

VIRGINIA:
IN THE WORKERS' COMPENSATION COMMISSION

Opinion by RAPAPORT
Commissioner

June 10, 2022

MICHAEL BEAN v. CITY OF CHESAPEAKE VIRGINIA
CHESAPEAKE CITY OF, Insurance Carrier
PMA MANAGEMENT CORP, TPA, Claim Administrator
Jurisdiction Claim No. VA00001886662
Claim Administrator File No. 0035W26538
Date of Injury: September 2, 2021

Adam B. Shall, Esquire
For the Claimant.

Robert L. Samuel, Jr., Esquire
For the Defendant.

REVIEW on the record by Commissioner Marshall, Commissioner Newman, and Commissioner Rapaport at Richmond, Virginia.

The claimant requests review of the Deputy Commissioner's April 7, 2022 Opinion awarding fifty-two (52) weeks of medical benefits pursuant to Virginia Code § 65.2-107 for posttraumatic stress disorder and continuing medical benefits for a gunshot wound as previously awarded. We AFFIRM.

I. Material Proceedings

The claimant, a police officer, sustained a compensable gunshot wound to his right hand on September 2, 2021. Pertinent to our inquiry, the claimant also suffers posttraumatic stress disorder as a result of the accident. At issue is whether Code § 65.2-107 limits the claimant's award of medical benefits for posttraumatic stress disorder to fifty-two weeks.

Deputy Commissioner Wilder conducted an on-the-record hearing on March 17, 2022. Both parties submitted position statements. The Deputy Commissioner found that the benefits the claimant could receive for posttraumatic stress disorder were provided in Code § 65.2-107 – as opposed to those in Code §§ 65.2-603, 65.2-500, and 65.2-502 – and, therefore, a fifty-two-week award of medical benefits was appropriate. He explained:

Section 65.2-107 . . . became effective on July 1, 2020, first defines the terms “law-enforcement officer,” “firefighter,” and “qualifying event” as well as several other terms and then reads follows in Subsection B:

Post-traumatic stress disorder incurred by a law-enforcement officer or firefighter is compensable under this title if:

1. A mental health professional examines a law-enforcement officer or firefighter and diagnoses the law-enforcement officer or firefighter as suffering from post-traumatic stress disorder as a result of the individual’s undergoing a qualifying event;
2. The post-traumatic stress disorder resulted from the law-enforcement officer’s or firefighter’s acting in the line of duty . . . ;
3. The law-enforcement officer’s or firefighter’s undergoing a qualifying event was a substantial factor in causing his post-traumatic stress disorder;
4. Such qualifying event, and not another event or source of stress, was the primary cause of the post-traumatic stress disorder; and
5. The post-traumatic stress disorder did not result from any disciplinary action, work evaluation, job transfer, layoff, demotion, promotion, termination, retirement, or similar action

. . . .

Subsection C then addresses the benefits available as a result of a qualifying diagnosis of post-traumatic stress disorder:

Notwithstanding any provision of this title, workers' compensation benefits for any law-enforcement officer or firefighter payable pursuant to this section shall (i) include any combination of medical treatment prescribed by a board-certified psychiatrist or a licensed psychologist, temporary total incapacity benefits under § 65.2-500, and temporary partial incapacity benefits under § 65.2-502 and (ii) be provided for a maximum of 52 weeks from the date of diagnosis. No medical treatment, temporary total incapacity benefits under § 65.2-500, or temporary partial incapacity benefits under § 65.2-502 shall be awarded beyond four years from the date of the qualifying event that formed the basis for the claim for benefits under this section. . . .

Under the terms of § 65.2-603, post-traumatic stress disorder for claimants not covered by § 65.2-107 may qualify as a compensable condition for medical treatment if the general causation standards of the Act are met. *See Baggett v. Newport News Public Schools*, JCN VA00000682448 (November 21, 2014). It is noted that § 65.2-107 creates a separate analytical structure solely for the condition of post-traumatic stress disorder for a limited class of firefighters and law enforcement officers: if certain conditions are met, a claimant is relieved of the evidentiary burden generally imposed in cases under the Act.

