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William Christopher Carmody

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THE LOGICAL RECOGNITION OF GRADUAL STRESS DISABILITY UNDER OKLAHOMA’S WORKERS’ COMPENSATION LAW

I. INTRODUCTION

Perhaps the most difficult problem facing courts administering workers’ compensation is the compensation of gradual stress disability.1 The causal relationship between employment stress and a resulting mental disability presents one of the most complex issues in workers’

1. Gradual stress disability is a mental disability resulting from the gradual stress of employment. See infra note 12 and accompanying text.

compensation law.\footnote{Joseph, supra note 1, at 289.} Despite this difficulty, however, courts in a growing number of jurisdictions are providing workers' compensation to claimants in cases of gradual stress disability.\footnote{1B A. LARSON, THE LAW OF WORKMEN'S COMPENSATION § 42.25(c) (1987).}

Although it is presently not known whether gradual stress disability is compensable under Oklahoma Workers' Compensation Act,\footnote{See infra notes 50-51 and accompanying text.} the Oklahoma Supreme Court will probably be required to decide this issue in the future. The court's determination that gradual stress disability is compensable will be logical. Compensating gradual stress disability is consistent with the Oklahoma Workers' Compensation Act, prior Oklahoma Supreme Court decisions, the underlying principles upon which workers' compensation is based, and the national trend toward compensating such claims.

II. THE DEVELOPMENT OF GRADUAL STRESS DISABILITY

A. Background

As the rate of industrial accidents rose in the early twentieth century, state legislatures enacted workers' compensation laws because the common law remedies available to injured employees were inadequate.\footnote{Before the enactment of workers' compensation, common law principles often prohibited an employee's recovery for a work-related injury. The common law of torts required the injured worker to prove that the employer was negligent. In addition, an employer had three defenses: contributory negligence, assumption of risk, and fellow servant rules. These hurdles were almost insurmountable for an injured employee seeking compensation under the common law. Manson, supra note 1. These common law constraints can be attributed to the laissez-faire economic philosophy dominant in the latter part of the nineteenth century. Comment, Workers' Compensation and Gradual Stress in the Workplace, 133 U. PA. L. REV. 847, 854 (1985); 1B A. LARSON, supra note 3, § 41.0.} Legislatures intended to provide broad, no-fault coverage to all employees suffering work-related injuries.\footnote{Comment, supra note 5, at 854-55.} To implement this objective, workers' compensation laws now require employers to compensate employees for accidental injuries "arising out of and in the course of employment,"\footnote{See OKLA. STAT. tit. 85, § 11 (Supp. 1987). For a discussion of the difficulty in applying this statutory language in gradual stress disability cases, see infra note 46 and accompanying text.} regardless of fault. In return for definite compensation under this no-fault recovery system, employees relinquish their common law tort claims against their employers. Thus, workers' compensation laws protect employers from potentially large damage awards, and guarantee employees compensation for work-related injuries that impair earning
Workers’ compensation law has evolved from covering purely physical injuries to also compensating those injuries with a mental component. Cases involving mental components are separated into three categories: (1) mental stimuli causing physical injury; (2) physical trauma causing a mental disability; and (3) mental stimuli causing mental disability. Injuries contained in this third category of cases are known as “purely mental” injuries.

Purely mental injuries are further divided into two classes. These classes are determined by the type of mental stimulus causing the mental disability. In the first class, a sudden work-related stimulus causes the mental disability. In the second class, the mental disability is caused by a gradual work-related stress that develops over time. This latter type of purely mental injury is labelled “gradual stress disability.”

Because of the subjective nature of mental disabilities, courts have been reluctant to extend workers’ compensation to such injuries. This recalcitrance led early courts to only award compensation for purely mental injuries resulting from sudden stimuli, since they are analogous to
physical injuries. Courts were reluctant to compensate claims of purely mental injuries because they feared that the claims might not be genuine. Professor Larson has referred to this concern as the "how could it be real when . . . it was purely mental" preconception.

Gradual stress disabilities are especially affected by judicial concern for "genuineness." In cases involving a sudden mental stimulus, some extraordinary event occurs. In this manner, sudden mental stimulus cases resemble physical accident cases. Courts are able to analogize sudden mental stimulus with physical accident cases because they both result from particular identifiable events. However, in gradual stress cases, the disability results from the gradual stress of employment, with no easily identifiable event.

Because sudden mental injuries are more readily compensated than gradual stress claims, courts appear to be more concerned with questions of proof than with principled determinations over the kind of injury that should be compensable. An event's evidentiary value in showing causation reassures courts that the injuries are genuine. With no particular event upon which to grasp, claimants seeking compensation for gradual stress disability must prove: (1) that they suffered from a work-related gradual stress and (2) that this stress caused the resulting mental disability. Despite this burden, over a period of time, courts have compensated claims for gradual stress disability.

13. See supra note 11 and accompanying text.
14. Comment, supra note 5, at 859.
15. Professor Larson states:
   This equation of "mental" with "unreal," or imaginary, or phoney, is so ingrained that it has achieved a firm place in our idiomatic language. Who has not at some time, in dismissing a physical complaint of some suffering friend or relative, airily waved the complaint aside by saying, "Oh, it's all in his head?" The impact of this pervasive preconception on compensation decisions can be briefly stated. A high proportion of the cases display a search for something—anything—that can be called "physical" to supply the element of "reality" in the injury. Larson, supra note 10, at 1243.
16. Comment, supra note 5, at 860 (citing I B A. LARSON, supra note 3, § 42.21); Joseph, supra note 2, at 287.
17. Comment, supra note 5, at 860. Most commentators believe that the distinction between a sudden and gradual mental stimulus is unprincipled, both medically and legally. Id. at 849 (citing Selzer, Psychological Stress and Legal Concepts of Disease Causation, 56 Cornell L. Rev. 951 (1971)); I B A. LARSON, supra note 3, § 42.23(b). Professor Larson has stated that the distinction is unsound because under workers' compensation law, when an injury has some physical component, the gradual nature of the stimulus has not been an obstacle to recovery. Id.
18. Comment, supra note 5, at 860.
19. See infra note 46 and accompanying text.
20. See supra note 12 and accompanying text.
B. Causation

Because of the difficulty in connecting a mental disability with the gradual stress of employment, the claimant's primary obstacle to the compensation of gradual stress disability is establishing causation. Unlike most physical disabilities, claims for gradual stress disabilities require expert medical testimony to prove causation. However, this medical evidence is intangible in nature. Furthermore, due to the absence of a single disabling event, isolating a work-related mental cause is difficult. In addition, factors such as stress outside the workplace exacerbate the claimant's burden of proving causation.

The inherent difficulty in proving causation has led courts to formulate tests in order to determine whether a gradual stress disability is work-related. Two principal tests have emerged: (1) the "unusual stress" test, and (2) the "objective causation" test. In jurisdictions using the unusual stress test, courts award workers' compensation to a claimant who establishes that a mental disability was caused by unusual, unexpected, or extraordinary stress. In jurisdictions using the objective...
causation test, the claimant is merely required to establish a causal connection between the mental disability and the gradual stress of everyday employment.\textsuperscript{28}

C. Judicial Recognition of Gradual Stress Disability

Twenty-five jurisdictions now compensate purely mental injuries under workers’ compensation statutes.\textsuperscript{29} Of these twenty-five jurisdictions, at least nineteen compensate gradual stress disability.\textsuperscript{30} According to jurisdictions compensating mental disabilities, these disabilities are no less compensable if caused by substantial stress, rather than sudden shock.\textsuperscript{31} \textit{Carter v. General Motors Corp.}\textsuperscript{32} is the leading case allowing compensation of gradual stress disability. Professor Larson has described the factual scenario:

Here we have the modern industrial tragedy, not at the executive level, but at the level of the assembly line, with a set of facts recalling Charlie Chaplin’s losing battle with this inhuman antagonist in \textit{Modern Times}. The claimant, who had considerable emotional trouble in his background, simply could not keep up with the assembly line, as a result of which he found himself constantly berated by his foreman. This in turn filled him with dread of losing his job, and the final result was a disabling psychosis.\textsuperscript{33}

\textsuperscript{28}Comment, \textit{supra} note 5, at 848. That Comment argues that the objective causation test is more appropriate than the unusual stress test for determining whether claims of gradual stress disability are compensable. It states that the objective causation test is preferable because: (1) it is more consistent with the policies of comprehensive coverage that animate workers compensation states; and (2) the unusual stress test is predicated on a misguided view of causation, which will often deny compensation to claimants whose injuries are in fact work-related. \textit{Id.} Nine jurisdictions apply the objective causation test. See, e.g., Fox v. Alascom, Inc., 718 P.2d 977 (Alaska 1986); McGarrah v. SAIF, 296 Or. 145, ---, 675 P.2d 159, 167 (1983); Breeden v. Workmen’s Compensation Comm’r, 285 S.E.2d 398, 400 (W. Va. 1981); Yocom v. Pierce, 534 S.W.2d 796, 798-800 (Ky. 1976); Royal State Nat’l Ins. Co. v. Labor & Indus. Relations Appeal Bd., 53 Haw. 32, ---, 487 P.2d 278, 282 (1971); Alberson’s Inc. v. Worker’s Compensation Appeals Bd., 131 Cal. App. 3d 308, ---, 182 Cal. Rptr. 304, 307 (1982).

