

# Post-Traumatic Stress Disorder

By Donald Barthel, Esq.  
*Law Offices of Bradford & Barthel, LLP*



Bradford & Barthel, LLP

@bradfordbarthel



bradfordbarthelllp

Bradford & Barthel LLP



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

TOOLS FOR YOU AT:  
[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

---

## **BLOG Articles**

[bradfordbarthel.blogspot.com/](http://bradfordbarthel.blogspot.com/)

---

## **AMA Rating Department**

[bradfordbarthel.com/areas-of-practice/bb-ratings/](http://bradfordbarthel.com/areas-of-practice/bb-ratings/)

---

## **CE Videos**

[bradfordbarthel.com/education/](http://bradfordbarthel.com/education/)

---

## **CE Webinars**

[bradfordbarthel.com/education/](http://bradfordbarthel.com/education/)



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

3

## **B&B Writ & Recon Department**

- Hundreds of Recons & Removals
- Nearly 100 Writs of Review
- Over a dozen Supreme Court Petitions for Review



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

4

Make sure you are:

10 CCR 2592.03 compliant



5

## The Problem

- consecutive record-breaking fire seasons
- deluge of mass shootings

=



CA firefighters & police organizations sought to help first responders by giving them opportunities to receive comp for psych injuries sustained over their career



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

6

## Legislative Findings



(a) Firefighting and law enforcement are recognized as two of the most stressful occupations. Only our nation's combat soldiers endure more stress. Similar to military personnel, California's firefighters and law enforcement personnel face unique and uniquely dangerous risks in their sworn mission to keep the public safe. They rely on each other for survival while placing their lives on the line every day to protect the communities they serve.



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

7

## Legislative Findings



(b) On any given shift, firefighters and law enforcement personnel can be called on to make life and death decisions, witness a young child dying with their grief-stricken family, or be exposed to a myriad of communicable diseases and known carcinogens. Firefighters and law enforcement personnel are constantly at significant risk of bodily harm or physical assault while they perform their duties.



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

8

## Legislative Findings

(c) Constant, cumulative exposure to these horrific events make firefighters and law enforcement personnel uniquely susceptible to the emotional and behavioral impacts of job-related stressors. This is especially evident given that the nature of the job often calls for lengthy separation from their families due to a long shift or wildfire strike team response.



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

9

## Legislative Findings

(d) While the cumulative impacts of these aggressive, deadly events are taking their toll, our firefighters and law enforcement officers continue to stand up to human-caused devastation and nature's fury, but they are physically and emotionally exhausted.



10

## Legislative Findings

(e) Trauma-related injuries can become overwhelming and manifest in post-traumatic stress, which may result in substance use disorders and even, tragically, suicide. The fire service is four times more likely to experience a suicide than a work-related death in the line of duty in any year.



11

## "Dirty Little Secret"

"more officers are dying of suicide than by being killed by suspects and accidents combined."

"Handling Public Safety Cases in California",  
Workers' Compensation Quarterly, Vol. 32, No. 3,  
2019



12



## The Answer

SB 542

TROUBLE  
QUESTION ?  
SOLUTION ANSWER



15

## Is there *really* a problem?

240+ firefighters and police officers committed suicide in 2017 exceeding the number of those that died in the line of duty

Correlation?  
Cause and effect?



16

## Want a sure fire sleeping aid...?

“injury” includes “**post-traumatic stress disorder**,” as diagnosed according to the *most recent edition* of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association

"most recent" = #5 (published in 2013)

DSM-IV was published **in** 1994

Updated version = 2000

The Point?

Don't expect #6 for a LONG time!



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

17

## When?

DOI o/a Jan. 1, 2020 to Jan. 1, 2025

Efforts to apply retroactively to 2017/2018, the height of wildfire destruction, failed



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

18

## Opposed?

- League of California Cities
- California State Association of Counties
- Rural County Representatives of California
- California Association of Joint Powers Authorities
  - "too expensive"
  - "increase bogus claims"

“Not only is there a lack of evidence that a presumption is needed, but there is also a lack of information about the cost associated with the changes....We believe the current workers’ compensation system strikes the appropriate balance with respect to psychiatric injuries.”

