



Workers' Compensation and Psychiatric Injury Definition

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Introduction

Psychiatric industrial injury lacks clear definition and objective causation standards in Workers' Compensation law. We propose to provide both: by requiring that psychiatric injury be defined by reference to medically recognized mental disorders and by means of a multifactor test for legal causation.

Our goal is to develop a means to assimilate work-related psychiatric injury into the existing framework of the workers' compensation (WC) system. This requires objectively identifiable indicia of causation. It also demands standardized diagnostic definitions. We believe both are possible with reasonable certainty. The easy cases—physical cause or physical effect—have already established considerable precedent.¹ The more difficult cases—lacking both physical cause and effect²—and the atypical cases—which do not have an obvious cause and do not fall into an established category of diagnosis—may

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¹Compensation is uniformly granted where a mental stimulus results in a physical injury (so-called mental-physical injury). See generally, A. Larson, WORKER'S COMPENSATION LAW (hereafter "Larson") (1992) at § 42.21, citing, Charon's Case, 321 Mass. 694, 75 N.E.2d 511 (1947) (fright resulted in paralysis); Harris v. Rainsoft of Allen County, Inc., 416 N.E. 2d 1320 (Ind. Ct. App. 1981) (heart attack occurred while watching business burn down); Ferguson v. HDE, Inc., 270 So. 2d 867 (La.1973) (stroke occurred while arguing about pay); Snyder v. San Francisco Fed & Grain, 748 P. 2d 924 (Mont. 1987) (ruptured aneurysm after unusual job stress), among other cases. Compensation is also uniformly granted where a physical event results in a mental injury (so-called physical-mental injury). See Larson at § 42.22, citing, Smith v. Industrial Comm'n, 161 Ill. App. 3d 383, 512 N.E. 2d 712 (1987) (sprain at work triggered a conversion reaction); Berger v. Hahner, Foreman & Cale, 211 Kan 541, 506 P. 2d 1175 (1973) (loss of eye followed by traumatic neurosis); Elliot v. Precision Castparts Corp., 30 Or. App. 399, 567 P.2d 566 (1977) (industrial back injury led to conversion reaction), and other cases.

²See Larson at § 42.23: in the U.S., a "distinct majority" of states support compensability (cases granting compensation cited at fn. 29), while a "substantial" number would deny a so-called "mental-mental" claim (cases denying compensation at fn. 30).

nevertheless be work-related and, under certain circumstances, also should be recognized as compensable under the proposed approach.

We suggest that any solution to the causality puzzle relating to mental illness shall not be exact. We do not pretend nor seek to find a method to identify actual medical causation, a far too complicated and complex inquiry for the intended efficiencies of any WC system. The law must work within the limits of medical science and legal assumptions and, therefore, the goal must be reasonable—not absolute—certainty. The WC system should compensate enough workers whose mental illness is work-related so as to be considered fair. Some workers whose mental illness seems to have a work connection will not be compensated; some workers whose mental illness seems to have little work connection will be compensated. However, the majority of workers whose mental illness seems to have a work connection will be compensated. Law is, after all, administered by humans, who can sometimes err. Social policy should develop a social system whose laws will enable the social welfare and legal systems to compensate fairly in most instances.

Elements of a Claim for Psychiatric Industrial Injury

By providing clearly delimited definitions of the elements of a WC claim for purely psychiatric injury, we believe that the WC system can more easily and fairly adjudicate contemporary claims for work-related mental disorder without sacrificing the system specific needs of certainty, clarity, and limited scope.

We propose a definition and an approach to industrial psychiatric injury that can be applied across all three paradigms.³ The simplest elements for a claim of psychiatric industrial injury should include (a) a psychiatric injury, (b) which is work-related, and (c) precludes work. The third element—defining and quantifying the psychiatric injury as an employment disability—is not addressed herein. Our goal is to identify and define the first two elements—psychiatric injury and industrial causation—in such a way as to mainstream pure (i.e., without obvious physical cause or effect) psychiatric disability claims into the WC system and demystify psychiatric industrial injury.

In the first section, we propose specifically limiting the categories of psychiatric disorders to be recognized under the WC system. In the next section, we prescribe minimal indicia for industrial causation. The imperfect congruence of these two elements may prove to be under inclusive by some measures. However, the net result will be to provide useful tools for the trier of fact to determine claims for purely psychiatric industrial injury consistent with the purposes and policies that inform the WC system.

³WC cases involving mental disability are commonly referred to as mental-physical, physical-mental, and mental-mental cases. Larson at § 42.20. See also, A. Larson, *Mental and Nervous Injury in Workmen's Compensation*, 23 VAN. L. REV. 243 (1970) at 1243; 82 Am Jur 2d, *Workers' Compensation* at 366, § 339. These terms have unfortunately become distinct categories that seem to pose an obstacle to compensation for purely psychiatric injury, rather than merely functioning as terms of convenience. See, e.g., *Gulick v. WCAB*, 711 A.2d 585, 587 (Pa. Commw. 1998) (when "the relationship between an alleged psychiatric injury and a claimant's employment is generally not obvious, a claimant must present unequivocal expert medical testimony to establish the causal connection," which is not otherwise required).

