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SUPREME COURT OF ARIZONA

TIMOTHY MATTHEWS Petitioner, v. INDUSTRIAL COMMISSION OF ARIZONA Respondent, CITY OF TUCSON Respondent Employer, TRISTAR Respondent Carrier.	Arizona Supreme Court No. CV-21-0192-PR Court of Appeals Division Two No. 2 CA-IC 2020-0001 ICA Claim No. 20182-540202 Carrier Claim No. 18736339

PETITION FOR REVIEW

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INTRODUCTION

This case presents an issue of first impression for this Court: Does the workers' compensation "mental injury statute" -- Ariz. Rev. Stat. § 23-1043.01 (B) -- violate article XVIII, § 8 of the Arizona Constitution because it impermissibly heightens the legal causation standard by covering a mental injury only upon a showing of "unexpected, unusual or extraordinary stress" related to the work? The constitution provides qualified employees coverage for injuries from "*any* accident arising out of and in the course of" employment that are "caused in whole or in part, or contributed to, *by a necessary risk or danger* of such employment, or *a necessary risk or danger inherent* in the nature thereof". Ariz. Const. art XVIII, § 8 (emphasis added).

By requiring "unexpected, unusual or extraordinary stress" for a mental injury by accident (language not used to qualify any other injury by accident), the mental injury statute places an additional hurdle to coverage that conflicts with the mandate for broader coverage required by the constitution. The "unexpected, unusual or extraordinary" stress standard has also allowed defendants to implicitly raise an "assumption of the risk" defense to defeat claims for mental injuries, thus perversely injecting a prohibited defense back into Arizona's workers' compensation system. Assumption-of-the-risk is one of the "unholy trinity" of

defenses curtailed under the workers' compensation regime mandated by the Arizona Constitution. *Grammatico v. Indus. Comm'n*, 211 Ariz. 67, 70, ¶ 11; 71, ¶ 16 (2005). For police detective Timothy Matthews, whose PTSD injury stemmed from the rare event he encountered at a June 2018 SWAT callout, the "unexpected, unusual or extraordinary" requirement defeated his claim for benefits, even when the resulting injury by accident was caused "in whole or part" by the "necessary risks or dangers" of his work as a domestic violence police detective and even though undisputed medical opinion evidence connected Matthews's disabling PTSD to the June 2018 encounter.

I. ISSUES DECIDED BY THE COURT OF APPEALS

1. Whether Administrative Law Judge ("ALJ") erred as a matter of law by failing to consider the record as whole in determining that the stress police detective Matthews encountered was not "unexpected, unusual or extraordinary" for his mental injury claim.
2. Whether A.R.S. § 23-1043.01(B) violates art. XVIII, § 8 of the Arizona Constitution by impermissibly restricting legal causation by requiring "unexpected, unusual or extraordinary" stress for mental injuries under our workers' compensation system?

II. ISSUE PRESENTED FOR REVIEW

For a covered mental injury under the Arizona workers' compensation statutes, the qualified employee must show that he encountered "unexpected, unusual or extraordinary stress" related to the employment. A.R.S. § 23-1043.01(B). "Unexpected, unusual or extraordinary stress" is a "legal causation" standard. *Barnes v. Indus. Comm'n*, 156 Ariz. 179, 182 (Ct. App. 1988). "[T]he legislature may not define legal causation in a way that conflicts with Article 18, Section 8 because the legislature cannot 'supersede constitutional provisions adopted by the people'". *Grammatico* at 67, ¶ 21 (quoting *Kilpatrick v. Super. Ct. In and For Maricopa County*, 105 Ariz. 413, 415-16 (1970)). Did the court of appeals err by holding that the mental injury statute does not violate article XVIII, § 8 of the Arizona Constitution by wrongly assuming that the broad coverage language in the constitution excludes mental injuries?

III. MATERIAL FACTS & PROCEDURAL HISTORY

Timothy Matthews, a Tucson Police domestic violence detective, was called to a SWAT standoff on June 17, 2018, at a home where a barricaded individual claimed to be holding family members hostage. (RT 4/22/19 at 32:17-21). After negotiations failed, the barricaded man shot himself in the chest and crawled out from the garage where he had holed up. (R at 35:15-25; 36:1-16). From the

command center, Matthews watched the man die on a live video feed on a large, color TV screen. (R at 35:4-10; 36:12-16). A short time later, Matthews then "processed the body", which required a head-to-toe inspection of the corpse, and gathered evidence at the scene. (R at 37:19-24; 38:12-17). Matthews filed a workers' compensation claim alleging his injury was Post Traumatic Stress Disorder ("PTSD") from the event's stress of watching the man die and processing the body (R at 492, 210). The City of Tucson denied the claim, and Matthews protested the denial by requesting a hearing in front of an administrative law judge ("ALJ"). (R at 490, 210).

