

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF JUDGES OF COMPENSATION CLAIMS
FORT LAUDERDALE DISTRICT OFFICE**

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OJCC No: 24-004224DAL (consolidated)

D/A: 12/08/2023, 02/07/2024

JUDGE: Daniel A. Lewis

AMENDED FINAL COMPENSATION ORDER

AFTER DUE NOTICE to the parties, a Final Merits Hearing was conducted before the undersigned Judge of Compensation Claims (JCC) on October 16, 2024 in Lauderdale Lakes, Broward County, Florida. The petition for benefits which came on for adjudication was filed on February 16, 2024. The Exhibits which were admitted into evidence at this Final Hearing are listed in the attached Appendix to this Order.

A Final Compensation Order was entered in this cause on October 29, 2024. On November 7, 2024, the claimant filed a Motion for Rehearing, and a hearing was held thereon on November 14, 2024. On November 18, 2024, an Order was entered granting the claimant's Motion for Rehearing in part, and the October 29, 2024 Final Compensation Order was vacated. This Amended Final Compensation Order is entered in place and stead of the Final Compensation Order entered on October 29, 2024.

The parties stipulated as follows:

A. The undersigned has jurisdiction of the parties and of the subject matter.

B. Notice of hearing was timely given to the proper parties.

C. Venue lies in Broward County, Florida.

D. The claimant's alleged accident and posttraumatic stress disorder and/or mental or nervous injuries have not been accepted as compensable by the employer/carrier.

E. The claimant's average weekly wage was not at issue for this Final Hearing.

F. The date of the claimant's attainment of maximum medical improvement (MMI) was at issue. The claimant contends that MMI for his mental or nervous injuries has not yet been reached.

G. Claim was made for:

1. A determination of the compensability of the claimant's posttraumatic stress disorder (PTSD) condition and/or mental or nervous injuries. The claimant seeks a determination of compensability under section 112.1815(2)(a)3 and/or section 112.1815(5), Fla. Stat.¹

2. Temporary total disability benefits from the date of the accident to date and continuing at the correct rate.

3. Authorization of a psychiatric evaluation and treatment with a board certified psychiatrist/psychologist to treat the claimant's work-related posttraumatic stress disorder condition and/or mental or nervous injuries pursuant to section 112.1815.

4. Also claimed were attorney's fees, costs, interest and penalties.

H. The employer/carrier asserted as defenses that:

¹ In his petitions for benefits, the claimant sought benefits for two specific dates of accident, December 8, 2023 and February 7, 2024. In the parties' Pretrial Stipulation, however, the claimant generally sought a determination of the compensability of his PTSD condition and/or mental or nervous injuries.

1. The claim does not meet the requirements of section 112.1815 for compensability.
2. The claimant did not have a qualifying event as defined in section 112.1815(5)(a), Fla. Stat.
3. The claimant does not meet the element of being diagnosed as having PTSD by a licensed psychiatrist.
4. As for mental only injuries: the claimant's work accident is not the major contributing cause of any alleged psychiatric condition.
5. The claimant's alleged workplace injury was not timely reported - not within the parameter of the Statute (52 weeks from the qualifying event or diagnosis of the disorder).
6. The employer/carrier also raised a general denial to the claim for attorney's fees, costs, interest and penalties.

After careful consideration and review of the testimony, documentary evidence and argument presented, the following are my findings of ultimate facts and conclusions of law:

FINDINGS OF ULTIMATE FACTS

1. The claimant testified in person before me at this Final Hearing. This claimant is a 42 year old man, who began working for the employer herein, the City of Fort Lauderdale, in 2009 as a law enforcement officer. The claimant testified he worked on road patrol, in the narcotics division, and in the rapid offender control unit. According to the claimant, he responded to motor vehicle accidents, domestic disputes, and burglaries. The claimant also investigated and responded to other violent type incidents, such as bomb threats and threats against schools and businesses.

2. The claimant testified that, when he began employment with the City as a police officer, he underwent a preemployment examination, which included a psychiatric evaluation. According to the claimant, he was cleared for full duty as a police officer following that examination. The City of Fort Lauderdale Police Officer Position Summary which was admitted into evidence reflects that officers provide general assistance to the public involving noncriminal activities. Officers also respond to criminal activities, including homicides, robberies, property crimes, domestic violence, sexual assaults, vice and narcotics, crimes by and against juveniles, and so forth.

3. The claimant testified he began experiencing emotional problems in late 2017 and early 2018. The claimant described a number of traumatic events to which he was exposed in the course of his employment as a police officer. In July, 2017, he responded to a shooting incident as part of the rapid offender control unit. The claimant heard gunshots and saw a female bleeding from gunshot wounds. Also in that incident, the claimant observed a young male on the passenger side of a motor vehicle who had suffered a gunshot wound to the body. When the claimant checked him for a pulse, he observed the male was deceased. According to the claimant, the deceased male's eyes were open and he stared directly at the claimant.

