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Gallagher Sharp Shop Talk: Workers' Compensation

Question: If a claimant suffers both a physical injury and psychiatric condition (e.g. PTSD) arising from the same accident, is the psychological condition compensable?

The passage of SB 7 in 2006 changed the definition of psychiatric conditions that are compensable. Prior to SB 7, it was fairly clear that psychological conditions were not allowable absent some “contemporaneous physical injury.” SB 7 further clarified that definition by specifying that the psychological condition must arise “from an injury” that was “sustained by that claimant.” *R.C. 4123.01(C)* Recently, the Ohio Court of Appeals, Second Appellate District, considered whether a psychological condition arising from the same incident, but not the injury, was compensable under Ohio law.

Armstrong v. John R. Jurgenson Co., 2011-Ohio-6708, involved an employee who was involved in a serious automobile accident in which the claimant’s truck struck another vehicle. The claimant was injured, and the other driver was killed. The claimant filed a workers’ compensation claim that was allowed for sprains and strains, but soon after the accident, the claimant began having nightmares about the accident and its immediate aftermath, and suffering severe anxiety and panic attacks. The claimant was diagnosed with post-traumatic stress disorder (“PTSD”) arising from the accident. The claimant sought to amend his claim to include PTSD, which the employer opposed administratively, and appealed pursuant to R.C. §4123.512. At trial, both the claimant and the employer presented experts who agreed that the claimant had PTSD, but disagreed about the cause. (The claimant’s expert opined that the physical injuries “contributed to” the development of the PTSD, while the employer’s expert concluded that the cause of the PTSD was being a “visual witness” to the accident.) The trial court ruled in favor of the employer, finding that the PTSD claim was not allowed because the condition did not *arise from* the physical injuries he suffered, and the claimant appealed.

The Second District affirmed, finding that the “new” definition of injury did not recognize psychiatric conditions that do not “arise” from physical injuries. It is not sufficient that there was a physical injury that occurred at the same time, as the term “contemporaneous” connotes a temporal nexus, not the causative nexus which is required for a compensable psychiatric injury. The court cited and discussed several prior cases interpreting the prior statute (*Clark, McCrone*), but concluded there must be a causal relationship between the injury and the condition. Because there was competent, credible evidence from which a court could find that the psychiatric condition did not arise from the physical injuries he suffered, but instead was due to his witnessing the “horrific injuries” suffered by the other driver, the trial court’s decision was not against the manifest weight of the evidence.

Does *Armstrong* represent the end of work-related PTSD claims in Ohio? At best, I suspect that *Armstrong* is an outlier, a decision that may largely be limited to its facts, or clarified by the Supreme Court of Ohio. If you have any specific questions, or would like to discuss this or any

other workers' compensation issues, you can contact me or Adam Sadowski from our Toledo office.

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