

**IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA**

Roger Williams,

DCA No.: 1D22-0533

Appellant,

OJCC No.: 21-011941MJR

v.

D/A: 03/31/2021

Brevard County Fire Rescue/
Preferred Governmental Claim
Solutions,

Appellee(s).

**AMICUS CURIAE BRIEF OF THE FLORIDA CHIEF FINANCIAL
OFFICER AND THE FLORIDA DEPARTMENT OF FINANCIAL
SERVICES IN SUPPORT OF APPELLANT ROGER WILLIAMS**

ON APPEAL FROM THE ORDER OF JUDGE OF
COMPENSATION CLAIMS HONORABLE MICHAEL J. RING
RENDERED ON JANUARY 28, 2022.

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PRELIMINARY STATEMENT

Appellant, Roger Williams, will be referred to as “Claimant.” The Appellees, Brevard County Fire Rescue and Preferred Governmental Claims Solutions, will be referred to collectively as “Appellees.” The Judge of Compensation Claims, Honorable Michael J. Ring, will be referred to herein as “JCC.”

STATEMENT OF INTEREST

The issues presented in this matter concern the conditions under which first responders are entitled to medical benefits for mental and nervous injuries without accompanying physical injury under section 112.1815, Florida Statutes (2021). The amicus submitting this brief, the Florida Department of Financial Services (“Department”) and Florida’s Chief Financial Officer (“CFO”), have a significant interest in the statewide administration of workers’ compensation laws, particularly those pertaining to first responders, which are implicated by this appeal.

The Department is a statutorily created state agency responsible for regulating workers’ compensation in the State of Florida. § 20.121(2)(l), Fla. Stat. (2021); Ch. 440, Fla. Stat. (2021). The CFO is the head of the Department and is the State Fire Marshal

for the State of Florida. § 20.121(1), Fla. Stat. (2021); § 633.104(1), Fla. Stat. (2021). As the State Fire Marshal, the CFO has a responsibility to raise awareness of the mental health challenges facing Florida's first responders and was heavily involved in advocating for the 2018 legislative changes to section 112.1815, Florida Statutes, to secure first responder's additional mental health benefits.

The Department and the CFO have an interest in the issues presented in this appeal because the outcome will have a statewide impact on workers' compensation matters that are squarely within the Department's regulatory authority. In addition, the CFO has a strong interest as the State Fire Marshal in advocating for firefighters and other first responders to ensure they receive the benefits to which they are entitled by law. Firefighters alone are attempting suicide at a rate five times higher than the general population and first responders as a whole are attempting suicide at rate more than ten times higher than the general population. SAMHSA, *Disaster Technical Assistance Center Supplemental Research Bulletin First Responders: Behavioral Health Concerns, Emergency Response, and Trauma*, (May 2018). Given these startling statistics, the Department

and CFO have grave and realistic concerns that if the JCC's interpretation of section 112.1815, Florida Statutes, is upheld, a large number of Florida's first responders will not receive the benefits that they are entitled to for mental and nervous injuries arising out of their employment and their service to the State of Florida.

SUMMARY OF THE ARGUMENT

The compensability of mental or nervous injuries, including post-traumatic stress disorder ("PTSD"), is governed by section 112.1815, Florida Statutes (2021). Section 112.1815(2)(a)3., allows for the provision of medical benefits for "a mental or nervous injury arising out of the employment unaccompanied by a physical injury involving a first responder." Section 112.1815(5)(a), Florida Statutes, allows for the payment of medical **and indemnity** benefits for mental or nervous injuries that arise out of the employment and are due to one of the eleven enumerated events.

The claimant in this appeal sought only medical benefits for the mental or nervous injury of PTSD and section 112.1815(2)(a)3., controls the analysis. The JCC erroneously concluded that section 112.1815(5)(a), Florida Statutes, governs the compensability of all PTSD claims for first responders. This conclusion is contrary to the

plain and unambiguous language of the statute and ignores the Legislature's intent to increase coverage for mental or nervous injuries suffered by first responders.

