



FLORIDA WORKERS' COMPENSATION: PTSD—PURE PSYCHIATRIC INJURIES COVERED FOR FIRST RESPONDERS

The Pulse nightclub tragedy in Orlando, Florida exposed the fact that Florida workers' compensation law did not recognize post-traumatic stress disorder (PTSD) as an injury for first responders. Officer Gerry Realin and seven other members of the Orlando Police Department's hazmat team were tasked with removing all of the bodies from the Pulse nightclub. As a result, Officer Realin was diagnosed with PTSD and in response, several Florida legislators took action to change this law, for the benefit of first responders, to include pure psychiatric injuries absent physical injuries.

A "first responder" includes a law-enforcement officer, as defined by Florida Statute Section 943.10, a firefighter per Florida Statute Section 633.102, or an emergency medical technician or paramedic per Florida Statute Section 401.23, employed by state or local government. Also considered first responders are volunteer law-enforcement officers, firefighters, emergency medical technicians or paramedics engaged by state or local government.

Effective October 1, 2018, Florida Statute Section 112.1815, which covers employment related accidents and injuries for first responders, was amended to include first responders suffering from PTSD. No physical injury is required as long as two conditions are met:

1. The PTSD resulted from the first responder acting within the course of his or her employment as provided in Florida Statute Section 440.091; and
2. The first responder is examined and subsequently diagnosed with PTSD by a licensed psychiatrist, who is an authorized treating physician, as provided in Chapter 440 due to one of the following events:
 - a) seeing for oneself a deceased minor;
 - b) directly witnessing the death of a minor;
 - c) directly witnessing an injury to a minor who subsequently died before or upon arrival at a hospital emergency department;
 - d) participating in the physical treatment of an injured minor who subsequently died before or upon arrival at a hospital emergency department;
 - e) manually transporting an injured minor who subsequently died before or upon arrival at a hospital emergency department;

- f) seeing for oneself a decedent's death involved grievous bodily harm of a nature that shocks the conscience;
- g) directly witnessing a death, including suicide, that involved grievous bodily harm of a nature that shocks the conscience;
- h) directly witnessing a homicide regardless of whether the homicide was criminal or excusable, including murder, mass killing as defined in 28 U.S.C. s. 530C, manslaughter, self-defense, misadventure, and negligence;
- i) directly witnessing an injury, including an attempted suicide, to a person who subsequently died before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience;
- j) participating in the physical treatment of an injury, including an attempted suicide, to a person who subsequently died before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience; or
- k) manually transporting a person who was injured, including by attempted suicide, and subsequently died before or upon arrival at the hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience.

This coverage set forth for PTSD is significantly narrower than the diagnostic criteria for post-traumatic stress disorder (309.81) set forth in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5) of the American Psychiatric Association.

In general, Florida Statute Section 112.1815 mandates that the PTSD diagnoses be demonstrated by clear and convincing evidence.

Workers' compensation benefits for a first responder under Florida Statute Section 112.1815 are not subject to apportionment due to any pre-existing PTSD, are not subject to any limitation on temporary indemnity per Florida Statute Section 440.093, and are not subject to the 1% limitation on permanent psychiatric impairment under Florida Statute Section 440.15(3).

Florida Statute Section 112.1815 further states that PTSD is deemed an occupational disease per Florida Statute Section 112.1815. "The time for notice of injury or death in cases of compensable post-traumatic stress disorder under this subsection is the same as in s. 440.151(6) and is measured from one of the qualifying events listed in subparagraph (a)2 or the manifestation of the disorder, whichever is later. A claim under this subsection must be properly noticed within 52 weeks after the qualifying event."

A PTSD diagnosis cannot be established until the necessary symptoms have existed more than one month. Also, diagnosis of PTSD often occurs long after the triggering event or even the onset of symptoms. Treatment for PTSD may include cognitive behavioral therapy (CBT), exposure/desensitization (in vivo therapy where a claimant confronts the actual scene or similar events associated with the trauma or imaginal exposure which involves exposure to the traumatic event through mental imagery), and medications (serotonin reuptake inhibitors [SSRIs] such as Sertraline [Zoloft] and Paroxetine [Paxil.]) See Care for Returning Service Members: Providing Mental Health Care for Military Service Members Returning from Iraq and Afghanistan; Christopher Erbes, et al; Minnesota Psychologist, November 2007; Treatment of Post-traumatic Stress Disorder: An Assessment of the Evidence; National Academy of Sciences; Fall 2007. Benzodiazepines should be avoided as there is no evidence that they are beneficial to PTSD and could increase the likelihood of a claimant developing PTSD when prescribed in the aftermath of trauma.

Work restrictions for PTSD typically include a process of gradual exposure to the incident triggers. Some claimants may be placed off work during treatment, but most are able to return to work light duty. Work restrictions typically entail keeping the claimant away from incident triggers. Eventually, these work restrictions are relaxed until full duty is attained.

With regard to mental impairment benefits in accordance with the 1996 Florida Uniform Permanent Impairment Rating Schedule, there are six areas to evaluate: intelligence, thinking, perception, judgment, affect, and behavior.

In general, there appears to be significant exposure for Florida workers' compensation coverage for first responders who are diagnosed with PTSD and same must be considered when establishing reserves and determining settlement valuation on a claim. Due to the possible interference of returning to work due to PTSD, it would be in your best interest to settle these claims quickly before a claimant later asserts that he/she is PTD as a result of the industrial accident.

It should be noted that Florida Statutes Section 440.093 still applies to all non-first responders. Mental or nervous injuries accompanied by physical trauma requiring medical treatment are deemed compensable. This statute requires proof of "mental or nervous injuries" to "be demonstrated by clear and convincing medical evidence by a licensed psychiatrist meeting criteria established in the most recent edition of the diagnostic and statistical manual of mental disorders published by the American Psychiatric Association." It also limits the duration of temporary benefits for a compensable mental or nervous injury (meeting the necessary physical injury threshold) to no more than six months after the employee reaches maximum medical improvement.