

**DECISION OF THE WORKERS' COMPENSATION APPEAL TRIBUNAL****Introduction**

- [1] On January 22, 2014, this postal worker sustained a right elbow injury when a coworker “rammed” an exterior door into the worker’s arm while he was outside the employer’s premises on a break. The worker filed a claim with the Workers’ Compensation Board<sup>1</sup> (Board)<sup>2</sup>.
- [2] By way of an April 1, 2014 decision letter, a Board case manager advised that the claim was accepted for a right elbow contusion. The case manager advised that the worker was capable of performing an offer of light duties on February 13, 2014 and capable of returning to full duties without limitations on February 18, 2014.
- [3] The case manager advised in the same decision letter under the heading *Acute Reaction To Stress Injury* the following:
- You advise that since the incident you have experienced nightmares and unsettled sleep. You feel very unsettled with regard to you employment and your fellow employees. You attended to see Dr. [Fong] and your doctor, Dr. [Wong], both of [whom] noted your anxiety and insomnia. Dr. [Wong] was asked on January 31, 2014 if he supported a diagnosis of anxiety, or in fact any other psychological diagnosis. He stated that although you were anxious and had some other symptoms that he did not support the diagnosis of anxiety or a psychological diagnosis<sup>3</sup>.
- [4] The case manager noted that the worker went off work again on February 22, 2014 until March 1, 2014 for alleged bullying and harassment from management. The case manager advised in the April 1, 2014 decision letter that the allegation of workplace bullying and harassment was another mechanism of injury with a likely injury date of February 22, 2014. Accordingly, the case manager informed the worker that he was entitled to file a new claim for mental disorder.
- [5] In May 2014, the worker filed a mental disorder claim with the Board citing harassment at his workplace that started when he returned to work on February 18, 2014<sup>4</sup>.
- [6] By way of an August 26, 2014 decision letter, a case manager denied the February 2014 claim for a mental disorder on the basis that it did not meet the statutory provision of section 5.1 of the *Workers Compensation Act* (Act).

<sup>1</sup> Operating as WorkSafeBC

<sup>2</sup> For the purpose of this decision, this claim will be referred to as the January 2014 claim.

<sup>3</sup> All quotes are reproduced as written except where indicated.

<sup>4</sup> For the purpose of this decision, this claim will be referred to as the February 2014 claim.

- [7] The worker appealed both decisions of the case managers to the Board's Review Division. In *Review Reference #R0176111* dated September 17, 2014 (January 2014 claim), a review officer confirmed the Board's decision that the worker was capable of performing light duty work effective February 13, 2014 and consequently denied the worker's request that he should have been paid temporary disability benefits from February 13 to 16, 2014<sup>5</sup>.
- [8] In *Review Reference #R0183068* dated March 11, 2015 (February 2014 claim), a review officer confirmed the Board decision that the provisions of section 5.1 of the Act had not been met and consequently, denied the claim for mental disorder.
- [9] The worker appealed both decisions to the Workers' Compensation Appeal Tribunal (WCAT).
- [10] WCAT held an oral hearing on February 2, 2016 during which time the worker gave affirmed evidence. A witness on behalf of the employer also gave affirmed evidence. The worker was represented at the oral hearing by legal counsel. The employer attended the oral hearing and was represented by its business agent.

### **Pre-Hearing Conference**

- [11] On July 23, 2015, I held a pre-hearing conference to discuss with the parties concerns regarding potential jurisdiction issues and preliminary matters regarding the availability of the parties and the witnesses to attend the oral hearing.
- [12] It was apparent from initial communication sent to WCAT from the worker's legal counsel that the worker was seeking as a remedy under the January 2014 claim, a finding that he had an acceptable psychological condition.
- [13] However, the underlying Board decision of April 1, 2014 and resulting Review Division decision of September 17, 2014 were not explicit in deciding whether a psychological injury had been adjudicated and denied under the claim. I explained the potential jurisdictional issues to the parties and advised on a preliminary basis that I considered whether this was a matter the Board should have determined but did not and therefore, whether the matter ought to be referred back to the Board under section 246(3) of the Act. Alternatively, I explained to the parties the other potential preliminary matter of whether it could be viewed that the April 1, 2014 decision letter denied a psychological injury arising from the January 2014 work incident.
- [14] In terms of the February 2014 claim, I advised the parties that on a preliminary basis it appeared to me that the sole issue related to whether the worker suffered from a mental disorder stemming from the time after he returned to work on February 18, 2014. Therefore, it was only open to the worker to use information from the January 2014 claim to establish background for a claim for mental disorder but it could not be used as the initiating incident for the February 2014 claim.
- [15] The parties were put on notice concerning these potential jurisdictional issues and to be prepared to provide oral submission on the matters at the oral hearing. I advised the parties that

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<sup>5</sup> The worker did not dispute the Boarding conclusion that he was capable of returning to full duties without limitations effective February 18, 2014 and indeed the evidence indicated he did.

I would reserve my decision on the issue concerning jurisdiction until I heard all of the evidence and at the point I issued my written decision.

## Issue(s)

[16] The issues under appeal are:

### *January 2014 claim*

- Did the Board make a decision regarding a mental disorder in accordance with its policy item #99.20 of the *Rehabilitation Services and Claims Manual, Volume II* (RSCM II)?
- If not, is there a matter the Board should have determined but did not? In other words, should the Board have adjudicated whether the worker suffered a mental disorder as a result of the January 22, 2014 work incident?
- If so (to the first question), does the worker have an acceptable claim for a mental disorder pursuant to section 5.1 of the Act?

### *February 2014 claim*

- Does the worker have an acceptable claim for a mental disorder pursuant to section 5.1 of the Act?

[17] The worker advised that he was no longer disputing the Board's decision that he was capable of performing light duties due to his compensable physical condition as of February. The worker stated (January 6, 2016 pre-hearing submission) that if a *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* (DSM-5) condition was accepted as arising from the January 22, 2014 assault, then matters for implementation would include the nature and duration of entitlement that flowed from acceptance of that condition, including potential temporary disability benefits after February 12, 2014 and thereafter.

[18] Given the worker's position, and taking guidance from WCAT's *Manual of Rules of Practice and Procedure* (MRPP), I will limit my jurisdiction and not address the worker's entitlement to temporary disability benefits in relation to his right elbow contusion after February 12, 2014. I agree with the worker that if it is found that he had an acceptable claim for mental disorder stemming from the January 22, 2014 work incident assault then entitlement to compensation benefits would be determined in accordance with implementation of that decision.

## Jurisdiction

[19] 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). It is not bound by legal precedent (subsection 250(1) of the Act). WCAT must make its decision on the merits and justice of the case, but, in so doing, it must apply a policy of the board of directors of the Board that is applicable in the case (subsection 250(2) of the Act), save for specific circumstances set out in section 251 of the Act. Subsection 250(4)

provides that WCAT must resolve the issue respecting the compensation of a worker in a manner that favours the worker where evidence supporting different findings is evenly weighted.