Love & Kisses,  
California Coalition on Workers Compensation



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

19

## Covered Employees

LC 3212.15 presumption applies to:

1. active firefighting members (whether volunteers, partly paid or fully paid) in all of these fire departments:
  - a. a fire department of a city, county, district or other public municipal corporation or political subdivision;
  - b. UC/CSU fire department;
  - c. the Department of Forestry and Fire Protection; and
  - d. county forestry or firefighting department or unit.



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

20

## Covered Employees



2. active firefighting members of a fire department that serve a U.S. Department of Defense installation and who are certified by the Department of Defense as meeting its standards for firefighters;
3. active firefighting members of a fire department that serve a National Aeronautics and Space Administration installation and who adhere to specified training standards;



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

21

## Covered Employees

4. specified peace officers, who are primarily engaged in active law enforcement activities, and
5. fire and rescue services coordinators who work for the Office of Emergency Services



22

## Sen. Henry Stern (D-Canoga Park), on 2/20 introduced SB 1047:

Proposes giving more workers access to the PTSD presumption that went into effect at the start of the year:

>firefighters employed by the

- Dept of State Hospitals
- Dept. of Developmental Services
- California Guard: CA Military Department



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

23

## How to Qualify

1. membership in above group(s)
2. 6 or more months of services performed for the department [like LC 3208.3(d)]
  - need not be continuous
  - does not apply if "sudden and extraordinary" employment condition (expect LOTS of claims here)



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

24

## *Flintroy v. Pacific Bell Telephone Co./AT&T*

2019 Cal. Wrk. Comp. P.D. LEXIS 148

F:

- DOH: Oct. 21, 2011
- DOI: March 20, 2012
- Taken off work April 6, 2012...(5+ months)
- ...but worked one additional day, April 24, 2012 (6 months)



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

25

## *Flintroy v. Pacific Bell Telephone Co./AT&T*

I: barred by LC 3208.3(d) Six Month Rule?

H: no

R:

may not "parse out" the period of employment subsequent to the applicant's injury in calculating his total period of employment.



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

26

Query...



What if IW had waited a month before working the additional day?

Two months?

One year?

**NO BRIGHT LINE RULE**



[www.bradfordbarthel.com](http://www.bradfordbarthel.com) 27

**6 month rule does NOT apply**  
*IF*

PTSD results from "sudden and extraordinary"

Double-edged sword?  
>raise too much of a stress-related issue...  
=lose right to carry a gun  
=lose job!?!?



Expect PTSD used primarily for retiring EEs



[www.bradfordbarthel.com](http://www.bradfordbarthel.com) 28

## Applying the Presumption

Covered by LC 3212.15?



"May I call you 'Rover?'"

➤ *presumption of injury aoe/coe* for:

1. PTSD
2. that develops/manifests during a period during which
3. IW is "in the service of" the department/unit [LC 3212.15(b)]



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

29

## IW is covered by LC 3212.15...

NOW WHAT?

unsuccessful rebuttal

=

full hospital  
surgical  
medical treatment

TD

PD

death benes



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

30

## How to defend



- presumption is disputable
- may be controverted by any evidence (LC 3212.15(c)(1))
- not subject to a nonattribution clause (not restricted from attributing to preexisting conditions and/or genetics)



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

31

## Potential liability doesn't last forever!

- *presumption extends* following termination of service
  - for a period of three calendar months for each full year of service
  - not to exceed 60 months (5 years), commencing w/ last date actually worked (LC 3212.15(c)(1))



32

## Start & Stop Dates?

Applies to DOIs o/a 1/1/20 to 1/1/25



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

33

## LC 4663(c) says...

(c) In order for a physician's report to be considered complete on the issue of permanent disability, the report must include an apportionment determination. A physician shall make an apportionment determination by finding what approximate percentage of the permanent disability was caused by the direct result of injury arising out of and occurring in the course of employment and what approximate percentage of the permanent disability was caused by other factors both before and subsequent to the industrial injury, including prior industrial injuries.



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

34

## LC 4663(c) says...



If the physician is unable to include an apportionment determination in his or her report, the physician shall state the specific reasons why the physician could not make a determination of the effect of that prior condition on the permanent disability arising from the injury. The physician shall then consult with other physicians or refer the employee to another physician from whom the employee is authorized to seek treatment or evaluation in accordance with this division in order to make the final determination.



