

VIRGINIA:
IN THE WORKERS' COMPENSATION COMMISSION

Opinion by MARSHALL
Commissioner

Nov. 23, 2021

DALE SINE v. STATE POLICE
COMMONWEALTH OF VIRGINIA, Insurance Carrier
YORK RISK SERVICES GROUP, Claim Administrator
Jurisdiction Claim No. VA00001746329
Claim Administrator File No. 7090871
Date of Injury July 2, 2020

Corey E. Pollard, Esquire
For the Claimant.

Adam L. Katz, Esquire
For the Defendants.

REVIEW before Commissioner Marshall, Commissioner Newman, and Commissioner Rapaport at Richmond, Virginia on July 28, 2021.

The defendants request review of the Deputy Commissioner's March 25, 2021 Opinion. They assign error to the finding the claimant proved his post traumatic stress disorder (PTSD) is an occupational disease. We AFFIRM¹

I. Material Proceedings

The claimant filed an August 3, 2020 claim which alleged a compensable injury by accident or an occupational disease or ordinary disease of life, post traumatic stress disorder ("PTSD"), with a communication date of July 2, 2020. He sought a medical award and temporary total disability from July 13, 2020 and continuing.

¹ The defendants initially requested review of the award of temporary total disability from July 13, 2020 and continuing. They withdrew this challenge on review. (Defs.' W.S. 1, n.1.)

At the February 17, 2021 hearing, the claimant clarified he was not alleging PTSD as an injury by accident.² He stated his disease claim was based on repeated exposures to multiple traumatic events. The defendants denied the claimant sustained an occupational disease or ordinary disease of life. They asserted an August 12, 2017 incident caused the claimant's condition, which may have been exacerbated by a 2018 incident. They denied the medical records supported the nature and extent of disability alleged.

The Deputy Commissioner heard the testimony of the claimant, a state trooper, and his wife, Cathy Sine. He admitted medical designations from both parties into evidence.

After his review of the testimony and medical evidence, the Deputy Commissioner found the claimant suffered from PTSD, as diagnosed by all relevant medical records. (Op. 6.) He found the medical records supported the period of disability alleged. (Op. 7.)

The Deputy Commissioner found the claimant's PTSD was a compensable occupational disease. (Op. 10.) He found the facts of this case differed significantly from those in *Musgrove v. Bedford County*, JCN VA00001270176 (July 23, 2019), a case on which the defendants relied.³ In *Musgrove*, a divided Commission denied an employee's claim for a compensable injury by accident or occupational disease. Musgrove was an EMT firefighter who responded to a horrific accident where he was actively engaged for an extended period of time. He later developed PTSD.

² We acknowledge the defendants allege the claimant's PTSD resulted from a single incident. In light of our decision that the PTSD developed from multiple exposures, we do not analyze this claim under an injury by accident theory.

³ The defendants also relied on *Hicklin v. City of Hampton*, JCN VA00001712507 (Jan. 29, 2021). In *Hicklin*, the claimant alleged either an injury by accident or a compensable occupational disease or ordinary disease of life. There were two incidents in 2012 and 2020 after which he suffered the sudden onset of PTSD. The disease claim failed because the medical evidence showed he had the sudden onset of PTSD after each incident, not a gradual onset *and* because the claimant did not prove the 2020 incident arose out of the employment. Those facts are distinguishable from the instant case.

The Commission majority found Musgrove's PTSD arose from a single incident. Given Musgrove's occupation, his claim did not qualify as an injury by accident as the horrific scene was not unexpected. The majority held "a disease 'may be the consequence of one significant exposure. The disease claim does not fail because of the one significant exposure, it fails because the claimant failed to prove his PTSD is a disease.'" (Op. 8.)

