

DECISION RENDERED COVER LETTER

WCAIS CLAIM NUMBER: 8677666

DISPUTE NUMBER: DSP-8677666-1

PETITIONS:

Claim Petition (LIBC-362)
Petition To/For (LIBC-378) Penalties (For violation of
the Act, Rules and Regulations)

PARTIES:

DION JONES
2611 N 33rd St
Philadelphia, PA 19132-2811

Ruxandra Osgood
2005 MARKET ST 18TH FLOOR
PHILADELPHIA, PA 19103-7042

vs

Curran-Fromhold Correctional Facility
7901 STATE RD
PHILADELPHIA, PA 19136

DAVID A PORTER, ESQ
1500 MARKET ST 32ND FLOOR
PHILADELPHIA, PA 19102-2100

INSURER CLAIM NUMBER:

INJURY DATE: 03/18/2021

JUDGE:

Lawrence Beck

The attached Decision of the Judge is final unless
an appeal is taken to the Workers' Compensation
Appeal Board as provided by law.

If you do not agree with this Decision, an appeal
must be filed with the Workers' Compensation
Appeal Board within 20 days from, but not
including, the date of this notice.

An appeal may be filed online, at
<https://www.wcais.pa.gov>, or paper forms for an
appeal may be obtained from:

Workers' Compensation Appeal Board
1171 S Cameron Street Rm 120B
Harrisburg, PA 17104
717-783-7838

Claimant/Employee Exhibits			
Number	Name	Admitted	Submitted For
C01	Fee Agreement	Yes	JONES, DION
C02	Deposition of Claimant	Yes	JONES, DION
C03	Deposition of Dr. Kim	Yes	JONES, DION
C04	Act 109 documents	Yes	JONES, DION
C05	Litigation Costs	Yes	JONES, DION

Defendant/Employer Exhibits			
Number	Name	Admitted	Submitted For
D01	Memorandum	Yes	Curran-Fromhold Correctional Facility
D02	Dr. Springer deposition transcript	Yes	Curran-Fromhold Correctional Facility

Judge Exhibits			
Number	Name	Admitted	Submitted For
J01	Notice of Denial	Yes	Beck, Lawrence
J02	SOW - AGREED	Yes	Beck, Lawrence

Witnesses		
Name	Witness For	Hearing Date
DION JONES	Claimant/Employee	01/20/2022

Events			
Date	Time	Location	Status
01/20/2022	14:00:00	Philadelphia Field Office	Conducted
10/22/2021	11:30:00	Philadelphia Field Office	Conducted
07/21/2021	13:30:00	Philadelphia Field Office	Conducted

PROCEDURAL HISTORY

On June 15, 2021, Dion Jones (Claimant) filed a Claim Petition for workers' compensation alleging he suffered a psychological injury on March 18, 2021 in the course of his employment as a corrections officer for Curran-Fromhold Correctional Facility (Employer). Claimant alleged he was "working at the booth at the front of the prison when [he] witnessed an inmate (who had just been released on bail) get fatally shot 10 times, about 10-20 feet away from [Claimant]". Claimant alleged that he sustained PTSD, anxiety, depression, and migraines as a result of the incident. Claimant sought temporary total disability benefits as a result of his alleged injuries from the date of the incident and ongoing, based upon alleged wages of \$1,040.00 a week. Employer filed a timely Answer to Claimant's Claim Petition.

On June 21, 2021, Employer issued a Notice of Workers' Compensation Denial indicating Claimant did not suffer a work-related injury.

On June 30, 2021, Claimant filed a Penalty Petition alleging Employer violated the Workers' Compensation Act by failing to issue Bureau documents timely.