The Element of Psychiatric Injury: Defining Mental Disorders

The first element, psychiatric injury, shall be defined as a personal injury or stressful life event that occurs in relation to the near future onset of a mental disorder. The "personal injury" may be categorized as "physical" or "mental." The "stressful life events" (stressors) are triggers to disorders, which in turn may become possible personal injury. Any major life event can precipitate mental illness.

This definition of psychiatric injury precludes preexisting conditions, such as personality disorders, as a type of injury by the requirement that the occurrence be closely related in time to the onset of the disorder. Lifelong conditions may be considered as a baseline or background for disability, but cannot in themselves qualify as a psychiatric injury. Preexisting conditions, especially personality disorders, increase the vulnerability of the person to stressful life event.⁴ Preexisting psychiatric illness will not exclude a work-related mental disorder from a WC award if the elements of a claim are present.⁵

The "mental disorder" resulting from the psychiatric injury must be limited to recognized categories subject to medical consensus. As in other WC claims, medical expert evidence should be required. Moreover, to provide objective standards of diagnosis for mental disorder, we would limit the acceptable diagnoses to those widely accepted by the psychiatric community.

The most definitive diagnostic tool currently available is the fourth edition of the *Diagnostic and Statistical Manual of Mental Disorders*, commonly (and hereafter) referred to as DSM-IV, published in 1994 by the American Psychiatric Association. An alternate source book is the *International Classification of Diseases*, known as ICD-10, published by the World Health Organization in 1992. DSM-IV is largely compatible with ICD-10 and its earlier version, entitled ICD-9-CM (Clinical Modification).⁶ The requirement to provide expert medical diagnosis of mental disorder pursuant to the terminology and criteria used in DSM-IV can be incorporated by specific reference into the applicable WC statute.⁷

Compensability will require more than a specific diagnosis. It will also require a fact pattern that conforms to the DSM-IV criteria for the diagnosed mental disorder. An expert opinion that consists only of a conclusory diagno-

⁴For example, "a person with a pre-existing personality disorder exposed to a sudden shock at work (e.g., an explosion) is more likely to develop a psychiatric disorder, or a more severe disorder, than another person exposed to the same conditions but without significant pre-existing dysfunction." Dr. David Rabinowitz, Director of Psychiatric Outpatient Services, Rambam Medical Center, Haifa, Israel, correspondence of May 31, 1999 (hereafter "Rabinowitz correspondence").

⁵See, e.g., *Hansen v. Von Duprin, Inc.*, 507 N.E.2d 573 (Ind. 1987) (claimant with previous emotional problems including fear of guns was subjected to workplace harassment by her supervisor intended to exacerbate this fear; preexisting condition did not bar recovery for diagnosed anxiety and depression triggered by workplace events).

⁶See DSM-IV at xxi and Appendix H at 829, which presents the DSM-IV Classification and the corresponding ICD-10 Codes.

⁷California and other states' WC statutes incorporate this requirement in the necessary elements of a compensable WC claim. See e.g., Cal Labor Code § 3208.3 (a), requiring that a psychiatric injury be diagnosed pursuant to statutory procedures or "using the terminology and criteria" of the DSM system, or other generally approved and nationally system of psychiatric diagnosis.

sis cannot fulfill the evidentiary burden required.⁸ The expert should provide a full factual description of the claimant's situation that fits the DSM-IV description of the mental disorder claimed. The trier of fact can refer to the standardized DSM-IV criteria to determine if the facts presented by the claimant support the mental disorder as claimed and diagnosed. A closer look at the DSM-IV system and its categories will illustrate its usefulness in this context.

A "mental disorder" is defined in DSM-IV as "a clinically significant behavioral or psychological syndrome or pattern that occurs in an individual and that is associated with present distress (e.g., a painful symptom) or disability (i.e., impairment in one or more important areas of functioning) or with a significantly increased risk of suffering death, pain, disability, or an important loss of freedom."⁹ The term *mental disorder* should not be taken to imply a strict distinction between "mental" disorders and "physical" disorders, characterized as "a reductionistic anachronism of mind/body dualism" by DSM-IV.¹⁰ Mental disorders are manifestations of behavioral, psychological, or biological dysfunction in the individual.¹¹ Similarly, DSM-IV's use of the term *general medical condition* is not meant to imply "any fundamental distinction between mental disorders and general medical conditions, that mental disorders are unrelated to physical or biological factors or processes, or that general medical conditions are unrelated to behavioral or psychosocial factors or processes."¹²

We endorse and adopt this integrated or holistic approach to mental disorders.¹³ Accordingly, we believe that the WC system should be able to provide protection for workers disabled by work-related mental disorders. Using the DSM definitions to identify specific mental disorders, as supported by expert medical testimony and the facts surrounding the onset of the disorder, a claimant will satisfy the first element of a claim for psychiatric industrial injury. While the DSM criteria may inform the causation inquiry, it will not define nor satisfy it. The causation element will be discussed separately below as an objective legal standard.