4. The claimant testified that, after this incident, his wife noticed he began to stare off into space, as if he was not there. According to the claimant, his wife encouraged him to speak to someone about the incident.

5. The claimant testified he also responded to a domestic violence incident in 2018 or 2019. According to the claimant, the SWAT team which responded did not immediately enter the premises where a woman was being held hostage. The claimant testified that, when the team

ultimately went in, the female hostage was deceased. The claimant testified he did not know if she had bled out.

6. The claimant testified he began experiencing flashbacks about the 2017 shooting incident in the year 2018 or 2019. The claimant testified he began to be irritable with his children, and his wife noticed that he was despondent. According to the claimant, he also began having problems sleeping. The claimant testified that in the year 2020, he saw a therapist or psychologist, Dr. Mack, for these issues, and she diagnosed him with PTSD. The claimant testified he also saw a nurse practitioner, Sheryl MacDonald, who also diagnosed him with PTSD and prescribed medication, including antidepressant and anti-anxiety medication.

7. The claimant testified that during this time, he began to lose weight. He continued to see the therapist as well as a counseling psychologist, Dr. Walker. The claimant testified he treated with Dr. Walker for over a year, through 2022.

8. According to the claimant, he began treating with psychiatrist Dr. Oldak in August, 2023. The claimant testified Dr. Oldak also diagnosed him with PTSD and managed his prescription medication. The claimant testified he also continued to see the therapist. The claimant testified his treatment with the therapist continues to this day. He also continues to take antidepressant and anti-anxiety medication.

9. The claimant also described other events at work, such as an incident where a male beat his girlfriend bloody. However, the claimant testified that all of his symptoms seem to stem from the 2017 shooting incident, including his nightmares and flashbacks.

10. The claimant testified that in December, 2023, he returned to road patrol. The claimant testified that around that date, he was investigating an incident or fight between two women. According to the claimant, one of the women left the scene and then returned with a two

by four. The claimant testified he disarmed the woman and cuffed her, after which she began to yell that he had raped her. According to the claimant, that incident again caused him mental distress, and he began shaking and sobbing.

11. The claimant testified his last response to an emergency call was on December 7, 2023. According to the claimant, this incident again involved a domestic violence call as well as a child custody situation. The claimant testified that when he arrived at the scene, he tried to defuse the situation, but he again ended up shaking and sobbing. The claimant testified he is not himself.

12. The claimant testified he worked as a police officer for the City of Fort Lauderdale for some 15 years. He is currently on administrative leave from the police department.

13. According to the claimant, he filed a First Notice of Injury under workers' compensation using December 8, 2023 as the date of accident. The claimant also filed for family medical leave under the FMLA on January 12, 2024, again using December 8, 2023 as the beginning date for his period of incapacity.

14. The claimant testified that Dr. Oldak was of the opinion he should not return to police work, and the doctor wrote a letter to that effect. The claimant testified he wants to continue with treatment for his PTSD and mental injuries.

15. On cross-examination questioning, the claimant admitted he did not directly witness for himself the 2017 shooting incident. According to the claimant, the male in the motor vehicle was deceased when he arrived. The claimant testified he also did not provide any treatment to the deceased male. The claimant also admitted that no bodily organs or entrails were visible as a result of that shooting incident. The claimant further testified he believed the gunshot victim was 19 years of age and not a minor.

16. The claimant also admitted he did not witness the death of the female arising from the domestic violence incident in 2018. The claimant conceded he also did not provide any treatment to the deceased female as the result of that incident.

17. The claimant testified he has a Bachelor's degree in sociology as well as a Master's degree in public health from Johns Hopkins University. According to the claimant, he obtained those degrees during the period June, 2019 to May, 2022. The claimant testified that his grades were excellent; however, he was unable to read the course material for a gender-based violence class and received his worst grade - a B minus - in that subject.

18. The claimant testified he teaches courses at Broward College in training and policy consulting. According to the claimant, the courses teach behavioral threat and risk assessment and prevention, as well as red flag laws. The claimant also serves as a law enforcement advisor to an organization called 97Percent, which is a gun violence prevention organization.

19. The claimant testified he began treating with psychologist Dr. Mack in the year 2020 and was diagnosed with PTSD. The claimant admitted he did not report his injury to the employer herein because it was not interfering with his work at that time.

20. The claimant testified he began treating with psychologist Dr. Walker in the year 2021 or 2022. The claimant testified Dr. Walker also diagnosed him with PTSD. The claimant again admitted he did not report the injury to the employer at that time. According to the claimant, Dr. Walker completed some paperwork for him in 2022. The claimant testified that was probably the first official notice of the injury which was given to the City of Fort Lauderdale.

21. The deposition of psychiatrist Dr. Kaplan was admitted into evidence at this Final Hearing. Dr. Kaplan's curriculum vitae, which was attached to his deposition, reflects that he is

board certified. Dr. Kaplan testified that, in the course of his practice, he also treats first responders for psychiatric conditions.

