2024

Workaholic Syndrome: Law and Psychology Explore the Far Reach of the Egg Shell Doctrine

Victoria C. Duke-Dawson

WORKAHOLIC SYNDROME: LAW AND PSYCHOLOGY EXPLORE THE FAR REACH OF THE EGG SHELL DOCTRINE

*Victoria Duke-Dawson**

TABLE OF CONTENTS

---

* Associate Service Professor In Law at St. Mary's School of Law – Texas, B.A. 1982, J.D. 1987. I wish to thank my friend who wishes to remain nameless, yet provided me with insight into his personal challenges with workaholic tendencies. He gave me permission to relay segments of his story. I give much appreciation to my colleagues who kept me motivated and focused.

I. INTRODUCTION

Edith and Reese, who had been married for twenty-five years, finalized another argument reminiscent of past arguments for the last six years. Edith complains Reese is rarely home, or when he is home, he uses the home office as an extension of his office at work. She realizes that Reese's excessive work antic exudes into their marriage life. On the other hand, Reese believes Edith is not proud of his accomplishments and does not appreciate what it takes to run the non-profit organization he and a comrade set up. From experience in the Navy, he knows it is necessary to be a hard worker to get ahead. However, since he is now in the civilian world, his desire to get ahead and build a non-profit organization fuels his every waking moment. His inspiration from Navy life is to never be a failure. Reese fears failure.

The quest to appease his sick mother while he was young,[1] Naval officers, and moving up in the ranks still permeates Reese's mind. This may be because two psychological forces affect his adult life. First, from an early age, his mother's personal and practical needs rested on him.[2] To meet his mother's unmet needs, he sacrificed his own needs for attention, comfort, and guidance to be the man of the house.[3] Second, his heightened sense of competition and ambition for elevating his career was solidified after twenty-six years of being inundated with subservient stressful functions in the Navy.[4] In essence, ambitions for this heightened sense of competition and elevating his career with the Navy pledged his life.[5] These limitations made his quest for promotions more rigorous.[6] Yet, as a civilian, Reese still

1. *See* Benjamin D. Garber, *Parental Alienation and the Dynamics of the Enmeshed Parent-Child Dyad: Adultification, Parentification, and Infantilization*, 49 FAM. CT. REV. 322, 324 (2011) (introducing the term parentification as "commonly associated with role corruption" in which the quest to appease his mother . . . "[E]nlists the child to fulfill his or her need to be cared for"); *see also* Paul Bennett, *Secret Reflections: Some Thoughts About Secrets and Court Processes in Child Protection Matters*, 45 ARIZ. L. REV. 713, 728 (2003) ("[Parentification] is generally defined as a 'functional and/or emotional role reversal in which the child sacrifices his or her own needs for attention, comfort, and guidance in order to accommodate and care for the logistical or emotional needs of the parent.'") (quoting GREGORY J. JURKOVIC, BURDENED CHILDREN: THEORY, RESEARCH, AND TREATMENT OF PARENTIFICATION 5 (Nancy D. Chase ed., 1999)).

2. Garber, *supra* note 1, at 724.

3. GREGORY J. JURKOVIC, BURDENED CHILDREN: THEORY, RESEARCH, AND TREATMENT OF PARENTIFICATION (Nancy D. Chase ed., 1999).

4. *See generally* Lilian C.X. Martins & Claudia S. Lopes, *Military Hierarchy, Job Stress and Mental Health in Peacetime*, 62 OCCUPATIONAL MED. 182, 182 (2012) ("[W]orking environment is strongly marked by peculiarities inherent to the military profession: rigid hierarchy, heightened competition and the ever-present possibility of changes occurring against the individual's wishes.").

5. *Id.* at 183 ("[T]hose occupying lower ranks in the military hierarchy display more likelihood of mental disorders.").

6. For him, life in the military included the pressures of the "competitive" processes associated with the limitations on the number of enlisted promotions the Navy could award at any given time, *id.*

believes the motto, "Ready to Lead, Ready to Follow, Never Quit,"[7] as not only the traits of a "good sailor" but the traits of a good worker. Thus, his earlier experiences strain his life today, as a civilian.

With funding challenges in his new civilian job threatening a potential closing, Reese experiences the same rigors of the military. The persistent "never quit" mindset from his naval training catapults Reese into a work habit where distraction from life itself and emotional distractions take control of his daily existence.[8] When a board member, a retired ranking officer, challenged Reese to show more commitment to the cause of the organization, another level of stress was infused. But this time Reese feels self-doubt and disappointment with himself as if he does not measure up.[9] After pushing himself to overcome these feelings, he demonstrates an inner compulsiveness to work endlessly. In doing so, he believes he is appeasing the Board by becoming driven to keep funds flowing, publishing marketing materials, writing contribution letters, keeping the staff motivated, maintaining a presence in the community, working with constituencies, and even running the curriculum of the non-profit. This catapults Reese, once again, into working long hours to get the job done. He becomes compulsive in his thinking about his role with the non-profit. He refuses to delegate assignments to staff members and takes a hands-on approach to every task.

Reese spirals deeper and deeper into his work. He pushes to inundate himself with one self-made project after another, with no end in sight. Yet, unbeknown to Reese, the stress from his childhood and his Navy experiences incubated

---

at 182; *see* STEPHANIE WILLIAMSON, NAT'L DEF. RSCH. INST., A DESCRIPTION OF U.S. ENLISTED PERSONNEL PROMOTION SYSTEMS 8 (1999) ("The Navy Enlisted Advancement System . . . evaluates the 'whole person' and promotes the best-qualified candidates based on a point system combining three main factors: examination, performance, and experience . . . however, the most significant requirement is the recommendation of the commanding officer.").

7. *SEAL Code: A Warrior Creed,* NAVYSEALS.COM, https://navyseals.com/nsw/seal-code-warrior-creed/ (last visited Feb. 18, 2023).

8. Mansi Kohli, *Workaholic Syndrome – Do You Suffer from the 'All Work and No Play' Addiction?*, THEHEALTHSITE, https://www.thehealthsite.com/diseases-conditions/workaholic-syndrome-all-work-no-play-addiciton-65588/ (last updated June 9, 2014, 2:42 PM); *Signs and Symptoms of Work Addiction*, FOUNDS. RECOVERY NETWORK (Apr. 26, 2018), https://www.foundationsrecoverynetwork.com/signs-and-symptoms-of-work-addiction/ (illustrating one of the three levels of work addictions, specifically the middle level, where the "addict begins to distance themselves from personal relationships . . . is distracted and emotionally stays at work . . . [and haves] trouble unwinding enough to get to sleep").

9. *See* Morley Glicken, *The Truth About Workaholics*, CAREERCAST, http://www.careercast.com/career-news/truth-about-workaholics (last visited Feb. 18, 2023) (indicating self-doubt is a common trait of workaholics); *see also* Kohli, *supra* note 8 (indicating one of the core fears of workaholics is fear of self; "[s]ubconsciously, quite a few workaholic people are not comfortable with the core of their self" and "[t]hey struggle from complexes and difficult emotions and use excessive work as a means to keep their mind busy").

propensities to set unrealistically high personal standards and goals.[10] While these propensities were once necessary to cultivate a "good sailor," now they are fostering other propensities such as perfectionism, excessive compulsion, and obsession.[11] These propensities, however, were dormant during the absence of stress, but the high stress from the non-profit organization exacerbates his condition.[12] For him, these preexisting dormant psychological disorders were stimulated by the jolts of workplace stressors. His stress adaptive responses, in terms of coping, reinforce for him that it was now "necessary to rely on protective or coping mechanisms to survive both emotionally and in the workplace."[13] Thus, the dormant psychological disorders awaken in his brain and trigger a work addiction that now manifests many underlying emotional and psychological issues into a workaholic syndrome.[14]

---

10. *See generally* Caitlyn Keyes, *The Parentification of Children*, 2BY2WEB (Apr. 6, 2017), https://2by2web.wordpress.com/2017/04/06/the-parentification-of-children/

> The act of functional parentification is where a child must care for the parent's physical, emotional, and in extreme cases, financial needs. This usually manifests in children whose parent(s) struggle with drug and/or alcohol addiction. Parentified children are usually put in a position where they are required to take care of their parents, and assume the household responsibilities that the parent should be taking care of . . . Chronic childhood parentification is associated with subsequent negative outcomes in adulthood, including depressive symptoms, ambivalence about dependency needs, characteristics of narcissistic and self-defeating personality styles, a sense of personal inauthenticity or 'imposter phenomenon,' and a tendency to utilize splitting as a psychological defense.

Id.; *see also* Lisa M. Hooper, *Expanding the Discussion Regarding Parentification and Its Varied Outcomes: Implications for Mental Health Research and Practice*, 29 J. MENTAL HEALTH COUNSELING 322, 323 (2007) (identifying parentification as emotional neglect which "occurs when the parent or caregiver fails to provide the necessary attention to the child's need for affection and emotional support, fails to provide needed psychological care, and lacks the competence to foster an appropriate attachment relationship and environment for the child to develop.").

11. *See* Cecilie Schou Andreassen, *Workaholism: An Overview and Current Status of the Research*, 3 J. BEHAV. ADDICTIONS 1, 2, 6 (2014) ("[T]here seems to be striking similarities between the construct of workaholism and constructs like obsessive passion towards work and work overinvolvement" and "workaholism is regarded by many as a *personality trait* . . . [with] high scores on traits such as . . . perfectionism."); *see also* Melanie Bickford, *Stress in the Workplace: A General Overview of the Causes, the Effects, and the Solutions*, CANADIAN MENTAL HEALTH ASS'N NFLD. DIV., Aug. 2005, at 1, 14 ("Personal characteristics that may lead one to be more prone to burnout include the tendency to place too-high expectations on oneself, as well as excessive compulsiveness, perfectionism, and inflated self-confidence."); *see also* CORINE VAN WIJHE, UNDERSTANDING WORKAHOLISM: ABOUT THE ROLE OF AFFECT AND COGNITIONS 16 (1985) ("[I]t has been frequently suggested that workaholics derive their self-esteem from their performance.").

12. 12 AM. JUR. 3D *Proof of Facts* § 323 (1991) ("Frequently . . . a mental disorder does not incrementally progress; rather, it can lay dormant for years and not come to the surface until the individual is subjected to a sufficient amount of stress or trauma.").

13. Jane L. Dolkart, *Hostile Environment Harassment: Equality, Objectivity, and the Shaping of Legal Standards*, 43 EMORY L.J. 151, 230 (1994).

14. *See* Mika Kivimäki et al., *Do Stressful Working Conditions Cause Psychiatric Disorders?*, 60 OCCUPATIONAL MED. 86, 86 (2010) ("The conceptual models in [the psychiatric] field suggest that

In this scenario, Edith, his wife, knows that Reese places work as a higher priority than the family. She notices that he, like an alcoholic, denies any reference to being a workaholic,[15] yet he fails to see the problem with his self-imposed demands, compulsive overworking, his inability to regulate work habits, and his overindulgence in work to the exclusion of most other life activities. But the question for her is; if her husband developed into a workaholic, were the stressors on his job the initial impetus for its development, and if so, are these issues subject to compensation? Her questions spark a conversation about compensation via the "thin skull" plaintiffs' rule, also commonly known as the eggshell doctrine. This is because the workaholic symptoms and the eggshell doctrine are supported by the model that the reactions consistent with pre-existing conditions or stress adaptive responses are, in fact, bodily injuries.[16]

To answer her inquiry into how psychology and law, although not popular assessments but trendy, view workplace stress on the human body it is important to link the unforeseeable and uncommon behavior of workaholics with the contemporary eggshell doctrine trends and modern psychology. To better align the trends of the legal doctrine and the psychology doctrine with workplace stress, this article proposes a shared point; the results of work-induced stress that aggravates or accelerates dormant psychological tendencies consistent with workaholic syndrome extend to the eggshell doctrine as both a psychological disorder and a bodily injury diagnosis, notwithstanding that the Diagnostic and Statistical Manual of Mental Disorders does not identify the syndrome as a diagnosis, because the characteristics and effects of workaholic syndrome produce psychological and a brain injury i.e., a bodily injury. As a bodily injury case, the workaholic syndrome has no difficulty reaching the eggshell doctrine in all jurisdictions. If the courts are willing to recognize conditions such as depression, alcoholism, and obesity, as part of the plaintiff's claim, some of which are arguably somewhat voluntary, it seems odd that the law would not include workaholic syndrome as part of a plaintiff's claim.[17] Conversely,

---

excessive job demands in combination with low control over work or low social support at work, the experience of imbalance between high effort spent at work and low reward received, and unfair treatment of employees by the management are particularly stressful [and] [i]f prolonged, they have adverse effects on physical and mental health.").

15. *See generally* Kohli, *supra* note 8 ("Most people who suffer from workaholic syndrome deny it, thinking it is normal and expected of them."); *see also* Corine I. van Wijhe et al., *Understanding and Treating Workaholism: Setting the Stage for Successful Interventions*, *in* RISKY BUSINESS: PSYCHOLOGICAL, PHYSICAL AND FINANCIAL COSTS OF HIGH RISK BEHAVIOR IN ORGANIZATIONS 108, 109 (Ronald J. Burke & Cary L. Cooper eds., 2010) ("[W]orkaholics are largely in denial of their problem . . . .").

16. *See generally* Lynley H.W. McMillan & Michael P. O'Driscoll, *Workaholism and Health: Implications for Organizations*, 17 J. ORGANIZATIONAL CHANGE MGMT. 509 (2004).

17. *See* Jennifer Parobek, *God v. the Mitigation of Damages Doctrine: Why Religion Should Be Considered a Pre-Existing Condition*, 20 J.L. & HEALTH 107, 130 (2006) ("If courts are willing to recognize such conditions as depression, alcoholism, obesity, and profitability as part of the plaintiff,

as a psychological injury, some jurisdictions may challenge such an entry without the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5),[18] psychological diagnosis. Therefore, in making this proposition, this analysis is not predominantly about causation from a legal point of view; it speaks to how law and psychology derived an understanding that emotional harms or psychological injuries cause bodily injuries, and are therefore, bodily injuries sufficient for consideration for the egg shell doctrine in all jurisdictions.

Before undertaking an analysis of the implication of stress in the workplace, this article requires a four-part approach. Specifically, Part II explores how workplace stress, commonly known as work-induced stress; coupled with trauma, adaptive responses, and latent psychological conditions trigger workaholic syndrome thereby creating a dysfunctional psychological and physical impairment to the body. This section also outlines how stress activates components in the brain to create what psychologists are now referring to as an injury to the brain. Part III of this article describes the evolution of the eggshell doctrine from inception to the most recent conception, which is to consider psychological injuries as bodily injuries in some jurisdictions. Part IV defines how tribunals treat mental or psychological harms similar to bodily injuries when psychological injuries are considered in tort cases, worker's compensation cases, and criminal cases. Part V combines the assessments of progressive psychologists, the eggshell doctrine precedent, and the pattern of prior adjudication to support the conclusion that the far reach of the eggshell doctrine extends and takes into account the effects of workaholic syndrome brought on by workplace stress.

II. WORKPLACE STRESS AND THE DYSFUNCTIONAL PSYCHOLOGICAL AND

all of which are arguably somewhat voluntary, it seems odd that the law would not include specific religious beliefs as part of the plaintiff as well."); *see also* Lewis v. Ins. Co. of N. Am., 322 So. 2d 429, 430-31 (La. Ct. App. 1975) (exemplifying both obesity and another pre-existing condition wherein plaintiff had a "degenerative osteoarthritic condition which was most likely dormant before the accident," and the court concluded that plaintiff had "suffered total and permanent disability" so the defendant had to take his victim as he found her); *see also* Pierce v. Gen. Motors Corp., 504 N.W.2d 648 (Mich. 1993) (deciding a case where a plaintiff argued that harassment at work caused him to drink more than he did before his employment, and that stress caused him to develop a debilitating nervous disorder. The dissent pointed out that the worker's compensation statute under which plaintiff brought his case allowed recovery even if the plaintiff was at fault or the work stress was not the only cause; the majority opinion ignored the established rule of pre-existing conditions because alcoholism is a disease, and if the defendant's negligent conduct aggravates the disease, the defendant is liable if the plaintiff's condition worsens).

18. AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (5th ed. 2013) [hereinafter DSM–5].

PHYSIOLOGICAL IMPAIRMENT TO THE BODY

Today, as opposed to the past, when psychology was completely divorced from medicine and the physical sciences, psychologists believe that thinking about the effects of stress on the individual in a unified mental and physical way identifies that the brain is the central organ of stress.[19] There is a growing body of social science research demonstrating and quantifying the impact of mental disorders on work productivity and workplace stress.[20] Much of the research concludes that the link to work addiction is stress and if an employee is constantly undergoing stress, the mind, and the body suffers and contributes to various psychological and psychosomatic problems.[21] For employees with diagnosed personality traits, pre-existing psychiatric disorders, and/or stress adaptive responses, workplace stress catapults them into a workaholic syndrome.[22] Their symptoms and impairments become not only psychological but also physiological and thus impairments to the body.[23]

A. Stress & Workplace Stress

Workplace stress "refers to a situation wherein job-related factors interact with a worker to change (disrupt or enhance) his or her psychological and/or physiological conditions such that the person (mind or body)" deviates from normal functioning.[24] For instance, in Japan, the phenomenon of occupational sudden death, *Karoshi*, which translates literally as "death from overwork" places white-collar salary men most susceptible.[25] Another illustration of this phenomenon of occupational

---

19. *See* Hanmu Guo et al., *Neurobiological Links Between Stress, Brain Injury, and Disease*, OXIDATIVE MED. & CELLULAR LONGEVITY, May 2022, at 1, 3 ("Stress has significant effects on different regions of the brain, including the hippocampus, hypothalamus, amygdala, and PFC. Depression, anxiety, cognitive deficits, and even mental diseases caused by stress are closely related to functional and structural damage of the related brain regions.").

20. *See* Rachel M. Janutis, *The New Industrial Accident Crisis: Compensating Workers for Injuries in the Office*, 42 LOY. L.A. L. REV. 25, 26 (2008).

21. Parul Sharma & Jyoti Sharma, *Work-Addiction: A Poison by Slow Motion*, 2 J. ECON. & BEHAV. STUD. 86, 88 (2011).

22. *Id.*

23. *Id.*

24. John Malone et al., *Stress at Work Part 1: Recognition, Causes, Outcomes and Effects*, *in* OCCUPATIONAL STRESS: A PRACTICAL APPROACH 1, 2 (Ken Addley ed., 1997) (citing John Newman & Terry Beehr, *Personal and Organizational Strategies for Handling Job Stress: A Review Of Research And Opinion*, 32 PERS. PSYCH. 1–42 (1979)).

25. *See* Yoshio Shibata, *Governing Employees: A Foucauldian Analysis of Deaths from Overwork in Japan*, GLOBAL ASIA J., Mar. 2012, at 1 (indicating the relentless job demands on employees in Japan as most strikingly illuminated by the so-called Karoshi - death from overwork – and *karojisatsu* – suicide generated by overwork and work-related depression–syndromes); Paul A. Herbig & Frederick A. Palumbo, *Karoshi: Salaryman Sudden Death Syndrome*, 9 J. MANAGERIAL PSYCH. 11, 11 (1994) ("[D]efines *karoshi* as a 'condition in which psychologically unsound work processes are allowed to continue in a way that disrupts the worker's normal life rhythms, leading to a buildup of fatigue in the

sudden death is traceable in France where twenty-five employees of France Telecom, a European telecommunications giant, committed suicide within less than a two-year period.[26] "The company's trades unions claimed that the number of suicides was a result of stressful working conditions."[27] The phenomenon of occupational sudden death ignites a growing awareness of the risks that workplace stress poses to employees across the range of organizational settings beyond those traditionally perceived as high risk.[28] For high-risk occupations like police, firefighters, emergency service personnel, hospital staff, health and social service workers, mental health professionals, and rescue workers, there is an undeniable correlation between workplace trauma and posttraumatic stress disorder, hereinafter referred to as PTSD, since there is a clear link to traumatic memories to a specific stressor.[29] However, in non-traditionally perceived high-risk jobs, workplace stress is also found to have a detrimental effect on employees' psychological and physiological health.[30]

Knowing that stress attributes to a phenomenon known as occupational sudden death, understanding stress is thereby imperative. "The term 'stress' more generally describes processes associated with challenging stimuli ('stressors'), situations that require behavioral adjustments, and the organism's ability to cope with coupled

---

body and accompanied by a worsening of preexistent high blood pressure and a hardening of the arteries, finally resulting in a fatal breakdown.'"); Bryan E. Robinson, *How to Avoid Death From Karoshi: The Unspoken Killer that Could Make Your Job Hazardous to Your Health*, PSYCH. TODAY (Dec. 3, 2020), https://www.psychologytoday.com/sg/blog/the-right-mindset/202012/how-to-avoid-death-from-karoshi (identifying Karoshi as common among corporate workers in their forties and fifties in such a way that the Japanese workplace has been tagged "a killing field").

26. Kivimäki et al., *supra* note 14, at 86.

27. *Id.*

28. *See* J. DOUGLAS BREMNER, DOES STRESS DAMAGE THE BRAIN?: UNDERSTANDING TRAUMA-RELATED DISORDERS FROM A MIND-BODY PERSPECTIVE 16-17 (2002) (reporting on the growing awareness of the risks that workplace trauma posed to employees).

29. *See id.* at 124 (indicating that in occupational settings there has been considerable focus on PTSD because of the clear link that is established by the traumatic memories to a specific stressor); Marlene Steinberg, *Systematic Assessment of Posttraumatic Dissociation: The Structured Clinical Interview for DSM-IV Dissociative Disorders*, *in* ASSESSING PSYCHOLOGICAL TRAUMA AND PTSD 122, 125–26 (John P. Wilson & Terence M. Keane eds., 2d. ed. 2004) (stating that workers in these high-risk occupations should be routinely screened for dissociative symptoms of PTSD: Veterans Administration or military hospitals, rape crisis units, trauma centers, shelters for battered women, emergency responders (police, fire, paramedics), disaster workers, and social service agencies and mental health clinics).

30. *See* Steinberg, *supra* note 29, at 126 ("Clinicians should also note that there are patient populations who do not present with overt histories of trauma or who may not be perceived to be at risk for PTSD or dissociative disorders."); McMillan & O'Driscoll, *supra* note 16, at 509 ("Workaholism has particular relevance to the field of management and organizational behavior . . . [and] the potential impact on corporate profitability and productivity and public health cannot be ignored, as workaholism has been documented as contributing to coronary heart disease, job-related stress, burnout and secondary addictions such as alcoholism.").

reactions."[31] This definition of stress "incorporates the psychological components of the condition, with stress being seen to occur when there is a substantial perceived imbalance between demand and response capability, under conditions where failure to meet demand has important perceived consequences."[32] Psychiatrically, stress is more likely a disorder only if, after some time has passed, the individual is not returning to stability or if the stress leads to other psychiatric problems such as depression, anxiety, or psychosis.[33] Many psychiatric disorders, however, can follow stress ranging "from phobia and panic reactions to borderline and multiple personality disorders."[34] Thus, the stress in itself is not the problem so much as the ability to bounce back.[35]

As it relates to workplace stress, some experts are commenting that the resulting risk of workplace stress is not just two-fold, but one singular risk that changes a worker's psychological/ physiological condition.[36] Recognizing the risk of workplace stress, scientists and psychologists made the connection to what a person experiences and what they think and feel has a profound effect on the body's physiology and the brain.[37] Many psychologists appreciate that there is no real separation between what happens in the brain and what goes on elsewhere in the body.[38] The old distinctions – between mind and brain, psychology and biology, mental and physiological – increasingly appeared to have no meaning as science deepens its understanding of how the mind and body function in health and disease.[39] Therefore, when filtering workplace stress into this new distinction, the connections are clear.

---

31. Tobias Esch et al., *The Role of Stress in Neurodegenerative Diseases and Mental Disorders*, 23 NEUROENDOCRINOLOGY LETTERS 199, 206 (2002).

32. *See* Malone et al., *supra* note 24, at 1.

33. BREMNER, *supra* note 28, at 17–21.

34. DES BUTLER, EMPLOYER LIABILITY FOR WORKPLACE TRAUMA 12 (2002).

35. BREMNER, *supra* note 28, at 156; RICHARD S. CITRIN & ALAN WEISS, THE RESILIENCE ADVANTAGE: STOP MANAGING STRESS AND FIND YOUR RESILIENCE 91 (2016) (stating disruptions happen all the time, and for individuals, we experience them as stressful events, but "our ability to respond effectively determines whether we bounce back effectively or not").

36. BREMNER, *supra* note 28, at 14–16.

37. *See id.* at 16 (indicating over the past two decades, there has been a massive amount of research and scientific knowledge determining that "what you experience and what you think and feel can have profound effects on your body's physiology and on your brain").

38. *See id.* at 270 ("The effects of stress on physical health appear to be caused by a disruption of the balance between different organs of the body, or *homeostasis*.").

39. *See id.* at 13–17 (there has been a false dichotomy of mind, brain, and body and advance research shows the effects of stress on psychology are mediated through the neurological consequences of the stress response, and the stress response has effects on a variety of other organ systems; thus, it is artificial to consider the psychological consequences as entries in and of themselves, in isolation from the neurological and general physical effects).

Likewise, many psychologists interpret stress and the related physical illness associated with stress as a cause of symptoms relating to an injury when that stress aggravates, intensifies, accelerates, and reactivates latent psychological disorders.[40] For many psychologists, the concept of considering the stress-induced psychological injury, as bodily injury, is consistent with the functionality of the body.[41] For some psychologists, a response to stress and the related physical illness from the workplace are products of the brain and body that continuously interact with each other.[42] While coupling their reactions to the stress theory with the term "workaholism,"[43] the two mental/physical ideologies work together to activate a constant red alert signal in the neurological system of the workaholic, thereby causing the associated frantic work habits.[44] Experiencing the results of a prolonged impairment of

40. See Warwick Middleton, *Book Review: Does Stress Damage the Brain? Understanding Trauma-Related Disorders from a Mind–Body Perspective*, AUSTL. & N.Z. J. PSYCHIATRY, Oct. 2003, at 633, 633 (reviewing DOUGLAS BREMNER, DOES STRESS DAMAGE THE BRAIN?: UNDERSTANDING TRAUMA-RELATED DISORDERS FROM A MIND-BODY PERSPECTIVE (2002)) (stating that a theme of Douglas Bremner's work is that "stress can have lasting effects on the individual leading to demonstrable changes in the function and the anatomy of the brain as well as causing other physical symptoms"); Narbeh Bagdasarian, *A Prescription for Mental Distress: The Principles of Psychosomatic Medicine with the Physical Manifestation Requirement in N.I.E.D. Cases*, 26 AM. J.L. & MED. 401, 422 (2000) ("The doctrine of psychosomatic disorders deals directly with the physical manifestation of emotional and mental conditions and explains how mental conditions can have physical manifestations."); THE ENCYCLOPEDIA OF PSYCHOLOGICAL TRAUMA 87 (Gilbert Reyes et al. eds., 2008) ("Several physiological stress response systems and brain areas associated with the processing of emotions, memories, and other forms of information crucial to adjusting the body's level of arousal and maintaining conscious self-awareness appear to be altered in persons with PTSD."); Bruce S. McEwen & Peter J. Gianaros, *Stress – and Allostasis – Induced Brain Plasticity*, 62 ANN. REV. MED. 5.1, 5.2 (2011) ("Stress and stressful experiences have long been implicated in the etiology and pathophysiology of chronic physical and mental health conditions that now pose a great threat to public health.").

41. *See* McEwen & Gianaros, *supra* note 40, at 5.8–5.9 ("The concept that the brain is the central organ of stress, with downward influences on many physiological processes involved in adaptation, provides a basis for understanding how interventions that are [combined into one] (or 'holistic' insofar as they stimulate the entire body to help itself to function normally) can have enormous preventative and therapeutic benefits."); Ivanka Savic, *Does Chronic Occupational Stress Cause Brain Damage?*, CEREBRAL CORTEX (Nov. 5, 2014), http://blog.oup.com/2014/11/chronic-occupational-stress-cause-brain-damage/#sthash.G90pjMIE.dpuf (hypothesizing and proving "chronic stress could lead to damage of the brain areas which modulate stress perception, leading to a vicious cycle with impaired ability to cope with stress and a further facilitation of stress perception").

42. *See generally* Agnese Mariotti, *The Effects of Chronic Stress on Health: New Insights into the Molecular Mechanisms of Brain-Body Communication*, 1 FUTURE SCI. OA (2015).

43. Monika Bartczak & Nina Ogińska-Bulik, *Workaholism and Mental Health Among Polish Academic Workers*, 18 INT'L J. OCCUPATIONAL SAFETY & ERGONOMICS 3, 3 (2012) (citing WAYNE OATES, CONFESSIONS OF A WORKAHOLIC: THE FACTS ABOUT WORK ADDICTION 57 (1971)) ("[W]orkaholism was first coined by Oates as 'addiction to work, the compulsion or the uncontrollable need to work incessantly,' which can bring a negative influence on health, personal happiness, interpersonal relations and social functioning.").

44. *Id.* at 11–12.

the brain, from the two mental/physical ideologies, is the hallmark of the workaholic syndrome as a bodily disease, which is the resulting addiction.[45]

In contrast, "individual factors, genes and others, such as temperament must also play a crucial role" in employees who are exposed to apparently stressful workplaces as they become psychiatrically or physically unwell.[46] The make-up of the unaffected employee may be age or good physical health that enhances the employee's resistance to stress.[47] Moreover, "[e]xposure to previous traumatic experiences, may increase vulnerability to later stressors, particularly if the prior trauma is still to be resolved."[48] As a result, for psychiatric disorders from many forms of stress, "[t]he appropriate focus in psychiatric medicine is the individual" because the stress "overwhelm[s] the ordinary human [adjustments] to life."[49] This direct focus on the individual requires a close look into a variety of personal factors such as "the biological make-up of [the] individual, his or her prior experiences and personality traits, and any previous training he or she may have undergone."[50] Another point of origin may be in the stress adaptive responses of the individual; "the coping mechanisms, which, depending on the emotional, physical[,] and genetic predisposition of an individual and the nature and intensity of the threat."[51] Therefore, "a stressor may have greater impact where there has been a pre-existing psychiatric disorder, personality disorder, developmental disorder or some other psychiatric condition."[52]

B. Workplace Stress Affecting Psychological and Physiological Conditions in the Body

The psychological responses to workplace stress, that overwhelms ordinary human adjustments, are within the category of disorders in the DSM-5 published by

---

45. *See* VAN WIJHE, *supra* note 11, at 12 ("[W]orkaholism is an addiction to one's work. . . .").

46. Kivimäki et al., *supra* note 14, at 87.

47. *See* BUTLER, *supra* note 34, at 7 (indicating the make-up of the individual may be age or good health that "enhance[s] a person's resistance to stress").

48. *Id.* at 8; *see also* Zahava Soloman et al., *Prior Trauma, PTSD Long-Term Trajectories, and Risk for PTSD During the COVID-19 Pandemic: A 29-Year Longitudinal Study*, 141 J. PSYCHIATRIC RSCH. 140 (2021).

49. BUTLER, *supra* note 34, at 13 (quoting JUDITH L. HERMAN, TRAUMA AND RECOVERY: THE AFTERMATH OF VIOLENCE – FROM DOMESTIC ABUSE TO POLITICAL TERROR 33 (1992)).

50. *Id.* at 7 ("[O]lder people are inclined to have more rigid coping mechanisms and be less able to develop flexible approaches in dealing with the effects of stressors.").

51. *See* Abdu'l-Missagh Ghadirian, *Human Responses to Life Stress and Suffering*, 3 BAHÁ'Í STUD. NOTEBOOK 49, 50 (1983) ("The psychological responses are coping mechanisms, which, depending on the emotional, physical and genetic predisposition of an individual and the nature and intensity of the threat, can be divided into adaptive and reactive response.").

52. BUTLER, *supra* note 34, at 8.

the American Psychiatric Association (APA).[53] In the United States, the DSM serves as the principal authority for psychiatric diagnoses,[54] and disorders identified in the sections must meet the definitions or criteria of a mental disorder.[55] The Diagnostic and Statistical Manual of Mental Disorders Fifth Edition (DSM-5) is the 2013 update that is developed since the manual's inception in 1844.[56]

The related definitions and psychological responses to workplace stress correspond within the category of anxiety disorder, also called social phobia, which involves overwhelming worry and self-consciousness about everyday social situations.[57] The development of social anxiety disorder may stem from embarrassing or humiliating social experiences in the past, such as being bullied or neglected by peers.[58] Social anxiety disorder incorporates other mental illnesses such as obsessive-compulsive disorder, depression general anxiety disorder, acute stress disorder,[59] and increased anxiety levels;[60] which are key psychological impairments in persons with workaholic syndrome.[61] These disorders include their related cognitive factors as well.[62] The anxiety symptoms specific to the employee with workaholic syndrome "may take the form of 'quantitative overload,' where employees believe they are required to perform too much within a certain timeframe."[63]

Advanced research reveals physiological responses to workplace stress affect not only the nervous system but also a variety of organs,[64] including the brain.

