

**IN THE SUPREME COURT
STATE OF ARIZONA**

TIMOTHY MATTHEWS,
Petitioner,

v.

THE INDUSTRIAL COMMISSION OF
ARIZONA,

Respondent,

CITY OF TUCSON,

Respondent Employer,

TRISTAR RISK MANAGEMENT,
Respondent Carrier.

Arizona Supreme Court
No. CV-21-0192-PR

Court of Appeals:
No. 2 CA-IC 2020-0001

ICA Claim No.:
20182-540202

Carrier Claim No.:
18736339

BRIEF OF AMICUS CURIAE
ARIZONA ASSOCIATION OF LAWYERS OF INJURED WORKERS

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Law enforcement personnel are not just the first line of defense against crime, they are the backbone of that defense. While just about every workday has stresses for the average “beat cop” and detectives, some days can be, by the nature of the work, extremely stressful. An officer can face life-threatening events, or officers might face situations that threaten not just their lives, but also the lives of other officers or the public.

In today’s world, law enforcement officials face even greater pressures as a segment of society decries them as prejudiced, violent, and a threat to society. As more officers leave the profession, the ranks are growing thinner, and pressures increase on those who are willing to walk the high wire of law-enforcement work. A few will, over the course of their career, sustain a mental injury related to their employment. As they fall from the wire, they turn, as they should, to the safety net that the framers of our constitution developed specifically for employment-related injuries, workers’ compensation. And the net is not there; their claims are being denied.

Timothy Matthews is one such officer, a detective. After an eighteen-year law-enforcement career, Detective Matthews, after working a horrific suicide-by-gun scene, filed a workers’ compensation claim for a mental injury, post-traumatic stress disorder (“PTSD”). His claim was denied

despite uncontradicted medical evidence that he suffers from PTSD and that his PTSD is related to his employment.

Matthews brought his claim before the court of appeals and raised two constitutional issues. First, that A.R.S. § 23-1043.01(B) violates article XVIII, § 8 of the Arizona Constitution because it allows an assumption of the risk defense to mental injuries in high-stress occupations in violation of constitutional mandates as explained in *Grammatico v. Indus. Comm'n*, 211 Ariz. 67, 117 P.2d 786 (2005); and second, that A.R.S. § 23-1043.01 restricts legal causation by requiring proof of unexpected, unusual, or extraordinary stress in violation of the constitution's guarantee of benefits for work-related injuries caused by nothing more than the 'necessary risks of employment'.

The Court of Appeals below found *Grammatico* distinguishable and inapplicable to the constitutional question and found that A.R.S. § 23-1043.01 does not violate the constitution because the statute does not limit the filing of mental claims, but rather expands workers' compensation coverage by authorizing mental claims. Petitioner, as well as Judge Eckerstrom, in his dissent, addressed this latter argument and their arguments will not be repeated here.

Petitioner Timothy Matthews has petitioned for review to this court because, as set forth in his petition, the statute under which his work-related illness was denied is unconstitutional. The frequency of appellate review of law-enforcement stress claims has increased over the last few years, and the question of the constitutionality of A.R.S. 23-1043.01 is of paramount importance to law enforcement personnel, an important segment of society because of their high-stress occupation; indeed, the constitutional issue addressed by the court of appeals below, with a strong dissent, remains an issue of state-wide importance as this court did not reach the issue in *France v. Indus. Comm'n*, 250 Ariz. 487, 481 P.2d 1161 (2021). Review of the constitutionality of A.R.S. § 23-1043.01(B) by this court is necessary to address the denial of mental claims for injuries unquestionably related to employment by Arizona workers.

This court has recently ruled on another law enforcement officer's mental claim, *France v. Indus. Comm'n*, *id.* These two claims have two important facts in common: first, the mental injuries of these employees were unquestionably related to their work in law enforcement; and second, both claims were denied, and the denials were upheld by the respective divisions of the court of appeals.

The compensability of mental injuries is governed by A.R.S. § 23-1043.01(B). The statute limits the compensability of mental claims by requiring that “unexpected, unusual or extraordinary stress related to the employment” be “a substantial contributing cause of the mental injury”. A.R.S. § 23-1043.01(B). The justification for a more stringent standard of proof in mental cases is that mental injuries can occur frequently with day-to-day stresses, and additional requirements are therefore necessary to ensure the claimed injury is related to work-related activities. See *Findley v. Indus. Comm'n of Arizona*, 135 Ariz. 273, 276, 660 P.2d 874, 877 (App. 1983) (“We further find that the classification is reasonable, based upon the nature of these cases, that is, the difficulty in showing a definite causal connection between work related stress and mental illnesses or injuries” citing *City of Phoenix v. Industrial Commission of Arizona*, 120 Ariz. 237, 585 P.2d 257 (1978)).

