

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS

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In the Matter of Arbitration between: \*  
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TOWN OF MILLBURY \*  
\* ARB-17-5805  
and \*  
\*  
MILLBURY POLICE ASSOCIATION, \*  
LOCAL 128 MASS COP, AFL-CIO \*  
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Arbitrator:

Kathleen Goodberlet, Esq.

Appearances:

- James P. Hoban, Esq. - Representing Town of Millbury
- Leigh A. Panettiere, Esq. - Representing Millbury Police Association, Massachusetts Coalition of Police, AFL-CIO, Local 128

The parties received a full opportunity to present testimony, exhibits and arguments, and to examine and cross-examine witnesses at a hearing. I have considered the issues, and, having studied and weighed the evidence presented, conclude as follows:

**AWARD**

The grievance is not arbitrable.

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Kathleen Goodberlet, Esq.  
Arbitrator  
December 1, 2017

## INTRODUCTION

On January 15, 2017, the Millbury Police Association, Local 128 MASS COP, AFL-CIO (Union) filed a unilateral petition for arbitration. Under the provisions of M.G.L Chapter 23, Section 9P, the Department of Labor Relations (DLR) appointed Kathleen Goodberlet, Esq. to act as a single neutral arbitrator with the full power of the DLR. On September 7, 2017, the undersigned Arbitrator conducted a hearing in Millbury, Massachusetts. The Union and the Town filed briefs on November 13, 2017.

## ISSUES<sup>1</sup>

1. Is the Millbury Police Association, Mass. COP Local 128, AFL-CIO's grievance arbitrable?
2. If so, did the Town of Millbury violate Article XV of the parties' collective bargaining agreement when it refused to place the Grievant on "Occupational Injury Leave" in accordance with G.L. c. 41, section 111F?
3. If so, what shall be the remedy?

## RELEVANT CONTRACT LANGUAGE

### ARTICLE IX GRIEVANCE PROCEDURE

Any dispute with respect to wages, fringe benefits, hours of work, conditions of employment, workload or standards of performance shall be subject to the grievance procedure.

Step 1. Within thirty (30) days of the event giving rise to the grievance, the union or police officer shall file the grievance in writing with the chief, with a copy to the Town Manager. The grievance shall contain a statement of the facts, a citation of applicable contract language and a statement of the remedy requested. The chief shall meet with the union and respond in writing to the grievance within seven (7) days of the filing of the grievance.

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<sup>1</sup> The parties agreed that the Arbitrator should decide the issues in this case.

Step 2. Within seven (7) days measured from the date which the chief's response is due, the union may file the grievance with the town manager. The town manager shall meet with the union and respond in writing within forty (40) calendar days from the date the grievance was filed with the town manager.

Step 3. Within thirty (30) days of the time in which the town manager response is due, the union may file the grievance for arbitration by notifying the town manager in writing.

The parties, or either party, may file a demand with the Massachusetts Board of Conciliation and Arbitration.

The Arbitrator shall have no power to add to, subtract from, or modify this Agreement, and may only interpret such items and determine such issues as may be submitted to him or her by agreement of the parties, or by order of a court.

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#### ARTICLE XV OCCUPATIONAL INJURY LEAVE

1. Permanent employees shall qualify for injury on duty status in accordance with the terms of M.G.L. Chapter 41, Section 111F, when:  
A) an injury has been received in the line of duty; B) the injury has been reported to the shift supervisor and/or the Chief of Police; C) a complete report relating date, time, place and other circumstances of the injury has been completed by the injured officer and submitted to the chief; D) a completed accident report for the town's insurance carrier has been filed with the chief, and E) a doctor's report certifying the injury, the incapacity, and the probable length of incapacity has been submitted to the chief.
2. Officers may be placed on paid administrative leave until application for injured on duty status has been accepted by the Chief of Police. This will give the Town the opportunity to investigate any claims coming before the Town.