---

53. *See* DSM-5, *supra* note 18.

54. *DSM Frequently Asked Questions*, AM. PSYCHIATRIC ASS'N, https://www.psychiatry.org/psychiatrists/practice/dsm/frequently-asked-questions (last visited Sept. 4, 2023) ("[The DSM] is the handbook used by health care professionals in the United States and much of the world as the authoritative guide to the diagnosis of mental disorders.").

55. *See id.*; *see also* DSM-5, *supra* note 18, at 20.

56. DSM-5, *supra* note 18, at 6.

57. *See* AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 411 (4th ed. 2006) [hereinafter DSM-IV-TR] (identifying social phobia as a "marked and persistent fear of social or performance situations in which embarrassment may occur").

58. *What Is Social Anxiety Disorder or Social Phobia?*, WEBMD, http://www.webmd.com/anxiety-panic/guide/mental-health-social-anxiety-disorder (last visited Jan. 6, 2024).

59. *See* DSM-IV-TR, *supra* note 57, at 429 ("Acute Stress Disorder is the development of characteristic anxiety, dissociative, and other symptoms that occurs within 1 month after exposure to an extreme traumatic stressor.").

60. *See What Is Social Anxiety Disorder or Social Phobia?*, *supra* note 58.

61. Sharma & Sharma, *supra* note 21, at 88 (listing psychological disorders associated with workaholics).

62. *See id.*

63. BUTLER, *supra* note 34, at 23.

64. *Understanding the Stress Response*, HARV. HEALTH PUBL'G (July 6, 2020), http://www.health.harvard.edu/staying-healthy/understanding-the-stress-response ("Over the years, researchers have learned not only how and why these reactions occur, but have also gained insight

Physiological responses to workplace stress can be responsible for psychiatric disorders resulting in neurological damage, also known as stress-induced brain damage.[65] Stress-induced brain damage is caused when a continuous release of adrenaline arrives in the body.[66] The release of adrenaline creates physiological changes that lead to - in the case of workaholics - work highs that become addictive and may even be fatal.[67] It is as if the nervous system of the workaholic is a constant idling engine running inside,[68] or the body adapts to living in a constant state of emergency.[69] When the state of alarm or emergency is continually in an alert status, adrenaline baths various psychological systems, which disrupts normal functioning.[70] The stress-induced brain damage results in a significant thinning of the mesial prefrontal cortex; the thinning in the frontal cortex, which is essential for our cognitive functions.[71] Thinning in the areas of the brain produce increased amygdala volumes,[72] and that increase positively correlates with the degree of perceived stress.[73] The amygdala, which is the first relay in the processing of stress stimuli,

---

into the long-term effects . . . stress has on physical and psychological health," which includes neurological systems); BREMNER, *supra* note 28, at 16.

65. *See* BREMNER, *supra* note 28, at 4 ("[S]tress-induced brain damage underlines and is responsible for the development of a spectrum of trauma-related psychiatric disorders, making these psychiatric disorders, in effect, the result of neurological damage.").

66. BRYAN E. ROBINSON, CHAINED TO THE DESK IN A HYBRID WORLD: A GUIDE TO WORK-LIFE BALANCE 22 (4th ed. 2023) ("Incessant working is often the limbic system's red-alert reaction (your stress response) to current work pressures, much as if you were in physical danger . . . while providing the workaholic limbic system with protection and safety, also keeps the sympathetic nervous system (your fight-or- flight response) in high arousal, trumping the parasympathetic nervous system (the rest-and-digest response).").

67. *Id.* at 48–49 ("Adrenaline – a hormone produced by the body in times of stress – has an effect like that of amphetamines, or 'speed.'").

68. *Id.* at 91.

69. ARCHIBALD D. HART, ADRENALINE AND STRESS: THE EXCITING NEW BREAKTHROUGH THAT HELPS YOU OVERCOME STRESS DAMAGE 89–92 (1995).

70. *See* ROBINSON, *supra* note 66, at 71 (describing a bulimic workaholic, "who has out-of-control work patterns that alternate between binges and purges" as they create adrenaline when engaged in "frantic productivity that is followed by inertia"); Esch et al., *supra* note 31, at 201 ("Over time, particularly in chronic stress, the prolonged stimulation of [sympathetic nervous system] and [hypothalamic-pituitary-adrenal] axis may lead to an enduring threat (threatened homeostasis), thereby eventually facilitating deleterious disease processes.").

71. Roberto Grujičić, *Prefrontal Cortex*, KENHUB, https://www.kenhub.com/en/library/anatomy/prefrontal-cortex (last reviewed Oct. 30, 2023); *see generally* Bruce S. McEwen et al., *Stress Effects on Neuronal Structure: Hippocampus, Amygdala, and Prefrontal Cortex*, 41 NEUROPSYCHOPHARMACOLOGY 3 (2016).

72. Regina Bailey, *Amygdala's Location and Function*, THOUGHTCO., https://www.thoughtco.com/amygdala-anatomy-373211 (last updated July 17, 2019) ("The amygdala is an almond-shaped mass of nuclei (mass of cells) located deep within the temporal lobes of the brain . . . It is involved in the processing of emotions such as fear, anger, and pleasure.").

73. *See* Savic, *supra* note 41 ("[I]n stressed subjects, there was a significant thinning of the mesial prefrontal cortex . . . in the frontal cortex, which is essential for our cognitive functions, the normal thinning effect of age was more pronounced than in the controls . . . [and] the amygdala volumes were

may be damaged due to repetitive stress stimulation.[74] This data suggest that chronic occupational stress may indeed be associated with specific changes in brain regions involved with the processing and modulation of stress stimuli.[75] Scientists agree that the amygdala plays a vital part in a variety of functions including the processing of emotions, stress response, and aggressive behavior,[76] the repeated stress experiences introduced to the amygdala cause brain circuits to change and form new memories associated with heightened perceptions that are deemed distressing.[77]

Beyond physiological responses to the brain, workplace stress triggers a defect in other bodily organs due to the release of adrenaline, noradrenaline, and cortisol into the bloodstream.[78] The stress hormones cortisol and adrenaline intervene in numerous negative long-term consequences of stress on the body.[79] For instance, it "raises blood pressure, increases the heart rate and the respiratory rate, shuts down the digestive system, directs blood to the biggest muscles for quick action, and tells the liver to release stored sugar into the blood for extra fuel."[80] Moreover, when adrenaline activates, additional physiological functions occur; such as the spleen increasing the release of red blood cells, the liver converting glycogen to glucose,[81] breathing becoming heavy, and a release of endogenous opiates acting on the brain to dull the sense of pain.[82]

The physiological effect of cortisol in the bloodstream is equally as damaging. The adrenal glands secrete cortisol in response to long-term stress.[83] Cortisol not

---

increased in subjects with occupational stress and the increase was positively correlated with the degree of perceived stress.").

74. *See id.* ("The amygdala . . . which is the first relay in the processing of stress stimuli, has tight and reciprocal connections to the medial prefrontal cortex (mPFC) . . . [and] combined inhibitory and excitatory, so called top-down modulation, of the amygdala is necessary for normal stress coping . . . [and] repetitive stress stimulation of the amygdala may lead to damage of the mPFC via targeted neurotransmitter release from the amygdala to mPFC, impaired stress modulation.").

75. *Id.*

76. Bailey, *supra note* 72.

77. *Id.*

78. BREMNER, *supra* note 28, at 267 (describing how adrenaline and the related norepinephrine are released and have "a number of actions in the body, including stimulation of the heart to beat more rapidly . . ." and causes blood pressure to increase).

79. *Id.* at 6 ("The stress hormones cortisol and adrenaline mediate many of the negative long-term consequences of stress on the body.").

80. Ben E. Benjamin, *How Stress Affects Your Body*, HEALTH TOUCH NEWS, https://bti.edu/pdfs/Benjamin_How-Stress-Affects-the-Body.pdf.

81. *See id.* (stating that when the digestive system is shut down, it "directs blood to the biggest muscles for quick action, and tells the liver to release stored sugar into the blood for extra fuel").

82. BREMNER, *supra* note 28, at 7.

83. Benjamin, *supra* note 80.

only has neurological effects on the brain,[84] but cortisol also has effects on other physiological systems such as the cardiovascular system, accelerating the process of atherosclerosis,[85] and hardening of the arteries.[86] "When it lingers in the body for prolonged periods, cortisol . . . [weakens] many types of tissue—especially muscles, tendons, and ligaments—raising the risk of chronic back, neck, and other injuries."[87] Cortisol makes the immune system more difficult to process healing, when a person is injured, and makes a person more vulnerable to getting sick.[88] Thus, when workplace "stress is enduring or recurring, the body regularly pumps out these stress hormones and mobilizes [physiological] systems, which over time can tax the body's resources and impair health."[89]

Research exposes strong relationships between experiences of chronic stress and the development of a larger list of illnesses and diseases.[90] One such report unveils the consequence of an imbalance of cortisol: cortisol lowers defenses and the imbalance may preclude fighting off the initial ingress of cancer.[91] The relationship between stress and the development of illness is also evident when stress affects cortisol to exacerbate rheumatoid arthritis or osteoarthritis.[92] Absent inheritance, there is also strong evidence linking diabetes mellitus to stress.[93] Stress or

84. BREMNER, *supra* note 28, at 269.

85. *Id.* at 271.

86. *What is Atherosclerosis?*, AM. HEART ASS'N (Nov. 6, 2020), http://www.heart.org/HEARTORG/Conditions/Cholesterol/WhyCholesterolMatters/Atherosclerosis_UCM_305564_Article.jsp#. Atherosclerosis, or hardening of the arteries, is a condition in which plaque builds up inside the arteries, *id.* Plaque is made of "cholesterol, fatty substances, cellular waste products, calcium and fibrin (a clotting material in the blood)," *id.*

87. Benjamin, *supra* note 80.

88. *Id.*

89. *See* Esch et al., *supra* note 31, at 206 ("An organism that encounters prolonged phases of such challenges may pay a price for the maintenance of its physiological and biological integrity: this is where pathophysiological disease processes in the face of stress may become activated."); JILL M. HOOLEY ET AL., ABNORMAL PSYCHOLOGY 145 (18th ed. 2020), https://poliklinika-harni.hr/images/uploads/439/stres-psiholoski-faktori-zdravlje.pdf (indicating in chapter 5, *Stress, Psychological Factors, and Health*, that when workplace stress is enduring, "the body regularly pumps out these stress hormones and mobilizes other systems, which over time can tax the body's resources and impair health").

90. Bickford, *supra* note 11, at 12.

91. *Id.* ("Being constantly stressed has the effect of lowering defenses that may help fight off the initial ingress of cancer.").

92. *See* Dhwani J. Kothari et al., *Stress in Arthritis*, *in* PSYCHOSOCIAL FACTORS IN ARTHRITIS: PERSPECTIVES ON ADJUSTMENT AND MANAGEMENT 79, 83 (Perry M. Nicassio ed., 2016) ("Short-term acute stressors that are characterized by uncontrollable social threat and long-term stressors that involve major life events . . . [and] in a coordinated fashion to influence immune functioning . . . can have profound implications for chronic inflammatory conditions like RA and SLE."); Bickford, *supra* note 11, at 12 ("Although stress does not appear to cause rheumatoid arthritis or osteoarthritis, being under stress can exacerbate these illnesses.").

93. Bickford, *supra* note 11, at 12 (providing a list of the development of illnesses and diseases that have a relationship between the experience of chronic stress and the development of the illness).

anxiety is also to blame in many cases of irritable bowel syndrome.[94] Research further suggests that increased stress over time can affect the "cellular immune response," which can impair the immune response.[95] Additionally, there is an undeniable link between incidences of high blood pressure and "both fatal and nonfatal heart attacks."[96] The list of stress-induced physiological illnesses goes on to include ulcerative colitis, strokes, stomach and duodenal ulcers, indigestion and heartburn, and chronic fatigue syndrome.[97] More specific to workaholics, they are prone to diseases and disorders including hypertension, diabetes, coronary heart disease and chest pains, gastroesophageal reflux disease and ulcers, chronic fatigue, spondylitis and even death.[98]

III. THE EVOLUTION OF THE EGGSHELL DOCTRINE

Concerning the eggshell doctrine, the idiom that you can't walk on eggshells without cracking a few eggs is appropriate. A minority of jurisdictions certainly cracked a few eggs by concluding that mental illness is akin to bodily injury.[99] For these jurisdictions, this concept is relevant since it applies after a tortious trauma event activates an incipient or dormant disorder.[100] The doctrine relates to "[t]he principle that a defendant is liable for a plaintiff's unforeseeable and uncommon reactions to the defendant's negligent or intentional act."[101] Under the rule, a defendant is liable for the full extent of the plaintiff's injuries, even if the plaintiff

---

94. *Id.*

95. REBECCA J. DONATELLE, MY HEALTH 54–55 (Barbara Willette ed., 3d ed. 2019).

96. Bickford, *supra* note 11, at 12.

97. *Id.* at 13.

98. Sharma & Sharma, *supra* note 21, at 88; *Ankylosing Spondylitis*, MAYO CLINIC, https://www.mayoclinic.org/diseases-conditions/ankylosing-spondylitis/symptoms-causes/syc-20354808 (last visited Aug. 31, 2023) (describing Spondylitis as an inflammatory disease that can cause some of the vertebrae in the spine to fuse together, making the spine less flexible and resulting in a hunched posture).

99. J. Stanley McQuade, *The Eggshell Skull Rule and Related Problems in Recovery for Mental Harm in the Law of Torts*, 24 CAMPBELL L. REV. 1, 2 (2001) ("That there is confusion in the law relating to mental harm is hardly open to question. Jurisdictions are divided in their approaches to the problem. The more conservative hold to the older restrictive rules, and those attempting to do away with them (the 'moderns') have sought to bring mental harm into line with physical impairments.").

100. *E.g.*, Salas v. United States, 974 F. Supp. 202, 209 (W.D.N.Y. 1997) (finding strong medical evidence that plaintiff's emotional problems were caused by the defendant is consistent or inconsistent with precedent case law holding that the "defendant must take a plaintiff as he or she finds her and hence may be liable for damages for aggravation of a pre-existing illness or for precipitation of a latent condition").

101. *Eggshell-Skull Rule*, BLACK'S LAW DICTIONARY (11th ed. 2019); Steve P. Calandrillo & Dustin E. Buehler, *Eggshell Economics: A Revolutionary Approach to the Eggshell Plaintiff Rule*, 74 OHIO ST. L.J. 375, 377 n.8 (2013) ("Alternatively, courts and scholars call this the 'eggshell-skull rule,' the 'thin-skull rule,' the 'special-sensitivity rule,' or the 'old-soldier's rule.'") (citation omitted).

possesses preexisting conditions that dramatically worsen the harm.[102] The eggshell doctrine advocates that the defendant takes his victim as he finds him.[103] In taking this stance, minority jurisdictions are showing the world that there is no reason to continue "to hold that 'taking one's victim as he finds him' means only as he finds him in body; it also includes as he finds him in mind."[104] Thus, the eggshell doctrine is increasingly looking beyond requiring a physical injury before liability will attach.[105]

A. The Early Years Requiring Physical Harm

"[T]he principle that a defendant is liable for a plaintiff's unforeseeable and uncommon reactions to the defendant's negligent or intentional act" begins with the eggshell doctrine.[106] Just prior to the coining of the phrase "thin skull" doctrine by the English courts, an 1899 Massachusetts court held that a "defendant must answer for the actual consequences of that wrong to her as she was, and cannot cut down damages by showing that the effect would have been less upon a normal person."[107] During that same decade, the Supreme Court of Wisconsin developed the seminal

---

102. RESTATEMENT (THIRD) OF TORTS: PHYSICAL & EMOTIONAL HARM § 31 (AM. L. INST. 2010). "Section [31] adopts and extends [Section] 461 of the Restatement Second of Torts [where] Section 461 was limited to physical conditions and more carefully circumscribed to address only injury that was greater than might have been foreseen . . . This Section [31] reflects the widespread acceptance and modest expansion to all preexisting conditions of an injured person and harm that results from that condition that might itself be characterized as unforeseeable." *Id.*

103. *See* Warren A. Seavey, *Mr. Justice Cardozo and the Law of Torts*, 52 HARV. L. REV. 372, 385 (1939) (indicating that, when a defendant negligently strikes a person with a skull so fragile that it is broken by a comparatively slight blow, "all courts are agreed that the defendant is liable for the wholly unexpected breaking").

