

As of October 6, 2014, this decision is no longer considered by WCAT to be noteworthy.

WCAT Decision Number : WCAT-2005-04743
WCAT Decision Date: September 09, 2005
Panel: Marguerite Mousseau, Vice Chair

Introduction

The employer appeals *Review Division Decision #15734*, dated December 8, 2004, in which a review officer found that the worker met the criteria for compensation for mental stress under section 5.1 of the *Workers Compensation Act* (Act).

The Workers' Compensation Appeal Tribunal (WCAT) has jurisdiction to consider this appeal under section 239(1) of the Act as an appeal from a final decision made by a review officer of the Workers' Compensation Board (Board) under section 96.2 of the Act.

The employer is represented by a management consultant who has provided a submission on its behalf. The worker is participating in the employer's appeal and her union representative has provided a submission on her behalf.

Issue(s)

The issue on this appeal is whether the events on July 26, 2003 and the worker's reaction to those events satisfy the criteria for compensation under section 5.1 of the Act.

Background

The worker has been employed as a paramedic with the employer since December 29, 1999. On July 26, 2003 she responded to a call and the events that transpired on that call form the basis of this appeal. The following description of the call is taken from an excerpt of an occurrence report written by the worker, which was included in the employer's letter protesting acceptance of the claim.

On responding to the call, the worker and her partner found that there were four police cars and five officers surrounding a house and property. One officer had a rifle ready. The worker parked the ambulance out of sight of the residence. She and her partner were told that a man was threatening to kill himself and had locked himself up in the house. There were relatives of the person at the scene, including his wife, who told the worker that there were firearms in the house and several gases and chemicals that could be used in a fire. The worker waited approximately five hours, during which time the police were told that the individual had doused himself and the house in gasoline.

The paramedics were not told about this. The worker and her partner were in the ambulance when they heard a loud popping noise, like gunfire, coming from the residence. The officers drew their weapons and moved towards the residence, out of sight of the paramedics. Within seconds an officer came back yelling at the paramedics to approach. The worker asked if it was safe and she was told that it was.

The worker approached on foot and her partner drove the ambulance. She found the patient prone on the ground, screaming in pain and surrounded by officers. There was thick smoke and the smell of burning chemicals coming from the house. The worker states, in the occurrence report, that they were approximately 45 feet from the house and she did not feel safe. The patient had first to third degree burns from his elbows to his fingers and first degree burns all over his head.

Once they had transferred the patient to the ambulance the worker was able to remove his clothing and administer first aid on the way to the hospital. She found the lid of an aerosol can of some sort on his pants and she thought the patient had set a can on fire and it had exploded. She noted that the patient's skin was hanging off his arms and he had full thickness burns. His face was gray/white but there was no evidence of second or third degree burns. The rest of his body had been doused with gasoline but there was no evidence of other burns. The worker included additional information about the patient's personal life and circumstances that she had obtained from his wife.

The worker, in her application for compensation, said that she felt "off" after that call but she did not miss work nor did she see a physician until several months later. Then, on October 22, 2003, the worker responded to a motor vehicle accident. An excerpt from the occurrence report regarding that call was also included in the employer's letter of protest.

The excerpt begins with the worker's statement, "*I had a bad call back in the summer which I have not been able to resolve. My call on the 22nd added to the ongoing problem.*" [Reproduced as written.] The worker describes a call in which a vehicle had gone into a ditch and was approximately 30 feet below the level of the highway. The patient was large and difficult to move and the situation was complicated by blood and vomit. The worker states that she was able to get the patient on the spineboard and to the hospital. She said that she was not feeling good about the call when she got to the hospital and a doctor who was "very excitable" made matters worse. She said that she tried to clean the vehicle but couldn't concentrate. She couldn't remember how to clean the equipment or what she should do. She told her partner that she could not finish the shift; she called the unit chief and then left. She stated that she recognized that she had been having problems on call, "stemming from a bad call I had in the summer."

On October 25, 2003 the worker saw her physician who submitted a report to the Board. He provided an injury date of October 22, 2003 but indicated that the cause of the injury was a very stressful episode at work involving guns, explosives and a suicidal

patient followed by a difficult motor vehicle extraction. He described the treatment as Lorazepam (an anti-anxiety medication) and counseling with the worker's employee assistance program and her physician. He questioned whether the worker should see a psychiatrist and provided a diagnosis of post traumatic stress disorder (PTSD).

