

VERMONT SUPREME COURT ADOPTS “SIMILARLY SITUATED STANDARD” UNDER WORKERS’ COMPENSATION STATUTE

The Vermont Supreme Court has issued an important decision involving a workers’ compensation claim that all employers should be aware of. *Crosby v. City of Burlington*, 2003 Vt. 107 (November 21, 2003). The decision sets forth the applicable standard that will now be applied in Vermont to determine whether an individual has suffered a psychological injury that is compensable under the Vermont Workers’ Compensation Statute. This case is particularly helpful to municipalities with a large proportion of employees working in highly stressful positions - such as emergency workers - because it creates a level playing field upon which determinations of whether employees have been injured by unusually stressful working environments must now be made.

The Vermont League of Cities and Towns filed a brief of *amicus curiae* (“friend of the court”) in support of the City’s interpretation of the case, which prevailed.

The Vermont statutes require employers to compensate “a worker [who] receives a personal injury by accident arising out of and in the course of employment.” 21 V.S.A. § 618. There are generally four categories of injuries that have been held to be compensable under § 618. These general categories include: 1) physical injury caused by physical stimulus; 2) physical injury caused by mental stimulus; 3) nervous injury caused by physical stimulus; and 4) nervous injury caused by nervous stimulus. *Crosby* involves a claim alleging the fourth category of injury, commonly referred to as a “mental-mental” claim.

The plaintiff in *Crosby* worked as a firefighter for the City from 1975 until his employment was terminated in 1995. In 1994, prior to his termination, the plaintiff stopped working and sought workers’ compensation, alleging that he was “experiencing stress at a level greater than he could handle.” *Crosby v. City of Burlington*, 2003 Vt. 107 (November 21, 2003). The plaintiff alleged the stress was due to anxiety caused by a 1991 car fire, a 1994 building collapse, and a 1994 shift transfer that caused him to lose confidence in his superiors and in his ability to do his job safely. The City denied the plaintiff’s claim for workers’ compensation benefits, and the plaintiff appealed to the commissioner of the Department of Labor and Industry. The commissioner also denied plaintiff benefits, explaining that the “evidence demonstrated that the stress he was experiencing stemmed from normal workplace pressures related to fighting fires, being transferred, and engaging in conflicts with his superiors.” *Id.* The plaintiff then sought a de novo jury trial in Superior Court. The jury awarded the plaintiff benefits and the City appealed, primarily contending that the trial judge erroneously instructed the jury that they should consider the “general population of employees” to determine whether the plaintiff was subject to unusual work-related stress. *Id.*

The Vermont Supreme Court has only addressed the issue of mental-mental injury in the context of workers’ compensation benefits on one prior occasion. *Bedini v. Frost*, 165 Vt. 167 (1996). In that case, the Court upheld the commissioner’s denial of benefits based on the finding that the claimant had not been subjected to unusual working conditions. The test for determining what constitutes “unusual working” conditions, however, was not clearly articulated by the Court.

The key issue for the Court in the present case is this: What is the appropriate “control group” that should be used to determine if a claimant has suffered “an unusual workplace stress” that constitutes a compensable injury under the workers’ compensation statute?

The Court reviewed the three different approaches courts have employed to measure whether a claimant has experienced “unusual workplace stress.” The first approach requires claimants to show that they were subjected to “unusual pressures compared to other employees in the same workplace with similar responsibilities.” The second approach measures the pressures experienced by a claimant against those encountered by all employees doing the same job. And the third approach requires a showing that a claimant experiences pressures significantly greater than those generally encountered by all employees in the working environment.

The Court adopted the second approach, referred to as the “Wyoming Standard” or “similarly situated standard,” which looks to the “day-to-day mental stresses experienced by other workers employed in the same or similar jobs” as the control group for determining whether a claimant has or has not been injured by “unusual workplace stress.” The Court noted its decision was grounded in sound public policy by providing employees with compensation for legitimate work-related injuries while at the same time limiting employers’ liability to injuries caused by their industry. The Court further explained that a “control group comprised of similarly situated workers in the same general field provides a relatively precise, fair, and empirically workable standard.” *Crosby* at 6. Therefore, in this case, the control group used to determine whether the plaintiff was injured by “unusual workplace stress” should be other firefighters, not other workers in general.

This case is good news for employers for several reasons. First, it clearly sets forth the applicable standard that a claimant must meet in order to establish a compensable, psychological, work-related injury. Second, the standard articulated in the decision promotes consistency among similar cases by focusing on actual employment conditions in a specific field “rather than trying to take into account the level of stress placed on the workplace as a whole.” *Crosby v. City of Burlington*, 2003 Vt. 107 (November 21, 2003). And third, it reiterates the principle set forth in *Bedini* that not all employees who suffer mental injury from workplace stress are entitled to workers’ compensation benefits, and that in order to be entitled to such benefits, the claimant must meet a heightened standard of proof.

The take away messages from this case are: 1) Not all injuries caused by work-related stress are compensable under the Workers’ Compensation statute; 2) Only work-related injuries caused by unusually stressful working conditions are compensable; and 3) To determine if an employee’s psychological injuries were caused by unusually stressful working conditions, Vermont courts must compare the pressures experienced by the claimant against those encountered by all employees doing the same or similar job.

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