\textsuperscript{29}For a list of these jurisdictions and case-by-case analysis, see IB A. LARSON, \textit{supra} note 3, § 45.23(c).

\textsuperscript{30} \textit{Id.} §§ 42.25(f) & (g). See \textit{supra} notes 27-28.

\textsuperscript{31} IB A. LARSON, \textit{supra} note 3, § 45.23(b).

\textsuperscript{32} 361 Mich. 577, 106 N.W.2d 105 (1960). A number of commentators have written about the \textit{Carter} decision. See Joseph, \textit{supra} note 2, at 297, for a list.

\textsuperscript{33} Larson, \textit{supra} note 10, at 1252.
The Michigan Supreme Court upheld the claimant's award of compensation. The court reasoned that the basic purpose of workers' compensation mandates that a worker disabled as a result of a work-related mental injury receive the same treatment as a worker disabled by a work-related physical injury. Benefits are not awarded for the injury, but rather for the loss of earning capacity. All courts that have allowed compensation for gradual stress disability have either implicitly or explicitly advocated this same reasoning.

III. GRADUAL STRESS DISABILITY IN OKLAHOMA

A. The Oklahoma Workers' Compensation Act

The Oklahoma Workers' Compensation Act (the Act) contains the almost universal requirement that for compensation to be awarded, a claimant must establish an "accidental personal injury, arising out of and in the course of employment." According to the Oklahoma Supreme Court, an "accidental injury" is an unexpected or unintentional event. The terms "arising out of" and "in the course of" are generally taken

35. Id. at 106 N.W.2d at 106.
36. See Joseph, supra note 2, at 298. For example, in Baker v. Worker's Compensation Appeals Bd., 18 Cal. App.3d 852, 861-62, 96 Cal. Rptr. 279, 286 (1971) "[A] disabling [physical] injury may be the result of the cumulative effect of each day's stresses and strains. We perceive no logical basis for a different requirement for a psychoneurotic injury. To one experiencing it, such an injury is as real and as disabling as a physical injury." Id. (citations omitted). Royal State Nat'l Ins. Co. v. Labor & Indus. Relations Appeals Bd., 53 Haw. 32, 38, 487 P.2d 278, 282 (1971).
37. The Oklahoma Workers' Compensation Act provides:
Every employer subject to the provisions of the Workers' Compensation Act shall pay, or provide as required by the Workers' Compensation Act, compensation according to the schedules of the Workers' Compensation Act 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.
OKLA. STAT. tit 85, § 11 (Supp. 1987) (emphasis added). The Act defines an injury or personal injury:
"Injury or personal injury" means only accidental injuries arising out of and in the course of employment and such disease or infection as may naturally result therefrom and occupational disease arising out of and in the course of employment as herein defined. Provided, 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.
OKLA. STAT. tit. 85, § 3(7) (Supp. 1987).
38. An often quoted definition of accidental injury appears in Andrews Mining & Milling Co. v.
together to form a single standard of compensability known as "work connection." However, these terms must be separately examined to determine the requirements necessary to satisfy each part of the test. "Arising out of" contemplates a causal relationship between the employment requirements and the act engaged in at the time the injury occurs. "In the course of" refers to the time, place, and circumstances of the injury. All three terms are issues of fact and must be established to

Atkinson, 192 Okla. 322, 135 P.2d 960 (1943). There, the Oklahoma Supreme Court stated as follows:

An "accident" is 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 whom it happens. In the term "accidental injuries," the substantive "injuries" expresses the notion of a thing or event, that is, the wrong or damage done to the person, while "accidental" qualifies and describes the noun by ascribing to "injuries" a quality or condition of happening, or coming by chance or without design, taking place unexpectedly or unintentionally.

Id. at 323-24, 135 P.2d at 961-62 (citations omitted).

The 1986, Oklahoma Workers' Compensation reform legislation placed a restriction on the statutory definition of accidental personal injury. Employees will no longer be compensated for injuries occurring in the course of employment, but which do not arise out of employment because of a purely personal risk to the employee. See OKLA. STAT. tit. 85, § 3(7) (Supp. 1987).


These terms are not synonymous, but are conjunctive terms. Ogg v. Bill White Chevrolet Co., 720 P.2d 324, 325 (Okla. 1986).

An injury "arises out of" the employment when two elements are satisfied: (1) the injury resulted from a risk reasonably incident to the employment; and (2) a causal connection exists between the employment and resulting injury. While both of these elements comprise the "causal relationship," the former element mandates the injury to be a foreseeable consequence of that employment. See Norton v. E. A. Cowen Constr. Co., 391 P.2d 785, 788 (Okla. 1964); Novak v. McAlister, 301 P.2d 234 (Okla. 1956). In Novak, the court stated the following:

An injury does not arise out of the employment within the meaning of our Workmen's Compensation Act, unless it resulted from a risk reasonably incident to the employment, and unless there is apparent to the rational mind, upon a consideration of all the circumstances, a causal connection between the conditions under which the work is being performed and the resulting injury.

Id. at 236 (citations omitted).

The "arising out of" requirement is found in all workers' compensation statutes. The requirement illustrates the compromise behind the statutes which requires: (1) employers to bear the initial cost of an injury that arises from an employment-related risk, regardless of "fault," and (2) employees to surrender their common-law right of tort recovery. This requirement incorporates the primary policy or legal causation formula by holding employers responsible only for compensating employment-related risks. Fox v. Alascom, Inc., 718 P.2d 977, 980 (Alaska 1986); see Joseph, supra note 2, at 280-83.

An injury occurs in the course of employment when it occurs within the spatial and temporal boundaries of employment. See Note, supra note 22, at 291. Professor Larson has stated that "an injury is said to arise in the course of the employment when it takes place within the period of the employment, at a place where the employee reasonably may be, and while he is fulfilling his duties or engaged in doing something incidental thereto." 1 A. LARSON, THE LAW OF WORKMEN'S COMPENSATION § 14.00 (1985).

The terms are "accidental personal injury," "arising out of" employment, and "arising in the course of" employment.
prove a compensable injury under the Act. Thus, all personal injuries that occur in the workplace are not covered by the Act.

In the relationship between "arising out of" and "in the course of," both terms do not carry equal weight. As a practical matter, if the injury arises out of the employment, the injury also arises in the course of employment; however, the opposite is not necessarily true. For an injury to have arisen out of the employment, the injury must be causally related to the employment. This causal relation requires a showing that the injury occurred during the course of employment. On the other hand, a determination that the injury arose "in the course of employment" only indicates that the injury occurred while the employee was working. It does not demonstrate that the injury resulted from employment. Consequently, the "course of employment" requirement has not been examined as closely as the "arising out of" requirement in mental injury cases.

Oklahoma courts addressing gradual stress disability cases encounter a two-fold problem in determining whether this type of injury is compensable. First, the court must determine if the gradual development of mental and emotional strain constitutes an "accidental personal injury" within the meaning of the Act. Second, if the statutory definition of "accidental personal injury" is met, the court must determine if there was sufficient causation: whether gradual stress disability actually arose out of the employment.

