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Mental-Mental Claims—Placing Limitations on Recovery Under Workers' Compensation for Day-to-Day Frustrations

*Williams v. DePaul Health Center*¹

I. INTRODUCTION

The American Psychological Association has predicted that stress-related injuries will be “the most pervasive occupational diseases of the 21st century.”² Mental injuries already rank “among the top ten work-related injuries and illnesses in the nation.”³ There are several possible explanations why mental injury claims caused by work-related stress have increased. First, society has become more aware and more educated about mental illness and its effects. This awareness has led to a more open attitude and understanding of persons with mental disorders, which has decreased the stigma attached to mental diseases.⁴ Second, a significant amount of employment now requires greater mental effort than physical labor; therefore, the possibility of developing a mental injury has increased.⁵ Furthermore, work-related stress is more prominent today because of the change towards a service-oriented industry, the decrease of job security, the demand for increased productivity, and the additional responsibility to

1. 996 S.W.2d 619 (Mo. Ct. App. 1999).

2. Donald C. Dilworth, *Psychologists Seek Ways to Reduce Workplace Stress*, TRIAL, Jan. 1991, at 14, 14.

3. Aya V. Matsumoto, Note & Comment, *Reforming the Reform: Mental Stress Claims Under California's Workers' Compensation System*, 27 LOY. L.A. L. REV. 1327, 1335 (1994).

4. *Id.* at 1336.

5. See Christy L. DeVader & Andrea Giampetro-Meyer, *Reducing Managerial Distress About Stress: An Analysis and Evaluation of Alternatives for Reducing Stress-Based Workers' Compensation Claims*, 31 SANTA CLARA L. REV. 1, 5 (1990).

complete work at home.⁶ Finally, there has been a significant change in workers' expectations regarding employment roles and work environment.⁷

Given the nature of today's work-place, it is not surprising that employees are developing stress-related disabilities. The dramatic rise in mental stress claims has placed the burden on legislatures and courts to determine whether these claims are covered under their state's workers' compensation laws. In determining whether to compensate mental stress claims, states must initially revisit the underlying principles of workers' compensation laws. Many states have avoided an increase in mental stress claims through legislative requirements that either make the claim more difficult to prove, limit the amount of recovery, or eliminate compensation for mental disorders.⁸ However, if compensation for mental stress claims is provided, then states must determine what types of mental injuries will be compensable.

Concerns about issues such as fear of fraud, proof of causation, and the subjectivity involved with mental injuries have resulted in jurisdictions adopting different standards for determining compensation.⁹ Because states have realized

6. See *id.* at 7-8. America's shift from a manufacturing industry towards a more service-oriented industry has introduced workers to divergent task requirements, atypical work environments, new technology, and an unfamiliar social setting. *Id.* at 7. Furthermore, the likelihood that an employee remains with the same company until retirement has decreased. Instead, employee stress levels have increased with the realization that one's job is in constant jeopardy because of "plant closings, technological obsolescence, mergers and acquisitions, the replacement of people with technology, and downsizing." *Id.* at 8. Moreover, the market's demand for increased productivity has resulted in additional work-related stress because of the need for new products and services to stay viable with competitors. See Amy S. Berry, Comment, *The Reality of Work-Related Stress: An Analysis of How Mental Disability Claims Should Be Handled Under the North Carolina Workers' Compensation Act*, 20 CAMPBELL L. REV. 321, 329 (1998).

7. See DeVader & Giampetro-Meyer, *supra* note 5, at 9. The influx of women and minorities in the work-force has produced expectations that differ from earlier generations. The National Institute for Occupational Safety and Health indicates that "[s]ix of every 10 new jobs are being filled by women, who continue to experience conflicting role demands and limited opportunities for promotion. These are known sources of occupational stress for these workers." Donald C. Dilworth, *Stress Problems Increase as Workplace Changes*, TRIAL, Feb. 1991, at 11, 11. Moreover, employees have come to expect a better "quality of work-life"—a work environment that is physically and psychologically safe. DeVader & Giampetro-Meyer, *supra* note 5, at 9.

8. See Kenneth M. Berman, *The Current State of Workers' Compensation Law and Practice*, in INSURANCE LAW: WHAT EVERY LAWYER AND BUSINESSPERSON NEEDS TO KNOW, at 327, 334 (PLI Litig. & Admin. Prac. Course, Handbook Series No. H0-000S, May 1998); William Atkinson, *Is Workers' Comp Changing?*, HRMAGAZINE, July 1, 2000.

9. See Dilworth, *supra* note 7, at 11. Compensation for mental stress claims range from the extreme "no compensation" view to "liberal" recovery for gradual stress that is not unusual to the nature of the job. States that fall between these two extremes provide <https://scholarship.law.missouri.edu/mlr/vol65/iss4/6>

the potential for abuse with mental stress claims, the overall trend has been for legislatures and courts to reduce recovery on this type of claim.¹⁰ The Missouri legislature responded by adopting an approach that allows recovery for mental stress claims that result from “unusual” work-related stress. The burden of defining the objective standards to be used in determining whether the claimant’s work-related stress qualifies as “unusual” was before the Missouri Court of Appeals for the Eastern District of Missouri in *Williams v. DePaul Health Center*.

II. FACTS AND HOLDING

Gloria Williams (“Williams”) was hired as a medical technologist by the defendant, DePaul Health Center, in August 1982.¹¹ In 1994, Williams accepted the position of temporary section manager of the hematology department.¹² After Williams had difficulty bringing new equipment on line, she was relieved of this responsibility and resumed her prior duties as a medical technologist.¹³ Based on an earlier request, Williams was appointed to a position in the hospital’s stat lab in December 1994.¹⁴

Two months later, Williams’s son was involved in an automobile accident that subsequently caused her to develop a fear of driving and suffer a panic attack.¹⁵ After complaining of a headache at work, Williams was referred to the employee health department where she was diagnosed with high blood pressure, directed to see a physician, and sent home.¹⁶ In March 1995, the physician, Dr.

compensation for mental injuries triggered by an unexpected, frightening event, or work-related stress that is extraordinary and unusual. See Dilworth, *supra* note 7, at 11.

10. See Atkinson, *supra* note 8.

11. *Williams v. DePaul Health Ctr.*, 996 S.W.2d 619, 621 (Mo. Ct. App. 1999).

12. *Id.* at 622.

13. *Id.* As temporary section manager, Williams “became involved in the calibration and testing of two new coagulation machines.” *Id.* While in New York for training, Williams’s supervisors relieved her of the “responsibility of bringing the new equipment ‘on line.’” *Id.* According to Williams’s supervisor, the medical director and pathologist had expressed concern about being unable to decipher the data that Williams gave him. *Id.* A co-employee was subsequently given the responsibilities relating to the equipment and Williams resumed her prior duties as a medical technologist. *Id.* at 622-23. After the co-employee was named the permanent section manager, Williams filed a complaint with the Equal Employment Opportunity Commission (“EEOC”) claiming that “she did not receive the permanent section manager position as a result of age and sex discrimination.” *Id.* at 622. However, the EEOC found that the position was not given to Williams because her performance as temporary section manager was not “exemplary.” *Id.* at 623.

