

DECISION OF THE WORKERS' COMPENSATION APPEAL TRIBUNAL

Introduction

- [1] In June 2014, this postal worker filed an application for compensation with the Workers' Compensation Board¹ (Board) claiming he suffered a mental disorder from bullying and harassment at work.
- [2] By way of a March 10, 2015 decision letter, a Board case manager denied the worker's claim on the basis that the circumstances described did not meet the requirements under section 5.1 of the *Workers Compensation Act* (Act).
- [3] The worker requested a review of this decision by the Board's Review Division. In Review Reference #R0192406 dated September 25, 2015, a review officer confirmed the Board's decision.
- [4] The worker now appeals to the Workers' Compensation Appeal Tribunal (WCAT).
- [5] WCAT held an oral hearing on February 2, 2016 during which time the worker 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.

Issue(s)

- [6] The issue under appeal is whether the worker suffered a mental disorder that meets the statutory provisions of section 5.1 of the Act.

Jurisdiction

- [7] 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.
- [8] 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.

¹ Operating as WorkSafeBC

- [9] Policies relevant to this appeal are found in the *Rehabilitation Services and Claims Manual, Volume II* (RSCM II).

Background and Evidence

- [10] To begin, I set out the background and evidence of two prior claims for which the worker maintained he suffered a mental disorder arising out of and in the course of his employment. Those incidents related to a January 2014 claim and a February 2014 claim². The worker referred to some of the details of those claims as background to the June 2014 claim. I will reference only the background necessary as it related to those claims to frame the issue under appeal.
- [11] On January 22, 2014, the worker sustained a right elbow injury when a co-worker “rammed” an exterior door into the worker’s arm while he was outside the employer’s premises on a smoking break. The Board accepted that claim for a right elbow contusion and paid temporary disability benefits until February 12, 2014.
- [12] It is the worker’s evidence, as reiterated by his oral testimony, that the January 22, 2014 work incident was the precipitating event for his mental disorder, diagnosed by Dr. Nader (psychologist) as Other Specific Trauma and Stress-Related Disorder (OSTSRD) and Adjustment Disorder with depressed mood.
- [13] The worker reported that after the January 2014 work incident, he experienced anxiety, nightmares, and problems sleeping. He did not feel safe at work.
- [14] The worker returned to work from the January 2014 incident on February 18, 2014. He advised the Board that on his return to work, his supervisors and managers engaged in bullying and harassment tactics. They gave him angry looks, sneered at him, and made comments that owing to the worker’s January 2014 claim, the employer no longer had a clean occupational health and safety record.
- [15] At the oral hearing, the worker testified 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 the investigation had nothing to do with the assault but 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 the co-worker and therefore, the worker said he did not get any sense if the co-worker 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.
- [16] Dr. Wong (attending physician) saw the worker on February 22, 2014. The worker advised that he was unable to work because he was too stressed out. Although Dr. Wong did not provide a *Diagnostic and Statistical Manual of Mental Disorders* (DSM) diagnosis, he said the worker had anxiety and depression because of his situation at work. Dr. Wong stated the worker had

² The parties had disclosure of the January 2014 and February 2014 claims.

anxiety and depression about the whole situation. He was off work again, with an estimated period being 14 to 20 days.

- [17] The worker returned to work at the beginning of March 2014. He said he was still worried for his safety. He requested a transfer to another facility because he felt unsafe. He was transferred within two weeks of the request.
- [18] Then, on June 25, 2014, just as he was leaving for lunch, the worker's supervisor approached advising that the chief union steward wanted to meet with the worker "for 15 minutes, no more". In a letter to the Board describing the incident, the worker said that he told his supervisor he needed more time. The supervisor allegedly said "that's all you're [going to] get". The worker informed the supervisor that he would take "the other route via grievance". The worker said that the supervisor got very angry, turned red, and said "go ahead, you make me sick". The worker advised that the supervisor had spit coming out of his mouth. When the worker was passing by, the supervisor yelled in an angry voice to the worker "get over here and offload this truck".
- [19] The worker believed that his supervisor tried to interfere with the bullying and harassment complaint the worker had filed in relation to the circumstances in February 2014.
- [20] On June 27, 2014, the worker saw Dr. Wong reporting that he felt very distressed, had headaches, and could not work because of the incident with his supervisor. Dr. Wong noted that the worker had been harassed and bullied at another work site prior to the June 25, 2014 work incident. Dr. Wong diagnosed anxiety, depression, and nightmares.
- [21] The case manager requested a Board field investigator conduct interviews of the worker, supervisor, and witness as part of the investigation into the June 25, 2014 incident. A February 2, 2015 field investigation report included the information taken from statements by the supervisor and witness.

