IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

TIMOTHY MATTHEWS,
Petitioner Employee,

v.

THE INDUSTRIAL COMMISSION OF ARIZONA,
Respondent,

CITY OF TUCSON,
Respondent Employer,

TRISTAR RISK MANAGEMENT,
Respondent Insurer.

No. 2 CA-IC 2020-0001
Filed July 9, 2021

Special Action – Industrial Commission
ICA Claim No. 20182-540202
Insurer No. 18736339
Gary M. Israel, Administrative Law Judge

AWARD AFFIRMED

COUNSEL

Bryan Clymer Attorney at Law, Tucson
By Laura Clymer
Counsel for Petitioner Employee

The Industrial Commission of Arizona, Phoenix
By Gaetano Testini
Counsel for Respondent

Moeller Law Office, Tucson
By M. Ted Moeller and Karolyn F. Keller
Counsel for Respondents Employer and Insurer

OPINION

Presiding Judge Espinosa authored the opinion of the Court, in which Judge Eppich concurred and Judge Eckerstrom dissented.

E S P I N O S A, Presiding Judge:

¶1 In this statutory special action, Timothy Matthews seeks review of the Industrial Commission's determination that he did not establish a compensable workers' compensation claim based on a post-traumatic mental stress injury, arguing the administrative law judge (ALJ) erred in finding that he failed to show "unexpected, unusual or extraordinary" stress, as required by the Arizona's Workers' Compensation Act (WCA), A.R.S. § 23-1043.01(B), governing mental stress injuries. Mathews also challenges the constitutionality of that provision. Because we conclude the ALJ properly applied the statute to the evidence underlying Matthews's claim, and because Matthews has not met his burden to establish its unconstitutionality, we affirm.

Factual and Procedural Background

¶2 We view the evidence in a light most favorable to upholding the ALJ's award. *Munoz v. Indus. Comm'n*, 234 Ariz. 145, ¶ 2 (App. 2014). Beginning in August 2000, Matthews received over four months of officer training with the City of Tucson Police Department after passing pre-employment physical and psychological examinations. There was evidence that he was provided a two-page acknowledgement that his duties might require him to respond to death scenes and handle body parts, as well as conduct child molestation interviews with victims and be subjected to various other stressful and emotionally charged situations.[1] After serving as a patrol officer for ten years, Matthews was promoted to detective in 2011 and was assigned to the violent crimes unit for six years, then

[1]The form was introduced by the City, and Matthews testified he did not recall seeing it, but stated "it's possible."

the street crimes unit, until finally joining the domestic violence unit in spring 2018.

¶3 In June 2018, Matthews was called to the scene of a barricaded man in the garage of a residence following a domestic violence report. Matthews watched a live video stream of the residence from a command post about a block away as negotiators spoke with the man. After gunshots were heard, officers stationed at the residence breached the garage door, and the man crawled out with a gunshot to the chest. Despite attempts to administer first aid, he died at the scene. Matthews viewed this from the command post and then was assigned to inspect the body and process and photograph the crime scene.[2]

¶4 In September 2018, Matthews filed a workers' claim of injury arising from the incident, based on medically diagnosed post-traumatic stress disorder (PTSD).[3] The City of Tucson's insurer, Tristar Risk Management, issued a notice of claim status later that month denying Matthews's claim. At a hearing before the ALJ, the parties presented expert testimony regarding Matthews's training and experience and the June event. Matthews's witness, Sergeant Daniel Spencer, a training supervisor for the Tucson Police Department, testified that the event in question was rare, and Matthews testified that the June incident was only the most recent among several other events that had contributed to his PTSD. The expert for the City of Tucson and Tristar (collectively, "the City"), Benny Click, a former Phoenix police officer and Dallas police chief, testified it was not an unusual event, stating, "there are some very powerful stressors that officers can be exposed to, and yet it's part of the job. It's not unanticipated, it's not extraordinary, it's not unusual," and even more stressful events such as the shooting of a fellow officer and mass shootings are part of an officer's training and not unanticipated. Both parties filed simultaneous post-hearing memoranda and responses. The ALJ issued a detailed decision in October 2019, finding the claim noncompensable because, based on the testimony of both experts, it "was not an unexpected, unusual or extraordinary stress situation," and that because Matthews had not filed a gradual injury claim, the ALJ did not consider prior incidents that he had testified about. Matthews requested review, and in a decision upon review, the ALJ affirmed its decision. Matthews filed a statutory petition for special action to

---

[2]Several other officers wrote reports indicating they had been present at the residence or nearby and had observed the death and/or assisted in processing the crime scene.

[3]After reviewing Dr. Joel Parker's medical report, presented by Matthews, the parties agreed that Matthews met his burden of medical causation, and his mental condition was not an issue below, nor is it on appeal.

review the decision upon hearing and decision upon review. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(2) and 23-951(A).

