

# Mental Trauma Injuries Under the Texas Workers Compensation Act



*Focus on PTSD*

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# PTSD following hospitalization after physical trauma



6 months following hospitalization

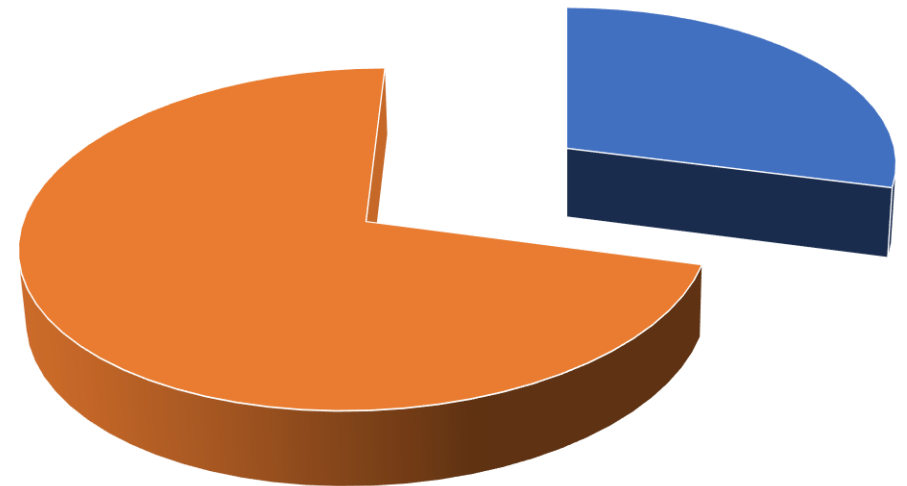
31% met criteria for probable PTSD

12 months following hospitalization

29% met criteria for probable PTSD

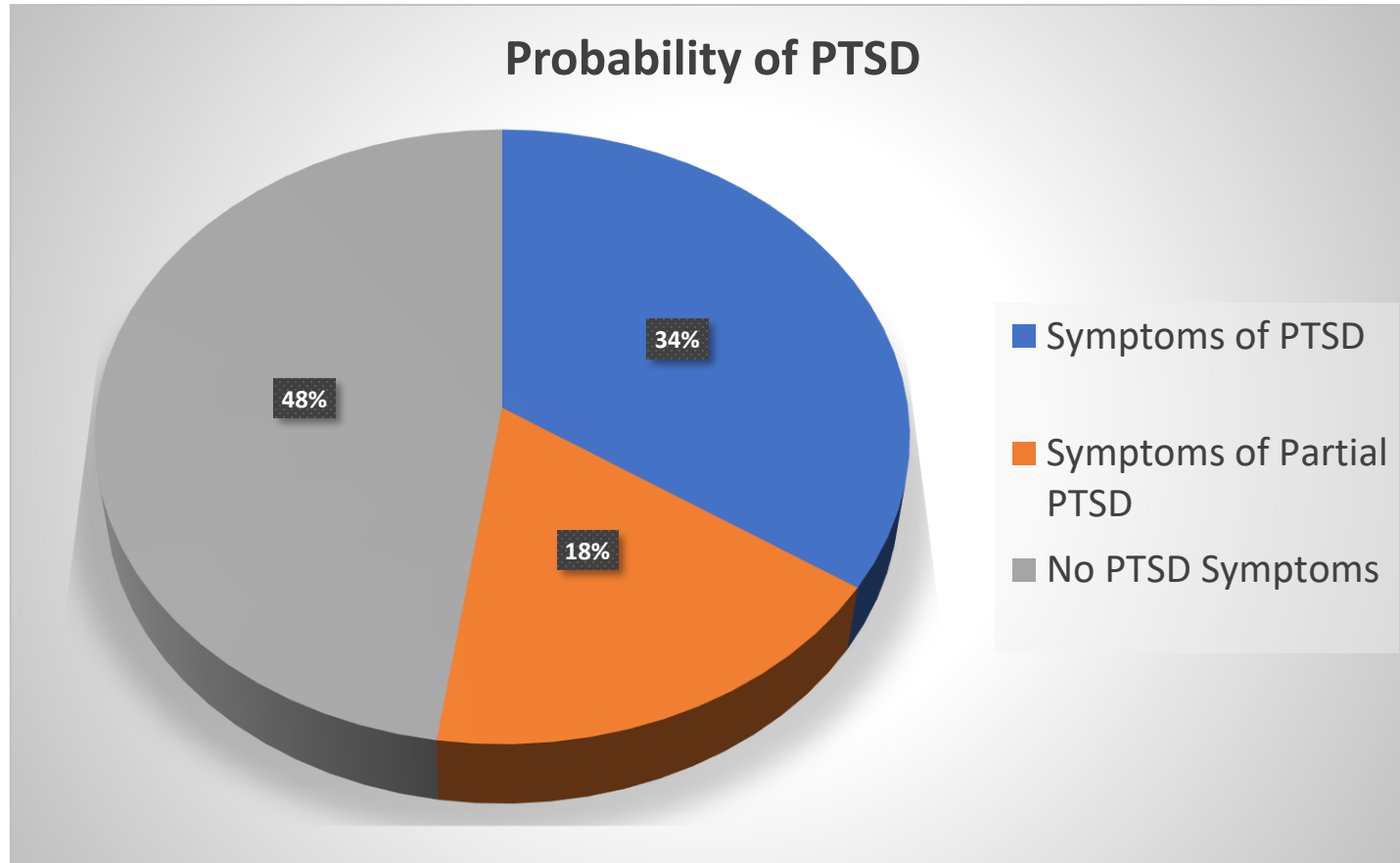
Shih RA, Schell TL, Hambarsoomian K, et al. Prevalence of posttraumatic stress disorder and major depression after trauma center hospitalization. *J Trauma*. 2010;69(6):1560–1566.