104. Anne C. Loomis, *Thou Shalt Take Thy Victim as Thou Findest Him: Religious Conviction as a Pre-Existing State Not Subject to the Avoidable Consequences Doctrine*, 14 GEO. MASON L. REV. 473, 495 (2007) (quoting RESTATEMENT (THIRD) OF TORTS: LIABILITY FOR PHYSICAL HARM § 31 cmt. a (Proposed Final Draft 2005)).

105. *See, e.g.*, *Salas*, 974 F. Supp. at 209 ("[A defendant] may be liable for damages for aggravation of a pre-existing illness or for precipitation of a latent condition."); Calcagno v. Kuebel, Fuchs P'ship, 802 So. 2d 746, 752 (La. Ct. App. 2001) (holding the defendant liable for all of the plaintiff's mental harm because the physical injury activated age-related changes in the plaintiff's brain that were asymptomatic before the injury); LaSalle v. Benson Car Co., 783 So. 2d 404, 408–09 (La. Ct. App. 2001) (holding the defendant liable for all of the plaintiff's mental harm because the plaintiff had no psychological problems before the physical injury, but required treatment in a psychiatric hospital after the injury).

106. Calandrillo & Buehler, *supra* note 101, at 377 n.8 (citing *Eggshell-Skull Rule*, BLACK'S LAW DICTIONARY 593 (9th ed. 2009)).

107. *See* Rachel V. Rose et al., *Another Crack in the Thin Skull Plaintiff Rule: Why Women with Post Traumatic Stress Disorder Who Suffer Physical Harm from Abusive Environments at Work or School Should Recover from Employers and Educators*, 20 TEX. J. WOMEN & L. 165, 180 (2011) (quoting Spade v. Lynn & B.R.R., 52 N.E. 747, 748 (Mass. 1899)) ("'[T]he defendant must answer for the actual consequences of that wrong to her as she was, and cannot cut down her damages by showing that the effect would have been less upon a normal person.'").

case announcing the "thin skull" doctrine.[108] Although the case of *Vosburg v. Putney*,[109] is identified as a memorable milestone and seminal case in American tort law,[110] it was the first case that introduced the eggshell doctrine as it multilaterally represented pedagogical tools for battery, fault, damages, and proximate cause to facts related to physical injuries; foreseeable and un-foreseeable.[111] However, when *Vosburg* first identified the eggshell doctrine, the concept was buried away in the defendant's brief along with nine other separate points of error from the lower court.[112] While the defendant unveiled his argument against liability for unforeseeable harms, the antithesis emerged.[113] The court established the eggshell doctrine by holding that the wrongdoer is liable for all injuries resulting directly from the wrongful act, whether they could or could not have been foreseen by him.[114]

After finding that a defendant will be liable for the full extent of a plaintiff's injuries, the next phase in the evolution of the eggshell doctrine became one of damages for extraordinary harms arising from relatively ordinary conduct.[115] Accordingly, the tortfeasor's duty of care would be measured by the ordinary person standard, but the plaintiff's injuries would not be.[116] In *McCahill v. New York Transportation Co.*, the defendant's employee negligently drove a taxi and struck the

108. Vosburg v. Putney, 50 N.W. 403, 403–04 (Wis. 1891).

109. *Id.* at 404. In *Vosburg,* one school boy kicked another in the shin, in circumstances that made the kicking a battery, *see generally id.* The kick would not have seriously injured a normal person, but the victim had an infection in his tibia and the kick aggravated the infection, causing serious injury, *id.*

110. *See* James A. Henderson, Jr., *Why* Vosburg *Comes First*, 1992 WIS. L. REV. 853 (1992) (referring to Professor Zigurds L. Zile's description of *Vosburg v. Putney's contribution to the law in* his article entitled *Vosburg v. Putney – A Centennial Story,* 1992 WIS L. REV. 877 (1992)); *but see* Stoleson v. United States, 708 F.2d 1217, 1221 (7th Cir. 1983) ("[I]t [was] not the earliest eggshell skull case . . . in Wisconsin," it was *Stewart v. City of Ripon*, 38 Wis. 584, 590–91 (1875)).

111. *See* Zigurds L. Zile, Vosburg v. Putney *– A Centennial Story*, 1992 WIS. L. REV. 877, 979-88 (1992) (describing how *Vosburg v. Putney* has been used in casebooks to emphasize a variety of torts concepts).

112. *Id.* at 922 (reporting that the appellant's brief assigned ten separate matters for error, grouping them into four categories for purposes of argument).

113. *Id.* at 923. The defendant argued that "[f]or negligence or an act not amounting to a wanton wrong to be held the proximate cause of an injury . . . the injury had to be the natural, probable and, thus, foreseeable consequence of the act," *id.*

114. *Id.* at 953; *see also* RESTATEMENT (SECOND) OF TORTS § 461 (AM. L. INST. 1965) ("The negligent actor is subject to liability for harm to another although a physical condition of the other which is neither known nor should be known to the actor makes the injury greater than that which the actor as a reasonable man should have foreseen as a probable result of his conduct.").

115. *See* Calandrillo & Buehler, *supra* note 101, at 377 (indicating liability attaches even when the plaintiff's vulnerable condition and the scope of the resulting injuries were completely unforeseeable; a defendant can be on the hook for extraordinary damages arising from relatively ordinary conduct).

116. Vaughn v. Nissan Motor Corp., 77 F.3d 736, 738 (4th Cir. 1996).

plaintiff, who suffered from alcoholism.[117] The plaintiff immediately became unconscious, was hospitalized for sustaining various broken bones, and died of delirium tremens.[118] The court affirmed an award of additional damages despite the fact plaintiff's alcoholism likely would have eventually resulted in his premature death.[119] Consequently, the relatively ordinary conduct of the defendant did not preclude liability even if those results would not have occurred if the plaintiff had been in a normal condition.[120]

This means that the eggshell doctrine also embraces unforeseeable preexisting conditions along with unforeseeable physical harm.[121] Damages for such *includes many* manifestations of physical conditions. Manifestations of unforeseeable preexisting conditions include aggravation, increase, and/or intensification of a prior injury;[122] the re-activation of a plaintiff's preexisting condition that had subsided due to treatment;[123] the aggravation of known, preexisting conditions that have not yet received medical attention;[124] and when defendants unearth a latent condition ailing plaintiffs.[125] This means that the actor's tortious conduct may merely accelerate the time when the other person suffers harm.[126]

If expanding the possibility of damages and manifestations of physical harm was not enough, the diversity of the eggshell doctrine adds unforeseeable psychological injuries that could be triggered by some degree of physical injury.[127] The Eastern District of Louisiana ruled that a latent psychological injury, in conjunction with minor physical injuries, was enough to establish liability against a defendant.[128] In this case, the defendant's automobile accident with the plaintiff set in

117. McCahill v. New York Transp. Co., 94 N.E. 616, 617 (N.Y. 1911).

118. *Id.*; Shannon Toohey, *Delirium Tremens (DTs)*, MEDSCAPE (Aug. 4, 2021), http://emedicine.medscape.com/article/166032-overview ("Delirium tremens (DTs) is the most severe form of ethanol withdrawal, manifested by altered mental status (global confusion) and sympathetic overdrive (autonomic hyperactivity), which can progress to cardiovascular collapse.").

119. *McCahill*, 94 N.E. at 617–18.

120. *Id.*

121. *See id.*

122. *See* Watson v. Rheinderknecht, 84 N.W. 798, 800 (Minn. 1901) (holding that testimony that shows prior injuries received by the plaintiff have "been aggravated, intensified, and increased by reason of the defendant's unlawful act" is allowable).

123. *See* Bruneau v. Quick, 447 A.2d 742, 745 (Conn. 1982).

124. *See* Glamann v. Kirk, 29 P.3d 255, 261 (Alaska 2001).

125. *See* Reed v. Union Pac. R.R. Co., 185 F.3d 712, 716–17 (7th Cir. 1999).

126. RESTATEMENT (THIRD) OF TORTS: PHYSICAL & EMOTIONAL HARM § 31 cmt. c (AM. L. INST. 2010).

127. *See* Bonner v. United States, 339 F. Supp. 640, 645 (E.D. La. 1972).

128. *Id.* at 654.

motion, or precipitated, a series of events that led to overt psychiatric illness.[129] Although the plaintiff had an existing personality structure and past history, the court found that the automobile accident was the precipitating cause that produced the plaintiff's mental disability.[130] Similarly, in *Stoleson v. United States*, the Seventh Circuit accepted preexisting psychological conditions with minor physical injuries.[131] Here, the court not only assessed the pre-existing psychological vulnerability of the plaintiff,[132] it determined that the methodology for calculating damages in preexisting physical injuries will be the same methodology for calculating damages when there is a preexisting psychological condition.[133]

An unforeseeable pre-existing psychological condition that accompanies physical injury caught the court's attention.[134] The doctrine adopted the definition of a latent mental condition as a dormant "disorder that has not erupted into full-blown psychotic symptoms."[135] "In contrast, a preexisting mental condition is a condition that existed before the physical injury occurred, was symptomatic, and affected the plaintiff's functioning in daily life."[136] However, in litigations involving preexisting physical conditions, some courts applied the rule when defendants unearth a latent condition,[137] re-activate a preexisting condition,[138] aggravate known preexisting conditions,[139] or accelerate an inevitable disability.[140] Due to the various categories of legal analysis, courts must now determine "if the defendant caused all the mental

129. *See id.* at 650 ("The Court [was] convinced that her eye symptoms were mild and intermittent in the beginning, but they gradually and progressively worsened until they were disabling.").

130. *Id.* at 647–50.

131. *See* Calandrillo & Buehler, *supra* note 101, at 385 (citing Stoleson v. United States, 708 F.2d 1217, 1221 (7th Cir. 1983)).

132. *See Stoleson*, 708 F.2d at 1221 (indicating that the plaintiff was not barred from "recovery of damages where the only consequence of the defendant's negligence is emotional distress" because the plaintiff's psychological illness was "alleged to have been the result of the physical injury she sustained").

133. *See id.* at 1223–24 ("[When] calculating damages in an eggshell skull case the trier of fact must make an adjustment for the possibility that the preexisting condition would have resulted in harm to the plaintiff even if there had been no tort . . . [and] sooner or later some symptom unrelated to the defendant's misconduct would have triggered the . . . psychosomatic symptoms.").

134. *See id.*

135. *See* Candice E. Renka, *The Presumed Eggshell Plaintiff Rule: Determining Liability When Mental Harm Accompanies Physical Injury*, 29 T. JEFFERSON L. REV. 289, 292–93 (2007) (citing ROBERT JEAN CAMPBELL, CAMPBELL'S PSYCHIATRIC DICTIONARY 366 (8th ed. 2004) ("[A] latent mental condition is a condition that existed before the physical injury in question was asymptomatic and did not affect the plaintiff's ability to function in daily life until activated by the physical injury.").

136. Renka, *supra* note 135, at 308–09 (citing Touchard v. Slemco Elec. Found., 769 So. 2d 1200, 1202 (La. 2000)).

137. *See, e.g.*, Reed v. Union Pac. R.R. Co., 185 F.3d 712, 715–17 (7th Cir. 1999).

138. *E.g.*, Bruneau v. Quick, 447 A.2d 742, 745–47 (Conn. 1982).

139. *E.g.*, Glamann v. Kirk, 29 P.3d 255, 261 (Alaska 2001).

140. *E.g.*, Bemenderfer v. Williams, 745 N.E.2d 212, 218 (Ind. 2001).

harm, activated a latent mental condition, or aggravated [or accelerated] a preexisting mental condition."[141]

B. The Later Years of the Eggshell Doctrine Diminishing Physical Harm

The Ninth Circuit holds physical injury need not be the lone triggering agent when there is an allegation under the eggshell doctrine for psychological injuries in cases relating to workplace stress.[142] In the case of *Wakefield v. N.L.R.B.*, the court said that the sole cause of an employee plaintiff's disability was the unlawful conduct by his employer that aggravated the plaintiff's non-disabling mental condition.[143] In this case, the plaintiff, a taxi driver, was continuously harassed by his employer for allegedly malingering after a work-related injury and subsequently for increasing his union activities.[144] Soon afterward, the plaintiff developed severe post-traumatic anxiety neurosis that required medical treatment.[145] The employer's "unlawful conduct included [the] imposition of 'intolerable working conditions which eventuated in a physical assault,' [threats, and intimidation]."[146] Here, the very impact of the eggshell doctrine on emotional harm or psychological injuries overturned a ruling by the National Labor Relations Board in favor of limiting a showing of physical harm.[147]

Restatement of Torts and the Second Circuit Court eliminates the need to look for physical injury in cases where a non-disabling mental condition is jolted into a disabling one due to a traumatic event.[148] In *Steinhauser v. Hertz Corp.*, a 14-year-old girl was involved in an automobile accident while riding with her parents.[149] Although no one suffered bodily injury in the accident, within a few minutes after the accident the child began to behave in unusual ways which intensified over the course of a few days.[150] After observation and treatment, the acute schizophrenic reaction was the final diagnosis.[151] The evidence at trial revealed that the child showed prior psychiatric abnormality in the past, but before the accident, she had

141. Renka, *supra* note 135, at 289–90.

142. *See* Wakefield v. NLRB, 779 F.2d 1437, 1438 (9th Cir. 1986).

143. *Id.* at 1438–39.

144. *Id.* at 1437.

145. *Id.*

146. *Id.* at 1439.

147. *Id.*

148. *See* RESTATEMENT (THIRD) OF TORTS: PHYSICAL & EMOTIONAL HARM § 31 (AM. L. INST. 2010) ("[W]hile § 461 [of the Restatement Second of Torts] was limited to physical conditions[,] Illustration 3 to §461 . . . reveals that special attributes of the person harmed, such as extraordinary education, ability, or achievement, were also meant to be covered by § 461.").

149. Steinhauser v. Hertz Corp., 421 F.2d 1169, 1170 (2d Cir. 1970).

150. *Id.*

151. *Id.*

never displayed such exaggerated symptoms.[152] The appellate court considered the principles of precedent law and the Restatement of Torts that revealed a negligent person is responsible for the direct effects of his acts.[153] The court said that the jury was entitled to consider the latent psychotic tendencies (the medical evidence) as a significant bearing on the number of damages.[154] Thus, the young girl predisposed to schizophrenia could have fully recovered damages from the full-blown psychosis resulting from an accident.[155]

C. The Most Recent Debate of the Eggshell Doctrine

The new issue that now gives pause to the eggshell doctrine, for jurisdictions that are divided into their approaches is whether psychological injury, induced by a trauma or jolt, is a "bodily injury." The conservative jurisdictions hold to the older restrictive rules that some physical injury, even minor, must be present to trigger the psychological injury.[156] For them, there is no distinguishing factor between the psychological and physiological effects on the brain. Unbeknownst to these courts, however, they are essentially treating mental harm like physical harm because in some cases it is impossible to determine if the physical injury caused the mental harm.[157] So for a clear contemporary alternative position that psychological injury is a "bodily injury," other jurisdictions hereafter referred to as the modern jurisdictions, denounce the theory that physical injury must trigger psychological injury is not necessary."[158] They take the position "that the ordinary processes of clinical

---

152. *Id.* at 1171.

153. *Id.* at 1172 ("It is unnecessary to engage in exhaustive citation of authority sustaining the legal validity of plaintiffs' theory [that] . . . a child with some degree of pathology which was activated into schizophrenia by an emotional trauma although it otherwise might not have blossomed.") (citing McCahill v. New York Transp. Co., 94 N.E. 616, 617 (N.Y. 1911)) ("[A] negligent person is responsible for the direct effects of his acts, even if more serious, in cases of the sick and infirm as well as in those of healthy and robust people, and its application to the present case is not made less certain because the facts are somewhat unusual and the intestate's prior disorder of a discreditable character.").

154. *See Steinhauser*, 421 F.2d at 1173 (making the parallel statement about the calculation of damages from *Stoleson v. U.S.* that the fact that the child's "latent psychotic tendencies would not defeat recovery if the accident was a precipitating cause of schizophrenia, [but] this may have a significant bearing on the amount of damages").

155. *See id.*

156. *See* McQuade, *supra* note 99, at 2 ("Jurisdictions are divided in their approaches to the problem. The more conservative hold to the older restrictive rules, and those attempting to do away with them (the 'moderns') have sought to bring mental harm into line with physical impairments.").

157. *See* Renka, *supra* note 135, at 295 ("These courts treat mental harm like physical harm: a defendant is liable for any mental harm that results from any physical injury he causes a plaintiff, regardless of any latent or preexisting mental condition the plaintiff had.").