## FACTS

### Grievance

This arbitration arises from a November 17, 2016 grievance alleging that on November 3, 2016, Police Chief Donald Desorcy (Desorcy) denied Officer AB's<sup>2</sup> request for injured-on-duty (IOD) leave in violation of Article XV (Occupational Injury Leave), Article XIV (Sick Leave), and all other relevant provisions of the contract. The Union's grievance requested that the Town: place Officer AB on injured on duty IOD leave retroactive to October 4, 2016; make him whole for any and all lost pay and benefits, including the taxes that were deducted from his pay while on paid administrative leave and sick leave, with interest; reimburse him for out of pocket medical expenses; and cover his medical expenses as required for an injury in the line of duty.

By letter to Union President Andrea Warpula (Warpula) dated November 23, 2016, Chief Desorcy denied the grievance at Step 1. On November 29, 2016, the Union advanced the grievance to Step 2. By letter to Union attorney Leigh Panettiere (Panettiere), Interim Town Manager E. Bernard Plante (Plante) denied the grievance at Step 2 on December 23, 2016. By letter to Plante dated January 4, 2017, Panettiere notified the Town that the Union intended to file for arbitration pursuant to Step 3 of the grievance procedure. The Union filed for arbitration with the DLR on February 15, 2017.

### Background

The Union represents police officers and police sergeants employed by the Town. The Union and the Town are parties to a collective bargaining agreement for the period

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<sup>2</sup> AB is a pseudonym for the Grievant.

July 1, 2016 through June 30, 2019 (Agreement). Officer AB was a Town police officer from September 25, 1995, until he retired on April 30, 2017. On September 2, 1995, just before starting work, AB passed a pre-employment psychological screening. During his 22 years as a police officer AB received numerous training certifications and certificates. AB's duties as a police officer repeatedly exposed him to traumatic events, but he never complained internally at the Police Department about such events.

In 2013, AB's primary care physician Mary Wendel (Wendel) M.D. diagnosed him with anxiety and prescribed him lorazepam, which AB used as needed for sleep.<sup>3</sup> AB's anxiety was generally work-related.<sup>4</sup> He declined the preventative therapy that Wendel

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<sup>3</sup> There is a document in the arbitration record indicating that on January 12, 2016, AB told Julia James (James), LMHP that "about three years ago his stress and anxiety had gotten so bad that his PCP put him on lorazepam which he takes 3 times a day as needed." During the hearing, AB testified generally that he had been using lorazepam since 2013, and that he had been using it "two a day sometimes" since then. However, I do not find that AB had stress and anxiety to the point where he was taking lorazepam 2-3 times a day until December 29, 2015. Although it is not clear when in 2013 Wendel first prescribed AB lorazepam, she noted on June 18, 2013 that AB was taking it for sleep, but not using it daily, and that his anxiety was better. On September 2, 2013, Wendel noted that AB had complained of increased "anxiety and stress at work - has a new boss [and is] very stressed." She prescribed him lorazepam for the evening, and noted that AB did not want preventative therapy. A few months later, on December 18, 2013, AB reported to Wendel in relevant part that he felt well and had no new complaints. There are no medical records regarding AB's anxiety in 2014. On June 30, 2015, Wendel noted only that AB "uses lorazepam . . . quiets mind." In contrast, Wendel's December 29, 2015, notes state, in relevant part "I did give him a prescription for trazodone 50 mg at bedtime only and lorazepam during the day." Therefore, I find that Wendel first prescribed lorazepam to AB to use during the day in December of 2015, and that he then began using it 2-3 times a day then because his anxiety had escalated significantly.