Probability of PTSD



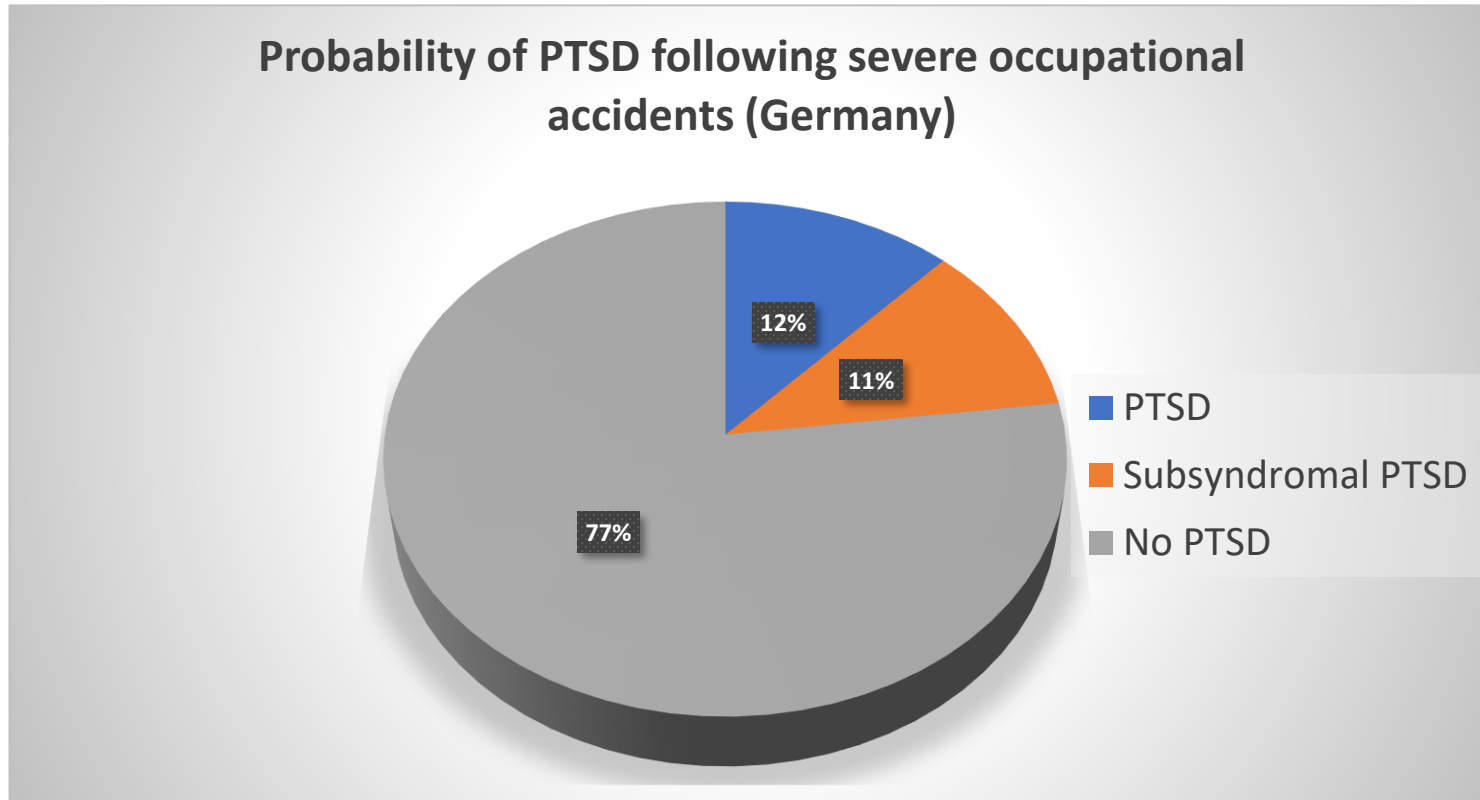
■ Met Criteria for PTSD ■ Negative for PTSD

