

Workers Comp
It Matters

Mental Illness In The Workplace What is Compensable – What is Not ?

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Mental Illness In The Workplace

What is Compensable – What is Not ?

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Is Mental Illness Prevalent in the United States?

A. 2020 Census reported that the population of the United States is 331.45 million

B. The National Institute of Mental Health has reported that in 2020, “nearly” one in five U. S. adults (18 or older) live with mental illness (52.9 million in 2020).

C. The Diagnostic and Statistical manual of Mental Disorders, Fifth Edition (DSM-5) 2013, lists nearly 300 mental illnesses



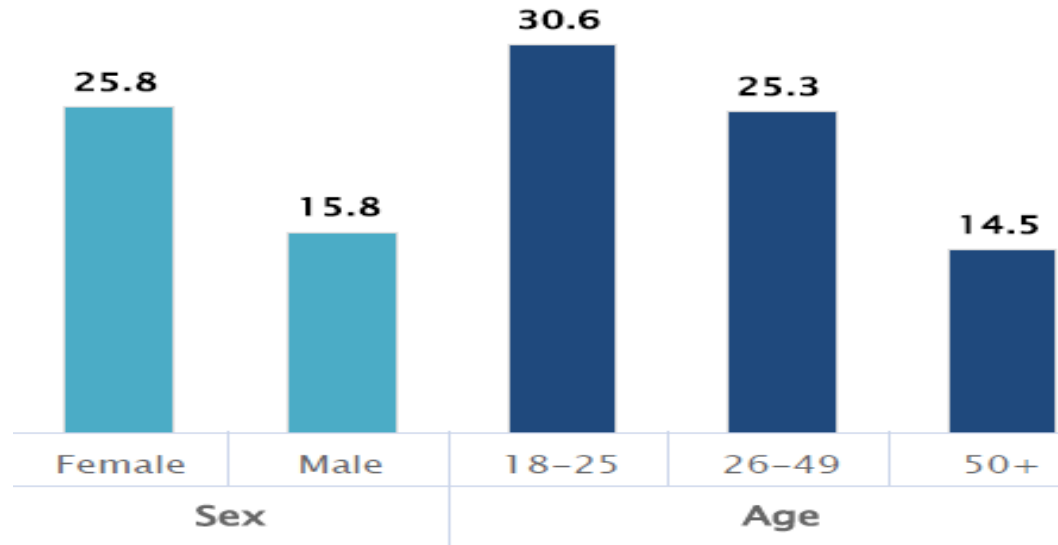
What Is Mental Illness ??



Mental illness is characterized as “any mental illness” (AMI) and Serious Mental Illness (SMI). Any mental illness is defined as a mental, behavioral, or emotional disorder and can vary in impact ranging from no impairment to mild, moderate and severe impairment.- Serious Mental impairment is defined as a mental, behavioral or emotional disorder resulting in serious functional impairment, which substantially interferes with or limits one or more major life activities.

NATIONAL INSTITUTE OF MENTAL ILLNESS:

The prevalence of AMI was higher among females (25.8%) than males (15.8%). Young adults aged 18-25 years had the highest prevalence of AMI (30.6%) compared to adults aged 26-49 years (25.3%) and aged 50 and older (14.5%).



International
Personalities/Professional
Athletes With Publicly
stated Mental Issues



International Personalities/Professional Athletes With Publicly stated Mental Issues



- Naomi Osaka : Japanese former world #1 tennis player. Pulled out of the mandatory press conference at the 2021 French Open, was fined \$15,000.00 and then withdrew from the tournament. Cites problems with depression.

International Personalities/Professional Athletes With Publicly stated Mental Issues



- **Nick Kyrgios:** Australian 2022 Wimbledon finalist and on/off court bad boy has received more fines than any other player in the history of the ATP.
- He reported self-harming and suicidal ideation in 2019 in addition to drinking 20-30 drinks a night. He has reported seeking professional help.

International Personalities/Professional Athletes With Publicly stated Mental Issues

- **Simone Biles** : American GOAT (Greatest Of All Time) gymnast – She has won seven (7) Olympic medals. At the 2020 Summer Olympics in Tokyo, she withdrew from most of the competition to focus on “safety, mental health and perseverance”.
- She was also a victim of sexual predator Larry Nassar.



International Personalities/Professional Athletes With Publicly stated Mental Issues

- **Shawn Mendes** : 23-year-old Canadian singer songwriter, multiple award winner with 20 million albums sold, has cancelled his Wonder world tour after just seven performances citing mental health issues.



MENTAL ILLNESS WITH ATTORNEYS



31.2% of lawyers surveyed in a ALM Mental Health & Substance Abuse Survey Reported Depression

That is 4 times the depression rate of general population



What Constitutes A Tennessee Worker's Compensation Mental Injury ?