The worker saw a social worker on October 29, 2003 who submitted a report of that meeting at the request of the case manager. The social worker states that the worker is presenting with the negative symptoms of "critical incident stress." He states "perhaps the most troubling lingering symptom is what she describes as a loss of confidence in her ability to do her job, significant self doubt and feelings of anxiety, second guessing and doubting herself, and a real impact on her ability to do her work as confidently and 'automatically' as she previously did". He describes the July incident stating that the worker had not been informed by the police about the gasoline and that the patient might ignite himself in the house "and she was extremely worried that in her very vulnerable position she might die." The worker was able to describe the whole scenario very vividly – he said, "she particularly remembers the smell of burning flesh as well as the smell of gasoline and other chemicals." The worker's co-workers were understanding but she felt disappointed in her immediate supervisor because there had been no debriefing.

The social worker states, the worker "felt extremely frightened and fearful for her life, she felt angry that she had not been better prepared for this scenario, that she had not been informed about the gasoline." In addition to progressively increasing anxiety, the worker had experienced some "trigger reactions, particularly triggered by smell, any kind of burning, smoke or even the appearance of burning has triggered an uncomfortable memory of this event." The worker continued to work a regular shift "and things continued to be a problem although some of the symptoms such as the trigger reactions have dissipated."

According to the employer's letter of protest, the worker was off work from October 22, 2003 to November 2, 2003.

Law and Policy

Section 5.1 of the Act provides the basis for compensation for "mental stress". It states:

5.1 (1) Subject to subsection (2), a worker is entitled to compensation for mental stress that does not result from an injury for which the worker is otherwise entitled to compensation, only if the mental stress

(a) is an acute reaction to a sudden and unexpected traumatic event arising out of and in the course of the worker's employment,

(b) is diagnosed by a physician or a psychologist as a mental or physical condition that is described in the most recent American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders at the time of the diagnosis, and

(c) is not caused by a decision of the worker's employer relating to the worker's employment, including a decision to change the work to be performed or the working conditions, to discipline the worker or to terminate the worker's employment.

(2) The Board may require that a physician or psychologist appointed by the Board review a diagnosis made for the purposes of subsection (1) (b) and may consider that review in determining whether a worker is entitled to compensation for mental stress.

The policy at item #13.30 of the *Rehabilitation Services and Claims Manual, Volume II* (RSCM II) provides direction on the interpretation of an event that is considered traumatic for the purposes of section 5.1 of the Act. It provides, in part:

Under subsection 5.1(1)(a), the Act establishes a two-part test:

1. There must be an acute reaction to a sudden and unexpected traumatic event.
2. The acute reaction to the traumatic event must arise out of and in the course of employment.

An "acute" reaction means – "coming to crisis quickly", it is a circumstance of great tension, an extreme degree of stress. It is the opposite of chronic. The reaction is typically immediate and identifiable. The response by the worker is usually one of severe emotional shock, helplessness and/or fear. It may be the result of:

- a direct personal observation of an actual or threatened death or serious injury;
- a threat to one's physical integrity;
- witnessing an event that involves death or injury; or,
- witnessing a personal assault or other violent criminal act.

For the purposes of this policy, a “traumatic” event is a severely emotionally disturbing event. It may include the following:

- a horrific accident;
- an armed robbery;
- a hostage-taking;
- an actual or threatened physical violence;
- an actual or threatened sexual assault; and,
- a death threat.

In most cases, the worker must have suffered or witnessed the traumatic event first hand.

In all cases, the traumatic event must be

- clearly and objectively identifiable; and
- sudden and unexpected in the course of the worker's employment.

This means that the event can be established by the Board through information or knowledge of the event provided by co-workers, supervisory staff, or others, and is generally accepted as being traumatic.

The policy also addresses workers who are frequently exposed to traumatic incidents in the course of their employment. It states:

It is recognized that some workers, due to the nature of their occupation, may be exposed to traumatic events on a relatively frequent basis (e.g., emergency workers). If such a worker has an acute reaction to a sudden and unexpected traumatic event, compensation for mental stress may be provided even if the worker was able to tolerate past traumatic events.

Submissions and Prior Decisions

The employer's representative submitted in the letter protesting the claim that the two incidents described did not satisfy the policy definitions of a traumatic event. With regard to the first incident, the representative noted that the worker had not witnessed any traumatic event since the ambulance was parked some distance from the scene; the worker had simply provided patient treatment as part of her regular duties. There was no evidence of any unexpected traumatic event that would be unusual for a paramedic occupation. Similarly, the employer did not consider the incident of October 22, 2003 was unusual, traumatic or unexpected for a paramedic.

