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The Need for Workers' Compensation Reform in Ohio's Definition of Injury: Szymanski v. Halle's Department Store

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THE NEED FOR WORKERS' COMPENSATION REFORM
IN OHIO'S DEFINITION OF INJURY:
Szymanski v. Halle's Department Store

I. INTRODUCTION

A recent Ohio decision concerning compensability of an injury was a most disappointing one for those interested in Ohio workers' compensation reform. In Szymanski v. Halle's Department Store, the Ohio Supreme Court held that "[a] heart condition brought on by emotional stress without contemporaneous physical trauma or injury resulting from a verbal attack by fellow employees is not compensable under [Ohio Revised Code] section 4123.01(C)." The court found that physical disabilities occasioned solely by emotional stress received in the course of, and arising out of, the employee's employment does not constitute an "injury" under Ohio workers' compensation law. Thus, the plaintiff was denied a remedy even though workers' compensation is a statutory scheme designed to compensate workers injured in the course of their employment. Article II, section 35 of the Ohio Constitution provides: "For the purpose of providing compensation to workmen and their dependents, for death, injuries or occupational disease, occasioned in the course of such workmen's employment, laws may be passed...."

In 1959 the General Assembly adopted its current definition of "injury." At that time, an amendment was made to Ohio Revised Code section 4123.01(C) to provide that: "'Injury' includes any injury, whether caused by external accidental means or accidental in character and

1 63 Ohio St. 2d 195, 407 N.E.2d 502 (1980).
2 Id. at 195, 407 N.E.2d at 505.

Throughout this Note, "workmen's compensation" and "workers' compensation" will be used interchangeably. S. 545, 111th Gen. Assembly, 2d Sess. (1976), amended the workmen's compensation statutes and substituted the word "workers" for "workmen's." 1976 Ohio Laws 1075. This change became effective on January 1, 1977; therefore, all prior judicial opinions refer to "workmen's compensation."

3 58 O. JUR. 2d Workers' Compensation § 53 (1963). Workers' compensation is a statutory plan insuring a faster, more certain scheme of reimbursement for employees whose injuries arise out of and are causally related to their work. Prior to such legislative action, employees had difficulty succeeding in negligence actions. Employers effectively used the defenses of assumption of the risk, fellow-servant immunity and contributory negligence, to bar recovery by the employee. The modern no-fault concept of workers' compensation places the burden on the employee to prove only that he was employed and that an accident occurred in the course of, and arose out of, the employment. Reimbursement, although more certain and faster than in a negligence action, is fixed by statute at a percentage of wages lost during a limited period.

4 Ohio Const. art. II, § 35.
result, received in the course of, and arising out of, the injured employee's employment." Also, the legislature added, for the first time, a liberal construction statute to chapter 4123: "Sections 4123.01 to 4123.94, inclusive, of the Revised Code shall be liberally construed in favor of employees and the dependents of deceased employees."

This Note begins with a background of Ohio Supreme Court limitations on the General Assembly's definition of injury in workers' compensation law. Part IV(C) of this Note will analyze other jurisdiction's approaches to the compensability of physical injury caused by mental stimulus and will discuss other aspects and refinements of personal injury in the course of employment. It is proposed that there is a need for reform in Ohio's construction of "any injury"—one that will embrace the nationwide trends of "uniformly" compensating workers for both physical and mental injury caused by mental stimulus. Ohio currently excludes both types of injuries. Such an exclusion of workers so injured results in an arbitrary and capricious denial of equal protection under the law, which is expressly prohibited by the Ohio Constitution. Part IV(D) of this Note presents an equal protection argument for employees harmed by work-related mental stimuli. A complete understanding of these issues, however, must begin with an understanding of the concept of "injury."

II. THE HISTORY OF "INJURY" IN OHIO

The General Assembly has been very liberal in its statutory definitions of injury. The legislative history behind the present definition within section 4123.01(C) reflects the intent of the General Assembly to compensate workers for injuries received in the course of, and arising out of, their employment. Beginning with General Code section 1465-68,

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6 OHIO REV. CODE ANN. § 4123.01(C) (Page 1981) (emphasis denotes amendment).
7 OHIO REV. CODE ANN. § 4123.95 (Page 1981). This liberal construction statute is fitting for legislation such as workers’ compensation which is remedial in character and designed to protect workers.
9 OHIO REV. CODE ANN. § 4123.01(C) (Page 1981).
10 1B A. LARSON, THE LAW OF WORKMEN'S COMPENSATION § 42.21 (1979) [hereinafter cited as LARSON]; see generally Larson, Mental and Nervous Injury in Workmen’s Compensation, 23 VAND. L. REV. 1243, 1244 n.4, 1247 (1970) (Ohio limits recovery to injuries that are physical and traumatic) [hereinafter cited as Mental and Nervous Injury].
the legislature provided that every employee injured in the course of employment, provided it was not purposely self-inflicted, would be entitled to receive compensation.12

The Ohio Supreme Court has commented on this enactment that:

Immediately upon the statute becoming effective, the courts were confronted with the problem of determining the scope of the term "injury" as related to employment. In the early cases decided by this court it was determined that compensation could be awarded only for accidental and traumatic injuries. It appears that these elements of the definition of compensable injury came into the cases through the effort of the courts to distinguish an injury by accident from an injury through disease . . . .13

The court further concluded that prior judicial interpretation of the statute approved compensation for only those injuries which "arose out of the employment" and that the requisite causal connection must exist between the worker's injury and his employment.14

In addition, Ohio courts were called upon to determine whether physical impact was a necessary element of accidental or traumatic injury. The 1931 case of Industrial Commission v. O'Malley15 examined the question of whether emotional stress leading to an employee's death constituted a compensable injury. O'Malley was a night watchman on duty when police arrived to investigate an open door in the building next to his place of employment. Shortly afterwards he was found in apparent pain, claiming "the excitement of it all" aggravated his hypertension so that he required medical attention.16 He died shortly after arrival at the hospital. The Ohio Supreme Court denied compensation based on a finding that O'Malley's death was due to mere excitement, without physical injury as a contributing factor.

Soon thereafter, the court was charged with a duty to define the term "injury" as it applied to "accidents." In Industrial Commission v. Franken,17 the claimant was performing his usual work duties when he began to feel ill. After going home, he suffered heart failure and died twenty-five days later. In denying compensation, the court held that "the term 'injury' . . . comprehends only such injuries as are accidental in their origin and cause."18 The Franken court concluded by stating that if its decision was contrary to the legislative intent, the General Assembly should so state.

12 1913 Ohio Laws 79. See note 4 supra and accompanying text.
14 Id. at 295, 43 N.E.2d at 269.
15 124 Ohio St. 401, 178 N.E. 842 (1931).
16 Id. at 403, 178 N.E. at 843.
17 126 Ohio St. 299, 185 N.E. 199 (1933).
18 Id. at 302, 185 N.E. at 200.
In 1937, the General Assembly responded to the *Franken* suggestion by amending section 1465-68 of the General Code as follows: "The term 'injury' as used in this section and in the workmen's compensation act shall include *any injury* received in the course of, and arising out of the injured employee's employment." This attempt to set forth the broadest definition possible, contingent upon a causal relationship between injury and employment, was expanded by the supreme court in *Malone v. Industrial Commission.*

The 1942 *Malone* decision is important for several reasons. The case concerned a foundry worker who died from heat prostration, developed while working in a superheated atmosphere. The court awarded compensation and defined "injury" as "comprehend[ing] a physical or traumatic damage or harm, accidental in its character in the sense of being the result of a sudden mishap occurring by chance, unexpectedly and not in the usual course of events, at a particular time and place." The court was mainly concerned with the notion of accidental injury as encompassing not only accidental means, but also being accidental in character and result. Further, the court defined "physical or traumatic injury" as "one produced by any sudden violent attack upon the tissues or organs of a living body producing a wound, tear or an abnormal condition thereon or therein. The attack may result from contact with deleterious gases, destructive temperatures or forces of nature." Thus, the *Malone* decision confirmed a broad definition of "injury" and established that "external accidental means" was not a requirement for "injury."

Ohio courts were given another opportunity to rule on the physical consequences of employment-related mental stress in the case of *McNees v. Cincinnati Street Railway Co.* McNees, a trolley car driver, died of coronary thrombosis brought on by severe mental strain and excitement while driving at night in a dense fog. The common pleas court

1937 Ohio Laws 109 (emphasis added).
140 Ohio St. 292, 43 N.E.2d 266 (1942).

21 *Id.* at 292, 43 N.E.2d at 267 (syllabus ¶ 1). See generally Alloway, supra note 8. The court contradicted itself by defining "injury" by these terms and then compensating the dependent. The superheated atmosphere involved in *Malone* was not the result of a sudden mishap occurring unexpectedly, as the employee was faced with these conditions daily in his work at the foundry. This contradiction was later the basis for holding that unusual circumstance need not precede a compensable injury under *Czarnecki v. Jones & Laughlin*, 58 Ohio St. 2d 413, 390 N.E.2d 1195 (1979).

