

Council on Worker's Compensation
Meeting Minutes
GEF-1 Building
Madison, Wisconsin
December 12, 2017

The Department of Workforce Development (DWD) provided public notice of the meeting under Wis. Stat. § 19.84.

Members present: Mr. Buchen, Ms. Frank, Mr. Gunderson, Mr. Kent, Mr. Redman, Mr. Schwanda, Ms. Thomas and Mr. Tindall

Excused: Ms. Bloomingdale, Mr. Fugina, Ms. Johnson, Mr. Reader and Ms. Seiler

Staff Present: Mr. Aiello, Ms. Brown, Mr. Krueger, Ms. Lake, Mr. Moreth and Mr. O'Malley

- 1. Call to Order/Introductions:** Mr. Krueger, serving as acting Chair, convened the Worker's Compensation Advisory Council (WCAC) meeting at approximately 10:00 a.m. in accordance with Wisconsin's open meetings law. Members of the WCAC, the audience, and Worker's Compensation Division (WCD) staff introduced themselves.
- 2. Approval of the Minutes:** A motion was made by Mr. Tindall to approve the minutes of the October 4 and 13, 2017 meetings. Mr. Kent seconded the motion. A correction was made to the minutes of the October 4th meeting by listing Mr. Schwanda as excused from the meeting and the addition of Mr. Redman as present at the meeting. The minutes for the October 4th meeting were unanimously approved as corrected, and the minutes for the October 13th meeting were also unanimously approved.
- 3. Correspondence:** Mr. O'Malley reviewed the correspondence received since the last meeting.

A letter dated November 17, 2017 was received from Representative André Jacque about AB-434 related to worker's compensation claims by certain public safety employees for post traumatic stress disorder (PTSD).

- 4. AB-434/SB-564 Relating to claims by certain public safety employees for post-traumatic stress disorder (PTSD):** Representative André Jacque introduced himself and explained the purpose of AB-434 and the events that led to the inception of the bill. He advised the WCAC the co-sponsor (SB-564) from the Wisconsin State Senate, Senator Van Wanggaard was unable to attend the meeting. AB-434 has bipartisan support. Representative Jacque requested the WCAC to address the very important issue of post-traumatic stress disorder (PTSD) as it pertains to public safety officers, due to the additional stress placed on these employees as compared to other professions.

There were 10 representatives of law enforcement and public safety organizations who attended the meeting with Rep. Jacque and who spoke in favor of AB-434.

Chief Todd Thomas from the Appleton Police Department. Chief Thomas spoke in support of AB-434. He noted that PTSD is an injury resulting from public safety officers' employment when seeing, hearing and dealing with situations that are beyond what human beings are

capable of handling. Left untreated, PTSD can lead to excessive anger, irritability, social isolation, risk-taking, nightmares, substance abuse, depression and suicide. The impact of PTSD is felt in every department and in the homes of every first responder. We have worked on addressing mental health and wellness, but we have not had the support we need from our lawmakers. Six (6) officers have died this year from suicide. That is three (3) times the number lost in the line of duty. Chief Thomas is part of the Wisconsin Law Enforcement Death Team that has been assisting more agencies that have lost an officer due to suicide. Chief Thomas' department has 110 officers and about 115 employees and has a licensed clinical social worker that comes to the department for eight (8) hours per month. The cost is paid from the department's training budget, but many departments do not have these resources. Some EAPs cover a limited number of meetings with a professional, but long term care is not covered. AB-434 needs some modification to make it workable, but it is a step in the right direction.

Andi Colker is a former police officer with the City of Waupun. Ms. Colker was diagnosed with PTSD in 2015. The diagnosis stemmed from an incident on May 5, 2006 when she watched a three (3) year old boy die at the hands of his foster father. The boy's two (2) year old brother became greatly ill while in her care. She lost her job due to her PTSD diagnosis. She engaged in self-destructive behavior and almost lost her marriage. Her EAP only offered her three (3) sessions with a counselor. She needed much more treatment but received no help from her department. Ms. Colker filed a worker's compensation claim, but was denied. She appealed the denial and is now proceeding with her claim. A change in the law would save lives and families. Public safety personnel are not looking for a paid lifetime bill, but someone to help when we need that help.

Lieutenant Dan Gatz is with the De Pere Fire Department and has been in the fire service for 15 years. He supports AB-434. One of the hot topics in the fire service is PTSD, as more and more fire rescue members are discussing their problems. AB-434 will allow responders to seek assistance without fear of denial of their claim by worker's compensation. Lieutenant Gatz's father has PTSD. He is a retired deputy sheriff. He was involved in a shooting where the perpetrator was killed. His father was placed on permanent disability due to the effects of PTSD. With proper help his father's career path and life would have been different.

