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THE REALITY OF WORK-RELATED STRESS: AN ANALYSIS OF HOW MENTAL DISABILITY CLAIMS SHOULD BE HANDLED UNDER THE NORTH CAROLINA WORKERS' COMPENSATION ACT*

I. INTRODUCTION

North Carolina enacted its Workers' Compensation statute¹ in 1929 to provide compensation to employees who suffer an injury or disease as a result of their employment.² There are numerous types of claims filed under this Act. The following are two distinct examples.

Stanley Livingston was employed as a superintendent in a home-building business.³ His job required him to ensure that home sites were clean.⁴ On May 16, 1985, Mr. Livingston was told to remove a pile of trash, which was six to eight feet in diameter.⁵ He was unable to find any of the men who usually removed the trash, so he undertook the assignment himself.⁶ He had been working about an hour when he began feeling stiffness in his back, which worsened during the two hours he spent moving the debris.⁷ After being diagnosed with a lumbar disc disease and undergoing surgery on June 12, 1985, he filed a workers' compensation claim for his physical injury.⁸

Teresa Williford worked as a service representative for Bell-south Telecommunications for ten to eleven years.⁹ Her job required her to take incoming calls from customers, add telephone services, change services, and handle bill inquiries and adjust-

* The author would like to thank Patrick Anders for his contributions in the selection and development of the topic for this comment.

1. N.C. GEN. STAT. §§ 97-1 to -143 (1991).

2. Sandra M. King & Bryant D. Webster, *Employment Covered Defenses, Workers Compensation*, 56, 56 (Wake Forest University School of Law, 1997).

3. *Livingston v. James C. Fields & Co.*, 93 N.C. App. 336, 336, 377 S.E.2d 788, 788 (1989).

4. *Id.*, 377 S.E.2d at 788.

5. *Id.*, 377 S.E.2d at 788.

6. *Id.*, 377 S.E.2d at 788.

7. *Id.*, 377 S.E.2d at 788.

8. *Id.*, 377 S.E.2d at 788.

9. *Williford v. BellSouth Telecommunications*, I.C. No. 640303, 3 (1997) (This case is currently being appealed to the Full Commission.). (On file in Law Review Office).

ments.¹⁰ She was instructed to question customers to determine what services they wanted or needed and to sell as many services as possible.¹¹ At the same time she was required to disclose mandatory information and stay within certain time limits.¹² Pressure was also placed on her to sell as much as possible as quickly as possible.¹³ As a service representative, Ms. Williford's calls were periodically monitored with no warning other than a green light on her computer.¹⁴ If she said something she was not supposed to, or left information out of a presentation, she was subject to reprimand or termination.¹⁵ Under the terms of her union contract, she could be expected to work up to thirteen consecutive days with only a couple of days off before returning to work.¹⁶ Following a leave of absence from work and attendance in the American Day Treatment Program for depression, Ms. Williford filed a workers' compensation claim, seeking compensation for work-related depression.¹⁷

These cases illustrate two very different types of claims under the North Carolina Workers' Compensation Act. Which, if either, should be compensable? Surprisingly, Ms. Williford's claim,¹⁸ which was completely subjective in nature was compensated, while Mr. Livingston's back injury claim,¹⁹ capable of being measured objectively, was denied.

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Williford*, I.C. No. 640303 at 4.

16. *Id.*

17. *Id.* at 7.

18. This claim was compensated, even though the defense showed that while Ms. Williford was being treated at the American Day Treatment Center the majority of her complaints were regarding her family in general, and more specifically, her teenage daughter. In addition, one of Ms. Williford's own experts stated that there is an epidemic of depression and it is not unique to employees of telephone companies. Another one of the plaintiffs experts testified that 15% of the population gets depressed at some point in their life. And according to an assessment completed while Ms. Williford was at the American Day Treatment Center, she was a caretaker in a highly demanding, needy family, and she described herself as being pulled in all directions by her family. (From Defendant's Contentions which are on file in North Carolina Industrial Commission's Office).

19. In *Livingston*, 93 N.C. App. at 337, 377 S.E.2d at 788, the Court of Appeals cited to the correct case, *Richards v. Town of Valdese*, 92 N.C. App. 222, 374 S.E.2d 116 (1988) in their decision. However, the case was applied in a

One of the most widely argued issues in workers' compensation law is whether mental or emotional disabilities caused by occupational stress should be compensable. Claims involving mental disability can be split into three categories: (1) those where a physical injury precipitates a mental disability, (2) those where the stress allegedly causes a physical injury such as a heart attack or stroke, and (3) those where mental stimuli cause purely mental injuries, commonly referred to as mental-mental claims.²⁰ This comment will focus solely on mental-mental claims.

The workplace seems to become more stressful, or perhaps employees' awareness of stress increases, with each passing year. Where twenty years ago job-related stress claims were rare or unheard of, the topic is now hotly debated with a commensurate rise in the number of claims filed under the workers' compensation statutes.²¹ The American Psychological Association predicts that stress-related injuries "will be the most pervasive occupational disease of the 21st century."²² Mental disorders already rank "among the top ten work-related injuries and illnesses in the nation."²³

Legislatures initially determine whether to compensate mental-mental claims. However, it is ultimately left to the courts of each state to interpret the Workers' Compensation Acts and set the guidelines for analyzing the compensability of each individual claim. The focus of this Comment will be on the compensability of

surprising manner. In *Richards*, a volunteer fireman, who had had back pain off and on for years, filed a claim after fighting a fire over a ten to fifteen hour period. *Richards*, 92 N.C. App. at 223, 225, 374 S.E.2d at 117, 119. While in full gear, he had to jump on and off of the fire truck repeatedly, and although he could not point to any specific time or event, the court allowed his claim. *Id.* at 225-26, 374 S.E.2d at 119. The court reasoned that an injury arising from a specific traumatic incident is compensable. *Id.* at 225, 374 S.E.2d at 118-19. A specific traumatic incident was defined as an injury that did not occur gradually, but one that occurred at a cognizable time. *Id.*, 374 S.E.2d at 119. In *Richards*, the court stated that a ten to fifteen hour time span could be a cognizable time. In *Livingston*, however, a two hour time period was not.

20. 3 Arthur Larson & Lex K. Larson, *Larson's Workmen's Compensation Law* §§ 42.00-42.23, at 7-575 to 7-679 (1997).

21. William C. Nugent, Comment, *When Employees Seek Workers' Compensation for Stress*, 14 Emp. Rel. L.J. 239, 239 (1988) (11% of occupational disease claims asserted work-related stress as the source).

22. Aya V. Matsumoto, Comment, *Reforming the Reform: Mental Stress Claims under California's Workers' Compensation System*, 27 Loy. L.A. L. Rev. 1327, 1335 (1994).

23. *Id.* at 1335.

mental-mental claims under the North Carolina Workers' Compensation Act. Section II will discuss the background and underlying purpose of workers' compensation law generally and the North Carolina Act specifically. Section III will outline the mental-mental disability claim itself. Section IV will analyze the mental-mental claim under the North Carolina Workers' Compensation Act while also tracing the mental-mental disability cases under the Act to show the current status of the law in North Carolina. Section V will make a recommendation that mental-mental claims should be barred as a general rule, with exceptions made for accidents and diseases above and beyond those pressures and stresses from which all employees suffer.

