Psychiatric and Mental Injury Workers Compensation Claims

- 03/07/12
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One of the least understood types of workers compensation claims is the psychiatric injury claim. Employers understand the physical injuries like a bone fracture or a laceration, but the mental injury claim is more difficult for employers to accept as a workers compensation claim. Employers are often befuddled, perplexed or doubt the validity of the mental injury claims.

Note: State statutes and case law which interprets state statutes varies so some things in this article may not apply to your company or your situation. Check with YOUR legal counsel before using this material as anything more than a thought-provoking article of interest.

With the psychiatric claim there are often no objective physical findings that can be measured. With subjective mental symptoms, the question of their validity is often influenced by the opinion the employer had of the employee prior to the claim. If the employee was known to be slacker prior to the psychiatric injury claim, the employer is less likely to accept the claim of a mental injury, then when the employee had been known as a dedicated hard worker. Regardless, whether the employer questions the validity of the mental injury claim or accepts it as valid, a detailed investigation into the medical documentation and the other non-work related factors that could affect the employee's mental state is necessary.

The investigation into a psychiatric claim can be complicated by the fact that the courts and state legislative bodies keep changing the definition of a mental injury claim. The adjuster assigned to handle a psychiatric claim needs to be experienced in handling these changes and be up to date on recent changes in the law.

There are two types of mental injury claims, physical-mental and mental-mental. In a physical-mental psychiatric claim, the employee had incurred a physical injury at work, and as a result of the physical injury, has developed a mental injury. A common example is the employee who injured his back, and due to worrying about how he will support his family on his reduced income, develops a severe case of depression. Also, a recent trend, in physical-mental injury, by employees who are coached by a plaintiff's attorney, is to develop post traumatic stress disorder after their injury.

In a mental-mental injury claim, the injury arises from fear, stress or anxiety. Due to the potential for abuse, most states have revised their workers compensation statutes to restrict or bar the mental-mental psychiatric claims. In the states where mental-mental claims are still permitted, there are four basic types, with each state setting their own boundaries as to what is accepted. From the strictest to the most lenient
1. The claim is compensable only if the employee is an eye-witness to a tragedy – for example, the employee sees another employee get ran over by a train.

2. The claim is compensable only if the stress is caused by events beyond the ordinary every day stress of the job.

3. The claim is compensable if workplace stress, fear or anxiety causes it (except the fear of being disciplined, terminated, transferred, etc. do not qualify).

4. The claim is compensable if caused by any job-related stress.

The **claim** for a psychiatric injury is not simply based on the whim of the employee. There is a guidebook to identify what is an actual mental injury. The American Psychiatric Association has published the ‘Diagnostic and Statistical Manual of Mental Disorders’ which can be used to verify or disprove the fact the employee has a mental injury.

**With psychiatric injury** comes the issue of determining the cause of the mental injury. Usually the employee has other contributing causes to the mental injury. For the psychiatric injury to be a workers compensation claim, the employee must prove that work, and not some other event(s), is the primary cause of the mental injury.

To **investigate** the mental injury requires the adjuster or the defense attorney to investigate the personal life of the employee. The defense of the mental injury claim requires the adjuster to do an assets check, a background check on the employee, a credit investigation of the employee, a criminal background investigation and an investigation of prior mental health related issues. The employee may be having anxiety and depression, but if it is due to his arrest for beating up his wife and his house being foreclosed due to his gambling problem, the cause of the employee’s anxiety and depression is most likely not mainly work related. [WCx]

If the **employee** (usually through a plaintiff's attorney) tries to expand his physical injury into a physical-mental claim, a good defense attorney, experienced in defending physical-mental injury and mental-mental injury, should be employed. An independent medical evaluation by a psychiatrist experience in defending mental injury claims will be necessary, as well. An evaluation of the claim should be completed and a determination made as to whether or not to settle or to deny the psychiatric injury. The decision on how to proceed should be made in conjunction with the opinion of the defense attorney, the adjuster and the defense psychiatrist.

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