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STATE OF MAINE
WORKERS' COMPENSATION BOARD
OFFICE OF EXECUTIVE DIRECTOR/CHAIR
442 CIVIC CENTER DRIVE, SUITE 100
27 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0027

JANET T. MILLS
GOVERNOR

JOHN C. ROHDE
EXECUTIVE DIRECTOR

April 1, 2025

Senator Michael Tipping, Chair
Representative Amy Roeder, Chair
Joint Standing Committee on Labor
100 State House Station
Augusta, ME 04333-0100

Re: Report to The Labor Committee Pursuant to 39-A M.R.S.A. § 153 (11) (A) Relative to First Responder Post Traumatic Stress Disorder Presumption

I. INTRODUCTION

A. Mental injuries caused by mental stress.

Mental injuries caused by mental stress have long been compensable in Maine. In *McLaren v. Webber Hospital Association*, Me. 386 A.2d 734 (Me. 1978), “a compensation award was upheld where the claimant suffered an acute [mental injury] as a result of a job-related sensitivity seminar he attended.” *Townsend v. Maine Bureau of Public Safety*, 404 A.2d 1014, 1016 (Me. 1979). In *Townsend*, the Law Court held “that gradual mental injuries are not per se excluded from the reach of the Act.” *Townsend*, 404 A.2d, 1016-1017.

The Law Court did, however, establish limitations with respect to proving a gradual mental is compensable:

In sum, where there is a sudden mental injury precipitated by a work-related event, our typical workers’ compensation rules will govern. *See McLaren v. Webber Hospital Association, supra*. Where, however, the mental disability is the gradual result of work-related stresses, the claimant will have to demonstrate either that he was subjected to greater pressures and tensions than those experienced by the average employee or, alternatively, by clear and convincing evidence show that the ordinary and usual work-related pressures predominated in producing the injury.

Townsend, 404 A.2d 1020.

B. Codification of Mental Injury Rule

In response to the Court's decision in *Townsend*, the Legislature enacted 39 M.R.S.A. § 51(3); effective September 29, 1987. The standard adopted by the Legislature in 1987 was incorporated into 39-A M.R.S.A. § 201(3) when the current Workers' Compensation Act was enacted in 1992.

C. The Current Statute

In 2017, the 128th Maine Legislature repealed § 201(3) and enacted 39-A M.R.S.A. § 201(3-A)¹. Section 201 (3-A) (A) carried forward the mental injury rule in the former § 201 (3). Section 201 (3-A) (B) created a presumption that law enforcement officers, firefighters and emergency medical services persons who meet specific criteria have suffered work related post-traumatic stress disorder ("PTSD").

In 2021, corrections officers and E 9-1-1 dispatchers were added to the list of employees to whom the presumption applies. (P.L. 2021, c. 419.)

In 2022, the sunset provision in 39-A M.R.S.A. § 201(3-B) was extended to October 1, 2025 and 39-A M.R.S.A. § 153 (11) was enacted. (P.L. 2021, c. 629.) Subsection 11 requires the Board to submit reports in 2025, 2027 and 2032 with respect to use of the rebuttable presumption.

Presently, L.D. 82 (An Act to Amend the Workers' Compensation Laws by Extending Indefinitely the Presumption Applying to Law Enforcement Officers, Corrections Officers, E-9-1-1 Dispatchers, Firefighters and Emergency Medical Services Persons Diagnosed with Post-Traumatic Stress Disorder) is pending before the Labor Committee. L.D. 82 repeals the sunset provision in § 201(3-B). L.D. 82 received unanimous support from the Workers' Compensation Board of Directors. On February 12, 2025, the Labor Committee unanimously voted Ought-To-Pass as Amended with the amendment being an emergency preamble to ensure the repeal is effective before October 1, 2025.

II. THE PRESUMPTION

In cases where the presumption in § 201(3-A)(B) applies, it is presumed that the employee's injury arose out of and in the course of employment and is, therefore, compensable. The presumption is rebuttable, meaning it can be overcome. To do so, the employer must provide clear and convincing contrary evidence.

The presumption does not apply when an employee gives notice of a claim that is or might be related to PTSD. The presumption only comes into play after the employee presents evidence of certain statutorily defined underlying facts.

Specifically:

¹ The full text of 39-A M.R.S.A. § 201(3-A) is included in Appendix A.

