

DECISION OF THE WORKERS' COMPENSATION APPEAL TRIBUNAL

Introduction

- [1] This appeal is about whether the worker's mental disorder is compensable under the *Workers Compensation Act* (Act).
- [2] The worker developed major depressive disorder that he attributed to bullying and harassment between 2017 and 2019 while employed at a saw mill. The worker therefore filed a claim for compensation with the Workers' Compensation Board (Board) on October 4, 2019. The Board denied the worker's claim; however, the Review Division directed the Board to carry out further investigation and re-adjudicate the claim.
- [3] In an August 18, 2020 decision letter, the Board again denied the worker's mental disorder claim. The Board concluded that the events in question were either excluded from consideration under the Act or were of insufficient significance to ground the worker's claim for compensation.
- [4] The worker disagreed and requested a review. In *Review Decision #R0271722*, dated June 4, 2021, a review officer confirmed the Board's decision and denied the worker's claim for a mental disorder.
- [5] The worker now appeals to the Workers' Compensation Appeal Tribunal (WCAT). I conducted an oral hearing of the worker's appeal by videoconference on December 8, 2021. The employer participated in the appeal.

Issue(s)

- [6] Is the worker entitled to compensation for a mental disorder?

Jurisdiction

- [7] This appeal is brought under subsection 288(1) of the Act,¹ which permits appeals of Review Division findings to the WCAT.

¹ The Act was revised effective April 6, 2020. The revisions have no substantive effect on this appeal. For convenience I refer to the current numbering of the Act.

Background and Evidence

- [8] A Board officer spoke with the worker about his claim on November 8, 2019 and summarized the events that the worker believed contributed to his psychological difficulties.
- [9] In essence, the worker advised that after moving to a new posting at the saw mill, he began experiencing what he considered to be bullying and harassment, largely at the hands of his new coworkers. This culminated in criticisms of the worker's safety and training performance and getting him into trouble with the mill manager. The worker also had ongoing problems with the mill manager.
- [10] After almost two years of feeling ostracized and unfairly criticized, the worker was demoted and returned to his original position at the saw mill. The mill manager characterized the demotion as a result of the worker being a safety concern and not learning the new job duties sufficiently well. For his part, the worker considered this to merely reflect further bullying and harassment in the workplace, orchestrated to a large degree by the mill manager and the crew at the new posting.
- [11] The Board officer summarized the worker's overall concerns in her memo as follows:

The worker states that the above mentioned employees and manager have spread rumors and have lied about him being an unsafe worker in the last year causing him to be demoted on July 29th 2019. The worker did not identify how he knows people are spreading rumors, but does reference a letter provided to him by his employer on July 29th 2019.

Safety infractions are documented in the letter of July 29th, 2019 from [the mill manager].

The worker believes that [the mill manager] is the instigator of this and that he believes that he is targeted by [the mill manager] because the workers seniority stands in the way of him hiring his friends and working with his friends, so [the mill manager] fabricates safety issues regarding the worker and spreads rumors.

- [12] The Board officer then went on in her memo to record the circumstances that the worker described to her as being of particular significance as follows:

During our interview one event was primarily discussed as impactful for the worker:

...

The worker reports that on July 22, 2019 the worker started training on a wheel loader in addition to his other duties.

The worker was trained for several days before his Manager...texted him asked him to work the machine on his own. The worker refused and stated that he wasn't ready and said it would be unsafe.

On July 29th, 2019 the worker was provided with the above mentioned letter with several alleged safety infractions and multiple reports from witnesses. In this letter he was essentially demoted.

The worker read the letter to me. The letter listed several safety infractions as well as referring to the worker as a loner.

The worker reports never having being written up in the past for safety infractions.

[13] In addition, the Board officer summarized the worker's complaints about the following crew members at the new posting:

[Mr. AM]

Worker has more seniority than [Mr. AM]. Worker speculates that once the worker is trained in machine operation he can be bumped out. [Mr. AM] reported to [the mill manager] that the worker doesn't look where he is going when he is walking through the yard, and that he is worried he is going to get run over.

[Mr. KD]

In the last year: Unknown dates

[Mr. KD] -Told the charge hand that the worker was using too many gloves and making him wear used gloves.

- [Mr. KD] told worker to just go to sleep on night shift. Worker suspects he was trying to get worker in trouble.
- Worker suspects that a reason [Mr. KD] has it out for him is because [Mr. KD] doesn't want to switch shifts. The standard is to switch shifts every two weeks, if the worker is present then [Mr. KD] will need to switch shifts.

