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## STRESS IN THE WORKPLACE: A CASE STUDY

by

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### CASE OVERVIEW

Mental-mental job-related stress claims have been debated across the country in the state courts and the state legislatures throughout the late 1980s and 1990s, with experienced practitioners on both sides of the issue taking opposite points of view regarding their compensability. Mental-mental claims are those claims in which mental stress at work causes a mental disability (nervous breakdown caused by emotional stress) without any physical corroboration. New York was one of the first states to resolve mental-mental workplace stress claims. In *Wolfe v. Sibley, Lindsay & Curr. Co.* 36 N.Y. 2d. 505, 330 N.E. 2d 603, 369 N.Y.S. 2d 637 (1975), the New York Court of Appeals for the first time held that the psychological or nervous injury precipitated by psychic trauma is compensable to the same extent as physical injury.

Recently, the state of Iowa has allowed recovery for mental stress claims, after its highest court resisted ruling on mental-mental claims for years. In the landmark case of *Dunlavey v. Economy Fire and Casualty Company* 526 N.W. 2d 845 (Iowa 1995), the Supreme Court for the first time considered the question of whether psychic trauma is a readily identifiable cause of psychological or nervous injury. The Court held that mental disorders, even if not accompanied by physical traumas to the body, constitute an injury under the Iowa workers' compensation statutes, Iowa Code Chapter 85 (1993). In *Dunlavey*, Francis C. Dunlavey filed a petition with the Iowa Industrial Commissioner against his employer, Economy Fire and Casualty Company, claiming that he had suffered psychological injury as a result of work-related stress. Economy Fire and Casualty Company argued that without any

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physical injury Dunlavey had no basis for recovery under Iowa's Compensation statute. This case sharpens the legal focus on mental-mental claims and places itself in the national spotlight in responding to the increase in workplace stress.

#### *BACKGROUND ANALYSIS OF JOB-RELATED STRESS*

The *Dunlavey* case is typical of the stressful scenarios occurring more and more frequently in the workplace and is symptomatic of what has been termed the 20th Century Disease. In light of current economic conditions, there are literally thousands of individuals who feel insecure in their jobs and who are unsatisfied with their present or long term career prospects. This economic uncertainty and vanishing job security has produced widespread worker tension. A 1991 study showed that 25% of United States workers suffer from stress related illnesses.

In the late 1980s and 1990s, employees' well being was battered by a set of stressful scenarios: added job responsibilities, job changes, non-recognition for their work, changing work environments, corporate cut backs, and corporate restructuring. The most significant of this result of this widespread worker tension has been the escalation of mental-mental stress claims against employers. These mental-mental stress claims have resulted in a whole new wave of workers' compensation cases. This widespread worker tension caused companies to experience costly litigation, lower productivity, higher medical costs, increased absenteeism, and higher employee turnover.

#### *DUNLAVEY V. ECONOMY FIRE AND CASUALTY COMPANY*

##### *Factual and Procedural Background*

In *Dunlavey*, the Iowa Supreme Court ruled that workers can recover Workers' Compensation benefits for mental illnesses caused by stress in the workplace. The court concluded "that the term 'personal injuries,' as used in Iowa Code section 85.3(1), includes a mental injury standing alone. Having so determined, it naturally follows that an employee's pure nontraumatic mental injury 'arising out of and in the course of the employment' is compensable under chapter 85 of the Iowa Code."

Dunlavey, a 62 year old claims adjuster, had worked in the insurance industry for approximately 30 years. He was employed by Iowa Kemper Insurance Company from 1977 to 1986 until Kemper merged with Economy Fire and Casualty Company. Prior to the merger, Dunlavey testified that he enjoyed his work as a claims adjuster, received good employment evaluations, denied having had any mental injuries.

Following the merger, Dunlavey's work environment became increasingly more stressful. Initially this stress resulted from uncertainty about his job future and also from increased criticisms from his new supervisors. For example, Dunlavey worked overtime to meet his new responsibilities usually working daily from 6:30 a.m. to 6:30 p.m. and working several hours during the weekend. Nevertheless, his level of performance as evaluated by the new management, was deemed as marginally acceptable.

Furthermore, Dunlavey and a co-worker Howard Anderson, another former Kemper employee, testified that Kemper employees had to perform more work than the employees brought in by Economy Fire and Casualty. Additionally, both men claimed that the stress the Economy managers placed upon them was greater than the stress placed on the Economy employees.