Discussion

¶5 Matthews raises two grounds for overturning the ALJ's determination. First, he argues the ALJ failed to consider the entire record and the evidence when it determined the stress from the June 2018 event was not unexpected, unusual, or extraordinary. Second, as he asserted in his request for review, the workers' compensation mental injury statute, A.R.S. § 23-1043.01(B), violates our state constitution "by heightening the legal causation standard with the requirement stress must be 'unexpected, unusual or extraordinary' for a compensable mental injury claim." We will uphold an ALJ's factual findings if they are reasonably supported by the evidence. *Micucci v. Indus. Comm'n*, 108 Ariz. 194, 195 (1972). Although we defer to the ALJ's findings, we review questions of law and constitutionality de novo. *Hahn v. Indus. Comm'n*, 227 Ariz. 72, ¶ 5 (App. 2011); *Grammatico v. Indus. Comm'n*, 208 Ariz. 10, ¶ 6 (App. 2004).

Consideration of Evidence in Record

¶6 Matthews contends the ALJ erred as a matter of law by "cherry-pick[ing] expert testimony and fail[ing] to consider the entire record."[4] Under

[4]On appeal, Matthews refers to evidence of preexisting psychological issues and events that occurred before the June 2018 event. The ALJ refused to consider these events as part of Matthews's claim, stating,

> [T]his claim does not encompass anything that occurred prior to June 17, 2018 and the undersigned is not determining whether prior incidents contribute to the applicant's alleged industrial injury nor whether the applicant sustained a gradual psychiatric injury based on the prior incidents along with the current incident of June 17, 2018 as that is not what was filed by the applicant.

Matthews listed only a single date of injury and described only a single event that he believed was injurious on his report of injury form. He did not submit a gradual injury claim, nor had he previously claimed a mental injury or illness related to his employment as a police officer through workers' compensation. *See Indus. Indem. Co. v. Indus. Comm'n*, 152 Ariz. 195, 199 (App. 1986) ("A gradual injury is independently compensable."); *W. Bonded Prods. v. Indus. Comm'n*, 132 Ariz. 526, 527 (App. 1982) (claimant must "establish all elements" of claim). More

§ 23-1043.01(B), a workers' compensation mental injury claim is not compensable "unless some unexpected, unusual or extraordinary stress related to the employment . . . was a substantial contributing cause of the mental injury, illness or condition." The applicant must show both medical causation and legal causation for a compensable mental stress claim. *See DeSchaaf v. Indus. Comm'n*, 141 Ariz. 318, 320 (App. 1984). Whether the stress is unexpected, unusual, or extraordinary is a legal conclusion, not a medical one. *Barnes v. Indus. Comm'n*, 156 Ariz. 179, 182 (App. 1988). "As a preliminary matter, an officer must first establish that his work-related stress was a substantial contributing cause of his mental injury." *France v. Indus. Comm'n*, ___ Ariz. ___, ¶ 24, 481 P.3d 1162, 1167 (2021). "[A] work-related mental injury is compensable if the specific event causing the injury was objectively 'unexpected, unusual or extraordinary.'" *Id.* ¶ 1, 481 P.3d at 1163 (quoting § 23-1043.01(B)). Under this standard, the event "must be examined from the standpoint of a reasonable employee with the same or similar job duties and training as the claimant, as opposed to the claimant's subjective reaction to the event." *Id.* And the ALJ must "focus[] on the stress imposed on the worker rather than how the worker experienced it." *Id.* ¶ 19, 481 P.3d at 1166. The ALJ determines the credibility of witnesses and resolves conflicts in the evidence. *Royal Globe Ins. Co. v. Indus. Comm'n*, 20 Ariz. App. 432, 434 (1973). We presume the ALJ considers all relevant evidence, *Perry v. Indus. Comm'n*, 112 Ariz. 397, 398 (1975), and we must affirm the administrative decision if it is reasonably supported by the evidence, viewed in a light most favorable to sustaining the award, *Lovitch v. Indus. Comm'n*, 202 Ariz. 102, ¶ 16 (App. 2002).

¶7 In its detailed findings of fact and conclusions of law, the ALJ stated it had "carefully considered the evidence in this matter which includes the post hearing memoranda filed by the parties." The ALJ explained that the testimony of Matthews's expert witness, Spencer, persuaded him that the event and stressors were "standard issue," as Spencer had at one point referred to them, and that Matthews had failed to meet his burden. The ALJ concluded, "based on the