Police experts testified that Detective Matthews was performing his necessary job duties as a domestic violence detective. (RT 6/10/19 at 34:22-25; 35:4-18; 57:8-17; 61:3-11 and RT 6/19/19 at 167:7-12; 170:7-17). Tucson Police Sergeant Daniel Spencer testified that the events of June 17, 2018, represented "a very small number of high-danger incidents …" (R 6/10/19 at 9:8-13). Retired police chief Benny Click testified that he could not give an example of when an officer was exposed to greater or different stress than any other officer, testifying, "I think it's – it's just part of the job. Yeah, there are some very powerful stressors that officers can be exposed to, and yet it's part of the job." (R 6/19/19 at 176:18-22).

The city's own examining psychiatrist Joel Parker, M.D. opined that Matthews's PTSD was permanently aggravated by exposure encountered performing his job duties on that June day. (R "IME" report at 657). Dr. Parker diagnosed Matthews with PTSD "related almost exclusively to his employment", and wrote in his report that, "He [Matthews] has a permanent aggravation of his pre-existing condition related to the subject industrial injury." (R "IME" report at 657). Based on Dr. Parker's medical report, the parties agreed that Matthews had met his burden of medical causation for the injury. (R "Dec." at 216).

However, the ALJ determined the stress Matthews faced that day was not "unexpected, unusual or extraordinary" and held the claim non-compensable. (R "Decision" at 210-219).

Matthews requested review of the decision, contending that the ALJ erred when he failed to consider the expert testimony and the record as a whole in determining the stress-producing encounter on June 17, 2018 was not "unusual" or "unexpected". (R "Req. for Rev." at 222). Matthews also asserted that the mental injury statute violated art. XVIII, § 8 of the Arizona Constitution. (R at 237). The ALJ affirmed his decision upon review. (R "Dec. Affirm." at 252). Matthews then appealed to the Arizona Court of Appeals where he contended that the ALJ erred by failing to consider the record as a whole and that the mental injury statute

violates art. XVIII, § 8 of the Arizona Constitution by impermissibly allowing the City to implicitly raise an "assumption of the risk" defense to deny Matthews's claim by showing that he knew what he was undertaking when he trained to become a police officer and that he was trained to respond to situations like the June 2018 event. (Opening Brief at 34-35; Reply Brief at 19). Matthews asserted that the mental injury statute heightens legal causation in direct conflict with the mandate of art. XVIII, § 8, which requires workers' compensation for all injuries by accident, caused in whole or part by a necessary risk of employment for qualified workers. (Id.).

The court of appeals affirmed that the ALJ properly weighed the evidence in his determination that the encounter of June 17, 2018 was not unusual or unexpected. *Matthews v. Indus. Comm'n*, No. 2 CA-IC 2020-001, ___ P. 3d ___, WL 2885804 *3, ¶ 8 (Ariz. App. 2d Div July 9, 2021). However, on the constitutional challenge, the appellate court, in a 2-1 decision, also held that the mental injury statute does not violate the constitution because the "legislature expanded rather than restricted the scope of compensable accidents when it enacted § 23-1043.01(B)", and since the statute "addresses a unique type of injury that was not specified or apparently contemplated by the framers of the Arizona constitution

or the original WCA", the Legislature can calibrate the scope of the expansion. *Matthews*, 2021 WL 2885804 at *6, ¶ 18, ¶ 19.

But as the dissenting opinion correctly noted, there is "no support [for the majority's premise] in either the language of article XVIII, § 8 or Arizona jurisprudence predating the 1980 statute". *Matthews*, 2021 WL 2885805 at *7, ¶ 24. To exclude this "subset of injuries without textual support for that exclusion in the Arizona Constitution" defies "settled norms of textual interpretation" – "that general terms are intended to "produce general coverage". *Matthews*, 2021 WL 2885805 at *8, ¶26 (*citing* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 101 (2012), and *Bilke v. State*, 206 Ariz. 462, ¶ 13, 80 P.3d 269 (2003) (general words are given general meaning unless preceded by "a list of specific or similar things").

The dissent also noted Arizona case law had recognized decades before the 1980 mental injury statute that "an injury is caused 'by accident' when either the external cause or the resulting injury itself in unexpected or accidental" and that Arizona follows the "almost uniform view that work-connected emotional stress resulting in a disability is by itself a sufficient basis to require an award for benefits." *Matthews*, 2021 WL 2885805 at *9, ¶ 30 .

