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# Mind Games: Understanding Mental Injuries Following Recent Changes to the Minnesota Workers' Compensation Act

Thomas W. Atchison

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## MIND GAMES: UNDERSTANDING MENTAL INJURIES FOLLOWING RECENT CHANGES TO THE MINNESOTA WORKERS' COMPENSATION ACT

Thomas W. Atchison<sup>†</sup>

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*“[T]here are known knowns; there are things we know we know. We also know there are known unknowns; that is to say we know there are some things we do not know. But there are also unknown unknowns—the ones we don’t know we don’t know.”*<sup>1</sup>

*—Donald Rumsfeld*

### I. INTRODUCTION

For injuries occurring on or after October 1, 2013, “mental-mental”<sup>2</sup> claims have become compensable workers’ compensation

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<sup>†</sup> Mr. Atchison is an associate attorney with Heacox, Hartman, Koshmrl, Cosgriff & Johnson, P.A. Mr. Atchison joined the firm in February 2015 and his practice involves defending employers and insurers in workers’ compensation matters. Mr. Atchison is a graduate of the University of Minnesota, BA, and William Mitchell College of Law, JD.

1. Sec’y of Def. Donald H. Rumsfeld, News Briefing of the Department of Defense (Feb. 12, 2002), *available at* <http://www.defense.gov/transcripts/transcript.aspx?transcriptid=2636>.

2. “Mental-mental” injuries are defined as mental injuries caused by mental stimulus. *See, e.g.,* *Frame v. Resort Serv., Inc.*, 593 S.E.2d 491, 495 (“A mental-mental injury is a purely mental injury resulting from emotional stimuli.” (citing *Shealy v. Aiken Cnty.*, 535 S.E.2d 438, 442 (2000))); James M. Inman, Note, *Where Are You Hurt? Kentucky Redefines Workers’ Compensation Injury in a Post-Traumatic Stress Disorder World*, 96 Ky. L.J. 465, 474 (2008) (defining mental-mental workers’ compensation cases as those “where a mental stimulus causes a mental or nervous

injuries in Minnesota.<sup>3</sup> In light of this change, many employers, insurers, and the attorneys who represented them have become concerned about how the new law might increase expenses and exposure associated with handling and defending those claims. While the added expense is a significant concern, many clients are just as worried about the scope of the new law. These changes give employers, insurers, and the attorneys who represent them great pause about the future of workers' compensation law in Minnesota: Will having a bad day at work now be a compensable workers' compensation claim? What about anxiety associated with a particularly stressful day or work environment? Employers and insurers want to know where the line will be drawn between normal, unavoidable stress and legitimate, work-related mental injuries.

The statutory changes, however, are by no means radical, nor were the changes unexpected. To begin, the changes are narrow, limiting compensability to diagnoses of post-traumatic stress disorder (PTSD).<sup>4</sup> Moreover, recent decisions from the workers' compensation courts have indicated that the old law completely banning mental-mental injuries was based on an outdated understanding of mental impairments and should be reexamined.<sup>5</sup> Understanding the statutory changes, the reasoning behind the changes, and the limitations within the new law will allow attorneys practicing in the area of workers' compensation to advise clients on compensability of this new category of injuries, particularly attorneys who practice defense work.

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injury . . .").

3. See MINN. STAT. § 176.011, subdiv. 16 (2014).

4. *Id.* § 176.011, subdiv. 15(d).

5. See, e.g., Craig B. Nichols, *Work-Related Mental Injuries: Minnesota's Compensability Standards*, 22 HAMLINE L. REV. 259, 261 (1998) (explaining that, under contemporaneous Minnesota workers' compensation law, the mental injuries needed to be related to a physical injury in order to be considered compensable by a court); Adam Tucker, Note, *A Matter of Fairness: How Denying Mental-Mental Claims Frustrates the Central Purpose of Workers' Compensation Law*, 31 J. LEGAL MED. 467 (2010) (discussing the development of mental-mental claims in American jurisprudence and the policy obstacles preventing full recognition of mental impairments as compensable injuries).