[Mr. RM]- July 23rd 2019, possible date.

- [Mr. RM] was quoted reported an incident where he was trying to talk to worker on the radio and that worker wasn't listening. Worker blew up at him over the radio. The worker states this is not true.
- Worker reports he has had a previous conflict with [Mr. RM] in the past. Worker puts his red light on to signal [Mr. RM] to stop running his machine,

[Mr. RM] would keep running his machine. He had to walk off the job to prove a safety point. Came back to the task and shook hands with him (unknown date)

I asked the worker if anyone has ever been threatening to him or yelled at him, no. I asked about intentional humiliation and the worker stated that them saying he is an unsafe worker is causing him to be publicly humiliated because it's a small crew and small town. ...

At the workers and doctors request the worker is currently working in a different area of the mill to avoid conflict.

Worker reports that even now that he has moved to a different area, the other workers drive by in the course of their work, and snicker and smile at him.

Worker reports that he has found out that guys on the green chain (new area) are talking about how bad he doing out there, and that he isn't going to work out. No date identified.

- [14] The Board officer contacted the mill manager on November 13, 2019, to discuss the worker's report of bullying and harassment. The mill manager denied being aware of any bullying or harassment. He advised that the worker and the crew at his new posting had some conflict over safety issues. The crew also felt that the worker was unwilling to listen to direction. It was for this reason that the mill manager decided to move the worker to a less dangerous area of the mill, as set out in the July 29, 2019 letter.
- [15] On November 15, 2019, the worker provided the Board officer with additional details and recollections about his claim. First, he referred to his chainsaw being "rocked". This referred to the chainsaw blade being dull and damaged as if from forceful contact with concrete or a rock.
- [16] In this regard, the worker stated that he was responsible for his own chainsaw and for keeping it sharp. He noticed that for at least two months after starting his new posting, his chainsaw would be dull and damaged upon his return to work the next morning. The worker knew he left his chainsaw sharp at the end of his shift and he therefore believed that someone on the crew had "rocked" his chainsaw to bully and harass him. The worker did not report his observations or suspicions to anyone at the time.
- [17] Second, the worker referred to instances of boot tampering since the time he started his new posting in August 2017 until he returned to his original position in July of 2019. He reported that "almost daily" he would find his boots "strewn about" the crew hut. The worker twice found his boots had water in them and once he found them outside. He did not report this issue to anyone.

- [18] Third, the worker noted a reluctance on the part of the crew to provide him with training. Upon commencing his new posting, the worker found his coworkers to be unhelpful. He felt their general attitude was that they had each learned the “hard way” and that the worker would have to “figure it out” for himself.
- [19] Fourth, the worker identified several specific difficulties with Mr. KD, one of the crew at the new posting. The worker recalled that one day he tripped while holding his chainsaw. Mr. KD saw the incident and reported to the charge hand that the worker had tripped and that his chainsaw “went flying”. This was untrue as the worker maintained control of the chainsaw and merely stumbled a little. The worker felt that Mr. KD was exaggerating in an effort to get the worker in trouble. On another occasion, Mr. KD complained to the charge hand that the worker was always using new pairs of work gloves. The charge hand directed the worker to use old gloves going forward. The worker recalled a further incident in August 2017, when Mr. KD told the worker he was doing a “shitty job”.
- [20] Fifth, the worker described union and safety issues as instances of bullying and harassment in his new position. For example, there were disputes about pay and about getting trained in the new posting in a timely way. The worker also believed that the mill manager had prevented him from attending at least three union and employer meetings about him in the second half of 2019. In addition, the worker recalled numerous serious safety incidents for which other workers did not receive discipline. The worker therefore felt that the safety complaints about him were merely a convenient excuse to bully and harass him and that the union was complicit.
- [21] After considering this information, the Board initially denied the worker’s claim, largely on the basis that the bulk of the events involved labour relations issues excluded from consideration under the Act. On review, the review officer referred the matter back to the Board for further investigation and adjudication.
- [22] In this regard, a Board field investigator spoke with six witnesses directly involved in the events in question and set out his summary of their statements in an August 6, 2020 report.

The union business agent

- [23] The union business agent was aware of the worker’s demotion from the new posting and assisted the worker with a grievance in order to initially secure the posting in 2018. The union business agent believed that the worker had difficulty following directions and had a “know it all” attitude. The union business agent also believed that the worker had some safety problems but on the other hand felt that the mill manager had not documented those concerns until a dispute about overtime hours had arisen immediately prior to the worker being demoted. The union business agent thought that the worker had a “chip on his shoulder”. He thought the worker wrongly believed there was a “conspiracy” against him. The union business agent ultimately

concluded that the crew at the new posting were telling the truth about the safety issues and that the worker's grievance of his demotion would not succeed.