- [20] Section 4(3) of the *Government Employees Compensation Act* (GECA) delegates to provincial workers' compensation boards the authority to adjudicate federal workplace injuries. Section 4(2) of the GECA provides that federally-regulated employees are entitled to receive compensation at the same rate and under the same conditions as are provided by provincial law; however, the GECA does not contain appeal provisions. Therefore, federally-regulated employees and their employers have the same appeal rights as provincially-regulated workers and employers. Accordingly, I find I have jurisdiction to consider this appeal.
- [21] This is an appeal by way of rehearing. WCAT has jurisdiction to consider new evidence, and to substitute its own decision for the decision under appeal.
- [22] Policies relevant to this appeal are found in the RSCM II.

## **Background and Evidence**

### *January 2014 claim*

- [23] As already noted, the Board accepted this claim for a right elbow contusion that occurred on January 22, 2014. The worker reported that he went outside his place of employment to smoke a cigarette. Another employee who worked in the employer's premises (although not with the worker) walked by and said that the worker was not allowed to smoke by the door. The worker moved from the door area. The other employee proceeded to enter the building and when he opened the door, he rammed it violently into the worker, while looking angry at the worker. The door hit the worker's right elbow area and forearm. The worker reported on his application for compensation to the Board that he was in shock and felt embarrassed. He immediately proceeded to report the incident to his shift manager, C (not real initial) and security. He also filed a report with the police and he thought about pressing charges against the employee.
- [24] The worker also reported on his application for compensation (dated January 27, 2014) that he brought the matter to management's attention but that nothing much had been done. He felt management did not care. The worker further reported that he was having sleeping problems and anxiety. He was scared to return to work. He found the whole experience including dealing with the police and pressing charges to be very difficult and upsetting.
- [25] Under the incident detail portion of the application, the worker reported "contusion to the right elbow and right forearm, anxiety and stress".
- [26] A physician's first report dated January 22, 2014 provided a diagnosis of right elbow contusion. The worker reported that a coworker slammed a door with a metal handle into the worker's right lower arm/elbow. He had a "little momentary "tingling of the middle three fingers. On examination, there was point tenderness and mild swelling as well as pain in the elbow with end of extension as well as pronation and supination. The treating physician, Dr. Fong, recommended ice, heat, and self massage.

- [27] A telephone memorandum dated January 28, 2014 documented a conversation between the worker and a Board entitlement officer. The worker advised that not only did he have an arm injury (which by then was “doing fine”) he also was having problems with stress and anxiety. In response, the entitlement officer advised that there was nothing in the initial medical reports indicating a diagnosis of stress and anxiety. The worker stated he would be returning to his regular physician the following day.
- [28] The entitlement officer contacted Dr. Fong’s office on January 28, 2014. The office advised that the worker had been seen again on January 25, 2014 for a “stress related visit” in relation to the January 22, 2014 work incident.
- [29] The worker returned for follow up medical treatment on January 29, 2014. This time he was seen by Dr. Wong, attending physician, who recorded the worker’s statement that he was having lots of anxiety, nightmares, and problems sleeping. The pain in his right arm was “starting to calm down”. Dr. Wong diagnosed right elbow sprain and indicated the worker was not medically capable of working full duties, full time for another 7 to 13 days.
- [30] On January 30, 2014 the entitlement officer spoke to Dr. Wong regarding whether his report from the visit the previous day was to be interpreted as proving a “mental health” anxiety diagnosis. In a statement attributed to Dr. Wong, he said he did not provide anxiety as a diagnosis; in his opinion, the worker was somewhat unsettled as a result of the incident but this would settle down in a couple of days at the most.
- [31] Dr. Wong reassessed the worker on February 22, 2014. The worker had returned to work on February 18, 2014 and since then management had been intimidating and “starring” at him. The worker was unable to work as he was too stressed out. Dr. Wong stated the worker had anxiety and depression about the whole situation. He was off work again, with an estimated period being 14 to 20 days. Dr. Wong again provided a diagnosis of right elbow strain.
- [32] The entitlement officer spoke to the worker again on February 21, 2014. The worker expressed concerns about anxiety as he felt he was being bullied and harassed by his employer and coworkers as a result of the incident. He said he tried to obtain assistance from his employer and union representative but was advised by his union that there was not much it could do to assist him. The worker said that his employer was no longer speaking to him. He filed a report with the police but he was unsure if charges would be laid against the other employee.
- [33] The worker told the entitlement officer that he was back at work but due to the January 22, 2014 work incident, his employer had made it unbearable to continue working. He was anxious and concerned for his safety. He had concerns regarding retaliation and requested some assistance from the Board to deal with that issue. The entitlement officer explained that once she had the necessary paperwork she would investigate further and make a decision. She requested the worker provide her with a copy of the police report he had filed in relation to the January 22, 2014 work incident. She also wanted to review the incident reports from the employer.
- [34] The entitlement officer advised the worker that the treating physician had not provided a diagnosis of anxiety and recommended the worker discuss his issues further with his doctor. The entitlement officer explained that the worker needed to discuss in detail with his treating physician what has been going on in order that an appropriate diagnosis could be made.

[35] There did not appear to be any further direct communication with the worker after this point. On April 1, 2014, a case manager issued the decision to accept that claim for a right elbow contusion and to advise the worker that he accepted Dr. Wong's opinion that although the worker was anxious and had some other symptoms, he did not support a diagnosis of anxiety or a psychological diagnosis.

[36] In the file disclosure documents, a "Summary –Decision Assist" heading indicated that the injury of "acute reaction to stress, unspecified" had been denied.

*February 2014 claim*

[37] The worker returned to work on February 18, 2014 after the right elbow contusion injury, which occurred in January 2014. He returned to work at that time on full duties. The worker advised that upon his return to work nobody asked him how he was doing and he felt he was being ignored by management. The worker reported that during his return to work in the week of February 18, 2014, the relief supervisor A (not real initial) kept staring and smirking at him. The worker felt A would deliberately walk by and give him dirty looks as if he had "a disease". He said these actions by A were intimidating and uncomfortable. He also feared that his employment was at risk. The worker confirmed to the case manager that he did not approach A to ask why he was glaring and smirking when he saw the worker. The worker stated that being ignored by management made him feel as if he was being punished for filing a violence in the workplace complaint stemming from the January 22, 2014 work incident.

[38] On February 20, 2014, the worker attended an interview as part of the January 22, 2014 incident investigation. The worker asked A, who was present during the interview, where was the previous statement he had filed. A allegedly looked at the worker as if he "was irrelevant". The worker said that as he was in the midst of relaying his account of the January 22, 2014 incident, A rudely interrupted him and asked "are you finished yet?" The worker advised that during the remainder of the interview, his smoking outside the employer's premises was discussed. The worker felt as if the assault on him by the coworker did not matter.

[39] Another incident occurred on February 20, 2014 when the worker said he was leaving the employer's premises for a coffee break when his shift manager, B (not real initial), looked at him angrily and then looked away. The worker said this was the first time B reacted to him in this manner, noting that their interactions had previously been cordial. The worker stated then when he got home after completing his shift he felt stress and anxiety because of this interaction. Consequently, he contacted the Board to report a harassment issue. He also contacted his employer's headquarters and the police.

