

The Impact of PTSD Remission on Workers' Compensation Benefits

By: Timothy S. Crom

In *Chrꝛ v. Mower County*, 2023 MN WRK. COMP. LEXIS 11 (Minn 2023), the Minnesota Supreme Court ruled that a remission of PTSD symptoms that results in the employee's inability to satisfy the DSM-5 Criteria is a bar to entitlement to further benefits associated with PTSD.

The employee in *Chrꝛ* worked as a Mower County Deputy Sheriff for 13 years. Near the end of his employment, he was diagnosed with PTSD by a licensed professional and was determined to be eligible for workers' compensation benefits. The diagnosis of PTSD was attributed to exposure to traumatic events while performing his duties as a deputy sheriff. The diagnosis was provided on September 25, 2019, and was withdrawn by his licensed professional on March 30, 2021. The facts show that after March 30, 2021, it was undisputed that the employee no longer carried the diagnosis of PTSD.

The employee was also diagnosed with a separate condition, consisting of major depressive disorder in partial remission and a mild alcohol use disorder. On March 31, 2021 following the determination that the employee no longer carried the diagnosis of PTSD, the employee retired. Following his retirement, he filed a Claim Petition alleging entitlement to workers'

compensation benefits effective April 1, 2021. Following the service of the Claim Petition, the employee was evaluated by Dr. Paul Arbisi who determined the employee did not meet all of the criteria needed for a diagnosis of PTSD under the DSM-5, but he also determined the employee had an adjustment disorder, unspecified and alcohol use disorder.

The employee was also reevaluated by his original psychologist, Dr. Slavik who provided the original diagnosis of PTSD. Following this evaluation, Dr. Slavik concluded the symptoms had improved and he no longer met the criteria under the DSM-5 for PTSD. Dr. Slavik also found that the employee was restricted from normal duties of a police officer. After hearing, the Compensation Judge awarded temporary total disability benefits determining that the employee had "sustained a work-related occupational disease in the nature of posttraumatic stress disorder arising out of and in the course of his employment." The Judge further found that the employee was temporarily and totally disabled as claimed and awarded TTD, rehabilitation, and a 20% permanency rated by the psychologist. The employer appealed the decision arguing that the Compensation Judge erred by awarding benefits after March 30,

Congratulations



Congratulations to JLO managing partner **Elisa M. Hatlevig** for being included in *Minnesota Monthly's* list of 2023 Top Lawyers in Minnesota.

The list is based on an online peer-review survey sent out to all lawyers in Minnesota. Thousands of votes were cast honoring excellence in all areas of practice.

2021, the date Dr. Slavik determined the employee no longer met the diagnostic criteria for PTSD.

The Court of Appeals reversed, concluding the employee was ineligible for workers' compensation benefits after March 30, 2021, noting that no licensed provider had concluded that the employee had PTSD pursuant to the criteria under the DSM-5. Both Dr. Arbisi and Psychologist Slavik determined he did not meet the criteria. The court also determined that the "other specified trauma and stressor related disorder" affecting the employee, per the opinions of Dr. Slavik and relied upon by the Compensation Judge, failed to meet all of the DSM-5 criteria for PTSD and could not be used as a basis for finding a compensable occupational disease.

Presented with the above issues, the Supreme Court noted that the central question was whether or not the employee, previously diagnosed with PTSD, but no longer carrying the diagnosis of PTSD based on the opinion of a licensed professional utilizing the DSM-5 had demonstrated that he had a “disablement... resulting from an occupational disease” after March 30, 2021. After discussing the underpinnings of PTSD and legislative changes in 2013 redefining “occupational disease” to include “mental impairment” and in turn defining “mental impairment” as “a diagnosis of post-traumatic stress disorder by a licensed psychiatrist or psychologist” the court determined that the only “mental impairment” covered by the Workers’ Compensation Act is PTSD.

The employee argued that he continued to experience disablement due to an occupational disease as found by Psychologist Slavik and therefore was entitled to benefits as claimed. The employee argued his original determination of having an “occupational disease” resulting in disablement, could not be ignored. The employee asserted that once he had been diagnosed with a compensable occupational disease the employee is not required

to demonstrate that he continues to have the disease. The employee further argued that the only remaining question is whether or not the employee is still disabled.

