

Tulsa Law Review

Volume 25
Number 4 *Symposium on Feminist
Jurisprudence*

Volume 25 | Number 4

Summer 1990

Compensability of Post-Traumatic Stress Disorder under Oklahoma Workers' Compensation Laws

April Harlton

Follow this and additional works at: <https://digitalcommons.law.utulsa.edu/tlr>



Part of the [Law Commons](#)

Recommended Citation

April Harlton, *Compensability of Post-Traumatic Stress Disorder under Oklahoma Workers' Compensation Laws*, 25 Tulsa L. J. 815 (1990).

Available at: <https://digitalcommons.law.utulsa.edu/tlr/vol25/iss4/6>

This Casenote/Comment is brought to you for free and open access by TU Law Digital Commons. It has been accepted for inclusion in Tulsa Law Review by an authorized editor of TU Law Digital Commons. For more information, please contact megan-donald@utulsa.edu.

THE COMPENSABILITY OF POST-TRAUMATIC STRESS DISORDER UNDER OKLAHOMA WORKERS' COMPENSATION LAWS

I. INTRODUCTION

Post-traumatic stress disorder is "the development of symptoms following a psychologically traumatic event not generally encountered in human experience."¹ The workers' compensation laws of Oklahoma do not specifically recognize or exclude post-traumatic stress disorder as a compensable accidental injury. However, Oklahoma courts have declined to accept an interpretation that would allow the definition of injury to include mental injuries unaccompanied by physical injury. A recent unpublished Oklahoma Court of Appeals decision, *Fenwick v. Oklahoma State Penitentiary*,² awarded compensation to a psychologist who developed post-traumatic stress disorder as a result of being held hostage by an armed inmate in the prison where he worked. In a five-four decision,³ the Oklahoma Supreme Court reversed the court of appeals decision, adhering to the longstanding judicially imposed limitation requiring an "accidental injury" under the workers' compensation act to include a physical injury element. While the Oklahoma Court of Appeals concluded that finding post-traumatic stress as an accidental injury was not inconsistent with prior case law,⁴ the Oklahoma Supreme Court disagreed, holding that absent a physical injury, a purely mental injury such as post-traumatic stress is not compensable under the Act.⁵ Post-traumatic stress disorder resulting from a specific violent or dangerous job-related event, without manifestation of physical injury, should be considered a compensable accidental injury arising out of and in the course of employment under the Oklahoma Workers' Compensation Act.

1. Smith, *Post Traumatic Stress Disorder: An Often Overlooked Element of Trauma*, 20 TRIAL, Feb. 1984, at 92.

2. No. 69,691 (Okla. Ct. App. March 21, 1989), *vacated*, 792 P.2d 60 (Okla. 1990).

3. *Fenwick v. Oklahoma State Penitentiary*, 792 P.2d 60 (Okla. 1990).

4. *Fenwick*, No. 69,691, slip op. at 4. The petition for writ of certiorari by the defendants, Oklahoma State Penitentiary and the State Insurance Fund, was granted on January 11, 1990. Order, *Fenwick* (No. 69,691).

5. *Fenwick*, 792 P.2d at 63.

II. BACKGROUND

To alleviate the harshness in requiring an employee to prove an employer's negligence before compensation may be granted for work-related injuries, workers' compensation statutes were set up in the form of "no-fault insurance programs" specifically designed to preempt tort law.⁶ However, despite this direct move away from tort law, courts often misapply tort principles to workers' compensation claims.⁷ One such example is the erroneous application of the "physical impact" doctrine.⁸ Historically, courts justified denying compensation for purely mental injuries because of the fear of fraudulent claims.⁹ Later workers' compensation courts attempted to authenticate the mental injury by requiring some form of precipitating physical impact.¹⁰ Thus, in order to prevent abuse, some workers' compensation courts erroneously cling to the physical impact doctrine because it requires the existence of an objective physical impact to serve as a guarantee that the mental disorder is "real" and that the employment genuinely caused it.¹¹

Notwithstanding the inapplicability of tort law to the area of workers' compensation, the fear of fraudulent claims can be alleviated by recognizing three facts.¹² First, despite the subjective nature of mental

6. Hirsh & Monroe, *Psychological Mental or Emotional Injury Induced by Trauma: Expanding Employer Liability Under Workers' Compensation*, MED. TRIAL TECH. Q., Winter 1984, at 265-66. Whereas in most states courts alone have the power to define policy limits in tort cases, they are subject to legislative directive when dealing with workers' compensation claims. Joseph, *The Causation Issue in Workers' Compensation Mental Disability Cases: An Analysis, Solutions, and a Perspective*, 36 VAND. L. REV. 263, 282 (1983).

7. Hirsh & Monroe, *supra* note 6, at 266-67. Prosser noted that the majority of states have repudiated the narrow "impact" requirement, holding as sufficient the requirement that the mental suffering or injury be guaranteed by some form of physical injury or illness or some other *objective physical manifestation*. However, there still exists confusion as to what these two factors include. W. KEETON, PROSSER & KEATON ON THE LAW OF TORTS § 54, at 362-64 (5th ed. 1984). Oklahoma follows the RESTATEMENT (SECOND) OF TORTS § 46 (1965), recognizing a cause of action for the infliction of mental suffering. See, e.g., *Williams v. Lee Way Motors Freight, Inc.*, 688 P.2d 1294, 1296 (Okla. 1984). The court noted that this new tort did not retain "the fiction of theoretical physical impact or injury in order to justify the award of damages for mental anguish." *Id.*

8. Hirsh & Monroe, *supra* note 6, at 267.

9. See generally Note, *Post-Traumatic Stress Disorder and the Technological Disaster*, 18 RUTGERS L.J. 623, 648 (1987). The physical impact doctrine was, in effect, used by courts as a reliability test to reduce the possibility of false claims. Hirsh & Monroe, *supra* note 6, at 268.

10. Hirsh & Monroe, *supra* note 6, at 267.

11. Joseph, *supra* note 6, at 288. In discussing the policy rationale, Joseph noted that "[t]he subjective dimension of mental disorders creates policy apprehensions that permeate judicial attitudes toward mental injuries." Joseph, *supra* note 6, at 310. However, in tort law, with the recognition of a cause of action for the intentional infliction of emotional distress came the willingness to recognize mental injuries absent visible physical injury. Note, *supra* note 9, at 650.

12. Note, *supra* note 9, at 648. Workers' compensation laws were specifically designed to eliminate the burdens put on an employee in a tort action, namely, proving the employer's negligence, as

injuries, they can, and often do, produce physical symptoms which are "capable of medical proof."¹³ Second, current medical diagnostic techniques enable identification of the nature and validity of mental injuries in much the same manner as the assessment of broken bones.¹⁴ Third, no relationship truly exists between the requirement of a physical impact and the genuineness of a mental injury.¹⁵

Relating these observations to post-traumatic stress, their validity becomes evident. While post-traumatic stress is commonly recognized as a psychological disorder, it is often accompanied by physical symptoms such as weight loss, vertigo, and muscle tremors.¹⁶ Moreover, the diagnostic criteria developed by the American Psychiatric Association¹⁷ serve as a tool for objectively assessing the mental injury despite its subjective nature. Finally, by its definition, post-traumatic stress is caused by an extraordinary event outside normal human experience.¹⁸ The event need not be physical in nature. Thus, the misapplication of the physical impact doctrine improperly restrains courts from determining that purely mental injuries qualify as compensable work-related accidents under workers' compensation statutes.¹⁹

Although difficult, it is not impossible to reduce mental injuries to compensable terms in light of recent psychiatric advancements.²⁰ Experts have stated that as a result of these advancements, many mental injuries "are as easy to diagnose today as a fractured bone."²¹ In response to employers' attempts to use the physical impact doctrine as a means of avoiding liability for mental injuries, modern courts note that tort law has no application to workers' compensation law,²² as it was purposely designed to avoid harsh results to those workers seeking compensation for job-related injuries.²³

well as overcoming a vast array of common law defenses such as assumption of risk and contributory negligence. Hirsh & Monroe, *supra* note 6, at 267.

13. Note, *supra* note 9, at 648 (citing Smith, *Relation of Emotions to Injury and Disease*, 30 VA. L. REV. 193 (1944)).

