

causing emotional harm to others” (*Boivin*, p 396). The duty in NIED only arises out of specific circumstances.

The court ruled that Somatex had a duty to act so as to avoid causing physical harm to others, and that this duty subjects the company to “liability for negligent conduct that causes physical harm” (citing Restatement (Third) of Torts: Liability for Physical and Emotional Harm §6, cmt. f (Am. L. Inst. 2010)). The court noted that what was lacking in Ms. Boivin’s submission opposing Somatex’s summary judgment motion was evidence that Somatex had caused her physical injury, for the purposes of her claim that Somatex breached its general negligence duty. The court found that Ms. Boivin’s claims as to the physical effects of PTSD did not produce “a genuine dispute of material fact as to a physical injury suffered by” Ms. Boivin (*Boivin*, p 397). The court said that Ms. Boivin had relied not on specific facts drawn from pleadings, depositions, or affidavits but instead on “conclusory allegations” (*Boivin*, p 397).

The court found that although Ms. Boivin had adequately argued that she experienced emotional distress as a result of the incident, she had not provided evidence that she qualified for the limited conditions required for a NIED claim. She did not have a close relationship with the employee who died and did not have a special relationship with Somatex. These circumstances denote an important difference between general negligence and NIED claims. With this, the court ruled that the lower court did not err, under either legal theory offered by Ms. Boivin, in determining that Somatex was entitled to judgment as a matter of law.

#### Discussion

In *Boivin*, Ms. Boivin attempted to offer her symptoms of PTSD as a qualifying physical injury under the law. But, the appellate court would not consider physical symptoms, only physical injury. Certainly her assertion that PTSD is a “physical disorder” is demonstrable, at least in the sense of it being a psychosomatic illness; anxiety is a core symptom of PTSD, and the physical manifestations of anxiety are well known. Under the state’s law, however, a symptom is not, in and of itself, an injury. That is not to say that PTSD does not cause, longitudinally, physical “injury,” at least as a somatic sequelae of this mental disorder. Chronic PTSD can cause significant physical (i.e., medical) injury (see Beristianos MH, *et al.*

PTSD and risk of incident cardiovascular disease in aging veterans. *Am J Geriatr Psychiatry*. 2016; 24 (3):192-200). But most of the medical effects of PTSD take years to develop, and there is no way for courts to know whether a particular plaintiff will develop PTSD-related medical disease or how long that may take. The case also demonstrates that evaluating forensic psychiatrists should be aware of jurisdictional variations in the definitions used in legal claims.

## Posttraumatic Stress Disorder as Compensable Occupational Disease

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### State Supreme Court Reviews Whether Appellee’s Posttraumatic Stress Disorder Qualifies as a Compensable Occupational Disease

DOI:10.29158/JAAPL.230067LI-23

**Key words:** compensable occupational disease; Minnesota statutes; PTSD; statutory presumption; workers compensation

In *Juntunen v. Carlton County*, 982 N.W.2d 729 (Minn. 2022), the Supreme Court of Minnesota considered questions of first impression and ruled that a county deputy sheriff diagnosed with posttraumatic stress disorder (PTSD) need only demonstrate a diagnosis of the condition in order to satisfy a statutory presumption of occupational disease for workers’ compensation benefits.

#### Facts of the Case

Douglas Juntunen was hired as a deputy sheriff in August 2001. While on the job, two specific events led to Mr. Juntunen’s subsequent treatment. In the first, Mr. Juntunen responded to an incident in which a 16-year-old boy died after severe head trauma in a car accident; this event was particularly affecting because Mr. Juntunen’s son had recently obtained his

driver's license. In a second incident, Mr. Juntunen responded to a domestic violence call involving a suspect he had known for much of his life. Mr. Juntunen witnessed the suspect die by suicide by putting a gun in his mouth and pulling the trigger.