The case manager found that the incident of July 26, 2003 was "traumatic" for the purposes of the Act and the policies but he found that the worker had not experienced an acute reaction to the incident. Accordingly, her claim for compensation was denied.

In her submission to the Review Division, the employer's representative referred to the earlier letter of protest and she also agreed that the worker had not experienced an acute reaction to the July incident. She stated that the employer's records revealed that the worker had worked an equivalent of 433 hours in the 3 months between the July and October calls and that no injury had been reported to the employer during that period nor had the worker sought medical care.

The representative restated that the employer "strongly disagrees" with any characterization of a call in which a paramedic provides treatment and transport of a patient in a safe environment as a "traumatic event."

In his submission to the Review Division, the worker's representative described the incident, stating that "the worker feared for her life due to the fire, unknown chemical odors from the fire, and the general unpredictability of the scene; police did not tell her of the gas threat as he earlier indicated he would torch himself." He states, "The worker heard the explosion of gasoline, and then was summoned to the patient inside his house, which was also on fire." He states, "This is not an everyday experience for a paramedic."

The worker's representative goes on to say that the worker has always stated that each day after July 26, 2003 was "harder and harder to get through" and that she was filled with self-doubt and other symptoms of PTSD and that it is well known that symptoms can present and worsen at different times and become progressively worse.

In the course of considering the worker's request for review of the Board decision, the review officer obtained an opinion from a Board psychology consultant, Dr. G. The review officer asked whether the worker's symptoms immediately after the July 2003 incident met the criteria for a *Diagnostic and Statistical Manual of Mental Disorders, Volume IV* (DSM-IV) diagnosis. She also asked whether the disabling symptoms that

developed immediately after the October 2003 incident were causally related to the July 2003 incident.

Dr. G replied that the description of the worker's condition immediately after the July incident did not appear to meet the full diagnostic criteria for PTSD – although the worker's reaction had met the diagnostic criteria of “sudden and acute” from a medical perspective.

Dr. G stated that, after the initial reaction, the worker's symptoms continued to develop between July and October and the October incident was an additional traumatic event which likely exacerbated the worker's developing PTSD. But, he went on to qualify this statement by saying that it was “theoretical and speculative.” He said that “specific justifiable conclusions” could only be made if there was a full psychological assessment. He subsequently confirmed, in an email exchange with the review officer, that he could not confirm a diagnosis in the absence of a psychological assessment.

The review officer's memo and questions and Dr. G's responses were disclosed to both representatives. The employer's representative again submitted that the incident on July 26, 2003 could not be viewed as traumatic when considered in light of the usual activities of paramedics. In support of this position she attached copies of pages 184 to 186 of the March 11, 2002 *Core Services Review of the Workers Compensation Board* (Core Review). With respect to Dr. G's opinion, the representative stated that it was inconclusive.

The worker's representative's submission in response to Dr. G's opinion includes statements to the effect that the employer did not carry out an appropriate follow-up and failed to ensure that employee and organizational needs were met. He submits that, in her “statement” the worker indicated “her shock, fear, and anger of not being told of the gasoline.” He submits that this was a traumatic event in that there was the threat of and actual violence – also a death threat in that the patient had threatened to commit suicide. He submits the worker's symptoms did not subside because of the significance of her psychological injury. He submits that the employer did not undertake appropriate investigations of the July and October 2003 incidents.

The review officer found that the suicide attempt, although it had occurred after 5 hours of waiting, was sudden and unexpected in that it happened without warning and in a manner that was not anticipated. She also noted that the worker was concerned for her own safety as she was 45 feet from the house, which appeared to be on fire. The review officer concluded that this was not a case of a paramedic simply providing treatment and transporting an injured patient. She noted that the stressors described in the DSM-IV criteria for PTSD include the witnessing of actual or threatened death or serious injury or a threat to the physical integrity of another person and that the policy states only that “in most cases” the worker must have suffered or witnessed the traumatic event first hand.

The review officer also concluded that the worker's reaction was acute. She noted that the term "acute" is used to define a reaction to an unexpected traumatic event as opposed to a number of stressors occurring over time. She accepted the worker's description of symptoms as described in the social worker's report and that some of these occurred very soon after the July incident. Accordingly, the review officer varied the case manager's decision and found that the worker was entitled to compensation for mental stress under section 5.1 of the Act.