14. Note, *supra* note 9, at 648. See also Hirsh & Monroe, *supra* note 6, at 268.

15. Note, *supra* note 9, at 649.

16. Note, *supra* note 9, at 633.

17. See *infra* note 29.

18. AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 247 (3d ed. 1987) [hereinafter DSM-III-R].

19. Hirsh & Monroe, *supra* note 6, at 272.

20. Hirsh & Monroe, *supra* note 6, at 268.

21. Hirsh & Monroe, *supra* note 6, at 268.

22. Hirsh & Monroe, *supra* note 6, at 273.

23. See, e.g., *Todd v. Goostree*, 493 S.W.2d 411 (Mo. Ct. App. 1973). The National Committee on State Workers' Compensation Laws identified five objectives of the workers' compensation system: (1) sufficient medical care; (2) services for rehabilitation; (3) emphasis on safety; (4) prompt

III. POST-TRAUMATIC STRESS DISORDER

A. Generally

Post-traumatic stress disorder is categorized as one type of traumatic neurosis.²⁴ There are three general forms of traumatic neuroses that may be manifested as post-traumatic stress disorder: survivor syndrome, war neurosis, and neuroses caused by industrial accidents.²⁵ Survivor syndrome is an especially severe and prolonged form of neurosis most commonly found in survivors of such life-threatening experiences as concentration camps, the bombing of Hiroshima, or mass disasters.²⁶ War neurosis is a heavily studied area with most of the research focusing on Vietnam veterans.²⁷ Although post-traumatic stress has been extensively examined in these first two categories, it is within the context of workplace traumas that workers' compensation courts have recently attempted to define the parameters of this disorder.²⁸

The American Psychiatric Association specifically recognizes post-traumatic stress disorder as a distinct medical malady and sets forth carefully defined diagnostic criteria in its *Diagnostic and Statistical Manual of Mental Disorders (DSM-III-R)*.²⁹ These criteria facilitate

delivery of benefit payments; (5) effective delivery system for services. Comment, *Workmen's Compensation: Compensability of Psychological Disability Precipitated by Psychological Trauma*, 1975 WASH. U.L.Q. 1128, 1129 n.6 (citing NATIONAL COMM'N ON STATE WORKMEN'S COMPENSATION LAWS, REPORT 35-39 (1972)).

24. Smith, *supra* note 1, at 94.

25. Smith, *supra* note 1, at 94.

26. Smith, *supra* note 1, at 94.

27. Smith, *supra* note 1, at 96.

28. Note, *supra* note 9, at 626.

29. AMERICAN PSYCHIATRIC ASSOCIATION, *DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS* (3d ed. 1987) [hereinafter DSM-III-R]. The DSM-III-R is recognized as a primary source for basic psychiatric diagnosis. Joseph, *supra* note 6, at 269 n.18. The DSM-III diagnostic criteria for post-traumatic stress disorder were best summarized by George Mendelson as follows:

- A. Existence of a recognizable stressor that would evoke significant symptoms of distress in almost everyone.
- B. Reexperiencing of the trauma as evidenced by at least one of the following:
 - (1) recurrent and intrusive recollections of the event;
 - (2) recurrent dreams of the event;
 - (3) sudden acting or feeling as if the traumatic event were reoccurring, because of an association with an environmental or ideational stimulus.
- C. Numbing of responsiveness to, or reduced involvement with the external world, beginning some time after the trauma, as shown by at least one of the following:
 - (1) markedly diminished interest in one or more significant activities;
 - (2) feeling of detachment or estrangement from others;
 - (3) constricted affect.
- D. At least two of the following symptoms that were not present before the trauma:
 - (1) hyperalertness or exaggerated startle response;
 - (2) sleep disturbance;

communication between the lawyer and the psychiatrist.³⁰ According to the DSM-III-R, the essential feature of post-traumatic stress disorder is the development of symptoms following a psychologically distressing event not ordinarily encountered in human experience.³¹ Importantly, the triggering event is *always* of such a nature so as to cause feelings of distress in most anyone.³² Therefore, two factors are critical to the diagnosis of post-traumatic stress disorder: (1) a traumatic event generally outside the scope of ordinary human experience, which, in turn, (2) triggers a specific set of symptoms.³³

B. *Progression of the Syndrome*

The diagnostic criteria focus on the accident itself as the "primary causal factor" of the mental disturbance.³⁴ The most common triggering events include imminent threats, either to one's own life or to the life of a family member, or some horrifying sight such as the traumatic injury or death of another person.³⁵ However, what legally constitutes the "extraordinary trauma" is subject to dispute.³⁶ One commentator describes the traumatic event as extraordinary "if it is sufficiently atypical to the individual so as to overwhelm the psychic defense mechanisms which assist one in everyday living."³⁷ Accordingly, "[t]he more senseless and irrational the event, the more difficult it will be for the victim to regain the psychic equilibrium," affecting the ability to cope with the traumatizing experience.³⁸ The "completely unexpected suddenness" of a traumatizing event occurring "in familiar and presumably safe surroundings"³⁹ is characteristic of most workplace injuries.

-
- (3) guilt about surviving when others have not, or about behavior required for survival;
 - (4) memory impairment or trouble concentrating;
 - (5) avoidance of activities that arouse recollection of the traumatic event;
 - (6) intensification of symptoms by exposure to events that symbolize or resemble the traumatic event.

Mendelson, *The Concept of Posttraumatic Stress Disorder: A Review*, 10 INT'L J. L. & PSYCHIATRY 45, 46-47 (1987).

30. Mendelson, *supra* note 29, at 45.

31. Mendelson, *supra* note 29, at 46. See also DSM-III-R, *supra* note 29, at 247.

32. Mendelson, *supra* note 29, at 46.

33. Note, *supra* note 9, at 627-28.

34. Note, *supra* note 9, at 627. Though psychiatric predisposition also plays a role in the development of post-traumatic stress disorder, it is a factor in measuring the intensity of the resulting mental injury rather than in determining the cause. Note, *supra* note 9, at 637.

35. DSM-III-R, *supra* note 29, at 247-48.

36. Note, *supra* note 9, at 629.

37. Note, *supra* note 9, at 629.

38. Note, *supra* note 9, at 638.

39. Mendelson, *supra* note 29, at 51.

In general, one commentator on the subject describes the "psychodynamics of emotional trauma" as consisting of the traumatic event, the traumatic process, and the traumatic state.⁴⁰ The resultant traumatic state is characterized by feelings of helplessness which may temporarily, or with greater persistence, inhibit the ability to deal effectively with the traumatic event.⁴¹ These feelings of helplessness are often intensified by accompanying symptoms such as headaches, insomnia, hysteria, nightmares, and personality changes.⁴² The most common symptom of post-traumatic stress involves re-experiencing the traumatic event.⁴³ A recent study involving a veteran suffering from post-traumatic stress found that as a result of re-experiencing the event, he became unable to function effectively at work.⁴⁴ Exposure to any stimuli that resembles or symbolizes the traumatic event may cause an unnerving re-experience of the incident.⁴⁵ This classic symptom reinforces the disorder's detrimental effect on the worker's ability to continue working at the very place where the accident occurred.⁴⁶

C. *Detection*

The task of identifying legally compensable mental injuries in workers' compensation claims is now facilitated by advances in medical science and psychiatry.⁴⁷ A recently published scale enables quantification of the severity of post-traumatic stress disorder. The "Impact of Event Scale" is a fifteen-question test designed to assess a victim's feelings of intrusion and avoidance.⁴⁸ In addition, another test, the Minnesota Multiphasic Personality Inventory, may detect false claims of the disorder.⁴⁹ Present-day courts are therefore well equipped with specific diagnostic criteria to adjudicate fairly claims for new types of mental disorders such as post-traumatic stress.

40. Mendelson, *supra* note 29, at 51-52 (quoting L. RANGELL, *The Metapsychology of Psychic Trauma* in *PSYCHIC TRAUMA* 5 (1967)).

41. Mendelson, *supra* note 29, at 52.

42. Smith, *supra* note 1, at 93 (citing Keiser, *Traumatic Neurosis: A Common Problem Relatively Untried in the Courts*, *MED. TRIAL TECH. Q.*, Sept. 1970, at 1).

43. Smith, *supra* note 1, at 96.

44. Smith, *supra* note 1, at 96.

45. DSM-III-R, *supra* note 29, at 248.

46. *See* Smith, *supra* note 1, at 92.