The Deputy Commissioner stated the case differed from the facts in *Musgrove*:

[I]n that the present case involves not only a "triggering event" but subsequent, distressing events which led to the development of the claimant's PTSD. The initial event occurred in August of 2017. However, one year later, at the anniversary of that event, the claimant had a subsequent panic attack when asked to return to that scene. Following that event, the claimant had yet another panic attack when being asked to attend a gun rally. Finally, the claimant had a rapid succession of such incidents in May and June 2020, leading up to his removal from work. Thus, the claimant's case avoids some of the obstacles encountered by the claimant in *Musgrove, supra*, because although triggered by one event, his PTSD developed over time from repeated exposures to similar events. Further, unlike in *Musgrave*,^[sic] *supra*. [t]he diagnosis meets the criteria for an occupational disease. Dr. DeCanio's response to questions from claimant's counsel, wherein he explicitly indicated that the claimant met the requirements for the elements set forth in Code Section 65.2-400, clearly establish the claimant's PTSD as a compensable occupational disease."

(Op. 9.)

The Deputy Commissioner concluded the claimant met his burden to prove a compensable occupational disease and awarded medical and disability benefits. He stated:

Therefore, if, as the Full Commission has noted, PTSD is established as a disease, it can be compensable if attributable to multiple service-related activities or possibly even to one significant exposure, then the claimant has proven his case regardless of whether the PTSD is attributable to the 2017 event or the several similar events that followed. After considering the precedent to date on this issue, and given the unrebutted medical evidence in this matter, the Commission finds that the claimant has met his burden of proof establishing that he is suffering from PTSD as a compensable occupational disease.

(Op. 9-10.)

The defendants request review. They allege the claimant's PTSD developed as a result of a sudden shock or fright on August 12, 2017 rather than as a cumulative disease process. They deny the claimant proved his PTSD is a disease, and they argue the Commission cannot infer from the record that the claimant suffers from a disease.

II. Summary of Evidence

We reviewed the evidence, the parties' written statements, and the oral argument presentations. We summarize to explain our decision.

After high school graduation, the claimant trained and worked as an electrician before joining the state police on May 10, 2000. He worked exclusively and continuously for the state police until July 13, 2020. He has not worked anywhere since that date.

As a road trooper, the claimant supported highway safety, worked accidents and crashes, assisted local agencies and investigated crimes as assigned. He encountered traumatic events including auto wrecks, assisted and secured the scenes of murders for Bureau of Criminal Investigation agents, and investigated suicides. He regularly saw death, dismemberment and serious injury on the job.

Beginning in 2011, the claimant supervised 130 vehicle inspection stations. He performed administrative duties, background checks of personnel, and field oversight of the stations. If he was in the field, he assisted troopers with crash investigations as needed. If civil disturbances broke out, he could be dispatched for crowd control. At the State Police Academy in 2000, his crowd control training was "to march and move fluent through in formation, so that we could get one spot to another. After that, basically, that's about it." (Tr. 9.)

On August 12, 2017, the claimant was deployed to the Unite the Right rally in Charlottesville, Virginia. His division was assigned to protect the statue of Robert E. Lee. He was armed and outfitted with a helmet, nightstick and gas mask. Two opposing groups of armed protestors clashed and began beating each other about twenty yards away. (Tr. 12.) The claimant testified he began to feel a little tense and could not breathe. He considered this a no-win situation. He felt trapped. He asked himself if the crowds broke toward the officers, “Do I run or start shooting people?” Later that night, “after all day of feeling trapped and that stuff going on,” the officers were put on a Department of Corrections bus with porthole windows. (Tr. 13.) On the bus, the claimant had a severe panic attack. He forcefully got off the bus and began taking off his clothes. *Id.* He testified he could not breathe, felt out of control, angry, and like a cornered dog. *Id.* Afterwards, the claimant continued to work and did not miss any time or receive any medical treatment. (Tr. 14.)

After the 2017 Charlottesville riots, the colonel made all troopers members of the tactical field force. In January 2018, the claimant received riot gear, including a ballistic helmet, shin guards, pads, a gas mask, a shield, gloves, Nomex fireproof covering, and fire retardants. He began to receive major training in crowd control. (Tr. 10.)

The claimant’s next panic attack occurred in August 2018 in Charlottesville. He was assigned to the memorial to the woman killed at the Unite the Right rally. The state police set up a secure area on the mall with access limited to those screened through a metal detector. He and four other troopers were assigned to keep unscreened people outside the secure area. Unsecured people outside the perimeter began to rile up the people inside, and “that’s when everybody kind of turned against us a little bit and trapped us between the barricades.” (Tr. 15.) The claimant

began having a panic attack with problems breathing and chest issues. The state police called in the nearby tactical field force which separated the officers from the protestors. The claimant completed his job that day and did not miss time from work or seek medical treatment. (Tr. 16.)