II. BACKGROUND AND PURPOSE OF WORKERS' COMPENSATION ACTS

At common law, an employee hurt on the job was not likely to win in a suit against his employer because he had to resort to the established rules and practice of tort law.²⁴ While the employee could claim damages for personal injuries including pain and suffering and was entitled to a trial by a jury of his peers, the odds were heavily stacked in favor of the employer.²⁵ The employer had the resources to wage a vigorous defense against the disabled employee who often could not afford counsel. In addition, the employee ultimately suffered damage to the employer-employee relationship because of the stigma associated with suing one's employer.²⁶

In the early 20th century, as the industrial revolution matured, a trend toward the adoption of workers' compensation remedies for injured employees developed throughout the country.²⁷ State legislatures enacted workers' compensation statutes to assure income to workers who suffered disabling injuries on the job, to provide treatment and rehabilitation for work-related injuries, and to facilitate a return to work.²⁸

24. Loann S. Meekins, *Benefits Available to Employees, Workers' Compensation*, 114, (Wake Forest University School of Law, 1997). (For example, the employee had to prove the negligence elements: duty, breach of duty, proximate cause, and damages, while avoiding defenses such as contributory negligence and assumption of the risk.)

25. *Id.*

26. *Id.*

27. *Id.*

28. Matsumoto, *supra* note 22, at 1332.

Workers' compensation was designed to eliminate the concepts of fault and negligence, focusing instead on the employer-employee relationship and the cause of the injury.²⁹ It was not designed to replace accident and health insurance, but rather to impose expenses directly attributable to the hazards of industry to industry itself.³⁰ Where health and accident insurance generally provides blanket coverage on an individual twenty-four hours a day, seven days a week, workers' compensation simply provides coverage for on the job injuries. In addition, the cost of health and accident coverage is borne by the individual as are any out-of-pocket expenses such as co-payments and deductibles. Workers' compensation eliminates these expenses by providing financial and medical benefits in an efficient, dignified, and uniform manner to employees sustaining work-connected physical injuries.³¹

To recover under workers' compensation, the statutes require that the disability result from the work relationship.³² The majority of states, including North Carolina, use the phrases "arising out of" and "in the course of employment" to define the required causal connection between the job and the injury.³³ These two phrases are not synonymous as they involve two distinct ideas.³⁴ However, they are not totally independent of one another because both are part of a single test to determine work-connection.³⁵ An

29. *Id.* at 1332.

30. Brian B. Bolton & Robert L. Dietz, *No (Victor) Wine Before Its Time: Revisiting the Expanding Compensability of Heart Attacks Eight Years Later*, 70 Oct. Fla. B.J. 77, 77 (1996).

31. Monica Gall, Note, *Gardner v. Van Buren Public Schools: Compensating Mental Disabilities under Workers' Compensation*, 1995 Det. C.L. Rev. 223, 223 (1995) (citing *Whetro v. Awkerman*, 174 N.W. 2d 783, 785 (1970)).

32. Thomas S. Cook, *Workers' Compensation and Stress Claims: Remedial Intent and Restrictive Application*, 62 Notre Dame L. Rev. 879, 881 (1987).

33. *Id.* at 882; see also, N.C. Gen. Stat. § 97-2(6) (1991). Some examples of other states using this language are: Alabama: ALA. CODE § 25-5-51 (1992); Arizona: ARIZ. REV. STAT. ANN. § 23-1021 (West 1995); Florida: FLA. STAT. ANN. § 440.02(17) (West 1991); Georgia: GA. CODE ANN. § 34-9-1(4) (1992); Maryland: MD. CODE ANN., LAB. & EMPL. § 9-101(b)(1) (1991); Ohio: OHIO REV. CODE ANN. § 4123.01(C) (Anderson 1995); Pennsylvania: PA. STAT. ANN. tit. 77, § 411(1) (1992); South Carolina: S.C. CODE ANN. § 42-1-160 (Law. Co-op 1985); and Virginia: VA. CODE ANN. § 65.2-101 (Michie 1995).

34. *Sweatt v. Rutherford County Bd. of Educ.*, 237 N.C. 653, 75 S.E.2d 738 (1953) (where the court stated, it has been uniformly held that the two phrases involve two ideas and impose a double condition); see also, *Barham v. Food World, Inc.*, 300 N.C. 329, 266 S.E.2d 676 (1980).

35. *Lee v. F.M. Henderson & Assoc.*, 284 N.C. 126, 131, 200 S.E.2d 32, 36 (1973) (where the court stated that the phrases are both part of single test of

injury "arises out of" employment if it is the result of a risk to which the employee was exposed because of the nature, conditions, obligations, or incidents of the employment.³⁶ The "course of employment" requirement examines the time, place, and circumstances of the injury in relation to the employment.³⁷ These requirements are fairly uniform throughout the states.

In 1929, the North Carolina Legislature adopted the North Carolina Workers' Compensation Act³⁸ as an exclusive remedy for workplace injuries.³⁹ The Legislature created the Act to provide compensation to employees who suffer from an injury or disease *arising out of and in the course of* their employment.⁴⁰ The Act ensures compensation to the employee who sustains a job-related injury or contracts an occupational disease, generally regardless of fault by the employer or contributing fault by the employee.⁴¹ The philosophy supporting the North Carolina Workers' Compensation Act is that wear and tear on the employee, as well as the machinery, should be charged to the industry.⁴²

The North Carolina Act abrogates certain common law rights held by employees, granting employers a limited and determinate liability.⁴³ The Act substitutes common law rights with a system of monetary payments calculated upon the actual loss of wages.⁴⁴ It is designed to protect all parties since it provides the employee with the certainty of compensation for an injury suffered in the course of employment.⁴⁵ For the employer, the Act reduces the unpredictability of loss by placing compensation on an actuarial

work-connection, and that deficiencies in the strength of one are sometimes allowed to be made up by strength in the other); *see also*, *Watkins v. City of Wilmington*, 290 N.C. 276, 281, 225 S.E.2d 577, 581 (1976).

36. *Cook*, *supra* note 32, at 882; *see also*, *Withers v. Black*, 230 N.C. 428, 53 S.E.2d 668 (1949); *Taylor v. Twin City Club*, 260 N.C. 435, 132 S.E.2d 865 (1963).

37. *Cook*, *supra* note 32, at 882; *see also*, *Plemmons v. White's Serv.*, 213 N.C. 148, 195 S.E. 370 (1938); *Powers v. Lady's Funeral Home*, 306 N.C. 728, 295 S.E.2d 473 (1982).

38. N.C. GEN. STAT. §§ 97-1 to -143 (1991).

39. § 97-10.1; *see also* *Brown v. Motor Inns of Carolina, Inc.*, 47 N.C. App. 115, 266 S.E.2d 848 (1980).