Unlike the presumptions established in § 65.2-402 and § 65.2-402.1, however, § 65.2-107 limits the medical and compensation benefits a qualifying claimant may receive for post-traumatic stress disorder in exchange for a relaxed evidentiary burden. Contrary to the assertions of claimant's counsel in his written position statement, the language "[n]otwithstanding any provision of this title" at the beginning of subsection C followed by a description of the benefits allowed is considered to communicate the General Assembly's intent to limit the medical and compensation benefits a claimant who qualifies under § 65.2-107 may receive for post-traumatic stress disorder, excluding a qualifying claimant from the general benefits available through the remaining portions of the Act.

(Op. 3-4.) The claimant timely requested review.

II. Findings of Fact and Rulings of Law

On appeal, the claimant maintains that Code § 65.2-107 is not the sole remedy for a police officer (or firefighter) seeking medical benefits for post-traumatic stress disorder and that one "can still seek a lifetime medical benefits award for post-traumatic stress disorder pursuant to Code

§65.2-603.” (Cl.’s W.S. 3.) The claimant asserts that the legislature could not have intended to create an “absurd result whereby law enforcement officers and firefighters would be in a worse position than” other injured workers, and that “[t]he legislature’s intent was to provide an additional avenue of recovery for these categories of first responders, not strip benefits away.” (*Id.*) We have carefully considered the statutory framework and find no error in the lower determination.

We fully recognize that a fifty-two-week period of medical benefits is obviously lesser than a medical benefits award afforded under Code § 65.2-603. Yet precisely, with quite clear language, the General Assembly crafted Code § 65.2-107 to read that after “undergoing a qualifying event,” a police officer would gain “any combination of medical treatment” and “be provided for a maximum of 52 weeks from the date of diagnosis.”¹ We are simply bound by the rules of statutory construction:

“The Virginia Supreme Court has long held that ‘when analyzing a statute, we must assume that “the legislature chose, with care, the words it used . . . and we are bound by those words as we [examine] the statute.”’” *Eley v. Commonwealth*, 70 Va. App. 158, 163, 826 S.E.2d 321 (2019) (alteration and omission in original) (quoting *Doulgerakis v. Commonwealth*, 61 Va. App. 417, 420, 737 S.E.2d 40 (2013)). “Once the legislature has acted, the role of the judiciary ‘is the narrow one of determining what [the legislature] meant by the words it used in the statute.’” *Chapman v. Commonwealth*, 56 Va. App. 725, 732, 697 S.E.2d 20 (2010) (alteration in original) (quoting *Dionne v. Southeast Foam Converting & Packaging, Inc.*, 240 Va. 297, 304, 397 S.E.2d 110 (1990)). Consequently, “[w]hen considering the meaning and effect of a statute, this Court follows the long-held standard that the clear meanings of words are controlling’ and determines the legislature’s intention from the plain language of the statute, ‘unless a literal construction would involve a manifest absurdity.’” *Id.* (quoting *Alston v.*

¹ Code § 65.2-107 defines a qualifying event as “an incident or exposure occurring in the line of duty . . . 1. Resulting in serious bodily injury or death to any person or persons; 2. Involving a minor who has been injured, killed, abused, or exploited; 3. Involving an immediate threat to life of the claimant or another individual; 4. Involving mass casualties; or 5. Responding to crime scenes for investigation.” The parties do not dispute that the claimant’s accident was a qualifying event.

Commonwealth, 49 Va. App. 115, 124, 637 S.E.2d 344 (2006)). Furthermore, “[p]roper construction seeks to harmonize the provisions of a statute both internally and in relation to other statutes.” *McGowan v. Commonwealth*, 72 Va. App. 513, 518, 850 S.E.2d 376 (2020) (quoting *Hulcher v. Commonwealth*, 39 Va. App. 601, 605, 575 S.E.2d 579 (2003)).

Atl. Orthopaedic Specialists v. City of Portsmouth, 73 Va. App. 157, 164-165 (2021).

III. Conclusion

The Deputy Commissioner’s April 7, 2022 Opinion is AFFIRMED.

An attorney’s fee is awarded in the total amount of \$2,000, which includes the \$1,500 awarded by the Deputy Commissioner below, to be deducted in weekly increments of \$300 per week until satisfaction of this fee award and paid directly to Adam B. Shall, Esquire, for legal services rendered to the claimant.

This case is ORDERED 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 Clerks’ Offices of the Commission and the Court of Appeals of Virginia.