The JCC further concluded that even if Claimant's PTSD were a compensable mental or nervous injury pursuant to Section 112.1815(2)(a)3., Florida Statutes, he would deny the claim because the Claimant failed to demonstrate his PTSD by clear and convincing evidence. The application of this burden of proof was improper as the statute does not require clear and convincing evidence where a claimant seeks only medical benefits for a mental or nervous injury.

ARGUMENT

I. Section 112.1815(2)(a)3., Florida Statutes, governs a first responder's claim for medical benefits for a mental or nervous injury arising out of employment.

Here, because Claimant sought only medical benefits for his mental or nervous injuries, section 112.1815(2)(a)3. controls the analysis. If the Claimant were seeking medical **and indemnity** benefits for his mental or nervous injuries than § 112.1815(5)(a) would control. This is consistent with the clear and unambiguous language of the statute and with the Legislature's intent to provide greater benefits to first responders for mental and nervous injuries.

Prior to 2007, workers' compensation benefits for mental or nervous injuries were governed solely by section 440.093,¹ which set forth that a "mental or nervous injury due to stress, fright, or excitement only is *not* an injury by accident arising out of the employment." Therefore, mental or nervous injuries without an accompanying physical injury requiring medical treatment were not compensable under Florida law. *Id.*

In 2007, a bill was passed that broadened workers' compensation coverage available to first responders by providing medical benefits for mental or nervous injuries unaccompanied by a physical injury. Ch. 07-87, Laws of Fla. This expansion of benefits was codified in section 112.1815, Florida Statutes.²

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

¹The statute has remained unchanged since its enactment in 2003.

²The statute defines "first responder" as "a law enforcement officer, . . . a firefighter, . . . or an emergency medical technician or paramedic . . . employed by state or local government." § 112.1815(1), Fla. Stat. (2007). The definition also encompassed volunteer law enforcement officers, firefighters, or emergency medical technicians or paramedics engaged by the state or a local government. *Id.*

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 a physical injury arising out of injury as a first responder accompanies the mental or nervous injury**. Benefits for a first responder are not subject to any limitation on temporary benefits under s. 440.093 or the 1-percent limitation on permanent psychiatric impairment benefits under s. 440.15(3)(c).

§ 112.1815(2)(a)3., Fla. Stat. (emphasis added).

In 2018, following the Pulse and Parkland shootings, the Legislature amended section 112.1815, Florida Statutes, to expand coverage for first responders suffering from mental and nervous injuries. Ch. 18-124, Laws of Fla. The new law added subsections (5) and (6) but did not alter the existing text of subsections (1) through (4).³ *Id.* The 2018 amendments provided additional benefits to first responders suffering mental or nervous injuries by providing for indemnity benefits regardless of whether the first responder incurred a physical injury. § 112.1815(5)(a), Fla. Stat. (2018).

The Legislature explained that the previous version of the statute provided inadequate coverage. “Current law provides that only medical benefits are payable for a mental or nervous injury of a

³ There was a technical change to section 112.1815(1), Florida Statutes, in 2013 to update a reference to the statutory definition of firefighter that had been renumbered. This change is not relevant to the issues in this matter.

first responder that is unaccompanied by a physical injury.

Indemnity benefits are available only if the mental or nervous injury is accompanied by a physical injury.” Fla. S. Comm. on Rules, S

376 (2018) Post-Meeting Analysis 11 (March 1, 2018),

<https://www.flsenate.gov/Session/Bill/2018/376/Analyses/2018s00376.rc.PDF>.

“[The new subsection] amends s. 112.1815, F.S., to revise the standards for determining compensability of employment-related post-traumatic stress disorder (PTSD) under workers’ compensation for first responders... The section creates an exception to the current prohibition on the payment of indemnity benefits unless a physical injury accompanies the mental or nervous injury by authorizing indemnity benefits for PTSD if certain conditions are met.”

Id. at 10.