40. *King & Webster*, *supra* note 2, at 56.

41. *Id.*

42. *Id.* (citing *Cates v. Hunt Construction Co., Inc.*, 267 N.C. 560, 148 S.E.2d 604 (1966)).

43. *Id.*

44. N.C. GEN. STAT. § 29-31 (1984); *see also*, *Branham v. Denny Roll & Panel Co.*, 223 N.C. 233, 236, 25 S.E. 2d 865, 867 (1943).

45. *Barber v. Minges*, 223 N.C. 213, 216, 25 S.E.2d 837, 839 (1943).

basis.⁴⁶ Workers' compensation is in effect a bargain between industry and the worker where the worker is guaranteed recovery, but the recovery is limited for the benefit of the industry.

For an injury to be compensable under the North Carolina Workers' Compensation Act,⁴⁷ the employee must prove two things. First, the employee must prove that an employer-employee relationship did in fact exist.⁴⁸ Second, the employee must establish that the employment was the cause of the injury.⁴⁹ The existence of the employer-employee relationship is determined by common law.⁵⁰

The test to be applied in determining whether the relationship of the parties under a contract for the performance of work is that of employer and employee, or that of employer and independent contractor is whether the party for whom the work is being done has the right to control the worker with respect to the manner or method of doing the work, as distinguished from the right merely to require certain definite results conforming to the contract.⁵¹

To prove the causation requirement, the second element an employee must satisfy for an injury to be compensable under the North Carolina Workers' Compensation Act, the employee must satisfy a three pronged test: (1) that the claimant suffered a personal injury by accident, which (2) was sustained in the course of employment, and (3) that the injury arose out of the employment.⁵² These are the prerequisites for a claimant to receive compensation.

The first prong of the causation test requires that the employee's personal injury be caused by an accident and there

46. *Id.* at 216, 25 S.E.2d at 839.

47. N.C. GEN. STAT. §§ 97-1 to -143 (1991).

48. *Hicks v. Guilford County*, 267 N.C. 364, 148 S.E.2d 240 (1966) (holding that in order to recover, a claimant must prove that he is a member of the class protected and the Act applies only where the employer-employee relationship exists.); *see also*, *Richards v. Nationwide Homes*, 263 N.C. 295, 139 S.E.2d 645 (1965); *Hart v. Thomasville Motors, Inc.*, 244 N.C. 84, 92 S.E.2d 673 (1956).

49. *Lewis v. W.B. Lea Tobacco Co.*, 260 N.C. 410, 132 S.E.2d 877, (1963) (Here the court stated that the injury must spring from the employment.); *see also*, *Clark v. Burton Lines, Inc.*, 272 N.C. 433, 158 S.E.2d 569 (1968); *Robbins v. Nicholson*, 281 N.C. 234, 188 S.E.2d 350 (1972).

50. *King & Webster*, *supra* note 2, at 65.

51. *Hicks*, 267 N.C. at 367, 148 S.E.2d at 243.

52. *Hollar v. Montclair Furniture Co., Inc.*, 48 N.C. App. 489, 490, 269 S.E. 2d 667, 669 (1980) (citing *Gallimore v. Marilyn's Shoes*, 292 N.C. 399, 233 S.E. 2d 529 (1977)).

must be a specific finding of this fact.⁵³ An accident is not a "series of events in employment, of a similar or like nature, occurring regularly, continuously or at frequent intervals in the course of such employment, over extended periods of time."⁵⁴ Instead, the North Carolina Supreme Court has defined an "accident" as an "untoward and unlooked for event which is not expected or designed by the injured employee."⁵⁵ In essence, an accident occurs when there is either an interruption to the normal work routine or when some event arises that is not part of the normal work routine.⁵⁶

The second prong mandates that the injury be sustained in the course of the employment. The course of employment element has been broadly defined. It only requires that the employee was performing an authorized task intended to benefit the employer's business.⁵⁷

The final prong of the causation test is that the injury must arise out of the employment. The injury arises out of the employment when it is a natural and probable risk of the job or the natural result of a risk inherent with that particular employment, so that a causal relationship exists between the job and the injury.⁵⁸ The injury must spring from the job and have its origin in the job.⁵⁹ It must be "apparent to the rational mind upon consideration of all of the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury."⁶⁰

53. *Jackson v. Fayetteville Area Sys. of Trans.*, 78 N.C. App. 412, 413, 337 S.E.2d 110, 111 (1985) (there needs to be a specific finding of fact regarding if employee sustained an injury and to the nature of that injury).

54. N.C. GEN. STAT. § 97-52 (1991); see also *Bowles v. CTS of Asheville, Inc.*, 77 N.C. App. 547, 335 S.E.2d 502 (1985).

55. *Harding v. Thomas and Howard Co.*, 256 N.C. 427, 428, 124 S.E.2d 109, 110 (1962).

56. *Gladson v. Piedmont Stores*, 57 N.C. App. 579, 292 S.E.2d 18. (1982).

57. *Powers v. Lady's Funeral Home*, 306 N.C. 728, 730, 295 S.E.2d 473, 475 (1982).

58. *Perry v. American Bakeries Co.*, 262 N.C. 272, 274, 136 S.E.2d 643, 645 (1964).

59. *Bolling v. Belk-White Co.*, 228 N.C. 749, 750, 46 S.E.2d 838, 839 (1948).

60. *Harden v. Thomasville Furniture Co.*, 199 N.C. 733, 735, 155 S.E. 728, 729-30 (1930) (quoting *In re Employers' Liability Assurance Corp.*, 102 N.E. 697, 697 (Mass. 1913)).

III. THE MENTAL DISABILITY CLAIM

Workers' compensation was originally designed to compensate for work-related physical injuries that prevented an individual from continuing to work.⁶¹ As technology developed, employers began requiring more mental than physical effort. This in turn created new stresses in the workplace.⁶² A high number of stressful events are inevitable in industry because companies must maintain or increase profitability to stay viable in the market.⁶³ Companies must offer new products and new services to increase its share of the market.⁶⁴ These types of changes cause different duties and responsibilities for employees.⁶⁵ Companies must also adapt to changing economic, political, social, legal, and environmental conditions.⁶⁶ Any change in the work place may produce stress in employees.⁶⁷ As education and awareness have increased in the general public, there have been changes in our attitudes regarding mental illnesses, decreasing the stigma attached to mental disease.⁶⁸ Consequently, there has been a tremendous increase in job-related stress claims. State legislatures and courts are left scrambling to find reliable ways to analyze these claims under current workers' compensation statutes.⁶⁹

Stress can be defined as anything that places an extra demand on an individual.⁷⁰ Modern science has confirmed that human beings do have a general response to all forms of stress.⁷¹ The response follows the same course regardless of the cause of the stress and the purpose of the response is to bring relief from the stress.⁷² American physiologist Dr. Walter Cannon called this

61. Christy L. DeVader & Andrea Giampetro-Meyer, *Reducing Managerial Distress about Stress: An Analysis and Evaluation of Alternatives for Reducing Stress-Based Workers' Compensation Claims*, 31 Santa Clara L. Rev. 1, 4 (1990).

