

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H101571

BRANDON M. GREENE, EMPLOYEE

CLAIMANT

CITY OF PINE BLUFF, EMPLOYER

RESPONDENT

ARKANSAS MUNICIPAL LEAGUE, CARRIER/TPA

RESPONDENT

OPINION FILED NOVEMBER 10, 2021

A hearing was held before ADMINISTRATIVE LAW JUDGE KATIE ANDERSON, in Little Rock, Pulaski County, Arkansas.

Claimant was represented by Mr. Steven R. McNeely, Attorney at Law, Jacksonville, Arkansas.

Respondents were represented by Mr. Jarrod Parrish, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-captioned claim on August 12, 2021, in Pine Bluff, Jefferson County, Arkansas. A Pre-Hearing Order was previously entered in this case on May 4, 2021. The Pre-Hearing Order has been marked as Commission's Exhibit #1 and was made a part of the record without any objection from the parties.

Stipulations:

During the pre-hearing telephone conference and/or during the hearing, the parties agreed to the following stipulations. They read:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. An employer-employee relationship existed on January 7, 2021, when Claimant sustained an alleged work-related injury.
3. At the time of the alleged injury, Claimant was earning an average weekly wage of \$947.20, which was sufficient to entitle him to the maximum temporary total

disability (TTD)/ permanent partial disability (PPD) compensation rates for 2021 of \$632.00/\$474.00, if the claim is found to be compensable.

Issues:

The parties agreed to litigate the following issues, which were also clarified at the hearing:

1. Compensability of a mental injury of post-traumatic stress disorder (PTSD) that aggravated Claimant's anxiety and depression under Ark. Code Ann. § 11-9-113.
2. Medical treatment.
3. Temporary total disability (TTD) from January 11, 2021, to a date yet to be determined, but no more than twenty-six (26) weeks.
4. Attorney's fees.
5. All other issues are reserved.

Contentions:

The following contentions were submitted by the parties:

Claimant contends that he suffered a compensable mental injury on January 7, 2021, when in the course and scope of employment he had a cocked and loaded handgun pointed in his face by a mentally disturbed suspect. Claimant contends he is entitled to reasonable and necessary medical treatment under the Act for his mental injury. Specifically, Claimant requests reimbursement for out-of-pockets under Rule 099.30 subsection J directly from the carrier. Claimant contends he is entitled to TTD from January 11, 2021, until a date to be determined or for twenty-six (26) weeks, whichever is shorter. Claimant contends that benefits have been denied and he is entitled to an attorney's fee. Claimant reserves all other benefits, including an impairment rating and future medical treatment.

Respondents contend that Claimant did not suffer a compensable mental injury on or about January 7, 2021. It is Respondents' position that, in the event compensability is found, the medical documentation does not support an actual diagnosis, nor do they support entitlement benefits.

Summary of Evidence:

The record consists of the hearing transcript of August 12, 2021, and the exhibits contained therein. Specifically, the following exhibits have been made a part of the record: Commission's Exhibit #1 included the Pre-Hearing Order entered on May 4, 2021; Claimant's Exhibit #1 consisted of fifty (50) pages of medical records¹; Claimant's Exhibit #2 consisted of eighteen (18) pages of non-medical records; and Claimant's Exhibit #3 consisted of a cover letter identifying medical records that Claimant was attempting to obtain. Respondents' Exhibit #1 was seventy-four (74) pages in length and consisted of medical records; Respondents Exhibit #2 was thirty-three (33) pages in length and included non-medical records².

Witnesses:

During the hearing, Brandon Greene (Claimant, used interchangeably herein) and his spouse, Maebree Greene, were the only witnesses to testify.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the evidence and other matters properly before the Commission, and after having had an opportunity to hear the testimony of the witnesses and observe their demeanor, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2012).

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. I hereby accept the above stipulations as fact.
3. Claimant proved that he sustained a compensable mental injury of post-traumatic stress disorder that aggravated his anxiety and depression when a gun

¹ Respondents objected to the admission of pages 51-64 of Claimant's Exhibit #1, as they were submitted fewer than seven (7) days prior to the hearing. The objection was sustained and pages 51-64 of Claimant's Exhibit #1 were proffered, but not considered in this Opinion.

² Claimant objected to Respondents' Exhibit #2 based on authentication as well as relevance. The objection was overruled, and the appropriate weight has been given to Exhibit #2 in this Opinion.

was pointed to his head while working for Respondent-Employer on January 7, 2021.

4. Claimant proved by a preponderance of the evidence that the medical treatment he received from January 11, 2021, until April 28, 2021, including treatment from Dr. Ramiro, Dr. Flanigin, and Chenal Family Therapy, was reasonably necessary in connection with his compensable mental injury of January 7, 2021.
5. Claimant proved by a preponderance of the evidence that he was entitled to temporary total disability benefits from January 11, 2021, and continuing for twenty-six (26) weeks.
6. Claimant's attorney is entitled to a controverted attorney's fee on all indemnity benefits awarded herein, pursuant to Ark. Code Ann. § 11-9-715.

CASE IN CHIEF

Hearing Testimony:

Maebree Greene, Claimant's wife, was the first witness to testify. She testified that she and Claimant had been married for almost eight (8) years. She testified that, although Claimant had previously suffered from depression and some anxiety, since the January 7, 2021, incident, he was "a totally different person." By way of example, Mrs. Greene testified that because of the episodes that Claimant was experiencing, she did most of the driving now. Claimant had "triggers" that would cause him to have an episode, such as seeing a police officer, seeing flashing lights, or hearing loud noises (such as fireworks). Mrs. Greene described one episode when Claimant was driving the car, and she had to get Claimant to pull over because it was as if he was in "another world." She stated that in that instance, Claimant slowly came back around; however, she had to take control of the vehicle. She explained that Claimant was no longer able to drive by the police department or play police officer games with their children. Their children are no longer allowed to play with "anything that makes a popping sound, such as balloons."

