

THE WETC PSYCHOLOGY NEWSLETTER

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Apportioning Psychiatric Injuries: A More Complete View

One of the major components in the workers' compensation system is apportionment. As virtually everyone reading this newsletter knows, Labor Code section 4663 reads in part:

“A physician shall make an apportionment determination by finding what approximate percentage of the permanent disability was caused by the direct result of injury arising out of and occurring in the course of employment and what approximate percentage of the permanent disability was caused by other factors both before and subsequent to the industrial injury, including prior industrial injuries.”

When it comes to apportioning permanent psychiatric disability both the defense and the applicant look to what has occurred in the past, namely, what experiences the individual may have had before, after, or concurrent with the industrial injury, as well as genetic factors that might account for some of the current permanent psychiatric disability.

One of the principal thoughts that has prevailed in the workers' compensation system is that prior adverse events or, as they are sometimes called, “stressors,” can account for the permanent psychiatric disability at the time an applicant's condition reaches Maximum Medical Improvement or a permanent and stationary status. A common belief is that the more “stressors” an individual has had in their lifetime the more apportionment is warranted. Another way of putting it is to say that the more negative things that have occurred in one's life, the more one's current permanent psychiatric disability is likely to be caused by those “stressors.”

Most psychologists and psychiatrists conducting evaluations in the workers' compensation area have apparently adopted this model. Generally, most practitioners consider such things as prior, subsequent and concurrent physical injuries and ailments, divorces, histories of child abuse, drug abuse, prior psychiatric disorders, etc. etc. etc. and apportion some percentage of the current permanent psychiatric disability to these “other factors.”

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There is a wealth of research data supporting the conclusion that it is appropriate to apportion permanent psychiatric disability to prior, subsequent and concurrent adverse events or “stressors.” Specifically, stressors, or as they more accurately called, adverse events, have long been shown to have negative effects. For example, some time ago, Dr. R. Jay Turner & Dr. Donald A. Lloyd demonstrated a clear relationship between the number of lifetime traumatic experiences and the likelihood that an individual will experience psychological distress and/or a psychiatric disorder and presumably some associated psychiatric disability (Turner, R. J. & Lloyd, D. A. Lifetime traumas and mental health: The significance of cumulative adversity. Journal of Health and Social Behavior, 1995, 36, 360-376).

Most recently there has come to light substantial evidence that the Turner and Lloyd model does not present the entire picture. Specifically, there is not a one-to-one or linear relationship between the number and type of prior, subsequent and concurrent stressors and the ability to cope with current stressors or to develop some psychopathology, permanent psychiatric disability or some additional disability.

In fact, the data indicate, not unlike what Nietzsche originally stated, “that which does not kill us makes us stronger.”

In particular, Dr. Mark D. Seery, Dr. E. Alison Holman and Dr. Roxane Cohen Silver have clearly demonstrated what many practitioners have long suspected, namely that there is a curvilinear relationship between adverse events and mental health outcomes in the form of distress, impairment, psychiatric symptoms, dissatisfaction and the propensity to be affected by more recent adverse events (Seery, M.D., Holman, E. A. and Silver, R.C. Whatever

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does not kill us: Cumulative Lifetime Adversity, Vulnerability, and Resilience. Journal of Personality and Social Psychology. 2010, 99,1-17). According to this viewpoint, a relatively large number of adverse events is associated with negative outcomes, but a modicum of adverse events is associated with fewer negative outcomes than no adverse events. The data supporting this comes from a nationally representative sample of over 2,000 randomly selected individuals and is highly consistent with what other similar researchers have termed “toughness,” “resilience,” “stress inoculation” and “immunization.” Essentially, what these scientists have talked about is that exposure to a modicum of stressors can have a positive or toughening effect that leaves an individual better able to cope with subsequent stressors.

In short, it is not reasonable to assume that just because an individual has had an adverse event either before, during or after their industrial injury that apportionment is necessarily

relevant. Quite to the contrary, a relatively tough life, as a result of a variety of adverse events, may make an individual more hardened or resistant to the likelihood that an industrial trauma will cause a psychiatric injury and may, in fact, reduce the amount of permanent disability that might otherwise be present if the individual had not been exposed to those traumas.

Thus, it is very important that practitioners deal with each case on an individual basis and not assume that because some trauma has occurred prior to or since an industrial injury that such an event requires apportionment! Accordingly, if you are an applicant attorney, and you have found out that some adverse things have happened to your client, that is not necessarily bad news. Similarly, if you are a defense attorney, it might be wise to not engage in the “early gloat” when you hear about those same “awful” events.

This is the twenty-third of a series of monthly newsletters aimed at providing information about psychological evaluations and treatment that may be of interest to attorneys and insurance adjusters working in the areas of workers’ compensation and personal injury. If you have not received some or all of our past newsletters, and would like copies, send us an email requesting the newsletter(s) that you would like forwarded to you.