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PARMA ANNUAL CONFERENCE

FEBRUARY 7-10, 2023

SACRAMENTO CONVENTION CENTER

# D6 What is a Violent Act, Catastrophic Injury, or Sudden and Extraordinary Event?

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# INTRODUCTION

We are here to talk about injuries that are considered:

- Violent acts
- Catastrophic injuries
- Sudden or extraordinary events.

Why?

- These are the exceptions that allow psy disability as a compensable consequence to a physical injury.



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# INTRODUCTION

- Psy disability as a compensable consequence of a physical injury was limited in 2013
- LC 4660.1 (c) there shall be no increase in permanent disability for psy, sex or sleep.
- But there are exceptions and that's why we are here to discuss these exciting topics.

# INTRODUCTION

- The 4 exceptions that open the door to psy impairment as a compensable consequence:
  - 1. Direct cause
  - 2. Violent act
  - 3. Catastrophic injury
  - 4. Sudden and Extraordinary event if employment less that 6 months



# INTRODUCTION

- Thresholds-
- Before the injury is analyzed for a psy exception you must first determine does the causation of the psy injury, as a compensable consequence, meet the required threshold.
- Even as a compensable consequence psy impairment must meet a threshold to be compensable.
- This is not the 1% rule.
- There are 2 psy compensability thresholds:
- 51% causation (predominate causation for catastrophic and sudden and extraordinary)
- 35-40% (substantial causation for violent acts)

# DIRECT CAUSE

- The physical injury must cause 51% of psy injury
- Factors to consider:
- Symptoms reported immediately
- Treatment recommended soon after injury
- ***Madson v. Michael J. Cavaletto Ranches, 2017 Cal. Wrk. Comp. P.D. LEXIS 95.*** Applicant was hauling lemons on a highway when another vehicle exited directly onto the highway without using the merge lane. Applicant swerved to avoid a collision, causing his truck to roll over onto the highway, pinning applicant inside the cab of the vehicle. Applicant hit his head and may have been knocked unconscious. In addition, applicant, who was claustrophobic, was pinned and crushed in the cab upside down for approximately 35 to 40 minutes, only able to take shallow breaths. He was also afraid that the truck would catch fire because the engine was still running and the truck had two full tanks of fuel. He had to be freed from the wreckage using the “jaws of life”.

# VIOLENT ACT

- Violent act-an act characterized by either strong physical force, extreme or intense force that is vehemently or passionately threatening.
- Physical injury must cause 35-40% of the psy injury.
- ***Allen v. Antelope Valley Union High School District, 2019 Cal. Wrk. Comp. P.D. LEXIS 66:***

Applicant, a receptionist for Antelope Valley Union High School District, slipped and fell on the floor of the school's lobby area when she was getting ready to leave work. She fell backward landing on her back on the floor. There was no loss of consciousness. A co-worker helped her up and she was able to drive herself home after the injury although she was off work for two weeks, then returning to regular duty. She did not seek medical treatment the day of the incident, although she did obtain medical treatment the following day.

Applicant alleged a subsequent injury when she tripped and fell on a lip of asphalt in the school's parking lot while leaving work. She hit her chin from the fall and chipped her tooth. She did not lose consciousness from the fall and had minimal bleeding. She, again, drove herself home after the incident. She was off work for two months following the injury and then returned to regular duty without restrictions.

She also alleged a cumulative trauma injury from repetitive use of her upper extremities. For the first time at trial, applicant added that the school's lockdowns were also a stressor as part of the cumulative trauma.