B. Judicial Recognition of Gradual Stress Disability in Oklahoma

1. The Vernon and Daugherty Misconception

_Vernon v. Seven-Eleven Stores_ and _Daugherty v. ITT Continental Baking Co._ are the only Oklahoma Supreme Court cases which involve gradual stress disability claims. Cases and commentators have cited _Vernon_ and _Daugherty_ as the seminal cases supporting the proposition

44. Ogg, 720 P.2d at 325-26; Andrews, 192 Okla. at 323, 135 P.2d at 961.


47. Id.

48. Id.

49. 547 P.2d 1300 (Okla. 1976).

50. 558 P.2d 393 (Okla. 1976).


52. IB A. LARSON, supra note 3, § 42.25(d); Note, supra note 22, at 298.
that Oklahoma has ruled against the compensation of purely mental injuries. However, neither the Vernon court nor the Daugherty court ruled on this issue. Consequently, these cases do not preclude Oklahoma’s compensation of purely mental injuries.

a. The Vernon Decision

The claimant in Vernon maintained that because a nervous breakdown resulting from his discharge and ensuing events impaired his earning capacity his disability was compensable under the Act. Vernon was a manager of a Seven-Eleven store who was required to take a polygraph test due to the loss of merchandise from his store. On the following day, Vernon’s supervisor informed him that he failed the polygraph test and would be automatically discharged. Vernon’s application for unemployment compensation was denied. Subsequently, he filed a claim for workers’ compensation, alleging that the events following the polygraph test precipitated a nervous breakdown.

Because Vernon’s nervous breakdown did not arise out of and in the course of employment, the Oklahoma Supreme Court did not rule on the compensability of a purely mental injury without an accompanying physical injury. His mental condition did not result from the manner of

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53. Because the claimants were unable to establish the requisite causal connection between their employment and subsequent mental conditions, the Oklahoma Supreme Court did not address the issue of whether purely mental injuries resulting from a risk reasonably incident to employment are compensable. Vernon, 547 P.2d at 1301-02; Daugherty, 558 P.2d at 395. See infra notes 60-64, 72-75 and accompanying text.

54. Vernon, 547 P.2d at 1301.

55. Id. at 1300. Vernon previously underwent several polygraph tests without complaint. There was nothing unusual about this test, and he did not become upset when he took it. Id.

56. Id.

57. Id.

58. If failure of the polygraph test alone precipitated Vernon’s nervous breakdown, this would be a claim for mental injury resulting from a sudden mental stimulus. However, since Vernon and his medical testimony alleged that the nervous breakdown was caused by the polygraph test and ensuing events (Vernon’s discharge and denial of unemployment compensation), this is a claim for mental injury resulting from gradual mental stimuli.

59. Id.

60. Although the court did not rule on the compensability of purely mental injuries, it addressed related decisions. The court acknowledged prior Oklahoma decisions which recognized the compensability of mental injuries when prior physical injuries induced post-traumatic neurosis. Id. at 1301. The court declined to discuss whether physical trauma is a prerequisite for the compensability of a mental injury, and instead discussed Jacobs v. Goodyear Tire & Rubber Co., 196 Kan. 613, 412 P.2d 986 (1966). The Vernon court stated that Jacobs expressed the contrary view in compensating purely mental injuries: only a traumatic neurosis which follows an accompanying physical injury is compensable.

However, whether Jacobs requires a physical injury before a mental injury is compensable is unclear. The claimant in Jacobs alleged that the lower court denied compensation based entirely on its assumption that a physical injury was a prerequisite for the compensability of a mental injury.
discharge (events still intrinsic to the employment relationship before discharge), but rather from the act of discharge and subsequent denial of unemployment compensation. Prior to his discharge, Vernon was in good health. Vernon's mental condition developed after his discharge. He became increasingly upset when rejected for unemployment compensation. Thus, because Vernon's disability did not arise out of and in the course of employment, he was unable to establish the work-connection necessary to constitute an "accidental personal injury" under the Act.

b. *The Daugherty Decision*

Daugherty claimed that the events surrounding the request for her resignation caused her psychological injury. Daugherty was a thrift store manager, who alleged that her superior made critical remarks regarding her work performance in the presence of customers and later under the Kansas Workers' Compensation Act. The Kansas Supreme Court responded that Jacob's interpretation of the district court's findings was unwarranted, and that he completely overlooked the fact that the lower court found that he "did not suffer personal injury by accident arising out of and in the course of his employment." Id. at 988. Jacobs alleged that his disability was due to a mental illness brought about by his attempts to meet his quota, and his supervisor's ultimatums. However, Jacobs failed to present any medical evidence to support a causal connection between his alleged mental illness and his employment. In fact, the only medical evidence presented contradicted his position. The court concluded that Jacobs failed to establish the necessary causal connection, and that his mental illness apparently resulted from the conflicting demands of management and co-workers, rather than the nature and requirements of his job. Id. at 988-90. Thus, under the appropriate factual circumstances, Jacobs might not preclude compensation for a purely mental injury. See Comment, *Workmen's Compensation: Recovery for Mental Injury Caused by Mental Impact*, 16 WASHBURN L.J. 552, 556 (1977), for a similar discussion.

61. The Oregon Supreme Court has previously recognized the compensability of purely mental injuries, see supra note 28. However, it recently held that compensation could not be awarded for a claim similar to that in Vernon. In Elwood v. SAIF, 298 Or. 429, 693 P.2d 641 (1985), the court addressed whether a claimant's alleged mental injury resulting from discharge was compensable under workers' compensation. The Elwood court held that a mental disability resulting from the act of discharge was not a compensable risk of employment. However, the court stated that the "manner of discharge," which can be regarded as events still intrinsic to the employment relationship before termination, can lead to compensation. Stressful events accompanying the discharge can make a resulting mental condition compensable; illness resulting from the mere act of discharge and loss of employment is not. Id. at 642.

62. Vernon, 547 P.2d at 1300.

63. Vernon attributed his mental and emotional instability to events following the polygraph test, i.e., his discharge. Id.

64. Id.

65. See supra note 37.

66. Daugherty, 558 P.2d at 394. Daugherty testified that she did not think she would ever be able to meet the public again; her nerves were "shot," and her husband had suffered a heart attack.

67. Id. Daugherty's superior went to the front of the store where customers were shopping and remarked that the store arrangement looked like "hell" to him. Id.
Daugherty became emotionally upset by the events surrounding the request for her resignation and was subsequently hospitalized. She filed a workers' compensation claim for her emotional injury.

Daugherty's mental condition was not causally related to her employment. Although she became emotionally upset during the course of employment, Daugherty did not prove that her condition arose out of employment. Apparently, her mental condition was not a risk reasonably incident to her employment. As a result, Daugherty was unable to establish the work-connection necessary to constitute an "accidental personal injury" under the Act, which is a prerequisite to compensation.

c. The Vernon and Daugherty Rationale

The Oklahoma Supreme Court rule that lower court findings will not be disturbed on review where supported by any competent evidence explains the results in Vernon and Daugherty. In both cases, substantial evidence supported the State Industrial Court's finding that no causal relation was established. Contrary to existing commentary, the results in Vernon and Daugherty do not require an accompanying causal relation between her employment and her mental condition.