62. *Id.* at 5.

63. SALVATORE R. MADDI & SUZANNE C. KOBASA, *THE HARDY EXECUTIVE: HEALTH UNDER STRESS* 78 (Dow-Jones Irving 1984).

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. Matsumoto, *supra* note 22, at 1336.

69. Gall, *supra* note 31, at 248.

70. ROBERT L. VENINGA & JAMES P. SPRADLEY, *THE WORK STRESS CONNECTION HOW TO COPE WITH JOB BURNOUT* 16 (Little, Brown & Co. 1981).

71. *Id.* at 18.

72. *Id.*

reaction the "fight or flight" response, arguing that it plays an important role in survival because it readies the body for action.⁷³

While modern science has identified the physical response of the body to stressful situations,⁷⁴ science is still less certain about mental disabilities.⁷⁵ This uncertainty creates problems for the courts. First and foremost, the uncertainty of mental diseases makes it difficult for courts to ascertain the "true nature, extent, and cause of injury."⁷⁶ The problem is compounded by the subjective nature of the psychological condition.⁷⁷ Doctor's opinions as to the cause of mental illness are premised upon the claimant's subjective answers to questions and tests.⁷⁸ Thus, very little, if any, objective criteria exist to aid the courts.

Another major difficulty with the mental disability claim is in determining whether the injury in fact results from work-related stress or from stress in the claimant's personal life.⁷⁹ No tests exist that can distinguish between work-place stress and personal-life stress. Therefore, in many instances, an employer may be compensating an individual for stress induced injuries that in reality were not caused by the employment.⁸⁰ This was not the intent behind workers' compensation. General health insurance should cover such an injury. An employer cannot be liable for lost

73. *Id.* at 19.

74. There is a tiny bundle of nerve cells at the center of the brain that send alarm signals throughout the nervous system. Veninga & Spradley, *supra* note 70, at 20. These messages cause muscles to tense and blood vessels to constrict while the tiny capillaries under the skin shut down all together. *Id.* Hormones are released to increase the energy supply which subsequently raises the pulse rate. *Id.* The brain utilizes a series of electrochemical distress reactions to stimulate the kidneys to secrete two sets of hormones. MADDI & KOBASA, *supra* note 63, at 18. One set breaks down organic compounds into simpler elements, increasing the amount of fats, cholesterol, and sugar in the bloodstream to prepare the body for great expenditures of energy. *Id.* The other set of hormones increase heart rate and constrict arteries, mobilizing the body and increasing the blood pressure. *Id.* These hormones also cause breathing to become shallow and rapid. *Id.* The end result of this process is that sleep becomes difficult and the mind begins to race with depressive thoughts. *Id.*

75. Gall, *supra* note 31, at 249.

76. *Id.*

77. Celeste M. Harris, *Occupational Disease, Workers' Compensation*, 109, 133 (Wake Forest University School of Law, 1997).

78. *Id.*

79. Marc A. Antonetti, *Labor Law: Workers' Compensation Statutes and the Recovery of Emotional Distress Damages in the Absence of Physical Injury*, 1990 Ann. Surv. Am. L. 671, 672 (1992).

80. *See supra* note 18.

wages to an individual who is having financial trouble or going through a divorce. Employers should only pay individuals who were truly disabled by their employment.

IV. NORTH CAROLINA MENTAL DISABILITY CLAIMS

Stress is an ordinary part of life. This reality makes it difficult to prove that any given occupation produces significantly more stress than that which the general public encounters.⁸¹ The mental-mental claim is a relatively new and constantly developing area of law in North Carolina, and as such these claims are not specifically set out in the North Carolina Workers' Compensation Act. North Carolina courts have addressed the issue of mental-mental claims in two contexts: claims naming the mental disability as an occupational disease, and claims involving mental disabilities which resulted from a particular event.

A. *Mental Disability as an Occupational Disease*

One way for a claimant to possibly recover under the Act for a stress-related condition is based upon N.C. Gen. Stat. § 97-53, dealing with occupational diseases.⁸² While some occupational diseases are enumerated,⁸³ and stress is not, employees claiming a mental-mental injury must therefore attempt to fit the mental disability within the "catch-all" provision. The "catch all" definition of an occupational disease is:

Any disease. . . which is proven to be due to causes and conditions which are characteristics of and peculiar to a particular trade, occupation or employment, but excluding all ordinary diseases of life to which the general public is equally exposed outside of the employment.⁸⁴

Therefore, mental-mental injuries are compensable in North Carolina as occupational diseases only if the claimant establishes that the mental disability is the result of factors in the work place and that the work place created a condition which subjected him to more stress than the general public.⁸⁵ The Act does not require

81. Harris, *supra* note 77, at 132.

82. N.C. GEN. STAT. § 97-53 (1991).

83. § 97-53(22-25); Examples include: carbon monoxide poisoning, poisoning by sulphuric, hydrochloric, or hydrofluoric acid, asbestosis, and silicosis.

84. § 97-53(13).

85. Barbara L. Curry, *Current Medical Issues in Workers' Compensation*, Workers' Compensation in North Carolina, 75, 77 (National Business Institute, 1996).

that the employment be the only cause of the injury, nor are all ordinary diseases of life excluded. The only diseases excluded are those common to the public. However, the employment must expose the employee to risks distinguishable in character and quantity from occupations generally or from non-occupational activities.⁸⁶ In other words, the employment must present a risk that the employee would otherwise generally not encounter. Despite this apparent difficulty in presenting such proof, North Carolina courts are becoming more likely than not to find such claims compensable. The reason for this is a lack of clear directive from the legislature.

One of the first mental-mental claims in North Carolina was *Harvey v. Raleigh Police Department*.⁸⁷ In 1978, Michael Wichmann was hired as a Raleigh Police Officer, and as part of the application process psychological tests were administered.⁸⁸ The tests showed no signs of anxiety or depression.⁸⁹ While his first year on the force was rocky,⁹⁰ his performance greatly improved over the years, and he received a promotion in 1981.⁹¹

In 1982, he began working part-time as a security guard for K-Mart while maintaining his full-time status as a Raleigh Police Officer.⁹² On May 19, 1982, he was placed on administrative leave from the police department pending investigation of allegations that he stole a candy bar from a store.⁹³ On May 28, 1982, he was told that he could not work off-duty while on administrative leave.⁹⁴ In addition, he had been named as a co-defendant with K-Mart in a suit alleging false arrest.⁹⁵ On May 31, 1982, following a fight with his wife, Mr. Wichmann committed suicide.⁹⁶

His widow filed a death claim under the North Carolina Workers' Compensation Act alleging that her husband's death

86. *Mills v. Mills*, 68 N.C. App. 151, 154, 314 S.E.2d 833, 836 (1984); *see also*, *Gay v. J.P. Stevens & Co., Inc.*, 79 N.C. App. 324, 339 S.E.2d 490 (1986).