[40] The worker said he returned to work the next day (given he worked night shifts, his next shift was February 22, 2014). He saw A, who again stared and smirked at him. The worker then went to his director to report the harassment. The worker filed a harassment complaint and went home.

[41] The worker advised in his statement to the Board that the entire experience left him very upset and uncertain about his safety in the workplace. He felt he had not been treated fairly and he should not have been made to feel ignored or treated poorly by his supervisors and manager. He said that it appeared there was more focus placed on him smoking instead of the fact that he

was assaulted at work. He did not feel it was appropriate to have been considered for discipline for smoking and treated in the manner he was by his supervisors and manager.

[42] The claim file did not contain any medical evidence.

## **New Medical Evidence**

### *Dr. Wong's January 21, 2015 Medical-legal Report*

[43] Dr. Wong advised that he had a brief conversation with the Board and he advised that the worker had a reactional anxiety attack from the January 22, 2014 work incident. Recovery would be expectant and "may resolve at that point in time". However, after the initial incident, the worker continued to experience bad dreams about the incident. He was quite anxious about the incident. Dr. Wong said that upon reviewing his chart notes, the worker had not recovered completely. He continued to have bad dreams about the incident and was quite nervous at work. He had continuous pressure from work.

[44] Dr. Wong stated that as a result of this incident and repeated subsequent incidents of stress at work, the worker was recently evaluated and was clinically diagnosed as having reactional depression. He was referred to counseling for psychological support and treatment.

[45] Dr. Wong stated that the January 22, 2014 work incident played a significant contributing role in the worker's psychological symptoms. Repeated subsequent "harassment" at work aggravated his symptoms and recovery process. The worker had been trying to deal with his situation at work. His initial stress prevented him from working from February 13, 2014 to February 17, 2014 and his ability to perform his regular duty after that time.

### *Dr. Wong's March 12, 2015 Supplemental Report*

[46] Dr. Wong advised that when he first assessed the worker on January 29, 2014, the worker had pain and anxiety, and he had physical and psychological restrictions for returning to work full duties, full time. He said when he spoke to the case manager, he was unable to provide a definitive diagnosis at that moment and the psychological condition could mostly be interpreted as reactional anxiety. With proper support and congenial environment, most cases would settle. The worker did not have any emotional or psychological problems prior to the work incident.

[47] The worker described a hostile environment that escalated and aggravated his psychological symptoms. Testing identified depression. Dr. Wong stated that he had not changed his opinion previously expressed in his January 21, 2015 opinion. The diagnosis remained the same; the worker suffered anxiety immediately after the incident. Given an unsupportive environment, he developed chronic depression as assessed by Dr. Wong on January 8, 2015.

### *Dr. Mirmiran's March 17, 2015 Psychiatric Assessment Report*

[48] The worker submitted a psychiatric assessment report that had been provided to Dr. Wong from Dr. Mirmiran (psychiatrist).

- [49] The worker reported that that he had been assaulted at work in January 2014 by a coworker. He assault significantly affected his mental health. The worker described the assault incident and stated that he attempted to lodge a complaint with his employer but he felt bullied and harassed by management for filing the complaints. He received threats towards his family and the police were notified.
- [50] Since the incident, the worker had been reportedly experiencing unwanted, intrusive thoughts and believed that if he had not been from a particular ethnic background he would have been treated differently. He was experiencing bad dreams three to four times a week. These dreams were about the incident or “bullies” standing over his head as he slept. His concentration was affected and he would get distracted by unwanted, intrusive and ruminative thoughts. He struggled with low energy and feeling tired and exhausted. He felt sad and angry and questioned why this happened to him. He felt worthless. At one point he had passive suicidal thoughts but no intent.
- [51] Dr. Mirmiran said the worker presented with some “soft” post-traumatic stress disorder (PTSD) symptoms and adjustment disorder with depressed mood. He did not have full clinical depression and did not require antidepressant medication; however, he needed to learn mood management techniques.
- Dr. Nader’s November 16, 2015 Psychological Assessment Report*
- [52] At the request of worker’s legal counsel, Dr. Nader (psychologist) conducted a psychological assessment of the worker over a two-day period in November 2015.
- [53] The worker described feeling humiliated by the incident on January 22, 2014. He also felt concerned the coworker might return to try and harm him again. He immediately reported the incident to his employer. The worker said that when he returned to work in mid February 2014, nobody acknowledged him and the members of the management team gave him dirty looks and sneers. He continued to think about the assault and the lack of acknowledgement from anyone from the management team made him think about the incident even more. He progressively got more upset. He went off work for a week.
- [54] Subsequently, in March 2014, he was transferred to another work location. However, in June 2014, his supervisor yelled “you make me sick”, with spit coming out of his mouth. The worker reported that the incident left him feeling humiliated and scared, as it reminded him of the January 2014 assault. He felt very anxious and believed his supervisor was going to hit him. He immediately reported the incident to his employer. He went off work for approximately eight days following this incident.
- [55] Of all the incidents that happened at work, the worker stated that the January 2014 incident was most bothersome and felt that none of the other incidents would have occurred but for that initial assault.
- [56] The worker described having unwanted, intrusive thoughts about the assault on a daily basis resulting in him feeling angry and upset. He had nightmares approximately four to five times per week. He got extremely anxious when he saw people who looked like the coworker who

assaulted him. He initially used alcohol as a way of with the thoughts of the assault. He avoided going near his former place of work.

[57] His responses to psychometric testing indicated the following:

- In general, the worker responded without undue exaggeration of problems and without undue defensiveness.
- He presented with symptoms consistent with PTSD and he acknowledged maladaptive beliefs about his personal coping abilities and the safety of the world.
- He endorsed low levels of worry and anger.
- He did not endorse a heightened preoccupation with body sensations and fear of losing control, inconsistent with panic.
- He endorsed severe levels of depression and anxiety as well as moderate levels of stress.
- He endorsed overall moderate levels of disability. During difficult times, he was prone to be self-critical, uncertain, and indecisive.
- His interpersonal style was modest and unpretentious and he was not comfortable asserting himself.

[58] In Dr. Nader's opinion, following the January 22, 2014 workplace assault, the worker likely met the diagnostic criteria for Other Specific Trauma and Stress-Related Disorder (OSTSRD). This diagnosis was essentially PTSD in the absence of a "criterion A" stressor. Although the assault was a physical assault against the worker, Dr. Nader believed that the nature of the assault did not meet the threshold for a criterion A stressor, specifically, "exposure to actual or threatened death, serious injury, or sexual violence". Therefore, while the worker met all of the symptom criteria for PTSD related to the assault, the nature of the assault itself would not qualify as a criterion A stressor. Consequently, the more appropriate diagnosis was OSTSRD. Dr. Nader stated that this diagnosis in no way suggested that the worker's symptoms and resulting impairments were any less severe than if he had met the full criteria for PTSD.

[59] Dr. Nader stated that the worker continued to meet full diagnostic criteria for OSTSRD stemming from the January 2014 assault. He also currently met the diagnostic criteria for adjustment disorder with depressed mood. The depressive symptoms began in May or June 2014 likely secondary to OSTSRD and workplace stressors.

