

Supreme Court advocates for workers' comp reform

by Phillip Bantz

Published: July 20th, 2012

Depressed deputy denied benefits, but court urges easing of limits on mental ailments

Now that the South Carolina Supreme Court has asked the legislature to reform an anachronistic state workers' compensation law, many are wondering whether a change is coming and, if so, what it will entail.

In *Bentley v. Spartanburg County*, the court ruled 3-2 on July 11 that a sheriff's deputy could not be compensated for the debilitating depression and anxiety he suffered after shooting and killing a suspect.

The ruling hinges on a state law that requires so-called "mental-mental" damages to arise from an "unusual or extraordinary condition" of the job in order to be compensable. Because he knew that he might have to use deadly force while at work, the deputy could not recover for his injuries.

His attorney, Jeremy A. Dantin of Harrison, White, Smith & Coggins in Spartanburg, said this is the first time that the high court has tested whether killing a person qualifies as extraordinary and unusual. He'd argued that it did because deputies are hardly ever involved in fatal shootings and the dissenting justices agreed.



"If your job carries with it some inherent dangers or risks, I think the statute as interpreted by the Supreme Court sets a very difficult burden in order for you to establish a mental-mental injury. It becomes almost impossible as long as you're doing something that is in the realm of possibility," said Dantin, who is considering asking the court for a rehearing.

An attorney for Spartanburg County, Richard B. Kale Jr. of Willson Jones Carter & Baxley in Greenville, declined to discuss the ruling until it is final.

While the court was divided in its interpretation of the law, it did come together in advocating for lawmakers to abolish the "unusual and extraordinary" heightened standard, which only applies to recovery of damages for mental-mental claims — purely mental injuries that were not triggered by any physical damages.

Chief Justice Jean H. Toal wrote for the majority that removing the standard would not "result in a flood of litigation given the safeguards that the General Assembly has built into" the law. She noted that Hawaii, Michigan, New Jersey, New York and Oregon have already enacted similar reforms.

In the 1980s, California experienced a dramatic spike in workers' comp claims after its Court of Appeals ruled that mental injuries based on an employee's perception of stress at work were recoverable. The legislature eventually had to enact a series of reforms to curb the rampant litigation.

Still, Toal contended that California's ruling was "overly broad" and what unfolded there would not happen in South Carolina if it were to lift the unusual-and-extraordinary standard.

Mikell H. Wyman, a workers' comp defense lawyer at Collins & Lacy in Charleston, said the

legislature might not have to wipe out that heightened requirement. Instead, it could create an exception for police, firefighters and other first responders.

The law already includes several employment-specific considerations, he said, and "it wouldn't take a step over the line from what we're used to."

But J. Tyler Lee, a personal injury lawyer at McWhirter, Bellinger & Associates in Columbia, said the burden of proof for mental-mental claims should be the same as claims for physical injuries.

Echoing the court, he added that the "science of psychiatry and psychology has advanced since that law was written and the bias against mental injury has gone away as people have become more educated."

Meanwhile, Christian E. Boesl, who practices workers' comp and employment law at Collins & Lacy's Columbia office, said he was unsure about whether the law "can be rewritten in this case to avoid the flood of litigation that California and other jurisdictions saw with a lesser requirement."

"That is to be seen," he added.

And if the S.C. Law Enforcement Officers Association has its way, workers' comp reform could be just around the corner. Its executive director, Jarrod Bruder, was already considering folding a legislative amendment into a retirement bill that passed the General Assembly this year but will not be enacted until 2014.

"We have time to go back and look at it. I think that's a conversation that can be included in [the bill] when we look at disability and workers' compensation," he said. "I think that's something that can be achieved during the next session."

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