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19 WCR 169, #2003-01153, Mental Stress - Section 5.1

WCAT Decision Number: WCAT-2003-01153-RB
WCAT Decision Date: **June 25, 2003**
Panel: Nora Jackson, Vice Chair

Introduction

In a decision letter dated October 21, 2002, a Workers' Compensation Board (Board) case manager advised the worker that her claim for compensation for stress had been denied. The worker appeals that decision (Appeal A).

Issue(s)

Was the mental stress suffered by the worker compensable under the *Workers Compensation Act* (the Act)?

Jurisdiction

This appeal was filed with the Review Board. Pursuant to Bill 63, the *Workers Compensation Amendment Act (No. 2), 2002*, the former Review Board and Appeal Division have been replaced by the Workers' Compensation Appeal Tribunal (WCAT) effective March 3, 2003. Section 38 of the legislation provides that all Review Board appeals are to be transferred to WCAT to be completed as WCAT appeals, unless a panel of the Review Board had completed an oral hearing, or unless written submissions were completed and a panel of the Review Board had commenced deliberations, before March 3, 2003.

As this appeal was not considered by a Review Board panel by March 3, 2003, it was transferred to WCAT and has been considered as a WCAT appeal except that no statutory time frame applies to the making of this decision. One effect of this change is that WCAT must apply policies set by the board of directors and the former governors of the Board.

Background and evidence

I have reviewed the evidence in the claim file, the evidence presented at the oral hearing held in Prince George, British Columbia on May 27, 2003, the Act and applicable Board policy as set out in the *Rehabilitation Services and Claims Manual Volume II* (RSCM).

Interested parties have full disclosure of the claim file available to them, and the medical and claim history will not be repeated in detail here except as relevant to the current appeal.

The worker's twin sister was employed by the employer as a labourer in the lay-up line. In 2002, the worker was 32 years old; she had started working for the employer in August 1991. On September 23, 2002, the worker's sister was killed in an accident when she was working at the mill. The worker was not working at the time of the fatality, did not witness it, was not being paid at the time of its occurrence, and did not witness the effects of the fatality on the workplace. She was at home when she received a call from her partner, after which she called the employer, who told her to go to the local hospital, where she would be told what had happened to her sister. The worker got a babysitter for her son and went to the hospital, where she found her sister dead and, as described by the worker, "with her skull crushed in".

The worker had been scheduled to work on the following "alternate" shift with the same employer. She was due to start work on 8:00 A.M. on September 24, 2002, but did not go to work on that date, nor had she gone back to work since. She submitted an application for compensation to the Board on October 15, 2002, citing the severe stress she was experiencing with regard to the traumatic fatality of her twin sister.

In a decision letter dated October 21, 2002, a Board case manager denied the worker's claim. The case manager cited the amendment to the Act, effective June 30, 2002, which provided that compensation was payable for mental stress only if that stress was an **acute** reaction to a sudden and unexpected traumatic event arising out of and in the course of the worker's employment. In this case, the worker was not working when her sister died, was not being paid by the employer, was not on the employer's premises, and did not witness the affects of the fatality on the workplace. It was the opinion of the case manager that the worker's stress, which she acknowledged and with which she sympathized, did not arise out of and in the course of the worker's employment.

In support of her appeal of the October 21, 2002 decision, the worker has submitted a note dated February 5, 2003 from Dr. Bruce Wilson, her attending physician. Dr. Wilson noted that the worker had lost her sister in the mill accident. The worker worked at the same mill, and her workstation over-looked the station where her sister was killed. The worker had been seen several times for anxiety and grief counselling, and was off work from grief and anxiety until January 6, 2003, when she returned to work.

Oral hearing

The worker told the panel that both she and her sister started working at the mill in 1986. The worker was 16 years old when she started working at the mill; this was the only job the worker has ever had. Another sister also worked there for a time, as had her father. Her two brothers-in-law worked at the mill, as did her common-law husband. On September 23, 2002, the worker's sister died at the mill, at a press located 30 to 40 feet from the station where the worker herself works.

The worker was not at the mill at the time of her sister's death, but, rather, received a telephone call at home. She advised that the mill closed down for a week after the death; the other employees received full wages for that week; it was the worker's evidence that she received only 60 percent of her usual wages through the employer's weekly indemnity program. She noted that other family members had filed claims for compensation for stress to the Board, and two of their claims had been accepted. However, it was clarified that these family members were present at the mill at the time of the death. The worker's husband had also requested compensation; his claim had also been denied.