Using DSM-IV to Define Industrial Mental Disorders

DSM-IV is an effective tool for highly trained clinicians, which provides a consensual language for communication about mental disorders.¹⁴ "This mul-

⁸See, e.g., *Ins. Co. of No. America v. WCAB (Kemp)*, 122 Cal.App.3d 905, 76 Cal.Rptr. 365 (1981) (conclusory psychiatric testimony without recitation of supporting facts deemed inadequate medical history, claim denied for insufficient expert testimony to support industrial causation).

⁹*Id.* at xxi.

¹⁰*Id.* at xxi.

¹¹*Id.* at xxi-xxii.

¹²*Id.* at xxv.

¹³As well stated by the New Jersey Appeals Court, "We are unable to separate a person's nerves and tensions from his body, " since "clearly, emotional trauma can be as disabling to the body as a visible physical wound." *NPS Corp. v. Insurance Co. of No. America*, 213 N.J. Super. 547, 517 A.2d 1211 (1986).

¹⁴See Greenberg, Honorable Jules L., *Causation and Threshold Determinations in Workers' Compensation Psychiatric Stress Claims: Back to the Future?*, 20 W. ST. UNIV. L. REV. at 131 (1992) (DSM "assures the judge that there will be a uniformity in reporting psychiatric injuries, which previously did not exist").

ti axial system facilitates comprehensive and systematic evaluation with attention to the various mental disorders and general medical conditions, psychosocial and environmental problems, and level of functioning."¹⁵ By requiring a medical expert to present a diagnosis consistent with DSM-IV, claims for mental disability will be limited to medically recognized mental disorders.

DSM-IV provides a uniform descriptive format for each mental disorder. Expert testimony utilizing this framework will be presented in a consistent, helpful, and substantial form, or otherwise can be distinguished and disregarded as insufficient.¹⁶ It is the court's duty to require that, if it adopts a psychiatrist's opinion, that the conclusion is expressed in terms of such standard medical concepts with evidence in the record to support such a conclusion.¹⁷

The following division of disorders encountered in the WC context into tripartite categories is merely intended to add to ease of assimilation into the present WC statutes and case law. It should not be taken to represent a necessary division of disorders or a recommendation that these arbitrary divisions be reinforced or maintained. There is overlap and repetition between the categories. Moreover, our approach is intended to dispense with these arbitrary divisions as inimical to the acceptance of purely psychiatric injury under the WC system. While this is not intended to be an exhaustive list of possible mental disorders that could be work-related, and thereby subject to valid claims under WC, it is a representative list that is provided to facilitate consideration of the benefits of including a DSM-IV diagnosis as an element for a claim of psychiatric mental disability.

Physical/Mental

1. Mood Disorders
 - a. DSM-IV 296.2 Major Depression—Single Episode
 - b. DSM-IV 296.3 Major Depression—Recurrent Episodes
 - c. DSM-IV 300.40 Dysthymic Disorder (Depressive Neurosis)
 - d. DSM-IV 293.83 Mood Disorder Due to a General Medical Condition
 - e. DSM-IV 296.90 Mood Disorder Not Otherwise Specified¹⁸
2. Adjustment Disorder with Depressed Mood
DSM-IV 309
3. Somatoform Disorders (Non-Physiologically Verifiable)
 - a. DSM-IV 300.11 Conversion Disorder
 - b. DSM-IV 300.81 Somatization Disorder
 - c. DSM-IV 307.8 Somatoform Pain Disorder
 - d. DSM-IV 300.7 Hypochondriasis

¹⁵DSM-IV at 25.

¹⁶"Unexplained medical labels—schizophrenia, paranoia, psychosis, neurosis, psychopath—are not enough. Description and explanation of origin, development, and manifestations of the alleged disease are the chief functions of the expert witness." *People v. Bassett*, 69 Cal 2d 122, 141, 70 Cal Rptr 193, 205 (1968 CA).

¹⁷Herbert Lasky, *Psychiatry and California Workers' Compensation Laws: A Threat and a Challenge*, 17 CAL. W. L. REV. 1, 21 (1980).

¹⁸Similar categories of "Not Otherwise Specified" ("NOS") should be included in all the major diagnostic groups to permit atypical cases to be coded.

4. Malingering (Non-Physiologically Verifiable):
DSM-IV V65.2

Mental/Physical

1. Psychological Factors Affecting Physical Conditions:
DSM-IV 316

2. Somatoform Disorders (see above)

Mental/Mental

1. Anxiety Disorders

- a. DSM-IV 300.2 Generalized Anxiety Disorder
- b. DSM-IV 300.01 Panic Disorder Without Agoraphobia
- c. DSM-IV 309.81 Posttraumatic Stress Disorder

2. Adjustment Disorders

- a. DSM-IV 309.24 Adjustment Disorder With Anxiety
- b. DSM-IV 309.0 Adjustment Disorder With Depressed Mood
- c. DSM-IV Adjustment Disorder with Disturbance of Conduct
- d. DSM-IV 309.9 Adjustment Disorder Unspecified

3. Mood Disorders

- a. DSM-IV 296.2 Major Depression
- b. DSM-IV 300.40 Dysthymic Disorder
- c. DSM-IV 300.11 Conversion Disorder

Personality Disorders Do Not Constitute Psychiatric Injury

Under the DSM-IV analysis, 10 specific Personality Disorders can be readily identified as preexisting conditions.¹⁹ Because a Personality Disorder is an inflexible and enduring pattern of subjective and objective dimension that is established early in a person's life and independent of employment, it can be excluded from mental disorders that may be the result of industrial injury. Nevertheless, if presented, a Personality Disorder must be considered in connection with understanding the background or baseline of a individual's situation when assessing psychiatric industrial injury that has exaggerated or exacerbated a preexisting condition, or triggered a compensable mental disorder.

