

Should there be a Special Exception for Law Enforcement in Mental Claims without an Accompanying Physical Injury?

September 18, 2014

Media Contact

Powers Tanis
Director of Strategic Marketing and
Communications 803.221.4907
email@mgclaw.com

Law enforcement officers who experience psychological trauma after killing someone in the line of duty are not entitled to workers' compensation benefits in South Carolina. In a 3-2 decision, the South Carolina Supreme Court recently decided that such an event was not an unusual circumstance of employment because an officer is specifically trained to use deadly force, the event alleged to have caused the trauma. *Bentley vs. Spartanburg County* 398 S.C. 418 (2012). Unfortunately, a fatal shooting after a domestic disturbance call was the beginning of a downward spiral for Deputy Bentley, who was seeking workers' compensation benefits for PTSD. The South Carolina General Assembly is now considering legislation that would change that by providing an exception for law enforcement officers. The bill being debated amends the "extraordinary and unusual" provision, which is the exception to the general rule that psychological trauma alone is not compensable unless it arises out of unusual circumstances.

The current amendment to S.C. Code Ann. § 42-1-160(B)(1) reads as follows:

(B) Stress, mental injuries, and mental illness arising out of and in the course of employment unaccompanied by physical injury and resulting in mental illness or injury are not considered a personal injury unless the employee establishes, by a preponderance of the evidence:

(1) that the employee's employment conditions causing the stress, mental injury, or mental illness were extraordinary and unusual in comparison to the normal conditions of the particular employment; and

(2) the medical causation between the stress, mental injury, or mental illness, and the stressful employment conditions by medical evidence.

(C) The provisions of subsection (B)(1) do not apply, however, if the employee is employed as a law enforcement officer and the impairment causing the stress, mental injury, or mental illness arises from the law enforcement officer's direct involvement in, or subjection to, the use of deadly force in the line of duty.

Typically, mental injury is not compensable unless accompanied by a physical injury in South Carolina. However, a so-called "mental-mental" claim *is* compensable so long as the claimant's employment conditions causing the stress, mental injury or mental illness were extraordinary and unusual in comparison to the normal conditions of the particular employment. For example, if a company's IT specialist witnesses the gruesome aftermath of a suicide on company property and alleges psychological trauma without a contemporaneous physical injury, that is probably a compensable "mental-mental" claim as long as the requisite medical causation is established. Obviously, the normal conditions of employment for an IT specialist do not include witnessing a suicide. Therefore, such an injury likely meets the exception.

The new legislation for law enforcement passed the House on a vote of 69 to 45, and has been referred to subcommittee in the State Senate. It is not expected to pass this year and must be re-filed next year since this is the second year of a two-year legislative session.

Other states are debating this issue as well. In Connecticut, for example, firefighters and police who use deadly force or witness a colleague's death are eligible for workers' compensation benefits. Connecticut allows police and firefighters to collect workers' compensation if they use deadly force or witness a colleague's death. New legislation would expand it to all municipal employees diagnosed with PTSD after witnessing a violent event or its aftermaths. Yet, in Colorado, legislation expanding benefits to cover PTSD failed, which was prompted by the officers who responded to the mass shooting at an Aurora movie theater in July 2012. A legislative task force will likely study the issue instead. Federal employees and military members can collect compensation if a psychiatrist finds PTSD symptoms, but most states require officers and firefighters to have an accompanying physical injury.

Protecting public servants like Deputy Bentley is certainly a noble goal, and even the South Carolina Supreme Court was divided as to whether existing law covered law enforcement officers who suffer from PTSD. In a dissenting opinion, Justice Hearn certainly believed that what Deputy Bentley experienced was "extraordinary and unusual." Likewise, the South Carolina House of Representatives was far from unanimous on the issue of whether to afford law enforcement officers workers' compensation benefits for PTSD, i.e. mental-mental claims.

Municipalities fear providing benefits to law enforcement for PTSD will be too burdensome and possibly lead to frivolous claims. Workers' compensation may not be the best vehicle to provide those protections for law enforcement (or even first responders). That said, the story of Officer Bentley might just be the compelling narrative that creates enough support for the South Carolina legislature to change the law.

This article originally appeared on 7/7/14 on the Workers' Compensation Institute's [website](#), and is republished here with permission.

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ABOUT THE AUTHOR

Scott Winburn is an attorney with [McAngus Goudelock & Courie](#). MGC is a metrics-driven law firm built specifically to meet the needs of insurance companies and their customers. From ten regional offices, we serve clients across the Southeast. Mr. Winburn may be reached at 803.227.2268 or by email.