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

35

## LC 4663(c) not amended!!!!

The point?



Apportionment is still option for disability arising under LC 3212.15

(fascinating deposition questions remain valid!)

(more about that later)



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

36

## PTSD: What is it really?

Post-traumatic stress disorder: a mental health condition that's triggered by a terrifying event,

experiencing it or  
witnessing it

Did I have it?



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

37

## Symptoms

may include:

- flashbacks
- nightmares
- severe anxiety
- uncontrollable thoughts about the event



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

38

## Exposed to terrifying event: may have temporary difficulty adjusting

BUT: usually improve with

- a. time
- b. good self-care

### Symptoms

- getting worse
- last months/years
- interfere with day-to-day functioning

=  
PTSD



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

39

## Symptoms

- may start w/in 1 month of traumatic event
- sometimes symptoms may not appear until years after event
- cause signif problems in social and/or work situations and/or relationships



40

## Four types:

1. Intrusive Memories
2. Avoidance
3. Negative Changes in Thinking and Mood
4. Changes in Physical and Emotional Reactions



symptoms can:

vary over time  
vary from person to person



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

41

## Intrusive Memories

Symptoms of intrusive memories may include:

- Recurrent, memories of the traumatic event
- Flashbacks
- Upsetting nightmares about the traumatic event
- Severe emotional distress or physical reactions to reminders of the traumatic event



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

42

## Avoidance



Symptoms of avoidance may include:

- Avoiding thinking or talking about the traumatic event
- Avoiding places, activities or people that remind you of the traumatic event



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

43

## Negative Changes in Thinking and Mood

Symptoms include:

- Negative thoughts about other people or the world
- Hopelessness about the future
- Memory problems, including not remembering important aspects of the traumatic event
- Difficulty maintaining close relationships



44

## Negative Changes in Thinking and Mood

Symptoms may include:

- Feeling detached from family and friends
- Lack of interest in activities once enjoyed
- Difficulty experiencing positive emotions
- Feeling emotionally numb



45

## Changes in Physical and Emotional Reactions



Symptoms of changes in physical and emotional reactions (aka “arousal symptoms”) may include:

- Easily startled
- Always on guard for danger
- Self-destructive behavior (drinking, driving too fast)
- Trouble sleeping
- Trouble concentrating
- Irritability, angry outbursts
- Overwhelming shame (survivor’s guilt)



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

46

## Intensity of symptoms

Vary over time

- may have more PTSD symptoms when:
  - stressed in general, or
  - when come across reminders of the terrifying event

EX. Experience: hear a car backfire



Result: relive combat experience



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

47

## When to see a doctor

Mayo Clinic recommends:

- having thoughts/feelings about a traumatic event >month
- symptoms severe
- having trouble getting life back under control

Early treatment can help prevent PTSD symptoms from getting worse.



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

48

## Pointer:

the quicker get to MMI, the better

1. Limit symptoms; PD
2. Limit TD exposure



## Skelton v. WCAB, No. H046249 (09/05/2019, 6th DCA)

F:

- RTW after injures
- used sick/vacation time to cover work
- missed for PTP appointments

I: entitled to TD for treatment appointments  
after RTW?

H: no



## NOTE:

This is an extension of Sup Ct's Lauher

Lauher:

no TD for missed work for treatment after MMI

Skelton:

not entitled to TD for wage loss to attend medical treatment after return to work



## *Skelton v. WCAB*

R:

TD = incapacity to work that is reasonably expected to be cured or materially improved with proper medical treatment

>payable during healing period:

- until recovers sufficiently to RTW (regardless of whether MMI), or
- until MMI



## *Skelton v. WCAB*

IMPACTED:

Lost wages?	YES
Lost vacation time?	YES
Lost sick time?	YES

BUT **NOT** due to incapacity to work

real issue:

- 1) scheduling issues
- 2) ER's leave policy

"Because Skelton's injuries did not render her incapable of working during the time she took off from work and suffered wage loss, Skelton was not entitled to TDI for that time off or wage loss"



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

53

## Causes (apportionment!)



PTSD is caused by a complex mix of:

- Stressful experiences, including the amount and severity of trauma in worker's life
- Inherited mental health risks (such as a family history of anxiety and depression)
- Inherited personality features (temperament)
- Brain's individual manner of regulates the chemicals and hormones IW's body releases in response to stress



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

54

How do you (magically) get to MMI?