140 Ohio St. at 302, 43 N.E.2d at 271.

22 *Id.* at 302, 43 N.E.2d at 271.


24 90 Ohio App. 223, 101 N.E.2d 1 (1st Dist. 1951) (Hamilton County). See also 152 Ohio St. 269, 89 N.E.2d 138 (1949).
entered judgment for McNees notwithstanding the verdict, that was affirmed by the appellate court, but the Ohio Supreme Court reversed and remanded with instructions to enter judgment for the employer on the general verdict of the jury. The case was later heard by the appellate court after a motion for new trial was overruled on remand.

On remand, the appellate court outlined both facts and case history noting that although the general verdict was entered for the employer, the jury had found in a special verdict that the mental strain and excitement from driving conditions caused McNees' death. O'Malley was distinguished because death there resulted from mere excitement without a mental strain and was unconnected with O'Malley's employment. Instead, the appellate court relied upon the supreme court's prior statement that: "Since the jury's answer to the special interrogatory finds a causal connection between decedent's death and the strain and excitement of certain conditions of his employment, it necessarily establishes a causal connection between his employment and the coronary thrombosis." In addition, the appellate court observed that other jurisdictions had held that mental strain, worry and anxiety causing "sudden and unexpected breaking of some portion of the internal structure of the body . . . or the failure of some essential function thereof" were compensable injuries. Nonetheless, the case was again reversed and remanded, this time because the charge to the jury that "mere mental strain or worry is not an injury within the meaning of the Workmen's Compensation Law" was prejudicial error.

A few years later, the supreme court retreated from its position on Ohio's definition of "injury." In Toth v. Standard Oil Co., the court denied compensation to an employee partially paralyzed from a cerebral hemorrhage. The hemorrhage was brought on by mental strain over a work-related incident. The court refused relief on the ground that "injury" must be "physical or that there [must] be a traumatic damage, accidental in character." The Toth court distinguished Malone by defining artificial heat as a physical contact. Also, it dismissed McNees, stressing the "unusual physical exertion" and stating that the court in that case was more

26 Id. at 230, 101 N.E.2d at 4 (citations omitted).
27 Id. at 231, 101 N.E.2d at 5.
28 Id.
29 160 Ohio St. 1, 113 N.E.2d 81 (1953). The claimant, a truckdriver, was subjected to police investigation on the suspicion that he killed a pedestrian in a hit-and-run accident. Toth suffered partial paralysis from a cerebral hemorrhage seven days after a lie detector test caused him great anxiety and worry.
30 Id. at 5, 113 N.E.2d at 83.
31 Id. at 6, 113 N.E.2d at 83. The physical exertion involved in McNees v. Cincinnati St. Ry. Co., 90 Ohio App. 223, 101 N.E.2d 1 (1st Dist. 1951) (Hamilton
concerned with reconciling the special interrogatory with the general verdict. The court found that "the connection with his employment was remote, but even if it had been immediate, worry and anxiety alone does not . . . constitute an injury." 32 In dissent, Justice Zimmerman reminded the court "that the Workmen's Compensation Act, in view of its remedial character, is to be construed liberally in favor of an injured workman." 33 Once again, as in his dissent in McNees, 34 Justice Zimmerman suggested that mental strain resulting in a physical disability "constitutes an 'injury' within the meaning and intent of the statute." 35 Furthermore, a leading authority on workers' compensation has criticized this "judicial limitation" as the "only one contra holding [prior to Szymanski] reported in the last quarter century" precluding compensability for mental stimulus caused physical injury. 36

In 1959, the Ohio General Assembly broadened the 1937 definition of "injury" to include "any injury, whether caused by external accidental means or accidental in character and result, received in the course of, and arising out of, the injured employee's employment." 37 In essence, this was merely a codification of the Malone ruling. 38 This attempt to assert the remedial character of workers' compensation for employees plagued by "any injury" was bolstered further by the addition of a liberal construction statute: "Sections 4123.01 to 4123.94, inclusive, of the Revised Code shall be liberally construed in favor of employees and the dependents of deceased employees." 39

Two further constructions of the definition of "injury" are relevant to the historical changes of the definition. The first, in Bowman v. National Graphics Corp., 40 provided that job-related injuries resulting from a gradual worsening condition are not compensable, for there must be a specific occurrence or incident which caused the injury. The second, County, concerned an attempt to put trolley poles onto wires. The supreme court, in the decision below, was not concerned with this physical aspect; instead, it discussed mental strain and excitement as the cause of death. See McNees v. Cincinnati St. Ry. Co., 152 Ohio St. 269, 280, 89 N.E.2d 138, 142 (1949).

32 160 Ohio St. at 6-7, 113 N.E.2d at 84.
33 Id. at 7, 113 N.E.2d at 84 (Zimmerman, J., dissenting).
34 152 Ohio St. at 286, 89 N.E.2d at 147 (Zimmerman, J., dissenting).
35 160 Ohio St. at 8, 113 N.E.2d at 84 (Zimmerman, J., dissenting).
36 LARSON, supra note 10, § 42.21. The Ohio Supreme Court decision in Toth stands out against both federal and state precedents which allow compensation for physical injuries caused by mental stimuli. Id.
37 OHIO REV. CODE ANN. § 4123.01(C) (Page 1981) (emphasis added).
38 Szymanski, 63 Ohio St. 2d at 197, 407 N.E.2d at 505 (1980); Hearing v. Wylie, 173 Ohio St. 221, 180 N.E.2d 921 (1962).
40 55 Ohio St. 2d 222, 378 N.E.2d 1056 (1978); Bowman, supra note 8. In Bowman, the court stated that the claimant's injury developed gradually and as a result of normal "wear and tear."
Czarnecki v. Jones & Laughlin Corp., 4 concerned a worker who injured his back while lifting a drum during the course of his employment. The court held that injury was compensable, absent proof of unusual circumstances prior to the injury, where the injury arose from an accidental event. Szymanski v. Halle’s Department Store is a culmination of these diverse definitions of “injury” and must be examined with them in mind.

III. Szymanski: FACTS AND HOLDING

Alicja Szymanski was employed as a sales clerk in the cosmetics section of Halle’s Department Store. On February 7, 1976, while showing a customer a requested item, she infringed on the product line to be sold by a co-worker. The co-worker began to scream and shout at the claimant, verbally attacking her and humiliating her in front of co-workers and customers. Szymanski left the sales area in tears and found it necessary to leave work early due to “pressure” and headaches.

She was treated medically for her symptoms of nervous tension, mental depression and slightly elevated blood pressure. Upon return to work that week, still under medication, Szymanski collapsed and was hospitalized. Her “physician determined that she had suffered a ‘changing myocardial process consistent of an ischemia.’” As a result of her condition, [she] was unable to return to work until April 12, 1976.”

Szymanski’s claim was disallowed by the Bureau of Workers’ Compensation. “The Cleveland Regional Board of Review affirmed the disallowance, and the Industrial Commission refused to entertain [her] appeal.”

She then appealed to the Court of Common Pleas of Cuyahoga County, which granted a motion by the employer for judgment on the pleadings. The court of appeals reversed the lower court, holding that the complaint alleged a compensable injury.

41 58 Ohio St. 2d 413, 390 N.E.2d 1195 (1979).
42 63 Ohio St. 2d at 195, 407 N.E.2d at 503. “The term ‘ischemia’ was defined by [Szymanski’s] physician [as] ‘a condition caused by a deficient blood supply to a part of the heart muscle due to a functional constriction or an actual obstruction of blood vessels.’” In his letter to the claimant’s attorney, the physician concluded: “[I]t is very probable that her transient heart condition was provoked by the unpleasant incident which endangered her life.” Id.
43 Id. at 195, 407 N.E.2d at 503.
44 Id.
45 The appeal was taken pursuant to OHIO REV. CODE ANN. § 4123.519 (Page 1980) which provides:

The claimant or the employer may appeal a decision of the industrial commission . . . in any injury or occupational disease case, other than a decision as to the extent of disability, to the court of common pleas of the county in which the injury was inflicted or in which the contract of employment was made if the injury occurred outside the state.
46 63 Ohio St. 2d at 196, 407 N.E.2d at 504.
47 Szymanski v. Halle’s Dept. Store, No. 39377, slip op. at 7 (Ohio Ct. App., 8th Dist., Oct. 4, 1979) (Cuyahoga County).
The court of appeals began its opinion with a discussion of the definition of injury in Ohio workers' compensation law: "[i]t is firmly established that the present legislative definition of a compensable injury is patterned after Malone v. Industrial Commission ... Malone held that a compensable injury includes injuries accidental in character and result." The court then cited a retreat from the Malone decision: "external accidental means" were necessary in finding a compensable injury under Dripps v. Industrial Commission, followed by and approved by Toth where the supreme court decided "anxiety and worry allegedly causally connected to an incident of the employment did not constitute a compensable injury." The Malone view, however, was reviewed by the General Assembly, and, as the court stated, was the basis of the 1959 amendment to section 4123.01(C) of the Revised Code, which supplemented the "Dripps Doctrine." In making Szymanski's claim compensable, the court reviewed four decisions wherein "the question of whether a heart attack is a compensable injury [was] held to be one of causation and for the jury." The court of appeals distinguished Toth as follows:

Toth is a pre-1959 decision rendered during the transition from Malone to Dripps and prior to the 1959 amendment. In our view, a heart attack caused by a verbal attack by fellow employees is "accidental in character and result" and is then potentially a compensable injury. The question of whether the verbal attack did in fact cause the heart attack is an issue of causation for the trier of fact.