In December 2019, the state police began to prepare for thousands of armed people expected to protest gun control proposals at the State Capitol in Richmond in January 2020. The claimant expected to work at crowd control at the rally. His supervisor discussed the planned protest and tactics in the office. The officers reviewed their riot gear. The claimant began to have tightness in his chest at night. Dreams interfered with his sleep. His family doctor prescribed medication for acid reflux which was ineffective.

On January 9, 2020, the claimant reported to the office. He had chest pains, could not breathe, and was shaking. He told his supervisor he had to go home. Sergeant Holley sent him to the hospital where tests ruled out cardiac problems. The doctors determined he was having panic attacks. After the hospital, the claimant saw his family doctor, who took him out of work for two weeks. He did not attend the gun rights rally. After two weeks off, he returned to work.

The claimant began counseling with Christopher DeCanio, Ph.D. on January 28, 2020. His wife urged him to get counseling because something did not seem right.

Civil disturbances broke out again in late May 2020. On May 31, 2020, the claimant was sent to Fredericksburg, Virginia for crowd control. When the troopers arrived, the tactical team was shooting gas canisters toward the protestors. The claimant heard flashbangs and booms and tried to put on his gas mask and gear so that he could go into the gas and deal with rioters. The rioters started dispersing when the police officers came out of the gas. The officers then broke into

platoons and squads to keep from getting trapped. He felt “keyed up” like in Charlottesville. He felt like a “caged dog, mad, angry, and scared.” (Tr. 22-23.)

The claimant worked almost seventy hours that week. He was on call the whole week, and he kept his riot gear in the car at the ready. He did his normal duties some days, and he traveled to different areas with protests on other days. He stated the week was a continuous period of rioting. He felt out of control and angry when he was sent to Harrisonburg. The troopers were sent to the Winchester area on June 5, 2020. When they met at a staging area, they were put on a bus to go into the city. The claimant felt trapped. He stated, “Kind of goes back to my memories of ‘17.” (Tr. 25.) After the protests in that area calmed down, the troopers were told to stay where they were with the expectation they would be sent to another area with protests. The claimant had another panic attack and began pacing by himself. He felt out of control and angry.

Following the week ending June 5, 2020, the claimant told his supervisor, Sergeant Holley, he needed two weeks off. He no longer was able to work. (Tr. 20-26; 32-33;50-52.) His condition felt worse. His mind wandered, he could not sleep, and he isolated himself. After the May and June 2020 protests, he began crying for no reason.

The claimant estimated he had six or seven separate panic attacks at work between August 2017 and July 13, 2020. (Tr. 28.) He testified as his condition progressed, he had difficulty multi-tasking and made mistakes in his day job. During the summer of 2020, he stopped volunteering to coach youth sports, one of his past favorite activities.

On cross examination, the claimant agreed his PTSD started as a result of the August 12, 2017 incident and reignited when he returned to Charlottesville in 2018.

The claimant's wife of sixteen years, Cathy Sine, testified she first noticed her husband had sleeplessness and anxiety after the August 2017 Charlottesville mission. He seemed anxious before he again was sent to Charlottesville in 2018. He was unable to enjoy Christmas in 2019 after he learned of the planned January 2020 gun rights rally. After each operation, his condition would escalate. It was a red flag for her when he had to go to the hospital in January 2020, and she asked him to see Dr. DeCanio. He was on call during all of 2020, and his symptoms began to be triggered by hearing news stories about protests. Since January 2020, the claimant, formerly happy go lucky, became more introverted and isolated himself.

The medical record reflects the claimant reported chest pain and pressure, light-headedness, and shortness of breath at a hospital emergency room on January 9, 2020. He told the physician he was "usually on the mildly anxious side, but has never felt the way he has felt today." The doctors ruled out cardiac problems and advised him to follow up with primary care.