---

importantly, evidence of a preexisting medical condition can have little, if any, relevance to whether an event was objectively unexpected or extraordinary. *See Lapare v. Indus. Comm'n*, 154 Ariz. 318, 319-20 (App. 1987) ("[U]nless a stress-producing *event* is found to be 'unusual, unexpected or extraordinary,' a resulting emotional disturbance does not constitute" a compensable injury. (quoting § 23-1043.01(B))) (emphasis added); *cf. Archer v. Indus. Comm'n*, 127 Ariz. 199, 205 (App. 1980) (claimant must prove unusual or extraordinary stressor by "pointing to an articulable work-induced incident which gave rise to the emotional stress"). We therefore do not consider in our analysis issues and matters occurring before the event in question. We take no position, however, on the viability of Matthews pursuing a gradual injury claim.

evidence of record and the testimony . . . this was not an unexpected, unusual or extraordinary stress situation." There is sufficient evidence in the record to inform and support the ALJ's conclusion. *Id.* (we affirm if decision is supported by evidence). And to the extent Matthews requests that we reweigh the evidence, it is beyond our purview to do so. *See Kaibab Indus. v. Indus. Comm'n*, 196 Ariz. 601, ¶ 25 (App. 2000); *State v. Lee*, 189 Ariz. 590, 603 (1997) ("appellate court will not reweigh the evidence"); *Janusz v. Ariz. Dep't of Econ. Sec.*, 157 Ariz. 504, 506 (App. 1988) ("we will examine the record to determine whether the decision was unreasonable . . . [but] we will not reweigh the evidence").

¶8 Testimony from the experts for each side, as well as that of Matthews himself, supports the ALJ's determination that the event in question and the stressors Matthews experienced could reasonably be characterized as neither extraordinary nor unanticipated. Although Matthews's expert, Spencer, testified that a "high-danger incident[]" where an individual "was armed acting out violently toward others and barricaded in a structure" was rare, he also estimated such incidents occurred "two to four times a year," and indicated it was not "atypical[]" for a domestic violence situation to go bad and end in a self-inflicted death.

> Q. Okay. I know that you weren't there that day and that you only have so much information about this, but I just have to be sure I understand. Based on what you have heard here or at some other point, are you aware of any duties that were imposed upon Mr. Matthews that day that would subject him to greater stress or a different situation than the other officers who were there that day?
>
> A. I think, you know, other than seeing the person down, you know, actually with the body -- processing the body, that would be the only thing extra from what the SWAT officer outside the door of the house, you know, during the incident would have seen, obviously, having an up-close intimate contact with the deceased. I don't know anything that sounds out of the atypicals [sic] that we encounter in that situation where a domestic violence situation goes bad. They self-inflict, and we're going to have to deal with it.

Spencer further testified:

> [W]e've had two that would differ from this was when we have the murder-suicides. When typically the husband kills the children and kills the wife and then kills himself, those are extremely rough on our personnel. Obviously, the children, those are really hard. So when I say "typical," I don't want to sound crude or uncaring, but there are a difference in the two psychologically for us, and I'm not a doctor or anything, but I just -- I've seen the outcomes of those particular murder-suicides versus these on our personnel, and so I don't know if that answers any of your question, but it sounds pretty standard issue case.

Spencer also agreed, consistent with Click's testimony, that Matthews's role and duties on the night in question, including processing the body, were the responsibility of domestic violence detectives at a domestic violence scene. Matthews himself testified that after the "standard domestic violence investigation turned into a death investigation," he was tasked with conducting a death investigation due to his training and experience in violent crimes which encompassed serious bodily injuries and death. Although there was other testimony from which Matthews argues the event was rare and extraordinary, we disagree with his repeated contention that the ALJ erred by "narrowly look[ing] for 'magic words' to determine legal causation."[5] *See Royal Globe Ins. Co.*, 20 Ariz. App. at 434 ("Where more than one inference may be drawn, the [ALJ] may choose either, and [the reviewing] Court will not disturb the [ALJ]'s conclusion unless it is wholly unreasonable."). Moreover, as acknowledged by Matthews, it was the ALJ's duty to determine the credibility of the witnesses and to resolve any conflicts in the evidence. *Id.* Because there was evidence that the June incident was not an

[5] Matthews also asserts the ALJ improperly referred to the dictionary definition of PTSD and "ignored the 'Official Disability Guideline,' adopted by the Industrial Commission." But that is incorrect. The ALJ referred only to dictionary definitions for some of the terms of § 23-1043.01(B), which does not define PTSD. Matthews makes no argument that the ALJ misconstrued the language of the statute, and we therefore need not parse its terms or address this contention further. *See Hahn*, 227 Ariz. 72, ¶ 7 (when statute's language clear and unambiguous, its terms given effect, and no need to apply any rules of statutory construction).

extraordinary or unanticipated occurrence in the context of domestic violence police work, we cannot say the ALJ erred in so concluding.