# VIOLENT ACT

- ***Duran v. California Department of Corrections & Rehabilitation, North Kern State Prison, 2019 WL 2106954 (Cal.W.C.A.B.):*** Applicant was employed as a correctional officer and was in the process of transporting inmates in a CDCR van to medical appointments outside prison confines. There were two vans travelling in a convoy. Applicant was in the front passenger seat of the trailing van when her van was bumped from behind by a civilian vehicle, pushing her van forward into the lead van. The two CDCR vans locked bumpers and glided to a controlled stop on the right shoulder of the road. The airbags did not deploy during or after impact. Applicant did have to kick her door open but exited the van in a minute or less. She did not strike any part of her body on the interior of the van and did not lose consciousness at any time. She did sustain injuries from the tightening of her seatbelt and was transported to the local hospital where she was released the same day.
- ***Torres v. Greenbrae Management (2017) 82 CCC 952 (panel decision):*** A tree trimmer was injured when a large tree branch he was standing on broke. He fell approximately 20 feet, lost his helmet, and swung by his tether. He hit his head against the tree trunk several times, and briefly lost consciousness. Four hours after the incident, he received medical treatment first at a clinic and then at an ER.





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# VIOLENT ACT

- ***Ugalde v. Rockwell Drywall, Inc., 2019 WL 2598710 (Cal.W.C.A.B.):*** Applicant was employed as a taper by Rockwell Drywall. His job involved using putty to make the surface of the walls/ceiling smooth and free of blemishes, requiring him to wear stilts as some rooms had ceilings that were between 11 and 12 feet high. At the time of his fall, he was allegedly wearing his stilts, which were 2.5 feet tall. He was going to dip into the bucket of putty, which was on the ground, when his body went forward. He was face down on the ground when he regained consciousness. He had pain in his right leg, no headache or bumps on his head, and he was not bleeding.
- ***Larsen v. Securitas Security Services (2016) 81 Cal.Comp.Cases 770:*** Applicant was working as a security guard on walking patrol when a car struck her from behind, causing her to hit the back of her head so hard she lost consciousness and, at one point, thought that she was going to die.



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# VIOLENT ACT

- ***Garcia v. Timberworks Construction, Inc.*, 2020 Cal. Wrk. Comp. P.D. LEXIS 300:** Applicant, a carpenter, was working on a ladder when he punctured his neck with a nail gun after the gun hit a piece of wood with his finger on the trigger, firing a nail into his jaw under his right ear.



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# VIOLENT ACT IMMEDIATE MEDICAL ATTENTION

- ***McCain v. Wallis Construction, Inc.*, 2022 Cal. Wrk. Comp. P.D. LEXIS 231:** Applicant, a laborer for Wallis Construction, was injured when a she slipped, fell and was struck in the left elbow by a “200 pound” weedwhacker. She did not lose consciousness after the event and kept working, fully expecting “that her symptoms would resolve promptly.” Applicant did not seek immediate medical treatment after the incident and continued to work her usual and customary duties for the next six weeks.

# VIOLENT ACT CAUSED BY EMPLOYEE

- ***Garcia v. Timberworks Construction, Inc.*, 2020 Cal. Wrk. Comp. P.D. LEXIS 300:** Applicant, a carpenter, was working on a ladder when he punctured his neck with a nail gun after the gun hit a piece of wood with his finger on the trigger, firing a nail into his jaw under his right ear.
- ***Guerrero v. Ramcast Steel Fabrication* (2017) 82 CCC 1222 (panel decision):** Applicant, a maintenance mechanic, was repairing a hydraulic press with his left hand when he lost his balance and his foot hit the pedals activating the press, which then crushed the long, ring and small fingers of his left hand. When he was able to move his foot, the press disengaged, and he removed his hand. He then saw that most of his left long and ring fingers were gone. He reported the event and was taken to the hospital where he underwent same day surgery.
- ***Lopez v. General Wax Co. Inc.* 2017 WL 2937937 (Cal.W.C.A.B.):** Applicant, a candle maker, was injured when her right index finger became stuck in a machine and subsequently a piece of her finger was chopped off, resulting in a partial amputation of her finger.



# CATASTROPHIC INJURY

- What is Catastrophic?
  - Focuses on the *nature* of the injury *versus* the *mechanism*
  - Requires a “Fact Driven Inquiry” to decide
  - Non-Exhaustive Factors to Be Considered
    - intensity and seriousness of medical treatment required
    - ultimate outcome at the P&S date,
    - severity of the physical injury and its impact on ADL(s),
    - whether physical injury is an incurable and progressive disease
    - whether the injury is analogous to loss of a limb, paralysis, severe burn, or severe head injury.