Upon an allowance to certify the record, the employer appealed to the Supreme Court of Ohio, which concluded that "disabilities ... caused solely by emotional stress without contemporaneous physical injury or physical trauma are not compensable injuries within the meaning of

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46 Id. at 3; Malone v. Industrial Comm'n, 140 Ohio St. 292, 43 N.E.2d 266 (1942).

49 165 Ohio St. 407, 135 N.E.2d 873 (1956). Toth was decided after the Dripps decision. The appellate court found this fact significant and concluded that since Dripps was later "overruled," Toth could also be found inconsistent with the intent of the legislature in its 1959 amendment and dismissed from consideration.

50 Szymanski v. Halle's Dept. Store, No. 39377, slip op. at 7 (Ohio Ct. App., 8th Dist., Oct. 4, 1979) (Cuyahoga County).

51 Id. at 4, The "Dripps Doctrine," patterned after Dripps, 165 Ohio St. 407, 135 N.E.2d 873, comprehended injuries as "physical or traumatic in character, that it arose suddenly and was not intentionally self-inflicted, and that it resulted by external means from some specific event or from some specific event or mishap occurring suddenly and unexpectedly and not in the usual course of events." 165 Ohio St. at 409, 135 N.E.2d at 875.

52 Szymanski v. Halle's Dept. Store, No. 39377, slip op. at 7 (Ohio Ct. App., 8th Dist., Oct. 4, 1979) (Cuyahoga County).

53 Id.

54 63 Ohio St. 2d at 196, 407 N.E.2d at 504.
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R.C. 4123.01(C)." Thus, the Ohio Supreme Court had come full circle by returning to the O'Malley definition of injury.

IV. CRITIQUE

In denying compensation to Szymanski for her heart condition caused by emotional stress, a majority of the Ohio Supreme Court required a disability caused by "physical or traumatic damage or harm" as set out in Malone.

A. The Majority Opinion

The court began with a review of O'Malley and Toth, the two earlier supreme court cases dealing with emotional stress and the "injury" concept. The court repeated its stance that "disabilities occasioned solely by emotional stress" are not compensable injuries.

The court again failed to view the "injury" in its entire sequence. In O'Malley, Toth and Szymanski, the court failed to recognize emotional stress as the origin of the physical disability. The injury in all three cases is not the emotional stress, but the physical disability resulting from emotional stress: the physical consequence of a mental stimulus. In his scathing criticism of the Toth decision, Larson clearly spelled this out:

It is odd that Ohio, with no statutory compulsion to do so (since the statute includes any injury received in the course of and arising out of the employment) insists on reading into the statute a limitation to injuries that are physical or traumatic. Even by Ohio's own terms, however, there is certainly physical injury enough to suit anyone in a cerebral hemorrhage resulting in partial paralysis. The injury must be understood to embrace the total episode from start to finish.

Larson also criticized the Szymanski decision, stating that "the 'injury' was here not hearing words, it was the heart attack."

Answering the appellate court's suggestion that Toth was overruled by the 1959 amendment to section 4123.01(C) of the Revised Code, the

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55 Id. at 198, 407 N.E.2d at 505.
56 124 Ohio St. 401, 178 N.E. 842 (1931).
57 140 Ohio St. at 292, 43 N.E.2d at 267 (syllabus ¶ 1).
58 63 Ohio St. 2d at 198, 407 N.E.2d at 505.
59 See Mental and Nervous Injury, supra note 10. Time factors involved in receiving an injury may vary from immediate to protracted. The court should look at this set of circumstances as a protracted culmination of prior events.
60 LARSON, supra note 10, § 42.21 at 7-593.
61 LARSON, supra note 10, § 42.21 at 7-589 (Supp. 1981).
62 OHIO REV. CODE ANN. § 4123.01(C) (Page 1981).
court firmly stated: "[t]here is nothing in the legislative history of this amendment which indicates an intention by the General Assembly to compensate for disabilities arising solely from emotional stress."  

The court, however, failed to review closely the phrase "accidental in character and result."  

Had the Szymanski court fully comprehended the meaning of this phrase, it would have corrected its faulty reasoning in Malone. The Malone court's holding that "[t]he term injury ... comprehends a physical or traumatic damage or harm" confused the issue of "injury" in the same manner as O'Malley, Toth and now, Szymanski. Had the court reviewed Szymanski's claim in light of its entire sequence from origin to result, it would have found injury "accidental in character and result," for although there were no physical external means causing the "accident," there was a physical disability "accidental in character and result." A heart condition resulting from emotional stress during the course of, and arising out of, employment is clearly accidental within the meaning of the statute if "injury" is perceived as a sequence of events.

Curiously, the court cited Malone as precedent for a restrictive definition of injury. Two aspects of Malone, however, lead to a different result than the one reached in Szymanski:

First, the Malone decision was actually a broader reading of the definition of injury than had previously been used because it added the "accidental in character or result" language. . . .

Second, the court granted the compensation sought in Malone. It is not the normal rule of case analysis to use a case that has offered a broadened construction of a statute to stand for the proposition that the statute should be narrowly construed.

The majority alluded briefly to Szymanski's contention "that it is a denial of equal protection of the laws to exclude from compensation those disabled employees whose disabilities arise solely from non-physical and non-traumatic incidents related to their employment." The court declined to pass judgment on this issue, as it was "neither raised nor briefed in the courts below." Nonetheless, this issue is of great importance to Ohio workers.

B. The Minority Opinion

In his vigorous dissent, Justice Sweeney attacked the majority's
reasoning. He stated that the court's "periodic exercise in contorting the language of R.C. 4123.01(C)"\(^70\) created a perverse outcome in this case. For Justice Sweeney, it was "inconceivable...how the majority [could] derive from [a definition of the term "injury"] a requirement that the injury must arise from physical contact or physical trauma."\(^71\) He believed that a reliance on Toth was "regrettable," for "[i]t should be clear that the injury in Toth was not anxiety, but was rather the resulting stroke; just as here the injury was the heart attack."\(^72\)

The dissenting opinion presents a logical and more appropriate construction of the General Assembly's language in the present definition of injury. It also embraces the spirit of the liberal construction statute wherein workers' compensation statutes are to be "liberally construed in favor of employees."\(^73\) The legislature's expansion of the statute's coverage was designed to broaden the court's persistent restrictive construction of "injury." A holding that the origin of an injury need not be physical, so long as the result is a physical disability is clearly within the purview of section 4123.01(C).\(^74\)

Justice Sweeney also noted that Toth has been sharply criticized as being "distinctly out of line" with other state decisions. Courts in other states have "uniformly" found compensability for mentally caused physical injury.\(^75\) He forewarned the inequitable results caused by the majority rule: if the co-worker had slapped Szymanski during the assault, compensability probably would have been awarded. He also cited an out of state court that "realized the irrationality of such a distinction"\(^76\) and compensated a claimant, having high blood pressure, who suffered a cerebral hemorrhage due to unusual job pressures.\(^77\)

The dissent's judicious consideration of other state decisions and the inequitable results that follow as a result of Ohio's disfavored stance reflect a need for a change in the supreme court's reasoning. Physical contact is an arbitrary measuring factor for determining which injuries should be removed from the court's consideration. Other states have not

\(^{70}\) Id.

\(^{71}\) Id.

\(^{72}\) Id.

\(^{73}\) OHIO REV. CODE ANN. § 4123.95 (Page 1981).

\(^{74}\) OHIO REV. CODE ANN. § 4123.01(C) (Page 1981).

\(^{75}\) 63 Ohio St. 2d at 200, 407 N.E.2d at 505-06 (citing Larson's treatise); see LARSON, supra note 10.

\(^{76}\) Id. at 200, 407 N.E.2d at 505-06. Justice Sweeney quoted Larson's treatise in his dissent. Larson, the leading authority on workers' compensation law, is a motivating force behind workers' compensation reform throughout the nation. He has been cited in many of the major cases in mental stimulus-physical injury and mental stimulus-mental injury awards.