## II. THE *LOCKWOOD* ERA

For years, mental-mental injuries were non-compensable workers' compensation claims in Minnesota.<sup>6</sup> Furthermore, the bar on mental-mental claims seemed to be absolute.<sup>7</sup> However, as mental impairments have become less stigmatized, the understanding of mental injuries has grown. Gone is the outdated notion that a mental injury alone is not an actual or compensable injury. As evidenced in *Dodds v. Red Lake School District IDS #38*, Minnesota workers' compensation law has not been immune from these developments.<sup>8</sup> Additionally, this evolved understanding of mental injuries was recently codified into law.<sup>9</sup>

In 1981, Minnesota first considered the compensability of mental-mental injuries in *Lockwood v. Independent School District No. 877*.<sup>10</sup> Ronald Lockwood, a high school principal, claimed a work-related manic-depressive disorder.<sup>11</sup> Over a three-year period, he alleged that his job duties expanded significantly, resulting in increased nervousness and an "inability to control his temper," which he took out on the students.<sup>12</sup> He eventually took an extended medical leave of absence and began to see a psychiatrist.<sup>13</sup>

At the workers' compensation hearing, the treating psychiatrist testified that, while manic-depressive disorder requires a genetic predisposition, "stress triggers the biochemical reaction causing the disorder."<sup>14</sup> He opined that "the stress of Lockwood's job caused his mental disorder."<sup>15</sup> Based on this testimony, both the compensation court and the Workers' Compensation Court of Appeals (WCCA)

6. See *Lockwood v. Indep. Sch. Dist. No. 877*, 312 N.W.2d 924, 926 (Minn. 1981) (holding that Minnesota's workers' compensation statute did not allow compensation for purely mental injuries).

7. See *id.* ("We are unwilling . . . to construe our statute as affording workers' compensation coverage for mental disability caused by work-related stress without physical trauma because we are unable to determine that the legislature ever intended to provide such coverage.").

8. *Dodds v. Red Lake Sch. Dist. IDS # 38*, No. 9588989 (Minn. Office Admin. Hearings Feb. 27, 2009) (findings and order).

9. See MINN. STAT. § 176.011, subdiv. 16.

10. *Lockwood*, 312 N.W.2d 924.

11. *Id.* at 924–25.

12. *Id.*

13. *Id.* at 925.

14. *Id.*

15. *Id.*

held that Lockwood's manic-depressive disorder "arose out of and in the course of his employment" and awarded benefits.<sup>16</sup>

The Minnesota Supreme Court reversed the WCCA.<sup>17</sup> In its decision, the court recognized three categories of mental injury claims.<sup>18</sup> The first category is the "physical-mental" injury, where a work-related physical injury causes a mental impairment.<sup>19</sup> The second is the "mental-physical" injury, where a work-related mental stress causes a physical injury.<sup>20</sup> Workers' compensation coverage had already been extended to these types of injuries.<sup>21</sup> The third category, the "mental-mental" injury, involves a mental injury caused by work-related mental stimulus and had never been addressed in Minnesota.<sup>22</sup> While a majority of other jurisdictions had already held mental-mental injuries to be compensable, the Minnesota Supreme Court in *Lockwood* was unwilling to extend coverage to such a claim absent a clearly expressed legislative intent to do so.<sup>23</sup> In effect, the court concluded that mental-mental injuries were outside the scope of the Minnesota Workers' Compensation Act, and therefore, were not compensable injuries.<sup>24</sup> For many years after *Lockwood*, a worker who had a mental impairment but lacked the corresponding physical injury was ineligible for workers' compensation benefits.

So began the *Lockwood* Era, wherein all mental-mental claims were denied workers' compensation coverage. In 1987, the Minnesota Supreme Court was offered the opportunity to overrule

16. *Id.*

17. *Id.* at 927.

18. *See id.* at 926.

19. *Id.* (citing *Hartman v. Cold Spring Granite Co.*, 243 Minn. 264, 67 N.W.2d 656 (1954)); *see also* Natalie D. Riley, *Mental-Mental Claims—Placing Limitations on Recovery Under Workers' Compensation for Day-to-Day Frustrations*, 65 MO. L. REV. 1023, 1030–31 (2000) (defining "physical-mental claims" as those that "involve injuries that lead to disabling psychological repercussions").

20. *Lockwood*, 312 N.W.2d at 926 (citing *Aker v. State, Dep't of Natural Res.*, 282 N.W.2d 533 (Minn. 1979)); *see also* Riley, *supra* note 19, at 1031 (defining "mental-physical claims" as those that "involve mental stimuli that result in physical disabilities").

