[J-42-2012] [MO: McCaffery, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

PHILIP PAYES,	: No. 50 MAP 2011
Appellant	: Appeal from the order of the Commonwealth Court entered 10-06-2010 at No. 461 CD 2010, affirming the decision of the Workers' Compensation Appeal Board dated 2-22-2010 at No. A08-2136.
v.	
WORKERS' COMPENSATION APPEAL BOARD (COMMONWEALTH OF PA STATE POLICE),	
Appellees	: ARGUED: April 11, 2012

CONCURRING AND DISSENTING OPINION

MR. CHIEF JUSTICE CASTILLE **DECIDED: October 30, 2013**

I view this as an exceedingly close case. I ultimately agree with the result and mandate reached by the Majority Opinion on the particular facts here. However, I respectfully disagree with the Majority's exposition of the applicable standard of review in cases like this one, which is the more important point; hence, I am in a partially dissenting posture.[1]

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[1] See Supreme Court IOP § 4(B)(2) ("As a general rule, an opinion is a 'concurring and dissenting opinion' when there is more than one issue and the Justice agrees with the majority's disposition of some but not all issues, and is in disagreement with the mandate. **There may be occasions, however, in which a Justice may agree with the outcome but may disagree with a principle enunciated by a majority of the Court which will govern the outcome of other cases. In such instances, Justices are not strictly bound to concur outright; rather, they retain the discretion to label responses as concurring and dissenting.**") (emphasis added).

The Majority posits that "the existence of a compensable mental or psychic injury is, for the reviewing court, a mixed question of law and fact." Majority Slip Op. at 9. But, in my view, the Dissenting Opinion of Mr. Justice Eakin properly sets forth the applicable standard of review as a question of law, Dissenting Slip Op. at 3-4, and explains why our precedent dictates that course. Although I agree that Justice Eakin's expression of this Court's standard of review is the correct one, and I agree with the majority of Justice Eakin's balanced expression in light of the correct standard, my own application of the standard on the admittedly unique facts here leads to the same result as the Majority.

Rather than a mixed question of law and fact, "we repeatedly have held that the ultimate determination of whether the employee established 'abnormal working conditions' is a question of law fully reviewable on appeal." RAG (Cyprus) Emerald Res. v. Workers' Comp. Appeal Bd. (Hopton), 912 A.2d 1278, 1284 n.6 (Pa. 2007). Of course, "we have also acknowledged that 'psychic injury cases are highly fact-sensitive and for actual working conditions to be considered abnormal, they must be considered in the context of specific employment.' Such a fact-sensitive inquiry requires deference to the fact-finding functions of the WCJ and, accordingly, we limit our review of those factual findings to determining whether they are supported by the evidence and overturn them only if they are arbitrary and capricious." Id. (citations omitted). Accordingly, "we view the appellate review of this question as a two-step process of reviewing the factual findings and then the legal conclusion." Id. But, ultimately, the determination of whether those factual findings establish abnormal working conditions is a question of law, fully reviewable on appeal. Id. at 1286.

Applying this standard of review to the facts (not the legal conclusions or gloss) as found by the WCJ, which were supported by the record, I conclude that the incident leading to appellant's mental-mental injury of PTSD was a "singular extraordinary event,"

even for a claimant who is a State Police Trooper. Majority Slip Op. at 16. I therefore agree with the ultimate decision to uphold the WCJ's determination that the injury was caused by an abnormal working condition. I do not view the Commonwealth Court's contrary ruling to be a major departure from settled law, and I do not agree with the Majority's overemphatic attempt to paint it as such. I repeat, this is a close case, and reasonable jurists, such as Justice Eakin, applying the proper standard, may reasonably reach a different result – as the Commonwealth Court did.