Why Proving a Work-Related, Psychological Injury Claim Stresses You Out

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Why Proving a Work-Related, Psychological Injury Claim Stresses You Out

Melissa Lin Jones

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I. INTRODUCTION

An amputation is obvious to the naked eye. A broken bone shows on an x-ray film. A herniated disk appears on an MRI scan. How do you prove a work-related psychological injury?

In a tort case brought in the District of Columbia, in order to recover for intentional infliction of emotional distress, “a plaintiff must show (1) extreme and outrageous conduct on the part of the defendant which (2) intentionally or recklessly (3) causes the plaintiff severe emotional distress.”\(^2\) Furthermore, “[t]he conduct must be “so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.”\(^3\) This high burden of proof satisfies society’s concern that an inherently invisible claim has not been fabricated for secondary gain.

The burden of proof is even higher when attempting to recover for negligent infliction of emotional distress. In the District of Columbia, there is no general duty of care to avoid causing mental distress at least in part because:

We know that, from repeated scares or frights, persons are liable to have their sensibilities easily, and in some cases morbidly excited . . . But the law furnishes no remedy for such sensitive condition. To attempt to furnish a legal remedy in such case, would open the door to the wildest speculation. Without for a moment intimating that simulation existed in this case, yet the nature of such claim would render it easy of simulation; and if not simulated, the temptation would be strong to exaggeration, and the assigning of one cause for another in the production of the morbid state of the nervous sensibilities; and all this, though it might be without real foundation, would be most difficult to disprove by the

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\(^1\) This article is in partial fulfillment of the requirements for the Doctor of Philosophy degree program at the University of Nevada, Reno. Special thanks go to Dr. Shawn C. Marsh, Dr. Angela M. Lee, Judge David B. Torrey, Dr. Lauren B. Edelman, and Judge Anthony J. Baratta for their insightful comments to improve this article.

This article is dedicated to my father, Norman Harry Weiss. Dad, now your name will live on forever.

Judge Jones is admitted to practice law in New York, the District of Columbia, Maryland, and Virginia. She is not engaged in the practice of law, and the contents of this article are not intended to provide legal advice. Views expressed in this article represent commentary concerning the law, the legal system, and the administration of justice. These views should not be mistaken for the official views of the United States Government, the United States Department of Labor, the Benefits Review Board, nor for Judge Jones’ opinion in the context of any specific case. The views expressed in this article do not necessarily represent the policies of the United States Government, the United States Department of Labor, or the Benefits Review Board, and no official endorsement by the United States Government, the United States Department of Labor, or the Benefits Review Board is intended or should be inferred.

\(^2\) Armstrong v. Thompson, 80 A.3d 177, 189 (D.C. 2013).

\(^3\) Drejza v. Vaccaro, 650 A.2d 1308, 1312 n.10 (D.C. 1994) (quoting Restatement (Second) of Torts § 46 cmt. d (1965)).
party sought to be charged. Such claims for compensation are subject to all the objections to remote and speculative damages.\(^4\)

Consequently, to mitigate the concern about spurious claims that are difficult to disprove, additional factors have been imposed—the defendant’s conduct must have placed the plaintiff in a “zone of physical danger,” such that:

[T]he plaintiff can show that (1) the defendant has a relationship with the plaintiff, or has undertaken an obligation to the plaintiff, of a nature that necessarily implicates the plaintiff’s emotional well-being, (2) there is an especially likely risk that the defendant’s negligence would cause serious emotional distress to the plaintiff, and (3) negligent actions or omissions of the defendant in breach of that obligation have, in fact, caused serious emotional distress to the plaintiff. Whether the defendant breached her obligations is to be determined by reference to the specific terms of the undertaking agreed upon by the parties or, otherwise, by an objective standard of reasonableness applicable to the underlying relationship or undertaking, e.g., in medical malpractice cases, the national standard of care. The likelihood that the plaintiff would suffer serious emotional distress is measured against an objective standard: what a “reasonable person” in the defendant’s position would have foreseen under the circumstances in light of the nature of the relationship or undertaking. In addition, the plaintiff must establish that she actually suffered “serious and verifiable” emotional distress.\(^5\)

Unlike the high burdens in tort cases, in a District of Columbia private sector, workers’ compensation case there is a presumption of compensability (“Presumption”). Specifically,

[i]n any proceeding for the enforcement of a claim for compensation under this chapter it shall be presumed, in the absence of evidence to the contrary:

(1) That the claim comes within the provisions of this chapter;
(2) That sufficient notice of such claim has been given;
(3) That the injury was not occasioned solely by the intoxication of the injured employee; and

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(4) That the injury was not occasioned by the willful intention of the injured employee to injure or kill himself or another.  

In order to invoke the Presumption in a physical injury case, the claimant must show an employment connection through some evidence of (1) a disability and (2) a work-related event, activity, or requirement which has the potential to cause or to contribute to the disability. This threshold is not high. A reasonable inference that job duties had the potential to contribute to the disability is sufficient. Testimony of a work-related event coupled with medical evidence that the employment had the potential of resulting in the injury is sufficient. In fact, testimony alone may suffice to invoke the Presumption:

The claimant argues that the [administrative law judge] was in error when she denied him the statutory presumption of compensability. The Director [of the Department of Employment Services (“Director”)] finds merit in claimant’s argument. The claimant testified that he was injured while pulling some plywood out of the trench. In order for claimant to benefit from the statutory presumption of compensability he must make an initial demonstration of two basic facts: a disability and a work related event, activity, or requirement which has the potential of resulting in or contributing to his disability. Ferreira v. Department of Employment Services, 531 A.2d 651, 655 (D.C. 1987). The Director finds that claimant’s job had the potential to cause his disability. Therefore, claimant is entitled to the statutory presumption of compensability.  

Invoking the Presumption in a physical injury case only requires a claimant produce “some evidence” of a disability and a work-related event, activity, or requirement. “Some evidence” is not a preponderance; it is not expert testimony; and it is not “credible evidence.” At the initial stage of a case, invoking the Presumption, it is premature to consider the credibility of evidence:

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7 Ferreira v. D.C. Dep’t of Emp’t Servs., 531 A.2d 651 (D.C. 1987).
11 Ferreira, 531 A.2d 651.
13 To ask a claimant, who already has produced substantial medical reports from the treating physician, and other relevant documentary evidence of causally related injury arising out of and in the course of employment, to provide sworn testimony to rebut an employer’s medical expert, no matter how insufficient that testimony may be with respect to the presumption of compensability, would impose too high a burden and one which is inconsistent with the purposes of the Workers’
Based on our case law and the “humanitarian purposes” of the Act, we hold that an [administrative law judge] cannot refuse to accord an employee seeking benefits the statutory presumption on the basis that the claimant’s evidence, which on its face is sufficient to show both an injury and a work-related event that has the potential of causing the injury, was simply not credible. To hold otherwise would contravene our decision in Ferreira and its progeny, in which we have repeatedly said that all that is required of the claimant for the presumption to apply is an “initial demonstration” consisting of “some evidence” of a work-related injury. 531 A.2d at 655 (emphasis added).

Accordingly, the [administrative law judge] must afford the statutory presumption of compensability to an employee seeking workers’ compensation for a physical injury, so long as the employee establishes a prima facie “‘initial demonstration’ of (1) an injury; and (2) a work related event, activity, or requirement which has the potential of resulting in or contributing to the injury.” Georgetown Univ. I, . . . 830 A.2d at 870. Credibility determinations are not an appropriate consideration at this initial stage.14

It cannot be emphasized enough—the threshold for invoking the Presumption is not high.

Once the claimant has invoked the Presumption, to rebut the Presumption the employer must show that the claimant’s disability did not arise out of and in the course of employment; it is the employer’s burden to come forth with substantial evidence of “a nonemployment related basis”15 “specific and comprehensive enough to sever the potential connection between a particular injury and a job-related event.”16 “Some isolated evidence” is not sufficient to overcome the Presumption;17 neither is a vague and nebulous opinion that many things can cause an injury,18 nor speculation and conjecture.19 However, the employer is not required to prove the disability could not have been caused by a work-related event or activity; that is too high a burden to impose.20


15 Young v. Dep’t of Emp’t Servs., 918 A.2d 427, 434 (D.C. 2007).
16 Ferreira, 531 A.2d at 655.
18 Holder v. Wash. Metro. Area Transit Auth., Dir. Dkt. No. 99-90, H&AS No. 99-342, OWC No. 507781 (Nov. 14, 2000) (the doctor’s opinion that “many things can cause [a tear in the meniscus]” was not specific and comprehensive enough to rebut the Presumption).
19 Brown v. Howard Univ. Hosp., CRB No. 12-061, AHD No. 11-060, OWC No. 675904 (June 27, 2011) (the employer offered “evidence of a pre-existing back condition, prior back injuries, a motive to lie, and prior inconsistent statements to rebut the Presumption”).
The Presumption usually is rebutted when a doctor (even a doctor retained for purposes of litigation) examines the claimant, reviews the relevant medical records, and states “an unambiguous opinion that the work injury did not contribute to the disability.”21 The difference between invoking the Presumption and rebutting the Presumption is that in order to rebut the Presumption by this method, the doctor must render an opinion regarding specific causation-conditions at work did not cause this claimant to sustain this injury. Even so, the administrative law judge must determine whether or not the Presumption has been rebutted without assessing credibility:

[A]n [administrative law judge] may not assess the credibility of a claimant’s evidence at this initial stage. Instead, the claimant is entitled to the statutory presumption that the injury arose during the course of employment and therefore entitled to workers’ compensation benefits, so long as he or she presents “some evidence” to establish a prima facie case of a work-related injury. Wash. Post v. District of Columbia Dep’t of Emp’r Servs., 852 A.2d 909, 911 (D.C. 2004). The burden is then on the employer to rebut the presumption that an employee’s injury was, in fact, not related to his or her employment. Id. The employer can rebut the presumption by proffering substantial evidence of non-causation, i.e., evidence that is “specific and comprehensive enough” that a “reasonable mind might accept it as adequate to contradict the presumed connection between the event at work and the employee’s subsequent disability.” Id. (footnote, citation, internal quotation marks and brackets omitted). This, again, is not a matter as to which the [administrative law judge] is to make credibility determinations. Only if the employer is able to rebut the presumption and the burden returns to the claimant is the [administrative law judge] entitled to make credibility determinations.22

If the employer fails to meet its burden, the claim falls within the Act; the injury is deemed work-related, and any resulting disability is compensable.23 If the Presumption is rebutted, the burden shifts back to the claimant to prove by a preponderance of the evidence any injury or disability arose out of and in the course of employment.24 Evidence is weighed only after the employer has rebutted the Presumption.

Frequently, the Presumption is the starting point in the analysis of litigated private sector workers’ compensation cases. By establishing a causal connection

22 Storey, 162 A.3d at 797.
23 Parodi, 560 A.2d at 526.
between a disability and a work-related event, the Presumption enables a claimant to establish entitlement to workers’ compensation benefits more easily because it also establishes the employer’s burden to “take the initial steps to disprove liability.”

The Presumption applies to both physical injuries and psychological injuries, but unlike the requirements for invoking it in a physical injury claim, in order to invoke the Presumption in a physical-mental claim, the claimant must prove “the physical accident had the potential of resulting in or contributing to the psychological injury.” If the employer does not rebut the Presumption, the injury is compensable; if the employer rebuts the Presumption, the claimant must prove “the physical accident caused or contributed to the psychological injury.”

In a mental-mental case, “an injured worker . . . invokes the statutory presumption of compensability by [offering credible evidence of] a psychological injury and actual workplace conditions or events which could have caused or aggravated the psychological injury supported by competent medical evidence.” If the employer does not rebut the Presumption, the injury is compensable; if the employer rebuts the Presumption, the claimant must “prove by a preponderance of the evidence that the workplace conditions or events caused or aggravated the psychological injury.”

Psychological injuries arising out of and in the course of employment are no less real than physical injuries arising out of and in the course of employment, but proving psychological injuries stresses out everyone involved in District of Columbia workers’ compensation cases. The problem started with the Dailey test.

II. THE THIRD-PARTY STANDARD: DAILEY v. 3M COMPANY

Ms. Dorothy Dailey is not the first claimant to allege a psychological injury arising out of and in the course of her employment. Her appeal to the Director of the District of Columbia Department of Employment Services (“Director”), however, set the standard for adjudicating psychological injury claims for decades to come.


26 In a physical-mental claim, the claimant alleges a physical injury caused a mental injury. In a mental-mental claim, the claimant alleges an emotionally traumatic event or stressor caused a mental injury. In a mental-physical claim, the claimant alleges an emotionally traumatic event or stressor caused a physical injury.


28 Id. at 1214.

29 Ramey v. Potomac Elec. Power Co., CRB No. 06-38(R), AHD No. 05-318, OWC No. 576531 (July 24, 2008) [hereinafter Ramey on Remand].

30 Id.

31 In December 2004, the Compensation Review Board assumed administrative appellate review of Compensation Orders. D.C. CODE § 32-1521.01 of the Private Sector Workers’ Compensation Act (“the Act”). Before the creation of the Compensation Review Board, the Director of the Department of Employment Services ruled on appeals of Compensation Orders.

32 Ms. Dailey was a private sector employee. As such, her claim for workers’ compensation benefits was governed by the Private Sector Workers’ Compensation Act, D.C. CODE § 32-1501.
In the early 1980s, Ms. Dailey worked as a secretary for the 3M Company. She worked at her employer’s Indianapolis, Indiana office until 1983 when 3M Company gave her the choice to either relocate to its Washington, D.C. office or to separate from her employment.

Ms. Dailey relocated, and while working in 3M Company’s D.C. offices, began to suffer from depression and an ulcer. By January 1985, she stopped working and returned to Indiana. Sometime thereafter, Ms. Dailey requested a formal hearing to adjudicate her claim for ongoing temporary total disability benefits. At the formal hearing, Ms. Dailey argued that her disabling depression was causally related to “the disruption of her job and life situation [and that] the disorganization and pressure at [3M Company’s] District [of Columbia] office contributed to her condition.” In its defense, 3M Company contended Ms. Dailey’s condition did not constitute an accidental injury arising out of her employment. An administrative law judge ruled in favor of 3M Company and denied Ms. Dailey’s claim for relief because her psychological injury did not arise out of her employment.

Ms. Dailey appealed the denial of her claim to the Director. She argued she was entitled to workers’ compensation benefits for two reasons: (1) “[H]er predisposition to a depressive condition should not bar her eligibility for benefits when work-related events aggravated her pre-existing condition,” and (2) 3M Company had not rebutted the Presumption that her injury arose out of and in the course of her employment.

Affirming the denial of temporary total disability benefits, the Director specifically held:

[I]n order for a claimant to establish that an emotional injury arises out of the mental stress or mental stimulus of employment, the claimant must show that actual conditions of employment, as determined by an objective standard and not merely the claimant’s subjective perception of his working conditions, were the cause of his emotional injury. The objective standard is satisfied where the claimant shows that the actual working conditions could have caused similar emotional injury in a person who was not significantly predisposed to such injury.

In the District of Columbia, public-sector-employee claims for workers’ compensation disability benefits are governed by a separate act, the District of Columbia Government Comprehensive Merit Personnel Act of 1978, as amended, D.C. CODE § 1-623.01 (2021) (“Public Sector Workers’ Compensation Act”). Although this chapter focuses on private sector claims, with the District of Columbia Court of Appeals’ resolution of McCamey II and Ramey v. D.C. Dep’t of Emp’t Servs., 997 A.2d 694 (D.C. 2010) [hereinafter Ramey II], the tests for proving a psychological injury under either act are the same. See “The Subjective McCamey Standard,” infra.


34 Prior to April 3, 2001, workers’ compensation adjudicators in the District of Columbia were not classified as administrative law judges. D.C. CODE § 32-1543(b) of the Act. Throughout this article these adjudicators uniformly are referred to as administrative law judges.

35 Dailey, H&AS No. 85-259.

36 Id. (footnote omitted).
In reaching this conclusion, the Director surveyed prior workers’ compensation cases alleging psychological injuries including *McEvily v. Washington Metropolitan Area Transit Authority*\(^{37}\) and *Wenzel v. British Airways*.\(^{38}\)

In *McEvily*, Mr. Robert E. McEvily claimed he had suffered a psychological injury as a result of a manager’s failure to respond promptly to his work products and his professional needs. An administrative law judge denied Mr. McEvily’s request for workers’ compensation benefits because he had not experienced an incident at work which “would”\(^{39}\) have affected anyone who was not otherwise predisposed to psychiatric disturbance. The District of Columbia Court of Appeals (“Court”) affirmed the denial of benefits.

Similarly, in *Wenzel*, the Director had elaborated on the standard for determining when a psychological injury arises out of employment:

The *Chaney* decision held that, at the very least, the concept of “arising out of the employment” requires a showing that there were obligations placed on the employee or conditions under which the employee performed which exposed him to risks or dangers which could have [led] to the kind of psychological injury actually suffered. A claimant could meet this burden by offering evidence of a specific, articulable source of the stress injury within the conditions of the [workplace] and medical evidence that that source could produce the kind of stress injury which the claimant suffered. Thus, to support the ultimate finding that a psychological injury arises out of the employment there must be a finding, supported by the evidence, that within the obligations or conditions of the workplace there was a specific, articulable source of injury in the workplace and a finding, supported by medical evidence, that the alleged source of the injury could have produced the kind of injury the employee suffered.

The *Chaney* requirement grew out of a concern that in psychological injury cases the legal concept of arising out of the employment would become indistinguishable from medical causation. I noted in *Chaney* that often the factfinders in stress injury cases simply based their decisions solely on the testimonies or reports of psychiatrists or psychologists. Where the legal test for an injury arising out of the employment depends solely on the persuasiveness of medical experts and not on any independent findings on the conditions in the workplace or on the legal significance of any such conditions, the term “arises out of”

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\(^{39}\) For almost twenty years, administrative law judges interchangeably substituted “would” and “could” in the *Dailey* test; the Compensation Review Board ruled that doing so has little impact on the outcome of a case. *Ward v. D.C. Water & Sewer Auth.*, CRB No. 24-03, AHD No. 03-355, OWC No. 563614 (Apr. 14, 2006).
becomes synonymous with “medically induced, caused or aggravated by.” Thus, once medical causation is established, the inquiry for these factfinders ends.

* * *

In requiring more than a showing that an employee had a medically harmful, psychologically adverse reaction to the work environment, *Chaney* emphasized that it is the employment, and not the make-up of the employee, which must account for the source of the employee’s stress. If there is nothing discernible in the employment which for articulable reasons would ordinarily account for the employee’s severe reaction, then the employee’s injury does not arise out of the employment. Thus, inasmuch as *Chaney* directs attention to the work environment, and not to the employee’s perception of his work environment, a factfinder has an objective basis on which to make his findings.  

In a footnote in *Dailey*, the Director acknowledged that the test applied in that case was a departure from the purely objective *Chaney* test. Pursuant to *Chaney*, if the claimant proved an actual and specific source of stress and if the medical evidence established a causal connection between that source and the psychological injury, the injury was compensable as arising out of employment regardless of whether the source of stress would have affected a person not otherwise predisposed to the psychological injury; however, even under the *Chaney* test, if the claimant had a personal predisposition to the alleged psychological injury, an additional “accidental injury” test was imposed. The psychological injury “would not be considered ‘accidental’ if the resulting injury was in essence the inevitable or unavoidable consequences of the worker’s [personal] psychological make up, and the injury’s connection to the employment was more coincidence than causally connected.”

Returning to the Director’s analysis of the denial of benefits to Ms. Dailey, the Director accepted that prior to her employment Ms. Dailey had an obsessive-compulsive character pattern and that she had not been exposed to an unusually intense mental stimulus at work for 3M Company which would have caused a psychological injury in another person not so predisposed, but the

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40 *Wenzel*, H&AS No. 84-308.

41 *Dailey*, H&AS No. 85-259, at n.1. See also *Young*, 918 A.2d at 431 n.5 (mold exposure) (“our workers’ compensation case law relating to workplace allergens dictates against any assumption that, because a substance present in the Hospital may not have been at dangerous or unhealthful levels for the general public, the substance could not cause an adverse reaction in a particular claimant”); *Howard Univ. Hosp. v. District of Columbia Dep’t of Emp’t Servs.*, 881 A.2d 567 (D.C. 2005) (latex allergy); *Wash. Post v. District of Columbia Dep’t of Emp’t Servs.*, 853 A.2d 704 (D.C. 2004) (allergy to a newspaper printing chemical).

42 *Dailey*, H&AS No. 85-259, at n.1.

43 The *Dailey* test was interpreted to require more than “common” stressors for a psychological injury to be compensable: [W]hile the *Dailey* test does not by its terms have an explicit requirement of “unusualness”, it does by implication assume that there is something out of the ordinary, either intrinsically, or in the frequency, persistence, severity, or...
Director was not persuaded by Ms. Dailey’s arguments that her predisposition was immaterial or that the aggravation of her pre-existing condition was compensable. First, although the Director acknowledged an aggravation of a pre-existing condition may be compensable, because Ms. Dailey’s injury did not arise out of and in the course of her employment, there was no aggravation:

[T]o say that one’s working conditions have aggravated a pre-existing condition, presupposes that legal causation has already been established between the pre-existing condition and the injury which is attributed to the employment conditions; but in this case, legal causation was never established. The thrust of the [administrative law judge’s] finding was that whatever emotional problems claimant experienced were caused by her own personal make up and non-work related factors, as opposed to being caused by events or conditions of her employment.  

As for Ms. Dailey’s argument that 3M Company had not rebutted the Presumption, Ms. Dailey had not introduced persuasive evidence of an injury sustained during the scope of her employment; therefore, she had not invoked the Presumption, and 3M Company had no duty to rebut it. Thereafter,

intensity, about the claimed stressors, at least in connection with their capacity to produce incapacitating anxiety or emotional harm. There would be no point to such a test in the first instance if normal, common stressors inherent in any or most employment were sufficient for compensability purposes. All that would be required in the absence of such characteristics would be straightforward cause and effect, the rejection of which as the standard in this special class of cases is the basis of the Dailey test.


Dailey, H&AS No. 85-259. This circular argument overlooks that in order for an aggravation to be compensable, the pre-existing condition need not be work-related. Jackson v. D.C. Dep’t of Emp’t Servs., 955 A.2d 728, 734 n.7 (D.C. 2008).  

The requirement for “persuasive” evidence is significant for two reasons: (1) The Dailey test must be satisfied by a preponderance of the evidence, and (2) persuasive evidence requires weighing evidence when invoking the Presumption. Dailey, H&AS No. 85-259. In a physical injury case, all that is required to invoke the Presumption is “some” evidence, and a credibility determination at this stage is premature. See “Breaking Down the Test: Invoking the Presumption of Compensability—Credible Evidence that the Work-Related Conditions or Events Existed or Occurred,” infra.  

The Director actually replaced the test for invoking the Presumption with the result of the Presumption:

[I]n order for the presumption of compensability to arise, claimant must establish by reliable, credible and probative evidence, the existence of an injury and the fact that it occurred during the course of employment. Once these two basic facts are established, the statutory presumption arises that the injury arose out of the employment. In this case, claimant did not establish by reliable, credible and probative evidence that her injury occurred during the course of her employment; and therefore, the presumption of compensability did not arise.

Dailey, H&AS No. 85-259.
satisfying the *Dailey* test by a preponderance of the evidence became a prerequisite for invoking the Presumption:

Lastly, after determining, properly in our view, that Petitioner had failed to meet the *Dailey* test, [the administrative law judge] went on to weigh the evidence again, without reference to the presumption. This step was unnecessary, because, if the *Dailey* test is not met, the inquiry ends, and the claim is non-compensable. In that the [administrative law judge’s] conclusion remained the same, i.e., the claim was not compensable, we do point out that it would have been error to grant the claim following this exercise. If the actual conditions as found by the [administrative law judge] based upon substantial evidence in the record are not such that an average worker of normal sensitivities, not predisposed to emotional or psychological injury, could be expected to suffer the same or similar psychological injury as that claimed by a claimant, then, under the Act, the claim must be denied. Consistent with that, the place to “weigh” the medical evidence on this potentiality question, at least initially, is in the presumption stage.