Mrs. Greene provided the following example of an episode at their daughter's birthday party when a balloon popped, causing Claimant to fall to the ground in a fetal position and rock

back and forth. Claimant's family members have made accommodations to assist with preventing an episode for Claimant; however, Mrs. Greene testified that Claimant no longer has the desire to socialize. She also stated that Claimant's medications have also made it difficult for them to conceive another child.

Upon cross-examination, Mrs. Greene testified that she was aware of Claimant's diagnoses of anxiety and depression; however, she was unaware of a diagnosis of adjustment disorder. She also stated that she was unaware that doctors had shown Claimant different calming and coping techniques to use during anxiety and panic episodes. She stated that she was aware that Claimant had experienced suicidal ideations prior to the time that she and Claimant met, and that Claimant had sleep apnea prior to January 7, 2021. When questioned about a panic attack that Claimant had experienced approximately one month prior to January 7, 2021, she stated that she had taken Claimant to the emergency room. She was also aware that Claimant was having issues with a supervisor at work and that he had filed a formal complaint with the police department prior to January 7, 2021. However, Mrs. Greene testified that she was not aware that Claimant was experiencing issues with sexual dysfunction prior to January 7, 2021.

Claimant testified that he was thirty-five (35) years old at the time of the hearing and had been married to his wife, Maebree Greene, for eight (8) years. Claimant testified that he had worked as a police officer since 2009. While working as a police officer, Claimant received additional training, including graduating from the police academy on March 26, 2010. He also completed three (3) months of field officer training. Thereafter, he was released to solo patrol, and from July of 2010, until early 2013, he served on the night shift. He then worked in the police department's internal affairs for almost three (3) years, where he participated in the Reid School of Interview and Interrogation and then in the advanced class. After internal affairs, he returned

to patrolman, where he participated in numerous training programs, including training as a general instructor and a radar instructor.

In 2019, Claimant was transferred to the detective division where he worked until February 27, 2020, when he was promoted to sergeant and was assigned to the swing shift (also the evening shift). On the swing shift, he supervised between ten (10) to fifteen (15) officers. Claimant testified that even in his supervisory role he continued to receive additional training.

Also, during this time at the police department, Claimant was a field training officer. For approximately five (5) years, he trained new officers. Claimant testified that he enjoyed this work with the new officers, and it led him to want to become a supervisor, where he would supervise a team of new officers.

Claimant explained that, after he was promoted to sergeant, he began feeling as though he was being mistreated by “certain supervisors” and that he had to “watch his back.” Claimant provided an example of a lieutenant who had on several occasions raised his voice at Claimant over the phone. These problems existed even when Claimant was in his previous position as a patrolman; however, Claimant stated that it “was nothing ever to the point where any kind of arguing, any kind of - - anything out of hand or anything like that.”

Claimant explained that he had undergone weight loss surgery to manage his obesity. Before his procedure, he weighed 400 pounds, and since the surgery, he was down to 290 pounds. Claimant also testified that he had suffered from depression since his middle teenage years (as far as he could recall, from the age of approximately sixteen), as a result of being physically abused by his father. His depression improved once he was able to live separately from his father, and he was eventually taken off his depression medication. He also testified that he did not have any issues with anxiety when he was younger, but while working for Respondent-Employer, he began

having symptoms and was eventually placed on medication. However, he did not recall having “complete anxiety” prior to January 7, 2021.

Approximately one (1) week prior to January 7, 2021, Claimant had been called to the home of an elderly man (named Harvey Melton) for a welfare check, which was requested by the man’s best friend and power of attorney due to reports that Melton was seen outside in the middle of the night waving firearms in both hands. When Melton would not respond to officers, the power of attorney granted the officers access inside the home. When Claimant got inside, he found Melton holding a firearm in both hands. Claimant was able to convince him to put the firearms down, and the two were ultimately able to have a conversation.

Then, on January 7, 2021, Claimant received a call from one of the administrative sergeants, who was responsible for serving mental petition pick-up orders. The administrative sergeant knew Claimant had previous experience with Melton, and Claimant volunteered to assist in the serving of the court-ordered petition. When the officers arrived at Melton’s home, he would not respond to their attempts to make contact. Claimant described the remainder of that event as follows:

We were then eventually allowed into the house by the power of attorney. We try to proceed with caution. We eventually made contact with the gentleman. He was in his bedroom, which consisted of a 20-foot, maybe, long corridor or type hallway that went back down to his bedroom where he was. He would never show his face except for very brief times. We knew from prior contact that he had multiple weapons, as well as we were - - we were notified from his son and his power of attorney that he did have multiple weapons inside the house.

Negotiations, I guess you’d say, went on for - - I can’t recall the exact amount of time, but I know that it was one, two, maybe three hours long trying to negotiate with him by multiple people, one being Lieutenant Donna Fratesi. She was the ranking officer on scene. Me and her attempted to talk with him. I was actually the last one to talk with him. I was - - at a point it seemed like he was starting to calm down. We never could get him to come out so that we could safely try to - - I don’t want to say take him into custody, as he was not under arrest, but detain him to be able to take him to the hospital.

Then at some point as we're talking to him we heard the distinct sound of a semi-automatic gun, the slide being pulled back, as if he were loading a round into the gun, and on that prior date he did have a semi-automatic, GLOCK-looking firearm in his hand. So then that's when I told everybody to back out of the residence, and everybody get out just in case he started shooting. Everyone that was inside got out.

I took up a position right outside his front door. Where I was at there was a piece of - - there was a brick wall starting from here out to the end of the house, and then right there it was basically like a glass pane, so it was merely just concealment. It would give me no protection if he were to start shooting. The distance between where I was standing to where he was standing I would roughly guess to be about 10 feet.