22. Dr. Kaplan performed an independent medical examination (IME) on behalf of the claimant on August 2, 2024 and September 8, 2024. Dr. Kaplan testified the examination was conducted virtually over the Zoom teleconferencing platform. Dr. Kaplan also reviewed the claimant's prior medical records, including the records of Dr. Oldak, Dr. Walker and Dr. Goldschmidt, the employer/carrier's independent medical examiner. The medical records of Dr. Oldak and Dr. Walker were attached to Dr. Kaplan's deposition by claimant's counsel and offered into evidence for factual purposes. *See* Dep. Dr. Kaplan 10:22-24.²

23. Dr. Kaplan testified the claimant first developed psychiatric symptoms after a work trauma exposure while working as a police officer for the Fort Lauderdale Police Department sometime between 2010 and 2013. According to Dr. Kaplan, the claimant witnessed a bloodied naked man in an apartment as well as a female who had been beaten by the male suspect. The female's teeth had been knocked out. The claimant advised Dr. Kaplan that, as a result of this incident, he developed insomnia, dissociative episodes, irritability, and poor attention span. The claimant reported he was also less communicative and that he developed increased anxiety when driving past the apartment complex where the incident occurred.

24. The claimant also advised Dr. Kaplan that, in 2017 or 2018, he was dispatched to an incident where he saw an officer helping a female who had been shot in the head. At that time, the claimant also witnessed a deceased male in a car who had apparently been shot or had shot

² Under the case law, the testimony of a physician who is not an expert medical advisor, an independent medical examiner or an authorized treating provider may still be admissible for fact purposes. Such factual testimony may include evidence concerning the claimant's appearance, history, complaints, diagnosis and treatment, but not opinions as to causation. Cespedes vs. Yellow Transportation, Inc., 130 So. 3d 243, footnote 1 (Fla. 1st DCA 2013), Office Depot vs. Sweikata, 737 So. 2d 1189, 1191 (Fla. 1st DCA 1999).

himself. The claimant reported to Dr. Kaplan that the deceased male's eyes looked straight at him.

25. Dr. Kaplan testified that, according to the claimant, after this trauma, his insomnia worsened, he developed flashbacks, difficulty concentrating, irritability, and increased hypervigilance.

26. Dr. Kaplan testified the claimant also related a third incident in the year 2019 that involved a female hostage who had been beaten to death. According to Dr. Kaplan, the claimant did not witness the deceased body, but felt the SWAT team should have gone in earlier to try to save the woman. Dr. Kaplan testified the claimant reported that his insomnia worsened after that incident, with flashbacks and increased irritability.

27. The claimant reported to Dr. Kaplan that he had received some counseling for these incidents. The claimant had begun psychotherapy virtually with a psychotherapist. According to Dr. Kaplan, in 2020, the claimant was seen by a psychiatric nurse practitioner, who diagnosed him with PTSD, depression and attention deficit hyperactivity disorder (ADHD). Dr. Kaplan testified the claimant was prescribed medication.

28. The claimant advised Dr. Kaplan that, in the year 2023, he began treating with psychiatrist Dr. Oldak. The claimant reported that Dr. Oldak also diagnosed him with PTSD. The claimant also reported to Dr. Kaplan that he had been treating with a new nurse practitioner for medication as well as with a new psychotherapist for counseling sessions.

29. Dr. Kaplan administered various psychiatric tests, including a Generalized Anxiety Disorder-7 Scale. Dr. Kaplan testified he tested the claimant for depression as well as for malingering or faking.

30. Dr. Kaplan diagnosed posttraumatic stress disorder or PTSD and major depressive disorder with recurrent moderate severity under the Diagnostic and Statistical Manual of Mental Disorders (DSM-5). Dr. Kaplan testified that PTSD is considered to be a mental or nervous injury.

31. According to Dr. Kaplan, the claimant currently complains of intrusive thoughts, nightmares, flashbacks, avoidance of people, hypervigilance, increased startle response, and dissociative episodes.

32. Dr. Kaplan opined the claimant's PTSD resulted from his employment as a police officer. According to Dr. Kaplan, the main trauma was the incident involving the deceased male in the car in 2017 or 2018. Dr. Kaplan opined the major contributing cause of the claimant's PTSD was his exposure to the various traumatic incidents while working as a police officer. Specifically, according to Dr. Kaplan, his exposure to the incident involving the deceased male in the car.

33. Dr. Kaplan testified that the treatment for the claimant's PTSD, as well as for his major depressive disorder, would consist of psychotherapy sessions as well as pharmacotherapy with antianxiety and antidepressant medication. Dr. Kaplan opined such treatment was medically necessary for the claimant.

34. Dr. Kaplan testified the claimant was restricted from performing his full duties as a police officer. According to Dr. Kaplan, the claimant stopped working in January, 2024 when his attending psychiatrist, Dr. Oldak, documented the claimant was unable to work as a police officer on a full duty, nonrestricted basis due to his PTSD condition. Dr. Kaplan testified he agreed with the work restrictions which Dr. Oldak assigned due to the claimant's PTSD. Those restrictions were assigned on December 8, 2023.