21. *See Aker*, 282 N.W.2d at 536 (providing compensation to the widow of a man who suffered a heart attack caused by work-related stress); *Hartman*, 243 Minn. at 278, 67 N.W.2d at 664 (awarding compensation to a man who developed neurosis as a result of injuries sustained while working).

22. *Lockwood*, 312 N.W.2d at 926–27.

23. *Id.* at 927.

24. *Id.*

*Lockwood* in *Johnson v. Paul's Auto & Truck Sales, Inc.*<sup>25</sup> The court declined to do so because, despite a major revision of the Workers' Compensation Act in 1983 and subsequent legislative sessions, "the legislature ha[d] given no indication of an intent to make [mental-mental injuries] compensable."<sup>26</sup> *Johnson*, in fact, slightly expanded the *Lockwood* doctrine, holding that the mere "presence of physical symptoms"<sup>27</sup> (facial tics, hand tremors, profuse sweating), which are manifestations of the mental disorder, do not automatically convert a mental-mental injury into a compensable mental-physical claim.<sup>28</sup> Following *Lockwood* and *Johnson*, the bar on mental-mental claims in the *Lockwood* Era was seemingly absolute.<sup>29</sup>

However, in recent years, the steadfast authority of *Lockwood* has been questioned. In February 2009, a workers' compensation administrative law judge heard *Dodds v. Red Lake School District IDS #38*, which began the erosion of the *Lockwood* doctrine.<sup>30</sup> Michelle Dodds was a teacher at Red Lake High School when a sixteen-year-old student broke into her classroom and fatally shot five students and another teacher before turning the gun on himself.<sup>31</sup> There was no dispute that as a result of the incident, Dodds developed severe PTSD, anxiety, and depression.<sup>32</sup> Dodds herself was physically unharmed during the classroom violence.<sup>33</sup> The question was whether her mental injuries resulted in a physical injury and therefore, a compensable workers' compensation claim.<sup>34</sup> Based on expert testimony, the judge found that because of the extreme mental stress and ongoing PTSD, the circuitry of Dodds' brain had been altered with abnormal chemical and electrical impulses, and

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25. *Johnson v. Paul's Auto & Truck Sales, Inc.*, 409 N.W.2d 506 (Minn. 1987).

26. *Id.* at 509. ("[The injured] [e]mployee . . . suggests that *Lockwood* be overruled. This we decline to do.")

27. *Id.*

28. *See id.* at 508–09.

29. *See, e.g., Jaakola v. Olympic Steel, Inc.*, 56 W.C.D. 238 (Minn. WCCA Nov. 19, 1996) (denying worker's claim for alleged mental injury after witnessing death of a co-worker because plaintiff lacked requisite physical injury), *aff'd*, 560 N.W.2d 92 (Minn. 1997).

30. *Dodds v. Red Lake Sch. Dist. IDS # 38*, No. 9588989 (Minn. Office Admin. Hearings Feb. 27, 2009) (findings and order).

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

these alterations were permanent.<sup>35</sup> In other words, the PTSD Dodds suffered from resulted in a physical injury to her brain, rendering her claim compensable as a mental-physical injury.

The *Dodds* decision gave the defense attorneys great pause: had clever plaintiffs' attorneys figured out how to get around the physical injury requirement set forth in *Lockwood*? While mental-mental injuries were still non-compensable, suddenly there was medical support for the theory that PTSD was a compensable mental-physical injury.<sup>36</sup> The WCCA, however, never heard the case because it settled while on appeal and before an appellate decision was issued. While *Dodds* did not create precedential case law opening the mental-mental door that *Lockwood* had previously slammed shut, it did reflect a more contemporary take on mental injuries. In *Dodds*, mental injuries were not viewed simply as hurt feelings. Rather, mental impairments were given a sort of legitimacy previously reserved only for physical injuries. Like a fractured spine or broken leg, certain mental injuries have serious, lasting effects that are not made better by toughening up. With the right set of facts, it seems entirely possible post-*Dodds* that an appellate court could find mental-mental injuries compensable.

