FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D21-2138

CITY OF HALLANDALE BEACH/PREFERRED GOVERNMENTAL CLAIMS SERVICES,

Appellants,

v.

MATTHEW CASEY,

Appellee.

On appeal from an order of the Office of the Judges of Compensation Claims.
Daniel A. Lewis, Judge.

Dates of Accidents: November 19, 2018, January 31, 2019, April 25, 2019, and June 4, 2019.

November 30, 2022

WINOKUR, J.

Section 112.1815(5), Florida Statutes, which was enacted in 2018, and took effect on October 1, 2018, provides certain workers' compensation benefits not available prior to that date. Appellee Matthew Casey sought these benefits. His employer, City of Hallandale Beach, argued that Casey's date of accident was prior to the effective date of the statute, so that the benefits were

unavailable to him. The judge of compensation claims (JCC) found that the date of accident was subsequent to this date, so that Casey was entitled to the benefits. We agree and affirm.

I

On February 14, 2018, Casey was an officer with the Hallandale Beach Police Department who responded to an active shooter scene at Marjory Stoneman Douglas High School in Parkland. While helping to clear students and secure the building, Casey witnessed the bodies of deceased persons, including those of minor students and an adult. Shortly afterwards, Casey began experiencing episodes of anger, nightmares, and anxiety. That October he attended an employer-provided mental health seminar, at which point he realized his symptoms may be due to post-traumatic stress disorder (PTSD). He contacted his supervisor to request assistance, met with superiors on November 19 or 20, and was placed on administrative leave immediately. On November 20, the City's workers' compensation insurance adjuster received a notice of injury identifying a February 14, 2018, date of accident, accepted the claim, and authorized treatment with a psychiatrist, Dr. Chervony. Casey was eventually placed on light duty, and around January 2020, was terminated. Casey filed multiple Petitions for Benefits (PFB) requesting indemnity benefits and medical treatment. In each PFB, Casey asserted a claim under section 112.1815 and listed varying dates of accident—all tied to dates he was taken out of work due to the PTSD.[1]

Dr. Chervony testified that, in hindsight, the treatment he had been providing since December 4, 2018 (the date of the first office visit) was for PTSD caused by the events at Stoneman Douglas High School on February 14, 2018. Dr. Chervony also testified that Casey's December 2018 leave was due to Casey's anxiety and anger issues that manifested immediately after, and were causally related to, the school shooting. In addition, Casey's

[1] Four PFBs were filed listing dates of accident November 19, 2018, January 31, 2019, April 25, 2019 or June 4, 2019. These dates relate to Casey being taken out of work for various periods of time.

authorized psychologist opined that December 4, 2018, was the first time Casey met all the PTSD criteria. Casey's independent medical examiner testified that Casey first met all the criteria on January 31, 2019. The Employer[2] acknowledged that Casey was a law enforcement officer diagnosed with work-related PTSD, and that the events of February 14, 2018, was a statutorily defined qualifying event.

In the final order, the JCC noted that the Employer accepted Casey's mental or nervous injuries, including PTSD, pursuant to section 112.1815(2)(a)3., Florida Statutes, with a February 14, 2018, accident date. This statutory subparagraph provides only for medical benefits for mental injuries unaccompanied by physical injuries. However, subsection (5), effective October 1, 2018, provides that PTSD suffered by a first responder is a compensable occupational disease if it is due to a listed qualifying event, with no physical injury required, and for which such a first responder is eligible for indemnity as well as medical benefits. The JCC concluded that because Casey's date of accident was November 19, 2018, subsection (5) applied to his claim.

The JCC agreed with Casey that, because his PTSD qualified as an occupational disease, there can be multiple accident dates for the injury, with each date of disability constituting a new accident date. Under these facts, the JCC determined that Casey's correct accident date was November 19, 2018—the date Casey went on administrative leave. Because the accident date occurred after the effective date of section 112.1815(5), the JCC found that Casey was entitled to benefits under that subsection.

II

Section 112.1815 permits a first responder to receive 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). The first responder,

[2] Casey's employer, City of Hallandale Beach, and the city's workers' compensation insurance carrier, are referred to in this opinion collectively as "Employer."

however, cannot receive indemnity benefits under 440.15 unless a physical injury accompanies the mental or nervous injury. *Id*. In 2018, however, an exception was made to this limitation. *See* ch. 2018-124, § 1, Laws of Fla. Under this provision, PTSD is a compensable occupational disease as set forth in section 440.151, if it is suffered by a first responder and it resulted from certain events, including "[s]eeing for oneself a deceased minor." § 112.1815(5)(a), (5)(a)2.a., (5)(c)1., Fla. Stat. (2018). The law took effect on October 1, 2018. Ch. 2018-124, § 3, Laws of Fla. Because PTSD is a compensable occupational disease under the circumstances set forth in section 112.1815(5), a first responder who meets those criteria is entitled not just to medical benefits but also to indemnity for lost wages stemming from the disability, even without any accompanying physical injury. § 440.151(1), Fla. Stat.

III

The Employer claims that the date of accident that controls Casey's entitlement to compensation was February 14, 2018, the date of the exposure to the qualifying event causing PTSD. Because this date was prior to the effective date of section 112.1815(5), the Employer contends that Casey is not entitled to benefits available by virtue of that subsection. For his part, Casey argues that the compensability of an occupational disease is determined by the date of disability, rather than the date of the harmful exposure or the date of the diagnosis of the medical condition due to the harmful exposure. Because, according to Casey, the date of disability was the date he was placed on administrative leave, and because this date occurred after section 112.1815 became effective, he is entitled to the subsection's benefits. We agree with Casey.

Before we address further the question of the proper date to apply, we note one difficulty with the Employer's contention that Casey suffered a compensable injury on February 14, 2018, the date he was exposed to a qualifying event that caused PTSD. The "P" in PTSD stands for "post." By its very name, PTSD cannot occur until sometime *after* a traumatic event occurs. This of course does not answer the question of whether the date of accident occurred before or after the effective date of section 112.1815(5). Nonetheless, we have recently addressed the question in *Wyatt v.*

Polk Cnty. Bd. of Cnty. Comm'rs, 47 Fla. L. Weekly D2224 (Fla. 1st DCA Nov. 2, 2022). As here, the workers' compensation claimant in *Wyatt* was a first responder who suffered exposure (in her case, multiple exposures) causing PTSD prior to the effective date of section 112.1815, but did not suffer any wage loss until taking a leave of absence after the effective date. We found that the claimant was nonetheless entitled to benefits because the date her injury became compensable occurred after the subsection became effective:

> 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 [the date she took a leave of absence] 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.").

Id. at D2226. In short, in an occupational disease claim the date of accident is set at the date of disability. *See 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.").

We also rejected in *Wyatt* the employer's contention that the claimant's argument would require "retroactive" application of section 112.1815(5): "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." 47 Fla. L. Weekly at D2226 (citing *Sullivan v. Mayo*, 121 So. 2d 424, 428 (Fla. 1960)). As the "injury" in an occupational disease case is set at the date of disability, there is no retroactivity involved here. The date of accident is November 19, 2018, plainly after the effective date of subsection 112.1815(5). Accordingly, pursuant to our opinion in *Wyatt*, the JCC did not err in finding that the correct date of accident for Casey's occupational disease claim is November 19, 2018, and that he, therefore, is entitled to benefits under section 112.1815(5).

AFFIRMED.

ROWE, C.J., and MAKAR, J., concur.

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

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