

Testimony in Opposition to LD 1302  
*An Act to Create a Rebuttable Presumption Under the Workers' Compensation Law for  
Line Workers Diagnosed with Post-Traumatic Stress Disorder*  
April 13, 2023  
Presented by Elizabeth Brogan

Senator Tipping, Representative Roeder and members of the Joint Committee on Labor and Housing, my name is Elizabeth Brogan and I am the Executive Director of the Workers' Compensation Coordinating Council and Maine Council of Self-Insurers. I appear before you today in opposition to LD 1302.

Mental injuries caused by mental stress, including post-traumatic stress disorder, are compensable under the Maine Workers' Compensation Act for all kinds of workers, including line workers, based on the individual merits of each case. Work stress which is "extraordinary and unusual" in comparison to the average employee in Maine, is an element of the claim. The Legislature did not limit mental stress claims to any single group, but left it up to the fact-finders, highly qualified and experienced Administrative Law Judges, to determine if the requirements of the claim have been met. Occupations that include more stressful work may have more mental injury claims, and the claims may be more easily made, without the need for further presumptions in the Act.

Injuries should be presumed to have arisen out of and in the course of employment (basically, at work and because of work) where circumstances are so compelling that the only rational inference can be that the injury is work-related. Where a presumption is created, facts are assumed to be true from the outset, a thumb on the scales, favoring one party over another, forcing the employer to *disprove* the presumed facts. Where a presumption is created, it will be applied in every instance in that category of claim, regardless of the individual circumstances of the case, and removing from the factfinder the discretion to consider the case as they would any other.

Where there is no presumption, claims by line workers, and claims by *all other groups of workers, for all types of injuries*, are decided based on the individual merits of the case, consistent with the construction language in §153 (3) of the Act, which states that "All workers' compensation cases must be decided on their merits" and that the Act "is not to be given a construction in favor of the employee," or of the employer.

For these reasons, we urge the committee to vote "ought not to pass" on LD 1302. I am happy to answer any questions.