

What is a Mental/Mental Workers' Compensation Case?

The Payes Case

Relevant case law divides psychological injuries into three categories, each with different requirements to prove an injury. One of these categories is a mental condition that occurs during or after a physical event (physical/mental injury). For example, if a worker's hand was torn off while handling chicken in a meat processing plant and then becomes depressed by the disfigurement. There is also a recognized mental condition that physically manifests itself (mental/physical injury), such as severe work stress that causes gastrointestinal problems. For example, think of a race car driver with bleeding ulcers. Finally, psychological trauma resulting in a mental condition, such as post-traumatic stress disorder, is a mental/mental injury.

Over a 20-year period, the Commonwealth Court published a series of cases that made many mental/mental injury claims unwinnable without showing proof of abnormal working conditions. The definition of "abnormal" for these purposes has slowly become more limited, excluding even severely odd and bizarre working environments. For example, the Court held in *D'errico v. Workers' Compensation Appeal Board (City of Philadelphia)*, 735 A.2d 161 (Pa. Cmwlth. 1999), that a traffic court judge who threw things, cursed, and shredded a doctor's excuse did not create an abnormal working environment. In this case, a staff member claimed that the judge's behavior mentally stressed her. She received no benefits.

The only conditions the Commonwealth Court accepted as abnormal are situations where a claimant's mental illness developed directly as a result of illegal activities done by the employer or its representatives. For example, the Court recognized unlawful activities such as sexual and religious harassment and failing to pay taxes or health insurance premiums as abnormal working conditions in mental/mental cases.

Generally, workers' compensation practitioners found that while these determinations were frustrating, they were within reason. Nevertheless, the standard took on a new cruelty when police officers and law enforcement officials could not demonstrate abnormal working conditions because no event that they experienced was considered abnormal.

In 2011, the Commonwealth Court denied benefits in *Washington v. Workers' Compensation Appeal Board (State Police)*, 11 A.3d 48 (Pa. Cmwlth. 2011), of a mental/mental claim. This case dealt with a photographer for the state police. The ruling was that photographing infant murder victims is not an abnormal working condition because the claimant admitted that the situation was a foreseeable part of his job. The Court began to recognize "foreseeable risk" as a barrier to getting benefits. In *Liquor Control Board v. Workers' Compensation Appeal Board (Kochanowicz)*, 29 A.3d 105 (Cmwlth. Ct. 2011), a liquor store clerk sought benefits for post-traumatic stress disorder after being tied and threatened with a gun. He did not receive benefits because he had received training for such events.

What is the Payes case and why is it important?

In 2013, the Supreme Court issued *Payes v. Workers' Compensation Appeal Board (State Police)*, 108 A3d. 922 (Pa. 2013), and changed the standards for determining whether a single event that causes a mental/mental work injury is worthy of payment under the Workers' Compensation Act.

The facts in *Payes* have almost a gothic quality. During the early hours of a state trooper's shift, a woman dressed entirely in black ran in front of his patrol car, his vehicle struck her, and she flipped over the car. The officer stopped his vehicle and radioed for an ambulance. While waiting for assistance, he observed blood coming out of the victim's mouth, checked her pulse, and attempted to perform mouth-to-mouth resuscitation on her. The officer and the woman were taken via ambulance to the hospital, where the woman died from her injuries. In blunt terms, the woman committed suicide by cop. The Commonwealth Court claimed that police officers often witness horrible tragedies and motor vehicle accidents; therefore, such events are not abnormal and do not require compensation.

The Supreme Court reversed the Commonwealth Court's decision in *Payes* and outlined a new approach to determining the compensability in these traumatic single-event cases. The majority ruling indicated that the appropriate manner for examining these cases is the following test:

- 1) Determine if the claimant's psychological injury has been objectively verified by an expert willing to give testimony.
- 2) Determine if the incident in question can be traced to an identifiable source (such as a woman attempting to commit suicide by cop).

3) Define each case of abnormal working conditions independently, without reference to similar cases.

The majority in *Payes* also noted that the process of determining abnormal working conditions does not end “when it is established that the claimant generically belongs to a profession that involves certain levels or types of stress.” The Supreme Court recognized the complexity of these injuries suffered by individuals in law enforcement and created a healthier standard for evaluating them. Collectively we have learned a great deal about psychological injuries in work settings and the stresses placed on police officers and the previous standard for handling mental/mental workers’ compensation cases were insufficient and unfair.