

Law Trends

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Compensability of Psychiatric and Psychological Conditions Under Ohio's Workers' Compensation System

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In order for an injury to be compensable under Ohio's workers' compensation law, it must meet the definition of "injury" as set forth in the Ohio Revised Code. The statute was amended in 1986 to define what constitutes a compensable injury and what does not. An injury is defined as "any injury, whether caused by external accidental means or accidental in character and result, received in the course of, and arising out of, the injured employee's employment." The definition goes on to exclude psychiatric conditions "except where the conditions have arisen from an injury or occupational disease."

After the 1986 amendments but before the Ohio Supreme Court's 2001 decision in *Bailey v. Republic Engineered Steels, Inc.*, Ohio law required that an employee sustain a physical injury in order to have a compensable workers' compensation claim. In other words, courts held that compensable injuries under the workers' compensation system required a physical component suffered by **the claimant**. However, after the *Bailey* decision, "a psychiatric condition of an employee arising from a compensable injury or occupational disease suffered by a **third party** is compensable under R.C. §4123.01(C)(1)."

In *Bailey*, Mr. Bailey, a forklift driver, accidentally ran over and killed a co-worker and subsequently, suffered severe depression. Mr. Bailey filed a workers' compensation claim, which was denied by the Industrial Commission. Mr. Bailey's case eventually went to the Ohio Supreme Court, where the definition of injury was broadened and Mr. Bailey's claim was allowed. The Ohio Supreme Court reasoned that Ohio's workers' compensation law does not require the claimant to suffer a physical injury in order to justify a claim. Instead, the Court ruled that the statute simply states that covered injuries include those "received in the course of and arising out of the injured employee's employment," and that no requirement of a physical injury exists in the statute. Thus, the *Bailey* court concluded that the intent behind the legislature in enacting the law was "to allow compensation in cases where an employee suffers a mental injury caused by a co-worker's physical injury."

Although the facts in *Bailey* involved a claimant who both **witnessed** and **caused** the injury to his co-worker, the court's holding does not require that a claimant actually witness or cause the third party's injury. The *Bailey* court's holding requires only that a claimant's mental injury be caused by a third party's compensable physical injury. Therefore, under a broad reading of *Bailey*, a claimant would have a compensable claim as long as there was medical documentation relating claimant's psychological condition to a compensable injury or occupational disease suffered by a third party.

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After the *Bailey* decision, the Fifth District Court of Appeals attempted to broaden further the scope of compensable injuries by ruling the statute was unconstitutional because it violated the Equal Protection Clauses of the United States and Ohio Constitutions. In *McCrone v. Bank One Corp.*, the Fifth District held that there was no rational basis to discriminate between psychological injuries arising from a physical injury to an employee or co-worker and those which were purely psychological in nature. The underlying workers' compensation claim in the *McCrone* case was filed by Mrs. McCrone, a bank teller at Bank One, who began counseling and was diagnosed with post-traumatic stress disorder following a robbery at her work station. Mrs. McCrone did not suffer a physical injury. Her claim for workers' compensation benefits for the condition of post-traumatic stress disorder was denied throughout the administrative process before the trial court and court of appeals ruled that her claim should be allowed.

The Fifth District's decision was appealed to the Ohio Supreme Court, and on December 28, 2005, the Court held that it was **not** unconstitutional for the Ohio legislature to exclude purely psychological or psychiatric conditions from the definition of a compensable injury under the Ohio workers' compensation statute. In *McCrone v. Bank One Corp.*, the Ohio Supreme Court reversed the prior decisions of the court of appeals and the trial court which found the law unconstitutional. In so holding, the Court found that the legislature's requirement that a compensable mental disorder be accompanied by a physical injury was rationally related to the legitimate government interest of "making the most efficient use of a finite fund."

Another positive aspect of *McCrone* is that the Court's 5-2 majority decision, written by Justice Lanzinger, questioned the Court's earlier holding in *Bailey* and implied that it was wrongly decided. In an apparent shift in the Court's position, the majority opinion stated that for a psychological injury to be compensable, the accompanying physical injury must be **to the claimant** and not a co-worker or other third party. Additionally, the majority referred to the *Bailey* decision as both "atypical" and an "aberration."

This long-awaited opinion is good news for Ohio employers who feared a decision allowing purely psychological claims would expand the definition of a workplace injury to include a host of psychological conditions, such as workplace stress, and in so doing, significantly increase workers' compensation costs for all Ohio employers.

More information on these new workers' compensation developments can be obtained by contacting Mr. Yates or Ms. Phelps at 419-241-6000. Mr. Yates, who is a member of the Firm, has been named to the 2006 Ohio Super Lawyers. Ms. Phelps is an associate with an educational background in human resources. Both work in the Firm's Employment Section.