



PTSD and the Injured Worker – Victimized Twice

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One of the most challenging areas in workers' compensation is psychological injuries and their relation to physical injury. Imagine the effect of an injury – whether minor or catastrophic – on a person struggling with anxiety or depression or on someone who had never been injured previously and suddenly finds their life turned upside down without resources to cope.

In Ohio workers' compensation psychological claims, post-traumatic stress disorder (PTSD) is creating a whole new class of injured workers resulting in the evolution of workers' compensation laws. The challenge with PTSD is that physical injury is not a required component of PTSD diagnosis. First responders, hostages and many others can suffer from PTSD resulting from trauma which occurred in the scope and course of their employment without any physical injury. Under Ohio's workers' compensation laws, these injured workers are left without recourse. In fact, violent crime victims are fighting to have PTSD diagnoses allowed as a covered condition by the Bureau of Workers' Compensation. The injured worker, already the victim of a violent crime with physical injuries ranging from a bruise to a gunshot wound, is victimized a second time when the psychological trauma resulting from their injuries is found not compensable.

Prior to 2006, Ohio Revised Code 4123.01(C)(1), in its definition of injury, required a physical injury before any psychological diagnosis could be allowed. For a psychological injury to be considered, the diagnosis had to relate back to the physical injury. Injury, which can be construed generally, encompassed the entire event in which the injury occurred under the legal standard of dual causation.

Thus, the injured worker who suffered a psychological injury, so long as he/she could show a physical injury at the root of the psychological diagnosis, could file a claim to have the diagnosis allowed, including PTSD. Because of the general definition, rape victims had a barrier to the allowance of the psychological trauma sustained if the victim could not prove physical injury. Doctors had to diagnose a bruise or abrasion or there would be no compensable claim for the victim. Thus, in 2006, the Ohio Legislature amended the definition of injury to include an exception for rape victims. However, the definition of injury otherwise excluded other psychological injuries unless directly related to the physical injury.

Fast forward to *Armstrong v. John R. Jurgensen Co.*, in which the Ohio Supreme Court held that an injured worker must show that a psychological diagnosis, specifically PTSD, must result from the physical injury itself and not from the events surrounding the injury. In *Armstrong*, the

worker was physically injured in a motor vehicle accident. As he was walking from his vehicle he saw the driver of the second vehicle, who he later learned had died. The injured worker filed for PTSD and was denied. The Supreme Court found that injury does not encompass the corresponding events.

Because of *Armstrong*, PTSD cases have been denied by the Bureau of Workers' Compensation (BWC) regardless of the facts because PTSD by its definition requires an event not an injury. The injured worker suffers reoccurring nightmares of the event, not the injury.

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Often those who are left without recourse became victims of violent crimes while performing their jobs. Some examples include gunshot victims, hostages, teachers, police officers, firemen, paramedics, etc.

Arguably the injuries these people sustain are also part of the event. For example, a gunshot victim: the event is being shot, the injury is gunshot wounds. The event and the injury happen simultaneously. According to strict interpretation of *Armstrong* by the BWC, PTSD cannot be allowed as part of the injured worker's claim. The only recourse is to take the issue through the Industrial Commission process. Current Industrial Commission rulings are split based on the varying offices, but appear to lean toward a strict construction of *Armstrong*. This leaves the injured worker a long arduous court battle, while third parties pay for treatment or they do not get the treatment they need at all. The costs shift from the BWC to other, sometimes government funded, programs.

The issue of PTSD and first responders has not gone unnoticed. Currently Senate Bill 5 (SB5) is pending with the Ohio State Senate. If approved, SB5 will create another exception allowing psychological injuries of first responders, like rape victims, to be approved without physical injury. Unfortunately, injured workers who aren't first responders or in positions with expected frequent PTSD claims would remain without recourse. Violent crimes can occur in any job. Yet, victims won't be able to obtain the treatment needed for resulting PTSD, victimizing them again. While this is not an argument for an open door policy for all scenarios, all crime victims should have the coverage provided under ORC 4123.01, including coverage for PTSD.