The court rejected these arguments asserting that they ran counter to the plain meaning and text of the statute (Minn. Stat. § 176.1011 Subd. 15(a)(2022). The court strongly rejected the employee’s recommended analysis and determined that in order to establish eligibility for workers’ compensation benefits at any given time, three elements must be simultaneously met:

1. The employee has an “occupational disease;”
2. The employee experiences “disablement;” and
3. The disablement “results from” the occupational disease.

After noting that the burden of proof was on the employee to establish the “elements” of a workers’ compensation claim the court goes on to note that the mental impairment that qualifies as an “occupational disease” eligible for entitlement to benefits is PTSD and only when the PTSD is diagnosed by a licensed psychiatrist or psychologist using the most

recently published addition of the DSM-5. The court notes that again it was undisputed the employee no longer met the diagnosis of PTSD and produced no reports from any licensed professional supporting a diagnosis under the DSM-5. He therefore no longer met the “occupational disease” element to establish entitlement to workers’ compensation benefits.

In a final loophole mentioned at the close of the case the court raised the issue that an employee who develops other disabling conditions as a consequence of the original diagnosed mental impairment or PTSD, such as depression or perhaps other mental health impairments, could perhaps argue that those conditions constitute a consequential injury to support the possibility of ongoing compensable disability associated with the original underlying diagnosis of PTSD (even if PTSD is no longer present). The court however indicated that they were not ruling on this issue as it was not before them and declined to address how the case would turn out under a consequential injury theory.

Congratulations

Congratulations to **Elisa Hatlevig** and **Trevor Johnson** who obtained summary judgment on behalf of the City of Minnetonka.

Plaintiffs alleged the City created a trespass, nuisance, or alternatively took Plaintiffs’ property due to flooding of their property. The district court held the City had not taken Plaintiffs’ property, the City did not fail to carry out a legal duty, and the City was entitled to statutory immunity on trespass and nuisance claims because the City’s execution of its water resource management plan was a discretionary function. The court concluded that it “need not question the City’s decision or timeline” related to the installation of a permanent drainage outlet in a pond.

2023 Legislative Update

By: Mollie A. Buelow

The 2023 Session of the Minnesota Legislature included many alterations and additions to state statutes. Below provides an insight into a few of the new laws impacting employment, human rights, and public safety in Minnesota.

Employment Law Landscape

The 2023 Legislative Session in Minnesota resulted in the passing of several significant changes for Minnesota employees and employers. The changes include: a ban on noncompete agreements, paid family & medical leave, earned sick & safe leave, additional protections for pregnant & nursing workers, CROWN Act, wage disclosure protection, prohibition on captive audience meetings, prohibitions on restrictive franchise agreements, wage protection for construction workers, changes to Minnesota's Drug & Alcohol Testing in the Workplace Act, etc. Further information regarding these changes can be found by clicking the link below:

[Minnesota Employment Law Changes 2023](#)

Minnesota Human Rights Act Updates

The Minnesota Human Rights Act, Minn. Stat. § 363A.03, added to the definition of "race". The new subdivision now provides that racial discrimination prohibited under the Minnesota Human Rights Act will include the prohibition of discrimination against "traits associated with race, including but

not limited to hair texture and hair styles such as braids, locs and twists." The Minnesota Human Rights Act prohibits discrimination on the basis of race in housing, education, employment and other areas. The text of the law is based on the CROWN Act: "Creating a Respectful and Open World for Natural Hair." Effective August 1, 2023.

Further, Minn. Stat. § 363A.02, subd. 1 added "gender identity" to the list of protected classes in the Minnesota Human Rights Act. Section 48 defines "gender identity" to mean "a person's inherent sense of being a man, woman, both or neither. A person's gender identity may or may not correspond to their assigned sex at birth or to their primary or secondary sex characteristics. A person's gender identity is not necessarily visible to others." Effective July 1, 2023.

Public Safety

The state's public safety, judiciary, corrections departments and agencies will receive \$3.56 billion in the 2024-25 biennium. Representative Kelly Moller (DFL-Shoreview) and Senator Ron Latz (DFL-St. Louis Park) sponsor the law, of which some provisions take effect July 1, 2023. The same budget law also contains dozens of policy updates and changes, including two high-profile gun control measures.

