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

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| **WCAT Decision Number:** | WCAT-2008-00516 |
| **WCAT Decision Date:** | February 18, 2008 |
| **Panel:** | Iain M. Macdonald, Vice Chair |

## Introduction

The worker has appealed a decision made by a review officer of the Workers' Compensation Board, operating as WorkSafeBC (Board), and conveyed in May 17, 2007 document.

In that document, the review officer considered the January 29, 2007 decision of a case manager, who had accepted the worker's claim for a mental stress injury due to circumstances that occurred at work over the course of a shift on December 7 and 8, 2006. The worker had been diagnosed as suffering from an acute stress disorder. The psychologist who assessed the worker reported that although the worker had some life stressors outside of work, these were all chronic or remote and were unlikely to have caused or contributed in any significant fashion to the worker's acute stress disorder. In the absence of the events that occurred during the worker's shift, it was unlikely that the acute stress disorder would have occurred.

The employer did not agree with the case manager's decision and placed the matter before the Review Division. The review officer considered the record of events that transpired over the course of the shift in question and, while acknowledging that the worker had been distressed by a number of them, found that the worker's acute stress reaction was not due to sudden and unexpected trauma arising out of and in the course of employment. The review officer determined that the incidents that occurred at work did not satisfy the criteria set out in the Board's policy, and consequently, the worker's mental stress claim could not be accepted by the Board. The review officer varied the case manager's decision.

The worker did not request an oral hearing. Item #8.90 of the Worker's Compensation Appeal Tribunal (WCAT) *Manual of Rules of Practice and Procedure* (MRPP) provides that an appeal may proceed without an oral hearing where the issues are primarily of a medical or legal nature. I am satisfied that in this case, credibility is not an issue, and that the facts are not in dispute. The disagreement revolves around an interpretation of the Board's policy in the context of adjudicating a mental stress injury claim, arising from the events described. Consequently, I find that the appeal can be fairly and fully decided without convening an oral hearing.


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The worker was represented by his union, which provided a September 15, 2007 written submission. The employer elected to participate in the appeal and was represented by a consultant; however, the employer made no submissions.

**Issue(s)**

The issue is whether the worker's diagnosed mental stress condition was an acute reaction to sudden and unexpected trauma arising out of and in the course of his employment.

**Jurisdiction**

WCAT may consider all questions of fact, law and discretion arising in an appeal, but is not bound by legal precedent (see section 250(1) of the *Workers Compensation Act* (Act)). WCAT must make its decision on the merits and justice of the case, but in so doing, must apply a policy of the board of directors of the Board that is applicable in the case. WCAT has exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact, law and discretion arising or required to be determined in an appeal before it (section 254 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.

All references to policy in this decision, unless otherwise specified, concern the Board's *Rehabilitation Services and Claims Manual, Volume II* (RSCM II).

**Relevant Information**

On the morning of December 8, 2006, the worker, an advanced emergency medical assistant, informed his employer that after completing an emergency intercity transfer of an acutely ill infant, he had noticed that he had been adversely affected by the event, in combination with other factors. The worker had been with the employer since June 2003, and had been doing the same job since December 2005.

On December 11, 2006 the worker consulted Dr. G, his regular physician, who reported to the Board that the worker had had a very stressful shift. He also had other stressors in his life. The worker was not sleeping well and required a few days off to recover. Dr. G diagnosed stress of a post-traumatic nature. Dr. G added that the worker had returned to his job on December 20, 2006.

In his own application for compensation, dated December 11, 2006, the worker said that in the time leading up to December 8, 2006, he had worked a large number of hours outside of his scheduled time to work. He wrote:

> During my last call on Thursday December 07, the driver of the ambulance we were in, had a few close calls towards having a serious collision, while driving with lights and sirens from [city A] to [city B] starting at 5 PM that day.
> On the same call we had to deal with a pediatric patient, who had to go from [city B] to the Children's hospital in Vancouver. This patient went from being short of breath, to respiratory arrest, to cardiac arrest. Fortunately we were able to resuscitate the patient, but the outcome after that is unknown to this date.
> Our working day started at 2.14 PM on Thursday December 07, and I had to drive with lights and sirens from [city A]…to the [city C] airport. This was a stressful drive, with slippery road conditions on the known winding roads.
> We got back to [city B] around 7 AM on Friday December 08.
> Shortly after, I realized that I needed more help to cope with all of this. I contacted our Employees Assistance Program the moment I got home. I talked to one of the counselors from [name of agency]. One of their advises was to go and see my family doctor. I saw my doctor this morning, and was advised to be off work until December 18, 2006.
>
> [reproduced as written, save for changes noted]

The worker added that during his last shift, he had worked from just after 2:00 in the afternoon until 8:00 the following morning.

