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The inability to be fully alive

Workers' comp and post-traumatic stress in first responders

By Jessica E. Berlat and Eustace de Saint Phalle

Many workers' comp lawyers represent injured workers who have had traumatic experiences that lead to post-traumatic stress disorder ("PTSD"). When you are representing a client who has PTSD, particularly a first responder, there are certain things that should be considered in the development of your case. Special attention must be paid to an underlying or pre-existing industrial injury.

It is generally understood that many people experience two to four traumatic experiences in their lifetimes. A first responder is going to have repeated experiences that lead to hundreds of exposures to traumatic incidents over the course of their career. This high level of exposure to critical incidents and prevalence of PTSD in our first responders is what led to the development of the workers' compensation presumption for PTSD.

Pierre Janet was a French philosopher, physician and psychologist who famously defined trauma as the "inability to be fully alive in the present moment." He is well known for his 1889 book, "L'Automatisme Pychologique," which showcases his early studies of patients with dissociative symptoms. Pierre Janet was arguably one of the first to systematically study dissociation as a crucial physiological process with which someone reacts to an overwhelming experience. More importantly, that a failure to confront the experience leads to this dissociation.

Pierre Janet's investigations into the mental process surrounding trauma are still relevant to the medical community today. While he never formally labeled the trauma he discussed as "PTSD," his observations on the effects of trauma closely parallel contemporary descriptions of PTSD. (Bessel A. van der Kolk, M.D., Onno van der Hart, Ph.D. Pierre Janet and the Breakdown of Adaption in Psychological Trauma. Am J Physiatry 146:12 December 1989.)

In more recent medical journals, it is recognized that his work "first clearly and systematically studied dissociation and claimed it as the crucial psychological process with which the organism reacts to overwhelming trauma, and which results in the wide variety of symptoms then classified under the rubric of 'hysteria.'" (*Ibid.*)

In this article we are going to explore PTSD from an underlying industrial injury perspective. Specifically, the California workers' compensation presumption for PTSD pursuant to Labor Code section 3212.15. In discussing PTSD, this article will address how this condition is diagnosed in the workers' compensation system by medical evaluators and how a permanent impairment rating (compensation to injured worker) is determined. It will provide a framework for what you should know, and what needs to be considered when you are developing evidence for a workers' compensation case, civil suit, or third-party matter.

The goal of this article is to develop an awareness of the diagnosis of PTSD and the predominance of this condition in our first responders. Importantly, in the context of a civil suit or third-party claim, PTSD should be treated like any other pre-existing medical condition in the determination of whether the eggshell-plaintiff doctrine applies. If your client has an underlying industrial injury, the medical diagnosis and evidence developed in their workers' compensation case can be used for evidentiary issues in any third-party case or future civil suit.

Post-Traumatic Stress Disorder (PTSD)

By definition, PTSD is a mental health condition that is triggered by experiencing or witnessing a terrifying event. In the workers' compensation system, the term PTSI (Post-Traumatic Stress Injury) is also used. They are both related concepts to describe the effects of trauma on mental health in the body. PTSI has often been defined as a biological trauma citing the physical changes which occur in the nervous system. It was thought that by labeling PTSD to PTSI, it would reduce the stigma associated with PTSD and improve an injured worker's likelihood of seeking medical help. These authors are not so sure this labeling has helped reduce the stigma. More importantly, the Labor Code presumption, addressed in detail below, has made reporting a PTSD injury more approachable.

Symptoms

There are 17 common symptoms of PTSD and they are categorized into three main categories: intrusive symptoms, avoidance symptoms, and arousal and reactivity symptoms.

Intrusion symptoms are defined as recurrent, distressing memories, flashbacks, nightmares and intense reaction to triggers.

Avoidance symptoms are usually defined as avoiding people, places, or activities that may trigger certain memories, difficulty recalling or discussing significant aspects of the trauma, avoiding or trying to avoid memories, thoughts or feelings.

Arousal and reactivity symptoms are commonly seen as irritability, angry outbursts, reckless or destructive behavior, difficulty concentrating, and sleep disturbance.

The most common symptoms of PTSD are nightmares/sleep disturbances, flashbacks of distressing events, irritability, angry outbursts, problems and difficulty concentrating. PTSD can also cause physical symptoms such as chronic pain, sweating, jitteriness, headaches, dizziness and chest pain.

According to the National Institute of Health, first responders have reported greater rates of dysphoric cluster of symptoms including diminished interest,

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emotional numbing, and social detachment, increased psychological reactivity and avoidance of situations. First responders have also reported more severe levels of depression and suppressed anger.

These findings indicate that first responders present with a distinct clinical profile that is characterized by dysphoric symptoms. These symptoms specifically can predict poor treatment response and require specific attention in treating PTSD in first responders.

Workers' compensation system

In our last workers' comp article (Plaintiff, May 2024), we explored Labor Code presumptions for our first responders. When it comes to first responders, the Legislature eased the burden of proving industrial causation and issues of apportionment for certain public employees that provide vital and hazardous services by establishing a series of evidentiary presumptions.

Most presumptions were enacted as recognition that first responders work in an uncontrolled work environment, which leads to not only higher risk of a specific injury, but also cumulative injuries due to exposure to dangerous chemicals, carcinogens, and critical incidents.