14. *Id.* Before accepting the temporary section manager responsibility, Williams had expressed interest in being on the stat lab team. *Id.*

15. *Id.*

16. *Id.*

Fox, recommended a two week leave of absence from work and also referred Williams to a psychiatrist, Dr. Kreisman.¹⁷ Approximately one year after Williams's initial appointment with Dr. Fox, she was released to return to work.¹⁸ When Williams returned to DePaul Health Center after her release, she was informed that "her position had been filled pursuant to the [Employer]'s personnel policy."¹⁹ Williams filed a workers' compensation claim against DePaul Health Center seeking benefits for mental injury resulting from work-related stress.

The Administrative Law Judge ("ALJ") awarded workers' compensation benefits to Williams based on her mental stress claim.²⁰ Upon review, the Missouri Labor and Industrial Relations Commission ("Commission") reversed the ALJ's award and denied benefits.²¹ In order to recover workers' compensation benefits for a mental injury, the Missouri legislature requires that the stress be "extraordinary" and "unusual." Furthermore, work-related stress must be "measured by objective standards and actual events."²² The Commission interpreted the statute as "requiring an employee to establish actual, rather than perceived or imagined, employment events caused by extraordinary and unusual work-related stress as demonstrated by objective standards."²³ The Commission adopted a comparison standard enunciated by the Wyoming Supreme Court in *Graves v. Utah Power & Light Co.*,²⁴ which requires a determination "whether a worker is subject to unusual stress [by] compar[ing]

17. *Id.* Williams was treated by Dr. Kreisman on six occasions and continued to see Dr. Fox as needed. *Id.*

18. *Id.* Williams contended that she requested a release to work based on financial hardship and that she was released to return to work on a part-time basis. However, these contentions were not substantiated in Dr. Fox's records. *Id.*

19. *Id.* at 624.

20. *Id.* at 621. The ALJ found that DePaul Health Center retaliated against Williams when they removed her from acting section manager for refusing "to cooperate in some alleged conspiracy regarding the return of one of the coagulation machines." *Id.* at 622 (citation omitted).

21. *Id.* at 624. The Commission reversed the ALJ's award in a two-to-one decision. *Id.*

22. MO. REV. STAT. § 287.120.8 (1994). Section 287.120.8 states: "Mental injury resulting from work related stress does not arise out of and in the course of the employment, unless it is demonstrated that the stress is work related and was extraordinary and unusual. The amount of work stress shall be measured by objective standards and actual events." MO. REV. STAT. § 287.120.8 (1994).

23. *Williams v. DePaul Health Ctr.*, 996 S.W.2d 619, 626 (Mo. Ct. App. 1999). The Commission noted that the case law "prior to the enactment of this statute was sparse and after its enactment was non-existent." *Id.* Therefore, the Commission had to formulate its own standard "for what objectively constitutes extraordinary and unusual stress." *Id.*

24. 713 P.2d 187 (Wyo. 1986).

his stress with the day-to-day stress generally encountered by workers in the same or similar jobs regardless of their employers.”²⁵

In support of its reversal, the Commission stated:

The [Employee] was the only witness to testify on her behalf about the level of stress she experienced at [Employer]. The [Employee]’s testimony obviously involves her subjective perceptions. The [Employee] provided no evidence that her hours, shifts, days, or job duties were extraordinary or unusual when compared with other medical technologists or section managers at [Employer] or anywhere else. When specifically given the opportunity to compare her work schedule with others, she responded that she only knew about her own schedule.²⁶

In contrast to Williams’s subjective testimony, DePaul Health Center introduced objective evidence that indicated Williams’s work “was no more onerous tha[n] that of her co-workers in the terms of starting times, number of hours and days worked.”²⁷ According to her supervisor, Ms. Colonbini, Williams’s shift schedule was similar to all other day shift employees in the hematology department.²⁸ When Williams accepted the position as temporary section manager, she was not only responsible for her duties as a medical technologist, but also her additional managerial duties.²⁹ Williams’s pay was also increased to eighteen dollars per hour, which fell within the salary range for a section manager.³⁰ According to her employer, Williams’s duties as temporary section manager were significantly less than her predecessor in that Williams (1) was no longer responsible for the blood bank section, (2) had the authority to hire and pay overtime to additional workers in order to complete her duties as a medical technologist, and (3) received overtime pay for any work that she took home.³¹

Soon after Williams was relieved of her position as temporary section manager, she was assigned to the position on the stat lab team.³² While this position consisted of working rotating shifts and varied hours, DePaul Health Center’s evidence confirmed that all of Williams’s shifts started in the morning.³³ Williams was not required to work late nights, nor was she required to work

25. *Williams*, 996 S.W.2d at 626.

26. *Id.* at 624.

27. *Id.* at 623.

28. *Id.* at 624.

29. *Id.*

30. *Id.* at 622. The section manager’s salary range was between \$16.55 and \$26.55 per hour. *Id.* at 622 n.1.

31. *Id.* at 622.

32. *Id.* at 623.

33. *Id.*

more than two weekends per month.³⁴ DePaul Health Center's exhibits documented that Williams had worked twenty days during the month of February, which was similar to the nineteen days worked by another employee in the stat lab during that same month.³⁵

Based on the evidence presented, the Commission concluded that Williams had failed to provide "objective evidence to substantiate her claim that she was exposed to unusual or excessive work stress when compared to other medical technologists or section managers for this or any other employer."³⁶ Williams appealed this decision contending that the Commission erred by adopting Wyoming's "objective causal nexus" test, rather than following Missouri's "extraordinary" and "unusual" stress test.³⁷ Williams argued that the Wyoming standard placed on her a "greater evidentiary burden."³⁸ DePaul Health Center insisted that Williams's subjective evidence failed to satisfy the Missouri requirement that work-related stress be extraordinary and unusual.³⁹

In addition, Williams contended that the Commission's decision that DePaul Health Center's "good faith" action in filling Williams's vacant position was against the overwhelming weight of the evidence.⁴⁰ The Commission noted that Section 287.120.9 of the Missouri Revised Statutes provides that "[a] mental injury is not considered to arise out of and in the course of the employment if it resulted from any disciplinary action, work evaluation, job transfer, layoff, demotion, termination or any similar action taken in good faith by the employer."⁴¹ The Commission found that "good faith" required that an employer's conduct towards an employee reflect "an honesty of intention."⁴² The Commission's decision was supported by DePaul Health Center's "good faith" need to fill Williams's position, which had been vacant for approximately one year.⁴³ Review by the Missouri Court of Appeals for the Eastern District of Missouri indicated that there was substantial, competent evidence to support the decision that DePaul Health Center's conduct was taken in good faith.⁴⁴

34. *Id.*

35. *Id.*

36. *Id.* at 624. Williams did not introduce any witnesses or testimony suggesting that her responsibilities and work schedule were any more rigorous than her co-workers' duties. In fact, when given the opportunity to compare her work load to similarly situated employees, Williams testified that she only knew about her own work schedule. *Id.*

37. *Id.*

38. *Id.* at 625.

