

# Psychological Claims are on the Rise, Now What?

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# Types of Mental Stress Claims in WC

- ▶ Physical injury - Mental Stress
- ▶ Mental Stress - Physical Injury
- ▶ MO WC does not require a physical injury to have a mental stress claim.
  - ▶ Nebraska - Must be a proximate cause of the underlying injury, except for first responders.
  - ▶ Illinois - must be able to be tied to a time, place, and cause. No physical injury needed.
  - ▶ Iowa - Must be primarily caused by work.
  - ▶ Kansas - Must be associated with a physical injury.
  - ▶ Oklahoma - Must be associated with a physical injury.
  - ▶ Arkansas - Must be associated with a physical injury.



# Physical Injury-Mental Stress

- ▶ Standard of Causation: Was the work accident the prevailing factor in the development of the medical condition and disability?
- ▶ Example: Claimant, an OTR truck driver, is in a MVA and rolls his rig over a guard rail and down an embankment. He suffers multiple fractures and is now afraid to return to truck driving for fear of another accident.



# Mental Stress- Mental Stress

- ▶ Standard of Causation for Occupational Disease: Is the mental stress caused by extraordinary or unusual stress?
- ▶ A MS claim can not be based on termination, demotion or lack of promotion. 287.120 (9)
- ▶ The stress exposure has to be extraordinary/unusual compared to the occupation.
- ▶ Example: Claimant alleges anxiety and depression from co-workers and supervisors yelling at him over a 5 year period at work on a constant basis.



# Mental Stress- Physical Injury

- ▶ Less common situation in WC and sometimes overlaps with civil actions for harassment, retaliatory discharge, discrimination, etc.
- ▶ Standard of Causation: Was the mental stress the PF in the development of the medical condition and disability.
- ▶ Ex.: Claimant works long hours with many deadlines to meet in high pressure job as a surgeon, criminal lawyer, air traffic controller, WC claims rep, etc. and suffer a rash, heart attack, etc.



# MISSOURI: PSYCHOLOGICAL CLAIMS



# Police Officer Psychological Claims

- ▶ Mo. Rev. Stat. § 287.120- Psychological Claims:
  - ▶ Mental injury resulting from work-related stress does not arise out of and in the course of employment unless it is demonstrated that the stress was work related and extraordinary and unusual
  - ▶ Work stress measured by objective standards and actual events
  - ▶ Mental injury did not arise out of course of employment if it resulted from disciplinary action, work evaluation, job transfer, layoff, demotion, termination, or any similar events by employer taken in good faith



# *Braswell V. Missouri State Highway Patrol*

- ▶ Claimant was Missouri State Highway Patrol trooper, witnessed other officers use taser on restrained individual
- ▶ Claimant mistook taser for service revolver, then began experiencing emotional issues and received treatment for it
- ▶ Commission decided statute did not apply here because the case resulted from a traumatic event rather than work-related stress
- ▶ Event was in fact compensable under statute



## *Jones V. Washington University*

- ▶ Missouri Court of Appeals holds that the statute was not applicable because claimant nurse's claim stemmed from a traumatic event
  - ▶ Event included physical contact/impact of patient grabbing claimant's breast rather than from work-related stress



# *George V. City Of Saint Louis*

- ▶ Missouri Court of Appeals affirmed that a firefighter's PTSD was an occupational disease because it was a natural consequence of his employment
- ▶ Did not need to show job stresses were extraordinary and unusual compared to other firefighters of equal rank
- ▶ Customary duties as a firefighter was a substantial factor in causing claimant's PTSD and exacerbating his depression



# KANSAS: PSYCHOLOGICAL CLAIMS



# Kansas Psychological Claims

- ▶ No statutory authority regarding KS psychological claims, thus we turn to KS Common Law
- ▶ Gleason v. Samaritan Home: established that in order to maintain compensable claim for traumatic neurosis, neurosis must have been brought specifically by the injury



# *Heyen V. City Of Wichita*

- ▶ Claimant, a police officer, is fired at a passenger in a vehicle they were pursuing
- ▶ Bullets shattered officer's passenger window, no physical injuries
- ▶ Claimant developed PTSD
- ▶ Board affirmed denial of psychological treatment because PTSD was not linked to physical injury



# *Ritter V. Decatur Health Systems*

- ▶ Claimant CNA injured her lower back while showering a wheelchair-bound patient
- ▶ Claimant suffered from lower back pain, preventing her from engaging in activities she enjoyed
- ▶ Diagnosed with major depressive disorder
- ▶ Board affirms decision that claimant suffered a compensable psychological injury that was directly traceable to her work-related injuries