The Board arranged for the worker to be referred to Dr. M for a psychological assessment. In a January 3, 2007 referral document, a Board psychologist said that the worker was an emergency medical assistant who had worked a long shift while transporting a paediatric patient during bad weather. Afterward, the worker had reported that he "needed help to cope," and his physician had recommended that he stay off work until December 18, 2006. There were also other life stressors noted by the physician at that time. The Board psychologist asked that the worker be assessed to determine whether he had a psychological condition in December, and if so, to what extent it had been caused by the shift he worked on December 7 and 8, 2006, and whether it had prevented him from subsequently attending work. The Board psychologist asked for an opinion on whether the worker experienced "an acute reaction to a sudden and traumatic event."

On January 9, 2007 Dr. M assessed the worker, who provided a detailed account of the events that occurred during the extended shift he had worked between December 7

and 8, 2006. He had received a call requesting transfer of an infant with "shortness of breath," from one city to another. He had been working with a new partner, who had recently transferred from another region, and was not familiar with local roads. Accompanying the worker and his partner in the ambulance was a critical care team, along with the specialized care equipment required for transporting an infant in distress. The worker's partner was driving the ambulance at high speed, such that the equipment inside the vehicle was constantly tipping. Other vehicles were reportedly being driven nearly off the road. On one occasion, the worker's partner drove the ambulance between an oncoming vehicle and a vehicle they were passing on a two-lane highway. The worker told Dr. M that he felt very unsafe with his partner driving. The critical care team had reportedly commented also on the calibre of driving.

Upon arriving at the location in city A, the worker could tell that the infant was in serious trouble. The intensive care unit in the local hospital was full, so plans were made to transport the infant to city B, where the child would be picked up by air ambulance.

The condition of the infant was such that it took a long time before the ambulance was ready to leave city A. While *en route* to city B, they learned that the air ambulance could not land, and so it would be necessary for them to transport the infant for another 90 minutes to city C. During the journey, the worker and his partner alternated driving, while the critical care team tended to the infant.

Upon arrival at city C, it was determined that the infant's respiratory status had not sufficient improved to allow for air transfer. It was then necessary to intubate the infant, and so the ambulance went to the local hospital. All treatment team members accompanied the infant there. Just prior to intubation, the infant went into respiratory arrest, which created an urgent need for intubation. There was some difficulty in inserting the intubation tube, and immediately thereafter, the infant went into cardiac arrest. The treatment team members were at the time in contact by cell phone with a specialist from BC Children's Hospital, who was directing care. In the middle of this urgent situation, the cell phone battery failed and contact was lost. The worker told Dr. M that the evening was a "nightmare of things going wrong."

When it was decided to attempt to fly the infant to Vancouver, the worker left to locate the pilots of the air ambulance, while the rest of the team stabilized the child. The worker and his partner were approaching the 16-hour mark in their shift, and were advised to begin driving back to their point of origin. The worker's partner began driving; however, had difficulty staying awake and so the worker took over driving while his partner slept. Two hours from their destination, they switched places again. Upon arriving at the ambulance station at approximately 7:00 a.m., the worker and his partner had to complete paperwork, clean the ambulance, and prepare it for the next shift. It was not until 11:00 a.m. that the worker as able to go home.

Between 7:00 a.m. and 11:00 a.m., the worker felt that he was “not himself.” He said that he had been unable to think straight and he had experienced difficulty in getting organized. He also began “having flashbacks” of “the baby arresting and the physicians not being able to intubate successfully.”

When the worker arrived home, he had immediately contacted an Employee Assistance Program (EAP) counsellor and spoke by phone for more than an hour. The counsellor provided him with a “stress assessment kit” that the worker was able to complete by phone from home. The counsellor also advised the worker to consult his physician.

The worker said he then made an appointment and was able to see his doctor two days later.

The worker advised Dr. M that he had also experienced difficulty in getting to sleep, and was mentally restless. He had required sleep-aid medication to help him to get a good night’s sleep.

Dr. M also explored a number of non-work-related life stressors that had been present at the time and discussed them with the worker. Psychometric testing undertaken in the course of Dr. M’s assessment was valid and confirmed the worker’s described symptoms.

Dr. M concluded that the worker suffered from acute stress disorder that was in partial remission. Dr. M wrote:

> [The worker] was exposed to a traumatic event in which he witnessed events that involved threat of death to another and responded with feelings of helplessness (“a nightmare of things going wrong”) and fear. He reported experiencing cognitive difficulties (“couldn’t think straight”) and depersonalization (“not himself”) hours later, and reports gaps in his memory for the events that occurred during this call that persist to the current time. He experienced flashbacks of the near death of the infant and became distressed on exposure to cues of the incident (e.g., other infants). He avoided contact with other infants after the incident. He had sleep disturbance, poor concentration, irritability and other symptoms of increased arousal. Symptoms caused clinically significant distress such that he immediately contacted an EAP counselor and sought the care of his physician. Criteria for this diagnosis appear to have been met for at least three days (to the time he obtained his prescription for sleep aids) but likely had returned to a subclinical level by the time he returned to work 12 days following the incident. There are some residual symptoms including difficulties with concentration, but full diagnostic criteria for Acute Stress Disorder no longer are met. At the time of the work incident [the worker] did have some life stressor[s] present, but all were chronic or

> remote and are unlikely to have caused or contributed in a significant fashion to the symptoms detailed above in the absence of events that occurred during the shift of December 7 and 8. That is to say, in my opinion were it not for the work events that occurred on December 7 and 8 I think it is unlikely [the worker] would have developed this Acute Stress Disorder. In my opinion, given the symptom detailed by [the worker] (in particular the sleep disturbance and difficulties with concentration) it would not have been safe for him to be functioning as an ambulance technician at the time he saw his family physician….

