating psychiatric symptoms, and undergoes the same course of psychotherapy. Is there any fair explanation for why one of these drivers should have all his therapy and lost time paid, while the other has to fend for himself?

What exactly, then, is the purpose of this distinction requiring that a psychiatric allowance must result from a particular physical diagnosis? In the past, Supreme Court decisions have fallen back on the position that psychiatric injuries are hard to prove, and that in order to conserve the workers' compensation fund, there must be a bright line that must be crossed in order to get one's foot in the door.[5] Maybe this is why the legislature was willing to write in an exception for sexual assaults – because of the inherent trauma caused by such incidents, perhaps the psychiatric injury can be presumed. If this is the case, maybe there are other bright-lines where the psychiatric injury can be presumed which would lead to fairer results, such as when witnessing a death, or perhaps witnessing a death while the claimant was also within the "zone of danger" (similar to the rule for negligent infliction of emotional distress cases in some states). This would help in some situations, but it would do nothing to correct unjust results that did not

[5] See McCrone.

fall within such bright lines, but where it is nevertheless clear that the workplace incident caused the psychiatric disorder.

The response to the argument that we need a bright-line rule, of course, is that "we are no longer living in the 19th century, when it was considered impossible to accurately diagnose psychological injuries" (Justice Resnick dissenting in McCrone). Justice Pfeifer, who joined the dissent, wrote about this topic in the Supreme Court's March 8, 2006 weekly column shortly after the McCrone decision. Justice Pfiefer contended that there is a clear difference between psychological harm caused by a known triggering event and the murky "I hate my job"-type depression. Is it really any more difficult for a trier of fact, be it a jury or hearing officer, to decide whether a psychiatric condition was caused by a particular incident (i.e., a fatal car crash) than it is to determine if the condition was caused by a particular fracture, herniation, or rupture? Don't juries decide all the time in personal injury cases whether emotional damages are due to a particular incident (be it harassment at work, loss of consortium, etc.) even in the absence of a particular physical wound? Why not at least put it to the trier of fact to determine if it is, as Justice Pfeifer termed it, an "equally provable injury"? Now that we are no longer "living in the 19th century," haven't we come to realize through modern science, brain chemistry, and neuroimaging that psychiatric conditions *actually are* physical in nature – at least to some extent – as opposed to the old concept of unprovable, nebulous complaints of "feeling blue"? The fear seems to be that if state removed the requirement that a physical condition must cause the psychiatric condition, the BWC would suddenly be helpless before a tide of claimants alleging their work made them crazy, with no way to disprove their claims. But while a psychiatric illness may have been impossible to prove or disprove a century ago, that is certainly no longer the case. The BWC uses modern scientific medical evidence all the time to argue against the presence (or causal relationship) of psychiatric conditions alleged to have resulted from a physical condition in a claim – could it not use the same methods to argue against a psychiatric allowance allegedly resulting from a particular event?

Despite my earlier quibbling with the Supreme Court's handling of the definition of "injury," I am not sure their interpretation is wrong. After all, when the statute describes what is *not* an injury, it lists specific conditions and diagnoses (such as "psychiatric conditions") rather than specific accidents or incidents to be excluded. This suggests that other types of diagnoses *are* injuries, and supports the Court's conclusion that an injury is a diagnosis you have, rather than an event that causes harm. But then there's R.C. 4123(C)(4), also added in the 2006 amendment, which seems to describe an injury as *both* a condition *and* an event: for purposes of this section, an injury does not include "**a condition** that pre-existed an injury, unless that pre-existing condition is substantially aggravated by the injury" (emphasis added). In the underlined phrase, doesn't "injury" sound a lot more like an event that occurs, causing a condition to worsen, rather than sounding like a condition itself? But in the boldfaced portion of that very same sentence, an injury is plainly equated to a condition. Therefore, the problem is likely the

wording of the statute itself. And just as the legislature changed its wording when it led to unjust results in incidents of sexual assault, perhaps that is what it will take to remedy this situation.

Unfairness and illogic aside, the rule is now clear. For a psychiatric allowance to be granted in a claim, it must, at least in part[6], be caused by "compensable physical injuries and not simply [due] to…involvement in the accident." Thus, to whatever extent a mental healthcare provider relates a psychiatric diagnosis to a particular physical result of the injury, the better the chance it will have of allowance. If a police officer kills an assailant in a struggle, he will likely not be successful if his depression is related to the sadness of taking a life. Instead, he would have to be depressed because the assailant also wounded him and he is no longer able to live the life he once lived. Never mind that both depression diagnoses might be equally provable. Never mind that both depression diagnoses might be equally causally related to the injurious episode. Never mind that both depression diagnoses might be equally work-related and equally disabling from said work. Whatever the reason, Ohio law has established that one is compensable and one is not, and for better or for worse, that's where we stand.

[6] It remains unclear to what extent the physical injuries must contribute, but the Supreme Court makes it clear that they must be at least a contributing cause. ("The record contains contradictory evidence of whether Armstrong's physical injuries were a contributing cause of his PTSD.")