FINDINGS OF FACT

1. Claimant testified by deposition on September 15, 2021 and live before this Judge on January 20, 2022. This Judge has reviewed Claimant's testimony and summarizes it as follows:
 - a. Claimant worked for Employer as a corrections officer for nine years. Claimant worked six to seven days a week in numerous areas of the prison. He worked as a grounds officer making certain the inmates cleaned the outside areas, lounge areas, and bathrooms. Claimant also worked in the segregation unit, various housing units, and in the main gate; he had only worked the main gate approximately 10 times during his in his nine years. Claimant related each post required different duties.
 - b. Claimant related that working the main gate required him to check the vehicles coming in and out of the prison grounds, including identification. He further related that the main gate has a booth, as well as an entrance and exit for visitors, employees, and transportation for the parking lot area. After checking identification, Claimant would push a button on the outside of the booth to let the vehicle or individual pass through an aluminum metal arm. While working an outside post, including the main gate, Claimant carried a firearm but was not provided a bullet proof vest, handcuffs, or a TASER.
 - c. Claimant's only general training was in 2012, while he was at the academy for 11 weeks. At the academy, he learned different defenses for altercations with an inmate, how to respond and keep distance, and gain control of the situation. Claimant related

that it was a lot of hand to hand training and learning how to use pepper spray.

Claimant also trained to use his service weapon, a Glock 17; he is recertified in its use every year. Claimant was trained in how to respond to a physical altercation and how to respond to a health issue; he was not trained in disarming an inmate or how to respond to a shooting.

- d. Claimant was working the main gate alone on March 18, 2021 at 1:50 AM. He was inside the bathroom, located at the rear of the main gate booth. As he was exiting the bathroom, a car, driving at a high speed, approached the main gate. When Claimant got to the front of the booth, he saw the car drive the wrong way through the exit side before he could check for identification. Claimant explained during his deposition that the metal arm was up at the time because it was acting up and maintenance was going to look into it; during his live testimony, Claimant related that the gate was up so the transportation vans could go in and out as they normally do.
- e. When Claimant opened the booth door, he heard gunshots. Claimant related that he ran back into the booth and took cover below the booth windows because he believed he was being targeted. Claimant called for assistance using his walkie-talkie, relaying that shots were being fired at the main gate and he needed assistance. Claimant then looked out the back window of the booth and saw that the car was stopped and a person was standing near the front of it. Claimant watched as the person was shot approximately 20 feet away from him; the person went from standing to dropping to his knees. Approximately ten shots were fired. Claimant related that the gunshot victim was a former inmate, who had just been released and was waiting at the bus stop across the street. After the released inmate was shot, the car drove away. Claimant was unable to identify the vehicle or its occupants with any specificity.
- f. Claimant related that, after the incident, it took a few minutes for the transportation officer to arrive at the scene and Claimant had to wait approximately an hour before he was cleared to leave. While he was waiting, Claimant saw the former inmate take his last breath and lay on the ground while the responding units waited for the coroner.
- g. Claimant related that, although he had radioed to call 911, no one did so he was asked to call 911. He was asked to write a memorandum memorializing the incident right away.
- h. Claimant related that nothing like the March 18, 2021 incident had never happened to him before; he had never witnessed an inmate being killed or dying. While he has seen fights, which occur about three times a month, and responded to situations where people have been stabbed, Claimant had never actually seen stabbings occur.
- i. Claimant had one training session on inmate releases years ago but none since a new procedure was instituted. He has never been made aware of an inmate being released while he was working the main booth; none of the responsibilities of working the

main booth involve releasing inmates and none of the other duties he has performed dealt with observing an inmate release.

