

As of February 16, 2015, this decision is no longer considered by WCAT to be noteworthy.

WCAT Decision Number : WCAT-2006-03876
WCAT Decision Date: October 12, 2006
Panel: Sherryl Yeager, Vice Chair

Introduction

The worker was an employed in a public service position in March 2005. She was 32 years old and eight months pregnant. On March 14, 2005 she was interviewing a client for the first time in her office when the client became upset and began yelling at the worker. They both stood up and the client asked the worker if she wanted to fight, then began using her native language and pointing at the worker's stomach.

The client refused to leave and ultimately the police were called and removed her from the office. The worker went home and developed abdominal pains that evening. She saw her physician the following day and he believed she had developed pre-labour cramping and restricted her to bed rest for seven days.

The worker returned to her office on March 21, 2005. The same client came in and again caused a scene, this time with the worker's supervisor. The worker went to see her doctor the following day during work hours. When she returned to the office she learned that another client had broken two office windows. The worker advised her supervisor she was scared of premature labour and booked off work. She went on maternity leave effective April 1, 2005.

A Board case manager considered the worker's claim on May 19, 2005 and determined the worker had not sustained any physical injury, nor did the events meet the criteria in section 5.1 of the *Workers Compensation Act (Act)* for mental stress. The worker was advised of this decision by letter dated June 1, 2005.

The worker requested a review of this decision.

A review officer confirmed the Board's decisions in *Review Decision #R0055191* dated January 19, 2006. The worker has appealed this decision.

Issue(s)

Did the worker sustain an injury arising out of and in the course of her employment?

Did the worker sustain an injury, namely mental stress, arising out of and in the course of her employment?

Jurisdiction

This appeal was filed with the Workers' Compensation Appeal Tribunal (WCAT) under section 239(1) of the Act.

This is an appeal by way of rehearing, rather than a hearing *de novo* or an appeal on the record. WCAT has jurisdiction to consider new evidence, and to substitute its own decision for the decision under appeal.

Appeal method

The appellant initially requested an oral hearing to present evidence, as this would allow her to explain the situation more clearly. I reviewed the information on the claim file and determined that the matter could be fairly determined based on the evidence contained in the claim file and I am satisfied an oral hearing is not required.

Background and Evidence

- The employer's report of injury, dated March 21, 2005, indicated the worker was eight months pregnant with a high-risk pregnancy and was having cramping and possible early labour.
- The worker's report of injury indicated the worker believed the client was cursing her unborn child in her language. She left her office and became very afraid that the client would hurt her and/or her unborn child.
- On March 22, 2005 Dr. Horner prepared a first report to the Board indicating the worker was fit to work at light duties. She had been verbally assaulted and this had led to possible pre-term labour on March 14, 2006. He had prescribed a week of bed rest and referred her to an obstetrician.
- The worker was scheduled to take maternity leave on April 30, 2006. An undated report from Dr. Horner, presumably between March 22 and April 1, 2005, indicated the worker continued to have abdominal pain and that she had tried to work but the pain in her uterus had increased. Dr. Horner was concerned about possible pre-term labour due to the stress of the verbal assault. On examination the worker's uterus was non-tender, her blood pressure was normal and the fetal heart rate was normal.
- Dr. Horner prepared a progress report on April 1, 2005 indicating the worker had post-traumatic stress complicated by possible pre-term labour. On examination

the worker's abdomen was mildly tender. The worker was reporting pain in the uterus and her post-traumatic stress was preventing her return to work.

- On May 13, 2005 the worker advised a Board case manager that she was very frightened by the incident with the client on March 15, 2005. The client was yelling so loudly that her co-workers came into the office and told her to leave. She was driven home by a co-worker and tried to rest. She began cramping that evening. She denied any prior cramps. This alarmed her because she was not due until May 7, 2005. She went to see her doctor the next day and was told to take the rest of the week off. The worker said the cramps progressively subsided as the week went on and she felt fit to return to work the following Monday, March 21, 2005. There were further incidents with clients the following day and she told her supervisor she was too scared to keep working and had to be off work.
- The worker advised she could not sleep and she would lie awake in bed and had nightmares of being attacked by the client, beginning March 21 or 22, 2005. She did not see a psychologist or have any psychological treatment because she did not consider it necessary. The cramping continued but was better when she was off work.
- The case manager determined there was no physical injury and the circumstances did not meet the criteria set out in section 5.1 of the Act for mental stress, and denied the worker's claim in a letter dated June 1, 2005.
- Dr. Horner prepared a hand-written note on October 3, 2005 in support of the worker's request for review. He indicated that she had suffered symptoms of uterine cramps, or pre-term labour, and acute anxiety due to the workplace events. He had instructed her to remain at home and rest, and not work.
- The review officer confirmed the Board's prior decisions. The review officer noted that the worker did not appear to experience pre-term labour, the diagnosis was therefore abdominal pain. There was no link between the worker's symptoms later in the day and the incident at work in Dr. Horner's letter. There was insufficient evidence to conclude the worker had a compensable injury. The review officer also concluded the worker did not experience an acute reaction to the events and therefore the requirements of 5.1 of the Act were not met.