68. Id. When her superior handed her a letter of resignation to sign and she read it, Daugherty said, "It just seemed like my whole world fell apart." Id.
69. Id. Daugherty's alleged mental injury was triggered by the events surrounding her request to resign. These events included her superior's remarks, the request for her resignation, and her husband's heart attack. Id. Therefore, her claim was one arising from gradual stress and not a sudden mental stimulus.
70. Id.
71. Id.
72. The State Industrial Court found that Daugherty did not sustain an "accidental personal injury." Id. at 395. In this regard, the Oklahoma Supreme Court referred to Vernon v. Seven-Eleven Stores, 547 P.2d 1300 (Okla. 1976) and Keeling v. State Indust. Court, 389 P.2d 487 (Okla. 1964) to emphasize Daugherty's failure to establish the requisite causal relation between her employment and her mental condition. Id.
73. Because she did not resign, Daugherty's mental condition developed during the course of her employment. Id. at 394.
74. In discussing Keeling, the court in Daugherty stated that "we sustained [the] Industrial Court's order denying compensation and held that a disease of body or mind arising during employment, with nothing more, is not within [the] Workmen's Compensation Act." Id. at 395 (emphasis added).
75. Like the claimant in Keeling (who suffered a nervous breakdown from nervousness and strain caused by the position in which she was compelled to sit at work), it is not likely that Daugherty's mental disability arose from a risk reasonably incident to her employment. In all likelihood, her mental disability was not reasonably incident to her employer's remarks, and request for her resignation. Id. at 395.
76. Vernon, 547 P.2d at 1301-02; Daugherty, 558 P.2d at 395.
77. Vernon, 547 P.2d at 1302; Daugherty, 558 P.2d at 395.
78. See supra note 51.
physical trauma or impact for the compensation of a purely mental injury. Rather, these decisions reinforce the claimants’ statutory burden of establishing a causal relation between their employment and mental disability: a prerequisite to workers’ compensation under the Act. Unless the Oklahoma Supreme Court denies workers’ compensation to a claimant who establishes that a purely mental injury is reasonably incident to, and causally related to the employment, it cannot be said that Oklahoma has ruled against the compensation of purely mental injuries.

2. The “Cause” Cases

Prior to Vernon and Daugherty, the Oklahoma Supreme Court had denied workers’ compensation in a line of cases involving injuries that were not purely mental, but contained mental components. In each of these cases, the claimant failed to establish that the injuries were causally related to his employment. This line of cases includes Ada Coca-Cola Bottling Co. v. Snead, In re Loague, Liebmann Arctic Ice Co. v. Henderson, and Keeling v. State Industrial Court. In these cases, the claimants were unable to prove that the mental component, a mental stimulus or mental injury, resulted from a risk reasonably incident to their employment. These cases are important to Oklahoma’s eventual compensation of gradual stress disability because each contains a comprehensive causation analysis of a claim containing a mental component.

a. The Snead Decision

Ada Coca-Cola Bottling Co. v. Snead is the best known Oklahoma case addressing the causal connection between an accidental physical injury and a mental component. The eighty-year-old Mr. Snead had an accident on January 7, 1957. While carrying Coca-Cola bottles, Mr. Snead caught his foot on a pallet leg, tripped, fell to the concrete floor,
and suffered bruises and abrasions.\textsuperscript{86} On January 26, 1957, Mr. Snead had a stroke and became totally disabled.\textsuperscript{87} He died of a second stroke on December 13, 1959.\textsuperscript{88}

The claimant’s\textsuperscript{89} recovery was premised on a tenuous causal connection. The claimant alleged that: (1) the accident of January 7th was a contributing cause to the stroke on January 26th; (2) the stroke on January 26th caused Mr. Snead to become totally disabled; (3) the disability caused him to worry about his inability to work and provide for his family; and (4) the worry was a contributing factor to the acute coronary thrombosis (stroke) which was the immediate cause of his death.\textsuperscript{90} The issue was whether Mr. Snead’s worry, the mental component, provided a causal link between his January 7th accidental physical injury and December 13th death, sufficient to establish that his death resulted from an injury “arising out of his employment.”\textsuperscript{91}

The causal connection between Mr. Snead’s accident and subsequent death was too remote and uncertain to satisfy the Act’s “arising out of employment”\textsuperscript{92} requirement. The court relied on the rule of Novak v. McAlister:\textsuperscript{93} an injury does not arise out of employment unless (1) it results from a risk reasonably incident to the employment, and (2) a causal connection exists between the required conditions of employment and resulting injury.\textsuperscript{94} In discussing previous cases awarding compensation for heart disease, the court noted that almost without exception, these cases contained three factors which supported the causal relationship between the claimant’s employment and resulting heart disease.\textsuperscript{95}

\textsuperscript{86} Id. at 698. Although Mr. Snead continued to work, he began seeing his family doctor for treatment. Between January 7th and January 26th, 1957, Mr. Snead was treated several times for his injury from the fall. \textit{Id.}

\textsuperscript{87} Id. Mr. Snead’s family doctor (Dr. M) opined that there was no connection between the injury of January 7th and the cerebral thrombosis (stroke) of January 26th. \textit{Id.}

\textsuperscript{88} Id. Dr. M continued treatment until early May, 1957, then his were discontinued and Dr. F began treating Mr. Snead. Dr. F treated Mr. Snead until his death on December 13, 1959. At the time of death, Dr. F signed a death certificate for Mr. Snead which the claimant introduced as evidence. It listed acute coronary thrombosis as the immediate cause of death. It did not mention the injury on January 7, 1957. \textit{Id.}

\textsuperscript{89} The claimant was Mr. Snead’s surviving wife. \textit{Id.} at 697.

\textsuperscript{90} Id. at 698.

\textsuperscript{91} Id. The court noted that “coronary thrombosis is one of the ailments included within the meaning of the general term ‘heart disease.’ Heart disease, like any other disease or injury, is not compensable unless it arises out of, and in the course of, the employment concerned.” \textit{Id.}

\textsuperscript{92} Id. at 698-99.

\textsuperscript{93} 301 P.2d 234, 236 (Okla. 1956).

\textsuperscript{94} See supra note 41 and accompanying text.

\textsuperscript{95} Snead, 364 P.2d at 699. The court delineated the three factors as: “(1) unusual physical effort, exertion or strain; (2) physical manifestation of pain or discomfort in the region of the chest or
The court then emphasized the absence of these factors in Snead. The court concluded that "worry," in the context of worrying over one's inability to provide for one's family, was not a risk reasonably incident to employment within the Novak rule.

b. The Loague Decision

In In re Loague, the Oklahoma Supreme Court again focused on the causal relationship to hold that the claimant's "worry" was not a risk reasonably incident to his employment. Once again, the court was confronted with a remote causal connection. In Loague, the claimant alleged that: (1) his face and hands were covered with prior job-connected burns; (2) these burns caused him emotional strain because he worried that he would be unable to support his family; (3) the emotional strain triggered the development of diabetes; and (4) the diabetes and its complications ultimately caused his death. Unless worrying over the inability to work and earn wages is a risk "reasonably incident" to the employment, the consequences of such worrying are not covered by the Workers' Compensation Act. The court concluded that to its knowledge no case has held the consequences of emotional stress, under such circumstances, to be compensable.
c. The Snead and Loague Implications

Like Vernon and Daugherty, the Snead and Loague decisions do not preclude compensation for injuries resulting from mental worry or stress under the appropriate circumstances. Both cases may be explained by their respective factual circumstances. In Snead and Loague, the Oklahoma Supreme Court was presented with a tenuous causal connection between the claimants' "worry" and subsequent deaths. In Loague, the court clarified its use of the term "worry" in Snead and noted that non-work-related worry (such as worrying about providing for one's family), as distinguished from a truly work-related worry, was not reasonably incident to employment. Therefore, worrying about family support is not a foreseeable risk of employment. However, by negative implication, the court's clarification in Loague suggests that a work-related worry, such as worrying over the amount of work to be done or the method of doing the work, may be reasonably incident to employment. In such a case, if a claimant established the requisite causal connection between a work-related worry and resulting injury, the court would presumably award compensation.

d. The Liebmann Decision

The Oklahoma Supreme Court recognized that Liebmann Arctic Ice Co. v. Henderson presented novel factual circumstances; the court was not aware of another case in which the claimant's own anger precipitated a psychological or emotional trauma. The claimant in Liebmann had a history of headaches, high blood pressure, a volatile temper, and was "pre-disposed" to a stroke. As manager of his employer's ice dock, his duties included keeping clear an off-street parking area to provide access to the dock. The claimant's recovery rested upon the following causal allegations: (1) the claimant saw a wrecker parked in the area; (2) he asked the driver to move; (3) the driver ignored his request and went into the cafe without making a reply; (4) this angered the claimant; and (5) that anger was the "exciting and inciting" cause of a disabling stroke

104. Id. at 496.
105. 486 P.2d 739 (Okla. 1971).
106. Id. at 741.
107. Id. at 740-41.
that the claimant suffered a short time later. The claimant's own medical witness testified that the stroke was due solely to the claimant's anger, and not to any external physical force.

