

had only considered two of these factors (consistency and specialty) in weighing the opinions of Dr. Lace and Ms. Kaley. She disputed that Dr. Lace's area of specialty made his opinion more valuable than Ms. Kaley's, noting in particular that Ms. Kaley's relationship is of special relevance in the assessment of Mr. Dols' functional restrictions. In sum, Judge Erickson argued to reverse and remand to the district court with instructions to reconsider Mr. Dols' claim with proper weight given to Ms. Kaley's opinion.

#### Discussion

*Dols v. Saul* underscores the inherent complexities of disability assessment and the potential for conflicting opinions that must be weighed to make a final determination. The Eighth Circuit Court of Appeals ruled that substantial evidence supported the ALJ's decision to deny Mr. Dols' disability claim. In doing so, this opinion highlights that the mere presence of psychiatric symptoms is insufficient for a claim of disability-related benefits. Instead, the functional impairments that result from these symptoms must also meet statutory criteria required for eligibility.

In the present case, the ALJ considered Dr. Lace's expert testimony in opposition to that of the counselor Ms. Kaley's. Despite the fact that Ms. Kaley had known the claimant for several years, the ALJ granted greater weight to the expert's opinion. Although he did not directly examine Mr. Dols, Dr. Lace served the district court in providing his objective opinion that Mr. Dols did not meet eligibility criteria.

Even though the ALJ did not find any overt biases in Ms. Kaley's testimony, the court may have considered the conflicts of interest that often emerge when a treating clinician testifies in an expert role. In their seminal article, "On Wearing Two Hats," Dr. Strasburger and colleagues caution against dual role conflicts and the ethics, legal, and clinical pitfalls confronting a treating clinician who testifies on behalf of a patient (Strasburger L, Gutheil T, Brodsky A: On Wearing Two Hats: Role Conflict in Serving as Both Psychotherapist and Expert Witness. *Am J Psychiatry* 154:448-456, 1997). Treating psychiatrists and mental health practitioners alike may seek to limit their involvement in a patient's legal proceedings to provision of records only,

thereby avoiding the potential trappings of oral testimony.

## Judicial Determination of Workers' Compensation Eligibility

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### Minnesota Supreme Court Interprets Amendment to the Minnesota Workers' Compensation Act for Claims of PTSD

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In *Smith v. Carver County*, 931 N.W.2d 390 (Minn. 2019), the Minnesota Supreme Court considered whether a compensation judge's decision to deny benefits to a claimant was based on appropriate assessment under the state's amended workers' compensation law.

#### *Facts of the Case*

Chadd Smith worked as a deputy sheriff in Carver County, Minnesota, for almost ten years. Prior to his employment, he had never been diagnosed with posttraumatic stress disorder (PTSD), and was mentally and physically cleared for duty by a preemployment examination. In the course of his duties, he was exposed to several scenes of death and violence. These included responding to the suicide death of a high school classmate, helping recover a corpse that had been crushed by heavy construction machinery, and responding to a car fire where a passenger trapped inside was unable to be saved. Among the traumatic events that Mr. Smith witnessed, he identified two as particularly distressing: providing aid to a car accident victim who died on the scene, and responding to the choking death of an infant and later attending the infant's autopsy.

Mr. Smith began experiencing insomnia, night terrors, and digestive symptoms. He was evaluated

by multiple professionals who diagnosed him with a variety of mental ailments. One professional diagnosed PTSD in 2014. Mr. Smith resigned from his position in June 2016. In July 2016, Mr. Smith was evaluated by Dr. Michael Keller, a licensed psychologist. Dr. Keller observed Mr. Smith to be tense, anxious, tearful, and hyper-vigilant. Dr. Keller's interview, chart review, and psychological testing led him to diagnose PTSD, major depression, and anxiety disorder in Mr. Smith.

Mr. Smith submitted a claim for workers' compensation based on his diagnosis of PTSD. Carver County requested an independent evaluation which was conducted by licensed psychologist, Dr. Paul Arbisi. Dr. Arbisi elicited symptoms including hyper-vigilance, mood swings, and insomnia. Based on his evaluation, he diagnosed somatic symptom disorder and adjustment disorder in Mr. Smith, but not PTSD. The compensation judge ruled that Dr. Arbisi's report, which failed to make a diagnosis of PTSD, was the more persuasive of the two. He denied benefits to Mr. Smith, as PTSD was the only psychological diagnosis eligible for benefits under the authoritative statute, Minn. Stat. § 176.001-.862 (2018).

Mr. Smith appealed to the Workers' Compensation Court of Appeals (WCCA). The WCCA noted that the applicable statute requires any psychiatric or psychological diagnosis to be based on the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM). The WCCA said that the statute requires a compensation judge to not merely gauge the persuasiveness of a medical expert's opinion, but ensure that psychiatric or psychological diagnoses are based on DSM criteria.

The WCCA held that the compensation judge's decision to adopt Dr. Arbisi's opinion was improper because the judge did not explicitly determine whether Dr. Arbisi's opinion conformed to DSM-5 criteria. The WCCA reversed the compensation judge's decision in part, vacated in part, and remanded the case to the lower court. Carver County appealed to the Minnesota Supreme Court.