35. Dr. Kaplan opined the claimant's other psychiatric diagnosis, that of major depressive disorder, is also considered to be a mental or nervous injury. Dr. Kaplan testified that condition or injury was also due to the work traumas which the claimant sustained while working as a police officer. Dr. Kaplan opined the major contributing cause of the claimant's major depressive disorder was his exposure to traumatic incidents while working as a police officer with the City of Fort Lauderdale.

36. Dr. Kaplan opined the claimant has not yet attained maximum medical improvement (MMI) for his psychiatric conditions.

37. Dr. Kaplan testified that, based on the tests which he administered, there was no evidence of feigning. Dr. Kaplan also testified that, if the claimant was involved academically with an organization which dealt with gun laws or gun safety, that would be something he is capable of performing within his psychiatric restrictions. However, Dr. Kaplan opined the claimant should not be exposed to further traumatic events, including events involving serious injury and death, which Dr. Kaplan felt would worsen his psychiatric condition.

38. Dr. Kaplan's IME report reflects the claimant denied having been treated for any mental disorder prior to going to work for the City of Fort Lauderdale Police Department. As indicated, Dr. Kaplan diagnosed PTSD and major depressive disorder, moderate severity. Dr. Kaplan opined the claimant needs to be treated by a board certified psychiatrist for medication management as well as by a qualified licensed therapist for psychotherapy sessions. Dr. Kaplan opined the claimant is currently impaired from working as a police officer secondary to his PTSD condition. Dr. Kaplan also felt the claimant's work impairment was more likely than not permanent.

39. In his IME report, Dr. Kaplan opined the claimant's PTSD and major depressive disorder conditions arose from his employment as a police officer with the City of Fort Lauderdale. Dr. Kaplan reported that the exposure to traumatic events while working as a police officer was the major contributing cause of the claimant's PTSD and major depressive disorder conditions.

40. In his report, Dr. Kaplan opined that the claimant's PTSD was due to one or more of the following qualifying events:

- Seeing for oneself a decedent whose death involved grievous bodily harm of a nature that shocks the conscience.
- Directly witnessing a death, including suicide, that involved grievous bodily harm of a nature that shocks the conscience.
- Directly witnessing a homicide.

41. As indicated, attached to Dr. Kaplan's deposition for factual purposes were the medical records of various other medical providers. The report of Dr. Stacey Walker, licensed counseling psychologist, reflects that she treated the claimant from October 11, 2021 to January 31, 2023. According to Dr. Walker's report, the therapy which she administered included cognitive behavioral therapy, dialectic behavioral therapy and coping skills. The report reflects the claimant was complaining of anxiety and a feeling of being overwhelmed. The report reflects Dr. Walker's diagnoses of anxiety disorder, unspecified, and posttraumatic stress disorder, unspecified. The report also reflects the claimant stopped the therapy sessions before reaching his goal or attaining his discharge plan.

42. Also attached to Dr. Kaplan's deposition were the medical records of psychiatrist Dr. Oldak. Those records reflect that Dr. Oldak treated the claimant from September 9, 2023 to

February 24, 2024. Dr. Oldak diagnosed the claimant with major depressive disorder, recurrent, moderate; generalized anxiety disorder; PTSD; and ADHD. Dr. Oldak treated the claimant with pharmacotherapy and psychotherapy.

43. Dr. Oldak wrote three "To whom it may concern" letters on the claimant's behalf. In his letter dated January 10, 2024, Dr. Oldak opined the claimant needed a temporary work absence beginning on December 8, 2023 due to his PTSD. Dr. Oldak reported the claimant had been undergoing treatment for PTSD and that a temporary leave of absence was required for the claimant to focus on his mental health and manage his current condition.

44. In his letter dated February 6, 2024, Dr. Oldak stated the claimant would need a temporary work absence starting on February 7, 2023 due to his PTSD and ongoing treatment. In his March 14, 2024 letter, Dr. Oldak stated the claimant should not be exposed to future traumatic events which could trigger symptoms of his PTSD and worsen his condition. In the letter, Dr. Oldak also addressed the cause of the claimant's PTSD; however, as stated, that is beyond the permissible scope of factual testimony or evidence from this unauthorized treating physician. Dr. Oldak opined the claimant was permanently incapable of performing useful and efficient service as a police officer due to functional limitations caused by his mental/behavioral health issues. In his letter, Dr. Oldak recommended the claimant no longer work for the Fort Lauderdale Police Department since he could no longer perform the necessary job requirements safely and effectively. Dr. Oldak opined the claimant had manifested a mental injury unaccompanied by a physical injury.

45. The deposition of board certified psychiatrist Dr. Goldschmidt was also admitted into evidence at this Final Hearing. Dr. Goldschmidt performed an IME of the claimant on behalf of the employer/carrier on March 27, 2024.