When he finally made it up the hallway and rounded out the corner, he was extremely agitated, yelling, cursing, telling us to get out of the house. Did not see a weapon at that time. I still kept mine down to the side where he couldn't see it. Tried to speak with him and calm him down, but I wasn't going to leave that position just in case he wanted to come outside and start shooting. I did not know what his mindset was at that time.

As I am trying to talk with him, all I can see is his arm come around the corner - - around the thing like this and aim the gun directly at me. I looked directly down the barrel and tried to - - had to make a split-second decision of do I want to shoot and neutralize this threat, this mentally-illed man, elderly man? Do I want to - - and then if I take that risk he's got the drop on me already; he's already aimed at me. I have to pull my gun up and then everything that flashed - - it seemed like it was an eternity while I tried to make this decision.

All I could think about was wanting to go home. I wanted to be home with my girls. I wanted to be home with my wife. I did not want to die that day. We had just had an officer die the previous year in October. It was a friend of mine and he was shot in the head and that was the main part of my body that was exposed was my head. And all I could think about is either I'm going to have to kill this elderly man who's mentally ill or he's going to end up killing me or maybe I could be able to get out of the way fast enough and retreat. I didn't want him to kill me, I didn't want to kill him, so I tried to retreat as best I could, and I tried to jump behind the concrete wall. Thankfully no shots were fired by either of us.

...

I was able to get behind a brick wall, and I just stood there and I was frozen. I couldn't do anything. Lieutenant Donna Fratesi was just a few feet away from me to the side. She was taking up a tactical point because I now said he had a gun and I was yelling at him commands and then I continued to yell the commands while I was outside. And then after - - I don't know how much time transpired; it was not

very long. He slammed the door shut, and at that time I fully retreated out to the roadway.

After the incident ended, Claimant reported the event to Lieutenant Donna Fratesi, as she was the ranking officer on the scene; Kelvin Sergeant, Chief of Police; and Lieutenant Billy Dixon, Claimant's immediate supervisor. Claimant testified that on his way home from work that evening, he began crying. He stated, "I started crying and I just - - it just hit me like a ton of bricks and I knew when something wasn't right and so that's when I notified Lieutenant Billy Dixon, who he then told me to notify Deputy Chief Billy Elliott, who is next in line in the chain of command." Chief Elliott instructed Claimant to contact "EAP" and schedule therapy sessions. Claimant explained that many police officers use the Employment Assistance Program (EAP) for therapy services. Claimant also testified that he saw his family doctor, Dr. Ramiro, on January 11, 2021. Claimant stated that he returned to work on January 8, 2021, but that he was instructed to get his therapy appointment with EAP set up and to "lay low that day." Claimant did not work on January 9, 2021. Dr. Ramiro took Claimant off work on January 11, 2021, and he testified that he had not returned to work since that date.

Claimant testified that he was treated at Chenal Family Therapy at the recommendation of Dr. Ramiro. He noted that he did not feel that the counseling he received through EAP was helpful. At Chenal Family Therapy, he began seeing Dustin Roberson, a licensed professional counselor, and had been attending therapy sessions there since that time. Claimant also stated that he saw Dr. Flanigin.

As for his symptoms, Claimant testified that prior to the January 7, 2021, incident, he did not have issues interacting with people, and his depression was controlled. Since the January 7, 2021, incident, he relived the event almost daily. He had experienced a situation at his daughter's birthday party, which he described as follows:

A balloon popped while I was there and it sent me into a PTSD episode and I felt that I was being attacked so - - and I just kind of fell out on the ground and just was shaking, holding my - - gripping myself, just as if I were trying to block the blows of someone hitting me. I thought there were people attacking me, and all I could feel was overwhelming fear. And I was just scared until my wife was able to get a cold rag or some type of cold substance and splashed it on me, which is a technique that my therapist told him to do - - or told any of my - - told her to do. What it does is it just shocks my body to shock my brain out of what's going on. As the PTSD episodes, what they do is, my brain shocks my body and controls it is the way that my therapist explained it to me, and that's pretty much the way it feels.

Claimant also testified about a second episode, which he described as follows:

Since then I've had another episode of where I was - - I felt like I was being attacked, and I saw incidents where that was going on. What it was was I was outside doing some work outside. I've actually bought headphones that I use. They are noise-canceling headphones that will actually turn off whenever there's a loud enough noise to exceed a certain decibel level. I had those on. They help calm me down and keep me from, you know, hearing any of those loud noises that trigger me. While I was doing that, my oldest daughter snuck up behind me. She said she was trying to call my name, but with those headphones on I didn't hear anything. She tapped me on the shoulder and what I was doing at the time was weed eating and I almost turned around with the weed eater onto her.

Claimant recounted a third episode and described it as follows:

And then I don't know if it was a combination of everything that went on, I merely had a flashback of one of the fights I had been in in the police department. And I felt - - and thought I saw two suspects trying to fight me, and I was trying to fight back. Apparently I didn't know what was going on, but from what my children and my wife saw is that I started punching a tin shed and then ended up hitting my head on the shed and then fell out on the ground. My wife said it looked like I was spasming, and I was still trying to fight some - - looked like I was trying to fight somebody off me. And all I can remember is that these suspects were kicking me and punching at me and was just trying to kill me. And my wife was able to get some sort of cold compress or something to kind of shock me out of it and even then it took a while to get me back to where I was supposed to be.

Claimant explained that after the third incident, he was exhausted, scared and embarrassed that his family had seen the episode. His fear was that his children would be afraid of him. He stated that his "wife was terrified" when looking at him that day.

Claimant also explained that he was unable to touch or handle his firearm after the January 7, 2021, event. He no longer wanted to visit his friends' houses or participate in social activities. He would become fearful when he saw red and blue lights or heard an emergency siren. He avoided the police station. He was fearful of going to sleep because of nightmares that caused him to relive the January 7, 2021, event. In one nightmare, a suspect shot a sergeant in the head, and Claimant described the nightmare as so vivid that he saw brain matter "go everywhere." He described other nightmares as, "I've had multiple nightmares where I've gotten into a shootout. I've gotten into a shootout with suspects and various things happen - - either my gun would not go off or I would shoot - - you know, end up shooting the suspect and they continued toward me like the bullets did nothing."