* * *

Although we recognize the complexity to the proceedings that this might add, requiring as it does findings of fact based upon the record as a whole as part of the initial presumption analysis, we can see no better way to proceed in this special class of cases in which there is a test requiring those factual findings before proceeding to whether in a specific given case there is an actual causal relationship between the employment and the claimed injury. Thus, while there is no possibility on this record of conflicting outcomes between the pre-presumption analysis and the outcome following weighing the evidence as a whole, the proper place for the [administrative law judge] to have considered all the record evidence of relevance to the *Dailey* test must be at this initial stage.[47]

As early as September 1990, the *Dailey* test was being examined critically:

Although recovery for aggravation of a preexisting condition may seem incompatible with the *Dailey* test’s focus on a hypothetical employee who is not “predisposed” to injury, we do not read *Dailey* to preclude recovery where a claimant comes to the job

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[47] Rawlings v. Wash. Metro. Area Transit Auth., CRB No. 04-65, AHD No. 04-123, OWC No. 590774 (Jan. 19, 2006) abrogated by *Ramey II*, 997 A.2d 694. When originally adjudicated pursuant to the *Dailey* test, Mr. Rawlings’ claim was denied; however, during the pendency of his case, the standard changed to the *Ramey* test, and benefits were awarded. See Rawlings v. Wash. Metro. Area Transit Auth., CRB No. 10-038, AHD 04-123, OWC No. 590774 (Sept. 8, 2011).
with a preexisting psychological condition. Under Dailey, an employee predisposed to psychic injury could recover if he is exposed to work conditions so stressful that a normal employee might have suffered similar injury. Thus, an employee with a predisposition to mental illness is not precluded from recovering under Dailey. Only when so interpreted is the Dailey standard compatible with the [Private Sector] Workers’ Compensation Act.48

Whether or not a claimant is predisposed to a psychological injury, the struggle to strike the balance between compensating for psychological injuries and imposing an objective test to confirm a work-related psychological injury began shortly after Dailey issued (if not in Dailey itself).49

III. THE BEGINNING OF THE END: MCCAMEY I

In an attempt to reconcile the skepticism surrounding psychological injuries with the liberal purpose of the Act, in 2008 the Court required the Compensation Review Board revise the test for the compensability of physical-mental injury claims. The objective Dailey test was replaced with the subjective McCamey test, but the transition was not a smooth one.

In the mid-1990’s, Ms. Charlene McCamey experienced a serious psychological illness due in substantial part to her parents’ deaths.50 After treating with Dr. Maria C. Hammill, Ms. McCamey resumed her regular employment duties without limitation.51

On September 29, 2000 while working for the District of Columbia Department of Public Schools, Ms. McCamey fell and injured her forehead, lower back, and neck.52 As a result of this work-related accident causing physical

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49 In several cases decided throughout the next seventeen years, the District of Columbia Court of Appeals specifically endorsed the requirement that in order to be compensable, a psychological injury claim filed by a person with a significant predisposition to a particular psychological injury must involve an event at work which “could have affected someone else who was not significantly predisposed to that type of injury.” McCamey v. D.C. Dep’t of Emp’t Servs., 886 A.2d 543 (D.C. 2005) [hereinafter McCamey I] vacated, McCamey v. D.C. Dep’t of Emp’t Servs., 896 A.2d 191 (D.C. 2006) [hereinafter McCamey II]; see also Landesberg v. D.C. Dep’t of Emp’t Servs., 794 A.2d 607 (D.C. 2002); Gary v. D.C. Dep’t of Emp’t Servs., 723 A.2d 1205 (D.C. 1998); McKinley v. D.C. Dep’t of Emp’t Servs., 696 A.2d 1377 (D.C. 1997); Charles P. Young Co. v. D.C. Dep’t of Emp’t Servs., 681 A.2d 451 (D.C. 1996); Sturgis v. D.C. Dep’t of Emp’t Servs., 629 A.2d 547 (D.C. 1993); Porter v. D.C. Dep’t of Emp’t Servs., 625 A.2d 886 (D.C. 1993). The Court even relied on the Dailey test when ruling on an appeal of a D.C. Police and Firefighters Retirement and Disability Act claim for administrative sick leave necessitated by an on-duty, psychological injury. Franchak v. D.C. Metro. Police Dep’t, 932 A.2d 1086 (D.C. 2007). All of these cases at least have been abrogated in part or overruled in part by McCamey II or Ramey II.


51 Id.

52 Id.
injuries, Ms. McCamey also suffered from headaches, “depression, panic attacks, confusion, auditory hallucinations, and memory loss.”

Ms. McCamey returned to Dr. Hammill for treatment; Dr. Hammill opined that the work-related accident had exacerbated Ms. McCamey’s pre-existing psychological disorder. An independent medical examiner, psychiatrist Bruce Smoller, disagreed with Dr. Hammill; Dr. Smoller asserted the source of Ms. McCamey’s psychological injury was her pre-existing psychosis, not her work-related accident.

Following a formal hearing, an administrative law judge denied Ms. McCamey’s psychological injury claim for workers’ compensation disability benefits. The administrative law judge’s appropriately based the decision the Dailey test. Ms. McCamey had failed to prove “a person of normal sensibilities with no history of mental illness would have suffered a similar psychological injury.”

On appeal, the Director affirmed the administrative law judge’s decision. His rationale was that “the evidence did not show[] that an individual who did not have a pre-existing anxiety disorder would have suffered a psychological injury as a result of trauma to the head.”

On judicial review, the Court rejected Ms. McCamey’s argument that the Dailey test was not applicable if the aggravation of a claimant’s pre-existing psychological condition is caused by a physical injury rather than by job stress:

Nor is it decisive that [a claimant] cites a specific job-related accident as the cause of her disorder rather than less easily identified conditions of stress in the employment. Whatever the triggering event or condition, the Director may properly apply a rule for causation in this difficult area of emotional injury that discourages spurious claims—one focusing on the objective conditions of the job and their effect on the “normal employee” not predisposed to the injury by a mental disorder.

Furthermore, the Court acknowledged that Ms. McCamey’s aggravation argument was not “implausible in principle,” but because the Court “previously [had] approved the Director’s analysis in Dailey and [had] applied it to the very kind of situation [in Ms. McCamey’s case,]” it was “compelled” to affirm the denial of benefits.

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53 McCamey I, 886 A.2d at 544.
54 McCamey, OHA No. PBL02-031.
55 Id.
56 Id.
57 McCamey I at 545.
59 Id.
60 McCamey I, 886 A.2d at 547 (quoting Porter, 625 A.2d at 889) (emphasis removed).
61 Id. at 548.
62 Id. at 546.
To this point, it was business as usual. The Court, however, foreshadowed the next step: Ms. McCamey’s position, though ably and conscientiously presented, founders upon our precedents, and it cannot prevail unless those precedents [including Porter, McEvily, and others] are overruled by the court sitting en banc.  

On March 15, 2006, the Court granted Ms. McCamey’s petition for en banc review. McCamey I was vacated, and the Dailey test was on the brink of being abrogated.

IV. THE SUBJECTIVE MCCAMEY STANDARD

More than two years after issuing McCamey I, the District of Columbia Court of Appeals reconsidered Ms. McCamey’s case en banc. Ms. McCamey was a public sector employee. Nonetheless, the Court began its analysis of the compensability of physical-mental injuries by explaining that, pursuant to the Private Sector Workers’ Compensation Act, an aggravation of a pre-existing condition is compensable even if non-employment related factors contribute to or aggravate that condition. Because an employer must accept its employees with the frailties that predispose them to injury, if a disability only arises out of employment in part, the disability is compensable.

Unlike in the Private Sector Workers’ Compensation Act, the aggravation rule is not codified in the Public Sector Workers’ Compensation Act; however, the Employees’ Compensation Appeals Board previously had ruled that an aggravation of a pre-existing injury (physical or psychological) is compensable under the Federal Employees’ Compensation Act. Despite the differences among these workers’ compensation acts, those differences did not materially alter the Court’s analysis of Ms. McCamey’s physical-mental claim because of the humanitarian purpose of workers’ compensation law in general; the application of the well-settled principle that employers take their employees as they find them applies to both private sector employees and public sector employees, and:

63 Id. at 548.
64 McCamey II, 896 A.2d 191.
65 Id.
66 McCamey II.
67 Id.
68 Id.
70 Section 32-1508(6)(A) of the Act states: “If an employee receives an injury, which combined with a previous occupational or nonoccupational disability or physical impairment causes substantially greater disability or death, the liability of the employer shall be as if the subsequent injury alone caused the subsequent amount of disability.” Id.
71 The Employees’ Compensation Appeals Board is the administrative, appellate body charged with reviewing claims based upon the Federal Employees’ Compensation Act, 5 U.S.C. § 8101 et seq. (the predecessor of the Public Sector Workers’ Compensation Act).
72 5 U.S.C. § 8101 et seq.
The expansion of the objective test from mental-mental cases to physical-mental cases is inconsistent with the language, legislative history, and purpose of the [Private Sector] Workers’ Compensation Act and the [Public Sector Workers’ Compensation Act]. Its application deprives an entire class of employees (including claimants with pre-existing psychological conditions) of compensation for injuries that they can prove are connected to workplace accidents. Because the workers’ compensation statutes exist for the purpose of compensating employees for work-related injuries, the objective test (at least as applied to physical-mental claims) is inconsistent with the statute and must be overturned.73

Based on case law that progressively foreclosed workers’ compensation benefits for claimants predisposed to psychological injury unless a normal or average employee would have experienced a similar injury, the Dailey test shifted the focus from an examination of the work environment to an examination of a hypothetical third person and created a heightened standard for claimants with pre-existing psychological conditions. As such, the Dailey test circumvented the aggravation rule, and claimants with pre-existing conditions were prevented from recovering for work-related injuries:

In the context of physical-mental disabilities, the physical accident is the unexpected occurrence supplying the necessary (and objective) workplace connection. Thus, in cases of physical injury, so long as the claimant proffers competent medical evidence connecting the mental disability to the physical accident (legal causation), the claimant has either established a prima facie case of aggravation or a new injury. That being the case, the objective test is simply unnecessary. Put another way, the pure objective test is always met in physical-mental cases, provided that the claimant proves the connection between the mental condition and the physical accident.74

Pursuant to McCamey II, as in physical injury cases, in private sector cases where the Presumption applies, in order to invoke that presumption in physical-mental cases the claimant now must prove “the physical accident had the potential of resulting in or contributing to the psychological injury.”75 In private sector physical-mental cases where the Presumption has been rebutted and in public sector physical-mental cases where there is no Presumption, the claimant must prove “the physical accident caused or contributed to the psychological injury.”76

On remand from the Court, the Compensation Review Board summarized the new rule in physical-mental cases as follows:

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73 McCamey II, 947 A.2d at 1202.
74 Id. at 1208–09.
75 Id. at 1213.
76 Id. at 1214.
[W]here a claimant in a physical-mental claim presents competent medical evidence connecting a work related physical injury to a claimed psychiatric injury the claimant has established a *prima facie* case of either a new injury or an aggravation of a pre-existing condition. Although this case is a claim under the public sector act, the [C]ourt did not limit its ruling or rationale to that act, but explicitly indicated that the ruling applies to the public and private sector acts.

Thus, under the new rule, unlike in *Dailey*, the injured worker, having established a causal link between the physical injury and the employment, bears the burden of proving by a preponderance of the evidence that the physical injury caused or contributed to the claimed psychological injury. The injured worker satisfies this burden by presenting evidence not only of the occurrence of the physical injury, but also competent medical evidence showing the physical injury caused or contributed to the psychological injury. The [Court] wrote that “Where the presumption is either inapplicable or has been rebutted, the burden falls on the claimant to prove by a preponderance of the evidence that the physical accident caused or contributed to the psychological injury”.

[*McCamey II* at 1214.] The [Court] went on to state that “In determining whether a claimant has met his or her burden, [an administrative law judge] must weigh and consider the evidence as well as make credibility determinations [and may] of course consider the reasonableness of the testimony and whether or not particular testimony has been contradicted or corroborated by other evidence.” *Id.*

This being a public sector case in which the presumption is “inapplicable”, the quoted language suffices to explain the standard. That is, the physical injury satisfies the causal link to employment, and what remains is a consideration as to whether there is competent medical evidence connecting the physical injury to the claimed psychological injury, thereby establishing a *prima facie* case of compensability of the psychological injury, which can then only be defeated by employer presenting a preponderance of countervailing evidence. The [C]ourt stressed that compensability may be shown where the claimant has a pre-existing psychological condition that is aggravated by the physical injury, if the aggravation is a direct and natural result of the physical injury.77

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77 McCamey v. D.C. Pub. Sch., CRB No. 10-03(R), AHD No. PBL 02-031, DCP No. LT2-DDT002160 (June 17, 2008).
The objective standard examining a claimant’s particular susceptibilities was rejected, and the Dailey test was abolished.78

V. THE MENTAL-MENTAL TEST: THE RAMEY TEST

In McCamey II the District of Columbia Court of Appeals specifically refrained from crafting a test to establish the necessary connection between employment and injury in mental-mental claims.79 Nonetheless, the Court emphasized:

[A]ny test that prevents persons predisposed to psychological injury from recovering in all cases is inconsistent with the legislative history and humanitarian purpose of the [Private Sector Workers’ Compensation Act and the Public Sector Workers’ Compensation Act]. Accordingly, if the [Compensation Review] Board decides that a special test for mental-mental claims remains desirable, it must be one focused purely on verifying the factual reality of stressors in the work-place environment, rather than one requiring the claimant to prove that he or she was not predisposed to psychological injury or illness, or that a hypothetical average or healthy person would have suffered a similar psychological injury, before recovery is authorized.80

Less than a month after McCamey II issued, the Court remanded a private sector, post-traumatic stress disorder case for reconsideration in light of its McCamey II decision—Ramey v. Potomac Electric Power Company.81

Mr. Benjamin Ramey reported to work as a conduit installer for Potomac Electric Power Company just before midnight on August 29, 2003.82 Mr. Ramey reported to a supervisor’s office for a job assignment, but based upon several observable signs, the supervisor accused Mr. Ramey of drinking.83 The supervisor transported Mr. Ramey to the employer’s downtown location and denied Mr. Ramey’s requests to use a restroom and smoke.84 For two hours, another supervisor attempted to arrange a breathalyzer test for Mr. Ramey.85

Mr. Ramey, his supervisor, a union representative, and a senior labor relations specialist eventually loaded into an automobile and drove to a medical facility about an hour south of the employer’s downtown location.86 The other

78 Id.
79 McCamey II, 947 A.2d at 1214.
80 Id. The Court’s warning here is similar to the caution issued in Young. See Young, 918 A.2d 427.
82 Id.
83 Id.
84 Id.
85 Id.
86 Id.
men denied Mr. Ramey’s requests to use a restroom, eat, or drink.\textsuperscript{87} When the facility could not perform a breathalyzer test, the group traveled to another facility; however, this facility also could not perform a breathalyzer test, so the group returned to the employer’s downtown location.\textsuperscript{88}

Almost twelve hours after he reported to work, Mr. Ramey’s employer gave him two successive breathalyzer tests.\textsuperscript{89} The first reading was 0.070.\textsuperscript{90} The second reading was 0.065. After his employer inspected his car, Mr. Ramey drove home and went to bed.\textsuperscript{91}

Mr. Ramey’s employer suspended him.\textsuperscript{92} He later resumed his usual duties, but his employer placed him on decision-making leave, which required participation in an alcohol rehabilitation program, three years’ probation, and random drug and alcohol testing during the first two years of probation.\textsuperscript{93}

Mr. Ramey participated in the alcohol rehabilitation program for two weeks.\textsuperscript{94} However, because he continued to drink, the program discharged him.\textsuperscript{95}

The next day, Mr. Ramey went to the Howard University Hospital emergency room for arm numbness and tingling.\textsuperscript{96} Shortly thereafter, he sought psychiatric treatment and filed a claim for workers’ compensation benefits as a result of post-traumatic stress disorder induced by his treatment on and about August 30, 2003.\textsuperscript{97} Applying the \textit{Dailey} test, an administrative law judge denied Mr. Ramey’s claim for relief:

The credible version of the events surrounding claimant’s activities on August 30, 2003 does not reflect the presence of stressors which would cause emotional injury to a person not predisposed to such injury. In that the evidence adduced by claimant has not invoked the presumption of compensability, his claim for relief, pursuant to the District of Columbia Workers’ Compensation Act, must fail.

Claimant testified, at hearing and at his deposition, that he was forcibly detained with implied threats of physical harm; that he was driven around in the dark for hours with intimidating companions who did not respond to his questions about where and why they were traveling; that he urinated on himself because he was not allowed to use a restroom; that it was obvious to his companions that he wet himself; that they laughed at him for urinating on himself and that they later told co-workers, who

\textsuperscript{87} \textit{Id.}
\textsuperscript{88} \textit{Id.}
\textsuperscript{89} \textit{Id.}
\textsuperscript{90} \textit{Id.}
\textsuperscript{91} \textit{Id.}
\textsuperscript{92} \textit{Id.}
\textsuperscript{93} \textit{Id.}
\textsuperscript{94} \textit{Id.}
\textsuperscript{95} \textit{Id.}
\textsuperscript{96} \textit{Id.}
\textsuperscript{97} \textit{Id.}
ridiculed him when he returned to work. Claimant believes he was treated like a dog or an animal, and remembers that the way he was treated made him feel “like dirt.”

Claimant was wearing pale grey coveralls the morning of August 30, 2003; he believes that the front of his pants all the way down to his shins, was wet with dark stains after he urinated on himself. He says that he felt humiliated and embarrassed when, according to him, Mr. Johnson and Mr. Negussie looked at his soiled pants and snickered. According to claimant’s testimony, when he returned to work after the five-day suspension he was embarrassed because he believed co-workers were talking about him urinating on himself. However, these perceptions were not corroborated by evidence from any other source.

Rather, the credible record evidence indicates that claimant was visibly inebriated, unsteady on his feet, and incoherent; that he was not forcibly restrained or coerced into going; that he understood that he was being driven to find a facility which would administer a Breathalyzer test; that it was not dark when he and the other PEPCO employees (including a union representative who had identified himself to claimant and was there to look out for claimant’s interests) left the downtown office; that they were driving around trying to find a facility for no longer than five hours; that the atmosphere in the car was friendly and relaxed rather than oppressive, and that no one in the car or at the office (again, including the union representative who was present to look out for claimant), was aware of claimant’s urinating on himself.

Clearly, it is claimant’s perception of the events of August 30, 2003, rather than the actual incident, which impacted his emotional state. Said perception, which does not reflect the reality which would have been experienced by the “normal employee”, cannot invoke the presumption that the actual incidences had the potential to cause emotional injury.98

The Compensation Review Board affirmed the administrative law judge’s ruling.99 However, because McCamey II was decided while this case was still pending before the Court, it vacated the Compensation Review Board’s Decision and Order affirming the Compensation Order.100

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98 Id.
99 Ramey v. Potomac Elec. Power Co., CRB No. 06-38, AHD No. 05-318, OWC No. 608087 (June 14, 2006).
In McCamey II, the Court had been unwilling to create a “carefully crafted test to establish the necessary connection between mental injury and work” that was appropriate for cases involving mental-mental claims where the objectively verifiable work connection may be less than apparent. That responsibility fell to the Compensation Review Board so it developed the Ramey test for mental-mental injuries:

[A]n injured worker alleging a mental-mental claim invokes the statutory presumption of compensability by showing a psychological injury and actual workplace conditions or events which could have caused or aggravated the psychological injury. The injured worker’s showing must be supported by competent medical evidence. The [administrative law judge], in determining whether the injured worker invoked the presumption, must make findings that the workplace conditions or events existed or occurred, and must make findings on credibility. If the presumption is invoked, the burden shifts to the employer to show, through substantial evidence, the psychological injury was not caused or aggravated by workplace conditions or events. If the employer succeeds, the statutory presumption drops out of the case entirely and the burden reverts to the injured worker to prove by a preponderance of the evidence that the workplace conditions or events caused or aggravated the psychological injury.

In Ramey II, the Court commented “the [Compensation Review] Board essentially adopted the test announced by this [Court] in McCamey [II] for use in physical-mental cases[] for application in mental-mental cases.” The McCamey and Ramey tests now apply in all work-related psychological injury cases in the District of Columbia.

VI. BREAKING DOWN THE TEST: INVOKING THE PRESUMPTION OF COMPENSABILITY

In McCamey II, the District of Columbia Court of Appeals created the current test for invoking the Presumption in a physical-mental claim: in a private sector case, the claimant must show “the physical accident had the potential of resulting in or contributing to the psychological injury.” In other words, a claimant invokes the Presumption by demonstrating correlation or general causation (the physical accident has the potential to cause or to contribute to a psychological injury), not specific causation (the physical accident actually caused or contributed to a psychological injury in this claimant).

101 Ramey I, 950 A.2d at 35 (quoting McCamey II, 947 A.2d at 1214).
102 Ramey on Remand, CRB No. 06-38(R).
103 Ramey II, 997 A.2d at 700.
104 McCamey II, 947 A.2d at 1213.
In a case involving a mental-mental injury, there is no physical accident to supply an obvious, yet necessary, workplace connection. Instead, pursuant to *Ramey*, the claimant “invokes the statutory presumption of compensability by showing a psychological injury and actual workplace conditions or events which could have caused or aggravated the psychological injury.”

Invoking involves an issue of general causation; however, the Compensation Review Board replaced the missing physical accident with (1) a credibility determination and (2) competent medical evidence connecting the mental disability to the physical accident.

Whether the injury is physical or psychological, the issue at this stage of a workers’ compensation claim is not one of specific causation but only potential causation—a distinct difference between workers’ compensation litigation and tort litigation. From the outset in a civil lawsuit, the plaintiff has the burden of proving actual causation between an act and an injury. In a tort case for intentional infliction of emotional distress, the defendant’s outrageous conduct actually must cause the plaintiff’s severe emotional distress. Proving the defendant’s outrageous conduct has the potential to cause severe emotional distress is not enough to prevail. In a tort case for negligent infliction of emotional distress, the defendant’s actions must have, “in fact, caused serious emotional distress to the plaintiff,”

There also is a distinct difference between the proof necessary to invoke the Presumption in a workers’ compensation claim for a physical injury and the proof necessary to invoke the Presumption in a workers’ compensation claim for a psychological injury. For example, Mr. Walter McNeal, Jr. invoked the Presumption in his workers’ compensation claim for a physical injury through testimony deemed not credible:

> On December 3, 2002, Claimant was standing in the lower level of the bus garage, talking to a co-worker, Felton Lowery, when a bus rounded the corner behind where Claimant was standing. As the bus passed Claimant, it made a minor brush with Claimant’s upper back and shoulder area, but the contact was insufficient to cause Claimant to experience any significant force or trauma.

> * * *

> Claimant was not injured as a result of this incident, and none of the medical care which Claimant subsequently received, and none of the disability experienced following the surgery, was causally related to a work injury, there being no such injury.