Worker

- [22] The worker advised that on June 25, 2014, he was leaving for his lunch break. He said it was on the eve of a compliance meeting regarding another claim he had with the Board. He needed a union representative. The worker's supervisor came up and said that the union representative wanted to meet with the worker "for 15 minutes, no more". The worker said it was not enough time and that he would go another route, in other words, the grievance process. The supervisor became really angry, turned to the worker and yelled, "go ahead, you make me sick". The supervisor was "beet" red and his fists were clenched. The worker said they were standing approximately three or four feet apart. The supervisor had spit coming out of his mouth. When asked if the supervisor spat at the worker or whether spit came out as it sometimes did, the worker responded that in the course of speaking, a "big gob came out". The worker thought the supervisor tried to spit on him. There were no witnesses to the incident. The worker walked away to get his lunch. Later, as the worker walked past the supervisor, the supervisor yelled to the worker in front of co-workers "get over here and off load this truck". Many co-workers saw, but the worker explained that none wanted to give a statement. The worker thought the supervisor was trying to interfere with the complaint he had filed about a past incident at work.

Supervisor

- [23] The supervisor relayed his version of the June 25, 2014 incident. He told the worker that the worker had a meeting with the shop steward for 15 minutes. The worker said it would take more than 15 minutes. The supervisor then said that the worker could request further time and it would be accommodated. The supervisor said the worker became angry and stated it was a serious matter which would require more time and said "you guys have screwed me around". The supervisor said the worker pointed at him and stated he needed more time now. In response, the supervisor said to "quit being so demanding" and "if you need more time we will make it work".
- [24] The supervisor stated that there were no witnesses to the interaction and it was not very loud. He said the worker liked to do things his own way and the supervisor was tired of the worker being demanding. The supervisor denied spitting at the worker. He said he had not heard anything about spitting until it was raised by the field investigator.
- [25] In regards to the incident whereby the supervisor was reported to have yelled at the worker "get over here and unload a truck", the supervisor denied yelling at the worker. He said the worker was a bully and treated people poorly.

Witness

- [26] The witness stated that on June 25, 2014 he observed, for about 30 seconds, an altercation between the worker and the supervisor. He said the worker and supervisor stood about two feet apart. He observed the supervisor with both fists clenched and his face red while he communicated with the worker. The supervisor's voice was raised and when he said, "you make me sick", the supervisor spat at the worker. The witness said he believed the supervisor was about to "go off". He had never seen that behaviour at work before and was shocked to see it from this supervisor. He said the supervisor was very angry and had a raised voice. The witness was unsure if the supervisor spat at the worker intentionally but said it was likely.
- [27] At the oral hearing, the worker testified that the supervisor told him he could have 15 minutes to meet with the union representative but no more. When the worker said that was not enough time, the supervisor clenched his fists and yelled at the worker "you make me sick". The worker said a "big gob of spit" came out of the supervisor's mouth. The worker said he had been with the employer for a very long time and this was the first time anyone every spoke to him in that tone and with fists clenched. He said it was "hateful". The worker said that the supervisor later yelled at him to "get over here and unload this truck". The worker denied that he yelled at the supervisor and denied saying that he would just go on a compensation claim. The worker also denied that any time he was asked to do something he would get upset.

New Medical Evidence

- [28] At the request of the worker's legal counsel, Dr. Nader (psychologist) conducted a psychological assessment of the worker over a two-day period in November 2015.
- [29] The worker described feeling humiliated by the incident on January 22, 2014. He also felt concerned the co-worker 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.

- [30] 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.
- [31] 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.
- [32] 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 co-worker who assaulted him. He initially used alcohol as a way of dealing with the thoughts of the assault. He avoided going near his former place of work.
- [33] 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 post-traumatic stress disorder (PTSD) and he acknowledged mal-adaptive 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.
- [34] In Dr. Nader’s opinion, following the January 22, 2014 workplace assault, the worker likely met the diagnostic criteria for 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.