- [24] The union business agent did not recall the worker mentioning anyone tampering with his boots at the time or having his chainsaw "rocked". Had the union business agent been told of such tampering at the time, he would have taken it "in a very serious fashion" and "investigated it thoroughly". The union business agent was therefore sure the worker had not told him of these issues at the time they occurred.

The mill manager

- [25] The mill manager advised that the new posting had initially not been awarded to the worker, despite the worker's seniority. This occurred before the mill manager was in charge. The worker secured the posting after grieving the issue and the mill manager thought this was reasonable and denied holding a grudge over the grievance. However, the mill manager thought that the worker's new crew were not happy because they liked the original incumbent and did not want to see the worker "bump" the incumbent. The mill manager heard complaints over the following weeks that the worker was difficult to train and had safety shortcomings.
- [26] The mill manager also recalled the overtime shift incident. He recalled the worker initially telling him that he would attend a weekend overtime shift in late July 25, 2019; however, the worker texted the mill manager a few hours later to say he could not attend due to child care obligations. The mill manager found this inconvenient but denied holding any grudge about it. It was shortly after the overtime shift issue that the mill manager decided to remove the worker from the posting on the basis of safety and training shortcomings. There was also a dispute about the mill manager trying to force the worker to take a week of unpaid time off. The worker provided a series of "screen grabs" recording the relevant series of text messages.
- [27] The record includes a copy of the letter from the mill manager to the worker relieving him of his new posting and returning him to his original position. While undated, it appears that the letter was issued on or around July 29, 2019. This letter summarized many of the events described above and generally referenced instances of the worker's safety issues and difficulties with training the worker. The letter included a note that the new posting was in a highly safety-sensitive area and that the worker's shortcomings made this new posting unsuited to him such that he was "disqualified" from the posting and returned to his prior job.
- [28] With respect to the worker's reference to his work boots being tampered with and his chainsaw being "rocked", the mill manager stated that he had never heard such complaints at the time and could not believe such "sabotage" would occur.

Mr. RS

[29] Mr. RS had been with the employer for about 25 years and was on one of the safety committees. He had investigated the worker's complaint about being demoted and he concluded that the concerns expressed about safety by the crew at the worker's new posting were likely correct. Mr. RS had prior personal experience of the worker "freaking out" when safety concerns were pointed out to the worker and Mr. RS therefore believed the crew's allegations against the worker.

[30] Mr. RS said that he was unaware of the worker's allegations of tampering with his boots and chainsaw. He was also unaware of the worker's concerns about bullying and harassment as he heard none of these issues from the worker despite having contact with him on several unrelated matters during the time in question.

Mr. AM

[31] Mr. AM said that he had not observed the worker being bullied or harassed in the new posting. He felt that the crew in the worker's new posting were a "good group" and "no one would shun anyone". Rather, Mr. AM described the worker as a "loner" who declined to join in with the crew during breaks. Mr. AM recalled others in the crew saying that the worker had a "bad attitude" and that the worker was "not listening or taking direction well."

[32] With respect to the worker's allegations of tampering with his boots and chainsaw, Mr. AM said he had never heard of this either from the worker or from general gossip.

Mr. JJ

[33] Mr. JJ had worked at the mill for several years operating heavy equipment. He had limited interaction with the worker as Mr. JJ spent most of his time in the cab of his machine. Mr. JJ thought he had a "casual but good" relationship with the worker and had not observed any problems. Mr. JJ described the worker as "different" and seemed to have an "opinionated" attitude that he always "knew what he was doing". He had heard from others on the crew that the worker did not listen to training or feedback but had not personally observed any problems of this nature.

[34] Mr. JJ was unaware of any information about tampering with the worker's boots or chainsaw; however, he noted that he had observed the worker "rock" his own chainsaw by accident on one occasion. Mr. JJ noted that this was an occupational hazard and happened to everyone from time to time.