87. *Harvey v. Raleigh Police Dep't*, 96 N.C. App. 28, 384 S.E.2d 549 (1989). (*Harvey II*)

88. *Harvey v. Raleigh Police Dep't*, 85 N.C. App. 540, 541, 355 S.E. 2d 147, 148 (1987). (*Harvey I*)

89. *Id.*, 355 S.E.2d at 148.

90. *Id.*, 355 S.E.2d at 148.

91. *Harvey II*, 96 N.C. App. at 30, 384 S.E.2d at 550.

92. *Id.*, 384 S.E.2d at 550.

93. *Id.*, 384 S.E.2d at 550.

94. *Id.*, 384 S.E.2d at 550.

95. *Id.*, 384 S.E.2d at 550.

96. *Id.*, 384 S.E.2d at 550.

was a result of work induced depression, an occupational disease.⁹⁷ Since Wichmann did not seek psychological treatment prior to his death, the claimant hired an expert to conduct a "psychological autopsy" which involved interviewing the decedent's family and reviewing employment records, school records, and any psychiatric notes available.⁹⁸ The purpose of the "autopsy" was to determine his state of mind at time of death.⁹⁹ The diagnosis from this "autopsy" was that Mr. Wichmann suffered from a depression that was significantly contributed to by his job.¹⁰⁰ The employer's expert stated that it was impossible to determine the origin of a mental disease that was undiagnosed prior to the victim's death.¹⁰¹ The Industrial Commission denied the claim, stating that Wichmann's job as a police officer was not a significant factor in the depression that ultimately led to his suicide.¹⁰²

Mrs. Wichmann appealed to the Court of Appeals, which remanded the case to the Commission with instructions to show the absence of any of the causation elements.¹⁰³ The Commission then held that the claimant had not met her burden of proof as the evidence indicated that the deceased employee's stress came from financial difficulties and his home environment rather than from his job.¹⁰⁴ Testimony from other officers showed Wichmann enjoyed his work but was also concerned about financial difficulties.¹⁰⁵ Decedent's widow appealed once more, but the Court of Appeals upheld the Commission's ruling stating that "[t]he burden of proving each and every element of compensability is upon the plaintiff," and that there was sufficient evidence to support the Commission's findings.¹⁰⁶

The result suggests that the burden of proof lies solely on the claimant to prove that the stress was in fact job-induced. The only thing the court could have improved upon was to state the rule in unequivocal terms. Given the subjective nature of the diagnosis of mental-mental disabilities, there is no feasible or just way for employers to prove that outside stress is the cause of mental dis-

97. *Harvey I*, 85 N.C. App. at 541, 355 S.E.2d at 148.

98. *Id.*, 355 S.E.2d at 148.

99. *Id.*, 355 S.E.2d at 148.

100. *Id.* at 541, 355 S.E.2d at 149.

101. *Id.* at 542, 355 S.E.2d at 149.

102. *Id.*, 355 S.E.2d at 149.

103. *Harvey I*, 85 N.C. App. 540, 355 S.E.2d 147.

104. *Harvey II*, 96 N.C. App. at 31, 384 S.E.2d at 551.

105. *Id.* at 33, 384 S.E.2d at 552.

106. *Id.* at 35, 384 S.E.2d at 553.

ease. No one is more aware of the various stressors in an employee's life than the employee himself. Therefore, the only rational result is to make the employee eliminate all stressors other than those that are work-related as the proximate cause of the mental-mental disability.

Less than three years later, the law was re-examined and expanded by the Court of Appeal's holding in *Cross v. Blue Cross/Blue Shield*.¹⁰⁷ In May 1987, Ms. Vivian Cross accepted a job as a medical review examiner with Blue Cross Blue Shield.¹⁰⁸ She resigned from this position in September 1987 alleging job-related stress.¹⁰⁹ Ms. Cross filed a claim under the Workers' Compensation Act alleging that her psychological problems were work induced.¹¹⁰

The evidence showed that Ms. Cross's job duties involved taking telephone requests for authorization of medical expenses and procedures, processing the authorizations, and distributing information on medical claims.¹¹¹ These duties seemed to be too much for Ms. Cross, as she received at least three memos concerning unsatisfactory performance.¹¹² In addition to her unsatisfactory performance at work, she also missed work without calling in or providing the requested medical verifications for employee absence.¹¹³

To support her mental-mental claim, Ms. Cross relied on deposition testimony from Dr. Naftel, a third-year psychiatry resident who examined her in 1987.¹¹⁴ However, Dr. Naftel never stated unequivocally that the cause of her problems was job-related. He simply stated that given the description of Ms. Cross' job "she was having trouble keeping up with what is going on there [at work], and generally for people that's stressful."¹¹⁵ The Commission denied her claim premised on occupational disease.¹¹⁶

The Court of Appeals found many outside stressors, which contributed to the claimant's condition. Ms. Cross had experienced the death of her sister in 1985 and the death of her brother

107. 104 N.C. App. 284, 409 S.E.2d 103 (1991).

108. *Id.* at 285, 409 S.E.2d at 104.

109. *Id.*, 409 S.E.2d at 104.

110. *Id.*, 409 S.E.2d at 104.

111. *Id.* at 286, 409 S.E.2d at 104.

112. *Id.*, 409 S.E.2d at 104.

113. *Cross*, 104 N.C. App. at 286, 409 S.E.2d at 104.

114. *Id.*, 409 S.E.2d at 104-5.

115. *Id.* at 287, 409 S.E.2d at 105.

116. *Id.* at 285, 409 S.E.2d at 104.

in 1986.¹¹⁷ She underwent an abortion in 1987 and broke up with her boyfriend during the same year.¹¹⁸ These stressors, coupled with her poor job performance, seem to constitute the reasons behind the court's upholding of the Commission's ruling.¹¹⁹

Cross is important because by even considering the claim, the court recognized the general compensability of psychological claims under the "catch all" provision¹²⁰ of the North Carolina Workers' Compensation Act. The *Cross* court's holding, however, implies that an important distinction is to be made between stress resulting from the inability to adequately perform one's job and stress caused by the demands of the job. The *Cross* court implied that if the demands of the job create stress, then compensation can be awarded. No mention was made of whether the stress has to be unique to that particular profession, which is a requirement of the statute.¹²¹ This is an erroneous oversight, creating coverage where none in fact exists.

Furthermore, prior case law¹²² makes clear that the employment must expose the employee to risks distinguishable in character and quantity from occupations generally, while at the same time they shall not be a series of events of a similar or like nature, occurring regularly in the course of such employment.¹²³ In *Harvey*, there existed risks that occurred regularly in the course of employment and in *Cross*, risks to which the public was equally exposed. This holding illustrates that the *Cross* court should have mandated that claimants bear the burden of proving that it was the job stress alone that was the proximate cause of their mental disability.

In 1995, the court addressed the issue of intervening causes.¹²⁴ William Baker was a detective with the Sanford Police Department.¹²⁵ From 1981 until 1990, he was the lead investigator for all major crimes, including homicides.¹²⁶

117. *Id.* at 288, 409 S.E.2d at 106.

118. *Id.*, 409 S.E.2d at 106.