# PTSD symptoms after work related injury



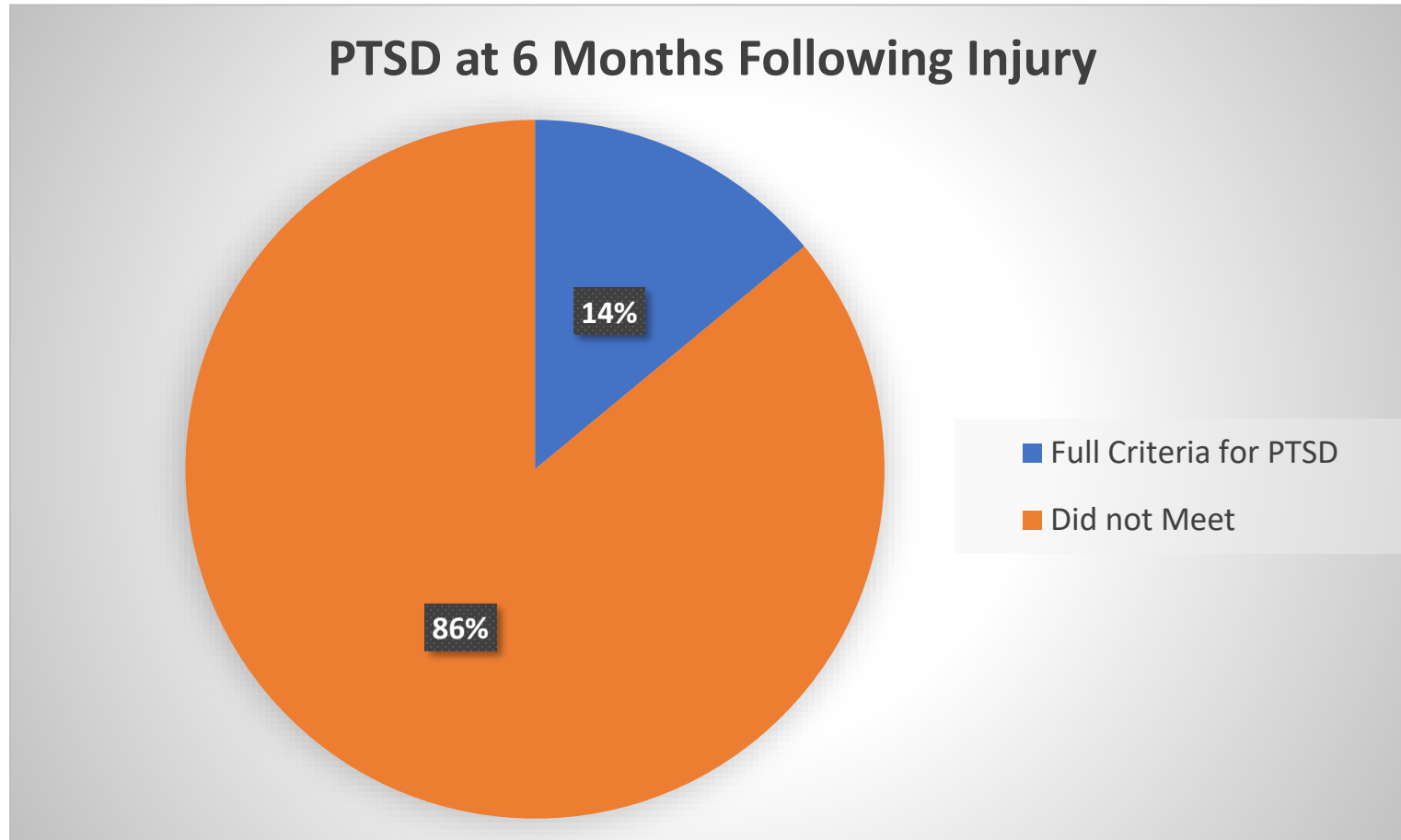
Asmundson GJ, Norton GR, Posttraumatic stress disorder and work-related injury. *J. Anxiety Disord.* 1998 Jan-Feb; 12(1):57-69.

# PTSD after severe occupational injury.



Nyberg E., Stieglitz R.D., Psychological disorders after severe occupational accidents. Vericherungs Medizin. 2003; 55:76-81

# PTSD and Traumatic Brain Injury



“Our study indicated that memory of a traumatic event is a strong predictor and a potential risk factor for subsequent development of PTSD. Future studies are needed to show whether these findings can be generalized to other traumatic conditions.”

# Outline

1. Compensability of Mental Trauma Injuries
2. Extent of Injury- Extending a Physical Injury to Include a Mental Trauma Injury
3. Treatment for PTSD
4. Rating PTSD under the AMA Guides, 4<sup>th</sup> Edition



"and then he said  
my migraine was  
all in my head"

# Texas Labor Code 408.006

(a) It is the express intent of the legislature that nothing in this subtitle shall be construed to limit or expand recovery in cases of mental trauma injuries.

(b) Notwithstanding Section [504.019](#), a mental or emotional injury that arises principally from a legitimate personnel action, including a transfer, promotion, demotion, or termination, is not a compensable injury under this subtitle.

Effective September 1, 2017



# What is not covered?

A mental or emotional injury that arises principally from a legitimate personnel action, including a transfer, promotion, demotion, or termination, is not a compensable injury under this subtitle.