The administrative law judge did not believe the incident described by Mr. McNeal had occurred, and the history Mr. McNeal had recounted to his

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105 *Ramey on Remand*, CRB No. 06-38(R).
106 *Hedgepeth*, 22 A.3d at 811.
treated and evaluating physicians included an incident “far more serious and traumatic”108 than the one the administrative law judge found actually had occurred. Nonetheless, Mr. McNeal’s discounted testimony and the medical evidence premised upon his reported history sufficed to invoke the Presumption.109

On the other hand, because of the Ramey criteria, Ms. Lakeisha Lewis failed to invoke the “presumption” in her mental-mental case when the administrative law judge did not find credible her testimony regarding workplace events and conditions:

Claimant’s testimony and Claimant’s reciting of events as listed in the records of Dr. Bartlett and Dr. Major Lewis cannot be found to be credible. Both the workplace event or condition did not exist as described by Claimant that would lead to a determination that Claimant invoked the presumption under Ramey that her injury arose out of and in the course of her employment.110

The Presumption is the starting point of the causation analysis, and there is no distinction in the Act between physical injuries and psychological injuries. The threshold for invoking the Presumption is higher for psychological injuries than it is for physical injuries; however, when invoking the Presumption, any suspicion of deception should apply equally, and the proof needed to invoke the Presumption in a case for a physical injury or in a case for a psychological injury should be the same.

VII. BREAKING DOWN THE TEST: INVOKING THE PRESUMPTION OF COMPENSABILITY—CREDIBLE EVIDENCE THAT THE WORKPLACE CONDITIONS OR EVENTS EXISTED OR OCCURRED

A claimant alleging a physical injury invokes the Presumption by presenting “some evidence” of a disability and of a work-related event, activity, or requirement that has the potential to cause or to contribute to the disability.111 A claimant usually invokes the Presumption through direct testimony, and at this

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108 Id.
109 This issue was beyond challenge before the Court of Appeals:
[The employer] does not challenge the [administrative law judge’s] determination that McNeal triggered the presumption of a “medical causal relationship between [the] alleged disability and the accidental injury,” and it could not fairly do so. McNeal’s testimony and various medical records reported that he was at work when a bus struck his back and neck and that shortly thereafter he was diagnosed with neck injuries. As the [Compensation Review Board] recognized, the [administrative law judge] “properly shifted the burden to [the employer] to produce evidence that is substantial, specific and comprehensive enough to sever the potential employment connection.” McNeal v. D.C. Dep’t of Emp’t Servs., 917 A.2d 652, 656 (D.C. 2007).
111 Ferreira, 531 A.2d at 655.
stage of a workers’ compensation case involving a physical injury—even if the claimant’s testimony is not credible—the Presumption can be invoked by that testimony.112 Based upon these fundamental tenets of District of Columbia workers’ compensation law, the Compensation Review Board inaccurately summarized the McCamey test. In McCamey II, the Court wrote:

Thus, we hold that it is appropriate to apply the causal standards seen throughout D.C. workers’ compensation cases. In cases where the statutory presumption is applicable, the claimant must show that the physical accident had the potential of resulting in or contributing to the psychological injury. See Smith, supra, 934 A.2d at 435 (quoting Mexicano v. District of Columbia Dep’t of [Employment Servs.,] 806 A.2d 198, 204 (D.C. 2002)) (“To benefit from the statutory presumption, the employee need only show some evidence of a disability and a work-related event or activity which has the potential of resulting in or contributing to the disability.”). Where the presumption is either inapplicable or has been rebutted, the burden falls on the claimant to prove by a preponderance of the evidence that the physical accident caused or contributed to the psychological injury. See Washington Post v. District of Columbia Dep’t of Employment Servs., 852 A.2d 909, 911 (D.C. 2004). In determining whether a claimant has met his or her burden, [an administrative law judge] must weigh and consider the evidence as well as make credibility determinations. In this regard, the [administrative law judge] may of course consider the

112 Storey, 162 A.3d at 797. Agreeing with a lengthy dissent written by the author of this article, the Court specifically ruled that an administrative law judge is not to make credibility determinations when assessing whether a claimant’s testimony invokes the Presumption in a physical injury case:

This appeal asks us to consider whether an Administrative Law Judge (“ALJ”) is authorized to make credibility determinations and weigh a claimant’s evidence in determining whether the claimant has met his or her “threshold requirement,” to be entitled to the statutory presumption of compensability. For the reasons that follow, we hold that an ALJ may not assess the credibility of a claimant’s evidence at this initial stage. Instead, the claimant is entitled to the statutory presumption that the injury arose during the course of employment and therefore entitled to workers’ compensation benefits, so long as he or she presents “some evidence” to establish a prima facie case of a work-related injury. Wash. Post v. District of Columbia Dep’t of Emp’t Servs., 852 A.2d 909, 911 (D.C. 2004). The burden is then on the employer to rebut the presumption that an employee’s injury was, in fact, not related to his or her employment. Id. The employer can rebut the presumption by proffering substantial evidence of non-causation, i.e., evidence that is “specific and comprehensive enough” that a “reasonable mind might accept it as adequate to contradict the presumed connection between the event at work and the employee’s subsequent disability.” Id. (footnote, citation, internal quotation marks and brackets omitted). This, again, is not a matter as to which the ALJ is to make credibility determinations. Only if the employer is able to rebut the presumption and the burden returns to the claimant is the ALJ entitled to make credibility determinations.

Id. at 797.
reasonableness of the testimony and whether or not particular testimony has been contradicted or corroborated by other evidence.\textsuperscript{113}

In other words, the Court ruled the weighing and credibility considerations should take place after the employer has rebutted the Presumption. However, the Compensation Review Board requires a credibility determination to invoke the Presumption in psychological injury cases.

In order to invoke the Presumption in mental-mental cases, the claimant must offer credible evidence of a psychological injury and actual workplace conditions or events that could have caused or aggravated the psychological injury supported by competent medical evidence.\textsuperscript{114} The added credibility requirement is an obvious attempt to ensure the work-related condition or event as reported by the claimant actually existed or occurred; however, whether the claimant’s injury is physical or psychological in order to arise out of and in the course of employment, the work-related condition or event as reported by the claimant must actually exist or occur. Thus, if assessing the credibility of a claimant’s testimony at this stage of a physical injury case is an inappropriate weighing of the evidence, assessing the credibility of a claimant’s testimony at this stage of a psychological injury case also is premature.\textsuperscript{115} Nonetheless, because the Compensation Review Board adopted this added requirement for mental-mental cases, the objectivity of the credibility determination must remain focused on the work environment; it cannot focus on the claimant’s perception or characterization of the work environment.\textsuperscript{116}

Mr. Phillip A. Taylor, a mechanic, checked a vehicle that came into his employer’s shop and, upon inspection, found the tires worn out, struts improperly installed, and alignment to be off. He reported this information to the shop manager, who instructed him to replace the tires, ignore the remaining problems,

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\textsuperscript{113} McCamey II, 947 A.2d at 1213–14 (emphasis added).

\textsuperscript{114} Ramey on Remand, CRB No. 06-38(R).

\textsuperscript{115} See Storey, 162 A.3d at 804; If, as the majority of the [Compensation Review Board] and [the employer] claim, an [administrative law judge] is allowed to discredit an employee’s evidence at the presumption stage, without even needing to consider the employer’s rebuttal evidence, then the statutory purpose of the presumption would be contravened. Essentially, the burden of proof would be on the employee to demonstrate that he or she suffered a work-related injury, rather than on the employer to show that the claimant did not suffer such an injury. That formulation of the burden of proof is in tension with what the Council intended when it enacted the statutory presumption. See D.C. Council, Report on Bill 3-106, supra, at 15 (burden is on the employer to demonstrate that employee did not suffer a compensable injury); see, e.g., McNeal, 917 A.2d at 658 (a claimant only has the burden when employer presents evidence that “rebut[s] the presumed causal connection”); see also Clark Constr. Grp., Inc. v. District of Columbia Dep’t of Emp’t Servs., 123 A.3d 199, 203 (D.C. 2015) (court will look to the legislative history where there are persuasive reasons to do so).

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and sign a ticket indicating he had performed all the work. Mr. Taylor was concerned that not addressing all of the problems could result in an accident and serious injuries, but the shop manager told Mr. Taylor to “sign the ticket and let it go.”

That night, Mr. Taylor began crying, had difficulty driving, and could not sleep.

The next day, a customer specifically requested an oil change using 5W30 weight oil. Because the shop was out of that grade, the manager instructed Mr. Taylor to use 10W30 weight oil instead. Furthermore, when Mr. Taylor was on his way to inform the customer about the change in the grade of oil, the manager instructed him to use the 10W30 weight oil without telling the customer. Shortly thereafter, Mr. Taylor left work because of stomach problems and an inability to stand; he did not return to work and received treatment for depression.

An administrative law judge ruled that although Mr. Taylor’s psychological injury occurred in the course of employment, it did not arise out of employment. The Director reversed the Compensation Order and awarded benefits because the administrative law judge had disregarded the fact that the actual work conditions Mr. Taylor asserted had caused his psychological injury existed:

On the one hand, the [administrative law judge] appears to have accepted claimant’s testimony that the events on December 30th and 31st did in fact occur, and that claimant suffers from depression. On the other hand, however, the [administrative law judge] made the finding that claimant’s depression resulted from his perception of events (that the new management was unethical) in the workplace. Thus, the [administrative law judge’s] finding that claimant’s depression resulted from claimant’s perception of events in the workplace is not in accordance with the evidence, and said finding does not rationally flow from the evidence. Therefore, the [administrative law judge’s] finding must be reversed as a matter of law.

* * *

As to claimant’s disability, the parties do not dispute that claimant suffers from a psychological impairment that could have been caused from the work. (HT 134, 137).

The question is whether claimant made a showing that the stressors complained of were actual conditions of the employment and not merely a subjective perception of the working conditions. Claimant provided uncontradicted testimony that management instructed him not to inform a customer that the services provided were not what the customer had requested. Specifically, the customer requested 5W30 weight oil, and since the employer did not have 5W30 in stock it substituted with 10W30 weight oil and

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refused to permit the claimant to inform the customer. Claimant also testified regarding the potential damage a different oil weight could cause to an engine. Claimant provided further uncontradicted testimony regarding management’s refusal to permit him to inform a customer that replacement of tires on her vehicle would not completely resolve the whole problem with the vehicle. Claimant also testified that to leave the vehicle in the condition as directed by the employer could result in a failure of the vehicle’s steering mechanism and result in serious injuries. 

* * *

Consequently, based on this record, the claimant has adduced substantial evidence that his reaction was from actual events that did in fact occur in the workplace.

* * *

In the instant case, although the claimant has made a prima facie showing (sufficient to invoke the presumption of compensability) that his actual working conditions could have caused his psychological injury, pursuant to Ferreira, supra. A special standard has been carved out for non-traumatically caused mental injuries. Thus, the focus in such case is whether the stressors of the job [were] so great that they would have caused harm to an average person. See Dailey v. 3M Company and Northwest National Insurance Co., H&AS No. 85-259 (Final Compensation Order May 19, 1988). In the present case, based on the evidence that claimant was instructed to participate in employer’s deceptive practices as a condition of employment, claimant has established that the conditions on his job were such that they could have caused harm to an average person. Id. 118

One of the problems demonstrated by Taylor is that the Dailey test had implemented an additional requirement for invoking the Presumption beyond a determination of whether or not the work-related conditions and events as reported by the claimant actually existed or occurred. Mr. Taylor made a showing that “his actual working conditions could have caused his psychological injury.” 119 At that point, the Presumption was invoked, and rather than shift the focus to “an average person,” the burden should have shifted to the employer to rebut the Presumption. Instead, Mr. Taylor’s claim for a psychological injury he proved could have been caused by work-related events would have been barred by Dailey’s version of objective verifiability if a third person would not have sustained a psychological injury as a result of the work-related events Mr. Taylor actually experienced.

The Dailey test attempted to create objective verification of a psychological injury by imposing a hypothetical third-party requirement that an “average person not predisposed to such injury would have suffered a similar

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118 Id.
119 Id.
injury.” Dailey’s inappropriate standard did not prove or disprove causation, and that condition has been replaced by a requirement that credible evidence objectively verifies the existence of the workplace conditions or events that allegedly caused the mental-mental injury. This new credibility condition precedent is unique to invoking the Presumption in mental-mental cases. Although it arguably satisfies the underlying policy requirement that only injuries arising out of and in the course of employment are compensable as workers’ compensation claims, it imposes an additional requirement for invoking the Presumption in cases for psychological injuries that is not required in other cases.

VIII. BREAKING DOWN THE TEST: INVOKING THE PRESUMPTION OF COMPENSABILITY—COMPETENT MEDICAL EVIDENCE THAT THE WORKPLACE COULD HAVE CAUSED THE MENTAL-MENTAL INJURY

In order to invoke the Presumption in a mental-mental case, the claimant must present credible evidence of a psychological injury and actual workplace conditions or events which could have caused or aggravated that psychological injury. In addition, the claimant’s proof must be supported by competent medical evidence. However, there is no regulation governing what constitutes competent medical evidence.

In Ramey, on remand the administrative law judge summarized the medical evidence sufficient to invoke the Presumption as follows:

In the instant case, the claim for benefits is premised upon an alleged psychological injury caused or aggravated by workplace stress (“mental-mental” claim). Claimant herein invokes the statutory presumption of compensability by showing a psychological injury and actual workplace conditions or events which could have caused or aggravated the psychological injury. Documentary evidence of a psychological injury includes the reports of Dr. Carl Douthitt and clinical social worker Radhika Joglekar. Claimant has adduced competent medical evidence to support his contention that the record events which occurred between August 30, 2003 and November 3, 2003 could have caused or aggravated a psychological injury.

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120 McCamey II at 1201.
121 Ramey on Remand, CRB No. 06-38(R).
122 The opinion of a licensed clinical social worker qualifies as competent medical evidence sufficient to invoke the Presumption. Howard v. Wash. Metro. Area Transit Auth., CRB No. 12-147(1), AHD No. 12-109, OWC No. 683290 (Oct. 30, 2013). The medical records relied on to invoke the Presumption do not have to have been based upon a contemporaneous medical examination. Thomas v. Wash. Metro. Area Transit Auth., CRB No. 08-226, AHD No. 08-037, OWC No. 635214 (Mar. 22, 2010).
Not a single medical opinion is quoted as a basis for general causation; the administrative law judge relied upon just the existence of unexplained medical records as competent medical evidence to invoke the Presumption.

An absence of medical evidence should not qualify as competent medical evidence, and at least arguably, even though methodology and conclusion are closely related when mental health experts assess diagnosis and causation, a doctor’s reliance solely upon a claimant’s subjective history to form an opinion regarding causation also should not qualify because the history of a work-related event alone does not answer the question of whether that event had the potential to cause or aggravate a psychological injury.124 The mere manifestation of symptoms while at work is not compensable:

[T]here are some injuries so thoroughly disconnected from the workplace that they cannot be said to “aris[e] out of or in the course of employment.” See 1 ARTHUR LARSON & LEX K. LARSON, LARSON’S WORKERS’ COMPENSATION LAW § 4.02 (2011) (Some risks have “origins of harm so clearly personal that, even if they take effect while the employee is on the job, they could not possibly be attributed to the employment.”).125

Regardless of what evidence qualifies as competent medical evidence, the requirement of offering competent medical evidence that supports the claimant’s showing of a psychological injury and actual workplace conditions or events which could have caused or aggravated the psychological injury in order to invoke the Presumption is another requirement unique to work-related psychological injury claims.126 There is no such requirement in work-related physical injury claims:

The statutory presumption applies as much to the nexus between an employee’s malady and his employment activities as it does to any other aspect of a claim. Swinton v. Kelly, 180 U.S. App. D.C. at 223, 554 F.2d at 1082 (construing the Longshoremen’s and Harbor Workers’ Compensation Act, the predecessor of the Act.) [The claimant] was not obliged to present expert opinion of causation in order to enjoy the benefit of the presumption. “It was not [his] burden to do that unless and until the employer presented sufficient evidence to rebut the presumed causal connection.” Id.

124 A claimant’s history of symptom development and positive response to removal from the work environment may permit a doctor to make an appropriate diagnosis or treatment recommendations, but neither a diagnosis nor treatment is the same as an opinion regarding causation.

125 Muhammad D.C. Dep’t of Emp’t Servs., 34 A.3d 488, 496 (D.C. 2012) (footnote omitted).

126 Storey, 162 A.3d at 803 (“Physical injury cases differ from ‘mental-mental’ cases because they do not require the claimant ‘to present expert opinion of causation in order to enjoy the benefit of the presumption’”).
at 223 n.35, 554 F.2d at 1082 n.35. Because [the employer] did not present such evidence, the presumption controls.  

Again, the threshold for invoking the Presumption is higher in psychological injury claims than it is in physical injury claims. In order to maintain fidelity to workers’ compensation policies and principles, it shouldn’t be—but even under the Ramey test, it must be invoked properly and reasonably.

IX. BREAKING DOWN THE TEST: REBUTTING THE PRESUMPTION OF COMPENSABILITY

After a claimant has invoked the Presumption in a mental-mental case, in order to rebut the Presumption, an employer must “show, through substantial evidence, the psychological injury was not caused or aggravated by workplace conditions or events.” This obligation is the same in a physical injury case:

This presumption operates, though, only “in the absence of evidence to the contrary.” D.C. CODE § 32-1521. “Once the presumption is triggered, the burden is upon the employer to bring forth ‘substantial evidence’ showing that death or disability did not arise out of and in the course of employment.” Ferreira, 531 A.2d at 655 (citation omitted). The employer’s evidence simply needs to be “specific and comprehensive enough,” id. (citation omitted), that “a reasonable mind might accept [it] as adequate” (footnote omitted) to contradict the presumed causal connection between the event at work and the employee’s subsequent disability. See, e.g., Safeway Stores, Inc. v. District of Columbia Dep’t of Employment Servs., 806 A.2d 1214, 1219-20 (D.C. 2002). Accordingly, while we have said that “the presumption of compensability cannot be overcome merely ‘by some isolated evidence,’” Whittaker v. District of Columbia Dep’t of Employment Servs., 668 A.2d 844, 847 (D.C. 1995) (citation omitted), neither is the presumption “so strong as to require the employer to prove that causation is impossible in order to rebut it.” Washington Hosp. Ctr. v. District of Columbia Dep’t of Employment Servs., 744 A.2d 992, 1000 (D.C. 2000) (emphasis in the original).

To meet its burden, an employer usually offers an opinion from an independent medical examiner: “[A]n employer has met its burden to rebut the presumption of causation when it has proffered a qualified independent medical expert who, having examined the employee and reviewed the employee’s medical

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127 McNeal, 917 A.2d at 658.
128 “Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” Children’s Def. Fund v. D.C. Dep’t of Emp’t Servs., 726 A.2d 1242, 1247 (D.C. 1999).
129 Ramey on Remand, CRB No. 06-38(R).
130 Wash. Post, 852 A.2d at 911.
records, renders an unambiguous opinion that the work injury did not contribute to the disability.” 131

Moreover, an employer’s burden is not satisfied if a doctor espouses anything but a clear and unambiguous opinion that employment conditions and the claimant’s disability are not related in any way because if the claimant’s employment contributes to an injury even in part, that injury is compensable. The difference between invoking the Presumption and rebutting the Presumption is that to invoke the Presumption, the claimant’s medical evidence must support general causation, but in order to rebut the Presumption, the employer’s medical evidence must include a negative opinion regarding specific causation.

Although causation opinions offered when invoking the Presumption and causation opinions offered when rebutting the Presumption are both subjective, the worker an independent medical examiner observes, arguably, differs from the worker the treating physician observes. The treating physician examines a patient seeking help; the independent medical examiner scrutinizes a claimant seeking benefits mired in litigation. These differences may affect multiple aspects of the examination, the resulting opinions, and the weighing of the evidence.

X. BREAKING DOWN THE TEST: WEIGHING THE EVIDENCE

If and only if an employer presents substantial evidence that the claimant’s psychological injury is not caused or aggravated by workplace conditions or events, the administrative law judge weighs the evidence. When weighing the evidence, the burden returns to the claimant to prove by a preponderance of the evidence that the psychological injury arose out of and in the course of employment. 132 At this point in the analysis, the claimant does not receive the benefit of the Presumption, and even though causation may be difficult to prove, there is no provision for relaxing that burden.

A psychological injury, be it depression or anxiety or post-traumatic stress disorder, is not a signature disease specifically linked to conditions of employment. When a claimant reports to a doctor for treatment, the doctor assesses the situation for therapeutic purposes, not for liability purposes. Importantly, neither a claimant’s subjective history nor a diagnosis is a cause, and little effort, if any, may be given to ruling in or ruling out non-employment-related causes or even objective reality. Undoubtedly, the complex interaction of multiple conditions and circumstances is difficult to untangle, but when arriving at an opinion of causation for purposes of liability, some effort is necessary. If that opinion is based upon the claimant’s subjective complaints without some forensic effort, it is conjecture, and all it does is bolster the claimant’s credibility regarding whether a particular event actually occurred and the claimant’s opinion whether a particular event caused or contributed to the claimant’s psychological injury. 133

131 Id. at 910.
132 McCamey II at 1214.
133 For example, Ms. Galina Hamlett alleged her psychological injury was caused by stress at work from verbal attacks and a non-supportive work environment. Based upon this history, Ms. Hamlett’s treating psychiatrist diagnosed her with psychosis not otherwise specified. An
Admittedly, because “[m]ental disorders result from an extraordinarily complex interrelation between an individual’s internal or subjective reality and his external or environmental reality,” a precise causation determination may be impossible. Precision, however, is not necessary in a District of Columbia workers’ compensation case; so long as employment conditions contribute to the existence or aggravation of an injury, that injury is compensable. Thus, even though there is no provision for relaxing the burden of proof, for a psychological injury to be compensable, employment only needs to contribute to the psychological injury.

XI. CONCLUSION

The issue isn’t whether or not work-related psychological injuries should be compensable. The issue is how to prove compensability in a way that avoids stressing out the entire workers’ compensation community. The three main arguments for a heightened standard of proof in psychological injury cases focus on the prejudices against psychological injuries:

1. Mental injuries are subjective.
2. It is difficult, if not impossible, to apportion personal stressors and industrial stressors.
3. A psychological injury is difficult to disprove.

Feeding off these arguments, the error in the Dailey test was that it didn’t focus on employment conditions; it focused on whether another person would have

administrative law judge did not accept the doctor’s testimony as competent medical evidence because that opinion just adopted Ms. Hamlett’s reported history:
The treating physician testimony is rejected since it is not based on objective evidence such as prior medical records, knowledge of workplace stressors, or knowledge of Claimant’s previous mental history.
Based upon Claimant’s failure to invoke the presumption of compensability because the distinct injury that she suffered did not have the potential of resulting in or contributing to her disability, Claimant is not entitled to the presumption of compensability for mental-mental injury established under Ramey [I]. Claimant did not present objective medical evidence since her treating physician relied solely upon Claimant’s history for the cause of her psychotic condition.

Hamlett v. Telesec Corestaff, AHD No. 08-020, OWC No. 635852 (Apr. 21, 2009). The Director recognized this problem more than thirty years ago:
This proceeding also demonstrates the undesirability of relying solely on psychiatric evidence; for often physicians who find a work-connection in the occurrence of an injury are not necessarily concerned about whether the conditions in the workplace of which a patient complains actually existed. What seems to be important to the physician is the perception the patient has of the workplace.

Wenzel, H&AS No. 84-308.

135 Ferreira, 531 A.2d 651.
suffered a psychological injury, not whether the work condition caused an injury to the claimant. The McCamey and Ramey tests still buy into these arguments and make the same mistake of not focusing on employment conditions.

