

# BELOW THE RED LINE

## WORKERS' COMPENSATION UPDATE "WE'VE GOT YOU COVERED!"

### August 2023

#### A WORD FROM THE PRACTICE CHAIR

Last week was a little more difficult for me (and my wife). We took the kid back to college. While it wasn't the first time, it doesn't get easier. However, some of the sting of the experience is gone, especially since we have gotten much better at the packing and unpacking routine. And fortunately for me, I was not asked to put anything together this year. I have learned over the years if I am required to put something together, I need plenty of time and minimal expectations. My father, bless his heart, did his best to teach me to work with my hands, but, at the end of the day, there was a good reason I went to law school. Anyway, back to the annual college drop-off event. As parents, we are divided, wanting that child with us, at least when they are acting reasonably, but we also want them to get out there and experience life and find what opportunities await them. A saving grace is having technology that allows us to visit with one another and catch up virtually. But technology has not yet developed a way to replicate a hug from your kid, and time has a funny way of flying by.

One of the more gratifying parts of getting older (or more seasoned) is the ability to mentor young attorneys at Heyl Royster. It is a pivotal component to being a great partner and leaving a lasting legacy for our firm and clients. While it may feel that way on certain days, none of us will work forever. As someone who brings over 25 years of workers' compensation experience to the table, I constantly remind myself that I do not know it all. As the mentor, you must be open to being taught a lesson or two by your mentees. You may have a lifetime of practical experience, but you also have some built-in biases and your singular perspective when evaluating any problem before you. In the past, I have written about our succession planning here at Heyl Royster and our vision and focus on the issue. While teaching and mentoring are part of my duties as a partner and chair of this great workers' compensation practice group, the lesson to take away is that everyone should be open to learning something. Mentoring is not a one-way street. This take-away can carry over into anyone's work life.

This month's article focuses on mental health injuries and the causation standard needed to prove these claims under the Illinois Workers' Compensation Act. Written by Chicago associate [Yu Ma](#), this is a great topic to focus upon and outline how to deal with these cases from a claim management standpoint because, in 2023, mental health has never been more front and center. Yu joined the Heyl Royster family in 2022 and is part of the workers' compensation team, working under the guidance and mentorship of [Brad Antonacci](#).

We are here, as always, to help with any mental traumas/injuries that are the subject matter of your claim. Feel free to contact us to discuss how we can help.

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## FEATURE ARTICLE

### WHEN ARE MENTAL ILLNESSES COMPENSABLE UNDER ILLINOIS WORKERS' COMPENSATION?

BY: YU MA



Depression and post-traumatic stress disorder (PTSD) are two of the more commonly experienced illnesses in the United States and can stem from our personal and work lives. Petitioners who suffer mental injury on the job or as a result of their job may be entitled to benefits under the Illinois Workers' Compensation Act 820 ILCS 305/1 *et seq.*

Under the Illinois Workers' Compensation Act, there are three different types of claims involving mental injury or illness. The first is mental-physical injury, in which job-related stress causes the employee to suffer a physical injury. For example, a driver kills a pedestrian and then suffers a heart attack from the shock of the event. The second is physical-mental injury, in which a psychological injury is related to and caused by physical trauma or injury at work. For example, an employee injures their back at work and then suffers depression due to the injury and its effects. The third category and most litigated type of mental injury is mental-mental injury, in which the claimant's psychological injuries are related to and caused by non-physical work-related factors.

A mental-mental injury is recognized as compensable if the psychological injury is caused by sudden, severe emotional shock traceable to a definite time, place, and cause. For example, a bus driver's mental injury was found to be compensable when she drove a bus that struck and killed a pedestrian and watched the pedestrian die. Another example is when a firefighter's PTSD claim was found compensable after

he witnessed a fellow firefighter die during a fire. But what about mental trauma involving multiple events at work over time that lead to the gradual deterioration of the employee's emotional well-being? While Illinois courts have been cautious about finding compensability under this theory because normal workplace stress is not covered under the Act, if there is a series of objectively observable workplace stressors that are more serious than the usual strain all employees experience at work, and the higher-level stress is a major cause of the claimant's mental injury, benefits may be appropriate under the Act. The Illinois Appellate Court has shed some light on the court's approach to addressing such a situation.