47. Note, *supra* note 9, at 648-49.

48. Mendelson, *supra* note 29, at 56-57.

49. Mendelson, *supra* note 29, at 57.

D. Treatment

Although the mode of treatment must be determined on a case-by-case basis,⁵⁰ a variety of treatment forms are available. One proposed treatment gaining wide acceptance is the cognitive-behavioral approach.⁵¹ Therapy focuses on confronting physiological effects, such as physical reactions to cues associated with the trauma, and behavioral effects, such as avoidance of stimuli that resemble the traumatic event.⁵² Experts agree that three to five years of weekly counseling sessions may be necessary to remedy the disorder, depending on individual circumstances.⁵³ Evidence suggests that symptoms may worsen if left untreated.⁵⁴ Manifestation of physical symptoms may also accompany the syndrome⁵⁵ and remain until the patient undergoes psychiatric treatment for the underlying mental injury of post-traumatic stress.⁵⁶ In this way, post-traumatic stress resembles depression.⁵⁷

E. The Causation Issue

When the disorder is the result of a specific, work-related event, the injured person's ability to earn a living may be impaired.⁵⁸ However, establishing a causal connection between the mental disorder and the work-related event is difficult. A number of distinguishable factors such as the worker's family or financial problems could arguably also trigger a mental disability.⁵⁹ However, the causal connection may be established by showing that a specific event occurred at work immediately preceding the manifestation of the mental harm.⁶⁰ As one commentator pointed out, "[c]ourts have generally found the case for compensation stronger

50. Smith, *supra* note 1, at 96.

51. See C. SCRIGNAR, *POST-TRAUMATIC STRESS DISORDER: DIAGNOSIS, TREATMENT AND LEGAL ISSUES* 149 (1988).

52. *Id.*

53. Smith, *supra* note 1, at 96.

54. Note, *supra* note 9, at 636 (citing Leopold & Dillon, *Psycho-Anatomy of a Disaster: A Long Term Study of Post-Traumatic Neurosis in Survivors of a Marine Explosion*, *AM. J. PSYCHIATRY* 920-21 (1963)).

55. Lipton & Schaffer, *Physical Symptoms Related to Post-traumatic Stress Disorder (PTSD) in an Aging Population*, 153 *MIL. MED.* 316, 316 (1988).

56. *Id.*

57. *Id.* Medical physicians are often consulted by depressed patients complaining of physical symptoms that are in reality the result of the depression and thus merely require treatment for the underlying depression. Post-traumatic stress disorder was found to be similar to depression in this respect. *Id.*

58. Smith, *supra* note 1, at 93.

59. DeCarlo, *Compensating 'Stress' in the '80s*, 1985 *INS. COUNS. J.* 681, 683.

60. To an extent, courts can objectively measure mental stimuli when such conditions can be traced to "temporally and spatially definite employment events." Joseph, *supra* note 6, at 291 n.113.

where the stress is sudden and unexpected, and more easily viewed as analogous to the suddenness of a traumatic injury."⁶¹ Because the definition of post-traumatic stress requires a "psychologically distressing event that is outside the range of usual human experience,"⁶² the diagnosis of the disorder itself assumes the existence of a specific traumatic event; thus it logically follows that a causal connection exists between this event and the injury.

Mental disabilities absent manifestation of physical injury may present a greater problem than heart or hearing loss claims because the subjective nature of psychiatry increases uncertainty.⁶³ This contention alone should not render mental injuries non-compensable. Rather, these psychological claims should be internalized within the workers' compensation system just as claims for mentally-induced heart attacks have been.⁶⁴ Psychiatry has expanded its ability to diagnose many prevalent forms of emotional and mental illness.⁶⁵ With all the supporting medical evidence, the issue has shifted from whether the mental injuries are "bona fide" to whether the alleged difficulties encountered in establishing a requisite standard of proof should bar compensation.⁶⁶ As a check in categorizing these injuries, a combination of expert testimony and use of the diagnostic criteria enunciated in the DSM-III-R can serve as guidelines for establishing proof.⁶⁷

IV. CASE ANALYSIS

Cases involving the mental aspect of job-related injuries can be divided into three categories.⁶⁸ Cases falling under the first category—physical trauma causing mental injury—are universally held compensable.⁶⁹ Likewise, the cases falling in the second category—mental stimulus causing a physical injury—are also uniformly held compensable.⁷⁰ The third category similarly involves a mental stimulus, but the result is a mental injury rather than one that is physical.⁷¹ This category can be

61. DeCarlo, *supra* note 59, at 684.

62. DSM-III-R, *supra* note 29, at 247.

63. DeCarlo, *supra* note 59, at 686.

64. DeCarlo, *supra* note 59, at 686.

65. Hirsh & Monroe, *supra* note 6, at 268.

66. Note, *supra* note 9, at 652.

67. Note, *supra* note 9, at 652.

68. 1B A. LARSON, THE LAW OF WORKMEN'S COMPENSATION § 42.20 (1987).

69. *Id.* § 42.22(a).

70. *Id.* § 42.21(a).

71. *Id.* § 42.20.

further subdivided into two areas: gradual stimulus causing mental injury and sudden stimulus causing mental injury.⁷² Compensating work-related injuries under the third category (hereinafter referred to as "mental-mental" claims) has caused the most debate despite the fact that it differs from the second category only in the type of resulting injury: mental rather than physical.⁷³

A. *Jurisdictions Denying Compensation*

Courts that refuse to award compensation in mental-mental claims have done so for varying and often evasive reasons. The most common rationales hold:

(1) that economic considerations prevent extending workers' compensation statutes to encompass purely mental injuries;⁷⁴

(2) that the issue is a question for the legislature rather than the judiciary;⁷⁵

(3) that the statutory definitions of "injury" or "accident" do not encompass mental-mental claims;⁷⁶

(4) that a sufficient causal connection between the purely mental injury and the employment does not exist.⁷⁷

These rationales represent an underlying policy concerning the economic repercussions in compensating these claims,⁷⁸ as well as the inherent doubt that the mental injuries are real.

In the recent federal case of *Gaston v. Flowers Transportation*,⁷⁹ the

72. *Id.* § 42.23(a), (b). For a comprehensive discussion concerning the compensability of gradual stress claims, see Comment, *The Logical Recognition of Gradual Stress Disability Under Oklahoma's Workers' Compensation Law*, 23 TULSA L.J. 461 (1988).

73. 1B A. LARSON, *supra* note 68, at § 42.20.

74. See, e.g., *Fireman's Fund Ins. Co. v. Industrial Comm'n*, 119 Ariz. 51, 55, 579 P.2d 555, 559 (1978) (Gordon, J., dissenting) (the workers' compensation system was not intended to be a form of general health insurance).

75. See, e.g., *Lockwood v. Independent School Dist. No. 887*, 312 N.W.2d 924, 927 (Minn. 1981); Nugent, *When Employees Seek Workers' Compensation for Stress*, 14 EMPLOYEE REL. L.J. 239, 242-43 (1988). Some states, like Colorado, have legislatively addressed mental-mental claims. That state's statute limits recovery to situations in which there is proof that the mental injury was "proximately caused solely by hazards to which the worker would not have been equally exposed to outside the employment." Cook, *Workers' Compensation and Stress Claims: Remedial Intent and Restrictive Application*, 62 NOTRE DAME L. REV. 879, 900 (1987) (citing COLO. REV. STAT. § 8-41.108(2.2) (1986)). See also *infra* text accompanying notes 90-94.

76. See *infra* text accompanying notes 165-71.

77. See generally Annotation, *Mental Disorders as Compensable Under Workmen's Compensation Acts*, 97 A.L.R.3d 161, 181-84 (1980) and cases cited therein.

78. Cook, *supra* note 75, at 898.

79. 866 F.2d 816 (5th Cir. 1989).

Fifth Circuit rejected a claim seeking compensation for a purely emotional injury under the Jones Act.⁸⁰ In *Gaston*, the claimant and his half-brother were working aboard a barge when it was suddenly struck by another vessel, causing both men to fall to the deck. The claimant's half-brother was thrust over the side of the barge and crushed to death despite the claimant's efforts to pull him to safety. Thereafter, the claimant began suffering from what was later diagnosed as post-traumatic stress disorder resulting from viewing his half-brother's death.⁸¹ The *Gaston* court looked to the United States Supreme Court's opinion in *Atchison, Topeka & Santa Fe Railway v. Buell*,⁸² which stated that "the question whether one can recover for emotional injury may not be susceptible to an all-inclusive 'yes' or 'no' answer."⁸³ Rather, the Court indicated that any pronouncement would have to be tailored to the specific facts.⁸⁴ Even though the Court in *Buell* hinted that some emotional injuries may be compensable, later circuit court decisions have refused to follow this lead.⁸⁵

The denial of benefits in *Gaston* stemmed from the fact that the claimant sought recovery for mental injuries sustained as a bystander rather than as an active participant.⁸⁶ The claimant's mental injuries resulted from viewing the gruesome death of *another*. The claimant received no relevant physical injury and the evidence revealed that he in no way feared such a possibility.⁸⁷ The court refused to extend coverage to bystanders, thereby precluding recovery for his mental injury.

