



***STRESS ON THE RISE***

**REMINGER WORKERS' COMPENSATION LUNCH & LEARN SERIES**

REMINGER.

# Presenters



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# Webinar Tips

- Your mic is muted when you join
- Only panelists will appear on video
- To ask questions, click on the Q&A icon on the meeting toolbar, type in the question, and click "Send"
- Questions will be addressed at the end of the presentation



# Scenario 1: Machine Operator

A machine operator who suffered a crushing injury from a punch machine can physically return to work but has developed anxiety, nightmares and panic disorder.



# Indiana Perspective

Is the mental component compensable? Yes, if can prove causation and no intervening incident to "break the chain"

Can include pre-existing injury exacerbations

It is well settled that where the primary injury arises out of the employment, every consequence which flows from it likewise arises out of the employment. *Goshen Veneer Co. v. Cozzi*, (1931), 93 Ind. App. 160, 176 N.E. 634

Burden of proof on Plaintiff and usually established through psychological testing and evaluation

# Kentucky Perspective

- KRS 342.0011(1) states an "injury" is any work-related traumatic event or series of traumatic events, arising out of and in the course of employment which is the proximate cause producing a harmful change in the human organism evidenced by objective medical findings. ... "Injury...shall not include a psychological, psychiatric, or stress-related change in the human organism, unless it is the direct result of a physical injury." Here, the machine operator would be covered because his condition is a result of a physical injury.
- Statute is softened somewhat by case law: *Richard E. Jacobs Group, Inc. V. White*, 202 S.W. 3d 24 (Ky. 2006) - contact with blood and body fluids
- After *White*, the standard is that to be compensable, a mental harm must directly result from a **physically traumatic event**, as opposed to the literal reading of the statute

# Ohio Perspective

- R.C. 4123.01(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.
- *Armstrong v. Jurgensen*, 136 Ohio St.3d 58, Ohio Supreme Court was asked what kind of relationship needs to exist between the psychiatric condition and a compensable physical injury.
  - Court held psychiatric condition must have been started by and therefore result from a physical injury or occupational disease the claimant suffered.
  - Court cited *Jones v. Catholic Healthcare Partners, Inc.*, 7th Dist. NO. 11 MA 23, 2012 OHio 6269, to note the physical injury does not need to be the sole cause of the mental condition, so long as a compensable physical injury was a proximate cause of psychiatric condition



## Scenario 2: Claims Processor

Claims processor with increased workload and hours as well as proving coverage for her absent co-workers who is told by manager to work even harder so company does not lose customers suffers heart attack at the end of her workday while working remotely.



# Ohio Perspective

- *Ryan v. Connor*, 28 Ohio St.3d 406, injured worker was under "great stress" during retirement discussions with employer. Injured worker has heart attack and dies. His widow files a claim for death benefits, alleging heart attack was work related because of stress brought on by retirement discussions.
  - Question for Court: Are physical injuries due solely to emotional distress compensable under the Ohio Workers' Compensation Act?
  - Ohio Supreme Court held they are compensable, but Court also created test.
    - "A physical injury occasioned solely by mental or emotional stress, received in the course of, and arising out of an injured employee's employment is compensable under R.C. 4123.01(C)."
    - However, for a stress-related injury to be compensable, it must be the result of mental or emotional stress that is unusual in some respect. Court noted every person experiences stress in everyday life.
      - First: injured worker must show the injury resulted from "greater emotional strain or tension than to which all workers are occasionally subjected."
      - Second: injured worker must show this employment related stress was medical cause of injury.

# Indiana Perspective

- Is this compensable and if so, why? Yes, absent other factors, due to increased workload and escalated work stress.
- The mere showing that an employee was performing his usual everyday tasks when he suffered a fatal heart attack does not establish a right to worker's compensation benefits unless there was some event or happening beyond mere employment. Jablonski v. Inland Steel Co., 575 N.E.2d 1039, 1991 Ind. App. LEXIS 1292 (Ind. Ct. App. 1991).
- Where death resulted from heart failure and evidence showed that death was caused by an increase in the workload beyond the heart's ability to function and not by a decrease in the heart's ability to meet an unchanged demand it was compensable. Consumers Co. v. Jefferson, 138 Ind. App. 499, 209 N.E.2d 32, 1965 Ind. App. LEXIS 539 (Ind. Ct. App. 1965).

# Kentucky Perspective

- In *Kubajak v. Lexington-Fayette Urban County Gov't*, 180 S.W. 3d 454 (Ky. 2005) an officer claimed that over a 15 year period of his job he suffered from PTSD, stress disorder, panic attacks and that he sustained a cumulative trauma psychiatric injury resulting from his "highly stressful duties." He did not report any physical trauma, although one psychiatrist opined his conditions resulted from exposures to violent scenes and death through course of career. The Supreme Court affirmed lower courts and found the evidence did not compel a finding that the condition resulted from a physically traumatic event, noting that he reported no serious physical trauma to any medical expert.
- In this fact pattern, we do have a physical event – if she can get a causation opinion on the heart attack, there is a 'totality of the circumstances' test - See *Moore v. Square D Company*, 518 S.W. 2d 781 (Ky. 1974).
- The psychological stress may be compensable as causative of heart attack here.

## Scenario 3: Senior Plumber

Plumber who is called by supervisor from a jobsite and told his mistake caused death of young apprentice. Plumber is wrought with guilt. Later investigation showed plumber not at fault but plumber filed claim for depression and PTSD.



# Kentucky Perspective

- What is a physically traumatic event under *White*? This case expanded the definition of physically traumatic:
  - Contact/physical impact – the Court noted that White "endured the physical impact of being coated with bodily fluids with a threat of much more serious health consequences than scratches and abrasions" *Id.* at 11
  - In *White*, the Supreme Court held that "the physical exertion of performing CPR and first aid on an individual with multiple gunshot wounds is a physically traumatic event" *Id.* at 10-11.
  - Had the plumber been still present at the scene, and touched/in any way rendered aid to the decedent employee, his psychiatric claim would likely be compensable – but not under these facts

# Ohio Perspective

- Ohio Supreme Court in *Armstrong* reiterated "R.C. 4123.01(C)(1) 'explicitly codified that mental-mental claims – psychiatric conditions arising solely from job-related emotional stress – were not compensable under the system.'"
- "No Ohio appellate court has ever recognized a workers' compensation claim for mental injury or mental disease caused solely by job-related stress which is unaccompanied by physical injury or occupational disease." *Rambaldo v. Accurate Die Casting*, 65 Ohio St.3d 281.

# Indiana Perspective

Is this compensable? No. Why?

Plaintiff either suffer a *physical injury* and/or *witness* a traumatic event causing extreme mental distress

Example: Nurse's aide that witnessed suicide/homicide shooting and developed severe depression [North Clark Community Hospital v. Goines, 545 N.E.2d 30, 1989 Ind. App. LEXIS 1008 \(Ind. Ct. App. 1989\).](#)

Mental/Mental?? Example *Sneaky Supervisor* case



# Tips to Mitigate Risk

- Early claim investigation and intervention can curtail length of disability
- Who has burden of proof? Is a physical injury or witness event at play? Expert evaluation to show related to work event
- PCP records often provide insight into Plaintiff and good starting point
- Break in chain of causation? Stress onset related to event in reasonable time frame?

# QUESTIONS?

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