Labor Code section 3212.15 Presumption for Post-Traumatic Stress Disorder

Labor Code section 3212.15 provides a presumption for PTSD. This is a relatively new presumption that became effective as of January 1, 2020 and now remains in effect until January 1, 2029. The presumption requires a minimum of six months of service (with exception for sudden/extraordinary events). The presumption also extends three months for every year of service up to five years. This presumption does not have an anti-attribution clause, so defendants can prove non-industrial factors to get apportionment of permanent disability due to non-industrial factors.

Diagnosis of PTSD

In the workers' compensation system, an injured worker is typically first evaluated and diagnosed by their primary treating physician (PTP). It is recommended that someone suffering from mental health symptoms be seen by a licensed psychologist or psychiatrist so that a diagnosis can be made. Eventually, an injured worker is going to be evaluated by a Panel Qualified Medical Evaluator (QME) or Agreed Medical Evaluator (AME).

This type of psychiatric examination is very complex and has significant impact on the resolution of symptoms, the recovery process, the need for future medical care, the level of permanent disability, and the return (if possible) to the open labor market. It requires obtaining sensitive information regarding the circumstances involving cumulative stress, secondary to multiple traumatic industrial incidents. The assessment must evaluate the emotional, social, psychiatric, and motivational issues that may be impacting the claim. This includes not only the psychological aspects, but the physical manifestations and sequela as well.

The Diagnostic and Statistical Manual of Mental Disorders, 4th Edition (DSM-IV), is used to officially diagnose mental health conditions including PTSD.

In the workers' compensation system, PTSD falls within the anxiety disorders category according to the DSM-IV. Certain criteria must be met for the diagnosis of PTSD to be made.

For instance, an individual must experience/witness/be confronted by an event that involves actual or threatened death, serious injury or threat to physical integrity of oneself or others. There are three symptom categories of PTSD: reexperiencing, avoidance and hyperarousal.

To be diagnosed with PTSD, an injured worker must have one or more symptoms in reexperiencing category, three or more from the avoidance category, and two or more from the hyperarousal category. These "disturbances" or symptoms must have a duration that is longer than one month and must cause clinically significant distress or impairment in social, occupation, or other important areas of functioning.

Practice pointer: Due to the medical reporting requirements in a workers' compensation case, when the system is utilized properly, a civil attorney in a crossover case or a future civil suit, has the advantage of earlier access to medical records without formal discovery. Within the medical reporting, it may be developed that an injured worker has pre-existing exposures, but is functioning well without a disabling event at that time. Importantly, this discovery could be utilized later in an employment, third-party, or civil suit with regards to a subsequent event that led to a disabling injury.

Permanent and stationary status and permanent disability

When assessing permanent psychiatric disability subsequent to January 2005, a medical evaluator or treater is to provide an impairment rating according to the AMA Guides, 5th Edition. For a mental health condition, these guidelines utilize what is called a Global Assessment of Functioning ("GAF") score in order to arrive at a permanent disability rating in the form of the whole person impairment index; rather than the work function impairment form previously utilized. This methodology for arriving at the appropriate GAF score is described in the DSM-IV.

There are three primary areas of functioning in determining the GAF score. They may include psychological symptoms, social and interpersonal functioning, and occupational functioning with considerations given to parameters such as concentration and adaptation.

A physician is going to base a GAF score on things like social isolation, communication, anger, insomnia/sleep disorders, and cognitive dysfunction. This GAF score, once produced, is converted to a whole person impairment.

An important advantage a civil attorney has in a crossover workers' compensation/third-party case, or even in a civil-suit with an eggshell plaintiff, is the use of the medical reporting from

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the workers' compensation case. This reporting is going to provide a framework that establishes: causation, scope of the injury (body parts and compensable consequences thereof), reasonableness of current medical care and an outline for future medical treatment.

A civil attorney is going to have access to this information much earlier into a case than they typically would and without formal discovery. Access to these medical records and experts is not only convenient, it minimizes litigation costs for a civil attorney.

Conclusion

There is not one specific warning sign for the development of PTSD. It can stem from a specific traumatic event or several events over the course of an injured worker's career.

First responders operate in a "suck it up" culture among their colleagues. They are supposed to be brave and tough. Traumatic events are brushed over and laughed about. This culture is perhaps most problematic because it deters many from seeking help. This leads to a build-up of psychological stress caused by repeated exposure, which leads to the development of PTSD.

It is often hard for an injured worker to come to the realization that the darkness they are encountering is in fact PTSD. Many of our first responders, have become accustomed, if not trained, to brush off critical incident exposures. Many find themselves emotionally numb until the symptoms rear their heads in other ways like anger or physical manifestations (panic attacks).

Unfortunately, the critical incidents our first responders witness do not stay behind when they leave the workplace. PTSD can significantly impact not only an injured worker's ability to work due to their debilitating symptoms but also their homelife and day-to-day quality of life. The data surrounding mental health of our first responders is devastating. It is time to get past the stigma of PTSD and create an awareness of what it is and what protections there are under the law that make treatment and compensation more accessible.

In the context of a civil suit or third-party case, an attorney should consider a diagnosis of PTSD as they would any other medical condition. When there is an underlying industrial injury, the civil attorney and workers' compensation attorney should work in concert with one another at the outset of a claim to make sure the appropriate treaters are being selected, and that the reporting that comes from those providers is complete. In developing evidence for a civil suit, an attorney should be determining whether the eggshell plaintiff doctrine applies due to this pre-existing condition.

Considering the medical reporting requirements in a workers' compensation case, when the system is utilized properly, a civil attorney in a crossover case or in a future civil suit, has the advantage of earlier access to medical records without formal discovery, quality experts, and reducing costs of litigation dramatically.



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