



Testimony of

American Property Casualty Insurance Association (APCIA)

Senate Finance Committee

Senate Bill 406 - Workers' Compensation - Occupational Disease Presumptions - First Responders

February 21, 2023

Letter of Opposition

The American Property Casualty Insurance Association (APCIA) is a national trade organization whose members write approximately 65 percent of the U.S. property-casualty insurance market, including 90% percent of Maryland's workers' compensation market. APCIA appreciates the opportunity to provide written comments in opposition to Senate Bill 406.

APCIA opposes Senate Bill 406, which would create a new and unwarranted presumption of compensability for post-traumatic stress disorder (PTSD) for a broad range of first responders. While first responders deserve the respect and admiration of all, in the interests of fairness they should retain the same modest burden of proving the work-relatedness of an injury or illness that other claimants have – and PTSD is already a compensable condition.

In general, mental stress claims are compensable where the work stress was both the predominant cause of the mental injury and extraordinary and unusual in comparison to pressures and tensions experienced by individuals in a comparable work environment. A higher compensability standard for so-called “mental-mental” claims (mental stress resulting in mental injuries) is both typical and appropriate in view of the greater challenge these claims present in connecting the injury to the workplace.

Consistent with this bedrock principle, the Maryland Court of Appeals held in *Means v. Baltimore County* (1997) that PTSD is compensable as an occupational disease if the claimant can prove that the disorder (i) was contracted as the result of and in the course of employment; (ii) caused the claimant to become incapacitated; and (iii) was due to nature of an employment in which the hazards of the occupational disease exist.

Senate Bill 406 would establish extremely weak criteria for creating a presumption of compensability that would require only a diagnosis of PTSD by a licensed psychiatrist or psychologist; two or more years of service as a first responder; and filing a claim either while employed or within 18 months afterwards. In contrast, legislation enacted a few years ago in Florida in response to the horrific Pulse nightclub shooting provides that PTSD in the absence of a physical injury suffered by a first responder must be demonstrated by clear and convincing medical evidence and result from one of eleven specified scenarios in which the first responder was exposed to the death of a minor, directly witnessed a homicide, or was in some way exposed to the death or ultimately fatal injuries of a person that involved “grievous bodily harm of a nature that shocks the conscience.”

According to NCCI's analysis of the Florida bill, "Due to the high prevalence of PTSD in firefighters, EMTs, and other first responders...the increase in compensable mental-physical claims or severity of mental-mental claims could be significant for these occupational classifications. Additionally, the award of indemnity benefits provides additional incentive to claim mental-mental benefits, which may result in increased utilization of the workers' compensation system."

For all of these reasons, APCIA urges the Committee to provide an unfavorable report on Senate Bill 406.

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