


**Psychological Conditions
from a Workers'
Compensation
Perspective**

November 5, 2021

Lisa A. Fike, Esq.
lfike@kwgd.com

KWGD KRUGLAK
WILKINS
GRIFFITHS &
DOUGHERTY
attorneys at law CO, L.P.A.

1




Intro

There appears to be a rising trend in Ohio workers' compensation claims for psychological conditions to be added to claims.

KWGD KRUGLAK
WILKINS
GRIFFITHS &
DOUGHERTY
attorneys at law CO, L.P.A.

2

2



Intro

These are more frequently being requested in claims as the physical conditions are nearing the end of being a source for ongoing treatment or compensation.

KWGD KRUGLAK
WILKINS
GRIFFITHS &
DOUGHERTY
attorneys at law CO, L.P.A.

3

3

Intro

There has been some recent pushes for new legislation to allow psychological only claims for certain classes of employees, but a new solution for this was found and passed.

4

Intro

I will cover:

- What is a psychological claim for Ohio workers' compensation
- What documentation needed
- what providers are eligible to diagnosis a psychological condition and certify disability for the condition,
- Jurisdiction of the hearing officer in a psychological condition,
- The role of the employer and occupational nurse in the claim process.

5

4123.01 Workers' compensation definitions

As used in this chapter:

(C) "Injury" includes any injury, whether caused by external accidental means or accidental in character and result, received in the course of, and arising out of, the injured employee's employment. "Injury" does not include:

(1) Psychiatric conditions except where the claimant's psychiatric conditions have arisen from an injury or occupational disease sustained by that claimant or 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; ***

R.C. 4123.01(K) - defines sexual conduct as requiring penetration, however slight.

6

What Does this Mean?

- You cannot have a psychological only claim in Ohio.
- The so-called "mental-mental" claim – a psychological condition that arises solely from stress – has never been compensated in Ohio. This exclusion was originally a part of the judge-made, common law. Then, in 1986 the General Assembly made this "mental-mental" exclusion a part of the Revised Code at Section 4123.01(C)(1). In 2006, in response to an Ohio Supreme Court decision expanding the scope of stress related-claims that could be compensated, the General Assembly amended that section and re-emphasized that in order for a mental or psychological condition to be compensated, the condition must arise out of a physical injury to the injured worker.

KWGD KROUSE
WAGNER
GORDON &
DUNN
ATTORNEYS AT LAW C.S., L.P.A.

7

7

What Does this Mean?

- This means no claims for stress, PTSD, anxiety as a result of work duties or events.
- The psychological condition must be as a result of a physical condition or injury.

KWGD KROUSE
WAGNER
GORDON &
DUNN
ATTORNEYS AT LAW C.S., L.P.A.

8

8

History of Psychological Claims

1. Mental conditions caused solely by work-related stress are not compensable as occupational diseases.
 - (Rambaldo v. Accurate Die Casting, 65 Ohio St.3d 281, 603 N.E.2d 975 (1992).
2. Supreme Court held "a psychiatric condition of an employee arising from a compensable injury or occupational disease suffered by a third party is compensable under RC 4123.01(C)."
 - (Bailey v. Republic Engineered Steels, Inc., 91 Ohio St.3d 38, 2001-Ohio-236, 741 N.E.2d 121.)

KWGD KROUSE
WAGNER
GORDON &
DUNN
ATTORNEYS AT LAW C.S., L.P.A.

9

9

History of Psychological Claims

3) In a 2005 Supreme Court case, an injured worker applied for workers' compensation for posttraumatic stress disorder developed after two robberies of the bank where she worked as a teller. She suffered no physical injuries in the robbery. The Court held that "psychological or psychiatric conditions that do not arise from a compensable physical injury or occupational disease are excluded from the definition of "injury" under R.C. 4123.01(C)(1) and from workers' compensation coverage." The Court held the exclusion of mental injuries from compensability under the Workers' Compensation Act did not violate the Equal Protection Clause of the United States or Ohio.

- (McCrone v. Bank One Corp., 107 Ohio St.3d 272, 2005-Ohio-6505, 839 N.E.2d 1)

KWGD
KNOX, WILSON,
GORDON &
DUNN
ATTORNEYS AT LAW
COLUMBIA, OHIO

10

10

History of Psychological Claims

4) A few years later, Bailey was legislatively nullified. For injuries after 8/25/06. The statute we discussed previously became the law. The emphasis being that the physical injury had to be sustained by the claimant and not by another individual.