As a result of the levels of stress experienced at work, Dunlavey's wife testified that she noticed that her husband appeared to be depressed, physically exhausted and continuously complaining about the stressful conditions at work. Shortly thereafter, Dunlavey was diagnosed with depression by Dr. James K. Coddington, the family physician. Dr. Coddington cited job stress as a definite causal factor in Dunlavey's illness.

Following this diagnosis, Dunlavey took a leave of absence from work seeking psychiatric treatment for his depression. Simultaneously he sought workers' compensation benefits claiming that his mental illness was caused by work-related stress. At his workers' compensation hearing, the treating psychiatrists unanimously agreed that Dunlavey was afflicted with major depression and that workplace stress was a causative or aggravating factor in the development of his depression.

The Iowa Industrial Commissioner ruled in favor of Dunlavey. Economy filed a petition for judicial review in the Iowa District Court arguing that without any physical injury Dunlavey had no basis for recovery under Iowa's Workers' Compensation statutes. The District Court upheld the Industrial Commissioner's decision, whereupon Economy appealed to Iowa's Supreme Court.

##### *Decision of the Iowa Supreme Court*

The Iowa Supreme Court agreed with the District Court and the Industrial Commissioner that an employee can recover for a non-traumatic injury. The Court further held that the term "personal injuries" found in Iowa Code section 85.3(1) includes mental injuries without any accompanying physical injury. Additionally, the court held that the employee must satisfy two requirements. First, the employee must establish factual or medical causation; the employee must prove that he or she has a mental injury which was caused by mental stimuli in the work environment. Second, the employee must meet the legal causation standard; he or she must prove that the mental injury was caused by workplace greater than day to day stresses experienced by other workers employed in the same or similar jobs. As a result, the Iowa Supreme Court set new standards for mental-mental injury claims and it becomes the most recent state to resolve the debate surrounding mental-mental workplace stress.

#### *INSTRUCTIONAL NOTE*

##### *Course Area and Pedagogical Objectives*

This case is ideally suited for an undergraduate or graduate course in Business Law and/or Employment Law. It may also have application in Business and Society, Human Resource

Management and Business Policy courses. This case can be used to demonstrate the legal implications of workplace stress. In the management context, this case can be used to analyze the management policy approaches and programs associated with job stress related issues. The professor may choose to lead classroom discussion of the legal and managerial issues presented in the case. In addition, the professor may choose to assign this case as a role playing exercise and challenge students playing the roles to resolve their disagreements to avoid litigation.

#### *Sources of Data*

Information for this case study is based on the Iowa Supreme Court decision in *Dunlavey v. Economy Fire and Casualty Company*. In addition, it is based on articles from health and stress management journals, popular business journals, and newspaper articles.

#### *Suggested Questions and Analysis*

1. What criteria does the Iowa Supreme Court establish in order for employees to be compensated for mental-mental job-related stress claims?

The court in *Dunlavey* held that the employee must satisfy two requirements to recover for mental-mental claims under Iowa's Workers' Compensation statutes. First, the employee must establish factual or medical causation: the employee must prove that he or she has a mental injury which was caused by mental stimuli in the work environment. Second, the employee must meet the legal causation standard: he or she must prove that the mental injury was caused by workplace stress greater than the day to day stresses experienced by other workers employed in the same or similar jobs.

2. Find other jurisdictions that have permitted recovery for a mental injury caused solely by a mental stimulus under the state's workers' compensation laws.

At least 15 state courts have permitted recovery for mental-mental injuries suffered in the workplace under their state's workers' compensation laws. These states include: Arizona, Arkansas, California, Delaware, Hawaii, Illinois, Indiana, Maryland, Mississippi, New Jersey, South Carolina, Tennessee, Texas, Virginia, and Wyoming.

3. What state legislatures have amended their workers' compensation statutes to permit compensability for mental injuries arising solely from a mental stimulus?

During the late 1980s and 1990s the following states have amended their workers' compensations statutes to permit recovery for mental-mental job-related claims: Alaska, Colorado, Louisiana, Massachusetts, Maine, New Mexico, New York, North Dakota, Oregon, Rhode Island, and Wisconsin.

4. What legal alternatives are available to individuals who wish to pursue mental-mental stress claims outside of the workers' compensation area?