46. Dr. Goldschmidt testified he reviewed the claimant's medical records, including the reports of Dr. Oldak and Dr. Walker, as well as the claimant's deposition testimony. According to Dr. Goldschmidt, the claimant was complaining of symptoms of PTSD from a November, 2019 work exposure where he observed a deceased victim in a motor vehicle who had sustained multiple gunshot wounds. The claimant also reported an incident with a schizophrenic woman.

47. The claimant told Dr. Goldschmidt he had been seen by a nurse practitioner, Sheryl MacDonald, who diagnosed him with PTSD. The claimant then saw psychiatrist Dr. Oldak.

48. Dr. Goldschmidt testified he administered MMPI testing to test for malingering. According to Dr. Goldschmidt, the tests indicated the claimant's statements would not be reliable or credible and that he would utilize symptoms to manipulate people.

49. Dr. Goldschmidt testified he did not diagnose the claimant with PTSD or ADHD. Dr. Goldschmidt opined the claimant's sleep apnea could cause a wealth of psychiatric and cognitive symptomatology, including PTSD-like or ADHD-like symptoms. According to Dr. Goldschmidt, there was an element of symptom magnification present.

50. Dr. Goldschmidt felt the claimant's lectures or presentations involving gun violence were inconsistent with someone who was traumatized from seeing a person who had been shot. Dr. Goldschmidt diagnosed personality disorder with paranoid and passive aggressive traits, dysthemia and untreated sleep apnea.

51. Dr. Goldschmidt opined that none of the claimant's diagnoses were work related. Dr. Goldschmidt also testified that the medication Adderall, which the claimant was taking for ADHD, can cause symptoms similar to PTSD.

52. Dr. Goldschmidt agreed that both PTSD and anxiety disorder are considered to be mental or nervous injuries. Dr. Goldschmidt also testified that the claimant reported symptoms of

flashbacks, crying spells, irritability, nightmares, sleeping issues, memory problems and being easily startled.

53. Dr. Goldschmidt testified that the testing administered by Dr. Kaplan were all self-reporting tests and of no real value. According to Dr. Goldschmidt, those tests have no utility from a forensic perspective.

54. Dr. Goldschmidt's IME report, which was attached to his deposition, reflects his diagnoses of personality disorder with paranoid and passive aggressive traits, dysthemia, sleep apnea, and obesity. Dr. Goldschmidt's report indicates that none of the diagnoses were workers' compensation related. According to the IME report, there was no objective evidence of PTSD or ADHD but there was evidence of physical and psychological symptom magnification. Dr. Goldschmidt reported the claimant's primary conflict was that he felt his superior officers were out to get him.

55. In his IME report, Dr. Goldschmidt stated the concept of MMI does not apply to personality disorders.

56. The deposition of the carrier's senior claims adjuster, Lissa Benoit, was admitted into evidence at this Final Hearing as a joint exhibit of the parties. Ms. Benoit testified that a First Report of Injury was filed for the claimant's alleged December 8, 2023 injury on January 26, 2024. Ms. Benoit testified that the compensability of the claim was denied by Notice of Denial dated January 31, 2024. The basis of the denial was that the claim did not meet the requirements of section 112.1815, Fla. Stat.

57. Ms. Benoit testified she received a letter dated January 10, 2024 from the claimant's treating psychiatrist, Dr. Oldak, which stated the claimant needed to take a leave of absence. Ms. Benoit testified the letter indicated the claimant had been undergoing treatment with Dr. Oldak

for PTSD and that Dr. Oldak considered the condition to be work related. In the letter, Dr. Oldak stated the claimant needed to take a temporary leave of absence to focus on his mental health.

58. Ms. Benoit testified the carrier received the claimant's February 16, 2024 petition for benefits on the same date. A Response to the Petition for Benefits was issued on March 1, 2024, again indicating the claimant did not meet the requirements of section 112.1815, Fla. Stat,

59. Ms. Benoit testified she received the First Report of Injury for the claimant's February 7, 2024 date of accident on February 23, 2024. According to Ms. Benoit, that date of accident was also denied by Notice of Denial dated March 5, 2024. The basis of the denial was that the claim did not meet the requirements of section 112.1815, Fla. Stat. A petition for benefits for that date of accident was also filed on February 16, 2024 and received by the carrier on February 27, 2024.³ As indicated, the Response to Petition for Benefits dated March 1, 2024 stated the same basis for the denial of the claim.

CONCLUSIONS OF LAW

60. The claimant seeks medical and/or indemnity benefits under both sections 112.1815(2)(a)3 and 112.1815(5), Fla. Stat. Case law instructs us that first responder claimants can seek workers' compensation benefits for PTSD under either or both statutory subsections. Williams vs. Brevard County Fire Rescue, 353 So. 3d 1198, 1199 (Fla. 1st DCA 2023). I will address each of these statutory provisions in turn.