The claimant began treatment with Dr. Christopher DeCanio, Licensed Clinical Psychologist, on January 28, 2020. He told Dr. DeCanio he was hospitalized two weeks earlier when he thought he was having a heart attack and had been out of work for two weeks. He reported he had to get off a correctional bus in Charlottesville⁴ during 2017 due to a panic attack. Dr. DeCanio recorded that at a second rally in Charlottesville in 2018, "he was surrounded by people." Dr. DeCanio diagnosed "Anxiety disorder, unspecified."

The claimant, who had no history of counseling or psychiatric diagnosis or care, saw Dr. DeCanio nine times preceding his July 2, 2020 diagnosis of PTSD. Over this period, he displayed varying amounts of anxiety and agitation.

⁴ Dr. DeCanio's note mistakenly identified Charlottesville as "Charlesville."

Dr. DeCanio observed greatly increased agitation and anxiety when he saw the claimant on June 17, 2020. Dr. DeCanio recorded “The [patient] was on unrestricted standby. He worked 80 hours that week and he is feeling completely overwhelmed.” He noted the claimant recalled being in a riot situation with only himself and two other officers. He advised the claimant to consider medication from his primary care physician and a leave of absence from work.

On July 2, 2020, Dr. DeCanio diagnosed the claimant with PTSD. The doctor recommended that the claimant complete a request under the Family and Medical Leave Act (FMLA). The claimant testified he discussed the PTSD diagnosis with the Dr. DeCanio around that time. He understood Dr. DeCanio thought the PTSD was work-related due to the riots.

Dr. DeCanio completed a July 8, 2020 FMLA form which stated “the [patient] experienced a traumatic experience while monitoring a protest and felt his life was in danger.” He then listed the claimant’s symptoms of PTSD. He concluded, “These symptoms appear to comprise a post traumatic stress disorder. (PTSD with delayed onset, F 43.10).”

In a July 9, 2020 letter, Dr. DeCanio stated “Officer Sine has experienced a traumatic experience while monitoring a protest and became surrounded by protestors and, clearly, his life was in danger.” He listed the claimant’s symptoms and his diagnosis of PTSD with delayed onset. At his July 15, 2020 session, the claimant related a situation when he went into a rage over a speeder. He was fearful of performing his duties as a police officer.

At the request of his captain, the claimant underwent a fitness for duty evaluation with Aradhana Bela Sood, M.D, a professor of psychiatry and pediatrics at Virginia Commonwealth University. Dr. Sood spoke with the claimant, his wife, his two supervisors, Sergeant Holley and Sergeant Mason, and Dr. DeCanio. Dr. Sood recorded the claimant’s account of attending the 2017

Unite the Right march in Charlottesville, where he was stationed near the memorial and felt trapped. He described his panic attack and need to exit the corrections bus. He told Dr. Sood he went back to Charlottesville in 2018 for the anniversary. She wrote “[h]e was again in an insecure area and felt trapped and surrounded by people as that protest again became quite ugly.” He described later lacking confidence to ticket an erratic driver who was tailgating him, due to fear of hurting the driver.

Sergeant Mason, the claimant’s supervisor, reported the claimant overall was a very good worker and a knowledgeable trooper. He stated the claimant had not been the same since the Charlottesville scenario. He remembered how the claimant pleaded to get off the bus and was frantic. Sergeant Mason felt in the past three or four months, the claimant’s symptoms had worsened and his emotions had become more out of control.

Sergeant Holley told Dr. Sood the 2017 Charlottesville incident was emotionally charged, with “a great deal of fighting and pushing and a stressful day for everyone.” After they left the rally, Sergeant Holley recalled remaining on the corrections bus from midnight onward and the claimant becoming claustrophobic and getting off the bus. He witnessed the claimant’s reaction to the very stressful 2018 Charlottesville anniversary and memorial firsthand. He recalled the claimant reporting a pain in his arm and being sent to the hospital in January 2020. He reported after the George Floyd incident and the rallies and protests that followed, the claimant “began to have even more trouble.” (Cl.’s Ex. 1.)