Until employers, insurers, adjudicators, and legislators overcome the bias against psychological injuries, they will never be treated the same as physical injuries. The solution is simple—just follow the law as written. In other words, apply the Presumption to psychological injuries the same way it applies to headaches, physical injuries that cannot be causally linked to employment through objective diagnostic testing, and all other physical injuries. Admittedly, the precise cause of a psychological injury is multifaceted, but under the Act, the definition of a compensable injury is liberal—no unusual incident is needed, the employer takes the claimant as it finds him. If conditions of employment contribute to or aggravate an injury, the claimant is entitled to compensation. On the other hand, if conditions of employment do not cause or contribute to an injury, the injury does not arise out of and in the course of employment; whether physical or mental, non-work-related injuries are not compensable. When the Presumption and the rest of the Act is applied properly there simply is no need for a separate test for psychological injuries.
# XII. Appendix

**Proving Psychological Injuries in Workers’ Compensation Cases**

<table>
<thead>
<tr>
<th>State</th>
<th>Category</th>
<th>Description</th>
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<tbody>
<tr>
<td>Alabama</td>
<td>Mental-Mental</td>
<td>“Injury and personal injury’ shall mean only injury by accident arising out of and in the course of the employment, and shall not include a disease in any form, except for an occupational disease or where it results naturally and unavoidably from the accident. . . . Injury does not include a mental disorder or mental injury that has neither been produced nor been proximately caused by some physical injury to the body.”</td>
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<td>ALA. CODE § 25-5-1(9) (2020)</td>
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<td>Furthermore, “an occupational disease does not include a mental disorder resulting from exclusively nonphysical stimuli.”</td>
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<tr>
<td></td>
<td>Physical-Mental</td>
<td>“Under Alabama law, for an employee to recover for psychological disorders, the employee must have suffered a physical injury to the body and that physical injury must be a proximate cause of the psychological disorders.”</td>
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<td><em>Ex Parte Vongsouvanh</em>, 795 So. 2d 625, 628 (Ala. 2000)</td>
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<tr>
<td></td>
<td>Mental-Physical</td>
<td>“An employee bears the burden of proving that his injuries arose out of and in the course of his employment. In cases involving nonaccidental injuries, the employee must prove both legal and medical causation to meet the ‘arising out of’ requirement. Furthermore, in cases involving gradual deterioration or cumulative stress, the employee must establish both legal and medical causation by clear and convincing evidence.”</td>
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136 The burdens of proof set forth in this appendix may be subject to exceptions or to interpretation by case law. Furthermore, this appendix represents the burdens that apply to generic employees; specific rules may apply to police officers, fire fighters, first responders, or other special categories of employee. Specific rules also may apply to claimants with pre-existing conditions.

137 Mental-physical claims may be based on various physical injuries. In the absence of a general burden of proof for this type of claim the burden of proof for a stress-related heart attack is provided.
evidence, rather than by a mere preponderance of the evidence. Under the Workers’ Compensation Act, ‘clear and convincing evidence’ is defined as ‘evidence that, when weighed against evidence in opposition, will produce in the mind of the trier of fact a firm conviction as to each essential element of the claim and a high probability as to the correctness of the conclusion. Proof by clear and convincing evidence requires a level of proof greater than a preponderance of the evidence or the substantial weight of the evidence, but less than beyond a reasonable doubt.’”

Ala. Code 1975 § 25-5-81(c)

“To establish legal causation, the injured employee must prove that ‘the performance of the duties for which he [or she] is employed … as an employee exposed [him or her] to a danger or risk materially in excess of that to which people not so employed are exposed [ordinarily in their everyday lives].’”


**Alaska**

**Mental-Mental**

“Compensation and benefits under this chapter are not payable for mental injury caused by mental stress, unless it is established that (1) the work stress was extraordinary and unusual in comparison to pressures and tensions experienced by individuals in a comparable work environment; and (2) the work stress was the predominant cause of the mental injury. The amount of work stress shall be measured by actual events. A mental injury is not considered to arise out of and in the course of employment if it results from a disciplinary action, work evaluation, job transfer, layoff, demotion, termination, or similar action taken in good faith by the employer.”

**Alaska Stat. § 23.30.010(b) (2020)**

*See also* **Alaska Stat. § 23.30.120(c) (2020):**

“The presumption of compensability established in [Alaska Stat. § 23.30.120(a)] does not apply to a mental injury resulting from work-related stress.”

**Physical-Mental**

“Except as provided in (b) of this section, compensation or benefits are payable under this chapter for disability or death or
the need for medical treatment of an employee if the disability or death of the employee or the employee’s need for medical treatment arose out of and in the course of the employment. To establish a presumption under AS 23.30.120(a)(1) that the disability or death or the need for medical treatment arose out of and in the course of the employment, the employee must establish a causal link between the employment and the disability or death or the need for medical treatment. A presumption may be rebutted by a demonstration of substantial evidence that the death or disability or the need for medical treatment did not arise out of and in the course of the employment. When determining whether or not the death or disability or need for medical treatment arose out of and in the course of the employment, the board must evaluate the relative contribution of different causes of the disability or death or the need for medical treatment. Compensation or benefits under this chapter are payable for the disability or death or the need for medical treatment if, in relation to other causes, the employment is the substantial cause of the disability or death or need for medical treatment.”

ALASKA STAT. § 23.30.010(a) (2020)

Mental-Physical
“Except as provided in (b) of this section, compensation or benefits are payable under this chapter for disability or death or the need for medical treatment of an employee if the disability or death of the employee or the employee’s need for medical treatment arose out of and in the course of the employment. To establish a presumption under AS 23.30.120(a)(1) that the disability or death or the need for medical treatment arose out of and in the course of the employment, the employee must establish a causal link between the employment and the disability or death or the need for medical treatment. A presumption may be rebutted by a demonstration of substantial evidence that the death or disability or the need for medical treatment did not arise out of and in the course of the employment. When determining whether or not the death or disability or need for medical treatment arose out of and in the course of the employment, the board must evaluate the relative contribution of different causes of the disability or death or the need for medical treatment. Compensation or benefits under this chapter are payable for the disability or death or the need for medical treatment if, in relation to other causes, the employment is the substantial cause of the disability or death or need for medical treatment.”
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<th>State</th>
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<tr>
<td>Arizona</td>
<td>Mental-Mental</td>
<td>“A mental injury, illness or condition shall not be considered a personal injury by accident arising out of and in the course of employment and is not compensable pursuant to this chapter unless some unexpected, unusual or extraordinary stress related to the employment or some physical injury related to the employment was a substantial contributing cause of the mental injury, illness or condition.”</td>
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<td>Arizona</td>
<td>Physical-Mental</td>
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<tr>
<td>Arkansas</td>
<td>Mental-Mental</td>
<td>“A mental injury or illness is not a compensable injury unless it is caused by physical injury to the employee’s body, and shall not be considered an injury arising out of and in the course of employment or compensable unless it is demonstrated by a preponderance of the evidence; provided, however, that this physical injury limitation shall not apply to any victim of a crime of violence.”</td>
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Physical-Mental
“(1) A mental injury or illness is not a compensable injury unless it is caused by physical injury to the employee’s body, and shall not be considered an injury arising out of and in the course of employment or compensable unless it is demonstrated by a preponderance of the evidence; provided, however, that this physical injury limitation shall not apply to any victim of a crime of violence.

(2) No mental injury or illness under this section shall be compensable unless it is also diagnosed by a licensed psychiatrist or psychologist and unless the diagnosis of the condition meets the criteria established in the most current issue of the Diagnostic and Statistical Manual of Mental Disorders.”

ARK. CODE ANN. § 11-9-113(a) (2020)

Mental-Physical
“(a) A cardiovascular, coronary, pulmonary, respiratory, or cerebrovascular accident or myocardial infarction causing injury, illness, or death is a compensable injury only if, in relation to other factors contributing to the physical harm, an accident is the major cause of the physical harm.

(b)

(1) An injury or disease included in subsection (a) of this section shall not be deemed to be a compensable injury unless it is shown that the exertion of the work necessary to precipitate the disability or death was extraordinary and unusual in comparison to the employee’s usual work in the course of the employee’s regular employment or, alternately, that some unusual and unpredicted incident occurred which is found to have been the major cause of the physical harm.

(2) Stress, physical or mental, shall not be considered in determining whether the employee or claimant has met his or her burden of proof.”

ARK. CODE ANN. § 11-9-114 (2020)

California

Mental-Mental
“(a) A psychiatric injury shall be compensable if it is a mental disorder which causes disability or need for medical treatment,
and it is diagnosed pursuant to procedures promulgated under paragraph (4) of subdivision (j) of Section 139.2 or, until these procedures are promulgated, it is diagnosed using the terminology and criteria of the American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders, Third Edition-Revised, or the terminology and diagnostic criteria of other psychiatric diagnostic manuals generally approved and accepted nationally by practitioners in the field of psychiatric medicine.

(b)

(1) In order to establish that a psychiatric injury is compensable, an employee shall demonstrate by a preponderance of the evidence that actual events of employment were predominant as to all causes combined of the psychiatric injury.

(2) Notwithstanding paragraph (1), in the case of employees whose injuries resulted from being a victim of a violent act or from direct exposure to a significant violent act, the employee shall be required to demonstrate by a preponderance of the evidence that actual events of employment were a substantial cause of the injury.

(3) For the purposes of this section, ‘substantial cause’ means at least 35 to 40 percent of the causation from all sources combined.

(c) It is the intent of the Legislature in enacting this section to establish a new and higher threshold of compensability for psychiatric injury under this division.

(d) Notwithstanding any other provision of this division, no compensation shall be paid pursuant to this division for a psychiatric injury related to a claim against an employer unless the employee has been employed by that employer for at least six months. The six months of employment need not be continuous. This subdivision shall not apply if the psychiatric injury is caused by a sudden and extraordinary employment condition. Nothing in this subdivision shall be construed to authorize an employee, or the employee’s dependents, to bring an action at law or equity for damages against the employer for a psychiatric injury, where those rights would not exist pursuant to the exclusive remedy doctrine set forth in Section
3602 in the absence of the amendment of this section by the act adding this subdivision.

(e) Where the claim for compensation is filed after notice of termination of employment or layoff, including voluntary layoff, and the claim is for an injury occurring prior to the time of notice of termination or layoff, no compensation shall be paid unless the employee demonstrates by a preponderance of the evidence that actual events of employment were predominant as to all causes combined of the psychiatric injury and one or more of the following conditions exist:

(1) Sudden and extraordinary events of employment were the cause of the injury.

(2) The employer has notice of the psychiatric injury under Chapter 2 (commencing with Section 5400) prior to the notice of termination or layoff.

(3) The employee’s medical records existing prior to notice of termination or layoff contain evidence of treatment of the psychiatric injury.

(4) Upon a finding of sexual or racial harassment by any trier of fact, whether contractual, administrative, regulatory, or judicial.

(5) Evidence that the date of injury, as specified in Section 5411 or 5412, is subsequent to the date of the notice of termination or layoff, but prior to the effective date of the termination or layoff.

(f) For purposes of this section, an employee provided notice pursuant to Sections 44948.5, 44949, 44951, 44955, 44955.6, 72411, 87740, and 87743 of the Education Code shall be considered to have been provided a notice of termination or layoff only upon a district’s final decision not to reemploy that person.

(g) A notice of termination or layoff that is not followed within 60 days by that termination or layoff shall not be subject to the provisions of this subdivision, and this subdivision shall not apply until receipt of a later notice of termination or layoff. The issuance of frequent notices of termination or layoff to an employee shall be considered a bad faith personnel action and shall make this subdivision inapplicable to the employee.
(h) No compensation under this division shall be paid by an employer for a psychiatric injury if the injury was substantially caused by a lawful, nondiscriminatory, good faith personnel action. The burden of proof shall rest with the party asserting the issue.

(i) When a psychiatric injury claim is filed against an employer, and an application for adjudication of claim is filed by an employer or employee, the division shall provide the employer with information concerning psychiatric injury prevention programs.

(j) An employee who is an inmate, as defined in subdivision (e) of Section 3351, or their family on behalf of an inmate, shall not be entitled to compensation for a psychiatric injury except as provided in subdivision (d) of Section 3370.

(k) An employee who is a patient, as defined in subdivision (h) of Section 3351, or their family on behalf of a patient, shall not be entitled to compensation for a psychiatric injury except as provided in subdivision (d) of Section 3370.1.”

CAL. LAB. CODE § 3208.3 (2020)

Physical-Mental
“(a) A psychiatric injury shall be compensable if it is a mental disorder which causes disability or need for medical treatment, and it is diagnosed pursuant to procedures promulgated under paragraph (4) of subdivision (j) of Section 139.2 or, until these procedures are promulgated, it is diagnosed using the terminology and criteria of the American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders, Third Edition-Revised, or the terminology and diagnostic criteria of other psychiatric diagnostic manuals generally approved and accepted nationally by practitioners in the field of psychiatric medicine.

(1) In order to establish that a psychiatric injury is compensable, an employee shall demonstrate by a preponderance of the evidence that actual events of
employment were predominant as to all causes combined of the psychiatric injury.

(2) Notwithstanding paragraph (1), in the case of employees whose injuries resulted from being a victim of a violent act or from direct exposure to a significant violent act, the employee shall be required to demonstrate by a preponderance of the evidence that actual events of employment were a substantial cause of the injury.

(3) For the purposes of this section, ‘substantial cause’ means at least 35 to 40 percent of the causation from all sources combined.

(c) It is the intent of the Legislature in enacting this section to establish a new and higher threshold of compensability for psychiatric injury under this division.

(d) Notwithstanding any other provision of this division, no compensation shall be paid pursuant to this division for a psychiatric injury related to a claim against an employer unless the employee has been employed by that employer for at least six months. The six months of employment need not be continuous. This subdivision shall not apply if the psychiatric injury is caused by a sudden and extraordinary employment condition. Nothing in this subdivision shall be construed to authorize an employee, or the employee’s dependents, to bring an action at law or equity for damages against the employer for a psychiatric injury, where those rights would not exist pursuant to the exclusive remedy doctrine set forth in Section 3602 in the absence of the amendment of this section by the act adding this subdivision.

(e) Where the claim for compensation is filed after notice of termination of employment or layoff, including voluntary layoff, and the claim is for an injury occurring prior to the time of notice of termination or layoff, no compensation shall be paid unless the employee demonstrates by a preponderance of the evidence that actual events of employment were predominant as to all causes combined of the psychiatric injury and one or more of the following conditions exist:

(1) Sudden and extraordinary events of employment were the cause of the injury.
(2) The employer has notice of the psychiatric injury under Chapter 2 (commencing with Section 5400) prior to the notice of termination or layoff.

(3) The employee’s medical records existing prior to notice of termination or layoff contain evidence of treatment of the psychiatric injury.

(4) Upon a finding of sexual or racial harassment by any trier of fact, whether contractual, administrative, regulatory, or judicial.

(5) Evidence that the date of injury, as specified in Section 5411 or 5412, is subsequent to the date of the notice of termination or layoff, but prior to the effective date of the termination or layoff.

(f) For purposes of this section, an employee provided notice pursuant to Sections 44948.5, 44949, 44951, 44955, 44955.6, 72411, 87740, and 87743 of the Education Code shall be considered to have been provided a notice of termination or layoff only upon a district’s final decision not to reemploy that person.

(g) A notice of termination or layoff that is not followed within 60 days by that termination or layoff shall not be subject to the provisions of this subdivision, and this subdivision shall not apply until receipt of a later notice of termination or layoff. The issuance of frequent notices of termination or layoff to an employee shall be considered a bad faith personnel action and shall make this subdivision inapplicable to the employee.

(h) No compensation under this division shall be paid by an employer for a psychiatric injury if the injury was substantially caused by a lawful, nondiscriminatory, good faith personnel action. The burden of proof shall rest with the party asserting the issue.

(i) When a psychiatric injury claim is filed against an employer, and an application for adjudication of claim is filed by an employer or employee, the division shall provide the employer with information concerning psychiatric injury prevention programs.

(j) An employee who is an inmate, as defined in subdivision (e) of Section 3351, or their family on behalf of an inmate,
shall not be entitled to compensation for a psychiatric injury except as provided in subdivision (d) of Section 3370.

(k) An employee who is a patient, as defined in subdivision (h) of Section 3351, or their family on behalf of a patient, shall not be entitled to compensation for a psychiatric injury except as provided in subdivision (d) of Section 3370.1.”

CAL. LAB. CODE § 3208.3 (2020)

**Mental-Physical**

The claimant must prove employment is a contributing cause of the heart attack. *Lamb v. Workmen’s Comp. Appeals Bd.*, 11 Cal. 3d 274 (1974).

<table>
<thead>
<tr>
<th>State</th>
<th>Section</th>
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<tbody>
<tr>
<td>Colorado</td>
<td><em>(2) (a) A claim of mental impairment must be proven by evidence supported by the testimony of a licensed psychiatrist or psychologist. A mental impairment shall not be considered to arise out of and in the course of employment if it results from a disciplinary action, work evaluation, job transfer, layoff, demotion, promotion, termination, retirement, or similar action taken in good faith by the employer. The mental impairment that is the basis of the claim must have arisen primarily from the claimant’s then occupation and place of employment in order to be compensable.</em>* * * * (c) The claim of mental impairment cannot be based, in whole or in part, upon facts and circumstances that are common to all fields of employment. (d) The mental impairment which is the basis of the claim must be, in and of itself, either sufficient to render the employee temporarily or permanently disabled from pursuing the occupation from which the claim arose or to require medical or psychological treatment. (3) For the purposes of this section: (a) ‘Mental impairment’ means a recognized, permanent disability arising from an accidental injury arising out of and in the course of employment when the accidental injury involves no physical injury and consists of a psychologically traumatic event. ‘Mental impairment’ also includes a disability arising from an</td>
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accidental physical injury that leads to a recognized permanent psychological disability.

(b)

(I) ‘Psychologically traumatic event’ means an event that is generally outside of a worker’s usual experience and would evoke significant symptoms of distress in a worker in similar circumstances.

(II) ‘Psychologically traumatic event’ also includes an event that is within a worker’s usual experience only when the worker is diagnosed with post-traumatic stress disorder by a licensed psychiatrist or psychologist after the worker experienced exposure to one or more of the following events:

(A) The worker is the subject of an attempt by another person to cause the worker serious bodily injury or death through the use of deadly force, and the worker reasonably believes the worker is the subject of the attempt;

(B) The worker visually or audibly, or both visually and audibly, witnesses a death, or the immediate aftermath of the death, of one or more people as the result of a violent event; or

(C) The worker repeatedly and either visually or audibly, or both visually and audibly, witnesses the serious bodily injury, or the immediate aftermath of the serious bodily injury, of one or more people as the result of the intentional act of another person or an accident.

(c) ‘Serious bodily injury’ means bodily injury that, either at the time of the actual injury or a later time, involves a substantial risk of death, a substantial risk of serious permanent disfigurement, or a substantial risk of protracted loss or impairment of the function of any part or organ of the body.”
COLO. REV. STAT. § 8-41-301 (2020)

See also COLO. REV. STAT. § 8-41-302(1) (2020):

“‘Accident,’ ‘injury,’ and ‘occupational disease’ shall not be construed to include disability or death caused by or resulting from mental or emotional stress unless it is shown by competent evidence that such mental or emotional stress is proximately caused solely by hazards to which the worker would not have been equally exposed outside the employment.”

Physical-Mental

“(2) (a) A claim of mental impairment must be proven by evidence supported by the testimony of a licensed psychiatrist or psychologist. A mental impairment shall not be considered to arise out of and in the course of employment if it results from a disciplinary action, work evaluation, job transfer, lay-off, demotion, promotion, termination, retirement, or similar action taken in good faith by the employer. The mental impairment that is the basis of the claim must have arisen primarily from the claimant’s then occupation and place of employment in order to be compensable.

* * *

(c) The claim of mental impairment cannot be based, in whole or in part, upon facts and circumstances that are common to all fields of employment.

(d) The mental impairment which is the basis of the claim must be, in and of itself, either sufficient to render the employee temporarily or permanently disabled from pursuing the occupation from which the claim arose or to require medical or psychological treatment.

(3) For the purposes of this section:

(a) ‘Mental impairment’ means a recognized, permanent disability arising from an accidental injury arising out of and in the course of employment when the accidental injury involves no physical injury and consists of a psychologically traumatic event. ‘Mental impairment’ also includes a disability arising from an
accidental physical injury that leads to a recognized permanent psychological disability.”

COLO. REV. STAT. § 8-41-301 (2020)

**Mental-Physical**

“‘Accident,’ ‘injury,’ and ‘occupational disease’ shall not be construed to include disability or death caused by heart attack unless it is shown by competent evidence that such heart attack was proximately caused by an unusual exertion arising out of and within the course of the employment.”

COLO. REV. STAT. § 8-41-302(2) (2020)

**Connecticut**

**Mental-Mental**

“‘Personal injury’ or ‘injury’ shall not be construed to include:

* * *

(ii) A mental or emotional impairment, unless such impairment [] arises from a physical injury or occupational disease. . .

(iii) A mental or emotional impairment that results from a personnel action, including, but not limited to, a transfer, promotion, demotion or termination.”

CONN. GEN. STAT. § 31-275(16)(B) (2020)

**Physical-Mental**

“[B]oth this court and our Supreme Court explicitly have interpreted the term ‘arises from’ in § 31-275(16)(B)(ii) to require a causal relationship between a physical injury or occupational disease and a claimed mental impairment in order for the mental impairment to be compensable under the act. The plaintiff’s argument that under § 31-275(16)(B)(ii) he need only show that the mental impairment was ‘accompanied by’ a physical injury, therefore is contrary to both the plain meaning of ‘arises from’ and prior judicial interpretations of § 31-275(16)(B)(ii). For these reasons, we conclude that the board properly interpreted ‘arises from’ in § 31-275(16)(B)(ii) to require a causal relationship between the plaintiff’s injury and his disorder.”
**Biasetti v. City of Stamford**, 1 A.3d 1231, 1235–36 (Conn. App. Ct. 2010) (although the claimant in this case is a police officer, the rule of law applies generally to all employees)

**Mental-Physical**

“[A] physical injury precipitated by work-related stress is a compensable injury under § 31-275(16)(B)(ii) and (iii). . . . [T]he [claimant] has the burden of proving that the injury claimed arose out of the employment and occurred in the course of the employment. There must be a conjunction of [these] two requirements . . . to permit compensation.”


**Delaware**

**Mental-Mental**

“[I]n order to be compensated for a mental injury in the absence of a specific and identifiable industrial accident (i.e., a mental injury which is gradually caused by stress), a claimant must offer evidence demonstrating objectively that his or her work conditions were actually stressful and that such conditions were a substantial cause of claimant’s mental disorder. . . . The stress causing the injury need not be unusual or extraordinary, but it must be real and proved by objective evidence. Where a claimant merely imagines or subjectively concludes that his or her work conditions have caused a psychological illness, there is no basis for holding the employer responsible since the connection between work and injury is perceived only by the impaired worker.”


**Physical-Mental**

“The law seems settled that, provided a sufficient causal connection is proved by competent evidence between an industrial accident and a resulting psychological or neurotic disorder resulting therefrom, such disability is compensable under Workmen’s Compensation Law.”


**Mental-Physical**

“[T]he ‘usual exertion’ rule . . . provides that irrespective of [a] previous condition, an injury is compensable if the ordinary stress and strain of employment is a substantial cause of the
<table>
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<th>District of Columbia</th>
<th>Mental-Mental</th>
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<td>“[A]n injured worker alleging a mental-mental claim invokes the statutory presumption of compensability by showing a psychological injury and actual workplace conditions or events which could have caused or aggravated the psychological injury. The injured worker’s showing must be supported by competent medical evidence. The [administrative law judge], in determining whether the injured worker invoked the presumption, must make findings that the workplace conditions or events existed or occurred, and must make findings on credibility. If the presumption is invoked, the burden shifts to the employer to show, through substantial evidence, the psychological injury was not caused or aggravated by workplace conditions or events. If the employer succeeds, the statutory presumption drops out of the case entirely and the burden reverts to the injured worker to prove by a preponderance of the evidence that the workplace conditions or events caused or aggravated the psychological injury.”</td>
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*Ramey v. Potomac Elec. Power Co.*, CRB No. 06-38(R), AHD No. 05-318, OWC No. 576531 (July 24, 2008)

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<th>Physical-Mental</th>
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| “[W]here a claimant in a physical-mental claim presents competent medical evidence connecting a work related physical injury to a claimed psychiatric injury the claimant has established a *prima facie* case of either a new injury or an aggravation of a pre-existing condition. Although this case is a claim under the public sector act, the [District of Columbia Court of Appeals] did not limit its ruling or rationale to that act, but explicitly indicated that the ruling applies to the public and private sector acts.