Constitutionality of Mental Injury Statute

¶9 Matthews next argues that even if the mental injury requirements of § 23-1043.01 were not met, the statute should be disregarded as violating article XVIII, § 8 of the Arizona Constitution because "it allows the defendants to wield an 'assumption of the risk' defense against applicants in high-stress occupations, such as police officers who suffer the mental injury PTSD due to their on-the-job stress," and "impermissibly restricts legal causation by requiring 'unexpected, unusual or extraordinary stress.'"[6] The City counters that § 23-1043.01 should withstand Matthews's challenge "due to its equal treatment of all stress-related mental injury claims and the unique nature of those claims." It also asserts it at no time raised an assumption-of-risk defense and the ALJ did not rely on such in denying Matthews's claim.

¶10 We analyze the constitutionality of a statute de novo, beginning with the strong presumption that the enactment is constitutional. *Grammatico*, 208 Ariz. 10, ¶ 6. We must presume the legislature acts constitutionally unless the statute offends a fundamental right or involves a suspect classification. *Planned Parenthood Ariz., Inc. v. Am. Ass'n of Pro-Life Obstetricians & Gynecologists*, 227 Ariz. 262, ¶ 9 (App. 2011). And if a legislative enactment is amenable to a constitutional construction, it is incumbent on courts to so construe it. *See Aitken v. Indus. Comm'n*, 183 Ariz. 387, 389 (1995) (appellate courts have "duty to construe a statute so as to give it, if possible, a reasonable and constitutional meaning" (quoting *Ariz. Downs v. Ariz. Horsemen's Found.*, 130 Ariz. 550, 554 (1981))). The party challenging the constitutionality of the statute bears the burden of overcoming the presumption, and we will declare the statute unconstitutional only if we are satisfied that it conflicts with our constitution. *Grammatico*, 208 Ariz. 10, ¶ 6.

¶11 Article XVIII, § 8 affords compensation to the worker for injuries from "any accident arising out of and in the course of" employment that is "caused in whole, or in part, or is contributed to, by a necessary risk or danger of such employment." And, as Matthews correctly points out, the framers of our state constitution "substantially curtailed" the assumption-of-risk defense when they

[6] Matthews also suggests the stress faced by police and other first responders "is different from other mental injury cases." However, he provides no basis for concluding the mental stress police may experience is necessarily greater or more well-defined than that for other occupations.

enacted article XVIII. *Grammatico v. Indus. Comm'n*, 211 Ariz. 67, ¶ 11 (2005). Decades later, § 23-1043.01(B) was added to the statutory scheme, *see* 1980 Ariz. Sess. Laws, ch. 246, § 32, and states in relevant part, "A mental injury, illness or condition . . . is not compensable pursuant to this chapter unless some unexpected, unusual or extraordinary stress related to the employment . . . was a substantial contributing cause of the mental injury, illness or condition."

¶12 This court addressed a constitutional challenge to § 23-1043.01(B) in *Findley v. Industrial Commission*, noting that all individuals with stress-related mental injury or illness workers' compensation claims are members of a class treated alike by statute. 135 Ariz. 273, 276 (App. 1983). We concluded that the statute constitutionally applied to this class "[g]iven the difficulty in proving the causal connection between mental illness and the work place." *Id.* at 276. We confirmed that determination in *Toto v. Industrial Commission*, stating, "The difficulties involved in establishing a causal nexus set forth in *Findley* are equally applicable to all claims concerning mental illnesses, not just those arising from job-related stress." 144 Ariz. 508, 511 (App. 1985). And in *Archer v. Industrial Commission*, the court recognized that "stress by its nature can be caused by numerous factors, the majority of which are non-industrial in nature." 127 Ariz. 199, 205 (App. 1980). Thus, a finding of non-compensability can be made where the work activity is only "part of the overall emotional stress to which all individuals are subjected through the living process." *Id.* at 204-05.

¶13 Citing our supreme court's decision in *Grammatico*, however, Matthews argues that § 23-1043.01(B) is constitutionally infirm because it "injects the 'assumption of the risk defense'" into the workers' compensation system. He maintains this is so because the additional requirement that the work-producing stress be unusual, unexpected, or extraordinary permits the City to argue that Matthews "knew the job was dangerous when [he] decided to become a police officer." The City acknowledges that an assumption-of-risk defense is barred by Arizona's workers' compensation scheme, but it contends Matthews's reliance on *Grammatico* is "misguided." We agree that case is significantly distinguishable.

¶14 The claimant in *Grammatico* did not assert a mental injury related to his employment and thus was not part of the class of persons involved in the present case. 211 Ariz. 67, ¶ 2. And the subsections our supreme court found unconstitutional in *Grammatico*, § 23-1021(C) and (D), have no relation to Matthews's claim or his statutory burden of proof. *Id.* ¶¶ 23-24. Subsections (C) and (D) were intended to restrict compensation to claimants who imbibed alcohol or unlawfully used drugs outside the knowledge of their employer and were later injured while under the influence of those substances unless they met additional legal burdens of proving the alcohol or drugs did not contribute to the accident. *Id.* ¶¶ 22-25. These subsections differ greatly from § 23-1043.01(B) because they

restrict compensation based upon the claimant's own actions rather than placing a particular legal burden of proof on a class of claimants due to the uniquely difficult nature of proving causation of mental injuries. *See Findley*, 135 Ariz. at 276; *Toto*, 144 Ariz. at 511.