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

55

Don't forget City of Jackson



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

56

## What did City of Jackson say?

Apportionment involving “immutable factors”  
CAN be substantial evidence

- test is not immutability
- test = whether there is substantial medical evidence to support apportionment



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

57

## Contributing Factors

(apportionment?)



Factors that make IW more likely to develop PTSD after a traumatic event:

- Experiencing intense or long-lasting trauma
- Trauma earlier in life, such as childhood abuse
- Having a job that increases your risk of being exposed to traumatic events, such as military personnel and first responders
- Having other mental health problems, such as anxiety or depression



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

58

## Contributing Factors (apportionment)

- Having problems with excess drinking or drug use
- Lacking a good support system of family and friends
- Having blood relatives with mental health problems, including anxiety or depression



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

59

## Kinds of traumatic events

The most common events leading to the development of PTSD include:

- Combat exposure
- Childhood physical abuse
- Sexual violence
- Physical assault
- Being threatened with a weapon
- Accident



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

60

## Kinds of traumatic events

Other traumatic events include:

- fire
- natural disaster
- mugging
- robbery
- plane crash



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

61

## Other traumatic events include

- torture
- kidnapping
- life-threatening medical diagnosis
- terrorist attack
- extreme or life-threatening events



62

## Complications

PTSD increases risk of other mental health problems (chicken or the egg):

- Depression and anxiety
- Issues with drugs or alcohol use
- Eating disorders
- Suicidal thoughts and actions



63

To be diagnosed with PTSD, an adult must have all of the following for at least 1 month:

1. At least one re-experiencing symptom
2. At least one avoidance symptom
3. At least two arousal and reactivity symptoms
4. At least two cognition and mood symptoms



64

## 1) Re-experiencing symptoms include:

- Flashbacks—reliving the trauma over and over, including physical symptoms like a racing heart or sweating
- Bad dreams
- Frightening thoughts

May cause problems in a everyday routine. Can start from own thoughts and feelings. Words, objects, or situations that are reminders of the event can also trigger re-experiencing symptoms.



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

65

## 2) Avoidance symptoms include:

- Staying away from places, events, or objects that are reminders of the traumatic experience
- Avoiding thoughts or feelings related to the traumatic event



Ex change personal routine (after MVA, avoid driving or riding in a car).



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

66

### 3) Arousal and reactivity symptoms include:

- Being easily startled
- Feeling tense or “on edge”
- Having difficulty sleeping
- Having angry outbursts

Arousal symptoms are usually constant, instead of being triggered by things that remind one of the traumatic events. These symptoms can make the person feel stressed and angry. They may make it hard to do daily tasks (sleeping, eating, or concentrating).



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

67

### 4) Cognition and mood symptoms include:

- Trouble remembering parts of the traumatic event
- Negative thoughts about oneself or the world
- Distorted feelings like guilt or blame
- Loss of interest in enjoyable activities



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

68

According to the National Center for PTSD, about 7 or 8 out of every 100 people will experience PTSD at some point in their lives.

Women are more likely to develop PTSD than men.

Genes may make some people more likely to develop PTSD than others.



Is this important?

69

## Some factors that increase risk for PTSD include:

- Living through dangerous events and traumas
- Getting hurt
- Seeing another person hurt, or seeing a dead body
- Childhood trauma
- Feeling horror, helplessness, or extreme fear
- Having little or no social support after the event
- Dealing with extra stress after the event, such as loss of a loved one, pain and injury, or loss of a job or home
- Having a history of mental illness or substance abuse



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

70

## Some factors that may promote recovery after trauma include:

- Seeking out support from other people, such as friends and family
- Finding a support group after a traumatic event
- Learning to feel good about one's own actions in the face of danger
- Having a positive coping strategy, or a way of getting through the bad event and learning from it
- Being able to act and respond effectively despite feeling fear