Claimant testified that he had been on several types of medication for depression and anxiety, and he had suffered from side effects, including sexual dysfunction. Further, Claimant testified that he loved law enforcement, he loved his job, and he missed doing the work. He had hoped that he could return to work; however, he also knew that because of his symptoms, he would not get able to go back to work as a law enforcement officer. It hurt him to think he could not return to law enforcement work. However, when asked about other types of work, Claimant explained that he had recently considered applying for a job in emergency preparedness at Jefferson Regional Medical Center, where he would be responsible for monitoring, repairing, and upkeep of the security cameras and teaching classes on emergency preparedness.

On cross examination, Claimant clarified that he had been to Mr. Melton's home earlier in the week to assist with a welfare check. At the previous visit, Melton had possession of two (2) handguns; fortunately, Claimant was able to calm him, get him to drop the weapons, and then have a conversation.

With regard to the January 7, 2021, incident, Claimant testified on cross examination that Mr. Melton was down a twenty (20) foot hallway in a bedroom, and Claimant and his co-workers were at the opposite end of the hallway from Melton and were trying to communicate with him. When Melton began to exit the bedroom, Claimant's co-workers were able to retreat from the house. Claimant was able to position himself outside the front entryway, where he could still communicate with Melton. Soon thereafter, Melton reached around the corner and put a gun to Claimant's head. Melton eventually retreated back into the home and closed the door. Claimant also agreed that at the time Claimant had made it to the outside entry to Melton's home, Melton had not threatened to shoot anyone, nor had he fired a shot.

When questioned on cross examination about his past health conditions, Claimant admitted that he had previously been diagnosed with depression and had taken medication for depression prior to January 7, 2021. Moreover, Claimant testified that he had experienced suicidal ideations during his teen years. The suicidal ideations lasted approximately two (2) years and were the result of medication he was taking at the time to cope with the physical abuse he endured by his father. Although Claimant testified that he did not recall a past medical history of adjustment disorder with mixed anxiety and depressed mood, the conditions were noted to have been documented by Dr. Ramiro in 2018.

Furthermore, on cross examination, Claimant was questioned regarding a February 2019 medical report from Jefferson Regional Hospital showing Claimant to have active depression diagnosis with anxiety and documenting an episode where Claimant had passed out. Claimant denied an event where he passed out, but also stated that he had no valid reason to dispute the medical record. Claimant further stated that he did not recall notations in other medical records prior to January 7, 2021, indicating anxiety, depression and sexual dysfunction.

With regard to his work experiences, Claimant admitted that he had numerous previous encounters, prior to January 7, 2021, where he had a weapon pulled on him or pointed at him. Moreover, Claimant testified that he had undergone virtual training from the police academy as well as follow-up booster seminars on protocols for an active shooter situation, and Claimant had, in fact, been shot in the left thigh during an altercation while working as a police officer. Claimant had also been stabbed during an incident and had been involved in twenty (20) to thirty (30) scuffles or fights with suspects while engaged in police work. Claimant agreed that those events did not result in any mental or psychological issues for which he sought treatment; that they did not result in any need for counseling services; and that they did not result in workers' compensation claims.

Claimant was also questioned about a panic attack that he suffered approximately one (1) month prior to the January 7, 2021, incident. During that episode, Claimant had to pull over while driving his vehicle as he was experiencing heart palpitations, headache, blurred vision, hyperventilating, numbness, and a sense that he was paralyzed. Claimant was taken to the emergency room. Claimant admitted to attributing the episode to all of the personnel and work-related issues he was experiencing at work. However, when questioned as to why Claimant would not have reported the incident to his then treating psychiatrists or counselors, Claimant stated that he did not know.

Claimant testified that he had experienced other situations causing mental stress at work, such as in October of 2020, when a friend and fellow officer was shot. Also, in May of 2013, when he was the first to report to the scene where he found a female supervisor (also a family friend) who had passed away from suicide. Lastly, in June of 2013, Claimant's best friend was killed in the line of duty. Claimant received counseling through EAP for the May and June of

2013 events; however, due to a miscommunication, he did not receive counseling after the October of 2020 event.

Claimant was also questioned regarding some significant difficulties he was having with a supervisor at the Pine Bluff Police Department. Claimant testified as to having been told that he had to shave his beard in order to be promoted; having been reprimanded for wearing suspenders with his police uniform; and having a supervisor “yell” at him over the phone. Claimant stated that he had been moved to a different shift while an investigation was pending on the complaints he had filed with the Chief of Police. Claimant also testified as to allegations that he had intentionally been given a “bad” patrol car and that his supervisors had been actively trying to demote him from his most recent position. Claimant also admitted that he had not received any type of notice regarding his complaint until after he was moved back to his original shift and the notice did not provide any response to his specific complaints. Claimant testified that at that point he was working in what he would describe as a hostile and unpleasant work environment. After the January 7, 2021, incident, Claimant agreed that he had filed an EEOC claim partially based on the complaints he had filed with the Police Chief.

When questioned about his medical records on cross examination, Claimant did not dispute the following: on January 11, 2021, Dr. Ramiro listed Claimant’s complaints as anxious and struggling with issues at work recently; on February 4, 2021, Chenal Family Therapy notes indicated that Claimant reported that things began to “spiral out of control” in 2013, around the time his supervisor and friend committed suicide and that he began having problems with his supervisors in 2020 and 2021 which was causing him to have difficulty making decisions; and on March 25, 2021, Chenal Family Therapy notes reflected that Claimant was experiencing a great deal of depression about issues he was having at work and a great deal of anxiety about financial

difficulties he was having at home. Claimant admitted to having experienced episodes of crying for no reason prior to January 7, 2021.