¶15 The City further responds that, rather than to support an improper assumption-of-risk defense, evidence regarding Matthews's training and job duties was necessary to help the factfinder understand "the various foreseeable events that could occur in the course of [Matthews's] employment as a police detective and the actions he would reasonably be required to perform are not common knowledge." We agree that establishing the contours of Matthews's position and its anticipated burdens through his training and experience, as well as the perspectives and opinions of the experts in his field, served to provide an objective lens through which the ALJ could view Matthews's employment and mental injury. *See France*, ___ Ariz. ___, ¶ 1, 481 P.3d at 1163 (stressful event examined from standpoint of reasonable employee with same or similar job duties and training as claimant, not claimant's subjective reaction to event); *Barnes*, 156 Ariz. at 181-82 (mental stress measured by "objective" and not "subjective" standard, meaning stress-producing event—not claimant's reaction to it—must be unexpected, unusual, or extraordinary). The City's submission of such evidence therefore did not constitute an assumption-of-risk defense, and the ALJ did not err in rejecting Matthews's constitutional challenge to § 23-1043.01(B) on this basis. *Cf. Hoge v. S. Pac. Co.*, 85 Ariz. 361, 362-63 (1959) (jury instruction that plaintiff "was experienced in and familiar with the work he was doing and knew and appreciated normal risks and hazards which attend it, including chance of injury," although "superficially read to suggest some of the flavor of assumption of risk," in context of other instructions did not violate federal employment statute prohibiting assumption-of-risk defense).

¶16 At oral argument, Matthews additionally claimed that § 23-1043.01(B) unconstitutionally "curtails compensable injuries" because the framers and the original WCA contemplated mental injuries and the legislature therefore could not treat them any differently.[7] Matthews is correct that terms and conditions of compensation laws may not be less protective than provided for in article XVIII, § 8. *DeSchaaf*, 141 Ariz. at 320, n.1; *see also Sw. Coop. Wholesale v. Superior Court*, 13 Ariz. App. 453, 458 (1970) ("The legislature has plenary power to legislate in the area of workmen's compensation, provided only that it does not

[7]We generally decline to consider arguments first raised at oral argument, *see Mitchell v. Gamble*, 207 Ariz. 364, ¶ 16 (App. 2004), however, given the importance of the constitutional issue under discussion, we address this contention on its merits.

transgress a constitutional limitation."). But he provides no on-point authority, nor has our research of case law and the limited legislative history available disclosed any support, for his premise that non-accidental mental injuries were envisioned by the framers of the constitution or the original statutory scheme. Although Matthews referred us to several workers' compensation cases discussing mental injuries, most of them involve a physical injury, which does not require proof of unexpected, unusual, or extraordinary stress, *see* § 23-1043.01(B) (distinguishing mental injuries stemming from stress alone and those stemming from physical injury), and all were decided decades after Arizona's constitution and the WCA were adopted.[8]

¶17 While the legislature may not curtail the scope of compensable accidents from the express terms of the constitution, it may expand them. *DeSchaaf*, 141 Ariz. at 320, n.1 (recognizing "legislature's authority to expand the applicability of the compensation laws"); *see Goodyear Aircraft Corp. v. Indus. Comm'n*, 62 Ariz. 398, 408-09 (1945) (legislature may broaden constitutional protection afforded workers by expanding "fields of accidents" without violating constitution); *Lou Grubb Chevrolet v. Indus. Comm'n*, 171 Ariz. 183, 188-90 (App. 1991) (legislature could properly add workers' compensation coverage for risks not mandated to be covered by art. XVIII, § 8; although constitution required legislature to provide specified coverage, "it did not restrict the legislature's power to provide additional coverage").

¶18 Section 23-1043.01(B) addresses a unique type of injury that was not specified or apparently contemplated by the framers of the Arizona constitution or the original WCA. *See* 1980 Ariz. Sess. Laws, ch. 246, § 32; *Aguiar v. Indus. Comm'n*, 165 Ariz. 172, 174-77 (App. 1990) (describing early judicial prompting and legislative timeline resulting in enactment of § 23-1043.01 in 1980). In *Findley*, this court observed that "§ 23-1043.01(B) now classifies a mental illness or condition as a 'personal injury by accident arising out of and in the course of employment' if

