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RECENT DEVELOPMENTS IN MENTAL/MENTAL CASES UNDER THE IOWA WORKERS' COMPENSATION LAW

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I. INTRODUCTION

Mental injuries in workers' compensation cases have long been recognized. Initially, mental disorders related to physical injuries in the workers' compensation arena arose at the same time as mental injuries during the evolution of common law personal injury recoveries.[1] Shortly thereafter, courts

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began to recognize physical injuries related to severe mental stress.[2] Today, mental disorders related purely to mental stress, known as "mental/mental" cases, are recognized with greater frequency.[3] The mental/mental injury, however, has undergone the most scrutiny and has caused the most controversy.

The controversy surrounding mental/mental injuries stems from the uncertainty of the human psyche. As one court noted, "Because a mental injury could have resulted from such diverse factors as social environment, culture, heredity, age, sex, family relationships, and other interpersonal relationships, as well as employment, a high degree of uncertainty exists in the diagnosis of cause."[4] Courts have often viewed mental disorders with suspicion because of the lack of objective proof associated with such disorders—finding insufficient the employee's subjective impression that work somehow caused a mental injury.[5] The development of criteria for various mental disorders by the American Psychiatric Association found in the *Diagnostic and*

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1. The presence of the physical injury provided the objectiveness that was deemed necessary to assure the validity of the subsequent mental disorder. *See* Deaver v. Armstrong Rubber Co., 170 N.W.2d 455, 464 (Iowa 1969) (upholding an award of benefits premised upon a mental disorder that resulted from a head injury); *see also* Gosek v. Garmer & Stiles Co., 158 N.W.2d 731, 733 (Iowa 1968) ("[W]hen there has been a compensable accident, and claimant's injury related disability is increased or prolonged by a trauma connected neurosis or hysterical paralysis, all disability, including effects of any such nervous disorder, is compensable."); 3 ARTHUR LARSON, WORKERS' COMPENSATION LAW § 42.22(a), at 7-832 (1997) ("[W]hen there has been a physical accident or trauma, and claimant's disability is increased or prolonged by traumatic neurosis, conversion hysteria, or hysterical paralysis, it is now uniformly held that the full disability including the effects of the neurosis is compensable."); 82 AM. JUR. 2d *Workers' Compensation* § 317, at 341-42 (1992) (stating that pre-existing injury does not bar workers' compensation claim).

2. The resulting physical injury is usually deemed to provide sufficient corroboration to avoid the concern over the subjectiveness of mental stress claims. Numerous examples of cases in which employees have recovered under workers' compensation acts for residual physical disability related to mental stress exist. *See, e.g.*, Harris v. Rainsoft of Allen County, Inc., 416 N.E.2d 1320, 1321 (Ind. Ct. App. 1981) (allowing recovery when owner and president of a company suffered a heart attack after he witnessed the devastation of his company by fire); Charon's Case, 75 N.E.2d 511, 512 (Mass. 1947) (allowing recovery when lightning caused a flash and explosion which frightened the worker to the point where she was afflicted with partial paralysis). In another common situation, an employee suffers a stroke allegedly due to work stress. 3 LARSON, *supra* note 1, § 42.21.

3. *See* 3 LARSON *supra* note 1, § 42.23. That is not to say, however, that isolated instances of such cases did not occur earlier. *See, e.g.*, Bailey v. American Gen. Ins. Co., 279 S.W.2d 315, 316 (Tex. 1955) (awarding an employee who survived unscathed when the scaffolding he was working on collapsed but witnessed co-worker plunge to his death); Burlington Mills Corp. v. Hagood, 13 S.E.2d 291, 292 (Va. 1941) (awarding an employee who fainted after being startled by an electric flash and sound resembling a shotgun).

4. Bedini v. Frost, 678 A.2d 893, 894 (Vt. 1996).

5. *See generally* Sara J. Sersland, *Mental Disability Caused by Mental Stress: Standards of Proof in Workers' Compensation Cases*, 33 DRAKE L. REV. 751 (1983-84) (discussing the uniqueness of cases involving mental/mental injuries and how different jurisdictions have dealt with standards of proof in such cases).

Statistical Manual of Mental Disorders (*DSM-IV*),[6] has brought uniformity to diagnosis but has not eliminated the basic subjectivity inherent in many psychiatric conditions.[7] While some would argue that the gap between physical and psychological medicine is narrowing,[8] many more would argue that the gap has not narrowed enough to adequately insure objectivity in such cases.[9]

In 1995, Iowa joined the majority of states that recognize mental/mental injuries with the Iowa Supreme Court case *Dunlavey v. Economy Fire & Casualty Co.*[10] In so doing, Iowa became part of a growing number of states that deal with mental/mental injuries and the corresponding controversy. This Article will discuss the standard of proof the Iowa Supreme Court chose to deal with mental/mental injuries, how it has affected recovery for mental/mental injuries, and how it may effect recovery for such injuries in the future. Finally, this Article will discuss how the recognition of mental/mental injuries and the standard of proof that the Iowa Supreme Court has chosen for those types of injuries has affected or may effect other areas within the workers' compensation system and other areas of the law.

II. LEGAL REASONING BEHIND THE *DUNLAVEY* DECISION

The focal point of any discussion on mental/mental injuries in Iowa is *Dunlavey v. Economy Fire & Casualty Co.*[11] In *Dunlavey*, the Iowa Supreme

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6. See AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (4th ed. 1994) [hereinafter DSM-IV], for a complete listing of all mental disorders and the criteria for each such disorder currently recognized by the American Psychiatric Association [hereinafter A.P.A.].

7. As noted in the introduction of *DSM-IV*:

> The specific diagnostic criteria included in *DSM-IV* are meant to serve as guidelines to be informed by clinical judgment and are not meant to be used in a cookbook fashion. For example, the exercise of clinical judgment may justify giving certain diagnosis to an individual even though the clinical presentation falls just short of meeting the full criteria for the diagnosis as long as the symptoms that are present are persistent and severe.

DSM-IV, *supra* note 6, at xxiii.

8. *See id.* at xxi.

> A compelling literature documents that there is much "physical" in "mental" disorders and much "mental" in "physical" disorders.
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> . . . The concept of mental disorder, like many other concepts in medicine and science, lacks a consistent operational definition that covers all situations. All medical conditions are defined on various levels of abstraction . . . .

Id.; *see also* Bedini v. Frost, 678 A.2d at 897 (Johnson, J., dissenting) (noting that some physical injuries are just as hard to diagnose as mental injuries because "soft-tissue injuries and back and neck complaints are notoriously difficult to diagnose, and pain itself can be described only by the sufferer").

9. Sersland, *supra* note 5, at 752-58.

10. Dunlavey v. Economy Fire & Cas. Co., 526 N.W.2d 845, 852 (Iowa 1995); *see also* discussion *infra* Part II and accompanying text. See also 3 LARSON, *supra* note 1, § 42.23 for a review of other jurisdictions recognizing mental/mental injuries.

11. Dunlavey v. Economy Fire & Cas. Co., 526 N.W.2d 845 (Iowa 1995). In *Dunlavey*, the claimant had worked in the insurance industry for 30 years and had been employed

Court, for the first time, squarely faced the issue of whether to extend compensation for mental/mental injuries under Iowa workers' compensation law.[12] The court concluded that personal injuries under the Iowa workers' compensation law implicitly (if not overtly) encompassed a mental injury independent of any physical injury.[13] After citing the statutory definition of

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specifically by Kemper Insurance for nine years prior to its merger with Economy Fire & Casualty Company. *Id.* at 847. The claimant enjoyed his work as a claims adjuster prior to the merger and denied any prior mental injuries. *Id.* He claimed to have routinely received increased responsibility and pay, as well as good employment evaluations. *Id.* After the merger, however, the claimant alleged that there were many changes in the work environment, "including a revision of claims handling procedures, different managerial personnel, and an increase in workload." *Id.*

The claimant and one of his co-workers testified at a hearing that Kemper employees had "developed a fear that the new Economy management intended to get rid of them in one way or another" and that many Kemper "claims examiners left because they felt they would be systematically eliminated." *Id.* The claimant added that "among other new responsibilities, [he] was required to exercise more supervision over adjusters and to work on Economy files while converting pending Iowa Kemper files into Economy files." *Id.* The claimant reported putting in overtime in an attempt to comply with the requirements and reported working during the week plus putting in several hours on the weekends. *Id.* Despite the extra time commitment, the claimant's performance evaluations deemed him as only "marginally acceptable." *Id.* He and his co-worker further testified that the former Kemper employees had to perform more tasks, worked more hours, and were placed under greater stress by Economy managers than the original Economy employees. *Id.* at 848. Employees from Economy testified the claimant's "workload was not unusual or out of the ordinary from that routinely carried by other claims examiners." *Id.*

The claimant's wife testified that during this time she noticed that her husband appeared to be depressed; he came home really tired, was drained of emotion, spoke of problems at work, and would not eat or do anything. *Id.* Shortly after the claimant's wife noticed these changes, the claimant's family doctor diagnosed the claimant with depression. *Id.* The doctor reported, "job stress is a definite causative factor." *Id.* The claimant was taken off work and, except for one brief period, has not returned. *Id.* The claimant was subsequently hospitalized and saw numerous psychiatrists. *Id.* All agreed the claimant had major depression and all but two concluded the claimant's employment was a "causative or aggravating factor in the development of his depression." *Id.* One stated the work stress "probably [was] a substantial factor in causing [the claimant's] depression" but "declined to compare its significance to other known stresses in [the claimant's] life." *Id.* The other doctor declined to express any opinion on causation. *Id.* All of the doctors generally agreed that the claimant was not capable of returning to work at the time of the hearing. *Id.*

The claimant filed a petition with the Iowa Industrial Commissioner alleging a psychological injury as a result of work stress and sought "compensation for permanent total disability" and the payment of medical bills. *Id.* The deputy industrial commissioner ruled the claimant had developed depression as a result of work stress that "exceeded the magnitude of the day-to-day stresses which must be endured by all employees" and ordered Economy to pay the claimant past and ongoing temporary total disability benefits and unpaid medical benefits. *Id.* at 849. The decision was affirmed by Industrial Commissioner and the district court before being appealed to the Iowa Supreme Court. *Id.*

12. *Id.* at 850.