\(^{77}\) Insurance Dept. of Miss. v. Dinsmore, 233 Miss. 569, 102 So. 2d 691 (1958). See also notes 109-11 infra and accompanying text for other out-of-state decisions.
found physical contact to be a prerequisite to compensability, and Ohio should adapt its present reasoning to this course of thought.

Justice Sweeney forcefully advocated a change of Ohio's interpretation:

It appears to this writer that the majority's refusal to recognize [Szymanski's] heart attack as a compensable injury is based on a fear that a causal relationship cannot be adequately established between the emotional distress and the physical result. If such a fear does exist it should be squarely confronted, rather than dismissed through a convoluted application of the definitional statute.\textsuperscript{78}

He suggested two tests to determine the compensability of injuries resulting from emotional distress: 1) a determination of whether the injury was received in the course of, and arising out of, the employment,\textsuperscript{79} and 2) a test wherein the worker must show that his injury resulted from "greater emotional strain or tension than that to which all workers are occasionally subjected."\textsuperscript{80}

These two tests would adequately establish the requisite causal relationship for compensability. They would insure that only those injured in the scope of their employment from truly stressful, work-related risks would be compensated. Moreover, workers' compensation statutes are remedial in character and should be read in light of the 1959 liberal construction statute. It is not consonant with the spirit of such legislation to restrict compensability to those workers who have suffered disabilities caused only by physical or traumatic harm. Employees suffering accidental disabilities due to enhanced emotional stress incurred in the course of, and arising out of, their employment should be compensated.

C. Expansion of the Concept of Injury: Inclusion of Mental Stimuli as Compensable Injuries

This section presents discussion of the following variations of personal injury: physical trauma causing nervous injury, mental stimulus causing physical injury and mental stimulus causing nervous injury.\textsuperscript{81}

\textsuperscript{78} 63 Ohio St. 2d at 200, 407 N.E.2d at 506.

\textsuperscript{79} Id.

\textsuperscript{80} Id. at 201, 407 N.E.2d at 506 (Sweeney, J., dissenting) (quoting Wilson v. Tippets-Abbott-McCarthy-Stratton, 22 A.D.2d 720, 253 N.Y.S.2d 149 (1964)).

\textsuperscript{81} The terms "mental stimulus," "nervous injury," "traumatic neurosis," "psychoneurosis," \textit{et al.} are "only a rough expedient adopted in order to sort out an almost infinite variety of subtle conditions and relationships for compensation law purposes." LARSON, \textit{supra} note 10, \S 42.20 at 7-784. See also Wasmuth, \textit{Psychosomatic Disease and the Law}, 7 CLEV.-MAR. L. REV. 34 (1958) [hereinafter cited as Wasmuth].
Both Ohio case law and the Ohio Industrial Commission accept only the first of these three categories. This limitation conflicts with other state decisions, for "[w]hen mental or nervous injury is preceded or followed by physical injury, the resulting disability is almost universally compensable, and the majority of jurisdictions also award compensation when a mental stimulus produces a nervous injury."\textsuperscript{82} It is recommended here that Ohio expand its current restrictive definition of injury to reflect the position taken by the majority of states.

1. Physical Trauma Causing Nervous Injury

"It is now uniformly held that the full disability including the effects of the neurosis is compensable when there has been a physical accident or trauma and the claimant's disability is increased or prolonged by traumatic neurosis, conversion hysteria or hysterical paralysis."\textsuperscript{83} Ohio subscribes to this theory. Administrators and courts are willing to grant an award for a residual disability known as "traumatic neurosis," in which the employee suffers a work-connected physical blow or trauma which causes a disabling mental or nervous disturbance. The administrators and courts seem to have no trouble with these cases because the requisite physical trauma, however slight, is present.

Of course, "[t]he compensability of disability or death resulting from an injury occurring subsequently to a compensable injury . . . depends upon whether the injury is of such a character that its consequences are to be regarded as the \textit{natural result} of the original injury."\textsuperscript{84} Thus, the claimant must establish the causal relationship between the injury and the mental or neurotic condition with the required degree of certainty.

One of the earliest Ohio cases dealing with an employment-connected mental disorder resulting from a physical injury is the 1935 \textit{American Rolling Mill Co. v. Duncan}\textsuperscript{58} decision. Duncan accidentally suffered an

\textsuperscript{82} Larson, \textit{supra} note 10, § 42.00 at 7-575.

\textsuperscript{83} Mental and Nervous Injury, \textit{supra} note 10, at 1249. Cf. Binder, \textit{The Defense of Claims of Psychic Trauma and Psychiatric Disability}, 12 \textit{Forum} 934, 934 (1977) (In some jurisdictions, psychiatric disabilities identified as "traumatic neuroses" or "functional overlays" account for "fully 15 percent of successful claims—and their number continues to grow.") The Binder article criticizes recovery under this area of workers' compensation law. One must keep in mind, however, that all claimants must prove the requisite causal connection between injury and employment. Workers' compensation is a remedy for work-related injuries, not a form of general insurance. Through evidentiary hearings, the various Industrial Commissions can weed out obvious fraudulent claims.

\textsuperscript{84} 58 O. JUR. 2d \textit{Workmens' Compensation} § 114 (1963) (emphasis added); see also 82 \textit{Am. JUR. 2d Workmen's Compensation} § 301 (1976).

\textsuperscript{58} 53 Ohio App. 33, 4 N.E.2d 148 (1st Dist. 1935) (Butler County). Of course, claimant had to causally connect his meningoencephalitis with the abrasion suffered at work. The claimant, via an ingenious attorney and convincing medical evidence, did prove the causal connection by a preponderance of the evidence. This is a good example of a court willing to award compensation for mental injury to those showing even the slightest physical contact.
abrasive injury and was able to prove that his meningoencephalitis (a form of insanity) resulted from the spread of streptococci which lodged in an abscess caused by the abrasion. His mental disability was allowed.

Similarly compensable was the injury in the 1939 case of Jones v. Industrial Commission, wherein a beer truck driver received a severe blow to the back of his head by the steel tailgate of the truck he was repairing. Evidence was introduced as to the "marked peculiarity of his actions," both mental and physical, throughout the course of the day of the injury. Jones disappeared that evening and was found drowned one month later. The court accepted the jury's finding that his presumed accidental drowning was due to an injury "which took away his power of mental and physical coordination." Since his death was traceable to a mental condition caused by injury sustained in the course of his employment, compensation was granted.

When an accidental injury or disease arises out of and in the course of employment and the mental derangement flowing therefrom results in suicide, compensation will be granted. However, since the presumption is against suicide, a claimant seeking to recover for a death by suicide must establish that an injury was sustained in the course of decedent's employment, that the injury caused a derangement of the mind to such an extent that decedent could not entertain a fixed purpose to take his own life, and that suicide was the direct result of that lack of purpose which characterizes an insane mind.

Therefore, dependents of deceased workers must prove that the act of suicide was "committed under an uncontrollable impulse or delirium or frenzy directly and proximately produced by a compensable injury,

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58 30 Ohio Law Abs. 7 (Ct. App., 2d Dist. 1939) (Franklin County).
57 Id. at 9. Claimant suffered a personality change, loss of motor and mental control, and was obviously impaired in his normal everyday functions.
58 Id. at 8.
60 58 O. JUR. 2d Workmens' Compensation § 107, at 243-44 (1963). Ohio subscribes to the necessity of proving an uncontrollable impulse, without volition, in committing suicide. In re Sponatski, 220 Mass. 526, 108 N.E. 466 (1915), promulgated this doctrine which is followed by many jurisdictions. Other jurisdictions hold that where an injury deprives the worker of normal judgment, and this mental disturbance incites suicidal depression, death is compensable. This is known as the "chain of causation test." Brenne v. Department of Indus., Labor & Human Relations, 38 Wis. 2d 84, 156 N.W.2d 497 (1968). Under this rule, a wilfull act of suicide is still compensable if the dependents can prove a mental disturbance causally related to the decedent's originally-compensated injury.
without conscious volition to produce death or knowledge of the physical consequences of the act."\footnote{58 O. JUR. 2d Workmens' Compensation § 107, at 243 (1963); see generally Scanlon, Suicide As Compensable Under Workmen's Compensation Laws, 12 CLEV.-MAR. L. REV. 26 (1963); Note, Workmen's Compensation—Suicide Compensable Where Causal Connection to Injury, 31 U. CIN. L. REV. 187 (1962); Annot., 15 A.L.R.3d 616 (1967).}

The 1960 decision of *State v. Industrial Commission*\footnote{83 Ohio Law Abs. 114, 165 N.E.2d 211 (Ct. App., 10th Dist. 1960) (Franklin County). At this time, the administrative agency did not bother to question the validity of collecting compensation for a nervous disorder related to a physical-stimulus disability. This is further proof that Ohio is willing to award compensation once a physical element can be maintained. However, the reverse (mental stimulus-physical injury) cannot be compensated under *Szymanski*.} dealt with a claimant whose back condition and nervousness were either due to or were aggravated by a fall sustained at work. The claimant's back disability and "psycho neurosis" were held compensable by the Regional Board, which further stated: "[t]he claimant is entitled to compensation for the time lost while being treated for her nervous condition."\footnote{Id. at 116, 165 N.E.2d at 212.} The Ohio Supreme Court agreed and compelled the Industrial Commission by mandamus to complete the order of the Regional Board allowing the claim.