Dr. Sood wrote:

On review, his symptoms appear consistent with posttraumatic stress disorder, as the temporal connection to the Charlottesville incident is clear. The onset of abrupt symptoms that have worsened over time, stem from that event and

have become exaggerated, with each subsequent experience that was similar. Now any type of large hostile gathering produces a feeling of panic and anxiety to the point he cannot think clearly. He denies any previous involvement of any mental health provider or a psychologist or a psychiatrist. He states he has never been anxious in his life, has never required any therapy prior to seeing Dr. DeCanio. He has never had any substance abuse.

(Cl.'s Ex. 1.)

On August 3, 2020, Dr. Sood concluded, "Senior Trooper Sine is a 47-year old Virginia [S]tate Police professional who meets the diagnostic criteria for Post-Traumatic Stress Disorder with temporal connection to events that he went through in 2017 2018. Recently another event which involved large crowds of individuals in protest/riot situation has caused him to have feelings of being trapped, feeling claustrophobic and fearing for his life." Her impressions were PTSD and Anxiety Disorder Not Otherwise Specified, moderate in severity.

Dr. DeCanio expressed his opinions about causation of the claimant's condition in answers to an October 28, 2020 questionnaire. Dr. DeCanio agreed:

He is familiar with the American Psychological Association's (APA's) Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, and its criteria for the diagnosis of Post Traumatic Stress Disorder (PTSD);

The claimant has PTSD, with delayed onset;

He was aware of the claimant's experiences on August 12, 2017 and August 11, 2018 in Charlottesville, and on May 31, 2020 in Fredericksburg and June 5, 2020 in Winchester as part of his job as a state trooper;

He was aware that over the past three years, the claimant began experiencing panic and anxiety when learning he may have to respond to a large hostile gathering as part of his employment;

He agreed the claimant developed PTSD as a result of multiple occupational exposures to hostile protests during his work for the State Police;

He agreed there is a direct causal connection between the work conditions the claimant experienced on August 12, 2017 when he was surrounded by hostile protestors, August 11, 2018, May 31, 2020, June 5, 2020, and other dates involving large hostile gatherings, and the PTSD diagnosis;

The claimant's PTSD followed as a natural incident of his work with the state police and from the workplace exposures and that these exposures were the proximate cause of the PTSD;

PTSD is not a condition to which the claimant had substantial exposure outside of his employment;

July 2, 2020 is the first date he communicated the diagnosis of PTSD to the claimant, and he told the claimant the condition was related to the employment.

The claimant remained totally disabled from all work due to PTSD.

In handwritten notes, Dr. DeCanio added that he recorded multiple instances of traumatic events. He identified the incident in Fredericksburg involved full riot gear and the one in Winchester included a bus ride. He indicated riot gear and riding the bus were triggers of panic and anxiety.

Dr. DeCanio continued to treat the claimant until January 6, 2021, for a total of nineteen sessions. He kept the claimant out of work due to PTSD. After Dr. DeCanio retired, the claimant began counseling with Dr. Dale Pickett. He first saw the new counselor shortly before the hearing.

III. Findings of Fact and Rulings of Law

The claimant's diagnosis of PTSD is undisputed. Both Dr. DeCanio and Dr. Sood agreed on the diagnosis. The question before us is whether his PTSD is a compensable disease.

At oral argument, the defendants conceded this case simply involves weighing conflicting factual evidence. (Oral Arg. Audio at 11:26:49 to 11:27:49.) After careful consideration of the

entire record, the evidence preponderates and we find that the claimant suffers from the occupational disease of PTSD which was caused by multiple events.

Post-traumatic stress disorder may be compensable as an injury by accident, an occupational disease, or an ordinary disease of life, depending on the circumstances under which the condition developed. *Fairfax Cty. Fire & Rescue Dep't v. Mottram*, 263 Va. 365, 375 (2002), *aff'g in part and rev'g in part*, 35 Va. App. 85 (2001). In *Mottram*, the Supreme Court of Virginia concluded the claimant, a first responder, suffered from PTSD which was an occupational disease. The Court noted, "each case turns on its own facts." *Id.*

Although the claimant experienced a first panic attack after the August 2017 Unite the Right rally, he did not sustain an injury at that time. His anxiety increased, but he missed no time from work and required no medical treatment. The same was true of his experience at the 2018 Charlottesville gathering. His anxiety increased each time he encountered another hostile protest. He began treatment with Dr. DeCanio in January 2018, but the psychologist did not diagnose PTSD until his ninth visit on July 2, 2020, after the claimant served at a spate of civil disturbances in late May through early June 2020.