# CATASTROPHIC INJURY

- Physical Injury must be catastrophic outside of the alleged psychiatric injury
- Unlike violent act, EE must prove psych injury was predominantly caused by actual events of employment (i.e. 51% or more)
- ***Wilson v. State of CA Cal Fire (2019) 84 CCC 393***: A firefighter battled a wildfire for several hours, inhaling smoke and fumes because he was not wearing a breathing apparatus. The applicant presented to the hospital with multiple symptoms in several body parts, including fever, nausea, vomiting, a full-body rash, bilateral eye discharge, difficulty breathing, as well as ulcers on his mouth and throat. He was placed in a medically induced coma and suffered both renal and respiratory failure. During his hospitalization, he also suffered from tremors, was intubated, placed on oxygen for an extended period and remained in the hospital for approximately two weeks before being discharged.

(RE CAUSATION: The psyche QME diagnosed applicant with PTSD and severe major depressive disorder. These conditions were considered predominantly caused by actual events of employment. He opined that 100% of applicant's PTSD was due to the direct effects of the industrial injury. The depression was deemed to be 75% related to this untreated PTSD and 25% related to being unable to continue working as a firefighter/EMT. He apportioned 90% of his psychiatric PD to actual events of employment and 10% to his reaction to not being able to continue work as a firefighter. The QME found that "while the primary injury, a Post-traumatic Stress Disorder, arose out of the effects of and treatment for a compensable physical injury....the industrial psychological injury represents a catastrophic injury.")



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# CATASTROPHIC INJURY

- ***Zarifi v. Group 1 Automotive, 2018 Cal. Wrk. Comp. P.D. LEXIS 300:*** Applicant forcefully struck his head against a glass wall. He did not lose consciousness, did not fall, and did not seek immediate medical treatment. His PTP diagnosed applicant with a forehead contusion, possible minor concussion syndrome, cervical strain, headaches and chronic depression. The AME in Neurology found applicant's cognitive disorder was mainly depression and noted his "initial injury was pretty minor."
- ***Holgerson v. State of California Department of Transportation, 2020 Cal. Wrk. Comp. P.D. LEXIS 138:*** Applicant, a bridge maintenance worker by the State of California, Department of Transportation, was working as a flagger on the side of a bridge when he was struck by a car. A Cadillac coming from a gas station about 120 feet from Holgerson was accelerating quickly and hit Holgerson while going 35 miles per hour, shattering his left leg completely, causing him to fly through the windshield. The driver hit the accelerator instead of the brakes and then slammed on the brakes, causing Holgerson to be projected out back through the windshield, flying 27 feet onto the asphalt. Treatment of, among other injuries, left temporal bone fracture with epidural hematoma and left basilar skull fracture, involved being air lifted to Santa Rosa Memorial Hospital where he was placed in the intensive care unit. He also underwent surgeries to multiple body parts.

(RE CAUSATION: Regarding causation, the psychiatric QME Dr. Mandelbaum opined that applicant's specific injury was the predominant cause, apportioning 100% of the psychiatric PD to the specific injury).

# CATASTROPHIC INJURY

- ***Hernandez v. Southwest Airlines, Inc., 2021 Cal. Wrk. Comp. P.D. LEXIS 333***: Applicant, a flight attendant, was entering a plane when he mis-stepped, cutting his right foot against the threshold and the sharp edge of the plane. He immediately noticed pain and swelling but was scheduled on a flight and was required to continue working the rest of the day. However, two days later he went to the occupational health center. Although the applicant received two surgeries for his right foot injury, the treatment was not serious or life-threatening. He did not return to work after the injury and retired from his position.
- ***Lund v. Ryko Solutions Inc. (2020) 86 CCC 291 (panel decision)***: The applicant was employed as a technician when he sustained injury to his lumbar spine (no details of how the injury occurred are given) and, in addition, injury to his psyche as a compensable consequence. He underwent a two-day decompression and fusion surgery, which was considered a “failed back” surgery. More than five years later, the surgery still had a significant impact on his activities of daily living, and he needed narcotic medication.