158. *See* McQuade, *supra* note 99, at 5 (indicating some 12 jurisdictions, including North Carolina, "have abandoned the bodily contact, physical consequences, and zone of danger rules and have opted to treat mental harms just like physical harms (generally referred to as the *modern view*)"); *see also*

psychiatric evaluation, the mental state examination, and psychometric testing are sufficiently objective for legal purposes."[159] It is also the contention of modern jurisdictions that discernible physical impairments occur because of mental distress.[160]

The trend to consider psychological injuries as bodily injuries by modern jurisdictions revealed itself more intensely in 2008. In the case of *Allen v. Bloomfield Hills Sch. Dist.,* evidence from a clinical psychologist, medical physician, and a PET scan were considered probative to determine the plaintiff's psychiatric impairment.[161] The court held that PET scan evidence established a "bodily injury" where the plaintiff suffered no physical injury before a diagnosis of post-traumatic stress disorder (PTSD).[162] In this suit, the plaintiff was operating a train near an intersection when he observed a school bus enter the railroad-grade crossing; he hit the bus and later discovered no children were on the bus at the time of the accident, but the driver was severely injured.[163] The plaintiff was subsequently diagnosed with PTSD stemming from the accident.[164] The plaintiff presented objective medical evidence that he "suffered a brain injury, specifically [PTSD] as a result of the accident."[165] He relied on a medical expert, who reviewed his PET scan and opined that his brain depicted "decreases in frontal and subcortical activity consistent with depression and [PTSD]."[166] The expert further opined that "'the abnormalities in [the plaintiff's] brain . . . [were] quite pronounced. . . clearly different in brain pattern from any of the normal controls [and] consistent with an injury to [the plaintiff's] brain.'"[167] The Court subsequently concluded that "this evidence would establish a

---

Bagdasarian, *supra* note 40, at 402 ("Until 1970, almost every state followed the classic and traditional model, requiring some kind of physical manifestation of mental distress in N.I.E.D. cases. In 1970 . . . Hawaii broke the tradition and abolished the classic requirement. Since then, fourteen states have followed Hawaii's lead.").

159. McQuade, *supra* note 99, at 27; *see* Rose et al., *supra* note 107, at 174 ("Two common types of functional imaging used are positron emission tomography (PET) and functional magnetic resonance imaging (fMRI).").

160. *See* Bagdasarian, *supra* note 40, at 427 ("N.I.E.D. claims require a plaintiff to show 'a causally connected, clearly discernable physical impairment' . . . [t]he purpose and focus of the test is to prove that the emotional distress has caused certain physical signs and symptoms in the plaintiff. This is precisely where the principles of psychosomatic medicine are applicable and helpful.").

161. Allen v. Bloomfield Hills Sch. Dist., 760 N.W.2d 811, 815 (Mich. Ct. App. 2008) (indicating a positron emission tomography (PET) scan of the plaintiff's brain was taken, the psychologist testified that "PTSD 'causes significant changes in brain chemistry, brain function, and brain structure'").

162. *Id.* at 812.

163. *Id.*

164. *Id.*

165. *Id.*

166. *Id.* at 815.

167. *Id.* at 815–16.

'bodily injury' within the meaning of [the statute]" requiring the Plaintiff to suffer a bodily injury.[168]

Because the plaintiff in the *Allen* case proved that a mental or emotional trauma can indeed result in physical changes to the brain, the trend to consider psychological injury as "bodily injury" is a realistic reach for the eggshell doctrine.[169] State courts and circuit courts both open the door to the concept of abandoning bodily contact and physical consequences while opting to treat mental harm just like physical harm.[170] Thus, the judicial decisions of modern jurisdictions point to the reality that embracing mental injuries as bodily injuries is consistent with current views of the neurological system's relationship to various organs in the body.[171] That relationship to various organs in the body aligns with the thought that there is no such thing as a normal person or normal fortitude when a wrongful act has been done to a plaintiff.[172] Therefore, courts seeking to recognize the individual factors of plaintiffs along with the psychiatric injury are more flexible with eliminating the disassociation between psychological injuries and physical injuries.

---

168. *Id.* at 812.

169. *Id.*

170. The following are examples of state courts applying the thin-skull rule to harm that results from a mental or psychological condition of the person: Bonner v. United States, 339 F. Supp. 640, 648 (E.D. La. 1972) (Federal Tort Claims Act case with unusually emotionally fragile plaintiff); Touchard v. Slemco Elec. Found., 769 So. 2d 1200, 1204 (La. 2000); Walton v. William Wolf Baking Co., 406 So. 2d 168, 175 (La. 1981) (plaintiff with predisposition to neurosis); Reck v. Stevens, 373 So. 2d 498, 502 (La. 1979) (emotionally unstable plaintiff); Theriault v. Swan, 558 A.2d 369, 372 (Me. 1989) (dicta); Freyermuth v. Lutfy, 382 N.E.2d 1059, 1064 n.5 (Mass. 1978) (plaintiff experiencing psychosis); Poole v. Copland, Inc., 498 S.E.2d 602, 604 (N.C. 1998) (plaintiff with a history of sexual and physical abuse); Raino v. Goodyear Tire & Rubber Co., 422 S.E.2d 98, 100 (S.C. 1992) (plaintiff with predisposition to chemical dependency); Hunter v. Burke, 958 S.W.2d 751, 757 (Tenn. Ct. App. 1997) (plaintiff with mild mental disability); Ragsdale v. Jones, 117 S.E.2d 114, 118 (Va. 1960) (plaintiff with fragile emotional state); Whatley v. Henry, 16 S.E.2d 214, 219 (Ga. Ct. App. 1941) (dicta). For circuit courts applying the thin-skull rule to harm that results from a mental or psychological condition of the person: Steinhauser v. Hertz Corp., 421 F.2d 1169, 1172–73 (2d Cir. 1970) (applying New York law) (plaintiff with predisposition to schizophrenia); Vaughn v. Nissan Motor Corp., 77 F.3d 736, 738 (4th Cir. 1996) (applying South Carolina law) (plaintiff with somatization disorder, which results in patient presenting with illnesses for which there is no physiological explanation); Dunn v. Denk, 54 F.3d 248, 250–51 (5th Cir. 1995) (applying federal law); Stoleson v. United States, 708 F.2d 1217, 1221 (7th Cir. 1983) (Federal Tort Claims Act case in which Wisconsin law was adopted) (hypochondria neurosis); *see* Jenson v. Eveleth Taconite Co., 130 F.3d 1287, 1294–95 (8th Cir. 1997) (applying federal law) (plaintiff with emotional instability; citing numerous other cases).

171. *See generally* McQuade, *supra* note 99, at 12-13.

172. *See* Des Butler, *Susceptibilities to Nervous Shock: Dispensing with the Mythical 'Normal Person,'* 1 MACARTHUR L. REV. 107, 138 (1997) ("'[N]ormal fortitude' is meaningless.").

IV. ADJUDICATING MENTAL OR PSYCHOLOGICAL HARMS

Adjudicating the concept that psychological injuries are brain injuries is not a new premise since courts and administrative tribunals intentionally and unintentionally employ the theory. These proceedings include civil cases, hostile working environment cases, workers' compensation disputes, and criminal law adjudication. To support the application of this concept, many statutes and interpretative case law now compensate for such psychological disabilities.[173] More specifically, the legal theories involving psychological disabilities due to workplace stressors range from common law tort, hostile working environment, and workers' compensation. Although some of the psychological disability claims in these proceedings do not include the commonly recognized disorders in the DSM-5, many adjudicators are still viewing psychological injuries as bodily injuries even though this is the diagnostic tool used by psychology. In doing so, they are taking special note of the symptoms after an event and the behavior of the complaining party as psychological evidence of impairment.[174] In addition to civil challenges, criminal law cases are impacted by the same psychological injury phenomenon.[175] These cases involve sentencing enhancements when the psychological injury is considered a substantial impairment to the victim.[176] Therefore, while interpreting these adjudicating bodies, there is a strong indication of judicial acceptance of the theory that psychological injuries are bodily injuries.

A. Precedent Common Law Tort Cases

Since more judicial decisions resonate with the theory that psychological injuries are bodily injuries, the abandonment of the psychological-only-injury argument is prevailing. These decisions sometimes originate with the knowledge "that diagnostic information could be 'misused or misunderstood' in legal proceedings due to the 'imperfection between the questions of ultimate concern to the law and the . . . clinical diagnosis.'"[177] In essence, "the clinical diagnosis of a DSM-IV mental

---

173. Katherine Lippel, *Workers' Compensation and Stress: Gender and Access to Compensation*, 22 INT'L J.L. & PSYCHIATRY 79, 79 (1999) ("The majority of North American jurisdictions now compensate for psychological disability related to workplace stressors, although the scope of the legislation varies greatly from state to state and from province to province.").

174. Bonnie L. Green & Stacey I. Kaltman, *Recent Research Findings on the Diagnosis of PTSD: Prevalence, Course, Comorbidity, and Risk*, *in* POSTTRAUMATIC STRESS DISORDER IN LITIGATION: GUIDELINES FOR FORENSIC ASSESSMENT 19, 33 (Robert I. Simon ed., 2d ed. 2003).

175. *Id.*

176. *See* Francis X. Shen, *Mind, Body, and the Criminal Law*, 97 MINN. L. REV. 2036, 2107, 2163 (2013) (discussing sentencing enhancements).

177. BUTLER, *supra* note 34, at 26–27.

disorder is not [necessarily] sufficient to establish the existence of a 'mental disorder, mental disability, mental disease, or mental defect.'"[178]

The case that exemplifies an abandonment of psychological only injury, *Stoleson v. U.S.,* is more perceptive about the court's lack of reliance on clinical diagnostic information.[179] Here, the Seventh Circuit excluded the use of any version of the DSM and evaluated the physical symptoms on which the traumatic event might act to produce ill health.[180] The court took note that "the physical symptoms of [the plaintiff's] hypochondria [had] by definition no organic basis."[181] The court said: "so 'little is known about the cause, nature, or effective treatment of hypochondria,' the condition is impossible to diagnose with confidence,"[182] i.e., no DSM application. As a result, the court took an alternative reading of the findings to avoid the matter-of-law concept and adopted a matter-of-fact-finding to focus on the physical symptoms of the plaintiff.[183] The court then concluded that the plaintiff's vulnerability was because of a psychological pre-existing condition and physical was irrelevant,[184] i.e., vulnerability can be either psychological or physical.[185]

Another precedent case perceives the same conclusion as *Stoleson*. In a California Court of Appeals case, *Baker v. Workmen's Comp. Appeals Bd.*, the plaintiff had become preoccupied with subjective heart disease that could not be documented.[186] Expert testimony indicated that the plaintiff developed cardiac neurosis, a form of psychoneurotic injury.[187] The plaintiff also suffered "considerable anxiety tension" causing "sufficient sympathetic discharge" for some time.[188] Absent any DSM diagnosis, the court said: "[t]he only logical and reasonable inference to be drawn from all the evidence is that [the] petitioner suffers from a psychoneurotic

178. *Id.* at 27 (referring to the DSM-IV).

179. United States v. Spinelli, 352 F.3d 48, 58 (2d Cir. 2003); Shen, *supra* note 176, at 2160.

180. *See* Stoleson v. United States, 708 F.2d 1217, 1221-22 (7th Cir. 1983) ("[A]n alternative reading of [the] findings on causation is not only possible but more plausible in light of the evidence: that . . . [causation was established as a matter-of-fact (not law)] . . . when . . . [the] 'hypochondriacal neurosis' [was established by plaintiff's] symptoms, not the underlying psychological condition on which a traumatic event might act to produce symptoms of ill health.").

181. *Id.* at 1222.

182. *Id.*

183. *Id.*

184. *See id.* at 1221 ("That [plaintiff's] vulnerability was psychological, rather than, as in *Vosburg*, physical, is irrelevant.").

185. Kathleen Kim, *The Coercion of Trafficked Workers*, 96 IOWA L. REV. 409, 463 (2011) ("Vulnerability may be 'physical, psychological, emotional, family-related, social or economic.'").

186. Baker v. Workmen's Comp. Appeals Bd., 96 Cal. Rptr. 279, 285 (Cal. Ct. App. 1971).

187. *Id.* at 282.

188. *Id.* at 285.

syndrome described as 'cardiac neurosis.'"[189] The court considered the results of the psychiatric evaluation that showed the injury was equivocal to organic brain syndrome.[190] This conclusion was reached despite no psychiatric entity or cardiac neurosis that represented or could be termed a medical diagnosis or opinion.[191] The adjudicating body ruled that it perceived no logical basis for a different requirement for psychoneurotic injuries and to one experiencing the symptoms; although, "such an injury is as real and disabling as a physical injury."[192]

Another case abandoned a psychological-only-injury argument in favor of adopting a more modern interpretation, committed to the argument with a more challenging rule of law.[193] The precise language regarding "bodily injury" of the Warsaw Convention (a treaty of the United States preempting local laws) was controlling in the *Weaver v. Delta Airlines, Inc.*, case.[194] The Warsaw Convention did not include psychological injury in its definition, but precedent case law determined that "bodily injury" was the proper extension of the law.[195] In compliance with precedent interpretation, the court determined that the plaintiff had "a classic case of chronic posttraumatic stress disorder."[196] The court understood PTSD as a physical injury by the Warsaw Convention, and this physical injury, as represented in the doctor's affidavit, was "secondary to alteration in brain chemistry, physiology, and anatomy."[197] Because the plaintiff's claim was presented as a physical injury and the plaintiff relied on "recent scientific research explaining that post-traumatic stress disorder evidences actual trauma to brain cell structures," the only reasonable conclusion for this court was to rule it as a bodily injury.[198] Although the decision was later vacated, the abandonment of psychological-only-injury gained this court membership with the modern jurisdictions.[199]

B. Adjudicating Psychological Harms in PTSD Litigation, Workers'

189. *Id.*

190. *Id.* at 282.

191. *Id.* at 285.

192. *Id.* at 286.

193. Weaver v. Delta Airlines, Inc., 56 F. Supp. 2d 1190, 1192 (D. Mont. 1999), *vacated*, 211 F. Supp. 2d 1252 (D. Mont. 2002).

194. *Id.*

195. Eastern Airlines, Inc. v. Floyd, 499 U.S. 530, 550 (1991).

196. *Weaver*, 56 F. Supp. 2d at 1191.

197. *Id.*

198. *Id.* at 1192.

199. *Weaver*, 211 F. Supp. 2d 1252 (D. Mont. 2002).

Compensation Cases, and Hostile Working Environment Cases

In PTSD litigation, workers' compensation cases, and hostile working environment cases, adjudicating bodies are now accepting additional psychological evidence beyond what is contained in the DSM-IV to view psychological injuries as bodily injury.[200] In essence, tribunals are now accepting psychological evidence patterned after three formulas: the (1) practice of "ascertain[ing] what behavior an individual exhibits," (2) "the circumstances which gave rise to that behavior," and (3) the recognition of the "correlations between certain behaviors and certain causal circumstances."[201] For example, PTSD precedent rests on the assumption of a specific set of causes, whereby a distinct set of events is assumed to be the uniformly most potent contributor to the behavior an individual exhibits.[202] Thus, the traditional legal theory of causation does not support the clinical and scientific considerations that involve categories of these psychological conditions.[203]

By accepting psychological evidence patterned after three formulas, the process demonstrates how the legal and medical communities change the nature of personal injury litigation.[204] For instance, in the past, the use of the first formula followed the DSM-IV model which paid attention to the behavioral symptoms that accompany PTSD.[205] The behavioral symptoms are described as re-experiencing,

---

200. *See* BUTLER, *supra* note 34, at 27 ("In determining whether an individual meets a specified legal standard (eg for competence, criminal responsibility, or disability), additional information is usually required beyond that contained in the DSM-IV diagnosis.").

201. David McCord, *Syndromes, Profiles and Other Mental Exotica: A New Approach to the Admissibility of Nontraditional Psychological Evidence in Criminal Cases*, 66 OR. L. REV. 19, 27 (1987) ("Over time, researchers recognize correlations between certain behaviors and certain causal circumstances. If a strong enough correlation becomes apparent, then researchers can predict that an individual subjected to certain circumstances will likely exhibit certain behaviors thereafter.").

202. Deirdre M. Smith, *The Disordered and Discredited Plaintiff: Psychiatric Evidence in Civil Litigation*, 31 CARDOZO L. REV. 749, 764 n.70 (2010) (citing Robert L. Spitzer et al., *Revisiting the Institute of Medicine Report on the Validity of Posttraumatic Stress Disorder*, 49 COMPREHENSIVE PSYCHIATRY 319, 319 (2008)) ("[A] key distinguishing feature of PTSD is that it is not agnostic to etiology . . . PTSD rests on the assumption of a specific etiology, whereby a distinct set of events (criterion A) is assumed to be the uniformly most potent contributor to outcome.").