Thus, Ohio administrators and courts have unqualifiedly recognized that mental conditions that causally result from physical injuries incurred at work are compensable. This understanding "that the body is a whole, and that injuries of one part may affect the entire organism"\footnote{Wasmuth, supra note 81, at 35.} is fully effectuated in this area of Ohio workers' compensation law. The need for reform is in the area referred to hereafter as "mental stimulus causing physical injury."

2. Mental Stimulus Causing Physical Injury

In both his treatise and article on mental and nervous injury under workers' compensation law,\footnote{LARSON, supra note 10, § 42.21 at 7-585-586; Mental and Nervous Injury, supra note 10, at 1243.} Larson discussed uniformity of compensability for physical injuries caused by mental stimuli. Of course, he highlighted Ohio's insistence on the element of physical causation and stressed that "[t]his is a judicial limitation."\footnote{LARSON, supra note 10, § 42.21 at 7-589; Mental and Nervous Injury, supra note 10, at 1244.} In this section, other state decisions regarding sudden and protracted physical injuries as a result of mental stimuli will be reviewed.

A sudden event precipitating a mental stimulus, which results in immediate physical injury, is probably the easiest example to analyze. Cases involving sudden frights or accidents and near-accidents with
direct physical consequences abound. For example, *Charon's Case,*" a 1947 Massachusetts decision, dealt with a claimant paralyzed on one side of her body as a result of sheer fright, experienced when lightning damaged three motors, causing a loud noise and a startling flash of light near her work station. The Massachusetts court recognized that these external circumstances triggered a mental reaction resulting in physical injury. The claimant was compensated.

"The case is no less clear when the extreme fright or emotional disturbance, instead of being momentary, is somewhat protracted." Ohio common pleas courts have compensated two claimants for such protracted injuries. In the 1940 case of *Johnson v. Industrial Commission,* an employee was severely reprimanded and subjected to "constant and violent shouting and nagging" by her foreman. As a result of this verbal abuse, she "became hysterical and numb and had to be removed to her home in an ambulance where she remained for a period of approximately four weeks suffering from intense hysteria and hysterical paralysis." The Common Pleas Court of Hamilton County awarded compensation pursuant to its finding that she suffered a "physical injury as a result of a sudden happening, to wit, the abuse to which she was subjected by the foreman at the particular time."

In 1951, the Common Pleas Court of Butler County decided *Day v. Industrial Commission* which concerned a union stewardess involved in a heated discussion at a grievance committee meeting. The claimant was placed "under a very high nervous tension" and collapsed "less than an hour after the meeting was concluded and after complaining of pains in her head." She died from a cerebral hemorrhage and heart failure with "antecedent causes due to hypertension and myocarditis." The court held that the statutory term "any injury" included mental strain and that since claimant's death was accidental in character and result, in the course of employment, and proximately caused by incidents related to such work, her dependent should be entitled to share in the workers' compensation fund. Two years later the Ohio court of appeals

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98 LARSON, supra note 10, § 42.21 at 7-589-590.
100 Id. at 439, 30 Ohio Law Abs. at 632.
101 Id. The court based its decision on a "sudden happening," albeit the verbal abuse she was subjected to was "constant," due to the supreme court's insistence on a specific event, resulting in an injury. *Goodman v. Industrial Comm'n*, 135 Ohio St. 81, 19 N.E.2d 508 (1939).
102 65 Ohio Law Abs. 5 (C.P. 1951) (Butler County).
103 Id. at 7.
104 Id.
105 The court cited *Malone v. Industrial Comm'n*, 140 Ohio St. 292, 43 N.E.2d 266 (1942), for *Malone's* earlier precedent focusing on "accidental."
decision in *McNees* allowed compensation for mental strain resulting in the death of a trolley car driver.\textsuperscript{106}

Thus, these earlier lower court decisions are in harmony with other state supreme court decisions acknowledging the relationship between mental strain and its physical consequences. These other state decisions concerning mental stimulus-physical injury have understood that:

The effects are the result of the press of circumstances and environment upon the emotions, midbrain and autonomic nervous system. The effects of stress might be from an injury [or] from mental strain ... of any cause ... Stress, in the medical sense, therefore, is any stimulus or succession of stimuli of such magnitude as to tend to disrupt the homeostasis of the organism. When the mechanisms of adjustment fail or become disproportionate or incoordinate, the stress may be considered an injury, resulting in disease, disability or death.\textsuperscript{107}

Examples of out-of-state decisions concerning mental stress and strain with resultant physical injury include two 1958 decisions. In *Aetna Insurance Co. v. Hart*,\textsuperscript{108} the Texas Supreme Court held that the precipitating cause of a stroke was an emotional stimulus due to brow-beating by an irate customer. Compensation was awarded to the hypertensive claimant. The Mississippi Supreme Court reached the same conclusion in *Insurance Department of Mississippi v. Dinsmore*,\textsuperscript{109} wherein an employee with preexisting hypertension collapsed at work as a result of an aggravation of her condition due to unusual mental and emotional strain. Both cases relied heavily on the expert testimony of medical doctors in order to establish the requisite causal relationship.\textsuperscript{110} Just as Justice Sweeney had noted in his *Szymanski* dissent,\textsuperscript{111} the *Dinsmore* court stated:

It seems unthinkable that, if hypertension may be aggravated either by physical or mental and emotional exertion, courts should be willing to accept the physical as causative, but reject, as not accidental, a disability, proximately resulting from mental and emotional exertion.\textsuperscript{112}

\textsuperscript{106} See notes 24-28 supra and accompanying text.

\textsuperscript{107} Wasmuth, supra note 81, at 40-41.


\textsuperscript{109} 233 Miss. 569, 102 So. 2d 691 (1958).

\textsuperscript{110} Medical testimony is often necessary to establish the technical rationale for bodily malfunction. It is also utilized to determine the requisite proximate cause relationship between an accident and the injury. White Motor Corp. v. Moore, 48 Ohio St. 2d 156, 357 N.E.2d 1069 (1976). See generally Note, Heart Injuries Under Workers' Compensation: Medical and Legal Considerations, 14 Suffolk U.L. Rev. 1365 (1980).

\textsuperscript{111} 63 Ohio St. 2d at 200, 407 N.E.2d at 506.

\textsuperscript{112} 233 Miss. at 579, 102 So. 2d at 694.
The 1972 Louisiana Supreme Court case of *Ferguson v. HDE, Inc.*,\(^{113}\) wherein an employee suffered a stroke while arguing over his paycheck, forcefully summed up the arguments in favor of compensating workers for physical injuries caused by mental stimuli:

Is there a valid distinction between injuries which occur in the course of some physical exertion, however slight, and injuries which occur because of emotional shock, fright, or stress? The violence to the physical structure of the body is the same. The sudden and unexpected nature of the occurrence is the same. The catastrophic effect upon the workman is the same.\(^{114}\)

Larson noted similarly that: "The character of the case does not change in kind, but only in degree when the stimulus takes the form of sustained anxiety or pressure leading to a heart attack or cerebral hemorrhage."\(^{115}\) Probably the best example of gradual emotional upset is *Klimas v. Trans Caribbean Airways, Inc.*\(^{116}\) Klimas suffered a fatal heart attack attributed solely to work-related mental disturbance and emotional strain caused by fear of losing his job and missing a deadline for a project experiencing cost over-runs. Compensation was awarded in this landmark decision since "undue anxiety, strain and mental stress from work are frequently more devastating than a mere physical injury."\(^{117}\)

There are several tests employed in measuring mental stimulus-physical injury cases. They have been devised to satisfy the "accidental" requirement encompassed by "injury" and are utilized to compensate only those workers who can prove that their injury was truly a result of work pressure. The most common is the "unusualness in emotional strain" test.\(^{118}\) Courts generally do not have a problem with the single event cases wherein an identifiable event immediately results in physical injury.\(^{119}\) There is, however, more concern with the protracted and gradual case, since administrative agencies and courts want to be certain that the employment truly contributed to the mental stimulus resulting in physical injury. Here, circumstances will be examined closely to determine whether there was an "unusual exertion" on the part of the employee. Of course, this test has its drawbacks, "because of the difficulty and confusion attendant [to] the search for the benchmark of

\(^{113}\) 270 So. 2d 867 (La. Sup. Ct. 1972).