(RE CAUSATION: The psyche AME apportioned the psychiatric disability 90% to the industrial injury and 10% to other factors. In her deposition she says she did not apportion substantially to his marital problems/separation from his wife 2 years prior.)



# CATASTROPHIC INJURY

- ***Hernandez v. Valley Transit Authority, 2021 Cal. Wrk. Comp. P.D. LEXIS 341:*** Applicant’s low back and right hip were injured when he was trying to get out of the way of an oncoming train and slipped on wet tracks. He received two low back surgeries and claimed he could not walk for more than a few minutes and used a cane and walker for longer walks. However, the AME did not state that he needed either of the assistive devices. Regarding ADLS, he was still able to walk for short distances, go to the bathroom on his own, lift 20-30 pounds, sit for over an hour, and “feels like everybody else” when he was sitting down or stationary.
- ***Leonard v. Santa Monica-Malibu Unified School District, 2019 Cal. Wrk. Comp. P.D. LEXIS 530:*** Applicant, a teacher, had thyroid cancer as a result of cumulative exposure during her employment. As a result, she suffered a “multitude of health issues” including hypertension, severe allergies, depression, anxiety, stress, occipital neuralgia, hypothyroidism, GERD, papillary carcinoma, follicular neoplasms, and Hurtle cell cancers. She underwent significant treatment including a total thyroidectomy, radioactive iodine therapy, and hormone replacement therapy and required lifelong medical attention. Her prognosis was “guarded,” and her cancer carried the risk of death.

# CATASTROPHIC INJURY

- ***Schaan v. Jerry Thompson & Sons, 2022 Cal. Wrk. Comp. P.D. LEXIS 264:*** The applicant, a painter, claimed a cumulative trauma injury to his bilateral shoulders, gastroesophageal reflux disease (GERD), problems with his psyche, sleep, sexual dysfunction, hypertension and digestive system. He underwent multiple surgeries to both shoulders (7) including a replacement on both sides. Applicant claimed he was severely limited in his ADLs including being unable to lift his arms more than 2-3 minutes at a time. He stated that due to injuries in his shoulders “he can’t even wipe his ass.” Although the injury had a fairly severe impact on his sexual functioning and sleep, applicant remained quite capable in his other activities of daily living and could walk, lift, do chores around the house such as “cleaning up dog poop” and yardwork.
- ***Chavira v. Southland Gunitite, Inc. (2021) 87 CCC 62 (panel decision):*** Applicant, a pool bottom finisher, was cleaning out a cement tank and was struck by a piece of dry cement debris. The tank had holes in it and water had gotten in and activated the cement. Applicant was told to go into the tank and clean out the debris. A piece of the debris made of dry cement broke off and hit him in the shin and swung him backward into the tank. He climbed out of the tank, told the employer what happened and was told to finish the job and walk it off. Shortly after the injury, the applicant was admitted to the hospital with serious conditions resulting from his physical injury — he suffered kidney failure, cellulitis, sepsis and congestive heart failure. He was hospitalized several times due to his injuries. The injury caused a lasting and substantial impact on his ability to perform activities of daily living in that his physical activity was limited due to pain in various body parts, including chest pain and difficulty with his ankle giving out. He also struggled with sleep.



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# SUDDEN AND EXTRAORDINARY

- EE who suffers a psych injury from a sudden and extraordinary event of employment may be eligible for benefits even if they worked for the ER for less than six months.
- Somewhat vague standard of what will rise to the level of “sudden and extraordinary”
- Highly Fact Driven

# SUDDEN AND EXTRAORDINARY

- Usually involves cases of single, discrete accidents or events that are unusual considering the nature of the EEs job duties.
- ***Matea v. Workers' Compensation Appeals Board (2006) 144 Cal.App.4<sup>th</sup> 1435, 71 Cal. Comp. Cases 1522.*** A manager-trainee at Home Depot injured his left foot/ankle when, after the store was closed, a wall shelf supporting lumber (12-foot four by fours) gave way without warning and all the lumber fell onto his leg.