- [35] 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.
- [36] 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.
- [37] The Adjustment Disorder with depressed mood was due to a combination of OSTSRD and subsequent workplace stressors in June 2014 (and December 2014).³
- [38] The worker submitted that the June 25, 2014 claim should be accepted as an aggravation of his diagnosed OSTSRD condition and for an Adjustment Disorder with depressed mood based on the expert opinion of Dr. Nader. 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.
- [39] The employer submitted that the panel did not have the jurisdiction to decide whether the worker suffered an aggravation of a pre-existing OSTSRD condition as that had not been determined by the Board in the decision letter under appeal. In terms of the alleged bullying and harassment, the employer submitted that the circumstances in June 2014 did not meet the Board criteria for an acceptable claim for mental disorder. The employer submitted that Dr. Nader's report was two years after the fact and he referred to circumstances that were not supported by the evidence.
- [40] The worker responded that while Dr. Nader's report was not contemporaneous to the event, he was fully qualified to make an opinion on the issue under appeal, and there was no contrary medical opinion.

Reasons and Findings

- [41] 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 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.

³ 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.

[42] 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.

[43] In addition, the worker must be suffering from a mental disorder that is described in the in the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* (DSM-5) and which is diagnosed by a psychiatrist or a psychologist.

[44] 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.

[45] 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?

[46] It is the worker's position that the incidents on June 25, 2014 exacerbated his pre-existing psychological conditions (diagnosed as OSTSRD and Adjustment Disorder with depressed mood) – both of which were diagnosed by Dr. Nader and are DSM diagnoses. Dr. Nader noted that the worker's depressive symptoms were due to a combination of OSTSRD and subsequent workplace stressors in June 2014. There is insufficient evidence in the June 2014 claim file that contradicts the opinion of Dr. Nader. As a psychologist who interviewed, and assessed the worker, I accept his opinion regarding the diagnosis. 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?

[47] 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-workers, supervisory staff or others" when the Board investigates the claim.

[48] The worker identified incidents having occurred on June 25, 2014 that resulted in an exacerbation of his OSTSRD and Adjustment Disorder with depressed mood. The first incident with the supervisor involved a dispute with the amount of time the worker would have available to meet with his union representative. There is dispute between the worker and the supervisor regarding the extent of the interaction. The worker said the supervisor yelled and spat at him. He also said the supervisor was red in the face, presumably an intended implication of his level of anger, and that his fists were clenched. The supervisor denied spitting at the worker and the

field investigator noted that the supervisor had a lot of spit in his mouth when he spoke. The supervisor also denied speaking loudly to the worker during the incident.

- [49] The incident between the worker and the supervisor was verified by a witness. The witness told the Board's field investigator that the supervisor spoke in a raised voice and said to the worker "you make me sick". The witness felt that the supervisor was about to "go off". He verified the supervisor was red in the face and had clenched fists.
- [50] The Board did not accept the witness's statement noting that the worker had initially told the case manager that there was no witness to the incident; however, subsequently, one appeared. As well, the case manager said the witness statement was almost verbatim to the worker's statement.
- [51] The field investigator's report noted that the witness was somewhat reluctant to provide a statement to the Board for fear of retribution from his supervisor and management. The field investigator said that it appeared the witness had independently observed the altercation between the worker and the supervisor.
- [52] I am not satisfied that the witness statement ought to be rejected on the basis that it was either influenced by the worker's statement or that it was clouded by the passage of time. Neither the worker nor the supervisor believed the altercation was witnessed which could account for their initial statements to that effect. However, there is insufficient evidence presented that the witness provided anything but his directly observed account of the incident. I place significant weight on the statement by the field investigator that the witness was basically a reluctant witness. By rejecting the witness's statement, the Board concluded his evidence was not credible.
- [53] In assessing the witness's credibility I undertook an assessment in accordance with the test used by the B.C. Court of Appeal in *Faryna v. Chorny* [1951] 4 W.W.R. (Ns) 171, (1952) 2 D.L.R. 354. The court in that case observed that:

