

David P. Grey – Ret.
Robert E. Grey
Brian P. O’Keefe
Kevin M. Plante
Daniel A. Dutton
Alissa P. Gardos
Sherman B. Kerner
Christa M. Collins



Reply to:
360 Main Street
Farmingdale, New York 11735
(516) 249-1342
www.GreyandGrey.com

Ronald L. Epstein
Peter Tufo
Steven D. Rhoads
Sasha Shafeek
Sanjai Doobay
Evelyn F. Gross
Andra Fraiberg-Vetro

July 5, 2018

PSYCHOLOGICAL TRAUMA
FOR POLICE OFFICERS AND FIRST RESPONDERS:
NEW COVERAGE UNDER THE
WORKERS’ COMPENSATION LAW

Over the past three decades, the law has steadily limited workers’ compensation coverage for many kinds of psychological trauma. However, last year the Legislature reversed course and expanded the coverage of psychological trauma for police officers and first responders. That expansion has now been reviewed by the Appellate Division, Third Department in a case called McMillan v. Town of New Castle, which was decided on June 28, 2018.

I. Psychological Injuries and Workers’ Compensation in General.

For workers’ compensation purposes, psychological injuries generally fall into one of four categories: (1) secondary to a physical injury; (2) the result of an employment action; (3) due to work-related stress of some sort; or (4) due to a specific traumatic event.

NASSAU

360 Main Street
Farmingdale, NY 11735
(516) 249-1342

**By Appointment Only*

SUFFOLK*

646 Main Street
Port Jefferson, NY 11777
(631) 249-1342

QUEENS

118-35 Queens Boulevard
Suite 1505
Forest Hills, NY 11375
(718) 268-5300

MANHATTAN

115 Broadway
Suite 403
New York, NY 10006
(212) 964-1342

BRONX*

305 East 149th Street
Second Floor
Bronx, NY 10451
(718) 268-5300

WESTCHESTER*

203 East Post Road
Suite E
White Plains, NY 10601
(914) 984-2292

A. Psychological Injury Secondary to Physical Injury.

The law generally provides coverage for psychological injuries that result from a work-related physical injury or disability. Where the injured person becomes depressed, anxious, or suffers from adjustment disorder as a result of physical pain, disability, or inability to work, diagnosed mental health conditions are routinely covered under the law. Not only does this provide payment for the medical treatment, the impact of the psychological injury can be considered in deciding weekly benefit awards.

B. Psychological Injury Due to an Employment Action.

In 1990, the Workers' Compensation Law was amended to eliminate coverage for an injury which is "solely mental and is based on work-related stress if such mental injury is a direct consequence of a lawful personnel decision involving a disciplinary action, work evaluation, job transfer, demotion, or termination taken in good faith by the employer." Workers' Compensation Law § 2(7). As a result of this amendment, a claim for psychological injury due to an employment decision is usually doomed to failure unless the injured party is successful in a grievance or civil lawsuit, thus proving that the employment action was not "taken in good faith."

C. Psychological Injury Due to Work-Related Stress.

Over time, the legal standard for psychological injury due to work-related stress has evolved to narrow coverage to situations where the stress is much greater than could be reasonably expected for the type of work. This "sliding scale" approach obviously

puts police officers and other first responders at a significant disadvantage compared to less stressful jobs. For example, a receptionist who answers a series of calls about an active shooter at another company location might well succeed in a claim for a psychological injury; a 911 operator who takes the same series of calls would not because the calls would not be considered “unusual for his or her job.”

D. Psychological Injury Due to a Specific Event.

The rule for psychological injury due to a specific event is similar to the work-related stress standard, but slightly more liberal. Once again, the test is whether the situation the injured person was exposed to was far beyond what they could reasonably expect given the nature of their job. Applying this rule, a teacher who finds a student who’s been stabbed and renders first aid would likely be covered for a psychological injury, but a police officer or EMS technician would not.

II. Expanded Legal Coverage for Psychological Injury.

In 2017, the Legislature responded to some of this unfairness by amending the Workers’ Compensation Law to provide that if a police officer, firefighter, EMT, paramedic, or emergency dispatcher “files a claim for mental injury premised upon extraordinary work-related stress incurred in a work-related emergency, the board may not disallow the claim upon a factual finding that the stress was not greater than that which usually occurs in the normal work environment.” Workers’ Compensation Law § 10(3)(b).

The new law eliminates the argument that a police officer or other first responder should not be covered for psychological injuries due to a specific work-related event because what they witnessed in responding to the scene was “part of their job.”

In McMillan v. Town of New Castle, a police officer with 10 years on the job was involved in two incidents in 2014 with exposure to blood. As a result he developed an anxiety disorder that disabled him from work in 2015. The Workers’ Compensation Board dismissed his claim on the basis that “the work-related stress that he was exposed to was not greater than that which usually occurs in the normal police environment.”

The officer applied for further review by the Workers’ Compensation Board. While his application was pending the law was changed – but the Board denied his claim anyway. The officer then appealed to the Appellate Division, Third Department, which held that the change in the law appears to provide coverage despite the Board’s conclusion that responding to the incidents was “part of the officer’s job.” The Court directed the Board to reconsider its decision in view of the new law.

III. Advice for Police Officers and First Responders.

The new legal standard provides a reason to take another look at filing a workers’ compensation claim for work-related psychological injuries due to a specific event. Here are some things you need to know:

- **The Workers’ Compensation Law gives you 30 days to notify your employer of a work-related injury.** The Board can excuse a late notice for certain reasons, but the sooner you notify the employer of an injury – physical or mental – the better off you are. When in doubt, fill it out. If you don’t, you may later find that legal time limits bar your claim and cost you significant coverage and benefits.

- Notifying the employer is not filing a claim. **The law gives you two years to file a claim**, which is done by completing and filing a C-3 form with the Workers' Compensation Board.
- You don't need a medical report to notify the employer or to file a claim, but **you do need medical proof to establish your case**. A doctor will have to provide a report including a history of the event, a diagnosis, and an opinion that the work-related event was the cause of the problem.
- You're better off with legal representation. You aren't required to have an attorney, but workers' compensation claims – particularly psychological injury claims – can be complex. We can help make sure you get proper benefits under the law.

Robert E. Grey
Grey & Grey, LLP
July 5, 2018