<sup>4</sup> There are no contemporaneous notes from Wendel between June of 2013 and June of 2015 attributing AB's anxiety specifically to his experience of traumatic events. On September 2, 2013, Wendel noted only that AB had complained of increased "anxiety and stress at work - has a new boss [and is] very stressed." AB testified during the arbitration hearing that before December of 2015, Wendel prescribed him lorazepam in 2013 to take as needed because of his "work concern[s]."

offered in 2013 and did not seek counseling. AB also had some nightmares before December of 2015, but he “toughed it out, lived it up,” and did not seek any treatment.<sup>5</sup>

AB testified during the arbitration hearing that he had no mental health impediment to performing his duties as a police officer right up until December 20, 2015. He explained that while he may have had some anxiety, it did not keep him from doing his job. His testimony in this regard is consistent with other documentary evidence in the arbitration record. In his application for disability retirement dated February 7, 2017, AB indicated that on December 21, 2015, he ceased being able to perform all of the essential duties of his position. Likewise, in a February 3, 2017 document attached to that application, Dr. Robin Caron (Caron) indicated that AB “had last been able to perform his essential job duties on December 20, 2015,” and noted that “[p]rior to December 21, 2015 [AB] had no reported history of mental health concerns and was a fully functioning member of society.”

On December 20, 2015, Officer AB and another officer temporarily removed a handgun from the Police Department armory to research the item, without the knowledge of the firearms instructors/armors, or the shift supervisor. On December 21, 2015, after learning that Chief and others were searching for the missing weapon, AB notified Sergeant Stephen McFaul (McFaul) that he had told the other officer to secure it in his locker overnight, and that they would return it to the armory during their shift the following day. As soon as the other officer reported for his shift that afternoon, they turned the handgun over to McFaul. On December 22, 2015, Chief Desorcy placed AB and the

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<sup>5</sup> On direct examination, AB testified only vaguely that he “probably” had nightmares after traumatic incidents before December of 2015, but on cross-examination he stated that he had “some nightmares before December of 2015.”

officer involved on paid administrative leave pending both an internal investigation and a criminal investigation by the Massachusetts State Police Detective Unit (MSPDU) into AB's and the other officer's unauthorized removal of a firearm from the Police Department armory.

As soon as Chief Desorcy placed AB on paid administrative leave and subjected him to criminal and internal investigations AB started having flashbacks.<sup>6</sup> He also started having more nightmares than he used to have. During the arbitration hearing, AB testified that the aftermath of his removal of the firearm on December 20, 2015 "triggered some bad thoughts." On December 29, 2015, AB went to see Wendel, who diagnosed him with extreme anxiety and, at AB's request, provided him with therapist recommendations. That day, in a medical report section on the history of AB's present illness, Wendel noted, in relevant part:

[AB] comes in today stating that he has been experiencing extreme anxiety since being placed on administrative leave from his position as police officer in the town of Millbury. Without going into further details, he just told me he is extremely upset and he feels like he is being pressured to leave his job. He states he has one other episode in the past where he was placed on administrative leave, but it was not as serious as this and this seems to be bothering him a great deal. He denies any suicidal plans but states that sometimes he just feels like it would be easier to not wake up in the morning. He is extremely anxious. He is not sleeping well. . . . His other medical problems remain stable. He is very tearful at times. He states that he would just love to leave his job, but he cannot afford to leave it at this time.

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<sup>6</sup> On May 20, 2016, AB told Wendel that his flashbacks started when "all this started." AB explained during cross-examination at the arbitration hearing, that the flashbacks started when he was placed on administrative leave and subject to investigation. Additionally, in its opening statement at the arbitration hearing, the Union stated that AB's "symptoms started as soon as he heard the allegations" against him.

In the assessment and plan section of the December 29, 2015 medical report, Wendel also wrote, in relevant part:

We had a very lengthy discussion in regards to his emotional stability. He states he has no intention of killing himself. . . . [AB] was extremely angry at the chief at this time, but understands that hopefully this will pass. He requested a recommendation for a therapist and I gave him several names. . . . I did give him a prescription for trazodone 50 mg at bedtime only and lorazepam during the day. He does have a followup [sic] appointment to see me in two weeks, but I instructed him to call me any time should he feel suicidal or in a moment of desperation to call here first.

