

CONSEQUENTIAL PSYCHOLOGICAL INJURIES IN MINNESOTA WORKERS COMPENSATION

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In my years of practice representing injured workers, there have been many clients who experienced some degree of psychological distress following a physical injury. Dealing with pain, loss of wages, medical appointments, concerns about future employability, interruption of daily routine, loss of sleep and hassles with insurers about benefits, to name just a few, can be very difficult. Many injured workers are able to cope with these stressors without suffering significant or long-lasting psychological harm, but some will find themselves sliding into depression, anxiety and/or chronic pain syndrome as they struggle daily to deal with everything.

It is this latter group of injured workers who may need psychological counseling and/or psychiatric treatment. This raises the issue for attorneys representing these clients as to whether to bring a claim for a consequential psychological injury. This decision can have a profound impact on the direction and outcome of the case. This decision will impact medical costs, the nature and extent of wage loss and permanent partial disability claims and the direction of vocational rehabilitation. These materials will review the applicable law and provide some practice suggestions for successfully handling consequential psychological injury claims resulting from physical injuries.

APPLICABLE LAW

Minnesota is one of only nine states that do not recognize mental injuries arising from mental stressors as compensable. This has been the law since the Supreme Court's decision in Lockwood vs. Independent School District No. 877, 312 NW2d 924, 34 WCD 305 (Minn. 1981). In that case the Court declined to include 'mental/mental' injuries in the statutory definition of 'personal injury', Minn. Stat. 176.011 Subd. 16 [enacted in 1953]. The Court's decision was based on its inability to discern whether the legislature intended to include such injuries in the statute. Nonetheless, the Court made some comments that are important to keep in mind when handling a consequential psychological injury claim. The Court stated:

“We recognize also that, while other courts have differed on the compensability of mental injury caused by work-related mental stimulus, the majority have held that such an injury is compensable. ...

“Unquestionably, disablement resulting from a mental illness caused by mental stimulus is as real as any other kind of disablement. Nor do we quarrel with Professor Larson's position that there can be no medically valid distinction made between physical and nervous injuries.” 314 NW2d at 926.

The first reported Minnesota case recognizing the compensability of a 'physical/mental' injury was Welchlin vs. Fairmont Ry. Motors, 230 NW 897, 6 WCD 218 (Minn. 1930). In Welchlin the Supreme Court reversed a denial of the employee's claim for traumatic neurosis resulting from a leg injury. The Court noted that under Minnesota common law

lawsuits for negligence damages for traumatic neurosis were allowed, citing several previous decisions. The Court noted that other jurisdictions allowed such compensation under their workers compensation laws, relying on and quoting at length from Eaves vs. Blaenclydah Colliery Co., 2 K.B. 73 (1909); in relevant part as follows:

“The effects of an accident are at least two-fold: they may be merely muscular effects-they almost always must include muscular effects-and there may be, and very frequently are, effects which you may call mental, or nervous, or hysterical, whichever is the proper word to use in respect of them.” 230 NW at 898.

This principle was reaffirmed in the Court’s decision in Hartman vs. Cold Spring Granite Co., 67 NW2d 656, 18 WCD 206 (Minn. 1954) and many later cases.

An issue that comes up frequently in consequential psychological injury cases is whether there was a physical injury and, if so, was it severe or significant enough to establish causation for a diagnosed psychological condition. One of the signature cases on this issue is Mitchell vs. White Castle Systems, 290 NW2d 753, 32 WCD 288 (Minn. 1980). Mitchell was working as a waitress at White Castle when she was slapped by an ‘unruly’ customer. Within a few days she complained of blurred vision, dizzy spells, pain in her left ear, humming in her head, numbness in her hands and feet, nervousness and distraction so severe she eventually quit her job. She had two years of psychiatric counseling and treatment, but by the time of the hearing nearly five years later she still

was suffering from depression, for which she continued taking medication. Her treating physician assigned a 20% permanent partial disability rating for this condition. The Compensation Judge denied the claim and the Workers Compensation Court of Appeals affirmed. The Supreme Court, however, reversed the decision, finding that Mitchell's psychological injury was compensable even though she had suffered no 'organic' injury. There was no evidence of a permanent physical injury.

