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64th Montana Legislature

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6/8/2016

PTSD and Montana's Workers' Compensation Exclusion of Mental-Mental Claims

by Pat Murdo, Research Analyst

In 1993 the Montana Legislature adopted, and the governor signed, a revision to Montana's public policy on workers' compensation that omitted stress-based claims from coverage. In essence, post-traumatic stress disorder -- although recognized by the medical world as a real effect of some traumas -- is, by policy choice, not compensable under Montana workers' compensation law.

As summarized by one workers' compensation expert, three types of mental health options are possible, but only physical-mental is likely to be compensable:

- physical-mental, in which physical injury leads to mental health issues;
- mental-physical, in which a mental health situation leads to physical injury/illness; or
- mental-mental, in which a mental situation leads to further mental conditions but does not originate with a physical injury/illness or cause.

This subject is before the Economic Affairs Interim Committee at its June 22, 2016, meeting at the request of Rep. Mary Ann Dunwell, who was contacted by emergency responder Chris Knodel of Glasgow earlier this year. The text of Mr. Knodel's email is below:

Sent: Monday, March 28, 2016 9:00 PM
To: Dunwell, Mary Ann (Rep)
Subject: PTSD and MCA

Dear Mary Ann Dunwell,

My name is Chris Knodel from Glasgow, Mt. I am a Shift Operator at the Fort Peck Power Plant and have been a firefighter for seven years. Five of those years I have been a member of Glasgow Volunteer Fire Department and Valley County Long Run Fire Department. January 1, 2015 I became Chief of Valley County Long Run Fire Dept.

I am sure you understand the realism of Post-Traumatic Stress Disorder. Most people have at least known of somebody affected by it, or have been themselves. PTSD is a real injury that not only harms the affected person, but also their family, friends, and any team they are a member of. Unfortunately, Montana Code Annotated (MCA) 39-71-105 states that "stress claims, often referred to as "mental-mental claims" and "mental-physical claims", are not compensable under Montana's workers' compensation and occupational disease laws." Furthermore, MCA 39-71-119 states "Injury or Injured does not mean physical or mental condition arising from: emotional or mental stress."

A member of our local volunteer fire departments, who is a real asset to our team, was involved

with the extrication of 3 fatalities. As a result, he is now suffering from PTSD. We filed a workers' compensation claim in an attempt to get the member the professional help he needs; however, MACo (Montana Association of Counties, Claims Services) denied the claim.

Post-Traumatic Stress Disorder is not only common in our armed forces. It is widespread throughout firefighters, EMS, Law Enforcement, and all first responders. MCA 39-74-101 thru 105 is a step in the right direction. However, it does not always assist with allowing our brave men and women access to the help they need. I believe that we owe it to the members of our armed forces, firefighters, and all first responders to amend Montana Code Annotated 39-71-105 and 39-71-119 to allow mental stress, mental injury, and/or PTSD to be covered by Montana workers' compensation and allow them the assistance they need.

Thank you for your time. Please contact me with any questions, comments, or concerns you might have.

Mr. Knodel cannot be at the June 22 Economic Affairs Interim Committee meeting, so Sgt. Richard LaBard of the Great Falls Police Department has agreed to provide the emergency responder's viewpoint. Larry Jones, an attorney who has represented workers' compensation insurance companies, has provided a history of the mental-mental discussion as related to workers' compensation. Representing the viewpoint of the PTSD client will be Justin Starin. He is an attorney in the same office as Sydney McKenna, who was the attorney for the case most often cited in relation to PTSD: *Stratemeyer v. Lincoln County* 259 Mont. 147 (1993) and 276 Mont. 67 (1996). Mr. Stratemeyer was a sheriff's deputy who suffered PTSD after a tragic and unsuccessful attempt to save a suicide victim.

The Montana Supreme Court's decision in the second [Stratemeyer case](#) recognized that the stress-related claim did not qualify for coverage under Montana's Workers' Compensation Act, which, according to the decision, meant that the exclusive remedy did not apply and that Lincoln County could be subject to a tort claim. The opinion cited cases from several states that also have not allowed stress-based claims to be compensable. The National Council of Compensation Insurance provided information from the Workers' Compensation Research Institute¹ that listed Montana with 15 other states (including North Dakota, South Dakota, and Wyoming) as not including mental stress claims under workers' compensation. The other 34 states either qualified their workers' comp coverage or provided unqualified coverage.

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¹The information is from a joint report by the International Association of Industrial Accident Boards and Commissions and the Workers' Compensation Research Institute, "Workers' Compensation Laws as of January 1, 2016," May 2016.