

The Law Offices of Bolton & Helm, LLP

CASE LAW UPDATE

Mental or Nervous Injury Claims

In **McKenzie v. Mental Health Care, Inc.**, Case No. 1D09-3922 (Fla. 1st DCA, July 23, 2010), the claimant was attacked by a violent patient who struck her in the neck and throat. She was diagnosed with injuries to the neck which required medical treatment. The physical injuries were accepted as compensable. The employee also claimed psychiatric injuries and requested treatment with a psychiatrist. The employer/carrier denied the psychological claims, alleging the psychiatric injuries were not compensable. The JCC denied the compensability of the psychiatric injuries, concluding that the physical injuries alone did not constitute at least 50% of the cause of the PTSD [Post Traumatic Stress Disorder], dysthymic disorder, anxiety disorder or personality disorder.

The 1st DCA explained that there are four (4) options concerning the compensability a mental disorder. Section 440.093(1) contains three sentences, with each sentence addressing different situations when mental or nervous injuries may arise in the workplace. Section 440.093(2) defines a fourth situation involving mental or nervous injuries.

The first sentence in section 440.093(1) provides: *A mental or nervous injury due to stress, fright, or excitement only is not an injury by accident arising out of the employment.* This first provision precludes coverage for mental or nervous injuries caused only by mental trauma i.e. an employee experiences mental trauma after being robbed at gunpoint but does not suffer a physical injury requiring medical treatment. The second sentence in section 440.093(1) provides: *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.* For example, an employee, in the course and scope of employment, is sexually assaulted at the workplace and

suffers a physical injury that requires medical treatment; the physical injury is certainly compensable as would be a separate mental condition. The third sentence in section 440.093(1) provides: *A physical injury resulting from mental or nervous injuries unaccompanied by physical trauma requiring medical treatment shall not be compensable under this chapter.* An example of this situation may be where an employee becomes stressed or nervous about something occurring at work and the stress or nervousness causes the employee to suffer a heart attack or other internal failure. This section seems to exclude the type of injury held compensable in the case of Zundell v. Dade County School Bd., 636 So. 2d 8 (Fla. 1994). Subsection 440.093(2) defines a fourth situation involving mental or nervous injury. In this instance, an employee who suffers an initial physical injury requiring medical treatment may obtain care for a mental or nervous injury that manifests, so long as the initial physical injury is the major contributing cause of the mental or nervous injury. For example, an employee sustains a serious back injury and, over time, the injury causes the employee to become clinically depressed as a natural manifestation of the physical injury.

Considering the facts in McKenzie, the 1st DCA remanded the claim for further findings allowing the JCC to determine whether the claimant sustained a mental injury under option two (2) outlined above.

Discussion:

Florida law under F.S. 440.093 addresses four (4) separate types of situations involving mental and nervous disorders and the compensability of the same. Each scenario should be considered in determining whether or not to provide care and treatment.

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