In Dotolo vs. FMC Corporation, 375 NW2d 25, 28 WCD 205 (Minn. 1985) the Court held that tinnitus caused by workplace noise exposure is a physical injury and that this injury substantially contributed to the employee's depression. The Court stated:

“Neither the lack of objective findings nor the absence of a compensable permanent partial hearing loss furnishes reason to conclude that tinnitus is not a physical trauma, and, indeed, the record contains substantial evidentiary support that physical trauma occurred.” 375 NW2d at 27.

Later cases suggest the courts have significantly retreated from these principles. In Dunn vs. US West Communications, 52 W.C.D. 682, 1995 WL 223183 (WCCA 1995) the Workers Compensation Court of Appeals affirmed denial of the employee's claim that she suffered a physical injury sufficient enough to cause post traumatic stress disorder. Dunn was the victim of an attempted armed robbery while in the course and scope of her employment. The would-be robber grabbed Dunn's hand, showed her a switchblade knife

and walked her towards her company van while holding the knife against her back. Dunn was able to escape and reported the incident to the employer. She did not report suffering any physical injuries. Over three years later as she drove by the location of the attempted robbery she had a 'strange feeling' and subsequently began to feel afraid and experienced nightmares. She sought psychological counseling that continued over the next year and by the time the case was tried Dunn reported her symptoms were nearly gone. She was diagnosed with post traumatic stress disorder (PTSD) and her treating psychiatrist related that condition to the attempted robbery. Dunn subsequently made claims for wage loss and medical benefits. The Compensation Judge denied Dunn's claim on the basis "[t] physical connection...a bodily reaction to a physical trauma, resulting in a psychological disability, is absent here." 52 WCD at 684-685, quoting Findings and Order, Memorandum at pages 6-7. The Workers Compensation Court of Appeals noted that the terms 'injury' and 'trauma' are not defined in the Workers Compensation Act, but concluded "...the physical touching and possible discomfort experienced by the employee in the instant case is not sufficient." 52 WCD at 685. The Court distinguished Dotolo noting there was a diagnosed medical condition resulting from the trauma.

The Workers Compensation Court of Appeals reached a similar conclusion but for different reasons in Casler vs. RCI Brokerage, 1995 WL 376768 (WCCA 1995). In Casler the employee, an over-the-road driver, was involved in a motor vehicle accident. Casler sought medical treatment the next day, complaining of neck pain, a cut on his nose and a bruise on his arm. He was prescribed a cervical collar that he wore for only a day,

he continued working full-time and sought no further treatment, even though he testified to having some ongoing neck symptoms. A week or so after the accident Calser told his family doctor that he was ‘shaken up’ and suffering from ‘nerves’ and anxiety because of the accident, so he was referred for mental health treatment. As time went on Casler’s anxiety worsened and he began experiencing panic-like attacks; his symptoms got so bad he ultimately was taken off work and was found to be permanently totally disabled. His treating psychiatrist wrote a report diagnosing major depressive disorder and generalized anxiety disorder, causally related to the work-related motor vehicle accident. The Compensation Judge denied all claims based on the adverse psychiatrist’s report. On review the Workers Compensation Court of Appeals commented as follows:

“We acknowledge that the employee was physically shaken up and sustained some minor injuries in the accident. Moreover, we agree with the employee’s position that even a temporary physical injury may trigger a compensable mental injury. However, not only did the employee seek no additional treatment for his physical injuries beyond the morning after the accident, there is virtually no evidence that these physical injuries played any role in the employee’s psychological condition. In their reports, Drs. Henke and Peterson related the employee’s depression and anxiety disorder only generally to the accident, not specifically to the employee’s physical injuries....Even the employee himself failed to offer any testimony linking any physical effects of the accident to his stress, anxiety, or depression.” Slip opinion at page 3.