1. The employee meets the definition of law enforcement officer, corrections officer, E-9-1-1 dispatcher, firefighter or emergency medical services person;
2. The employee is diagnosed with PTSD;
3. The PTSD diagnosis is made by “an allopathic physician or an osteopathic physician licensed under Title 32, chapter 48 or chapter 36, respectively, with a specialization in psychiatry or a psychologist licensed under Title 32, chapter 56” (collectively “health care provider”);
4. The health care provider concludes that the PTSD
 - a. resulted from work stress,
 - b. that the work stress was extraordinary and unusual compared with that experienced by the average employee, and
 - c. the work stress and not some other source of stress was the predominant cause of the post-traumatic stress disorder.

Once this evidence is presented, it is presumed that the employee’s PTSD injury arose out of and in the course of employment. The employee will be entitled to the benefits of the Act unless the employer provides clear and convincing evidence to the contrary.

Lastly, “A mental injury is not considered to arise out of and in the course of employment if it results from any disciplinary action, work evaluation, job transfer, layoff, demotion, termination or any similar action, taken in good faith by the employer.” 39-A M.R.S.A. § 201(3-A).

III. EARLY INTERVENTION, TREATMENT AND EDUCATION

Enactment of the PTSD presumption in 2017 was primarily based on a desire to destigmatize PTSD injuries and to promote early intervention and treatment. The rationale, as set forth in the Board’s December 22, 2021, report, was based on a recognition that:

- PTSD is a serious problem for the employees covered by the presumption;
- early intervention by way of employee assistance programs, peer-to-peer communications and, when necessary, medical treatment are important tools to ameliorate the impact of PTSD; and,
- it is important to increase awareness of, and reducing the stigma associated with, PTSD injuries.

These goals continue to be of equal importance and there are approaches that have proven to be successful in meeting them.

The Workers’ Compensation Board of Directors has members, one management, one labor, who have direct experience with programs and plans that can help to destigmatize PTSD, promote

early intervention, and, as a result, increase the likelihood of positive outcomes in cases involving PTSD.

One approach involves the availability of peer-to-peer support networks established by unions and other groups representing first responders. Peer-to-peer networks provide a place for employees to turn if they need help. Peers can also proactively address issues by reaching out to ask if help is needed. Some employees are more likely to accept support – and admit they need help – if the support is offered by a peer who may have experienced similar situations.

Support can also be provided within a department. For example, by hiring an employee whose job is to provide support where it is or may be needed. Working within the department allows the individual to develop relationships with co-workers before there is a need for assistance. As is the case with peer support, an employee is more likely to access help from an individual they trust than someone they may not know. In addition to providing support, another effective strategy is to keep employees who can work at work.

Internal and external peer support includes connecting employees with health care providers who specialize in treating first responders. This can be done not only after a bad call, it can be done when it appears that an employee's behavior may be impacted by underlying mental health issues. Anecdotally, workplaces that have support and stay-at-work programs experience positive outcomes with fewer employees needing to access the services of health care providers while remaining employed.

The Maine Municipal Association (“MMA”) has also implemented education, early intervention and treatment efforts. The following information was provided to the Board by the MMA:

Since 2019, the MMA Workers’ Compensation Fund, with support from the MMA Executive Committee, has committed over \$180,000 for Mental Stress Resiliency Initiatives to support municipal employees. These efforts include sponsoring and funding multiple Critical Incident Stress Management (CISM) courses across the state. To date, MMA Risk Management Services (RMS) has sponsored 12 CISM courses, reaching 167 entities and 303 employees. Additionally, we partnered with the Maine Chiefs of Police to co-sponsor a three-day CISM course aimed at helping members establish Peer Support Teams. Other key initiatives include:

- *Peer-to-Peer Training (2022): Sponsored training for 27 individuals.*
- *Stress Management for Heroes (2022): Hosted four courses, benefiting 98 individuals.*
- *Resilient Responder Training: Awarded three scholarships and hosted training at MMA for 20 first responders from 14 different organizations.*

In September 2024, MMA launched Serve Strong, a web-based platform accessible 24/7, providing essential resources for first responders and their families, including access to talk therapy.

MMA’s Learning Management System, NeoGov Learn, also offers 29 courses focused on mental health and resiliency. This is available to all members of the WC fund at no cost. These include:

- *The Asher Model training for law enforcement.*
- *A five-part Leading with Emotional Intelligence series.*
- *Various stress management courses designed specifically for municipal operations.*

IV. ANALYSIS

A. The Data

The Board's analysis is based on an examination of claim information in its database for two equal three-year periods: October 18, 2018 through October 17, 2021 (the "pre-presumption data") and October 18, 2021 through October 17, 2024 (the "post-presumption data"). Information in the Board's database is derived from filings submitted by self-insured employers and insurance companies.