# The Psychiatric IME

## The Clinician

- ▶ First, Do No Harm
- ▶ Beneficence
- ▶ Confidential
- ▶ May seek collateral sources of information to provide good care, but care not withheld if the sources are not available

## Forensic Examination

- ▶ Medical and psychiatric knowledge required to help answer a legal question
- ▶ Collateral sources of information are required
- ▶ Non-confidential
- ▶ Opinion may be harmful or at least not helpful



# Challenges for Forensic Psychiatry IME

- ▶ Diagnostic challenges with manual-based syndromes
- ▶ Lack of full longitudinal history
- ▶ No laboratory or imaging findings
- ▶ Everyone thinks they are a psychiatrist



# First Steps

- ▶ Define the question
- ▶ Records, records and more records!
- ▶ Engage the expert



# Experts

- ▶ Psychiatrist
- ▶ Psychologist
- ▶ Neurologist
- ▶ Neuropsychologist
- ▶ Nurses
- ▶ Social Workers



# The Psychiatric IME-History

- ▶ Personal History
- ▶ Education
- ▶ Work History
- ▶ Past Medical/Surgical History/Medication/Allergies/ROS
- ▶ Past Psychiatric/Substance Use History
- ▶ Legal History
- ▶ Family History



# Disability - Kansas - KP&F

- ▶ Own Occupation Period. For the first 24 months for which benefits are paid, the member is unable to perform the material and substantial duties of his or her regular occupation due to sickness or injury.
- ▶ Any Occupation Period. After benefits have been paid for 24 months, the member is unable to perform the material and substantial duties of any gainful occupation due to sickness or injury.



# Disability - Kansas - KP&F

- ▶ **biologically-based mental illness** A biologically-based mental illness may include, but is not necessarily limited to, schizophrenia, schizoaffective disorder, schizophreniform disorder, brief reactive psychosis, paranoid or delusional disorder, atypical psychosis, major affective disorders (bipolar and major depression), cyclothymic and dysthymic disorders, obsessive compulsive disorder, panic disorder, pervasive developmental disorder, including autism, attention deficit disorder and attention deficit hyperactive disorder as such terms are defined in the diagnostic and statistical manual of mental disorders, fourth edition, (DSM-IV, 1994) of the American psychiatric association, but shall not include conditions not attributable to a mental disorder that are a focus of attention or treatment



# Disability - Kansas - KP&F

- ▶ A service-connected disability is caused by an act of duty. Kansas law presumes your disability is service-connected if, after five years of credited service, you develop one of the following:
  - Heart, lung or respiratory disease
  - A type of cancer that results from exposure to heat, radiation or a known carcinogen

This does not apply if there is evidence that your condition is not service-connected.



# Disability - Missouri - LAGERS

- ▶ Non-Duty Disability
- ▶ You're eligible for a non-duty disability benefit if you're vested and become totally and permanently disabled from non-occupational causes which prevent you from performing your current job. The monthly benefit would be calculated in the same manner as a normal retirement, based upon salary and service credit at the time of disability, with no reduction for age.
- ▶ Duty Disability
- ▶ If you become totally and permanently disabled from job-related causes, you may be eligible for a duty disability benefit regardless of vesting status. Your benefit would be calculated in the same manner as a normal retirement using the final average salary at the time of disability and service credit you would have earned to age 60.



# Disability - Missouri - LAGERS

Duty Disability	Non-Duty Disability
Disability caused by work related disability or illness	Disability caused by non-work related disability or illness
No vesting requirement	Must be vested to be eligible
Credited service is added as if the member would have worked until age 60 for the monthly benefit calculation.	Credited service is added as if the member would have worked until age 60 for the monthly benefit calculation.
Monthly benefit is payable for life.	Monthly benefit is payable for life.



# Disability - Missouri - LAGERS

- ▶ Duty Related Disability.
  - ❑ Member is permanently unable to perform his or her job.
  - ❑ Can be mental or physical.
  - ❑ Disability onset was because of job related illness or injury.



# Disability - Missouri LAGERS - Firefighters

- ▶ Chapter 87 of Mo. Rev. Stat.
- ▶ If employee has been a firefighter for at least 5 years and has:
  1. any condition of health caused by any infectious disease;
  2. disease of lungs or respiratory tracts;
  3. hypertension;
  4. disease of the heart;
  5. cancer (specific cancers specified under 87.006) resulting in partial or total disability or death;

Condition is presumed duty related.



# Disability - Missouri LAGERS - Firefighters

- ▶ Cancer.
- ▶ May be denied if evidence that cancer was not due to line of duty or shows that cancer was due to voluntary use of tobacco.



# QUESTIONS?