Dr. M added that a significant factor in the worker's recovery had been his prompt seeking of help from an EAP counsellor and his own awareness of the value of discussing his symptoms and experiences with his co-workers. Dr. M was not aware of any pre-existing or co-existing psychological condition that was likely to have contributed to the worker's disorder. The worker had had a number of stressful ambulance calls in the past; however, he had been able to handle them without difficulty, and had coped by discussing events with his colleagues, such that they had minimal effect on him afterwards.

Upon receipt of Dr. M's opinion, a case manager decided that the worker's claim satisfied the requirements of section 5.1 of the Act. Consequently, the case manager accepted the worker's claim.

The employer did not agree and appealed to the Board's Review Division. In submissions made to the Review Division, the employer pointed out that the Board policy at item #13.30 is specific and requires clear evidence of a sudden and expected severe trauma arising out of and in the course of employment. While the worker's shift had no doubt been stressful, the events that had occurred were not sufficiently unexpected or traumatic to cause a mental stress injury within the context of section 5.1 of the Act.

The review officer agreed and, while not doubting that the worker had become genuinely distressed as a result of his work experience, nevertheless concluded that the diagnosed acute stress disorder was not acceptable because it had arisen through circumstances that were not compatible with the policy requirements set out in policy item #13.30.

The review officer consequently varied the case manager's decision.

In support of the appeal to WCAT, the worker's representative provided a September 15, 2007 written submission. After generally describing what had happened over the course of the shift in question, the worker's representative said that the type of call and the events that transpired in the course of it were, by all standards, unexpected. The length of time spent on the call was rare, and although road

conditions were common, the new partner's unfamiliarity with the road and the number of near accidents that occurred during the journey were unique. Similarly, the deteriorating condition of the infant leading to cardiac arrest was likewise unique. The worker's representative said that the events that occurred over the course of a five-hour journey to city C were, in some respects, sudden and unexpected, and were also traumatic. The worker had immediately experienced the effects of the sudden and unexpected traumas and had sought immediate assistance. The registered psychologist retained by the Board to assess the worker had diagnosed a disorder listed in the *Diagnostic and Statistical Manual of Mental Disorders, Volume IV* (DSM-IV-TR) and had causally related it to the events that transpired during the long call out. The finding of the review officer had been contrary to the psychological opinion provided by Dr. M. In such circumstances, the review officer's decision should be varied, and the worker's claim should remain as a Board responsibility under section 5.1 of the Act. The worker's shift had been replete with sudden, unexpected events, potential physical threats to the worker's person, and other stressors that had caused a mental stress injury.

**Findings and Reasons**

The published WCAT decisions to which I will refer were publicly available online (http://www.wcat.bc.ca/research/appeal-search.htm) prior to the closing date for submissions in this appeal. It was not, therefore, necessary to disclose these decisions to the parties, since the parties have, at all relevant times, had reasonable access to them, when preparing submissions.

Mental stress claims where the mental stress does not result from a physical injury or an occupational disease are governed by section 5.1 of the Act, which 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.

The diagnosis in the case at hand is that of acute stress disorder. This was diagnosed by a psychologist, and the condition is described in the most recent American Psychiatric Association's DSM-IV-TR. The mental stress was not caused by a decision of the worker's employer relating to the worker's employment. The requirements of section 5.1(1)(b) and (c) are therefore satisfied. It remains, then, to be shown whether the mental stress was an acute reaction to a sudden and unexpected traumatic event arising out of and in the course of the worker's employment, as set out in section 5.1(1)(a).

Policy item #13.30 addresses mental stress claims under section 5.1 of the Act. The policy provides that an "acute" reaction means coming to crisis quickly, and that it is the opposite of chronic. For the purposes of the policy, a "traumatic" event is a severely emotionally disturbing event, which may include the following: a horrific accident; an armed robbery; a hostage-taking; actual or threatened physical violence; an actual or threatened sexual assault; and a death threat. The policy also states that in all cases the traumatic event must be clearly and objectively identifiable; and sudden and unexpected in the course of the worker's employment.

The evidence in this case establishes medical confirmation of a causal relationship between the workplace events and the diagnosed mental stress condition. Medically, the events in the workplace were likely sufficiently traumatic to cause the diagnosed mental stress disorder. However, the question remains whether, legally, there was an acute reaction and whether what occurred in the course of the worker's employment was sudden, unexpected, and was sufficiently traumatic to be recognized as causative of the worker's mental stress condition, in the context of section 5.1 of the Act and policy item #13.30.