It was the worker's evidence that the company offered psychological counselling to assist her in her grief. The worker attended two sessions, but was told that she was grieving in the right way. She was supported in her grief by her family and colleagues. When asked why she returned to work after January 3, 2003, the worker advised that her attending physician had advised that she could try to return to work. She did so, and has been working at her pre-injury employment ever since. Her colleagues have been supportive, and she has not lost any further time from work since returning in January.

Received and accepted at the oral hearing was a written submission from the worker's representative, which is now part of the claim file, and will not be repeated in detail here. It was his argument that as the worker's sister died at her place of work, at a spot some 30 to 40 feet from the worker's own workstation, that death would be always present. He argued that the mere fact that the worker was not at work at the time of the tragic accident did not lessen the effect of the death occurring there. The worker had suffered an acute reaction to an unexpected traumatic event; therefore, the resulting mental stress should be compensable. The worker's representative asked that the panel accept the worker's claim for mental stress, and direct the Board to pay wage loss and health care benefits from September 24, 2002 to January 6, 2003, when the worker returned to work.

Although the employer's representative was invited to make a submission, she declined to do so, and took no position on the worker's appeal. She reiterated that there was no doubt that the worker had suffered acute stress at the death of her sister, and that the only question to be decided by the panel is whether that stress is compensable under the Act.

Post hearing submissions and investigations

Subsequent to the oral hearing on this matter, the panel received and accepted a further submission from the employer. Dated June 6, 2003, that submission clarified information provided at the oral hearing which had previously been provided to the worker. As the submission was brief, it will be repeated here in full:

> During this hearing it was reported that following the fatality at our mill the mill shut down for one week and employees where [sic] compensated 100% for that period of time. It was stated that [the worker] was not paid for this week but instead received W.I. benefits at 60% of her wages. This raised concern for me and I've gone back and checked the records as it would not be fair to [the worker] if this was the case. The records do indicate that [the worker] was paid her regular wages for the week the mill was shut down and then started her W.I. benefits. I have also confirmed this with [the worker].

Findings and reasons

The Act was amended, effective June 30, 2002. On and after that date, a worker is entitled to compensation for mental stress under section 5.1(a) of the Act only if the mental stress "is an acute reaction to a sudden and traumatic event arising out of and in the course of the worker's employment", is diagnosed by a physician as one of the mental or physical conditions listed in the American Psychiatric Association's guide at the time the condition is diagnosed, and is not the result of a decision by the employer with regard to the worker's terms of employment.

The Board's policy with regard to mental stress is set out in item #13.30 of the Volume II of the RSCM. It explains that in order for mental stress to be compensable under section 5.1(a) of the Act, a three-part test must be met. First, the worker must have an acute reaction to a sudden and unexpected traumatic event. The second part of the test is that the acute reaction to the traumatic event must arise out of and in the course of the worker's employment. Finally, in order for mental stress to be compensable under the Act, the worker's mental stress must be diagnosed by a physician as a mental or physical condition that is described in the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders* current at the time of the diagnosis.

In this case, it seems clear that the first prong of test has been met. The worker had no prior history of mental stress or illness. Her condition was not chronic. Rather, it arose in response to a sudden and unexpected and naturally traumatic event. That event, the death of the worker's twin sister, was clear and identifiable, the result of a horrific

accident. Neither the Board nor the employer doubted that the worker had suffered mental stress, nor does this panel.

The second question which must be answered in the affirmative in order for stress to be compensable is whether it arose out of and in the course of the worker's employment. The panel finds that, in this case, it did not. Policy sets out, and common sense demands, that in considering the matter of work-relatedness, we must determine if there is a connection between the employment and the resulting acute reaction.

Here, the worker did not directly witness the accident which caused her sister's death. She was not on the employer's premises when it occurred. Her injury was caused neither by the employer, nor while she was acting for her employer, nor by her co-workers. Her injury, the mental stress which there is no question she suffered, was caused by the death of her sister, and would have been present had the sister died in a car accident or even, at such a young age, by natural causes. The worker's mental stress did not arise out of and in the course of her employment.

With regard to the third part of the test, the worker was not diagnosed with a mental or physical condition that is described in the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders* current at the time of the diagnosis. The only medical report on file is a note, dated February 5, 2003, from the worker's attending physician, indicating that the worker had suffered grief and anxiety and was, for that reason, off work; however, neither grief nor anxiety meet the diagnostic criteria required for compensation under the Act.

Conclusion

I deny the worker's appeal. The Board's October 21, 2002 decision is confirmed. No expenses are awarded by the panel.

Nora Jackson
Vice Chair

NJ/jkw

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