

VIRGINIA:  
IN THE WORKERS' COMPENSATION COMMISSION

Opinion by RAPAPORT  
Commissioner

**July 10, 2023**

CHRISTOPHER MILLNER v. THE CITY OF LYNCHBURG  
LYNCHBURG CITY OF, Insurance Carrier  
SMARTCASUALTYCLAIMS, Claim Administrator  
Jurisdiction Claim No. VA00001903365  
Claim Administrator File No. 015113682 LYN 231412088 Q  
Date of Injury: September 1, 2021

E. Albion Armfield, Esquire  
For the Claimant.

Richard D. Lucas, Esquire  
For the Defendant.

Review before Commissioner Marshall, Commissioner Newman, and Commissioner Rapaport at Richmond, Virginia on June 30, 2023.

The defendant requests review of the Deputy Commissioner's February 24, 2023 Opinion. We REVERSE and VACATE the Award for payment of medical benefits under the provisions of Virginia Code § 65.2-400 and enter a new Award for payment of medical benefits under the provisions of Virginia Code § 65.2-107.

**I. Material Proceedings**

The claimant, a firefighter, filed a claim on November 14, 2022 alleging that he sustained a compensable occupational disease of post-traumatic stress disorder communicated to him on September 1, 2021. He sought medical benefits. The defendant raised several defenses against the claim, including that Code § 65.2-107 controlled and was the exclusive remedy under which the claim must be considered.

An evidentiary hearing on February 9, 2023. The claimant testified to experiencing post-traumatic stress disorder due to multiple traumatic events to which he responded over a period of time. The Deputy Commissioner found that Code § 65.2-107 was inapplicable and that analysis of the compensability should be pursuant to Code § 65.2-400. She explained:

The defendant takes the position that the claimant’s PTSD claim “is governed by, and limited to, the coverage afforded under Code § 65.2-107 . . . to the exclusion of an occupational disease claim under Chapter 4 of the Virginia Workers’ Compensation Act (“Act”) and/or an injury by accident claim subject to the provisions of Chapter 6 of the Act.” The defendant cited *Bean* [v. *City of Chesapeake Virginia*, JCN VA00001886662 (June 10, 2022)] and its language that “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,” Code “§ 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.” *Id.*, pg. 3. (Emphasis added).” . . .

Our review of the statute, the case law, and the parties’ position statements leads us to agree with the claimant and distinguish the facts and holding in *Bean* from the facts of the present case. The claimant in *Bean* suffered a singular event, which was a qualifying event under Code § 65.2-107. The claimant in the present case was not alleging a singular event. He testified to “repeated traumatic exposure.” Under the facts of *Bean*, Code § 65.2-107 was the exclusive remedy. Under the facts of the present case, Code § 65.2-107 is not applicable and the claimant’s claim must be considered under Code § 65.2-400.

(Op. 7-8.) The defendant timely requested review.<sup>1</sup>

## **II. Findings of Fact and Rulings of Law**

After careful deliberation, we agree with the defendant that the “only reasonable and logical reading of § 65.2-107 is that it is inclusive and applicable to all claims resulting from a ‘qualifying event.’” (Def.’s W.S. 5.)

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<sup>1</sup> The defendant stated on appeal that “the sole issue in this review is whether Code § 65.2-107 is claimant’s exclusive source of recovery.” (Def.’s W.S. 2.) Accordingly, we omit discussion of the medical evidence.

“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 (2019) (alteration and omission in original) (quoting *Doulgerakis v. Commonwealth*, 61 Va. App. 417, 420 (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 (2010) (alteration in original) (quoting *Dionne v. Southeast Foam Converting & Packaging, Inc.*, 240 Va. 297, 304 (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. Commonwealth*, 49 Va. App. 115, 124 (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 ((2020) (quoting *Hulcher v. Commonwealth*, 39 Va. App. 601, 605 (2003)).

*Atl. Orthopaedic Specialists v. City of Portsmouth*, 73 Va. App. 157, 164-65 (2021).

The Virginia Workers’ Compensation Act is contained within Title 65.2 of the Code of Virginia. The General Assembly added Code § 65.2-107 in Chapter 1, “Definitions and General Provisions” effective July 1, 2020. Section 65.2-107(B) provides that “[p]ost-traumatic stress disorder . . . , incurred by a . . . firefighter is compensable under this title if: 1. A mental health professional examines a . . . firefighter and diagnoses the . . . firefighter as suffering from post-traumatic stress disorder as a result of the individual’s undergoing a qualifying event.” Section 65.2-107(A) defines a qualifying event as follows:

“Qualifying event” means an incident or exposure occurring in the line of duty on or after July 1, 2020:

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.

We must read the statute as plainly written.

The statute clearly mandates that post-traumatic stress disorder suffered by a firefighter “is compensable under this *title* if” delineated criteria are met. (emphasis added.) “Title” refers to Title 65.2. Once those criteria are established, the claimant has a remedy as provided by Section 65.2-107(C). Critically – and similar to the import of the term “title” – Section 65.2-107(C) reads “*Notwithstanding any provision of this title*, workers’ compensation benefits for any . . . firefighter payable pursuant to this section shall (i) include any combination of medical treatment . . . (ii) be provided for a maximum of 52 weeks from the date of diagnosis.” (emphasis added.) Thus, we must conclude that Code § 65.2-107 carves out the exclusive remedy concerning post-traumatic stress disorder for firefighters (and law-enforcement officers) in the Act. Accordingly, the claimant’s recovery is limited to 52 weeks of medical benefits from the date of diagnosis. As we observed in *Bean*, “§ 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.”

### **III. Conclusion**

The Deputy Commissioner’s February 24, 2023 Opinion is REVERSED and VACATED.  
A new Award shall enter as follows:

#### AWARD

An Award is hereby entered in favor of Christopher Millner, claimant, against City of Lynchburg, self-insured employer, providing for the payment of medical benefits commensurate

with Virginia Code § 65.2-107. The defendant is awarded a credit for the payments of medical treatment that it has already made.

An attorney's fee of \$500 is awarded to Albion Armfield, Esquire, for legal services rendered to the claimant, payment of which is the sole responsibility of 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.