FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

Nos. 1D19-4601
1D20-2383
(consolidated)

MANDY LYNN WYATT,

Appellant,

v.

POLK COUNTY BOARD OF COUNTY COMMISSIONERS and COMMERCIAL RISK MANAGEMENT, INC.,

Appellees.

On appeal from an order of the Office of Judges of Compensation Claims.
Robert A. Arthur, Judge.

Date of Accident: November 27, 2018.

November 2, 2022

TANENBAUM, J.

Mandy Lynn Wyatt started working as an emergency medical technician ("EMT") and paramedic for Polk County Fire Rescue in August 2015. Over the course of her employment, she witnessed several horrible things on the scene at emergency calls involving

women and children. According to unrebutted testimony and other evidence, the first of these occurred when Wyatt responded in May 2016 to a domestic violence incident in which the victim had been badly beaten by her boyfriend and suffered severe head trauma. The victim died shortly after arriving at the hospital. Then, in January 2017 and June 2017, Wyatt responded to cardiac arrest calls involving three-month-old children. In between these two events, she went to a call where a mother had wrecked her car, pulled her child out of the car, and run into a pond with the intent to drown him. In April 2018, she responded to a call involving a small child seriously injured by two pit bulls. Finally, in June 2018, she responded to a car crash in which a five-year-old had been killed. The deceased child had already been removed from the scene, but Wyatt was responsible for taking care of the child's two-year-old sister. As she did so, Wyatt noticed the deceased child's brain matter stuck in the girl's hair and proceeded to pick out the pieces.

Wyatt first began experiencing nightmares and flashbacks—the first signs of a possible post-traumatic stress disorder ("PTSD")—in 2016, as a result of the domestic violence call. Around the same time, she sought assistance with her symptoms from a critical incidence stress management team, which was available to first responders with on-the-job experiences like Wyatt's. She began seeing a therapist in March 2017. Her trauma worsened as she was exposed to the incidents in 2017 and 2018 involving children. She continued to feel depressed and anxious and consistently experienced nightmares. Even so, she was not exposed to another traumatic incident at work following the tragic June 2018 crash scene. Wyatt continued working, but there were times when she would have to take leave and cut short her overnight shifts so she did not have to sleep at the fire station. She worked her last shift with Polk County Fire Rescue on November 27, 2018. A few days later, she took a leave of absence under the Family and Medical Leave Act because she felt like she no longer could do her job. Her condition did not improve during that leave, and she never returned.

On April 26, 2019, Wyatt filed a petition for benefits ("PFB").[1] In the PFB, she asserted the PTSD she had been suffering because of her repeated responses to emergency calls. She sought indemnity for her lost wages on theories of both temporary total disability and temporary partial disability pursuant to section 440.15, Florida Statutes. She also sought authorization for medical care and treatment of the PTSD under section 440.13. She claimed November 27, 2018—the last day that she worked—as the date of her accident.

Wyatt, of course, sought benefits under the Workers' Compensation Law, but as a first responder, she relied on section 112.1815, Florida Statutes, to support her claim. That provision, originally enacted in 2007, *see* ch. 2007-87, § 1, at 1066–67, Laws of Fla., establishes special provisions to govern the determination of benefits "relating to employment-related accidents and injuries of first responders," including EMTs and paramedics. § 112.1815(1), (2)(a), Fla. Stat.; *see Palm Beach Cnty. Fire Rescue v. Wilkes*, 309 So. 3d 687, 688 (Fla. 1st DCA 2020). To be sure, this statute does not establish a parallel system of workers' compensation for first responders. *Cf.* § 440.03, Fla. Stat. (binding "every employer and employee as defined in s. 440.02 [to] the provisions of [chapter 440]"); § 440.02(16)(a), Fla. Stat. (defining "employer" to include "the state and all political subdivisions thereof"); *see also* § 440.02(15)(a), Fla. Stat. (defining "employee" to "mean any person who receives remuneration from an employer for the performance of any work or service while engaged in any employment under any appointment or contract for hire or apprenticeship").[2] Rather, it treats first responders as a specific

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[1] The employer asserted timeliness as a defense. That defense was stricken for itself being untimely, but there is no cross-appeal addressing whether the defense was properly stricken. We make no comment, then, on whether the PFB in fact was timely based on these facts.