Mr. KD

- [35] Mr. KD reiterated his view that the worker “did not want to take direction from anyone” and that the worker “became angry if things were pointed out to him”. He noted several instances of unsafe actions on the part of the worker, including the tripping incident with the chainsaw, an incident where the worker was walking behind large mobile machinery in operation, and an incident when he thought the worker was not tightening the cable on a log bundle in a safe or correct manner. Mr. KD took safety extremely seriously as, over his career, he had experienced the death of two friends due to workplace accidents.
- [36] Mr. KD had no knowledge about anything to do with tampering with the worker’s boots or chainsaw.
- [37] A Board officer then spoke with the worker on August 12, 2020 about the field investigator’s report. The worker indicated that it was obvious he had been bullied and harassed, that the crew and mill manager did not want him in the new position, and that the union business agent knew all about the tampering issues. The worker reiterated that the safety issues were just an excuse to remove him from the new position and that the crew and mill manager were all conspiring against him. The worker queried whether the Board investigator had spoken with the witnesses the worker thought would assist his case; upon being advised that no one had corroborated his complaints of bullying and harassment, the worker expressed dissatisfaction with the investigation and suggested further inquiry was necessary.
- [38] Notwithstanding the worker’s concerns, the Board considered that it had appropriately investigated the worker’s claim and ultimately concluded that the worker had not been the victim of bullying and harassment. Rather, the workplace stressors related to discipline, safety, and training issues, none of which were capable of grounding compensation under the Act. The Board therefore issued the August 18, 2020 decision underlying the present appeal.
- [39] In the course of the resulting Review Division proceedings, the worker argued that it was obvious he had experienced bullying and harassment and that he was looking for support and for somebody to look into all the facts of his case. He provided detailed submissions, including an April 30, 2021 statement, and continued to emphasize that he was the subject of spurious safety and training criticism as a convenient cover for bullying and harassment at the hands of the crew at the new posting and the mill manager.
- [40] As already noted the review officer ultimately confirmed the Board’s decision for essentially the same reasons. That is, the bulk of the events in question were excluded from consideration under the Act as they related to labour relations issues. The few events that were not excluded were too insignificant to amount to bullying and harassment. It is from these conclusions that the worker now appeals.

[41] In the course of the WCAT proceedings, the worker filed an August 9, 2021 report from Dr. Fadeyi, a psychiatrist. Dr. Fadeyi diagnosed the worker with Major Depressive Disorder, moderate episode, with anxious distress. Dr. Fadeyi did not offer any particular cause of the worker's psychological difficulties; however, he identified no particular relevant factors other than the worker having "a lot of problems at work."

[42] At the oral hearing of the worker's appeal, I heard from the worker as well as the mill manager. I summarize their testimony below.

The worker

[43] The worker worked at his original posting for about five years before moving to the new posting. During his work at the original posting there were no safety or training concerns identified.

[44] When the new posting first became available in 2017, the worker bid for it. The job in very general terms related to operations in the mill's log yard. The job included using a chainsaw and operating heavy mobile equipment, both new areas for the worker.

[45] The worker did not initially win the posting but after getting the union involved he was ultimately successful in securing the posting. He did not start immediately as he was told that he was needed to train new workers on his original position first. There were more delays and a year went by without the worker taking up the new posting. He eventually grieved the delay and about a month later he commenced the new posting.

[46] The worker was initially paired with Mr. KD for training; however, he did not receive much help from the latter. He came to realize that the crew "did not want him out there". The worker believed that this was because, once trained, he would have the seniority to potentially bump one of more of the crew members from their positions. The worker described his relationship with Mr. KD as "horrible" and felt that he had been "set up to fail". While Mr. KD did not swear at him, the worker felt Mr. KD was aggressive and had an unpleasant demeanour.

[47] The worker complained to the union business agent about his training and was assigned to training with a different crew member. The worker noted in general that he had many concerns throughout this time and filed various complaints with the union about conditions, pay, training, and so on. Once his training re-commenced with a new trainer, the worker felt this training went well and after a few weeks he qualified as a "buckerman", one of the two key tasks of the posting.

[48] The next component of his training was operating a piece of heavy mobile equipment and he started this training shortly before his demotion. He had about 15 hours of training and was managing well when, on July 26, 2019, the mill manager asked the worker to do an overtime shift on the weekend. The worker initially agreed; however, he realized a few hours later that he

could not do the shift and advised the mill manager by text. The worker felt the mill manager was angry about his response and then contrived the “safety” and “training” concerns in order to demote the worker back to his original position.