In sum, on cross examination, Claimant testified to the following:

Q: As documented in the medical, you mentioned panic attacks as being the debilitating factor that would keep you from police work. We know you had one a month before this accident, don't we?

A: That's correct.

Q: You mentioned nightmares and talked about all the different dreams that you've had, and we have medical documentation that you're at the doctor having sleep disturbances and bad dreams. You don't dispute that, do you?

A: No, sir.

Q: You're talking about depression and anxiety, both of those are documented prior problems in your medical records; correct?

A: That's correct.

Q: Sexual dysfunction, that's noted as a prior problem in your G.I. workup. He mentioned it two times in the report. You don't dispute that, do you?

A: No, sir.

Q: Difficulty making decisions as documented in the records we just covered was due to the problems you were having with your supervisors and the second-guessing you and undermining you; correct?

A: Yes, sir.

Q: The overall contention is that having a gun pointed at you has caused all of the problems that you're having now, but as we talked about a minute ago, you've had weapons pointed at you multiple times; correct?

A: That's correct.

Q: You've been shot and stabbed; correct?

A: Correct.

Q: You've been in 20 to 30 fights or altercations while working on the police force, correct?

A: Correct.

Q: All of this that you're talking about today is coming up at a time when you are actively levying complaints against the police department. Do you agree with that?

A: Yes, sir.

Q: You're alleging misconduct, inappropriate treatment against supervisors, and you'd filed a formal complaint and then you subsequently filed an EEOC complaint; correct?

A: That's correct.

On re-direct examination, Claimant clarified that he had not received a diagnosis of post-traumatic stress disorder prior to January 7, 2021. Claimant further testified that his supervisors were aware of the December 5, 2020, visit to the emergency room, and that the Pine Bluff Police Department did not offer any support or accommodations after the incident.

On re-cross examination, the following exchange occurred:

Q: Mr. Greene, you had testified that no one had used the diagnosis PTSD before January 7, 2021, but I think I understood you on cross-examination to say that you cannot state with any certainty that you told your doctors after January 7, 2021, about your pre-existing panic attack about a month before; is that right?

A: Yes, sir.

Q: And if the doctors didn't know that you'd had a debilitating panic attack a month before, would you agree with me that they would not have a complete set of information in which to provide an opinion about your mental health?

A: If I did not tell them, that would be correct - -

Q: Okay.

A: - - but I would think that I had.

Q: All right.

When questioned by the Commission, Claimant stated that he was thirty-five (35) years old, and he had one (1) year of college and over 1,500 hours of training. While Claimant had some work experience in a factory setting when he was ages eighteen (18) to twenty-three (23), his longest job was with the police department. He had always wanted to be a police officer and was ultimately hired by the Pine Bluff Police Department on December 7, 2009.

Claimant testified that with his symptoms of anxiety and depression, he had good days and bad days. On a good day, he was able to run a tractor and bush hog. He also testified that he had more bad days than good, and in a typical week, he would have only two (2) good days.

Relevant Medical Evidence:

Medical records showed that prior to January 7, 2021, Claimant treated with his primary care physician, Dr. Mark Ramiro, for sleep apnea, diabetes mellitus, Type II, hyperlipidemia, restless leg syndrome, and adjustment disorder with mixed anxiety and depressed mood.

Medical records show that in November of 2018, Claimant reported to Dr. Ramiro that he was suffering from “anxiety attacks” and depressed mood, uncontrollable crying spells, and general lack of motivation. Claimant was diagnosed with adjustment disorder with mixed anxiety and depressed mood, and a referral was made to Chenal Family Therapy for the anxiety and depression. In April of 2019, Claimant reported to Dr. Ramiro that he was not sleeping well and was having bad dreams. However, in September of 2019, Dr. Ramiro noted that Claimant’s adjustment disorder with mixed anxiety and depressed mood was “stable” and that he was to continue his current medication. Dr. Ramiro listed Claimant’s goal of trying to develop at least one relaxation technique in the next six (6) months. In August of 2020, Dr. Ramiro noted Claimant’s diagnosis of adjustment disorder with mixed anxiety and depressed mood.

Claimant was also seen at GI Associates of South Arkansas on April 28, 2020, where Claimant presented with complaints of right lower quadrant abdominal pain, chronic diarrhea, nausea, and abnormal liver function tests. At a subsequent visit, medical records indicated that Claimant had a history of decreased sex drive.

During a visit to Jefferson Regional Medical Center (JRMC) on February 8, 2019, medical records indicated that Claimant was “somewhat depressed related to family deaths.” On December 5, 2020, Claimant was seen at the emergency room at JRMC, where his mood was tearful and anxious. Claimant reported that he had anxious feelings when he woke that morning; that his heart began to pound; that he felt some chest pain and heart palpitations; and that his hands became numb. Claimant stated that he feared the episode was “more than a panic attack.” Claimant was treated and discharged the same day, and he was instructed to follow up with his primary care physician or mental health counselor to help manage his anxiety and depression.

In August of 2020, Claimant underwent a bariatric procedure for weight loss due to morbid obesity. Medical records reflected his diagnosis of anxiety and depression.

After Claimant’s alleged incident at work on January 7, 2021, Claimant was seen by Dr. Ramiro on January 11, 2021, for complaints of anxious feelings, bad dreams, and a panic attack. Medical records from that day reflected that Claimant reported having a gun pointed at him at work recently; that he was having issues at work with coworkers/supervisors; that he was seeing a counselor through the police department; and that he had a recent trip to the emergency room for a panic attack. At that visit, Claimant was assessed with adjustment disorder with mixed anxiety and depressed mood; diabetes mellitus, Type II; hyperlipidemia; hypertension; neuralgia; obesity; obstructive sleep apnea; restless leg syndrome; panic attack; situational anxiety; and R/O post-

traumatic stress disorder. Dr. Ramiro opined that Claimant should be “[o]ff work for now, follow up in 1 week.”