Law and Policy

Section 5(1) of the Act establishes that workers who sustain an injury arising out of and in the course of employment are entitled to compensation.

Policy #13.00 of the *Rehabilitation Services and Claims Manual, Volume II* (RSCM II) provides that "personal injury" is defined as any physiological change arising from some

cause, for example, a limitation in movement of the back or restriction in the use of a limb. It is not confined to injuries which are readily and objectively verifiable by their outward signs (for example, breaks in the skin, swelling, discolouration, deformity). It includes, for example, strains and sprains.

Section 5.1 of the Act establishes that:

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 [DSM] 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.

Policy #13.30 of the RSCM II establishes that a worker may be entitled to compensation for mental stress due to an acute reaction to a sudden and unexpected traumatic event. The policy establishes that the term "mental stress" is intended to describe conditions such as post-traumatic stress disorder (PTSD) or other associated disorders. Mental stress does not include "chronic stress" which refers to a psychological impairment or condition caused by mental stressors acting over time. Workers who develop mental stress over the course of time due to general workplace conditions, including workload, are not entitled to compensation.

Submissions

The worker's representative provided a written submission dated July 6, 2006. This included a medical-legal letter from Dr. Horner dated February 28, 2006. Dr. Horner advised that he saw the worker on March 16, 2005 for abdominal cramps, insomnia and anxiety symptoms. He diagnosed probable pre-term labour and situational anxiety disorder due to the work incident the day before. He believed the worker's symptoms fulfilled the definition of mental stress in Board policy. He believed that the worker did suffer a personal injury. He wrote:

The delay of (the worker's) symptoms of abdominal pain occurring in the evening of March 15, 2005 do not indicate lack of causation from the traumatic event as the physiology of stress causing hormonal changes in pregnancy would take hours for their build up and effect upon the uterus. This is even seen when hormones are given to induce labour, there being hours to days before labour would occur.

Dr. Horner believed it was more than 50% probably that the March 15, 2005 incident caused the worker's symptoms as they followed the events within hours. He went on to comment that the worker had always been responsible and appropriate in her interactions and symptoms of emotional distress carried significant weight as they were out of context with her normal demeanour.

The worker's representative believed the worker had suffered a personal physical injury because of the March 15, 2005 incident and that due to the incident she had a situational anxiety disorder condition. He argued that the worker's evidence and the opinion of Dr. Horner should be given considerable weight.

The employer's representative responded on August 2, 2006 and requested her November 16, 2005 submission to the Review Division be relied upon. The employer's representative argued there was insufficient evidence to conclude the worker sustained an injury because of her work activities. The worker's claim did not meet the requirements of section 5.1 of the Act and policy #13.30 of the RSCM II. The worker was only speculating that the client was cursing her child. She often worked in an environment where clients yelled at her and dealing with an upset client was not unexpected. There was no treatment for a psychological condition. After March 22, 2005 the worker remained off work because she was fearful of going into premature labour. She commenced maternity leave on March 28, 2005.

Findings and Reasons

Although Dr. Horner did not complete a report to the Board until March 22, 2005, I am satisfied from the comments in this report and the worker's statements to the Board that she sought medical attention on March 16, 2005 and was advised to stay off work.

Prior appellate decisions are not binding on WCAT, however they can provide useful reference, particularly in uncommon situations like this one.

I am satisfied that in the matter before me, the worker sustained a physical injury on March 15, 2005 as a result of the confrontation with the client. Policy #13.00 of the RSCM II identifies an injury as "physiological change." Dr. Horner has indicated in his February 2006 letter that the worker's symptoms on that evening can be attributed to the hormonal changes resulting from the emotional distress of the incident.