- [49] The worker felt that minor or one-off incidents were held against him and exaggerated, such as the chainsaw tripping incident. In addition, the worker noted an instance when he was told to sharpen his chainsaw using both hands not one hand. Contrary to the reports from Mr. KD, the worker had no problem making this adjustment.
- [50] The worker pointed out that he did not receive any written warnings or discipline for the various events that the mill manager ultimately relied on to demote him back to his original position at the saw mill.
- [51] The worker agreed that on one occasion he did not maintain eye contact with the operator of heavy mobile equipment while crossing nearby; however, he said that others did this and when he was corrected he had no problem and did not think it was a “big deal”.
- [52] With respect to bullying from the crew, the worker reiterated his belief that the crew tampered with his boots and his chainsaw. He referred to his boots being tampered with eight to ten times and he recalled his chainsaw being dull five to ten times. The worker said he did not report these events because he was embarrassed and because he did not initially realize the extent and coordination of the bullying and harassment. He said he raised it with the union business agent; however, nothing happened.
- [53] In response to questioning about his reaction to these circumstances, the worker described himself as “devastated”. He found it hard to believe that coworkers would treat him this way and said that their behaviour “stopped my world”. The worker thought that the crew did not want him there and wanted a different worker there instead.
- [54] The worker said he was ultimately diagnosed with major depressive disorder with anxious distress and was still receiving counselling and medication. He noted an intervening back injury but said he had recovered and was ready to start a graduated return to work; however, the employer was not allowing him back due to concerns about his ability to work.
- [55] On questioning from the employer, the worker thought that the mill manager did not like him because of the worker raising “so many” union complaints. The worker agreed there had not been “hundreds” of such complaints; however, he confirmed that there were “still a lot.” The worker ultimately felt that the mill manager wanted to remove him from the new posting because of this animosity and that he used “nitpicking” safety and training complaints as a convenient excuse to do so. He agreed that there were a few very minor safety and training issues; however, they were “blown out of proportion”.

- [56] The worker was also questioned about his relationship with the crew at the new posting. He thought he “got along” with the crew, except for Mr. KD. He noted however that the mill manager told the worker the crew did not want the worker in the new posting. The worker thought this was in part because, once fully trained to the new posting, the worker would be able to “bump” some of the crew members.
- [57] With respect to tampering with his boots, I asked the worker why he continued to leave his boots in the crew shed once he had experienced the first instances of tampering. He agreed this might have been a good idea in hindsight; however, he noted that he did not want to draw attention to the issue as he found it embarrassing. He also noted that there were different boots depending on weather conditions and the type of job to do, so it would not in any event have been practical to try and take all his boots home every day.
- [58] I asked the worker more about why he believed the mill manager and the crew at the new posting were motivated to act against him in the way he believed. The worker raised three general themes.
- [59] First, the mill manager was annoyed at having to go to the time and expense of training the worker to operate the chainsaw and heavy mobile equipment when the incumbent already had those skills. The mill manager also had to train new staff on the worker’s original position, a position that the worker had performed well. Further, there was a dispute about a week’s missed pay for the worker that the union ultimately forced the mill manager to pay the worker. The worker therefore felt that the mill manager was inconvenienced and annoyed by the worker’s efforts to secure the new posting.
- [60] Second, the worker noted that by grieving the posting he “bumped” the junior member of the crew out of the new posting. The crew liked that person and the new person had been there almost a year.
- [61] Third, and on somewhat similar note, the worker, once fully trained, would have been able to further bump another crew member. The worker felt that these three factors generally explained the concerted and sustained action against him that he suffered at the hands of the crew at the new posting and at the hands of the mill manager.

The mill manager

- [62] The mill manager had forty years of experience in the wood products industry and spent his last few years before retirement at the employer’s mill. He was not responsible for the initial posting and agreed with the worker’s concerns about it going to a less senior worker. The mill manager therefore felt that he assisted the worker to get the new posting and wanted him to succeed.