The Legislature included the “notwithstanding sub-paragraph (2)(a)3.” in subsection 5(a) because subsection (2)(a)3. specifically states, “payment of indemnity as provided in s. 440.15 may not be made unless a physical injury arising out of injury as a first responder accompanies the mental or nervous injury.” § 112.1815(2)(a)3. Fla. Stat. (2021). The plain and unambiguous language makes clear that the Legislature was carving out an

exception for first responders who suffer from PTSD due to particularly horrific events. *See* § 112.1815(5)(a), Fla. Stat. (2021).

Under the revised statute applicable to this case, medical benefits continue to be available for first responders with employment-related mental or nervous injuries unaccompanied by a physical injury under section 112.1815(2)(a)3., Florida Statutes (2018). However, if a first responder developed PTSD due to one of eleven enumerated events in section 112.1815(5)(a)2.a-k., Florida Statutes (2018), such first responder is eligible for both medical and indemnity benefits even where the PTSD was unaccompanied by a physical injury. *See* § 112.1815(5)(a), (c), Fla. Stat. (2018). The benefits under section 112.1815(5) are entirely separate from, and in addition to, the benefits available in section 112.1815(2)(a)3., Florida Statutes (2021).

Section 112.1815(2)(a)3., Florida Statutes (2021), establishes that medical benefits are available to first responders for mental or nervous injuries, whether accompanied or unaccompanied by a physical injury. Section 112.1815(2)(a)3., Florida Statutes (2021), establishes that indemnity benefits are also available to first responders for mental or nervous injuries, but only in instances

where physical injury accompanies the mental or nervous injury. PTSD is a mental or nervous injury; therefore, PTSD arising out of employment would entitle first responders to benefits. Pursuant to section 112.1815(2)(a)3., Florida Statutes (2021), first responders are eligible to receive medical benefits for PTSD unaccompanied by a physical injury and to receive both medical benefits and indemnity benefits for PTSD accompanied by a physical injury.

Since its inception, section 112.1815(2)(a)3. has not changed with respect to mental or nervous injuries unaccompanied by physical injury. The statute has always read, “[f]or 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.”

It is well accepted that “the polestar of statutory interpretation is legislative intent, which is to be determined by first looking at the actual language used in the statute. *Searcy, Denney, etc. v. State*, 209 So. 3d 1181, 1189 (Fla. 2017). “If the statutory language is clear and unambiguous, the court may not resort to the rules of statutory construction, and the statute must be given its plain and unambiguous meaning.” *Id* at 1185.

Although the JCC stated that the statutory language of section 112.1815 was clear and unambiguous, he nevertheless went on to analyze the statute under the rules of statutory construction. This analysis was unnecessary because the plain language of section 112.1815 makes clear that a first responder's PTSD arising out of employment, but unaccompanied by physical injury, would either 1) be eligible for medical benefits under section 112.1815(2)(a)3., Florida Statutes (2021), or 2) be eligible for medical and indemnity benefits under section 112.1815(5)(a), Florida Statutes (2021), if the first responder met the criteria specified in section 112.1815(5)(a)1-2., Florida Statutes (2021).

The JCC reasoned that the rule of specific over general took precedence over the rule of *in pari materia*. This analysis erroneously focused on the classification of the mental or nervous injury as opposed to the benefits sought and led the JCC to an objectively incorrect result.

The JCC's reliance on the rule of specific over general to distinguish between section 112.1815(2)(a)3., Florida Statutes (2021), and section 112.1815(5)(a), Florida Statutes (2021), is misplaced. Section 112.1815(5)(a) explicitly pertains to PTSD where

medical and indemnity benefits are sought. This section controls over the portion of section 112.1815(2)(a)3. that addresses medical and indemnity benefits for mental or nervous injury, but not the portion pertaining to only medical benefits for mental or nervous injury. The claimant in this appeal sought only medical benefits for the mental or nervous injury of PTSD and section 112.1815(2)(a)3., controls the analysis.