Finally, the dissent held that § 23-1043.01(B) conflicts with art. XVIII, § 8 "squarely in its language, expressly precluding compensation for mental injuries arising from the usual, predictable hazards of employment" and that following the reasoning and precedent in *Grammatico*, § 23-1043.01(B) is "unconstitutional on the same grounds." *Matthews*, 2021 WL 2885805 at *10, ¶ 33.

IV. REASONS THE PETITION SHOULD BE GRANTED

1. This is an issue of first impression and of statewide importance because this Court has never addressed whether § 23-1043.01(B) violates the coverage mandate found in art. XVIII, § 8 of the Arizona Constitution.

This Court should grant review because the mental injury statute, A.R.S. § 23-1043.01(B), has never been measured against the coverage mandate of the Arizona Constitution, which provides compensation for injuries from "any accident arising out of and in the course of" employment that are "caused in whole, or in part, or is contributed to, by a necessary risk or danger of such employment." art. XVIII, § 8. Earlier this year, in *France v. Industrial Commission*, this Court did not reach the constitutional question as to whether 23-1043.01(B) is unconstitutional as applied to "high-stress occupations" because the court of appeals did not consider the argument and this Court did not accept it for review. *France v. Indus. Comm'n*. 250 Ariz. 487, 488, ¶ 2, FN 1 (2021). In Matthews's

case, however, the court of appeals *did* consider the constitutional argument and came away with a split decision, 2-1, on the statute's constitutionality.

Whether the mental injury statute violates the state constitution is one of statewide importance as well because the purpose of the Workers' Compensation Act is to cover claims for work injuries from accidents that "arise out of employment" and are caused "in whole or part, from a necessary risk of employment". art. XVIII, § 8. The mental injury statute raises the legal causation standard higher than what is required by the constitution. "The test to be applied in accidents *mentioned in the constitutional mandate* to determine whether they arise out of the employment is, were they caused in whole or in part, or contributed to by a necessary risk or danger of the employment, or inherent in its nature. … The standard … would be, was the risk or danger necessary or inherent in the employment." *Goodyear Aircraft Corp. v. Indus. Comm'n*, 62 Ariz. 398, 409 (1945).

In the case at bar, there was no medical dispute that Matthews suffered a personal injury by accident – disabling PTSD. And there was no dispute that Matthews was performing duties of a domestic violence detective on that day in June 2018 when he watched a man die from a gun blast to the heart and then he "processed" the body. Matthews's personal injury was caused by an accident

arising from a necessary risk of his employment as a police detective. But the heightened legal causation requirement of § 23-1043.01(B) defeated what would otherwise be a compensable claim under art. XVIII, § 8. The mental injury statute undermines the fundamental principle of our workers' compensation system – "that it is a trade of tort rights for an expeditious, no-fault method" for employees to receive a limited recovery for work-related accidents. *Grammatico* at 71, ¶17 (2005).

1. Why the majority erred

The majority opinion is based on the wrong assumption that the 1980 statute "addressed a unique type of injury that was not specified or apparently contemplated by the framers" of the constitution or the original Act. *Matthews,* 2021 WL 2885804, at *6, ¶ 18. Nine years before enactment of the mental injury statute, the court of appeals in *Brock v. Industrial Commission* found compensable a mental injury to a city water truck driver who unwittingly ran over and killed a woman. *Brock v. Indus. Comm'n*, 15 Ariz. App. 95 (1971). The court in Brock specifically noted that to deny the claim because truck driver's mental injury was "unaccompanied by physical force or exertion" would result in a "judicially engraft[ed] exception" to the "all-inclusive language" of the statute, and result an

"overly restrictive" construction that would run "contrary to the clearly expressed intent" of the workers' compensation act. *Brock*, at 97.

Brock isn't the only case prior to 1980 where Arizona appellate courts held that emotional stress claims are compensable. *See also*, *Rutledge v. Indus. Comm'n*, 9 Ariz. App. 316, 318-19 (1969); *Thiel v. Indus. Comm'n*, 1 Ariz. App. 445, 446-49 (1965). And as far back as 1942, this Court held that "a nervous shock caused by an accident arising out of and in the due course of employment is a compensable 'injury'." *American Smelting v. Indus. Comm'n*, 59 Ariz. 87, 92 (1942). As noted by the dissent, "By engrafting § 23-1043.01(B) on this jurisprudential canvas, the legislature could not have reasonably believed it was extending compensation for a species of injury not previously contemplated by the Arizona workers' compensation scheme." *Matthews*, 2021 WL 2885804, at *8, ¶ 27.

