



**Comments for the
House Veterans Affairs and Emergency Preparedness Committee's
Hearing on Post Traumatic Stress Injury in First Responders**

Pennsylvania Municipal League

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Recently, legislation has been introduced that seeks to change the current landscape for first responders who encounter stressful situations while performing their duties. In the Commonwealth of Pennsylvania, like many other states, compensation for disability resulting from mental injury is only appropriate when the stressful event is the result of an abnormal working condition. This condition applies to all workers, not just first responders. For decades, courts have interpreted “abnormal working condition” very liberally. In other words, almost nothing was abnormal in certain professions, including first responders. The abnormal working condition element has resulted in many claims for disability from mental injury being denied across the board. One can imagine that there are many very stressful, but normal, working conditions encountered every day by nurses and other medical providers, corrections officers, air traffic controllers, private security workers, and many other occupations.

The abnormal working condition element of mental injury claims is not a construction found in the Workers’ Compensation Act; it was judicially created. Therefore, an amendment to the Workers’ Compensation Act, as proposed in House Bill 2664 of 2018 and House Bill 432 of 2019, is not appropriate. Because this element of a mental injury claim was created by the courts, the courts need to speak. And, the law has been changing slowly for first responders. In *Payes v. WCAB (Commonwealth PA State Police)*, 79 A.3d 543 (Pa. 2013), the Supreme Court of Pennsylvania initiated a fundamental shift in jurisprudence when it allowed a claim for PTSD made by a Pennsylvania State Trooper who struck and killed a man who intentionally jumped in

front of the Trooper's vehicle, thereby committing suicide by police. This shift in the courts continues to allow more room for first responders to make claims for disability under the Workers' Compensation Act and the Heart & Lung Act.

As a Commonwealth, our first concern should be providing immediate medical and psychological care to emergency services personnel who are in crisis and in danger of hurting themselves or others. Crisis assistance should be closely followed by the implementation of prevention measures that will help emergency services personnel properly deal with the stress of their professions thus heading-off more serious consequences, such as the development of PTSD. This treatment should be available to first responders while the courts continue to contemplate the abnormal working condition element of disability claims.

PML supports the Commonwealth taking the lead in raising awareness of PTSD in the emergency service community. An awareness/education campaign must start with the first responders themselves and include their families, their employers, and medical and mental health providers. From the Committee's March 2018 hearing on PTSD, it was clear that there are numerous local efforts underway across the Commonwealth to bring awareness and training to first responders. Rather than locally initiated efforts, however, it would be more effective if the Commonwealth provided the resources and engaged in coordinating statewide programs like those found in House Bill 2508 of 2018.

A coordinated approach will ensure best practices are used, resources are not duplicated and all first responders have access to the most effective medical and mental wellness protocols available. House Bill 2508 amends Title 35 adding a new Chapter – Emergency Responder Mental Wellness and Stress Management. The bill seeks to re-instate the Critical Incident Stress Management Program; develop peer to peer support and counseling programs; establish a toll-free, anonymous helpline; and develop training for first responders. Statewide data collection on incidents of PTSD should be included in the Commonwealth's efforts. Finally, funding should be increased in the bill, as \$250,000 does not seem adequate.

If the intended goal is awareness of the impact of first responder stress, the management of that stress, as well as treatment and prevention on PTSD, then PML believes the measures outlined in House Bill 2508 must be implemented first and long before making changes to the Workers' Compensation Act. Therefore, the amendments proposed by House Bills 2664 and

432 that bring PTSI under the category of occupational disease within the Workers' Compensation Act are pre-mature and possibly unnecessary. As stated earlier, House Bills 2664 and 432 seek to amend the Workers' Compensation Act to include PTSI as an enumerated occupational disease for first responders, specifically police officers, firefighters, and emergency medical service workers.

PML strongly advises against adding PSTI for first responders as an occupational disease under the Workers' Compensation Act. This addition would have significant impacts on employers, employees, and taxpayers including, but not limited to, the following:

- It would give the employee the presumption that the injury is caused by his or her job. An employer would then have to rebut the presumption in order to dispute the claim. There is no language in the bill on what it would take to successfully rebut the presumption.
- Occupational diseases allow claimants a very, and unnecessarily long, time to file a claim. An employee would have 300 weeks from the last date of occupational stress to develop a disability resulting from a mental injury. Then, the employee would have an additional 3 years from the date the injury was known to be related to occupational stress to make a claim. Furthermore, each day that an employee experiences occupational stress would reset the 300-week time clock. Conceivably, a person could retire from a police force and more than 10 years later file a PTSI claim.
- The lengthy window of exposure to claims translates into greater employer risk which naturally translates into higher workers' compensation premiums.
- A PTSI occupational presumption for police officers, fire fighters and EMS workers will be more expensive than the cancer presumption added in 2011.
- A PTSI occupational presumption will push insurance coverage for police departments to the already overwhelmed State Workers' Insurance Fund (SWIF).
- The potential for frivolous claims is greater for mental injuries than any other type of workers' compensation claim. Stress-related injuries are real for some and can take a massive toll. But, a stress-related injury cannot be seen on x-ray, identified in a blood test, or corrected by a surgeon. The diagnostic criteria are completely based on

subjective complaints of a patient. House Bills 2664 and 432 provide nothing by way of objective diagnostic criteria for PTSD, nor do they define the term “traumatic event” or “psychological stress” in the language currently offered. The lack of objective standards may lead to misuse of legislation with good intentions.

Finally we question whether the “abnormal working conditions” standard for mental injury is actually set aside for first responders by the addition of the occupational presumption. As noted above, the abnormal working condition criteria is not found in the Workers’ Compensation Act. The concept was confirmed by the Supreme Court of Pennsylvania in *Martin v. WCAB (Ketchum)*, 568 A.2d 159 (Pa. 1990), when the Court wrote that the approach was intended to distinguish a causal relationship between employment and disability from psychiatric injuries that arise from the employee’s subjective reaction to normal working conditions. This is an important distinction that should be given serious consideration if legislation is going to remove it as an element for mental injury claims.

In conclusion, PML strongly supports the awareness, training, and prevention measures outlined in House Bill 2508. As a local government association, we stand ready to do our part in assisting local officials in understanding and addressing the stress related ailments faced by first responders. However, we are strongly opposed to making any changes to the Workers’ Compensation Act at this time that would create another occupational disease presumption. The employer exposure costs are significant, as we have seen with the cancer presumption. And, these proposals would cover more employees and presume a mental injury which by its nature is more elusive to diagnose than a physical illness.

We appreciate the opportunity to provide our feedback on these proposals and offer our assistance in implementation of the types of measures outlined in House Bill 2508. Thank you and please contact Amy Sturges, Director of Governmental Affairs, at asturges@pml.org, with any questions.