If the JCC's interpretation of section 112.1815, Florida Statutes (2021) is upheld, it would essentially eradicate the benefits enumerated in subsection (2). This interpretation is contrary to the expressed legislative intent behind the creation of subsection (5) because it restricts benefits available to first responders with PTSD instead of expanding them. Under the JCC's interpretation, benefits of any kind would *only* be available to first responders with PTSD if their PTSD arose from the eleven events listed in section 112.1815(5)(a)2.a-k., Florida Statutes, (2021). Meaning, under this interpretation first responders who develop PTSD as a result of their employment but not as a result of a qualifying event would not even be entitled to medical benefits.

This interpretation excludes a large number of first responders from receiving any benefits for their employment-related PTSD simply because it arose from circumstances other than the eleven enumerated events. This is an unreasonable result, and this interpretation should therefore be rejected. *See Diaz v. Jones*, 215 So.3d 121, 122 (Fla. 1st DCA 2017) (“A basic tenet of statutory construction compels a court to interpret a statute so as to avoid an unreasonable or absurd result.”).

In the case at hand, if any rule of statutory construction were even necessary, the rule of *in pari materia* should have been utilized. “The statutory construction rule of *in pari materia* requires that provisions relating to the same subject should be construed together and compared with each other.” *Cone v. State of Fla. Dep’t of Health*, 886 So.2d 1007, 1010 (Fla. 1st DCA 2004) (quoting *Smith v. Crawford*, 645 So.2d 513, 522 (Fla. 1st DCA 1994)). Utilizing this rule of statutory construction is appropriate and leads to the proper discernment of legislative intent as subsections (2) and (5) of section 112.1815, Florida Statutes (2021), “should be construed together and compared with each other.” The plain language of, and legislative intent behind, section 112.1815, Florida Statutes (2021),

supports the interpretation that subsection (2) applies to all mental and nervous injuries, including PTSD, and that subsection (5) offers additional benefits to first responders with PTSD arising from particularly horrific events arising out of their employment.

II. Pursuant to section 112.1815, Florida Statutes, the burden of proof when claiming medical benefits for a mental or nervous injury is preponderance of the evidence

Section 112.1815(2)(a)3., states in pertinent part:

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 . . . only medical benefits . . . shall be payable for the mental or nervous injury. However, payment of indemnity . . . may not be made unless a physical injury arising out of injury as a first responder accompanies the mental or nervous injury.

§ 112.1815(3), Florida Statutes (2021). (emphasis added).

The plain language of the first sentence of section 112.1815(2)(a)3. makes clear that the burden of proof required for mental or nervous injuries occurring as a manifestation of a compensable injury is clear and convincing evidence. The most obvious and reasonable interpretation of this sentence is that clear and convincing evidence is required for a mental or nervous injury

occurring as a manifestation of a physical injury. This is inapplicable here because the Claimant sought only medical benefits for the mental or nervous injury of PTSD unaccompanied by a physical injury.

When the statutory language is clear and unambiguous, the statute must be given its plain and obvious meaning rather than resorting to rules of statutory construction. *Searcy, Denney, Scarola, Barhnhart & Shipley, etc. v. State*, 209 So.3d 1181, 1185 (Fla. 2017). However, even if the meaning were not plain and unambiguous, comparing this language with the language of chapter 440 makes the Legislature's intent clear. Under section 440.093, which was enacted in 2003 and has remained unchanged, a mental or nervous injury unaccompanied by physical injury was not considered "an injury by accident arising out of employment," and therefore was not compensable. Only a mental injury occurring as a manifestation of a compensable physical injury was afforded coverage under chapter 440:

(1) A mental or nervous injury due to stress, fright, or excitement only is not an injury by accident arising out of the employment. **Nothing** in this section **shall be construed to allow** for the **payment of benefits** under

this chapter **for mental or nervous injuries without an accompanying physical injury**

(2) **Mental or nervous injuries occurring as a manifestation of an injury compensable under this chapter** shall be demonstrated by clear and convincing medical evidence by a licensed psychiatrist meeting criteria established in the most recent edition of the diagnostic and statistical manual of mental disorders published by the American Psychiatric Association. **The compensable physical injury** must be and remain the major contributing cause of the mental or nervous condition and the compensable physical injury as determined by reasonable medical certainty must be at least 50 percent responsible for the mental or nervous condition as compared to all other contributing causes combined.