- [63] The mill manager noted that the new posting was dangerous. The area was “tight” and heavy mobile equipment was in frequent operation. The posting also involved extensive use of chainsaws.
- [64] Within a short time of the worker starting in the new posting, the mill manager received informal complaints from the crew that the worker was difficult to train and did not always follow safety rules. The crew told the mill manager that he “had to do something” about the worker because they did not want to work with him.
- [65] The mill manager did not agree that there was a conspiracy between him and the crew to have the worker demoted. He said that he eventually lost patience with the worker’s various problems and agreed with the crew that the worker was not a good fit.
- [66] The mill manager pointed out that he was in charge of 150 staff and that he had limited interaction with the worker. He denied any personal bias against him as he was too busy with managing the workforce and the mill. The mill manager was not annoyed by the worker filing grievances from time to time as that was simply part of a unionized workplace.
- [67] On questioning from the worker’s representative, the mill manager agreed that he wrote the letter of demotion shortly after the worker declined the weekend overtime shift. The mill manager also agreed that he should have kept written discipline records; however, he explained that the trainers “gave a bit of leeway” and it was not until the crew told the mill manager they would not work with the worker anymore that the mill manager investigated the circumstances and “all the details came out”, at which point the mill manager decided it was time to return the worker to his original position.
- [68] The mill manager agreed that it would probably have been fairer to give the worker a chance to respond; however, the mill manager felt that the safety issues and training problems were of sufficient significance that it was best to simply return the worker to his original position and move on.
- [69] The mill manager disagreed with the worker’s representative’s suggestion that there was any other motivation for demoting the worker other than safety.
- [70] After the conclusion of the mill manager’s testimony, the parties agreed to complete their appeal submissions in writing.
- [71] However, the worker also filed additional evidence in the form of a statement from the union business agent. The union business agent denied saying that he did not wish to represent the worker. He also denied saying he only represented the worker to avoid a Labour Board complaint and similarly denied saying that the worker had interfered with the union’s lawyer.

Finally, the union business agent confirmed that the mill manager had not provided him with documentation recording safety issues related to the worker's performance at the new posting.

Submissions

- [72] The worker essentially argues in his initial submission and rebuttal that he was subjected to a lengthy period of targeted harassment and bullying from both the crew at the new posting as well as the mill manager. The worker says that hiding these actions behind "safety" and "training" deficiencies is not believable such that they cannot be merely dismissed as a matter of labour relations and therefore excluded from consideration under the Act.
- [73] In particular, the worker points out the absence of any written reprimands or performance management either in relation to training or in relation to safety at the new posting. The worker also notes delays with the worker receiving the training necessary for the new posting and the constant need for the worker to enforce his rights through the union. This is said to reflect the ongoing negative attitude of the mill manager towards the worker.
- [74] Further, the worker emphasizes that the demotion occurred shortly after the worker declined an overtime weekend shift. The worker suggests that the mill manager was annoyed by the worker's refusal and then, in retaliation, decided to concoct an excuse to demote him. Such conduct is not a *bona fide* exercise of management rights and should therefore not be excluded from consideration under the mental disorder provisions of the Act.
- [75] The worker goes on to characterize the mill manager as an unreliable witness because the latter's testimony was lacking in detail and at times contradicted other evidence in the record.
- [76] With respect to the actions of the crew at the new posting, the worker reiterates his concerns about unhelpful trainers, unkindness, tampering with his boots and chainsaw, and exaggerating minor mistakes in order to make the worker look bad. He was not given the same training opportunities as others and the crew did not like him because of his bumping of a crew member and potential to bump another crew member upon the worker completing his training.
- [77] In these circumstances, the worker says that the management rights exclusion does not apply, that he was the subject of bullying and harassment at the hands of the mill manager and the crew, and that his mental disorder was caused by these actions. The worker therefore submits that I should allow his appeal and accept his claim for a mental disorder.
- [78] The employer filed a detailed reply; however, in light of my disposition of the worker's appeal, I need not summarize it here.

Reasons and Findings

- [79] I deny the worker's appeal. In essence, his claim relates to labour relations issues. While it may well be that those issues have caused the worker a mental disorder, the Act excludes such causes from grounding compensation. My reasons for denying the worker's appeal are set out in more detail below.
- [80] Section 135 of the Act applies to the worker's appeal. It provides that a worker will be entitled to compensation for a mental disorder if the mental disorder is a reaction to either a "traumatic event" or is predominantly caused by a significant work-related stressor or cumulative series of such stressors.
- [81] Subsection 303(2) of the Act is also relevant and requires that I apply published policies of the Board. The policies relating to the issue of the worker's entitlement to compensation for mental stress are set out in the *Rehabilitation Services and Claims Manual, Volume II*.
- [82] In particular, I note policy item #C3-24.00, "Section 135 – Mental Disorders". I also note policy item #97.00, "Evidence", which provides direction regarding the gathering and weighing of evidence. Board Practice Directive #C3-3 "Mental Disorder Claims" is also relevant. Although the latter is not binding upon me, it merits consideration to the extent that it is consistent with the Act and policy because it promotes fairness and certainty within the workers' compensation system.
- [83] The effect of the applicable law and policy is that the evidence must demonstrate a sufficient causal link between the worker's employment and a mental disorder described in the *Diagnostic and Statistical Manual of Mental Disorders (DSM)*, as diagnosed by an appropriate professional.
- [84] Even if a sufficient causal link is present, compensation may still be unavailable if the traumatic or stressful event(s) in question are related to the exercise of an employer's management rights pursuant to paragraph 135(1)(c) of the Act.
- [85] I will follow the same analytical approach as that set out in the policy.