[60] In Dr. Nader's opinion the January 2014 assault precipitated the worker's OSTSRD in that the assault was a surprising, unexpected event that shook his sense of personal safety at work. The perceived harassment and bullying experiences in February 2014 and June 2014 served as triggers reminding the worker of the initial January 2014 assault and furthered his belief that he was unsafe at work. Therefore, the February 2014 and June 2014 incidents caused significant emotional distress and exacerbated the OSTSRD symptoms from the initial assault.

[61] The adjustment disorder with depressed mood was due to a combination of OSTSRD and subsequent workplace stressors in June 2014 (and December 2014)<sup>6</sup>.

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<sup>6</sup> I have not referred to the details of the December 2014 incident as it is a separate matter from the ones properly before me on appeal.

## Oral Hearing Evidence

- [62] At the oral hearing, I obtained oral submissions on the jurisdiction issue raised at the pre-hearing conference. The positions held by the parties were also stated in their respective written submissions received prior to the oral hearing. Through counsel, the worker submitted that he was seeking a finding that he suffered a psychological injury related to the January 22, 2014 claim, pursuant to section 5.1 of the Act, and that the worker remained temporarily disabled beyond February 13, 2014 due to that psychological injury.
- [63] The worker argued that the panel had within its jurisdiction the issue of whether he had an actual DSM psychological condition compensable under his claim. The Board had investigated whether there was a psychological condition, and denied an acute reaction to stress injury, as per the Board's June 6, 2014 Disclosure Claim Data Report, which appeared to be based on the April 1, 2014 decision letter. In the alternative, the worker submitted that this was a matter the Board should have made a determination on but did not and accordingly, the matter should be referred back to the Board for a determination.
- [64] The employer submitted that the Board did not make a decision for a mental disorder. The sole issue decided in the April 1, 2014 decision letter was whether the worker was entitled to temporary disability benefits in relation to the right elbow contusion from February 13, 2014 to February 16, 2014. The April 1, 2014 decision letter noted that Dr. Wong did not support a diagnosis of anxiety or a psychological diagnosis.
- [65] The worker testified to details regarding the January 22, 2014 work incident consistent with those already established on the claim file and uncontroverted. He said he went off work on January 25, 2014 because he kept thinking about the incident and because of his right elbow contusion. He said that even after the Board terminated his temporary disability benefits on February 12, 2014, he continued to experience anxiety, insomnia, and stress from the work incident.
- [66] The worker stated that when he returned to work on February 18, 2014 nobody approached him or seemed concerned about how he was doing. He said there was no investigation of the incident, no acknowledgement of the incident, and was on the receiving end of smirks from his supervisors and comments such as "there goes our five year safety record". Even when the investigation took place, the worker felt he was not listened to and had nothing to do with the assault and more to do with why he had been smoking outside the employer's premises. The employer did not inform the worker that it had spoken to his assailant and therefore, the worker said he did not get any sense if the coworker was still angry since he had not received any information. The worker said that because the angry stares and smirks were not witnessed he felt the employer acted like those things never happened.
- [67] When he returned to work in March 2014, the worker worried for his safety. He requested a transfer to another facility. He said he requested the transfer because he felt unsafe where he had been working. He was transferred within two weeks of his request.
- [68] In June 2014, the worker requested time to meet with his union representative regarding the assault and the bullying and harassment he felt afterwards. His then supervisor told the worker he had 15 minutes. He then clenched his fists and yelled to the worker "you make me sick". The

worker said that “a big gob of spit” came out of the supervisor’s mouth. The supervisor then yelled at the worker to unload the truck.

- [69] A series of emails were submitted during the oral hearing and entered into evidence as exhibit #1. Email communication dated January 23, 2014 from the employer’s superintendent advised that the coworker involved in the assault had been suspended. The worker testified at the oral hearing that he had not been informed that the coworker had been suspended.
- [70] A letter dated January 24, 2014 addressed to the worker from B, his shift manager, advised that an investigation was ongoing and the worker was directed to have no contact with the coworker. The letter went on to offer confidential support through its Employee Assistance Program. The worker confirmed that he got this letter but he stated that he was unaware of the outcome of the investigation.
- [71] Another letter addressed to the worker from B dated February 25, 2014 was entered into evidence as exhibit #2. The letter stated it was a follow up to the worker’s written complaint dated January 22, 2014. The February 25, 2014 letter advised an investigation was conducted and based on the information it appeared the worker’s smoking precipitated the incident. Any further details surrounding the matter were inconclusive and the investigation was considered closed. The letter went on to note that the worker’s participation was less than complete and at times disruptive. His conduct actually impeded the timely resolution of the complaint the worker initiated and could have “cast doubt on the validity of the complaint itself”.

*Witness Evidence*

- [72] B gave affirmed evidence as the employer’s witness. B stated that he had been with the employer for 21 years, and knew the worker for 20 years. He had no direct supervisory authority over the assailant coworker. He described his working relationship with the worker as being very good over the years. He stated the worker reported the assault incident to him on January 22, 2014.
- [73] Regarding the January 24, 2014 letter, B said he wrote it to the worker because of the seriousness of the incident and he had been concerned about the worker’s welfare and safety. He said the coworker was suspended effective January 23, 2014 but he could not recall if he told the worker this information.
- [74] B denied that he looked angrily at the worker and denied that he said “we’ll there goes our five year safety record”. In fact, he said he was surprised to hear that the worker had hurt feelings and had the perception B treated him badly or had not welcomed him back the worker returned to work.
- [75] Regarding the February 25, 2014 letter, B stated that this was issued to the worker to advise him that the issue had been looked into and investigation into the assault done. B confirmed that the worker had also been investigated regarding a bylaw infraction for smoking by the doors of the building; however, no disciplinary action was taken against the worker. The worker stated that contrary to what the worker may have believed, the smoking incident was less important than the violence in the workplace investigation. He said the result of the employer’s violence in the workplace investigation was communicated to the worker in the February 25, 2014 letter.

## *Oral Submissions*

- [76] The worker submitted that he was seeking acceptance of the diagnosed OSTSRD condition under section 5.1 of the Act. He requested that Dr. Nader's opinion be given significant weight. He submitted that the assault on January 22, 2014 was the initiating event in his OSTSRD and some of his psychological symptoms were directly caused by the assault. The worker submitted that it appeared that if OSTSRD was accepted under the January 22, 2014 claim as a reaction to the assault then matters for implementation would include the nature and duration of entitlements that flow from acceptance of that condition. The worker further submitted that the January 22, 2014 incident caused his OSTSRD including his ongoing, unresolved disorder and directly related to the diagnosed adjustment disorder with depressed mood that developed months later. The worker noted that according to Dr. Nader, the incidents of perceived bullying and harassment in 2014 exacerbated his OSTSRD from the initial assault and the incidents in June 2014 led to some of his symptoms of adjustment disorder with depressed mood.
- [77] The worker argued that while section 5.1 of the Act excluded labour relations matters, where an employer violated its own health and safety obligations and policies, it could not be argued that any resulting mental disorder was barred by virtue of section 5.1(1)(c) of the Act.
- [78] The worker submitted that it was clear the employer failed to undertake a real investigation into the January 22, 2014 work incident in light of the February 25, 2014 letter to the worker. Regarding the smirks and angry looks, the worker submitted that these did not need corroboration to find that they had occurred. Rather, it was a matter that relied on credibility and in this case, the worker said he presented in a straight forward manner and was a good historian. Therefore, his evidence should be accepted.
- [79] The employer submitted that the panel did not have the jurisdiction to decide whether the worker suffered an aggravation of his psychological condition as that was an issue the Board had yet to decide in the first instance.
- [80] The employer also submitted that the February 2014 claim did not meet the criteria for bullying and harassment. Further, Dr. Nader's opinion came two years after the January 2014 work incident and he referred to circumstances that were not supported by the evidence.