Michael W. Doud, Sr. is with the Wisconsin Injured Law Enforcement Officers Resource Council. Mr. Doud considers himself to be a PTSD success story. In 2006, Mr. Doud contemplated committing suicide. He took personal leave from his employment and sought medical treatment. He was able to return to work as a police officer for another 10 years. He has responded to numerous calls where shooting was involved and in one instance, he had to shoot a perpetrator. He stated that training officers costs about \$100,000.00 from the date of hire through the first year of employment. Assisting officers with obtaining therapy does not cost \$100,000.00 and officers should be able to obtain assistance through the worker's compensation system.

Mr. Buchen inquired about the current law concerning worker's compensation coverage of PTSD for law enforcement and public safety employees. Mr. O'Malley explained the worker's compensation law categorizes psychological injuries as mental-mental injuries where no physical injury is involved. The legal test for determining compensability of a mental-mental injury claim requires the stress experienced by an employee to be of an extraordinary nature. The Probst case was decided in 1989 by the Court of Appeals and addressed the question about what other employees are to be compared when determining whether an employee has experienced unusual or extraordinary stress. The test is for the stress to be compared to

the level or amount of stress experienced by other employees in the same or similar occupation. Based on the Probst case and some later case law the amount of stress experienced by law enforcement and public safety employees is to be compared to other law enforcement or public safety employees working in similarly situated employment. This makes it difficult for law enforcement personnel to receive worker's compensation benefits for mental stress injuries. Mr. Buchen stated that establishing a more logical standard may be a better approach than creating a presumption.

Jim Palmer is the Executive Director of the Wisconsin Professional Police Association. This organization is the state's largest law enforcement group representing 9,000 members from over 300 local association affiliates. PTSD was first recognized as a distinct illness by the American Psychiatric Association in 1980. The diagnosis was viewed with considerable skepticism, so courts and legislators throughout the nation established strict parameters to limit what they anticipated to be a surge of potential workplace claims. In the last few decades, the treatment of PTSD has dramatically changed. The medical community firmly recognizes PTSD and understands how to treat those afflicted with the condition. PTSD is more pervasive with law enforcement officers. At least 32 states have passed laws to allow first responders to file worker's compensation claims for PTSD without having to demonstrate an accompanying physical injury. In 2013 Minnesota changed its worker's compensation law and according to the League of Minnesota Cities Insurance Trusts, the costs have been a relatively modest one (1) percent. AB-434 reflects the value that should be placed on that preeminent form of public service. It is rare for an ADA claim to arise out of a situation where PTSD is involved since officers are just unfit to work.

Michael V. Crivello is President of the Milwaukee Police Association. Mr. Crivello supports AB- 434. He represents 1,520 officers, however some of these officers have been lost due to PTSD. The officers are good and capable people who could still be working if they been provided the proper care. We owe it to our officers, firefighters and first responders to be there for them. The scenes viewed by officers are not like those on television. These scenes are carried throughout the officer's career. Mr. Crivello requested the WCAC to embrace this bill on behalf of the officers he represents.

Tresa Martinez, CEAP, MSSW, is the EAP Administrator for the City of Madison. Ms. Martinez started working in this field 26 years ago with the Department of Transportation, Wisconsin State Patrol and first responders. For the last 13 years, she has been the director of the City of Madison's Employee Assistance Program and Critical Incidence Response Program. She has met and trained hundreds of first responders and I would like to emphasize that some of the events that these people encounter are so horrific that no amount of training or preparation can prepare their hearts and souls for what they experience. It is not about strength of character, but rather is an involuntary response. The more dedicated and invested the responders are, the higher the risk of injury. She dedicated her profession to helping first responders and requests the WCAC to be part of this solution. Money will not be spent on people who are working the system. That just does not happen and she has not seen it happen in her 26 years. First responders who are off work with a mental health related injury have the highest suicide risks of all the population. The City of Madison has a Cadillac program for employee assistance in comparison to other agencies around the state.

Mr. Buchen requested Representative Jacque to comment about whether the Wisconsin League of Municipalities or the Wisconsin Counties Associations took a position on AB-434.