*Was There an Acute Reaction?*

Under policy item #13.30, an acute reaction as required by section 5.1(1) of the Act is defined as "coming to crisis quickly" and as a situation of great tension or an extreme degree of stress. The reaction is immediate and identifiable, rather than a gradual onset, and is characterized by severe emotional shock, helplessness and/or fear. The acute reaction may be the result of direct personal observation of an actual or threatened death or serious injury, a threat to one's physical integrity, witnessing an event that causes death or injury, or witnessing a personal assault or other violent crime.

In determining whether the worker's reaction was "acute," I observe that his symptoms came on relatively quickly and, within a few hours of completing his shift, he had consulted a counsellor, who in turn advised him to see his doctor. Two days later the worker consulted Dr. G, who found him to be medically disabled by reason of a mental stress condition.

While policy item #13.30 says that an acute reaction means "coming to crisis quickly," and the reaction is "typically immediate and identifiable," the Board has published a series of Best Practices Information Sheets (BPIS) to assist adjudicators to implement its policies. In BPIS #15, the Board states that, generally, a reaction will be considered "acute" if it occurs within four weeks of the event. While the suggested policy interpretation in BPIS #15 is not binding on me, I find it helpful in determining the Board's intention concerning the adjudication of mental stress claims. I am therefore satisfied that the worker's mental stress reaction was acute within the meaning of section 5.1 of the Act, and policy item #13.30.

*Was There a "Traumatic Event"?*

In discussing the meaning of "traumatic event," policy item #13.30 provides a number of examples of events that are considered traumatic. Generally, these examples involve actual or threatened death, serious injury or violence. The examples given in the policy and the requirement for an event to be clearly and objectively identifiable as traumatic mean that an individual's experience of an event as subjectively traumatic will not in itself necessarily satisfy the requirement of section 5.1(1)(a).

In WCAT noteworthy *Decision #2006-02777* (most recently accessed on February 11, 2008, the panel wrote:

> In addition, the term "traumatic event" has been defined by policy in such a way as to exclude consideration of the worker's perception in determining whether an event was "traumatic." [Dr. B] has noted that there is considerable latitude when it comes to determining whether an event was traumatic for the purpose of establishing a diagnosis of PTSD [post-traumatic stress disorder]. Medically, consideration is given to whether the worker perceived the event as traumatic and this is taken into account in deciding whether the worker has developed PTSD.
>
> Under the policy at #13.30, however, an event must be one that is generally accepted as traumatic in order to satisfy the criterion of a traumatic event. Accordingly, if a worker has an acute reaction to an event that is not generally accepted as traumatic, this does not meet the criterion of an acute reaction to a sudden and unexpected traumatic event. There is no exception provided for the worker who perceives a situation as traumatic because he or she has become sensitized due to prior exposures to workplace trauma.
>
> Since the medical standard for a traumatic event is different from the policy standard for a traumatic event, a worker may well be diagnosed as suffering from PTSD as a result of a workplace event that is medically

recognized as traumatic but not legally recognized as traumatic. In such a case, the worker is likely not entitled to compensation.

The episodes of "near miss" while the ambulance travelled swiftly over winding roads in icy winter conditions could also be considered traumatic to an extent; however, the evidence does not establish that they were traumatic in the sense that the worker immediately feared death or serious injury. The emergency vehicle was travelling at speed on winding roads under winter conditions. While this would be worrisome at the best of times, there is no evidence of any particular instance where the vehicle went out of control, or any similar event that would have made the worker think that he was actually in imminent danger of dying or of suffering serious injury. The near miss episodes, while stressful, were not traumatic within the context of the examples provided in policy item #13.30.

To witness respiratory arrest followed by cardiac arrest of a distressed infant would, by any reasonable standard, qualify as an objectively identifiable traumatic event. The cessation of breathing and heartbeat signifies to any rational person that death is imminent. It is hardly conceivable that to witness respiratory, followed by cardiac, arrest would fail to be measured as traumatic against any reasonably objective standard. In the case where the imminent death is that of an infant, the resultant trauma is that much greater. I am therefore satisfied that there was at least one "traumatic" event during the course of the worker's shift. However, whether this traumatic event was significant in causing the worker's acute stress reaction, within the context of section 5.1 and policy item #13.30, can not be determined without considering it in the context of the rest of the evidence, and the statutory requirement that the event be sudden and unexpected. In that respect, I observe that the infant's respiratory and cardiac arrest event was implicated by Dr. M as part of a continuum of stressors, rather than as a stand-alone cause, leading directly to the acute stress disorder. The question arises whether a series or continuum of stressors is a "sudden" event within the meaning of the Act and applicable Board policy.