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

71

## Drugs to treat PTSD

Prazosin	Amitriptyline	Aripiprazole
Zoloft	Paxil	Dronabinol
Sertraline	Paroxetine	Asenapine
Lamotrigine	Venlafaxine	Fluvoxamine
Mirtazapine	Risperidone	
Quetiapine	Desvenlafaxine	



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

72

## Typical Psychological Treatment

- Cognitive Behavior Treatment (CBT)

OBJECTIVE focuses on relationship among thoughts, feelings, behaviors

- notes how changes in any one domain can improve functioning in the other domains



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

73

## CBT

Length of treatment:

12-16 sessions in either individual or group



74

## How to defend



- 1) Ascertain whether EE is **covered by the statute LC 3212.15**
- 2) Ascertain whether psyche injury **developed or manifested** during a period of employment statutorily described employer.
- 3) Ascertain whether the psyche injury occurred on or after 1-1-2020
  - Investigate/challenge the **date of injury**



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)



75

## How to defend?

**(4)** Don't let EE aggregate all the injuries on the same date, such as last day of work



- **separate the injuries** by proving multiple dates of injury for the psyche and non-psyche injuries



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

76

## How to defend?

### (4) con't

- Be familiar with LC 5411 and 5412 (determining DOI for CTs) how to prove a “DOI” (see Western Growers)

Note:

this is a question of fact; you **MUST** have evidence



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

77



ASK: When EE miss time from work due to each injury?

ASK: When did EE receive treatment for each injury?

ASK: Did EE receive continuous medical care?

ASK: Were there distinct periods of TD?

ASK: Was the injurious exposure similar throughout COE?

ASK: Were any periods of disability (TD or PD) caused by separate specific events?



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

78

5. LC 3212.15 is **rebuttable**. If you demonstrate psyche is solely due to non-industrial causes, presumption is rebutted.
6. LC 3212.15 is not listed in 4663(e) (which precludes apportionment in many scenarios)
  - prove psyche disability is:
    - partially due to non-industrial causes or
    - a different (prior) industrial psyche injury

=



PD should be **apportioned**



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

79

## Special Rules for Psyche Apportionment?

**NO!**



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

80

## How Do Doctors Rate PTSD

Absent central nervous system or brain injury...

...psyche injury is rated the same way it has since 2005!

GAF



81

## Psych?

Bad news

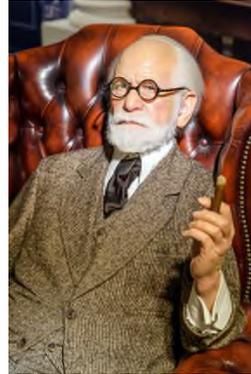
- No objectives at all!



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

82

Psychiatrists are not comfortable working together...what would Freud think?



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

83

## Recipe

- (1) Take a handful of psychiatrists.
- (2) Lock them in a room.
- (3) Call them a “committee”
- (4) What would you get?

DISASTER...AKA...



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

84

## AMA Guides Chapter 14

“Mental & Behavioral Disorders”

- WORTHLESS



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

85

## Rating Psychiatric Impairment

- Pages 1-12 thru 1-16
- GAF = Global Assessment Function



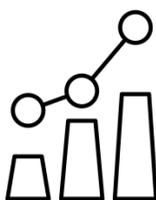
“Kicking the tires to check the engine”

[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

86

## Eleven GAF Categories

- 10 of the 11 have a GAF range of 10
- Compare I/W to each category (1-14, 1-15)
- If “symptom severity” or “level of functioning” is worse than is described, go to next category



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

87

## Eleven GAF Categories (continued)

- Keep looking for category that best matches “symptom severity” or “level of functioning” (whichever is worse).
- While selecting a category, “[c]onsider psychological, social and occupational functioning on a hypothetical continuum of mental health-illness.”



88

- Do not consider impairment in functioning due to physical (or environmental) limitations
- Evaluates symptoms at MMI



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

89

## Code 91-100

- Superior functioning in a wide range of activities, life's problems never seem to get out of hand, is sought out by others because of his or her many positive qualities.
- No symptom.



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

90

## Code 91-100

Mary Poppins?



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

91

## Code 81-90

Absent or minimal symptoms (e.g., mild anxiety before an exam), good functioning in all areas, interested and involved in a wide range of activities, socially effective, generally satisfied with life, no more than everyday problems or concerns (e.g., an occasional argument with family members).