- j. Claimant has not worked since the incident. About a day after the incident, Claimant was having trouble sleeping and getting headaches; he then began having anxiety and feeling depressed. He felt guilty because he was unable to help the victim. He was easily startled by loud noises and thought he was being followed.
- k. Claimant was not asked to complete an incident report so he contacted Deputy Warden Gordon, deputy of the safety office, and informed him that he was experiencing anxiety, headaches, nightmares, trouble sleeping, flashback, and loss of appetite. He asked to be sent to Employer's workers' compensation clinic. Claimant was provided a list of people to contact but never received a call back and was unable to get an appointment at Behavioral Health. Claimant reached out to his union and was referred to Behavioral Health of Palm Beaches, Florida, where he was admitted for two weeks beginning April 19, 2021. By April 2021, he was having headaches, lasting four hours at a time, every other day. Claimant related his appetite had decreased and he was not eating.
- l. When Claimant returned to Pennsylvania, he began treating at Mirmont Treatment Center. Claimant went to group and individual therapy; he had never had depression, anxiety, headaches, loss of appetite, or seen a therapist before March 18, 2021.
- m. Claimant eventually began seeing Dr. Kim every two weeks in addition to his group therapy. Both treatments have provided help.
- n. As of his deposition, Claimant related that he is easily startled and on high alert. He still has occasional flashbacks. He has headaches once or twice a week for a few hours at a time. He felt he had improved, but it was day to day. He takes Prazosin and Trazodone, which are prescribed by Dr. Julianne Walters, a psychiatrist; Dr. Walters provides medication management and Dr. Kim provides trauma therapy. Dr. Kim is helping him by pushing him to do more things and to go out to places that make him uncomfortable, including driving by the prison. He did not feel capable of returning to work because, every time he wants to get back, his anxiety increases. His anxiety is triggered by fireworks and crowds. He did not think it would be safe to go back to work.
- o. As of his live testimony, Claimant was continuing to see Dr. Kim for therapy. He related the therapy has decreased his anxiety and depression. His appetite has also improved. He still gets anxious and agitated on some days, but he had not been getting any headaches lately. He still has difficulty sleeping but experiences nightmare less often. He does not feel fully recovered or able to return to full duty due to his ongoing symptoms. He, with Dr. Kim, is working to see if he could

perform transitional, part-time work with less contact beginning in March 2022. He has been in contact with Employer's human resources department about the process.

- p. Claimant has not had any income or worked since the incident. Claimant used his personal time for about three months after the incident but he has not received unemployment compensation or short/long term disability payments.
 - q. Claimant has a contingent fee agreement with his counsel.
2. Claimant presented the September 22, 2021 deposition of Michelle Kim, Ph.D. This Judge has reviewed Dr. Kim's testimony and summarizes it as follows:
- a. Dr. Kim is licensed to practice clinical psychology in the Commonwealth of Pennsylvania. In her profession, as a licensed clinical psychologist, Dr. Kim conducts psychological testing assessments, evaluations, and psychotherapy. She is not a board-certified physician.
 - b. Dr. Kim first saw Claimant on June 17, 2021, at which time he provided a history of the incident. Claimant related that, on March 18, 2021 a car approached the guard booth where he was stationed, drove by him at a high speed, and started shooting. Claimant related to Dr. Kim that, after he retreated to the booth, he looked out the window and saw a person struggling to get up and then falling to the ground. A total of approximately 10 shots were fired during the incident. After the incident, his supervisor sent him to the crisis center at Penn Hospital, which subsequently referred him to an outpatient clinic. Claimant could not get an appointment at Behavioral Health through his employee assistance program (EAP). On April 19, 2021, he was admitted to an inpatient unit in Florida for two weeks for increased alcohol consumption, nightmares, insomnia anxiety, depression, and racing thoughts. While in the inpatient unit, Claimant attended individual and groups sessions; he was prescribed Vistaril to help his mood. After he was released, Claimant began attending psychotherapy at Mirmont in Media. He initially went three hours a day five days a week. Claimant also met with a therapist weekly and attended group sessions three times a week. Claimant related that the therapy and medication helped with his anxiety and nightmares. Claimant reported he had no prior psychiatric history or family history; he denied any other stressors in his life.
 - c. Dr. Kim related that, as of his initial examination, Claimant's mood was anxious with a congruent affect. He reported poor mood, problems focusing and concentrating, and word finding difficulty. Dr. Kim administered the post-traumatic stress disorder evaluation, which revealed a score of 49 indicating moderate symptoms of PTSD.
 - d. Claimant complained of repeated disturbing implicit memory of the man dying and of the dead body. Claimant reported that this type of incident had never happened in his employment before; he had never witnessed anyone die or getting killed while he

was working as a corrections officer. He related that his body freezes and he gets heart palpitations when the trauma memory is triggered. He avoids any cues or stimuli that remind him of the trauma and avoids driving by his workplace. Dr. Kim related that Claimant was hypervigilant and hyperalert. Claimant reported feeling guilty he did not do more to help the person. He was also easily irritated over trigger matters.