*Was There a "Sudden Event"?*

Section 5.1(1)(a) of the Act states the word "event" in the singular. Although the Board policy recognizes psychological injury as a form of personal injury, the statutory criteria for acceptance of a mental stress claim, in the absence of physical injury, is more stringent and more narrowly defined than that for acceptance of a personal injury claim. Whereas the Board will accept a claim for personal injury arising out of and in the course of employment, only mental stress arising in the specific circumstances set out in section 5.1 of the Act will be accepted, for compensation purposes, as having been caused by the employment. Causation, therefore, in the context of section 5.1 of the Act, requires more than medical evidence linking the appearance of mental stress to the worker's employment. The evidence must also show that the mental stress was caused by an event arising out of and in the course of the employment. Acceptance of

a claim for mental stress under section 5.1 of the Act does not extend to a series of events cumulatively resulting in a mental stress injury.

It has been argued in previous cases that the principles set out in *Athey v. Leonati*, [1996] 3 S.C.R. 458, a decision of the Supreme Court of Canada with respect to causation of personal injury and the test for determining causation, should also be applied to claims for mental stress. This was discussed and analyzed in *WCAT Decision #2006-00841*. A review of the panel's discussion and analysis shows:

> (a) Causation is established where the plaintiff proves to the civil standard on a balance of probabilities that the defendant caused or contributed to the injury;
>
> (b) The general, but not conclusive, test for causation is the "but for" test, which requires the plaintiff to show that the injury would not have occurred but for the negligence of the defendant;
>
> (c) The "but for" test is unworkable in some circumstances, so the courts have recognized that causation is established where the defendant's negligence "materially contributed" to the occurrence of the injury;
>
> (d) Causation need not be determined by scientific precision; and
>
> (e) It is not necessary for the plaintiff to establish that the defendant's negligence was the sole cause of the injury. There is no basis for a reduction of liability because of the existence of other preconditions; defendants remain liable for all injuries caused or contributed to by their negligence.

The court in *Athey* also discussed the "thin skull" rule, and made a differentiation between a thin skull and what the court referred to as a "crumbling skull":

> …The "crumbling skull" doctrine is an awkward label for a fairly simple idea. It is named after the well-known "thin skull" rule, which makes the tortfeasor liable for the plaintiff's injuries even if the injuries are unexpectedly severe owing to a pre-existing condition. The tortfeasor must take his or her victim as the tortfeasor finds the victim, and is therefore liable even though the plaintiff's losses are more dramatic than they would be for the average person.
>
> The so-called "crumbling skull" rule simply recognizes that the pre-existing condition was inherent in the plaintiff's "original position". The defendant need not put the plaintiff in a position better than his or her original position. The defendant is liable for the injuries caused, even if they are

> extreme, but need not compensate the plaintiff for any debilitating effects of the pre-existing condition which the plaintiff would have experienced anyway. The defendant is liable for the additional damage but not the pre-existing damage…Likewise, if there is a measurable risk that the pre-existing condition would have detrimentally affected the plaintiff in the future, regardless of the defendant's negligence, then this can be taken into account in reducing the overall award…This is consistent with the general rule that the plaintiff must be returned to the position he would have been in, with all of its attendant risks and short-comings, and not a better position.

The panel in *WCAT Decision #2006-00841* observed that, although enunciated in terms of fault and negligence, the fundamental principles in *Athey* remain valid in determining whether an injury is caused by, or arose out of, a worker's employment.

The panel in *WCAT Decision #2006-04195* noted that the law in this area is also set out in I.N. Klar, *Tort Law*, 2nd ed. (Scarborough: Carswell, 1996), at 347:

> Cases in which plaintiff's pre-existing conditions are either aggravated or activated by an accident frequently arise. Where a plaintiff has a pre-existing condition which is latent and inactive at the time of the accident, but becomes triggered by it, the courts appropriately treat this as a thin skull case. The plaintiff is entitled to full compensation. Where, however, the plaintiff is suffering from an active and existing condition at the time of the accident, which is aggravated by the accident, courts will assign only partial responsibility for the plaintiff's injuries to the defendant. The defendant's responsibility will depend upon the extent to which the accident aggravated the plaintiff's existing condition. Finally, a third category of cases has been suggested. A case may arise where the plaintiff has an asymptomatic, degenerative condition at the time of the accident which ultimately would have resulted in the type of injury suffered by the plaintiff in the accident. The accident accelerates the process of degeneration. This has been called a "crumbling skull," with the plaintiff entitled only to the damages corresponding to the effect of the accident on the accelerative process. In principle, this category of cases raises the same issue as raised by cases where plaintiffs are suffering from existing conditions which become aggravated by the defendant's negligence, and should be treated in a similar way.

In *WCAT Decision #2006-00841*, the panel considered the application of *Athey* to the provisions of section 5.1 of the Act and policy item #13.30 and wrote:

> I have considered how the "thin skull" rule might apply in the circumstances of this case, given the limitations imposed under


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> section 5.1 of the Act. I find that it is not sufficient that the aggravating event simply arise out of and in the course of employment to be compensable for mental stress cases. The limitations in section 5.1 of the Act apply to the acceptance of the claim for an aggravation of a pre-existing condition, disease or disability. I find that the diagnosed aggravation must arise from an acute reaction to a sudden and unexpected traumatic event to be compensable.