Representative Jacque responded the City of Milwaukee spoke against the bill at the hearing. The Wisconsin Counties Association spoke and registered against the bill. The Wisconsin League of Municipalities had registered against the bill. Representative Jacque spoke with a number of municipal officers who agree the issue is important and it needs to be discussed. He spoke with the City of Milwaukee and the City of De Pere about the bill and their concern were largely along the lines of making sure there was a medical/clinical diagnosis.

Chief Bernie Coughlin is president of the Wisconsin Chiefs of Police Association. This organization represent over 500 departments in Wisconsin and Chief Coughlin is a legislative co-chair. We are not asking for a free ride or a free pass, we are only asking for the WCAC's help. An officer under Chief Coughlin approached him last summer with difficulty sleeping. The officer related multiple work traumas he experienced over his 10 year career and we worked with him. The officer experiences flashbacks to a scene where four (4) teenagers died in a burning car, an infant's head grew to the size of a basketball while performing CPR and the infant's mother who called for help was found to have inflicted the injuries to the infant, the suicide of a 13 year old girl and the severe dog bites to a little girl's face that required a couple of hundred stitches. We are helping this officer even though EAP only covers a few consultations. Currently, the insurance carrier's job is to deny the claim. They have no skin in the game. They are good risk managers, but imagine what they could do for public safety if one of the risks that they had to manage was PTSD.

David Seager is with the Milwaukee Professional Firefighters. Mr. Seager extended his appreciation for the efforts of Representative Jacque and Senator Wanggaard. The people who spoke here today have had long careers and have witnessed many things. They are here today for those that are coming tomorrow and into the future. The State of Wisconsin has a history of looking out for public safety and first responders. We are here to garner assistance. This bill will not cause an extraordinary taxpayer issue. Mr. Seager requested the WCAC to support this legislation. The PTSD legislation is not a permanent disability issue. If you think of the other presumptions (cancer, heart, lung and infectious disease), those are permanent conditions. With respect to PTSD, if someone can get the proper treatment and they will be able to return to work.

Mr. Tindall had a question about the presumption of heart, lung and cancer conditions being work-related under duty disability and if there is any consideration to PTSD belonging under that umbrella since the language in AB-434 seems more consistent with duty disability as opposed to worker's compensation. Representative Jacque responded it has been suggested and considered. He commented that it is appropriate to have AB-434 to come under worker's compensation because of the desire to get people back to work. The problem is that if the PTSD is not connected to a physical trauma, the standard of proof is an impossible one. The current standard is not a good fit for those occupations that deal with different levels of dangerous, life-threatening situations. He believes there will be success stories with AB-434. The Supreme Court standard from the 1970s is inappropriate in its application to police and fire officers.

Mr. Tindall was also concerned that AB-434 creates a presumption without a backstop and posed a scenario about an officer being yelled at for arriving late to roll call and claiming PTSD. Representative Jacque responded it was his goal to invite the WCAC into this conversation. No one wants bad actors to make things difficult for those who do the job the right way. Representative Jacque expressed his willingness to work with others and for the

WCAC to amend AB-434 in a manner that will meet the WCAC's support or for there to be a separate Agreed Upon Bill.

Chief Joe Collins is with the Two Rivers Police Department. We are seeking help to get our officers back to work. We expect our people to walk through mud and come out clean, but this stuff sticks. Chief Collins is the Chair of the Training Committee for the FBI National Academies Officer Safety and Wellness. We partnered with the Air Force and they have shared their training program with us. He led the Law Enforcement Death Response Team from 2005 to 2015 and dealt with 13 line of duty deaths and three (3) times that number of officer suicides during that 10 year period. The stigma for asking for help must be removed. His department added 40 hours of officer wellness training. The effects from the loss of a 10 year veteran or the loss of an office due to suicide ripple through a department.

A motion was made by Mr. Kent for the members representing Labor and Management to go into closed caucus. The motion was seconded by Mr. Tindall. The motion passed unanimously and the members went into closed caucus at about 11:45 a.m. The members returned from caucus at about 12:15 p.m.

5. Other Business of the Council: Mr. Kent made the following motion, seconded by Mr. Buchen:

The Office of Worker's Compensation Hearings should it contemplate any and all legislative or regulatory changes to attorney fees regarding the worker's compensation process, bring those proposals to the Council for proper vetting, analysis and consideration.

The motion passed unanimously.

6. Adjournment: A motion was made by Mr. Tindall to adjourn the meeting. The motion was seconded by Mr. Kent. The motion passed unanimously. The meeting was adjourned at approximately 12:25 p.m.

The Worker's Compensation Advisory Council does not have any additional meetings scheduled at this time.