The court in *Gaston* did *not* hold that an emotional injury caused by actions directed specifically toward a claimant is non-compensable.⁸⁸ In referring to purely emotional injuries, the court narrowed the scope of compensable injuries in this particular type of work, stating that it was incongruous to permit compensation of seamen and railroaders for viewing gruesome events because their callings "involve braving certain

80. 46 U.S.C. app. § 688(a) (1982 & Supp. V 1987) states that "[a]ny seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law."

81. *Gaston*, 866 F.2d at 817.

82. 480 U.S. 557, 570 (1987). The court declined to address the issue of whether purely emotional injuries were compensable under the FELA, and thus the Jones Act, due to a lack of a fully developed record. *Id.* at 567.

83. *Gaston*, 866 F.2d at 818 (quoting *Buell*, 480 U.S. at 570).

84. *Id.* at 821.

85. A survey by the court of later circuit court decisions revealed that only one circuit—the Ninth Circuit—acknowledged the compensability of a purely emotional claim. *Id.* at 818-19.

86. *Id.* at 819.

87. *Id.* at 820.

88. *Id.* at 821.

hazards and are traditionally not well suited to the squeamish or faint-hearted."⁸⁹ This case illustrates the reluctance to extend coverage to encompass purely mental injuries sustained on the job. It also can be viewed as a harsh result because few people would argue that seeing a fellow worker crushed to death would have no impact.

An illustration of leaving the issue for legislative determination is found in *Followill v. Emerson Electric Co.*⁹⁰ There, a maintenance man who viewed a "grisly" scene of a fellow worker's head crushed in a die cast press received no compensation for his resulting nervous disorder.⁹¹ The court refused to overrule the line of Kansas decisions which allow recovery for mental injury *only* when they stem from an actual physical injury,⁹² notwithstanding that claimant's mental injury resulted from one specific incident and was as disabling as any physical injury.⁹³ Instead, the court stated that extension of the scope of compensable injuries should be left to the legislature.⁹⁴

B. *Jurisdictions Granting Compensation*

A significant number of cases in jurisdictions which grant benefits for mental injuries involve workers that were exposed to one specific triggering incident, in contrast to injuries resulting from a gradual build-up of events. A sudden stimuli element allows courts to analogize the mentally traumatic event to a traditional physical injury.⁹⁵

89. *Id.* at 820.

90. 234 Kan. 791, 674 P.2d 1050 (1984).

91. *Id.* at 791, 674 P.2d at 1050.

92. *Id.* at 796, 674 P.2d at 1053.

93. *Id.*

94. *Id.* The court held that the claimant's mental disorder did not qualify as a "personal injury" as defined by the state's Workers' Compensation Act notwithstanding that the definition states that a personal injury is a "lesion or change in the physical structure of the body," and further states that it is not necessary that such a lesion or change "present external or visible signs of its existence." *Id.* at 793, 674 P.2d at 1051 (quoting KAN. STAT. ANN. § 44-508(e) (1974)). An argument can be made that this definition includes mental injuries which ordinarily are *not* visible. However, the "damage to the physical structure of the body" language poses problems for many courts attempting to construe their Acts to include such injuries. See *infra* text accompanying notes 112-19 for courts which have construed this language to include mental-mental claims despite no clearer legislative directive requiring them to do so.

95. Cook, *supra* note 75, at 905.

1. Early Recognition

One of the earliest cases recognizing the validity of allowing compensation for a mental injury absent any physical manifestation was *Burlington Mills Corp. v. Hagood*.⁹⁶ There, the claimant developed a mental disability in the form of traumatic neurosis after being severely frightened by a sudden electric flash caused by a short circuit in a nearby wire.⁹⁷ The Virginia court noted the importance of considering the "nervous system and mental makeup and their intimate relation to [a person's] vital forces."⁹⁸ The court held that there was a sufficient causal relationship between the electric flash and the claimant's resulting mental injury to allow compensation.⁹⁹ Moreover, the court, while acknowledging the common law physical impact rule in tort, concluded that this rule has no application under the workers' compensation system, which was designed to compensate for work-related injuries rather than to award damages for a wrong done in tort.¹⁰⁰ Finally, the court placed great weight on the medical expert's determination that traumatic neurosis is in fact an ailment recognized by the medical profession.¹⁰¹ The case is important both for its recognition that the physical impact doctrine has no application in workers' compensation claims and that medical testimony can confirm the validity of mental injuries resulting from work-related emotional stimuli.

2. Scope of "Accidental Injury"

Two related problems encountered by workers' compensation courts in claims for purely mental injuries include placing the mental injury within the scope of the term "accidental injury" and finding a causal relationship between the work-related event and the mental disability. Statutes generally do not set out exactly what constitutes an accidental injury, therefore interpretation has been left to the courts.¹⁰²

In *Wolfe v. Sibley, Lindsay & Curr Co.*,¹⁰³ the New York high court

96. 177 Va. 204, 13 S.E.2d 291 (1941).

97. *Id.* at 204, 13 S.E.2d at 292.

98. *Id.* at 209, 13 S.E.2d at 293 (quoting *Klein v. Len H. Darling Co.*, 217 Mich. 485, 187 N.W. 400, 403 (1922)).

99. *Id.*

100. *Id.*

101. *Id.* at 211, 13 S.E.2d at 294.

102. *See, e.g.*, Comment, *supra* note 23, at 1133. *See also* text *infra* accompanying note 144.

103. 36 N.Y.2d 505, 330 N.E.2d 603, 369 N.Y.S.2d 637 (1975). New York's workers' compensation statute is similar to that of Oklahoma in that it also defines the term "injury" as an "accidental injury arising out of and in the course of employment." *Id.* at 508, 330 N.E.2d at 605, 369 N.Y.S.2d at 640 (citing N.Y. WORK. COMP. LAW §§ 2(7), 10 (Consol. 1965)); *cf.* OKLA. STAT. tit.

specifically addressed the question of whether a mental injury precipitated by psychic trauma fell within the "accidental injury" requirement of the workers' compensation statute. The claim involved a worker who became severely depressed as a result of discovering her boss's body in his office after he had killed himself.¹⁰⁴ The court stressed that no reason exists for denying recovery where both the cause and the effect are purely mental.¹⁰⁵ Inasmuch as the court had previously recognized the compensability of claims involving a psychic element either as the causal factor of a resulting injury or as the injury itself, it held that a psychological injury caused by a psychic trauma was just as compensable as any physical injury under their Act.¹⁰⁶

3. Ridiculousness of the Physical/Mental Distinction

An Illinois case particularly noteworthy for repudiating a physical element requirement and imposing a sudden stimuli requirement is *Pathfinder Co. v. Industrial Commission*.¹⁰⁷ There, the claimant suffered severe mental shock as a result of viewing a fellow employee's hand being severed in a punch press. The court directly addressed whether an employee who suffered a severe, sudden emotional shock and resulting mental disability "traceable to a definite time and place and to a readily perceivable cause" could recover absent a showing of physical injury under the Illinois Workmen's Compensation Act.¹⁰⁸ The court construed the term "accident" broadly to encompass anything that happens unexpectedly and noted previous decisions finding that a "psychological disability is not of itself noncompensable."¹⁰⁹ Armed with this support, the *Pathfinder* court determined that compensation should be awarded to claimants for purely mental injuries caused by some form of sudden stimuli even when no physical trauma is sustained.¹¹⁰ Citing a number of cases granting recovery for psychological disabilities when the physical

85, § 11 (Supp. 1988). Both New York and Oklahoma leave the task of defining "accidental injury" to the courts. See Comment, *supra* note 23, at 1133.

104. *Wolfe*, 36 N.Y.2d at 507-08, 330 N.E.2d at 604, 369 N.Y.S.2d at 639.

105. *Id.* at 510, 330 N.E.2d at 606, 369 N.Y.S.2d at 641.