---

[8]*See Am. Smelting & Refin. Co. v. Indus. Comm'n*, 59 Ariz. 87 (1942) (miner who suffered neck and shoulder injuries from falling debris could recover for paralysis of arm notwithstanding lack of apparent physiological cause); *Murray v. Indus. Comm'n*, 87 Ariz. 190, 201 (1960) (claimant's continuing "psychoneurotic" pain and disability following accident and severe back injury held compensable); *Tatman v. Provincial Homes*, 94 Ariz. 165 (1963) (where claimant's disabling mental disorder caused or aggravated by fifteen foot fall from scaffolding, Commission's ten-percent award set aside); *Brock v. Indus. Comm'n*, 15 Ariz. App. 95, 96 (1971) (city truck driver who accidentally ran over and killed pedestrian entitled to disability award for aggravation of preexisting mental condition due to "unexpected injury-causing event.").

the statutory prerequisites are met." 135 Ariz. at 277. And we held that "[g]iven the difficulty in proving the causal connection between mental illness and the work place, the legislature could constitutionally provide a more stringent proof classification for these types of injuries." *Id.* at 276; *see also Toto*, 144 Ariz. at 511 ("The difficulties involved in establishing a causal nexus set forth in *Findley* are equally applicable to all claims concerning mental illnesses, not just those arising from job-related stress."). Notwithstanding the evenhanded burden-of-proof requirements for demonstrating mental injuries, we conclude the legislature expanded rather than restricted the scope of compensable accidents when it enacted § 23-1043.01(B). *See Goodyear*, 62 Ariz. at 408-09; *Lou Grubb Chevrolet*, 171 Ariz. at 190.

¶19 Finally, a word about our colleague's eloquent dissent is in order. It charges that we "defy our settled norms of textual interpretation" because the general term "injury" should be interpreted to "produce general coverage," and we should not "infer exceptions for situations that the drafters never contemplated." Contrary to the dissent's assertion, however, we do not take the position that the framers intended to preclude compensation for mental injuries. Nor do we contend workplace accidents are limited to "unexpected workplace events." Rather, the term "injury" must be read in context with its accompanying qualifier: "any accident arising out of and in the course of" employment. Ariz. Const. art. XVIII, § 8. Although our colleague asserts "the causal relationship between the workplace event and the mental injury is unambiguous," suggesting that in this case § 23-1043.01(B) needlessly limits compensability for Matthews's injury, that argument misses the point. As previously noted, we found no support, textual or otherwise, for the notion that the framers contemplated non-accidental mental injuries as eligible for compensation. That being the case, the legislature was free to expand the "field[] of accidents," *Goodyear*, 62 Ariz. at 409; *see also Findley*, 135 Ariz. at 276 ("Given the difficulty in proving the causal connection between mental illness and the work place, the legislature could constitutionally provide a more stringent proof classification for these types of injuries."), and could, as the dissent describes it, properly "calibrate" the determination of a mental injury's causal connection to the workplace by reference to the nature of the specific event alleged in the context of the occupation involved, *see Sw. Coop. Wholesale*, 13 Ariz. App. at 458 ("The legislature has plenary power to legislate in the area of workmen's compensation, provided only that it does not transgress a constitutional limitation."). Accordingly, we cannot conclude the statute infringes upon article XVIII, § 8 and the rights of Arizona workers.

Disposition

¶20 Because the ALJ properly applied the requirements for evaluating a mental stress injury under Arizona law to the evidence in this case, and because § 23-1043.01(B) does not conflict with our constitution, the ALJ's award is affirmed.

E C K E R S T R O M, Judge, dissenting:

¶21 The underlying facts on medical causation are not disputed. Detective Matthews suffers from a debilitating mental injury. That injury was caused by his exposure to traumatic events encountered in the course of his employment. Such exposure was a necessary hazard of his job as a police detective. The coverage mandate set forth in article XVIII, § 8 of the Arizona Constitution, establishing the standard for legal causation, is equally undebatable: qualified workers are entitled to compensation for all work-related injuries caused by a "necessary risk or danger of such employment." Because I cannot harmonize the plain language of that constitutional directive with the outcome here, I respectfully dissent.

¶22 In denying Matthews compensation, the ALJ applied § 23-1043.01(B). In pertinent part, that statute limits compensation for mental injuries to those arising from "unexpected, unusual or extraordinary stress" related to a claimant's employment. The ALJ found, consistent with the expert testimony presented, that witnessing human death was a predictable, "standard issue" feature of a police officer's job. In essence, Matthews was denied compensation because his job necessarily included the risk of causing the very mental injury he suffered. *See* American Psychiatric Association, *Diagnostic & Statistical Manual of Mental Disorders* 309.81 (5th ed. 2013) (identifying direct encounter with unnatural death of another as diagnostic criterion for Posttraumatic Stress Disorder).