The employer has appealed the review officer's decision. In her submission to WCAT dated April 6, 2005, the representative again disputes the review officer's findings that the July 2003 incident was sudden, unexpected and traumatic and that the worker's reaction was acute. She submits that, when the actual suicide attempt occurred, the paramedics "were not at the scene." The representative again set out the employer's position that a response to a call by a paramedic should not be viewed as traumatic in light of the recommendations in the Core Review report.

In a submission in response, the worker's representative submits that the police should have informed the paramedics of the chemicals in the house and that they could be used in a fire. He also submits that the threat of chemicals posed a personal risk to the paramedics due to possibility of an explosion or the possibility of inhaling toxic fumes. He submits that the paramedics were not at a safe distance when attending the patient. He submitted that police standoffs of this nature usually have "a happy conclusion" and in that sense, the outcome was unexpected.

Reasons and Decision

In deciding whether the incident on July 26, 2003 satisfies the criteria for a "sudden and unexpected traumatic event," I have relied primarily on the worker's statement as contained in her occurrence report, which she wrote shortly after the incident. I consider that the events on July 26, 2003 were likely quite unusual for a paramedic in that they involved a police stand-off and the worker was required to wait nearby for the better part of five hours, knowing that she could be dealing with a serious injury or injuries to the patient and possibly police officers at any time. It is likely that this situation would create a sense of heightened tension and anxiety for the worker.

On the whole, I consider that these circumstances would result in a traumatic event. But the occurrence of a traumatic event is not sufficient to satisfy the requirements under section 5.1 of the Act. Section 5.1(1)(a) requires a "*sudden and unexpected* traumatic event" (emphasis added).

The *Concise Oxford Dictionary*, ninth edition, provides the following definition of "sudden":

occurring or done unexpectedly or without warning; abrupt, hurried, hasty

The term “unexpected” is defined as:

not expected; surprising

Expect is defined as:

regard as likely; assume as a future event or occurrence

Although I am satisfied that this call had some unique or unusual elements which set it apart somewhat from the more typical calls, I find no basis for concluding that any part of the incident was “sudden and unexpected.” The worker spent approximately 5 hours waiting for an incident to occur and, given the circumstances, it would be obvious that there was a likelihood of serious injury to either the patient and/or a police officer. There would have been no reason to have paramedics there, were this not the case. As a result, the suicide attempt and potential for serious injury had to be expected. The worker may not have been prepared to deal with burns, but I am not satisfied that dealing with burns instead of gunshot wounds is a basis for characterizing the incident as “unexpected.” In any case, the worker knew that the patient was suicidal and according to the occurrence report she had been told by his wife that there were firearms in the house and chemicals and gases that could be used in a fire. Given all of these circumstances I cannot view the manner in which the patient attempted suicide as “unexpected” and, after a 5 hour wait, I do not view it as either sudden or unexpected.

I accept that the worker did not feel safe treating the worker at a distance of 45 feet from the burning house. But, her subjective response is not a factor that is taken into account for the purpose of deciding whether the incident was “sudden and unexpected.” The policy makes it quite clear that the decision as to whether an incident is a “sudden and unexpected traumatic event” is based on objective criteria.

The worker’s feeling of vulnerability or being unsafe and her emotional state generally is taken into account when considering whether she had an acute reaction and whether she satisfied the criteria for a DSM-IV diagnosis. It is not a factor in determining the nature of the incident. Accordingly, I find that the events of July 26, 2003 did not constitute “a sudden and unexpected traumatic event.”

In making this finding, I note that the policy in item #13.30 of RSCM II specifically provides that emergency personnel may be compensated for an acute reaction to a sudden and unexpected traumatic event even where the worker was able to tolerate past traumatic events. Since this policy specifically distinguishes between traumatic events and “a sudden and unexpected” traumatic event, it does not assist the worker where the alleged precipitating traumatic event was not sudden and unexpected.

Since I find that the worker is not entitled to compensation on the basis that that aspect of section 5.1(1)(a) has not been met, it is not necessary to make findings as to whether her reaction was an “acute reaction” or whether the requirement for a DSM-IV diagnosis have been satisfied.

Conclusion

I find that the incident of July 23, 2003 does not meet the statutory criterion of “a sudden and unexpected traumatic event”. As a result, the worker is not entitled to compensation for mental stress.

I vary the decision of the review officer in *Review Division Decision #15734*, dated December 8, 2004.

Marguerite Mousseau
Vice Chair

MM/gw