- e. Following her examination, Dr. Kim diagnosed Claimant with post-traumatic stress disorder as a result of the March 18, 2021 incident as well as alcohol use disorder, in early remission. Her treatment plan involved cognitive behavior therapy, the goal of which was an eventual return to work.
- f. Dr. Kim sees Claimant every two weeks. During his sessions, Claimant reported getting angry easily over trigger matters, being scared of, and freezing when he hears, fireworks, and continued avoidance. Claimant did report some improvement in that he no longer uses alcohol.
- g. Dr. Kim related that she initiated a cognitive therapy called prolonged exposure therapy, where Claimant was to look at photos of the prison on the internet and monitor his anxiety until it decreased by 50 percent. Claimant was able to drive by the facility as part of his therapy; however, he started to shake and cry when he did so.
- h. Dr. Kim related that, as of September 2, 2021, Claimant reported his mood was up and down. He still got sad and scared when he thought about going back to work. His psychiatrist had increased his psychotropic medications. Claimant continued to have anxiety and nightmares.
- i. During his most recent visit on September 16, 2021, Claimant reported having intrusive memories of the incident, hypervigilance, insomnia, and being hyperalert. Dr. Kim related that Claimant was having panic attacks during his session. Dr. Kim conducted eye movement desensitization and reprocessing (EMDR), bilateral stimulation, and deep breathing causing Claimant's anxiety to be decreased.
- j. Claimant has related that he would like to have weekly sessions because he found them helpful.
- k. Throughout his sessions, Claimant's motivation has been to get back to work.
- l. Dr. Kim related that Claimant's most concerning symptom occurs when he dissociates and is not aware of his surroundings during his session.
- m. As of her testimony, Dr. Kim related that her diagnoses remained post-traumatic stress disorder related to the March 18, 2021 incident, and the (early remission) alcohol use disorder.

- n. Dr. Kim explained that, per the DSM-5, for a diagnosis of post-traumatic stress disorder (PTSD), the associated symptoms must cause a clinically significant distress or impairment in social occupation or in other important areas of functioning. The trauma must occur when the person is exposed to a situation where they experienced, witnessed, or were confronted with an event involving actual threats of death or serious injury. Based on this, Dr. Kim found Claimant met the criteria for PTSD. Dr. Kim related that Claimant also met the other criteria for PTSD: he was re-experiencing the trauma through unwanted, distressing memories, recollections and nightmares; he was experiencing persistent avoidance of any stimulus associated with the trauma; and, he was having increased anxiety and panic attacks. Dr. Kim also related that Claimant complained of difficulty focusing and concentrating. Claimant also experiences irrational guilt, which is a symptom of PTSD.
 - o. Dr. Kim related that the incident was extremely traumatic and had never occurred to Claimant before. There were multiple gunshots fired and he witnessed the person being killed. This indicated a very severe traumatic stressor.
 - p. Claimant is improving with therapy. He has strong motivation to get better and his desire to reenter the workforce has improved. Claimant's ability to monitor his anxiety and panic attacks and his understanding of coping techniques are also improving.
 - q. Claimant has not fully recovered from his PTSD and is unable to return to work as a result.
 - r. Dr. Kim related that she did not review the memorandum Claimant drafted immediately after the incident. She conceded that she was unaware of Claimant's training or work environment. She did not review Claimant's deposition.
3. Employer presented the March 18, 2021 memorandum completed by Claimant following the incident. This Judge has reviewed the memorandum, which states [typographical errors, included]:

On March 18, 2021 I C/O D. Jones was assigned to CFC Main Gate on the 11pm- 7am shift. At approximately 1:50am a transportation van exited the gate. I returned to the booth to use the restroom. While I was using the restroom I heard multiple gun shots I got down took cover I fixed my clothing while staying low I opened up the bathroom door and looked out and in the distance I saw a dark colored vehicle turning left out of the driveway. I got on the radio an called for assistance I exited the booth and scanned the area I noticed someone laying on the ground near the grass area to the right behind the gate, all the while on the radio calling for assistance, within second Transportation Officer Barnes arrived. I stated to him and pointed in the direction of where the person was laying. At this point other

transportation vehicles arrived along with CFCF Sgt. Thomas. Sgt Thomas instructed me to call 911.