119. *Cross*, 104 N.C. App. at 288, 409 S.E.2d at 106.

120. N.C. GEN. STAT. § 97-53(13) (1991).

121. *See* § 97-53(13) (requiring that the disease be "proven to be due to causes and conditions which are characteristic of and peculiar to a particular trade, occupation or employment").

122. *Gay v. J.P. Stevens & Co.*, 79 N.C. App. 324, 339 S.E.2d. 490 (1986).

123. N.C. GEN. STAT. § 97-52 (1991).

124. *Baker v. City of Sanford*, 120 N.C. App. 783, 463 S.E. 2d 559 (1995).

125. *Id.* at 784, 463 S.E.2d at 560.

126. *Id.*, 463 S.E.2d at 560.

Mr. Baker filed a claim for workers' compensation disability benefits alleging that one particular homicide trial in 1989 caused him to begin experiencing fear and stress.¹²⁷ Evidence showed that most of his time in late 1989 was spent at home and at work alone in a dark room.¹²⁸ A doctor diagnosed him with "agitated depression 'related to his job and to his stress at work.'"¹²⁹ The doctor testified that while he did not believe that the one trial was the only factor, Mr. Baker's work was a significant factor in his development of depression.¹³⁰ Testimony from Baker's wife revealed that he had attempted suicide in 1990 "because, although he loved his job, he had a lot invested in it, and it was 'getting to him.'"¹³¹

However, the evidence showed that his job was not the only stressor in his life. In February 1990, Mr. Baker's brother was found dead.¹³² Mr. Baker did not return to work after his brother's death, but was hospitalized for depression.¹³³ He was diagnosed with "major depression" which is a disease "that is not just brought on by a situation, but is related to chemical imbalances coupled with physical and psychological elements."¹³⁴ Mr. Baker's doctor testified that this depression had begun before the brother's death, and that the death was "the last straw" before bringing the disease to "a head."¹³⁵

The Industrial Commission did find that prior to the brother's death, Mr. Baker had indeed developed depression as an occupational disease. However, it ruled that such depression was not disabling; therefore it was not compensable.¹³⁶ Furthermore, the Commission held that the death of Mr. Baker's brother caused the "major depression" and that the "major depression" was not a "direct and natural result of [Mr. Baker's] work depression."¹³⁷

127. *Id.* at 784, 463 S.E.2d at 561.

128. *Id.*, 463 S.E.2d at 561.

129. *Id.*, 463 S.E.2d at 561.

130. *Baker*, 120 N.C. App. at 784, 463 S.E.2d at 561.

131. *Id.* at 785, 463 S.E.2d at 561.

132. *Id.*, 463 S.E.2d at 561.

133. *Id.*, 463 S.E.2d at 561.

134. *Id.*, 463 S.E.2d at 561.

135. *Id.*, 463 S.E.2d at 561.

136. *Baker*, 120 N.C. App. at 786, 463 S.E.2d at 562. (The Commission ruled that while Mr. Baker developed depression prior to his brother's death, he was still able to work, therefore it was the death of his brother that made his condition disabling and not his job.)

137. *Id.*, 463 S.E.2d at 562.

Therefore, the death of the brother was deemed an intervening cause, and Mr. Baker's claim for benefits was denied.¹³⁸

On appeal, the Court of Appeals relied on the standard set out in *Rutledge v. Tultex Corp.*¹³⁹ to determine whether an occupational disease existed under section 97-53(13) of the Workers' Compensation Act.¹⁴⁰ For a disease to be occupational, it must be:

- 1) characteristic of persons engaged in the particular trade or occupation in which the claimant is engaged; 2) not an ordinary disease of life to which the public generally is equally exposed with those engaged in that particular trade or occupation; and 3) there must be a causal connection between the disease and [claimant's] employment.¹⁴¹

The Commission in *Baker* determined that the resulting "major depression" was not attributable to Mr. Baker's employment. However, the Court of Appeals reversed this ruling, because of the possibility that the loss of the brother served to aggravate the occupational disease that had already existed.¹⁴² Still relying on *Rutledge*, the court stated that it is not necessary that the sole cause be work-related, but that compensation is mandated when the employment is a contributing factor to the disability.¹⁴³ The case was remanded to the Commission with instructions to determine whether the job was a significant factor in the disease's development.¹⁴⁴

In *Baker*, the court misapplied the *Rutledge* test. Everyone experiences stress, whether due to relationships, money, or status in society. Every job has stress, from the teenager working a backed up drive-thru to the executive whose company is having financial difficulty. There is no accurate, objective way to determine whether an individual's mental disability is work-related or personal, especially in a case such as *Baker* where there is uncontroverted evidence of work and personal stress. *Baker* is a testament to the fact that stress causing mental injury is an ordinary disease of life to which everyone is subject. This is obvious. But by ignoring the obvious the court implied that ordinary diseases to

138. *Id.* at 788, 463 S.E.2d at 563.

139. 308 N.C. 85, 301 S.E.2d 359 (1983).

140. *Baker*, 120 N.C. App. at 787, 463 S.E.2d at 562-63.

141. *Rutledge*, 308 N.C. at 93, 301 S.E.2d at 365.

142. *Baker*, 120 N.C. App. at 788, 463 S.E.2d at 563.

143. *Id.*, 463 S.E.2d at 563.

144. *Id.* at 789-90, 463 S.E.2d at 563-64.

which everyone is subject are compensable if the employment is a contributing factor.

By awarding compensation without regard to whether stress-causing conditions are characteristic of and peculiar to a particular occupation and without regard to whether a disease is one to which the public is generally exposed, the law is ignored. Such compensation directly contradicts the North Carolina Workers' Compensation Act and the *Rutledge* test.

A further example of the existing contradiction is the recent case of *Pulley v. City of Durham*.¹⁴⁵ Margie Pulley, the first female public service officer with the City of Durham, went to work for the City as a police officer in November 1975.¹⁴⁶ Officer Pulley started seeing Dr. Hostetter, a clinical psychologist, in 1984 because she felt physically ill, was having difficulty concentrating at work and was experiencing difficulty handling the stresses involved with her job.¹⁴⁷ However, during her first session, she described her main sources of stress as "having recently filed bankruptcy, having problems with her Down's Syndrome son's day care, her husband having legal problems, and his leaving home periodically."¹⁴⁸ Dr. Hostetter diagnosed Officer Pulley "as having a major depressive disorder with some psychotic symptoms" which were related to her husband and child.¹⁴⁹ The doctor recommended a three-month leave of absence to which Officer Pulley adhered.¹⁵⁰

Officer Pulley continued seeing Dr. Hostetter after she returned to work.¹⁵¹ Shortly after Officer Pulley's return to work, Dr. Hostetter changed her diagnosis to "longstanding events of post traumatic stress syndrome arising from the multiple traumatic situations that she [Officer Pulley] encountered as a public safety officer."¹⁵² Officer Pulley terminated her employment with the City of Durham in April 1989 and filed a claim for workers' compensation benefits for occupational stress.¹⁵³ In 1991, Officer Pulley saw Dr. Ziel, a specialist in psychiatry, "who found that plaintiff's [Pulley's] employment as a public safety officer was

145. 121 N.C. App. 688, 468 S.E.2d 506 (1996).