For PTSD to be compensable as a disease, the employee must show either it is an occupational disease under Virginia Code § 65.2-400 or an ordinary disease of life under Virginia Code § 65.2-401. "[T]he question whether a condition or disease is an ordinary disease of life or an occupational disease is essentially a medical issue to be decided by the trier of fact based on the evidence presented." *Mottram*, 263 Va. at 375 (quoting *Knott v. Blue Bell, Inc.*, 7 Va. App. 335, 338 (1988)).

To prove an occupational disease, an employee must establish that he suffers a disease arising out of and in the course of employment “but not an ordinary disease of life to which the general public is exposed outside of employment.” Va. Code § 65.2-400(A). To meet this burden, the employee must prove (1) a direct causal connection between the work conditions and the occupational disease; (2) that the disease can be seen to have followed as a natural incident of the work as a result of the exposure due to the nature of the employment; (3) that the disease was proximately caused by the employment; (4) that it was not a disease to which he would have had substantial exposure outside of employment; (5) it was incidental to the character of the business, and not independent of the employee/employer relationship; and (6) the disease originated in a risk of employment and flowed as a direct consequence of it. Va. Code § 65.2-400(B).

In *Mottram*, the Supreme Court of Virginia found the claimant’s PTSD was a disease, noting his “repeated exposures to traumatic exposures caused reactions in his neurobiological systems, much like the reaction of the employee’s immune system in *A New Leaf* [*v. Webb*, 257 Va. 190 (1999)].” *Mottram*, 263 Va. at 373. In *Petersburg Fire & Rescue v. Wells*, No. 0328-04-2 (Va. Ct. App. Oct. 4, 2004), the Court of Appeals relied on *Mottram* to hold an ailment diagnosed as PTSD may qualify as an occupational disease under the Act. The Court noted the Commission in *Mottram* found that PTSD, in its standard medical definition, qualified as a disease under the Act. The Court ruled “if a claimant proves the ailment did not occur as a result of a specific injury, the commission may, without further proof, infer that it is a disease under the Act, absent evidence to the contrary.” *Id.*

We find the claimant's PTSD is properly classified as an occupational disease. He did not suffer a specific injury. The medical evidence from both Dr. DeCanio and Dr. Sood established the claimant's condition developed over time and over repeated exposures to traumatic events.

"Medical evidence is not necessarily conclusive, but is subject to the commission's consideration and weighing." *Hungerford Mech. Corp. v. Hobson*, 11 Va. App. 675, 677 (1991). Dr. DeCanio, the treating psychologist, opined the claimant suffers from a compensable occupational disease. We give greater weight to his opinion that the claimant's disease resulted from multiple exposures to trauma than to his initial statement attributing the symptoms to a traumatic event. His later opinion is more consistent with the credible testimony. Dr. Sood's report focused on fitness for duty, but her opinion also supports the finding the claimant suffers from an occupational disease.

IV. Conclusion

We AFFIRM the March 25, 2021 Opinion.

Interest is awarded on the award pursuant to Virginia Code § 65.2-707.

For legal services to the claimant, we AWARD an attorney's fee of \$3,000, to Corey R. Pollard, Esquire, for legal services to the claimant on review. This is in addition to the \$7,500 attorney's fee awarded by the Deputy Commissioner. The total attorney's fee of \$10,500 shall be deducted by the insurer and paid directly to the attorney.

This matter is hereby removed from the review docket.

APPEAL

You may appeal this decision to the Court of Appeals of Virginia by filing a Notice of Appeal with the Commission and a copy of the Notice of Appeal with the Court of Appeals of

Virginia within thirty (30) days of the date of this Opinion. You may obtain additional information concerning appeal requirements from the Clerk's Offices of the Commission and the Court of Appeals of Virginia.