In *Chicago Transit Auth. v. Illinois Workers' Comp. Comm'n*, First District Appellate Court affirmed in an unpublished opinion that a compensable injury was sustained under the Act when a bus driver was found to have developed PTSD from multiple incidents on his high-crime route working for the Chicago Transit Authority. 2015 IL App (1st) 123722WC-U. The claimant was awarded 15 weeks of TTD benefits and all reasonable and necessary medical expenses. *Id.* ¶12. In this case, the emotional injury did not arise from one sudden and severe shock at a definite time but from a series of verbal abuses on four occasions over a two-month span. *Id.* The claimant's bus route includes stops at Englewood, which, noted by the arbitrator, is a neighborhood with one of Chicago's highest violent crime rates. *Id.* ¶17, Footnote 2.

The claimant applied to be transferred to the Englewood neighborhood route in February 2010 after CTA discontinued the old route he served. *Id.* ¶10. He requested this new route due to the short commute from his home. One of the claimant's duties was to pick up students at Englewood High School at the end of the school day. *Id.* ¶16. On March 3, 2010, the claimant witnessed three young men attempting to rob another young male on his bus. *Id.* ¶18. Though he was able to flag down a police officer, and the attackers did not attempt to make any physical contact with him, the claimant alleged that this event caused him great fear. The young men who attempted the robbery on the bus were later arrested and prosecuted. A second incident occurred a few weeks later when the claimant restarted the bus slower than usual, and a female student passenger screamed and cursed at him repeatedly. *Id.* ¶11. Soon after the second incident, the claimant was forced to exit the bus and repair the battery several young passengers had disabled earlier. *Id.* ¶13. The



youths taunted the claimant with racial epithets as he worked to repair the bus.

Finally, on April 26, 2010, before he started work, the claimant came to his supervisor for support because he was called to testify in the criminal proceeding regarding the March 3, 2010, incident. *Id.* ¶17. He stated that his supervisor did not offer sufficient assistance. He alleged that when he drove the bus later that day, he felt upset and experienced shortness of breath. *Id.* ¶18. He called CTA control, which called an ambulance to his location and transported him to the ER. After being discharged from the hospital ER, he sought psychological treatment and was diagnosed with work-related adjustment disorder, acute stress disorder, and post-traumatic stress disorder (PTSD). *Id.* ¶19.

In *Luis Gonzalez v. Chicago Transit Auth.*, 10 IL. W.C. 16776 (Ill. Indus. Com’n Dec. 21, 2011), the arbitrator found that the claimant’s current condition of psychological ill-being arose out of and in the course of his employment. The Commission and Circuit Court of Cook County affirmed the arbitrator’s decision.

At the appellate level, the court first recognized that the Illinois court has been particularly hesitant to allow recovery under the mental-mental theory, and it has repeatedly noted that “[m]ental disorders which develop over time in the normal course of the employment relationship do not constitute compensable injuries.” *Chicago Transit Auth. v. Illinois Workers’ Comp. Comm’n*, 2015 IL App (1st) 123722WC-U, ¶26 (citing *Matlock v. Industrial Comm’n*, 321 Ill. App. 3d 167, 171 (2001)). However, the court held that mental-mental injury is compensable under the Act if three elements are met:

1. The mental disorder arose in a situation of greater dimensions than the day-to-day emotional strain and tension that all employees must experience;
2. The conditions exist in reality from an objective standpoint, and
3. The employment conditions, when compared with the nonemployment conditions, were the major contributory cause of the mental disorder.

The court noted that all the above three elements are questions of fact for the Commission to

determine, and the Commission’s decision will only be overturned if it is against the manifest weight of evidence. *Id.* ¶27-32 (citing *Runion v. Indus. Comm’n*, 245 Ill. App. 3d 470, 615 N.E.2d 8 (5th Dist. 1993)).

For the first factor, CTA argued that the claimant did not experience greater stress and tension than other CTA drivers were exposed to from discourteous passengers and unruly teenagers. *Id.* ¶28. The court disagreed. They considered the fact that the claimant had to pick up students from Englewood High School who were far more than merely discourteous and unruly. Therefore, the court held that the first



element is established since the particular bus route and the claimant’s daily duty exposed the claimant to a violent and dangerous environment greater than the stress and tension of all other CTA drivers. *Id.* ¶29-30.

The second factor is whether the condition exists. *Id.* ¶31. The court deferred to the Commission’s judgment on the facts, including the credibility of the claimant’s testimony and other objective evidence, such as surveillance footage. The court held that the second element was met.


For the third factor, the court held that they look at the claimant’s prior mental condition and the

medical expert's opinion. *Id.* ¶32. Based on the lack of pre-accident mental history and the medical expert's opinion, the court found the employment conditions to be the major cause of the mental disorder. *Id.* Above all, the court affirmed the Commission's decision and held that the claimant's mental injury was caused by driving buses and being bullied by students on his route.