13. *Id.* at 851. The court ignored, however, that for all practical purposes, the concept of a mental/mental injury did not exist when the Iowa workers' compensation law was enacted. The court likewise did not address the Iowa legislature's lack of action in this area. In other

"personal injury"[14] and the definition of "injury" formulated decades earlier by the court in *Almquist v. Shenandoah Nurseries, Inc.*,[15] the Iowa Supreme Court stated:

> "The expansive concept of personal injury outlined in *Almquist* would, applying the language of the case, include a mental impairment produced by a mental stimulus. A major depressive disorder is clearly an impairment of health, and if caused by unusual mental stress is not the product of a natural process, but rather something which acts extraneously to damage mental health."[16]

The court further reasoned that such a definition was in line with recent decisions in which the court had "'explicitly interpreted' personal injuries 'for purposes of workers' compensation coverage to include mental conditions.'"[17] The court noted that previous cases dealt with a mental injury in the context of a physical injury, but concluded that such a distinction was irrelevant.[18] Again giving credit to the reasoning of the trial court, the supreme court cited the following:

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states facing similar issues, the states passed legislation specifically allowing or disallowing such claims. *See infra* notes 34 and 41 and accompanying text.

14. Iowa Code section 85.61(4) provides:

The words "*injury*" or "*personal injury*" shall be construed as follows:

a. They shall include death resulting from personal injury.

b. They shall not include a disease unless it shall result from the injury and they shall not include an occupational disease as defined in section 85A.8.

IOWA CODE § 85.61(4) (1997).

15. Almquist v. Shenandoah Nurseries, Inc., 254 N.W. 35 (Iowa 1934). In *Almquist*, the court opined:

> A personal injury, contemplated by the Iowa Workmen's Compensation Law, obviously means an injury to the body, the impairment of health, or a disease, not excluded by the act, which comes about, not through the natural building up and tearing down of the human body, but because of a traumatic or other hurt or damage to the health or body of an employee. The injury to the human body here contemplated must be something, whether an accident or not, that acts extraneously to the natural processes of nature, and thereby impairs the health, overcomes, injures, interrupts, or destroys some function of the body, or otherwise damages or injures a part or all of the body. This is the personal injury contemplated by . . . the . . . Code . . . .

Id. at 39 (citations omitted).

16. Dunlavey v. Economy Fire & Cas. Co., 526 N.W.2d at 851 (quoting the district court opinion).

17. *Id.* (citing Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 16 (Iowa 1993)); *see also* Deaver v. Armstrong Rubber Co., 170 N.W.2d 455, 466 (Iowa 1969) (following Sollitt Constr. Co. v. Walker, 135 N.E.2d 623, 627 (Ind. Ct. App. 1956) and the Indiana Appellate Court's interpretation of the word "injury" in the context of its workers' compensation act and adopting its statement that the term "injury" "include[s] mental ailments or nervous conditions").

18. Dunlavey v. Economy Fire & Cas. Co., 526 N.W.2d at 851. Specifically, the court ruled:

> "In the final analysis it is not possible to limit the concept of injury to a physical mechanism or stimulus and be consistent with the line of cases from *Almquist* to *Mortimer* or the principle of liberal interpretation and construction they reflect. It seems clear from the cases that the requirement of 'injury' is intended to distinguish "hurt or damage to the health or the body" of an employee not the product of natural processes, which is compensable, from the 'natural building up and tearing down of the human body' which is not. There is no indication the legislature intended to imply a limitation to harm resulting from a physical stimulus."[19]

In holding that a mental disorder produced solely by a mental stimulus is compensable as an injury under the Iowa Workers' Compensation Act, the Iowa Supreme Court joined a growing number of state courts that have upheld such a recovery.[20] There is still, however, great diversity and controversy regarding what standard of proof should be used in determining compensability.[21]

III. STANDARDS OF PROOF IN MENTAL/MENTAL CASES AFTER *DUNLAVEY*

As in all workers' compensation cases, medical and legal causation must be established in mental/mental cases.[22] As the *Dunlavey* court noted:

> We have previously divided this causation requirement into two separate determinations: (1) factual or medical causation and (2) legal causation. Causation in fact involves whether a particular event in fact caused certain consequences to occur. In the context of this workers' compensation case, factual causation means medical causation, that is whether the employee's injury is causally connected to the employee's employment.

> Although our interpretation of "personal injury" in both *Mortimer* and *Deaver* occurred in the context of a mental injury accompanied by a physical injury, we view this distinction as irrelevant. In both cases we concluded that the term "personal injuries" as used in Iowa Code section 85.3(1) encompasses a mental injury as well as a physical injury. Our conclusion finds support in Professor Larson's treatise where he urges that "there is no really valid distinction between physical and 'nervous' injury."

Id. (citations omitted) (quoting 3 LARSON, *supra* note 1, § 42.23(a), at 7-906).

19. *Id.* at 851 (quoting the district court opinion) (citations omitted).

20. It should be noted that the Industrial Commissioner previously recognized mental/mental injuries and in doing so followed the "Wisconsin" rule based on *Swiss Colony v. Department of Industry, Labor and Human Relations*, 240 N.W.2d 128 (Wis. 1976). *See* Utterback v. Wapello County, No. 1019771, slip op. at 7-8 (Iowa Indus. Comm'r June 23, 1994) (appeal decision). *See generally* 3 LARSON, *supra* note 1, § 42.23(b).

21. *See generally* Sersland, *supra* note 5 (discussing the various standards of proof used in other jurisdictions).

22. Dunlavey v. Economy Fire & Cas. Co., 526 N.W.2d at 853.

> Distinct from medical causation, we must also consider the legal causation standard. Legal causation presents a question of whether the policy of the law will extend responsibility to those consequences which have in fact been produced. Factual or medical causation presents an issue of fact while the standard of legal causation presents an issue of law. [23]

Therefore, mental/mental cases are treated no differently than any other workers' compensation case. The discussion on standards of proof in such cases, however, does not end there. Despite the *Dunlavey* court's dicta "that no logical reason exists to distinguish a mental injury from a physical injury because both result in a disability,"[24] the court found it necessary to create a specific legal test for causation in mental/mental cases separate and distinct from legal causation in simple physical injury cases.[25]

A. *Medical Causation*

Proof of medical causation is required in any workers' compensation case in order to satisfy the "arising out" requirement set out in the act.[26] It is essential to establish medical causation, because without it a court does not even reach the issue of legal causation. Therefore, an employee with a mental/mental claim has the same type of hurdles to overcome as an employee with any other type of workers' compensation claim.

As in all other claims, medical causation or proof is established through expert testimony.[27] The weight given to expert opinions is for the finder of fact and may be influenced by many factors such as the completeness of the premise given by the expert and other surrounding circumstances.[28] In a recent appeal decision, the Iowa Industrial Commissioner explained:

> [B]oth parties may develop facts as to the physician's employment in connection with litigation, if so; the physician's examination at a later date and not when the injuries were fresh; the arrangements as to compensation; the extent and nature of the physician's examination; the physician's education, experience, training, and practice; and all other factors which bear upon the weight and value of the physician's testimony may be considered. Both par-

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23. *Id.* at 853 (citations omitted).

24. *Id.* at 851 (citing Honeywell v. Allen Drilling Co., 506 N.W.2d 434, 437 (Iowa 1993)).

25. *Id.* at 853. In doing so, the court noted that the distinction was important for three reasons. *Id.* at 857. First, it "provides the employees with compensation for legitimate work related injuries while at the same time limits the employers' liability to injuries caused by its industry." *Id.* Second, it avoids the confusion of comparing a claimant to "all employees." *Id.* Finally, the court found it persuasive that the states that have had experience with mental/mental claims have begun enacting statues that require proof that the injured employee's stress is greater than that of similarly situated employees. *Id.* at 858.

26. Schreckengast v. Hammermills, Inc., 369 N.W.2d 809, 810 (Iowa 1985).

27. Bradshaw v. Iowa Methodist Hosp., 101 N.W.2d 167, 171-72 (Iowa 1960).

28. Bodish v. Fischer, Inc., 133 N.W.2d 867, 870 (Iowa 1965).

> ties may bring all this information to the attention of the factfinder as either supporting or weakening the physician's testimony and opinion. All factors go to the value of the physician's testimony as a matter of fact not as a matter of law.[29]

Other factors the Commissioner has considered in reviewing medical testimony include the qualifications of the expert, such as whether she is Board certified.[30] In another case, a deputy industrial commissioner concluded a clinical psychologist was not an expert.[31] The deputy explained, "It should be noted that clinical psychologists are commonly allowed to testify in district court as expert witnesses expressing opinions on causation. In this agency, however, they are not considered to be experts and their opinions are not sufficient to support a finding."[32]

Therefore, to recover on the basis of a mental disorder, the claimant must show through *credible* expert testimony that the mental disorder resulted from or was aggravated by the employment. With the use of *DSM-IV*, hopefully the classification and diagnosis of mental illnesses will become clearer.[33] If the mental disorder occurs through mental stress in the workplace unaccompanied by physical injury, however, the claimant then must prove legal causation.