The claimant's stroke was not a risk reasonably incident to his employment. The court determined that the risk that the claimant, while performing a routine risk in a routine way, might become so angry as to precipitate a stroke which was attributed solely to the claimant's own anger and not to any physical effort, exertion or external force, was not a risk reasonably incident to the claimant's employment. Because the claimant's anger was not reasonably incident to his employment, his resulting stroke did not "arise out of employment." Therefore, the causal connection required for compensation was missing.

Justice Hodges dissented in Liebmann and argued that the Oklahoma Workers' Compensation Act made no distinction between injuries resulting from physical effort and injuries resulting from mental strain. In support, Justice Hodges cited a New Jersey decision, Fink v. City of Paterson, which had been cited and quoted with approval in a prior Oklahoma Supreme Court decision. In Fink, the employer harassed the claimant, and the claimant consequently suffered a heart attack. In awarding compensation, the Fink court held that where the heart failure was caused by unusual strain or exertion beyond the mere

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108. Id. at 741.
109. Id. at 741.
110. The court acknowledged prior decisions awarding compensation to injuries precipitated by a mental stimulus and distinguished them from Liebmann. Compensation was awarded in Dalton Barnard Hardware Co. v. Gates, 203 Okla. 268, 220 P.2d 249 (1950) when an employer's verbal assault precipitated a female employee's high blood pressure, caused her to faint and fall, and resulted in a back injury. In Northwestern Refining Co. v. State Indus. Comm'n, 145 Okla. 72, 291 P. 533 (1930), the court awarded compensation when an explosion that occurred in a nearby refinery frightened the claimant, caused him to jump from a ladder, and resulted in a back and ankle injury. The Liebmann court distinguished Dalton and Northwestern from Liebmann, because in the former cases, the claimant suffered a sudden shock or fright caused by an external force; they were either threatened or in fear of apparent danger. In contrast, the claimant in Liebmann was performing a routine duty, and his anger was not caused by any external force, either verbal or physical. Id. at 741-42.
111. Id.
112. Id. at 742. The court stated that:
   It is readily apparent that sophisticated reasoning can demonstrate an abstractly logical "causal connection" between two conditions or factors bearing almost any other kind of connection with each other. The truth is well illustrated by the following remark of claimant's medical witness while discussing this subject: "Listen, I'm sure there's a relationship between Jake's being born and this thing." This is the reason for the additional requirement that the injury result from a risk reasonably incident to the employment. Id. (emphasis supplied).
113. Id. at 742.
employment itself, the strain need not be physical or laborious in character, but may consist of "unusual emotional or nervous strain and anxiety."116

The dissent's application of Fink supported the view that injuries resulting from emotional strain may be compensable, but raised the question of whether the emotional strain in Liebmann was unusual.117 Apparently, the majority in Liebmann did not find the circumstances to be unusual by stating the claimant was performing a routine duty and observing that it was not unusual for vehicles to park where the wrecker was parked.118 By insisting upon some external force, the majority was not controverting the logic of Fink but was concluding that the claimant's anger was not precipitated by unusual circumstances.

e. The Keeling Decision

In Keeling v. State Industrial Court,119 the Oklahoma Supreme Court again examined the causal connection. It referred to Novak and Snead and determined that the claimant's nervous breakdown was not reasonably incident to employment.120 In Keeling, the court was presented with the following causal allegations: (1) the claimant was employed as a seamstress; (2) she operated a sewing machine that required a certain physical posture; and (3) that posture along with the nervous strain she suffered from being transferred to a new job caused her nervous breakdown.121

The court focused on the distinction between a physical injury resulting from improper posture and a mental injury or disease resulting from improper posture.122 The distinction was determinative because while a physical injury resulting from improper posture may be compensable, a mental injury is not. The Oklahoma Supreme Court illustrated this distinction by quoting from two cases. In Shoren v. United States Rubber Co.,123 the Rhode Island Supreme Court stated as follows:

A disease, which under any rational work is likely to progress so as finally to disable the employee, does not become a "personal injury" under the act merely because it reaches the point of disablement while

116. Fink, 44 N.J. Super. at ___, 129 A.2d at 748.
117. See Note, supra note 82, at 369.
118. Liebmann, 486 P.2d at 741.
120. Id. at 491.
121. Id. at 488.
122. Id. at 491.
123. 87 R.I. 319, 140 A.2d 768 (1958).
work for a subscriber is being pursued. It is only when there is a direct causal connection between the exertion of the employment and the injury that an award of compensation can be made.\textsuperscript{124} This distinction was more clearly marked out in the Massachusetts case of \textit{In re Maggelet},\textsuperscript{125} where the court denied compensation and stated, "[t]he disease must be, or be traceable directly to, a personal injury \textit{peculiar to the employment}.”\textsuperscript{126}

In \textit{Keeling}, Justice Berry's special concurring opinion agreed with the majority on the basis of the facts presented, but noted that a mental injury could be compensable if it actually resulted from the particular employment.\textsuperscript{127} He recognized the complexity of the human mind and noted that the various causes of mental illness are often speculative. Therefore, competent evidence\textsuperscript{128} was necessary to remove speculation as to the cause of the mental injury.\textsuperscript{129} However, he concluded that evidence showing that the employment was merely incidental to the mental condition would not be sufficient.\textsuperscript{130}

3. The "Stepping Stones" Toward Oklahoma's Compensation of Gradual Stress Disability

Although the Oklahoma Supreme Court has not yet awarded compensation for a purely mental injury resulting from gradual stress, the court has never expressly held that a purely mental injury was not compensable.\textsuperscript{131} In fact, a close examination of prior Oklahoma Supreme Court decisions reveals that the court has awarded compensation for everything short of purely mental claims. These decisions are the stepping stones leading toward Oklahoma's recognition of gradual stress disability.

\textit{a. The Liberal Construction of "Accidental Injury"}

In 1943, \textit{Andrews Mining & Milling Co. v. Atkinson}\textsuperscript{132} provided a

\textsuperscript{124} Id. at __, 140 A.2d at 771.
\textsuperscript{125} 228 Mass. 57, 116 N.E. 972 (1917).
\textsuperscript{126} Id. at 59, 116 N.E. at 974 (emphasis added).
\textsuperscript{127} \textit{Keeling}, 389 P.2d at 492. Justice Berry stated that "[t]he anxiety attendant upon maintaining one's position of employment may, under certain conditions, be considered together with other circumstances occurring during and in the course of employment which may combine to produce a compensable injury." Id.
\textsuperscript{128} Justice Berry was referring to competent expert testimony. Id.
\textsuperscript{129} Id.
\textsuperscript{130} Id.
\textsuperscript{131} See supra notes 49-53 and accompanying text.
\textsuperscript{132} 192 Okla. 322, 135 P.2d 960 (1943).
stepping stone toward the compensation of purely mental injuries. The Oklahoma Supreme Court clarified its commitment to the rule that "the term 'accidental injury' is not to be given a narrow or restricted meaning, but is to receive a broad and liberal construction, with a view of compensating injured employees where disabilities result from compensable personal injuries." A broad and liberal construction of the term "accidental injury" is both consistent with workers' compensation policy (compensation is based on impaired earning capacity) and is necessary for the recognition of purely mental injuries because mental injuries, as well as physical injuries, can render an employee unable to continue employment. As this liberal construction of accidental injury incorporates workers' compensation policy into the determination of compensation, it leads to an understanding that a mental disability may constitute an accidental personal injury within workers' compensation law.

b. "Cumulative" Accidental Injuries

A number of Oklahoma decisions provide that an accidental injury need not be attributable to one particular event, but may arise progressively from the cumulative effect of a series of exertion episodes. The importance of these decisions is clear: for purely mental injuries resulting from gradual stress to be compensable under the Oklahoma Workers' Compensation Act, the term "accidental injury" must be interpreted as an injury that can develop over a period of time. Perhaps the best known case compensating a "cumulative" injury is Macklanburg-Duncan Co. v. Edwards. The claimant's disability was attributed to a continual process rather than to any specific event that had developed over a period of eight years. His employer contended that because the claimant's injury was not the result of any particular happening or event, it was not an "accidental injury" within the meaning of the Workers' Compensation Act. A liberal construction of "accidental injury" required the court to recognize that an injury may be inflicted progressively and over a period of time. An accidental injury is not confined to infliction on one definite date or to being the result of an

