



North Dakota Association for Justice
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The Trial Lawyers of North Dakota

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Chairman Warrey and members of the House Industry, Business and Labor Committee, my name is Jaci Hall, Executive Director of the North Dakota Association for Justice. I am here today opposed to SB2109 in its amended form.

In January of this year, the ND Supreme Court reversed a WSI decision for Mr. Oak Reile. Mr. Reile was a delivery driver who fell off a loading ramp and fractured his cervical spine. He suffered spinal cord injuries and received months of treatment in North Dakota and in Colorado.

Mr. Reile applied for benefits with WSI and was approved for his physical medical benefits but was denied for his mental health claim based on a diagnosis of adjustment disorder with depression.

During his appeal, WSI sought an independent medical review for his mental diagnosis and informed the doctor of the statutory requirements for his psychological condition to be compensable. The letter stated that to assist the doctor with his application, WSI would also include the administrative code, where they defined the statute. This was Admin Code 92-01-02-02.5. The letter went on to instruct the physician that other contributing causes – those included in the amended version of SB2109 – cannot be the source of a compensable psychological condition.

Since the administrative rule does not allow other contributing factors, the physician determined that the depressive disorder could not be caused by the spinal cord injury – instead it was the significant grief related to the loss of sensory and motor function related to the spinal cord injury. The physician admitted Reile's condition is "one hundred percent" the result of the "work injury and the spinal cord damage," but later clarified his answer was not regarding the "physiological basis of the spinal cord injury," but



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instead the “depression is one hundred percent the cause of the, of his emotional reaction to the overwhelming stress.”

The ALJ determined Reile’s condition is compensable under the statute but, because his condition does not meet the requirements of the administrative rule promulgated by WSI, he is not entitled to benefits. Ultimately, Mr. Reile continued to appeal to the ND Supreme Court. The Court reversed the decision and determined that WSI overreached with their interpretation of the statute (65-01-02) and the definition of compensable injury.

SB2109 looks to take the administrative interpretation of the statute, that did not approve a mental disability and make it law after this decision in January. This change would be detrimental to injured workers in North Dakota. Currently, WSI only covers physical disability and relies on this administrative rule to deny mental diagnoses that are a result of a physical disability even though the statute allows for physical / mental diagnoses.

For example, if a police officer is shot in the line of duty and suffers physical impairment along with PTSD, the officer will receive benefits to heal from the physical disability but will not receive coverage to overcome the PTSD. Without healing them mentally, the officer may never be fit for duty again. Nothing physical prevents them from returning, except the mental disability.

I ask you today to remove the underlined amendment on page 4 lines 10-19 and lines 27 and 31 on page 14 and lines 1-5 on page 15 to support physical / mental claims by injured workers. These claims are determined on a case-by-case basis, so not all claims will be approved. This change will just provide the opportunity for cases to be reviewed. With the amended language, the mental diagnosis will be denied 100% because the



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physical injury does not cause the mental diagnosis, it is a result of the changes in lifestyle after the physical injury.

The ND Supreme Court made great strides to support injured workers when they reversed the decision in *Reile vs WSI* last January. They determined that claimants must prove a “causal connection” between the work injury and the condition for which benefits are sought. They concluded that the Legislative Assembly may not delegate to another body the power to make law—to legislate—but it may bestow authority to execute the laws it enacts. Thus, current administrative interpretation of what a compensable injury is is not equivalent to the legislative intent. By passing SB2109, it will take their interpretation and make it law.

SB2109 is not needed, and we ask the amended version be removed and the bill receive a Do Not Pass recommendation by the committee.

Thank you for your time and I will stand for questions.