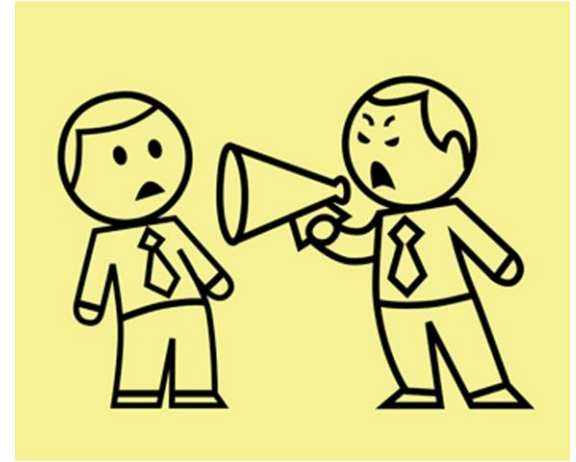
Legitimate personnel action can include:

- Employer's assignment of hours to be worked,
- Deadlines to be met
- Work to be performed
- Promotion practices, and
- Interpersonal conflict.





# Legitimate Personnel Action



Being reprimanded, deserved or undeserved, for one's job performance may well be, from both the employer's and the employee's standpoint, a natural part of any job causing mental stress but the resulting injury, if any, is not suffered while the employee is engaged in or about furtherance of the affairs of the employer.

*City of Austin v. Johnson*, 525 S.W.2d 220, 221 (Tex. Civ. App.-Beaumont 1975, writ ref'd n.r.e.).

# What is not Covered?

Not traceable to a particular time, place or event.

- Boss was a former drill Sargent
- Complaints of daily profanity, short temper, yelling, screaming, charging, humiliation, and embarrassment.
- Employer wanted a comp injury to limit damages.
- No work related injury because there was no particular event that caused the injuries. *GTE SW v. Bruce*, 998 Sw2d 605 (Tex. 1999)
- Series of traumatic experiences are not covered.

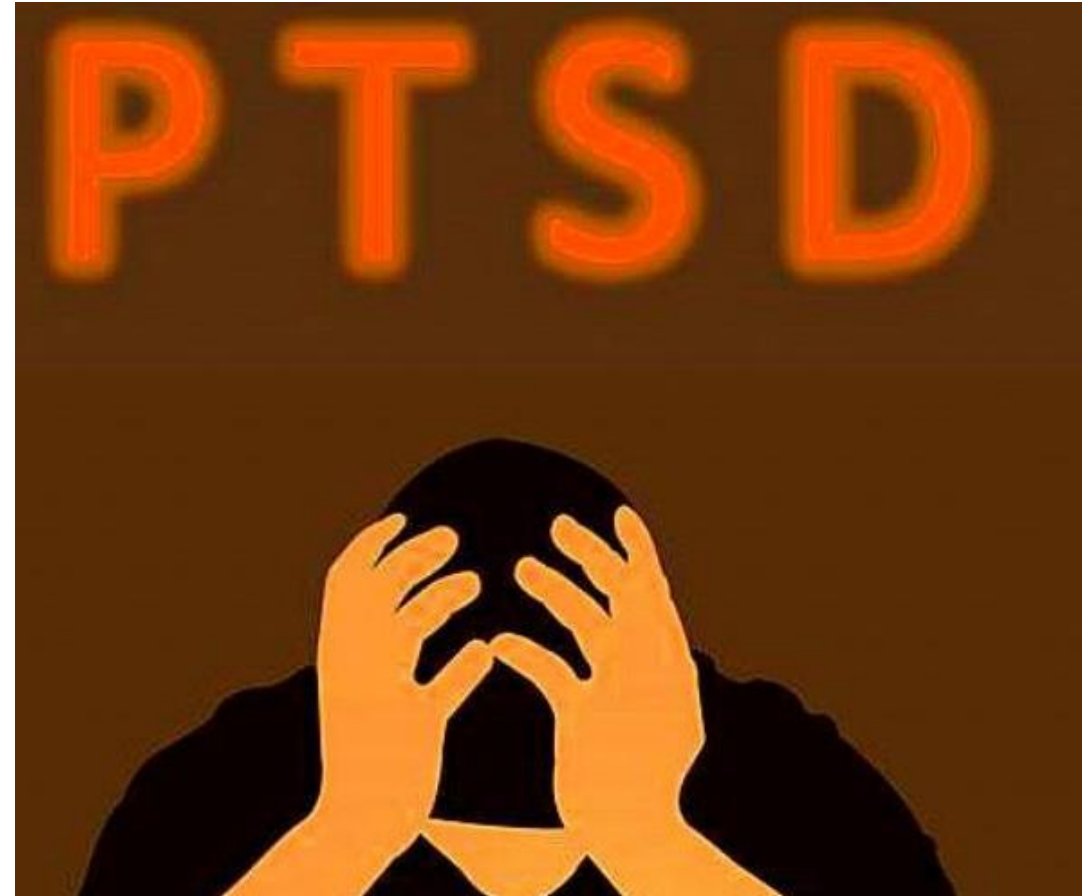


Compare to one particular traumatic event that was not a legitimate personnel action.

# What is covered?

Proof of a definite time, place, and cause.

- Think PTSD.
  - Mass disasters
  - Serious accidents
  - Threat of death and injury
  - Death of colleagues
  - Witnessing death, suffering, and injury
  - Assault



# Determination of Whether a Claim is Covered

Fact issue for the Administrative Law Judge

- Mental trauma claims are fact intensive.
- Investigation is key
  - Claimant's Statement
  - Co-workers' Statements
  - Management Statements
  - All current and prior medical records
- Not just the event, but all facts and circumstances leading up to it.