On January 12, 2016, AB saw Julia James (James), LMHP at Cornerstone Behavioral Health. James diagnosed AB with generalized anxiety disorder and PTSD and noted, in relevant part:

Presenting Complaint: 53-year old married male presenting with generalized anxiety disorder and PTSD. Client has been working as a police officer for the past 20 years, and has seen and experienced a lot of traumatic and tragic events. Most recently, on December 20, [2015] client made a mistake at work and his Chief and the Town are filing criminal charges against him and he is on admin leave indefinitely. Client admits he made a mistake, but doesn't understand why they're treating him so harshly. Client states he was responsible for the gun locker at work, and he took a gun out to give it to an officer, but it wasn't returned in a timely manner. Other officers were looking for the gun for another case, and when it wasn't where it was supposed to be, he got into trouble. Client is working with union and lawyers, but is very frustrated and angry that he's been "hung out to dry." Client also states, that he should have started coming to therapy long time ago to process some of the things he sees and deals with at work.

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Past Psychiatric History: None

Past Counseling Experiences: None

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Diagnoses: F41.1 generalized anxiety disorder and F43.10 PTSD, with high blood pressure and recent stressor at work contributing to client's symptoms.

Clinical Formulation/Summary: 53-year old married, Caucasian male presenting with generalized anxiety disorder as evidenced by client's report of feeling nervous, unable to control worry, and feeling afraid something bad is about to happen almost every day. Client also presents with PTSD from his job as evidenced by experiencing many traumatic events causing nightmares, intrusive memories, hypervigilance, [and] persistent negative thoughts that interfere with client's ability to do his job.

Initial plan: Individual weekly therapy using CBT and mindfulness skills to help client learn better coping skills to manage anxiety, and help client process trauma so he is able to be more positive and effective on the job.

A few months later, on May 20, 2016, Wendel also diagnosed AB with anxiety and depression, and PTSD.

Ultimately, AB and the other officer did not face any criminal charges, but they did face termination. By letter dated February 26, 2016, Sr. First Assistant District Attorney Jeffrey T. Travers (Travers) notified Chief Desorcy that the District Attorney's Office would not seek criminal charges relative to the MSPDU Firearms Investigation. Nevertheless, after the conclusion of the criminal investigation, Chief Desorcy directed Lieutenant Regina Rush-Kittle (Rush-Kittle) to commence the Police Department's internal investigation. Shortly thereafter, on April 4, 2016, Lieutenant Rush-Kittle submitted a report to Chief Desorcy regarding the internal investigation. By letter dated May 2, 2016, Chief Desorcy notified AB that he would hold a hearing on May 13, 2016 to consider whether or not to terminate AB's employment for conduct unbecoming a police officer in violation of Millbury Police Department Rule 4.02.

On March 8, 2016, after the criminal investigation concluded and the internal

investigation began, the Worcester Telegram & Gazette published an article naming Officer AB and indicating that he was on paid administrative leave due to a criminal investigation. AB subsequently had an encounter with an individual whom he had arrested multiple times in the past. That individual asked AB what it was like “to be on the other side.” The encounter made Officer AB fear that this person was going to come after him.

In lieu of proceeding with AB’s June 2016 termination hearing, the parties signed a Settlement Agreement on June 10, 2016. The Settlement Agreement provided that AB would receive a six month suspension without pay, but that he would only serve four of the six months retroactively from June 1, 2016 to October 1, 2016. The remaining two months of suspension without pay would be held in abeyance until October 1, 2017. AB would not have to serve the remaining two months of the suspension as long as he did not violate any Police Department Rule during the abeyance period. The Settlement Agreement also contained a waiver clause that stated, in its entirety:

Waiver. In consideration of the terms herein, the Union and Officer [AB] agree to waive any and all rights they may have to file or assert any claim, complaint, or other action in any forum of any kind, including a grievance and demand for arbitration under the Collective Bargaining Agreement, an unfair labor practice charge pursuant to M.G.L. c. 150E, or a civil service complaint, against the Town and/or the town manager, board of selectmen, chief of police, officers, employees, attorneys and/or agents, both individually and in their official capacities, related to, arising out of, and/or incident to Officer [AB’s] conduct on December 20, 2015, discipline related to Officer [AB’s] conduct on December 20, 2015, and/or the Town’s Notice of Proposed Termination directed to Officer [AB]. The Union and Officer [AB] expressly waive any and all rights to any hearing pursuant to Cleveland Bd. Of Educ. v. Loudermill, 470 U.S. 532 (1985), G.L. c. 31, §41, or any other similar federal or state authority, statute, or regulation.

After AB’s suspension ended on October 1, 2016, he did not return to work. Rather, on October 4, 2016, he went to the Police Station and gave Sergeant Brian Lewos

(Lewos) an envelope for Chief Desorcy containing letters from Wendel and James.

James' letter, dated September 21, 2016, stated in relevant part:<sup>7</sup>

I've been working with [AB] in psychotherapy since January 12, 2016.

[AB] is suffering from post-traumatic stress caused by his job as a police officer. He struggles with flashbacks, intense nightmares, anxiety and panic attacks. Due to the severity of his symptoms, I do not believe he is capable of returning to work at this time. I will continue to evaluate him and update you regarding his prognosis.

Wendel's letter, dated September 30, 2016, stated in relevant part:<sup>8</sup>

I am writing on behalf of [AB], who is a patient of mine. I have been treating [AB] for many years. In the last two to three years, [AB] has been suffering from bouts of anxiety, panic and depression.<sup>9</sup> He has also been receiving care from a licensed mental health clinician for almost a year who finds that [AB] is suffering from post-traumatic stress caused by his job as a police officer. Due to the increasing severity of his symptoms, I do not believe he is capable of performing his duties as a police officer at this time. He will continue to be evaluated and treated by his therapist and myself for ongoing care.

On October 6, 2016, Desorcy acknowledged receipt of the letters from AB's medical providers, placed AB on administrative leave pending a status determination, and requested that AB provide him with the appropriate paperwork pursuant to Article XV, Occupational Injury Leave. AB subsequently executed medical records releases, and had his medical records from James and Wendel sent to Desorcy. However, AB did not submit any other information pursuant to Article XV, such as an injury report or accident report.

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<sup>7</sup> James' September 21, 2016 letter is addressed to Panettiere.

<sup>8</sup> Wendel's September 30, 2016 letter is unaddressed.

<sup>9</sup> There are no medical reports in the arbitration record of Wendel diagnosing AB with depression before May of 2016.

By letter dated November 3, 2016, Desorcy denied AB's request for IOD leave, terminated his paid administrative leave, and placed AB on sick leave retroactively to October 4, 2016. The Union subsequently filed a grievance with Desorcy at Step 1 on November 16, 2016. After Desorcy denied the Step 1 grievance on November 23, 2016, the Union filed at Step 2 with Plante on November 29, 2016. Plant denied the Step 2 grievance on December 23, 2016, and the Union subsequently filed for arbitration.

In December of 2016, AB began seeing a new clinician, Meghan McIntire (McIntire), LMHC, because James was no longer at Cornerstone Behavioral Health. On April 26, 2017, AB reported to McIntire being "ang[ry] that he has to deal with [PTSD], believing that if he was never disciplined so harshly at work he never would have experienced these symptoms." On April 30, 2017 AB retired from his position as a police officer.

### POSITIONS OF THE PARTIES<sup>10</sup>

#### The Union

The Union argues that it did not waive the right to grieve the denial of Officer AB's 111F grievance. In order to trigger the waiver provision of the June 20, 2016 Settlement Agreement, the 111F claim would have to either arise from: (1) the action of removing the firearm from the armory; (2) the discipline; or (3) the termination notice. It does not arise from any of those events.