## **Reasons and Findings**

### *January 2014 Claim*

*Did the Board make a decision regarding a mental disorder in accordance with its policy item #99.20 of the RSCM II?*

- [81] Subsection 96.2(1)(a) of the Act states that person referred to in section 96.3 (including a worker who is directly affected by the decision) may request a review officer to review "a Board decision respecting a compensation or rehabilitation matter under Part 1" of the Act.

[82] The term “decision” is not defined in the Act. However, policy item #99.20, “Notification of Decisions,” includes the following definition:

A “decision” is a determination of the Board to award, deny, reconsider or limit entitlement to benefits and services, or impose or relieve an obligation, pertaining to compensation or rehabilitation matters under Part 1 of the Act or policy.

[83] Policy item #99.20 also states that:

A decision is made, for the purpose of triggering the timelines for reconsiderations and reviews, on the date the decision is communicated to the affected person.

[84] With respect to communication of decisions, the policy states:

The Board will communicate the following decisions through a decision letter:

- Decisions on whether a claim is accepted, denied or rejected;
- Decisions on initial entitlement to temporary disability benefits, a permanent disability award, benefits for a fatality and vocational rehabilitation assistance;

...

The communication of the above decisions in writing triggers the timelines for reconsideration and review. The fact that a decision was not communicated in writing does not void the decision.

If one of the above decisions is not communicated in writing, the Board will determine whether the decision was satisfactorily communicated through other means, for example, verbally, through the payment or termination of compensation, or the referral of a worker for medical treatment or examination, in order to determine the timelines for reconsideration and review.

[85] The policy sets out a number of elements that “should, where appropriate,” be included in a decision letter. These include the matter being adjudicated, the evidence that was considered, the formal decision, and an explanation of the impact of the decision on payment of compensation or entitlement or other benefits or services.

[86] The worker seeks recognition that the April 1, 2014 decision letter communicated a decision denying a claim for mental disorder. I find it did for the reasons that follow. The April 1, 2014 decision cannot be viewed in isolation. Generally, entitlement decisions communicated in decision letters reflect the culmination of evidence gathering, and investigation into a particular matter. In this regard, it is necessary to follow the thread of processes that came before the actual decision letter was issued.

[87] It is clear from as early as a January 28, 2014 telephone conversation between the worker and a Board entitlement officer that the worker was expressing difficulties with stress and anxiety.

Noting an absence of evidence related to a diagnosis of stress and anxiety, the entitlement officer contacted Dr. Fong's office the same day. The entitlement officer was informed that the worker had been seen on January 25, 2014 for a "stress related visit" in relation to the January 22, 2014 work incident. It is clear from this point the entitlement officer began the evidence gathering requirement in order to complete her adjudication of a possible psychological condition.

[88] The entitlement officer then spoke to the worker's regular attending physician, Dr. Wong, on January 30, 2014 questioning whether his report from the visit the previous day was to be interpreted as proving a "mental health" anxiety diagnosis. In a statement attributed to Dr. Wong, he said he did not provide anxiety as a diagnosis; in his opinion, the worker was somewhat unsettled as a result of the incident but this would settle down in a couple of days at the most. This is further evidence that the entitlement officer was alive to a possible psychological condition stemming from the January 22, 2014 work incident.

[89] The April 1, 2014 decision letter then went on to detail, under the heading Acute Reaction to Stress injury, some of this evidence previously gathered during the adjudication process. The case manager (who wrote the decision) said that accepted Dr. Wong's analysis. By doing so, I conclude the case manager's April 1, 2014 decision letter implicitly denied a claim for mental disorder and was not merely words in passing. As further, and perhaps most compelling, support of this is the fact that the claim file included a June 6, 2014 Disclosure Claim Data Report indicated that Acute Reaction to Stress Injury had been denied on the claim.

[90] That the Board decision letter did not cite the applicable law and policy for mental disorder is challenging, but it is not fatal to the worker's position. I am mindful that the decision letter did not include all the elements cited by policy #99.20 but it did discuss the evidence gathered during the inquiry process. That the September 17, 2014 Review Division decision only addressed the worker's entitlement to temporary disability benefits after February 12, 2014 is also not fatal to taking jurisdiction over the mental disorder issue. WCAT derives its jurisdiction from either or both the underlying Board decision and/or Review Division decision.

[91] In light of this analysis, I find the April 1, 2014 Board decision letter contains a decision regarding the denial of a mental disorder. Accordingly, I will turn to considering the merits of that issue.

*Did the worker suffer a mental disorder as a result of the January 22, 2014 work incident?*

[92] The worker claims for a mental disorder arising from the workplace incident with a coworker on January 22, 2014. A claim for compensation for a mental disorder is adjudicated under section 5.1 of the Act applying the policy in item #C3-13.00 of the RSCM II, the policy manual. The Board also has a Practice Directive, #C3-3, that discusses the items contained in the policy and the statute. Unlike the policy, the practice directive is not binding, but it serves to illustrate what questions are important, how terms are used by adjudicators, and it aims to promote consistency of adjudication across these kinds of claims.

- [93] Under section 5.1 a worker is entitled to compensation for a mental disorder if the mental disorder:
- (i) is a reaction to one or more traumatic events arising out of and in the course of the worker's employment, or,
  - (ii) is predominantly caused by a significant work-related stressor, including bullying or harassment, or a cumulative series of significant work-related stressors, arising out of and in the course of the worker's employment.
- [94] In addition, the worker must be suffering from a mental disorder that is described in the in the American Psychiatric Association's DSM-5 and which is diagnosed by a psychiatrist or a psychologist.
- [95] Finally, the mental disorder cannot be the result of a decision by the worker's employer about the nature of the employment, any change in the employment, any change in the worker's working conditions, or a decision to discipline the worker or terminate their employment.
- [96] It is the worker's position that he suffers from a mental disorder that is a reaction to a traumatic event – being assaulted when the coworker struck his arm with a door on January 22, 2014. The worker asserts that this was the initialing event and his subsequent periods of disability that occurred in February 2014 (as well as June 2014) were aggravations of the mental disorder brought on by the treatment he received from his supervisors and managers. I will first address the incident on January 22, 2014.
- [97] There are several requirements in the statute which must be met before a claim for a mental disorder can be accepted. I will consider each in turn
1. Is there a diagnosis of a mental disorder?
- [98] Dr. Wong, who initially assessed the worker following the January 22, 2014 work incident, did not provide a diagnosis of a mental disorder. His January 29, 2014 medical report noted the worker had issues with anxiety, nightmares, and sleeping but he did not diagnosis a mental disorder related to those symptoms. In a subsequent conversation with the Board officer entitlement officer, Dr. Wong was paraphrased as saying that in his opinion the worker was somewhat unsettled as a result of the January 22, 2014 work incident. Again, he offered no mental disorder diagnosis.
- [99] New medical evidence submitted to WCAT included a report from Dr. Wong dated January 25, 2015. It was Dr. Wong's opinion that in the aftermath of the January 22, 2014 work incident, the worker developed reactional anxiety. Leaving aside the fact Dr. Wong that has not identified himself as having the requisite qualifications of a psychologist or psychiatrist, reactional anxiety is not listed as one of the Anxiety Disorders contained in the current (and applicable) version of the DSM.
- [100] Dr. Mirmiran stated in his March 17, 2015 psychiatric assessment report that the worker presented with some "soft" PTSD symptoms along with an adjustment disorder with depressed mood, while Dr. Nader was of the view that the worker met the diagnostic criteria for OSTSRD but not PTSD. Dr. Nader explained that while the worker met all of the symptom criteria for