Recently, the Minnesota Supreme Court was given its turn to consider the changing understanding of mental-mental claims.<sup>37</sup> In *Schuetz v. City of Hutchinson*, Scott Schuetz, a police officer, responded to an emergency call at the local high school involving a child with whom he was personally acquainted.<sup>38</sup> She had fallen out of a truck.<sup>39</sup> Resuscitation attempts failed and she was pronounced dead at the hospital.<sup>40</sup> Three years later, Schuetz "was diagnosed with PTSD" related to the incident.<sup>41</sup>

At the workers' compensation hearing, conflicting medical evidence was presented from a psychiatrist, a neuropsychologist, and a clinical psychologist regarding whether PTSD was a mental disability that resulted in a physical injury to the brain, as was argued in *Dodds*.<sup>42</sup> The compensation judge found PTSD to

35. *Id.*

36. *Id.*

37. *See Schuetz v. City of Hutchinson*, 843 N.W.2d 233 (Minn. 2014).

38. *See id.* at 235.

39. *Id.*

40. *See id.* at 235 n.1.

41. *See id.* at 236.

42. *See id.*; *see also Dodds v. Red Lake Sch. Dist.* IDS # 38, No. 9588989 (Minn.

“represent[] a mental disability” that is not compensable under Minnesota workers’ compensation law.<sup>43</sup> Schuette appealed and the WCCA affirmed.<sup>44</sup> The opinion from the WCCA, however, strongly suggested that PTSD should be a compensable injury.<sup>45</sup> The court referenced *Larson’s Workers’ Compensation Law*, noting that “modern medical opinion no longer distinguishes between physical injuries and nervous or mental injuries.”<sup>46</sup> The court further stated, “Notwithstanding the fact that *Lockwood* seems to be an increasingly isolated position in workers’ compensation law, it remains the standard in Minnesota and this court reviews the present appeal in accordance with that decision.”<sup>47</sup>

Ultimately, the Minnesota Supreme Court affirmed the WCCA, noting that mental stimulus that results in a mental injury is not compensable under *Lockwood*.<sup>48</sup> The court concluded that the compensation judge’s finding that PTSD did not result in a physical injury was “not manifestly contrary to the evidence.”<sup>49</sup> Additionally, the court declined to overturn *Lockwood*, implying that such a change is a policy determination to be considered by the legislature.<sup>50</sup>

While the *Schuette* decision continues the black-letter law of *Lockwood*, the appellate decision, particularly from the WCCA, suggests that the policy considerations underlying its legal conclusions—namely, that mental injuries alone are outside the scope of compensable workers’ compensation claims—may be flawed. Importantly, the Minnesota state legislature shared this concern.<sup>51</sup>

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Office Admin. Hearings Feb. 27, 2009) (findings and order).

43. *Schuette*, 843 N.W.2d at 236.

44. *Id.*

45. *Schuette v. City of Hutchinson*, WC12-5486 (Minn. WCCA Apr. 18, 2013), available at <http://mn.gov/workcomp/2013/Schuette-04-18-13.html>.

46. *Id.* (citing 4 LEX K. LARSON & ARTHUR LARSON, *LARSON’S WORKERS’ COMPENSATION LAW* § 56.04(1) (2013)).

47. *Id.*

48. *Schuette*, 843 N.W.2d at 237.

49. *Id.* at 238.

50. *Id.* at 238–39.

51. See MINN. STAT. § 176.011, subdivs. 15(d), 16 (2014).



### III. LEGISLATIVE CHANGES ENACTED MAY 2013

On May 16, 2013, Governor Dayton signed a bill into law that included significant changes to the law regarding mental-mental injuries.<sup>52</sup> Specifically, Minnesota Statutes section 176.011, subdivision 16, was amended to read:

“Personal injury” means any mental impairment as defined in subdivision 15, paragraph (d), or physical injury arising out of and in the course of employment . . . . Physical stimulus resulting in mental injury and mental stimulus resulting in physical injury shall remain compensable. Mental impairment is not considered a personal injury if it results from a disciplinary action, work evaluation, job transfer, layoff, demotion, promotion, termination, retirement, or similar action taken in good faith by the employer.<sup>53</sup>

Section 176.011, subdivision 15, paragraph (d) now reads: For the purposes of this chapter, “mental impairment” means a diagnosis of post-traumatic stress disorder by a licensed psychiatrist or psychologist. For the purpose of this chapter, “post-traumatic stress disorder” means the condition as described in the most recently published edition of the Diagnostic and Statistical Manual of Mental Disorders by the American Psychiatric Association.<sup>54</sup>

Similar changes were made to the definition of “occupational disease.”<sup>55</sup> As most employees, employers, insurers, and defense attorneys know, this dramatic alteration to the definition of personal injury and occupational disease will change the course of workers’ compensation practice in Minnesota. Understanding the new law and anticipating its effects will help attorneys practicing workers’ compensation in Minnesota properly defend mental-mental injuries.