4. Employer submitted the January 12, 2022 deposition of David Springer. MD. This Judge has reviewed Dr. Springer's testimony and summarizes it as follows:
 - a. Dr. Springer is licensed to practice medicine in the Commonwealth of Pennsylvania and is board-certified in psychiatry. Dr. Springer has worked in two prison settings. He related that PTSD is a common diagnosis he treats. Dr. Springer related that an extraordinary experience can result in a number of different symptoms, and that people, with different backgrounds and make-up, have different reactions to the same event. Some may have no reaction, most may have some transitory reaction, and some will have a significant reaction, with long-lasting symptoms.
 - b. Dr. Springer examined Claimant on October 26, 2021. As part of his examination, he reviewed the deposition and treatment notes of Dr. Kim, Claimant's memorandum, Claimant's records from Center for Alcohol and Drug Studies, Lake Worth, Florida, and Claimant's treatment records from the Center of Alcohol and Drug Studies.
 - c. Dr. Springer related that Claimant provided a history of not being enthusiastic about working in the prison, but that he did like his coworkers. Claimant did experience some violent episodes among the prisoners, including stabbings, fights, and suicide, which Dr. Springer related were typical in prisons.
 - d. Claimant reported that, on March 18, 2021, he was stationed at the entry booth to the grounds of the prison, there were two checkpoint arms for going in and out of the prison grounds. Claimant relieved a coworker, who transferred a firearm to him. Claimant was working the overnight shift. There was not much traffic. Claimant had to use the restroom, which was in the rear of the booth. Claimant related that, when he did that, he would leave the arm up so people could go more readily in and out. Claimant related that, when he was coming out of the bathroom, he saw a vehicle in front of the booth, moving fast. As soon as he got to the outside doorway at the front of the booth, the car had gone through the exit lane. Claimant then heard shots and thought someone was shooting at him. Claimant took cover in the booth and tried to call for assistance and requested someone call 911. Claimant related he then went to the bathroom in the back of the booth. Looking out the window there, he saw the car and a person on his knees. Claimant related he saw the person drop to the ground but did not see the actual shooting. Claimant later learned that the person was a recently released inmate; the person had been on the other side of the street, waiting for a bus, and was chased back onto the prison grounds by the car.
 - e. Dr. Springer related that there were several factors causing Claimant's psychological condition, not just the March 18, 2021 incident. Dr. Springer related that Claimant was very disturbed and felt like he was being blamed for the person's death. Claimant felt

- guilt that he was in the bathroom and not able to come out and protect the individual. Claimant felt that the prison blamed him for not being at his post. Claimant felt the news reporting made it seem like he was not fulfilling his duties. Claimant was anxious that there was a lawsuit that the person's family had filed against the prison and he was being blamed for the shooting. Claimant reported there was an issue with leaving the traffic arm up and he was uncertain whether he was going to be blamed for that. Claimant was uncertain regarding how his co-workers would treat him. Claimant was stressed as that the prison had potentially become more dangerous.
- f. In his examination, Dr. Springer performed two tests: the Structured Inventory of Malingered Symptomatology and the Trauma Symptom Inventory Two. The Structure Inventory of Malingered Symptomatology tests for people who are truly having symptoms or feigning symptoms. Dr. Springer related that there is a scale and a norm; Claimant had scores above the cutoff. The Trauma Symptom Inventory Two test assesses posttraumatic stress or other kind of traumatic exposures and resulting symptoms. Claimant scored extremely high on the test: over 99 percent on the posttraumatic stress and intrusive experience scales, which includes memories and flashbacks of the incident. Dr. Springer related that Claimant did not describe anything to that degree during his interview. Dr. Springer related that, generally, combat veterans have a score of 61 to 64 on the scale of posttraumatic stress trauma; Claimant scored over 75 on the test.
 - g. Dr. Springer opined that Claimant did not have posttraumatic stress disorder but does have adjustment disorder and depressed mood. Dr. Springer explained that Claimant's diagnosis is related to feelings about the guilt that he could not help the man, the media portrayal, the lawsuit, the way Employer treated him, and his fear of going back to the prison and being around his coworkers.
 - h. Dr. Springer related that, based upon Claimant's initial description contained in the memorandum drafted immediately following the incident, Claimant was in the bathroom when the incident occurred. Dr. Springer opined that Claimant was likely embarrassed and felt guilty that he was not at his post. Claimant did not experience the event directly; Claimant did not see anything. Dr. Springer related that, even if Claimant had seen a shooting, the incident is within the range of what a corrections officer could expect to see in a prison setting, which includes violence and death.
 - i. Dr. Springer related that there needed to be a shift in focus of Claimant's treatment. Dr. Springer related that his treatment now focuses on reaffirming Claimant's view of himself having PTSD rather than his true issues. Dr. Springer recommended Claimant transition to a different focus in his treatment to help him to move forward.
5. The parties agreed that Claimant's average weekly wage was \$2,124.24, with a corresponding compensation rate of \$1,130.00.