But A.R.S. § 23-1043.01(B) is rooted in Arizona’s workers’ compensation laws mandated under article XVIII, § 8 of our constitution. *Article XVIII, § 8* provides that “The legislature shall” ... enact workers’ compensation law that provides benefits to workers for injuries caused in whole, or in part, or is contributed to, by a necessary risk or danger of such employment...” This standard of legal causation was recently restated and

applied to find another workers' compensation statute unconstitutional. *See Grammatico v. Indus. Comm'n*, supra (Statute limiting recovery for injured workers who tested positive for or consumed alcohol or drugs unconstitutional).

While the legislature may statutorily expand workers' compensation coverage, it may not curtail the coverage guaranteed by our constitution. *See DeSchaaf v. Indus. Comm'n of Arizona*, 141 Ariz. 318, 321, 686 P.2d 1288, 1291 (App. 1984), *Goodyear Aircraft Corp. v. Indus. Comm'n*, 62 Ariz. 398, 158 P.2d 511 (1945), *Lou Grubb Chevrolet v. Indus. Comm'n*, 171 Ariz. 183, 829 P.2d 1229 (App. 1991).

As the court of appeals correctly noted, Matthews's employment-related duties were a substantial contributing cause to his PTSD. This was not an issue before the ALJ or the court of appeals because the parties stipulated that Matthews met that initial burden. This was also true in *France*. If the constitution guarantees coverage for work-related injuries, and Matthews and France unquestionably sustained work-related injuries that were denied based solely on statutory limitations restricting that coverage, then how can those statutory limitations withstand this constitutional challenge? They cannot.

The constitution also specifically provides for workers' compensation benefits for injuries resulting from "a necessary risk or danger of such employment". *Ariz. Constit. article XVIII, § 8*. In this regard, the City of Tucson ("the City") introduced evidence that Matthews was told, at the time of his hire, that his duties might include handling body parts, responding to death scenes, child-molestation cases, and other stressful and emotionally charged situations. *Matthews*, 2021 WL 2885805 ¶ 1. According to the City, this notice served as a helpful description of the general duties of police officers. But we can also infer from this same evidence that the City was fully aware that law enforcement work involves stresses far beyond what workers generally face, and according to the description, at times it is horrific. It may well be obvious to a lay person – but certainly is to a trained medical professional – that one might reasonably expect that watching a person die, as it occurs live on video, and then "processing" the body and the associated crime scene, is gruesome and horrific work and can lead to PTSD.

We can also infer that the City of Tucson, by providing such a graphic warning to prospective employees, understands that its law-enforcement personnel are exposed to situations beyond the pale of ordinary work – that

the stresses they might encounter are graphic. There is no reason to provide such a warning if the City did not believe that there are risks of exposing individuals to these types of experiences, and the consequences are, of course, PTSD or other mental injury. Given that our constitution guarantees workers' compensation coverage for injuries arising out of necessary risks of employment, these types of injuries, as described by the City, should be covered simply because the exposures are admittedly a necessary risk of the employment.

One final constitutional consideration. When examining constitutional challenges, proof of statutory special requirements will be upheld as constitutional if there are reasonable grounds for the classification *and if all persons within the class are treated alike.* *Hart v. Industrial Com'n of Arizona*, 180 Ariz. 307, 884 P.2d 193 (App. 1994) (emphasis added), *Findley v. Industrial Comm'n*, 135 Ariz. 273 (App. 1983). The class at issue here is defined as all mental cases. *Findley*, *id.* at Ariz. 276, P.2d 877. One of the requirements to prove compensability for mental cases requires proof that the stress placed on an employee be unexpected, unusual, or extraordinary. *A.R.S. § 23-1043.01(B)*; *See Barnes v. Indus. Comm'n of Ariz.*, 156 Ariz. 179, 183, 750 P.2d 1382, 1386 (App. 1988). Our courts have set forth the test to

