

The Mental-Mental Muddle and Work Comp in Oregon. II

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While most of the nation rises out of the economic recession, the state of Oregon seems to be lagging somewhat behind. Its workers' compensation system gives rather liberal benefits, and its costliness is one of the reasons sometimes given to explain why business seems to be staying away from this place of such natural beauty. The ongoing evolution of mental stress claims in Oregon provides a good example of the difficult interface between mental health and the law.

In the 1960s and the mid-1970s, Oregon courts were very wary of "mental-mental" claims, in which job stress causes a mental problem. Oregon did generally accept that stress could make a physical disease worse.

In a 1982 article entitled *The Mental-Mental Muddle and Work Comp in Oregon*, I discussed the rapid increase in successful mental stress claims in Oregon in the late 1970s and early 1980s.¹ This was attributed to increasing numbers of attorneys and psychiatrists and inadequate mental health insurance coverage. Terms such as "material contribution" and "aggravation" were being interpreted very broadly.

In my 1982 article, I wrote about the January 20, 1981 Oregon Supreme Court decision in *James v. SAIF* (State Accident Insurance Fund).² To review, Ms. James was a women in her thirties who had a history of treatment for chronic problems with anxiety and depression. In October 1976 she began work in a social agency as a counselor for the elderly poor. She had troubles getting along with her supervisor and also found her windowless office in a basement to be upsetting to her. She developed an almost phobic response to her job and was unable to continue in June 1977. In February 1980, the Oregon Court of Appeals agreed that her mental problems were compensable.³ In its landmark 1981 decision, the Oregon Supreme Court did not directly state that work-related mental problems should be covered under workers' compensation law. The court did point out that such difficulties seem to be more in the realm of occupational disease than accidental injury. As an occupational disease, a mental illness would be compensable only if it could be shown that it was

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caused by circumstances "to which an employee is not ordinarily subjected or exposed except during a period of regular employment." In the case of Ms. James, the court pointed out that the history indicated that she was sensitive to criticism both on and off the job. The Oregon Supreme Court sent this case back to the Oregon Court of Appeals to answer the fact question of whether this lady's illness was due primarily to her job circumstances or whether there were other outside factors also acting as causative agents here.

Current Developments

On October 22, 1982 the Oregon Court of Appeals answered the fact question posed to it in the *James* case.⁴ The Court once again pointed out that this lady's preexisting mental disorder was not a major issue. All that had to be shown was that her underlying pathology was exacerbated by the conditions of her employment. The Court pointed out that the occupational disease did not have to be caused or aggravated solely by the work conditions. What had to be shown was that the at work conditions were the "major contributing cause" of the disability when compared with the nonemployment conditions. In this case the Court reviewed the material and found that the work conditions did constitute the major contributing cause. The term major contributing cause had recently been used by the Oregon Court of Appeals in the case of an attorney whose practice had gotten him into some legal difficulties of his own due to questionable business tactics, and who had developed emotional stress symptoms as a result of these legal difficulties.⁵

This case law sequence seemed to narrow the focus somewhat. The key question asked of the examining psychiatrist now became whether the work difficulty was the major contributing cause or not. In practice the workers' compensation carrier would often present the psychiatrist with various investigative reports indicating that the employee had been exposed to many stresses off the job. In defense the attorney representing the worker would supply investigative material indicating the various abuses that had taken place on the job. In trying to define just what was meant by the major contributing cause, the question was usually asked whether the person would have become ill if a particular series of job events had not taken place. If the expert could demonstrate that the job events really were the crucial factors, then the claim was usually accepted. In fact most of these claims were debated so hotly that they ended up before a hearings officer. The usual fear expressed by the insurance companies was that mental illness is such a chronic problem that accepting a claim could become a very expensive and drawn out process.