On January 19, 2021, Claimant returned to Dr. Ramiro for a follow-up visit. Claimant reported that his anxiety was managed with medication; that he had been seeing a counselor; that he was having headaches; that he did not feel like he needed to be working in a position where he had to make “split second decisions” to use his weapon or protect himself; and that because he had a history of suicidal ideation as a teenager, he wanted to get his anxiety and depression under control before he returned to a place where he could experience suicidal ideation. Dr. Ramiro offered adjustment disorder with mixed anxiety and depressed mood and post-traumatic stress disorder as Claimant’s diagnoses, in addition to various diagnoses for his physical conditions. Dr. Ramiro’s notes included an order for a psychiatry consultation for Claimant’s adjustment disorder and “probable PTSD.” Claimant was instructed to remain off work.

On March 9, 2021, Dr. Ramiro’s clinic notes demonstrated that Claimant still reported having nightmares and that Chenal Family Therapy was still working to get him scheduled with a psychiatrist. Dr. Ramiro noted that Claimant was coping well unless it had “something to do with work.”

On February 4, 2021, Claimant began seeing Duston Roberson, LPC, at Chenal Family Therapy for anxiety and depression. At that therapy appointment, Claimant reported his recent encounter at work when he had a gun pulled on him. Clinic notes reflect that Claimant had since experienced nightmares, uncontrollable crying, and anxiety. He also described other dangerous work encounters that he had experienced and reported that he was experiencing harassment at work after filing a complaint against coworkers. That day, Claimant’s diagnosis was listed as post-traumatic stress disorder, chronic, and unspecified depressive disorder.

Claimant returned to see Mr. Roberson for a therapy session on February 11, 2021, for his chronic post-traumatic stress disorder and depressive disorder. Claimant reported that he was struggling with hypervigilance and hyperarousal, nightmares, and difficulty managing his mood. Claimant was instructed on ways to manage through the symptoms with cold rags on his neck and face, cold showers, and exercise. Claimant and Mr. Roberson discussed Claimant's traumatic experience and how Claimant felt that he would not be able to go back to work due to triggers he was experiencing.

Claimant had additional sessions with Mr. Roberson on February 18, 2021, February 25, 2021, March 4, 2021, March 16, 2021, and March 25, 2021, where claimant and Mr. Roberson continued to work on implementing coping skills that Claimant could use to help him manage his mood and the trauma that he had experienced related to his diagnosis of post-traumatic stress disorder and unspecified depressive disorder. On March 25, 2021, Claimant reported a great deal of anxiety and depression around issues he was having with managing his personal finances in addition to dealing with coping skills to manage his nightmares, hypervigilance, and hyperarousal. Clinic notes also demonstrated that Claimant was working on coping skills in order to manage the trauma he had experienced.

Claimant returned for a follow-up visit with Dr. Ramiro on March 29, 2021. That day, Claimant reported that he was having suicidal thoughts, although he had no plan or intention of committing suicide; that he was unable to get in to see a psychiatrist; and that he was experiencing right elbow pain and left wrist pain when attempting to lift anything. With respect to Claimant's mental health symptoms, he was diagnosed with adjustment disorder, depression, panic attack, and nightmares. Dr. Ramiro made a referral for a psychiatric consultation.

Claimant visited Jefferson Regional Medical Center on April 1, 2021, for a follow up for his hypogonadism. Hospital records indicated that Claimant was experiencing weight gain and fatigue in the last few months. Claimant’s diagnoses were anxiety, depression, diabetes mellitus, hypertension, and hypogonadism.

On April 6, 2021, Claimant reported to Mr. Roberson that he had thoughts of public suicide, but currently had no intention or plan. However, Claimant also reported some relief from the nightmares he had experienced as a result of medication “prescribed by reportedly Dr. Flanigin from the Arkansas Psychiatric Clinic.”

Claimant returned for a therapeutic session on April 13, 2021, where Claimant reported some improvement of his anxiety and nightmares; however, he also reported some “emotionless feelings” and feeling like a zombie at times.

An April 21, 2021, clinic note demonstrated that Claimant was evaluated at the Arkansas Psychiatry Clinic where Claimant’s assessment consisted of post-traumatic stress disorder, depression, insomnia, and nightmares associated with chronic post-traumatic stress disorder. Claimant’s medications were adjusted. Also on that date, Dr. Richard Flanigin completed a “City of Pine Bluff Medical Inquiry Form in Response to an Accommodation Request,” wherein he stated that Claimant had post-traumatic stress resulting in Claimant being “very easily overwhelmed,” having “difficulty making decisions,” and avoiding “stressful events.” Dr. Flanigin included the following comment at the end of the document: “Pt unable to return to work due to continued PTSD symptoms.”

An April 28, 2021, document signed by Dr. Flanigin addresses criteria for post-traumatic stress disorder and relates the criteria to the January 7, 2021, incident and the related symptoms Claimant was experiencing (such as flashbacks, disturbed sleep, anxiety, anger, irritability,

despondent, hypervigilant, difficulty concentrating, and heightened startle reactions). Dr. Flanigin noted Claimant's history of losing a close friend in the line of duty, as well as discovering his supervisor after her death by suicide. Dr. Flanigin notes, "It is possible that the issues that Brandon is having may have been coming on for a long period of time and finally manifested in his most recent interaction with the man pulling a gun on Brandon." Dr. Flanigin noted that he was currently treating Claimant and that Claimant was also currently undergoing therapy from Mr. Roberson. He stated that Claimant's medical and therapeutic intervention could be necessary for the long term. He also noted that Claimant had trouble participating in activities both social and work related. He concluded that Claimant's symptoms were "caused by his work on the police force and are not drug related or related to any other illnesses. Brandon has had several instances happen that are work related that contributed to his current condition."