\(^{114}\) *Id.* at 870.

\(^{115}\) LARSON, supra note 10, § 42.21 at 7-590.


\(^{118}\) LARSON, supra note 10, § 38.65.

\(^{119}\) *Id.* at 7-199-200.
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'usual' exertion against which to measure the precipitating exertion." 120

Another test utilized in mental stimulus-physical injury cases is the "exertion greater than the ordinary wear and tear of life" test.121 Cases using this test generally involve overwork, protracted negotiations, special deadlines and "nervous strain" that is "so conspicuous that they can be seen to be quantitatively greater than any standard of 'usualness' that might be selected, whether the employee's own past experience, the experience of employee's generally or the wear and tear of everyday nonemployment life." 122

New York courts introduced a third test dealing specially with on-the-job altercations. In Wilson v. Tippetts-Abbott-McCarthy-Stratton,123 a 1964 supreme court case, a worker suffered a stroke as a result of an argument with his superior. He was compensated for proving "greater emotional strain or tension than that to which all workers are occasionally subjected."124 This case was cited by Justice Sweeney in his Szymanski dissent125 as presenting the standard for determining whether a heart attack or cerebral hemorrhage should be compensated. This test would enable the court to compensate employees like Ms. Szymanski for the "accidental" quality of their injury, as required by statutory law.126

The above cases and tests represent only a few of the myriad decisions supporting a finding of compensability for workers physically disabled by work-induced mental stress and strain. In their decisions the courts have embraced the beneficent, remedial character of workers' compensation laws. Ohio courts should review these decisions and change their stance accordingly.

3. Mental Stimulus Causing Nervous Injury

A current trend in workers' compensation law involves a "nervous" or psychological disability caused by a single mental stimulus or by mental stimuli occurring in a relatively short period of time. "[T]here is already visible a distinct majority position supporting compensation in these cases."127 A number of cases, however, support the contrary view and reason either that "such disorders could not be said to have been caused by 'accident' ... [or] could not properly be considered an 'injury'

120 Id. at 7-220-221.
121 Brush, supra note 117, at 55-56.
122 LARSON, supra note 10, § 38.65 at 7-221.
124 Id. at 721, 253 N.Y.S.2d at 150. See also Santacroce v. 40 W. 20th St., Inc., 10 N.Y.2d 855, 178 N.E.2d 912, 222 N.Y.S.2d 689 (1961).
125 63 Ohio St. 2d at 201, 407 N.E.2d at 506 (Sweeney, J., dissenting).
126 OHIO REV. CODE ANN. § 4123.01(C) (Page 1981).
127 LARSON, supra note 10, § 42.23 at 7-624.
within the meaning of compensation statutes."\(^\text{128}\) Although there is growing authority approving compensability in protracted stress situations, most cases in this category concern a mental disorder occasioned by an identifiable sudden mental stimulus.\(^\text{129}\)

The 1975 New York decision of Wolfe v. Sibley, Lindsay & Curr Co.\(^\text{130}\) is one example of a single traumatic event triggering a nervous injury. The claimant was a secretary who, over a period of time, assumed varied responsibilities of her superior, due to his anxiety and depression. One morning, after calling the police at his direction, she entered his office immediately after his suicide. The claimant subsequently suffered from acute depressive reaction which disabled her for several months. The court held that "nervous injury precipitated by psychic trauma is compensable to the same extent as physical injury."\(^\text{131}\) The court reasoned that because stress or shock may result in either a physical or psychological injury, there should be no distinction between the two, since the individual is incapable of proper functioning in either circumstance. Also, the court noted that "[t]here is nothing talismanic about physical impact";\(^\text{132}\) consequently, recovery should not be limited to mental stimulus-physical injury cases.

Illinois is another jurisdiction allowing compensation. In 1976, the Pathfinder Co. v. Industrial Commission\(^\text{133}\) decision awarded compensation to an employee who had ordered a co-worker to operate a punch press which severed the co-worker's hand up to the wrist. Claimant extricated

\(^{128}\) Annot., 97 A.L.R.3d 161, 167 (1980). This annotation is an interesting and thorough review of other state decisions concerning mental stimulus-mental injury cases. Arguments for and against compensation are discussed at length. It is proposed in this Note that Ohio courts favor an award of compensation for workers sustaining a mental injury due to mental stimulus. See generally Note, When Stress Becomes Distress: Disabilities Under Workers' Compensation in Massachusetts, 15 New Eng. L. Rev. 287 (1980).

\(^{129}\) This Note will not review mental disorders which allegedly arise from an unconscious desire to prolong compensation (commonly referred to as "compensation neurosis"). See Larson, supra note 10, § 42.24; and Mental and Nervous Injury, supra note 10, for a discussion of "compensation neurosis."


\(^{131}\) 36 N.Y.2d at 510, 330 N.E.2d at 606, 369 N.Y.S.2d at 641.

\(^{132}\) Id. at 510, 330 N.E.2d at 606, 369 N.Y.S.2d at 642.

\(^{133}\) 62 Ill. 2d 556, 343 N.E.2d 913 (1976).
the hand from the machine and promptly fainted. She suffered a severe psychological reaction which disabled her. The court concluded that an employee who “suffers a sudden, severe emotional shock traceable to a definite time, place and cause which causes psychological injury or harm has suffered an accident,” even though the worker suffered no physical trauma or injury. The court also concluded there is little justification for a rule allowing compensation for workers suffering from psychological disabilities caused by minor physical injuries while withholding compensation from those with similar psychological disabilities caused by sudden, severe emotional shock.

Only recently have courts been willing to compensate victims of the protracted stress of anxiety-producing work situations. The fountainhead of this doctrine, *Carter v. General Motors Corp.*, held that a mental disorder precipitated solely by the emotional pressures of the daily performance of work is compensable. This viewpoint has slowly attracted a following, and it is now the majority position in jurisdictions which have dealt with the question of whether gradual mental stimulus causing nervous injury should be compensated.

Of course, the causal nexus between work and injury and the test of whether the injury resulted “from a situation of greater dimensions than the day-to-day mental stress and tensions which all employees must experience” must be established. The claimant in *Swiss Colony, Inc. v. Department of Industry, Labor & Human Relations*, a 1976 Wisconsin case, was able to prove that her mental breakdown was a result of job-related stresses and strains greater than that which employees are generally subjected and that these stresses and strains caused her nervous injury. The court awarded compensation for mental disability arising from the “nerve-wracking” nature of claimant’s job, which consisted of an unusually heavy work load, long hours and a critical and berating supervisor.

Thus, courts have dealt with the entire realm of “injury” cases and found compensability in nearly every circumstance, be it physical causation with mental result or a mental causation with mental result. These courts have understood that injury is “the effect of the total episode from first to last on the total organism, including brain and nervous

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134 Id. at 563, 343 N.E.2d at 917.
136 LARSON, supra note 10, § 42.23(b).
137 Id. at 7-639. This test is designed to award compensation to those workers who can prove a greater than ordinary risk inherent in their work, in order to distinguish their injury from that risk the public is exposed to in general. This is based on the rationale that workers’ compensation is designed to compensate workers for employment-related risks and is not a form of general insurance.
138 72 Wis. 2d 46, 240 N.W.2d 128 (1976).
Causal nexus and "unusualness" or "greater emotional strain than everyday life" tests enable the courts to confine recovery to those workers truly deserving an award of compensation. The reluctance of Ohio courts to follow suit should be amended. Workers injured as a result of mental stimuli should be entitled to an award of compensation for their disabilities.

D. Equal Protection and Due Process of Law Considerations

Failure to compensate an injury caused by mental stimuli with physical or mental consequences may be attacked on equal protection grounds. The fourteenth amendment to the United States Constitution proclaims that no state shall deny to any person within its jurisdiction the equal protection of the laws. Further, the Ohio Constitution, in article I, section 2, proclaims that "[a]ll political power is inherent in the people. Government is instituted for their equal protection and benefit . . . ."