While the greater number of job-related stress claims are made under worker compensation claims, in some instances, employees have been able to successfully pursue such claims outside of the workers' compensation area. In some work-related mental stress claims pursued under state discrimination statutes, employers have raised the issue of the "exclusive remedy" provisions of the state workers' compensation laws.

The issue was squarely faced in *Boscaglia v. Michigan Bell Telephone Company*, 420 Mich. 308, 362 N.W. 2d 642 (Mich. 1984), where the claimant brought an action for damages alleging violation of her civil rights and sought recovery for physical and mental or emotional injury. Here, the court held that the exclusive remedy provision of the Workers' Compensation Act did not bar such an action where the employee was alleging a violation of the Fair Employment Practice Act or the Michigan Civil Rights Act.

In addition, New York's highest court exemplified a willingness to compensate employees for mental anguish and humiliation in discrimination cases. The New York Court of Appeals in *Consolidated Edison Company of New York, Inc. v. New York State Division of Human Rights (Pamela Easton)*, 77 N.Y. 2d 411, 570 N.E. 2d 217, 568 N.Y.S. 2d 569 (1991) held that there was substantial evidence supporting the finding of the state commissioners of Human Rights, that Consolidated Edison discriminated against Pamela Easton, a black woman, on the basis of sex and race, by promoting two white males to supervisory positions, both of whom lacked her experience level. In upholding the Commissioner's award of \$10,000.00 for hurt, humiliation, and mental anguish suffered, the court noted the effects of discrimination were perceived every day when the complainant reported to white males, petitioners had promoted over her.

5. Which state courts and legislatures deny recovery for mental-mental claims for job related stress?

The states of Alabama, Florida, Georgia, Kansas, Minnesota, Montana, Nebraska, Ohio, Oklahoma, and South Dakota are among the minority and do not permit compensation for mental-mental stress cases under any circumstances. In a South Dakota Supreme Court case, *Lather v. Huron College*, 413 N.W. 2d 369 (S.D. 1987), the issue of mental-mental compensability was considered for the first time. Here, the employee left his position as a college basketball coach because of work-related stress. Subsequently, he was treated for a psychological disorder which ultimately led to his suicide. The court, in denying the claim, held that mental disability caused by a mental stimulus was not compensable.

Similarly some state legislatures have denied workers' compensation for mental injuries unless the mental injury is suffered in connection with a physical injury. For example, workers who suffer heart attacks from job related stress are covered by mental-physical claims. The state legislatures that have denied mental-mental claims are the following: Alabama, Connecticut, Idaho, Kentucky, Montana, New Hampshire, Washington and West Virginia.

6. In light of the *Dunlavey* decision, describe the types of programs companies might employ to cope with work-related stress?

Concerned with escalating human cost that job related stress exacts, employers have instituted various programs designed to identify and prevent, or reduce, the sources of stress that are precipitating mental stress claims and employee burnout. Employees from companies that offer stress reduction programs are 50% less likely to miss work or quit their jobs due to stress. Researchers calculate the average cost of rehabilitating stress disabled employees at \$1,925 and, if not rehabilitated, the cost would average \$73,273 to cover the disability payments.

While employee assistance programs have been in existence for some time, it is only within the past decade that employers have instituted stress management programs. A review of some of the programs adopted by employers both major corporations and small firms, reveals a wide diversity in their structure, components and focus, ranging from comprehensive holistic stress management programs to modest programs providing employees with time to engage in stress releasing activities.

Some examples of stress management programs are as follows:

- Texas Instruments, Inc. cited as the employer of the year in 1991 by the National Employees' Services and Records Associations, adopted a holistic stress management philosophy which underlies a wide range of programs such as its wellness program Lifetrack which includes health assessments and recommendations for participation in company sponsored wellness programs. Over a three year period, employees participating in the program have shown a 7% improvement in coping with stress.
- AT&T Communications began developing a corporate wellness program known as Total Life Concept which recognizes stress management as an essential component. The program focuses on educating its managers about stress, with emphasis on the recognition of stress factors that can effect workers, and the development of a flexible management style which would mitigate the stressors.
- Small companies are beginning to recognize that on-the-job stress, while varying from company to company, is a fact of life and must be addressed. For example, Pension and Group Services at Kalamazoo, Michigan, an administrator for employee health benefits and health care, responded to employees' requests for programs that would reduce stress by creating a complete physical fitness center. This center developed a program encouraging a holistic approach to stress management. The company has had a positive response with approximately 75% of its 200 employees making use of its programs.

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