On April 26, 2021, Dr. Ramiro authored a letter wherein he opined that the incident on January 7, 2021, had caused Claimant to experience adjustment disorder with mixed anxiety and depressed mood and that he was now under the care of a psychiatrist. Dr. Ramiro also stated that while Claimant had shown some improvement, he was not prepared to return to normal duties as an active patrol officer.

Documentary Exhibits:

The following documentary exhibits were submitted by the parties:

1. A March 29, 2018, Disciplinary Report for Claimant from the Pine Bluff Police Department for failing "to bring calm to an incident."
2. Pine Bluff Police Department swing shift calendars dated March 1, 2020, through July 4, 2020.
3. A Pine Bluff Police Department Disciplinary Report dated May 4, 2020, indicating Claimant was suspended without pay for violating department policy when wearing suspenders with his uniform after having been warned of the violation by several supervisors.

4. Pine Bluff Police Department time off requests dated June 19, 2020, through June 20, 2020.
5. A June 21, 2020, letter drafted by Lieutenant Price to Deputy Chief of Police Kelvin Hadley expressing concern about Claimant's absences at work and the impact on his current rank of Sergeant.
6. A June 21, 2020, memorandum by Deputy Chief Hadley recommending that Claimant be demoted back to the patrolman level due to Claimant's recent two-week suspension for disobeying a direct order from the Chief of Police, a Lieutenant, and a Deputy Chief, and due to Claimant's poor attendance.
7. On June 25, 2020, Deputy Chief Hadley authored a memorandum urging that Claimant be demoted back to the rank of patrolman.
8. A June 26, 2020, letter from Lieutenant Price to Deputy Chief Hadley noting Claimant's recent absences on June 25, 2020, and on June 26, 2020, and encouraging the administration to reconsider Claimant's current rank of Sergeant.
9. A November 2, 2020, response to Claimant's formal complaint from Chief of Police Kelvin Sergeant stating in his conclusion that Claimant's request to be removed from Deputy Chief Hadley and Lieutenant Price's command was denied. Chief Sergeant concluded that due to a lack of evidence to support Claimant's allegations, against his two supervisors, he would be transferred back to his original shift.
10. A January 2021 Incident Report from the Pine Bluff Police Department completed by Claimant providing details of the assault on Claimant. Claimant provided a narrative of the events of January 7, 2021. Lieutenant Donna Fratesi also provided a narrative of the events of January 7, 2021.
11. An EEOC Form 5 indicating that Claimant filed a Charge of Discrimination on February 12, 2021, alleging harassment by his supervisors based on race, retaliation, and disability.
12. A March 16, 2021, Pine Bluff Police Department sick leave request form.
13. A document consisting of a letter and payment records reflecting payments made to Claimant's medical providers by Optum.
14. A letter from the Pine Bluff Police Department authored by Lloyd Franklin, Interim Chief of Police, demonstrating that Claimant was terminated by the Department effective July 28, 2021.

ADJUDICATION

Compensability:

Claimant contends that he suffered a compensable mental injury of post-traumatic stress disorder (PTSD) that aggravated Claimant's anxiety and depression on January 7, 2021, when in the course and scope of employment he had a cocked and loaded handgun pointed in his face by a mentally disturbed suspect. Respondents have denied that his alleged mental conditions are compensable.

It is well-settled that under Arkansas workers' compensation law that an employer takes the employee as he finds him, and employment circumstances that aggravate preexisting conditions are compensable. Hickman v. Kellogg, Brown & Root, 372 Ark. 501, 277 S.W.3d 591 (2008). A pre-existing disease or infirmity does not disqualify a claim if the employment aggravated, accelerated, or combined with the disease or infirmity to produce the disability for which workers' compensation is sought. Id. An aggravation is a new injury resulting from an independent incident, and being a new injury with an independent cause, it must meet the definition of a compensable injury in order to establish compensability for the aggravation. Id. at 511-12, 277 S.W.3d at 600.

The claim for a mental injury or illness is governed by Ark. Code Ann. § 11-9-113(a) (Repl. 2012), which provides:

(a)(1) A mental injury or illness is not a compensable injury unless it is caused by physical injury to the employee's body, and shall not be considered an injury arising out of and in the course of employment or compensable unless it is demonstrated by a preponderance of the evidence; provided, however, that this physical injury limitation shall not apply to any victim of a crime of violence.

(2) No mental injury or illness under this section shall be compensable unless it is also diagnosed by a licensed psychiatrist or psychologist and unless the diagnosis of the condition meets the criteria established in the most current issue of the Diagnostic and Statistical Manual of Mental Disorders.

In the matter at hand, I find that the claimant proved he sustained a compensable mental injury or illness pursuant to Ark. Code Ann. § 11-9-113(a). On January 7, 2021, while working in the line of duty as a police officer for Respondent-Employer, Claimant was the victim of a crime of violence when a mentally disturbed elderly man pointed a gun at Claimant's head.

Since the incident, Claimant has been treated for anxiety, depression, panic attacks, sleep disorders, flashbacks, and post-traumatic stress disorder. Claimant was evaluated by psychiatrist Dr. Richard Flanigin on April 21, 2021. Dr. Flanigin assessed Claimant with "Post-traumatic stress disorder, Depression, major, recurrent, moderate, insomnia, and nightmares associated with chronic post-traumatic stress disorder." Dr. Flanigin's opinion that Claimant suffered from post-traumatic stress disorder was demonstrated by an April 28, 2021, document specifically listing the diagnostic criteria for 309.81 post-traumatic stress disorder and thereby implicitly referencing the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition. In this report, Dr. Flanigin applied Claimant's symptoms to each category of the diagnostic criteria. This evaluation and diagnosis arose following Claimant's work-related incident on January 7, 2021. Also, on April 21, 2021, Dr. Flanigin completed police department documents demonstrating that Claimant was unable to return to work due to continued symptoms of post-traumatic stress disorder. I give great weight to Dr. Flanigin's medical opinion.