#### Ruling and Reasoning

The Supreme Court of Minnesota reviewed the workers' compensation statute *de novo*. The state's workers' compensation statute had been amended in 2013 to allow compensation for injured workers on the basis of a "mental impairment," specifically a

diagnosis of PTSD (Minn. Stat. § 176.011, subd. 15 (d) (2018)). Prior to this amendment, psychological or psychiatric conditions were not eligible for compensation. The WCCA had determined that the language of the statute required a compensation judge to ensure that any diagnosis offered by a licensed psychologist or psychiatrist conformed to the latest DSM criteria. The court disagreed and reinstated the compensation judge's decision. To interpret the statute, the court sought to establish the Minnesota legislature's intent when this amendment was passed.

The court reviewed the established role of compensation judges in assessing medical opinions, namely determining whether those opinions have "adequate foundation" or were, in other words, supported by the evidence. The court noted that in cases of competing expert opinions, assuming the judge finds that both have adequate foundation, the compensation judge rules based on the persuasiveness and credibility of the opinions. The court opined that the WCCA cannot reverse a compensation judge's decision unless it determines that an expert opinion accepted by the judge was "not supported by the evidence" (*Smith*, p 396).

The court determined that the Minnesota legislature did not intend to change the scope of a compensation judge's decision-making with its 2013 amendment. It stated that the WCCA's interpretation of the statute would require a compensation judge to "lay each expert's report on the desk next to the DSM-5 and assess whether the medical professional's opinion conformed with the precise wording of the DSM-5 as the compensation judge interprets those words" (*Smith*, p 397).

The court ruled that, instead, interpretation of clinical data and clinical decision-making should be deferred to licensed psychiatrists and psychologists when diagnosing PTSD. The court further highlighted disclaimers within the DSM-5 itself that it is to be used as a guide exclusively for clinical and research experts and argued that it is "not a checklist for judges" (*Smith*, p 398). The court therefore concluded that it would be outside of a judge's purview to disagree with a psychologist or psychiatrist about whether a diagnosis is based on the latest DSM criteria.

The court subsequently reviewed the opinions and depositions provided by Drs. Keller and Arbisi. The court determined that Dr. Arbisi relied on DSM-5

criteria to form his medical opinion and failed to find that Dr. Arbisi's diagnosis was "clearly erroneous." The court therefore concluded that the WCCA had no standing to reverse the compensation judge's ruling.

#### Discussion

In *Smith*, the Minnesota Supreme Court's opinion clarified the role of a compensation judge in legal proceedings in confirming an adequate factual basis of clinical opinions and ruling based solely on credibility and persuasiveness. The decision also underscores that clinical interpretation and decision-making fall within the domain of mental health experts, not judges.

The Minnesota legislature's 2013 amendment allowing for workers' compensation to PTSD diagnoses in employees will provide relief for those who meet the applicable diagnostic criteria. Prior to this amendment, mental disabilities were not eligible for workers' compensation. While adopting PTSD as a compensable illness is laudable, this case highlights residual imperfections in the state's workers' compensation law. For instance, in their evaluations, both Drs. Keller and Arbisi found that Mr. Smith was indeed experiencing disabling symptoms, including insomnia and emotional distress. But because Dr. Arbisi did not consider these symptoms to be consistent with the specific diagnosis of PTSD, Mr. Smith was determined to be ineligible for benefits.

In its ruling, the Minnesota Supreme Court highlighted the complexities of providing a psychiatric diagnosis. It further acknowledged that competing diagnoses submitted by opposing experts could each have an adequate foundation. Yet, under the current workers' compensation act in Minnesota, only a diagnosis of PTSD is eligible. Eligibility based merely on diagnosis rather than disability therefore introduces an arbitrary threshold that can be further addressed by the Minnesota legislature.

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### **Burden of Persuasion Requires Relevance for Funds for Mental Health Expert under the Federal Criminal Justice Act**

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In *United States v. Martinez*, 923 F.3d 806 (10th Cir. 2019), the Tenth Circuit Court of Appeals held that the district court's decision to deny the authorization of government funds to hire a forensic psychologist was not an abuse of the district court's discretion. The Tenth Circuit also affirmed the district court's decision that the defendant's mental health history was not relevant and, as a result, was inadmissible. The Tenth Circuit affirmed the conviction.

#### Facts of the Case

In July 2017, Christopher Lee Martinez was 27 years old when he responded to a personal advertisement posted in the "Casual Encounters" section of Craig's List by Special Agent Brent Metcalfe of the Wyoming Division of Criminal Investigation. Special Agent Metcalfe posed as a father soliciting a sexual encounter for his 12-year-old daughter while they visited Cheyenne during the Cheyenne Frontier Days festival. Mr. Martinez responded to the advertisement and engaged in online conversation with Special Agent Metcalfe, asking repeatedly if Special Agent Metcalfe was a "cop," as well as discussing possible sexual acts Mr. Martinez could engage in with the 12-year-old girl. When Mr. Martinez asked to send online messages directly to the girl, Special Agent Metcalfe assumed the daughter's identity in the online communications. Ultimately, Mr. Martinez agreed to meet at a motel to take the girl's virginity and bring a condom. When Mr. Metcalfe arrived, he was arrested in the motel parking lot and found in possession of the phone used in the online communications and a condom. Mr. Martinez admitted to sending the messages but claimed his intention was to call the police to turn in the father.

In the pretrial phase, Mr. Martinez's attorney requested that the court appoint a forensic psychologist at government expense under the Criminal Justice Act of 1964 (CJA) (18 U.S.C. § 3006A