After a former partner died by suicide in 2016, Mr. Juntunen was referred to his workplace employee assistance program (EAP). He was assigned to a counselor who met with him four times over the next three months. After this initial period of treatment, which included discussions concerning his work-related trauma, he did not return for treatment for about two years. In 2018, Mr. Juntunen returned for additional sessions with his EAP counselor; he restarted treatment because he had become increasingly anxious over just the idea of preparing to go to work. The counselor used eye movement desensitization and reprocessing therapy to treat Mr. Juntunen's trauma.

In August 2019, at his attorney's request, Mr. Juntunen met with Dr. Michael Keller, a licensed psychologist, for a forensic evaluation. Dr. Keller administered several diagnostic tests, including the PTSD Checklist for Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), the Clinician-Administered PTSD Scale for DSM-5-Past Month (CAPS-5), and the MMPI-Second Edition-Restructured Format (MMPI-2-RF). He also interviewed Mr. Juntunen concerning his symptoms over the previous 30 days. Dr. Keller diagnosed Mr. Juntunen with PTSD, major depressive disorder, and anxiety disorder. In his report, Dr. Keller opined that Mr. Juntunen's condition was likely to persist for "not less than 1-2 years, and maybe [sic] lifetime in nature" (*Juntunen*, p 735). The following day, Mr. Juntunen informed his supervisors about his diagnoses; he was placed on leave. The County filed a First Report of Injury, noting the date of injury as August 20, 2019. The County, through Minnesota Counties Intergovernmental Trust, denied primary liability for Mr. Juntunen's injury.

In February 2020, Mr. Juntunen filed a claim petition which challenged the county's denial of responsibility and sought temporary total and permanent partial disability benefits. The County again denied the claim and then appointed Dr. Paul Arbisi, a psychologist, to perform a psychological evaluation. In July 2020, Dr. Arbisi reviewed records from the EAP counselor, as well as those of Dr. Keller, and Mr. Juntunen's primary care physician. He administered the CAPS-5 and MMPI-2-RF tests.

In September 2020, Dr. Arbisi's report opined that Mr. Juntunen had major depressive disorder, but that it was not related to his work with the county. Dr. Arbisi did not believe that Mr. Juntunen exhibited current indications of PTSD, because he did not report current PTSD symptoms. Dr. Arbisi had only focused on the preceding 30 days, and he allowed that it was possible that Mr. Juntunen did once fulfill the criteria for PTSD.

After a hearing, a compensation judge denied all benefits to Mr. Juntunen. The judge concluded that based on the evidence, Mr. Juntunen had not sustained PTSD as a result of his employment. The judge noted that "although the Workers' Compensation Act provides that PTSD in certain categories of workers is presumed to be causally related to their work, the employee has the burden of proving that he or she has the occupational disease of PTSD" to trigger the statutory presumption (*Juntunen*, p 736). The judge found that Dr. Arbisi's report and opinion were "more persuasive" than those of Dr. Keller. Mr. Juntunen appealed.

The Workers Compensation Court of Appeals (WCCA) reversed and remanded the lower court's decision, citing disagreement with the compensation judge's conclusion that the presumption does not apply unless the judge makes the finding that the employee has PTSD. The presumption of PTSD applied in this case because Mr. Juntunen presented with a PTSD diagnosis from Dr. Keller. The WCCA held that the county failed to rebut the presumption that Mr. Juntunen's diagnosis was a compensable occupational disease and that the county did not offer evidence that at the time of the disablement Mr. Juntunen did not in fact have PTSD. The WCCA held that Dr. Arbisi failed to specify whether Mr. Juntunen had a diagnosis of PTSD in September 2019. The County then petitioned for a writ of *certiorari*, which was granted.

