FRANCE
DISCUSSION

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Factual and Procedural Background

France, a sheriff's deputy with Gila County in Arizona, was summoned to a welfare check. He had engaged this same individual two nights before when the individual had threatened to kill France and several other officers. On this occasion, France shot and killed the suspect. He suffered no physical injury, but was subsequently diagnosed with post-traumatic stress disorder. He never returned to work.

Arizona Revised Statute, 23-1041.01(B) conditions coverage for mental injuries on a showing that the injury resulted from "some unexpected, unusual or extraordinary stress related to [the] employment [which] was a substantial contributing cause of the mental illness, injury or condition." France's claim was denied by the employer and its insurer on the grounds that his PTSD did not meet these criteria. In the subsequent litigation, the expert witnesses agreed that France suffered from PTSD as a result of the incident. Thus, the only issue was whether the stress he experienced was "unexpected, unusual or extraordinary."

The administrative law judge issued an award denying France's claim, concluding that the incident did not rise to this level. The judge determined that there was nothing in the incident that set it apart from the normal duties of a deputy sheriff. All officers are trained for dangerous situations, the judge decided.

The Arizona Court of Appeals set aside the award. The court reasoned that the administrative law judge, in focusing her analysis on the officer's "training and job duties," erroneously based the determination upon the nature of the event rather than the nature of the stress. The court further held that the phrase "unexpected, unusual or extraordinary stress" should be construed as meaning "that the injury-inducing stress, imposed upon the claimant by virtue of his employment was sufficiently significant and noteworthy to differentiate it from the non-compensable general stress caused by the work regimen".

The Holding of the Supreme Court

The Arizona Supreme Court vacated the lower court's opinion and set aside the award of the Arizona Industrial Commission with an opinion that offers important, but limited guidance for analyzing mental-injury claims in general, and claims by so-called first responders, including firefighters and police officers.

The key take-aways are as follows. First, the court expressly limits its holding to "mental injuries arising from a specific work-related incident." It is not intended to address "gradual injuries resulting from ordinary stressors and strains of the work regimen." Generally, the court observes, mental-injury claims based on "gradual buildup of work-related stress" are non-compensable, because "there is neither an articulable work-related event nor an increase in stressful activity." Conversely, mental-injury claims based on a sudden work-related event are more often compensable.

Second, the compensability of these claims rests not on the claimant's subjective reaction to the stressful event, but on an "objective, reasonable person standard." In the sudden-injury cases, this requires proof that the stress "imposed" on the claimant was "unexpected, unusual or extraordinary."

Third, whether the stress meets the statutory criteria is not determined solely on the nature and scope of the claimant's job duties. The ALJ must also consider whether the event that is the focus of the claim was either unexpected, unusual or extraordinary. The court makes no effort to define these terms, beyond noting that "the record in this case shows that this type of encounter by a law enforcement officer is exceedingly rare."

Observations

A little background is worth noting. Arizona enacted its mental-injury statute in 1980. It followed a 1978 opinion by the Arizona Supreme Court in a case called *Sloss v. Indus. Comm'n*, 121 Ariz. 10 (1978). In *Sloss*, the claimant, a state police officer, sought workers' compensation coverage for a mental injury allegedly caused by the stress

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of his employment. In affirming an award denying the claim, the high court held that to meet his burden of proof, the claimant had to show that his condition was caused by "the unexpected, the unusual or the extraordinary stress." *Sloss*, at 11. The subsequent enactment of A.R.S. §23-1043.01(B) represents a somewhat rare endorsement by the Legislature of policy established originally by the judiciary. (Interestingly, in its opinion in *France*, the court makes no reference to its earlier opinion in *Sloss*.)

In the decades that followed the enactment of the statute, it became the subject of numerous appellate opinions, but until *France*, all of the opinions came from Arizona's lower courts. The opinion of the Arizona Court of Appeals in *France* cast doubt on the continuing viability of many of these cases. *France* offered the Supreme Court an opportunity to address this subject anew after decades of silence.

Regrettably, the limited scope of the court's opinion will lead to further litigation over the meaning of the statute. To be sure, the high court's reluctance to issue an expansive advisory opinion intended to address all of the myriad fact patterns that can arise in these cases is understandable, but by apparently treating "unexpected, unusual or extraordinary" not as a term of art, but as setting forth three separate and distinct bases for establishing the compensability of a sudden-event mental-injury claim, its opinion leaves in considerable doubt how we are to interpret the statute. Even though the claimant in *France* had reason to expect that he might be involved in a gun fight, for example, his claim might still be covered on the theory that the event was either "unusual" or "extraordinary." But what is the threshold for establishing when an event is sufficiently "unusual"? Sufficiently "extraordinary?"

Answers to these questions the *France* court is content to leave for another day. Except where statistics are available for the kind of event that is the subject of a claim, the litigation is likely to feature opinion evidence from qualified experts. This will require the ALJ to decide the case based on the expert evidence she finds to be most persuasive.

For attorneys who represent claimants, *France* nevertheless represents a welcome step in the right direction. In mental-injury claims that are based on gradual stress, it can be difficult to distinguish what is work-related and what is not. This challenge largely evaporates in claims that are based on stress that is sudden and unanticipated. Under *France*, those claims are now presumptively covered, absent expert medical or other evidence establishing that the condition is pre-existing and unrelated to the trauma.