Thus, under the new rule, . . . the injured worker, having established a causal link between the physical injury and the employment, bears the burden of proving by a preponderance of the evidence that the physical injury caused or contributed to the claimed psychological injury. The injured worker satisfies this burden by presenting evidence not only of the occurrence of the physical injury, but also competent medical evidence that the physical injury was the cause or aggravator of the psychological injury.” |
evidence showing the physical injury caused or contributed to the psychological injury. The [Court] wrote that ‘Where the presumption is either inapplicable or has been rebutted, the burden falls on the claimant to prove by a preponderance of the evidence that the physical accident caused or contributed to the psychological injury.’ [McComey v. D.C. Dep’t of Employment Servs., 947 A.2d 1191, 1214 (D.C. 2008)] The [Court] went on to state that ‘In determining whether a claimant has met his or her burden, [an administrative law judge] must weigh and consider the evidence as well as make credibility determinations [and may] of course consider the reasonableness of the testimony and whether or not particular testimony has been contradicted or corroborated by other evidence.’ [Id.]

McCamey v. D.C. Pub. Sch., CRB No. 10-03(R), AHD No. PBL 02-031, DCP No. LT2-DDT002160 (June 17, 2008)

Mental-Physical

“[T]he question whether a claim presents a compensable ‘accidental injury’ does not depend on whether the employment event which allegedly caused it was an emotional or a physical stressor, or whether that stressor was usual or unusual. Rather, the injury, to be ‘accidental,’ need only be something that unexpectedly goes wrong within the human frame. A heart attack clearly can meet that test.”

Jones v. D.C. Dep’t of Emp’t Servs., 519 A.2d 704, 708–09 (D.C. 1987)

Florida

Mental-Mental

“A mental or nervous injury due to stress, fright, or excitement only is not an injury by accident arising out of the employment. Nothing in this section shall be construed to allow for the payment of benefits under this chapter for mental or nervous injuries without an accompanying physical injury requiring medical treatment.”

FLA. STAT. § 440.093(1) (2020)

Physical-Mental

“(2) Mental or nervous injuries occurring as a manifestation of an injury compensable under this chapter shall be demonstrated by clear and convincing medical evidence by a licensed psychiatrist meeting criteria established in the most recent edition of the diagnostic and statistical manual of mental
disorders published by the American Psychiatric Association. The compensable physical injury must be and remain the major contributing cause of the mental or nervous condition and the compensable physical injury as determined by reasonable medical certainty must be at least 50 percent responsible for the mental or nervous condition as compared to all other contributing causes combined. Compensation is not payable for the mental, psychological, or emotional injury arising out of depression from being out of work or losing employment opportunities, resulting from a preexisting mental, psychological, or emotional condition or due to pain or other subjective complaints that cannot be substantiated by objective, relevant medical findings.

(3) Subject to the payment of permanent benefits under s. 440.15, in no event shall temporary benefits for a compensable mental or nervous injury be paid for more than 6 months after the date of maximum medical improvement for the injured employee’s physical injury or injuries, which shall be included in the period of 104 weeks as provided in s. 440.15(2) and (4). Mental or nervous injuries are compensable only in accordance with the terms of this section.”

FLA. STAT. § 440.093 (2020)

**Mental-Physical**

“A physical injury resulting from mental or nervous injuries unaccompanied by physical trauma requiring medical treatment shall not be compensable under this chapter.”

FLA. STAT. § 440.093(1) (2020)

**Georgia**

**Mental-Mental**

“[T]o be compensable a psychic trauma must arise naturally and unavoidably from some discernible physical occurrence.”


**Physical-Mental**

“[A] psychological injury or disease is compensable if it arises ‘naturally and unavoidably’ . . . from some discernible physical occurrence.’ . . . [A] claimant is entitled to benefits under the Workers’ Compensation Act for mental disability and psychic treatment which, while not necessarily precipitated by a physical injury, arose out of an accident in which a
compensable physical injury was sustained, and that injury contributes to the continuation of the psychic trauma. The physical injury need not be the precipitating cause of the psychic trauma; it is compensable if the physical injury contributes to the continuation of the psychic trauma.”

_Southwire Co. v. George_, 470 S.E.2d 865, 866–67 (Ga. 1996)

**Mental-Physical**

“[I]njury’ and ‘personal injury’ [shall not] include heart disease, heart attack, the failure or occlusion of any of the coronary blood vessels, stroke, or thrombosis unless it is shown by a preponderance of competent and credible evidence, which shall include medical evidence, that any of such conditions were attributable to the performance of the usual work of employment.”

GA. CODE ANN. § 34-9-1(4) (2020)

**Hawaii**

**Mental-Mental**

“‘Disability’ means loss or impairment of a physical or mental function.”

HAW. REV. STAT. § 386-1 (2020)

Also, “[i]n any proceeding for the enforcement of a claim for compensation under this chapter it shall be presumed, in the absence of substantial evidence to the contrary:

(1) That the claim is for a covered work injury.”

HAW. REV. STAT. § 386-85 (2020)

In addition, “an employee suffers a work-related injury within the meaning of HRS § 386-3 when he sustains a psychogenic disability precipitated by the circumstances of his employment.”


However, “[a] claim for mental stress resulting solely from disciplinary action taken in good faith by the employer shall not be allowed; provided that if a collective bargaining agreement or other employment agreement specifies a different standard than good faith for disciplinary actions, the standards
set in the collective bargaining agreement or other employment agreement shall be applied in lieu of the good faith standard. For purposes of this subsection, the standards set in the collective bargaining agreement or other employment agreement shall be applied in any proceeding before the department, the appellate board, and the appellate courts.”

HAW. REV. STAT. § 386-3(c) (2020)

**Physical-Mental**

“‘Disability’ means loss or impairment of a physical or mental function.”

HAW. REV. STAT. § 386-1 (2020)

Also, “[i]n any proceeding for the enforcement of a claim for compensation under this chapter it shall be presumed, in the absence of substantial evidence to the contrary:

(1) That the claim is for a covered work injury.”

HAW. REV. STAT. § 386-85 (2020)

**Mental-Physical**

“Operation of the statutory presumption [HAW. REV. STAT. § 386-85(1)] is crucial in cardiac cases where the causes of heart disease are not readily identifiable.”


**Idaho**

**Mental-Mental**

“‘Injury’ and ‘personal injury’ shall be construed to include only an injury caused by an accident, which results in violence to the physical structure of the body. The terms shall in no case be construed to include an occupational disease and only such nonoccupational diseases as result directly from an injury.”

IDAHO CODE ANN. § 72-102(18)(c) (2020)

See also IDAHO CODE ANN. § 72-451(2) (2020):

“Nothing in subsection (1) of this section shall be construed as allowing compensation for psychological injuries from psychological causes without accompanying physical injury.”
## Physical-Mental

“(1) Psychological injuries, disorders or conditions shall not be compensated under this title, unless the following conditions are met:

(a) Such injuries of any kind or nature emanating from the workplace shall be compensated only if caused by accident and physical injury as defined in section 72-102(18)(a) through (18)(c), Idaho Code, or only if accompanying an occupational disease with resultant physical injury, except that a psychological mishap or event may constitute an accident where:

(i) It results in resultant physical injury as long as the psychological mishap or event meets the other criteria of this section;

(ii) It is readily recognized and identifiable as having occurred in the workplace; and

(iii) It must be the product of a sudden and extraordinary event;

(b) No compensation shall be paid for such injuries arising from conditions generally inherent in every working situation or from a personnel-related action including, but not limited to, disciplinary action, changes in duty, job evaluation or employment termination;

(c) Such accident and injury must be the predominant cause as compared to all other causes combined of any consequence for which benefits are claimed under this section;

(d) Where psychological causes or injuries are recognized by this section, such causes or injuries must exist in a real and objective sense;

(e) Any permanent impairment or permanent disability for psychological injury recognizable under the Idaho worker’s compensation law must be based on a condition sufficient to constitute a diagnosis using the terminology and criteria of the American psychiatric association’s diagnostic and statistical manual of
mental disorders, third edition revised, or any successor manual promulgated by the American psychiatric association, and must be made by a psychologist or psychiatrist duly licensed to practice in the jurisdiction in which treatment is rendered; and

(f) Clear and convincing evidence that the psychological injuries arose out of and in the course of the employment from an accident or occupational disease as contemplated in this section is required.

* * *

(3) The provisions of subsection (1) of this section shall apply to accidents and injuries occurring on or after July 1, 1994, and to causes of action for benefits accruing on or after July 1, 1994, notwithstanding that the original worker’s compensation claim may have occurred prior to July 1, 1994.

* * *

(5) No compensation shall be paid for such injuries described in subsection (2) of this section arising from a personnel-related action including, but not limited to, disciplinary action, changes in duty, job evaluation, or employment termination.”

IDAHO CODE ANN. § 72-451 (2020)

Mental-Physical
“(1) Psychological injuries, disorders or conditions shall not be compensated under this title, unless the following conditions are met:

(a) Such injuries of any kind or nature emanating from the workplace shall be compensated only if caused by accident and physical injury as defined in section 72-102(18)(a) through (18)(c), Idaho Code, or only if accompanying an occupational disease with resultant physical injury, except that a psychological mishap or event may constitute an accident where:

(i) It results in resultant physical injury as long as the psychological mishap or event meets the other criteria of this section;

(ii) It is readily recognized and identifiable as having occurred in the workplace; and

(iii) It must be the product of a sudden and extraordinary event;
(b) No compensation shall be paid for such injuries arising from conditions generally inherent in every working situation or from a personnel-related action including, but not limited to, disciplinary action, changes in duty, job evaluation or employment termination;

(c) Such accident and injury must be the predominant cause as compared to all other causes combined of any consequence for which benefits are claimed under this section;

(d) Where psychological causes or injuries are recognized by this section, such causes or injuries must exist in a real and objective sense;

(e) Any permanent impairment or permanent disability for psychological injury recognizable under the Idaho worker’s compensation law must be based on a condition sufficient to constitute a diagnosis using the terminology and criteria of the American psychiatric association’s diagnostic and statistical manual of mental disorders, third edition revised, or any successor manual promulgated by the American psychiatric association, and must be made by a psychologist or psychiatrist duly licensed to practice in the jurisdiction in which treatment is rendered; and

(f) Clear and convincing evidence that the psychological injuries arose out of and in the course of the employment from an accident or occupational disease as contemplated in this section is required.

* * *
(3) The provisions of subsection (1) of this section shall apply to accidents and injuries occurring on or after July 1, 1994, and to causes of action for benefits accruing on or after July 1, 1994, notwithstanding that the original worker’s compensation claim may have occurred prior to July 1, 1994.

* * *
(5) No compensation shall be paid for such injuries described in subsection (2) of this section arising from a personnel-related action including, but not limited to, disciplinary action, changes in duty, job evaluation, or employment termination.”
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<tr>
<th>State</th>
<th>Code Annotated Section</th>
<th>Description</th>
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| Illinois   | Mental-Mental          | “[A]n employee who, like the claimant here, suffers a sudden, severe emotional shock traceable to a definite time, place and cause which causes psychological injury or harm has suffered an accident within the meaning of the Act, though no physical trauma or injury was sustained.”  
*Pathfinder Co. v. Indus. Comm’n*, 343 N.E.2d 913, 917 (Ill. 1976)  
However, “[r]ecovery for nontraumatically induced mental disease is limited to those who can establish that: (1) the mental disorder arose in a situation of greater dimensions than the day-to-day emotional strain and tension which all employees must experience; (2) the conditions exist in reality, from an objective standpoint; and (3) the employment conditions, when compared with the nonemployment conditions, were the ‘major contributory cause’ of the mental disorder.”  
**Physical-Mental**  
“Psychological injuries are compensable under the Act when they are related to and caused by a work-related physical injury. *Matlock v. Indus. Comm’n*, 321 Ill. App. 3d 167, 171 (2001). In these so-called ‘physical-mental’ cases, even a minor physical contact or injury may be sufficient to trigger compensability. *Id.; see also Marshall Field & Co. v. Indus. Comm’n*, 305 Ill. 134 (1922); *Chicago Park Dist. v. Indus. Comm’n*, 263 Ill. App. 3d 835, 842 (1994). Moreover, the work-related physical trauma need not be the sole causative factor, but need only be a causative factor of the subsequent mental condition. *City of Springfield v. Industrial Comm’n*, 291 Ill. App. 3d 734, 738 (1997); *see also Amoco Oil Co. v. Indus. Comm’n*, 218 Ill. App. 3d 737, 747, (1991).”  
**Mental-Physical**  
“Generally, even when an employee suffers from heart disease, if the heart attack which brings on disability or death is work
related, the employee may recover workers’ compensation. 

*Associates Corp. of North America v. Indus. Comm’n* (1988) 167 Ill. App. 3d 988. It is well established that if there is work-related stress, either physical or emotional, that aggravates the disease so as to cause the heart attack, then there is an accidental injury or death arising out of and during the course of the employment. *Associates Corp. v. Indus. Comm’n*, citing *City of Des Plaines v. Indus. Comm’n* (1983) 95 Ill. 2d 83, 88–89. Further, while the claimant must prove that some act of employment was a causative factor, the act need not be the sole, or even the principal, causative factor. *Northern Illinois Gas Co. v. Indus. Comm’n* (1986) 148 Ill. App. 3d 48. In addition, a preexisting heart condition does not preclude the Commission’s finding that the heart attack is compensable. *Sears, Roebuck & Co. v. Indus. Comm’n* (1980) 79 Ill. 2d 59.”


**Indiana**

### Mental-Mental

“Whether the injury is mental or physical, the determinative standard should be the same. The issue is not whether the injury resulted from the ordinary events of employment. Rather, it is simply whether the injury arose out of and in the course of employment.”


### Physical-Mental

“It is our opinion that when a purely mental condition known as a neurosis is shown by competent evidence to be the direct result of a physical injury sustained by an employee arising out of and in the course of the employment and which neurosis, through functional disturbances of the nervous system, disables the employee from working at his former occupation, he has suffered a compensable injury under the terms of the Indiana Workmen’s Compensation Act.”


### Mental-Physical

“Indiana courts have held that in order for a heart attack to be considered a work-related injury, it must be shown that:
the employment, or the conditions of the employment, must have been, in some proximate way, accountable for, conducive to, or in aggravation of or the hastening of, the failing activity of the heart.

*Douglas v. Warner Gear Division of Borg Warner Corp.* (1961) 131 Ind. App. 664, 174 N.E.2d 584, 588; see also *Harris v. Rainsoft of Allen County, Inc.* (1981) Ind. App., 416 N.E.2d 1320. In other words, the claimant must demonstrate that the heart attack was precipitated by some unusual stress related to his employment.”


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<th>Iowa</th>
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<td>“[W]e adopt an objective standard of legal causation and place the burden on the employee to establish that the mental injury was caused by workplace stress of greater magnitude than the day-to-day mental stresses experienced by other workers employed in the same or similar jobs, regardless of their employer. Although evidence of workers with similar jobs employed by a different employer is relevant, evidence of the stresses of other workers employed by the same employer with the same or similar jobs will usually be most persuasive and determinative on the issue.”</td>
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*Dunlavey v. Econ. Fire & Cas. Co.*, 526 N.W.2d 845, 858 (Iowa 1995)

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<td>“An employee has the burden to prove by a preponderance of the evidence that her injuries arose out of and in the course of employment. <em>See Quaker Oats Co. v. Ciha</em>, 552 N.W.2d 143, 150 (Iowa 1996). An injury is considered to arise out of employment ‘if there is a causal connection between the employment and the injury.’ <em>St. Luke’s Hosp. v. Gray</em>, 604 N.W.2d 646, 652 (Iowa 2000). In this case, the employer questions whether Schneberger’s mental health problems are causally related to the physical trauma she sustained on the job.”</td>
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“One issue is determining which legal causation standard should be applied, the heart attack standard, or the mental injury standard. Legal causation standards were developed in order to distinguish the injuries that are actually caused by the employment from those that simply occur in the course of employment. The employment must be more than merely the setting in which a preexisting condition manifests itself. *Miedema v. Dial Corp.*, 551 N.W.2d 309 (Iowa 1996); *Newman v. John Deere Ottumwa Works of Deere & Co.*, 372 N.W.2d 199 (Iowa 1985). The agency previously ruled that a heart attack induced by mental stress is governed by the heart attack standard. *Jackson v. The Britwill Company*, No. 976793 (Iowa App. August 29, 1995). That precedent is well founded. A heart attack of any variety that is brought about by mental stress is a mental-physical injury that has been compensated in Iowa using the heart attack standard.

There are three classes of mental injury, (1) physical-mental, (2) mental-physical and (3) mental-mental. The normal standard for recovery under workers’ compensation is proof by a preponderance of the evidence that the injury arose out of and in the course of employment. Mental injuries were traditionally viewed with skepticism due to the belief that they could be feigned. A legal causation standard of unusual stress developed for mental-mental injuries as a means of determining the legitimacy of claims.

A legal causation standard for unusual stress is not applied to physical-mental or mental-physical injuries because the physical component is considered to be adequate corroboration for the genuineness of the mental injury claim.”


**Kansas**

**Mental-Mental**

“[T]he obligation of an employer under K.S.A. 44-501 *et seq.* does not extend to mental disorders or injuries unless the mental problems stem from an actual physical injury to the claimant.”


**Physical-Mental**
“There is no distinction between physical and psychological injuries for the purpose of determining whether a workman’s disability from an injury is compensable.”


**Mental-Physical**

“[C]ompensation shall not be paid in case of coronary or coronary artery disease or cerebrovascular injury unless it is shown that the exertion of the work necessary to precipitate the disability was more than the employee’s usual work in the course of the employee’s regular employment.”

*KAN. STAT. ANN.* § 44-501(c)(1) (2020)

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<th>Kentucky</th>
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<td>“‘Injury’ means any work-related traumatic event or series of traumatic events, including cumulative trauma, arising out of and in the course of employment which is the proximate cause producing a harmful change in the human organism evidenced by objective medical findings. ‘Injury’ does not include the effects of the natural aging process, and does not include any communicable disease unless the risk of contracting the disease is increased by the nature of the employment. ‘Injury’ when used generally, unless the context indicates otherwise, shall include an occupational disease and damage to a prosthetic appliance, but shall not include a psychological, psychiatric, or stress-related change in the human organism, unless it is a direct result of a physical injury.”</td>
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*KY. REV. STAT. ANN.* § 342.0011(1) (2020)

**Physical-Mental**

“‘Injury’ means any work-related traumatic event or series of traumatic events, including cumulative trauma, arising out of and in the course of employment which is the proximate cause producing a harmful change in the human organism evidenced by objective medical findings. ‘Injury’ does not include the effects of the natural aging process, and does not include any communicable disease unless the risk of contracting the disease is increased by the nature of the employment. ‘Injury’ when used generally, unless the context indicates otherwise, shall include an occupational disease and damage to a
prosthetic appliance, but shall not include a psychological, psychiatric, or stress-related change in the human organism, unless it is a direct result of a physical injury.”

KY. REV. STAT. ANN. § 342.0011(1) (2020)

**Mental-Physical**

“[T]he apparent goal of the disputed amendment [to KRS 342.0011(1)] was to prevent compensation for so-called ‘mental-mental’ claims. The legislature attempted to do so in 1994, and we are persuaded that its goal in 1996 was to do so more effectively by preventing compensation for all mental changes that resulted from mental stress or trauma, including those that resulted from a physical change. There is no indication that it intended to preclude compensation for ‘mental-physical’ claims as well. Furthermore, had that been the legislature’s intent, it would have defined ‘injury’ as a work-related physically traumatic event, thereby precluding both ‘mental-mental’ and ‘mental-physical’ claims. But it did not. In view of this and of the fact that the last sentence of KRS 342.0011(1) refers to psychological and psychiatric changes but not to physical changes, we are convinced that by including the term ‘stress-related,’ the legislature intended to denote another type of mental condition. We conclude, therefore, that the last sentence of KRS 342.0011(1) applies only to mental changes and requires that such changes must directly result from a physically traumatic event in order to be compensable.”

*McCowan v. Matsushita Appliance Co.*, 95 S.W.3d 30, 32–33 (Ky. 2002)

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<th>Louisiana</th>
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| “(b) Mental injury caused by mental stress. Mental injury or illness resulting from work-related stress shall not be considered a personal injury by accident arising out of and in the course of employment and is not compensable pursuant to this Chapter, unless the mental injury was the result of a sudden, unexpected, and extraordinary stress related to the employment and is demonstrated by clear and convincing evidence.

* * *

(d) No mental injury or illness shall be compensable under . . . Subparagraph (b) . . . unless the mental injury or illness is diagnosed by a licensed psychiatrist or psychologist and the
diagnosis of the condition meets the criteria as established in the most current issue of the Diagnostic and Statistical Manual of Mental Disorders presented by the American Psychiatric Association.”


**Physical-Mental**

“(c) Mental injury caused by physical injury. A mental injury or illness caused by a physical injury to the employee’s body shall not be considered a personal injury by accident arising out of and in the course of employment and is not compensable pursuant to this Chapter unless it is demonstrated by clear and convincing evidence.

(d) No mental injury or illness shall be compensable under . . . Subparagraph . . . (c) unless the mental injury or illness is diagnosed by a licensed psychiatrist or psychologist and the diagnosis of the condition meets the criteria as established in the most current issue of the Diagnostic and Statistical Manual of Mental Disorders presented by the American Psychiatric Association.”


**Mental-Physical**

“Heart-related or perivascular injuries. A heart-related or perivascular injury, illness, or death shall not be considered a personal injury by accident arising out of and in the course of employment and is not compensable pursuant to this Chapter unless it is demonstrated by clear and convincing evidence that:

(i) The physical work stress was extraordinary and unusual in comparison to the stress or exertion experienced by the average employee in that occupation, and

(ii) The physical work stress or exertion, and not some other source of stress or preexisting condition, was the predominant and major cause of the heart-related or perivascular injury, illness, or death.”

“Mental injury caused by mental stress. Mental injury resulting from work-related stress does not arise out of and in the course of employment unless:

A. It is demonstrated by clear and convincing evidence that:

(1) The work stress was extraordinary and unusual in comparison to pressures and tensions experienced by the average employee; and

(2) The work stress, and not some other source of stress, was the predominant cause of the mental injury.

The amount of work stress must be measured by objective standards and actual events rather than any misperceptions by the employee[.]

***

“A mental injury is not considered to arise out of and in the course of employment if it results from any disciplinary action, work evaluation, job transfer, layoff, demotion, termination or any similar action, taken in good faith by the employer.”

**ME. REV. STAT. ANN. tit. 39-A § 201(3-A) (2020)**

**Physical-Mental**

“A long-standing principle in workers’ compensation jurisprudence provides that a mental or psychological abnormality which is ‘caused by [a physical work] injury, or...a preexisting state of mental abnormality or sub-abnormality [which] was excited and caused to flame up with overpowering vigor by her injury’ is compensable. [citations omitted] In this regard, a so-called ‘physical-mental’ injury was distinguished by the Law Court, in 1979, from a gradual mental injury due to work stresses, with the latter requiring a higher standard of proof as to causation.”