PTSD related to the assault, the nature of the January 22, 2014 incident itself would not qualify as a criterion A stressor, specifically, “exposure to actual or threatened death, serious injury, or sexual violence”.

[101] I accept the opinion of Dr. Nader. I find he provided a reasoned and well explained rationale for preferring the diagnosis of OSTSRD over a PTSD diagnosis. He is qualified to make such a diagnosis and distinction between the two diagnoses. Both Dr. Mirmiran and Dr. Nader agreed the worker also met the diagnostic criteria for an adjustment disorder with depressed mood. Both OSTSRD and adjustment disorder with depressed mood are DSM diagnoses. I find, therefore, that the worker has a diagnosis of a mental disorder.

2. Was there one or more events, or a stressor, or a cumulative series of stressors?

[102] Policy item #C3–13.00 requires that all events, stressors, or incidents described as potential causes of a psychological diagnosis must be identifiable. The Board does not just accept a worker’s “subjective belief about the event or stressor”, although that is taken into consideration when assessing the issue of causation. The events or stressors are usually verified by “co-worker’s, supervisory staff or others” when the Board investigates the claim.

[103] I accept the January 22, 2014 incident occurred as described by the worker. The worker reported on his application of compensation in relation to the January 22, 2014 incident that the coworker rammed the door violently into the worker’s right elbow and forearm, while looking angry at the worker. Based on the events as described by the worker and supported by other evidence on file, the Board accepted the claim for a right elbow contusion. This is an identifiable event or stressor as policy requires but was it traumatic or significant?

3. Was the event “traumatic” or the work-related stressor “significant”?

[104] A traumatic event is defined by Board policy in item #C3–13.00 as “an emotionally shocking” event, which is generally unusual and distinct from the duties and interpersonal relations of a worker’s employment. It is generally witnessed firsthand and the worker has a reaction to it that is immediate and identifiable.

[105] The Practice Directive provides the following guidance on the meaning of “emotionally shocking” and “traumatic”:

The policy does not define “emotionally shocking” or “traumatic”. Common to the definitions of those terms is an element of emotional intensity as well as distinctiveness from the ordinary course of events. The following excerpts illustrate some common definitions of the terms. Black’s Law Dictionary defines “shock” as, “a profound and sudden disturbance of the physical or mental senses, a sudden and violent physical or mental impression”. “Mental shock” is more specifically defined as, “shock caused by agitation of the mental senses and resulting in extreme grief or joy”. The Merriam-Webster online Dictionary defines “shocking” as, “extremely startling, distressing or offensive”. The Concise Oxford Dictionary defines “traumatic” as, “deeply disturbing or distressing”.

- [106] The worker testified that he felt shock and embarrassment by the workplace incident. While the swinging of the door into the worker's elbow was described in the evidence as being an assault, I do not consider it to be the type of emotionally intense event intended to be covered by the policy. While I accept that the coworker's behaviour and angry reaction may have been unexpected, stressful and emotionally upsetting, I find that when viewed objectively (while also considering the worker's evidence) it was not the kind of "emotionally shocking" or "deeply disturbing or distressing" experience referred to in the policy. Dr. Nader advised that the nature of the workplace incident did not meet the threshold for a criterion A stressor for a diagnosis of PTSD as it did not involve "exposure to actual or threatened death, serious injury, or sexual violence". I consider this type of exposure would be akin to the types of emotionally shocking or traumatic events contemplated by policy. Thus, I do not find the incident of January 22, 2014 meets the threshold of what policy contemplated as being a traumatic event but was it a significant workplace stressor?
- [107] Policy item #C3-13.00 provides that a work-related stressor is considered "significant" when it is excessive in intensity and/or duration from what is experienced in the normal pressures or tensions of a worker's employment.
- [108] I find the incident was a "significant" workplace stressor. To the extent that the coworker did not expressly threaten the worker, did not mean the worker did not feel threatened. Indeed, the coworker swung the door with enough force that his action caused physical harm to the worker. The employer considered the incident fell within its violence in the workplace protocol and the coworker was suspended for his actions.
- [109] As explained in policy item #C3-13.00, the worker's subjective response to the event or stressor is considered, but the question is not determined solely on the basis of the worker's subjective belief. The intent behind the coworker's actions, which made them threatening was any lack of apology at the time of the incident occurrence. Had the incident not been intended to threaten or abuse the worker but merely an accident, then it would be reasonable to expect the coworker explain that at the time or apologize. That did not happen. He swung the door open, hit the worker's arm and even when the worker questioned why the coworker did that, the coworker simply responded that the worker should not have been smoking outside the employer's premises. I find that when viewed objectively the action was threatening. The evidence as a whole does not draw me to the conclusion that the January 22, 2014 incident was in keeping with the normal pressures or tensions of the worker's employment. On the contrary I find the incident was excessive in intensity from what is experienced in the normal pressures or tensions of the type of employment the worker performed.
- [110] I find that the incident amounted to a significant stressor as contemplated by section 5.1 of the Act and policy item #C3-13.00 of the RSCM II.

#### 4. Causation

- [111] Policy item #C3-13.00 explains that the Act requires the mental disorder be predominantly caused by a significant work-related stressor, or a cumulative series of significant work-related stressors, arising out of and in the course of the worker's employment. There are two parts to this requirement. The first part is the determination whether the significant stressor or cumulative series of significant stressors arose out of and in the course of employment.

[112] There is no dispute the worker was engaged in a smoking break when the incident occurred with the coworker. Policy item #C3-18.00 explains that there is a broad intersection and overlap between employment and personal affairs. An incidental intrusion of personal activity such as a break into the process of employment is not a bar to compensation. Policy states further:

Where the common practice of an employer or an industry permits some latitude to workers to attend to matters of personal comfort or convenience in the course of employment, compensation for injuries or death occurring at those moments is not denied simply on the ground that the worker is not in the course of productive work activity at the crucial moment. This is within the scope of the established doctrine relating to acts which, though not in themselves productive, are nevertheless a normal incident of employment.