KWGD
KNOX, WILSON,
GORDON &
DUNN
ATTORNEYS AT LAW
COLUMBIA, OHIO

11

11

History of Psychological Claims

5) In a 2013 Ohio Supreme Court ruling, the court found that an employee's psychological or mental-health claims only have to be covered by workers' compensation if that mental-health "injury" is directly related to a physical injury. In this case, a truck driver attempted to collect workers' compensation for the physical and mental harm he sustained in a highway accident. The accident involved the death of the other driver, who drove into the back of the claimant's dump truck. As a result of the fatal accident, the truck driver alleged that he developed a stress disorder. Although the court allowed the driver to collect compensation for his physical injuries, it denied his claim that the accident and his stress disorder were linked.

- (Armstrong v. John R. Jurgensen Co., 136 Ohio St.3d 58, 2013-Ohio-2237, 990 N.E.2d 568.)

KWGD
KNOX, WILSON,
GORDON &
DUNN
ATTORNEYS AT LAW
COLUMBIA, OHIO

12

12

History of Psychological Claims

Holding: The Ohio Supreme Court has held that a causal connection must exist between the allowed physical injury and the claimant's mental condition. The mental condition must be causally related to the compensable physical injury and not simply a result of the claimant's involvement in an accident

KWGD KNOX, GILMAN & DUNN, LLP
attorneys at law
13

13

History of Psychological Claims

Hearing Officer's Manual - If there is reliable medical evidence establishing the allowed physical conditions are a proximate cause of the mental disorder(s), the claim can be allowed, even if the evidence establishes the incident itself is also a proximate cause. The physical injuries need not be the sole cause.

KWGD KNOX, GILMAN & DUNN, LLP
attorneys at law
14

14

Stress Claims

1. Physical injury caused by stress is compensable if resulted from a greater degree of stress than to that which all workers are occasionally subjected. This requires showing that the stress is unusual.

– (Ryan v. Connor, 13 28 Ohio St.3d 406, 503 N.E.2d 1379 (1986))

KWGD KNOX, GILMAN & DUNN, LLP
attorneys at law
15

15

Stress Claims

2. Medical evidence must show a substantial causal relationship. Whether an injury resulted from greater emotional strain or tension than that to which all workers are occasionally subjected is an objective question. Small v. Defiance Public Library, 85 Ohio App.3d 583, 620 N.E.2d 879 (3d Dist. 1993) ("[The] objective test squarely focus[es] on the stress experienced by all workers as a whole, not just to workers in a particular occupation or profession. To satisfy this test, the worker must distinguish the job stress at issue from the normal, everyday stress which all workers experience from time to time. The test relates to the stress itself, not to the worker's individualized or subjective response to the stress.").

KWGD
KNOX, WILSON,
GARDNER &
DUNN
ATTORNEYS AT LAW
COLUMBIA, ILL.

16

16

Stress Claims

3. Fright, worry, or excitement alone is not compensable. The stress must result in a physical injury.

KWGD
KNOX, WILSON,
GARDNER &
DUNN
ATTORNEYS AT LAW
COLUMBIA, ILL.

17

17

What needs to be filed by an injured worker?

1. Request for a psychological condition

- Filed on a FROI-1 (along with the physical conditions);
- On a Motion requesting it as an additional allowance in the claim

KWGD
KNOX, WILSON,
GARDNER &
DUNN
ATTORNEYS AT LAW
COLUMBIA, ILL.

18

18

What needs to be filed by an injured worker?

2. If the condition is being requested by Motion, then a declaration from the Injured Worker is required. It can be on the motion or on a separate document, but must be signed by the Injured worker. And it states:

"I am aware that this motion is being filed to request that the bureau or commission recognize my emotional problem, nervous condition, or psychiatric disability as being a result of the injury for which the claim is allowed."

KWGD KINGSLEY
WATSON
DUNN &
GORDON
ATTORNEYS AT LAW
LOS ANGELES, CALIFORNIA

19

19

What needs to be filed by an injured worker?

3. Supporting medical documentation in the form of a report that sets out the specific psychiatric conditions and a causation statement for the requested condition(s) as being related to the work-related physical conditions.

KWGD KINGSLEY
WATSON
DUNN &
GORDON
ATTORNEYS AT LAW
LOS ANGELES, CALIFORNIA

20

20

Permitted Providers

1. To provide treatment and support a diagnosis:

- Medical Doctor (M.D.)
- Doctors of Osteopathic Medicine (O.D.)
- Licensed psychiatric specialists
- Clinical psychologists
- Licensed Professional Clinical Counselors (LPCC)
- Licensed Independent Social Workers (LISW)

KWGD KINGSLEY
WATSON
DUNN &
GORDON
ATTORNEYS AT LAW
LOS ANGELES, CALIFORNIA

21

21

Permitted Providers

2. An Advanced Practice Registered Nurse (APRN) or Advanced Practice Nurse (APN) cannot provide the supporting medical.
3. The LPCC and LISW cannot certify periods of disability or sign any forms used for compensation (Medco-14)

KWGD
KINGSLAND
WILSON
GORDON &
DUNN
ATTORNEYS AT LAW
LOS ANGELES, CALIFORNIA

22

22

BWC / Employer Response

State-Fund Employer

- BWC is the first line of action. They will review the Motion to ensure that it is complete and has all the required documents.
- They will then schedule a psychological evaluation.
- Depending on the opinion of their doctor, they will either issue an order or will refer the matter to the Industrial Commission.
- The employer can then either rely on the BWC medical or obtain an independent medical of their own.