Considering Personality Disorder as a preexisting condition is consistent with the maxim that the employer "takes the worker as s/he is" for WC purposes.²⁰ The worker may be rated on the combined effects of the preexisting condition and the new disability resulting from the new work-related injury without recognizing the personality disorder or other preexisting mental disorder.

¹⁹See DSM-IV at 629 *et seq.*

²⁰It is axiomatic that employers must take their employees as they are—with their physical and mental deficiencies. See Arthur Larson, *The Law of Workmen's Compensation*, § 12.20 (1982); see also, Lawrence Joseph, *Causation in Workers' Compensation Mental Disability Cases: The Michigan Experience*, 27 WAYNE L. REV. 1079 (hereafter "Joseph, Wayne"), 1089, fn. 40, citing *Sheppard v. Michigan National Bank*, 348 Mich. 577, 83 N.W.2d 614 (1957) ("Nothing is better settled in compensation law than that the act takes the workmen as they arrive at the plant gate. Some are weak and some are strong. Some particularly as age advances, have a preexisting 'disease or condition' and some have not. No matter. All must work. They share equally the hazards of the press and their families the stringencies of want, and they all, in our opinion, share equally in the protection of the act in event of accident, regardless of their prior condition of health").

der as an industrial psychiatric injury. This same analysis applies to any other preexisting psychiatric (or physical) condition that may be found in the claimant's medical history. As with other preexisting conditions, when an employment-related injury aggravates, accelerates, or combines with an inherent weakness or chronic illness to produce an employment disability, WC statutes generally provide that compensation may be granted.

The Element of Industrial Causation: Defining a Legal Standard

Utilizing the DSM-IV system of defining mental disorder, and all the attendant information it provides, we can now proceed to the second essential element required for a finding of psychiatric industrial injury. There must be the required "causation": the mental disorder must arise out of the course of employment.²¹

The parameters described in DSM-IV often limit the onset of the disorder in relation to an identifiable event. Similarly, certain disorders require a distinct period of time of manifestation of symptoms. These and similar DSM-IV standard definitions provide many guideposts that will enable the decision-maker to determine not only if a recognized mental disorder exists, but also if it was causally related to the claimant's work.

However, neither DSM-IV nor expert medical testimony will provide a complete answer to the question of industrial causation. While a DSM definition and diagnosis of a mental disorder may provide information on the onset and course of the disorder, it will not provide a final and dispositive answer to the question of industrial causation for WC purposes. The issue of causation in WC claims is a legal issue distinct from questions of medical etiology.²² Certainly medical evidence can in certain cases preclude industrial causation.²³

²¹The general coverage language of "arising out of and in the course of" employment found in many WC statutes embodies the basic causation requirement of WC: injury resulting in disability must be work-related. These two phrases are not synonymous, but involve two different ideas and impose a double condition. *Sweatt v. Rutherford County Bd. of Educ.*, 237 N.C. 653, 75 S.E.2d 738 (1953). An injury "arises out of" employment if it is the result of a risk inherent in the employment, such as the nature, conditions, obligations, or incidents of the particular employment. The "course of employment" test refers to the time, place, and circumstances of the injury in relation to the employment. "Course of employment" is often broadly defined to require only that the employee was performing an authorized task for the benefits of the employer's business. While these two phrases constitutes the general causation requirement found fairly uniformly in WC statutes, the very generality of these terms has proved too vague to provide a framework for a consistent approach to causation of purely psychiatric claims.

²²While actual facts of the employment relation, time, and place of employment events may be established with certainty, "the existence of a factual casual connection between the employment and the disabling injury . . . can never be absolutely determined. It must be based entirely on probabilities." Joseph, Wayne at 1091.

²³See, e.g., *Twentieth Century Fox Film Corp. v. WCAB (Conway)*, 141 Cal.App.3d 779, 190 Cal.Rptr. 560 (1981) (psychiatrist testimony stated non-work-related cause led to breakdown, employment stresses provided after-the-fact rationalization), discussed in *Lasky*, 1988 at 56-58; and see, *Pacheco v. Bd. of Retirement of the County of Los Angeles Employees Retirement Ass'n*, 188 Cal.App.3d 631, 233 Cal.Rptr. 41 (1986) (psychiatric testimony that claimant's psychological functioning was same as preemployment precluded award for psychiatric industrial injury), discussed in *Lasky*, 1988 at 76-77. *Miller v. Akron General Medical Center*, 1990 Ohio App. LEXIS 3074 (1990); *Branscum v. RNR Construction Co.*, 60 Ark. App 116, 959 S.W. 2d 429 (1998).