#### Ruling and Reasoning

The Supreme Court of Minnesota noted that the parties disagreed about when the presumption of PTSD, per Minn. Stat. § 176.011 (15)(e) (2022), was to be applied. The state supreme court noted that the question was whether the presumption was met when the employee presented a PTSD diagnosis, or only after legal determination had been made that the employee's PTSD diagnosis was more credible than the opposing expert opinion proffered by the employer. The court thus asserted that this was a question of statutory interpretation to be reviewed *de*

*novo*. The court detailed that a mental impairment was a compensable occupational disease when it arose in the course of employment, and that the employee had the burden to prove the elements of a workers' compensation claim, including that the employee had an occupational disease. The court noted that the PTSD presumption was invoked when one is employed in one of the enumerated occupations, has been diagnosed with PTSD by a licensed psychologist or psychiatrist, and does not have a previous diagnosis of PTSD. The county had also argued that other presumptions in Minn. Stat. § 176.011 (15) required employees to prove that they experienced a designated disease before the presumption would apply. But the supreme court noted that this section of the statute only mentioned medical diseases and did not use the word "diagnosis." The court said that different meanings are presumed when the legislature uses different words, here "diagnosis" versus "disease." Accordingly, the court ruled that the employee only needed to present a diagnosis for the presumption to apply, and that the statute did not require "such a diagnosis to be more credible or persuasive than" a competing diagnosis offered by the employer (*Juntunen*, p 740). The court upheld the WCCA's finding that the factors to satisfy the presumption were met.

The court also addressed the WCCA's finding that to rebut the presumption, the employer must present significant proof to the contrary. The employer argued that Dr. Arbisi's report was adequate to rebut the presumption, but the WCCA had held that because Dr. Arbisi's report did not specifically address whether the employee had a diagnosis of PTSD in September 2019, it failed to rebut the presumption. The supreme court agreed with this analysis and noted that Dr. Arbisi did not evaluate Mr. Juntunen until 10 months after Mr. Juntunen notified the county of the diagnosis. The court upheld the WCCA's opinion, and the case was remanded to the compensation judge for benefit determination.

#### Discussion

In *Juntunen*, a concurring opinion raised concerns over the variability of PTSD symptoms over time. That jurist did not disagree with the majority opinion findings but was concerned about the state's policy design as to the economics of providing long-term benefits for a disorder with such a variable course.

PTSD is often alleged in workers' compensation claims, and it is helpful for forensic psychiatrists to

have an understanding of the literature and research in this area, as well as diagnostic tools. One recent review, focusing on the long-term stability of the PTSD diagnosis, indicated that after a subject has experienced symptoms for at least three months, the subject is likely to experience a chronic course (Diamond PR, *et al.* Change in prevalence of posttraumatic stress disorder in the two years following trauma: A meta-analytic study. *Eur J Psychotraumatol.* 2022; 13(1):2066456.) But, review articles focusing on remission rates and point prevalence indicate wide variability as to long-term remission rates (6–92 %), as well as symptom intensity at any given time (see Steinert C, *et al.* The course of PTSD in naturalistic long-term studies: High variability of outcomes. A systematic review. *Nord J Psychiatry.* 2015; 69(7):483-96 and Marmar CR, *et al.* Course of posttraumatic stress disorder 40 years after the Vietnam War: Findings from the National Vietnam Veterans Longitudinal Study. *JAMA Psychiatry.* 2015; 72(9):875-81).

The 10-month gap between the examinations in *Juntunen* illustrates the fact that different findings can result when evaluations occur at different times, even when the evaluations are completed in a purely clinical context. For the present, PTSD will continue to be a challenging entity in both medicolegal and clinical contexts.

## Prolonged Solitary Confinement

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### Federal Circuit Court Considers Whether a Prisoner's Conditions of Confinement Claim Substantiates an Eighth Amendment Rights Violation

DOI:10.29158/JAAPL.230067L2-23

**Key words:** conditions of confinement claim; cruel and unusual punishment; culpable state of mind; qualified immunity; solitary confinement

In *Clark v. Coupe*, 55 F.4th 167 (3d Cir. 2022), the Third Circuit Court of Appeals found that Angelo Clark's allegations gave rise to a plausible claim that the circumstances around his seven-month