

An Officer's Guide for Stress Related Injuries

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California public safety officers are subject to a challenging and at times stressful environment. Peace officers are frequently exposed to stress related injuries like suspect assaults, officer-involved shootings and severe orthopedic injuries. What if the stress from the job is caused by other factors such as supervisory conflict or an investigation? What are the standards for an injured officer to receive worker's compensation benefits for a stress related injury? This article will provide a guide for peace officers who have been exposed to stress related injuries.

Labor Code section 3208.3 provides:

“b)(1) In order to establish that a psychiatric injury is compensable, an employee shall demonstrate by a preponderance of the evidence that actual events of employment were predominant as to all causes combined of the psychiatric injury. (2) Notwithstanding paragraph (1), in the case of employees whose injuries resulted from being a victim of a violent act or from direct exposure to a significant violent act, the employee shall be required to demonstrate by a preponderance of the evidence that actual events of employment were a substantial cause of the injury. (3) For the

purposes of this section, 'substantial cause' means at least 35 to 40 percent of the causation from all sources combined. (c) It is the intent of the Legislature in enacting this section to establish a new and higher threshold of compensability for psychiatric injury under this division”

Sub-section (h) further provides:

“No compensation under this division shall be paid by an employer for a psychiatric injury if the injury was substantially caused by a lawful, nondiscriminatory, good faith personnel action. The burden of proof shall rest with the party asserting the issue.”

The courts have applied section 3208.3 to require a higher standard of proof for stress injury claims. First, the officer will need to show that the predominant cause (i.e. 51% or greater) of the stress injury they have suffered has been caused by actual employment events. If the injury is the result of a staff assault or OIS, the standard is lowered to “substantial” cause (i.e. 35-40%) of the combined sources of the stress. The next potential hurdle is the employer’s “good faith personnel action” defense. The labor code provides a complete bar to stress injuries if a “substantial” cause of the stress arises from the employer’s nondiscriminatory good faith personnel action.

In the case of *Rolda v. Pitney Bowes*, the WCAB outlined the test employers must show for the “good faith personnel action” defense to apply. The employer must show the actual events of employment that caused the

stress injury were, in fact, a good faith personnel action. Take for example an officer who is subject to an internal affairs investigation that results in discipline. The officer then alleges stress **after** the investigation and resulting discipline. The “good faith personnel action” defense would be used to bar this type of stress claim.

What if the stress has caused additional physical injuries like heart/hypertension, gastro esophageal reflux (GERD), or IBS? Does the “good faith personnel action” bar the physical claims arising from the stress?

In a recent case *County of San Bernardino v. WCAB*, the Court of Appeals held the “good faith personnel action” defense precludes recovery for psychiatric injuries as well as for the resulting physiological manifestations if they were “solely” caused by stress from such good faith personnel actions. Importantly, the Court stated the holding did not undermine the rule that physical injuries aggravated by work-related stress are compensable. The Court further noted there was no evidence the injured employee suffered job stress **apart** from that caused by the “good faith personnel actions.”

Therefore, under the Court’s analysis in *County of San Bernardino*, if the officer’s stress arises from other sources—such as staff or suspect assaults and threats, workload, or just the fact the officer works in a dangerous environment—the physiological manifestations, such as heart or GERD, would not be barred. It is important for the injured officers to

provide the examining physicians a complete history of the job stress and not just the supervisory conflict or stress from an investigation. If the on-the-job stress causes a physical injury and the job stress is not subject to the “good faith personnel action” defense, the injuries will likely be determined to be work related.

It is important to understand that worker’s compensation claims for stress are typically disputed by the employer, unless the claim arises from a specific event like a suspect assault or officer involved shooting. These claims require the facts of the job stress to be fully developed. The goal is to knock down the employer’s “good faith personnel action” defense. Even if the employer can show the stress injury arose from a “good faith personnel action,” the officer’s physical injuries, like heart or GERD, should not be barred so long as the officer has sustained additional stress apart from the “good faith personnel action.”

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