

# The Eggshell Worker and the Natural Deterioration Exception

By Angela M. Hardway, Esq.

The Ohio Workers' Compensation Act was enacted to provide compensation to workers and their dependants for injuries or death incurred in the course of their work. From that, Ohio Revised Code 4123 was created. Unlike other areas of law, the workers' compensation codes are continually under scrutiny by our courts and the legislature. An example of this is O.R.C. 4123.01(C).

O.R.C. 4123.01(C) sets forth the definition of injury from which workers and employers take their direction. An injury is defined to include "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." Because of the broadness of definition, O.R.C. 4123.01 (C) contains four exceptions: (1) psychiatric injuries without physical injury unless arising from forced sexual conduct; (2) injury or disability caused primarily by the natural deterioration of tissue, organ or part of the body; (3) injury or disability occurred in voluntary participation in employer-sponsored recreation or fitness activity, if the employee signs a waiver; and (4) a condition that

pre-existed an injury unless that pre-existing condition is substantially aggravated by the injury. From ORC 4123.01 (C) (2), much litigation has ensued.

Due to numerous contests to the original definition of injury, without exceptions, the Supreme Court created the eggshell claimant rule in 1959. The Supreme Court affirmed that "compensation under our law is not to be denied because the injury would not have occurred except

for the peculiar susceptibility of the in-

der the exceptions in light of the eggshell claimant rule. Many times, in these cases, the injury is not clearly defined because of either accumulative trauma or because the action would not have resulted in the same traumatic injury in a healthy person. The analysis can be argued to come down to two primary factors: the purpose of the activity at the onset of the injury and causation.

Recently, the Sixth Circuit Court of Appeals addressed a challenge to the eggshell claimant rule in *Ruth A. Luetke v. Autoneum North America, Inc. et al.*, 2015-Ohio-3210 wherein the employer relied upon the exceptions in 4123.01(C). The Sixth Circuit declined to expand the natural deterioration

exception. The court reiterates that there never was a healthy person standard in the workers' compensation system. The court reiterated the Supreme Court of Ohio, who has specifically held "an injury sustained by an employee upon the premises of her employer arising during the course of the employment is compensable ... irrespective of the presence or absence of a special hazard thereon which is distinctive in nature or quantitatively greater than hazards encountered by the public at large." *Griffin v. Hydra-Matic*

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dividual worker." *State ex rel. Ohio Bell Tel. Co. v. Krise*, 42 Ohio St.2d 247. The eggshell claimant rule has continued to be reaffirmed even in light of the exceptions contained in ORC 4123.01(C), most recently updated this year. Yet, there is a strong drive to redefine the eggshell claimant rule and to rely on the natural deterioration exception in 4123.01(C)(2). This has, and continues to be, an unsuccessful drive.

There are several factors that have to be considered when evaluating an injury un-

*Div., Gen. Motors Corp.*, 39 Ohio St. 3d 79, 529 N.E.2d 436 (1988), syllabus.

The court further followed the findings of the First District Court of Appeals in which the court held that “since the employer’s demonstration was undertaken for the employer’s benefit, reasonable minds could only conclude that the injury arose out of his employment.” *Cummings v. Thriftway Food & Drug*, 1st District Hamilton No. C-960160, 1996 Ohio App. LEXIS 4016 (Sept. 18, 1996). The First District Court concluded that “the finding of causal connection between an employee’s injury and his employment does not depend on the identification of a risk unique to the employment.” *Id.*

Understandably, employers do not want to be responsible financially for every medical event of their employees. This is why employees have to causally connect the condition to his/her employment and

that their activity at the time was for the benefit of the employer. In addition, with the exceptions codified in 4123.01(C), there are challenging hurdles the claimant must overcome to gain coverage for their injuries. With the substantial aggravation of pre-existing conditions exception, it is not easy. With the proper causal evidence though, even pre-existing conditions should be allowed in the workers’ compensation claim.

As it stands, the natural deterioration exception in 4123.01(C)(2) is limited. As reiterated by the Sixth Circuit Court, “... the fundamental requirement embodied in R.C. 4123.95 that the Workers’ Compensation Act, and particularly its coverage formula, is to be liberally construed *in favor of awarding benefits.*” *Luetke* citing *Fisher*, supra, 49 Ohio St.3d at 278, 551 N.E.2d 1271, (Emphasis added.) This is a fundamental requirement that should

be remembered, yet seems to be conveniently overlooked in our current workers’ compensation system.

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