133. Id. at 323, 135 P.2d at 961 (citations omitted).
135. 311 P.2d 250 (Okla. 1957).
136. Id. at 252.
137. Id.
isolated or particular event. The Oklahoma Legislature had never shown an intent to restrict the meaning of accidental injury to a tangible event.

\[c. \text{ Compensability of a Mental Injury Resulting from an Accompanying Physical Injury}\]

Since 1925, the Oklahoma Supreme Court has recognized that a mental disability resulting from an accompanying accidental physical injury is compensable. In \textit{Rialto Lead & Zinc Co. v. State Industrial Commission}, the claimant sustained an accidental injury arising out of and in the course of his employment when he fell from a pole and landed on his back. Medical testimony revealed that the claimant suffered from a traumatic injury to the lumbar region and muscles of his back, and that the back injury developed into a neurosis. After the claimant's physical impairments abated, the claimant suffered a nervous breakdown and was diagnosed as suffering from "neurasthenia." The court noted the absence of any evidence of malingering and relied on English cases to hold that when a mental condition directly results from a physical injury sustained by an employee, which deprives the employee from working in his former occupation, compensation would be awarded.

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138. \textit{Id.} at 254-55. The court expressly abandoned the idea that an accidental injury must have been the result of a specific event, where the evidence shows that the claimant's disability is caused by trauma, or by some external force. \textit{Id.} at 253.

In reaching its decision, the court relied upon language it quoted at length from \textit{American Jurisprudence}. The court quoted in part:

Ordinarily, an injury, to be accidental within the meaning of the statute, must be traceable to a definite time, place, and cause. This is the usual test for distinguishing between accident and occupational disease. But this rule does not require that the injury result from a single specific and definite occurrence, and does not preclude recovery of compensation for an injury caused by the cumulative effect of a series of minor accidents, each one of which is specific and ascertainable, although its actual contribution to the resultant injury cannot be definitely fixed. Neither does the rule require that the time be fixed in all cases with minute or particular exactness, and in many cases it is sufficient if the approximate time is determinable.

\textit{Id.} at 252-53.


141. 112 Okla. 101, 240 P. 96 (1925).

142. \textit{Id.}

143. \textit{Id.} at 102, 240 P. at 97.

144. \textit{Id.}

145. \textit{Id.} at 103, 240 P. at 98. Malingering involves the conscious feigning of a mental injury for the dual purpose of avoiding work and obtaining compensation. Note, \textit{supra} note 46, at 736.

146. \textit{Rialto}, 112 Okla. at 103, 240 P. at 98.
The court's theory of compensation rested upon the claimant's wage loss, rather than his physical disability. Compensation awarded for a mental condition was contingent upon that condition depriving the employee of working in his former occupation. As such, the court linked the claimant's mental disability with his inability to earn a living. This award of compensation based on a claimant's inability to work, as opposed to the severity of his physical injury, was an important step to the eventual compensation of purely mental injuries.

d. A "Mental Stimulus" Causing a Compensable Accidental Injury

In 1930, the Oklahoma Supreme Court awarded compensation for an accidental physical injury resulting from a mental stimulus. In Northwestern Refining Co. v. State Industrial Commission, the claimant was working while standing on a ladder. A nearby explosion frightened the claimant who jumped off the ladder and suffered physical injuries. The employer alleged that the claimant's fright was due to a previous existing nervous condition for which the employer was not liable. While the court acknowledged the claimant's nervous disposition, it concluded that the claimant would not have jumped had the explosion not occurred. The court determined that the sudden shock of the explosion caused the claimant to jump from the ladder and awarded compensation because the injury arose out of and during the course of

147. Id.
148. The court reiterated its position by quoting at length from the old English case Eaves v. Blaenclydach Colliery Co., 2 K.B. 73 (Eng. 1909). In Eaves, the court stated in part that "he has not wholly recovered from the nervous effects of the accident, which are just as real and just as important as the muscular effects and make him unable to work." Id. (emphasis added).

The underlying purpose of workers' compensation was to provide compensation to a worker for the loss of an opportunity to engage in work when the worker's disability was occasioned by an injury suffered from an accident arising out of and in the course of employment. See Burlington Mills Corp. v. Hagood 177 Va. 204, __, 13 S.E.2d 291, 293 (1941).

Professor Larson believes that the original focus of the earning impairment principle has eroded and should be restored in workers' compensation. 2 A. LARSON, THE LAW OF WORKMEN'S COMPENSATION § 57.14. For a discussion on the modern disagreement over the theory of disability, and its relation to Oklahoma Workers' Compensation, see Recent Development, supra note 8, at 429.

149. 145 Okla. 72, 291 P. 533 (1930).
150. Id.
151. Id. Initially the claimant alleged an injury to his back and ankle, and pains in his chest. He went to the hospital and received treatments. Those bills were paid by his employer. At the Workers' Compensation hearing, no claim was made that the claimant was suffering because of his ankle or back, as those injuries had been temporary matters which had passed within a short time. However, the claimant alleged that he was suffering from a pain in his chest and that he was unable to work. He was sixty-four years of age and had been suffering from hardening of the arteries for a long time prior to the accident. Id.
152. Id.
153. Id. The court stated the following:
The principle of compensating an accidental physical injury precipitated by a mental stimulus was reaffirmed in *Bill Gover Ford Co. v. Roniger*. In *Roniger*, the claimant was an office worker whose duties consisted of general clerical work and dealing with customers. However, when a co-worker left the office, she was required to do all the work previously done by the co-worker, in addition to her regular duties. While performing one of these additional duties, the claimant suffered a heart attack. Her medical witness testified that the stress and strain suffered by the claimant was the precipitating factor causing the heart attack.

The mental stress resulting from the claimant’s increased work schedule was causally related to her heart attack. In determining that the existence of several facts established a causal relationship, the court addressed cases from other jurisdictions that had already held that a heart disability caused by stress or strain was compensable under Workers’ Compensation. Of particular note is the language quoted,
from the New York case of Lobman v. Bernhard Altmann Corp.\textsuperscript{162} where the court stated in part that "[i]t is settled that an injury caused by emotional stress or strain may be found to be accidental within the contemplation of the Workers' Compensation law."\textsuperscript{163} Apparently the Roniger court relied on this language.

By determining that a mental stimulus caused a compensable injury, both Northwestern and Roniger provide stepping stones toward Oklahoma's recognition of gradual stress disability. In these decisions, the Oklahoma Supreme Court confronted the complex causal relationship that exists where the precipitating stimulus depends on the subjective mental strain of employment rather than on an objective physical act.\textsuperscript{164} The Northwestern court concluded that a sudden mental stimulus caused an accidental personal injury. Thirty-five years later, the court in Roniger held that gradual mental stress stimulated a heart attack. This evolution is a significant step to the eventual recognition that a gradual mental stimulus can result in a mental injury.

e. Everyday Stress as a Mental Stimulus Causing an Accidental Injury

In 1975, the Oklahoma Supreme Court held that under certain circumstances, an accidental injury resulting from the usual, everyday stress of employment is compensable. In Oklahoma City v. Schoonover,\textsuperscript{165} the court broadened its previous decisions in Northwestern\textsuperscript{166} and Roniger.\textsuperscript{167} These earlier decisions recognized the compensability of accidental injuries caused by a mental stimulus. In Northwestern, the mental stimulus was a sudden shock, whereas in Roniger, the mental stimulus was unusual, gradual stress. In Schoonover, the Oklahoma Supreme Court held that the usual stress of certain occupations can result in an accidental injury.\textsuperscript{168} This decision has provided yet another step toward the eventual compensation of gradual mental injuries reasonably incident to, and arising out of, the everyday stress of employment.