Tennessee Worker's Compensation Statutes



TCA 50-6-102 CHAPTER DEFINITIONS:

Tennessee Worker's Compensation Statutes continued...



TCA 50 -6- 102 (14) CHAPTER DEFINITIONS:

- TCA 50-6-102 (14): “Injury” and “personal injury” means an injury by accident, a mental injury, occupational disease including diseases of the heart, lung and hypertension, or cumulative trauma conditions including hearing loss, carpal tunnel syndrome or any other repetitive motion conditions, arising primarily out of and in the course and scope of employment, that causes death, disablement or the need for medical treatment of the employee; provide that:

Tennessee Worker's Compensation Statutes continued...



TCA 50 -6- 102 (14)(A) CHAPTER DEFINITIONS:

- An injury is “accidental” only if the injury is caused by a specific incident or set of incidents, arising primarily out of and in the course and scope of employment, and is identifiable by time and place of occurrence, and shall not include the aggravation of a preexisting disease, condition of ailment unless it can be shown to a reasonable degree of medical certainty that the aggravation arose primarily out of and in the course and scope of employment; **TCA 50-6-102 (14)(A)**

Tennessee Worker's Compensation Statutes continued...



TCA 50 -6- 102 (14)(B) CHAPTER DEFINITIONS:

- An injury “arises primarily out of and in the course and scope of employment only if it has been shown by a preponderance of the evidence that the employment contributed more than fifty percent (50%) in causing the injury, considering all causes; **TCA 50-6-102 (14)(B)**

Tennessee Worker's Compensation Statutes continued...



TCA 50 -6- 102 (14)(E) CHAPTER DEFINITIONS:

- The opinion of the treating physician, selected by the employee from the employer's designated panel of physicians pursuant to TCA 50-6-204(a)(3) shall be presumed correct on the issue of causation but this presumption shall be rebuttable by a preponderance of the evidence.

TCA 50-6-102 (14)(E)

Tennessee Worker's Compensation Statutes continued...



TCA 50 -6- 102 (17) CHAPTER DEFINITIONS:

- “Mental Injury” means a loss of mental faculties or a mental or behavioral disorder, arising primarily out of a compensable physical injury OR an identifiable work-related event resulting in a sudden or unusual stimulus, and shall not include a psychological or psychiatric response due to the loss of employment or employment opportunities

Tennessee Worker's Compensation



Statutes continued...

TCA 50 -6-207 (1)(D). SCHEDULE of COMPENSATION TEMPORARY TOTAL DISABILITY:

An employee claiming a mental injury as defined by TCA 50-6-102, occurring on or after July 1, 2009, shall be conclusively presumed to be at maximum medical improvement upon the earliest occurrence of the following:

Tennessee Worker's Compensation Statutes continued...



TCA 50 -6-207 (1)(D). SCHEDULE of COMPENSATION TEMPORARY TOTAL DISABILITY:

- (i.) At the time the treating psychiatrist concludes the employee has reached maximum medical improvement; or...

Tennessee Worker's Compensation Statutes continued...



TCA 50 -6-207 (1)(D). SCHEDULE of COMPENSATION TEMPORARY TOTAL DISABILITY:

- (ii.) One hundred four (104) weeks after the date of injury in the case of mental injuries when there is no underlying physical injury **TCA 50-6-102 (1)(D)**



Mental Injuries Arising Primarily Out of A Compensable Physical Injury

What You Must Show

1. A physical injury arising primarily out of the and in the course and scope of employment **(TCA 50-6-102 (14)(B))**
2. A qualified medical professional's (physician and preferably a psychiatrist) opinion establishing that the mental injury accompanying the physical work injury was/is to a degree greater than 50% related to the work accident/ injury. **(TCA 50-6-102(14)(B))**

Mental Injuries Arising Primarily Out of A Compensable Physical Injury continued...

Psychiatrist v. Psychologist

NOTE: While the testimony of a clinical psychologist may be competent on some issues, “a psychologist is NOT competent to offer testimony concerning medical causation and the permanency of any impairment.” Such testimony may be relevant to a trial court’s determination of an employee’s ability to return to work as it relates to his or her entitlement to temporary disability benefits”.

Katlyn N. McLaurin v AT&T Services, LLC, et.al.
Tennessee Bureau of Workers Compensation,
Workers Compensation Appeals Board, Docket
No. 2017-03-1133; State File No. 69883-2017.





What Benefits are
available to the
Employee suffering
a Compensable
Mental Injury?

What benefits are available to the Employee suffering a Compensable Mental Injury?



Medical Benefits –
Psychiatric/
Psychological

TCA 50-6-204(a)(1)(A)

- ✓ There are occasions where the authorized treating psychiatrist will refer the injured employee to a psychologist for evaluation, testing and even treatment if the ATP psychiatrist believes psychological therapy is indicated.