First, the 111F claim is not related to the removal of the firearm from the armory. There is no claim that this event was stressful or that it in any way gave rise to AB's

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<sup>10</sup> The parties raised numerous arguments regarding the merits of this case. However, in light of my decision, I have included only the parties' arguments related to arbitrability.

symptoms. Second (and third), the 111F claim is not related to either the discipline or the termination notice. Rather, the claim arises out of the injuries that Officer AB sustained while performing his duties as a police officer prior to December 20, 2015, which were triggered by the fear that the December 20, 2015 criminal allegations caused. The medical records demonstrate that AB's symptoms arose in 2011-2013, but became disabling in December 2015. The termination notice was not issued until May 2, 2016, and the Settlement Agreement was executed on June 10, 2016. Thus, he was already suffering from disabling PTSD well before the discipline was both threatened and imposed. His claim for benefits, therefore, could not be related to the discipline for the purposes of the Settlement Agreement waiver.

Moreover, the grievance does not seek 111F damages for the period of AB's suspension; rather, it seeks 111F retroactive to October 4, 2016, the date he would have returned to work if he had not been suspended. The 111F claim cannot have arisen from the discipline if it does not seek any compensation during the period the discipline was imposed. Additionally, any relationship between the symptoms and the discipline would be temporal only, because it was not the discipline that caused his symptoms, but the critical incidents and the criminal allegations. If the disability did not arise from a bona fide personnel action, then neither did the grievance.

### The Town

The Town argues that in the Settlement Agreement, the Union and AB expressly agreed to relinquish any rights to file the grievance at issue. Both AB and all of his care providers causally relate the onset of his PTSD symptoms to being placed on paid administrative leave and subjected to investigation. In turn, the administrative leave and

investigation of AB is “related to, aris[es] out of, and/or incident to” his conduct on December 20, 2015 and/or the discipline arising out of that conduct. Pursuant to Bagley v. Monticello Ins. Co., 430 Mass. 454, 457 (1999) and other cases, this grievance is waived under the terms of the Settlement Agreement.

Being placed on paid administrative leave and subjected to investigation triggered AB’s PTSD. James’ initial PTSD diagnosis noted AB’s exposure to numerous stressful events over his career as well as his December 20, 2015 mistake at work for which AB was on administrative leave and facing criminal charges. Similarly, Wendel referred AB to James following an office visit of December 29, 2015, to address AB’s “extreme anxiety since being placed on administrative leave.” Wendel also documented on May 20, 2016 that “since all this started, he has had a lot of flashbacks in terms of traumatic events that have occurred with his employment as a police officer.” AB explained in his testimony that “when all this started” meant when he was placed on paid administration leave and subjected to investigation.

The paid administrative leave and subsequent investigation were probable and foreseeable consequences of AB’s December 20, 2015 conduct. Thus, the onset of his PTSD symptoms and his subsequent diagnosis were proximately caused by his conduct on that date. But for AB’s December 20, 2015 conduct, he would not have been placed on paid administrative leave pending an investigation. The Settlement Agreement waiver is broad enough to release this grievance based on Bagley v. Monticello Ins. Co., 430 Mass. 454 (1999). Although AB was diagnosed with PTSD nearly six months before executing the Settlement Agreement, and he told his care providers that he did not believe he could return to work, he and the Union agreed to a broad waiver of all rights and claims

in the Settlement Agreement, without requesting an exception for a potential IOD claim. In such circumstances, in light of the broad scope of the release, the claim is extinguished and this grievance is barred. Naukeag Inn, Inc. v. Rideout, 351 Mass. 353, 356 (1966).

### OPINION

The threshold issue in this case is whether the Union's grievance is arbitrable. In the June 10, 2016 Settlement Agreement, the Town, AB and the Union agreed that AB would serve a 4 month suspension until October 1, 2016. The Settlement Agreement also, stated, in relevant part:

Waiver. In consideration of the terms herein, the Union and Officer [AB] agree to waive any and all rights they may have to file or assert any claim . . . including a grievance and demand for arbitration under the Collective Bargaining Agreement . . . against the Town . . . related to, arising out of, and/or incident to Officer [AB's] conduct on December 20, 2015, discipline related to Officer [AB's] conduct on December 20, 2015, and/or the Town's Notice of Proposed Termination directed to Officer [AB].