Further, the majority opinion did not point to any Arizona law or court decision suggesting the framers intended to exclude mental injuries, nor could they rely on the plain language of the coverage mandate of art. XVIII, § 18. "Words are to be given their usual and commonly understood meaning unless it is plain or clear that a different meaning was intended." *Kilpatrick* at 421. "Courts are not at liberty to impose their views of the way things ought to be simply because that's

what must have been intended, otherwise no statute, contract or recorded word, no matter how explicit, could be saved from judicial tinkering." *Kilpatrick* at 422. [1]

a. "Injury by accident"

The majority opinion's reference to Matthews's disabling PTSD injury as a "non-accident" injury also ignored our decades-old Arizona case law that recognizes an injury is caused by "accident" within the Workers' Compensation Act whether there is an external cause or the resulting injury itself is unexpected. *Paulley v Indus. Comm'n*., 91 Ariz. 266, 272 (1962). This Court in *Paulley v. Industrial Commission*, restated that "Arizona follows the English and now majority American view that an injury is caused 'by accident' when either the external cause or the resulting injury itself is unexpected or accidental." In specifically referencing *Goodyear Aircraft Corp. v. Indus. Comm'n*, this Court in *Paulley* then explained that the "construction of the phrase 'injury by accident' is most likely to effectuate the evident purpose of the law" – those workers covered by the act who are injured while engaged in their work are to be compensated".

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1 "Without some indication to the contrary, general words (like all words, general or not) are to be accorded their full and fair scope. They are not to be arbitrarily limited." Antonin Scalia & Bryan Garner, *Reading Law: The Interpretation of Legal Texts*, 101 (2012).

Paulley at 272, citing to *Goodyear Aircraft Corp. v. Indus. Comm'n*, 62 Ariz. 398, 402 (1945).

b. *Grammatico* analysis

The majority opinion simply ignored the relevance of this Court's decision and constitutional analysis in *Grammatico v Indus. Comm'n*, 211 Ariz. 67 (2005). *Grammatico* demonstrates how Arizona courts should analyze whether a statute imposes a legal causation burden beyond what is allowed in the constitution. "Under Art. 18, Sect. 8, an employee demonstrates legal causation by showing that a necessary risk or danger of employment caused or contributed to the industrial injury in whole or in part." *Grammatico* at 72, ¶ 23. As this Court explained in *Grammatico*, while the legislature "has some latitude to establish the requisite medical causation", it cannot "define legal causation in a statute in a way that conflicts with Article 18, Section 8 because the legislature 'cannot enact laws which will supersede constitutional provisions adopted by the people'". *Grammatico* at 72, ¶ 21, citing *Kilpatrick* at 415-16.

In *Grammatico*, this Court held two statutory subsections unconstitutional because they impermissibly restricted legal causation by operating to deny coverage even when the claimants' industrial injuries were caused in whole or in

part by necessary risks of their employment, which is part of constitution's coverage mandate. *Grammatico* at 75, ¶ 35.

However, in the case at bar, the majority refused to apply *Grammatico's* reasoning on the grounds that *Grammatico* dealt with a physical rather than a mental injury. *Matthews*, 2021 WL 2885805 at *. That's a false distinction; the issue of legal causation applies all industrial injuries. *DeSchaaf v. Indus. Comm'n*, 141 Ariz. 318, 320 (Ct. App. 1984).

Because the coverage mandate of the constitution is broader and more comprehensive than the mental injury statute, "[a] construction of the latter must be governed by the constitutional provision." *In re Mitchell v Indus. Comm'n*, 61 Ariz. 436, 451 (1944).

The mental injury statute's requirement that the stress from the encountering event be "unexpected, unusual or extraordinary" restricts legal causation in a similar way as the unconstitutional subsections in *Grammatico* restricted legal causation – by denying claims otherwise covered by the plain language of art. XVIII, § 8. In the case at bar, the "unexpected, unusual or extraordinary" stress requirement denied compensation *even when* the necessary risks or dangers of being a domestic violence detective – responding to a SWAT callout, watching a

person die from a self-inflicted gunshot wound, and "processing the body" from head to toe -- caused or contributed to Matthews's disabling PTSD injury.

2. Why the dissenting opinion is correct

The dissent is not only eloquent, but also it is correct. It recognized that our workers' compensation system covered mental injuries prior to 1980. It articulated the correct standard to use in interpreting constitutional language. It understood the relevance of the reasoning and precedent in *Grammatico*.

CONCLUSION

The Court should accept review of this case. It is an issue first impression, which has statewide importance. The mental injury statute undermines the fundamental principle of our workers' compensation system – "that it is a trade of tort rights for an expeditious, no-fault method" for employees to receive a limited recovery for work-related accidents. *Grammatico* at 71, ¶ 17. Law enforcement officers like Matthews, who suffer undisputed PTSD from an accident that arises out of a necessary risk of their employment, should not be denied the limited benefits guaranteed to them by the workers' compensation provisions of our state constitution.

RESPECTFULLY SUBMITTED this 30th day of August 2021.

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