39. *Id.* at 625-26.

40. *Id.* at 629.

41. *Id.*; MO. REV. STAT. § 287.120.9 (1994).

42. Williams v. DePaul Health Ctr., 996 S.W.2d 619, 629 (Mo. Ct. App. 1999).

43. *Id.*

44. *Id.* Moreover, DePaul Health Center had previously established that Williams had an inadequate record in her position as temporary section manager; she was <https://scholarship.law.missouri.edu/mlr/vol65/iss4/6>

In a case of first impression, the court affirmed the Commission's decision and took the opportunity to clarify the comparison standard that is to be applied in a workers' compensation claim for a mental-mental injury.⁴⁵ In Missouri, the proper comparison in determining whether an employee's work-related stress is extraordinary and unusual is to compare it with the "stress encountered by employees having similar positions, regardless of employer, with a focus on evidence of the stress encountered by similarly situated employees for the same employer."⁴⁶ In this case, Williams only testified to her own experience as a hematologist within the stat lab. Williams failed to demonstrate through objective evidence that her work-related stress was greater than that of a similarly situated employee at either DePaul Health Center or at another hospital.⁴⁷ When an employee fails to establish that his or her work-related stress was extraordinary and unusual when compared to other similarly situated employees of his or her employer or of any other employer, workers' compensation benefits for a mental injury will be denied in Missouri.

III. LEGAL BACKGROUND

Traditionally, employees who suffered work-related injuries relied on tort remedies to recover damages.⁴⁸ However, recovery under tort law proved to be unsatisfactory to injured employees.⁴⁹ In response to inadequate tort remedies, state legislatures enacted workers' compensation laws to ensure recovery to employees who were injured on the job.⁵⁰ The workers' compensation system was developed to serve two primary goals. First, workers' compensation statutes were enacted to provide income and treatment to injured employees, while also promoting rehabilitation to facilitate the employee's return to work.⁵¹ Second,

subsequently given a job that she had previously requested; and her work schedule was similar to other hematologists. *Id.*

45. *Id.* at 621. Presiding Judge Hoff wrote the *Williams* opinion, with Judge Gaertner and Judge Russell concurring in the decision.

46. *Id.* at 628.

47. *Id.* at 629.

48. *See* Berman, *supra* note 8, at 329; Berry, *supra* note 6, at 324.

49. *See* Berman, *supra* note 8, at 329. Common law tort actions proved to be unsatisfactory because the employer often prolonged the litigation with numerous legal defenses that either prevented recovery or placed a significant financial hardship on the worker so that he could not continue the lawsuit. *See* Berman, *supra* note 8, at 329. In addition, the working relationship was often damaged as a result of the litigation, thereby creating an uncomfortable situation for the healed worker to return to work. *See* William Keoniakelelani Shultz, Mitchell v. State and HRS § 386-3: *Workers' Compensation Reform in the State of Hawaii*, 21 U. HAW. L. REV. 807, 807 (1999).

50. *See* Berry, *supra* note 6, at 324.

51. *See* Berman, *supra* note 8, at 329; Matsumoto, *supra* note 3, at 1332.

the statutes were designed to provide employers with limited liability from an employee's work-related injury.⁵²

Workers' compensation laws attempted to promote a balance between the employee and employer. The employee would relinquish the right to bring a civil lawsuit that could result in an unpredictable amount of money damages, while the employer assumed liability for these claims regardless of fault in order to limit the potential damages.⁵³ While the purpose of workers' compensation laws was to provide automatic recovery to an employee injured as a direct consequence of his employment, such laws were not intended to act as a substitute for accident and health insurance.⁵⁴ Instead, workers' compensation laws were designed to place the burdens and expenses of work-related injuries on the industry itself.⁵⁵

The increase in claims for mental injuries suffered by employees has expanded the scope of workers' compensation. Historically, recovery under workers' compensation was associated with an employee who was physically injured as a result of an accident that arose out of and in the course of employment. Modern workers' compensation statutes recognize two basic types of injuries: an accidental injury that arises from a single, unusual event, and an occupational disease that develops over time and is an inherent hazard of the job.⁵⁶ Therefore, today's statutes no longer limit an injured employee's recovery to strictly physical injuries "arising out of and in the course of employment."⁵⁷ Because most legislatures have failed to specifically include mental injuries in their workers' compensation statutes, courts have had to ultimately determine whether their state's laws include recovery for mental injuries.⁵⁸

There are three categories of mental injuries for which an employee might recover:⁵⁹ (1) "physical-mental claims" involve physical injuries that lead to

52. See DeVader & Giampetro-Meyer, *supra* note 5, at 3-4.

53. See Matsumoto, *supra* note 3, at 1333. This arrangement has been classified as a "bargain between the employee and the employer." Matsumoto, *supra* note 3, at 1333. This balance made recovery under workers' compensation an exclusive remedy for the injured employee; therefore, unless the employer actually intended the harm, the employee was precluded from bringing a civil action against the employer. See Berman, *supra* note 8, at 329; Matsumoto, *supra* note 3, at 1334.

54. See Berry, *supra* note 6, at 325.

55. See Berry, *supra* note 6, at 324.

56. See Berman, *supra* note 8, at 330. While accidental injuries are usually associated with crushed or severed body parts, examples of occupational diseases include carpal tunnel syndrome and black lung disease. See Berman, *supra* note 8, at 330.

57. 1 ARTHUR LARSON, WORKERS' COMPENSATION § 1.10 (1996).

58. See Berry, *supra* note 6, at 323.

59. See LARSON, *supra* note 57, at § 46.21-.23; see also Berry, *supra* note 6, at 323; Thomas R. Head III, Comment, *Crochiere v. Board of Education of Enfield: Workers' Compensation for Job-Related Mental Disease Claims—Stress Reliever or Judicial Headache?*, 21 AM. J. TRIAL ADVOC. 131, 132-33 (1997).

disabling psychological repercussions,⁶⁰ (2) “mental-physical claims” involve mental stimuli that result in physical disabilities,⁶¹ and (3) “mental-mental claims” involve mental stimuli that result in a debilitating mental response.⁶² States have addressed physical-mental claims and mental-physical claims under their workers’ compensation laws.⁶³ However, many states’ statutes fail to provide compensation for mental-mental claims, such as those that result from work-related stress, without some related physical injury.⁶⁴ In controversial decisions, courts have determined whether the meaning of “injury” in workers’ compensation statutes includes compensation for mental-mental injuries.⁶⁵

A. Determining Compensation for Work-Related Stress

While compensation for mental-mental claims is controversial, a majority of jurisdictions allow compensation when certain circumstances are present. The four basic approaches taken by states regarding compensation for mental-mental claims include: (1) no compensation allowed under any circumstances, (2) compensation allowed if stress results from a sudden, frightening or shocking event, (3) compensation allowed for gradual stress that is not unusual, and (4) compensation allowed for gradual stress, but only if the stress is unusual or extraordinary.⁶⁶

60. Physical-mental claims occur when the physical injury precedes and causes the mental injury. See *Hohlstein v. St. Louis Roofing Co.*, 49 S.W.2d 226 (Mo. Ct. App. 1932) (employee’s mental injury resulted from the physical injury he received when he fell twenty feet from the roof of the building he was working on to the ground).