B. *Legal Causation*

What makes the mental/mental injury different from its physical injury counterpart is the standard of proof for legal causation. In determining what legal causation standard to adopt, the *Dunlavey* court had numerous examples to which it could refer. Some states have made it a matter of statutory interpretation[34] while other states have adopted tests which equate medical causation with legal causation and award benefits if the worker can show that his mental disorder is causally related to the employment.[35] In Wisconsin, the court adopted a test of legal causation that requires proof that the worker was subjected to unusual or greater stress than that endured by all other workers.[36]

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29. Larson v. Boys & Girls Home, No. 1020255/998721, slip op. at 21 (Iowa Indus. Comm'r Mar. 21, 1995) (arbitration decision) (citing Rockwell Graphic Sys., Inc. v. Prince, 366 N.W.2d 187, 192 (Iowa 1985)).

30. *See* Utterback v. Wapello County, No. 1019771, slip op. at 9 (Iowa Indus. Comm'r June 23, 1994) (appeal decision) (finding the treating psychiatrist's opinion less persuasive than another because the treating psychiatrist was not Board certified, and at the time he began treating the claimant he had just completed his medical residency).

31. Wolfram v. Midwest Gynecologists, P.C., No. 1020266, slip op. at 4 (Iowa Indus. Comm'r June 16, 1993) (expedited decision).

32. *Id.*

33. *See* DSM-IV, *supra* note 6.

34. *See, e.g.*, ALASKA STAT. § 23.30.265(17)(A) (Michie 1990) (stating that the work stress must be "extraordinary and unusual in comparison to pressures and tensions experienced by individuals in a comparable work environment").

35. 3 LARSON, *supra* note 1, § 42.25(g).

36. Probst v. Labor & Indus. Review Comm'n, 450 N.W.2d 478, 480 (Wis. Ct. App. 1989).

The Industrial Commissioner adopted the Wisconsin standard as the means of establishing a mental/mental injury prior to the Iowa Supreme Court's pronouncement in *Dunlavey*.[37]

The Iowa Supreme Court agreed that an objective "unusual stress" standard was appropriate, but rejected the Wisconsin standard, in part, because the phrase "all other workers" was too large and vague a group to establish appropriate objective standards.[38] The court instead opted for the Wyoming standard of "unusual stress," stating:

> [A]lthough we agree with the petitioner that an objective, "unusual stress" standard is the appropriate standard, we decline to follow the petitioner's suggestion to adopt the Wisconsin supreme court's formulation of the standard. . . . Specifically, we hold that in order for an employee to establish legal causation for a nontraumatic mental injury caused only by mental stimuli, the employee must show that the mental injury "was caused by workplace stress of greater magnitude than the day-to-day mental stresses experienced by other workers employed in the same or similar jobs," regardless of their employer.[39]

The court explained its preference for the "similarly situated" employee standard stating:

> Unlike the "fellow employees" test, this test could be used in cases where the worker has no fellow employee holding the same job in his company. Moreover, under the same or similar job standard, an employer who puts excessive stress on several employees could not avoid the payment of benefits by simply making that excessive stress equal for all employees. The stress on [its] workers would be compared to the stress suffered by those holding similar jobs in other companies.
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> . . . .
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> The objective test based on workers with the same or similar jobs is also superior to a test based on the working world at large. It is impossible to determine, except in the broadest fashion, the stress to which the working world at large is exposed. In every worker's compensation case heard under this test, the parties could call witnesses whose job related stress is either significantly greater or significantly smaller than the stress suffered by the

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37. *See* Demirjean v. Principal Fin. Group, Inc., No. 1014925, slip op. at 4 (Iowa Indus. Comm'r Aug. 31, 1994) (appeal decision), *rev'd*, No. 7-205/96-0246 (Iowa Ct. App. Aug. 22, 1997); Utterback v. Wapello County, No. 1019771, slip op. at 8 (Iowa Indus. Comm'r June 23, 1994) (appeal decision); Street v. United Technologies, No. 959365, slip op. at 4 (Iowa Indus. Comm'r June 30, 1993) (appeal decision); Wolfram v. Midwest Gynecologist P.C., No. 1020266, slip op. at 4 (Iowa Indus. Comm'r June 16, 1993) (expedited decision).

38. Dunlavey v. Economy Fire & Cas. Co., 526 N.W.2d 845, 857 (Iowa 1995).

39. *Id.* (citations omitted) (quoting Graves v. Utah Power & Light Co., 713 P.2d 187, 193 (Wyo. 1986)).

> worker seeking compensation. The standard would be too amorphous to be practical.[40]

Finally, the court also found it persuasive that such a standard was in line with the states that have actually enacted statutes on the matter.[41] The court concluded by stating:

> For all these reasons, we adopt an objective standard of legal causation and place the burden on the employee to establish that the mental injury was caused by workplace stress of greater magnitude than the day-to-day mental stresses experienced by other workers employed in the same or similar jobs, regardless of their employer. Although evidence of workers with similar jobs employed by a different employer is relevant, evidence of the stresses of other workers employed by the same employer with the same or similar jobs will usually be most persuasive and determinative on the issue.[42]

As the *Dunlavey* court noted, the Wyoming rule will arguably ease employees', employers', lawyers', and judges' grasps of legal causation in mental/mental cases. One need not look any further than the testimony of the injured worker, supervisors, and co-employees for examples of typical working conditions and usual stress—including atypical conditions. It should not be necessary to present expert testimony or testimony from workers in other employment, except in the unusual situation when the injured worker does not have fellow employees holding the same job with the employer or when all of the employees with that employer experience excessive stress. The fact finder, however, still has the subjective task of reviewing that testimony or evidence and determining whether, given the particular circumstances, a mental/mental claim is compensable. A review of case law on the matter, from Iowa and other jurisdictions that adhere to the Wyoming rule, demonstrates that the outcome in such cases often times go either way.

IV. MENTAL/MENTAL INJURIES IN IOWA AFTER *DUNLAVEY*

It is commonly understood that the standards of proof established by the Iowa Supreme Court in *Dunlavey* make it more difficult to recover for a

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40. *Id.* at 857-58 (alteration in original) (quoting Graves v. Utah Power & Light Co., 713 P.2d at 193).

41. *Id. See, e.g.*, ALASKA STAT. § 23.30.265(17)(A) (Michie 1990) (stating that work stress must be "extraordinary and unusual in comparison to pressures and tensions experienced by individuals in a comparable work environment"); COLO. REV. STAT. ANN. § 8-41-301(2)(a)-(d) (West Supp. 1996) (stating that the psychologically traumatic event must be "generally outside of a worker's usual experience and would evoke significant symptoms of distress in a worker in similar circumstances"); N.M. STAT. ANN. § 52-1-24(A) (Michie 1978) (same). It is interesting to note that the court considered the statute standards of other states persuasive yet did not find it persuasive that the Iowa legislature had not chosen to address the issue of mental/mental claims.

42. Dunlavey v. Economy Fire & Cas. Co., 526 N.W.2d at 858 (citing Graves v. Utah Power & Light Co., 713 P.2d at 193 n.5).

mental/mental injury than the standards previously used by the Industrial Commissioner. It is interesting to note, however, that even under the Industrial Commissioner's former standard it was not easy to establish a mental/mental claim.[43] Does the new standard then, make it virtually impossible to successfully make a mental/mental claim? Definitely not.

For example, on remand, the Industrial Commissioner ruled that the claimant in *Dunlavey* had established "by a preponderance of the evidence that his workplace stress was greater than the day-to-day stresses experienced by all claims adjusters" working for his employer.[44] The Industrial Commissioner concluded that in reviewing the evidence a pattern emerged in which the "claims adjuster who had previously worked for Kemper were required to cope with workplace stress that other Economy claims adjusters did not experience."[45] Thus, the claimant, Dunlavey, met his burden of proof.[46] Nevertheless, the standard does require proof of unusual stress even if the employee is in an occupation that is perceived to be stressful.

A. *Stress Inherent in Any Work Situation*

In discussing what constitutes a compensable claim, it is helpful to discuss what type of situations or stresses have been deemed a regular part of most, if not all, work settings and are, therefore, not compensable. The Industrial Commissioner addressed many of these issues prior to the *Dunlavey* decision, and in the process, clearly showed that the commissioner did not have any rosy illusions about the nature of work.

One case that illustrates many of the stresses of modern employment is *Demirjean v. Principal Financial Group, Inc.*[47] The claimant developed symptoms of major depressive disorder in December of 1990 while working as an administrative clerk.[48] Two years earlier, the claimant became aware that

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43. *See* Demirjean v. Principal Fin. Group, Inc., No. 1014925, slip op. at 3-4 (Iowa Indus. Comm'r Aug. 31, 1994) (appeal decision), *rev'd*, No. 7-205/96-0246 (Iowa Ct. App. Aug. 22, 1997); Utterback v. Wapello County, No. 1019771, slip op. at 10 (Iowa Indus. Comm'r June 23, 1994) (appeal decision); Street v. United Technologies, No. 959365, slip op. at 3-4 (Iowa Indus. Comm'r June 30, 1993) (appeal decision); Wolfram v. Midwest Gynecologist P.C., No. 1020266, slip op. at 4-5 (Iowa Indus. Comm'r June 16, 1993) (expedited decision).