Does the worker have a DSM diagnosed mental disorder?

- [86] Dr. Fadeyi, a psychiatrist, has diagnosed the worker with a DSM condition in the form of a major depressive disorder. I therefore resolve the first step in the analysis in the worker's favour.

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

- [87] The worker has provided a list of identifiable stressors. I agree that they occurred in a general sense, although it is not clear who is responsible for the boot tampering and "rocking" of the

saw. The worker appears to give the most significance to his demotion and the associated allegations of a poor attitude to training combined with safety issues. I again agree that these events occurred in a general sense.

Were the events “traumatic” or the work-related stressors “significant”?

- [88] None of the events that the worker describes approach the meaning of “traumatic” as that phrase is discussed in the policy or practice directive. The immediate urgency, feeling of lack of safety, perception of actual or imminent harm, and such similar circumstances are not present here. While the worker certainly experienced the events as unpleasant, unfair, and unkind, I cannot characterize them individually or collectively as being “traumatic”.
- [89] Indeed, with specific reference to the tampering issues, it appears to me only in hindsight that the worker ascribes much significance to them at all. He did not report them to the union business agent or to the safety committee, despite having frequent dealings with them at the time. I do not say this to suggest that the events did not occur but merely to explain why it does not appear to me that the tampering incidents, while unpleasant, could reasonably be considered traumatic for the purposes of the Act and policy.
- [90] That is not the end of the matter. While the events in question fall short of the “traumatic” requirement, compensation may still be engaged under the Act if the series of stressors in question were “significant”. Here, I am satisfied that the events in question were, cumulatively, significant stressors for the purposes of the Act and policy.
- [91] In this regard, I accept the worker’s description of feeling ostracized, treated unkindly, and being the subject of unfair criticism from the crew at the new posting. I further find that the worker has provided an explanation for this conduct that makes sense in all the circumstances — that is, the crew were angry at the worker for “bumping” one of the crew and potentially likely to bump a second crew member upon the worker completing his training.
- [92] Furthermore, I agree with the worker that he felt victimized and scrutinized by the mill manager’s approach to complaints about the worker’s safety and training difficulties. In a union environment I would expect that safety and training problems would be documented and performance managed. It would be upsetting to suddenly be advised of a host of difficulties that had not been raised in the past, then demoted, without an opportunity to respond or to improve.
- [93] I therefore agree with the worker that he experienced a series of significant workplace stressors both in the context of his interactions with the crew at the new posting and from the mill manager, particularly in relation to his demotion. While I agree with the worker on these points, the key difficulty in his appeal is that the bulk of these issues relate to labour relations and are therefore excluded from consideration under the Act.

Management Rights Exclusion

- [94] Paragraph 135(1)(c) of the Act permits employers to manage their workforce without being vulnerable to mental stress claims. The purpose behind this exclusion is to recognize that employment is often highly personal and that conflict may arise between an employer and a worker in managing the employment relationship. Thus, as long as an employer is acting in a *bona fide* way in exercising its management rights, any resulting mental stress is not compensable.
- [95] Applying this principle to the present appeal, it is clear that the bulk of the worker's distress in relation to the events he has described relates to his demotion and disputes over training and safety issues. The issues of tampering, gloves, rudeness, and so on span a lengthy period and were not mentioned until after the demotion as being of any significance. Thus, in my view, it is only the demotion and related safety and training issues that are capable of potentially being the "predominant cause" of the worker's mental disorder.
- [96] However, I conclude that these training and safety issues, including the ultimate demotion decision, are excluded from consideration pursuant to paragraph 135(1)(c) of the Act.
- [97] I understand that the worker dismisses these issues as being merely a convenient smokescreen or ruse that the employer and to a lesser extent the crew used in order to give an air of legitimacy to bullying, harassing, and intimidating the worker.
- [98] The worker in particular attacks the credibility of the mill manager and says that he was largely motivated to demote the worker due to the worker's refusal to take an overtime shift. While I agree that the mill manager was not a particularly persuasive witness, I note that he has since retired and was in any event responsible for some 150 employees at the time. I would not expect him to have as complete and detailed a recall as the worker in relation to the events in question.
- [99] I need not further evaluate the mill manager's credibility for the simple reason that I do not substantially rely on his evidence. Rather, I place the greatest weight on the evidence of the union business agent. The key evidence that he provided, which was not persuasively contradicted even in his post-hearing statement, was that he believed the crew when they reported safety and training issues. He spoke with them individually at the time and was persuaded that there were training and safety issues with the worker. These were the same reports provided to the mill manager and the union business agent told the mill manager as much. If, as here, the union business agent evaluated these reports as being reasonably accurate, I can hardly fault the mill manager for reaching the same conclusion.
- [100] I emphasize at this point that I do not find the union business agent or the mill manager to necessarily be "correct" about the training and safety issues. I certainly understand the worker's