In Schoonover, the claimant\textsuperscript{169} alleged that the everyday stress of the

\begin{itemize}
\item 162. 19 A.D.2d 931, 244 N.Y.S.2d 425 (1963).
\item 163. Roniger, 426 P.2d at 704 (quoting Lobman, 19 A.D.2d at 933, 244 N.Y.S.2d at 427).
\item 164. For a comprehensive discussion of the causal relationship existing in claims for purely mental injuries see Comment, supra note 5.
\item 165. 535 P.2d 688 (Okla. 1975).
\item 166. See supra notes 149-53 and accompanying text.
\item 167. See supra notes 155-63 and accompanying text.
\item 168. In Schoonover, the court determined that the deceased's occupation as a police officer involved inherent danger creating constant anxiety and apprehensiveness, which resulted in emotional stress and strain. Schoonover, 535 P.2d at 692. See infra notes 175-76 and accompanying text.
\item 169. The claimant was the surviving wife of the deceased police officer. Id. at 689.
\end{itemize}
police officer’s employment caused the recurrence of a peptic ulcer, which resulted in death. Prior to entering the police force, the officer had suffered from a peptic ulcer, but upon his entry into the police force, the examining physician reported that the officer’s ulcer was completely healed. Evidence indicated that the employment was stressful and sufficient to create anxiety and apprehensiveness. The police officer sought medical attention and was diagnosed as having a recurrence of the peptic ulcer. After several periods of hospitalization, he was again hospitalized for stomach resection surgery. Although records showed he tolerated surgery well, he died two days later.

The court determined that the deceased’s emotional stress was engendered by the working conditions and nature of his employment. The employment involved inherent danger creating anxiety and apprehensiveness, which resulted in emotional stress and strain. Because uncontroverted medical evidence established that the deceased plaintiff’s ulcer was provoked by that constant stress, the ulcer was within the definition of accidental injury. The court agreed with the lower court that there is no difference between an injury or death caused by physical external violence and an injury caused by mental internal pressure.

The Oklahoma Supreme Court’s conclusion that there is no distinction between an accidental injury or death resulting from a physical stimulus and an accidental injury or death resulting from a mental stimulus poses a logical question. If the court recognizes that both physical and mental stimuli can produce a compensable physical injury, will the court recognize that both physical and mental stimuli can produce compensable mental injury?

IV. THE LOGICAL RECOGNITION OF GRADUAL STRESS DISABILITY UNDER OKLAHOMA’S WORKERS’ COMPENSATION LAW

Although it is presently unknown whether a purely mental injury is compensable under the Oklahoma Workers’ Compensation Act, the Oklahoma Supreme Court will probably be required to address this issue.
in the future. For the court to address the compensability of a gradual mental injury, however, the appropriate factual circumstances must be present. These circumstances require the claimant to establish several factors: (1) that the stress or strain developed gradually; (2) that it developed during the performance of required employment; (3) that the stress is causally connected with a resulting mental injury; and (4) that the mental injury arose from a risk reasonably incident to that employment.\textsuperscript{178} In this manner, the claimant would satisfy the statutory requirement of proving an accidental injury "arising out of and in the course of" employment.\textsuperscript{179} If confronted with such circumstances, the court's award of compensation would be logical. Compensating purely mental injuries that result from gradual stress of employment is consistent with the Oklahoma Workers' Compensation Act, prior Oklahoma Supreme Court decisions, and the underlying principles upon which Workers' Compensation is based.

A. The Oklahoma Workers' Compensation Act

Compensation of gradual stress disability is consistent with the Oklahoma Workers' Compensation Act. The Act provides compensation when "an accidental personal injury sustained by the employee arise[s] out of and in the course of employment."\textsuperscript{180} This language reflects the basic purpose of the Act, which is to ensure that industry assumes the burden of personal injuries suffered by workers in the course of their employment.

The statutory language does not preclude the compensation of purely mental injuries. In fact, the Act makes no distinction between physical and mental injuries; it merely requires an "accidental physical injury." An examination of the statutory definition of "injury or personal injury"\textsuperscript{181} reveals that this definition is broad enough to cover a mental injury, as long as the mental injury arises out of and in the course of employment, and the source of the mental injury is not purely personal but is reasonably incident to that employment.

Although the Oklahoma Workers' Compensation Act contains a

\textsuperscript{178}. These "appropriate factual circumstances" are derived from Novak v. McAllister, 301 P.2d 234 (1956) where the Oklahoma Supreme Court interpreted the statutory requirement of an accidental injury "arising from" employment. See supra note 41 and accompanying text.

\textsuperscript{179}. OKLA. STAT. tit. 85, § 11 (Supp. 1987). See supra note 37 and accompanying text.

\textsuperscript{180}. Id.

\textsuperscript{181}. OKLA. STAT. tit 85, § 3(7) (Supp. 1987); see supra note 37.
physical impairment payment schedule,\textsuperscript{182} this schedule does not suggest a legislative intent to limit compensation to physical injuries. Rather, the schedule provides an administrative means to effectuate the underlying purpose of Workers’ Compensation which is to compensate impaired earning ability.\textsuperscript{183} Schedules were originally implemented because the severity of a worker’s injury supported the presumption that there had been or would be an actual wage loss.\textsuperscript{184} The purpose of the schedule was to prevent litigation because a claimant’s loss would be conspicuous, and the amount of compensation would be certain.\textsuperscript{185} While the use of the schedule has expanded over the years, the schedule cannot be separated from the underlying “wage loss” policy supporting it; otherwise, workers’ compensation merely becomes an insurance policy for loss of limbs. In addition, the schedule does not provide an exclusive list of compensable injuries. The nonexclusivity of the schedule is underscored by Oklahoma Supreme Court decisions sustaining compensation for mental injuries resulting from accidental physical injuries.\textsuperscript{186}

The Oklahoma Legislature sets Oklahoma Workers’ Compensation policy, and the Oklahoma Supreme Court interprets this legislative intent. Therefore, only the legislature has the authority to make changes in the provisions that delineate the type of injuries that are compensable under the Oklahoma Workers’ Compensation Act. However, even after Oklahoma courts have awarded compensation for mental injuries resulting from accompanying physical injuries, the Oklahoma Legislature has not seen fit, by amending the Act, to restrict the meaning of accidental injury to cover only physical injuries. On the contrary, the Legislature has chosen to treat work-related injuries as a cost of production to be borne by industry and, ultimately, through the consumption process, by the community in general.

B. Oklahoma Supreme Court Decisions

Compensation of gradual stress disability is consistent with prior

\textsuperscript{182} A schedule is a “list describing various members of the body, and prescribing a fixed number of weeks of compensation for their loss or loss of use.” 2 A. Larson, THE LAW OF WORK-MEN’S COMPENSATION § 57.14(c) (1987). See OKLA. STAT. tit. 85, § 22 (Supp. 1987). For example, the schedule for permanent partial disability lists compensation of two-thirds of a worker’s average weekly wages to be paid to claimant for thirty-five weeks for the loss of a first finger, for ten weeks for the loss of a toe other than the great toe, and for fourteen weeks for a hernia. Recent Development, supra note 8, at 429.

\textsuperscript{183} See Recent Development, supra note 8, at 429.

\textsuperscript{184} Id.

\textsuperscript{185} Id.

\textsuperscript{186} See supra note 139.
Oklahoma Supreme Court decisions. Vernon and Daugherty are the only cases where claims for gradual mental injuries were unaccompanied by related physical injuries. Because of the particular facts of those cases, however, the court did not rule on the compensability of purely mental injuries.\(^{187}\) As such, the court has never held that a gradual stress disability arising out of and in the course of employment is not compensable.