146. *Id.* at 689, 468 S.E.2d at 507.

147. *Id.*, 468 S.E.2d at 507.

148. *Id.*, 468 S.E.2d at 507.

149. *Id.* at 689-90, 468 S.E.2d at 507.

150. *Id.* at 690, 468 S.E.2d at 507.

151. *Pulley*, 121 N.C. App. at 690, 468 S.E.2d at 507.

152. *Id.*, 468 S.E.2d at 507.

153. *Id.*, 468 S.E.2d at 508.

causally connected to plaintiff's [Pulley's] psychological problems."¹⁵⁴

The initial Deputy Commissioner denied her claim; however the Full Commission reversed, finding that there was a lack of expert opinion evidence showing that the emotional problems were not job-related.¹⁵⁵ The full Commission accepted the two doctors' opinions that Pulley's employment as a police officer significantly contributed to her problems.¹⁵⁶ The City of Durham appealed.¹⁵⁷

The Court of Appeals gave absolute discretion to the findings of the Full Commission. The court relied on the Full Commission's findings that throughout Pulley's employment she was involved with situations where people were victims of or had committed criminal acts, as well as situations involving personal injury and death.¹⁵⁸ In addition, great weight was afforded Dr Ziel's testimony that there was a recognizable link between the nature of police work and an increased risk of contracting depression.¹⁵⁹ Based on this evidence, the court held there was sufficient evidence for the Full Commission to conclude Officer Pulley's emotional condition was job-induced.¹⁶⁰

Pulley, as well as *Cross* and *Baker*, leaves the law in North Carolina in conflict with the Workers' Compensation Act itself. The Act specifically states that to be compensable as an occupational disease, the employment must place the employee at a higher risk than the general public.¹⁶¹ In *Pulley*, there was uncontroverted evidence that she was initially diagnosed with a major depressive disorder in addition to some psychotic symptoms related to her husband and child. Yet, the court stated there was no expert opinion evidence that Officer Pulley's condition was not job-related. However, whereas the law plainly states that the

154. *Id.*, 468 S.E.2d at 508 (This visit to and diagnosis by the psychiatrist could be viewed as a part of her disability claim. To recover under the workers' compensation act for any occupational disease, the claimant must show that the employment makes them more likely than the general public to suffer from the disability. To be successful in showing this, a doctor's testimony is usually required.).

155. *Id.*, 468 S.E.2d at 508.

156. *Id.*, 468 S.E.2d at 508.

157. *Pulley*, 121 N.C. App. at 690, 468 S.E.2d at 508.

158. *Id.* at 694, 468 S.E.2d at 510.

159. *Id.*, 468 S.E.2d at 510.

160. *Id.*, 468 S.E.2d at 510.

161. N.C. GEN. STAT. § 97-53(13) (1991).

plaintiff must prove her case, here, Officer Pulley was not required to refute the evidence of outside stressors. Under the Workers' Compensation Act, Pulley should have been required to prove that her condition was not a result of stressors outside of her job. Seemingly, courts are allowing claimants to recover without proving that their job places them at a greater risk than the general public as the statute clearly requires.

B. Mental Disability Claims Arising from a Particular Accident

Until 1996, the majority of mental disability claims were filed as occupational disease claims. This trend began to change in *Jordan v. Central Piedmont Community College*,¹⁶² the claimant alleged that her mental disability was an injury by accident not an occupational disease.¹⁶³ Ms. Jordan, the claimant, was a vocational training instructor at a correctional facility.¹⁶⁴ Prior to her employment, prison officials conducted an orientation session with Ms. Jordan to explain the type of facility where she would be working.¹⁶⁵ The officials disclosed to her that she would be subject to searches and that she risked the possibility of experiencing hostage situations.¹⁶⁶ Prison officials also reassured Ms. Jordan that there had been no incidents involving injury or harassment by the inmates.¹⁶⁷ She was instructed that if a conflict did arise, she was to let the staff members handle it.¹⁶⁸

After two years of employment inside the facility, Ms. Jordan's classes were moved to a trailer that was about one hundred feet from the facility and was fenced off by itself.¹⁶⁹ Ms. Jordan was alone with the inmates during her class and the trailer was not equipped with a telephone, intercom or any other means of communication.¹⁷⁰

162. 124 N.C. App. 112, 476 S.E.2d 410 (1996).

163. *Id.* at 114, 476 S.E.2d at 411. The Workers' Compensation Act compensates not only occupational diseases, which develop over a period of time and are not attributable to a specific event, but also injuries resulting from traceable accidents. See N.C. Gen. Stat. §§ 97-2(6), -52 (1991).

164. *Id.* at 113, 476 S.E.2d at 410.

165. *Id.* at 114, 476 S.E.2d at 411.

166. *Id.*, 476 S.E.2d at 411.

167. *Id.*, 476 S.E.2d at 411.

168. *Jordan*, 124 N.C. App. at 114, 476 S.E.2d at 411.

169. *Id.*, 476 S.E.2d at 411.

170. *Id.*, 476 S.E.2d at 411.

On June 26, 1991, Jordan witnessed a fight between inmates in her classroom.¹⁷¹ Although she requested that the inmates separate and leave each other alone, the fight only escalated.¹⁷² Jordan went outside and yelled to two guards, who happened to be within earshot, that she needed help.¹⁷³ These guards did not respond and the fight continued to worsen.¹⁷⁴ Ms. Jordan again attempted to summon the guards help, but was again ignored.¹⁷⁵ Eventually other inmates broke up the fight that had left a broken window and blood on the floor.¹⁷⁶

Ms. Jordan testified that before the incident she felt safe at work because she thought the prison staff was available to assist her in conflict situations.¹⁷⁷ After the incident, Ms. Jordan began experiencing anxiety attacks, insomnia, and when she was able to sleep, nightmares about the fight.¹⁷⁸ She sought treatment from a psychologist who diagnosed her as suffering from post traumatic stress disorder as a direct result of the June 26 inmate fight.¹⁷⁹ Ms. Jordan filed a workers' compensation claim alleging a psychological injury by accident as a result of the inmate fight.¹⁸⁰ The Commission concluded that Ms. Jordan had suffered an injury by accident arising out of and in the course of her employment and awarded her benefits.¹⁸¹ Defendant appealed alleging that recovery is not allowed under the North Carolina Workers' Compensation Act for mental injuries.¹⁸²

The Court of Appeals disagreed with the Defendant. The court found that "the broad intent of the Workers' Compensation Act is to provide compensation to employees who sustain an injury arising out of and in the course of their employment."¹⁸³ According to the court, N.C. Gen. Stat. § 97-2(6) defines "injury" without making a distinction between those that are physical and psycho-

171. *Id.*, 476 S.E.2d at 411.

172. *Id.*, 476 S.E.2d at 411.

173. *Id.*, 476 S.E.2d at 411.