61. Section 112.1815(2)(a)3, Fla. Stat., provides, in pertinent part, as follows:

A mental or nervous injury involving a first responder and occurring as a manifestation of a compensable injury must be demonstrated by clear and convincing evidence. For a mental or nervous injury arising out of the employment unaccompanied by a physical injury involving a first responder, only medical benefits under s. 440.13 shall be payable for the mental or nervous injury. However, payment of indemnity as provided in s. 440.15 may not be made unless

³ The claimant's two cases for his two dates of accident were consolidated by Order entered by the undersigned on August 22, 2024.

a physical injury arising out of injury as a first responder accompanies the mental or nervous injury.

62. “Section 112.1815 permits a first responder to receive medical benefits under section 440.13 to treat a mental or nervous injury suffered at work, even if it was unaccompanied by a physical injury. The first responder, however, cannot receive indemnity benefits under 440.15 unless a physical injury accompanies the mental or nervous injury.” City of Hallandale Beach vs. Casey, 352 So. 3d 22, 24 (Fla. 1st DCA 2022).

63. Here, there is no dispute the claimant was a first responder and was employed as a police officer for the purposes of section 112.1815, Fla. Stat. The employer/carrier herein asserted that the claimant’s work accident is not the major contributing cause of any alleged psychiatric condition under section 112.1815(2)(a)3.

64. Here, the claimant testified he was experiencing mental or nervous symptoms following a 2017 shooting incident. According to the claimant, he saw a psychologist, Dr. Mack, in 2020, who diagnosed him with PTSD. The claimant also saw a nurse practitioner, Sheryl MacDonald, who also diagnosed PTSD and prescribed medication. The claimant testified he also saw psychologist Dr. Walker, who treated him from October, 2021 to January, 2023. Dr. Walker also diagnosed anxiety disorder as well as PTSD. The claimant then saw Dr. Oldak in September, 2023. Dr. Oldak diagnosed major depressive disorder, anxiety disorder, PTSD, and ADHD.

65. Dr. Oldak wrote three letters dated January 10, 2024, February 6, 2024, and March 14, 2024 stating he had been treating the claimant for PTSD. In the letters, Dr. Oldak stated the claimant was initially temporarily and then permanently unable to perform his duties as a police officer.

66. As summarized hereinabove, the claimant's IME physician, psychiatrist Dr. Kaplan, diagnosed the claimant with PTSD and major depressive disorder, with recurrent moderate severity. Dr. Kaplan opined the claimant's mental injuries, including his PTSD, resulted from his employment as a police officer. According to Dr. Kaplan, the main trauma was the incident involving the deceased male in the car in 2017 or 2018. The claimant testified this incident occurred in July, 2017.

67. Dr. Kaplan opined the major contributing cause of the claimant's PTSD was his exposure to various traumatic events while working as a police officer with the City of Fort Lauderdale; specifically, his exposure to the incident involving the deceased male in the car in 2017. According to Dr. Kaplan, the claimant needs treatment for his PTSD and major depressive disorder in the form of psychotherapy as well as pharmacotherapy. Dr. Kaplan testified the claimant needs to be treated with a board certified psychiatrist for medication management and with a qualified, licensed therapist for psychotherapy sessions. Dr. Kaplan testified this treatment was medically necessary. Dr. Kaplan also opined the claimant has not yet attained MMI.

68. Dr. Walker, the claimant's treating psychologist, diagnosed anxiety disorder, unspecified, and PTSD. Dr. Oldak, the claimant's treating psychiatrist, also diagnosed the claimant with major depressive disorder, recurrent, moderate; generalized anxiety disorder; PTSD; and ADHD. As indicated, although Dr. Oldak addressed the cause of the claimant's PTSD, that testimony is beyond the scope of permissible factual testimony from an unauthorized treating physician. Dr. Oldak opined the claimant manifested a mental injury unaccompanied by a physical injury.

69. Contrary to this medical evidence and testimony, the employer/carrier's IME, psychiatrist Dr. Goldschmidt, did not diagnose the claimant with PTSD or ADHD. Instead, Dr.

Goldschmidt diagnosed personality disorder with paranoid and passive aggressive traits, dysthymia and sleep apnea. Dr. Goldschmidt found there was evidence of symptom magnification present. According to Dr. Goldschmidt, none of the claimant's diagnoses were work related. However, Dr. Goldschmidt agreed that PTSD and anxiety disorder are considered to be mental or nervous injuries.

70. I note that there is an issue as to whether a first responder claimant must establish that his mental or nervous injury was the result of his employment by clear and convincing evidence or by a preponderance of the evidence where, as here, the mental or nervous injury was not accompanied by a physical injury. *See Williams vs. Brevard County Fire Rescue*, 353 So. 3d 1198, footnote * (Fla. 1st DCA 2023). As the footnote to the concurring/dissenting opinion states, in an amicus brief which was filed in that case, the Florida Department of Financial Services contended that the standard of proof in such cases would be a preponderance of the evidence. However, a dissenting opinion has no precedential value; only the written, majority opinion of an Appellate Court has precedential value. *Soya vs. Health First, Inc.*, 337 So. 3d 388, footnote 2 (Fla. 1st DCA 2022).