¶23 But, contrary to the statute's limiting directive, the Arizona Constitution contemplates coverage for the predictable and necessary hazards of employment. Article XVIII, § 8 specifically provides that qualified employees "shall" be compensated for injuries arising from an accident "caused in whole, or in part, or is contributed to, *by a necessary risk or danger of [their] employment, or a necessary risk or danger inherent in the nature thereof*." (Emphasis added.) *See Grammatico*, 211 Ariz. 67, ¶ 25 ("Article 18, Section 8 *requires* compensation if a necessary risk or danger of employment partially caused or contributed to the accident . . . ." (emphasis added)). By limiting coverage of mental injuries to those arising only from unexpected, unusual, or extraordinary workplace events, § 23-1043.01(B) contradicts the scope of coverage mandated by article XVIII, § 8. The statute is therefore unconstitutional. *See Grammatico*, 211 Ariz. 67, ¶ 21 ("[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.'" (quoting *Kilpatrick v. Superior Court*, 105 Ariz. 413, 415-16 (1970))).

¶24 The majority concludes, however, that article XVIII, § 8 never contemplated compensation for "non-accidental" mental injuries arising from workplace events. It therefore maintains that, by enacting § 23-1043.01(B), the legislature set forth an expansion of coverage which it was entitled to calibrate. But that premise finds no support in either the language of article XVIII, § 8 or Arizona jurisprudence predating the 1980 statute.

¶25 No text in article XVIII, § 8 suggests any limitation on the types of workplace injuries entitling a worker to compensation. Rather, the clauses addressing such compensation use general, all-inclusive language and omit any context that suggests a more restrictive meaning was intended. *See* Ariz. Const. art. XVIII, § 8 (using the words "injury" and "personal injury"); *see also Brock*, 15 Ariz. App. at 96-97 (declining to engraft limitations for mental injuries when statute used "all-inclusive language"—"injury" and "accident"—to define scope of compensation).

¶26 The majority review of the pertinent jurisprudence suggests we should presumptively read the general term "injury," as used in article XVIII, § 8, to refer only to physical injuries, and exclude mental ones. As the record before us demonstrates, mental injuries—no less than knee injuries, back injuries, or any other species of physical injury—can debilitate a worker. The majority has not explained why the framers would have intended to preclude compensation for them. In essence, my colleagues ask that we exclude a subset of injuries without express textual support for that exclusion in the Arizona Constitution. But doing so would defy our settled norms of textual interpretation. Those canons, necessary to provide a predictable context for lawmakers to communicate their intentions, compel us to presume that general terms are intended to "produce general coverage." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 101 (2012) ("[I]n the end, general words are general words, and they must be given general effect.");[9] *see also Bilke v. State*, 206 Ariz. 462, ¶ 13 (2003)

[9]As Justice Scalia reasoned when encountering this interpretive problem:

> Some think that when courts confront generally worded provisions, they should infer exceptions for situations that the drafters never contemplated . . . . Traditional principles of interpretation reject this distinction because the presumed point of using

(general words given general meaning unless preceded by "a list of specific or similar things").

¶27 Nor had the appellate courts of Arizona interpreted the Arizona Constitution as setting forth any such limitation before 1980. And, as the legislature was undoubtedly aware, this court had repeatedly approved awards for mental injuries on statutory grounds in the decades preceding the statute. *E.g.*, *Brock*, 15 Ariz. App. at 95-97 (finding compensable mental injury to water-truck driver who accidentally ran over and killed a woman); *Rutledge v. Indus. Comm'n*, 9 Ariz. App. 316, 318-19 (1969) (heart attack caused in part by mental stress of employment compensable); *Thiel v. Indus. Comm'n*, 1 Ariz. App. 445, 446-49 (1965) (fatal heart attack caused in part by "emotional stress and strain" of employment compensable); *see also* n.7, *supra* (listing additional pre-1980 cases wherein physical injuries either aggravated or caused compensable mental disabilities). Indeed, as this court observed in *Brock*, compensation for work-connected mental injuries was the uniform practice in other jurisdictions as well. 15 Ariz. App. at 97. 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.

¶28 Rather, as our subsequent jurisprudence explains and the majority acknowledges, the legislature was intending to provide the Industrial Commission with a criterion to discern "the causal connection between mental illness and the work place." *Findley*, 135 Ariz. at 276. Therefore, § 23-1043.01(B) was not intended to expand compensation. It was designed to further calibrate which mental injuries would be compensable. As we noted in *Findley*, this is something the legislature is generally entitled to do. *Id.* But, in so doing, it was not entitled to bar compensation for mental injuries directly caused by the known and expected hazards of the workplace. Such injuries must be compensated under the express terms of article XVIII, § 8.

¶29 By enacting § 23-1043.01(B), the legislature may well have intended only to provide a criterion for distinguishing those mental injuries truly arising from workplace events (compensable) from those arising from a worker's difficulties in coping with life (non-compensable). But, in so doing, it rendered a subset of mental injuries non-compensable where, as here, the causal relationship between the workplace event and the mental injury is unambiguous.