Although the worker often dealt with upset clients who yelled at her, on this occasion the outburst came without warning and for no apparent reason. This was her first meeting with the client. The client stood and challenged her to a physical altercation. The worker was eight months pregnant and undoubtedly would experience some concerns about such a comment. The worker's co-workers intervened and directed her to leave the office, and the client in fact had to be removed from the premises by the police. I consider it unlikely that this was a routine client interaction.

Although the Board officer noted it was speculation by the worker that the client was threatening her fetus, I do not consider it a requirement that the threats be confirmed. It is sufficient that the worker did not understand the client's language and that she perceived this as a threat or "curse" from an individual who was being verbally aggressive and was a stranger to her. That perception or belief would reasonably be an emotionally stressful event for someone in an advanced state of pregnancy. The hormonal reaction described by Dr. Horner is a physiological reaction to a perceived threat, and the result was abdominal cramping that he classified as pre-term labour. The worker's symptoms were significant enough that she sought medical treatment and was directed to stay off work for a week.

If not for the abdominal pain or cramping that Dr. Horner considered disabling, the worker would have returned to work on March 16, 2005. There is no medical opinion on file to the contrary. I am therefore satisfied that the worker sustained an injury arising out of and in the course of her employment in accordance with section 5(1) of the Act.

I allow the worker's appeal on this issue.

The worker also argues that she sustained a mental stress injury under section 5.1 of the Act. The Act and Board policy establishes mental stress as a separate and distinct injury from other physiological and psychological injuries. I find insufficient evidence to conclude the worker's symptoms meet the legislated criteria for a mental stress injury.

Dr. Horner did not provide a DSM-IV diagnosis. While the worker was anxious and upset by the events on March 15, 2005 and later on March 22, 2005, she was not treated for a psychological condition, nor is there evidence that she was disabled by this anxiety. She indicated to the Board that she did not consider treatment necessary.

The worker indicated she felt fine on March 21, 2005 and indeed returned to work on that date. It was not until further incidents took place at her work, which she only overheard or learned of after the fact, that she became concerned the workplace was unsafe and could trigger premature labour. There was no traumatic event, nor did she have an acute reaction to an event, as envisioned in policy #13.30 of the RSCM II.

I do not accept Dr. Horner's interpretation that the possibility of premature labour in an eight-months pregnant woman amounts to a potentially catastrophic event that could be

considered “severely emotionally disturbing.” There has been no evidence provided that the worker was severely emotionally disturbed by the thought of premature labour. There is some evidence she was distressed by the incident with the client, but none that premature labour itself was a primary focus of her thought process.

The worker elected to stop working on March 22, 2005 because she was concerned about going into premature labour. Hours before this decision, her doctor considered her fit to return to work at light duties. There is no evidence that her work tasks were not light duties and I would presume from the nature of her employment that this was a sedentary position. The decision to book off work was a personal, preventative measure that she took regarding a non-compensable medical condition, namely pregnancy. Following her decision to book off work, her physician provided supportive progress reports to the Board, however I give significant weight to the recorded comments of the employer and the Board officers that the worker was concerned about premature labour because of the circumstances in her workplace.

Although the question of wage loss is not before me, I note for reference that policy #34.51 of the RSCM II provides that no compensation is payable to a worker who withdraws from work for preventive reasons.

I deny the worker’s appeal on this issue.

Conclusion

I vary, in part, the decision of the Board set out in *Review Decision #R0055191* dated January 19, 2006. I find the worker did sustain an injury arising out of and in the course of her employment on March 15, 2005 in accordance with section 5(1) of the Act. I find the worker did not sustain a mental stress injury arising from the events on March 15 and/or March 22, 2005. The file is returned to the Board for further adjudication as to the worker’s entitlement to wage loss and health care benefits.

The worker’s representative requested reimbursement of the expense of Dr. Horner’s medical-legal letter dated February 28, 2006. As it was reasonable for the worker to obtain this letter, and it was helpful in my deliberations, this expense is awarded, within the limits of Board tariffs. I note the worker’s union, not the worker herself, incurred this expense. No other expenses were requested or identified, and none are ordered.

Sherryl Yeager
Vice Chair

SY/lc