Similarly, the DSM-IV criteria for a particular mental disorder can support a legal finding of industrial causation.²⁴ There are also cases where a mental disorder, such as Major Depressive Disorder or Panic Disorder, will be diagnosed without any apparent cause.

Case law and analysis demonstrate that in cases with obvious physical cause and effect the courts have managed quite well to distinguish industrial from nonindustrial cause.²⁵ Our goal here is to provide useful guideposts for the causation inquiry in the purely psychiatric domain, historically referred to as the Mental-Mental claim. We refer to this type of claim as a "purely psychiatric" claim: any claim made asserting a nonphysical cause for a mental disorder.

Lawrence Joseph, in his comprehensive 1983 article "The Causation Issue in Workers' Compensation Disability Cases: An Analysis, Solution and a Perspective"²⁶ (hereafter "Joseph, Vanderbilt"), argues that the complexities of mental disability claims preclude a fair and just determination of causation. Joseph concludes that compensation for industrial psychiatric injury should be included in Professor John F. Burton Jr.'s recommendation for a statutory solution for compensation of disabling diseases of unknown cause.²⁷ Professor Burton has proposed a "Workers' Disease Compensation Act" as a systemic solution for disability claims of unknown or multiple cause which would not require a work-related nexus for compensation.²⁸

Lasky disagrees.²⁹ Like Lasky, we too believe that "substantially effective solutions are possible."³⁰ The importance of preserving the integrity of the WC system, and acknowledging the very real disability that can be suffered from work-related psychiatric injury, informs this effort. Moreover, by recognizing the limited meaning of "cause" within the WC inquiry, the endeavor becomes both reasonable and realistic.³¹ It is not required to find the medical cause of a purely psychiatric claim in order to find that a psychiatric injury (assuming disability) is compensable. It is only necessary to determine that the injury was work-related; that is, that it arose out of and occurred in the course of employment as defined within the WC system.

"Cause" as an element of a WC claim should not be confused with absolute, actual, or medical cause.³² "Cause" as utilized in WC is a "policy choice" defined by statute, detailed in case law, and "essentially rooted in the compro-

²⁴See, e.g., *Kroger Co. v. Industrial Comm'n of Ohio*, 80 Ohio St 3d 483, 687b N.E.2d 446 (1997).

²⁵See footnote 2, *supra*.

²⁶Van. L. Rev. 263

²⁷*Id.* at 318.

²⁸See John F. Burton, Jr., *Back Injuries: Should the Work-Related Tests be Abandoned?*, MEDICAL-LEGAL ASPECTS OF WORK INJURIES (1994) at 118.

²⁹Lasky, 1993 at 72.

³⁰*Id.*

³¹Joseph, Vanderbilt at 276, states "[t]he difficulty in establishing factual causation is epistemological: the trier of fact never absolutely can determine the 'fact' of causation." However, legal causation is all that is required.

³²WC boards and courts do not need medical certainty to establish that the worker's injury or disorder is work-related. At best, they need only a legal probability, that is, more than a fifty-fifty chance that the work caused or contributed to the disorder.

mise nature of the workers' compensation system itself."³³ By setting the parameters of causation required for a compensable injury, the law defines the parameters of the WC system itself. While expert medical diagnosis, together with other factual evidence, must inform the determination of the existence of a work-related psychiatric injury, it is ultimately the evaluative judgment of the WC system's overinclusive or underinclusive definition of causation that will decide if purely psychiatric injuries are compensable.³⁴

Based on the medically spurious distinction between physical and mental injury,³⁵ the importance of inter-personal relations in the growing service economy, and the necessity to maintain both the appearance and the reality of fairness within the WC system, we believe it is desirable and essential to find a functional policy definition of "work-related cause" that applies broadly and will specifically include purely psychiatric industrial injury. By requiring the identification of mental disorders by means of DSM-IV, we can also prescribe factual causation standards by reference to DSM-IV with some objective measure.

We propose the following standards as primary guideposts in the trier of fact's determination of industrial causation in purely psychiatric disability claims.

A psychiatric disorder shall not be deemed the result of a work-related injury, unless

1. the psychiatric disorder is recognized and diagnosed under DSM-IV; and
2. the claimant experienced an acute trauma or unusual stressor that arose from and occurred in the course of employment; and
3. the symptoms of the psychiatric disorder appeared within 6 months thereafter; and
4. the employment-related trauma or stressor was a positive factor in the development of the disorder or played an active role in the course of the disorder; and
5. notice of a claim for psychiatric injury (to the insurer or the employer), stating facts under paragraphs 1, 2, 3, and 4 above, is made no later than 6 months after the appearance of such symptoms.

This combination of (1) a medically identifiable mental disorder and (2) a work-related event occurring before the onset of the symptoms, (3) within a relatively prescribed period of time, (4) which actively affected the disorder, together with (5) timely notice will serve as a surrogate for actual causation and fulfill the WC mandate for finding industrial causation. Each of the five factors must be present to support a legal finding of industrial causation. Each of these five legal causation factors will now be discussed.