_Sinçyr v. M.S.A.D. #54_, 2009 ME Wrk. Comp. LEXIS 468, at *2 (April 08, 2009)

**Mental-Physical**

A heart attack caused by stress is compensable if it arises out of and in the course of employment. _Stadler v. Nativity Lutheran Church_, 438 A.2d 898 (Me. 1981).
Maryland  | Mental-Mental  
---|---  
“‘[A]n injury under the Act may be psychological in nature if the mental state for which recovery is sought is capable of objective determination.’ [Belcher v. T. Rowe Price Found., Inc., 621 A.2d 872, 890 (1993); however,] ‘a mere showing that a mental injury was related to general conditions of employment, or to incidents occurring over an extended period of time, is not enough to entitle the claimant to compensation. The mental injury must be precipitated by an accident, i.e., an unexpected and unforeseen event that occurs suddenly or violently.’”  

*Davis v. Dynacorp*, 647 A.2d 446, 448 (Md. 1994)  

See also *Means v. Baltimore County*, 689 A.2d 1238, 1242 (Md. 1997):  

“PTSD may be compensable as an occupational disease under the Workers’ Compensation Act if the claimant can present sufficient evidence to meet the statutory requirements. See § 9-101(g) (disease must be contracted as the result of and in the course of employment and the disease must cause the employee to become incapacitated); § 9-502(d)(1)(i) (disease must be due to nature of an employment in which the hazards of the occupational disease exist).”  

Physical-Mental  
“‘[A]n injury under the Act may be psychological in nature if the mental state for which recovery is sought is capable of objective determination.’ [Belcher v. T. Rowe Price Found., Inc., 621 A.2d 872, 890 (1993); however,] ‘a mere showing that a mental injury was related to general conditions of employment, or to incidents occurring over an extended period of time, is not enough to entitle the claimant to compensation. The mental injury must be precipitated by an accident, i.e., an unexpected and unforeseen event that occurs suddenly or violently.’”  

*Davis v. Dynacorp*, 647 A.2d 446, 448 (Md. 1994)  

Mental-Physical  

Massachusetts  | Mental-Mental
“Personal injuries shall include mental or emotional disabilities only where the predominant contributing cause of such disability is an event or series of events occurring within any employment. If a compensable injury or disease combines with a pre-existing condition, which resulted from an injury or disease not compensable under this chapter, to cause or prolong disability or a need for treatment, the resultant condition shall be compensable only to the extent such compensable injury or disease remains a major but not necessarily predominant cause of disability or need for treatment. No mental or emotional disability arising principally out of a bona fide, personnel action including a transfer, promotion, demotion, or termination except such action which is the intentional infliction of emotional harm shall be deemed to be a personal injury within the meaning of this chapter.”

**MASS. GEN. LAWS ANN. ch. 152, § 1(7A) (2020)**

**Physical-Mental**

> “[T]he third sentence of [MASS. GEN. LAWS ANN. ch. 152, § 1(7A) setting out a heightened standard of causation for claims for psychological disabilities] applies only to those mental or emotional disabilities that are not consequential to work-related physical injury.”


**Mental-Physical**


**Michigan**

**Mental-Mental**

> “‘Personal injury’ includes a disease or disability that is due to causes and conditions that are characteristic of and peculiar to the business of the employer and that arises out of and in the course of the employment. An ordinary disease of life to which the public is generally exposed outside of the employment is not compensable. A personal injury under this act is compensable if work causes, contributes to, or aggravates pathology in a manner so as to create a pathology that is medically distinguishable from any pathology that existed prior to the injury. Mental disabilities and conditions of the aging process, including but not limited to heart and cardiovascular conditions, and degenerative arthritis shall be compensable if contributed to or aggravated or accelerated by the employment
in a significant manner. Mental disabilities shall be compensable when arising out of actual events of employment, not unfounded perceptions thereof, and if the employee’s perception of the actual events is reasonably grounded in fact or reality.”

**MICH. COMP. LAWS SERV. § 418.401(2)(b) (2020)**

**Physical-Mental**

“Personal injury’ includes a disease or disability that is due to causes and conditions that are characteristic of and peculiar to the business of the employer and that arises out of and in the course of the employment. An ordinary disease of life to which the public is generally exposed outside of the employment is not compensable. A personal injury under this act is compensable if work causes, contributes to, or aggravates pathology in a manner so as to create a pathology that is medically distinguishable from any pathology that existed prior to the injury. Mental disabilities and conditions of the aging process, including but not limited to heart and cardiovascular conditions, and degenerative arthritis shall be compensable if contributed to or aggravated or accelerated by the employment in a significant manner. Mental disabilities shall be compensable when arising out of actual events of employment, not unfounded perceptions thereof, and if the employee’s perception of the actual events is reasonably grounded in fact or reality.”

**MICH. COMP. LAWS SERV. § 418.401(2)(b) (2020)**

**Mental-Physical**

“Mental disabilities and conditions of the aging process, including but not limited to heart and cardiovascular conditions and degenerative arthritis, are compensable if contributed to or aggravated or accelerated by the employment in a significant manner. Mental disabilities are compensable if arising out of actual events of employment, not unfounded perceptions thereof, and if the employee’s perception of the actual events is reasonably grounded in fact or reality.”

**MICH. COMP. LAWS SERV. § 418.301(2) (2020)**

**Minnesota**

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<td>“Subd. 15. <em>Occupational disease.</em>”</td>
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(a) ‘Occupational disease’ means a mental impairment as defined in paragraph (d) or physical disease arising out of and in the course of employment peculiar to the occupation in which the employee is engaged and due to causes in excess of the hazards ordinary of employment and shall include undulant fever. Physical stimulus resulting in mental injury and mental stimulus resulting in physical injury shall remain compensable. Mental impairment is not considered a disease if it results from a disciplinary action, work evaluation, job transfer, layoff, demotion, promotion, termination, retirement, or similar action taken in good faith by the employer. Ordinary diseases of life to which the general public is equally exposed outside of employment are not compensable, except where the diseases follow as an incident of an occupational disease, or where the exposure peculiar to the occupation makes the disease an occupational disease hazard. A disease arises out of the employment only if there be a direct causal connection between the conditions under which the work is performed and if the occupational disease follows as a natural incident of the work as a result of the exposure occasioned by the nature of the employment. An employer is not liable for compensation for any occupational disease which cannot be traced to the employment as a direct and proximate cause and is not recognized as a hazard characteristic of and peculiar to the trade, occupation, process, or employment or which results from a hazard to which the worker would have been equally exposed outside of the employment.

* * *

(d) For the purposes of this chapter [for injuries occurring on or after October 1, 2013], ‘mental impairment’ means a diagnosis of post-traumatic stress disorder by a licensed psychiatrist or psychologist. For the purposes of this chapter, ‘post-traumatic stress disorder’ means the condition as described in the most recently published edition of the Diagnostic and Statistical Manual of Mental Disorders by the American Psychiatric Association.

* * *

Subd. 16. Personal injury. — ‘Personal injury’ means any mental impairment as defined in subdivision 15, paragraph (d), or physical injury arising out of and in the course of
employment and includes personal injury caused by occupational disease; but does not cover an employee except while engaged in, on, or about the premises where the employee’s services require the employee’s presence as a part of that service at the time of the injury and during the hours of that service. Where the employer regularly furnished transportation to employees to and from the place of employment, those employees are subject to this chapter while being so transported. Physical stimulus resulting in mental injury and mental stimulus resulting in physical injury shall remain compensable. Mental impairment is not considered a personal injury if it results from a disciplinary action, work evaluation, job transfer, layoff, demotion, promotion, termination, retirement, or similar action taken in good faith by the employer. Personal injury does not include an injury caused by the act of a third person or fellow employee intended to injure the employee because of personal reasons, and not directed against the employee as an employee, or because of the employment. An injury or disease resulting from a vaccine in response to a declaration by the Secretary of the United States Department of Health and Human Services under the Public Health Service Act to address an actual or potential health risk related to the employee’s employment is an injury or disease arising out of and in the course of employment.”

MINN. STAT. ANN. § 176.011 (2020)

Physical-Mental
“Cases in which work-related physical injury or trauma causes, aggravates, accelerates or precipitates mental injury are compensable. Hartman v. Cold Spring Granite Co., 67 N.W.2d 656 (Minn. 1954). It is not necessary the physical injury be the sole cause of the mental injury; it is sufficient the work-related physical injury be a substantial contributing factor to producing the mental injury. Miels v. NW Bell Tel. Co., 355 N.W.2d 710 (Minn. 1984). Minnesota courts have not required a physical injury be of a specific degree or severity when a physical injury results in a mental injury. The employee, to prove a compensable mental injury, must merely show a physical stimulus/injury caused the resulting mental injury. Mitchell v. White Castle Sys. Inc., N.W.2d 710 (1984). However, there must be ‘a clear medical opinion connecting the psychological condition to the injury.’ Westling v. Untiedt & Vegetable Farm, slip op. (W.C.C.A. Apr. 29, 2004). See also Dotolo v. FMC Corporation, 375 N.W.2d 25 (1985); Steinbach v. B.E. & K Construction Co., W.C.C.A. (1991);
Minnesota Department of Labor and Industry, “Workers’ compensation: Post-traumatic stress disorder and mental injuries,”

**Mental-Physical**

“Cases in which work-related mental stress or stimulus produces identifiable physical ailments may be compensable workers’ compensation injuries. The work-related stress need not be the only cause of the physical injury; it is sufficient for the stress to be a substantial contributing factor. *Aker v. Minnesota*, 282 N.W.2d 533 (Minn. 1979); *Wever v. Farmhand, Inc.*, 243 N.W.2d 37 (Minn. 1976). A two-step test is necessary to prove causation for a stress-induced injury; the employee must prove elements of both legal and medical causation to prevail with this type of claim. *Courtney v. City of Orono*, 463 N.W.2d 514 (Minn. 1990). *Romens v. Ballet of Dolls, Inc.*, W.C.C.A. 1-19-17. Medical causation requires proof that the mental stress resulted in the employee’s physical condition. Legal causation requires the employee to show that the mental stress was extreme or at least ‘beyond the ordinary day-to-day stress to which all employees are exposed.’ *Egeland v. City of Minneapolis*, 344 N.W.2d 597 (Minn. 1984). The test of ‘beyond day-to-day stress’ includes situations where stress has accumulated over a long period of time. The mental stress must relate to the nature, conditions and obligations or incidents of the employment relationship. *Solem v. College of St. Scholastica*, slip op. (W.C.C.A. June 27, 2000).
Also, to be compensable, the physical ailments caused by the mental stress must be susceptible to medical treatment that is separate and independent of treatment for the employee’s mental condition. If the physical ailments are ‘characterized not as independently treatable physical injuries but as physical symptoms or manifestations of employee’s anxiety or personality disorder and amenable to treatment only as an inseparable aspect of employee’s psychiatric condition, the claim is not compensable.”


Mississippi Mental-Mental
“[W]hen a claimant seeks compensation benefits for disability resulting from a mental or psychological injury, the claimant has the burden of proving by clear and convincing evidence the connection between the employment and the injury. Furthermore, to be compensable, a mental injury, unaccompanied by physical trauma, must have been caused by something more than the ordinary incidents of employment.”

_Fought v. Stuart C. Irby Co.,_ 523 So. 2d 314, 317 (Miss. 1988) (internal citations omitted)

Physical-Mental
“While Powers [v. Armstrong Tire & Rubber Co., 173 So. 2d 670, 672 (1965)] held that the causal connection between an industrial accident and a mental injury must be proven by ‘clear evidence,’ a review of this state’s precedent shows that ‘clear evidence’ and ‘clear and convincing evidence’ are used synonymously, and apply to a claimant’s burden of proof under either a mental/mental or physical/mental case.”


Mental-Physical
“[U]nder the rule in Mississippi in heart cases, the injury must be shown to have arisen within the time and space boundaries of the employment and within the course of activity whose purpose is related to the employment.”
Mississippi Research & Dev. Ctr. v. Dependents of Shults, 287 So. 2d 273, 276 (Miss. 1973)

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| “8. Mental injury resulting from work-related stress does not arise out of and in the course of the employment, unless it is demonstrated that the stress is work related and was extraordinary and unusual. The amount of work stress shall be measured by objective standards and actual events.

9. A mental injury is not considered to arise out of and in the course of the employment if it resulted from any disciplinary action, work evaluation, job transfer, layoff, demotion, termination or any similar action taken in good faith by the employer.” |

MO. REV. STAT. § 287.120 (2020)

**Physical-Mental**

“We conclude that the Commission erred in applying Section 287.120.8 to determine that Claimant did not sustain an accidental injury arising out of and in the course of her employment. The plain language of Section 287.120.8 indicates that it applies only to claims of mental injury resulting from work-related stress. Claimant’s claim of mental injury was not based upon work-related stress, i.e., based upon work conditions over a period of time. [citations omitted]

Rather, Claimant’s claim of mental injury was based upon the physical assault that occurred on December 30, 2000. Claimant’s claim is for mental injury resulting from a traumatic incident, one which included the physical contact or impact of Patient grabbing Claimant’s breast, not from work-related stress. Therefore, by its terms, Section 287.120.8 does not apply to Claimant’s claim, and she was not required to prove that the stress was extraordinary and unusual. [citation omitted] Thus, the compensability of Claimant’s claim should be determined under Section 287.120.1. . . .

The Final Award of the Commission is reversed and remanded with instructions to apply Section 287.120.1 to determine whether Claimant sustained an accidental injury arising out of and in the course of her employment and, if necessary, to address the remaining issues for determination.”

**Mental-Physical**

“A cardiovascular, pulmonary, respiratory, or other disease, or cerebrovascular accident or myocardial infarction suffered by a worker is an injury only if the accident is the prevailing factor in causing the resulting medical condition.”

**MO. REV. STAT. § 287.020(3)(4) (2020).**

Also, “[t]he word ‘accident’ as used in this chapter shall mean an unexpected traumatic event or unusual strain identifiable by time and place of occurrence and producing at the time objective symptoms of an injury caused by a specific event during a single work shift. An injury is not compensable because work was a triggering or precipitating factor.”

**MO. REV. STAT. §287.020(2) (2020).**

### Montana

**Mental-Mental**

“‘Injury’ or ‘injured’ does not mean a physical or mental condition arising from:

- (a) emotional or mental stress; or

- (b) a nonphysical stimulus or activity.”


In addition,

“(a) ‘Occupational disease’ means harm, damage, or death arising out of or contracted in the course and scope of employment caused by events occurring on more than a single day or work shift.

(b) The term does not include a physical or mental condition arising from emotional or mental stress or from a nonphysical stimulus or activity.”


Finally, “[i]t is the intent of the legislature that:
(a) a stress claim, often referred to as a ‘mental-mental claim’ or a ‘mental-physical claim’, is not compensable under Montana’s workers’ compensation and occupational disease laws. The legislature recognizes that these claims are difficult to objectively verify and that the claims have a potential to place an economic burden on the workers’ compensation and occupational disease system. The legislature also recognizes that there are other states that do not provide compensation for various categories of stress claims and that stress claims have presented economic problems for certain other jurisdictions. In addition, not all injuries are compensable under the present system, and it is within the legislature’s authority to define the limits of the workers’ compensation and occupational disease system."


Physical-Mental
In order to be compensable, a mental injury must “directly result[] from those physical injuries [defined in MONT. CODE ANN. § 39-71-119(1)(a).]”


Mental-Physical
“‘Injury’ or ‘injured’ does not mean a physical or mental condition arising from:

(a) emotional or mental stress; or 

(b) a nonphysical stimulus or activity.”


In addition,

“(a) ‘Occupational disease’ means harm, damage, or death arising out of or contracted in the course and scope of employment caused by events occurring on more than a single day or work shift.
(b) The term does not include a physical or mental condition arising from emotional or mental stress or from a nonphysical stimulus or activity.”


Finally, “[i]t is the intent of the legislature that:

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**Nebraska**

**Mental-Mental**

“A claim for a psychological or mental condition requires that the mental condition must be related to or caused by the physical injury. See Zach v. Nebraska State Patrol, 273 Neb. 1 (2007). An injury caused by a mental stimulus does not meet the requirement that a compensable accidental injury involve violence to the physical structure of the body. Id.”

*Hynes v. Good Samaritan Hosp.*, 869 N.W.2d 78, 88 (Neb. 2015)

**Physical-Mental**

“Compensation may be recovered for emotional or psychological conditions which are proximately caused by a work-related injury and result in disability.”

Mental-Physical
“Injury and personal injuries mean only violence to the physical structure of the body and such disease or infection as naturally results therefrom and personal injuries described in section 48-101.01. The terms include disablement resulting from occupational disease arising out of and in the course of the employment in which the employee was engaged and which was contracted in such employment. The terms include an aggravation of a preexisting occupational disease, the employer being liable only for the degree of aggravation of the preexisting occupational disease. The terms do not include disability or death due to natural causes but occurring while the employee is at work and do not include an injury, disability, or death that is the result of a natural progression of any preexisting condition.”


Nevada
Mental-Mental
“1. Except as otherwise provided in this section, an injury or disease sustained by an employee that is caused by stress is compensable pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS if it arose out of and in the course of his or her employment.

2. Any ailment or disorder caused by any gradual mental stimulus, and any death or disability ensuing therefrom, shall be deemed not to be an injury or disease arising out of and in the course of employment.

3. Except as otherwise provided by subsections 4 and 5 [regarding first responders and state employees], an injury or disease caused by stress shall be deemed to arise out of and in the course of employment only if the employee proves by clear and convincing medical or psychiatric evidence that:

(a) The employee has a mental injury caused by extreme stress in time of danger;

(b) The primary cause of the injury was an event that arose out of and during the course of his or her employment; and

(c) The stress was not caused by his or her layoff, the termination of his or her employment or any disciplinary action taken against him or her.”
Physical-Mental
Physical-mental injuries are compensable if they are a “direct consequence of physical injuries sustained in the workplace.”


Mental-Physical
“2. For the purposes of chapters 616A to 616D, inclusive, of NRS:

(a) Coronary thrombosis, coronary occlusion, or any other ailment or disorder of the heart, and any death or disability ensuing therefrom, shall be deemed not to be an injury by accident sustained by an employee arising out of and in the course of his or her employment.”

New Hampshire

Mental-Mental
“‘Injury’ or ‘personal injury’ as used in and covered by this chapter means accidental injury or death arising out of and in the course of employment, or any occupational disease or resulting death arising out of and in the course of employment, including disability due to radioactive properties or substances or exposure to ionizing radiation. ‘Injury’ or ‘personal injury’ shall not include diseases or death resulting from stress without physical manifestation. . . . ‘Injury’ or ‘personal injury’ shall not include a mental injury if it results from any disciplinary action, work evaluation, job transfer, layoff, demotion, termination, or any similar action, taken in good faith by an employer.”


Physical-Mental
“‘Injury’ or ‘personal injury’ as used in and covered by this chapter means accidental injury or death arising out of and in the course of employment, or any occupational disease or resulting death arising out of and in the course of employment, including disability due to radioactive properties or substances or exposure to ionizing radiation. ‘Injury’ or ‘personal injury’ shall not include diseases or death resulting from stress without
physical manifestation. . . . ‘Injury’ or ‘personal injury’ shall not include a mental injury if it results from any disciplinary action, work evaluation, job transfer, layoff, demotion, termination, or any similar action, taken in good faith by an employer.”


**Mental-Physical**

“[P]sychological stress and overexertion can cause a work-related heart attack. Once the causal relationship is accepted as possible the claimant still must prove that ‘the work-related stresses in the particular case at issue were a causal factor in the heart attack which ensued.’ In each case, analysis should therefore focus on whether there is sufficient proof of causal work-related stress. The claimants had to show by a preponderance of evidence that the actual work-related stress precipitated decedent’s heart attack. In other words, the claimants had to prove both medical and legal causation.

The legal causation test defines the degree of exertion that is necessary to make the injury work-connected. . . . Thus, heart attacks that actually result from work-related stress are distinguished from those that occur at work merely as a result of natural physiological process. If there is no prior weakness or disease of the heart, any exertion connected with the heart attack as a matter of medical fact is adequate to satisfy the legal test of causation so as to make the injury or death compensable.

In addition to legal causation, that is, that the stress was work-connected, the claimants must also prove as a fact medical causation. In other words, the claimant must medically prove that the work stress or exertion probably caused or contributed to decedent’s heart attack.”


**New Jersey**

**Mental-Mental**

“[F]or a worker’s mental condition to be compensable, the working conditions must be stressful, viewed objectively, and the believable evidence must support a finding that the worker reacted to them as stressful. In addition, for a present-day claimant to succeed, the objectively stressful working conditions must be ‘peculiar’ to the particular workplace, and
there must be objective evidence supporting a medical opinion of the resulting psychiatric disability, in addition to ‘the bare statement of the patient.’”

* * *

**Physical-Mental**

“There is no doubt that psychiatric illness secondary to injuries is compensable under New Jersey Worker’s Compensation Law providing that the essential elements of the psychiatric impairment are established by competent medical criteria.”

* * *

**Mental-Physical**

“In any claim for compensation for injury or death from cardiovascular or cerebral vascular causes, the claimant shall prove by a preponderance of the credible evidence that the injury or death was produced by the work effort or strain involving a substantial condition, event or happening in excess of the wear and tear of the claimant’s daily living and in reasonable medical probability caused in a material degree the cardiovascular or cerebral vascular injury or death resulting therefrom.

Material degree means an appreciable degree or a degree substantially greater than de minimis.”

**New Mexico**

**Mental-Mental**

“As used in the Workers’ Compensation Act [52-1-1 NMSA 1978]:

* * *

B. ‘primary mental impairment’ means a mental illness arising from an accidental injury arising out of and in the course of employment when the accidental injury involves no physical injury and consists of a psychologically traumatic event that is generally outside of a worker’s usual experience and would evoke significant symptoms of distress in a worker in similar circumstances, but is not an event in connection with
disciplinary, corrective or job evaluation action or cessation of
the worker’s employment[.]”


**Physical-Mental**

“As used in the Workers’ Compensation Act [52-1-1 NMSA
1978]:

* * *

“C. ‘secondary mental impairment’ means a mental illness
resulting from a physical impairment caused by an accidental
injury arising out of and in the course of employment.”


**Mental-Physical**

“[W]here an employer denies a disability is a result of an
accident, the claimant ‘must establish that causal connection as
a probability by expert testimony of a health care provider.’ In
other words, Herman had to show by medical evidence that
decedent’s death and heart attack was a medically probable
result of the work-related stress.”

*Herman v. Miners’ Hosp.*, 807 P.2d 734, 736 (N.M. 1991)

**New York**

**Mental-Mental**

“It is well settled that mental injuries caused by work-related
stress are compensable if the claimant can establish that the
stress that caused the injury was ‘greater than that which other
similarly situated workers experienced in the normal work
environment.’”

(N.Y. App. Div. 2015)

However, “‘[i]injury’ and ‘personal injury’ mean only
accidental injuries arising out of and in the course of
employment and such disease or infection as may naturally and
unavoidably result therefrom. The terms ‘injury’ and ‘personal
injury’ shall not include an injury which is solely mental and is
based on work-related stress if such mental injury is a direct
consequence of a lawful personnel decision involving a
disciplinary action, work evaluation, job transfer, demotion, or
termination taken in good faith by the employer.”
Physical-Mental

“Since there is no statutory definition of [accidental injury] we turn to the relevant decisions. These may be divided into three categories: (1) psychic trauma which produces physical injury, (2) physical impact which produces psychological injury, and (3) psychic trauma which produces psychological injury. [citations omitted] As to the first class our court has consistently recognized the principle that an injury caused by emotional stress or shock may be accidental within the purview of the compensation law. [citations omitted] Cases falling into the second category have uniformly sustained awards to those incurring nervous or psychological disorders as a result of physical impact.”