What benefits are available to the Employee suffering a Compensable Mental Injury?



Temporary Disability Benefits

✓ **Temporary Disability Benefits**

as per TCA 50-6-207(1)(D)

What benefits are available to the Employee suffering a Compensable Mental Injury?

Permanent Disability



Note: The AMA Guides 6th Ed. Chap. 14, references the DSM (Diagnostic and Statistical Manual of Mental Disorders (DSM) IV while the latest such publication, is the DSM 5.

The PPI (Permanent Partial Impairment) rating system prescribed in chapter 14 of the AMA Guides 6th Ed. is complicated and relies both on the employee's reporting and the evaluators observations.

What benefits are available to the Employee suffering a Compensable Mental Injury?

Permanent Disability continued...



There are three scales that are utilized in the AMA Guide to the Evaluation of Permanent Impairment 6th Ed. Chapter 14 to assess a Permanent Impairment Rating for a Mental Injury:

- ✓ 1) BPRS – Brief Psychiatric Rating Scale
- ✓ 2) GAF – Global Assessment Functioning scale and
- ✓ 3) PIRS – Psychiatric Impairment Rating Scale

What benefits are available to the Employee suffering a Compensable Mental Injury?

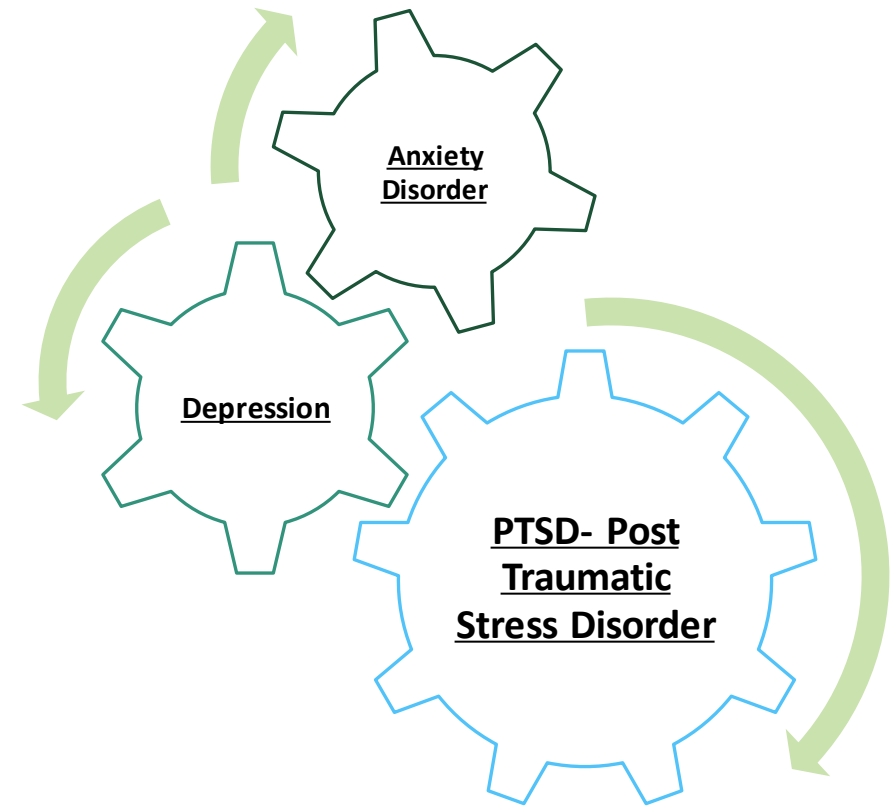
Permanent Disability Continued...

There are evaluative criteria for reaching an assessment in each of these scales, BPRS, GAF and PIRS, and once all three have been completed, it is the median score (middle) that constitutes the Mental and Behavioral Disorder (M&BD) Impairment (Permanent Partial Impairment (PPI)). This is a body as a whole rating or whole person rating.