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

92

## Code 81-90 (continued)

### Ozzie & Harriet?



93

## Code 71-80

If symptoms are present, they are transient and expectable reactions to psychosocial stressors (e.g., difficulty concentrating after family argument); no more than slight impairment in social, occupational or school functioning (e.g., temporarily falling behind in schoolwork).



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

94

## First Three Healthiest Codes Receive NO WPI

GAF 70-100 = 0  
(page 1-16)

PROBLEM

Nobody is  
**PERFECT!**

[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

95

Code 61-70  
= 0-14% WPI = 0-20% PD

Some mild symptoms (e.g., depressed mood and mild insomnia)

OR

Some difficulty in social, occupational or school functioning (e.g., occasional truancy or theft within the household), but generally functioning pretty well, has some meaningful interpersonal relationships.



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

96

## Code 51-60

= 15-29% WPI = 21-41% PD

Moderate symptoms (e.g., flat affect and circumstantial speech, occasional panic attacks)

OR

Moderate difficulty in social, occupational or school functioning (e.g., few friends, conflicts with peers or co-workers).



97

## Code 51-60 (continued)

- Doesn't this describe most claimants with psych claims?
  - "Moderate difficulty in... occupational... functioning"?
  - "Conflicts with...co-workers"?



98

## Code 41-50

= 30-48% WPI = 42-67% PD

Serious symptoms (e.g., suicidal ideation, severe  
obsessional rituals, frequent shoplifting)

OR

Any serious impairment in social, occupational or  
school functioning (e.g., no friends, unable to keep  
a job).



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

99

## Code 41-50 (cont'd)

“suicidal ideation”?

“preoccupation” required?

“unable to keep a job”?

sounds like many psych claimants we've seen!



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

100

## Code 31-40

= 51-65% WPI = 71-97% PD

Some impairment in reality testing or communication (e.g., speech is at times illogical, obscure or irrelevant)

OR

major impairment in several areas, such as work or school, family relations, judgment thinking or mood (e.g., depressed man avoids friends, neglects family, and is unable to work; child frequently beats up younger children, is defiant at home and is failing at school).



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

101

## Code 31-40 (continued)

“Speech is at times illogical, obscure or irrelevant”?

*Me? (you're my witnesses!)*



*(I'm retiring!)*



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

102

Code 21-30

= 70-76% WPI = 98-100% PD



Behavior is considerably influenced by delusions or hallucinations

OR

serious impairment in communication or judgment (e.g., sometimes incoherent, acts grossly inappropriately, suicidal preoccupation) OR inability to function in almost all areas (e.g., stays in bed all day; no job, home or friends).



103

Code 11-20

= 77-83% WPI = 100% PD



Some danger of hurting self or others (e.g., suicide attempts without clear expectation of death; frequently violent; manic excitement)

OR

occasionally fails to maintain minimal personal hygiene (e.g., smears feces)

OR

gross impairment in communication (e.g., largely incoherent or mute).



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

104

Code 1-10  
= 84-90% WPI = 100% PD



Persistent danger of severely hurting self or others  
(e.g., recurrent violence)

OR

Persistent inability to maintain minimal personal  
hygiene

OR

Serious suicidal act with clear expectation of death.



Code 0

Inadequate information



## Psych Impairment #

- 14.01.00.00
- A nod to Chapter 14, but nothing more...

How to defend?



VS



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

107

## Psych has always been...



**CRAZY!**

Craziness applies to psych apportionment?

**NOPE!**



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

108

## Psych



Apportion psych just like ALL OTHER  
INJURIES!!



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

109

Issue: Does this mean no apportionment?



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

110

## Remember the 6 month rule?

LC 3208.3(d) requires *actual service* for six months

Under the six-month rule, an employee must be employed for six months in order to make a claim for psychiatric injury.

*Wal-Mart*: LC 3208.3(d) requires the performance of *actual service*



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

111

## Remember the 6 month rule?

Not fully outlined by courts how to determine 6 month period in cases w/broken periods of work, either by calendar month, actual days worked

What about broken periods of work?

Not entirely clear.

All we know is what the statute says...