Mental-Physical

“Since there is no statutory definition of [accidental injury] we turn to the relevant decisions. These may be divided into three categories: (1) psychic trauma which produces physical injury, (2) physical impact which produces psychological injury, and (3) psychic trauma which produces psychological injury. [citations omitted] As to the first class our court has consistently recognized the principle that an injury caused by emotional stress or shock may be accidental within the purview of the compensation law. [citations omitted] Cases falling into the second category have uniformly sustained awards to those incurring nervous or psychological disorders as a result of physical impact. [citations omitted] As to those cases in the third category the decisions are not as clear.”

public generally is equally exposed with those engaged in that particular trade or occupation.’ Rutledge v. Tultex Corp., 308 N.C. 85, 93 (1983) (citation omitted). In addition, ‘there must be a causal connection between the disease and the [claimant’s] employment.’ Id. (citation and internal quotation marks omitted). ‘In cases where the employment exposed the worker to a greater risk of contracting the disease than the general public, the first two elements are satisfied.’ Chambers v. Transit Mgmt., 360 N.C. 609, 612 (2006) (internal citations and quotation marks omitted).

It is well established that ‘[u]nder appropriate circumstances, work-related depression or other mental illness may be a compensable occupational disease’ pursuant to N.C. Gen. Stat. § 97-53. Pitillo v. N.C. Dep’t of Envtl. Health & Natural Res., 151 N.C. App. 641, 648 (2002) (citation omitted); accord Clark v. City of Asheville, 161 N.C. App. 717, 721 (2003). In such cases, ‘the claimant must prove that the mental illness or injury was due to stresses or conditions different from those borne by the general public.’ Pitillo, 151 N.C. App. at 648 (citation omitted).”


Physical-Mental

“This case is properly characterized as a ‘physical/mental case’ -- i.e., physical insult resulting in mental injury -- as opposed to the ‘mental/mental’ or ‘mental/physical’ scenario that requires a more difficult evaluation of whether the mental insult is ‘objectively’ causative, ‘in light of the commonsense viewpoint of the average man[.]’ This is not a case of a minor work-related injury that ‘triggers’ or ‘precipitates’ an extreme and unpredictable reaction in the claimant far out of proportion to what one might expect from ‘the average reasonable man’ or normal run of employees. . ., so that the cause is seen as arising out of the employee and not the employment. While plaintiff’s physical problems were more persistent and painful than her orthopaedists would have anticipated, and were worse because of her mental vulnerability as Dr. Comer testified, they were significant enough to justify substantial impairment ratings by her treating physician. The employee had an established pattern of difficulty with mental stressors, and it would have been surprising if the situational depression that most people experience due to the pain and hardship of a significant injury
had not affected her more markedly than normal. Our Courts long ago established that when the physical injury is substantial enough to cause disability, pain and the likelihood of situational depression in the average or normal employee, the ‘thin skull’ principle conventionally applied in ‘physical/physical’ workers’ compensation cases will be applicable.”

* * *


**Mental-Physical**

“Ordinarily a death from heart disease is not an injury by accident arising out of and in the course of the employment, nor an occupational disease, so as to be compensable under our statute.”


<table>
<thead>
<tr>
<th>North Dakota</th>
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| **Mental-Mental** | “‘Compensable injury’ means an injury by accident arising out of and in the course of hazardous employment which must be established by medical evidence supported by objective medical findings.  

* * *

b. The term does not include:

(10) A mental injury arising from mental stimulus.”


**Physical-Mental**

“‘Compensable injury’ means an injury by accident arising out of and in the course of hazardous employment which must be established by medical evidence supported by objective medical findings.

a. The term includes:

* * *

(6) A mental or psychological condition caused by a physical injury, but only when the physical injury is determined with reasonable medical certainty to be at least fifty percent of the cause
of the condition as compared with all other contributing causes combined, and only when the condition did not pre-exist the work injury.”


**Mental-Physical**

“‘Compensable injury’ means an injury by accident arising out of and in the course of hazardous employment which must be established by medical evidence supported by objective medical findings.

a. The term includes:

* * *

(3) Injuries due to heart attack or other heart-related disease, stroke, and physical injury caused by mental stimulus, but only when caused by the employee’s employment with reasonable medical certainty, and only when it is determined with reasonable medical certainty that unusual stress is at least fifty percent of the cause of the injury or disease as compared with all other contributing causes combined. Unusual stress means stress greater than the highest level of stress normally experienced or anticipated in that position or line of work.”


<table>
<thead>
<tr>
<th>Ohio</th>
<th><strong>Mental-Mental</strong></th>
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|      | “‘Injury’ includes 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. ‘Injury’ does not include:

(1) Psychiatric conditions except where the claimant’s psychiatric conditions have arisen from an injury or occupational disease sustained by that claimant or where the claimant’s psychiatric conditions have arisen from sexual conduct in which the claimant was forced by threat of physical harm to engage or participate.” |

**Ohio Rev. Code Ann. § 4123.01(C) (2020)**

**Physical-Mental**
“Armstrong [v. John R. Jurgensen Co., 990 N.E.2d 568 (Ohio 2013)] holds that there must be a causal connection between the physical and psychological injuries in order to obtain workers’ compensation for the psychological injury, but it does not discuss or in any way suggest that the psychological injury must occur contemporaneously with or within a certain period of time of the physical injury to be compensable. Of course, the passage of time is one factor to be considered in factually determining whether a causal connection has been established, and may make it more difficult for the claimant to establish such a connection. But Armstrong does not stand for the proposition that the absence of a psychological injury at the time of the physical injury, or sooner thereafter, is determinative.”


Mental-Physical

“Because stress is experienced by every person in everyday life, it is necessary to define what kind of mental or emotional stress is legally sufficient to give rise to a compensable injury. Much stress occurring in the course of, and arising out of, employment, is simply a result of the demands of functioning in our society, and participating in the work force, in and of itself, is a stressful activity. In order for a stress-related injury to be compensable, therefore, it must be the result of mental or emotional stress that is, in some respect, unusual. Over twenty years ago, the New York Court of Appeals developed a test that has since effectively been applied by the courts of a number of jurisdictions to determine whether the stress alleged to be the cause of a claimant’s injury is legally sufficient to merit an award of workers’ compensation. We, too, adopt this test and hold that in order for a stress-related injury to be compensable, the claimant must show that the injury resulted from ‘greater emotional strain or tension than that to which all workers are occasionally subjected.’

Once a claimant has met this first test, he still must establish that the stress to which he (or claimant’s decedent) was subjected in his employment was, in fact, the medical cause of his injury. In this regard, the claimant must show a substantial causal relationship between the stress and the injury for which compensation is sought. The claimant therefore must ‘show by a preponderance of the evidence, medical or otherwise, that a direct or proximate causal relationship existed between * * *'
**[the stress] and his harm or disability,’ or, when death benefits are sought, that the claimant’s decedent’s death was ‘accelerated by a substantial period of time as a direct and proximate result of the **[stress].’”

*Ryan v. Connor*, 503 N.E.2d 1379, 1382 (Ohio 1986) (internal citations omitted)

**Oklahoma**

**Mental-Mental**

“1. A mental injury or illness is not a compensable injury unless caused by a physical injury to the employee, and shall not be considered an injury arising out of and in the course and scope of employment or compensable unless demonstrated by a preponderance of the evidence; provided, however, that this physical injury limitation shall not apply to any victim of a crime of violence.

2. No mental injury or illness under this section shall be compensable unless it is also diagnosed by a licensed psychiatrist or psychologist and unless the diagnosis of the condition meets the criteria established in the most current issue of the Diagnostic and Statistical Manual of Mental Disorders.”

**OKLA. STAT. tit. 85A, § 13(A) (2020)**

**Physical-Mental**

“1. A mental injury or illness is not a compensable injury unless caused by a physical injury to the employee, and shall not be considered an injury arising out of and in the course and scope of employment or compensable unless demonstrated by a preponderance of the evidence; provided, however, that this physical injury limitation shall not apply to any victim of a crime of violence.

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**OKLA. STAT. tit. 85A, § 13(A) (2020)**

**Mental-Physical**
“A. A cardiovascular, coronary, pulmonary, respiratory, or cerebrovascular accident or myocardial infarction causing injury, illness, or death is a compensable injury only if, in relation to other factors contributing to the physical harm, the course and scope of employment was the major cause.

B. An injury or disease included in subsection A of this section shall not be deemed to be a compensable injury unless it is shown that the exertion of the work necessary to precipitate the disability or death was extraordinary and unusual in comparison to the employee’s usual work in the course of the employee’s regular employment, or that some unusual and unpredicted incident occurred which is found to have been the major cause of the physical harm.”

OKLA. STAT. tit. 85A, § 14 (2020)

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<th>Oregon</th>
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(a) As used in this chapter, ‘occupational disease’ means any disease or infection arising out of and in the course of employment caused by substances or activities to which an employee is not ordinarily subjected or exposed other than during a period of regular actual employment therein, and which requires medical services or results in disability or death, including:

* * *

(B) Any mental disorder, whether sudden or gradual in onset, which requires medical services or results in physical or mental disability or death.

(C) Any series of traumatic events or occurrences which requires medical services or results in physical disability or death.

(b) As used in this chapter, ‘mental disorder’ includes any physical disorder caused or worsened by mental stress.

(2) 

(a) The worker must prove that employment conditions were the major contributing cause of the disease.
(c) Occupational diseases shall be subject to all of the same limitations and exclusions as accidental injuries under ORS 656.005(7).

(d) Existence of an occupational disease or worsening of a preexisting disease must be established by medical evidence supported by objective findings.

(3) Notwithstanding any other provision of this chapter, a mental disorder is not compensable under this chapter unless the worker establishes all of the following:

(a) The employment conditions producing the mental disorder exist in a real and objective sense.

(b) The employment conditions producing the mental disorder are conditions other than conditions generally inherent in every working situation or reasonable disciplinary, corrective or job performance evaluation actions by the employer, or cessation of employment or employment decisions attendant upon ordinary business or financial cycles.

(c) There is a diagnosis of a mental or emotional disorder which is generally recognized in the medical or psychological community.

(d) There is clear and convincing evidence that the mental disorder arose out of and in the course of employment.”

OR. REV. STAT. § 656.802 (2020)

Physical-Mental
“[I]f . . . ORS 656.802 (relating to occupational diseases in the form of mental disorders) applies, [] the requirements of that provision must be met, whether the cause of the mental disorder was physical, non-physical, or both.”

DiBrito v. SAIF Corp. (In re DiBrito), 875 P.2d 459, 462 (Or. 1994)

Mental-Physical
“[A] heart attack, whether it is caused by physical exertion, by job stress, or by both, is an accidental injury within the
meaning of ORS 656.005(7). A heart attack is not a ‘mental disorder’ within the meaning of ORS 656.802. Accordingly, the requirements relating to mental disorders established in ORS 656.802(3) do not apply to a claim for compensation for a heart attack.”

*Mathel v. Josephine County (In re Mathel)*, 875 P.2d 455, 459 (Or. 1994)

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<thead>
<tr>
<th>Pennsylvania</th>
<th>Mental-Mental</th>
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<td>“While establishing a causal nexus between an injury and the work place is ordinarily sufficient to establish one’s entitlement to benefits under the Act, there exists a heightened burden of proof for individuals who wish to recover benefits for purely psychological injuries. In the so called ‘mental/mental’ case, a claimant has the burden of proving not only that he or she suffered a work-related injury, but also that the mental injury was the result of abnormal working conditions and not simply a subjective reaction to normal events in the work place.”</td>
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<th>Physical-Mental</th>
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<td>“As in all cases where a claimant seeks [workers’ compensation] benefits via claim petition, Claimant has the initial ‘burden of proving all the elements necessary to support an award’ of benefits. Where, as here, a claimant asserts a claim under the physical/mental standard, the claimant must establish, in relevant part, that the mental injury resulted from a triggering physical stimulus and arose during the course of employment. ‘A claimant need not prove that he or she suffered a physical disability that caused a mental disability for which he or she may receive benefits. Nor must a claimant show that the physical injury continues during the life of the [mental] disability.’ However, . . . our precedent has interpreted the term ‘physical stimulus’ as a physical injury that requires medical treatment, even if that physical injury is not disabling under the Law. Additionally, the mental injury must be related to the physical stimulus.”</td>
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Furthermore, “[i]f the casual [sic] relationship between the claimant’s work and the injury is not clear, the claimant must provide unequivocal medical testimony to establish the necessary relationship.”


Mental-Physical
“In 1972, the General Assembly enacted substantial changes in the Act which shifted the focus from injuries by accidents in the course of employment to injuries arising from and related to the course of employment. [citation omitted] With these amendments, the legislature clearly manifested its intention to expand workmen’s compensation coverage to include stress heart attack victims. [citation omitted]

* * *

A straightforward reading of the Act demonstrates there are only two requirements for compensability -- (1) that the injury arose in the course of employment and (2) that the injury was related to that employment.

The operative language in section 301(a), 77 P.S. § 431 is ‘[e]very employer shall be liable for compensation for personal injury to, or for the death of each employee, by an injury in the course of employment.’ In section 301(c), 77 P.S. § 411(1), the operative language is ‘‘injury’ and ‘personal injury’ . . . shall be construed to mean an injury to an employee [sic], regardless of his previous physical condition, arising in the course of his employment and related thereto . . . .’ This Court and the Commonwealth Court have consistently construed section 301(c) to require the establishment by the claimant of only two facts -- that the injury arose in the course of employment and was related thereto. See, e.g., . . . Workmen’s Compensation Appeal Board v. Bernard S. Pincus Co., [479 Pa. 286 (1978)] (under the amended Workmen’s Compensation Act, a heart attack is a compensable injury as long as the claimant proves that it occurred in the course of employment and was related thereto.); Faust v. Workmen’s Compensation Appeal Board, 55 Pa. Cmwh. 285 (1980) (‘heart attacks are compensable injuries . . . if they (1) arise in the course of employment and (2) are related thereto.’).

Rhode Island

**Mental-Mental**

“The disablement of any employee resulting from an occupational disease or condition described in the following schedule shall be treated as the happening of a personal injury, as defined in § 28-33-1, within the meaning of chapters 29 - 38 of this title, and the procedure and practice provided in those chapters shall apply to all proceedings under this chapter, except where specifically provided otherwise in this chapter:

* * *

(36) The disablement of an employee resulting from mental injury caused or accompanied by identifiable physical trauma or from a mental injury caused by emotional stress resulting from a situation of greater dimensions than the day-to-day emotional strain and tension which all employees encounter daily without serious mental injury shall be treated as an injury as defined in § 28-29-2(7).”

R.I. GEN. LAWS § 28-34-2 (2020)

**Physical-Mental**

“The disablement of any employee resulting from an occupational disease or condition described in the following schedule shall be treated as the happening of a personal injury, as defined in §28-33-1, within the meaning of chapters 29 - 38 of this title, and the procedure and practice provided in those chapters shall apply to all proceedings under this chapter, except where specifically provided otherwise in this chapter:

* * *

(36) The disablement of an employee resulting from mental injury caused or accompanied by identifiable physical trauma or from a mental injury caused by emotional stress resulting from a situation of greater dimensions than the day-to-day emotional strain and tension which all employees encounter daily without serious mental injury shall be treated as an injury as defined in § 28-29-2(7).”

R.I. GEN. LAWS § 28-34-2 (2020)

**Mental-Physical**

“In heart-attack cases the inquiry centers not on whether the work activity involved physical exertion but rather whether there existed a causal connection between the employee’s work and the resulting heart attack.”
<table>
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<th>South Carolina</th>
<th>Mental-Mental</th>
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<td>“(B) Stress, mental injuries, and mental illness arising out of and in the course of employment unaccompanied by physical injury and resulting in mental illness or injury are not considered a personal injury unless the employee establishes, by a preponderance of the evidence:</td>
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<tr>
<td>(1) that the employee’s employment conditions causing the stress, mental injury, or mental illness were extraordinary and unusual in comparison to the normal conditions of the particular employment; and</td>
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<td>(2) the medical causation between the stress, mental injury, or mental illness, and the stressful employment conditions by medical evidence.</td>
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<tr>
<td>(C) Stress, mental injuries, heart attacks, strokes, embolisms, or aneurisms arising out of and in the course of employment unaccompanied by physical injury are not considered compensable if they result from any event or series of events which are incidental to normal employer/employee relations including, but not limited to, personnel actions by the employer such as disciplinary actions, work evaluations, transfers, promotions, demotions, salary reviews, or terminations, except when these actions are taken in an extraordinary and unusual manner.”</td>
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S.C. CODE ANN. § 42-1-160 (2020)

Physical-Mental

“Where . . . the mental injury is induced by physical injury, it is not necessary that it result from unusual or extraordinary conditions of employment.

A condition which is induced by a physical injury, is thereby causally related to that injury. [citations omitted] It is a new symptom manifesting from the same harm to the body. In such circumstances, it may properly be compensated in a change of condition proceeding as a part of the original injury.”

Mental-Physical
“(B) Stress, mental injuries, and mental illness arising out of and in the course of employment unaccompanied by physical injury and resulting in mental illness or injury are not considered a personal injury unless the employee establishes, by a preponderance of the evidence:

(1) that the employee’s employment conditions causing the stress, mental injury, or mental illness were extraordinary and unusual in comparison to the normal conditions of the particular employment; and

(2) the medical causation between the stress, mental injury, or mental illness, and the stressful employment conditions by medical evidence.

(C) Stress, mental injuries, heart attacks, strokes, embolisms, or aneurisms arising out of and in the course of employment unaccompanied by physical injury are not considered compensable if they result from any event or series of events which are incidental to normal employer/employee relations including, but not limited to, personnel actions by the employer such as disciplinary actions, work evaluations, transfers, promotions, demotions, salary reviews, or terminations, except when these actions are taken in an extraordinary and unusual manner.”

S.C. CODE ANN. § 42-1-160 (2020)

South Dakota Mental-Mental
“‘Injury’ or ‘personal injury,’ only injury arising out of and in the course of the employment, and does not include a disease in any form except as it results from the injury. An injury is compensable only if it is established by medical evidence, subject to the following conditions:

* * *

The term does not include a mental injury arising from emotional, mental, or nonphysical stress or stimuli. A mental injury is compensable only if a compensable physical injury is and remains a major contributing cause of the mental injury, as shown by clear and convincing evidence. A mental injury is any psychological, psychiatric, or emotional condition for which compensation is sought.”

### Physical-Mental

“‘Injury’ or ‘personal injury,’ only injury arising out of and in the course of the employment, and does not include a disease in any form except as it results from the injury. An injury is compensable only if it is established by medical evidence, subject to the following conditions:

(a) No injury is compensable unless the employment or employment related activities are a major contributing cause of the condition complained of; [ ]

. . . A mental injury is compensable only if a compensable physical injury is and remains a major contributing cause of the mental injury, as shown by clear and convincing evidence. A mental injury is any psychological, psychiatric, or emotional condition for which compensation is sought.”


### Mental-Physical

“‘Injury’ or ‘personal injury,’ only injury arising out of and in the course of the employment, and does not include a disease in any form except as it results from the injury. An injury is compensable only if it is established by medical evidence, subject to the following conditions:

(a) No injury is compensable unless the employment or employment related activities are a major contributing cause of the condition complained of.”


### Mental-Mental

“‘Injury’ and ‘personal injury’ mean an injury by accident, a mental injury, occupational disease including diseases of the heart, lung and hypertension, or cumulative trauma conditions including hearing loss, carpal tunnel syndrome or any other repetitive motion conditions, arising primarily out of and in the course and scope of employment, that causes death, disablement or the need for medical treatment of the employee; provided, that:

(A) An injury is ‘accidental’ only if the injury is caused by a specific incident, or set of incidents, arising primarily out of and in the course and scope of
employment, and is identifiable by time and place of occurrence, and shall not include the aggravation of a preexisting disease, condition or ailment unless it can be shown to a reasonable degree of medical certainty that the aggravation arose primarily out of and in the course and scope of employment;

(B) An injury ‘arises primarily out of and in the course and scope of employment’ only if it has been shown by a preponderance of the evidence that the employment contributed more than fifty percent (50%) in causing the injury, considering all causes;

(C) An injury causes death, disablement or the need for medical treatment only if it has been shown to a reasonable degree of medical certainty that it contributed more than fifty percent (50%) in causing the death, disablement or need for medical treatment, considering all causes;

(D) ‘Shown to a reasonable degree of medical certainty’ means that, in the opinion of the physician, it is more likely than not considering all causes, as opposed to speculation or possibility;

(E) The opinion of the treating physician, selected by the employee from the employer’s designated panel of physicians pursuant to § 50-6-204(a)(3), shall be presumed correct on the issue of causation but this presumption shall be rebuttable by a preponderance of the evidence.”

TENN. CODE ANN. § 50-6-102(14) (2020) (for injuries occurring on or after July 1, 2014)

In addition, “‘[m]ental injury’ means a loss of mental faculties or a mental or behavioral disorder, arising primarily out of a compensable physical injury or an identifiable work related event resulting in a sudden or unusual stimulus, and shall not include a psychological or psychiatric response due to the loss of employment or employment opportunities.”

TENN. CODE ANN. § 50-6-102(17) (2020) (for injuries occurring on or after July 1, 2014)
| Physical-Mental                                                                 |
| Adam 2001. Work-Related Psychological Injury Claim 119 |

“‘Injury’ and ‘personal injury’ mean an injury by accident, a mental injury, occupational disease including diseases of the heart, lung and hypertension, or cumulative trauma conditions including hearing loss, carpal tunnel syndrome or any other repetitive motion conditions, arising primarily out of and in the course and scope of employment, that causes death, disablement or the need for medical treatment of the employee; provided, that:

(A) An injury is ‘accidental’ only if the injury is caused by a specific incident, or set of incidents, arising primarily out of and in the course and scope of employment, and is identifiable by time and place of occurrence, and shall not include the aggravation of a preexisting disease, condition or ailment unless it can be shown to a reasonable degree of medical certainty that the aggravation arose primarily out of and in the course and scope of employment;

(B) An injury ‘arises primarily out of and in the course and scope of employment’ only if it has been shown by a preponderance of the evidence that the employment contributed more than fifty percent (50%) in causing the injury, considering all causes;

(C) An injury causes death, disablement or the need for medical treatment only if it has been shown to a reasonable degree of medical certainty that it contributed more than fifty percent (50%) in causing the death, disablement or need for medical treatment, considering all causes;

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In addition, “[m]ental injury’ means a loss of mental faculties or a mental or behavioral disorder, arising primarily out of a compensable physical injury or an identifiable work related event resulting in a sudden or unusual stimulus, and shall not include a psychological or psychiatric response due to the loss of employment or employment opportunities.”

Mental-Physical

“Injury’ and ‘personal injury’ mean an injury by accident, a mental injury, occupational disease including diseases of the heart, lung and hypertension, or cumulative trauma conditions including hearing loss, carpal tunnel syndrome or any other repetitive motion conditions, arising primarily out of and in the course and scope of employment, that causes death, disablement or the need for medical treatment of the employee; provided, that:

(A) An injury is ‘accidental’ only if the injury is caused by a specific incident, or set of incidents, arising primarily out of and in the course and scope of employment, and is identifiable by time and place of occurrence, and shall not include the aggravation of a preexisting disease, condition or ailment unless it can be shown to a reasonable degree of medical certainty that the aggravation arose primarily out of and in the course and scope of employment;

(B) An injury ‘arises primarily out of and in the course and scope of employment’ only if it has been shown by a preponderance of the evidence that the employment contributed more than fifty percent (50%) in causing the injury, considering all causes;

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(D) ‘Shown to a reasonable degree of medical certainty’ means that, in the opinion of the physician, it is more likely than not considering all causes, as opposed to speculation or possibility;

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TENN. CODE ANN. § 50-6-102(14) (2020) (for injuries occurring on or after July 1, 2014)

<table>
<thead>
<tr>
<th>Texas</th>
<th><strong>Mental-Mental</strong></th>
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| “It is well-settled that mental trauma, even without an accompanying physical injury, can produce a compensable injury if it arises in the course and scope of employment and can be traced to a definite time, place and cause. Bailey v. American General Insurance Co., 279 S.W.2d 315 (Tex. 1955); Olson v. Hartford Accident and Indemnity Co., 477 S.W.2d 859 (Tex. 1972). However, the Texas Supreme Court has specifically held that damage or harm caused by repetitious mentally traumatic activity, as opposed to physical activity, cannot constitute an occupational disease. Transportation Ins. Co. v. Maksyn, 580 S.W.2d 334 (Tex. 1979); see also [Texas Workers’ Compensation Commission] Appeal No. 941551, [decided December 23, 1994]; and Texas Workers’ Compensation Commission Appeal No. 94785, decided July 29, 1994.”