Examples of Mental Injury Accompanying a Work-related Physical Injury

1. PTSD – Post Traumatic Stress Disorder

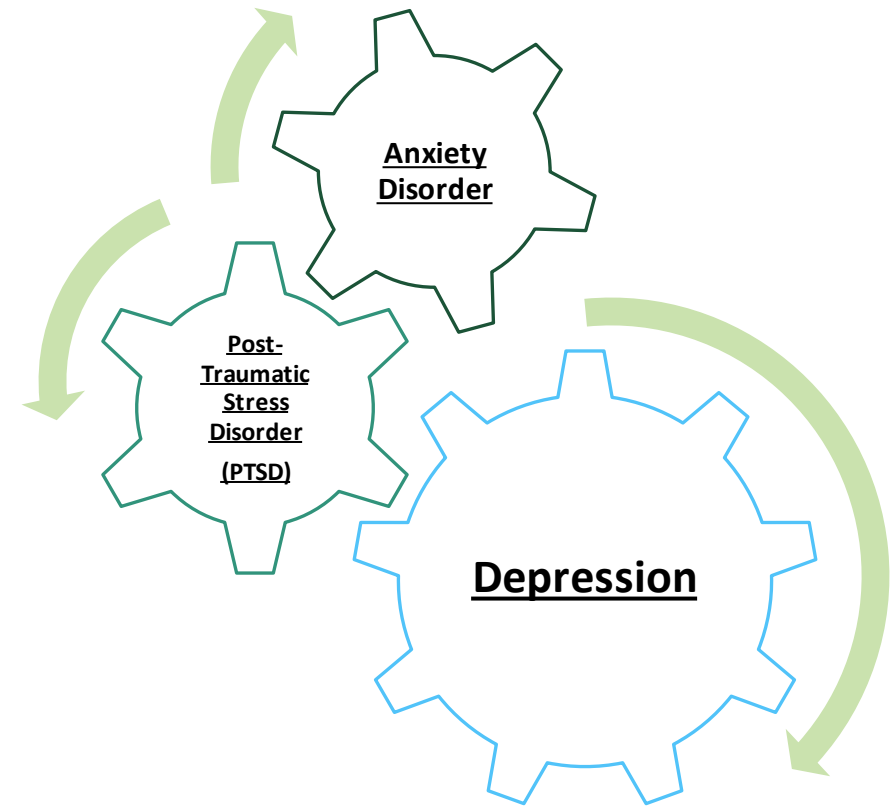
Disorder: The National Institute of Mental Health defines PTSD as a disorder that develops in some people who have experienced a shocking, scary or dangerous event (includes accidents, living through dangerous events and trauma, getting hurt, and pain). Treatment includes psychotherapies, medications (often antidepressants), and focus on associated problems (job issues).



Examples of Mental Injury Accompanying a Work-related Physical Injury Continued. .

2. Depression :

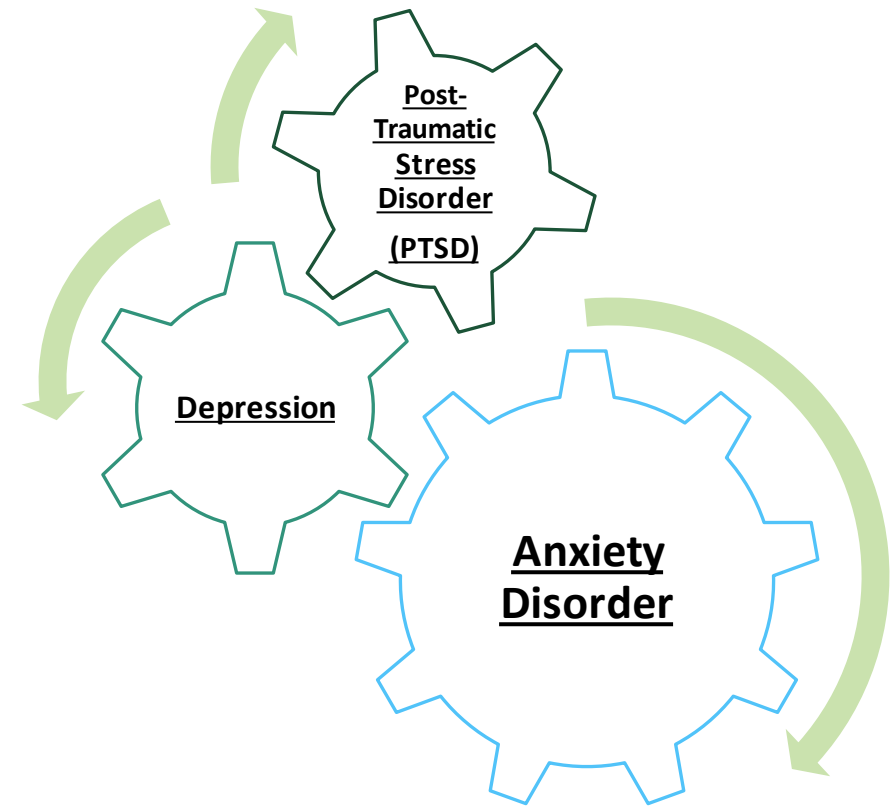
Can be triggered/caused by major life changes such as trauma/injury. Treatment involves medications and psychotherapy or a combination of the two.



Examples of Mental Injury Accompanying a Work-related Physical Injury Continued . .

3. Anxiety Disorder :

Can be caused by work injury causing a chronic medical condition. Can be treated with medications, psychotherapy or both.