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A particularly troublesome evaluation area involved individuals who were extremely sensitive to the job environment. For example, a chronic paranoid schizophrenic might be disciplined in a very matter of fact way by his/her boss and then might suffer a psychotic episode with delusions about the boss. By using the major contributing cause, or "but for" test, it might very well be said that the interaction with the boss caused the psychosis. Similarly, if the changing economy caused an office reorganization and an employee was not able to adapt, then it would be said that the reorganization was the major contributing cause. In essence the courts thought that they had helped to clarify, but in practice this did not necessarily follow.

The number of mental stress claims continued to increase, especially from those working in state agencies.⁶ For example, the State Accident Insurance Fund is a major workers' compensation carrier in Oregon. In 1977 it dealt with three mental stress claims from state employees. By 1980 the number was 23 and in 1983 it was 57. No convincing reason has been offered as to why state employees seem to have such a propensity for filing these claims. Some have said it is because they are more knowledgeable about the process. Others give explanations which are unflattering to the quality of state employees. At this point the reason is just not clear.

The workers' compensation system continues to be a major arena for employees to act out their grievances against management. If an employee feels unfairly treated, or essentially unloved, and if that employee then gets depressed or anxious about this, it has become more and more common to file a stress claim. Many employers feel somewhat helpless. There is enough concern about this that the 1983 Oregon Legislative Assembly dealt with two bills that would have severely restricted the circumstances under which mental illness is compensable by workers' compensation law.⁷ Essentially, these bills tried to restrict compensation to instances where there were sudden, traumatic events or some extraordinary stress, or some physical injury causing mental illness. Neither of these two bills went very far, but the issue is certainly not finished.

McGarrah v. SAIF

The next major chapter in this unfolding story was written by the Oregon Supreme Court on December 20, 1983, in the case of *McGarrah v. SAIF*.⁸ Mr. McGarrah was a deputy sheriff who was 40 years old at the time of his first hearing. His troubles apparently began when he wrote a memorandum to his superiors, pointing out that there was low morale in the department and asking that they do something about it. He singled out one particular officer as being a major cause of this low morale. This particular officer

subsequently became a captain and ended up as Deputy McGarrah's superior. Deputy McGarrah claimed that his new superior then singled him out and began putting a lot of pressure on him by excessive criticism and by manipulation of shift scheduling. Deputy McGarrah finally became so depressed that he could not function anymore and he went home with violent feelings of hostility toward his supervisor and never did return to police work. He was examined by a number of psychiatrists and they were all in agreement that he had symptoms of anxiety and depression which seemed to be the result of the perceived vendetta against him. There was no good evidence of any stress outside the job that was contributing to his condition. Available evidence indicated that actual harassment did take place and that the problem could not be blamed on Deputy McGarrah's misperception of events.

In discussing this case, the Oregon Supreme Court gave a very erudite and lengthy discussion of mental illness in the work place. The Court made it clear that mental symptoms are real and that they should not in any way be downgraded in importance. In referring to the *James* case, the court said that there they had merely set forth a rule to apply in mental stress cases. They did not think that they had really answered the major question of whether Oregon's Occupational Disease Statute provides compensation for mental disorders resulting from on the job stress.

The Court pointed out that some argue that mental stress claims could place an extreme economic burden on the workers' compensation system. The Court says that it is really not its job to respond to such fears. The legislature may eliminate all mental stress claims, if it wants to. It is the Court's job to interpret the statutes as they now exist, and they could find no legislative words or other evidence to indicate that the legislature wanted to rule out mental stress claims.

They once again made clear that the occupational disease need not be *solely* caused or aggravated by the work conditions. It was necessary, however, that the at work conditions, when compared with nonemployment exposure, be the major contributing cause of the disorder. The stressful conditions, however, must be real and not imaginary.