May not be as it initially appears...

# At Risk Employers

While every workplace is at risk of unpredictable catastrophic disasters and accidents, several occupations have a higher risk of being exposed to threat, horrific injury and death.

- Emergency services, military, acute medical services, bank officers and train drivers have had notable attention in the literature.
- Industries that see higher rates of accidents such as mining, agriculture and fishing.

# 504.019: PTSD for Some First Responders

First Responder defined as a:

- Peace Officer
- Emergency care attendant, EMT, paramedic, and
- Firefighter whose principal duties are firefighting and aircraft crash & rescue

**This section only applies to PTSD, not all mental trauma conditions and diagnoses.**

Effective date 9/1/17



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# 504.019: PTSD for Some First Responders



PTSD must meet diagnostic criteria specified by the American Psychiatric Association in the Diagnostic and Statistical Manual of Mental Disorders, fifth edition.



# PTSD and DSM-5

**Criterion A (one required):** The person was exposed to: death, threatened death, actual or threatened serious injury, or actual or threatened sexual violence, in the following way(s):

- Direct exposure
- Witnessing the trauma
- Learning that a relative or close friend was exposed to a trauma
- Indirect exposure to aversive details of the trauma, usually in the course of professional duties (e.g., first responders, medics)

# PTSD and DSM-5

**Criterion B (one required):** The traumatic event is persistently re-experienced, in the following way(s):

- Unwanted upsetting memories
- Nightmares
- Flashbacks
- Emotional distress after exposure to traumatic reminders
- Physical reactivity after exposure to traumatic reminders

# PTSD and DSM-5

**Criterion C (one required):** Avoidance of trauma-related stimuli after the trauma, in the following way(s):

- Trauma-related thoughts or feelings
- Trauma-related reminders

# PTSD and DSM-5

**Criterion D (two required):** Negative thoughts or feelings that began or worsened after the trauma, in the following way(s):

- Inability to recall key features of the trauma
- Overly negative thoughts and assumptions about oneself or the world
- Exaggerated blame of self or others for causing the trauma
- Negative affect
- Decreased interest in activities
- Feeling isolated
- Difficulty experiencing positive affect

# PTSD and DSM-5

**Criterion E (two required):** Trauma-related arousal and reactivity that began or worsened after the trauma, in the following way(s):

- Irritability or aggression
- Risky or destructive behavior
- Hypervigilance
- Heightened startle reaction
- Difficulty concentrating
- Difficulty sleeping

# PTSD and DSM-5

**Criterion F (required):** Symptoms last for more than 1 month.

**Criterion G (required):** Symptoms create distress or functional impairment (e.g., social, occupational).

**Criterion H (required):** Symptoms are not due to medication, substance use, or other illness.

# Texas Labor Code Sec. 504.019: PTSD for Some First Responders

Post-traumatic stress disorder suffered by a first responder is a compensable injury under this subtitle only if it is based on a diagnosis that:

(1) the disorder is caused by an event occurring in the course and scope of the first responder's employment; and

(2) the preponderance of the evidence indicates that the event was a substantial contributing factor of the disorder.

- Legislature's intent was to recognize PTSD as a compensable injury, stating "under current law, PTSD is not recognized as a compensable injury under the Texas' workers' compensation system like many physical wounds." (HB 1983E)

# Compensability of PTSD

Section 504.019 may create a lower standard for compensability.

“Preponderance of the evidence indicates that the event was a substantial contributing factor of the disorder.” – This is the statute wording

Medical Evidence?

- Compared to requirement that Claimant produce medical evidence explaining how the compensable injury caused the condition based on reasonable medical probability.

Preponderance of the evidence?

- What if a DD says not compensable. The DD opinion has presumptive weight.
- Does the new statute make it be easier for a first responder to overcome a DD opinion?

“A substantial contributing factor.” What if more than one?

Has not been interpreted by Appeals Panel or Texas Courts





# Mental Trauma Injuries for Everyone Else

Worker must provide medical evidence, based on reasonable medical probability, to explain how the mechanism of injury caused mental trauma injury.

- Not Sufficient: “[b]ut for the occurrence . . . Claimant . . . would not have developed PTSD; therefore, in all reasonable medical probability, this is part of the compensable injury.”  
APD 160618
- PTSD recognized under the “New Law” as part of a comp claim as early as 1992. APD 91122



# In the Course and Scope of Employment

- Claimant became the target of unwanted affection.
- Claimant filed a sexual harassment complaint against the co-worker and he was terminated.
- Co-worker came to Claimant's work area and attacked her with a hand made knife.
- He held the knife to her throat and threatened to kill her.
- We was subdued by other employees and did not cut Claimant with the knife.
- Claimant was diagnosed with PTSD as a result of this incident.

Held: Compensable PTSD claim. APD 022091-S



# Not in the Course and Scope of Employment

- Claimant was a firefighter and was involved in a large fire in October 2000.
- During the fire, he was involved in a threatening situation and was overcome by heat and smoke.
- Testified he had a breakdown two weeks later.
- One doctor attributed depression to being unmarried, no relatives nearby, and no friends outside of work.
- One doctor attributed depression to the fire.