In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

- [54] Based on this principle, a number of factors may be considered in assessing credibility including the existence of bias, interest or other motive, internal and external consistency, spontaneity, imperfection, and willingness to concede error. In this case, the witness did not appear to have an obvious interest in the outcome of this appeal. Further, his statement to the field investigator was in harmony with the statements of the worker, both given contemporaneous to the incident and subsequently at the oral hearing. The witness statement is not in perfect alliance with the worker's. For example, the witness believed the supervisor likely intentionally spat at the worker; whereas, the worker initially told the Board and his doctor that the supervisor had spit coming out of his mouth when he spoke and it landed on the floor, but he did not indicate the supervisor intentionally spat at him. I find there is insufficient evidence to reject the witness statement based on a lack of credibility. Accordingly, I accept that there was an altercation between the

worker and the supervisor that was “heated” and that this incident, irrespective of the second, was a workplace stressor.

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

[55] A traumatic event is defined by Board policy 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.

[56] 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”.

[57] I do not consider the altercation between the worker and the supervisor to be the type of emotionally intense event intended to be covered by the policy. While I accept that the supervisor’s reaction may have been unexpected, stressful, and emotionally upsetting, I find that when viewed objectively (while also considering the worker’s subjective interpretation of the supervisor’s behavior) it was not the kind of emotionally shocking or deeply disturbing or distressing experience referred to in the policy. Dr. Nader advised that the June 2014 incident exacerbated the worker’s OSTSRD, which he explained was a mental disorder diagnosis that did not meet the threshold for a criterion A stressor for a diagnosis of PTSD as it did not involve “expose 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 altercation between the worker and his supervisor on June 25, 2014 (including an episode of the supervisor yelling at the worker to unload a truck) meets the threshold of what policy contemplated as being a traumatic event but was it a significant workplace stressor?

[58] 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. 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 and harassment.

- [59] 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. In this regard, the evidence of the witness is of particular usefulness.
- [60] Based on the weight of the evidence, I find the first altercation between the worker and the supervisor to be a significant workplace stressor. Although the supervisor did not threaten the worker, the witness believed the altercation was intense enough that he thought the supervisor would "go off". The supervisor had clenched fists, which denotes an element of threat, conveyed through body language. I accept that the supervisor's voice was raised, which enabled the witness to hear comments such as "go ahead, you make me sick". I find that when viewed objectively the altercation was threatening and was not in keeping, through the lens of an objective and reasonable observer, with the normal pressures or tensions of the worker's employment.
- [61] I am not satisfied that the evidence supports a conclusion that the supervisor intentionally spat at the worker. This conclusion is not consistent with the worker's initial reports to the Board and his doctor. The witness believed the supervisor likely intentionally spat at the worker but this is a speculative conclusion. This is particularly so given the field officer stated the supervisor spoke with a lot of saliva in his mouth and the worker did not report initially, when his recollection of events would likely be untarnished with the passage of time, that the supervisor had intentionally spat at him.
- [62] The Board's non-binding Practice Directive #C3-3 states that adjudicating claims for work-related stressors involves a detailed understanding of the working conditions and the specific stressors the worker is reporting. The practice directive also notes that the Act and policy do not 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. The practice directive also notes that not all interpersonal conflict or conduct that is rude or thoughtless will be considered abusive behaviour. Each case needs to be investigated to determine the details and nature of the interpersonal conflict.
- [63] On its own, I would not necessarily consider the incident in which the supervisor allegedly yelled at the worker to "get over here and unload this truck" to be a significant work-place stressor. However, when viewed within the context of the earlier altercation, I find this conduct was intended to, or should reasonably have been known would, intimidate, humiliate or degrade the worker.
- [64] I find that based on the weight of the evidence that incidents on June 25, 2014 amounted to significant work-place stressors as contemplated by section 5.1 of the Act and policy item #C3-13.00 of the RSCM II.

4. Causation

- [65] Policy item #C3-13.00 notes that there are two elements to establishing causation for a mental disorder claim. The first part (namely, "arising in the course of the worker's employment") refers to whether the traumatic event happened at a time and place and during an activity consistent with, and reasonably incidental to, the obligations and expectations of the worker's employment.