§ 440.093, Fla. Stat. (emphasis added).

Under section 440.093, a mental or nervous injury occurring as a manifestation of a compensable physical injury must be demonstrated by clear and convincing medical evidence to prove entitlement to medical and indemnity benefits. The Legislature carried the same language and burden of proof over to section 112.1815 by requiring clear and convincing evidence for mental or nervous injuries occurring as a manifestation of a compensable injury, presumably because such injuries are eligible for medical and indemnity benefits. Common sense would also dictate that a

heightened burden of proof is required when a claimant is seeking additional benefits.

Thus, the plain language, common sense, ordinary meaning, and comparison to chapter 440, make clear that the first sentence of section 112.1815(2)(a)3. requires clear and convincing evidence for a mental or nervous injury occurring as a manifestation of a compensable physical injury. Notably, the Legislature was silent as to burden of proof in the second sentence of section 112.1815(2)(a)3. pertaining to mental or nervous injury unaccompanied by physical injury for which only medical benefits are available.

A plain reading of the statute dictates that there is no such heightened burden when seeking medical benefits for mental or nervous injuries that are unaccompanied by a physical injury because there is no “clear and convincing” language following the second sentence of subsection (2)(a)3. Furthermore, the Senate’s Appropriations Committee’s Bill Analysis reflects the Legislature’s intent that the heightened clear and convincing standard is only applicable where a claimant seeks both medical and indemnity benefits. Fla. S. Comm. on Rules, S 376 (2018) Post-Meeting Analysis 11, (March 1, 2018).

However, assuming *arguendo* that the actual language is not clear and unambiguous, we must assume that the Legislature's omission of burden of proof language and use of differing language in the same statute is a sign the Legislature intended varied meanings. *See Carlson v. State*, 227 So. 3d 1261, 1267 (Fla. 1st DCA 2017). Had the Legislature intended the clear and convincing burden of proof to apply to mental or nervous injury without accompanying physical injury, it would have done so.

Because the Legislature was silent on the burden of proof to be imposed in claims for mental or nervous injuries not accompanied by physical injury, the burden of proof to be applied in this case is the same burden of proof that is applied in all workers' compensation cases where no specific burden of proof is statutorily imposed – preponderance of the evidence. Preponderance of the evidence is the burden of proof that is applied in all workers' compensation cases when no specific burden is statutorily imposed. *See Stokes v. Schindler Elevator Corp./Broadspire*, 60 So. 3d 1110, 1114 (Fla. 1st DCA 2011) (Thomas, J., concurring).

Here, because Claimant sought only medical benefits, he had the burden of proving that his mental or nervous injuries arose out of

his employment by a preponderance of the evidence. See § 112.1815(2)(a)3., Florida Statutes (2021). This is consistent with the clear and unambiguous language of the statute and with the Legislature's intent to provide greater benefits to first responders for mental and nervous injuries.

CONCLUSION

The JCC incorrectly interpreted and applied the provisions of Section 112.1815, Florida Statutes in denying the Claimant's request for medical treatment for his work-related mental/nervous injuries. The Claimant's PTSD is a mental or nervous injury entitling him to medical benefits pursuant to section 112.1815(2)(a)3., Florida Statutes. The burden of proof when claiming medical benefits for a mental or nervous injury under section 112.1815(2)(a)3., Florida Statutes, is preponderance of the evidence.

Respectfully submitted this 16th day of June, 2022.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via electronic transmission through the Florida courts e-filing portal to all counsel or parties of record, on this 16th day of June, 2022.

/s/ Cassidy M. Perdue

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY this brief complies with the type size and style requirements of Rule 9.045(b), Florida Rules of Appellate Procedure and has been prepared in Bookman Old Style, 14 Point Font. This brief complies with the type volume limitations set forth in Rule 9.370(b), Florida Rules of Appellate Procedure.

/s/ Cassidy M. Perdue