6 months need not be continuous



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

112

## EX \*CT

- DOH: 9/14/08
- Began work: 9/15/08
- Stopped earning wages: 3/12/09 = 5 months,
- Kept on books until 1/25/10
- claimed first day 9/12/08 b/c went to office to pick-up laptop for training (unpaid commute)

H: 6 month test not proven

R:

- not paid for laptop pickup = not a day of "actual service"
- just b/c ER did not *formally* terminate and kept on ER-sponsored health does not add "days of actual service"



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

113

## TIME OFF

F:

- worked six months
- missed two weeks due to non-aoe/coe pancreatitis

H: claim not barred

R: "applicant was off every weekend, and it would be unreasonable to interpret the statute as counting weekends against her in determining whether she completed six months of 'performance of actual service'..."



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

114

## Whose Burden?

Guess!

(it's an affirmative defense)



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

115

## Whose Burden?

What about separate and distinct periods of employment with complete severance of EE/ER relationship?

EX.

- w/ER A > 2.5 years
- left A to work for ER B for 1 year
- RTW @ ER A for < 6 months when injured
  - probationary EE
  - different store
  - different supervisor
  - different dept.

H: met 6 month test



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

116

## 6 month rule does NOT apply to

claims resulting from  
"a sudden and extraordinary employment condition"

### EE's burden

"An event does not become presumptively extraordinary because the employer offers no evidence it is regular or routine...[S]uch a broad interpretation could place a greater risk of liability on those employers whose safety measures are better and more effective, i.e., those who manage to prevent accidents on the job from becoming routine or commonplace."



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

117

## "Sudden and extraordinary"

*Wal-Mart Stores, Inc. v. WCAB  
(Garcia) (2003) 68 CCC 1575*



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

118

## NOT all accidental injuries (Matea v WCAB)

NOT "regular or routine employment event[s]"

"sudden" =

"happening without previous notice or with very  
brief notice: coming or occurring  
unexpectedly; not foreseen or prepared for."

What *is* and *is not* routine for emergency  
personnel?

What is/not foreseen? Prepared for?



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

119

## "extraordinary"

"going beyond what is usual, regular, common, or  
customary"

"having little or no precedent and usu[ally] totally  
unexpected"



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

120

## *Matea v. WCAB* (2006) 71 CCC 1522

F: Home Depot shelf fell; lumber fell on EE's leg

H: "sudden and extraordinary"

R:

no evidence of such occurrences being "regular and routine events" (talk about being between a rock and a hard place)



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

121

- *Rojas v. Springfield Ins*: attacks of sexual harassment fit the exception.
- *Sack v. WCAB*: months of pranks and harassment were not a sudden and extraordinary event.
- *Reed v. WCAB* (1997) routine and regular exchange between ER and EE involving work practices were neither "sudden" nor "extraordinary" employment condition



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

122

- *Brown v. WCAB*: supervisor tapped EE on the head with papers and berated her for poor work. >insulting; not "sudden and extraordinary"
- *Curtis v. WCAB*: being yelled at by demanding superior, who pounded on desk, not S&E



## *Does this fact pattern have potential impact on emergency personnel?*

*Travelers Casualty & Surety Co. v. WCAB  
(Dreher)*

H:

slip and fall on concrete walkway was not a sudden and extraordinary employment condition



## Dreyer

R:

- the unexpectedly "catastrophic" nature of the injury did not support a finding of an "extraordinary" employment condition
- LC does not include the nature of the injuries resulting from the incident as a basis for the exception
- evidence showed EE routinely walked on concrete walkways at the work site
- slip-and-fall was the kind of incident that reasonably could be expected to occur



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

125

## Dreyer

Can serious fires, shoot-outs and death of others be said can "reasonably be expected to occur"?

Aren't fire and police specifically *trained* for such occurrences?



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

126

## Other failures to find "sudden & extraordinary"

- roofer's fall from a roof
- electrician's fall from a 12-foot ladder while installing cable
- deputy probation officer injured during a training course while demonstrating with an instructor how to respond to a right hook (neither "sudden" or "extraordinary")



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

127

## Other failures to find "sudden & extraordinary"

- accidental collision with a man while walking down work hallway
- EE who was struck by a car while jaywalking
- traffic officer who was struck by an automobile while trying to cite the driver did not suffer "sudden and extraordinary" inasmuch as traffic officers commonly interact with irate drivers and are trained in how to react when people become angry or attempt to drive away, even when someone is "shouting obscenities" (police? fire? what are *they* trained to do?)