KWGD
KINGSLAND
WILSON
GORDON &
DUNN
ATTORNEYS AT LAW
LOS ANGELES, CALIFORNIA

23

23

BWC / Employer Response


Self Insured Employer

- The SI employer is the first line of action.
- They can either accept the motion or reject the motion.
 - The motion still needs to have all of the required pieces.
- If they accept the motion, the condition becomes part of the claim, and the treatment and any related compensation should be considered in the claim.
- If they reject the motion, it will then be referred to the Industrial Commission for hearing.
- Also, if they reject the motion, they will want to obtain a report of their own before a hearing on the merits. (IME or IMR)

KWGD
KINGSLAND
WILSON
GORDON &
DUNN
ATTORNEYS AT LAW
LOS ANGELES, CALIFORNIA


24

24




Industrial Commission Jurisdiction over Psychological Conditions

- *Adjudications Before the Ohio Industrial Commission*
Memo S8
- When an injured worker files a motion for a specific psychiatric condition based on a report that documents a psychological condition related to the injury, and other examining doctors diagnose conditions that are different from the conditions stated in the motion, the following procedure will apply:
 - In evaluating such information, hearing officers are not limited to the specific psychiatric diagnosis requested or cited in the original motion. After considering all of the medical evidence, hearing officers have discretion to consider any psychiatric condition diagnosed, and related to the allowed injury, that he or she determines most appropriate




25

25




Defense Role / Industrial Nurse Role

- Request and review all medical in the claim file and from the employee's primary care provider.
- Look for any prior history of depression, anxiety, etc in the medical history. This should also include psychological medications in the medication list.
 - If that doctor is not prescribing the psychological medication, then the employee/counsel needs to be asked who was the prescribing doctor and get those records.




26

26



Defense Role / Industrial Nurse Role

- Review the treatment records in the claim file. Review the "psychological exam" findings in those records for any symptoms or a lack of reported symptoms.
- If you are aware that there is mis-information or information left out of the claimant's report that would impact his/her psychological condition, make a note of it. You can then provide the information to your defense expert and ask them to address it.
 - Prior legal problems, prior psychological history, other family/social stressors



27

27

Legislation

- In 2015, Senate Bill 5 was introduced in 2015 to mandate workers' compensation coverage for rescue workers who experience PTSD regardless of physical injury, but it stalled in the Senate Finance Committee.
 - The Ohio BWC estimated the legislation would cost employers \$182 million per year, using the national average of 18% of first responders filing annually for workers' compensation benefits.

28

Legislation

- House Bill 308 became effective on April 12, 2021. This bill establishes compensation and benefits for first responders through the creation of a specific fund designated to address Post Traumatic Stress Disorder (PTSD). The fund will not be administered by the Ohio Bureau of Workers' Compensation. The intention of the fund is to "pay compensation for lost wages to a public safety officer who is disabled by post-traumatic stress disorder (PTSD) without an accompanying physical injury received in the course of, and arising out of, employment..." By creating a separate fund to pay the costs of medical expenses and compensation for PTSD regardless of physical injury, Ohio can meet first responders' mental health needs while still protecting the integrity of the Bureau of Workers' Compensation fund.

29

Legislation

- House Bill 308 also offers protection to those first responders who seek treatment. "No employer shall discharge, demote, reassign, or take any punitive action against any public safety officer because the officer filed a claim or instituted, pursued, or testified in any proceedings related to compensation or benefits paid from the state post traumatic stress fund as a result of a diagnosis of post-traumatic stress disorder received in the course of, and arising out of, employment as a public safety officer but without an accompanying physical injury."

30

Legislation

- Public employers who employ first responders will be assessed premiums to finance the PTSD fund. Private employers will not be responsible for paying into the PTSD fund.
- The passing of the house bill reaffirms Armstrong's requirement that an alleged psychological injury must be causally connected to an underlying physical injury for workers' compensation, while also providing an exception for first responders.

KWGD KIRKLAND
WATSON
GARRARD &
DAVEY LLP
attorneys at law
31