106. *Id.* See also *Peters v. New York State Agric. & Indus. School*, 64 A.D.2d 749, 406 N.Y.S.2d 638 (1978), where the sole supervisor present when a "riot" occurred among the students at the school for delinquent boys was awarded compensation for distress and fear of bodily harm even though no physical injury was sustained.

107. 62 Ill. 2d 556, 343 N.E.2d 913 (1976).

108. *Id.* at 562, 343 N.E.2d at 916.

109. *Id.* at 563, 343 N.E.2d at 917.

110. *Id.* at 564, 343 N.E.2d at 917.

injury was minor, the court stressed the ridiculousness of making a distinction between claimants with very minor physical injury and those with no physical injury at all.¹¹¹

In *Bailey v. American General Insurance Co.*,¹¹² the Supreme Court of Texas upheld compensation for a purely mental injury despite the limited language of the Texas workers' compensation statute defining "injury" as "damage or harm to the physical structure of the body."¹¹³ The claimant suffered from a disabling neurosis after viewing a fellow employee falling to his death from scaffolding where both were working.¹¹⁴ After noting that the workers' compensation statute is to be construed liberally, the court interpreted "physical structure of the body" to include the "entire body, not simply . . . the skeletal structure or . . . the circulatory system or . . . digestive system . . . [but the] complex of perfectly integrated and interdependent bones, tissues and organs which function together by means of electrical, chemical and mechanical processes in a living, breathing, functioning individual."¹¹⁵ All parties agreed that the claimant had suffered greatly from the experience. Moreover, medical testimony established that the claimant's body no longer functioned properly.¹¹⁶ The court questioned whether it was possible to hold that "as a matter of law, even though a 'physical structure' no longer functions properly, it has suffered no 'harm'."¹¹⁷ Answering in the negative, the court interpreted the term "injury" to include the claimant's disabling mental disorder which was quite real though lacking in visible physical manifestation.¹¹⁸ The court noted that rejection of this "dichotomy between 'mind' and 'body'" was an established trend among the various states.¹¹⁹

111. *Id.* The court best summarizes the issue:

[T]here is little to support a rule that allows an award for a claimant . . . who is suffering from psychological disabilities caused by an often minor physical injury but denies an award to a claimant with a similar psychological disability brought about . . . by a sudden, severe emotional shock and who fortuitously did not sustain any physical injury in his accident.

Id.

112. 154 Tex. 430, 279 S.W.2d 315 (1955).

113. *Id.* at 435, 279 S.W.2d at 318.

114. *Id.* at 432, 279 S.W.2d at 316.

115. *Id.* at 436, 279 S.W.2d at 318.

116. *Id.*

117. *Id.*

118. *Id.* at 437, 279 S.W.2d at 319.

119. *Id.* at 438, 279 S.W.2d at 319.

4. Putting the Issue to Rest

A recent Louisiana Supreme Court case, *Sparks v. Tulane Medical Center Hospital and Clinic*,¹²⁰ put the issue to rest in finding a mental injury compensable when induced by a "significant employment incident" without an accompanying physical trauma.¹²¹ The claimant, who worked as an "exchange card supervisor" stocking the medical supply rooms at a hospital, observed various incidents of theft, vandalism, and drug use in her work area. She reported her findings to her supervisor in an effort to stop these practices, and personally warned some of the employees. The claimant was thereafter subjected to repeated instances of harassment from co-employees. On one day in particular, the claimant returned to work after the weekend to discover that the supply room had not been stocked by the weekend employees. After reporting this incident to her supervisor, the claimant learned that this group of co-employees had threatened her personal safety.¹²² The claimant became so upset and frightened that she left work and was unable to return.¹²³ The employer argued that (1) she did not prove that her mental injury resulted from an "accident" as required by Louisiana's Workers' Compensation Act, and (2) because no physical trauma accompanied the alleged mental injury, she did not suffer a compensable injury involving "violence to the physical structure of the body."¹²⁴

The court first interpreted an accidental "event" as requiring either "an unexpected and sudden or violent occurrence which *causes injury*, or . . . an unexpected change in the employee's *physical condition* which renders him incapable of working" and is, at least in part, caused by the employment.¹²⁵ While noting that the definition of "injury" does not draw a distinction between mental and physical injuries, the court acknowledged that previous Louisiana decisions have often drawn such a distinction.¹²⁶ In discussing various states' recognition of both "physical-mental" and "mental-physical" categories, the court reasoned that no justification exists for allowing compensation for injuries arising from slight physical exertion while denying compensation for those same injuries if brought on by mental exertion.¹²⁷ Under this line of reasoning, a

120. 546 So. 2d 138 (La. 1989).

121. *Id.* at 139-40.

122. *Id.* at 140-41.

123. *Id.* at 141.

124. *Id.* at 142 (quoting LA. REV. STAT. ANN. § 23:1021(1), (7) (West Supp. 1989)).

125. *Id.* at 143 (emphasis original) (citation omitted).

126. *Id.* at 143-44.

127. *Id.* at 144.

stroke resulting from a heated argument with a supervisor would be just as compensable as one brought on by lifting heavy objects in the course of employment.¹²⁸

The *Sparks* court noted that the decisions denying compensation did so on the ground that some form of physical trauma was needed to satisfy the statutory "injury" requirement.¹²⁹ In contrast, those courts granting compensation found that a serious mental disability that prevents the employee from working is a sufficient "injury" under the statute.¹³⁰ The court stated that "[w]e cannot ignore the scientific fact that mental disorders constitute an injury to the physical capabilities of a worker."¹³¹

Resolution of the dispute required interpretation of the phrase "injury by violence to the physical structure of the body."¹³² "Violence" had been previously interpreted to mean *damage or harm*, not necessarily a "blow or visible application of force,"¹³³ violence need not be the *cause* of the injury, but rather *is* the injury. Further, the term "physical structure of the body" was deemed to include the body as a whole, not simply the skeletal structure, organs, and tissue.¹³⁴

Thus, the claimant's mental injury was compensable with one qualification—proof that the injury resulted from a sudden or violent unexpected employment-related event which satisfied the statutory "accident" requirement.¹³⁵ Ironically, the court affirmed the plaintiff's award notwithstanding that the worker had presented evidence of a *series* of incidents of harassment.¹³⁶ While the general hostile atmosphere left the worker "helpless and afraid," the specific threats communicated on one specific day constituted the sudden event triggering the disability that curtailed her work performance.¹³⁷

128. *Id.*

129. *Id.* The category of "mental-mental" had been the subject of disagreement among the various appellate courts in Louisiana. The factual situation in *Sparks* afforded the Louisiana Supreme Court an opportunity to settle the issue.

130. *Id.* at 144-45.

131. *Id.* at 145 (quoting *Jones v. City of New Orleans*, 514 So. 2d 611 (La. App. 4th Cir. 1987), *writ denied*, 515 So. 2d 1111 (La. 1987)).

132. *Id.* at 145.

133. *Id.*

134. *Id.* at 145-46 (quoting *Bailey v. American Gen. Ins. Co.*, 154 Tex. 430, 436, 279 S.W.2d 315, 318 (1955)).

135. *Id.* at 147.

136. *Id.* at 148.

137. *Id.* at 149.

5. Mental Injury as an Occupational Disease

While a number of courts allowing compensation still impose some form of sudden stimulus requirement, a few courts have gone considerably further, classifying a mental injury induced by emotional stimuli as an occupational disease.¹³⁸ In *City of Aurora v. Industrial Commission*,¹³⁹ the court classified post-traumatic stress disorder resulting from stressful conditions of employment as an occupational disease rather than an accidental injury.¹⁴⁰ Occupational disease under the Colorado Act must result directly from employment or working conditions, follow as a natural result of employment, and be traceable causally to the work rather than from some hazard outside employment.¹⁴¹ Without much discussion, the court held that compensation could be awarded for post-traumatic stress disorder as an occupational disease caused by "the unique psychological stresses of undercover narcotics work."¹⁴²

V. COMPENSABILITY IN OKLAHOMA

A. *The Workers' Compensation Statute*

Oklahoma's Workers' Compensation Act allows compensation for an "accidental personal injury arising out of and in the course of employment."¹⁴³ In addition, because of the remedial nature of the Act, the term "accidental injury" has been accorded a "broad and liberal" interpretation and has been defined as "an event happening without any human agency, or if happening through human agency, an event which, under the circumstances, is *unusual* and *not expected* to the person to

138. See, e.g., 1B A. LARSON, *supra* note 68, at § 42.23(f).

139. 710 P.2d 1122 (Colo. Ct. App. 1985).

