



[Back to News](#) | [Print News](#)

State: Va.

Court Denies PTSD Benefits, Finding Gruesome Accident Scene Part of Trooper's Job: Top [2017-11-21]

Mental trauma suffered by a Virginia state trooper who came across a mutilated body that had been dragged by a car for nearly a mile is not compensable because the incident was not unusual for a law enforcement officer, a state appellate court ruled.

The Court of Appeals of Virginia last week affirmed a decision by the Workers' Compensation Commission to deny benefits to State Trooper Dustin Hess.

Most U.S. states grant workers' compensation benefits for post-traumatic stress disorder. But the majority of them also include an exception in their statutes that can be used to deny benefits to first responders.

The exception, common across states, requires workers to prove that their PTSD was triggered by an "unusual" event. Judges consider the likelihood that a worker would encounter such an event on the job when making benefit decisions.



The legal test can be tough to pass for those who encounter trauma on the job every day. Despite the gruesome nature of the scene that Hess witnessed when he responded to a car crash on Aug. 19, 2015, he did not qualify for workers' compensation benefits because responding to car crashes is not an unusual work event for him.

Tulane University professor Charles Figley, who specializes in trauma research, found that difficult to stomach.

"This is like not covering the flu. It's something that can be easily treated," Figley said.

He said employers that deny PTSD benefits "need to catch up with the rest of the world in understanding how trauma emerges and goes away."

"If he got proper treatment in terms of desensitization, thinking through the experience and talking with other people who've gone through this, he probably would be able to get over it," Figley said. "We have so many traumatized people out there who don't need to be traumatized — they can be treated fairly quickly and be highly productive citizens, not to mention good cops."

Hess called to the scene

On Aug. 19, 2015, Hess was the first to arrive at the scene of a fatal accident. What he found was unlike anything he had seen during his 10 years as a state trooper.

A car had struck an embankment, overturning and ejecting the driver into the opposite lane. The driver had then been struck by an oncoming vehicle that dragged him for almost a mile. When Hess tried to identify the driver, he found a body that was mutilated beyond recognition.

Hess said the experience seriously disturbed him. The psychological effects worsened by the end of his shift. About two weeks later, he sought psychological help. He also filed a workers' compensation claim seeking temporary total disability benefits. His employer challenged the claim.

During a hearing before a deputy commissioner from the Virginia Workers' Compensation Commission, two witnesses

testified on the Virginia State Police's behalf.

One said that troopers spend 37% of their time investigating car crashes and that it was not unusual to encounter a mutilated body. The other testified that he had seen worse than the Aug. 19 accident.

The deputy commissioner awarded Hess benefits anyway, saying he was entitled to temporary disability, and reasonable and necessary medical benefits. The police department appealed.

On appeal, the full commission decided that Hess' injury was not compensable because the events surrounding the accident were "not shocking or unexpected to an experienced state trooper and crash scene investigator."

After learning the facts of the case, Figley was skeptical of that conclusion: "It's not unusual to respond to a traffic accident in which someone's been killed, but it's highly unusual for those circumstances to take place," he said.

The appellate court upheld the commission's decision, however.

The court made it its business to decide whether Hess "encountered a situation that was an expected occurrence in the performance of his duties." If he had, he would not get benefits.

The Virginia State Police said that Hess should have expected the scene that day, because he had received fatal accident and crash scene reconstruction training. Hess acknowledged that he had received the training but said it was not enough to prepare him for "outlier" incidents like this one.

The appellate court called this a "novel theory." It said case law did not support Hess' argument in favor of "a subjective standard of the definition 'sudden shock or fright.'"

"The decision of the commission was supported by credible evidence that the fatal accident scene encountered by Hess was not sudden or unexpected for a state trooper with his training and experience, and was thus not compensable," the court wrote.

Colorado's standard

More than half of the states whose workers' compensation systems cover PTSD require claimants to prove the triggering event was "unusual."

Colorado was one of those states until this year. House Bill 17-1229 closed the exception with a specific nod to the fact that it had the potential to bar first responders from needed PTSD benefits.

"The bill provides grounds for a public safety professional to make a claim of mental impairment based on a psychologically traumatic event that occurs within the normal course of their duties," a fiscal note for the bipartisan-sponsored bill stated.

HB 17-1229 allows first responders to receive workers' comp benefits when they can prove they've been attacked, witnessed a death or the immediate aftermath of a death, or witnessed a large-scale attack or accident that left multiple people seriously injured.

It passed 28-6 in the Senate and 52-11 in the House last spring. Gov. John Hickenlooper signed it into law in June.

Edie Sonn, a spokeswoman for Colorado's Pinnacle Assurance, was involved in the discussions that led to HB 17-1229. She said hospitals were among the bill's fiercest opponents, fearing the legislation would increase their workers' compensation costs.

"We made it clear to them, this is not just seeing blood. It has to be a traumatic incident," Sonn told WorkCompCentral in June. "And we had a couple of responses for them. One was: To be perfectly honest, for anyone who either has a gun, like a peace officer or corrections officer, or who has access to sharp implements — if they truly have a mental issue that is related to their employment, don't you want to get them help? Isn't that in the best interest of all involved?"