

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D22-533

ROGER WILLIAMS,

Appellant,

v.

BREVARD COUNTY FIRE
RESCUE/PREFERRED
GOVERNMENTAL CLAIMS
SOLUTIONS,

Appellees.

On appeal from an order of the Office of the Judges of
Compensation Claims.
Michael J. Ring, Judge.

Date of Accident: March 31, 2021.

December 28, 2022

PER CURIAM.

We affirm the final compensation order in this workers' compensation appeal because the expert medical testimony credited by the Judge of Compensation Claims supports the conclusion on Claimant's § 112.1815(2)(a)3 claim that the accident did not give rise to any need for treatment due to post-traumatic stress disorder or any other compensable mental injury, irrespective of the evidentiary standard used below. We do,

however, agree with Claimant’s argument that first responder claimants can seek workers’ compensation benefits for PTSD under either § 112.1815(2)(a)3 or paragraph (5), or both. *See Wyatt v. Polk Cnty. Bd. of Cnty. Comm’rs*, 47 Fla. L. Weekly D2224 *6, — So.3d —, 2022 WL 16628983 (Fla. 1st DCA Nov. 2, 2022) (finding Claimant entitled to benefits based upon subparagraph (2)(a)3. of section 112.1815, as well as paragraph (5)(a)). But the availability of these claims does not alter the outcome here.

AFFIRMED.

LEWIS and OSTERHAUS, JJ., concur; MAKAR, J., concurs in part, and dissents in part with opinion.

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

MAKAR, J., concurring in part, dissenting in part.

I concur in affirmance as to all issues raised except an important issue of first impression: What is the burden of proof that first responders must meet to establish entitlement to medical benefits only for mental or nervous injuries, such as post-traumatic stress disorder (“PTSD”), arising from their employment where no physical injury accompanies the injury? *See* § 112.1815(2)(a)3., Fla. Stat. (2022) (allowing medical benefits only for “a mental or nervous injury arising out of the employment unaccompanied by a physical injury involving a first responder”).

On this issue, the judge of compensation claims (JCC) erred in concluding that the only path for a first responder to establish the compensability of a mental or nervous injury such as PTSD was via subsection 112.1815(5), Florida Statutes, which was enacted in 2018 to allow for medical *and* indemnity benefits for PTSD arising out of employment involving eleven specific events. *Id.* § 112.1815(5) (codifying Ch. 2018-124, § 1, Laws of Fla.). The plain language of subsection (5) states that it applies to PTSD

claims “notwithstanding sub-subparagraph (2)(a)3.” and related statutes, which is a legislative acknowledgement that both provisions were intended to co-exist. Subsection (5) supplements and complements sub-subparagraph (2)(a)3. For this reason, the claimant, Roger Williams, was entitled to seek medical benefits (but not indemnity benefits) under sub-subparagraph (2)(a)3. *Id.* § 112.1815(2)(a)3. (“For a mental or nervous injury arising out of the employment unaccompanied by a physical injury involving a first responder, only medical benefits under s. 440.13 shall be payable for the mental or nervous injury.”).

The JCC concluded that even if a PTSD claim could be brought under sub-subparagraph (2)(a)3., Williams failed to present clear and convincing evidence of his claimed injury. This standard of proof, however, is specified by statute for only situations where the mental injury arises from a physical injury. *Id.* (“A mental or nervous injury involving a first responder and occurring as a manifestation of a compensable injury must be demonstrated by clear and convincing evidence.”). As Williams and amicus Florida Department of Financial Services point out,* the default standard is a preponderance of the evidence, which means that Williams’s claim should be reevaluated on remand under the correct standard.

Megan E. Oliva, Vincent J. Leuzzi, Maitland, for Appellant.

William H. Rogner, Derrick E. Cox, Winter Park, for Appellees.

* The Department states that “Because the Legislature was silent on the burden of proof to be imposed in claims for mental or nervous injuries not accompanied by physical injury, the burden of proof to be applied in this case is the same burden of proof that is applied in all workers’ compensation cases absent a different statutorily imposed burden of proof. That burden is preponderance of the evidence.” *See Stokes v. Schindler Elevator Corp./Broadspire*, 60 So. 3d 1110, 1114 (Fla. 1st DCA 2011) (Thomas, J., concurring) (explaining the basis for the preponderance of the evidence standard).

Cassidy M. Perdue, Katie Beth Privett, Office of the General Counsel, Tallahassee, for Amicus Curiae Department of Financial Services.