203. *See id.*

204. *See* Alan A. Stone, *Post-Traumatic Stress Disorder and the Law: Critical Review of the New Frontier*, 21 BULL. AM. ACAD. PSYCHIATRY L. 23, 34 (1993) ("The recognition of [the PTSD] disorder by the medical community changed the nature of personal injury litigation . . . .").

205. *See* Shen, *supra* note 176, at 2160 (citing AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS-IV-TR 463–68 (4th ed. 2000)) ("PTSD is also defined and diagnosed exclusively through behavioral measures. The diagnostic criteria for PTSD make no explicit mention of the brain.") (emphasis omitted); *see also* AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 393 (4th ed. 1994) [hereinafter DSM-IV] (categorizing PTSD under anxiety disorders as "reexperiencing of an extremely traumatic event accompanied by symptoms of increased arousal and by avoidance of stimuli associated with the trauma").

avoidance, negative cognitions and mood, and arousal.[206] Thus, these behavioral symptoms are the behavior the individual exhibits. The original DSM diagnosis of PTSD disorder transformed the existence of the recognizable stressors which were; re-experiencing the traumatic event, numbing of responsiveness, and a list of other possible symptoms which included survivor's guilt. [207]

When tribunals consider circumstances that gave rise to the behavior, the second formula for considering psychological evidence, they view workers' compensation cases from a prism of the nexus between cause and effect similar to the prism for bodily injury claims.[208] For instance, "[u]nder New York's Worker's Compensation scheme, psychological . . . injury precipitated by psychic trauma [was] compensa[ted] to the same extent as physical injury."[209] Within this formula, adjudicating bodies allow "workers' compensation benefits for workers suffering emotional distress or like injury as a result of nonsudden emotional stimuli."[210] Similar

---

206. DSM-IV, *supra* note 205, at 428. The symptom clusters of PTSD include:

> Reexperience: "recurrent and intrusive distressing recollections of the event"; "dreams of the event"; "acting or feeling as if the traumatic event were recurring"; "intense psychological distress at exposure to internal or external cues that symbolize or resemble an aspect of the traumatic event"; and "physiological reactivity on exposure to internal or external cues that symbolize or resemble an aspect of the traumatic event."
>
> Persistent avoidance of stimuli associated with the trauma to include: efforts to avoid thoughts, feelings, or communications; "efforts to avoid activities, places, or people"; "inability to recall an important aspect of the trauma"; "markedly diminished interest or participation in significant activities"; "feeling of detachment or estrangement from others"; "restricted range of affect"; and "sense of a foreshortened future."
>
> Persistent symptoms of increased arousal to include: "difficulty falling or staying asleep"; "irritability or outbursts of anger"; "difficulty concentrating"; "hypervigilance"; and "exaggerated startle response."

Id.; *see also* Harry Croft, *How Did PTSD Change from the DSM-IV to the DSM-5?*, HEALTHYPLACE (Dec. 18, 2013), http://www.healthyplace.com/blogs/understandingcombatptsd/2013/12/18/ptsd-change-dsm-iv-dsm-5/.

207. *Cf.* Anushka Pai et al., *Posttraumatic Stress Disorder in the DSM-5: Controversy, Change, and Conceptual Considerations*, 7 BEHAV. SCIS. 1, 1 (2017). "Changes to the diagnostic criteria from the *DSM-IV* to *DSM-5* include: the relocation of PTSD from the anxiety disorders category to a new diagnostic category named 'Trauma and Stressor-related Disorders', the elimination of the subjective component to the definition of trauma, the explication and tightening of the definitions of trauma and exposure to it, the increase and rearrangement of the symptoms criteria, and changes in additional criteria and specifiers." *Id.*

208. Emmanuel S. Tipon, Annotation, *Right to Workers' Compensation for Emotional Distress or Like Injury Suffered by Claimant as Result of Nonsudden Stimuli – Requisites of, and Factors Affecting, Compensability*, 106 A.L.R. 5th 111 (2003) (citing Consolidated Freightways v. Drake, 678 P.2d 874 (Wyo. 1984)).

209. J.T.W., Annotation, *Workmen's Compensation—Mental State or Nervous Condition Following Accident or Injury as Compensable, or Factor in Determining Amount or Duration of Period of Compensation*, 86 A.L.R. 961 (1933) (citing N.Y. WORKERS' COMP. LAW § 1 et seq. (McKinney); Patterson v. Xerox Corp., 732 F. Supp. 2d 181 (W.D.N.Y. 2010)).

210. Tipon, *supra* note 208.

responses are seen in cases of psychic trauma or stressful condition related to workplace sexual harassment and workplace discrimination cases resulting from a plaintiff's national origin, race, and gender.[211] In these cases, bullying, harassment, or discrimination are these circumstances for the court to consider the stress as triggered by the psychological event.

Other tribunals arrive at the same conclusion when they consider the circumstances which gave rise to the behavior, the third formula, but through other means. Under Louisiana statute and common law, an accident precipices the compensable injury when a non-physical occurrence or event occurs.[212] The accident is the circumstance that gave rise to the behavior that triggers a review of psychological evidence.[213] That accident can occur when the claimant watches a co-employee fall to death after the collapse of a scaffold, suffers robbery, suffers fear of sexual abuse, or views co-employee suicide.[214] In Alabama, under the Alabama Workmen's Compensation Act, when psychological injuries are concerned, the trial court may consider all evidence relating to circumstances including when the claimant suffers a physical injury, no matter how slight, one day before a disabling neurosis developed.[215]

When courts accept psychological evidence by recognizing the correlations between certain behaviors and certain causal circumstances, they also activate the third formula.[216] Under this formula, they treat certain behavior like a medical diagnosis.[217] For instance, in PTSD cases, the pattern of behavior is brought on by a causal circumstance of a stressor event and followed by symptoms.[218] Subsequently, courts accept the psychological evidence that the symptoms are consistent with specific events that impair, affront, and/or disrupt personal integrity.[219] Their willingness to accept the general evidence of PTSD to support a doctrinal expansion

---

211. *See* Schiraldi v. AMPCO Sys. Parking, 9 F. Supp. 2d 213, 217 (W.D.N.Y. 1998) (alleging sexual harassment); *Patterson*, 732 F. Supp. 2d at 185 (alleging discrimination based upon plaintiff's national origin, race and gender).

212. Deus v. Allstate Ins. Co., 15 F.3d 506, 519 (5th Cir. 1994) (citing Sparks v. Tulane Med. Ctr. Hosp. & Clinic, 546 So. 2d 138, 147 (La. 1989)).

213. *Id.*

214. *Id.* at 520.

215. Allen v. Diversified Prods., 453 So. 2d 1063, 1065 (Ala. Civ. App. 1984) (citing Bickerstaff Clay Prods. Co. v. Dixon, 444 So. 2d 390 (Ala. Civ. App. 1983)).

216. *See* Shen, *supra* note 176, at 2160.

217. *Id.*

218. *See id.* (citing AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS-IV-TR 463–68 (4th ed. 2000)) ("PTSD is also defined and diagnosed exclusively through *behavioral* measures. The diagnostic criteria for PTSD make no explicit mention of the brain.").

219. *See* Rose et al., *supra* note 107, at 177 ("Patients with PTSD describe symptoms that impair, affront, and/or disrupt their personal integrity and associate these symptoms with specific events.").

of emotional distress claims may be due to the dramatic and pervasive impact PTSD has had in American psychiatry and social justice.[220] This acceptance admits that exposure to an extreme traumatic stressor can cause serious psychological injuries even without physical manifestations, in which case the accuracy of individual diagnoses arguably becomes less important.[221] Because PTSD is incident specific,[222] it creates a presumption of causation in which the correlations between certain behaviors and certain causal circumstances are recognized.

The practice of recognizing the correlations between certain behaviors and certain causal circumstances also materializes in worker's compensation cases. In a District of Columbia worker's compensation case, the court balanced the general rule of causation with psychological behavior in a situation involving depression and other psychological illnesses.[223] The court said causation is to be "liberally construed," yet special standards for certain types of claimed injuries have been crafted.[224] While relying on the seminal case of *Dailey v. 3M Co. and Northwest Nat'l Ins. Co., H & AS No. 85-259,* the court noted that the special standard for claimed psychological injury focus is on the causal circumstances of job-related stress, an employee with a predisposition to mental illness, and "whether the stressors of the job were so great that they could have caused harm to an average worker."[225] The *Dailey* test, as it is known in the workers' compensation arena, is

220. *See* Lars Noah, *Pigeonholing Illness: Medical Diagnosis as a Legal Construct*, 50 HASTINGS L.J. 241, 271 (1999) ("[C]ourts have accepted general evidence concerning PTSD as a nosological entity to support a doctrinal expansion of emotional distress claims . . . ."); Stone, *supra* note 204, at 23 ("No diagnosis in the history of American psychiatry has had a more dramatic and pervasive impact on law and social justice . . . ."); *see also* Nichols v. Busse, 503 N.W.2d 173, 180 (Neb. 1993); Berthelot v. Aetna Cas. & Sur. Co., 623 So. 2d 14, 22 (La. Ct. App. 1993); Giamanco v. EPE, Inc., 619 So. 2d 842, 845-46 (La. Ct. App. 1993); Sullivan v. Bos. Gas Co., 605 N.E.2d 805, 811 (Mass. 1993).

221. Noah, *supra* note 220, at 271.

222. *See* Daniel W. Shuman, *Persistent Reexperiences in Psychiatry and Law: Current and Future Trends for the Role of PTSD in Litigation*, *in* POSTTRAUMATIC STRESS DISORDER IN LITIGATION: GUIDELINES FOR FORENSIC ASSESSMENT 1, 4 (Robert I. Simon ed., 2d ed. 2003) ("PTSD posits a causal relationship between traumatic events and psychiatric disorder . . . ."); Bonnie L. Green & Stacey I. Kaltman, *Recent Research Findings on the Diagnosis of PTSD: Prevalence, Course, Comorbidity, and Risk*, *in* POSTTRAUMATIC STRESS DISORDER IN LITIGATION: GUIDELINES FOR FORENSIC ASSESSMENT, *supra* note 222, at 19, 33 ("Development of PTSD has been clearly linked with level of exposure to objective aspects of the stressor experience . . . .").

223. Spartin v. D.C. Dep't of Emp. Servs., 584 A.2d 564 (D.C. 1990).

224. *Id.* at 568 ("Although the 'general rule of causation' in workers' compensation cases is to be 'liberally construed,' . . . the Director has crafted special standards for certain types of claimed injuries . . . [and] the *Dailey* test is such a special standard.") (quoting Capital Hilton Hotel v. D.C. Dep't of Emp. Servs., 565 A.2d 981, 985 (D.C. 1989)).

225. *Id.* at 568-69 (using *Dailey* to determine that on a showing that actual conditions of employment a worker was claiming excessive amount of stress caused him to become disabled with depression and other psychological illnesses may recover worker's compensation benefits for emotional injury even if the employee was predisposed to psychic injury).

objective.[226] Within this objective standard, the District of Columbia case, applying *Dailey*, not only adopts the modern view for compensation[227] but holds there is liability when actual conditions of employment are the cause of an employee's emotional injury.[228] Thus, from a legal application standpoint, workers' compensation cases in the District of Columbia join the modern jurisdictions to support compensation when the employee's pattern of behavior or diagnosis is caused by stressor events at the workplace and followed by symptoms.

C. Criminal Law Cases

Federal criminal courts also consider the applicability of psychological injuries as bodily injury in cases subject to enhancements.[229] The United States Sentencing Guideline, involving attempted murder, provides for a four-level enhancement if the victim sustained permanent or life-threatening bodily injury and a two-level enhancement if the victim sustained serious bodily injury.[230] Cases where the enhancement applied not only mean injuries involving a substantial risk of death, loss, or substantial impairment of the function of a bodily member, or organ, but it includes loss or substantial impairment of the mental faculty that is likely to be permanent.[231] Embracing the theory of treating psychological injury as a bodily injury, Congress seeks proportionality in sentencing through a system that imposes appropriately different sentences for criminal conduct of differing severities.[232]

In supporting the United States Sentencing Manual's definition of mental faculty, the Second Circuit "interpret[s] 'bodily injury' to include harm to a victim's

---

226. Porter v. D.C. Dep't of Emp. Servs., 625 A.2d 886, 889 (D.C. 1993), *abrogated by* McCamey v. D.C. Dep't of Emp. Servs., 947 A.2d 1191 (D.C. 2008) ("[T]he *Dailey* test 'fits within the modern trend to compensate workers for emotional injury caused by job stress' even though they bring to the job some predisposition to emotional illness, but that the test 'is objective' . . . .").

227. *See Spartin*, 584 A.2d at 569 ("*Dailey* fits within the modern trend to compensate workers for emotional injury caused by job stress.").

228. *See id.* at 568.

229. *See* U.S. SENT'G GUIDELINES MANUAL § 2A2.1 (U.S. SENT'G COMM'N 2015) [hereinafter U.S.S.G.].

230. *Id.* at § 2A2.1(b)(1).

231. *Id.* at § 1B1.1 cmt. n.1(K).

232. USSG ch. 1, pt. A (U.S. SENT'G COMM'N 2021). The three objectives that Congress sought to achieve in enacting the Sentencing Reform Act of 1984 include: (1) "to avoid the confusion and implicit deception that arose out of the pre-guidelines sentencing system which required the court to impose an indeterminate sentence of imprisonment and empowered the parole commission to determine how much of the sentence an offender actually would serve in prison," (2) to create a "reasonable uniformity in sentencing by narrowing the wide disparity in sentences imposed for similar criminal offenses committed by similar offenders," (3) to seek "proportionally in sentencing through a system that imposes appropriately different sentences for criminal conduct of differing severity." *Id.*

mental processes and psychic well-being."[233] In *U.S. v. Spinelli,* the victim of a murder attempt who was shot at close range sustained only temporary minor physical injuries but allegedly suffered permanent psychological and emotional injuries.[234] The Second Circuit made two arguments supporting the Guidelines' automatic connections to psychological injuries to physical injuries.[235] First, the court said, "the resulting injury to the victim is the sole determinant of whether these enhancements are justified" and the guidelines were made dependent on the resulting injuries to the victim.[236] Second, the court said that the "two-level enhancement for 'serious bodily injury' automatically becomes applicable in cases where 'medical intervention' is required, and this remains so when the necessary intervention is the result of psychic damage only."[237] The court further adds, "[i]t is clear, then, that the 'impairment of a . . . mental faculty' category is capacious enough to encompass lasting emotional and psychological harm, at least when that harm is aggravated by circumstances that prolong its detrimental impact on the victim."[238]

Likewise, the First Circuit makes the same psychological injury is a bodily injury argument by interpreting the codification of a federal carjacking code.[239] In *U.S. v. Lowe*, the defendant appealed his twenty-five year sentence for kidnapping.[240] Under 18 U.S.C. § 2119(1), the violation "enhances [his] 15–year sentence . . . 'if serious bodily injury (as defined in section 1365 of this title) results' from the commission of a carjacking."[241] The statute defined "'serious bodily injury' . . . [as] bodily injury which involves: (A) a substantial risk of death; (B) extreme physical pain; (C) protracted and obvious disfigurement; or (D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty."[242] On this issue, the defendant argued that the victim, whom he raped, "did not suffer serious bodily injury as defined in the [kidnapping] statute, and that even if the rape constitutes serious bodily injury, the rape is outside the coverage of the statute because it did not result from the force, violence[,] and intimidation used to take the car."[243]

---

233. United States v. Spinelli, 352 F.3d 48, 58 (2d Cir. 2003) (citing United States v. Jacobs, 167 F.3d 792, 801 (3d Cir. 1999)) ("[N]oting that Guidelines treat physical and non-physical injuries with comparable seriousness."); United States v. Rodgers, 122 F.3d 1129, 1132-33 (8th Cir. 1997) (holding that while PTSD may not always rise to the level of 'serious bodily injury,' it can in some circumstances).

234. *Spinelli*, 352 F.3d at 59.

235. *Id.* at 57-58.

236. *Id.*

237. *Id.* at 58-59.

238. *Id.* at 59 (quoting U.S.S.G. § 1B1.1, cmt. n.1(j) (1999)).

239. United States v. Lowe, 145 F.3d 45, 53 (1st Cir. 1998).

240. *Id.* at 47.

241. *Id.* at 52.

242. *Id.* at 52-53.

243. *Id.* at 52.