44. Dunlavey v. Economy Fire & Cas. Co., No. 858652, slip op. at 6 (Iowa Indus. Comm'r May 28, 1996) (remand decision).

45. *Id.*, slip op. at 6.

46. *Id.*

47. Demirjean v. Principal Fin. Group, Inc., No. 1014925 (Iowa Indus. Comm'r Aug. 31, 1994) (appeal decision), *rev'd*, No. 7-205/96-0246 (Iowa Ct. App. Aug. 22, 1997). The court of appeals reversed and remanded the claim, ruling that the new standard of proof developed in *Dunlavey*, which was handed down after the Industrial Commissioner's decision, was not necessarily more stringent. Demirjean v. Principal, No. 7-205/96-0246 slip op. at 6. The court concluded that the "hurdles" to overcome under the *Dunlavey* standard were of a different height and scope than those previously employed. *Id.* Therefore, one could not simply conclude that as she "failed to prove her case under the less stringent standard, she surely would fail if a more stringent test were applied." *Id.*

48. Demirjean v. Principal, No. 1014925 slip op. at 2-3.

her employer would be opening a satellite office in another city and that the work in her department would be moved to that location.[49] During the transition period, the claimant underwent retraining in preparation for a new billing system, and the workload was redistributed within her department.[50] The claimant eventually lost her job when the work was transferred to the new location.[51]

The case was decided prior to *Dunlavey* and the Industrial Commissioner, using the Wisconsin rule, determined that the claimant failed to show that her major depressive disorder resulted from a situation of greater dimensions than the day-to-day mental stresses and tensions that all employees may experience.[52] The Industrial Commissioner reasoned:

> Claimant also asserts that her depressive disorder was caused by the stress of her department moving from Des Moines to Waterloo. It is noted that the change in location was not sudden or unexpected, but rather took place over a three-year period.
>
> Claimant also points to the need to learn new computer and phone systems, and training other employees on these new systems. The mere introduction of new technology and the resulting retraining required does not constitute stress above and beyond that experienced by all employees; indeed, technological change is currently occurring so rapidly in the workplace that nearly all employees must cope with technological change.
>
> Claimant has a long history of depressive disorder, including numerous suicide attempts since high school. Claimant has also suffered a divorce, as well as a breakup of her church, which apparently played an important role in her life. Clearly, claimant's depressive disorder preexisted her employment with the defendant. Claimant bears the burden of proof to show that her depressive disorder was aggravated by her work conditions. Although claimant has shown conditions at her workplace that are less than ideal, they do not rise to the level of stress greater than that experienced by all employees. To be compensable under the workers' compensation law, claimant must show that her depressive disorder or an aggravation of a preexisting disorder was caused by factors of stress beyond that which all employees must experience in the workplace. Claimant has failed to carry her burden to show that the stresses she alleges rose to that level. Claimant's psychological condition is not the responsibility of her employer.[53]

The decision was significant because the Iowa Industrial Commissioner recognized that technological change, including new systems and retraining, is a

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49. *Id.*, slip op. at 2.
50. *Id.*
51. *Id.*
52. *Id.*, slip op. at 5-6.
53. *Id.* (citations omitted).

normal part of employment and refused to consider such stresses as factors supporting an award.[54]

Likewise, the Industrial Commissioner has also noted that "the workplace is often not a particularly enjoyable location for many individuals. Bosses and supervisors are not commonly known for being kind and nurturing. Work is often hard and hours are often difficult."[55] The Industrial Commissioner further noted that "while many people would like to have a close, friendly working relationship with their boss or supervisor, such a situation does not occur all that frequently."[56] Indeed, "in today's employment setting, employees are faced with increased work loads, demanding supervisors and employers, staffing cutbacks and reassignments, and an overall attitude that more must be done with less."[57] As one deputy industrial commissioner noted, "Neither companies nor managers, no matter how good their intentions, can eliminate employee stress."[58]

Finally, it has also been recognized that the work does not always cause the stress.

> Most workers, at some time or another, do not like their jobs, but feel obligated to continue to work, due to a mortgage, other financial obligations, or a sense of pride. It is not the work that causes the stress but the other obligations that make working a necessity in life.[59]

Likewise, things such as commuting "inconveniences" are job stresses that must be endured by all employees.[60]

B. *Stress Brought on by Actions of Co-Workers*

It should come as no surprise that the actions of co-workers can lead to a mental/mental claim and not just the actions of an employee's supervisor or boss. To amount to a compensable claim, however, more than a personality

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54. *See also* Utterback v. Wapello County, No. 1019771, slip op. at 10 (Iowa Indus. Comm'r June 23, 1994) (appeal decision) (holding that "all employees are subjected to technological changes in the workplace").

55. Wolfram v. Midwest Gynecologists, P.C., No. 1020266, slip op. at 4 (Iowa Indus. Comm'r June 16, 1993) (expedited decision).

56. *Id.*, slip op. at 5.

57. *Id.*; *see also* Lindblom v. Iowa Dep't of Pub. Safety, No. 1018902, slip op. at 1 (Iowa Indus. Comm'r Nov. 18, 1993) (arbitration decision) (holding that "claimant was not asked to do anything more than any other state patrolman and his work situation involved stressful components which all employees must experience including deadlines, uncertainties, imperfect bosses, irritating coworkers, unpleasant tasks, production requirements, etc.").

58. Lindblom v. Iowa Dep't of Pub. Safety, No. 1018902, slip op. at 1 (Iowa Indus. Comm'r Nov. 18, 1993) (arbitration decision).

59. Domeyer v. Interstate Power Co., No. 1056268, slip op. at 10 (Iowa Indus. Comm'r Aug. 12, 1996) (arbitration decision).

60. Street v. United Technologies, No. 959365, slip op. at 5 (Iowa Indus. Comm'r June 30, 1993) (appeal decision).

conflict must exist.[61] After all, some conflict or tension between co-workers is likely to occur in the "day-to-day" work setting. In *Wolfram v. Midwest Gynecologists, P.C.*,[62] the claimant, a registered nurse, did not get along with a medical assistant who began working in the doctor's office several years prior to the claimant.[63] The claimant was disturbed by the fact that this co-worker, whose level of education was inferior to her own, was allowed to function as her supervisor; often criticizing the claimant's work performance, sometimes unfairly.[64] It was also noted that the co-worker had "remained somewhat aloof" from the claimant and that the pair had not developed a "friendly working relationship."[65] While the deputy industrial commissioner hearing the case acknowledged that the claimant's work setting was "somewhat stressful," he concluded that it "was not . . . beyond the range of what may be considered to be normal in a workplace as far as stress is concerned."[66]

On the other hand, in *Solomon v. City of Sioux City*[67] the stress experienced by the claimant resulting from her co-worker's actions was compensable.[68] In *Solomon* the claimant worked with one other employee in the city print shop.[69] Over the last few years that the claimant worked for the city, her co-worker's actions became increasingly bizarre.[70] His clothes were dirty and at times covered with pet manure.[71] The co-worker stopped taking care of himself and showed up at work with foul body odor.[72] He also had an explosive temper, would grumble to himself, throw things like staple guns against the wall—sometimes missing the claimant by only a few inches—and "began to talk about keeping a list of [people] he was going to 'blow away.'"[73] On one occasion he brought a gun to work and waved it around the room in front of the claimant.[74] Furthermore, the co-worker had a habit of taking the knife, used by him and the claimant for layout work, "to cut open boils on his legs leaving blood and pus on the knife . . . and [eating] them in front of [the claimant]. He also would pull hairs from his nose and eat them in front of her."[75] Concluding that the claimant's mental/mental claim was compensable, the deputy industrial commissioner found that the

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61. Wolfram v. Midwest Gynecologists, P.C., No. 1020266, slip op. at 4 (Iowa Indus. Comm'r June 16, 1993) (expedited decision).

62. Wolfram v. Midwest Gynecologists, P.C., No. 1020266 (Iowa Indus. Comm'r June 16, 1993) (expedited decision).

63. *Id.*, slip op. at 2.

64. *Id.*

65. *Id.*

66. *Id.*, slip op. at 5.

67. Solomon v. City of Sioux City, No. 1052950 (Iowa Indus. Comm'r Nov. 29, 1995) (arbitration decision).

68. *Id.*, slip op. at 7.

69. *Id.*, slip op. at 3.

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*, slip op. at 4.

75. *Id.*

city failed to provide the claimant with a safe working environment.[76] The deputy commissioner also noted that "[a]lthough dealing with difficult employees may not be unusual for supervisors, it is not routine for nonsupervisory personnel."[77]

The contrast between *Wolfram* and *Solomon* is obvious. It seems appropriate that in order for benefits to be awarded in such situations that a co-worker's behavior must be far outside the realm of ordinary annoyance. Most, if not all of us, have had to suffer through an annoying co-worker who "got on our nerves." Such stresses are clearly inherent in any work situation and should not be compensable.