In expanding on this last point, the Court referred to the case of *Leary v. Pacific Northwest Bell*.⁹ Mr. Leary, age 54 at the time of the hearing, had worked for Pacific Northwest Bell for 33 years as a telephone repairman and installer. In late 1977 he began to experience various psychosomatic problems. He related these to changes at work, where there were a number of new supervisors who were younger than he. Psychiatric opinion indicated that he had a rather rigid personality with emotional and intellectual limitations. There was change in the work place and he was having trouble adapting to it. He blamed others for his own inadequacies. The problem

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seemed to be more in the way that he *perceived* things than in objective reality. The Oregon Supreme Court acknowledged how difficult it was to separate actual stressful conditions from perceived stressful conditions in situations like this. On the same December 20, 1983 date that they decided the *McGarrah* case, they remanded the *Leary* case to the Court of Appeals to apply their more objective standard. On April 18, 1984 the Court of Appeals agreed that *Leary* did not meet this standard.¹⁰

The Supreme Court clarified that this objective test for stress did not inject an element of fault into the law. They understand that a worker does not misperceive reality and become mentally ill due to his own fault. The main issue is whether there are some objective stress-producing circumstances as the major contributing cause or whether it is just the way the worker perceives things. The court further states that employers should try to avoid hiring stress-causing supervisors, just as safety measures are utilized to avoid accidents.

Summary

To summarize, in the state of Oregon at this time, mental illness caused by employment is covered by workers' compensation insurance. There have recently been some legislative attempts to seriously restrict this and there probably will be some more in the future. As the law now stands, the job stress must be the major contributing cause as measured against any off the job stress. The on the job events producing the stress must exist in reality. A stress emanating primarily from a worker's misperception or paranoid thinking does not constitute an acceptable causative agent. Obviously it is not always that easy to distinguish between on the job causes and off the job causes and objective stresses and merely perceived stresses. And what about the individual who has faulty perceptions which lead to actions that provoke an objective response?

As a psychiatrist, I am glad to see more recognition given to mental illness caused by the work place. I applaud the Oregon Supreme Court for pointing out that an organization has an obligation to somehow deal with stress-producing supervisors. I think we have to be on guard against those forces working through the legislature which try to minimize or deny the importance of mental illness.

At the same time, though, we have to try to enlighten rather than confuse. Our expertise is in diagnosing and treating, not in constructing legal terminology. In my evaluation of the *Leary* case, I tried to explain to the best of my ability just what was going on. The Oregon Supreme court quotes me as follows:

I have described a complex situation. Whether this is properly compensable under

workers' compensation law is impossible for me to say. It is more of an administrative law decision than a medical one.¹¹

I feel comfortable with this wording. It demonstrates, I think, some attempt at objectivity on my part. It shows that I am not simply a hired gun for whatever side is paying me, in this case the insurance company. At the same time, though, attorneys do press us to be more specific. As much as possible, I think that we should try to stay with the psychiatric situation. The legal terminology is constantly changing and it tends toward too simplistic answers to complicated behavior. The workers' compensation system is still struggling with the notions of the unconscious and personality structure and multicaused events. A major role for us here is to patiently educate and elucidate.

References

1. Colbach EM: The Mental-Mental Muddle and Work Comp in Oregon. *Bull Am Acad Psychiatry Law* 10, 1982
2. *James v. State Accident Insurance Fund*, 290 Or. 343, 624 P.2d 565 (1981)
3. *James v. State Accident Insurance Fund*, 44 Or App. 405, 605 P.2d 1368 (1980)
4. *State Accident Insurance Fund v. James*, 61 Or. App. 30, 33, 655 P.2d 620 (1982)
5. *State Accident Insurance Fund Corporation v. Gygi*, 55 Or. App. 570, 574, 639 P.2d 655, rev den 292 Or. 825 (1982)
6. Scheminske, Brad, SAIF attorney, A seminar on "Stress" Claims, February 27, 1984, Salem, OR
7. Senate Bills 258 and 259, Oregon Legislative Assembly, 1983 Regular Session
8. *McGarrah v. State Accident Insurance Fund Corporation*, 296 Or. 145, 675 P.2d 159 (1983)
9. *Leary v. Pacific Northwest Bell*, 296 Or. 139, 675 P.2d 157 (1983)
10. *Leary v. Pacific Northwest Bell*, 67 Or. App. 766, 680 P.2d 5 (1984)
11. *Op. cit.*, p. 3