6. This Judge has reviewed Claimant's testimony and finds it credible. Claimant's description of the incident is not disputed in any meaningful way. Indeed, the only minor inconsistencies in Claimant's description of the incident this Judge can ascertain pertain to whether Claimant actually witnessed the entirety of the shooting and the victim actually being struck by gunfire. Claimant's reaction to the incident, and his subsequent treatment, are not subject to any real debate. While the efficacy of that treatment is questioned, it is undisputed that Claimant sought and received treatment following the incident. Regarding Claimant's testimony as to his present condition, regardless of whether the source of same is PTSD or adjustment disorder with depressed mood, this Judge finds Claimant credible. While this Judge is aware that Claimant's reaction is, and always will be, subjective in some way, this Judge has no doubt that Claimant's reaction is earnest and true. This determination is based, in part, on Claimant's demeanor and deportment while testifying live.
7. This Judge has reviewed the testimony of Dr. Kim and Dr. Springer and accepts the testimony of Dr. Kim, where they differ regarding Claimant's diagnoses and present status. Dr. Kim, as Claimant's treating therapist, is in a better position to diagnose and comment on Claimant's status, as compared to Dr. Springer. Despite not reading Claimant's deposition, Dr. Kim provided a clear understanding of Claimant's history and treatment and provided a clear, concise, and credible explanation of Claimant's symptoms and their relationship to the incident. Dr. Springer's opinions are rejected where they conflict with Dr. Kim.
8. Regarding Claimant's Claim Petition, this Judge finds as follows:
 - a. Claimant was employed by Employer on March 18, 2021.
 - b. Claimant's time of injury average weekly wage was \$2,124.24, with a corresponding compensation rate of \$1,130.00.
 - c. On March 18, 2021, Claimant experienced an abnormal working condition in witnessing a violent shooting resulting in the death of another.
 - d. As a result of the abnormal working condition, Claimant suffered post-traumatic stress disorder, from which he has not recovered.
 - e. Claimant is entitled to indemnity benefits from March 18, 2021 and ongoing, together with statutory interest. Employer is entitled to a credit for all wages, Heart & Lung Act benefits, or any unemployment compensation paid to Claimant on and after March 18, 2021.
 - f. Employer is responsible for all reasonable and necessary treatment related to Claimant's post-traumatic stress disorder.

9. Claimant's Penalty Petition is granted. Employer knew Claimant experienced the incident on the day it occurred. Following such incident, Claimant was referred to Employer's panel provider. Despite this, Employer failed to issue a Bureau document prior to June 30, 2021, more than three months after the incident. For such failure, Employer is penalized 30 percent of all indemnity benefits, plus interest thereon and notwithstanding any credit, payable to Claimant from March 18, 2021 to June 30, 2021.
10. Claimant's counsel's contingent fee agreement is approved. Claimant's counsel is entitled to a twenty-percent fee calculated on Claimant's indemnity benefits. Except where such fee is to be paid as an unreasonable contest, as set forth below, Claimant's counsel's fee agreement is chargeable to and from Claimant's indemnity benefit award.
11. Employer's contest regarding Claimant's Claim and Penalty Petitions was unreasonable up to the October 26, 2021 the date of Dr. Springer's examination. Regarding the Penalty Petition, Employer presented no evidence as to why it delayed three months prior to issuing a Bureau document despite having obvious notice of the incident and Claimant's request for treatment. For such unreasonable contest of the Penalty Petition, Claimant's counsel's twenty percent fee shall be calculated on, but not chargeable to, Claimant's awarded penalty.