[113] Part A of policy item #C3-18.00 discusses situations where a worker is on lunch, coffee or other breaks. A worker may be considered to be in the course of the employment while engaged in other incidental activities such as when using washroom facilities or having a lunch or coffee breaks on the employer's premises. However, an injury that occurs in these situations may not automatically arise out of the employment. Both employment and non-employment factors are considered.

[114] I find that as a matter of acknowledgement, the Board would have undertaken an analysis of whether the worker was in the course of his employment when it adjudicated the right elbow contusion. That the Board accepted the claim as compensable, establishes that it acknowledged the worker was on break when the injury occurred and although he was engaged in an incidental activity, he remained in the course of his employment. Further, by virtue of its acceptance of the claim for a physical injury, the Board would have already recognized that in its broadest sense, the incident was an employment-related issue as opposed to a purely personal issue between the worker and the coworker. The Board accepted, therefore, that the January 22, 2014 incident was sufficiently connected to the employment such that the physical injury also arose out of the employment. Accordingly, if the physical injury arose out of and in the course of employment, it follows that any mental disorder stemming from the same incident also arose out of and in the course of employment.

[115] The second part of the causation issue is whether the significant work—related stressor was the predominant cause of the mental disorder.

[116] Policy item #C3-13.00 states:

Predominant cause means that the significant work-related stressor, or cumulative series of significant work-related stressors, was the primary or main cause of the mental disorder.

[117] In Dr. Nader's opinion, the January 22, 2014 workplace incident precipitated the worker's OSTSRD in that it was a surprising, unexpected event that shook his sense of personal safety at work. Although Dr. Mirmiran offered a different diagnosis of "soft" PTSD symptoms, he similarly attributed the mental disorder to the January 22, 2014 workplace incident. I am mindful that the diagnosis provided by Dr. Nader was two years following the incident; however, the symptoms the worker described to Dr. Wong in the aftermath of its happening are alike to those

he reported to Dr. Mirmiran and Dr. Nader. I do not consider this to be a case where there is a new diagnosis some two years later related to different symptoms. Rather, I consider this a case where the diagnosis provided by Dr. Nader has become apparent and refined. The worker did not identify any pre-existing psychological conditions. Neither Dr. Nader nor Dr. Mirmiran stated that any other stressor other than the work-related one was a predominant cause of the mental disorder.

- [118] Based upon Dr. Nader's expert opinion, I find that the evidence supports the conclusion that the January 22, 2014 significant workplace stressor was the predominant cause of the worker's diagnosed OSTSRD. Thus, I find that the causation requirement is satisfied.

#### 5. Labour relations exclusion

- [119] Although there is evidence that the employer also investigated the worker smoking and whether he breached its policies, the employer did not take any disciplinary action towards the worker and advised him of this in its February 25, 2014 letter. The employer has not argued that the mental disorder was the result of any of its investigation into the workplace incident on January 22, 2014, including the worker smoking. The evidence on file from Dr. Nader, Dr. Mirmiran and Dr. Wong do not suggest that the worker's reaction to possible discipline from smoking, which could bring the event into one of labour relations, was the predominant cause of his mental disorder.
- [120] Accordingly, I find that the worker's OSTSRD stemming from the January 22, 2014 work incident was not caused by a decision by the employer relating to the worker's employment, and that the requirement in section 5.1(1)(c) is satisfied.
- [121] The worker's appeal on this issue is allowed.

#### February 2014 Claim

*Does the worker have an acceptable claim for a mental disorder pursuant to section 5.1 of the Act?*

- [122] The law and policy relevant to this issue has already been set out in this decision with the following exceptions.
- [123] Policy item #C3-13.00 recognizes that all workers are exposed to normal pressures and tensions at work which are associated with the duties and interpersonal relations connected with the employment.
- [124] Policy goes on to state that interpersonal conflicts between the worker and his or her supervisors, co-workers or customers are not generally considered significant unless the conflict results in behaviour that is considered threatening or abusive. Examples of significant work-related stressors may include exposure to workplace bullying or harassment.
- [125] Practice Directive #C3-3 expands further on policy by noting that interpersonal conflicts between a worker and co-workers, supervisors or customers are not generally considered significant unless the conflict results in behavior that is considered threatening or abusive. While neither

the Act nor the policy define bullying, harassment, threatening or abusive, in general terms, both bullying and harassment reflect conduct that is intended to, or should reasonably have been known would intimidate, humiliate or degrade an individual.

- [126] The worker's position is that when he returned to work after the January 22, 2014 work incident, he was bullied and harassed by his supervisors and managers. He described being the recipient of sneers and angry looks as well as comments about the employer's clean five year record being jeopardized. The worker also stated that the investigation into his claim of violence on the workplace was not conducted properly leading to him having feeling of not being safe in his work environment.
- [127] Dr. Nader stated that the worker's perceived harassment and bullying experiences in February 2014 served as triggers reminding him of the initial January 2014 assault and furthered his belief that he was unsafe at work and thereby exacerbated the OSTSRD symptoms from the initial January 22, 2014 incident.
- [128] The worker submitted that in initiating incident in January 22, 2014 caused his OSTSRD and based on the expert opinion of Dr. Nader, was directly related to him developing an adjustment disorder with depressed mood months later. He submitted that based on the opinion of Dr. Nader, the incidents of perceived harassment and bullying in 2014 exacerbated his OSTSRD from the initial workplace incident.
- [129] I read Dr. Nader's opinion, and the worker's argument to mean that he is seeking a finding that the February 2014 alleged harassment and bullying aggravated his pre-existing (and now compensable) OSTSRD. Policy item #C3-13.00 states that where a worker has a pre-existing mental disorder and claims that a significant work-related stressor aggravated the pre-existing mental disorder, the claim is adjudicated with regard to section 5.1 of the Act and policy item #C3-13.00. Therefore, in my view the "causative significance" test in policy item #C3-16.00 "Pre-existing conditions or Diseases," would not apply and the "predominant cause" test would apply to an aggravation of a pre-existing mental disorder.
- [130] As noted previously, a traumatic event is one that is emotionally shocking and is generally unusual and distinct from the duties and interpersonal relations of a worker's employment. The incidents described by the worker as having occurred in February 2014 on his return to work are not of a manner considered emotionally shocking and rising to the level of being traumatic as required by section 5.1 of the Act. Instead, I find that the workplace situations described by the worker amount to ongoing interpersonal conflicts, which fall into the category of a work-related stressor or a cumulative series of stressors.
- [131] Policy item #C3-13.00 provides that one or more events, or a stressor or a cumulative series of stressors must be identifiable. The worker's subjective statements and response to the event or stressor are considered; however, this question is not determined solely by the worker's subjective belief about the event or stressor (although I have considered the worker's subjective statements and response). The Board also verifies events or stressors through information or knowledge of events or stressors provided by co-workers, supervisory staff, or others.
- [132] The worker identified several stressors which cumulatively caused/aggravated his mental disorder. These include a belief that the employer did not conduct a proper investigation into the

January 22, 2014 work incident, sneers and angry looks from his supervisors and managers, and belittling comment regarding the employer's loss of a clean occupational health and safety record. I accept that these experiences of the worker amount to a cumulative series of work-place stressors.