C. *Stress Brought on by Media Attention*

Sometimes the stress an employee feels does not come from the boss or co-workers but from some outside source, such as the media. The outcome in such cases is mixed, with the decision at least partially based on the nature of the claimant's job.[78]

For example, in *Haffner v. Page County Sheriff's Department*,[79] the claimant acted "as a jailer, secretary, and civil process administrator."[80] Her job was fairly stressful, she did not get along with her co-workers, and she believed she was asked to do more work than she was capable of performing.[81] Additionally, the claimant was "under great scrutiny due to newspaper articles alleging an affair with the . . . county sheriff."[82] The allegation was untrue.[83] The deputy industrial commissioner deciding the case concluded that "the newspaper articles and petty gossip concerning the alleged affair was [sic] not under the control of the employer" and the county "did not have the ability to direct a newspaper to stop printing such tabloid-like articles."[84] It was therefore concluded that "stresses related to the political climate [were] not attributable to the employer and [could not] be deemed stresses greater than that ordinarily incurred by employees in same or similar occupations."[85]

Similarly, in *Munson v. Northeast Council of Substance Abuse*,[86] the claimant was unable to sustain a stress claim based on public criticism and unflattering media coverage. The reasoning, however, was somewhat different than that of the *Haffner* case. The claimant in *Munson* was hired as the

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76. *Id.*, slip op. at 6.
77. *Id.*
78. *See infra* Part IV.D.
79. Haffner v. Page County Sheriff's Dep't, No. 1020289 (Iowa Indus. Comm'r Dec. 6, 1995) (arbitration decision).
80. *Id.*, slip op. at 3-4.
81. *Id.*
82. *Id.*, slip op. at 4.
83. *Id.*
84. *Id.*
85. *Id.*
86. Munson v. Northeast Council of Substance Abuse, No. 1055341 (Iowa Indus. Comm'r Sept. 13, 1995) (arbitration decision).

executive director of a substance abuse center.[87] Shortly after entering the position, the claimant found herself in the middle of a public controversy, which culminated in the claimant (who was white) firing a popular minority member of the minority outreach program.[88] During the course of the controversy, the claimant attended various board meetings which exposed her to shouting and accusations against her.[89] The claimant was also picketed and her car was vandalized.[90] A radio call-in station did not portray the claimant in a positive light.[91] Evidence was presented that indicated no other executive director had been picketed, referred to on a radio program, or received such negative publicity.[92] Finding for the defendants, the deputy industrial commissioner noted that the claimant was the head of a public entity in a high stress job and therefore "should expect public criticism."[93] The deputy industrial commissioner also concluded that the claimant had brought much of the controversy upon herself because of her questionable and confrontational management style.[94]

The *Haffner* and *Munson* decisions help illustrate that not all stress experienced on the job is brought on by the employer or is necessarily the responsibility of the employer. The cases also suggest that the employee may have to accept more responsibility for her actions on the job, which may effect her stress level.[95] It remains to be seen whether that responsibility extends to employees at every level or just those in management. It seems, however, that if the claimant has a hand in making the working situation stressful, he should not subsequently be able to make a workers' compensation claim based on that stress. Likewise, it seems reasonable that if the employer has no control over the stress brought on by outside forces, the employer should not be held responsible for that stress.

D. *Stress Inherent to Some Professions*

One of the criticisms of the legal standard adopted by the Iowa Supreme Court in *Dunlavey* is that it makes it difficult, if not impossible, for individuals in some professions to successfully bring a mental/mental claim. After all, few would disagree that the job of a surgeon, trial lawyer, police officer, or executive director is likely to be highly stressful more often than not. In short, some would argue that the *Dunlavey* standard of proof effectively applies an assumption of risk to highly stressful professions.

For example, in one appeal decision, the Industrial Commissioner noted:

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87. *Id.*, slip op. at 2.
88. *Id.*, slip op. at 3.
89. *Id.*
90. *Id.*
91. *Id.*
92. *Id.*, slip op. at 9.
93. *Id.*, slip op. at 12.
94. *Id.*, slip op. at 13.
95. *But see* Fleming v. Humboldt Community Sch., No. 1051965, slip op. at 11-15 (Iowa Indus. Comm'r Oct. 30, 1995) (arbitration decision). For a discussion of *Fleming*, see *infra* notes 136-150 and accompanying text.

> There is some validity to the argument that the Dunlavey standard of review injects the common law defense of assumption of the risk into workers' compensation law in Iowa. By requiring a comparison with other employees in the same or similar occupations, Dunlavey in effect states that a worker who chooses employment in a high-stress profession assumes the risks of that profession and will not be compensated for a mental injury resulting from the stresses of that profession or occupation unless he or she can show that the stress was greater than that normally experienced by others in the profession. This approach appears to conflict with the basic no-fault principle of the workers' compensation law that the defense of assumption of the risk has no application.[96]

Certainly, the cases dealing with these professions illustrate the difficulty in establishing a claim under the *Dunlavey* standard of proof.

In *Jensen v. Steelworks,*[97] the claimant was a salaried production scheduler for a manufacturer of steel filling cabinets.[98] He claimed to have suffered a mental/mental injury due to excessive workloads—working fifty to sixty hours a week and weekends.[99] The claimant asked for and received some help in the form of a co-worker entering production data.[100] Friction developed between the claimant and his new helper, however, and the claimant stated that he ended up having to check his co-workers' work as well as checking his own work.[101] The claimant subsequently developed a compulsion to check his work over and over again, which slowed his productivity and increased his stress.[102] He was eventually diagnosed as having an obsessive-compulsive disorder.[103] The claimant's supervisor and co-workers testified that other workers also had to work long hours and that the stress level of the management at the company's Indiana plant was far more stressful than at the Iowa plant.[104] In ruling that the claimant had not established legal causation, the deputy industrial commissioner concluded that "[i]t is clear under *Dunlavey* that the court wished to adopt a higher standard of proof for those in management jobs to show a compensable mental injury."[105]

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96. Jackson v. Britwill Co., No. 976793, slip op. at 16 (Iowa Indus. Comm'r Aug. 29, 1995) (appeal decision) (citing Secrest v. Galloway Co., 30 N.W.2d 793 (Iowa 1948)); *see also* 1 LARSON, *supra* note 1, §§ 4.30-.50.

97. Jensen v. Steelworks, No. 1050304 (Iowa Indus. Comm'r May 4, 1995) (arbitration decision).

98. *Id.*, slip op. at 2.

99. *Id.*, slip op. at 3.

100. *Id.*

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*, slip op. at 4.

105. *Id.*, slip op. at 6.

The claimant in *Roche v. Department of Community Corrections,*[106] a probation officer, claimed job stress because his employer did not allow him to carry a gun,[107] which resulted in his concern for his safety. Further, the claimant's lack of authority to make an arrest and his self-perception that he was being targeted for dismissal made his job stressful.[108] The claimant also argued that he had an increased workload from twenty cases to between fifty and ninety cases, which caused more stress.[109] The commissioner concluded, however, "that the claimant's work load was not unusually stressful" nor was his "caseload shown to have been unusually burdensome when compared with other probation/parole officers."[110]

Similarly, in *Moon v. Board of Trustees,*[111] the Iowa Supreme Court ruled that the claimant, a police officer, had not established his right to benefits.[112] The claimant, a 25-year veteran of the police force, informed his captain that he was suffering from a panic disorder and "did not feel safe carrying a weapon, and feared an inability to back up other officers."[113] The claimant was immediately removed from duty, began counseling, and eventually retired.[114] He subsequently applied for accidental disability benefits[115] claiming that his disability was caused by two specific incidents that arose in the course of his job.[116] In the first incident, the claimant confronted an armed robbery suspect.[117] When the suspect attempted to escape, the claimant did not shoot at him because he feared his partner would be caught in the crossfire.[118] Following that episode, the claimant began having nightmares about the incident.[119] The second incident that troubled the claimant involved a young officer who had committed suicide.[120] The claimant had disciplined the officer shortly before the suicide and the claimant reported feeling guilty for not noticing the deceased officer's problems.[121]

In affirming the trial court's decision, the Iowa Supreme Court cited "substantial evidence" in the record that indicated that the two incidents that allegedly caused the claimant's disability "were no more than the day-to-day

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106. Roche v. Department of Community Corrections, No. 910537 (Iowa Indus. Comm'r Aug. 2, 1995) (remand decision).

107. *Id.*, slip op. at 2-3.

108. *Id.*

109. *Id.*, slip op. at 3.

110. *Id.*, slip op. at 5.

111. Moon v. Board of Trustees, 548 N.W.2d 565 (Iowa 1996).

112. *Id.* at 570.

113. *Id.* at 566-67.

114. *Id.* at 567.

115. *Id.* The *Moon* case is also significant in that the court noted that the standard of proof developed in *Dunlavey* for workers' compensation claimants under Iowa Code chapter 85 also applied to police officers making an accidental disability claim under Iowa Code section 411.6(5). *Id.* at 568.

116. *Id.* at 567.