Regarding the Claim Petition, Employer's contest was reasonable only as of Dr. Springer's examination, which provided an alternative, though ultimately rejected, diagnosis and (unrelated) cause. While this Judge is aware it was, and remained, Claimant's relatively high burden to show an abnormal working condition gave rise to his claimed psychological injuries, Employer presented no evidence to contradict the basic and accepted facts of the incident's occurrence and Claimant's subsequent treatment. Employer presented no evidence, other than the anecdotal evidence provided by Dr. Springer's training and experience, to indicate that the violence at the heart of this matter was not abnormal. As such, Employer's contest of Claimant's Claim Petition was unreasonable until October 26, 2021. For such unreasonable contest of the Claim Petition, Claimant's counsel's twenty percent fee shall be calculated on, but not chargeable to, Claimant's awarded indemnity benefits for such time period. The calculation of the basis for such fee (i.e., Claimant's indemnity award) shall not include any credit for prior wages, Heart & Lung Act benefits, or unemployment compensation.

12. Claimant's counsel expended reasonable litigation costs in the amount of \$4,163.97 in successful prosecution of the Claim and Penalty Petitions. Employer shall reimburse Claimant's counsel for such costs.
13. Claimant is not subject to a Domestic Relations lien.

CONCLUSIONS OF LAW

1. The parties are bound by the Workers' Compensation Act, as amended (Act).

2. An employee who seeks workers' compensation benefits through an original claim petition has the burden to prove all of the elements necessary to support an award of those benefits, including the nature of the injury and the duration of any disability. Vista International Hotel v. WCAB (Daniels), 742 A.2d 640 (Pa. 2000); Fox v. WCAB (Eazor Express, Inc.), 373 A.2d 141 (Pa.Cmwlth. 1977); Inglis House v. WCAB (Reedy), 634 A.2d 592 (Pa.Cmwlth. 1993). While disabilities caused by psychological elements can be considered injuries under the Act, an employee who claims that the psychological disability resulted from emotional, non-physical stimuli at work bears a greater burden of proof than an employee whose alleged psychological disability results from physical injury or stimuli. Martin v. Ketchum, Inc., 568 A.2d 159 (Pa. 1990). As part of this burden, the employee must show that the work-related stress is caused by actual objective abnormal working conditions rather than subjective, perceived, or imagined employment events. Thomas v. WCAB (Atlantic Refining Co.), 423 A.2d 784 (Pa.Cmwlth. 1980). Determining whether a working condition is abnormal is highly fact sensitive and is based on the "content, intensity, duration, and frequency of the offending behavior." RAG (Cyprus) Emerald Resources, LP v. WCAB (Hopton), 912 A.2d 1278 (Pa. 2007). Events must be considered in relation to the specific employment. Antus v. WCAB (Sawhill Tubular Div. Cyclops Industries, Inc.), 625 A.2d 760 (Pa.Cmwlth. 1993). However, the conditions of employment, or the inherent risk related to the employment, does not determine whether a condition is abnormal or not and a singular, extraordinary event, may be considered abnormal despite its potential inclusion in that inherent risk or even in the presence of specific training relative to the risk. Payes v. WCAB (Commonwealth PA State Police), 79 A.3d 543 (Pa. 2013); Pennsylvania Liquor Control Board v. WCAB (Kochanowicz), 108 A.3d 922 (Pa.Cmwlth. 2014).

Here, there is no dispute that Claimant bore witness to a disturbing event: the intentional killing of another individual. The circumstances of that killing, in relation to Claimant's employment, render the incident even more tragic. The victim, a former inmate, was killed after apparently seeking safety on the prison's grounds. The perpetrator of that killing was, arguably (and as feared by Claimant), aided in his killing by the prior actions of Claimant – leaving the metal arm raised. Claimant viewed the unintended consequences of his actions firsthand. The full extent of Claimant's experience with this tragedy is not completely known; however, whether Claimant actually witnessed the bullets striking the victim is, ultimately, irrelevant. Claimant's experience is sufficient to "involve" him in the event: Claimant's watching as the speeding vehicle followed the victim onto prison grounds, the eruption of gunfire (which Claimant initially, and not unreasonably, thought may have been directed at him), and watching the victim fall after having been struck.