By creating a statutory scheme to provide "compensation to workmen and their dependents, for death, injury or occupational disease, occasioned in the course of such workmen's employment," the General Assembly has not violated the equal protection guarantee. However, Ohio courts have reached inequitable results by discriminatorily applying the "injury" provision. Arguably, workers disabled by mental stimuli are similarly situated to workers disabled by physical stimuli. Disabling bodily malfunctions, whatever their cause, are within the General Assembly's requirement of "any injury." A worker suffering from an injury via mental stimuli is harmed to the same extent as one suffering

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139 Mental and Nervous Injury, supra note 10, at 1255.
140 The major point of this Note is that Ohio courts should follow the numerous other state courts which have found such injuries compensable. A second and less detailed argument centers on equal protection and due process issues. These issues were first raised before the Ohio Supreme Court in Szymanski's brief and in the Amicus Curiae brief. Because it was not argued below, the alleged denial of equal protection under the law was not considered by the Ohio Supreme Court. See Szymanski, 63 Ohio St. 2d at 198, 407 N.E.2d at 505.
141 U.S. CONST. amend. XIV.
142 OHIO CONST. art. I, § 2.
143 OHIO CONST. art II, § 35.
144 OHIO REV. CODE ANN. § 4123.01(C) (Page 1981).
145 Other state courts have held that an individual incapable of functioning properly due to psychic trauma is as deserving of a award as an individual who has suffered a physical impact injury. The resulting harm to the worker is the same whether caused by physical or mental stimuli. A worker who suffers a heart attack or cerebral thrombosis as a result of psychic trauma is as incapacitated as a worker who suffers a heart attack or cerebral thrombosis from physical exertion. Insurance Dept. of Miss. v. Dinsmore, 233 Miss. 569, 102 So. 2d 691 (1958). See Wolfe v. Sibley, Lindsay & Curr Co., 36 N.Y.2d 505, 330 N.E.2d 603, 369 N.Y.S.2d 637 (1975) (similar argument with regard to mental causation-mental result injuries).
from an injury via physical stimuli. Szymanski’s heart condition, albeit caused by emotionally upsetting circumstances, proved just as disabling as any compensable heart condition resulting from a physical source. Yet, the Ohio Supreme Court automatically excludes all disabled workers suffering mentally-induced injuries. This uniform exclusion of a class of workers injured without “compensable physical injury or physical trauma” results in an arbitrary and capricious denial of equal protection of the laws, which is expressly prohibited by article II, section 26 of the Ohio Constitution, which guarantees uniform operation of general laws.

A cardinal precept of federal and state law is that all stand equal before the law. This maxim indicates that all persons have an absolute equality of right and opportunity and that they must be afforded the equal protection of laws. Therefore, all laws, to be valid, must “operate equally upon all persons of the same class.”

The Ohio General Assembly has the broad power of classification and differentiation of persons and subject matter in legislative enactments. The Ohio legislature has the inherent right and power of classification of all persons in its purview because equal protection guarantees that similarly situated persons will be dealt with in a similar manner and that those in different circumstances will not be treated as if they were the same. The classifications, however, must have a “real and substantial basis” and “shall not be arbitrary and unreasonable.” Moreover,

146 Szymanski, 63 Ohio St. 2d at 198, 407 N.E.2d at 505 (emphasis added).
147 OHIO CONST. art II, § 26 provides, in part: “All laws of a general nature, shall have a uniform operation throughout the state . . . .” This section of the Ohio Constitution has been cited with reference to “equal protection” requirements in many workers’ compensation claims, including: Sechler v. Krouse, 56 Ohio St. 2d 185, 383 N.E.2d 572 (1978); Fleischman v. Flowers, 25 Ohio St. 2d 131, 267 N.E.2d 318 (1971); State ex rel. Lourin v. Industrial Comm’n, 138 Ohio St. 618, 37 N.E.2d 595 (1941).

For purposes of this Note, the Ohio Constitution will be referred to in this equal protection argument. However, “[t]he equal protection of the law provision in article I of the Ohio Constitution is substantially the same as the guaranty in that respect contained in the Fourteenth Amendment to the Federal Constitution.” 17 O. JUR. 3d Constitutional Law § 626 at 148 (1980). Therefore, equal protection clauses which place limitations upon governmental action are essentially identical in the federal and Ohio Constitutions and only the Ohio Constitution need be cited. See Porter v. Oberlin, 1 Ohio St. 2d 143, 205 N.E.2d 363 (1965).

149 17 O. JUR. 3d Constitutional Law § 628 at 150 (1980).
150 State ex rel. Lourin v. Industrial Comm’n, 138 Ohio St. 618, 37 N.E.2d 595 (1941); Winrod v. Sommer, 36 Ohio Misc. 37, 302 N.E.2d 597 (C.P. 1972) (Carroll County).
"[t]he reasonableness of a statutory classification is dependent upon the purpose of the Act."164

Courts have recognized that even workers' compensation laws, if arbitrary and unreasonable, could violate the Ohio Constitution which provides that "[a]ll laws, of a general nature, shall have a uniform operation throughout the state."156 In Fleischman v. Flowers,158 the claimant suffered an injury to her left hand resulting in permanent residual disability that limited motion in the hand. Her application for a determination of the percentage of permanent partial disability under the terms of section 4123.57157 was denied by the administrative agency and lower courts because the claimant did not meet three prerequisites to compensability.158 The Ohio Supreme Court acknowledged earlier court decisions which held that the power of the General Assembly "while broad, is not limitless."159 The court determined that the provision of section 4123.57 limiting eligibility to file an application led to arbitrary and capricious results and was therefore "unconstitutional as being in conflict with the 'equal protection' requirements of Section 26 of Article II of the Ohio Constitution."160

In general, the workers' compensation laws of Ohio, as enacted in the state Constitution and statutes, do not violate individual protections af-

164 Kinney v. Kaiser, 41 Ohio St. 2d 120, 123, 322 N.E.2d 884, 886 (1975). The purpose of Ohio’s workers’ compensation act is to provide compensation to workers for injuries occasioned in the course of their employment. OHIO CONST. art. II, § 35. This purpose reflects the General Assembly’s intent to shift the risk of loss of earning capacity from the worker to the employer and, ultimately, to the consumer. In light of this beneficial and remedial character, the workers’ compensation law should be construed liberally in favor of the employee. OHIO REV. CODE ANN. § 4123.95 (Page 1981).


158 The three prerequisites limited eligibility to file an application for a determination of the percentage of permanent partial disability to those "persons who (1) have received compensation for temporary total disability; or (2) would have been eligible for compensation for temporary total disability had the employer not paid such person wages during the period of disability; or (3) have received compensation for partial disability based on impairment in earning capacity." Fleischman v. Flowers, 25 Ohio St. 2d 131, 133, 267 N.E.2d 318, 320 (1971). The eligibility requirements applied regardless of the extent of the worker’s permanent partial disability resulting from a compensable injury.

159 25 Ohio St. 2d at 135, 267 N.E.2d at 321.

160 Id. at 139, 267 N.E.2d at 323. The eligibility requirements led to inequitable results. They precluded a worker from returning to work within seven days from having their application considered, “although the extent or degree of his permanent partial disability may be far in excess of that suffered by another employee who happened to be totally absent from employment for more than one week, and even though there be no question as to the relationship of the disability to the injury.” Id. at 137, 267 N.E.2d at 322.
for ded by the United States Constitution. The General Assembly has classified workers' compensation laws in a manner that does not violate the equal protection guarantees of the Ohio Constitution since they apply to "every person in the service of any person, firm, or private corporation, including any public service corporation." This classification scheme appears perfect because it treats all similarly situated persons in a similar manner; that is, if workers are injured due to their employment, they should be compensated. The legislature is under a constitutional mandate to pass laws "providing compensation to workmen and their dependents, for death, injuries or occupational disease, occasioned in the course of such workmen's employment." Accordingly, the General Assembly has liberally defined "injury" as "any injury, whether caused by external accidental means or accidental in character and result, received in the course of, and arising out of, the injured employee's employment." Further, the legislature enacted a liberal construction statute favoring employees and dependents of deceased employees.

Thus, the legislature has certainly done its part in providing an equal opportunity for all workers to be compensated for disabilities caused by their employment. The problem, however, lies at the administrative and court levels, where the statutes are implemented. The problem in Ohio with respect to workers injured by mental stimuli is not one of impermissible classification but one of impermissible application unfairly denying equal protection to workers injured by mental stimuli. Ohio government officials, in their administrative and judicial capacities, have applied the term "any injury" to different groups of workers with varying degrees of disabilities; hence, "any injury" connotes only one statutory term. However, administrative and judicial application has dichotomized the term into two groups: those with physical causation injuries and those with non-physical causation injuries. Workers in the first subclassification, physical causation injuries, are compensated for all results naturally flowing from the original physical trauma or injury, while workers in the second subclassification, non-physical causation injuries, are denied compensation even though they suffer substantially similar physical or mental disabilities.

163 Ohio Const. art. II, § 35.
166 See notes 83-94 supra and accompanying text for a discussion of physical injury and residual disability, i.e., "traumatic neurosis."
Equal protection guarantees of the Ohio Constitution should be considered when the court distinguishes between those who may and those who may not receive a benefit from the workers' compensation system. The issue is whether the distinction between those who may and those who may not receive compensation is a legitimate one. In its quest to treat similarly situated individuals in a similar manner, the court must first determine whether persons being treated differently are in fact "dissimilar."