61. Mental-physical claims result from a mentally stressful work environment or event that causes the worker to suffer a physical disability. See *Montgomery County v. Grounds*, 862 S.W.2d 35 (Tex. App. 1993) (deputy police chief suffered a heart attack after the sheriff failed to return to inform the deputy that he would not be indicted for altering reports).

62. Mental-mental claims arise when both the injury and the effects are mental in nature. A mental-mental claimant would allege that the mental injury resulted from the nature of the job. See *Bryant v. Giani Inv. Co.*, 626 So. 2d 390 (La. Ct. App. 1993) (employee’s mental injury was instigated by an argument with a supervisor that took place in public and included obscenities).

63. See Head, *supra* note 59, at 132-33.

64. See Head, *supra* note 59, at 133.

65. See Head, *supra* note 59, at 132-33.

66. See LARSON, *supra* note 57, at § 42.25(b)-(g) (defining the four basic approaches and listing the jurisdictions that follow each approach); Head, *supra* note 59, at 137 n.46, 140 n.73, 142 n.92, 144 n.115 (listing cases that are representative of each approach); Catherine M. Smith, *Workers’ Compensation for Mental-Mental Claims*, 19 AM. J. TRIAL ADVOC. 229, 230-31 (1995) (providing a list of states that adhere to the four general categories of compensation for mental-mental claims). Professor Larson notes that state legislatures have also significantly limited mental stress claims through restrictions such as: “(1) requiring a set amount or type of stress; (2) raising the standard

In order to minimize responsibility for stress-related claims, several states have expressly ruled out liability for mental-mental claims.⁶⁷ Some courts have limited the definition of “injury” in their workers’ compensation statutes to cover only those injuries to the “physical structure of the body.”⁶⁸ The most common rationale behind denying compensation for mental-mental claims is the fear of fraud, because unlike physical injuries, there is no visible proof of a mental injury from work-related stress.⁶⁹ There is also a significant amount of subjectivity involved in determining compensation for mental-mental claims because one employee may suffer a mental injury from work-related stress, while another employee performing the same job may be unaffected.⁷⁰ In addition, it is difficult for courts to determine whether stress is attributable to one’s work as opposed to outside factors that stem from one’s personal life.⁷¹ Furthermore, there is concern that compensating mental-mental claims will diminish funding for claims for physical injuries because of the increase in mental claims and the litigation expenses involved.⁷² Additional rationales that support denying compensation for mental-mental claims include “fears of abuse, problems with proving causation, questions concerning the distinction of mental and physical injuries, and interpretation of legislative intent.”⁷³ While some jurisdictions that deny compensation would agree that mental injuries can be just as disabling as physical injuries, these courts are not willing to extend the scope of workers’ compensation to include mental-mental claims.⁷⁴

of causation; (3) increasing the burden of proof; (4) imposing specific diagnostic guidelines; and (5) limiting benefits.” LARSON, *supra* note 57, at § 42.25(a)(2).

67. In 1996, Kentucky eliminated its liability for mental-mental claims by excluding them from statutory coverage. Kentucky’s workers’ compensation statute provides that “injury” is “not [to] include a psychological, psychiatric, or stress-related change in the human organism, unless it is a direct result of a physical injury.” KY. REV. STAT. ANN. § 342.0011(1) (Michie 1997). *See also* CONN. GEN. STAT. ANN. § 31-275(16)(B)(ii) (West 1996).

68. Head, *supra* note 59, at 137.

69. *See* James R. Martin, *A Proposal to Reform the North Carolina Workers’ Compensation Act to Address Mental-Mental Claims*, 32 WAKE FOREST L. REV. 193, 196 (1997).

70. *See id.*

71. *See id.* at 196-97.

72. *See id.* at 197. A study conducted by the California Workers’ Compensation Institute found that in 1990, thirty-three percent of the psychiatric claims were mental-mental claims. Mental-mental claims averaged \$16,340 in costs, with litigation costs averaging approximately \$3,633 per case. *See Mental-Mental Claims*, 16 No. 2 WORKERS’ COMPENSATION MONTHLY 17, Feb. 1996.

73. Head, *supra* note 59, at 139 (footnotes omitted).

74. *See* Head, *supra* note 59, at 139. These courts are unwilling to include mental-mental injuries because of the uncertainty of whether the legislatures actually intended recovery for these claims. *See, e.g.,* Lockwood v. Indep. Sch. Dist. No. 877, 312 N.W.2d 924 (Minn. 1981); Lather v. Huron Coll., 413 N.W.2d 369 (S.D. 1987).

Requiring that a claimant witness a sudden, frightening or shocking event has been referred to as the “traumatic event” test.⁷⁵ Courts that allow compensation for stress resulting from a traumatic event realize that limiting workers’ compensation benefits solely to physical injury is too harsh.⁷⁶ However, these jurisdictions still take a limited approach because they do not extend coverage to mental injuries related to general conditions of employment or mental illnesses that have arisen over an extended period of time.⁷⁷ This approach not only eliminates the possibility of filing fraudulent claims, but it also avoids the problems associated with proving causation.⁷⁸ Requiring the mental injury to be caused by a tragic, unforeseen event essentially provides courts with a more definitive standard to determine recovery than determining compensation for gradual stress.

Jurisdictions that allow recovery for ordinary stress require the employee to prove the work-related stress was the cause of the mental injury.⁷⁹ This “causation” test allows recovery when the stress is the type that is normally associated with the workplace.⁸⁰ While this approach is recognized as being the most liberal, it remains extremely difficult for an employee to prove that normal work-related stress caused the mental injury because every employee is faced with similar stress in the course of employment. Subsequently, the courts have developed two legal causation standards to determine whether gradual stress should be compensated. First, the “subjective causal nexus” standard allows compensation if the claimant “factually establishe[s] that [he] honestly perceives some personal injury incurred during ordinary work of his employment ‘caused’ his disability.”⁸¹ This standard essentially allows an employee to recover even

75. See George W. Dawes, Comment, *Eligibility for Workers’ Compensation in Cases of Nontraumatic Mental Injury: The Development of the Unusual Stress Test in Wisconsin*, 1987 WIS. L. REV. 363, 365; see *Pathfinder Co. v. Indus. Comm.*, 343 N.E.2d 913 (Ill. 1976) (compensating a claimant who subsequently developed a fear of machinery and suffered headaches, nervousness and numbness in her hands and legs after witnessing a co-worker sever her hand at the wrist and then assisting in the removal of the co-worker’s severed hand).