### IV. THE GOOD, THE BAD, AND THE UNKNOWN

Naturally, there are a lot of concerns surrounding the new law, particularly for defense attorneys. Undoubtedly, there will be an

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52. *See id.*

53. *Id.* § 176.011, subdiv. 16.

54. *Id.* § 176.011, subdiv. 15(d).

55. *See id.* § 176.011, subdiv. 15(a).

increase in the number of claims filed. This makes sense, as coverage has been extended to a type of injury previously barred. Beyond the simple increase in claims, employers and insurers may also have concerns about the costs associated with defending these new claims. For example, just as most claims involving a physical injury require an independent medical examination, mental-mental claims will likely require an independent psychological examination.

There may also be a deluge of initial “frivolous” claims, which will test the boundaries of the new law by alleging mental injuries that do not necessarily rise to the level of PTSD. These claims may include work-related depression, anxiety, or humiliation resulting from minor events, rather than exposure to traumatic events. While these boundary-pushing claims may ultimately be dismissed, they will have to be thoroughly and competently defended. This is particularly true for the next few years, as the new law finds its footing and the judicial parameters are framed. Defense firms may also have to place added focus on employment law, or hire outside counsel, as there will likely also be claims testing the limitations of the exclusion for good faith actions taken by the employer.

There are also problems with the way the new law defines PTSD. As indicated, Minnesota Statutes section 176.011, subdivision 15 makes the “most recently published edition” of the American Psychiatric Association’s *Diagnostic and Statistical Manual of Mental Disorders (DSM)* the defining authority.<sup>56</sup> The fifth edition of the *DSM (DSM-V)* was just published on May 18, 2013, two days after Governor Dayton signed the new law into effect.<sup>57</sup> And, as if on cue, it contained major revisions to the definition of PTSD.<sup>58</sup> The change most relevant to the field of workers’ compensation was the addition of PTSD that results from “repeated or extreme exposure to aversive details of the traumatic events(s) . . . .”<sup>59</sup> The *DSM-V*

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56. *Id.* § 176.011, subdiv. 15(d) (“For the purposes of this chapter, ‘post-traumatic stress disorder’ means the condition as described in the most recently published edition of the Diagnostic and Statistical Manual of Mental Disorders by the American Psychiatric Association.”). See generally *DSM*, AM. PSYCHIATRIC ASS’N, <http://www.psychiatry.org/practice/dsm> (last visited Apr. 24, 2015).

57. See Am. Psychiatric Ass’n, *DSM-5 Overview: The Future Manual*, DSM-5 DEV., <http://www.dsm5.org/about/Pages/DSMVOverview.aspx> (last visited Apr. 24, 2015).

58. *Id.*

59. AM. PSYCHIATRIC ASS’N, *DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS* 271 (5th ed. 2013).

provides examples such as first responders collecting human remains, or police officers repeatedly exposed to details of child abuse.<sup>60</sup> In essence, the *DSM-V* provides for *Gillette*-type<sup>61</sup> PTSD claims.<sup>62</sup> While the addition of the *Gillette*-type PTSD claim provides clarity for defense lawyers who wondered if repeated exposure to small-scale traumatic events would be covered, it might result in an increase in compensable injuries.

Unlike previous versions, the *DSM-V* does not require intense fear, helplessness or horror in response to the traumatic event.<sup>63</sup> Instead, the focus is on symptoms and behavior beginning after the traumatic event occurs.<sup>64</sup> The removal of intense fear, helplessness, or horror shifts the focus from the event that caused PTSD to the subsequent reaction, which should also concern defense lawyers. Disproving the traumatic nature of an event is far less abstract and expensive than disproving an individual's emotional reaction to that event.

Another concern regarding the definition of PTSD includes the inherent problems in using a singular, evolving source to define PTSD. First, and perhaps foremost, by using the "most recent" *DSM* to define PTSD, the Minnesota legislature has built a degree of uncertainty into the law. While the *DSM-V* was published in May 2013,<sup>65</sup> and a new version of the *DSM* will not likely be published for many years, the next edition could feature an even broader, more expansive definition of PTSD. As discussed, the understanding of mental health issues is, by its very nature, a progressive science. As mental health problems become more accepted and as the science surrounding the diagnoses becomes more refined, the definitions associated with mental impairments expand to include more symptoms and triggers. Because of these definitional expansions, perhaps even having a bad day at work could, one day, constitute a compensable injury. At this point, however, it is merely speculation.