The provisions of section 5.1 and policy item #13.30 have been extensively discussed in a series of WCAT decisions over recent years. The panels have consistently found that to be compensable, the mental stress injury must be attributable to, and appear shortly after, an objectively verifiable extremely emotionally disturbing traumatic event arising out of and in the course of the worker's employment. The panels have rejected the compensability of mental stress arising cumulatively from a series of events, or as part of a continuum of stress over time, on the grounds that the legislation and the policy does not support the compensability of such exposures.

In *WCAT Decision #2004-03316-RB*, the panel wrote:

> The changes to the legislation have defined and narrowed the scope of a compensable mental stress claim. I find that the worker's claim does not meet the required components for acceptance of her claim for mental stress. I note that the worker's reaction to the students' behaviour and her need for time off work was something that built over time and cumulated over a two week period. The changes to the Act have specifically required that a compensable mental stress claim arise from an acute and unexpected event. The worker has provided evidence to the contrary, that in fact she expected the students' poor behaviour and anticipated having to pick up the students in the course of her workday. The events leading to her breakdown on September 19, 2002 were not sudden or unexpected, and did not arise from a traumatic event. I do not go as far as to find that it is acceptable for the worker to be exposed to irrational behaviour from passengers as part of her regular job duties, but, as the worker has acknowledged, irrational and unreasonable behaviour from bus passengers does occur. I am required to apply Board policy and the relevant policy to this appeal specifically restricts acceptance of claims for mental stress that arise from workplace conditions or workload that develops over time. I find the worker's stress built over a two-week period due to her workplace conditions.

In considering the stress encountered regularly by emergency workers, I observe that in WCAT noteworthy *Decision #2006-02777*, the WCAT panel reviewed the history and development of section 5.1 of the Act in general, and its particular application to claims made for mental stress by emergency workers. Although the panel dealt with a claim

for post-traumatic stress disorder, the same criteria for analysis apply to adjudication of each claim for mental stress that involves a diagnosis listed in the DSM-IV-TR. The panel wrote:

> Accordingly, it is very difficult to find that the legislature did not intend to exclude compensation coverage for emergency workers suffering from the cumulative effects of trauma. Clearly, that is the intent.
>
> In view of the above, in adjudicating this appeal, I believe that I am limited to assessing whether each specific incident and the worker's reaction satisfy the criteria under section 5.1.

The compensability of a claim for mental stress injury attributable to a series of events was also discussed in *WCAT Decision #2005-02507*, in which the panel found that a psychological impairment caused by mental stressors over time was not compensable under section 5.1 of the Act. This decision was referred to the chair of WCAT for reconsideration on the grounds that the panel's decision was patently unreasonable.

In *WCAT Decision #2006-00054*, the WCAT chair wrote:

> The phrase "patently unreasonable" indicates that the interpretation of the Act must be one that is not rationale or viable. A decision must not be set aside simply because there is another preferable interpretation of the Act.
>
> Section 5.1(1)(a) provides that a worker is only entitled to compensation for mental stress if there is an "unexpected traumatic event". The definitions of "trauma" in the *Concise Oxford English Dictionary* (10th edition, revised) include "a deeply distressing experience" and the definitions of "event" include "a thing that happens or takes place". In light of these definitions, I find the vice chair's determination that a psychological impairment caused by mental stressors over time is not compensable under section 5.1 is entirely reasonable.
>
> While the worker's representative submits that the worker's history of previous traumas and psychological problems ought to have been taken into account in determining whether the March 27, 2004 incident resulted in compensable mental stress, I do not find that the vice chair erred in interpreting item #13.30 of RSCM II as establishing that the event must be objectively traumatic in order to meet the requirements of section 5.1(1)(a). It is clear from the statements and examples in the policy that an event must be severely emotionally disturbing from an objective perspective in order to be considered a traumatic event for the purposes of 5.1(1)(a). While the worker's representative contends that

the vice chair ought to have applied the "thin skull rule", a subjective test is not established by section 5.1(1) and item #13.30.

While I am not bound by the chair's decision arising from reconsideration of a specific matter raised in a single appeal, I nevertheless find the chair's reasoning to be helpful in determining the outcome of the disputed matters in this appeal.

I agree with the chair's conclusion and the analysis by the panel in *WCAT Decision #2006-00841* that the "thin skull rule" *per se* is not established by section 5.1(1) of the Act. I find that the principle of "contributing cause" as discussed in *Athey* may not be applied to the adjudication of claims for mental stress injury. That is not to say, however, that a compensable mental stress injury may not be superimposed as an aggravation of a pre-existing psychological condition. The aggravation, however, in order to be compensable, must not only arise out of and in the course of the employment; it also must be an acute reaction to a sudden and unexpected traumatic event. In other words, the aggravating event must meet the criteria set out in section 5.1(1)(a) and in policy item #13.30. This effectively establishes that any aggravating event must first be of sufficient magnitude to have caused the mental stress injury in its own right within the context of the legislative and policy criteria, even if it should at the same time incidentally aggravate a pre-existing psychological condition.

