

First Responders And Post-Traumatic Stress Disorder Update:
What dates of accident are covered?

Since 10/01/18 First Responders have been entitled to receive indemnity benefits for disabling mental injuries in the absence of physical trauma if certain criteria are met.

Section 112.1815(5), Florida Statutes, provides that there are 11 “qualifying events” one of which must occur before a First Responder is entitled to seek disability benefits for a purely mental injury. As soon as the Statute was passed questions arose as to whether this expansion in benefits would apply only to incidents which occurred after 10/01/18. The First District Court Of Appeal recently provided some clarification on this issue.

In the case of Palm Beach County Fire Rescue v. Wilkes (1D20-1216, December 14, 2020), the First District Court Of Appeal reversed a decision by Judge Carol Stephenson awarding indemnity benefits for Post-Traumatic Stress Disorder arising out of an incident occurring in 2015. The claimant argued that witnessing the death of a child in 2015 was a qualifying event so as to entitle him to seek indemnity benefits for Post-Traumatic Stress Disorder. While the qualifying event occurred before the effective date of the Statute, the claimant argued that his condition did not manifest itself, and cause disability, until after 10/01/18. The Judge agreed and awarded benefits.

The employer/carrier appealed the Judge’s decision asserting that the Statute should not be applied retroactively. The Appellate Court did not address that argument as they found the decision should be reversed on other grounds. In particular, Section 112.1815(5)(d), Florida Statutes, provides that a claim must be asserted within 52 weeks of the qualifying event. In Mr. Wilkes’ case, it was undisputed that the qualifying event occurred in 2015. The claimant attempted to argue that the qualifying event criteria should also include the date that the

Post-Traumatic Stress Disorder manifested itself. This creative interpretation of the Statute was rejected by the Appellate Court.

While the First District Court Of Appeal has not yet addressed whether the new PTSD Statute can be applied to dates of accident before 10/01/18, it has clarified that any claim must be filed within 52 weeks of the qualifying event. It is suspected that, should the issue be litigated further, the Appellate Court would conclude that the expanded benefits afforded by Section 112.1815(5), Florida Statutes, would only apply to dates of accident occurring after the effective date of the Statute as it constitutes a substantive change in the Law.

When responding to a claim for payment of indemnity benefits related to a mental injury, it is recommended the claim handler consider the following:

1. Did the mental injury arise out of the same event which caused a physical injury? If yes, then indemnity benefits are potentially payable.
2. Did Post-Traumatic Stress Disorder arise in the absence of a physical injury? If yes, indemnity benefits may be payable if the claimant is a First Responder who suffered a qualifying event as defined in Section 112.1815, Florida Statutes, and the claim was asserted within 52 weeks of that qualifying event.

It should also be noted that a First Responder is still entitled to recover care for stress related injuries occurring in the absence of physical trauma provided the mental or nervous injury arose out of the employment. However, in such circumstances, the First Responder is only entitled to medical benefits.