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

128

## Other failures to find "sudden & extraordinary"

- brake failure for steering wheel that locked
- power saw cutting off fingers

R:

- anyone working with a power saw would recognize the danger
- "tragic and sudden", "not uncommon, unusual or totally unexpected" for work involving a power saw



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

129

## Finding Sudden & Extraordinary

GENERAL RULE: workplace violence/illegal acts

=

"sudden and extraordinary employment condition"

- store clerk's injury resulting from robbery and assault
- sexual molestation and rape by supervisor
- home caregiver's assault by a patient
- teacher assaulted by a student
- cashier shot five times by underage customer who wanted alcohol



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

130

## Failed to deny within 90 days?

Have an LC 3208.3(d) defense

NO WORRIES!



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

131

## Ok to raise at trial, even if not

raised at the MSC

*Martinez v. WCAB* (2010) 75 CCC 381 (writ denied)

*Acosta v. Specialty Crane, Industrial Construction, Inc.*

*But see*

*Johnson v. Telford*, 2009 Cal. Wrk. Comp. P.D. LEXIS 587



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

132

Don't forget...this is not for  
disgruntled emergency personnel

STILL APPLICABLE

**lawful, nondiscriminatory, good-faith  
personnel action defense**



*www.bradfordbarthel.com*

133

As a sidenote

(not directly PTSD related)

...check out Wilson



*www.bradfordbarthel.com*

134

## Wilson



F:

- firefighter inhaled fumes at wildfire
- accepted: lungs, psych, left eye, head, brain

H: 66% PD (no impairment for psych)

R: SB 863 (2013) = LC 4660.1(c)(2)(B): no increased PD for psych arising out of compensable physical injuries, unless suffers

**"catastrophic injury"**

WCJ: it's like "hard core pornography: I know it when I see it"



Justice Potter Stewart

[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

135

## Wilson



WCAB en banc says...

H: yes; this is a "catastrophic injury"

R: five factors that a judge may consider, including:

1. The intensity and seriousness of treatment received by the employee that was reasonably required to cure or relieve the effects of the injury.
2. The ultimate outcome when the physical injury is permanent and stationary.
3. The severity of the physical injury and its impact on the employee's ability to perform activities of daily living.
4. Whether the physical injury is closely analogous to one of the injuries specified in the statute: loss of a limb, paralysis, severe burn or severe head injury.
5. Whether the physical injury is an incurable and progressive disease.



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

136

## Wilson

Rejected arguments:

- "catastrophic" refers to the *mechanism of injury*
- "catastrophic" refers to the condition *immediately* after the injury occurs



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

137

All is not lost...



The WCAB advised that when determining whether the exception is met...

"the trier of fact should be mindful of the legislative intent behind section 4660.1(c)."

Anyone remember what that is?



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

138

§ 4660.1(c), "[T]here shall be no increases in impairment ratings for sleep dysfunction, sexual dysfunction, or psychiatric disorder, or any combination thereof, arising out of a compensable physical injury."



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

139

Section 1 of SB 863 explains that "in enacting subdivision (c) of Section 4660.1 of the Labor Code, the Legislature intends to eliminate questionable claims of disability when alleged to be caused by a disabling physical injury arising out of and in the course of employment ..."



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

140

# Legislative has gone

O-P-P-O-S-I-T-E

Direction with PTSD



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

141

*Tuesday, May 5, 2020*

## Bill Proposes PTSD Presumption for Emergency Medical Workers

(5/5/20 Workerscompcentral)

Private sector emergency medical service providers who contract with  
the government

=

presumption PTSD is compensable

Assemblyman Freddie Rodriguez

AB 2447

would cover contracts with:

- state
- local
- tribal
- special district



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

142



Donald Barthel, Esq.  
Bradford & Barthel, LLP  
2518 River Plaza Drive  
Sacramento, California 95833  
(916) 569-0790  
dbarthel@bradfordbarthel.com



[www.bradfordbarthel.com](http://www.bradfordbarthel.com)

143