I am also satisfied that the notion of a series of injuries culminating in disability, as discussed in policy item #14.20, is also not established by section 5.1(1). I find, therefore, that a mental stress injury manifesting as a result of the last injury of a series of cumulative mental stress injuries over time is not compensable within the meaning of section 5.1 of the Act unless the culminating event is of sufficient magnitude to meet the criteria set out in section 5.1(1) and policy item #13.30.

In the result, I find that mental stress arising cumulatively from a series of events, or as part of a continuum of stress over time, is not compensable on the grounds that the legislation and the policy does not support the compensability of such exposures. There is no subjective test established by section 5.1(1)(a) of the Act. There must be an event that is objectively verifiable and sufficient in its own right, within the context described in policy item #13.30, to cause the diagnosed mental stress injury.

In the case at hand, there was no single event that suddenly occurred and caused the worker's mental stress injury. There were a number of stressors in the work over the course of a very long shift that served cumulatively to cause the worker, by the end of his shift, to feel unable to cope any more. Some of the stress was prolonged over several hours, such as the sustained stress of travelling in the ambulance in icy conditions on a winding road. Some of the stress was short-lived, such as one or more episodes of "near miss" when the ambulance encountered oncoming traffic when moving over to overtake slower traffic. Some of the stress came on suddenly, such as

when the infant arrested, and when the cell phone died in the middle of a call to medical staff at Children's Hospital, and other stress came on more gradually and cumulatively, such as was involved in having to continue on to city C when the plans to hand off the infant at city B had to be revised. On the basis of the evidence in this case, I find that while there may well have been cumulative stressors that manifested in the diagnosed Acute Stress Disorder, there was not, in all the stressful events, whether they were sudden or prolonged, a "sudden event" of the kind and magnitude contemplated by policy item #13.30.

I acknowledge that, while the infant had been distressed for some time, the respiratory arrest and cardiac arrest was a sudden event. I observe, however, that Dr. M did not identify this event as having, by itself, causative significance in the worker's acute stress disorder; rather, the event was included as part of a continuum of stressful events occurring during the shift. The infant's arrest was not, therefore, the "event" required by section 5.1 of the Act, and although arguably a "sudden event," it was not the "sudden event" that caused the acute stress disorder. The appeal fails on this ground.

*Was There an "Unexpected Event"*

It is not sufficient that an event arising out of and in the course of employment be sudden; it must also be unexpected. What is unexpected for some may well be reasonably foreseeable for others, and may in fact form part of the regular function of their employment. Emergency workers, for example, continually encounter crisis situations, and since dealing with sudden crises forms a substantial part of their regular work, it would not be reasonable to say that facing a sudden crisis is "unexpected" in the course of employment. There are, however, as acknowledged in the Board's policy, situations where an emergency worker may be faced with a sudden and unexpected crisis event. The provisions of section 5.1 of the Act do not exclude emergency workers from claiming compensation for mental stress in such circumstances.

*WCAT Decision 2005-03844-RB* involved a case where a paramedic/ambulance attendant came unexpectedly upon an accident scene, about which he had had no notice. Shortly afterward he developed a mental stress condition related to dealing with horrific injuries at the accident site. The employer had argued that the worker, in his occupation as a paramedic/ambulance attendant, should have been accustomed to dealing with horrific injuries, and that the scene was no different than others that he would have been expected to deal with in the normal course of his employment. The panel observed that the Board's policy 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.

In considering the specific circumstances of the case, the panel wrote:

> In this case, the evidence is that the worker came upon the accident scene suddenly, without foreknowledge of what had occurred. He was quickly confronted by the sight of a person laying in a pool of blood, who had obviously suffered severe injuries. This situation lies squarely within the examples given in Board policy concerning unexpected and traumatic incidents.
>
> The worker, in his professional capacity, might well have encountered previous traumatic sites without an apparent problem. In this case, however, he was psychologically traumatized and suffered an acute reaction to the horrific sight that confronted him in the course of his employment duties. Board policy provides that in such a case compensation for mental stress may be provided even if the worker was able to tolerate past traumatic events.

The panel distinguished between the worker's experience in the regular course of his job, and the sudden and unexpected event with which he had suddenly been confronted, which, in turn, gave rise to his mental stress condition.

*WCAT Decision #2006-00154* concerned the case of two correctional officers working together in a secure room. One correctional officer, who was significantly superior in strength, became markedly aggressive and threatening toward the other. He also physically grabbed the other officer and threatened bodily harm. There were firearms secured in the room. An application of the "objectively verifiable" test confirmed that the correctional officer who was threatened had reasonable cause to fear immediate severe injury or death. The panel wrote:

> The…incident was a traumatic event. Every witness testified it was sudden and unexpected to be assaulted by a fellow officer. The incident was an actual threat of physical violence and identifiable. The worker had an acute reaction. The inconsistency in the worker's testimony about when she reported to Y was minor. The worker worked alone with X. There was a procedure to follow to exit the area and she did not have the key in her possession. The worker was vulnerable, in that she was accommodated and X was in better physical shape. Weapons were present and X was closer to the safe than the worker. These circumstances all contributed to make it a traumatic experience.