Because work-related psychological injuries can be difficult to prove, with unique challenges and requirements for causation under the Act, the assistance of defense counsel to thoroughly analyze the facts and law is recommended. Illinois courts have denied mental-mental claims if the defense was able to distinguish the emotional stress caused by bad employment conditions from the emotional stress caused by other reasons or generally experienced by other employees as well, such as mental injuries caused by arguments with coworkers, increased workload and verbal abuse by supervisor, and personnel matters unrelated to the claimant's work.

We welcome you to contact any of our Heyl Royster attorneys specializing in workers' compensation defense if you have any questions on this topic or any other workers' compensation issues.



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If your business, organization, or you as an individual need premier defense services from an industry-leading workers' compensation defense firm, the dedicated legal minds at Heyl Royster are ready to provide you with the legal advice and legal services that you deserve. From complex claims to disputes, causation, and more, our workers' compensation attorneys are experienced litigators ready to come to your defense.

Heyl Royster Is Ready To  
Defend You

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***An accomplished legal professional, Yu is experienced in the U.S. and China.***

A first-generation immigrant, Yu is an accomplished legal professional who has been practicing nationally and internationally for over a decade in the industry. She began her legal career in Shanghai, China, after completing her Bachelor of Commerce and IP Law degree with High Honors. While in China, she practiced corporate and employment law for a large firm.

Yu continued her legal studies at the University of Illinois College of Law, receiving her Master of Law in 2014 and her J.D. in May 2022. While in law school, she externed with Judge Michael Mihm in the Central District Court of Illinois and clerked with Heyl Royster. Additionally, Yu served as the Production Editor for the Illinois Journal of Law, Technology, and Policy and was a member of the Moot Court Team.

Yu now resides in the north suburb of Chicago with her family.

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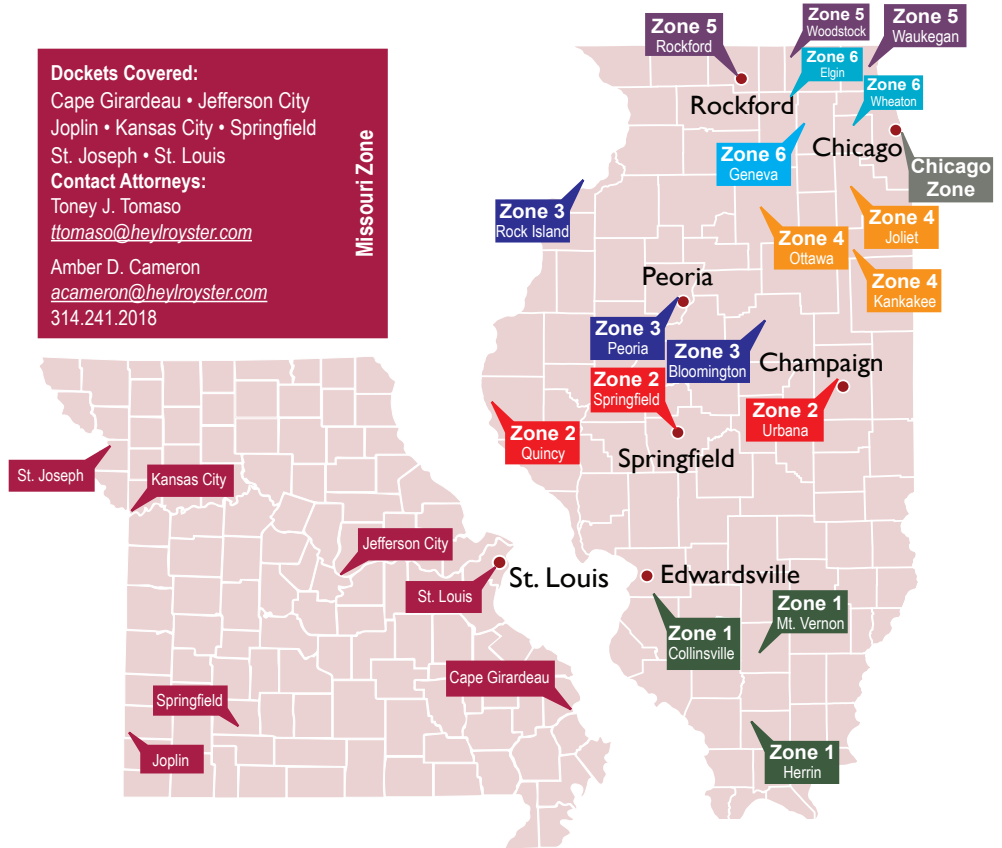
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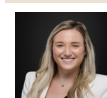
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