60. *Id.*

61. *See Gillette v. Harold, Inc.*, 257 Minn. 313, 101 N.W.2d 200 (1960) "*Gillette* injuries" refer to those that are the result of repetitive minute trauma sustained as part of an employee's job duties. *Id.*

62. *See* AM. PSYCHIATRIC ASS'N, *supra* note 59.

63. *See id.*

64. *See id.*

65. *See* Am. Psychiatric Ass'n, *supra* note 57.

Another, subtler problem with relying solely on the most recent version of the *DSM* to define PTSD is that the Minnesota legislature has tied all compensable diagnoses to a manual that may not have the definitive and authoritative weight it had previously. For many years, the *DSM* was the be-all-end-all for defining and understanding mental illness and impairments.<sup>66</sup> But as mental impairments have become more understood, the amount of research and focus on the field increases (or, perhaps, vice versa). In other words, there is now competition in the diagnostic marketplace, which naturally creates competing assessments. To this point, the National Institute of Mental Health (NIMH) recently withdrew its support of *DSM-V*.<sup>67</sup> In support of its withdrawal, the NIMH, the largest funding agency for mental health research, cited the “lack of validity” and the fact that *DSM-V* diagnoses are not based on “any objective laboratory measure.”<sup>68</sup> And, while the disagreements between NIMH and the American Psychiatric Association may seem inconsequential, it does reflect a potential problem for PTSD diagnoses in Minnesota workers’ compensation claims. Given the legislature’s reliance on the *DSM* and the possibility that the manual’s authority is weakening, there could be circumstances where a legitimate, objective diagnosis of PTSD may not comport with the definition set forth in *DSM-V*. This dilemma will be further complicated if more organizations and doctors follow the NIMH’s approach and break from the definitions contained in the *DSM*. In time, there may be varying, equally valid and legitimate definitions of PTSD from multiple organizations. Compensation judges, however, will have their hands tied because

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66. See, e.g., Douglas A. Hass, *Could the American Psychiatric Association Cause You Headaches? The Dangerous Interaction Between the DSM-5 and Employment Law*, 44 LOY. U. CHI. L.J. 683, 683 (2013) (“Since its first publication in 1952, the [DSM] has long served as the primary reference for . . . state and federal courts and government agencies . . .”); Cia Bearden, Note, *The Reality of the DSM in the Legal Arena: A Proposition for Curtailing Undesired Consequences of an Imperfect Tool*, 13 HOUS. J. HEALTH L. & POL’Y 79, 81 (2012) (“[I]n the legal sphere, the [DSM] is regularly relied upon by attorneys and referenced by courts in judicial proceedings.”).

67. See Thomas Insel, *Director’s Blog: Transforming Diagnosis*, NAT’L INST. MENTAL HEALTH (Apr. 29, 2013), <http://www.nimh.nih.gov/about/director/2013/transforming-diagnosis.shtml>.

68. *Id.*

the Minnesota legislature has limited the definition of PTSD to that contained in the *DSM*.<sup>69</sup>

This potential dilemma, moreover, contravenes the public policy considerations at the heart of workers' compensation laws and confuses the issues at hand: it shifts the focus from compensating injured workers to satisfying certain diagnostic criteria from one particular source. In an attempt to provide clarity and consistency by limiting the definition of PTSD to the *DSM*, the legislature may have complicated litigation surrounding PTSD claims.

#### V. DEFENDING PTSD CLAIMS

For attorneys practicing workers' compensation defense, the statutory changes do contain elements that will be useful when handling and defending mental-mental claims. To begin, the statute explicitly excludes mental impairments resulting "from a disciplinary action, work evaluation, job transfer, layoff, demotion, promotion, termination, retirement, or similar action taken in good faith by the employer."<sup>70</sup> These exclusions appear to be the legislature's attempt to state that the stresses associated with normal, unavoidable work events do not give rise to compensable mental-mental claims; having a bad day will not be compensable. Additionally, compensable mental-mental claims are limited to PTSD.<sup>71</sup> Depression, anxiety, and other mental impairments will not be compensable. This, too, limits the scope of the new statute. Claims alleging PTSD are far less common than claims alleging consequential depression related to an underlying physical injury.