One of the more significant of the provisions includes a restraint on when a judge can issue a no-knock search warrant. The provision

provides that no-knock search warrants can be issued by a judge only when a search cannot be executed while the premises is unoccupied and "the occupant or occupants of the dwelling will present an immediate threat of death or injury to the officers executing the warrant if the officers announce their presence or purpose prior to entering the dwelling." Before this change, judges could previously approve no-knock warrants under additional conditions, such as when police could demonstrate an inability to detain a suspect or collect evidence through a knock-and-announce warrant.

Furthermore, there are two high-profile gun control provisions passed by the 2023 Session of the Minnesota Legislature. The first provision states that as of August 1, 2023, the law prohibits private transfers of pistols and semiautomatic military-style assault weapons without a firearms eligibility background check of the person receiving the firearm. The second provision is a "red flag" law, which goes into effect on January 1, 2024. It allows family or household members, a chief law enforcement officer, a city or county attorney, or a guardian to petition a court for an "extreme risk protection order" prohibiting the respondent from possessing firearms for up to one year, including on an emergency basis. HF2890/SF2909*/CH52.

Nurse and Patient Safety Act

The "Nurse and Patient Safety Act" aims to address working conditions

and shortage of health care workers, especially direct care nurses. The provisions include a Healthcare Professional Education Loan Forgiveness Programs that will expand to include direct care nurses at nonprofit hospitals with over \$10.6 million being set aside to forgive loans for the newly eligible workers. Furthermore, in support of the shortage of nurses, incident response action plans will be required at all hospitals to combat the rising violence against health care workers. Representative Sandra Feist (DFL-New Brighton) and Senator Erin Murphy (DFL-St. Paul) sponsored the law. HF1522/SF1384*/CH75.

Recreational Cannabis

Under Chapter 63 (HF 100*/SF 73) Minnesota has become the 23rd state to enact legislation legalizing adult-use of recreational cannabis. The provisions establish a statewide regulatory framework including requirements for each type of license under this Chapter, establish taxes on the regulated products,

amends criminal penalties, expunges certain prior convictions related to cannabis and provides for temporary regulation of hemp-derived edible cannabinoid products. Beginning August 1, 2023, personal possession of up to two pounds of marijuana is no longer a crime. Section 9 prohibits smoking cannabis flower or products in places where smoking is prohibited under the Clean Indoor Air Act and contains other prohibitions including using cannabis flower or products in state correctional facilities, using while in or operating a motor vehicle while under the influence of cannabis flower or products, giving cannabis flower or products to a person under the age of 21 or giving cannabis flower or products as a promotional gift.

The legalization of adult-use of recreational cannabis sends big changes to the evolving landscape of workplace cannabis testing. With the legalization of cannabis, employers are now tasked with providing their employees with

detailed policies that adhere to all applicable laws.

Bill Dooley Bicycle Safety Act

In the omnibus transportation finance package, the Bill Dooley Bicycle Safety Act no longer requires bicyclists to come to a complete stop at a 4 way stop-sign intersection. Instead, bicyclists can yield and proceed through the intersection. This is known nationwide as the “Idaho Stop”. Idaho adopted this law change in 2022. Although a bicyclist would still be required to stop at a red traffic light, they can continue through the intersection before the light turns green. The bill also established both the Mississippi River Trail, and the Jim Oberstar Bikeway as designated bicycle routes. These new provisions are part of an effort to improve cyclist safety in Minnesota. The new law changes go into effect on Aug. 1, 2023.

Congratulations to **Joe Flynn, Vicki Hruby, Elisa Hatlevig, Tessa McEllistrem** and **Jake Peden** for being named to the 2023 list of Minnesota Super Lawyers and Rising Stars.



Super Lawyers is a Thomson Reuters business that provides a rating service of outstanding lawyers from more than 70 practice areas, who have attained a high-degree of peer recognition and professional achievement. The selection process is multi-phased and includes independent research, peer nominations and peer evaluations. Rising Stars selections undergo the same selection process as Super Lawyers but recognizes attorneys who are 40 years old or younger, or have been practicing for 10 years or less. No more than 2.5% of lawyers in Minnesota are named to the Rising Stars list.

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