Medical evidence has demonstrated that mental stimuli may produce symptoms and disabilities similar to those resulting from sudden, strenuous physical effort. Other states have accepted medical evidence relating the similar disabling results obtained by mental stimuli when a physical injury occurs. A growing number of other states have found mental stimuli-mental result disabilities similar in harmful effect to physical injuries, and award compensation accordingly for harmful change in the human organism. The human organism, in order to function capably, must not suffer harm to either its external and internal physical elements, or to its mental balance. Thus, in some jurisdictions outside Ohio, medical experts and court authorities agree

10 With regard to heart attacks, acute emotional disturbances have been shown both experimentally and by common clinical observation to be capable, in the same manner as sudden strenuous physical effort, of inducing sudden changes in cardiovascular dynamics that could lead to heart attacks. Acute psychological stimuli may result in increased cardiac outputs, augmented stroke volumes, increased heart rates, enhanced myocardial oxygen consumption and blood requirements, increased demands for coronary arterial flow, elevations of blood pressure, cardiac rhythm irregularities and abnormal electrocardiographic changes. E. Sagall & B. Reed, The Heart and the Law 618 (1968). See also Note, Heart Injuries Under Workers' Compensation: Medical and Legal Considerations, 14 Suffolk U.L. Rev. 1365 (1980). With regard to mental disorders, see Allen, Ferster & Rubin, Readings in Law and Psychiatry (1975) for a review of traumatic neurosis, psychosomatic injuries and other disorders and their relation to the law. After a review of these articles, physical causation alone becomes a suspect criterion when non-physical causation injuries can also be shown to proximately cause a "injury" under Ohio Rev. Code Ann. § 4123.01(C) (Page 1981).

109 See notes 113-15 supra and accompanying text.

107 See note 127 supra and accompanying text.

171 Larson has observed the following:

As to the category of mental stimulus causing nervous injury, with no 'physical' involvement, although the cases are sharply divided, the strength of the trend toward coverage suggests that the time is perhaps not too far off when compensation law generally will cease to set an artificial and medically unjustifiable gulf between 'physical' and 'nervous.' The test of existence of injury can then be greatly simplified. The single question will be whether there was a harmful change in the human organism—not just its bones and muscles, but its brain and nerves as well.

Mental and Nervous Injury, supra note 10, at 1260.
that mental stimuli is similar in effect to physical stimuli causing injury.

Ohio's insistence on blindly ignoring these findings is undefensible. In effect, the dichotomy produced by the Ohio Supreme Court has created a classification impermissible under equal protection guarantees. This classification undermines the purpose of workers' compensation: to provide a remedy to injured employees. The arbitrary classification established by administrative and court action affects only a certain number of persons, i.e., those with physical causation injuries, who fit the purposes of the statute, but excludes others who are similarly situated. Therefore, access to the remedy of workers' compensation is not equal for all individuals injured in the course of their employment.

Due process, as well as equal protection, guarantees must be upheld by Ohio's legislature and judiciary. In Kinney v. Kaiser,\textsuperscript{172} where section 4123.59 death benefits were denied, the court concluded that the statute was unconstitutional because its jurisdictional prerequisites\textsuperscript{173} violated equal protection and due process. The court stated that equal protection of the laws requires "reasonable grounds for making a distinction between those within and those outside a designated class" so that the test for reasonableness of a classification "is dependent upon the purpose of the Act."\textsuperscript{174} The court opined further that the jurisdictional prerequisites subclassified dependents of deceased workers into those who could meet one or more of the prerequisites and those who could not. Dependents who could not meet one or more prerequisites were automatically precluded from consideration for death benefits. However, the court noted: "If given an opportunity to present evidence, it is certain that some members of the excluded group could prove a causal connection between an industrial injury and the subsequent death of the workman."\textsuperscript{175}

The Kinney court also stated that the classifications established by the jurisdictional prerequisites obstructed compensation objectives of both article II, section 35 of the Ohio Constitution and statutory section 4123.59; yet "could be upheld if it were shown that they were rationally related to the accomplishment of some state objective at least as impor-
tant as the objective of compensating dependents . . .”\textsuperscript{176} of workers who, as a result of their employment, met their deaths. The Kinney court found that the sole function of the prerequisite was “administrative ease” in rejecting claims filed by dependents of workers whose deaths were not causally related to their employment.\textsuperscript{177} This effectively established a “conclusive presumption” that no causal nexus existed between work and death if the dependents could not satisfy the jurisdictional prerequisites, thereby relieving the administrative agency of its duty to conduct evidentiary hearings on causation.\textsuperscript{178} Such conclusive presumptions erected for “administrative ease” were struck down as violative of the due process clause of the fourteenth amendment by the United States Supreme Court in \textit{Vandis v. Kline}.\textsuperscript{179} The Kinney court followed this precedent.

In finding that equal protection guarantees were also violated, the Kinney court recommended that the administrative agency use evidentiary hearings for disputed claims for death benefits, placing the burden of proving the causal nexus upon the claimant. This would be the only “reasonable and practicable” method which would not automatically “eliminate a whole class of claims without considering the merits of each.”\textsuperscript{180}

As the Kinney decision illustrates, the present dichotomy, of physical and non-physical causation injuries created by administrative and judicial decisions, is an arbitrary and capricious denial of equal protection and due process rights of claimants suffering non-physical causation injuries. The purpose and main objective of both article II, section 35 of the Ohio Constitution and Revised Code section 4123.01(C) is to compensate workers for injuries arising out of and in the course of their employment. The General Assembly has not specified that the injury must be occasioned by physical means, yet the judiciary has limited compensation to such. The Ohio Supreme Court itself has declared: “[i]t is fundamental that the state courts will not apply a valid statute as to work such discrimination and inequality as would invalidate the statute if those vices were contained in it,”\textsuperscript{181} but it continues to discriminate nonetheless against non-physically caused injuries.

\textsuperscript{176} Id. at 124, 322 N.E.2d at 883.
\textsuperscript{177} Id.
\textsuperscript{178} Id.
\textsuperscript{179} 412 U.S. 441 (1973). With regard to conclusive presumptions instituted for “administrative ease,” the Court proclaimed: “The State’s interest in administrative ease and certainty cannot, in and of itself, save the conclusive presumption from invalidity under the Due Process Clause where there are other reasonable and practicable means of establishing the pertinent facts on which the State’s objective is premised . . . .” Id. at 451. This objective may be obtained through evidentiary hearings at the administrative level.
\textsuperscript{180} 41 Ohio St. 2d at 125, 322 N.E.2d at 884.
\textsuperscript{181} Maynard v. B.F. Goodrich Co., 144 Ohio St. 22, 28, 56 N.E.2d 195, 198 (1944).
Given an opportunity to present evidence, heart attack, cerebral thrombosis or even mental injury, claimants could prove a causal connection between their work environment and their disability. If a claimant's injury is not preceded by a physical trauma, he will be denied opportunity to present evidence in his favor under the Szymanski decision. This automatic denial is based on "administrative ease" and a "fear that a causal relationship cannot be adequately established between the emotional distress and the physical" or mental result. Such an automatic rejection is akin to the Kinney conclusive presumption of a lack of causal nexus between work and injury if the claimant cannot establish physical causation. Such a conclusive presumption is inconsistent with the spirit of statutes designed to compensate workers for work-related injuries, and is an arbitrary and capricious denial of the constitutional right to equal protection and due process of law.

V. CONCLUSION

Although the policy considerations of the Ohio Supreme Court were unstated, it is safe to assume that the Szymanski court's decision was based in part on a desire to curtail the increase in the cost of compensating a larger class of injured employees and in part on a desire to reduce the likelihood of fraudulent claims. This judicial limitation, however, is not supported by the General Assembly's intent to compensate workers injured in the course of their employment. Such a limitation by the court narrows the scope of recoverable injuries and yields inequitable results. Thus, workers suffering from work-related injuries have found that the court will render a different decision regarding an award of compensation, contingent upon the injury's cause: physical or mental.

Based on a review of prior Ohio court decisions, of legislative enactments designed to broaden the scope of recoverable injuries, of other state decisions and of an equal protection and due process analysis, it is recommended here that the Ohio Supreme Court adopt the spirit of workers' compensation legislation and discard the restrictive bonds prescribed by Szymanski. Moreover, Ohio Revised Code section 4123.01(C) should be interpreted liberally so workers can receive compensation for mental causation-physical result or mental causation-mental result injuries received in the course of, and arising out of, their employment.

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This case is also authority for the "accidental in character and result" portion of Ohio Rev. Code Ann. § 4123.01(C) (Page 1981).

1 See note 168 supra and accompanying text.
2 63 Ohio St. 2d at 200, 407 N.E.2d at 506 (Sweeney, J., dissenting).
3 For a succinct, yet detailed summary of policy considerations, the discussion in Bowman, supra note 8, at 1002-06, is analogous.