174. *Jordan*, 124 N.C. App. at 114, 476 S.E.2d at 411.

175. *Id.*, 476 S.E.2d at 411.

176. *Id.*, 476 S.E.2d at 411.

177. *Id.*, 476 S.E.2d at 411.

178. *Id.*, 476 S.E.2d at 411.

179. *Id.*, 476 S.E.2d at 411.

180. *Jordan*, 124 N.C. App. at 114, 476 S.E.2d at 411.

181. *Id.* at 115, 476 S.E.2d at 411.

182. *Id.* at 115, 476 S.E.2d at 412.

183. *Id.* at 116, 476 S.E.2d at 412.

logical.¹⁸⁴ The court, relying on recent cases¹⁸⁵ that recognize mental injuries as compensable occupational diseases, stated that to hold mental injuries uncompensable as injuries by accident would be incongruous with the compensation of such claims under principles of tort law and would lead to harsh results.¹⁸⁶ Specifically, the court concluded that "as long as the resulting disability meets statutory requirements, mental, as well as physical impairments, are compensable under the Act."¹⁸⁷

Unlike some of the earlier mental-mental cases, the court in *Jordan* reached the correct result. *Jordan* differs from previous cases because the claimant's disability was the result of a specific traumatic incident. The fight occurred in and during one of Ms. Jordan's classes, in other words, during the course of her employment. Furthermore, but for her employment, she would not have been present at the fight. Therefore, the disability was a result of a risk involved with her employment. In addition, *Jordan* was brought as an injury by accident instead of as an occupational disease. The court was correct in stating that mental disabilities meeting the statutory requirements are compensable. Problems only arise when a court tries to make a claim fit the requirements of the statute when it otherwise does not.¹⁸⁸ In *Jordan*, the court applied the statute in the correct way and did not try and force a result.

V. CONCLUSION

While stressful situations may have debilitating effects on an individual, research has shown that there are factors, which, if present, may have a buffering effect.¹⁸⁹ Perhaps the most important buffer is individual personality.¹⁹⁰ What one person interprets as stressful may not be interpreted the same way by someone else. Every individual handles stress differently. Herein

184. *Id.* at 117, 476 S.E.2d at 413.

185. See *supra* notes 124-144 and accompanying text, see also *supra* notes 145-160 and accompanying text.

186. *Jordan*, 124 N.C. App. at 119, 476 S.E.2d at 414.

187. *Id.*, 476 S.E.2d at 414.

188. See, e.g., *Pulley v. City of Durham*, 121 N.C. App. 688, 468 S.E.2d 506 (1996) (The court seemed to ignore facts, such as the claimant's filing of bankruptcy, her husband's legal problems, and her mentally handicapped child.).

189. MADDI & KOBASA, *supra* note 63, at 24.

190. *Id.*

lies the problem with mental disability claims being found compensable under workers' compensation.

The courts have compensated mental disability claims as both occupational disease and as accidents arising out of and in the course of employment. Regardless of the theory asserted, it appears that under the present regime claimants more likely than not will recover. Is this the way the legislature intended the North Carolina Workers' Compensation Act to be interpreted? Arguably, no.

The purpose of workers' compensation has never been to replace general health insurance. To compensate mental disabilities as an occupational disease seems to make workers' compensation general psychological insurance. Since all jobs are stressful to a degree, all jobs place their employees at a greater risk than the general public to contract an emotional disability. Where is the line drawn? Should employers administer the Minnesota Multi-Phasic Personality Inventory psychological test along with drug testing in the next decade? Workers' compensation was designed to provide a remedy for those unable to work because they were hurt on the job. It was not designed to provide financial support for those whose personality is unsuited for the employment they chose.

As a general rule, mental disability claims, absent a physical injury, should not be compensable under the North Carolina Workers' Compensation Act. The Act should be amended to specifically and unequivocally bar such claims. This, admittedly draconian solution, would alleviate the necessity of the courts' interpreting the current Act. The amendment, though, should also provide two exceptions to the general rule.

The first exception would be for claims that result from a sudden stimulus. This exception would protect claimants such as Ms. Jordan,¹⁹¹ who have a mental disability as a result of a sudden occurrence. If physical disabilities are compensable due to a sudden, unexpected "accident," then mental claims under similar circumstances should be compensable as well. Other states¹⁹² have already implemented such a policy.

191. *Jordan*, 124 N.C. App. 112, 476 S.E.2d 410.

192. For example: Arizona: *Ariz. Rev. Stat. Ann.* § 23-1043.01(B) (West 1995); Illinois: *Pathfinder v. Industrial Comm'n*, 343 N.E.2d 913 (Ill. 1976); Tennessee: *Jose v. Equifax, Inc.*, 556 S.W.2d 82 (Tenn. 1977); Texas: *Bailey v. American Gen. Ins. Co.*, 279 S.W.2d 315 (Tex. 1955).

The second exception would be for claims that arise from stimuli, which even though gradual in nature, are sufficiently more damaging than those encountered in everyday employment. While several states have such a rule¹⁹³ the Supreme Court of Wisconsin has announced the most coherent test. In *School District v. ILHR Dept.*,¹⁹⁴ the court stated, "in order for a nontraumatically caused mental injury to be compensable in workers' compensation cases, the injury must have resulted from a situation of greater dimensions than the day-to-day mental stress and tension, which all employees experience."¹⁹⁵

These exceptions would require specific language allocating the burden of proof to the claimant, and excluding compensation for stress created by disciplinary actions or job termination. Only the individual knows the true source of his own stress¹⁹⁶ and sometimes not even the individual really knows. Equity and earlier case law require that the burden of proving that nonwork stresses are not the cause of the mental disability should fall on the claimant. Employees who are disciplined or terminated because of poor job performance should be barred from filing a Workers' Compensation claim. North Carolina is an employment at-will state and companies should not incur a penalty for demanding that an employee satisfactorily perform his job. Neither should employees who are laid off be able to file claims because companies are sometimes forced to downsize, whether due to financial difficulties or a decrease in market share. Claimants should be required to offer clear, convincing proof that work is the cause of the mental disability.

In conclusion, North Carolina's current Workers' Compensation Act does not specifically address mental disability claims. This leaves courts in the position of having to interpret the present law, a task that has resulted in the misapplication of the occupational disease requirements. It is imperative that the

193. For example: Arkansas: *Owens v. National Health Lab., Inc.* 648 S.W.2d 829 (Ark. 1983); Maine: *Townsend v. Maine Bureau of Pub. Safety*, 404 A.2d 1014 (Me. 1979); South Carolina: *Powell v. Vulcan Materials Co.*, 384 S.E.2d 725 (S.C. 1989); and Wisconsin: *Swiss Colony v. Department of ILHR*, 240 N.W.2d 128 (Wis. 1976).

194. 215 N.W.2d 373 (Wis. 1974).

195. *Id.* at 373.

196. See *Harvey v. Raleigh Police Dep't.*, 96 N.C. App. 28, 35, 384 S.E.2d 549, 553 (1989).

legislature amend the Act to reflect the proper manner of obtaining compensation for mental disability claims.

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