117. *Id.*

118. *Id.*

119. *Id.*

120. *Id.*

121. *Id.*

stresses commonly associated with police departments."[122] The court noted that even the claimant acknowledged "all police officers are faced with life and death every day and have a stress-related occupation."[123] Moreover, the chief of police stated that neither of the incidents were "exceptionally stressful for law enforcement work."[124]

Other jurisdictions dealing with the issue have come to equally stringent conclusions when dealing with police officers. For example, in *Philadelphia v. Workmen's Compensation Appeal Board,*[125] (*W.C.A.B.*) the Pennsylvania court noted that the job of a police officer was "inherently highly stressful" and concluded that the claimant had not met his burden of proof.[126] In *W.C.A.B.*, the claimant was involved in a gun battle with a barricaded individual whom the claimant shot and killed.[127] The claimant subsequently found out that the individual whom he had shot had actually been brandishing an unloaded gun.[128] Initially, neighbors of the individual praised the claimant and the claimant's supervisors told him he would be commended for his actions. Public opinion, however, began to turn and the claimant became the subject of ongoing media attention and investigations by the police department and the district attorney.[129] The investigations culminated in the claimant's indictment for "voluntary manslaughter, involuntary manslaughter and recklessly endangering another person."[130] The charges were dropped but the claimant was re-arrested a second time and again charged with the same counts before ultimately being exonerated.[131] The claimant stated that as a result of the charges and the publicity he suffered anxiety and depression.[132]

The claimant had a police captain testify on his behalf that "it [was] not normal for a police sergeant to be involved in a shooting such as the one Claimant was involved in, and that the subsequent charges brought against Claimant were extremely abnormal."[133] In determining that the claimant had not established that his work performance "was unusually stressful for that kind of a job or a finding that an unusual event occurred making the job more stressful than it had been"[134] the court concluded:

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122. *Id.* at 568.
123. *Id.* at 569-70.
124. *Id.* at 570.
125. Philadelphia v. Workmen's Compensation Appeal Bd., 682 A.2d 875 (Pa. Commw. Ct. 1996).
126. *Id.* at 879.
127. *Id.* at 877.
128. *Id.*
129. *Id.*
130. *Id.*
131. *Id.*
132. *Id.*
133. *Id.*
134. *Id.* at 879 (quoting City of Scranton v. Workmen's Compensation Appeal Bd., 583 A.2d 852, 856 (Pa. Commw. Ct. 1990)). Note that the Pennsylvania test is slightly different than the test established by the Iowa Supreme Court in *Dunlavey*. *See supra* Part III.B.

> The credited testimony of the various police witnesses established that investigations are routine after incidents such as [a shoot out]. Criminal indictments and public outcry may not necessarily result from such investigations, but neither can these eventualities be considered outside the realm of possibility. Anyone who commits a homicide in this Commonwealth, justifiable or not, should expect to face the consequences stemming therefrom; this includes police officers for whom shooting people is an inherent job risk. Indeed, as protectors of the peace, police officers may be subject to an even higher scrutiny, which in this modern age may occur through the media of television, print, radio and even public protest and outcry.[135]

Lest one think that it is impossible for a professional or anyone in a management position to successfully bring a mental/mental claim, consider the case of *Fleming v. Humboldt Community Schools*.[136] In *Fleming*, the claimant, a superintendent of schools for the Humboldt Community School District became depressed and committed suicide.[137] The claimant, who was described as being a very religious person, reportedly had no problems with his children or in his marriage.[138] It was clear from the evidence that the most significant mental stress that the claimant experienced was from his job.[139] Central to that stress was the controversial "outcome based education" (OBE) program that the school district was planning to implement.[140]

The claimant, who was a proponent of OBE suffered public criticism in "the form of letters to the editor; public meetings conducted by outside activists; and even the preparation of an anti-OBE video tape circulated around the community."[141] Certain Christian fundamentalists in the community vehemently disagreed with the implementation of the program and organized an attack of its use by administrators.[142] The controversy began to take the form of personal attacks and harassment with many members of the claimant's church joining in the criticism.[143] The claimant also reportedly received "threats and even attacks on his commitment to Christianity."[144] In addition to the OBE controversy, the claimant was dealing with the school district's financial difficulties in meeting payrolls and repairing buildings.[145]

In ruling for the claimant, the court concluded, "From the evidence presented, it is also found that the stress experienced by [the claimant], espe-

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135. Philadelphia v. Workmen's Compensation Appeal Bd., 682 A.2d at 879-80.

136. Fleming v. Humboldt Community Sch., No. 1051965 (Iowa Indus. Comm'r Oct. 30, 1995) (arbitration decision).

137. *Id.*, slip op. at 2-3. See *infra* Part V.B and accompanying notes for a discussion of the applicability of the *Dunlavey* standard in suicide cases.

138. Fleming v. Humboldt Community Sch., No. 1051965, slip op. at 3.

139. *Id.*, slip op. at 3.

140. *Id.*, slip op. at 3-4.

141. *Id.*, slip op. at 4.

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.*

cially from the OBE controversy, when viewed objectively and . . . as [the claimant] perceived them, were of greater magnitude than the day-to-day mental stresses school administrators or school superintendents experience routinely."[146] The commissioner noted that the seven other school superintendents from similar rural or small school districts who provided testimony in the case "agreed that the type of stress and personal attacks [the claimant] experienced were unusual compared to the day-to-day stresses they routinely experience in their jobs."[147] The other superintendents indicated instead that their "day-to-day routine stresses involve[d] general administrative duties; working more than a 40 hour week; dealing with the public; conducting meetings; handling personnel problems; and, coping with budget problems."[148] The deputy industrial commissioner then concluded that "the enormous time and concentration involved in having to deal with a full-blown public controversy and highly personal attacks, even to the extent of attacks on his religious beliefs, were beyond the norm and extremely stressful and difficult to handle even for school district superintendents."[149]

The *Munson* case on media coverage has striking similarities. The claimant in *Munson* suffered personal attacks, public outcry, and stinging criticism from a local radio station.[150] Yet, the outcomes were quite different. The reason is likely attributable to the tragic outcome in *Fleming* and the fact that the claimant in *Munson* was deemed to have brought many of the problems upon herself. The contrast in the decisions highlight that while the *Dunlavey* decision did help to settle the legal causation controversy surrounding mental/mental decisions, claimant's will have to continue to wage their battles on the specific facts of their cases.

Finally, in contrast to the assumption of the risk argument discussed, it should be noted that while professionals and people in positions of management may be perceived as having a more difficult time showing that the stress that they encountered is unusual, they are subjected to the same legal causation hurdle that all other claimants must clear. Perhaps it should not be seen so much as a matter of assumption of the risk on the part of professionals, but rather an acknowledgment that people that work in stressful occupations are generally well-trained with a temperament to carry out the normal duties associated with those occupations.

E. *Emphasis on the Meaning of "Day-to-Day" and "Routinely"*

Recent decisions from some deputy industrial commissioners seemed to give special emphasis to the phrases "day-to-day" and "routinely" when applying the standard for legal causation.[151] Looking at the language in

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146. *Id.*, slip op. at 8-9.
147. *Id.*, slip op. at 9.
148. *Id.*
149. *Id.*
150. *See supra* notes 86-94 and accompanying text.
151. *See* Blanchard v. Belle Plaine/Vinton Motor Supply Co., No. 1048262, slip op. at 4 (Iowa Indus. Comm'r May 7, 1996) (arbitration decision); Pauley v. Family Dollar Stores, No. 1078880, slip op. at 4 (Iowa Indus. Comm'r July 3, 1996) (arbitration decision); Wolf v.

Fleming one sees that these phrases play a prominent roll in the decision.[152] The *Dunlavey* standard has seemingly been modified to stress "greater magnitude than the *day-to-day* mental stresses workers employed in same or similar fields experience *routinely*."[153] As the deputy industrial commissioner in *Fleming* plainly stated, "Emphasis must be given to the words day-to-day and routinely."[154]

One should be cautioned, however, about putting too much emphasis on these phrases. First, the word "routinely" does not appear in the *Dunlavey* test established by the Iowa Supreme Court. Second, although not every stress occurs on a daily basis, it does not necessarily mean it is not "a stress of greater magnitude than the day-to-day mental stresses experienced by other workers employed in the same or similar jobs."[155] More aptly, the question is whether the stress is one that an employee could reasonably be expected to encounter during the course of the job. By putting too much emphasis on these phrases, one strays from the very origins of the *Dunlavey* test—the "unusual stress" standard.[156] When one looks to this history, it seems clear that the court was attempting to establish a higher standard of proof.

V. POSSIBLE APPLICATION OF *DUNLAVEY* IN MENTAL/PHYSICAL CASES

Heart attack and suicide cases are other areas in which the court has found it necessary to establish special legal causation tests. With the pronouncement of the legal standard for mental/mental cases in the *Dunlavey* case, there has been effort to merge other tests associated with mental/physical cases into one streamlined test using *Dunlavey* as the model.

A. *Heart Attack Cases*

Over the years the Iowa Supreme Court has developed a three-prong test for establishing legal causation in heart attack cases. As the court noted over twenty years ago in *Sondag v. Ferris Hardware*:[157]

> In the first situation the work ordinarily requires heavy exertions which, superimposed on an already-defective heart, aggravates or accelerates the condition, resulting in compensable injury. . . .

MMS Consultants, No. 1084090, slip op. at 5 (Iowa Indus. Comm'r July 26, 1996) (arbitration decision); Jensen v. Steelworks, No. 1050304, slip op. at 5 (Iowa Indus. Comm'r May 4, 1995) (arbitration decision); Munson v. Northeast Council of Substance Abuse, No. 1055341, slip op. at 13 (Iowa Indus. Comm'r Sept. 13, 1995) (arbitration decision); Solomon v. City of Sioux City, No. 1052950, slip op. at 6 (Iowa Indus. Comm'r Nov. 29, 1995) (arbitration decision).

152. Fleming v. Humboldt Community Sch., No. 1051965, slip op. at 14 (Iowa Indus. Comm'r Oct. 30, 1995) (arbitration decision).

153. *Id.*, slip op. at 12 (emphasis added).

154. *Id.*, slip op. at 14.

155. *Id.*

156. *See supra*, notes 38-42 and accompanying text.