71. As indicated, here, the claimant was diagnosed with PTSD and major depressive disorder by his IME psychiatrist, Dr. Kaplan. Psychologist Dr. Walker also diagnosed PTSD, as well as anxiety disorder. Psychiatrist Dr. Oldak's diagnoses included, among other mental disorders, major depressive disorder, anxiety disorder and PTSD. The only physician who diagnosed the claimant with a personality disorder as opposed to a mental or nervous injury was the employer/carrier's IME, psychiatrist Dr. Goldschmidt.

72. I accept the medical testimony and opinions of the claimant's psychiatric IME, Dr. Kaplan, and I reject any contrary medical testimony of the employer/carrier's

psychiatric IME, Dr. Goldschmidt. Case law instructs us that the JCC may accept the testimony of one physician over that of another so long as it does not appear that the JCC ignored or overlooked contrary testimony. Chavarria vs. Selugal Clothing, Inc., 840 So. 2d 1071 (Fla. 1st DCA 2003) (*en banc*). *See also* White vs. Bass Pro Outdoor World, LP, 16 So. 3d 992 (Fla. 1st DCA 2009) (holding a JCC may reject evidence, even uncontroverted testimony, which he does not believe) and Mitchell vs. XO Communications, 966 So. 2d 489 (Fla. 1st DCA 2007) (holding it is well-settled that a JCC may reject in whole or in part even uncontroverted testimony the JCC disbelieves and that the claimant must present evidence which the JCC finds persuasive).

73. Here, I find the opinions of Dr. Kaplan to be persuasive. As stated, Dr. Goldschmidt opined the claimant has a personality disorder, yet the claimant's treating physicians all diagnosed mental or nervous injuries or conditions, as did the claimant's IME, Dr. Kaplan. I find that the opinions of Dr. Kaplan comport most with logic and reason in this cause in light of all of the evidence presented. In accordance with Dr. Kaplan's opinions, I further find the claimant has not yet attained his plateau of MMI for his mental or nervous injuries.

74. I find the claimant has established causation and major contributing cause; that is, that his mental or nervous injury was the result of his employment, by both a preponderance of the evidence as well as by clear and convincing evidence. Clear and convincing evidence is defined as evidence of such quality and character so as to produce in the mind of the JCC a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established. McKesson Drug Co. vs. Williams, 706 So. 2d 352 (Fla. 1st DCA 1998). The sum total of the evidence must be of sufficient weight to

convince the trier of fact without hesitancy. Florida Department of Children and Families vs. F.L., 880 So. 2d 602, 614, footnote 7 (Fla. 2004).

75. The claimant's claim for a determination of the compensability of his PTSD and/or mental or nervous injuries under section 112.1815(2)(a)3, Fla. Stat., is hereby granted.

76. The claimant next seeks a determination of the compensability of his PTSD under section 112.1815(5), Fla. Stat. Section 112.1815(5), Fla. Stat., provides that PTSD suffered by a first responder is a compensable occupational disease if it is due to a listed qualifying event. No accompanying physical injury is required, and such a first responder is eligible for indemnity as well as medical benefits. City of Hallandale Beach vs. Casey, *supra*, 352 So. 3d at 23. As stated, here, there is no dispute that this claimant was a first responder.

77. The claimant herein was diagnosed with PTSD by a licensed psychiatrist. The statute allows for such a diagnosis to be made in person or through telehealth. However, under the statute, the diagnosis must be made by an authorized treating physician. Section 112.1815(5)(a)2, Fla. Stat. Case law defines "authorized treating provider" to mean a treating provider authorized by the employer/carrier. Rucker vs. City of Ocala, 684 So. 2d 836, 839-840 (Fla. 1st DCA 1996). Since the claimant's diagnosis of PTSD was not made by an authorized treating physician, I find the claimant does not satisfy that statutory requirement.⁴

⁴ The employer/carrier herein did not raise the defense that the diagnosis of PTSD was not made by an authorized treating physician, only that the claimant was not diagnosed as having PTSD by a licensed psychiatrist. However, the employer/carrier also asserted the defense that the claimant does not meet the requirements of section 112.1815 for compensability. One of the statutory requirements for compensability is that the diagnosis of PTSD be made by an authorized treating physician. As stated, I find the claimant did not satisfy this requirement.

78. The employer/carrier also asserted the defense that the claimant's PTSD was not due to one of the 11 qualifying events listed in section 112.1815(5)(a), Fla. Stat. I agree. For example, the claimant did not see for himself a deceased minor. "Minor" is defined in section 112.1815(5)(e) as having the same meaning as in section 1.01(13), Fla. Stat. That is, any person who has not attained the age of 18 years. Here, the claimant testified he did not know the age of the person who committed suicide in the motor vehicle. The claimant testified he believed that the gunshot victim was 19 years old.