Work Related Mental Injuries
NOT
Arising out of a Compensable Physical Injury

TCA 50-6-102 (17)

Work Related Mental Injuries
N~~O~~T
Arising out of a Compensable Physical Injury

“Mental injury” means a loss of mental faculties or a mental or behavioral disorder, arising primarily out of a compensable physical injury OR AN IDENTIFIABLE WORK RELATED EVENT RESULTING IN A SUDEN OR UNUSUAL STIMULUS and shall not include a psychological or psychiatric response due to the loss of employment or employment opportunities.

(TCA 50-6-102 (17))

Jose v. Equifax, 556 S.W. 2d 82 (1977), Opinion by Justice William Harbison



Facts of the Case:

Russell E. Jose was the Claims Director and Field Representative for Equifax which operated as an insurance adjustment company.

Mr. Jose alleged that in his job as Claims Director, he was subject to “a tremendous amount of pressure” and as a result, sustained a severe psychiatric illness.

Jose v. Equifax, 556 S.W. 2d 82 (1977), Opinion by Justice William Harbison



Facts of the Case Continued...

The stress and “psychiatric illness” caused him to consume alcohol and he became an alcoholic. Mr. Jose sought disability and medical benefits for his alleged maladies.



Jose v. Equifax, 556 S.W. 2d 82 (1977), Opinion by Justice William Harbison



RULING:

In Jose, Justice Harbison differentiated between mental injuries accompanying work related physical injuries and those mental injuries asserted where only a “mental stimulus” occurring on the job caused the alleged mental or nervous illness.

Jose v. Equifax, 556 S.W. 2d 82 (1977), Opinion by Justice William Harbison



RULING Continued...

Further, Justice Harbison, while stating that the Tennessee Supreme Court would not limit mental injury to just cases with an accompanying work-related physical injury noted that in proper cases involving mental stimulus such as “fright, shock, or even excessive, unexpected anxiety, such could amount to an “accident” sufficient to justify and award for a resulting mental disorder”.

Jose v. Equifax, 556 S.W. 2d 82 (1977), Opinion by Justice William Harbison



RULING Continued...

However, Justice Harbison also stated that even a liberal interpretation of the compensation law “does not embrace every stress or strain of daily living or every undesirable experience encountered in carrying out the duties of a contract of employment”. Justice Harbison noted that Workers Compensation is not as broad as general, comprehensive health and accident insurance.



William Ireton v. Horizon Mental Health Management No.
E2015-00296-SC-R3-WC-October 7, 2015

Facts of the Case:

Mr. William Ireton asserted work related stress and PTSD experienced in the absence of any physical injury.



William Ireton v. Horizon Mental Health Management No.
E2015-00296-SC-R3-WC-October 7, 2015

Facts of the Case Continued...

Mr. Ireton was a Registered Nurse. In 2010 he was employed by Horizon Mental Health Management LLC and was assigned to Woods Memorial Hospital's 10 bed psychiatric unit. Mr. Ireton performed his assigned duties and became a program director/community education manager. His duties evolved to include "offsite" marketing and inquiries to determine if patients would be appropriate for admission to the psychiatric unit.



William Ireton v. Horizon Mental Health Management No.
E2015-00296-SC-R3-WC-October 7, 2015

Facts of the Case Continued...

In 2012, Mr. Ireton was sent to a three-day conference and participated in a “trauma-sensitivity care” training session. The training seminar presenter, Ms. Barbara Lang, stated to all of the attendees: “I want you to put yourself in our patient’s shoes and imagine how it would feel when you’re asked, ‘Have you ever been physically, emotionally, or sexually abused’?”



William Ireton v. Horizon Mental Health Management No.
E2015-00296-SC-R3-WC-October 7, 2015

Facts of the Case Continued...

Mr. Ireton, who had previously taken patient histories and even the histories of patients that had been abused, alleged that upon receiving the instructions from Ms. Lang, he became overwhelmed, totally “freaked out” and had flashbacks of when he had been raped as a child (age 12) by an older cousin (age 17).



William Ireton v. Horizon Mental Health Management No.
E2015-00296-SC-R3-WC-October 7, 2015

Facts of the Case Continued...

Mr. Ireton asserted that he was unable to continue work because of this psychologically traumatic incident.

Mr. Ireton was under treatment by a psychiatrist, Dr. LeBuffe, at the time the matter was tried before Chancellor Jerri Bryant in McMinn County.



William Ireton v. Horizon Mental Health Management No.
E2015-00296-SC-R3-WC-October 7, 2015

Facts of the Case Continued...

Mr. Ireton provided a history to his psychiatrist, Dr. LeBuffe, admitting to prior treatment for anxiety, depression, panic attacks, crying at work and suicidal thoughts, however Mr. Ireton testified that after the September 27, 2012, seminar incident, he experienced symptoms “unlike those of the past”.

Dr. LeBuffe diagnosed Mr. Ireton with PTSD and depression which he asserted were caused by Mr. Ireton’s prior abuse as a child, but were severely exacerbated by the September 27, 2012, seminar incident.



