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State: Fla.

Revised PTSD Rules Miss Point on Trauma, First Responders Say: Top [2018-11-08]

The Florida Division of Workers' Compensation has revised its proposed rule on what types of traumatic scenes may qualify a first responder for wage benefits for post-traumatic stress disorder.

Insurers may be satisfied with the simplified language, but police and firefighter advocates argue that it's unwise to try to codify the stress points of the human psyche.

"To itemize the things that a police officer might encounter that could lead to such (mental) injury is, in my opinion, a fool's errand," Sam Cabral, president of the International Union of Police Associations, said in written comments to the division.

The proposed rule is required by Senate Bill 376, the post-traumatic stress disorder bill that passed the Legislature with much fanfare last spring. The law leaves it up to state regulators to develop rules that specify which injuries witnessed by emergency workers would qualify "as grievous bodily harm of a nature that shocks the conscience."

The first version of the rule, unveiled in July, listed 14 types of injuries that emergency workers would have to witness before they could receive PTSD benefits. After an August hearing, those were whittled down to eight, and the division removed other language that some stakeholders said was confusing and could lead to prolonged litigation.

"We believe the rule has been made more objective as to what the first responder observes, not how they feel," said Steve Rodenberry, a Tallahassee insurance attorney who spoke at the August hearing and suggested much of the revised language that division officials have adopted.

"We have no objection" to the revised wording, he said Wednesday.

But in written comments and at an Oct. 4 workshop, first-responder advocates spoke out strongly against the list of traumas. The eight injuries include decapitation, degloving, enucleation, evisceration, exposure of the brain or other internal organs, impalement, severance and third-degree burns on 9% or more of the body.

"There are a couple more injuries that our people deal with all the time that aren't on the list," said Matthew Marshall, battalion chief for the Cape Coral Fire Department. "What about drownings? We have people who end up in canals and we have to send in dive teams."

The water is often so murky that the fire department divers cannot see a hand — or face — until it's upon them. That's a shocking sight that can haunt a rescue diver for life, Marshall said.

Another injury not on the list is smoke inhalation. While smoke victims may not show gruesome, bloody trauma, their dead bodies are nonetheless traumatic to witness, he said.

A psychologist who has counseled traumatized law-enforcement agents for three decades said simply listing ghastly injuries does not conform with standard mental health treatment guidelines for diagnosing post-traumatic stress.

"From a clinical perspective, these are very far from what we look at," said Dr. Carolyn Stimmel, executive director of the



Florida Psychological Association. “Our reaction is that this has narrowed down the criteria so much that we are going to have a lot of first responders who would qualify under any definition of PTSD, but who won’t fall into one of these little, narrow categories. They are going to be left out.”

Stimel and others used the example of the terrorist attacks of Sept. 11, 2001. Under the proposed Florida rule, a first responder who saw someone fall from one of the Twin Towers in New York City would not qualify for benefits unless he witnessed a decapitation or one of the other eight types of injuries. The rules also do not allow for cumulative stress that builds over a responder’s career, Stimel said.

In a letter to the division, the executive director of the Florida Fire Chiefs’ Association noted that the tersely worded rules do not mention trauma from seeing multiple fatalities, such as mass drownings or deaths from storms, which might not include the bloody injuries.

“Some provision should be made for such an event, as any responder group coming upon multiple decomposing bodies who may have died from drowning after a hurricane would be shocked and their conscience impacted,” said retired fire Chief William Ray Colburn.

A better option is to leave it to an administrative law judge to review the case and make a determination about whether the trauma had contributed to PTSD, Colburn and other first-responder advocates said.

PTSD is a serious problem nationwide that should be compensated to help emergency workers cope, but an “arbitrary” list of conditions is not fair to the victims, the police union’s Cabral said.

“Sadly, any list that attempts to itemize the dreadful and repulsive experiences that a law enforcement officer may encounter will fall short, as the sober, sane, rulemaker cannot conjure up the imagination that will enable him to predict the terrible destruction and devastation that evil men or appalling accidents can wreak on human beings,” Cabral’s letter reads.

The PTSD law was passed less than two years after the Pulse nightclub shooting in Orlando, which left 49 people dead and dozens more injured. Although first responders described horrific scenes after the shooting — and some have been diagnosed with PTSD — it’s not clear if the proposed rule would cover the police and rescue workers at the Pulse.

News reports described many gunshot wounds, but no decapitations or eyes popped out of their sockets — one definition of enucleation, a trauma listed in the proposed rule. The rule language does not specify gunshot wounds.

The Florida League of Cities, which initially opposed the law early this year, said in August that the list of traumas raises issues that could complicate claims handling. HB 376, now state law, appears to require that the listed injuries had to contribute to or cause the victim’s death. But in many cases, the responder may never know the cause of death, and obtaining that information in a claim proceeding may be difficult at best, wrote David Cruz, deputy general counsel for the League of Cities.

Information about a victim’s death may be exempt from public record disclosure because of the privacy requirements of the federal Health Insurance Portability and Accountability Act, also known as HIPAA.

“Application of the rule could impact the first responder’s ability to assert a claim, and the employer or insurer’s ability to evaluate a claim,” Cruz said.

Also, Cruz argued, the rule lists only the injuries without accounting for the severity of the wounds.

Otherwise, the division’s revisions since August appear to have addressed some of Cruz’s and Rodenberry’s main concerns. The initial version of the rule contained wording that also required that an injury result in “gross personal disfigurement or protracted loss of bodily member or organ.” That phrase lacked objectivity and specificity, and could have been seen as going beyond the scope of the legislative mandate, Cruz noted.

That wording has been eliminated in the latest proposed rule.

The public comments, released to WorkCompCentral this week after a records request, also give some insight into the rulemaking process at the Florida DWC. Brittany O’Neil, policy coordinator for the division, said in the August hearing that the trauma list came from a list of common injuries developed by insurance carriers.

The 9% burn requirement comes from the “rule of nine,” an established medical doctrine that assesses the range of burn

injuries and is used to guide treatment decisions, O'Neil said. A leg, for example, comprises 18% of a body mass, according to the eMedicineHealth website.

Andrew Sabolic, assistant director of the division, indicated that the law will carry costs for payers.

“We have to make sure that the first responders who are exposed to this type of situation get the benefits they deserve and at the same time, understand that the Legislature, when they were debating this bill, specifically put in this rule language to manage the scope of it,” Sabolic said at the hearing.

The next step is another public hearing, if requested, to be held at 9 a.m. Nov. 17 at the Hartman Building, Room 102, in Tallahassee.

Even if regulators finalize the rule shortly after that, the regulations won't take effect anytime soon. Because the agency has determined that the rule will cost businesses more than \$200,000, the Legislature must ratify the final language.

The Legislature does not convene until March 2019.