I also note that Dr. Ramiro's medical records support Dr. Flanigin's medical opinion. Claimant began seeing Dr. Ramiro on January 11, 2021, soon after the incident, when Claimant reported anxious feelings, bad dreams, and panic attack symptoms. Although Dr. Ramiro was Claimant's primary care physician, and not a psychiatrist or a psychologist, on April 26, 2021, Dr. Ramiro authored a letter wherein he opined that the January 7, 2021, incident had caused Claimant

to experience adjustment disorder with mixed anxiety and depressed mood and that Claimant was unable to return to work and resume his normal duties as a patrol officer.

Moreover, Claimant's medical records from Chenal Family Therapy also support Dr. Flanigin's medical opinion. After the January 7, 2021, event, Claimant began therapy sessions with Mr. Roberson. Again, although Mr. Roberson is a Licensed Professional Counselor and not a psychiatrist or a psychologist, his notes reflected a diagnosis of post-traumatic stress disorder and unspecified depressive disorder, and he treated Claimant for reported nightmares, hypervigilance, hyperarousal, feelings of hopelessness and helplessness, and feelings of unworthiness. Medical records indicate that Claimant continued therapeutic treatment for the diagnoses through April of 2021.

Claimant's wife credibly testified that he had not been the same since the events of January 7, 2021. She acknowledged that Claimant had experienced depression and anxiety prior to the January 7, 2021; however, she described how Claimant no longer interacted with his family in the same way as he had before January 7, 2021. He had become distant, had little desire to socialize, and would have experiences where things such as seeing a patrol car, hearing a firework or balloon pop, or seeing flashing lights, would cause him to have an anxiety attack.

Claimant's testimony showed that since January 7, 2021, he suffered from panic attacks caused by certain triggers, including startling noises. He also stated that he suffered from nightmares; flashbacks; a fear of his firearm; a fear of blue lights or sirens, and issues participating in social activities and interacting with people. Claimant described several occasions when he suffered from panic attacks and how those attacks impacted him, as well as his family. Claimant testified that since January 11, 2021, he has been unable to return to his work for Respondent-Employer. I find Claimant to be a credible witness.

I note that a portion of the medical records revealed that Claimant had been treated prior to January 7, 2021, for anxiety and depression. Claimant explained that he suffered abuse by his father and underwent treatment for depression during his teenage years. Dr. Ramiro's records revealed a diagnosis of adjustment disorder with mixed anxiety and depression, and Claimant confirmed having been treated for symptoms of anxiety and depression by Dr. Ramiro prior to January 7, 2021. Claimant also acknowledged that he experienced a panic attack approximately one (1) month before the January 7, 2021, incident at work. However, Dr. Flanigin noted Claimant's symptoms and opined that Claimant's symptoms manifested with the most recent work incident when an elderly suspect put a gun to Claimant's head. He concluded that Claimant's symptoms were "caused by his work on the police force and are not drug related or related to any other illnesses. Brandon has had several instances happen that are work related that contributed to his current condition."

Therefore, based on the evidence presented in this case, Claimant was the victim of a violent crime when a loaded gun was pointed at his head on January 7, 2021, while working as a police officer for Respondent-Employer. I find that Claimant has established by a preponderance of the evidence that his post-traumatic stress disorder was diagnosed by psychiatrist, Dr. Flanigin, and that this diagnosis meets the criteria established in the "most current issue" of the Diagnostic and Statistical Manual of Mental Disorders.

B. Medical Treatment:

An employer shall promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. § 11-9-508(a).

Here, the medical records of evidence clearly prove that Claimant’s symptoms of post-traumatic stress disorder and need for treatment are directly related to his work incident on January 7, 2021. The preponderance of the evidence shows that the medical treatment rendered to the Claimant from January 11, 2021, through April 28, 2021, including the records from Dr. Ramiro, Dr. Flanigin, and therapist Dustin Roberson, was both reasonable and necessary in order to treat, diagnose, and address his post-traumatic stress disorder and related symptoms. As such, Respondents are liable for all medical treatment received by Claimant from January 11, 2021, through April 28, 2021, in connection with the compensable traumatic event on January 7, 2021.

C. Temporary Total Disability:

In accordance with Ark. Code Ann. § 11-9-113, where a claim is by reason of mental injury or illness, the employee shall be limited to twenty-six (26) weeks of disability.

Here, Claimant has asserted his right to disability benefits from January 11, 2021, the date when Dr. Ramiro took Claimant off work, to a date yet to be determined, but not more than twenty-six (26) weeks. During this period of time, Claimant was under the care of Dr. Ramiro and then Dr. Flanigin. The testimony of Claimant and his wife, as well as the documentary evidence of record, demonstrate that Claimant was unable to pursue gainful employment due to the symptoms from the compensable traumatic event. As a result, I find that Claimant proved his entitlement to disability benefits from January 11, 2021, and continuing for twenty-six (26) weeks.

D. Attorney’s Fee:

Respondents have controverted this claim for additional benefits in its entirety. Therefore, Claimant’s attorney is entitled to a controverted attorney’s fee on all indemnity benefits awarded herein to the claimant, pursuant to Ark. Code Ann. § 11-9-715.

AWARD

Respondents are directed to pay benefits in accordance with the findings of fact set forth herein this Opinion.

All accrued sums shall be paid in lump sum without discount, and this Award shall earn interest at the legal rate until paid, pursuant to Ark. Code Ann. § 11-9-809.

Pursuant to Ark. Code Ann. § 11-9-715, Claimant's attorney is entitled to a twenty-five percent (25%) attorney's fee on the indemnity benefits awarded herein. This fee is to be paid one-half (1/2) by the carrier and one-half (1/2) by the Claimant.

IT IS SO ORDERED.

KATIE ANDERSON
ADMINISTRATIVE LAW JUDGE