140. *Id.* at 1123.

141. *Id.* See COLO. REV. STAT. § 8-41-108(3) (Supp. 1984).

142. *Aurora*, 710 P.2d at 1124.

143. OKLA. STAT. tit. 85, § 11 (Supp. 1988) states in part:

Every employer subject to the provisions of the Workers' Compensation Act shall pay . . . compensation . . . for the disability or death of his employee resulting from an *accidental personal injury* sustained by the employee *arising out of and in the course of his employment*, without regard to fault as a cause of such injury. . . .

Id. (emphasis added). Moreover, OKLA. STAT. tit. 85, § 3(7) (Supp. 1988) defines "injury or personal injury" as:

only accidental injuries arising out of and in the course of employment and such disease or infection as may naturally result therefrom . . . [p]rovided, only injuries having as their source a risk not purely personal but one that is reasonably connected with the conditions of employment shall be deemed to arise out of the employment.

Id.

whom it happens."¹⁴⁴ Moreover, Oklahoma courts deleted the requirement of a slip, fall, or impact for an injury to be compensable.¹⁴⁵

Interpreting the term "accidental injury" remains problematic for the courts when addressing purely psychological injuries notwithstanding broad construction. Despite the fact that the statutory definition of accidental injury does not draw a distinction between mental and physical injuries,¹⁴⁶ Oklahoma courts continue to require some objective physical manifestation of injury before permitting compensation.¹⁴⁷

B. *Evolution in Oklahoma*

Oklahoma courts have permitted compensation when a mental element is either the causal factor of a resulting injury or is the injury itself. To date, the Oklahoma Supreme Court has declined to accept the majority position among states which supports compensating mental injuries caused by mental stimuli.

1. Mental Injuries Caused by Physical Stimuli

Oklahoma first recognized a mental injury as compensable in *Rialto Lead & Zinc Co. v. State Industrial Commission*.¹⁴⁸ The court considered whether a machinist may be compensated for the mental disability—a nervous breakdown—sustained following his work-related back injury.¹⁴⁹ The court held in the affirmative, relying on a "long line of English decisions" granting compensation for such injuries under England's Workmen's Compensation Act.¹⁵⁰ The recognition in *Rialto* of

144. *Andrews Mining & Milling Co. v. Atkinson*, 192 Okla. 322, 323, 135 P.2d 960, 961 (1943) (emphasis added). The court explained that the term "injury" expresses the "*thing or event*" that causes harm to the person, while "accidental" qualifies and describes the injury as something unexpected. *Id.* at 323-24, 135 P.2d at 962.

145. See *Nelson v. City of Oklahoma City*, 573 P.2d 696, 698 (Okla. 1977) and cases cited therein; see also *Wilson Foods Corp. v. Porter*, 612 P.2d 261, 264 (Okla. 1980).

146. See text of statute, *supra* note 143.

147. See *infra* text accompanying notes 148-72. Only a small group of states persist in denying compensation for mental-mental claims: Florida, Georgia, Kansas, Minnesota, Montana, Ohio, and Oklahoma. 1B A. LARSON, *supra* note 68, at § 42.25(d) n.10.

148. 112 Okla. 101, 240 P. 96 (1925). With this case, Oklahoma was noted as among the first states to allow recovery for a mental disability resulting from a physical injury. Cook, *supra* note 75, at 896.

149. *Rialto*, 112 Okla. at 103, 240 P. at 98.

150. *Id.* See also *Wade Lahar Constr. Co. v. Howell*, 376 P.2d 221 (Okla. 1962), where following a head injury, a claimant developed a post-traumatic neurosis. After the claimant was awarded compensation for the head injury, he sought an additional award for his resulting neurosis. Although the mental disability manifested itself gradually after the initial head trauma, the court allowed additional compensation because it related back to the original physical injury. The court stated that "[d]isability from a psychiatric condition produced by an accidental injury is compensable in the same manner as any other impairment of the body." *Id.* at 224 (citing *Rialto*, 112 Okla.

the compensability of a specific mental injury produced by a physical injury set the predicate for awards in the cases that followed.

However, in *Keeling v. State Industrial Court*,¹⁵¹ the court refused to extend the rule established in *Rialto* even slightly when it denied compensation to a seamstress who had a nervous breakdown allegedly due to the strained seating position she assumed at work. While the court acknowledged that some mental injuries are compensable—those that are “the natural consequence of an accident which is compensable under the Workmen’s Compensation Act”—it found that the seamstress’s claim did not result from an “accidental personal injury.”¹⁵² The court emphasized the distinction between a *physical injury* caused by poor posture and a *disease* caused by poor posture, the latter not compensable because of the lack of a direct causal connection between the exertion of the employment and the injury.¹⁵³ The court held that a “disease of the mind or body which arises in the course of employment, with nothing more, is not within the act.”¹⁵⁴ The court further explained that the disease had to be directly traceable to a personal injury “peculiar to employment.”¹⁵⁵ Thus, in *Keeling*, the court denied compensation, not because it held all mental injuries to be non-compensable, but rather because this *particular* mental injury could not be traced to the employment.

2. Mental Stimuli Producing Physical Injury

Oklahoma courts also compensate in factual situations where mental stimuli cause a physical injury, for example, heart attacks stimulated by emotional factors. One such case is *Bill Gover Ford Co. v. Roniger*,¹⁵⁶ where the claimant suffered a heart attack as a result of a stressful increase in her duties as a clerical worker. The court noted that the heart attack need not be precipitated by one strain but rather can be the result of an accumulation of strains, and awarded compensation.¹⁵⁷

101, 240 P. 96). The court reasoned that because the claimant’s changed condition was attributable to a prior compensable injury, additional compensation could be granted despite the non-physical nature of the condition. *Id.* See also *L.E. Jones Drilling Co. v. Harris*, 403 P.2d 497 (Okla. 1965).

151. 389 P.2d 487 (Okla. 1964).

152. *Id.* at 490.

153. *Id.* at 491.

154. *Id.* (quoting *Shoren v. United States Rubber Co.*, 87 R.I. 319, 140 A.2d 768 (1958)).

155. *Id.*

156. 426 P.2d 701 (Okla. 1967).

157. *Id.* at 703. Compare *Liebmann Arctic Ice Co. v. Henderson*, 486 P.2d 739 (Okla. 1971). There, the claimant suffered a stroke after becoming angry over an incident at work. In denying compensation, the court reasoned that claimant’s stroke did not “arise out of employment” as a “risk reasonably incident” thereto as required by the Act, but rather was the result of his *own* inability to control his temper. *Id.* at 741-42.

The case of *Oklahoma City v. Schoonover*¹⁵⁸ marked the commencement of awarding benefits for a condition developing gradually over a period of two years, in contrast to the previous limitation on "accidental injury," which required the injury to be traceable to a definite and specific event. There, a claimant-police officer died following surgery for treatment of a pre-existing ulcer aggravated by constant emotional tensions at work. Inasmuch as his death resulted from the surgery alone, in order to bring the claim within the realm of the Workmen's Compensation Act, the ulcer itself had to qualify as an "accidental injury" under the Act or no recovery could be allowed.¹⁵⁹ To establish an "accidental injury," two requirements must be satisfied: The injury must be the "result of a risk reasonably incident to the employment," and there must be a causal connection between the work performed and the injury sustained.¹⁶⁰ The court found that the medical evidence suggesting that tension and stress from his job had caused the progressive worsening of his condition, coupled with the eventual necessity for surgery, satisfied these two requirements.¹⁶¹

The court in *Schoonover* distinguished this situation from those cases involving aggravation of a condition due to "worry" over the possible inability to work, finding "worry" not to be a risk reasonably incident to employment.¹⁶² The court found that the aggravation of the police officer's ulcer was not created by worry, but rather from the tense and stressful nature of the claimant's employment.¹⁶³ It is important to note that the condition of the worker's ulcer developed over a period of time, and that his condition developed as a result of mental rather than physical stimuli.¹⁶⁴

3. Mental Injuries Caused by Non-Physical Stimuli

The Supreme Court of Oklahoma was presented with its first opportunity to decide whether a mental injury absent physical injury should be compensated in *Vernon v. Seven-Eleven Stores*.¹⁶⁵ The claimant developed a nervous condition after employment had been terminated because of his failure to pass a routine polygraph test. The court was concerned

158. 535 P.2d 688 (Okla. 1975).

159. *Id.* at 689.

160. *Id.*

161. *Id.* at 692.