Thus, without a barrier precluding compensation, perhaps the starting point toward the recognition of gradual stress disability is Justice Berry's special concurring opinion in Keeling.\(^{188}\) According to Justice Berry, if a mental injury could be found to have actually resulted from the particular employment, it could be compensable.\(^{189}\) He apparently rejected the historical equation of mental with "unreal" or "imaginary" and recognized that although the various causes of mental illness are often speculative, the developing sophistication of psychiatry has reduced the difficulty of determining whether a mental stimulus is the cause of a mental injury. However, he stated that competent evidence was needed to remove speculation as to the cause of the mental injury.\(^{190}\) His acceptance of the view that a mental injury may constitute an "accidental injury" allowed him to proceed with the key issue of whether the claimant's mental injury (nervous breakdown) was causally related to her employment so as to warrant imposing liability on her employer. Under the factual circumstances of Keeling, however, Justice Berry agreed with the court's majority, and determined that the claimant did not establish that her nervous breakdown was causally related to her employment.\(^{191}\)

Consistent with Justice Berry's concurring opinion in Keeling, many other Oklahoma Supreme Court decisions provide stepping stones toward the recognition that a gradual mental stress can cause a compensable mental injury. In a series of cases from 1925 to the present, Oklahoma courts have held that mental injuries that develop from accompanying accidental physical injuries are compensable.\(^{192}\) Since 1930, several Oklahoma Supreme Court decisions have compensated claimants for physical disabilities that have resulted from work-related mental

\(^{187}\) See supra notes 51-59, 66-71 and accompanying text.


\(^{189}\) Id.

\(^{190}\) Id.

\(^{191}\) Id.

\(^{192}\) See supra notes 140-45 and accompanying text.
stimuli. In addition, another line of Oklahoma Supreme Court decisions provides that an "accidental injury" does not have to be attributable to one particular event, but that it may arise progressively from the cumulative effect of a series of events.

Thus, prior Oklahoma Supreme Court decisions have established that a mental injury is an "accidental injury" within the meaning of the Act, and that physical injuries resulting from work-related emotional stress are compensable. If both physical injuries leading to mental injuries, and mental stress leading to physical injuries are compensable, it follows that emotional stress leading to mental injuries is compensable within the Act. Therefore, it appears that under the appropriate factual circumstances, a purely mental injury that results from the gradual stress of employment logically constitutes a compensable "accidental injury" within the meaning of the Oklahoma Workers' Compensation Act.

C. Workers' Compensation Policy

Compensation of gradual stress disability is consistent with the underlying principles upon which workers' compensation is based. These principles include: (1) the presumption of compensability; (2) the premise that an employer takes the employee "as he finds him"; (3) the principle that workers' compensation benefits are not awarded for the injury as such, but rather for the loss of earning capacity; and (4) the principle that business and industry should bear the burden of economic loss resulting from the injuries of workers.

1. Presumption of Compensability

Although a claimant has the burden of establishing an accidental injury within the Act, Oklahoma Workers' Compensation law presumes that a worker's claim for injury comes within the provisions of the Act, in the absence of substantial evidence to the contrary. In addition, any reasonable doubt is to be resolved in favor of the claimant. This presumption was illustrated in Andrews, where the Oklahoma Supreme Court clarified its commitment to a broad and liberal construction of the

193. See supra notes 149-63 and accompanying text.
194. See supra notes 134-39 and accompanying text.
195. See supra notes 178-79 and accompanying text.
197. Id. (citing In re Martin, 452 P.2d 785 (Okla. 1969); Nebo Oil Co. v. Wright, 406 P.2d 266 (Okla. 1965)).
term "accidental injury," with a view of compensating injured employees where disabilities result from compensable personal injuries. Because the definition of "personal injury" is broad enough to include mental injuries, the benefit of the presumption of compensability is obvious. A mental injury arising out of and in the course of employment is presumed to constitute an accidental personal injury within the Oklahoma Workers' Compensation Act.

2. An Employer Takes An Employee "As He Finds Him"

Workers' compensation law generally protects the "eggshell skull" plaintiff, a worker who is more predisposed to injury than the average worker. Under this principle, a worker predisposed to mental reactions from stress should not be denied workers' compensation any more than a worker predisposed to certain physical injuries. The fact that an average worker might not experience any ill effects from the same stress should be irrelevant. However, if purely mental injuries that result from the gradual stress of employment are not compensated, these "eggshell" employees will not be compensated for injuries because the stress to which this type of claimant succumbed was stress which would not overcome the average worker.

3. Impaired Earning Capacity

The underlying purpose of workers' compensation is to provide compensation to a worker for the loss of his opportunity to engage in work when his disability is the result of an accidental injury arising out of and in the course of employment. Benefits are not awarded for the

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200. See supra note 181 and accompanying text.
202. See Comment, supra note 5, at 861. The New York Court of Appeals stated: [T]here is nothing in the nature of a stress or shock situation which ordains physical as opposed to psychological injury. The determinative factor is the particular vulnerability of an individual by virtue of his physical makeup. In a given situation one person may be susceptible to a heart attack while another may suffer a depressive reaction. In either case the result is the same—the individual is incapable of functioning properly because of an accident and should be compensated under the Workmen's Compensation Law.
203. See supra note 148 and accompanying text.
injury as such, but rather for the loss of earning capacity. Under this principle, no logical basis distinguishes a physical injury that impairs a worker's earning capacity from a mental injury that impairs a worker's earning capacity.204

In today's highly competitive world, undoubtedly people often are affected by mental pressures resulting from their employment.205 These disabilities are just as costly to the production process as physical injuries. The humanitarian goals of the Workers' Compensation Act require that indemnification be based not upon the label assigned to the injury received but upon the employee's inability to work because of disabilities flowing from his employment.

Court's apparently justify the denial of compensation for purely mental injuries because they are easier to feign than physical injuries. However, this justification is unsubstantiated. No evidence shows that it will be easier to feign or more difficult to detect complex patterns of psychoneurotic reactions than certain "physical" injuries.206 The important question under workers' compensation law should be whether the injury arose out of and occurred in the course of employment.207 To operate in an unbiased manner, the workers' compensation system must serve as a potential source of protection for all workers, regardless of the manner in which their injuries develop.208

204. It has been stated that "[t]he recurring demand for 'something physical or extraordinary' in workers' compensation cases involving mental and nervous injury results, absent a statutory requirement, from misapplication of tort principles that permit recovery for negligently inflicted mental distress only upon proof of a physical impact." Note, Workers' Compensation For Mental Disabilities Resulting from Protracted Stress, 17 WILLAMETTE L. REV. 693, 696 (1981).


206. Comment, supra note 25, at 1137; see 1B A. LARSON, supra note 3, § 42.23(a). Professor Larson states that:

[T]here 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 workmen's compensation. But the excuse no longer exists.

Id.

207. Comment, supra note 5, at 862.

208. Id.
4. Economic Burden To Be Borne by Industry

Another basic principle of workers’ compensation is to burden business and industry with the economic loss resulting from the workers’ injuries.\textsuperscript{209} The cost is then passed on to the consumer in the form of higher prices. If work-related injuries are not compensated, this principle will be frustrated because private insurers will be forced to pay medical bills for work-related injuries.\textsuperscript{210} As a result, this burden will be shifted from industry to the subscribers of private health programs.\textsuperscript{211}

Cognizant of the present economic conditions in Oklahoma, compensation of purely mental injuries would be a costly burden to Oklahoma employers, small and large, who compete with out-of-state businesses. Compensation would also be costly to the consumers who absorb these costs. The concern, however, is not for employers and consumers, but for injured employees. Prior to their injuries, the employees were contributing members of the work force.\textsuperscript{212} Instead of relying on charity, these people should receive workers’ compensation if their disability was work-related.\textsuperscript{213}

V. CONCLUSION

Compensation of purely mental injuries resulting from the gradual stress of employment is consistent with the Oklahoma Worker’s Compensation Act, prior Oklahoma Supreme Court decisions, the underlying principles upon which workers’ compensation is based, and the national trend toward compensating this disability. The Oklahoma Workers’ Compensation Act provides compensation for an “accidental personal injury” and makes no distinction between a physical and mental injury. Although prior Oklahoma Supreme Court decisions have not addressed the compensability of gradual stress claims, other decisions represent the “stepping stones” toward the court’s ultimate compensation of gradual stress disability. The underlying principle supporting workers’ compensation mandates that compensation be awarded for an employee’s work-related injury which impairs earning capacity, without regard to the label of that injury. In addition, a growing number of American jurisdictions

\textsuperscript{210} \textit{Id.}
\textsuperscript{211} \textit{Id.}
\textsuperscript{213} \textit{Id.}
have compensated claims for gradual stress disability when confronted with the appropriate circumstances. Therefore, the Oklahoma Supreme Court’s eventual compensation of gradual stress disability will be logical.

*William Christopher Carmody*