76. See Head, *supra* note 59, at 140.

77. See Head, *supra* note 59, at 141.

78. See Head, *supra* note 59, at 141. Stress can easily be linked to family problems, including children and marriage, and financial hardships, thereby making it difficult to tie claims directly to work. When a specific event has traumatized the worker, the fear of fraud and difficulty in proving causation is decreased. See Atkinson, *supra* note 8.

79. See Head, *supra* note 59, at 144.

80. This broad “causation” approach allows a worker to be compensated for normal work-related stress as long as the worker’s mental injury is causally connected to the employment. See Dawes, *supra* note 75, at 365.

81. Head, *supra* note 59, at 144. A Michigan court ruled that compensation should be awarded even if there is only a strictly subjective causal nexus between the trauma and the mental injury. See *Deziel v. Difco Lab., Inc.*, 268 N.W.2d 1 (Mich. 1978). However,

if he mistakenly believes his mental injury was caused by work-related stress. Second, the “objective causal nexus” standard allows compensation if the employee can show through objective proof that his working conditions were stressful and also a substantial contributing factor to his mental injury.⁸² Regardless of which standard is required, this approach does not inquire into whether the mental stress is greater than that of ordinary employment; rather, benefits are available as long as causation is established.

The majority approach holds that mental-mental claims arising out of gradual stress are compensable only if the stress is unusual. Under this approach, the claimant must still prove that the mental injury was caused by work-related stress.⁸³ However, recovery is not provided for injuries that result from normal, day-to-day strains of the job.⁸⁴ To ensure the work-related injury exceeds ordinary stress, many states have eliminated recovery for mental-mental claims resulting from “any disciplinary action, work evaluation, job transfer, layoff, demotion, termination or any similar action taken in good faith by the employer.”⁸⁵ The “unusual stress” test was adopted by many states because it is viewed as a middle course between the more restrictive “traumatic event” test and the more liberal “causation” test.⁸⁶ Furthermore, states adopted this test in

Michigan has subsequently enacted a statute repudiating the *Deziel* court’s subjective standard. See MICH. COMP. LAWS ANN. § 418.301(2) (West 1999). To date, there is no state that follows this subjective standard.

82. Head, *supra* note 59, at 145. The Delaware Supreme Court held that a mental injury is compensable if (1) there was no prior physical trauma, (2) the injury was the result of gradual stimuli rather than a sudden shock, and (3) the job related stress causing the injury was not unusual. Nevertheless, an employee seeking compensation for a mental injury must establish by objective proof that his or her working conditions were stressful and a substantial cause of the disabling injury. See *State v. Cephas*, 637 A.2d 20, 21 (Del. 1994).

83. If a strictly subjective rule was adopted, mental-mental claimants would recover regardless of whether their injuries stemmed from employment, as long as the individual believed the injury was work-related. See Marc A. Antonetti, *Labor Law: Workers’ Compensation Statutes and the Recovery of Emotional Distress Damages in the Absence of Physical Injury*, 1990 ANN. SURV. AM. L. 671, 696 (1992).

84. See Dawes, *supra* note 75, at 365.

85. MO. REV. STAT. § 287.120.9 (1994); see also ALASKA STAT. § 23.30.395(17) (Michie 1998); ME. REV. STAT. ANN. tit. 39-A, § 201(3)B (West Supp. 1998). Other states that deny workers’ compensation for mental injuries arising from good faith personnel decisions include Montana and New York. See Shultz, *supra* note 49, at 812. Without statutory protection, the employer could essentially be liable for an employee’s pre-existing mental health status when good faith disciplinary actions are taken. See Shultz, *supra* note 49, at 828.

86. See Dawes, *supra* note 75, at 365. Professor Larson believes that states should compensate mental-mental claims that fall between gradual stimuli “that are sufficiently more damaging than those of everyday employment life to satisfy the normal ‘arising-out-of’ test, and those that are not.” LARSON, *supra* note 57, at § 42.23(b). Professor Larson disagrees with drawing the line between sudden and gradual stimuli; however,

order to reduce the likelihood of fraudulent claims in mental injuries.⁸⁷ However, the problem with this approach is that many jurisdictions have failed to provide a standard by which courts can determine whether gradual stress is extraordinary. In fact, there has been no uniform guideline for determining what qualifies as unusual and extraordinary because of the fact-specific nature of workers' compensation claims.⁸⁸

Because of the variety of approaches taken by courts in interpreting whether "injury" includes mental-mental claims, states that have yet to determine whether to compensate mental-mental claims must reconsider their workers' compensation statutes. In 1992, the Missouri legislature amended its workers' compensation statute to provide that "[m]ental injury resulting from work related stress does not arise out of and in the course of the employment, unless it is demonstrated that the stress is work related and was extraordinary and unusual."⁸⁹ Prior to this amendment, case law addressing mental-mental claims was scarce and since the enactment it was non-existent.⁹⁰ By adopting this amendment, the Missouri legislature avoided the judicial determination of whether mental-mental claims are compensable. While Missouri has placed a statutory limitation on recovery by requiring that the stress be extraordinary and unusual, it did not establish a standard for determining what constitutes "extraordinary and unusual" stress.

B. Determining Whether Work-Related Stress is Unusual

Missouri's workers' compensation statute provides that "[t]he amount of work stress shall be measured by objective standards and actual events."⁹¹ Therefore, Missouri courts are faced with developing the proper comparison group of employees and working conditions. There are three possible comparison standards that have been developed by various jurisdictions to determine compensation for mental-mental claims requiring proof of unusual and extraordinary stress, which include: (1) comparing the employee's stress to that of all other workers in the workforce, (2) comparing the employee's stress to that of other employees in the same classification for the same employer, or (3) comparing the employee's stress to other workers in the same or similar job regardless of their employer.⁹²

he notes that states will make their task easier by ruling out all gradual stimuli. See LARSON, *supra* note 57, at § 42.23(b).

87. See Dawes, *supra* note 75, at 371. The likelihood of fraud is reduced by requiring objective factors and eliminating the claimants subjective reaction to the job.