William Ireton v. Horizon Mental Health Management No.
E2015-00296-SC-R3-WC-October 7, 2015

Facts of the Case Continued...

However, Dr. LeBuffe also testified that a charge nurse in a psychiatric unit would be expected to take histories of patients who have experienced childhood trauma and have experienced sexual abuse.

Dr. LeBuffe stated that that it is not unusual or extraordinary for a person in the employee's position to have received training but that what Mr. Ireton had been asked to do was somewhat unusual.



William Ireton v. Horizon Mental Health Management No.
E2015-00296-SC-R3-WC-October 7, 2015

Facts of the Case Continued...

Mr. Ireton was also treated by Ms. Kate Hume who was his treating psychotherapist but not a physician. She was permitted to testify regarding diagnosis and treatment but not causation.



William Ireton v. Horizon Mental Health Management No.
E2015-00296-SC-R3-WC-October 7, 2015

Facts of the Case Continued...

Ms. Kate Hume did testify that she was aware that Mr. Ireton suffered from “life-long PTSD”, prior periods of frequent nightmares, flashbacks, hyper subtle response, longstanding and unresolved trauma memories and prior treatment with antidepressants.



William Ireton v. Horizon Mental Health Management No.
E2015-00296-SC-R3-WC-October 7, 2015

Facts of the Case Continued...

Dr. Sidney Alexander performed an IME for the Employer. Dr. Alexander conducted testing on Mr. Ireton which indicated that he was not suffering from PTSD and was malingering.



William Ireton v. Horizon Mental Health Management No.
E2015-00296-SC-R3-WC-October 7, 2015

Facts of the Case Continued...

Dr. Alexander testified by deposition that Mr. Ireton did retain some permanent impairment but that such was unrelated to his work and the incident of September 27, 2012.



William Ireton v. Horizon Mental Health Management No.
E2015-00296-SC-R3-WC-October 7, 2015

Facts of the Case Continued...

Dr. Alexander indicated that he could not properly conduct an impairment assessment because he had been provided so much inaccurate information by Mr. Ireton.



William Ireton v. Horizon Mental Health Management No.
E2015-00296-SC-R3-WC-October 7, 2015

Facts of the Case Continued...

Dr. Alexander further testified that the complainant of incident, “put yourself in the shoes of a patient” does not meet the criteria for a traumatic stressor. Rather, such was a consistent, pervasive piece of training.



William Ireton v. Horizon Mental Health Management No.
E2015-00296-SC-R3-WC-October 7, 2015

RULING:

The court, in its analysis, referred to the requirement that for a mental injury caused purely by a mental or emotional stimulus to be compensable, it must have “resulted from an identifiable stressful work-related event that produced a sudden mental stimulus such as fright, shock, or excessive unexpected anxiety” Guess v. Sharp manufacturing Co. of America, 114 S.W.3d 480 (Tenn. 2003).



William Ireton v. Horizon Mental Health Management No.
E2015-00296-SC-R3-WC-October 7, 2015

RULING Continued...

But also, “the stress produced may not be usual stress in comparison to the stress ordinarily experienced by an employee in the same type of duty”. Goodoe v. State 36 S.W. 3d 62, 66 (Tenn. 2001).



William Ireton v. Horizon Mental Health Management No.
E2015-00296-SC-R3-WC-October 7, 2015

RULING Continued...

Rather, the stress “must be extraordinary and unusual in comparison to the stress ordinarily experienced by an employee in the same type of duty” Gatlin v. City of Knoxville, 822 S. W. 2d 587, 592 (Tenn. 1991).



William Ireton v. Horizon Mental Health Management No.
E2015-00296-SC-R3-WC-October 7, 2015

RULING Continued...

Therefore, the test for a compensable injury alleged to have resulted from a purely mental or emotional stimulus is a two- part test:

First, the injury must stem from “an identifiable stressful, work-related event producing a sudden mental stimulus such as fright, shock, or excessive unexpected anxiety; and,

Second, the event must be extraordinary in comparison to the stress ordinarily experienced by an employee in the same type of duty” Castle v. Sullivan County Sheriff’s Department, 2012 WL 475644 at 3-4 (Tenn. Workers Comp Panel 2012).



William Ireton v. Horizon Mental Health Management No.
E2015-00296-SC-R3-WC-October 7, 2015

RULING Continued...

Mr. Ireton lost at the trial level as the trial court used an “objective standard” for the second part of the test. Mr. Ireton argued on appeal that the court should have used a “subjective standard”, taking into account his individual, pre-existing mental or psychological condition which may have predisposed him to reacting to the particular stress.



William Ireton v. Horizon Mental Health Management No.
E2015-00296-SC-R3-WC-October 7, 2015

RULING Continued...