157. Sondag v. Ferris Hardware, 220 N.W.2d 903 (Iowa 1974).

> "If there is some personal causal contribution *in the form of a previously weakened or diseased heart*, the employment contribution must take the form of an exertion greater than that of nonemployment life.
>
> . . . Note that the comparison is not with *this employee's* usual exertion *in his employment* but with the exertions of normal *nonemployment* life of this or any other person."
>
> In the second situation compensation is allowed when the medical testimony shows an instance of unusually strenuous employment exertion, imposed upon a pre-existing diseased condition, results in a heart injury.[158]

The third way in which legal causation can be met is by establishing that the claimant felt impelled to continue working even after the onset symptoms, when but for his work duties, he would have rested or sought medical attention.[159]

But, these early tests all seem to be looking at physical stresses—how physically demanding the work is[160] as opposed to pure mental stresses, such as having to deal with shortfalls in a budget, receiving criticism from one's boss, or witnessing a gruesome accident. In short, the traditional heart attack cases were dealing with physical injuries—heart attacks brought on by physical exertion, so-called physical/physical injuries. With this distinction in mind, there is certainly an argument to be made in applying the *Dunlavey* standard of proof to heart attack cases, at least when the heart attack is alleged to have been brought on by mental stress rather than physical exertion. In a recent case, *Jackson v. Britwill Co.*,[161] however, the Iowa Industrial Commissioner specifically refused to apply the *Dunlavey* standard of proof and instead opted for the standard established in *Sondag*.[162]

In *Jackson*, the widow of a worker who had numerous risk factors predisposing him to coronary artery disease alleged that her husband had been subjected to greater than usual stress in his employment.[163] Factors considered significant in establishing the stress included difficulties in managing Britwill Company facilities that had numerous ongoing problems and a fear of termination due to the problems at the facility.[164] Following a meeting at the facility, the claimant suffered a mild cardial infarction and died.[165] The claimant did not allege excessive physical exertion or stress, rather he alleged that the stress was purely mental in nature. The Iowa Industrial

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158. *Id.* at 905 (quoting 2 LARSON, *supra* note 1, § 38.83(b) at 7-320 to 7-321).

159. *Id.* at 906.

160. *See, e.g.*, Riley v. Oscar Mayer Foods Corp., 532 N.W.2d 489 (Iowa Ct. App. 1995) (claiming that the deceased aggravated or accelerated his underlying heart condition by performing very heavy work).

161. Jackson v. Britwill Co., No. 976793 (Iowa Indus. Comm'r Aug. 29, 1995) (appeal decision).

162. *Id.*, slip op. at 15.

163. *Id.*, slip op. at 2-3.

164. *Id.*, slip op. at 5-6.

165. *Id.*, slip op. at 9.

Commissioner, on appeal from a denial of benefits, reversed and found that the medical evidence supported a finding of causal connection.[166]

In declining to extend the *Dunlavey* standard, the Industrial Commissioner reasoned:

> The Iowa Supreme Court has on numerous occasions addressed the question of the proper standards to be used in compensating disability or death as a result of a work-related heart attack. The legal standard of comparison of the stress the worker was exposed to in heart attack cases is not the same as the *Dunlavey* standard. *Sondag* contemplates comparing the worker's exertion or stress with nonemployment life; *Dunlavey* contemplates comparing the worker's stress with the stress experienced by other workers in the same or similar occupations.
>
> In light of the numerous pronouncements of the heart attack standard in a long line of decisions by the Iowa Supreme Court, it would be inappropriate for the industrial commissioner to extend the *Dunlavey* standard to heart attack cases. The *Dunlavey* decision is limited to "mental-mental" injuries, and was based on factors unique to those injuries. Any change in the standards used in compensating heart attack cases set forth in *Sondag* and other cases would need to be made by the Iowa Supreme Court.[167]

While the Iowa Industrial Commissioner declined to extend the *Dunlavey* holding to heart attack cases and the Iowa Supreme Court has not yet directly faced the question, Arizona applied the "unusual stress" standard to a case involving emotional stress that caused physical injury.[168] In *Sloss v. Industrial Commission*,[169] a highway patrolman filed a claim for benefits asserting his gastritis was brought on by emotional stress.[170] In denying the claim, the Arizona court found "[t]hat the stresses to which the applicant was exposed in his employment were the same as, and no greater than, those imposed upon all other Highway Patrolmen in the same type of duty."[171] His physical condition brought on by mental distress did not constitute an "injury by accident" because "[h]e was exposed to nothing other than the usual ordinary and expected incidents of his job as a Highway Patrolmen."[172]

Applying the *Dunlavey* unusual stress standard to mental/physical claims would provide a practical, uniform, and consistent test to be applied in workers' compensation claims arising out of mental stresses in the work environment. "Physical" exertion and "mental" exertion are quite different for a number of reasons. Physical exertion or stress is easier to describe and understand. Lifting heavy weights, working in an extremely cold or hot environment, and laboring for long hours, for example, are easier concepts to grasp and apply to the standards enunciated in *Sondag*. Mental stress, on the

166. *Id.*, slip op. at 17.
167. *Id.*, slip op. at 15-16.
168. Sloss v. Industrial Comm'n, 588 P.2d 303, 304 (Ariz. 1978).
169. Sloss v. Industrial Comm'n, 588 P.2d 303 (Ariz. 1978).
170. *Id.* at 304.
171. *Id.* at 304-05.
172. *Id.* at 305.

other hand, is frequently ambiguous and uncertain and therefore should require a more stringent standard such as the one adopted in *Dunlavey*. Furthermore, the adoption of the *Dunlavey* standard in mental/physical heart attack cases would be consistent with the Iowa Supreme Court's own reasoning in *Dunlavey*. As previously discussed, the court specifically stated its preference for the "similarly situated" employee standard when dealing with mentally induced injuries rather than a standard which looks at the stress incurred by all employees.[173] It seems equally obvious that in dealing with mentally induced injuries a court makes a conscious decision to compare a claimant's mental stress to that of a similarly situated employee, not to the stresses of "non-employment" life.

Finally, it is illogical to differentiate mental stress claims solely on either the basis of the presence or absence of physical symptoms or on the type of physical injury that results. After all, one could easily argue that almost any mental condition has some physical symptoms. One only has to look at *DSM-IV* to see the host of physical symptoms accompanying depression and most other mental conditions.[174]

B. *Suicide Cases*

Suicide cases have also traditionally caused particular difficulty in determining compensability. Under Iowa Code section 85.16(1),[175] compensation is not allowed for an injury which is caused "[b]y the employee's willful intent to injure the employee's self or to willfully injure another."[176] Therefore, in order to recover on the basis of suicide, evidence must be produced to obviate the apparent willfulness of the act.

In *Schofield v. White*,[177] the Iowa Supreme Court held that in order to avoid the "willful intent to injure" provision, there must be proof that "the mental condition of [the] decedent at the time of the suicidal act was such that he was motivated by an uncontrollable impulse or in a delirium of frenzy, without conscious volition to produce death."[178] Over time, the harshness of this standard resulted in a shift to the "chain-of-causation" test. In *Kostelac v. Feldman's, Inc.*,[179] the Iowa Supreme Court joined a majority of jurisdictions in adopting the chain-of-causation test.[180] Under this test, compensation was to be permitted upon proof of a chain of causation linking a "loss of normal judgment and domination by a disturbance of the mind,

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173. *See supra* notes 38-42 and accompanying text.

174. DSM-IV, *supra* note 6, at 327. For example, some of the physical symptoms of depression include a more than five percent increase or decrease of body weight in a month, objective psychomotor agitation and fatigue, or loss of energy. *Id.*

175. IOWA CODE § 85.16(1) (1997).

176. *Id.*

177. Schofield v. White, 95 N.W.2d 40 (Iowa 1959).

178. *Id.* at 46.

179. Kostelac v. Feldman's, Inc., 497 N.W.2d 853 (Iowa 1993).

180. *Id.* at 857.

causing the suicide."[181] It is important to note, however, that the *Kostelac* court indicated that the application of this new rule was "complicated somewhat by the fact that we have not yet had occasion to rule whether a mental injury, standing alone, will give rise to a claim for workers' compensation."[182] The court ultimately ruled that the claimant had failed to establish medical causation; therefore, the court did not have to make a decision on the compensability of a purely mental injury.[183]

Initial decisions from deputy industrial commissioners dealing with this issue have concluded that the *Dunlavey* standard should be applied to suicide cases.[184] As one deputy reasoned:

> Given the language in *Kostelac*, the court fully intended that any new rule for mental injuries they would in the future adopt was to be applied to mental stress in suicide cases. In *Kostelac*, the court clearly stated that the chain of causation begins with a showing of a work injury. Additionally, in Iowa, a showing of compensable mentally-induced injury requires a showing of not only medical causation but also the legal causation enunciated in *Dunlavey*.[185]

The reasoning enunciated by the deputy industrial commissioner makes sense. Additionally, all of the reasons cited for applying the *Dunlavey* standard of proof in heart attack cases discussed previously would apply. Therefore, there is good reason to presume the court will adopt the *Dunlavey* standard in suicide cases premised upon work stress unaccompanied by physical injury.

VI. MENTAL/MENTAL CASES VERSUS CIVIL RIGHTS CLAIMS

Under the workers' compensation system "[t]he reason for the employer's immunity is the quid pro quo by which the employer gives up his normal defenses and assumes automatic liability, while the employee gives up his right to common law verdicts."[186] Thus, with few exceptions, the workers' compensation system is an injured worker's exclusive remedy.[187] An inten-

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181. *Id.* (citing State *ex rel.* Wyo. Workers' Compensation Div. v. Ramsey, 839 P.2d 936, 940 (Wyo. 1992)).