Hearing Officer determined depression not related to the fire. APD 011026



# APD 011026 Analyzed under 504.019

- There would possibly be a different result under 504.019.
- Date of injury after 9/1/17.
- Diagnosis would need to be PTSD.
- PTSD would need to meet the diagnostic criteria.



It is possible that even if there are conflicting medical records, if the “preponderance of the evidence indicates that the event was a substantial contributing factor of the disorder,” there may be a compensable claim when there was none before.

# Extent of Injury

Extending a physical injury to a mental injury.

Texas courts have held that “expert testimony is necessary to establish causation as to medical conditions outside the common knowledge and experience” of the fact finder. [\*Guevara v. Ferrer\*, 247 S.W.3d 662 \(Tex. 2007\)](#).

The Appeals Panel has held that proof of causation must be established to a reasonable medical probability by expert evidence where the subject is so complex that a fact finder lacks the ability from common knowledge to find a causal connection. APD 022301

Look for an explanation of how the mechanism of injury caused the alleged mental trauma.

# Not Part of the Injury



*Texas Employers Insurance Association v. Wilson*, 522 S.W.2d 192, 195 (Tex. 1975), a case concerning whether a claimant's eye injury extended to his condition of traumatic neurosis, which included anxiety over obtaining future work, the court stated:

“It therefore must be concluded that although the claimant may be disabled by reason of a neurosis traceable in part to circumstances arising out of and immediately following his injury, there must be a finding that the neurosis was the result of the injury.”

# Not Compensable

Compensable back injury.

Alleged injury includes a psychological injury because:

- the stresses brought upon her by her injury
- inability to work
- frustration with the process
- difficulties that she has faced all along the way in diagnosis and treatment

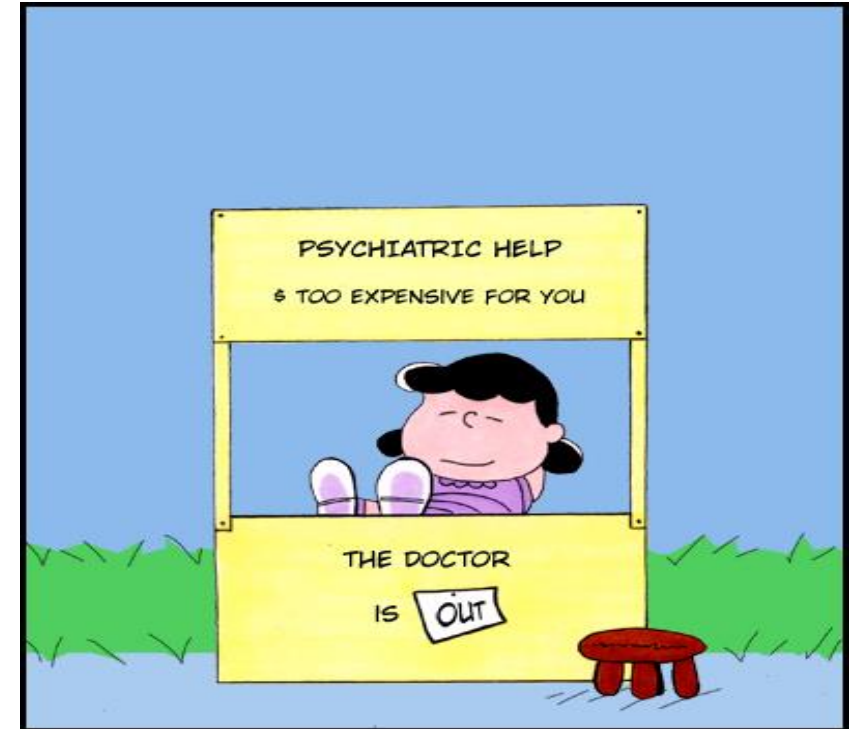
“Without this (worker’s compensation) injury, there would have not been this damage. The injury is directly responsible for her difficult emotional situation at this time.”

Although the claimant may not have experienced a psychological problem but for the fact that a back injury occurred and set in motion a dispute, this is not alone a sufficient basis to conclude that an additional compensable injury has occurred. APD 950749



# Treatment for PTSD (ODG)

- Pharmacotherapy: antidepressants
- Psychotherapy: cognitive therapy  
psychoeducation  
exposure therapy  
group therapy  
hypnosis  
imagery rehearsal therapy  
eye movement desensitization and reprocessing





# DDs for Mental Trauma Injuries

“To examine injuries and diagnoses relating to other body areas or systems, including but not limited to . . . mental and behavioral disorders a designated doctor must be a licensed medical doctor or doctor of osteopathy.” 127.130(b)(7)



“To examine traumatic brain injuries, a designated doctor must be board certified in neurological surgery, neurology, physical medicine and rehabilitation, or psychiatry by the ABMS or board certified in neurological surgery, neurology, physical medicine or rehabilitation, or psychiatry by the AOABOS.” 127.130 (b)(8)(A)

# Rating Mental Trauma Injuries

4<sup>th</sup> Edition, AMA Guides, Chapter 14

- Percentages of impairment are not provided in the Guides.
- Second Edition provided range of impairment but was criticized as subjective.
- “No precise measures of impairment in mental disorders.”