The Ireton court noted that such was not the law in Tennessee and what is mandated is the “objective standard” which requires that the event or stress be abnormal, extraordinary, or unusual “in comparison to the stress ordinarily experienced by an employee in the same type of duty”. Castle, 2012 WL 475644 at 6.



William Ireton v. Horizon Mental Health Management No.
E2015-00296-SC-R3-WC-October 7, 2015

RULING Continued...

In Mr. Ireton's case, the event in question was a statement made by another of the Employer's employees during a training session with one hundred other employees in attendance on the second day of a three-day conference.

The event was a statement made "I want you to put yourself in your patient's shoes and imagine how it would feel when you're asked, have you ever been physically, emotionally, or sexually abused?". The statement was not directed to the Employee individually or any specific personal event but was broad and general.



William Ireton v. Horizon Mental Health Management No.
E2015-00296-SC-R3-WC-October 7, 2015

RULING Continued...

Therefore, the Tenn. Sup. Ct Panel held that the stress to which Mr. Ireton was subjected was not abnormal, extraordinary, or unusual when viewed under the “objective standard” in comparison to the stress ordinarily experienced by an employee in the same type of duty.



Worker's Compensation Mental Injuries

APPLICATION OF LAW TO FACTS – ACTUAL CASES

Mental Injury accompanying Physical Injury

Facts of the Case:

- Driver of national interstate motor carrier tractor trailer collided with passenger vehicle and sustained compensable physical injuries arising out and in the course of his employment.



Mental Injury accompanying Physical Injury

Facts of the Case Continued:

- The wreck was a risk incident to the employment.



Mental Injury accompanying Physical Injury

Facts of the Case Continued:

- The investigating police officer asked the employee to sit in the police vehicle to provide information before he was transported from the scene with non-life-threatening physical injuries.



Mental Injury accompanying Physical Injury

Facts of the Case Continued:

- The driver of the passenger vehicle was killed in the accident.
- The employee asserted that the police vehicle was placed in such a position that he could see the deceased driver still sitting in his automobile.
- The employee claimed a mental injury in addition to physical injuries.



Case Involving Mental Injury accompanying Physical Injury

Facts of the Case Continued:

- Employee requested medical care inclusive of an orthopedic physician and a psychiatrist.
- Employee was provided with Forms C-42 Employee's Choice of Physician offering both a selection of three independent orthopedic surgeons and three independent psychiatrists.
- Employee selected and was seen by a panel psychiatrist and the psychiatrist opined that the employee was suffering from a mental injury causally related to the truck wreck and the trauma of the fatality viewed by the employee.





Absent additional evidence to the contrary,

This Mental Injury IS
COMPENSABLE!

Mental Injury in Absence of Physical Injury

Facts of the Case:

Driver of a “yard mule” (semi-tractor used to move trailers around the terminal yard of a national interstate motor carrier) struck a fellow employee who was crossing the travel portion of the yard at night and in the rain. The employee that was struck died instantly.



Mental Injury in Absence of Physical Injury

Questions to Consider:

1. As to the driver of the “yard mule”, was this an identifiable stressful work-related event that produced a sudden mental stimulus such as fright, shock or excessive unexpected anxiety?
2. Was this event extraordinary in comparison to the stress ordinarily experienced by an employee in the same type of duty?



Mental Injury in Absence of Physical Injury

Additional Facts of The Case:

The claimant employee operating the “yard mule” requested and was provided a Form C-42 panel of psychiatrists (3) and he made a selection and sought treatment. The psychiatrist confirmed a diagnosis of mental injury caused by the striking and killing of the fellow employee.





Absent additional evidence to the contrary,

This Mental Injury IS
COMPENSABLE!

Case Involving Mental Injury in Absence of Physical Injury

FACTS:

- Dock worker (whose duties included driving a “yard mule”) at the terminal for a national interstate motor carrier asserted a mental injury without any proof of physical injury.



Case Involving Mental Injury in Absence of Physical Injury

FACTS OF THE CASE CONTINUED:

- Employee asserted that two separate incidents at work caused him mental injury.



Case Involving Mental Injury in Absence of Physical Injury

FACTS OF THE CASE CONTINUED:

- Employee asserted that in December 2017 he had a conversation with a union steward concerning a change of the location in the smoking area (Agreed to by management and the Union).
- The employee, a heavy smoker, was advised of same, but the employee asserted that it was unacceptable to him and that he was not going to obey the change in the location.



Case Involving Mental Injury in Absence of Physical Injury

FACTS OF THE CASE CONTINUED:

- In order to discuss the issue, the employee met the union steward in the terminal's employee break room which was monitored by closed circuit TV (without sound). What was intended to be a "sit down" discussion on the policy change, escalated to anger.