162. *Id.* at 691.

163. *Id.*

164. *Id.* at 689-90.

165. 547 P.2d 1300 (Okla. 1976).

that no physical injury precipitated the mental injury and emphasized the fact that the nervous condition arose only after employment was terminated.¹⁶⁶ Although acknowledging that decisions from other jurisdictions allowed compensation for mental injuries absent physical trauma, the court declined to follow them in this case.¹⁶⁷ The nervous condition arose *after employment was terminated*, and therefore was not an accidental injury arising *in the course* of employment as required by the Act.¹⁶⁸ The court did *not* hold that mental injuries were never compensable.

In *Daugherty v. ITT Continental Baking Co.*,¹⁶⁹ the claimant contended that severe emotional injury resulted from critical comments concerning her work performance and from her supervisor's request for her resignation.¹⁷⁰ The court, citing both *Keeling* and *Vernon*, denied compensation, stating that a mental injury "with nothing more" is not encompassed by the Act.¹⁷¹

The common elements arising throughout these denials of compensation for mental injuries caused by mental stimuli are a lack of a causal connection between the injury and the employment and problems in defining the scope of "accidental injury." This unwillingness to extend the notion of "accidental injury" to encompass injuries which are not accompanied by something that can be termed "physical" has heretofore been the pattern in these cases despite the abundance of authority explaining the fallacy of any distinction between "what is physical" and "what is mental."¹⁷² However, no court has specifically denied benefits merely because the injury was solely psychological in nature. Perhaps the issue

166. *Id.* at 1300-01.

167. *Id.* at 1301.

168. *Id.* at 1302.

169. 558 P.2d 393 (Okla. 1976).

170. *Id.* at 394.

171. *Id.* at 395.

172. Larson, in discussing those jurisdictions which currently refuse to draw a distinction between physical and mental causation, states:

The net result is that, if other jurisdictions would follow this lead, the categories into which this article divides the cases could and should be reduced by combining "mental stimulus causing physical injury," and "mental stimulus causing nervous injury," since there is no really valid distinction between physical and "nervous" injury. Certainly modern medical opinion would support this view and insist that it is no longer realistic to draw a line between what is "nervous" and what is "physical." It is an old story in the history of law to observe legal theory constantly adapting itself to accommodate new advances and knowledge in medical theory. Perhaps in earlier years, when much less was known about mental and nervous injuries and their relation to "physical" symptoms and behavior, there was an excuse, on grounds of evidentiary difficulties, for ruling out recoveries based on such injuries, both in tort and in workmen's compensation. But the excuse no longer exists.

has not been directly addressed because no compelling factual situation has yet been presented to the Oklahoma Supreme Court.

VI. RECOMMENDATIONS FOR UPDATING OKLAHOMA LAW

A. *The Fenwick Case—A Missed Opportunity to Decide the Issue*

The case of *Fenwick v. Oklahoma State Penitentiary*,¹⁷³ presented the Oklahoma Supreme Court with an opportunity to decide the compensability of mental-mental claims. Fenwick, a counselor in an Oklahoma prison, unsuspectingly walked into a hostage incident where four women were being detained by a knife-wielding inmate.¹⁷⁴ The inmate took Fenwick hostage; after hours of negotiating, Fenwick convinced the inmate to let the women go free.¹⁷⁵ Fenwick remained in close confinement with the armed inmate before finally being freed. Although the inmate threatened him, Fenwick suffered no immediate physical harm.¹⁷⁶

Fenwick developed post-traumatic stress disorder as a result of this specific work-related incident.¹⁷⁷ The manifestation of this mental injury resulted in severe depression and anxiety, and was accompanied by symptoms physical in nature, including severe headaches, vertigo, and numbness.¹⁷⁸ The trial court found that Fenwick suffered no compensable job-related injury.¹⁷⁹ This decision was reversed and remanded by the Oklahoma Court of Appeals.¹⁸⁰

The Court of Appeals stated that "accidental injury" under the Workers' Compensation Act encompassed a "functional abnormality or loss" and that post-traumatic stress disorder was "clearly a 'functional abnormality or loss' that arose out of and in the course of [claimant's] job-related hostage experience with an armed and dangerous inmate."¹⁸¹

Larson, *Mental and Nervous Injury in Workmen's Compensation*, 23 VAND. L. REV. 1243, 1253 (1970).

173. No. 69,691 (Okla. Ct. App. March 21, 1989), *vacated*, 792 P.2d 60 (Okla. 1990).

174. Brief of Petitioner at 1, *Fenwick* (No. 69,691).

175. *Id.*

176. *Id.*

177. However, as noted in the Brief of Petitioner, the fact that the mental injury resulted from a threat rather than a tangible physical knife wound is not dispositive as there need not be an impact or contact for an injury to be compensable. *Id.* at 9 (citing *Nelson v. City of Oklahoma City*, 573 P.2d 696, 698 (Okla. 1977)).

178. *Id.* at 4.

179. *Fenwick*, No. 69,691, slip op. at 1 (Okla. Ct. App. Mar. 21, 1989), *vacated*, 792 P.2d 60 (Okla. 1990).

180. *Id.* at 4.

181. *Id.* at 3. OKLA. STAT. tit. 85, § 3(11) (Supp. 1988) adopts the AMERICAN MEDICAL ASSOCIATION, GUIDES TO THE EVALUATION OF PERMANENT IMPAIRMENT (1984) [hereinafter

All testifying medical experts agreed that the post-traumatic stress disorder resulted from the hostage incident and that the claimant needed continuing psychiatric treatment to remain functional.¹⁸² Moreover, the majority noted that the State Insurance Fund paid for Fenwick's treatment for approximately four years, but later denied that an accidental job-related injury was sustained.¹⁸³

A bare majority of the Oklahoma Supreme Court in *Fenwick v. Oklahoma State Penitentiary*,¹⁸⁴ denied compensation for mental injuries in the absence of accompanying physical injury, judicially limiting the language of the Act. A majority of five justices stated that the definition of "accidental personal injury" provided in the Act is not comprehensive, and that it has therefore been the court's responsibility to determine the scope of its definition.¹⁸⁵ The court denied compensation, concluding that "[t]his Court has consistently held that physical injury must be present for a disability to be compensable."¹⁸⁶ The court so held notwithstanding that *Fenwick* has clearly distinguishable facts from prior case law. All of the cases cited by the court in *Fenwick* involved claimants who suffered from general mental stress caused by ordinary workplace problems rather than specific mental disorders capable of diagnosis resulting from unexpected and unusual work-related events¹⁸⁷ Thus, the court declined to fully address the issue, instead leaving it to the legislature. The court did so despite the fact that interpretation of the term "accidental personal injury" has been left to the courts.

Both dissents contended that if nothing in the Act disallows compensability of purely mental injuries, neither should the court. Justice

GUIDES], as exclusive guidelines for use in evaluating medical evidence to prove impairment. GUIDES specifically addresses mental and behavioral disabilities and states that "it is important to recognize that residual impairment from a mental disorder may be just as real and severe as impairment resulting from a physical disorder or injury." GUIDES, *supra* at 219. Moreover, GUIDES defines "impairment" as involving "any anatomical or functional abnormality." *Id.* at 215.

182. *Fenwick*, No. 69,691, slip op. at 2.

183. *Id.* at 2 n.1.

184. 792 P.2d 60 (Okla. 1990).

185. The court stated:

A definition of injury is provided in the Workers' Compensation Act (the Act) itself. This definition is more repetitive of the requirements set out under section 11 than it is definitive. Since the definition in the Act is not comprehensive, it has been the duty of the courts to further define "accidental personal injury."

Id. at 62.

186. *Id.*

187. *Id.* The cases cited by the court as support for its physical injury requirement were: *Haynes v. Pryor High School*, 566 P.2d 852 (Okla. 1976); *Daugherty v. ITT Continental Baking Company*, 558 P.2d 393 (Okla. 1976); *Vernon v. Seven-Eleven Stores*, 547 P.2d 1300 (Okla. 1976).