# SUDDEN AND EXTRAORDINARY

- ***State Compensation Insurance Fund v. Workers' Compensation Appeals Board (Garcia) (2012) 204 Cal.App.4<sup>th</sup> 766, 77 Cal. Comp. Cases 307:*** Applicant had been working at Cole Ranch picking avocados for approximately 2 months when the injury occurred. While picking avocados from a 35-foot high tree in an avocado grove, the applicant fell from a 24 foot ladder and suffered a traumatic head injury. According to applicant, no one at Cole Ranch advised him of the risk of falling from the ladder, no other picker to his knowledge had fallen from a ladder, and there were no safety meetings/safety harness provided for ladder use.
- ***Travelers Casualty & Surety Co. v. WCAB (Dreher) (2016) 246 Cal.App.4<sup>th</sup> 1101, 81 CCC 402:*** Dreher was working as a live-in maintenance supervisor for an apartment complex when, as he was walking in the rain to another building in the complex, he slipped and fell on a slippery concrete walkway. He sustained numerous injuries, including a fractured pelvis and injuries to his neck, right shoulder, right leg, and knee.

# SUDDEN AND EXTRAORDINARY

- Motor Vehicle Accidents
  - Often don't rise to the level of being uncommon, unusual or unexpected enough to meet the sudden and extraordinary exception.
  - EE will need to show beyond a preponderance of the evidence that the specific circumstances surrounding the accident were extraordinary in nature

# SUDDEN AND EXTRAORDINARY

- Motor Vehicle Accidents (cont'd)
  - ***Morejon v. Pedro A. Lopez dba PAL Trucking, 2010 Cal. Wrk. Comp. P.D. LEXIS 140.***  
Applicant was in a truck accident which occurred because his brakes failed as he was going down a hill, although he recalled checking his brakes before the incident. Part of his training as a truck driver involved learning how to use run-away ramps, as brake failures can happen to any truck. There were two run-away ramps in the area where the accident occurred.
  - ***CIGA v. WCAB (Tejera) (2007) 72 CCC 482 (writ denied):*** A truck driver lost control of his truck on a wet highway, the trailer jackknifed, striking the cab of the vehicle numerous times. The steering wheel came loose in the driver's hands, applicant was thrown to the passenger side of the truck and out the passenger-side door. On the ground, he saw the trailer coming toward him, and had to roll out of the way, the trailer almost running over his feet.



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# SUDDEN AND EXTRAORDINARY

- Motor Vehicle Accidents (cont'd)
  - ***Paquini v. Spring Hill Jersey Cheese, Inc., dba Petaluma Creamery, 2019 Cal. Wrk. Comp. P.D. LEXIS 38.*** Applicant, a truck driver, alleged he was injured when the steering wheel of the ten-wheel milk truck he was driving locked up, causing him to lose control of the truck and wreck. However, applicant also testified that he was able to return the truck to the roadway by pushing very hard, which contradicted the notion that the steering wheel was locked.
  - ***Johnson v. MHX, LLC, 2022 Cal. Wrk. Comp. P.D. LEXIS 82:*** Applicant, a truck driver trainee, was caught in bumper to bumper traffic adjacent to train tracks when a commuter train approached. Although he believed he was clear of the train, his truck was struck. Applicant took his safety belt off to get out of the truck, but the commuter train approached too fast. When the truck cab was struck, applicant was tossed from one seat to the next, injuring himself. He suffered injuries to his left forearm, left elbow, left shoulder, left wrist, chest, neck, ribs, abdomen left side, facial, lung left side, hypertension, vision, and headache.



# SUDDEN AND EXTRAORDINARY

- ***Emery v. Hertz Corp. (2021) 87 CCC 94 (panel decision)***: Applicant was working as a manager trainee responding to customer phone calls regarding rental cars as well as cleaning cars and monitoring the office. A customer called requesting a senior discount, however, applicant was not empowered to discuss discounting with the public. The customer became angry and began insulting applicant over the phone. After she referred the caller to customer service and hung up on him, the customer called back angry, and stated that he was “going to come down to her office and teach her a lesson about customer service” and that he was going to "hurt her" or "shoot her."



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