

Sub. HB 27
Testimony by Katherine Ivan
For the Ohio Association for Justice
In support of allowing first responders diagnosed with PTSD to qualify for workers'
compensation
Before the House Insurance Committee
March 22, 2017

Mr. Chairman and members,

My name is Katherine Ivan and I am a workers' comp attorney with the law firm of Agee, Clymer, Mitchell and Laret here in Columbus. My purpose in testifying today is to provide you with some legal background on the the PTSD issue and to urge your support for the inclusion of an amendment that I understand will be offered, which would allow first responders who are diagnosed with PTSD to obtain workers' compensation benefits and medical care.

Ohio injured workers who are diagnosed with Post-Traumatic Stress Disorder (PTSD) claims as a result of work activity are eligible to file workers' compensation claims under ORC 4123.01(C)(1). An injured worker must have a current claim for physical injuries suffered at work. The injured worker has the burden to prove that the diagnosis of PTSD is because of the physical injury.

The law does not allow Ohio Injured workers to file workers' compensation claims for psychological conditions only. For example, if an injured worker witnessed an explosion but did not sustain any physical injuries in the explosion he or she cannot file a workers' compensation claim for psychological injuries that result from what was witnessed.

Before June 2013, PTSD claims could be filed if they resulted from the events surrounding the injury as long as there was also a physical injury. For example, an injured worker merely had to have an open claim for something as minor as a cut, scrape, or bruise because of an explosion. However, if the injured worker was diagnosed PTSD and his or her doctor determines that the PTSD diagnosis is because of the explosion, the injured worker could attempt to add that diagnosis to the claim and seek treatment and possible compensation benefits.

In June 2013, the Ohio Supreme Court changed this in Armstrong v. John R. Jurgensen Co., 136 Ohio St.3d 58, 2013-Ohio-2237. Mr. Armstrong was a dump truck driver who was yielding on an on-ramp to the highway. Mr. Armstrong watched a vehicle rear-end his truck and observed the other driver's death. He had a workers' compensation claim for neck and back sprains because of the impact. Later, he was diagnosed with PTSD and his doctor opined that it was because of what he witnessed. The Court held that the PTSD must be caused by the neck and back injuries, not the circumstances surrounding the injury. Since June 2013, the physical injury must cause the PTSD diagnosis rather than the circumstances surrounding the work accident.

This case makes it less likely that a first responder who is diagnosed with PTSD because of some mental observation of an incident at work to seek treatment. The language in this provision would not reverse Armstrong but rather carve out a protection for first responders to file psychological-only claims where

they can prove that the psychological diagnosis is because of the work activity observed. First responders deserve the protection of being able to file psychological only claims because of they are far more likely to experience an event that develops into a PTSD diagnosis.

Mr. Chairman, I thank you for granting me this time to testify. If you have questions, I'll do my best to answer for you.