The First Circuit held that the carjacking resulted in serious bodily injury "as a direct consequence of the rape," and the victim "suffered serious and continuing mental trauma, constituting a 'protracted . . . impairment of . . . mental facult[ies].'"[244] In deriving at this conclusion, the court cites *United States v. Vazquez-Rivera*,[245] which previously held "persistent psychological trauma resulting from rape qualified as protracted impairment of mental faculties, and therefore, as 'serious bodily injury.'"[246]

Federal courts and administrative tribunals that wrestle with the issue of harsher sentencing for criminal offenders who inflict mental or *psychological injury* understand the relationship between the mind and brain. They find help in arriving at this conclusion from the inclusion of "mental faculty" within the definition of serious bodily and the Sentencing Guidelines Manual. However, their adoptive theory was rationalized in *Spinelli*. Although the court found insufficient facts in the record to determine whether the victim had "sustained [such] injury" and "remanded for further inquiry," the court still held that "emotional injury can result in 'loss or substantial impairment of the function of a . . . mental faculty.'"[247] The obvious deduction is that these criminal courts identify the victims' particular susceptibility or vulnerability much like the civil courts and administrative tribunals who adopted the psychology injury is bodily injury theory.

V. THE REACHING FAR INTO THE WORKAHOLIC SYNDROME

Given that employers "encourage[], support[] and compensate[]" for hard work, today's employees are "becom[ing] potential victims of work addiction."[248] Working under pressures "for short term gains in terms of productivity and profits" for employers, employees with latent psychological conditions are oblivious to the potential negative results that can occur. These results can take on the form of workaholic syndrome, which poses a "threat to their work life, personal, social and psychological well-being."[249] When workaholic symptoms are awakened by "a stressor event," "the severity of the event and the nexus to symptoms" fall within the reach of the eggshell doctrine. In consideration of the views of progressive psychologists, the eggshell doctrine precedent, with the modern court interpretation, jurisprudence

244. *Id.* at 53.

245. 135 F.3d 172 (1st Cir. 1998).

246. *Lowe*, 145 F.3d at 53.

247. United States v. Spinelli, 352 F.3d 48, 57 (2d Cir. 2003).

248. *See* Sharma & Sharma, *supra* note 21, at 89 (introducing the pace of change in the present era of living and the corporate environment that encourages employee productivity at a high rate).

249. *Id.* at 88 ("Besides, the adverse effect on the health status workaholics as compared to non-workaholics, workaddictors' also face threat to their work life, personal, social and psychological well-being.").

is obligated to take into account the impact of workplace stress that results in workaholic syndrome. An analogous assessment is similarly appropriate for consideration since the concept of considering the stress-induced psychological injury, as bodily injury, is consistent with the functionality of the body by psychologists that think about the effect of stress on the individual in a unified mental and physical way. For that reason, it is vital to examine the essential reasons why the reach of the eggshell doctrine extends to the results of work-induced stress once the stress aggravates or accelerates dormant psychological tendencies of the workaholic syndrome.

A. The Close Nexus Between Workplace Stress and Workaholic Syndrome

Previously viewed by society as a "cognitive paradigm," the workaholic syndrome is sometimes overlooked as a brain injury.[250] In "[t]he workaholic's world," their behavior is acceptable as a respectable trait because it is a "world . . . of power, control, success, . . . prestige[,] . . . complexity, responsibility, ambition, and drive."[251] Tagged as "the best-dressed problem of the 21st century,"[252] experts believe most workaholics do not realize they are gradually becoming emotionally crippled and addicted to control and power in a compulsive drive to gain approval

250. *See* VAN WIJHE, *supra* note 11, at 12-14 (citing Lynley McMillan et al., *Workaholism: A Review of Theory, Research, and Future Directions*, 18 INT'L REV. INDUS. & ORGANIZATIONAL PSYCH. 167 (2003)). Psychologist L. McMillian and others distinguish traditional psychological perspectives from various psychologist on workaholism. Here he indicates "workaholism could be viewed from an operant learning perspective as a learned behavior that originates from continuous reinforcement: the learning theory paradigm," *id.* at 12. A trait theory of workaholism, with a trait-specific and a broader personality approach, would have two premises. A trait-specific theory "equates workaholism with specific trait-like behavioral manifestations, such as perfectionism, strong need for achievement, obstinacy, orderliness, compulsiveness, and rigidity," *id.* at 13. A broader personality approach "consists of generic explanations of human behavior, for instance, higher-order personality traits like conscientiousness and neuroticism." *Id.* Another perspective considers workaholism as a result from dysfunctional family relationships, "whereby family's rules, beliefs, and behavior patterns . . . view[] workaholic behavior as a reaction to a maladaptive family functioning." *Id.* Another approach identifies that the cognitive paradigm may provide a framework for understanding workaholism in that "some individuals may possess a cognitive vulnerability that increases their risk for dysfunctional behaviors and feelings." *Id.*

251. BARBARA KILLINGER, WORKAHOLICS: THE RESPECTABLE ADDICTS 3 (1997).

252. Univ. N.C. Charlotte, *Living to Work: A Look at the Best Dressed Problem of the 21st Century*, NEWSWISE (July 26, 2010, 3:00 PM), https://www.newswise.com/articles/a-look-at-the-best-dressed-problem-of-the-21st-century (citing the phrase coined by Robinson, *supra* note 25); *see* ROBINSON, *supra* note 66, at 188 (titling a chapter as "Carrying the Legacy of the Pretty Addiction").

and success.[253] In many instances, they lack a perspective on the true value of life, and love becomes distorted.[254]

The theory that workaholism is a cognitive paradigm diminishes when psychologists re-evaluate how stress is associated with many mental and physical disorders. For these psychologists, the disruption of the balance between different organs of the body link to the impact of stress.[255] So, when research and scientific knowledge evaluate what a person experiences, thinks, and feels, it has been shown to have a profound effect on the body's physiology and on the brain.[256] "Gradually, scientists came to realize that many mental disorders may have their basis in stress-induced alterations in brain function and structure."[257] "[T]he old Greek concepts of *thumos* and *phrenos*" are evidence of the effects of stress on a range of physical and mental outcomes "have long been recognized as being associated with stress exposure" and considered by psychologists.[258]

Similar to other work-induced stress, once stress aggravates or accelerates dormant psychological tendencies of a person with workaholic tendencies, there is a psychological injury to the brain, i.e., a bodily injury.[259] Then, when considering the individual's adaptive responses and pre-existing psychiatric disorders, responses to this level of stress have one singular change within the body, that being the brain.[260] Since the brain is the central organ of stress processes and different

253. *See* ROBINSON, *supra* note 66, at 18-20 (describing the increasing gradual process of becoming emotionally crippled and addicted); *see id.* at 110, 141 (describing one patient's thoughts that when you're a workaholic, work defines your identity, gives your life meaning, and making an assertion that a workaholic believes that you "must have absolute control over people and situations in order to survive psychologically and physically"); PERNILLE RASMUSSEN, WHEN WORK TAKES CONTROL: THE PSYCHOLOGY AND EFFECTS OF WORK ADDICTION 61 (2008) ("A psychologically insecure work environment may also contribute to work taking control of a person. If the workplace is characterized by competition and insecurity, it can lead to the individual employee spending a lot of extra time doing his work.").

254. *See* Sharma & Sharma, *supra* note 21, at 88 ("Work addicts divert their energy to work, gradually neglect their family . . . ultimately distan[ce] themselves from the[ir] personal life . . . have no time at all for any outside relationships including their family . . . experience more marriage failures that commonly ended up in divorce . . . [and] spouses of workaholics have higher levels of marital estrangement and less positive affect than the spouses of non- workaholics . . . .").

255. BREMNER, *supra* note 28, at 13 ("A number of research studies are also consistent with the idea that stress can also have detrimental effects on brain structure and function.").

256. *Id.* at 16.

257. *Id.*

258. *Id.*

259. *See generally id.*; *see also* Kohli, *supra* note 8.

260. *See* Malone et al., *supra* note 24, at 2 (defining job stress and referring to job stress wherein the "job-related factors interact with a worker to change (disrupt or enhance) his or her psychological and/or physiological conditions such that the person (mind or body) is forced to deviate from normal functions"); *see generally* BREMNER, *supra* note 28.

dynamic adaptations, it is a key target for "the wear-and-tear on the body."[261] Accordingly, when the individual worker with adaptive responses or pre-existing psychiatric disorders is exposed to repeated or chronic stress, controlling overall stability becomes a factor.[262] By way of their particular adaptive responses, they are constantly adjusting and balancing various components in the process of adapting to challenges.[263] So, when this activity in the brain is prolonged, it impairs mental and physical health through its inadequate effects to modify its own structure and follow changes within the body or in the external environment.[264] In short, the metabolic, immune, and cardiovascular systems are affected.[265]

Individuals experiencing quantitative and qualitative overload account with various symptoms and behavioral malfunctions do not know these are workaholic tendencies.[266] Unbeknownst to them, their biological make-up, prior experiences, personality traits, and previous training, check all the boxes for an individual assessment with the appropriate focus on workaholic syndrome.[267] Additionally, for them, it is a strong probability that their adaptive responses display a coping mechanism by way of a psychological strategy or adaptation to manage stress. Coupled with emotional and genetic predisposition plus the nature and intensity of their

---

261. *See* McEwen & Gianaros, *supra* note 40, at 5-4, 5-11 ("The brain is the central organ of stress processes and allodynamic adaptation, and it is a key target of allostatic load . . . the wear -and-tear on the brain . . . .").

262. *See* Bruce S. McEwen & Teresa Seeman, *Protective and Damaging Effects of Mediators of Stress*, 896 ANNALS N.Y. ACAD. SCI. 30 (1999); Bruce S. McEwen, *Allostasis and Allostatic Load: Implications for Neuropsychopharmacology*, 22 NEUROPSYCHOPHARMACOLOGY 108, 110-11 (2000) ("'Allostatic load' refers to the price the body pays for being forced to adapt to adverse psychosocial or physical situations, and it represents either the presence of too much stress or the inefficient operation of the stress hormone response system, which must be turned on and then turned off again after the stressful situation is over.").

263. Esch et al., *supra* note 31, at 206 ("[T]he term 'stress' more generally describes processes associated with challenging stimuli ('stressors'), situations that require behavioral adjustments, and the organism's ability to cope with coupled reactions . . . [Thereby] physiological pathways become activated, including the *fight-or-flight* or stress response, a set of physiological mechanisms that get started in challenging situations to facilitate behavioral adjustments, adaptation, and survival.").

264. *See id.* ("[W]hen prolonged stress or an overwhelming acute stressor are involved these very same physiological pathways, although intentionally having protective properties, may also turn out to exert detrimental effects upon individual's integrity and health."); *see* BUTLER, *supra* note 34, at 7 ("[O]lder people are inclined to have more rigid coping mechanisms and be less able to develop flexible approaches in dealing with the effects of stressors.").

265. McEwen & Gianaros, *supra* note 40, at 5.10 ("Allostatic systems enable the individual to cope with stressful experiences . . . [except when] sluggish, ineffective, prolonged, or not terminated promptly, [they] can impair mental and physical health through their maladaptive effects on brain plasticity and metabolic, immune, and cardiovascular pathophysiology.").

266. Lisa Dorn, *Stress, Health, and the Office Environment*, *in* HUMAN STRESS AND THE ENVIRONMENT 161 (J. Rose ed., 1994); *see* Esch et al., *supra* note 31, at 206.

267. *See* BUTLER, *supra* note 34, at 7.

threat,[268] the resulting behavior they experience noticeably interferes with their activities of daily living and their ability to adjust to and participate in the life of the person with workaholic tendencies.[269]

B. Workaholic Syndrome and A Judicial Matter-of-Fact-Finding Analysis on Psychological Symptoms

Within the context of modern legal disputes, the reach of the eggshell doctrine extends to the results of work-induced stress once the stress aggravates or accelerates the dormant psychological tendencies of the workaholic syndrome. In the context of legal disputes under the eggshell doctrine, the pattern of adjudication by modern jurisdictions dictates adherence to and an obligation to a matter-of-fact-finding with emphasis on psychological symptoms which equates to bodily injuries. For the individual with tendencies of workaholic syndrome, this is consistent with the holding and reasoning in *Stoleson* and the logical route to evaluate causation for the workaholic syndrome.[270] This is determined by emphasizing psychological symptoms, similar to the plaintiffs in *Stoleson, Baker,* and other cases, where the etiology of the workaholic syndrome is regarded by many as being "unknown" as well.[271]

Workaholic syndrome, defined in terms of its symptoms, manifests only distressing experiences (as anxiety) or undesirable behavior (as abuse of alcohol) and phenomena that are inseparable from normal sensation, emotion, intentions, and actions, i.e., the very essence for non-organic disorders, which necessitates an analysis outside of the traditional legal causation.[272] In terms of its symptoms, the workaholic classifications, or a system used to group its category, have rarely been based on solid theory or empirical underpinnings.[273] Although not an official diagnosis in the DSM-5, this disorder contains psychological symptoms under obsessive-compulsive personality disorder and "refers to an excessive devotion to work and productivity leading to the exclusion of leisure activities and friendships."[274] Thus,

---

268. *See* Ghadirian, *supra* note 51, at 50.

269. Univ. N.C. Charlotte, *supra* note 252 (citing Robinson, *supra* note 25) ("[W]orkaholic[s] might binge, working around the clock for days on end, or the workaholic might view work as his/her life, and family and friends as a secondary distraction.").

270. *See* Stoleson v. United States, 708 F.2d 1217, 1221-24 (7th Cir. 1983).

271. *See* Cella v. United States, 998 F.2d 418, 423-24 (7th Cir. 1993) (discussing case law which references workaholic syndrome's etiology as "unknown").

272. O. Bratfos, *Organic Versus Non-Organic Diseases. A Distinction Necessary for Rational Practice*, 110 TIDSSKR NOR LAEGEFOREN 865 (1990) (article in Norwegian).

273. Andreassen, *supra* note 11, at 1 ("Workaholic typologies have rarely been based on solid theoretical or empirical underpinnings.") (internal citation omitted).

274. Marco Giannini & Aurora Scabia, *Workaholism: An Addiction or a Quality to be Appreciated?*, 5 J. ADDICTION RSCH. & THERAPY 1 (2014); 12 AM. JUR. 3D *Proof of Facts* § 323 (1991) ("*Obsessive-*

using the matter of law finding analysis, an adjudicating body can only conclude that is an impossible methodology since it is not a defined diagnosis within itself. This is because the cluster of symptoms, not categorized, makes known a causal relationship between trauma or stress and the documentation of workaholic syndrome. Thereby comparing the individual characteristics of the patient's psychological symptoms to determine etiology is the logical route and aligns with the matter-of-fact-finding analysis from *Stoleson.*[275]

The logical route to gauge how courts evaluate a psychological diagnosis is in the Seventh Circuit, in the case of *Cella v. U.S.*, which shares some insight for deviating from the matter of law analysis.[276] This case considers the medical/psychological diagnosis to be as an idiopathic disorder, any disease that is of uncertain or unknown origin with an unknown cause.[277] *Cella* did not evaluate the expert's testimony as an attempt to state definitively the full etiology.[278] This type of evaluation was impossible. For this court, the etiology of the plaintiff's condition required the "analysis of medical literature and case study comparison with the individual characteristics of the patient's case to determine etiology."[279] This court said the application was "an accepted methodology in reaching [a] conclusion."[280] In further support of this slant on analysis, the court said it "merely offers a clinical diagnosis of [the plaintiff's] condition and (based on his review of [the plaintiff's] medical history, neurological examination of [the plaintiff], and medical literature research) an opinion regarding the cause of his condition."[281] Therefore, the court ruled that "[t]he methodology utilized by [the expert] in generating his opinion regarding causation . . . was well-founded."[282]

Given the various psychological manifestations of workaholic syndrome, the methodology of psychiatric evaluations demonstrates that matter-of-fact-finding with emphasis on psychological symptoms is pertinent when scrutinizing work-induced stress cases. Similar to the expert's position in *Cella*, "some type of severe emotional or physical stress seemed to have etiological importance" in the

---

compulsive disorder (formerly called a neurosis) is a disorder in which thoughts, words, or ideas are thrust into the patient's conscious mind, frequently against the patient's desire. The affected patient may also have an impulse or compulsion to act out certain irrational behavior.").

275. *See Stoleson*, 708 F.2d at 1221-24.

276. *See Cella*, 998 F.2d at 424-29.

277. *See id.* at 420 ("[The doctor] recognized that the generally-accepted medical dogma identifies polymyositis as an idiopathic disorder . . . .").

278. *Id.* at 427.

279. *Id.* at 426.

280. *Id.*

281. *Id.* at 427.