[133] *Noteworthy Decision WCAT-2014-02791* dated July 25, 2014 discussed that all incidents of bullying and harassment are necessarily interpersonal conflicts, and therefore establishing threat or abuse is a threshold requirement for all bullying/harassment claims. While that decision is not binding on me, I agree with and adopt the panel's line of reasoning.

[134] I acknowledge that the comment regarding the employer's loss of its clean record, even in a manner and meaning interpreted by the worker, occurred, it was rude, inappropriate, and unprofessional particularly when communicated by a supervisor; however, I do not consider it to be either threatening or abusive. I do not consider that a reasonable person viewing the situation from the outside would consider this comment as extremely offensive or as having involved insulting language. As a result, I do not find the comment constitutes bullying or harassment as contemplated by the Act or the policy.

[135] Neither of the terms "threatening" and "abusive" are defined in the policy or the practice directive. However, in decision *WCAT-2013-01593*, a panel discussed the definition of these terms as follows:

"Abusive" is defined in the *Oxford English Dictionary* as "extremely offensive and insulting; characterized by illegality or physical abuse". It is defined in *Black's Law Dictionary, Eighth Edition* as, "characterized by wrongful or improper use".  
 "Threatening" is defined in the *Oxford English Dictionary* as "make[ing] or express[ing] a threat to someone or to do something; put at risk; endanger".  
 "Threat" is defined as "a statement of an intention to inflict injury, damage, or other hostile action, as retribution". It is defined in *Black's Law Dictionary, Eighth Edition* as communicating intent to inflict harm or loss on another.

[136] With these definitions in mind, I do not find the behaviour of the worker's supervisors or managers to be extremely offensive or insulting, characterized by illegality or physical abuse. The worker did not describe that any member of his management team, including individuals A and B, threatened or endangered him. I do not consider angry stares and sneers amount to an intent to inflict injury, damage, or retribution. Although these looks would have been uncomfortable for the worker to have experienced, they amount to workplace conflicts. There is dispute as to whether the incidents, particularly with B, occurred as described. B testified at the oral hearing and denied that he engaged in angry looks or snide comments to the worker. I consider it is not necessary to determine with certainty the accuracy of either the worker's evidence or that of B because I do not find that even if the circumstances were as described by the worker, on the whole, they were not threatening or abusive, nor were they reasonably known to intimidate, humiliate or degrade the worker.

[137] I find that the worker's perceived bullying and harassment does not represent a traumatic event or significant workplace stressor or series of work-place stressors. As indicated previously, there are several requirements in the statute which must be met before a claim for a mental disorder can be accepted. These requirements contract or expand depending on the conclusions

reached at each stage of the analysis. For instance, if there is no diagnosis of a mental disorder by a psychologist or a psychiatrist, the inquiry need go no further, although most decision-makers do go on to consider the merits of the circumstances giving rise to the claim. Similarly, as is the case here, if the evidence leads to a conclusion that there was no traumatic event or significant workplace stressor or cumulative series of workplace stressors, it is not necessary to wade into the policy considerations relating to causation or labour relations exclusions. Overall, I find that there is insufficient evidence that the worker was subjected to a significant workplace stressor or cumulative series of workplace stressors such that this was a predominant cause in aggravating the mental disorder.

## Conclusion

- [138] I vary the September 17, 2014 decision of the Review Division. I find that the Board made a decision regarding a mental disorder in accordance with its policy item #99.20 of the RSCM II. I find the worker did suffer a mental disorder as a result of the January 22, 2014 work incident.
- [139] I confirm the March 11, 2015 Review Division decision. I find the worker does not have an acceptable claim for a mental disorder pursuant to section 5.1 of the Act. This conclusion incorporates the finding that the worker did not suffer an aggravation of his pre-existing mental disorder in February 2014.
- [140] The worker requested reimbursement of one day time loss for attending the February 2, 2016 oral hearing. Given the outcome of the appeal, I order the Board to reimburse the worker for his one day time loss from work to attend the oral hearing pursuant to section 7(1) of the *Workers Compensation Act Appeal Regulation* (Regulation).
- [141] In addition, the worker requested reimbursement of Dr. Wong's January 21, 2015 medical-legal report totaling \$331.00. I find it was reasonable for the worker to have obtained this report. Pursuant to section 7(1) of the Regulation, I order reimbursement of this appeal expense at the invoiced amount of \$331.00.
- [142] Finally, the worker requested reimbursement of Dr. Nader's November 16, 2015 psychological assessment totaling \$2,887.50. Item #16.1.3 of WCAT's MRPP provides that WCAT will generally order reimbursement of expenses for attendance of witnesses or obtaining written evidence, regardless of the results in the appeal, where (1) the evidence was useful or helpful to the consideration of the appeal or (2) it was reasonable for the party to have sought such evidence in connection with the appeal. WCAT will generally limit the amount of reimbursement of expenses to the rates or fee schedule established by the Board for this purpose.
- [143] Item #16.1.3.1 of the MRPP provides that a WCAT panel has the discretion to award reimbursement of an expert opinion in an amount greater than the fee schedule in limited circumstances. Such limited circumstances may include difficult cases that require significant time and effort, consideration of the length of the report, or whether the detail and analysis of the report is uncommon.
- [144] If the bill or account exceeds the Board fee schedule, the party seeking reimbursement of the full amount must explain the reasons the account exceeds the fee schedule and why the panel

should order reimbursement of the full amount. In the absence of a request and a satisfactory explanation of the circumstances, WCAT will limit reimbursement to the fee schedule amount.

- [145] At the oral hearing, the worker submitted that Dr. Nader's rate was comparable to the amount charged by other psychologists for rendering psychological assessment reports. Further, he was entitled to get the best possible opinion to advance his appeal and not simply the cheapest. The employer submitted that Dr. Nader's assessment should not be reimbursed as it was provided two years after the workplace incident and it exceeded the Board's fees schedule.
- [146] The Board's fee schedule for psychology assessment and report is \$180.00 per hour to a maximum of 12 hours. Dr. Nader's invoice indicated he charged \$250.00 per hour for a total of 8.75 hours. When considering the maximum a psychologist can charge based on the fee schedule (\$2,160.00) and the amount charged by Dr. Nader (\$2,887.50 including GST), the difference is \$727.50.
- [147] Having regard to the limited, although not exhaustive list of criteria, set out in the MRPP, I am persuaded to exercise my discretion to depart from the general rule set out in item #16.1.3.1. The opinion was rendered for three different appeals (from three separate claims although only two are addressed in this decision). The subject matter including the interplay of the three separate claims (January 2014, February 2014 and June 2014<sup>7</sup> claims) was complex. Dr. Nader interviewed the worker over a two-day period, conducted psychometric test scoring and interpretation, and reviewed the evidence from three claims prior to providing his opinion. Therefore, in the limited circumstances of this case, I order reimbursement of Dr. Nader's November 16, 2015 psychological assessment totaling \$2,887.50.
- [148] There was no additional request for reimbursement of appeal expenses. None are apparent. Therefore, I make no further order in that regard.

Cynthia Katramadakis  
Vice Chair

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<sup>7</sup> The June 2014 claim is the subject of a separate appeal that I decided and Dr. Nader's psychological assessment was used to decide that appeal.

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