88. See Head, *supra* note 59, at 142.

89. MO. REV. STAT. § 287.120.8 (1994).

90. See Williams v. DePaul Health Ctr., 996 S.W.2d 619, 626 (Mo. Ct. App. 1999).

91. MO. REV. STAT. § 287.120.8 (1994).

92. Williams, 996 S.W.2d at 626 n.3.

First, the employee's stress can be compared to all other workers in the workforce generally. Maine's workers' compensation statute requires that work stress be "extraordinary and unusual in comparison to pressures and tensions experienced by the average employee."⁹³ In *Caron v. Maine School Administrative District No. 27*,⁹⁴ the issue before the court was whether a mental-mental claimant "must demonstrate that she experienced work stress that was extraordinary and unusual in comparison to pressures experienced by the average of all employees or in comparison to pressures experienced by the average employee performing the same job with similar duties."⁹⁵ The Commission found that Caron's work stress was extraordinary and unusual in comparison to the pressures experienced by the average of all employees.⁹⁶ The court upheld the Commission's decision finding that the plain meaning of the statute required "a comparison of the work pressures experienced by the injured employee with the work pressures experienced by the average of all employees, rather than . . . the average of a specific class of employees."⁹⁷ In support of its findings, the court noted that the statute placed no limitation or modification on the term "average employee."⁹⁸ Furthermore, the court noted that there was no evidence that the legislature intended to abandon prior case law that required claimants to establish a mental injury through circumstances greater than the day-to-day stresses experienced by all employees.⁹⁹

Second, the employee's stress can be compared to that of other employees in the same classification for the same employer. In Alaska, a mental-mental claimant must establish that "the work stress was extraordinary and unusual in

93. ME. REV. STAT. ANN. tit. 39-A, § 201(3) (West Supp. 1998). Maine's workers' compensation statute states:

Mental injury resulting from work-related stress does not arise out of and in the course of employment unless it is demonstrated by clear and convincing evidence that:

- A. The work stress was extraordinary and unusual in comparison to pressures and tensions experienced by the average employee; and
- B. The work stress, and not some other source of stress, was the predominant cause of the mental injury.

The amount of work stress shall be measured by objective standards and actual events rather than any misperceptions by the employee. A mental injury is not considered to arise out of and in the course of employment if it results from any disciplinary action, work evaluation, job transfer, layoff, demotion, termination or any similar action, taken in good faith by the employer.

ME. REV. STAT. ANN. tit. 39-A, § 201(3) (West Supp. 1998).

94. 594 A.2d 560 (Me. 1991).

95. *Id.* at 561.

96. *Id.* at 562.

97. *Id.*

98. *Id.*

99. *Id.* at 562-63.

comparison to pressures and tensions experienced by individuals in a comparable work environment.”¹⁰⁰ In *Williams v. State Department of Revenue*,¹⁰¹ the Alaska Supreme Court accepted the Workers’ Compensation Board’s interpretation that “individuals in a comparable work environment” meant other employees in the claimant’s office that had a position similar to that of the claimant.¹⁰² Based on testimony that indicated that the claimant was treated the same as her co-workers and that other similarly situated employees for the employer were under greater stress, the court found that the claimant failed to establish that her work-related stress was extraordinary and unusual.¹⁰³

Finally, the employee’s stress can be compared to other workers in the same or similar jobs regardless of their employers. In *Graves v. Utah Power & Light Co.*,¹⁰⁴ the Wyoming Supreme Court found that the most rational approach in determining whether a worker is subject to extraordinary stress is to compare his stress with the “day-to-day stress generally encountered by workers in the same or similar jobs regardless of their employers.”¹⁰⁵ The court found that unlike the same employer requirement, this test could be used in cases “where the worker has no fellow employees holding the same job in his company.”¹⁰⁶ Furthermore, this test prevents one employer from placing excessive stress on all his employees by including the stress experienced by those holding similar jobs with other employers.¹⁰⁷ The court also found this test to be superior to the comparison of the average of all employees because it would be “impossible to determine . . . the stress to which the working world at large is exposed.”¹⁰⁸ A comparison to all employees would be “too amorphous to be practical.”¹⁰⁹ The Wyoming court held that a claimant must demonstrate “that the injury was caused by workplace stress of greater magnitude than the day-to-day mental

100. ALASKA STAT. § 23.30.395(17) (Michie 1998). Alaska’s statute does not include mental-mental claims unless it is established that:

(A) the work stress was extraordinary and unusual in comparison to pressures and tensions experienced by individuals in a comparable work environment, and (B) the work was the predominant cause of the mental injury; the amount of work stress shall be measured by actual events; a mental injury is not considered to arise out of and in the course of employment if it results from a disciplinary action, work evaluation, job transfer, layoff, demotion, termination, or similar action, taken in good faith by the employer.

ALASKA STAT. § 23.30.395(17) (Michie 1998).

101. 938 P.2d 1065 (Alaska 1997).

102. *Id.* at 1071.

103. *Id.* at 1072.

104. 713 P.2d 187 (Wyo. 1986).

105. *Id.* at 193.

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

stresses experienced by other workers employed in the same or similar jobs," regardless of their employer.¹¹⁰ The court further noted that while the stress of other similarly situated workers in the same company is usually controlling, it may not be the most persuasive in the face of a conflicting industry-wide standard.¹¹¹

In *Dunlavey v. Economy Fire & Casualty Co.*,¹¹² the Iowa Supreme Court addressed for the first time whether a mental-mental claim was compensable.¹¹³ The court interpreted personal injuries to include mental-mental claims, and further found that an employee's pure non-traumatic mental injury is compensable because it arises out of and in the course of employment.¹¹⁴ The Iowa court consulted case law from various jurisdictions and found that at least fifteen state courts had permitted recovery for a mental injury caused solely by a mental stimulus under the state's workers' compensation laws.¹¹⁵ Based on consultation of other states' case law, the Iowa Supreme Court adopted the "unusual stress" test approach¹¹⁶ and also adopted the same comparison group of employees as formulated by the Wyoming Supreme Court.¹¹⁷ In adopting the "similarly situated" formulation of the "unusual stress" standard, the Iowa Supreme Court was persuaded by the Wyoming court's rationale in *Graves*.

In Iowa, the employee must prove "that the mental injury was caused by workplace stress of greater magnitude than the day-to-day mental stresses experienced by other workers employed in the same or similar jobs, regardless of their employer."¹¹⁸ The Iowa Supreme Court clarified that with their comparison group, "evidence of workers with similar jobs employed by a different employer is relevant"; however, "evidence of the stresses of other workers employed by the same employer with the same or similar jobs will usually be most persuasive and determinative on the issue."¹¹⁹

In 1992, the Missouri legislature eliminated the need for court determinations involving whether workers' compensation covers mental injuries. The legislature incorporated the "unusual stress" test as its compensation standard and further required that objective standards and actual events be used to determine compensation of mental claims. However, the statute failed to

110. *Id.*

111. *Id.* For further support of the test adopted by the Commission, see *McClain v. Texaco, Inc.*, 780 S.W.2d 34 (Ark. Ct. App. 1989) and *Collado v. City of Albuquerque*, 904 P.2d 57 (N.M. Ct. App. 1995).

112. 526 N.W.2d 845 (Iowa 1995).

113. *Id.* at 850.

114. *Id.* at 851.

115. *Id.* at 852-53 (providing jurisdictions that have allowed recovery for mental-mental claims).

116. See *supra* notes 83-88 and accompanying text.

117. *Dunlavey*, 526 N.W.2d at 855.

118. *Id.* at 847.

119. *Id.* at 858.

inform the courts which comparison group of employees should be used in determining whether a claimant's stress is "extraordinary and unusual." The Missouri Court of Appeals for the Eastern District of Missouri defined this comparison standard in *Williams v. DePaul Health Center*.