282. *Id.* at 426.

plaintiff's case.[283] The etiological importance for psychiatric disorders stemming from stress-induced workaholic syndrome is in the psychiatric medicine and the individual because the stress "overwhelm[s] the ordinary human adjustments to life."[284] The etiology of the workaholic syndrome also requires an analysis of symptoms already identified in the DSM-5 categories.[285] This analysis of symptoms within the DSM-5 is universally accepted.[286] However, for those who debate this proclamation, medical literature was the basis for *Cella.*[287] Furthermore, according to *Cella,* "an expert's opinion need not be universally accepted in the scientific community before it can be sufficiently reliable to offer probative value."[288] The ultimate expression left by *Cella* and applicable to workaholic syndrome solidifies the appropriateness of the methodology; "'[a]s long as the expert's methodology is well founded, the nature of the expert's conclusion is generally irrelevant, even if it is controversial or unique.'"[289]

C. Workaholic Syndrome and Vulnerability Without a DSM-5 Official Diagnosis

Because the individual's vulnerability generally is psychological, the reach of the eggshell doctrine extends to workaholic syndrome prompted by work-induced stress. In other words, the "capabil[ity] of being physically or emotionally wounded,"[290] internalized (irrational) external performance by an irrational belief about high-performance standards, is the vulnerability factor for workaholism.[291]

---

283. *Id.* at 421.

284. *See* BUTLER, *supra* note 34, at 13 ("'[T]raumatic events are extraordinary, not because they occur rarely, but rather because they overwhelm the ordinary human adaptions to life.'") (quoting JUDITH L. HERMAN, TRAUMA AND RECOVERY: THE AFTERMATH OF VIOLENCE – FROM DOMESTIC ABUSE TO POLITICAL TERROR 33 (1992)).

285. DSM-IV-TR, *supra* note 57, at 431.

286. *DSM-5*, WIKIPEDIA, https://en.wikipedia.org/wiki/DSM-5 (last visited Jan. 20, 2024). "In the United States, the DSM serves as the principal authority for psychiatric diagnoses. Treatment recommendations, as well as payment by health care providers, are often determined by DSM classifications, so the appearance of a new version has practical importance," *id.*

287. *See* Cella v. United States, 998 F.2d 418, 424-25 (7th Cir. 1993).

288. *Id.* at 426 (citing Christophersen v. Allied-Signal Corp., 939 F.2d 1106, 1111 (5th Cir. 1991), *abrogated by* Daubert v. Merrell Dow Pharms., Inc., 509 U.S. 579 (1993)).

289. *Id.* at 426 (quoting *Christophersen*, 939 F.2d at 1111).

290. *Vulnerable*, MERRIAM-WEBSTER DICTIONARY, https://www.merriam-webster.com/dictionary/vulnerable (last visited Feb. 9, 2023).

291. Corine van Wijhe et al., *Irrational Beliefs at Work and Their Implications for Workaholism*, 23 J. OCCUPATIONAL REHAB. 336, 343 (2013) ("[W]orkaholics have internalized (irrational) external performance standards to protect their self-worth . . . [meaning] irrational beliefs about high performance standards that have to be met at work could act as a vulnerability factor for workaholism.").

Additionally, jurisprudence sanctions the fact that a plaintiff's vulnerability can be a psychological pre-existing condition rather than physical.[292]

The vulnerability of the workaholic, although not without a DSM-5 official diagnosis, originates in an "addiction to work, the compulsion or the uncontrollable need to work incessantly."[293] "[S]everal authors have proposed that workaholism is associated with obsessive compulsiveness, which reflects a preoccupation with matters of control."[294] From another view, the characteristics include working long hours, an obsession with work, and working "beyond what is reasonably expected from them, in order to meet organizational or economic requirements."[295] Experts seem to distinguish the characteristics between a behavioral component (excess work) and a cognitive component (work compulsion) in workaholic syndrome,[296] which is also sometimes characterized as an addiction.[297]

Other studies highlight vulnerability traits of workaholics as irrational self-orientated performance demands and negative emotions.[298] "Irrational beliefs are rigid, illogical and unreasonable cognitions."[299] "Such irrational beliefs are the root

---

292. Stoleson v. United States, 708 F.2d 1217, 1221 (7th Cir. 1983) (explaining it was irrelevant that the plaintiff's vulnerability was psychological rather than physical); *see also* Kim, *supra* note 185, at 463.

293. Bartczak & Ogińska-Bulik, *supra* note 43, at 3 (quoting WAYNE E. OATES, CONFESSIONS OF A WORKAHOLIC: THE FACTS ABOUT WORK ADDICTION 57 (1971)).

294. VAN WIJHE, *supra* note 11, at 78; van Wijhe et al., *supra* note 291, at 338 ("[W]orkaholism seems characterized by a lack of confidence and control over circumstances."); Janet T. Spence & Ann S. Robbins, *Workaholism: Definition, Measurement, and Preliminary Results*, 58 J. PERSONALITY ASSESSMENT 160, 160 (1992) (stating workaholics who are signified by elevated levels of work involvement, driven by an inner compulsion to work); Mahin Sarfaraz et al., *Assessing the Impact of Workaholism and Work Engagement on Medical University Employee Stress and Satisfaction Levels*, PEERJ, Feb. 4, 2022, at 2 ("These compulsive workers give special preference towards work irrespective of time, working hours and labor category."); Yura Loscalzo & Marco Giannini, *Clinical Conceptualization of Workaholism: A Comprehensive Model*, 7 ORGANIZATIONAL PSYCH. REV. 306, 306, 311 (2017) (proposing "a *comprehensive model*, which defines workaholism as a clinical condition that is characterized by both externalizing (i.e., addiction) and internalizing (i.e., obsessive-compulsive) symptoms and by low levels of work engagement," and also providing similar definitions from other experts).

295. Corine van Wijhe et al., *Rise and Shine: Recovery Experiences of Workaholic and Nonworkaholic Employees*, 22 EUR. J. WORK & ORGANIZATIONAL PSYCH. 476, 477 (2013) (citing Kimberly S. Scott et al., *An Exploration of the Meaning and Consequences of Workaholism*, 50 HUM. RELS. 287, 314 (1997)).

296. *Id.*

297. *See id.* (citing Gayle Porter, *Workaholic Tendencies and the High Potential for Stress Among Co-Workers*, 8 INT'L J. STRESS MGMT. 147, 151 (2001)).

298. *See* Loscalzo & Giannini, *supra* note 294, at 316 ("Other cognitive antecedents [for workaholics] include performance-based self-esteem and . . . four irrational beliefs studied (performance demands, approval of coworkers, failure, control) . . . .").

299. van Wijhe et al., *supra* note 291, at 336.

cause of the workaholic's preoccupation with work."[300] In other words, workaholism "may result from a disturbance in the cognitive interpretation."[301] In support of this understanding, one expert examined the associations between irrational beliefs and workaholism by using a new measure of irrational beliefs.[302] The "results predominantly indicate that the belief that one has to meet stringent performance standards is a key irrational cognition of workaholics."[303] From the field of clinical psychology, called the mood as input (MAI) model,[304] this same expert then evaluated the negative emotions of workaholics.[305] "The results of the structural analyses reveal[ed] that negative affect is related to workaholism."[306] In short, the findings determined that "[w]orkaholics continue working because they feel that they have not completed enough work; they are driven by the desire to live up to their own and others' expectations, seemingly without considering their enjoyment of work."[307] "Taken together, these findings highlight the psychological vulnerabilities inherent in workaholics."[308]

The vulnerability traits of workaholics that ultimately activate, aggravate, or accelerate psychological tendencies are the same psychological predispositions in the DSM-5. Expert scholars in psychology agree "workaholism should be placed in the DSM between the chapters on obsessive-compulsive and related disorders."[309] This conclusion is based on "the majority of scholars [who] have defined

---

300. *See id.* (citing Charles P. Chen, *Improving Work-Life Balance: REBT for Workaholic Treatment*, *in* RESEARCH COMPANION TO WORKING TIME AND WORK ADDICTION 310, 310-29 (Ronald J. Burke ed., 2006)).

301. *See id.* at 337.

302. *Id.* at 338.

303. *Id.* at 343.

304. Corine I. van Wijhe et al., *To Stop or Not to Stop, That's the Question: About Persistence and Mood of Workaholics and Work Engaged Employees*, 18 INT'L J. BEHAV. MED. 361, 362 (2011) [hereinafter van Wijhe & Wilmar Schaufeli II].

> The MAI model assumes that people use personal cognitive rules to estimate how they are doing on a given task with no clear ending. That is to say, on the one hand, individuals may evaluate their progress towards a goal by considering how much they have done and on the other hand they may estimate their progress towards a goal by evaluating their current enjoyment in performing the task . . . when evaluating whether one has done enough (i.e., the enough stop rule), a positive mood is interpreted as being satisfied about one's performance, meaning that it is all right to quit the task. However, a negative mood would convey that one is not yet satisfied, implying that one has to continue in order to feel content.

Id.

305. *See id.*

306. *Id.* at 368.

307. *Id.*

308. van Wijhe et al., *supra* note 291, at 345.

309. Loscalzo & Giannini, *supra* note 294, at 329 (showing that that the authors are both at the University of Florence in the School of Psychology).

workaholism as a behavioral addiction."[310] In "[u]sing clinical psychology terminology, they have conceptualized workaholism as an externalizing condition, namely as a disorder characteristic of people that cope with psychological discomfort by means of behaviors that are visible to others, such as aggressiveness, antisocial behaviors, or addictions."[311] In the face of the growing body of literature, these experts developed "a new model that is . . . comprehensive and easy to test," providing a route for the "recognition of workaholism as a mental disorder in the next edition of the DSM."[312]

The report and findings of two experts, relying on a vast body of literature, address the results of vulnerability that start with negative emotions to stressful situations and bring into being coping behaviors identified as DSM-like characteristics.[313] These experts count on a proposition "supporting the possibility that workaholism could be an internalizing disorder instead of an externalizing one" and is therefore an obsessive-compulsive disorder.[314] They then count on almost fifty years of workaholism literature where most scholars referred to workaholism as an externalizing disorder exhibiting behavioral addiction, especially in the most recent publications.[315] In identifying workaholism as an "internalizing or an externalizing disorder," a section of the DSM can easily be identified.[316] For instance, concerning internalizing factors, some studies report "workaholics are characterized by traits related to the obsessive-compulsive personality, such as perfectionism," [317] a DSM-5 category. "[T]his is congruent with the diagnostic criteria for personality disorders."[318] As it relates to externalizing factors, other studies found "aggressive

310. *Id.* at 308.

311. *Id.*

312. *Id.* at 306–07.

313. *See id.* at 315.

314. *Id.* at 311 (citing Robinson, *supra* note 25).

315. *See id.* (citing Cecilie Schou Andreassen et al., *Development of a Work Addiction Scale*, 53 SCANDINAVIAN J. PSYCH. 265 (2012)); *see also* Mark D. Griffiths & Maria Karanika-Murray, *Contextualising Over-Engagement in Work: Towards a More Global Understanding of Workaholism as an Addiction*, 1 J. BEHAV. ADDICTIONS 87 (2012).

316. *See* Loscalzo & Giannini, *supra* note 294, at 311 ("It is nevertheless important to establish whether workaholism is best conceived of as an internalizing or an externalizing disorder, as this could tell us in which section of the DSM it should be placed . . . .").

317. *Id.* at 315 (citing Witsinee Bovornusvakool et al., *Examining the Antecedents and Consequences of Workaholism*, 15 PSYCH.-MANAGER J. 56, 63 (2012); Joachim Stoeber et al., *Perfectionism and Workaholism in Employees: The Role of Work Motivation*, 55 PERSONALITY & INDIVIDUAL DIFFERENCES 733 (2013); Aharon Tziner & Miri Tanami, *Examining the Links Between Attachment, Perfectionism, and Job Motivation Potential with Job Engagement and Workaholism*, 29 J. WORK & ORGANIZATIONAL PSYCH. 65 (2013)).

318. *Id.* at 312.

behaviors[] in workaholics . . . as an addiction with the same seven core features of the other substance-related addictions."[319]

Many studies reveal that interactions between individuals with these pre-existing psychological tendencies, environmental factors, and work-induced stress have "a direct effect on workaholism."[320] This is because the symptoms are in the "respective diagnostic criteria," pointing to an underlying disorder.[321] These consistencies explain the link to a DSM-5 diagnosis without the benefit of its own label, as these consistencies relate to the common characteristics of the workaholic syndrome stated earlier as obsessive compulsion, anxiety, and a category of personality disorder—perfectionism.[322]

The key psychological impairments in persons with the workaholic syndrome outline an impressive parallel with DSM-5 criteria. For instance, within the personality disorder criteria is the diagnosis of obsessive-compulsive.[323] "Individuals with obsessive-compulsive personality disorder display excessive devotion to work and productivity to the exclusion of leisure activities and friendships."[324] The other psychological tendencies that have an effect on workaholic syndrome and experts agree they are a form of personality disorder, perfectionism, and anxiety.[325] As a personality disorder, DSM-5 describes "perfectionism and self-imposed high standards of performance [that] cause significant dysfunction and distress."[326] Anxiety "features . . . excessive fear and anxiety and related behavioral disturbances."[327] "[A] generalized anxiety disorder is excessive anxiety and worry . . . about a number of events or activities . . . . [with an] intensity, duration, or frequency . . . [that] is

319. *Id.* (citing Cristian Balducci et al., *Exploring the Relationship Between Workaholism and Workplace Aggressive Behaviour: The Role of Job-Related Emotion*, 53 PERSONALITY & INDIVIDUAL DIFFERENCES 629 (2012); Griffiths & Karanika-Murray, *supra* note 315, at 87).

320. *See id.* at 317 ("[A]chievement motivation and perfectionism both showed an interaction effect with environmental factors and a direct effect on workaholism. Thus, for the first time, [researchers] propose[d] an interaction between individual characteristics and environmental factors instead of considering them separately.").

321. *See* DSM-5, *supra* note 18, at 19 ("The symptoms contained in the respective diagnostic criteria sets do not constitute comprehensive definitions of underlying disorders . . . . Rather, they are intended to summarize characteristic syndromes of signs and symptoms that point to an underlying disorder with a characteristic developmental history, biological and environmental risk factors, neuropsychological and physiological correlates, and typical clinical course.").

322. *See* Kohli, *supra* note 8.

323. *See* DSM-5, *supra* note 18, at 678-79.

324. *Id.* at 679.

325. *See* Kohli, *supra* note 8.

326. DSM-5, *supra* note 18, at 679.

327. *Id.* at 189.

out of proportion to the actual likelihood or impact of the anticipated event."[328] Albeit, clinicians may privilege a classification of their own relating to workaholic syndrome over the official DSM-5 manual,[329] it is undeniable the DSM-5 contains the common mental disorders associated with the workaholic syndrome and attaches to the vulnerabilities without an official diagnosis.

VI. CONCLUSION

In conjunction with the DSM-5 criteria and symptoms, whether they support the workaholic syndrome or not, the extent of harm caused by workaholism generates injury to the brain, i.e., a bodily injury is caused by the workaholic syndrome because its origin is stress. There are changes in the function and the anatomy of the brain, as well as physical symptoms, when stress is from excessive work demands.[330] Additionally, there is an adverse effect on both physical and mental health significant enough to correlate to bodily injury.[331] Such stress-induced brain damage correlates with various DSM-5-like diagnoses; anxiety, obsessive-compulsive, perfectionism, persistent thoughts, urges, impulsive repetitive behaviors or mental acts; the diagnostic schema does appropriately address the stress-related psychiatric disorders.[332]

In the scenario above, the workaholic's wife expresses concern regarding whether the stressors on her husband's job initialed the impetus for the development of workaholic syndrome, and if so, were these issues subject to compensation? The conclusion suggests that because of his vulnerabilities, the results of his work-induced stress were likely the cause of aggravating or accelerating dormant psychological tendencies. Notwithstanding that the DSM-5 does not identify the syndrome as a diagnosis, the research agendas from past studies justify that the eggshell doctrine is not that far of a reach. Law and psychology have derived an understanding that emotional harms or psychological injuries cause bodily injuries and are therefore bodily injuries sufficient for consideration of the eggshell doctrine in all jurisdictions.

---

328. *Id.* at 222; *see What is Anxiety?*, PSYCH. TODAY, https://www.psychologytoday.com/us/basics/anxiety (last visited Jan. 20, 2024) ("Anxiety is both a mental and physical state of negative expectation . . . characterized by increased arousal and apprehension tortured into distressing worry, and physically by unpleasant activation of multiple body systems—all to facilitate response to an unknown danger, whether real or imagined.").

329. *DSM*, PSYCH. TODAY, https://www.psychologytoday.com/us/basics/dsm (last visited Sept. 11, 2023).

330. *See* BREMNER, *supra* note 28, at 17.

331. Kivimäki et al., *supra* note 14, at 86–87.

332. *See generally* DSM-5, *supra* note 18.