It is also important to understand how mental-mental injuries are incorporated into the statute. As indicated above, occupational disease has been expanded to include mental impairments.<sup>72</sup> The legislature did not create a new injury classification with new procedures and defenses. Rather, it has expanded the existing definition of occupational disease to include certain mental impairments. As a result, defense attorneys will be able to handle mental-mental claims just as they have conventional physical

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69. See MINN. STAT. § 176.011, subdiv. 15(d) (2014); AM. PSYCHIATRIC ASS'N, *supra* note 59, at 271.

70. MINN. STAT. § 176.011, subdiv. 15(a).

71. See *id.* § 176.011, subdiv. 15(d).

72. See *id.* § 176.011, subdiv. 15.

injuries. For example, defense attorneys can still point to a preexisting condition, activities wholly unrelated to the employee's work activities, or intentional third-party acts when denying mental-mental claims. Furthermore, given that PTSD is often tied to a traumatic event like a shooting or an assault, the intentional third-party act defense may have newfound usefulness. Thus, when contemplating the increased exposure, it is important to remember that the scope of the new law is narrow, and most defense attorneys already have a good handle on the best defenses to mental-mental claims.

Beyond the statutory defenses, perhaps the most useful tool to defense attorneys is the *DSM-V* itself, which identifies differential diagnoses that are separate and distinct from PTSD.<sup>73</sup> For example, *DSM-V* positions acute stress disorder and PTSD as separate mental impairments: the symptom patterns of the two diagnoses are similar, but acute stress disorder lasts anywhere from “[three] days to [one] month following a traumatic event,” while PTSD lasts much longer.<sup>74</sup> In other words, acute stress disorder is that temporary feeling of anxiety and unease you have following a major event, while PTSD is a much more significant impairment. Similarly, the *DSM-V* highlights adjustment disorders as a type of impairment that is similar, but different from PTSD.<sup>75</sup> With an adjustment disorder, the symptom pattern of PTSD occurs, yet the underlying stressor does not need to rise to the requisite level needed for a PTSD diagnosis.<sup>76</sup> Where PTSD is the response to a traumatic event, adjustment disorders are the result of everyday stressors, such as getting divorced or getting fired.<sup>77</sup>

Finally, the *DSM-V* points out that not all psychological reactions to extreme stressors or traumatic events are necessarily PTSD.<sup>78</sup> PTSD is a specific chronological impairment whereby certain identifiable symptoms only occur following exposure to a traumatic event.<sup>79</sup> It is possible that other psychological impairments, such as dissociative disorder, may be triggered by a

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73. See AM. PSYCHIATRIC ASS'N, *supra* note 59, at 279–80.

74. *Id.* at 279.

75. *Id.*

76. *Id.*

77. See *id.*

78. *Id.*

79. *Id.* at 274.

traumatic event.<sup>80</sup> In those circumstances, however, the employee would not suffer from PTSD and, as a result, would not have a compensable mental-mental claim.

Understanding these differential diagnoses will help defense attorneys identify non-compensable mental-mental claims. And while it is unlikely that defense attorneys will turn into mental health experts overnight, having a solid understanding of *DSM-V* will at least help them point psychiatrists and psychologists in the right direction when drafting an independent psychological examination letter.

## VI. CONCLUSION

With the inclusion of some mental-mental claims, Minnesota workers' compensation law has moved into the twenty-first century. Gone is the outdated notion that work-related mental impairments are not compensable injuries. While the inclusion of mental-mental injuries may result in more claims and increased financial exposure for employers and insurers, it is still possible for attorneys to effectively handle and defend these new claims. There are, of course, some unknown aspects of the new law, and there will likely be increased litigation for a few years as the courts decide the practical scope of the law. But, these unknowns are to be expected with any new legislation and should not give attorneys practicing workers' compensation law too much pause—at least not yet. True concern should be reserved for when a court takes mental-mental claims in a wholly unexpected direction, opening up the mental-mental floodgates to anyone who has had a bad day. From this perspective, Donald Rumsfeld's quote, despite its clumsy syntax, has great erudition and relevance.

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80. See *id.* at 265–90.