[2] For this reason, we reject out of hand the employer's implicit contention that there is a distinction between a claim for workers' compensation benefits under chapter 440 and a claim by a first responder for those same benefits pursuant to section 112.1815. Because there is no parallel system, a first responder does not have

class of state and local employees who otherwise are entitled to coverage under the Workers' Compensation Law, and it sets out various special definitions, exceptions (*e.g.*, regarding burdens of proof, caps, and time limits), and compensability variations to be applied in the determination of first responders' claims for benefits made under chapter 440.

Application of section 112.1815 makes a difference in the determination of a claim like Wyatt's. For example, Wyatt does not claim to have suffered a physical injury at work, and the Workers' Compensation Law generally places strict limits on compensability for a mental or nervous work injury. A compensable *physical* injury must be the major contributing cause of the mental or nervous injury, and temporary benefits may not be paid for more than six months following the date of maximum medical improvement for the physical injury. *See* § 440.093, Fla. Stat. (2018). Under this provision (considered alone), Wyatt's claimed injury would not be compensable at all. Since its original enactment in 2007, however, section 112.1815 has eased this limitation for first responders like Wyatt by allowing for medical benefits under section 440.13 to treat a mental or nervous injury suffered at work, even if it was "unaccompanied by a physical injury." § 112.1815(2)(a)3., Fla. Stat. (2018); *see* ch. 2007-87, § 1, at 1066–67, Laws of Fla.; *see also Wilkes*, 309 So. 3d at 688 (contrasting this subparagraph with the general preclusion in section 440.093).[3] This subparagraph, then, would entitle Wyatt to medical treatment for her anxiety, depression, and nightmares to

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to cite or reference section 112.1815 in a PFB to take advantage of any pertinent definitions, exceptions, and variations provided in that section. It was sufficient for Wyatt to reference sections 440.13 and 440.15 as setting out the benefits she was seeking, and the PFB alleged sufficient facts to put the employer on notice that she was a first responder, such that section 112.1815 could apply to the claim.

[3] Note that under this subparagraph, indemnity payments under section 440.15 remain unavailable for this type of injury unless it stems from a physical injury suffered by the claimant as a first responder.

the extent these symptoms were caused by her work as a paramedic, and she would not be subject to the limitations ordinarily placed on such a benefit. *See* § 112.1815(2)(a)3., Fla. Stat.

In 2018, the Legislature added a subsection five to section 112.1815. *See* ch. 2018-124, § 1, at 1655–57, Laws of Fla. The law took effect October 1, 2018, which was after Wyatt's exposure to the various traumas that we identified above, but before Wyatt suffered lost wages as a result of going out of work for her PTSD. *See id.* § 3, at 1657. The new provision expands compensability for first responders who suffer specifically from PTSD, a particular type of mental injury that ordinarily would have to be addressed under subparagraph (2)(a)3., which we just discussed. Subsection five now directs that PTSD suffered by a first responder be considered a "compensable occupational disease" as provided in section 440.151. § 112.1815(5)(a), (c)1, Fla. Stat. (2018); *see Wilkes*, 309 So. 3d at 688. Under section 440.151, then, a first responder who cannot work because of PTSD is entitled to not just medical benefits but also indemnity for lost wages stemming from the disability—even without any accompanying physical injury. *Cf.* § 440.151(1), Fla. Stat. (providing that an employee "shall be entitled to compensation as provided by this chapter" if the employee becomes disabled as a result of "an occupational disease").

Under the new subsection, if a first responder wants to receive indemnity under section 440.15 for lost wages due to work-caused PTSD, she must prove her PTSD by "clear and convincing medical evidence" that the PTSD "resulted from the first responder acting within the course of his or her employment,"[4] and—through a licensed and authorized treating psychiatrist—that the PTSD is due to one or more of eleven enumerated "events," including the following:

- Seeing for oneself a deceased minor;

[4] Section 440.091, Florida Statutes, describes what it means for a first responder to be "acting within the course of employment."

- Directly witnessing the death of a minor;
- Directly witnessing an injury to a minor who subsequently died before or upon arrival at a hospital emergency department;
- Seeing for oneself a decedent whose death involved grievous bodily harm of a nature that shocks the conscience;
- Directly witnessing a death, including suicide, that involved grievous bodily harm of a nature that shocks the conscience;
- Directly witnessing an injury, including an attempted suicide, to a person who subsequently died before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience.

§ 112.1815(5)(a)1., 2.a.–c., f.–g., i., Fla. Stat. (2018) (sub-subparagraph lettering omitted); *id.* (5)(b); *see Wilkes*, 309 So. 3d at 688.