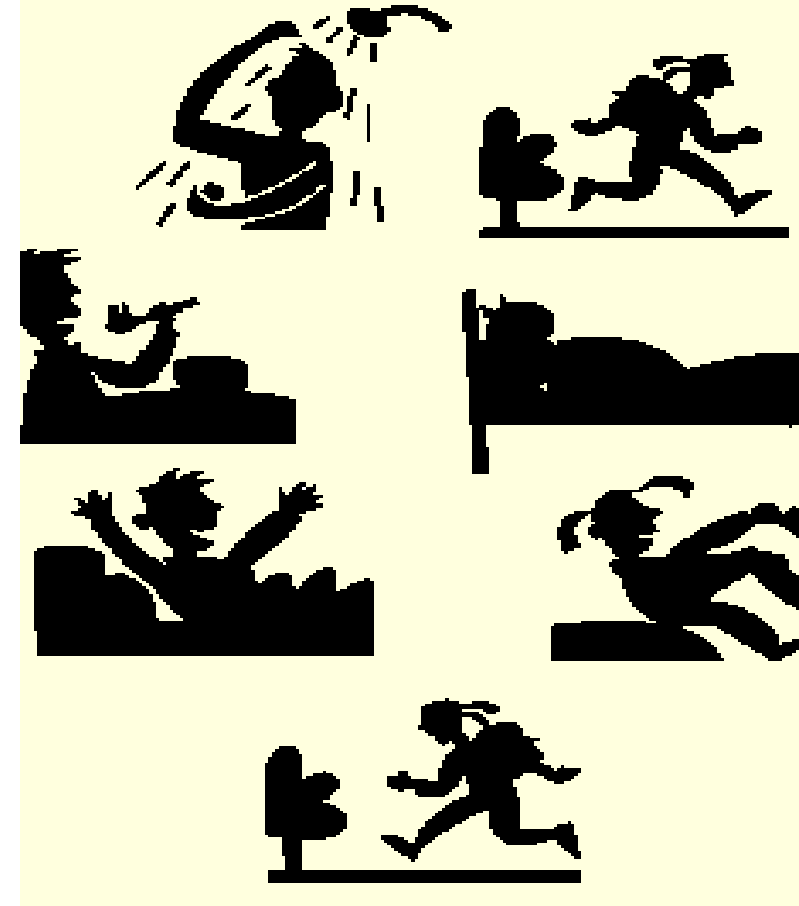


# AMA Guides Classification of Impairments Due to Mental and Behavioral Disorders

Area or aspect of functioning	Class 1: No Impairment	Class 2: Mild Impairment	Class 3: Moderate Impairment	Class 4: Marked Impairment	Class 5: Extreme Impairment
Activities of daily living Social functioning Concentration Adaptation	No impairment is noted.	Impairment levels are compatible with most useful functioning.	Impairment levels are compatible with some, but not all, useful functioning.	Impairment levels significantly impede useful functioning.	Impairment levels preclude useful functioning.

# Factors Considered

1. Activities of daily living. Cleaning, shopping, cooking, transportation, paying bills, grooming, maintaining a residence, using a phone, etc.
2. Social functioning and ability to get along with others.
3. Concentration, persistence, and pace (task completion). Ability to maintain attention long enough to complete daily tasks.
4. Deterioration or decompensation in work like settings. Failures to adapt to stressful circumstances that cause Claimant to withdraw from the situation or to experience difficulties.



# Methods used to rate

1. Assess each of the four categories
2. Rate each of the four categories under chapter four (Nervous System), used for rating brain dysfunction.
  - Mild: 0-14%
  - Moderate 15-29%
  - Severe 30-49%
  - Severe limitation of all daily functions 50-70%
3. Assign rating for each category one quarter of the whole rating.

“The criteria for evaluating these disturbances relate to the criteria for mental and behavioral impairments (Chapter 14).” AMA Guides, P 142



# Example

Area or aspect of functioning	Class 1: No Impairment	Class 2: Mild Impairment	Class 3: Moderate Impairment	Class 4: Marked Impairment	Class 5: Extreme Impairment
Activities of daily living Social functioning Concentration Adaptation	No impairment is noted.	Impairment levels are compatible with most useful functioning.	Impairment levels are compatible with some, but not all, useful functioning.	Impairment levels significantly impede useful functioning.	Impairment levels preclude useful functioning.

Activities of daily living: No impairment 0%  
 Social functioning: No impairment 0%  
 Concentration: Moderate impairment 29%  
 Adaption: Moderate impairment 29%  
 58/4= 14.5%

# Methods used to rate

Ranges of impairment from the second edition.

Normal:	0 to 5%
Mild:	10 to 20%
Moderate:	25 to 50%
Moderately Severe:	55 to 75%
Severe:	More than 75%



Consider the overall impact of the injury and provide a rating.

This method is more subjective, and could be objectionable since it is based on the 2<sup>nd</sup> edition.