perspective that any issues were minor and reflected nothing more than the bias against him from the crew. It may well be that in a perfect world the worker should have been given an opportunity to respond and to correct any problems that may have existed; however, that is not what the management rights exclusion is about. It is enough that management reasonably exercised the rights in question; management need not be "correct" or provide perfect procedural fairness in order to still engage the exclusion.

- [101] Here, the union business agent, who I infer is more likely aligned with the workforce than with management, was satisfied that there were some performance and safety issues. Further, he was satisfied that the new posting was safety sensitive and carried with it serious risk of injury or even death. If, in these circumstances, the union business agent believed there was cause to demote the worker then it can hardly be said that the mill manager should be held to a higher standard in reaching the same conclusion. This is particularly so as the mill manager has far broader responsibilities than managing one worker and one posting. That his attention to the issue was not as thoughtful or helpful as the worker would have wished does not take the mill manager's actions outside of the paragraph 135(1)(c) exclusion.
- [102] In other words, I consider that there was sufficient reason and sufficient information for the mill manager to have been acting in a *bona fide* manner when he made the demotion decision. I again do not say this was the "correct" decision. I merely say that it fell within the reasonable scope of the management rights exclusion. Indeed, the management rights exclusion does not require a mill manager to act perfectly or even be ultimately correct. It is enough that the mill manager acts reasonably on his or her view of the circumstances. That is what happened here.
- [103] I understand that the worker points to the coincidence between his refusal of an overtime shift and his demotion. The worker infers from this a retaliatory motive on the part of the mill manager; however, I find this unlikely. While I agree the mill manager was annoyed and decided at this point to look into the worker's performance, the mill manager did not fake or coerce the feedback he received from the crew. Again, I return to the union business agent's own similar interviews with the crew and the fact that he was satisfied that their concerns had merit. I further note the similar material gathered by the Board field investigator.
- [104] Overall, I decline to infer from this coincidence that the demotion decision was motivated by a desire to retaliate against the worker such that the resulting demotion cannot be considered to be a reasonable exercise of management rights. I instead conclude that, while the overtime issue may well have finally caused the mill manager to look more closely into the worker's performance, the resulting information he received nevertheless provided a reasonable basis for the mill manager's subsequent demotion decision.
- [105] Therefore, while I understand the worker's perspective, I must also recognize that the mill manager was responsible for a large number of workers and the overall mill operations. He inquired about the worker's performance, perhaps out of annoyance but nevertheless he was

entitled to do so, and heard sufficient complaints that it was open to him to reach the demotion decision. I again emphasize that the demotion was not necessarily "correct". It may also be that a more diligent manager would have conducted the process differently. However, I repeat that, given that the union business agent thought there were grounds for the demotion, it can hardly be said that the mill manager's decision was so unreasonable as to fall outside the management rights exclusion.

[106] It follows that the worker's distress about learning of the safety and training complaints, culminating in his demotion, are excluded from consideration under the Act as valid causes of his mental disorder. The remaining elements of his mental disorder claim are of substantially less significance than these excluded issues such that it is not possible to conclude the worker's mental disorder was "predominantly caused" by factors not otherwise excluded from consideration under the Act.

[107] Consequently, the bulk of the events that the worker has described as significant stressors are excluded from proper consideration pursuant to paragraph 135(1)(c) of the Act. The remaining events, including the glove issue, boot tampering, and "rocking" of his chainsaw, are minor in comparison to the distress related to his demotion and allegations of safety and training issues such that they cannot be the predominant cause of the worker's mental disorder.

[108] For these reasons, I find that the worker is not entitled to compensation for a mental disorder under the Act.

[109] As a result, I must deny the worker's appeal.

Conclusion

[110] I confirm *Review Decision #R0271722*. I find that the worker is not entitled to compensation for a mental disorder.

[111] Neither party requested reimbursement for appeal expenses nor are any such expenses apparent to me. I therefore make no order for the reimbursement of appeal expenses.

Warren Hoole
Vice Chair