Prior to the final evidentiary hearing on Wyatt's claim, the employer conceded in its trial memo that Wyatt suffers from PTSD that developed because of her exposure to the on-the-job traumatic events described above. It explained that it denied Wyatt's claim because all of the qualifying events that led to her PTSD occurred before the effective date of the law adding subsection five: October 1, 2018. The JCC denied Wyatt's claim in its entirety—her claim for both medical treatment under section 440.13 and wage indemnity under section 440.15.

In explaining his denial, the JCC focused on what he considered to be Wyatt's "last injurious exposure." The JCC noted that Wyatt claimed November 27, 2018 (the last day she worked) as her date of accident. The JCC reasoned, however, that her accident had to be the date of her last "exposure" to one of the "qualifying events" enumerated in subparagraph (5)(a)2., which would have been June 2018, when she responded to the car crash in which the five-year-old child had died. According to the JCC, she

was not exposed to a qualifying event on her last day of work. From this reasoning, the JCC reached two incorrect conclusions. First, the JCC concluded that Wyatt did not have an accident on the date she claimed, so she was not entitled to benefits under section 112.1815. Second, the JCC concluded that Wyatt's "substantive rights were fixed as of" June 2018, when her last qualifying event occurred, so she was not entitled to benefits under the statute as amended in October 2018. We address each of these conclusions in turn and explain why we must set aside the denial of benefits and remand.

We start with the date of the accident. To the extent that Wyatt's claim for medical benefits and indemnity relies on her PTSD being an occupational disease as provided by sections 112.1815(5) and 440.151, she correctly identifies November 27, 2018, as the accident date. Notwithstanding any other provision in chapter 440, "the *disablement* . . . of an employee resulting from an occupational disease . . . shall be treated as the happening of an injury by accident." § 440.151(1)(a), Fla. Stat. (emphasis supplied); *cf.* § 440.09(1), Fla. Stat. (requiring an employer to pay compensation and furnish benefits for an "accidental compensable injury or death arising out of work performed in the course and the scope of employment"). Neither the employee's exposure to a cause of the disease nor her suffering of symptoms counts toward the accident date; her *disablement* (read: her "disability") does, if it occurs at all. § 440.151(1)(a), (3), Fla. Stat. (2018); *cf. City of Port Orange v. Sedacca*, 953 So. 2d 727, 732 (Fla. 1st DCA 2007) ("Realistically, it is possible that a permanent disease may never result in disability."). At least with respect to wage indemnity, then, an employee, does not suffer a compensable loss from an occupational disease until she experiences the "incapacity because of the injury to earn in the same or any other employment the wages which the employee was receiving at the time of the injury." § 440.02(13), Fla. Stat. (2018) (defining "disability"); *see also Am. Beryllium Co. v. Stringer*, 392 So. 2d 1294, 1296 (Fla. 1980) ("In occupational disease cases, therefore, it is the disability and not the disease which determines the compensability of a claim."); *Conner v. Riner Plastering Co.*, 131 So. 2d 465, 467 (Fla. 1961) ("After all, it is the disability, and not the disease itself which determines whether the claim is compensable.").

Because the employee's right to compensation by statute does not accrue until the occupational disease causes a loss (again, we are talking about indemnity here), the date or dates an employee suffers exposure or contracts the disease would not be at all relevant to determining the date of the accident in this context. *See Orange Cnty. Fire Rescue v. Jones*, 959 So. 2d 785, 786–87 (Fla. 1st DCA 2007) ("This court has consistently held that when a claim involves an occupational disease, the date of accident for the purpose of benefits is the date of disability—not the date of the diagnosis, exposure to, or contraction of the disease."); *but cf.* § 112.1815(5)(d), Fla. Stat. ("The time for notice of injury or death in cases of compensable posttraumatic stress disorder . . . is measured from one of the qualifying events listed in subparagraph (a)2. or the manifestation of the disorder, whichever is later."). The JCC's "last injurious exposure" approach, then, was not commensurate with what the statute requires. *See Am. Beryllium*, 392 So. 2d at 1296 (agreeing with the principle that it cannot be correctly assumed "that the date of disablement" from a disease is the same as "the last injurious exposure or with the subsequent detection of the disease," which could occur "at some point in time later than the former but earlier than the latter" (internal quotation and citation omitted)).