> general words is to produce general coverage—not to leave room for courts to recognize ad hoc exceptions.

Scalia & Garner, *supra*, at 101.

¶30 The majority also contends that the use of the word "accident" in article XVIII, § 8 was intended to limit its scope to only unexpected workplace events. For this reason, my colleagues find "no support, textual or otherwise, for the notion that the framers contemplated non-accidental mental injuries as eligible for compensation." That reasoning overlooks that our supreme court has read the term "accident," in the context of workers' compensation law, as a term of art, which includes both unexpected workplace events and unexpected *injuries* arising from routine workplace events. *Paulley v. Indus. Comm'n*, 91 Ariz. 266, 270-72 (1962) ("[W]e again announce 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."). Indeed, as the court observed, article XVIII, § 8 uses the word "accident" in the very sentence stating that those injuries stemming from "a necessary risk or danger," inherent in the worker's employment, are covered. *Id.* at 271 n.4. In short, both controlling Arizona jurisprudence and the plain text of the Arizona Constitution support that mental injuries arising from the predictable hazards of the workplace are covered.[10]

¶31 By limiting compensation for mental injuries to those injuries arising from "unexpected, unusual or extraordinary stress," § 23-1043.01(B) has barred compensation for Matthews, a first responder who has undisputedly suffered an authentic mental injury arising from the necessary features of his employment. More troubling, by barring compensation for those workers who, like Matthews, suffer mental injury on jobs where encountering human trauma is commonplace, the statute effectively bars compensation for the precise universe of vocations posing the greatest risk of mental injury.[11]

---

[10] Article XVIII, § 8 would not bar the legislature from limiting compensation for mental injuries to those arising from workplace events that can be fairly characterized as true "risks" and "hazards" to mental health. This criterion would sort those mental injuries truly arising from workplace events that pose cognizable dangers to mental health (compensable) from those arising from a worker's difficulties in coping with the normal rigors of life (non-compensable).

[11] In *France*, our supreme court created a narrow pathway for a small subset of first responders to qualify for compensation under the "unexpected, unusual, or extraordinary" standard. It held that workers could receive compensation if the specific encounter was "unexpected, unusual, or extraordinary" even for one accustomed to encountering such traumatic events. ___ Ariz. ___, ¶¶ 20-23, 481 P.3d at 1166-67. The court expressly declined to address the constitutional

¶32 Mental injury claims can raise especially complex questions of causation. *See Archer*, 127 Ariz. at 204 (reviewing numerous mental injury cases in search of manageable criteria to determine causation and compensability).[12] But the criteria for sorting compensable mental injury claims from non-compensable ones cannot constitutionally exclude claims that arise from predictable hazards of the workplace.[13]

¶33 In *Grammatico*, our supreme court addressed whether the legislature could preclude compensation for work-related injuries when a worker's "alcohol or drug use contributed to the accident." 211 Ariz. 67, ¶ 25. The court held that, because the statute at issue in that case "denie[d] compensation to an injured worker . . . *even if* a necessary risk or danger of employment partially or substantially caused or contributed to the accident," the statute impermissibly conflicted with article XVIII, § 8 of the Arizona Constitution. *Id.* ¶ 23. That holding applies with equal force here. The provision we address, § 23-1043.01(B), not only conflicts with article XVIII, § 8 in application; it does so squarely in its language, expressly precluding compensation for mental injuries arising from the usual, predictable hazards of employment. I would therefore follow the reasoning and precedent our supreme court set forth in *Grammatico* and hold § 23-1043.01(B) unconstitutional on the same grounds.

---

question raised by applying § 23-1043.01(B) to "high-stress occupations." *Id.* n.1, 481 P.3d at 1163.

[12]In *France*, our supreme court endorsed the reasoning in *Archer*, observing that, "although *Archer* addressed whether work-related stress was unexpected, unusual, or extraordinary in the context of heart-related injuries," its discussion and conclusions "'remain sound as applied to mental injuries.'" ___ Ariz. ___, n.2, 481 P.3d at 1166 (quoting *France v. Indus. Comm'n*, 248 Ariz. 369, n.4 (App. 2020)).

[13] *Archer*—the case in which our court most thoroughly analyzed the problem—arguably conjured a constitutionally compliant standard. It concluded that the compensability of mental injury cases "depends upon the directness of the relationship between a work precipitating event and the resulting injury." 127 Ariz. at 204. And, it observed that any requirement to show "unusual or extraordinary" emotional stress would merely be harnessed to "reaffirm[] the necessity" of "an articulable work-induced incident which gave rise to the emotional stress." *Id.* at 205. Notably, this "directness" standard coupled with the relaxed use of the "unusual or extraordinary" standard (as a mere factor in the totality of the circumstances assessing "directness"), would not exclude first responders from mental injury coverage.