182. *Id.*

183. *Id.* at 857-58.

184. *See* Blanchard v. Belle Plaine/Vinton Motor Supply Co., No. 1048262, slip op. at 9 (Iowa Indus. Comm'r May 7, 1996) (arbitration decision); Domeyer v. Interstate Power Co., No. 1056268, slip op. at 9-10 (Iowa Indus. Comm'r Aug. 12, 1996) (arbitration decision); Fleming v. Humboldt Community Sch., No. 1051965, slip op. at 14 (Iowa Indus. Comm'r Oct. 30, 1995) (arbitration decision).

185. Blanchard v. Belle Plaine/Vinton Motor Supply Co., No. 1048262, slip op. at 9 (Iowa Indus. Comm'r May 7, 1996) (arbitration decision).

186. Suckow v. NEOWA FS, Inc., 445 N.W.2d 776, 779 (Iowa 1989) (citations omitted).

187. IOWA CODE § 85.20 (1997). *See, e.g.*, Slaymaker v. Archer-Daniels-Midland Co., 540 N.W.2d 459, 462 (Iowa Ct. App. 1995) (holding that worker's tort claim for intentional

tional tort inflicted upon a worker, such as sexual harassment, is one of those exceptions.[188] Workers have a cause of action for discrimination, not under the Iowa workers' compensation law, but the federal and state civil rights laws which pre-empt the workers' compensation laws and is the only recourse for injured workers.[189]

The Iowa Supreme Court explicitly endorsed this reasoning in *Ottumwa Housing Authority v. State Farm Fire & Casualty Co.*[190] The court noted that the claimant, who had simultaneously filed a workers' compensation claim and a civil rights claim based on the same acts of sexual discrimination, had her workers' compensation claim dismissed for good reason.[191] The court determined that "[i]n these circumstances the quid pro quo for [the employer's] giving up its normal defenses is gone."[192] The court held, therefore, that "the basis for a workers' compensation claim grounded on these same discrimination claims is likewise gone."[193]

Recently, however, the Iowa Supreme Court in *Baird v. Ottumwa Community School District,*[194] reversed a trial court's dismissal of what appeared to be a sexual discrimination case in the workers' compensation arena.[195] As a result of this decision, speculation may arise as to the implication of the case, particularly regarding facts alleged in mental/mental cases under the new *Dunlavey* standard. In *Baird,* as in *Ottumwa Housing Authority,* the claimant had simultaneously filed a workers' compensation claim along with a claim with the Iowa Civil Rights Commission.[196] The claimant ultimately entered into a settlement agreement with her employer on the civil rights issue before a final decision or right-to-sue letter was issued.[197] As a part of the settlement, the employer denied any wrong-doing but agreed to "initiate practices promoting nondiscrimination, including the prohibition of sexual harassment."[198] The agreement also specified that it did not "include any recovery for any claims for medical care, medication, or other relief available under the Iowa Workers' Compensation Act 'and that complainant retains all rights to proceed under the Iowa Workers' Compensation Act.' "[199]

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infliction of mental anguish due to exposure to asbestos was barred by the exclusivity provision of the workers' compensation law).

188. IOWA CODE § 85.20 (1997); *see also* Gillespie v. Firestone Tire & Rubber Co., No. 1042214, slip op. at 3-4 (Iowa Indus. Comm'r Oct. 24, 1994) (appeal decision); Miller v. Marshalltown Community Sch. Dist., No. 1053023, slip op. at 2-3 (Iowa Indus. Comm'r Sept. 14, 1994) (appeal decision).

189. *See* IOWA CODE § 216.6 (1997); 42 U.S.C. § 2000e (1994).

190. Ottumwa Hous. Auth. v. State Farm Fire & Cas. Co., 495 N.W.2d 723 (Iowa 1993).

191. *Id.* at 729.

192. *Id.*

193. *Id.*

194. Baird v. Ottumwa Community Sch. Dist., 551 N.W.2d 874 (Iowa 1996).

195. *Id.* at 874-75.

196. *Id.* at 875.

197. *Id.*

198. *Id.*

199. *Id.* (quoting the parties' agreement).

In reversing the trial court's grant of summary judgment, the Iowa Supreme Court found that a genuine issue of material fact precluded any such motion.[200] The court noted that there had been no adjudication of the civil rights claim.[201] Furthermore, even if the acts alleged in the civil rights claim had constituted sexual discrimination, there was nothing in the record from which the court could conclude those were the same acts or circumstances upon which the claimant had based her workers' compensation claim.[202] The claimant, in her petition to the Industrial Commissioner, had simply alleged "abusive treatment by supervisors resulting in severe depression."[203] The court concluded that "[i]t is manifest that not all circumstances that would create a compensable claim for emotional distress benefits under our decision in *Dunlavey v. Economy Fire & Casualty Co.* would give rise to a sexual discrimination claim" under Iowa Code section 216.6.[204]

Of course, there are other implications to the *Baird* decision. For example, some commentators have argued that the case "raises interesting issues about preemption" and that "[a]pparently, if harassment is not proved, a claim or charge of harassment not only does not necessarily defeat a workers' compensation claim, it may actually help it along."[205] However, just as "[i]t is manifest that not all circumstances that would create a compensable claim for emotional distress benefits under our decision in *Dunlavey* would give rise to a sexual discrimination claim,"[206] it is also clear that not every failed civil rights case will lead to a compensable workers' compensation case. First, under *Dunlavey,* the claimant must be able to establish medical causation—a legal standard not required in civil rights cases. Secondly, if the civil rights claim is found to be without merit based on the facts, then it was not a civil rights case at all and there is no room for the argument that the state workers' compensation law has been pre-empted. Likewise, there is no reason to believe that losing the civil rights case will somehow help the claimant win the workers' compensation case unless one believes the extra practice of trying the case twice is a benefit.

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200. *Id.* at 876.

201. *Id.*

202. *Id.*

203. *Id.*

204. *Id.* (citation omitted). While the court's statement is technically correct, it would seem that very few cases would result from such a distinction. *See, e.g.*, Wolf v. MMS Consultants, No. 1084090 (Iowa Indus. Comm'r July 26, 1996) (arbitration decision) (stating that the stresses the claimant experienced were not in excess of those experienced by people in similar fields and the sexual harassment incidents were isolated). "Male claimant was questioned about his sex life and jokes were made concerning sexual activity with another employee." *Id.* at 3. "The conversations were made in context where it could be considered male bonding by a supervisor with a subordinate." *Id.* Furthermore, "[c]laimant did notify management that he was offended by the statements," and "[n]o further activity occurred after that point." *Id.*

205. Frank Harty, *Worker's Compensation and Damages Under the Iowa CRA*, LAB. & EMPLOYMENT NEWSLETTER (Labor and Employment Section, Iowa State Bar Assoc., Des Moines, Iowa) Nov. 1996, at 6.

206. Baird v. Ottumwa Community Sch. Dist., 551 N.W.2d at 876.

Yet, there clearly are some lessons to be learned from *Baird.* For example, defense attorneys attempting to settle a civil rights claim should consider including any potential workers' compensation claim as a part of a settlement agreement or at least counseling their clients that the potential for such a claim may still exist even after the civil rights case has been settled. Likewise, claimants that lose civil rights cases and that may be able to establish medical causation for a mental injury may want to consider filing a workers' compensation case.

VII. CONCLUSION

With the *Dunlavey* decision, Iowa has now joined the majority of states recognizing the compensability of mental/mental injuries in the workers' compensation arena. In so doing, the Iowa Supreme Court has adopted a realistic and balanced test of legal causation. The evidence necessary to establish the usual stress of workers employed by the same employer or in the same employment should be available, the factors that may constitute unusual stress, if any, should be apparent, and the expert testimony can be focused on those factors. In opting for the *Dunlavey* standard, the court specifically rejected the Wisconsin test, which compares the employee's stress to that of all other workers, as generally being difficult to analyze in practice and biased toward employees who work in perceived stressful occupations.

Under the *Dunlavey* standard the bias is removed. The mental stress of potential claimants is compared with "the day-to-day mental stresses experienced by other workers employed in the same or similar jobs, regardless of their employer."[207] There is an acknowledgment that there is stress inherent in all employment situations, and an acknowledgment that workers in some fields or professions may face greater stress on a day-to-day basis. This should not, however, be characterized as an assumption of risk, but rather as a realization that persons who work in stressful occupations are generally prepared by training and temperament to carry out the normal duties associated with those occupations. Therefore, the standard is not biased against persons in such positions, but rather allows for a uniform application of a legal standard across the wide spectrum of all jobs.

Because the standard of proof established in *Dunlavey* does add consistency to the determination of mental injuries, serious consideration should also be given to extending the *Dunlavey* rationale to heart attack and suicide cases brought on by mental stress. By adopting the *Dunlavey* standard in such cases, there would be only one streamlined legal causation test to apply in all mental injury cases. Sometimes less truly is better.

Finally, while the *Dunlavey* case implicitly recognized mental/mental injures there are still causes of action, such as civil rights claims, that will preempt a claimant's cause of action under the workers' compensation system. One will have to be careful to sort out conduct or situations that are the result of intentional acts, potential civil rights claims, or other tort actions from

207. Dunlavey v. Economy Fire & Cas. Co., 526 N.W.2d 845, 858 (Iowa 1995).

employment stress that falls within the realm of a worker's exclusive remedy under the workers' compensation system.