See also TEX. LAB. CODE ANN. § 408.006 (2019):

“(a) It is the express intent of the legislature that nothing in this subtitle shall be construed to limit or expand recovery in cases of mental trauma injuries.

(b) Notwithstanding Section 504.019 [Coverage for Post-Traumatic Stress Disorder for Certain First Responders], a mental or emotional injury that arises principally from a
legitimate personnel action, including a transfer, promotion, demotion, or termination, is not a compensable injury under this subtitle.”

**Physical-Mental**

“The 1989 Act defines ‘injury’ as ‘damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm.’ Section 401.011(26). The scope of an injury thus can encompass ancillary conditions which are connected to the injury.”

Texas Workers’ Compensation Appeal No. 93697, 1993 TX Wrk. Comp. LEXIS 3564, at *10 (September 23, 1993)

In addition, “in finding that the hearing officer was sufficiently supported in concluding that claimant’s psychiatric conditions are compensable, we do not hold that a ‘direct result,’ as opposed to a ‘result,’ must be found in order to find a mental condition compensable in every case in which a mental condition arises after sustaining a physical compensable injury.”

Texas Workers’ Compensation Appeal No. 960526, 1996 TX Wrk. Comp. LEXIS 4294, at *8 (April 29, 1996)

**Mental-Physical**

“A heart attack is a compensable injury under this subtitle only if:

(1) the attack can be identified as:

   (A) occurring at a definite time and place; and

   (B) caused by a specific event occurring in the course and scope of the employee’s employment;

(2) the preponderance of the medical evidence regarding the attack indicates that the employee’s work rather than the natural progression of a preexisting heart condition or disease was a substantial contributing factor of the attack; and

(3) the attack was not triggered solely by emotional or mental stress factors, unless it was precipitated by a sudden stimulus.”
Utah Mental-Mental

“(1) Physical, mental, or emotional injuries related to mental stress arising out of and in the course of employment shall be compensable under this chapter only when there is a sufficient legal and medical causal connection between the employee’s injury and employment.

(2)

(a) Legal causation requires proof of extraordinary mental stress from a sudden stimulus arising predominantly and directly from employment.

(b) The extraordinary and sudden nature of the alleged mental stress is judged according to an objective standard in comparison with contemporary national employment and nonemployment life.

(3) Medical causation requires proof that the physical, mental, or emotional injury was medically caused by the mental stress that is the legal cause of the physical, mental, or emotional injury.

(4) Good faith employer personnel actions including disciplinary actions, work evaluations, job transfers, layoffs, demotions, promotions, terminations, or retirements, may not form the basis of compensable mental stress claims under this chapter.

(5) Alleged discrimination, harassment, or unfair labor practices otherwise actionable at law may not form the basis of compensable mental stress claims under this chapter.

(6) An employee who alleges a compensable industrial accident involving mental stress bears the burden of proof to establish legal and medical causation by a preponderance of the evidence.”


See also Utah Code Ann. § 34A-3-106 (2020) pertaining to occupational diseases:
“(1) Physical, mental, or emotional diseases related to mental stress arising out of and in the course of employment shall be compensable under this chapter only when there is a sufficient legal and medical causal connection between the employee’s disease and employment.

(2)

   (a) Legal causation requires proof of extraordinary mental stress arising predominantly and directly from employment.

   (b) The extraordinary nature of the alleged mental stress is judged according to an objective standard in comparison with contemporary national employment and nonemployment life.

(3) Medical causation requires proof that the physical, mental, or emotional disease was medically caused by the mental stress that is the legal cause of the physical, mental, or emotional disease.

(4) Good faith employer personnel actions including disciplinary actions, work evaluations, job transfers, layoffs, demotions, promotions, terminations, or retirements, may not form the basis of compensable mental stress claims under this chapter.

(5) Alleged discrimination, harassment, or unfair labor practices otherwise actionable at law may not form the basis of compensable mental stress claims under this chapter.

(6) An employee who alleges a compensable occupational disease involving mental stress bears the burden of proof to establish legal and medical causation by a preponderance of the evidence.”

**Physical-Mental**

(1) Physical, mental, or emotional injuries related to mental stress arising out of and in the course of employment shall be compensable under this chapter only when there is a sufficient legal and medical causal connection between the employee’s injury and employment.

(2)
(a) Legal causation requires proof of extraordinary mental stress from a sudden stimulus arising predominantly and directly from employment.

(b) The extraordinary and sudden nature of the alleged mental stress is judged according to an objective standard in comparison with contemporary national employment and nonemployment life.

(3) Medical causation requires proof that the physical, mental, or emotional injury was medically caused by the mental stress that is the legal cause of the physical, mental, or emotional injury.

(4) Good faith employer personnel actions including disciplinary actions, work evaluations, job transfers, layoffs, demotions, promotions, terminations, or retirements, may not form the basis of compensable mental stress claims under this chapter.

(5) Alleged discrimination, harassment, or unfair labor practices otherwise actionable at law may not form the basis of compensable mental stress claims under this chapter.

(6) An employee who alleges a compensable industrial accident involving mental stress bears the burden of proof to establish legal and medical causation by a preponderance of the evidence.”

**Utah Code Ann. § 34A-2-402 (2020)**

*See also* Utah Code Ann. § 34A-3-106 (2020) pertaining to occupational diseases:

“(1) Physical, mental, or emotional diseases related to mental stress arising out of and in the course of employment shall be compensable under this chapter only when there is a sufficient legal and medical causal connection between the employee’s disease and employment.

(2)

(a) Legal causation requires proof of extraordinary mental stress arising predominantly and directly from employment.
(b) The extraordinary nature of the alleged mental stress is judged according to an objective standard in comparison with contemporary national employment and nonemployment life.

(3) Medical causation requires proof that the physical, mental, or emotional disease was medically caused by the mental stress that is the legal cause of the physical, mental, or emotional disease.

(4) Good faith employer personnel actions including disciplinary actions, work evaluations, job transfers, layoffs, demotions, promotions, terminations, or retirements, may not form the basis of compensable mental stress claims under this chapter.

(5) Alleged discrimination, harassment, or unfair labor practices otherwise actionable at law may not form the basis of compensable mental stress claims under this chapter.

(6) An employee who alleges a compensable occupational disease involving mental stress bears the burden of proof to establish legal and medical causation by a preponderance of the evidence.”

**Mental-Physical**

“(1) Physical, mental, or emotional injuries related to mental stress arising out of and in the course of employment shall be compensable under this chapter only when there is a sufficient legal and medical causal connection between the employee’s injury and employment.

(2)

   (a) Legal causation requires proof of extraordinary mental stress from a sudden stimulus arising predominantly and directly from employment.

   (b) The extraordinary and sudden nature of the alleged mental stress is judged according to an objective standard in comparison with contemporary national employment and nonemployment life.

(3) Medical causation requires proof that the physical, mental, or emotional injury was medically caused by the mental stress
that is the legal cause of the physical, mental, or emotional injury.

(4) Good faith employer personnel actions including disciplinary actions, work evaluations, job transfers, layoffs, demotions, promotions, terminations, or retirements, may not form the basis of compensable mental stress claims under this chapter.

(5) Alleged discrimination, harassment, or unfair labor practices otherwise actionable at law may not form the basis of compensable mental stress claims under this chapter.

(6) An employee who alleges a compensable industrial accident involving mental stress bears the burden of proof to establish legal and medical causation by a preponderance of the evidence.”

**Utah Code Ann. § 34A-2-402 (2020)**

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(2)

(a) Legal causation requires proof of extraordinary mental stress arising predominantly and directly from employment.

(b) The extraordinary nature of the alleged mental stress is judged according to an objective standard in comparison with contemporary national employment and nonemployment life.

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(4) Good faith employer personnel actions including disciplinary actions, work evaluations, job transfers, layoffs, demotions, promotions, terminations, or retirements, may not form the basis of compensable mental stress claims under this chapter.

(5) Alleged discrimination, harassment, or unfair labor practices otherwise actionable at law may not form the basis of compensable mental stress claims under this chapter.

(6) An employee who alleges a compensable occupational disease involving mental stress bears the burden of proof to establish legal and medical causation by a preponderance of the evidence.”

Vermont Mental-Mental
“(i) A mental condition resulting from a work-related event or work-related stress shall be considered a personal injury by accident arising out of and in the course of employment and be compensable if it is demonstrated by the preponderance of the evidence that:

(I) the work-related event or work-related stress was extraordinary and unusual in comparison to pressures and tensions experienced by the average employee across all occupations; and

(II) the work-related event or work-related stress, and not some other event or source of stress, was the predominant cause of the mental condition.

(ii) A mental condition shall not be considered a personal injury by accident arising out of and in the course of employment if it results from any disciplinary action, work evaluation, job transfer, layoff, demotion, termination, or similar action taken in good faith by the employer.”


Physical-Mental
“The key component of any workers’ compensation claim is the causal nexus between a work-related accident and a resulting injury. 21 V.S.A. 618. Most compensable claims originate with a physical stimulus, a slip and fall, for example,
and result in a physical injury, such as a disc herniation or a ligament tear. The same causal nexus is required in a physical-mental claim, the only difference being that the work-related physical stimulus gives rise to a psychological injury rather than a physical one.”


**Mental-Physical**

“In determining the compensability of heart attacks, Vermont follows those jurisdictions that require evidence that the heart attack was the product of some unusual or extraordinary exertion or stress in the work environment.”


**Virginia**

**Mental-Mental**

“A claimant establishes an injury by accident if there is ‘(1) an identifiable incident; (2) that occurs at some reasonably definite time; (3) an obvious sudden mechanical or structural change in the body; and (4) a causal connection between the incident and the bodily change.’ *Chesterfield County v. Dunn*, 9 Va. App. 475, 476 (1990). Whenever the injury is strictly psychological, it ‘must be causally related to a physical injury or be causally related to an obvious sudden shock or fright arising in the course of employment.’ *Id.* at 477. However, disagreements over managerial decisions and conflicts with supervisory personnel that cause stressful consequences which result in purely psychological disability ordinarily are not compensable.”


A mental-mental claim may be compensable as an occupational disease if it satisfies the requirements of *VA. CODE ANN.* § 65.2-400 (2020):

“A. As used in this title, unless the context clearly indicates otherwise, the term ‘occupational disease’ means a disease arising out of and in the course of employment, but not an ordinary disease of life to which the general public is exposed outside of the employment.
B. A disease shall be deemed to arise out of the employment only if there is apparent to the rational mind, upon consideration of all the circumstances:

1. A direct causal connection between the conditions under which work is performed and the occupational disease;

2. It can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment;

3. It can be fairly traced to the employment as the proximate cause;

4. It is neither a disease to which an employee may have had substantial exposure outside of the employment, nor any condition of the neck, back or spinal column;

5. It is incidental to the character of the business and not independent of the relation of employer and employee; and

6. It had its origin in a risk connected with the employment and flowed from that source as a natural consequence, though it need not have been foreseen or expected before its contraction.”

**Physical-Mental**
“The burden was upon the claimant to satisfy the Commission by a preponderance of the evidence both that he suffered from a psychological disability and that the disability was causally related to his industrial accident.”


**Mental-Physical**
“The claimant, however, did not prove by a preponderance of the evidence that his heart attack was an injury by accident arising out of his employment by Winkler. To show an ‘injury by accident,’ a claimant must prove both ‘an indentifiable [sic] incident that occurs at some reasonably definite time’ and that such incident caused ‘an obvious sudden mechanical or structural change in the body.’ *Lane Co. v. Saunders*, 229
The opinion of the deputy commissioner correctly sets forth the applicable standard under the Supreme Court’s cases, beginning with Badische Corporation v. Starks, 221 Va. 910 (1981) and culminating in Saunders:

[T]he claimant must trace his injury to a definite time, place or circumstance. It cannot be the result of a breakdown of a gradual development. . . . [A] claimant must identify his injury with a movement made or an action taken at a particular time at work. When a claimant cannot so identify an accident causing his injury, he cannot recover compensation.

We understand the Supreme Court’s decision in Saunders to suggest that this element of ‘injury by accident’ applies also to an employee who claims injury as a result of work that is unusual to him or unusually strenuous, repetitive or stressful. [Lane Co., 229] Va. at [199–200], 326 S.E.2d at 703.

Moreover, we can discern no exception to the ‘injury by accident’ test established by the Supreme Court in Starks, Cogbill [223 Va. 354], and Saunders which permits a different analysis in the heart attack cases, although each of these decisions involved back injuries. Although other states may allow a different result in unusual exertion or stress cases, and the commentators have criticized a resolution of heart attack cases under an accidental injury portion of a statute, we believe that the requirement of showing ‘injury by accident,’ as developed by the Supreme Court in cases of back injury, applies equally to claims resulting from heart attacks.”


<table>
<thead>
<tr>
<th>Washington</th>
<th>Mental-Mental</th>
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<tbody>
<tr>
<td>“(1) Claims based on mental conditions or mental disabilities caused by stress do not fall within the definition of an occupational disease in RCW 51.08.140.</td>
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<tr>
<td>Examples of mental conditions or mental disabilities caused by stress that do not fall within occupational disease shall include, but are not limited to, those conditions and disabilities resulting from:</td>
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<tr>
<td>(a) Change of employment duties;</td>
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</tbody>
</table>
(b) Conflicts with a supervisor;

(c) Actual or perceived threat of loss of a job, demotion, or disciplinary action;
(d) Relationships with supervisors, coworkers, or the public;

(e) Specific or general job dissatisfaction;

(f) Work load pressures;

(g) Subjective perceptions of employment conditions or environment;

(h) Loss of job or demotion for whatever reason;

(i) Fear of exposure to chemicals, radiation biohazards, or other perceived hazards;

(j) Objective or subjective stresses of employment;

(k) Personnel decisions;

(l) Actual, perceived, or anticipated financial reversals or difficulties occurring to the businesses of self-employed individuals or corporate officers.

(2)

(a) Stress resulting from exposure to a single traumatic event will be adjudicated as an industrial injury. See RCW 51.08.100.

(b) Examples of single traumatic events include: Actual or threatened death, actual or threatened physical assault, actual or threatened sexual assault, and life-threatening traumatic injury.

(c) These exposures must occur in one of the following ways:

(i) Directly experiencing the traumatic event;

(ii) Witnessing, in person, the event as it occurred to others; or
(iii) Extreme exposure to aversive details of the traumatic event.

(d) Repeated exposure to traumatic events, none of which are a single traumatic event as defined in subsection (2)(b) and (c) of this section, is not an industrial injury (see RCW 51.08.100) or an occupational disease (see RCW 51.08.142). A single traumatic event as defined in subsection (2)(b) and (c) of this section that occurs within a series of exposures will be adjudicated as an industrial injury (see RCW 51.08.100).

(3) Mental conditions or mental disabilities that specify pain primarily as a psychiatric symptom (e.g., somatic symptom disorder, with predominant pain), or that are characterized by excessive or abnormal thoughts, feelings, behaviors or neurological symptoms (e.g., conversion disorder, factitious disorder) are not clinically related to occupational exposure.”

WASH. ADMIN. CODE § 296-14-300 (2020)

In addition, “[a]n injury or illness occurring in the work environment is not recordable or considered work-related if it meets one of the following exceptions:

The illness is a mental illness. Mental illness will not be considered work-related unless the employee voluntarily provides the employer with an opinion from a physician or other licensed health care professional with appropriate training and experience (psychiatrist, psychologist, psychiatric nurse practitioner, etc.) stating that the employee has a mental illness that is work-related.”


Physical-Mental
A mental injury proximately caused by a physical injury may be compensable, and “[t]he test for proximate cause or the ‘but for’ test does not require that the amount of causation be quantified in terms of magnitude. It is sufficient that if the expert testifying can state that ‘but for’ the conditions of the industrial injury the worker would not have otherwise suffered the condition complained of when, where, or how, he
or she did. In re Robert B. Tracy, BIIA Dec., 88 1695 (1990). Dr. Burlingame’s testimony established the required causal connection when he stated that the, ‘industrial injuries under consideration had exacerbated his anxiety and depression.’ Burlingame Dep. at 11. The impact of the carpal tunnel condition created additional mental/emotional stressors due to Mr. Albee’s inability to continue working at his job. Thus, while Mr. Albee’s anxiety and depression conditions preexisted his carpal tunnel condition, we find that this physical condition worsened his mental difficulties.”

In re: David R. Albee, 2000 WA Wrk. Comp. LEXIS 204 (November 21, 2000)

In addition, “[a]n injury or illness occurring in the work environment is not recordable or considered work-related if it meets one of the following exceptions:

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Mental-Physical

“The rule is well settled in heart cases that unless the attack is precipitated by some unusually strenuous exertion on the part of the workman (and hence ‘a sudden and tangible happening of a traumatic nature’) there is no ‘injury.’”

Warner v. Dep’t of Labor & Indus., 414 P.2d 628, 630 (Wash. 1966)

However, a heart attack may qualify as an occupational disease if the claimant proves proximate cause:

“[I]t is now clear that there can be a legal dichotomy between the disease process underlying an occupational disease claim and the disability arising out of such disease process. Under Dennis [v. Department of Labor and Industries, 109 Wn.2d 467 (1987)], the disease process itself need not be
employment-related to sustain the claim of occupational disease. It is legally sufficient if the disease-based disability is employment-related, i.e., related in the sense that the disability arose naturally and proximately out of the employment.

“In determining whether a disease-based disability arose naturally out of employment, the Dennis court noted that the focus is upon the conditions of employment alleged to be the causal culprit of the disability. While these conditions need not be peculiar or unique to the worker’s particular employment, they must be distinctive thereto. The court further noted that there must be a showing that such particular work conditions more probably caused the worker’s disease-based disability than conditions in everyday life or all employment in general. In the case before us, assuming arguendo that the work conditions of Mr. Swartz’s job as a test board operator were distinctive from a stress-inducing standpoint, the widow must still prove proximate cause.”


West Virginia

**Mental-Mental**

“For the purposes of this chapter, no alleged injury or disease shall be recognized as a compensable injury or disease which was solely caused by nonphysical means and which did not result in any physical injury or disease to the person claiming benefits. It is the purpose of this section to clarify that so-called mental-mental claims are not compensable under this chapter.”

W. VA. CODE ANN. § 23-4-1f (2020)

**Physical-Mental**

“[T]his Court has held that, ‘[i]n order for a claim to be held compensable under the Workmen’s Compensation Act, three elements must coexist: (1) a personal injury (2) received in the course of employment and (3) resulting from that employment.’ Syllabus Point 1, Barnett v. State Workmen’s Comp. Comm’r, 153 W. Va. 796 (1970). ‘A claimant in a workmen’s compensation case must bear the burden of proving his claim but in doing so it is not necessary to prove to the exclusion of all else the causal connection between the injury and employment.’ Syllabus Point 2, Sowder v. State Workmen’s Comp. Comm’r, 155 W.Va. 889 (1972). This Court has also stated that ‘a psychiatric disability arising out


**Mental-Physical**

“It is settled law in West Virginia that under the Workmen’s Compensation Act disease, whether occupational or not, is not a personal injury within the meaning of Code, 23-4-1, and is not compensable, unless it is attributable to a specific and definite event arising in the course of and resulting from the employment. It is equally well settled in West Virginia that disease that is attributable to a specific and definite event arising in the course of and resulting from the employment, is compensable. [citations omitted] On the basis of these decisions, it is clear that the term ‘personal injury’ as used in the Workmen’s Compensation Act of this state contemplates and includes the result of unusual exposure, shock, exhaustion, and other conditions not of traumatic origin provided that they are attributable to a specific and definite event arising in the course of and resulting from the employment.”


However, “in case of heart attack or heat prostration frequently occasioned by bodily and other conditions to which the employment may not in any wise contribute, we have great difficulty in determining what should be done. The consideration which this Court has given to cases of this character attests this difficulty. While we have awarded compensation in heat prostration cases, within strictly defined limits, . . . we are not disposed to extend the rule laid down therein, and make it applicable to situations not there present, and where the risks are less. Considering all that has been written on the subject, and appraising this case in its entirety, we are unable to see that the Commissioner and Appeal Board were justified in awarding compensation. To do so they must have held that decedent was exposed to a particular risk or danger attendant to his employment, to which the general public, as that phrase is herein interpreted, was not exposed, and we do not think the facts of this case justified such a holding.”
<table>
<thead>
<tr>
<th>State</th>
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<th>Testimony</th>
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<tr>
<td>Wisconsin</td>
<td>Mental-Mental</td>
<td>“[M]ental injury nontraumatically caused must have resulted from a situation of greater dimensions than the day-to-day emotional strain and tension which all employees must experience. Only if the ‘fortuitous event unexpected and unforeseen’ can be said to be so out of the ordinary from the countless emotional strains and differences that employees encounter daily without serious mental injury will liability under ch. 102, Stats., be found.”</td>
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<td></td>
<td>Physical-Mental</td>
<td>“If the mental injury suffered by [the claimant] was the result of an accident, the injury is compensable under the Workmen’s Compensation Act. It is clear that the legislature intended to impose liability against the employer for mental and physical injuries which are caused by accident or disease. [See Wis. Stat. §102.01(2)(c), ‘“Injury’ means mental or physical harm to an employee caused by accident or disease.”]”</td>
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<td>Mental-Physical</td>
<td>“The underlying heart disease is a compensable occupational disease if the work activity precipitates, aggravates and accelerates beyond normal progression, a progressively deteriorating or degenerative condition.”</td>
</tr>
<tr>
<td>Wyoming</td>
<td>Mental-Mental</td>
<td>“‘Injury’ means any harmful change in the human organism other than normal aging and includes damage to or loss of any artificial replacement and death, arising out of and in the course of employment while at work in or about the premises”</td>
</tr>
</tbody>
</table>
occupied, used or controlled by the employer and incurred while at work in places where the employer’s business requires an employee’s presence and which subjects the employee to extrahazardous duties incident to the business. ‘Injury’ does not include:

\[\text{***(J)** Any mental injury unless it is (I) Caused by a compensable physical injury, it occurs subsequent to or simultaneously with, the physical injury and it is established by clear and convincing evidence, which shall include a diagnosis by a licensed psychiatrist, licensed clinical psychologist or psychiatric mental health nurse practitioner meeting criteria established in the most recent edition of the diagnostic and statistical manual of mental disorders published by the American Psychiatric Association. In no event shall benefits for a compensable mental injury under this subdivision be paid for more than thirty-six (36) months after an injured employee’s physical injury has healed to the point that it is not reasonably expected to substantially improve.} \]


**Physical-Mental**

“Injury’ means any harmful change in the human organism other than normal aging and includes damage to or loss of any artificial replacement and death, arising out of and in the course of employment while at work in or about the premises occupied, used or controlled by the employer and incurred while at work in places where the employer’s business requires an employee’s presence and which subjects the employee to extrahazardous duties incident to the business. ‘Injury’ does not include:

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**Mental-Physical**

“Benefits for employment-related coronary conditions except those directly and solely caused by an injury, are not payable unless the employee establishes by competent medical authority that:

(i) There is a direct causal connection between the condition under which the work was performed and the cardiac condition; and

(ii) The causative exertion occurs during the actual period of employment stress clearly unusual to or abnormal for employees in that particular employment, irrespective of whether the employment stress is unusual to or abnormal for the individual employee; and

(iii) The acute symptoms of the cardiac condition are clearly manifested not later than four (4) hours after the alleged causative exertion.”