

PERSONNEL ISSUES IN WORKERS' COMPENSATION STRESS CLAIMS

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Workers' compensation laws are based on a no-fault concept in which liability depends on whether the employee's injury arose out of and in the course of employment. Tort liability, such as intentional or negligent acts of the employer, does not have to be proved. Common law defenses for the employer are also not relevant. Since the inception of these laws, however, there has been a gradual expansion of workers' compensation liability, especially in the area of stress claims. Broadening concepts of accidental injury and occupational disease have increased the chance that conditions unrelated to employment will be found compensable, making the employer a general insurer of employee health and employability. Personnel issues often form the background of stress claims, or are said to be the stress itself for which compensation is sought. Because they are ubiquitous, however, a no-fault concept for recovery may not be appropriate any longer.

Unlike other types of employment stress which are a natural incident to the performance of the work, i.e. flow from the type of work, the amount of work, or circumstances that are a direct result of work duties, personnel issues are a by-product of relationships. They include the relationship between employee and employer, as well as employee with other employees. Inevitably, relationships create conflicts, and conflicts create stress. Similarly, managerial decisions and actions may be necessary to resolve conflicts or to advance the needs of the organization, and these can create stress. Since personnel issues are a part of all employment, they need to be considered in every workers' compensation stress claim. At times, claimants will point to them directly as the source of their employment stress. At other times, claimants will point to something else, when covert personnel issues are the actual problem. Five types of personnel issues are commonly seen:

Performance problems can take many forms. Generally, they are due to inadequate productivity or poor quality of performance. Often employees will complain that they are overworked, unfairly criticized, provided with inadequate resources, or have insurmountable obstacles to the performance of their task. Where their complaints are justified, their claim may be understandable. However, in other instances, performance problems arise from the employee's own poor performance. This could be a result of inadequate training or skills, a bad job-to-employee match up, or just intangible behavioral problems. It could also be from a mental disorder independent of work stress, that affects performance. In any case, a negative performance evaluation or criticism from a supervisor is understandably stressful, but that stress may arise more from the employee than the employment.

Personality differences also lead to conflict within an organization. When those differences are a result of personality disturbance in the employee, manager, or co-employee, the conflict can be extreme. For example, if an employee has maladaptive ways of dealing with others because of paranoid or borderline traits, this can be extremely disruptive to the other employees and can also interfere with work performance. Personality disturbance may represent occasional inappropriate behavior or an actual disorder characterized by pervasive interpersonal problems. Some employees because of their personality disturbance have unusual perceptions by which they misread how others interact with or feel about them. They may, in fact, draw negative feedback because of their own peculiarities, or may feel victimized by co-employees and managers. Often, they receive unfavorable appraisals and, if they are not able to recognize their own contribution, they will undoubtedly feel distressed. However, this distress, again, springs from the employee and not the employment. Managers with personality disturbance can, of course, make an employment setting intolerable to all

employees also, with understandable stressful consequences. The relative contribution of each must be weighed carefully.

Motivational issues are a concern within any organization. Most people want to work, not only for the money but also for what work brings to their lives. But, where the employee is not motivated for personal reasons, then the employee may be bringing the problem to the employment. For example, employees, by default, may have taken a job which they knew or could have known was not satisfactory, or they may be "burned out" from their particular type of work. In other cases, there may be non-work priorities and interests which deflect from genuine investment in the job. Job dissatisfaction and malcontent invariably lead to negative feedback from the employer which then creates stress. In these instances, the stress is also more a product of the employee than the employment.

Employee misbehavior is a more overt contribution to conflict within an organization. This can be in the form of simple pranks, to more serious harassment, to actual criminal behavior. An employer's response to such actions should be an expected outcome regardless of how stressful that response may be or how much the employee disagrees with it. Here, it is clearly not the employment but the employee who generated the conflict.

Last, there are a host of problems that stem from *employment insecurity*. These include fear of layoffs or terminations, as well as actual layoffs or terminations. They also include distress over reprimands and warnings which jeopardize the employee's job. They can result from a demotion, not receiving a promotion, or other job threats. In some circumstances, employment insecurity is a result of the employee's own behavior from poor performance, maladaptive personality traits, or lack of motivation. In others, it is simply caused by the ordinary managerial decisions of any work environment. While employment insecurity can obviously be stressful, a continuing working relationship between employer and employee can rarely be guaranteed. The stress of losing that relationship arises not from employment but from fear of unemployment.

Personnel issues have been addressed legally, for the most part, using the general interpretation for stress claims in the respective jurisdiction. Rulings depend on how broad or narrow the jurisdiction has interpreted compensability in these cases. Where they are allowed, frequently they are limited, and require such things as physical manifestations, an unusual stress, a sudden stimulus, or an active versus passive role of the employment. In jurisdictions which require only ordinary stress, most personnel issues would be compensable if the stress contributed at all to the emotional breakdown. Other jurisdictions have looked at whether the employer's conduct was reasonable and/or in good faith based on all the circumstances. Those circumstances could include the employee's contribution. It should be obvious, however, that looking at the reasonableness of either employer or employee behavior injects a tort liability concept which is incompatible with a no-fault system. Yet, personnel issues may be unavoidable. Employers must have sufficient control over the productivity and quality of an employee's performance and must respond when there are performance failures or other behavioral problems. Employers must also, at times, make economic decisions about the size of the work force, salary levels, and an allocation of personnel from unnecessary to necessary positions. Without this, the employers' rights to manage the organization would be severely impaired. Furthermore, if one of the social aims of workers' compensation liability is to encourage employers to eliminate unsafe conditions and the risk of harm to employees, it may be in vain with regard to personnel issues. They can never be eliminated.

It may be that public policy wishes to make employers essentially general insurers of employee health and employability, but that was certainly not the intent of original workers' compensation legislation. If that is not the direction to take, then in stress claims where

personnel issues are involved, there should be a more open abandonment of the no-fault concept and at least a partial return to tort liability principles which consider the reasonableness of the employer's conduct and the contribution of the employee.