The panel in *WCAT Decision #2006-00154* also found that there were unique circumstances that had to be taken into account and said that the worker was at the time in an accommodated position and that the event involved a threat to the worker's security. The panel, however, continued:

> I distinguish such circumstances from events where the worker may have been required to deal with unruly or otherwise threatening inmates, in that this event involved a co-worker in a secured area. Policy item #13.30 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. I consider the circumstances described by the worker would fall within such parameters. I do not consider this event or the context in which it arose is similar to a worker becoming unable to deal with the stress of dealing with inmates over time.

*WCAT Decision #2005-02403* involved a nurse who had become engaged in a verbal disagreement with a physician at work. The worker was at the time seven months pregnant. The physician berated the worker while standing close to her. The worker retired to her office, but then the physician arrived there and he continued to berate her. She asked him to back up and he did so, sat in a chair and closed the office door. The conversation became heated and he pointed at her with his finger, and he became louder and more confrontational. The worker asked him to leave and he indicated he would not do so. The worker felt threatened and then left the situation. In concluding that the circumstances of that worker's claim met the requirements of section 5.1(1)(a) of the Act, the panel acknowledged that what transpired between those two individuals might not, at first glance, be viewed as a traumatic event within the meaning of the Board's policy. However, the panel found there were unique circumstances, including that the worker was pregnant, and that she was confined in a small space with someone who was larger than herself and who was very angry. That anger was escalating and the other person refused to leave when asked. The panel in *WCAT Decision #2005-02403* concluded the event was traumatic and that the unique circumstances created a threat to that worker's physical integrity.

The significance of considering uniqueness in the circumstances of each case goes toward establishing the criteria of "unexpected," since a unique circumstance might also, in appropriate circumstances, reasonably be viewed as unexpected. If particular material events can be recognized as unique, then it distinguishes them from what might otherwise be accustomed in the employment. In certain cases, this distinction may be sufficient to constitute "unexpected" and, if the other statutory and policy criteria are satisfied, it may bring the case within the parameters of section 5.1 of the Act and policy item #13.30 of the RSCM II.

The circumstances involving the transport of the distressed infant in the case at hand, while likely unique in the general experience of members of the population at large, could not necessarily be taken as such in the experience of an emergency services worker. I accept that many of the situations faced by emergency services workers would, in the experience of the general population, readily be "objectively verifiable" as traumatic, as referred to in policy item #13.30. However, just as uniqueness serves to distinguish a commonly encountered event from an unexpected event arising in the employment, a lack of uniqueness serves to show that an event may not be unexpected within the context of section 5.1 of the Act and policy item #13.30.

Specifically, in considering the facts in this case, I accept that dealing with an infant in life threatening distress is not necessarily an uncommon or unexpected event in the experience of an emergency services worker. To encounter the distressed infant after having been earlier informed that the call-out involved an infant in distress, further serves to eliminate "unexpected" as a factor reasonably describing this worker's experience at the time in question in this case.

Further, although the failure of the cell phone in the middle of the call to medical staff at Children's Hospital could reasonably be described as "unexpected," it is difficult to conclude that this event would, in the circumstances, be sufficient to generate feelings of horror and helplessness, given that a trained transport team was present and tending to the infant, and they were near, if not already in, a hospital at the time.

The near misses while overtaking other traffic, which were mentioned by the worker in the course of the interview with the psychologist, while no doubt disturbing and alarming, could not reasonably be viewed as unexpected, since overtaking traffic represents an element of risk at any time. In any event, the evidence does not identify the worker's reaction to any near miss as the cause of his mental stress condition.

I find that the evidence does not establish an "unexpected event" within the meaning of section 5.1 of the Act and policy item #13.30 as the cause of the worker's mental stress injury. The appeal fails on this ground.

**Summary**

I find that the worker's mental stress condition was not an acute reaction to a sudden and unexpected traumatic event arising out of and in the course of employment.

The worker suffered an acute stress disorder, which came on shortly after he experienced a series of events arising out of and in the course of his employment during a prolonged shift in December 2006. The acute stress disorder was due to a series of events, and was not due to a sudden and unexpected traumatic event. The provisions of section 5.1 of the Act specifically state that compensation for mental stress is payable only where the mental stress is an acute reaction to a sudden and

unexpected traumatic event. It does not provide for compensation for mental stress due to a continuum of stressful events. The worker's claim does not satisfy the requirements of section 5.1 of the Act and policy item #13.30 and, therefore, it can not be accepted as a Board responsibility. I confirm the review officer's decision in this regard.

**Conclusion**

In accordance with the foregoing findings and reasons I confirm the review officer's May 17, 2007 decision.

No reimbursable expenses were requested and I therefore do not at this time order reimbursement of expenses pursuant to section 7 of the *Workers Compensation Act Appeal Regulation*.

Iain M. Macdonald
Vice Chair

IMM/gw/jd