The Board sent its claim data to the MMA and the State of Maine Office of Employee Health, Wellness & Workers' Compensation ("SOM") and asked that they review it for accuracy; provide information regarding return-to-work dates; provide information regarding any policies, plans, programs, etc. that promote early intervention, diagnosis and treatment; and, provide information related to claim costs. MMA's information was incorporated into the Board's data. SOM's data was not received in time to incorporate into this report.

Claims involving corrections officers and E-9-1-1 dispatchers were identified using occupations reported to the Board when a First Report of Injury ("FROI") was filed. Claims were included as PTSD claims if the description of injury potentially involved PTSD. Since a FROI is usually filed soon after an injury is reported, the exact diagnosis is sometimes not clear because treatment is at its inception. Since claims were classified as PTSD injuries if they potentially involved a PTSD diagnosis, the data may overstate the number of cases brought pursuant to § 201(3-A)(B) because some of these claims may not have resulted in a PTSD diagnosis "by an allopathic physician or an osteopathic physician licensed under Title 32, chapter 48 or chapter 36, respectively, with a specialization in psychiatry or a psychologist licensed under Title 32, chapter 56."

B. Number of FROIs filed in Corrections Officer and E-9-1-1 dispatcher PTSD Claims

The following charts show that the total number of FROIs is the same for both the pre- and post-presumption periods. Of that total, the number filed for E-9-1-1 dispatchers has increased while the number filed for corrections officers has decreased.

Pre-Presumption					
Job Category	2018	2019	2020	2021	Grand Total
Corrections Officer	3	22	12	14	51
E-9-1-1 Dispatcher		3	3	4	10
Total	3	25	15	18	61

Post-Presumption					
Job Category	2021	2022	2023	2024	Grand Total
Corrections Officer	7	12	7	11	37
E-9-1-1 Dispatcher	2	8	9	5	24
Total	9	20	16	16	61

The pre-presumption totals include 56 lost time FROIs and two cases identified by MMA as medical only² and three as informational only³. The two medical only FROIs had dates of injury in 2019 and are in the E-9-1-1 category. One of the three information only cases was from 2019 in the corrections officer category, the other two (one in 2020 and one in 2021) are in the E-9-1-1 dispatcher category.

The post-presumption totals include 58 lost time FROIs and one case identified by MMA as medical only and two as informational only. The medical only FROI had a date of injury in 2023 and is in the E-9-1-1 dispatcher category. Both information only cases were from 2022; one in the corrections officer category and the other in the E-9-1-1 dispatcher category.

C. Claims with Payments

In the pre-presumption period, payments were reported in 11 of the 61 cases identified above. The average cost per claim, across all FROIs, was \$21,924.57. If the analysis is limited to just lost time FROIs, the average cost per claim was \$23,882.13. If the analysis is limited to just the cases where a payment was made, the average was \$121,581.73.

In the post-presumption period, payments were reported in 15 of the 61 claims identified above. The average cost per claim, across all FROIs, was \$16,477.42. If the analysis is limited to just lost time FROIs, the average cost per claim was \$17,315.25. If the analysis is further limited to just the cases where a payment was made, the average was \$68,106.66.

The average cost per claim in all three analyses is lower in the post-presumption period than the pre-presumption period.

D. Number of Claims Involving an Award or Settlement

Pursuant to § 153(11), the Board must report on the portion of claims that resulted in a settlement or an award of benefits. An award can be the result of litigation in a contested process which requires an administrative law judge to issue an order. Awards also include claims where the parties agree to voluntarily resolve a case in lieu of litigation by submitting a consent decree that is signed by an administrative law judge.

² Medical only FROIs relate to injuries that require the services of a health care provider but do not cause the employee to lose a day's work. 39-A M.R.S.A. § 303.

³ Informational (or incident) only FROIs are not mentioned or defined in the Act. The Board's understanding is that these reports are created when an incident that might, but has not yet, required the services of a health care provider but do not cause the employee to lose a day's work.

The Board did not find any decrees that awarded benefits based on the presumption contained in § 201(3-A)(B).

A lump sum settlement is an agreement between the parties to “discharge any liability for compensation, in whole or in part, by the employer’s payment” of a sum of money. 39-A M.R.S.A. § 352.

Three of the pre-presumption claims resulted in lump sum settlements and one of the post-presumption claims resulted in a lump sum settlement.

