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Don't Stress Over Occupational Work-Related Stress Claims: The Requirements Have Not Changed

BY JAMMIE N. JACKSON

According to the U.S. Bureau of Labor Statistics, New Jersey's unemployment rate was 6.1 percent in September 2009. The State of New Jersey Department of Labor & Workforce Development reported an unemployment rate of 9.4 percent in September. Given the increase in unemployment, stress associated with being unemployed is no surprise. What is surprising is the increase in work-related stress claims filed by those who remain employed.

As with any claim for workers' compensation benefits, legal analysis of occupational work-related stress claims must begin with the statute. Occupational exposure claims are governed by N.J.S.A. 34:15-31. The statute defines a compensable occupational disease as any disease "arising out of and in the course of employment, which is due in a material degree to causes and conditions which are or were characteristic of or peculiar to a particular trade, occupation, process or place of employment." An accident arises out of the employment when it

is something the risk of which might have been contemplated by a reasonable person when entering the employment as incidental to it. A risk is incidental to the employment when it belongs to or is connected with what a worker has to do in fulfilling his contract of service. *Furda v. Scammell China Co.*, 17 N.J. Super. 339, 347, 86 A.2d 39 (Law Div. 1952). The Appellate Division amplified the proof requirements regarding work-related stress claims in the case *Goyden v. State Judiciary*, Superior Court of N.J., 256 N.J. Super. 438, 445, 607 A.2d 657 (App. Div. 1991), *Aff'd O.B.*, 128 N.J. 54, 607 A.2d 622 (1992). The case became and remains the most significant occupational psychiatric opinion to date.

Mr. Goyden worked in the office of the clerk of the Superior Court from 1959 until his retirement in 1984, becoming supervisor of records in 1976. While there he experienced an increase in the volume of work which led to a backlog in the filing of court documents. Goyden alleged that he suffered from disabling physical and mental injuries as a result of his occupational exposure to a stressful work environment. The facts of the case were not disputed. The Appellate Division disagreed with the Judge of Compensation's application of the appropriate standard for disability in work-related stress cases; and therefore,

overturned the original finding of compensability. The Court held that there needed to be a showing of "objectively verifiable work conditions" which would be considered stressful as opposed to Goyden's "perception." The Court further held that "Merited criticism cannot fairly be considered to be a 'cause . . . and condition . . . characteristic of or peculiar to a particular trade, occupation, process, or place of employment.' Merited criticism is common to all occupations and places of employment."

Recently, the Appellate Division has revisited this issue in the unreported case of *K.S. v. Sunny Days Early Childhood Services*, A-2923-07T2 (decided Jan. 20, 2010). The Court reaffirmed the continuing applicability of the *Goyden* standard and found that K.S.'s claim for psychiatric disability was not compensable. Like Mr. Goyden, K.S. also complained of a stressful work situation that led to psychiatric manifestation of disability. Once again the trial court found compensability while the Appellate Court reversed. The Appellate Court noted that K.S.'s claim suffered from the same deficiencies as the evidence presented in *Goyden*. K.S. testified that she was overwhelmed by the amount of work she was required to do. However, she failed to present evidence that other employees performing the

Jackson is an associate at Marshall, Dennehey, Warner, Coleman & Goggin in Cherry Hill and devotes her practice to workers' compensation litigation.

same or similar responsibilities would have found the workload unreasonable. Specifically, K.S. failed to present sufficient credible evidence showing that the conditions of her workplace were objectively stressful, just like *Goyden*.

As a result, the bottom line remains the same. When a worker claims that an injury is induced by stress in the workplace, the worker must present evidence establishing that the working conditions were stressful, "viewed objectively." *Goyden v. State Judiciary*, Superior Court of N.J., 256 N.J. Super. 438, 445, 607 A.2d 657 (App. Div. 1991), Aff'd O.B., 128 N.J. 54, 607 A.2d 622 (1992). The worker must also show that "the objectively stressful working conditions" are "peculiar" to the particular workplace and the worker must produce medical evidence showing that these work conditions were the material cause of the psychiatric disability. The "bare statement" of the petitioner alone is insufficient. (*Saunderslin v. E.I. duPont Co.* 102 N.J. 402, 412, 508 A.2d 1095 (1986). All three elements must be proven by a preponderance of the evidence in order for the petitioner to prevail.

With regard to the three elements required to prevail on an occupational stress claim, it is important to remember the following key points:

(1) Proof of objectively verified stressful work conditions requires more than just testimony from the petitioner

regarding his or her perception of events or subjective reactions. The employee's subjective reaction is not to be disregarded but it cannot be the sole ingredient of the formula for compensability. *Williams v. Western Electric Company*, 178 N.J. Super. 571, 429 A.2d 1063 (App. Div. 1981).

(2) Peculiar to the workplace requires proof of an essential relationship to the work or its nature. In *Burnell v. Wilwood Crest Police Dept.*, 176 N.J. 225, 822 A.3d 576 (2003), the Court amplified the peculiarity aspect of the test, stating: "By 'characteristic of or peculiar to' is meant conditions that one engaged in that particular employment would view as creating a likely risk of injury. Those conditions must 'cause' the disease as a natural incident of either the occupation in general or the place of employment . . . In other words, there is attached to that job a hazard that distinguishes it from the usual run of occupations." Examples of conditions that have been held to satisfy the peculiarity requirement include: second-hand smoke exposure from a colleague; post-traumatic stress disorder developed by a flight attendant upon learning a plane she was scheduled to be on had been hijacked and crashed; a firefighter's exposure to smoke; and exposure to aluminum dust in a can manufacturing plant. In contrast, the courts have held that receipt of a lay-off notice and "merited criticism" during an employee performance evaluation are not

conditions peculiar to the workplace. The threats of lay-off or unemployment along with merited criticism are common to all occupations and places of employment.

(3) Medical evidence showing that the work conditions were the material cause of the employee's psychiatric disability can be particularly problematic where the worker already has a prior psychiatric condition. If such a pre-existing condition exists, the worker must prove that a person without that pre-existing psychiatric condition would have reacted to the work-related stressors in the same way the worker with the pre-existing condition reacted. *Goyden v. State Judiciary*, Superior Court of N.J., 256 N.J. Super. 438, 445, 607 A.2d 657 (App. Div. 1991), Aff'd O.B., 128 N.J. 54, 607 A.2d 622 (1992).

Claims for psychiatric disability invoke a level of natural sympathy for the petitioner. However, natural sympathy for the petitioner should not become a substitute for petitioner's burden of proof. In the present economic climate, many workers complain that they are being asked to perform more tasks for less pay. Some say the fear of losing their job is always present. As a result, the number of claims for psychiatric disability stemming from occupational exposure to a stressful work environment appears to be increasing. While the number of claims has changed, the compensability requirements remain the same. ■