For the following reasons, I find that the grievance at issue in this case is related to, and incident to AB's December 20, 2015 conduct, and that the Union and AB waived their rights to arbitration in the June 10, 2016 Settlement Agreement.

AB had no mental health impediments to the performance of his duties as a police officer before December 20, 2015. He testified that while he may have had some anxiety before that point in time, it did not keep him from doing his job. Likewise, Dr. Caron's February 3, 2017 report states that, "[p]rior to December 21, 2015 [AB] had no reported history of mental health concerns and was a fully functioning member of society."

The onset of AB's PTSD symptoms are inextricably intertwined with his December 20, 2015 conduct. As a direct result of AB's December 20, 2015 conduct, Chief Desorsy placed AB on administrative leave and launched criminal and internal investigations

against him on December 22, 2015. AB's PTSD symptoms arose as soon as he heard the allegations. He started having flashbacks, bad thoughts, more frequent nightmares, and ceased being able to perform all essential duties of his position after December 21, 2015. On December 29, 2015, AB reported to Dr. Wendel that he was "experiencing extreme anxiety since being placed on administrative leave," and sought therapist recommendations. On January 12, 2016, LMHC James diagnosed AB with generalized anxiety disorder and PTSD, and on May 20, 2016 Dr. Wendel diagnosed AB with anxiety and depression, and PTSD. In October of 2016, AB requested IOD leave because the PTSD symptoms that he first experienced in December of 2015 had persisted through the end of his 2016 suspension period. After Desorcy denied AB's IOD leave request, the Union filed the grievance at issue. Therefore, because AB's PTSD was triggered by events which necessarily resulted from his December 20, 2015 conduct, and because AB first developed PTSD while on administrative leave for his December 20, 2015 conduct, I find that the grievance is related to AB's December 20, 2015 conduct.

I dismiss the Union's arguments that AB's 111F claim is unrelated to his December 20, 2015 conduct, discipline, or termination notice. The Union's argument that AB's removal of a firearm from the armory was not stressful and did not give rise to his symptoms ignores the overwhelming evidence to the contrary. AB suffered extreme anxiety and sought counseling for PTSD symptoms immediately after being placed on administrative leave for criminal and internal investigations of his unauthorized removal of the firearm from the armory, events that necessarily resulted from AB's removal of the firearm from the armory.

The Union also argues that AB's 111F claim cannot be related to the discipline because his symptoms were disabling in December of 2015, well before the Town issued the May 2, 2016 termination notice, and the parties executed the June 10, 2016 Settlement Agreement. However, AB sought IOD leave because of his PTSD symptoms – symptoms that he told McIntire on April 26, 2017 that he never would have experienced if he had not been disciplined so harshly. Thus, AB has acknowledged that his grievance is directly related to his discipline.

Even if the May 2, 2016 termination notice and the June 1, 2016 suspension did not cause AB's PTSD, the bottom line is that his PTSD symptoms surfaced as soon as he heard the allegations against him for his December 20, 2015 conduct. Thus, the disability for which he seeks IOD benefits is both related to, and incident to the allegations and investigations which resulted from his December 20, 2015 conduct. Therefore, his grievance for IOD leave for his PTSD symptoms is related to his December 20, 2015 conduct. The Union's point that AB's grievance does not seek damages for his period of suspension, does not overcome the fact that AB first experienced PTSD symptoms in connection with his December 20, 2015 conduct.

Having determined that the grievance is not arbitrable because the Union and AB expressly waived their right to bring it, I need not reach the outstanding questions of whether the Town violated the Agreement.

AWARD

The grievance is not arbitrable.

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Kathleen Goodberlet, Esq.  
Arbitrator  
December 1, 2017