79. The claimant also did not directly witness the death or fatal injury of a minor. "Directly witnessing" is defined in section 112.1815(5)(e) to mean to see or hear for oneself. In addition, the claimant did not see for himself a homicide or a decedent or a person whose death involved grievous bodily harm of a nature that shocks the conscience. Section 112.1815(5)(f) directs the Department of Financial Services to adopt rules specifying injuries qualifying as grievous bodily harm of a nature that shocks the conscience. That Rule, which is found at Fla. Admin. Code R. 69L-3.009, specifies that injuries which qualify as grievous bodily harm of a nature that shocks the conscience include decapitation, degloving, enucleation, evisceration, exposure of one or more of certain listed internal organs, impalement, severance, and third degree burns on 9% or more of the body. No such injuries were involved in this case.

80. Although Dr. Kaplan opined the claimant's PTSD was due to one or more of the qualifying events listed in the statute, such as the claimant seeing for himself a decedent whose death involved grievous bodily harm of a nature that shocks the conscience, directly witnessing a homicide, etc., I find that this determination is not a medical issue. I find the determination of whether the claimant met one of the 11 listed qualifying events of section 112.1815(5)(a) is a question of fact for the JCC, as the trier of fact, to decide. See Ullman vs. City of Tampa Parks

Department, 625 So. 2d 868, 871 (Fla. 1st DCA 1993) (holding that the question of whether an accident occurred, as contrasted with the issue of medical causation in the face of the undisputed occurrence of an accident, is not, strictly speaking, a medical question. Instead, it is a question of fact for the JCC, as the trier of fact, to decide). In addition, under the case law, the opinions of an expert which are not supported by competent substantial evidence have no evidentiary value. Geiger Distributors, Inc. vs. Snow, 186 So. 2d 507, 509 (Fla. 1966).

81. Consequently, I find the claimant is not entitled to benefits under section 112.1815(5), Fla. Stat. The claimant's claim for determination of the compensability of his PTSD under section 112.1815(5), Fla. Stat., is hereby denied.

WHEREFORE, in view of the foregoing, it is hereby ORDERED AND ADJUDGED that:

1. The claimant's claim for a determination of the compensability of his posttraumatic stress disorder condition and/or mental or nervous injuries under section 112.1815(2)(a)3, Fla. Stat., is hereby granted.

2. The claimant's claims for a determination of the compensability of his accidents of December 8, 2023, February 7, 2024, and his posttraumatic stress disorder condition under section 112.1815(5), Fla. Stat., are hereby denied and dismissed.

3. The claimant's claim for temporary total disability benefits from the date of the accident to date and continuing at the correct rate is hereby denied and dismissed, as section 112.1815(2)(a)3, Fla. Stat., does not permit the award of indemnity benefits for a first responder unless a physical injury accompanies the mental or nervous injury.

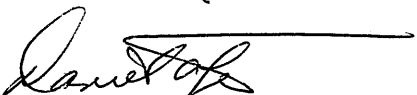
4. The claimant's claim for authorization of a psychiatric evaluation and treatment with a board certified psychiatrist and a qualified psychologist to treat his work-related PTSD and/or mental or nervous injuries pursuant to section 112.1815(2)(a)3, Fla. Stat., is hereby granted.

5. The claimant's claim for interest and penalties is hereby denied and dismissed, as no indemnity benefits have been awarded herein.

6. Pursuant to section 440.34, Fla. Stat., the claimant shall be entitled to recover his reasonable attorney's fees and taxable costs from the employer/carrier, based on the benefits secured herein. Jurisdiction shall be reserved to determine the amount of the fees and costs due.

DONE AND ORDERED at Lauderdale Lakes, Broward County, Florida this

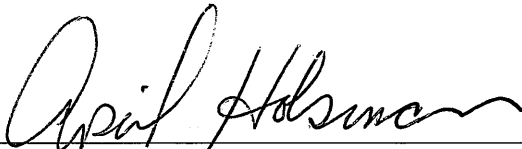
21st day of November, 2024.



Honorable Daniel A. Lewis
Judge of Compensation Claims

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Amended Final Compensation Order was furnished this 21st day of November, 2024 by electronic transmission to the parties' counsel of record and by U.S. mail to the parties.



Secretary to Judge of Compensation Claims

APPENDIX

Carita vs. City of Fort Lauderdale; OJCC 24-004224DAL

Judge's Exhibits:

1. Uniform Statewide Pretrial Stipulation filed August 2, 2024, Docket Number 22

Claimant's Exhibits:

1. Deposition of Dr. Eric Kaplan filed October 9, 2024, Docket Number 33
2. City of Fort Lauderdale Police Officer Position Summary filed October 9, 2024, Docket Number 35
3. FMLA paperwork filed October 9, 2024, Docket Number 36

Joint Exhibits:

1. Deposition of Lissa Benoit filed October 9, 2024, Docket Number 34

Employer/Carrier's Exhibits:

1. Deposition of Dr. Thomas Goldschmidt filed October 11, 2024, Docket Number 43

Other Items:

1. Claimant's Trial Memorandum filed October 9, 2024, Docket Number 39
2. Case Law in Support of Claimant's Trial Memorandum filed October 9, 2024, Docket Number 38
2. Employer/Carrier's Trial Memorandum filed October 14, 2024, Docket Number 44