# Methods used to rate

Ranges of impairment from Chapter 4 of the AMA Guides.

Mild: 0-14%

Moderate 15-29%

Severe 30-49%

Severe limitation of all daily functions 50-70%

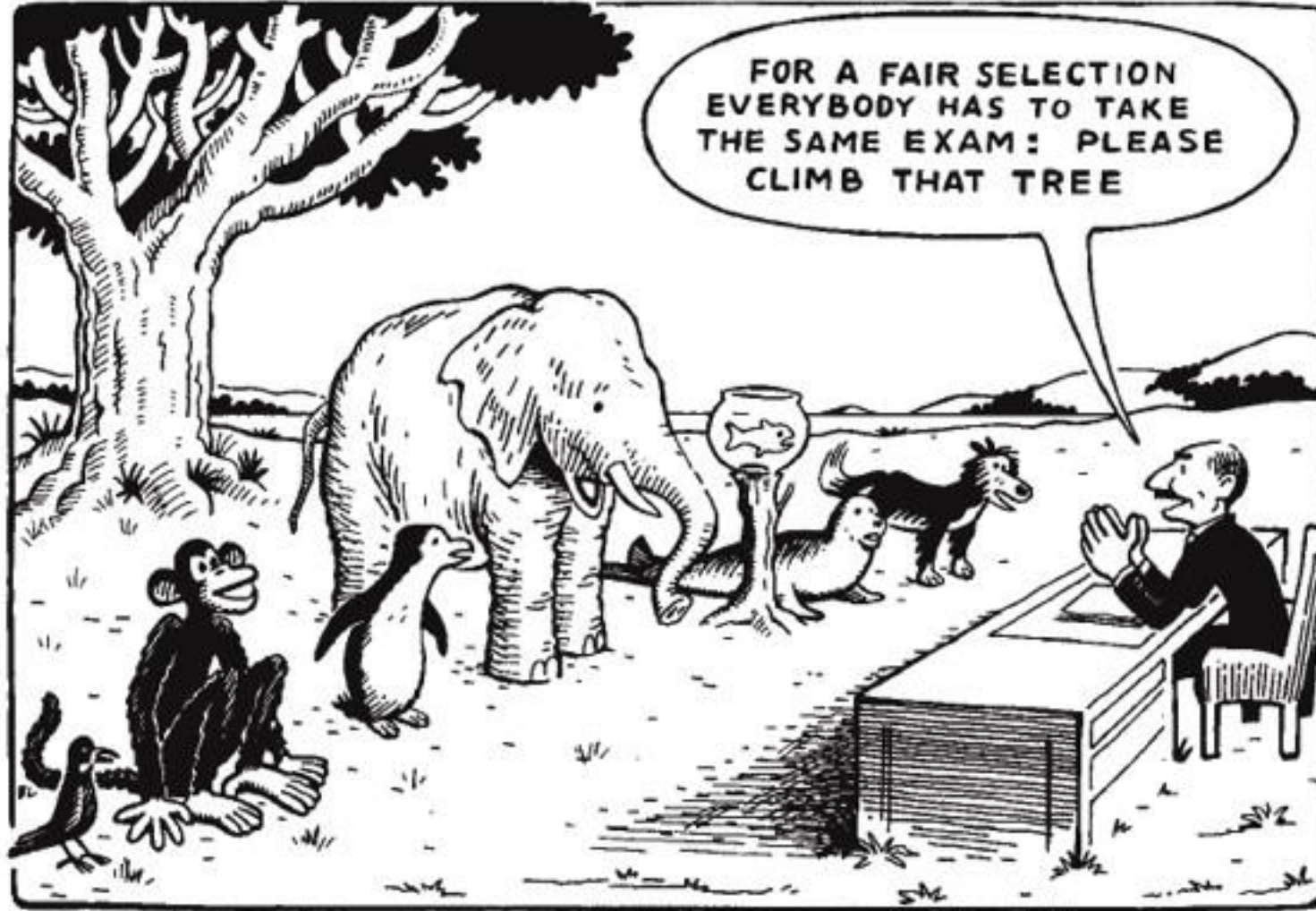
Consider the overall impact of the injury and provide a rating.

This method is more subjective, and could be objectionable since it does not consider each of the four aspects of impairment.

- What if you have two areas of functioning that are rated with no impairment and two rated with moderate?







# Rating PTSD

14% IR for PTSD Portion of the Claim (APD 172488)

5% IR for PTSD Portion of the Claim (APD 002946)

7% IR for PTSD Portion of the Claim (APD 172755)

0% IR for PTSD (APD 142702)

18% IR for PTSD (other conditions part of this rating) (APD 170803)

14% vs. 25% IR for PTSD (a case I have handled)

Compare to a rating for lumbar radiculopathy: DRE Category III- 10%



# Issues with rating PTSD

- Tables allow for ranges of impairment.  
Mild is 0 to 14%.
- Four categories of functioning are considered.
- Rating within each of the categories is subjective- it is not based on something like atrophy or range of motion.
- No specific guidance on how to combine the rating from each of the four categories into a rating for the entire injury.
- Must comply with Rule 130.1(c): describe and explain specific clinical findings related to each impairment- cannot just assign a number.





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