The question then remains whether this incident was abnormal or, as Employer contends, should be viewed in relation to Claimant's employment as a correction officer, a position for which violence, if not accepted, is expected. First, this Judge is not prepared to find, conclude, or declare that the violent event at the heart of this case is de rigueur for this employment or expected in today's society: the witnessing of a killing of one human

being by another should not be considered “normal”, especially absent any contrary evidence. Given the totality of the circumstances, as set forth above, and including Claimant’s unintended role in the occurrence of the incident, this Judge finds and concludes that the incident was abnormal and not incident to Claimant’s employment. This Judge notes that the only evidence regarding the abnormality of these circumstances came from Claimant, notwithstanding anecdotal testimony from Dr. Springer. Employer’s defense, or attack on Claimant’s supporting evidence, boils down to the following: it is a prison; violence, even a killing, is expected and a circumstance for which Claimant was trained. While not its burden to establish the lack of “abnormality”, Employer presented no evidence regarding the frequency of violence within Claimant’s employment so as to conclude that this incident was not abnormal. Absent any evidence that this incident was either not abnormal or, while abnormal occurred directly as a result of Claimant’s own malfeasance, this Judge is limited to the evidence presented, which, as herein stated, establishes an abnormal working condition resulting in Claimant’s psychological disability.

3. As set forth above, for its failure to issue timely Bureau documents accepting, or denying, the claim, Employer is penalized 30 percent of all indemnity benefits, plus interest thereon, payable to Claimant from March 18, 2021 to June 30, 2021.
4. Employer’s contest of the Claim and Penalty Petitions was unreasonable, in part, as set forth above.

ORDER

AND NOW, Claimant's Claim Petition is GRANTED.

On March 18, 2021, Claimant experienced an abnormal working condition in witnessing a violent shooting resulting in the death of another. As a result of the abnormal working condition, Claimant suffered post-traumatic stress disorder, from which he has not recovered.

Claimant's time of injury average weekly wage was \$2,124.24, with a corresponding compensation rate of \$1,130.00. Claimant is entitled to indemnity benefits from March 18, 2021 and ongoing, together with statutory interest. Employer is entitled to a credit for all wages, Heart & Lung Act benefits, and any unemployment compensation paid to Claimant on and after March 18, 2021.


Employer is responsible for all reasonable and necessary treatment related to Claimant's post-traumatic stress disorder.

Claimant's Penalty Petition is GRANTED, as set forth herein. Employer is penalized 30 percent of all indemnity benefits, plus interest thereon, payable to Claimant from March 18, 2021 to June 30, 2021.

Claimant's counsel's contingent fee agreement is approved and calculated on Claimant's indemnity benefits. Except where such fee is to be paid as an unreasonable contest, as set forth below, Claimant's counsel's fee agreement is chargeable to, and from, Claimant's indemnity benefit award.

Employer's contest of the Claim and Penalty Petitions was unreasonable, in part. For the unreasonable contest of the Penalty Petition, Claimant's counsel's 20 percent fee shall be calculated on, but not chargeable to, Claimant's awarded penalty. For the unreasonable contest of the Claim Petition, Claimant's counsel's 20 percent fee shall be calculated on, but not chargeable to, Claimant's awarded indemnity benefits for such time period. The calculation of the basis for such fee (i.e., Claimant's indemnity award) shall not include any credit for prior wages, Heart & Lung Act benefits, or unemployment compensation.

Employer shall reimburse Claimant's counsel \$4,163.97 in litigation costs as set forth herein.

A handwritten signature in black ink, appearing to read 'Lawrence Beck', with a horizontal line extending to the right.

Lawrence Beck

DION JONES vs Curran-Fromhold Correctional Facility
DSP-8677666-1

Workers' Compensation Judge
Philadelphia Field Office