Wyatt was exposed to various traumas between 2016 and June 2018 and suffered from PTSD as a result—all before the new subsection went into effect. But she did not experience a compensable *loss* (in terms of wages) until that PTSD led to an "incapacity" to earn a wage.[5] The new subsection five allows for

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[5] Bear in mind that the Workers' Compensation Law is not primarily designed to compensate an employee for her injury; rather, it is drafted to "focus[] primarily on the need to provide compensation for the economic loss resulting from the injury," to ensure the injured employee is "compensated for the loss of earnings." *Brannon v. Tampa Trib.*, 711 So. 2d 97, 99 (Fla. 1st DCA 1998); *compare* § 440.151(1)(a), (3), Fla. Stat. (defining the compensable injury in terms of incapacity to earn a wage), *with Am. Unif. & Rental Serv. v. Trainer*, 262 So. 2d 193, 194 (Fla. 1972) ("The purpose of the [Workers' Compensation Law] is to compensate for loss of wage earning capacity due to work-connected injury."); *Broward v. Jacksonville Med. Ctr.*, 690 So. 2d

such PTSD experienced by a first responder to be treated as an occupational disease, meaning that the first responder is entitled to indemnity for that wage loss if it flows from the PTSD. For Wyatt, that loss did not occur until her ongoing PTSD caused her to walk away from her job after November 27, 2018. By operation of section 440.151(1)(a), that date is when Wyatt's "injury by accident" occurred. By that date, subsection five had gone into effect, and Wyatt had the right as a first responder to claim indemnity for lost wages because of her PTSD. The JCC's refusal to consider that claim, then, misses the mark.

This brings us to the other point we want to make about how the JCC legally erred. Implicit in the JCC's incorrect disposition seems to have been a concern about "retroactive" application of the new subsection. The employer's primary argument for why Wyatt is not entitled to any benefits is rooted in this point: that to award Wyatt benefits based on her PTSD would be to impermissibly apply subsection five "retroactively."[6] We disagree.

589, 591 (Fla. 1997) ("The Workers' Compensation Law is designed to protect employees and their dependents against the hardships that arise from an employee's injury or death").

[6] We reject the employer's argument that we should affirm simply because Wyatt failed to present an authorized treating psychiatrist to say what the employer concedes about her PTSD. *Cf.* § 112.1815(5)(a)2., Fla. Stat. (requiring that "a licensed psychiatrist who is an authorized treating physician as provided in chapter 440" examine and diagnose the first responder with PTSD due to one of the eleven enumerated events). By conceding the very facts that such a licensed psychiatrist would be establishing, the employer waived this argument. The requirement of a licensed and authorized treating psychiatrist in paragraph (5)(a) goes to how a claimant must establish that the PTSD was caused by one of the enumerated events. Had the employer contested the link between Wyatt's PTSD and any of these events, its point here may have been well taken. Its concession regarding the link, however, obviated the need for Wyatt to prove the link through a treating psychiatrist.

The "well established" rule is "that the substantive rights of the respective parties under the Workmen's Compensation Law are fixed as of the time of the injury to the employee." *Sullivan v. Mayo*, 121 So. 2d 424, 428 (Fla. 1960); *see also Paulk v. Sch. Bd. of Palm Beach Cnty.*, 615 So. 2d 260, 261 (Fla. 1st DCA 1993). This rule is in place to guard against an unconstitutional impairment of contract. *Cf.* Art. I, § 10, Fla. Const.; Art. I, § 10, cl. 1, U.S. CONST. The Workers' Compensation Law traditionally has been treated as a virtual contract between the employer, employee, and insurance carrier. *See, e.g.*, *Hardware Mut. Cas. Co. v. Carlton*, 9 So. 2d 359, 359 (Fla. 1942). A judicial fiction to be sure, but the contract is considered to "embrac[e] the provisions of the statutes as they may exist *at the time of any injury compensable* under the terms of the statute." *Id.* (emphasis supplied).

If a law entitling an employee to recompense for a particular injury did not exist at the time the employee suffered the injury specified, that law could not be considered "part of the contract." *Id.* For a court to allow recovery under that law anyway is to, in effect, give the employee a right against the employer that did not exist in the virtual contract. This would be to effectuate a change in "the substantive rights of the parties thereunder," which would constitute an unconstitutional impairment of the "obligation of contract." *Id.*; *see also Sullivan*, 121 So. 2d at 428 (explaining that "a subsequent [statutory] enactment could not impair the substantive rights of the parties established by this contractual relationship" as of the time the injury occurs). To avoid this problem, then, we say that the parties' substantive rights against each other are fixed as of the date the employee suffers an injury. For the purpose of applying the occupational disease statute to Wyatt's claim for wage indemnity, her injury was her incapacity to earn wages because of her PTSD. That incapacity occurred on November 27, 2018, so the parties' substantive rights against each other regarding that loss became fixed as of that date, after subsection five already was in effect.