Kauger pointed out that the statute on its face does not exclude psychological injury without accompanying physical trauma from coverage.¹⁸⁸ Rather, she noted that exemption of mental injuries from workers' compensation coverage has been engrafted by the court, and not enacted by the legislature. She concluded that recovery should be allowed in *Fenwick*, but not in other cases until legislative guidance is provided.¹⁸⁹ Likewise, Justice Opala pointed out that "there is no textually demonstrable legislative intent to exclude from compensability those accidental injuries that result in mental scarring alone."¹⁹⁰ He noted that the judicially created exemption has no place in the statutory workers' compensation law and was no doubt erroneously derived from common law principles of tort liability.¹⁹¹

Post-traumatic stress disorder arising from a sudden mental stimulus causing some form of debilitating injury is specifically capable of diagnosis and alleviates the need for a physical injury requirement.¹⁹² The Oklahoma Court of Appeals in *Fenwick* properly addressed the disorder as a specific, medical malady arising from the "impact of being exposed to the danger or violence of a *particular* event" as distinguished from a disorder arising from general anxiety.¹⁹³

The supreme court dismissed this analysis, stating that it does not matter whether a resulting disorder is traceable to a single event, but rather the critical factor is the presence of physical injury.¹⁹⁴ While a physical dimension requirement allows courts to justify more easily grants of compensation,¹⁹⁵ genuine work-related injuries occur that cause only mental trauma. The loss of former well-being compels compensation. Clearly *Fenwick's* post-traumatic stress resulting from the trauma of being held hostage was more than adequately authenticated at the trial level. Further support of its authenticity was illustrated by the State Insurance Fund's payments for *Fenwick's* counseling sessions.¹⁹⁶ The

188. *Id.* at 66.

189. *Id.* at 76.

190. *Id.* at 63 (emphasis omitted).

191. *Id.* at 64.

192. *See supra* text accompanying notes 34-39.

193. *Fenwick*, No. 69,691, slip op. at 3 (emphasis added).

194. *See supra* text accompanying notes 184-86.

195. Joseph, *supra* note 6, at 289.

196. After four years of treatment, the State contended that *Fenwick* suffered no accidental injury. Answer Brief of the Respondent at 6, *Fenwick* (No. 69,691). This is tantamount to contending that when it is found that a worker will need physical therapy for an indeterminate time after several surgeries to correct a job-related injury to his leg, that the worker never suffered an accidental injury at all.

point is that showing *some* objective, physical trauma, however slight, does not make the mental injury any more real. Conversely, the failure to show physical trauma does not make a mental injury less debilitating.

B. *Three Underlying Premises*

Three concepts have been accepted by the majority of jurisdictions in granting benefits to the worker who has sustained a genuine work-induced mental injury. The first involves the humanitarian and remedial purposes of workers' compensation statutes which require broad and liberal interpretation, and resolution of doubts in favor of the injured claimant.¹⁹⁷ This interpretation allows the mentally-induced injury to fall within statutory definitions of "accidental injury."¹⁹⁸

Second, advancements have been made in the medical field which indicate that the distinction between what is "mental" and what is "physical" in terms of compensable injury is now without justification.¹⁹⁹ Proof of mental disability can be established as readily as proof of physical disability,²⁰⁰ and accepted medical checks can be utilized to ensure that the claimant is not feigning an injury,²⁰¹ whether the claim is for hearing loss or for post-traumatic stress syndrome.

Finally, causation can be established when a sudden, dramatic event is responsible for a claimant's mental injury.²⁰² The existence of a specific event removes the difficulty in linking the harm suffered by a worker to the employment.²⁰³

If the Oklahoma Supreme Court chooses to accept these premises then in certain compelling situations, such as those described in *Fenwick*, a strict physical element would not be required in every mental injury claim.

C. *Proposition for an Acceptable Standard*

As the majority of courts recognize, there are ways to avoid overburdening the workers' compensation system without eliminating from

197. Oklahoma adopts this view. See, e.g., *Andrews Mining & Milling Co. v. Atkinson*, 192 Okla. 322, 135 P.2d 960 (1943). See also 1B A. LARSON, *supra* note 68, at §§ 42.00-10.

198. See, e.g., *Bailey v. American Gen. Ins. Co.*, 154 Tex. 430, 279 S.W.2d 315 (1955), and *supra* notes 112-19.

199. Larson, *supra* note 172, at 1260.

200. See text accompanying note 12.

201. See text accompanying notes 47-49.

202. See text accompanying notes 58-67.

203. Hirsh & Monroe, *supra* note 6, at 278.

coverage work-related mentally-induced psychological injuries. Accordingly, states have developed a variety of standards.²⁰⁴ The most restrictive standard allowing recovery requires that the mental injury be directly traceable to a definite, sudden event.²⁰⁵ Thus, the sudden-stimulus standard is a small step from the physical element requirement because, although not physical in dimension, there is still "something" to point to as the cause of the mental injury—the sudden, traumatic event.²⁰⁶ Broader standards allow compensation for mental injuries resulting from both sudden and gradual stimuli.²⁰⁷ However, the Oklahoma Supreme Court need not extend the rule that far. To ensure compensability of *valid* mental claims while maintaining those safeguards necessary to make sure that causation and genuineness exist, the court could adopt a sudden stimulus standard. This standard represents a middle ground in that it recognizes compensability of meritorious mental claims, but avoids the difficulties inherent in relating gradually induced mental injuries to employment.²⁰⁸ Nothing in the caselaw or the Workers' Compensation Act prevents Oklahoma from extending coverage to encompass these mental-mental claims as thus restricted. States with more restrictive definitions of accidental injury have interpreted this term to include these claims.²⁰⁹ Moreover, Oklahoma courts already permit recovery for injuries of a more protracted nature.²¹⁰ The restriction

204. Larson classifies mental injury cases into four categories:

Group One: mental stimulus producing mental injury is compensable even if gradual, and even if the stress is not unusual by comparison with that of ordinary life or employment.

Group Two: "mental-mental" cases are compensable even if gradual, but only if the stress is unusual.

Group Three: "mental-mental" cases are compensable, but only if the stimulus is sudden.

Group Four: "mental-mental" cases are never compensable, whether gradual or sudden; there must be some physical component in the injury.

1B A. LARSON, *supra* note 68, at § 42.25(b). See also Cook, *supra* note 75, at 903.

205. Sersland, *Mental Disability Caused by Mental Stress: Standards of Proof in Workers' Compensation Cases*, 33 DRAKE L. REV. 751, 769 (1983-84).

206. As one commentator noted, "[t]he chances of approving unmeritorious claims is substantially reduced by requiring the employee to point to a distinct event that caused the disability." Nugent, *supra* note 75, at 245. Inasmuch as Oklahoma has already accepted the viewpoint that a mental disability may constitute an accidental injury, the only remaining problem is in establishing causation which can be accomplished by imposition of a sudden stimulus standard. Hirsh & Monroe, *supra* note 6, at 278.

207. See *supra* note 204. Under Larson's classification, groups one and two are much broader than the sudden stimulus standard. Variations of these two groups broadly extend coverage to gradually induced mental injuries such as those caused by ordinary everyday stresses and strains on the job. See also Cook, *supra* note 73, for an in-depth analysis of the various broad-based standards applied by courts.

208. Nugent, *supra* note 75, at 245.

209. See text accompanying notes 112-37.

210. See discussion of *Schoonover*, text accompanying notes 158-64, where daily tension and stress from the job was recognized as a valid precipitating factor.

enunciated in *Keeling*,²¹¹ that a mental injury with *nothing more* is not a compensable injury within the Act, is not inconsistent with the view of granting compensation for mental injuries induced by mental stimuli; *Fenwick* demonstrated something more: a distinct, sudden traumatic work-related event that caused the injury.²¹² By choosing to adopt a sudden stimulus standard, the court will not be opening the floodgates to an endless barrage of litigation for purely mental claims, but rather will be updating the law to compensate in the clear instance of a work-related mental injury deserving benefits.

VII. CONCLUSION

The majority position supports compensating mental injuries caused by sudden traumatic events on the job. *Fenwick* presented a compelling fact situation, providing the Oklahoma Supreme Court with an opportunity to bring the law up to date with medical science. By adopting a sudden stimulus requirement the court could avoid the difficulties inherent in deciding mental injury cases while enabling the clearly valid claims to be compensated. The timely recognition of post-traumatic stress disorder as a compensable accidental injury would enable Oklahoma to join the majority of jurisdictions presently acknowledging the validity of mental injuries without a manifestation of physical injury in workers' compensation claims. The legislature should resolve the controversy by amending the statute defining injury to include mental injuries such as post-traumatic stress disorder, or if it fails to so act, the supreme court should reverse its stand and address the issue.

April Harlton

211. 389 P.2d 487 (Okla. 1964).

212. Brief of Petitioner at 9, *Fenwick* (No. 69,691).