³³Joseph, Wayne at 1087.

³⁴*Id.* at 1148. See also Barth, Peter S. and Hunt, H. Allan, WORKERS' COMPENSATION AND WORK-RELATED ILLNESSES AND DISEASES at 118.

³⁵"Every significant deleterious physical alteration must have an emotional accompaniment or reaction. One does not usually sustain a physical injury or suffer a significant physical illness without some change from the preexisting emotional state. Similarly, emotional changes often produce a related psychological or metabolic alteration, albeit evanescent, reversible, or as yet undiscovered." Joseph, Wayne at 1138 and fn. 338, citing Selzer, *Psychological Stress and Legal Concepts of Disease Causation*, 56 CORNELL L. REV. 951, 952 (1971).

Factor One: The Psychiatric Disorder Is Recognized and Diagnosed per DSM-IV

Disorder. As stated above and discussed in detail in previously, only mental disorders that are described in the DSM-IV system will be accepted as claims. Furthermore, expert testimony or evidence of a conclusory diagnosis alone is insufficient. The factual circumstances must be described and fit the diagnostic features of the disorder claimed.

Factor Two: The Claimant Experienced an Acute Trauma or Unusual Stressor that Arose from and Occurred in the Course of Employment

Event. The above proposed standards for causation require the identification of an acute trauma or unusual stressor-trigger within or related to the work environment that triggered the onset or development of the mental injury. It shall be the claimant's ultimate burden to establish by a preponderance of the evidence that an actual life event, which arose from, or occurred in the course of, or in consequence of claimant's employment, acted as a injurious stressor that preceded the near future onset of symptoms of a diagnosed mental disorder. (The claimant must also show that the mental disorder has produced an employment disability, a third and essential element not discussed here.)

This requirement is similar to the "accident" requirement of many WC statutes. An accident is not a "series of events in employment, of a similar or like nature, occurring regularly, continuously or a frequent intervals in the course of such employment, over extended periods of time."³⁶ An accident is unexpected, sudden, and nonroutine. More specifically, we require an acute trauma or an unusual stressor. "Acute trauma" excludes chronic repetitive stresses and relates to the element of occurrence in time. It is close to the concept of an single accident. In contrast, an "unusual stressor" is not so limited and could include any stressor that is not part of the normal work routine, whether or not it recurs in time.

The requirement that the trauma be "acute" or the stressor be "unusual" should be interpreted in view of both the individual and in consideration of the ordinary conditions of the specific workplace. It must be assumed that the employee is able to fulfill the ordinary demands of the employer once the employee has successfully completed a minimal period of employment under ordinary conditions without incident.³⁷

Factor Three: The Symptoms of the Psychiatric Disorder Appeared Within 6 Months Thereafter

Time. We propose an 6-month time limitation for the appearance of the identifying features of the claimant's psychiatric injury. This limitations period

³⁶North Carolina Gen. Stat. § 97-52 (1991), cited in *The Reality of Work-Related Stress: An Analysis of How Mental Disability Claims Should Be Handled Under the North Carolina WC Act*, 20 CAMPBELL L. REV. 321 (1998) at 326.

³⁷For example, the California Labor Code denies compensation for psychiatric injury to employees who have been employed less that 6 months. The provision does not apply if the psychiatric injury is caused by a sudden and extraordinary employment condition. Cal. Labor Code § 3208.3(d).

is absolute and also must be qualified by reference to the temporal features of that disorder as described in the DSM-IV diagnosis. As stated above, only mental disorders that are described in the DSM-IV system will be accepted as claims. Furthermore, expert testimony or evidence of a conclusory diagnosis alone is insufficient. The factual circumstances must be described and fit the diagnostic features of the disorder claimed. For purposes of a finding of work-related causation, the close temporal relationship between the events of employment (Factor Two) and the near future onset of the mental disorder (Factor Three) will be determinative.

The DSM-IV demands that a "temporal relationship" exists between the stressful life events and the onset of the disorder but does not define this, leaving it up to clinical judgment. Although temporal features of a specific disorder will be considered as part of the diagnostic process, for purposes of the causation determination, additional and arbitrary limiting standards should be imposed. While such absolute standards may depart from DSM-IV, which provides for extreme and atypical cases, we suggest this somewhat under-inclusive approach in the name of judicial economy and fraud prevention.

For example, an Adjustment Disorder, such as DSM-IV 309.24, entails obvious emotional or behavioral symptoms in response to an identifiable stressor. The stressor can be defined by time and place, and should be clearly associated with the claimant's work environment. For a finding of work-related causation, in accordance with the features of this disorder under DSM-IV, claimant's symptoms must develop within 6 months after the onset of the stressor. Accordingly, a claimant whose symptoms occurred later could not show work-related cause.

Similarly, Mood Disorders, such as DSM-IV 296, whether due to psychosocial (mental/mental) or physical (physical/mental) causes, have a specific temporal course in relation to the claimant's pre-disorder state. Depressed moods must last at least 2 weeks for a single episode and recurrent episodes must be at least 2 months apart. With a chronically depressed mood, a claimant is symptom free no more than 2 months at a time. In all mood disorder cases, a trier of fact should be able to find a work-related cause based on the temporal relationship of work events to the onset of the mood disorder.