IV. INSTANT DECISION

In *Williams*, the Missouri Court of Appeals for the Eastern District of Missouri affirmed the Commission's reversal of the ALJ's award of workers' compensation benefits.¹²⁰ In addition, the court upheld the Commission's denial of Williams's workers' compensation benefits for her alleged mental-mental claim.¹²¹ Furthermore, the court took the opportunity to clarify the Missouri standard applicable to workers' compensation claims involving mental injuries that allegedly result from work-related stress.¹²²

First, the court analyzed the Commission's decision to apply the "objective causal nexus" test enunciated by the Wyoming Supreme Court in *Graves*.¹²³ The court agreed with the Commission's interpretation of Section 287.120.8 of the Missouri Revised Statutes, which requires that objective standards are necessary to determine whether work-related stress is extraordinary and unusual.¹²⁴ The court noted that determining a proper comparison group of employees is necessary even when the statute specifically requires the stress to be extraordinary and unusual.¹²⁵ The court found that the legislature failed to define the objective standards to be used in determining compensation and that there was no applicable Missouri case law to aid the Commission in its determination.¹²⁶ Therefore, the court concluded that the Commission took the

120. *Williams v. DePaul Health Ctr.*, 996 S.W.2d 619, 621 (Mo. Ct. App. 1999). The court's standard of review for workers' compensation proceedings on appeal from the Commission involves only questions of law. In order to "modify, reverse, remand for rehearing, or set aside awards based on factual determinations," the court must adhere to the grounds set forth in Section 287.495.1 of the Missouri Revised Statutes. See *Wiele v. Nat'l Super Mkts., Inc.*, 948 S.W.2d 142, 145 (Mo. Ct. App. 1997). When the Commission reverses an ALJ's findings and award, the court applies a two-step analysis that first involves examining the whole record, viewing the evidence in the light most favorable to the award. If there is competent and substantial evidence supporting the award, then the court determines whether the award is against the overwhelming weight of the evidence. *Williams*, 996 S.W.2d at 625.

121. *Williams*, 996 S.W.2d at 621.

122. *Id.*

123. *Id.* at 625.

124. *Id.* at 627.

125. *Id.*

126. *Id.*

appropriate steps to determine an objective standard by consulting case law in other jurisdictions.¹²⁷

Secondly, the court decided whether the Wyoming test adopted by the Commission should be the applicable standard for mental-mental claims in Missouri.¹²⁸ The court evaluated the approaches taken by other jurisdictions to determine the proper comparison group.¹²⁹ The court did not find the *Graves* decision to be applicable because the Wyoming state legislature had subsequently passed a statutory provision eliminating compensation to workers claiming mental-mental injuries.¹³⁰ However, the court was persuaded by a similar analysis taken by the Iowa Supreme Court in *Dunlavey*.¹³¹ The court found that the proper comparison to be applied in Missouri was “to compare Employee’s work-related stress with the stress encountered by employees having similar positions, regardless of employer, with a focus on evidence of the stress encountered by similarly situated employees for the same employer.”¹³²

The court adopted this comparison group of employees for several reasons. First, this standard takes into consideration the employment conditions of other employers in the industry in the event that the employer in question is too small to have other similarly situated employees.¹³³ Second, other employers in the industry can be taken into consideration when the stress levels of a particular employer are high.¹³⁴ Finally, the Iowa standard provides the claimant with evidence that is more readily available to satisfy the burden of proof because it is evidence of this particular claimant’s employer.¹³⁵

In reviewing the mental-mental claim, the court addressed Williams’s additional contentions of error.¹³⁶ The court reviewed Williams’s assertion that

127. *Id.*

128. *Id.* at 626.

129. *Id.* at 627.

130. *Id.* at 626 n.4.

131. *Id.* at 626. The court was not persuaded by the *Graves* decision because the Wyoming state legislature had passed a workers’ compensation statutory provision in 1997 that defined injury in part as excluding “[a]ny mental injury unless it is caused by a compensable physical injury, it occurs subsequent to or simultaneously with, the physical injury and it is established by clear and convincing evidence.” *Id.* at 626 n.4 (quoting *Pinkerton v. State ex rel. Wyo. Workers’ Safety & Comp. Div.*, 939 P.2d 250, 251 (Wyo. 1997)). In *Dunlavey*, the Iowa Supreme Court adopted the same test that the Wyoming court laid out in *Graves* and that the Commission adopted in *Williams*. Therefore, the Missouri Court of Appeals for the Eastern District of Missouri chose to follow the Iowa court’s analysis of the Wyoming standard. *Id.* at 627.

132. *Id.* at 628.

133. *Id.*

134. *Id.*

135. *Id.* at 628-29.

136. *Id.* at 629. The court also reviewed Williams’s complaint that the Commission erred in finding that she failed to establish medical causation for her alleged mental injury. The court found that this issue is one for the Commission’s determination

DePaul Health Center acted in bad faith in filling the vacant position.¹³⁷ In addition to the Commission's findings, the court found that Williams was on leave for approximately one year before she sought reinstatement to her job and that there was no evidence that she applied for and received leave for that time period.¹³⁸ Therefore, the court held that DePaul Health Center made a reasonable personnel decision to replace Williams's vacant position.¹³⁹

In *Williams*, the court found that the only evidence indicating work-related stress was Williams's testimony regarding her own experience.¹⁴⁰ The court also noted that Williams failed to demonstrate the stress encountered by other hematologists employed by either DePaul Health Center's stat lab or another employer.¹⁴¹ Further, DePaul Health Center's evidence showed that Williams's work conditions were no more stressful than any other employee in the same position employed in its stat lab.¹⁴² Therefore, the court concluded that Williams failed to establish that her stress was extraordinary and unusual when compared to other similarly situated employees of DePaul Health Center or of any other employer and therefore denied her workers' compensation benefits.¹⁴³

V. COMMENT

Based upon current trends in the work-place, it is understandable how an employee's work environment can cause a disabling mental injury. However, a minority of states continue to deny compensation for mental injuries that arise independent from a physical injury. These states have disregarded the fundamental principle of workers' compensation—to compensate workers for the loss of income that results from injuries suffered as a result of work-related risks.¹⁴⁴ These jurisdictions fail to recognize that an employee who is unable to work because of a job-related injury remains disabled regardless of whether the injury resulted from mental stress or physical harm.

because "the Commission may determine what weight it will accord expert testimony on medical causation." *Id.* at 631; see *Landers v. Chrysler Corp.*, 963 S.W.2d 275, 282 (Mo. Ct. App. 1997). Furthermore, it was up to the Commission to determine which of the two conflicting medical theories should be accepted. See *Williams v. DePaul Health Ctr.*, 996 S.W.2d 619, 631 (Mo. Ct. App. 1999); see also *Landers*, 963 S.W.2d at 282. Therefore, the court held that the Commission's decision was not against the overwhelming weight of the evidence. *Williams*, 996 S.W.2d at 631.

137. *Williams*, 996 S.W.2d at 621.