The policy also refers to the second part of the causation test (namely, “arising out of the worker’s employment”). This refers to the cause of the mental disorder. Both employment and non-employment factors may contribute to the mental disorder. However, in order for the mental disorder to be compensable, the significant work-related stressor, or cumulative series of significant work-related stressors, must be the predominant cause of the mental disorder. In other words, the significant work-related stressor or significant work-related stressors must be the primary or main cause of the mental disorder.

- [66] The practice directive notes that, in most cases, a psychological assessment will provide important evidence with respect to identifying and discussing the relative impact of different stressors in causing the diagnosed mental disorder. The work-related stressors need not be the sole cause. Nor is it necessary that the work-related stressor or stressors outweigh all other stressors combined.
- [67] Dr. Nader opined that the June 2014 incidents exacerbated the worker’s OSTSRD and Adjustment Disorder with depressed mood.
- [68] 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. I find, therefore, that the “causative significance” test in policy item #C3-16.00, “Pre-existing conditions or Diseases,” would not apply and that the “predominant cause” test would apply to an aggravation of a pre-existing mental disorder.
- [69] The employer argued that I did not have the jurisdiction to decide whether the June 2014 incidents aggravated the pre-existing conditions; however, as the causation test, in my view, is the same for aggravation then it seems only reasonable to take broad jurisdiction over the causation issue. However, even if I am incorrect in my interpretation of the causation test for a pre-existing mental disorder, I would arrive at the same conclusion.
- [70] I find the worker was in the course of his employment when the incidents occurred. The conversation took place on the employer’s premises during work hours, and the subject matter of the conversation was reasonably incidental to the worker’s employment but were the incidents a predominant cause of the mental disorder?
- [71] In Dr. Nader’s opinion, the incidents in 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 June 2014 incidents caused significant emotional distress and exacerbated the OSTSRD symptoms from the initial assault. Dr. Nader provided a comprehensive assessment prior to rendering his opinion. I find he had an accurate understanding of the facts as indicated by the history set out in the narrative of his report. Dr. Nader did not identify another cause for the mental disorder and he noted that prior to January 2014, the worker did not have a history of psychological treatment or diagnosis. I have not been provided with another opinion contrary to that offered by Dr. Nader. Accordingly, I rely on and accept his opinion in finding that the June 25, 2014 incidents were a predominant cause of the worker’s OSTSRD and Adjustment Disorder with depressed mood diagnoses.

5. Labour Relations Exclusions

- [72] Policy item #C3-13.00 of the RSCM II provides that there is no entitlement to compensation if the mental disorder is caused by a decision of the worker's employer relating to the worker's employment. The Act provides a list of examples of decisions relating to a worker's employment which include a decision to change the work to be performed or the working conditions, to discipline the worker or to terminate the worker's employment. This statutory list of examples is inclusive and not exclusive. Other examples may include decisions of the employer relating to workload and deadlines, work evaluation, performance management, transfers, changes in job duties, layoffs, demotions and reorganizations.
- [73] The incident on June 25, 2014 involving the supervisor yelling at the worker to "get over here and unload this truck" related to directing the worker's workload and would be considered a decision of the employer relating to the worker's employment. However, even setting this incident aside, the altercation between the worker and supervisor would not be subject to section 5.1(1) (c) exclusions. As noted by the review officer, the practice directive provides that an employer has the prerogative to make decisions regarding the management of the employment relationship but this does not mean that decisions can be communicated in any fashion. In this case, the manner in which the supervisor communicated to the worker was from an objective standard, threatening. I consider that this was not a situation in which the supervisor was merely communicating a decision relating to the worker's employment. I agree with the worker that even if the subject matter was employment related, if the communication crosses over to threatening or abusive, it no longer falls under the ambit of labour relations. Accordingly, in this case, I find the worker is not barred by section 5.1(1) (c) of the Act.

Conclusion

- [74] I vary the Review Division decision dated September 25, 2015. I find the worker suffered a mental disorder (either on a primary or aggravation basis) that meets the statutory provisions of section 5.1 of the Act. I allow the worker's appeal.
- [75] I awarded expenses pertaining to the worker's attendance at the oral hearing and for obtaining Dr. Nader's psychological assessment report under another appeal I decided for the worker. There are no specific expenses associated with this appeal alone. Therefore, I make no order in that regard.

Cynthia Katramadakis
Vice Chair