Posttraumatic Stress Disorder, DSM-IV 309.81, is closely associated with a specific and extreme traumatic stressor that should be easily identifiable as either work-related or non-work-related. While the disturbance must last more than 1 month, the onset of symptoms may be delayed.

The limitation periods proposed above may exclude some claims where onset of symptoms is delayed beyond 6 months, or notice is omitted. In these cases, the benefits of predictability, notice, and objective standards prevail and are consistent with the compromise at the foundation of the WC system.

Factor Four: The Employment-Related Trauma or Stressor Was a Positive Factor in the Onset or Development of the Disorder or Played an Active Role in the Course of the Disorder

Trigger. Having satisfied the minimum standards of a DSM-IV diagnosis and timely symptoms and notice of claim, the claimant must also persuade the

trier of fact that an employment event, trauma, or stressor was "a positive factor in the onset or development of the disorder or played an active role in the course of the disorder." It is insufficient if the psychiatric disorder merely coincided with the claimant's employment experience. While the work-related trauma or stressor may not be the sole, or even primary cause of the disorder, it must be a contributing factor or trigger for the disorder, rather than a mere backdrop to the events.³⁸

The employment event may be only one of the factors contributing to the onset of the mental disorder.³⁹ However, it should play an active and positive role in the development of the disorder.⁴⁰ Nonindustrial and personal factors also should be considered, and a determination made whether the work-related triggers-stressors played a significant role in the onset of the disorder. Consideration of the claimant's own subjective perception of the contributing trauma(s) or stressor(s) is also mandated by the doctrine that "industry takes the employee as it finds him."⁴¹ However, subjective perceptions alone should be deemed insufficient without an objectively recognizable event that can be subject to investigation and judicial review.⁴²

Preexisting Conditions and Multiple Causes. The complex nature of psychiatric disorders often includes preexisting conditions or predisposition for psychiatric injury. An employee with a preexisting vulnerability may be an able worker nonetheless. Each individual has a personal threshold for trauma or stress. Certain preexisting conditions may affect this threshold. Psychiatric industrial injury may more commonly occur in individuals with "predisposing

³⁸For example, in California the statutory requirement that the injury be "proximately caused by the employment . . . has received a much broader construction in WC law than it has in tort law. All that is required is that the employment be one of the contributing causes without which the injury would not have occurred. . . . Nevertheless, the statutory requirement retains sufficient force that compensation may not be awarded where the nature of the employee's duties 'merely provided a stage for the event.'" *Albertson's, Inc. v. WCAB*, 131 Cal. App.3d 308, 316, 182 Cal.Rptr. 304, 308-09 (1982), citing *Transactron, Inc. v. WCAB*, 68 Cal.App.3d 233, 238, 137 Cal.Rptr. 142 (1977).

³⁹"It is well established that an employee's claim for psychiatric injury may be founded on honest subjective perception of job harassment which interacts with a preexisting condition so as to cause job stress, providing the *employment is a positive factor* in causing the injury." (*Albertson's Inc. v. WCAB*, 131 Cal. App.3d 308, 182 Cal.Rptr.304 (1982)). The proper focus of inquiry is not how much stress *should* be felt by an employee in his work environment, based on a "normal" reaction to it, but how much stress *is* felt by the individual worker reacting uniquely to the work environment, the individual worker's perception of the circumstances being "what ultimately determines the amount of stress he feels." *Id.* at 314. *Clay v. WCAB*, 206 Cal.App.3d 1179, 254 Cal.Rptr. 144 (1988) (emphasis added).

⁴⁰Herbert Lasky, *GUIDELINES FOR HANDLING PSYCHIATRIC ISSUES IN WORKERS' COMPENSATION CASES*, 1988 at 57.

⁴¹*Id.*

⁴²A purely subjective causation standard was recognized by the Michigan Supreme Court in *Deziel v. Difco Laboratories, Inc.*, on remand, 403 Mich. 1, 268 N.W.2d 1 (1978), and later reversed by legislation providing a specific causation standard for mental disabilities. Mich Comp. Laws Ann. § 418.301 (1), (2), and .401 (c), effective January 1, 1982. The legislative reversal of this precedent is contained in the statutory statement: "Mental disabilities shall be compensable when arising out of actual events of employment, not unfounded perceptions thereof." § 301(2).

vulnerabilities."⁴³ This subjective aspect of the causation inquiry must be recognized and accepted.⁴⁴ The WC system accepts the worker as s/he is.

The causation inquiry must consider the role of preexisting conditions. While an employment-related trauma or stressor may not be the sole or primary factor precipitating a mental disorder, it may provide the trigger-stimulus to aggravate, accelerate, or combine with a preexisting condition or disposition to produce a mental injury, sufficient to satisfy the causation nexus. This may be sufficient to satisfy Factor Four (Active Role). We suggest, therefore, the focus on triggers of the onset of mental injuries.