determine whether a claimant meets this burden: “the test for determining the measure of emotional stress is not a subjective one (i.e., how the employee reacts to the job), but an objective one (i.e., do the duties imposed by the job subject the claimant to greater stress than his fellow employees?)”. *France*, supra at ¶ 19, P.2d at 1166, citing *Archer v. Indus. Comm’n of Ariz.*, 127 Ariz. 199, 203, 205, 619 P.2d 31, 33 (App. 1980).¹ This requirement can lead to a compensable claim for one worker and a non-compensable claim for another worker, both of whom suffer the same exposure while performing two different jobs. A simple example illustrates this point, and as we examine the example below, keep in mind that the justification for permitting restricting language in A.R.S. § 23-1043(B) is to eliminate injury not caused or contributed to by employment risks, but instead caused by day-to day stresses.

A bank teller² who, while in the course of employment, was present as a customer was shot and killed during a robbery would unquestionably

¹ This court, in *France*, seems to suggest that the analysis is subtly but importantly different, that an ALJ should “analyze whether the Shooting Incident imposed stress on France that was unexpected, unusual, or extraordinary. *France*, supra at ¶ 20, P.2d at 491.

² See *Ellenbarger-King v. Industrial Commission of Arizona*, 2017 WL 6567999, not reported in Pac. Rptr. (Grocery worker sustained a mental injury from

have a valid claim (because tellers are not typically exposed to such risks), whereas a police officer inside the bank, also in the course of employment, witnessing that same killing, may not (because police officers may be at times exposed to that risk). Objectively, this type of exposure could reasonably and objectively result in a mental injury, regardless of occupation. By examining the impact of stress on a person by employment type, we have impermissibly focused the issue not on the stress-inducing incident and whether it is objectively stressful, but on whether it is objectively stressful to a reasonable person in a particular occupation. One person in the class receives benefits, one does not. In neither case, however, are we concerned with eliminating day-to-day stresses, just as we are not concerned with day-to-day stresses in the case at hand. The test for determining whether there was sufficient proof that the stress placed on an employee be unexpected, unusual, or extraordinary violates the constitutional mandate to provide workers' compensation benefits to injured workers because not all people in the class impacted by A.R.S. § 23-1043(B) (mental injury claims) are being judged by the same yardstick.

an armed robbery), presented here not as legal authority but only as an example of a mental injury caused by a robbery to a grocery worker.

CONCLUSION

Increasing crime, more violent crime, fewer police officers, public disdain, and at times lack of governmental support are all problems that plague today's police forces. This all adds stresses to an already stressful occupation, but still there are officers and detectives that carry on. All jobs carry a degree of stress, and while there are occasionally workers who file claims based on day-to-day stresses, the vast majority of Arizona's workers simply tolerate the stress and do their jobs. Workers should not, however, carry the burdens associated with loss of pay and expenses for medical treatment from work-related stresses that are not day-to-day, stresses that stand out because of their traumatic nature. Indeed, Arizona has a support system for work-related injuries, workers' compensation.

This court has repeatedly stated that, "The Workmen's Compensation Act is remedial, and its terms should be liberally construed in order to effectively carry out the purpose for which it was intended, that being to place the burden of injury and death from industrial causes upon industry." *Dunlap v. Industrial Commission*, 90 Ariz. 3, 363 P.2d 600 (1961). This very purpose, originating in our constitution as set forth above, is not being enforced for mental injuries, and Detective Matthews, as well as Mr. France

before him, are glaring examples of an industry not carrying “the burden of injury and death from industrial causes upon industry.”

AALIW requests that this court accept review of this case.

RESPECTFULLY SUBMITTED, this 20th day of October, 2021.

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CERTIFICATE OF COMPLIANCE

1. This Certificate of Compliance concerns:

A brief, and is submitted under Rule 14(a)(5)

An accelerated brief, and is submitted under Rule 29(a)

A motion for reconsideration, or a response to a motion for reconsideration, and is submitted under Rule 22(e)

A petition or cross-petition for review, a response to a petition or cross-petition, or a combined response and cross-petition, and is submitted under Rule 23(h)

An amicus curiae brief, and is submitted under Rule 16(b)(4)

2. The undersigned certifies that the brief/motion for reconsideration/petition or cross petition for review to which this Certificate is attached uses type of at least 14 points, is double-spaced, and contains 2487 words.

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By: /s/ Robert J. Forman
Attorney for Petitioner

CERTIFICATE OF SERVICE

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