We also note here that section 440.151 has not changed since 2003. That means section 440.151(1)(a)—with its treatment of an employee's disablement by an occupational disease as the "injury by accident"—existed long before Wyatt's incapacity to work arose

in November 2018.[7] It did not matter that Wyatt's exposure to qualifying traumas occurred prior to the effective date of the newly enacted subsection five's becoming law. For the entire time that Wyatt worked as an EMT for Polk County, she had an imputed contractual entitlement to compensation for financial loss she might suffer *as a result of* an occupational disease. Put another way, the loss that Polk County implicitly agreed to insure against included her incapacity to earn wages as a result of an occupational disease, regardless of how the law defined the disease on the day the incapacity occurred. Subsection five, then, did not "have the effect of rewriting antecedent contracts, that is, of changing the substantive rights of the parties to existing contracts," in violation of Article I, section 10 of the Florida Constitution. *Manning v. Travelers Ins. Co.*, 250 So. 2d 872, 874 (Fla. 1971). There, in turn, is no retroactivity issue regarding application of that subsection to Wyatt's claim.

Before closing, we address one other error in the JCC's final order. We said at the beginning that Wyatt sought medical care, not just wage indemnity, as part of her claim. In both her trial memorandum and her motion for rehearing, Wyatt argued, in the alternative, that even if the JCC were to fail to award her full benefits (medical care and indemnity) under the new subsection five, she still was entitled to medical care under section 112.1815(2)(a)3., which was unaffected by the 2018 amendment. The JCC seems to have ignored this alternate basis asserted by Wyatt for an award of medical care, and the JCC denied such care simply because he perceived her as claiming that benefit under the 2018 version of section 112.1815. We frankly do not understand what difference the version makes. As we already mentioned, since its original enactment in 2007, a first responder has been entitled to medical care for a "mental or nervous injury" suffered on the job, even if there is no commensurate physical injury. *See* § 112.1815(2)(a)3., Fla. Stat. (2007); *id.* (2017). Before and after the 2018 addition of subsection five, then, Wyatt could seek authorization for medical care under section 440.13 for her PTSD

[7] That also means that subsection four (regarding "last injurious exposure" before section 440.151 took effect) has no relevance here.

suffered as a first responder, and she did not have to make any special showing to establish her claim. On this front, based on the employer's concession that Wyatt's PTSD was work-caused, the JCC had no basis for denying the claim for medical care under section 440.13, regardless of whether the 2017 or the 2018 version of section 112.1815 applied. At all events, Wyatt was entitled to employer authorization of appropriate psychiatric care.

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The record irrefutably shows—as the employer conceded and the JCC's order otherwise accepted—that Wyatt proved her PTSD was the result of her employment and stemmed from one or more enumerated qualifying events. This being the case, Wyatt was entitled to benefits under section 440.13 (thanks to subparagraph (2)(a)3. of section 112.1815) and under section 440.15 (thanks to paragraph (5)(a) of the same statute). We therefore set aside the JCC's order on review in case number 19-4601 and remand with instructions that the JCC order authorization of medical care for Wyatt's PTSD (and address any entitlement to reimbursement for appropriate care that Wyatt has received at her own expense). On remand the JCC also shall determine the amount of wage indemnity to award based on the disablement stemming from Wyatt's disorder.

In a separate appeal, case number 20-2383 (consolidated before this panel with case number 19-4601), Wyatt appeals a summary final order rendered by the JCC based on res judicata. *See* § 60Q-6.120, Fla. Admin. Code. After the JCC rendered the order on review in case number 19-4601, Wyatt filed several new petitions for benefits claiming different dates of accident, based on different theories. The petitions all still were based on the same PTSD that we have now addressed in the context of the lower-numbered appeal. The JCC rendered the summary final order based on its disposition in the order that we are vacating. Because the "matter decided" is no longer so decided, we set aside the summary final order and remand for consideration of whether, in the light of our opinion, the subsequent petitions for benefits are moot or can otherwise be disposed of in a manner consistent with our analysis here.

In case number 19-4601, SET ASIDE and REMANDED with INSTRUCTIONS.

In case number 20-2383, SET ASIDE and REMANDED with INSTRUCTIONS.

LEWIS and M.K. THOMAS, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Nicolette E. Tsambis of Smith, Feddeler, Smith P.A., Lakeland, for Appellant.

Thomas P. Vecchio of Vecchio, Carrier, Feldman & Johannessen, P.A., Lakeland, for Appellees.