The individual circumstances of the case will be determinative. Nevertheless, due to the generally objective character of the proposed standards, individualistic concerns do not dominate the inquiry. Moreover, everyday and ordinary stresses are insufficient under the proposed causation standard.⁴⁵ Usual incidents of discipline, reprimand, or dismissal will not satisfy the standard in any case.⁴⁶

The standard for a finding of disorder and causation apply equally to individuals with or without preexisting conditions. The threshold is no higher nor lower. Whether or not a preexisting condition exists the objective standards must be met. A mental disorder suffered by an employee with a preexisting condition must meet the requirements that the trauma was acute, or the stressor was unusual, that such acute trauma or unusual stressor was closely related in time to the appearance of the symptoms, and that it was a positive factor or played an active role in the diagnosed disorder.

Factor Five: Notice of a Claim for Psychiatric Injury (to the Insurer or the Employer), Stating Facts Under Paragraphs 1, 2, 3, and 4 Above, is Made No Later than 6 Months after the Appearance of Such Symptoms

Time Plus. The time limitations imposed by the causation inquiry is designed to help ensure that a specific relationship between the claimant's employment and his mental disorder is positively proffered at the time a claim is

⁴³Lasky, 1988 at 51.

⁴⁴Each individual's preexisting condition or predisposing factors presents a unique constellation of facts. This necessarily subjective state "does not lessen the compensability of an injury which precipitates a disabling neurosis" or mental disorder. Larson at § 42.22 at 7-158.

⁴⁵See, e.g., Pate v. WCAB, 104 Pa. Commw. 481, 522 A.2d 166 (1987), *cert denied*, 108 S. Ct. 1025 (1988) where an employee with a preexisting schizophrenic condition claimed an aggravation of her condition due to her supervisor's criticism of her work. Her claim was denied for a lack of evidence that she encountered anything unusual in her work environment. See also, Coleman v. Guide-Kalkoff-Burr, Inc., 10 N.Y.2d 857, 178 N.E.2d 912, 222 N.Y.S.2d 689 (1961) (stress from two brief arguments on employee with heart condition did not rise above stress level of ordinary daily work).

⁴⁶See, e.g., Ann. L. of Mass., Ch. 152, § 29, which states as follows: "No mental or emotional disability arising principally out of a bone fide personnel action including a transfer, promotion, demotion, or termination except such action which is the intention infliction of emotional harm shall be deemed to be a personal injury" (discussed in Larson, § 42.23(a) at 7-173). See also, e.g., Smith & Sanders, Inc. v. Peery, 473 So.2d 423 (Miss. 1985) (worker with preexisting psychiatric condition suffered nervous breakdown when laid off; compensation denied for lack of unusual or unexpected injury); In re Korsun's Case, 354 Mass. 124, 235 N.E.2d 814 (1968) (emotional stress and excitement from fear of job loss, preceding heart attack and death, do not arise out of employment; compensation denied).

made and is not the result of post-hoc reasoning or rationalization. This limitation emphasizes the importance of the relationship between the trigger-stressor at work and the onset of the mental injury. Timely notice of a claim must be given. In order to do this, the claimant must state the onset of symptoms and disclose the actual employment-related event or events claimed to be related to the claimed disorder. It will remain for the trier of fact to determine if the employment events are more than temporally related to the onset of the symptoms and if they have actively contributed to the claimant's mental disorder.

The proposed causation requirements do not presume to establish a certain medical or factual causal connection between the trauma or stressor and the appearance of symptoms of mental disorder. We are referring to legal assumptions. The factors necessary to establish causation for WC purposes—a DSM-IV diagnosis supported by factual predicates consistent with such diagnosis, together with the appearance of the symptoms of such disorder within a limited time period after an identifiable trauma or unusual stress arising out of claimant's employment—will be sufficient to establish a work relationship. The causation inquiry is squarely defined as an objective legal standard for the trier of fact to apply and determine. Nevertheless, expert testimony regarding the diagnosis and the medical and factual features of the disorder will be indispensable to this determination. Finally, the claimant's own subjective experience of factually verifiable events and preexisting conditions, if any, are also given consideration.

Conclusion

We believe that the standards and tests that we have proposed for determining the existence of a mental disorder and establishing the requisite employment-related causation are welltailored to the purposes and policies of the WC system worldwide. Above all, we have tried to develop a method that is well suited to the nature of the system itself. We recommend these standards as fair, objective, consensual, and functional within an administrative/judicial forum.

We believe that purely psychiatric industrial injury belongs within the ambit of the WC system to the extent that mental disorders are subject to standardized diagnoses with factual predicates as provided by DSM-IV. We also believe that once the essential policy role of the causation requirement is recognized, an objective if somewhat arbitrary causation standard for psychiatric industrial injury is more easily stated. We do not attempt to factually define when a mental disorder is or is not work-related. Rather we provide a mechanism to fairly provide protection for employees who suffer purely psychiatric injury which can be closely associated with an unpredictable employment experience.

Our foremost concern was to fashion a workable model to function well within the existing system. Much like the WC system overall, it is a rough system, that should attain just results. Above all, we recommend it because it represents the same kind of compromise that lies at the foundation of the WC system itself.