138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.*

142. *Id.*

143. *Id.*

144. See *Berry*, *supra* note 6, at 324.

Furthermore, the workers' compensation system was designed to address the competing policies that existed between compensating the injured employee and limiting the liability placed on the employer. By refusing to recognize mental-mental claims under their workers' compensation statutes, these states are not only leaving the injured worker uncompensated, but they are denying the employer the benefit of its worker having an "exclusive remedy." Because workers' compensation claims are generally more manageable and less costly than civil tort actions presented to unpredictable juries, both employee and employer will bear the unsatisfactory consequences of tort remedies.

Statutory recognition of mental-mental claims requires the state to accept the proposition that there can be liability for mental injuries that result from work-related stress. Compensating mental injuries that arise from gradual stress determined to be unusual is the approach most consistent with workers' compensation principles. This "middle-of-the-road" approach recognizes that an employee's mental injuries may stem not only from physical harm, but also from mental stimuli. Requiring unusual stress for recovery also reduces the possibility of an employer becoming a general health insurer when an employee with pre-existing mental health problems is hired. Once the state has crossed this first threshold, it must decide what level of causation is required, what type of proof must be established, and what amount of compensation should be given. In determining compensation guidelines, these states should formulate regulations that adhere to the fundamental principles of workers' compensation and strive to find measures that best effectuate this policy.

Proving that a mental injury resulted from unusual work-related stress is a difficult burden for an injured employee to meet. Proponents of a subjective approach argue that compensation for a work-related physical injury is not based upon a reasonableness standard, therefore, compensation for mental injuries should not be based upon objective standards.¹⁴⁵ These proponents also argue that denying coverage because a reasonable person would not be affected by the same stress, violates workers' compensation principles that entitle an injured employee to compensation.¹⁴⁶ While it seems that a claimant's burden of proof may be more difficult when objective standards are employed, critics fail to take into account that mental injuries produce different concerns than physical injuries. These concerns include the fear of fraud, proof of causation, and the subjectivity involved with mental injuries.

An objective standard is not necessary to determine whether a physical injury exists because there is visible proof of the injury available. In addition, the tangible proof reduces the likelihood of fraudulent claims, whereas with mental stress claims, it is difficult to determine whether a claimant has suffered a mental injury, and if so, to what extent the claimant has suffered. Objective standards limit the potential liability of an employer for mental stress claims that

145. See Martin, *supra* note 69, at 210-11.

146. See Martin, *supra* note 69, at 211.

were caused by factors in the claimant's personal life. Without a standard that minimizes these concerns, jurisdictions are more likely to adopt an approach that would eliminate compensation for mental-mental claims. Because of the concerns associated with mental stress claims, objective standards are the most rational approach to use in determining compensation.

Adopting an objective standard requires the state to determine whether the claimant's work-related stress should be compared to that of all employees, employees of the same employer, or employees that are similarly situated. Comparing the claimant's work-related stress to the "working world at large" is impractical. This standard would allow the parties to always produce a witness whose work-related stress is either significantly less or significantly greater than the stress experienced by the claimant. Furthermore, courts find this approach to be "difficult to analyze in practice and biased toward employees who work in perceived stressful occupations."¹⁴⁷ Requiring the claimant to compare his stress to that of his fellow employees fails to take into consideration small employers. In addition, this comparison standard would not prevent an employer from placing excessive stress equally among all employees.

The "similarly situated" formulation is superior to the other comparison standards. With this standard, the employee is benefitted because her comparison can incorporate the stresses of those in a similar job who work for a different company when there are no similarly situated co-workers under her employer. Employers have a similar advantage if their company is small because the employee's position can be compared to a similar position of another similar employer. A comparison standard that would look to the working world at large could weaken an employee's claim if her work appeared less stressful than the average employee. In addition, an employer whose positions involve more stress than the average employee would always be subject to liability.

The "similarly situated" standard further provides the parties with readily available evidence that may not have existed if the comparison standard adopted was not flexible. Both the employee and employer can evaluate the situation based on apparent employment conditions rather than trying to take into account the level of stress placed on the work force as a whole. This approach will "arguably ease employees', employers', lawyers', and judges' grasps of legal causation in mental/mental cases."¹⁴⁸ It eliminates the need to present expert testimony or testimony from workers outside of the claimant's employment unless the employer is too small or high levels of stress are being placed on all employees. Instead, proof of a mental-mental claim can be proven through the testimony of the injured worker, his supervisors, and co-employees.¹⁴⁹

147. Marvin E. Duckworth & Tina M. Eick, *Recent Developments in Mental/Mental Cases Under the Iowa Workers' Compensation Law*, 45 DRAKE L. REV. 809, 837 (1997).

148. *Id.* at 818.

149. *Id.*

The *Williams* court reviewed the possible comparison groups that were available in defining objective standards.¹⁵⁰ In analyzing the possible comparisons, the court noted the difficulties associated with comparing an employee's stress to that of the average employee and to only those employed by the same employer.¹⁵¹ The court rejected the "average employee" comparison because it was too general and declined to follow the "same employer" standard because it was too specific. Instead, the court found the "similarly situated" standard to be superior because it takes into consideration small employers and stressful working environments, while also providing the parties with readily available evidence.

The court's justifications for adopting the "similarly situated" formulation were consistent with the rationale of both the Iowa and Wyoming courts. In requiring an objective comparison standard, the court promoted a balance between the interests of both the employee and the employer. By adopting the "similarly situated" comparison standard, the court avoided the criticisms associated with the "average employer" and "same employer" standards. In addition, its uniform application to employees, regardless of their work situation, provides consistency to the determination of mental injuries.¹⁵²

Missouri has provided legislative guidelines allowing recovery for mental claims; however, these guidelines did not clearly set forth what objective standards should be used to determine whether the claimant's work-related stress qualifies as unusual. In *Williams*, the court took the opportunity to clarify the appropriate standard applicable for determining compensation of mental-mental claims in Missouri. In adopting the Iowa approach, the court made a rational choice that was consistent with the overall theme of Missouri's workers' compensation policy. The "similarly situated" standard provides a realistic and balanced test of legal causation. Furthermore, adopting this standard does not open the door for claims arising from the day-to-day frustrations that all working individuals face. The clarification of Missouri's objective standard is beneficial to both employees and employers because it identifies what is necessary to recover under workers' compensation for a mental-mental claim.

VI. CONCLUSION

The tremendous increase in work-related stress claims has resulted in either courts determining whether these claims will be compensated under the state's current workers' compensation laws or has led to the state legislatures taking action to include or exclude these types of claims. The litigation from claimants who have suffered mental injuries as a result of work-related stress will continue

150. See *Williams v. DePaul Health Ctr.*, 996 S.W.2d 619, 627-29 (Mo. Ct. App. 1999).

151. *Id.*

152. See Duckworth & Eick, *supra* note 147, at 837.
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to rise. The approach taken by jurisdictions such as Missouri demonstrates that there are some limits to the compensability of mental-mental claims. The boundaries defined by Missouri are appropriate for states that want to ensure compensation for mental-mental claims while promoting a balance between the interests of both employee and employer.

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