E. Costs

The analysis in subsection IV(C) considers costs associated with PTSD claims regardless, in the post-presumption period, of whether the presumption was a factor. With respect to premiums (contributions for self-insured employers), the presumption can only be said to increase costs if it makes otherwise non-compensable claims compensable. As noted in subsection IV(D), the Board did not find any decrees that awarded benefits based on the presumption contained in § 201(3-A)(B).

F. Return To Work Information

In the pre-presumption data, 19 of the 56 lost time claims included a return-to-work date. Of these, 18 reported a return date within the initial 7-day waiting period and one reported a return-to-work date within three months of the injury date.

In the post-presumption data, 24 of 58 lost time claims included a return-to-work date. Of these, 20 reported a return date within the initial 7-day waiting period; one was after the initial 7-day waiting period but before the 15th day (after which compensation is paid from the date of incapacity); two were within 1 month of the injury date and one was within 13 months of the injury date.

Without additional information from the remaining cases it is not possible to draw meaningful conclusions about how often and how soon employees returned to work after a PTSD injury was reported.

V. CONCLUSION

Overall, the number of FROIs identified as involving PTSD claims was the same in the pre-presumption and post-presumption periods. FROIs filed for corrections officers decreased in the post-presumption period compared to the pre-presumption period and increased for E-9-1-1 dispatchers. Costs per claim were lower in the post-presumption period. Return-to-work information is an important factor to be considered, however, additional information is necessary with respect to return-to-work outcomes. The Board is working to simplify and improve data collection and will be including a focus on return-to-work information as part of this effort. The

Board will also explore steps it might take to ensure that efforts to destigmatize PTSD injuries and to promote early intervention and treatment continue.

I am available to answer any questions you may have regarding this report.
Sincerely,

John C. Rohde
Executive Director
Workers' Compensation Board

Cc: Senator Dick Bradstreet
Senator Joseph Rafferty
Representative Marshall Archer
Representative Matthew Beck
Representative Alicia Collins
Representative Gary Drinkwater
Representative Valli Geiger
Representative Laurel Libby
Representative Rafael Macias
Representative Charles Skold
Representative Mike Soboleski
Steven Langlin - OPLA Analyst
Sophia Paddon - OPLA Analyst
Eliana Beca, Committee Clerk

APPENDIX A

39-A MRSA §201 (3-A)

§ 201. Entitlement to compensation and services generally

• • • • •
3-A. Mental injury caused by mental stress. Mental injury resulting from work-related stress does not arise out of and in the course of employment unless:

A. It is demonstrated by clear and convincing evidence that:

(1) The work stress was extraordinary and unusual in comparison to pressures and tensions experienced by the average employee; and

(2) The work stress, and not some other source of stress, was the predominant cause of the mental injury.

The amount of work stress must be measured by objective standards and actual events rather than any misperceptions by the employee; or

B. The employee is a law enforcement officer, corrections officer, E-9-1-1 dispatcher, firefighter or emergency medical services person and is diagnosed by an allopathic physician or an osteopathic physician licensed under Title 32, chapter 48 or chapter 36, respectively, with a specialization in psychiatry or a psychologist licensed under Title 32, chapter 56 as having post-traumatic stress disorder that resulted from work stress, that the work stress was extraordinary and unusual compared with that experienced by the average employee and the work stress and not some other source of stress was the predominant cause of the post-traumatic stress disorder, in which case the post-traumatic stress disorder is presumed to have arisen out of and in the course of the worker's employment. This presumption may be rebutted by clear and convincing evidence to the contrary. For purposes of this paragraph, "law enforcement officer," "corrections officer," "firefighter" and "emergency medical services person" have the same meaning as in section 328-A, subsection 1. For the purposes of this paragraph, "E-9-1-1 dispatcher" means a person who receives calls made to the E-9-1-1 system and dispatches emergency services. "E-9-1-1 dispatcher" includes an emergency medical dispatcher as defined in Title 32, section 85-A, subsection 1, paragraph D.

By January 1, 2022, the board shall submit a report to the joint standing committee of the Legislature having jurisdiction over labor matters that includes an analysis of the number of claims brought under this paragraph, the portion of those claims that resulted in a settlement or award of benefits and the effect of the provisions of this paragraph on costs to the State and its subdivisions. The Department of Administrative and Financial Services, Bureau of Human Resources and the Department of Public Safety shall assist the board in developing the report, and the board shall seek the input of an association, the membership of which consists exclusively of counties, municipalities and other political or administrative subdivisions, in the development of the report.

This paragraph is repealed October 1, 2022.

A mental injury is not considered to arise out of and in the course of employment if it results from any disciplinary action, work evaluation, job transfer, layoff, demotion, termination or any similar action, taken in good faith by the employer.