Case Involving Mental Injury in Absence of Physical Injury

FACTS OF THE CASE CONTINUED:

- The employee asserted that the union steward shook his finger at him and used “cuss words”. The employee stated that the union steward told him, “if you don’t like it, we can take it across the street and settle it”.



Case Involving Mental Injury in Absence of Physical Injury

FACTS OF THE CASE CONTINUED:

- The employee then left the break room, went to the terminal manager's office, and filed a complaint against the union steward. The video, without sound, viewed by the terminal manager, did not reportedly convey aggressive behavior by the union steward.



Case Involving Mental Injury in Absence of Physical Injury

FACTS OF THE CASE CONTINUED:

- Employee also asserted that in April 2018 the same union steward (also a driver for the company) parked his company semi-tractor trailer truck in the terminal yard instead of backing up to a freight door.



Case Involving Mental Injury in Absence of Physical Injury

FACTS OF THE CASE CONTINUED:

- The employee called the dock supervisor and reported the union steward. The dock supervisor called the union steward to explain why his truck had not been backed to a freight door and was told that when the union steward arrived at the terminal, no doors were unoccupied. Therefore, the union steward could not back up to any door.



Case Involving Mental Injury in Absence of Physical Injury

FACTS OF THE CASE CONTINUED:

- Following his meeting with the dock supervisor the union steward sought out the employee to discuss the problem. The employee was operating in a “yard mule” and backed away from the approaching union steward. The employee asserted that the union steward was “flipping him the bird” and “screaming and yelling and coming after him”.
- The employee asserted that he feared for his life.



Mental Injury in Absence of Physical Injury



ADDITIONAL FACTS :

- The employee was unable to articulate any curse words used by the union steward over the noise of the “yard mule”.
- The employee was never touched by the union steward
- The employee’s movements were never restrained or restricted by the union steward.
- The union steward denied using profanity or threatening the employee

Mental Injury in Absence of Physical Injury



ADDITIONAL FACTS CONTINUED. . .

- Numerous other employees witnessing the incidents complained of and provided affidavit testimony indicating that the union steward did not use profanity or threaten the employee.

Mental Injury in Absence of Physical Injury



ADDITIONAL FACTS CONTINUED. . .

- The employee sought treatment from a family practitioner, Dr. Jose Malagon PhD and a psychiatrist Dr. Randall May. Both provided medical records indicating their respective opinions that the employee was suffering from mental issues (PTSD) and that the cause was his altercations with the union steward. Neither conducted any testing and both relied entirely on the statements of the employee.

Mental Injury in Absence of Physical Injury



ADDITIONAL FACTS CONTINUED. . .

- The employer had the employee seen by psychologist D. Malcom Spica, PhD. and psychiatrist Dr. Sidney Alexander. Extensive testing was conducted which revealed no support for a causal connection between the employee's reported incidents at work and a mental injury.

Mental Injury in Absence of Physical Injury



ADDITIONAL FACTS CONTINUED. . .

- This matter was the subject of an Expedited Hearing seeking temporary benefits, medical and disability.

Mental Injury in Absence of Physical Injury

Question(s) to Consider:

1. Was this an identifiable stressful work-related event that produced a sudden mental stimulus such as fright, shock or excessive unexpected anxiety?
2. Was this event extraordinary in comparison to the stress ordinarily experienced by an employee in the same type of duty?



Mental Injury in Absence of Physical Injury



ADDITIONAL FACTS CONTINUED. . .

- The employee worked at an interstate truck terminal which was also a union shop. In fact, the employee was a teamster.
- The employee's accounts of what happened in his two encounters with the union steward were denied by the union steward and numerous other witnesses (as to bad language and threatening behavior)

Mental Injury in Absence of Physical Injury



ADDITIONAL FACTS CONTINUED. . .

- Rough language was used routinely at the terminal
- Arguments amongst the union employees often occurred as part of the job of unloading, loading, driving, and shipping of freight.

Mental Injury in Absence of Physical Injury



RULING:

- Employees asserted mental injury held not compensable as burden of proof as to causation not met. Employee failed to sufficiently demonstrate that the alleged events and the employee's employment contributed more than fifty percent in causing the need for medical treatment, considering all causes. The court held that the employee was not likely to prevail at the compensation hearing.

Mental Injury in Absence of Physical Injury



RULING Continued...

- Motion for Summary Judgement filed thereafter resulted in a dismissal of the employee's action.



This Mental Injury is NOT
COMPENSABLE!

CONCLUSION

- Physical injury + mental injury is compensable if psychiatrist opines mental injury to be causally related to work accident to a degree greater than 50%.
- Stand alone compensable mental injury must have been caused by a work-related event that produced a sudden mental stimulus such as fright, shock or excessive anxiety.

AND

- Using an "objective standard", the event must have been extraordinary in comparison to the stress experienced by an employee in the same type of duty.

Thank You.
We are at the
The FINISH LINE.



- Questions?