

Noteworthy Decision Summary

Decision: WCAT-2004-04737 **Panel:** Susan Marten **Decision Date:** September 8, 2004

Adjustment Disorder – Mental Stress – Distinction between Compensation for Personal Injury and Mental Stress – Sections 5(1), 5.1, 246(3) and (4) of the Workers Compensation Act – Policy Items #13.00, #13.20, #13.30, and #22.33 of Rehabilitation Services and Claims Manual, Volume II

A teacher was assaulted by a student and developed acute stress. The panel found that where a physical injury occurs alongside mental stress that is independent of the physical injury, but also a result of the circumstances that gave rise to the physical injury, an award for mental stress may be made under section 5(1) of the *Workers Compensation Act* (Act) whether or not the circumstances are such as to also give rise to a claim under section 5.1 of the Act. Section 5(1) applies when a disability results from multiple causes, as long as at least one of those causes is compensable. If a compensable injury aggravates symptoms of another disorder, this is sufficient for that disorder to fall within the criteria set out in section 5(1) of the Act.

The worker was employed as a teacher. A student dropped a hot object down the back of the worker's shirt, causing a burn injury to his neck. The Workers' Compensation Board (Board) accepted the worker's claim for the burn injury but did not accept a diagnosed acute stress adjustment disorder under section 5.1 of the Act and policy item #13.30 of *Rehabilitation Services and Claims Manual, Volume II* (RSCM II). The worker requested a review by the Workers' Compensation Review Board, which was denied.

The worker's appeal to the Workers' Compensation Appeal Tribunal (WCAT) was suspended under section 246(3) of the Act when the panel ordered the Board to determine whether the worker's physical injury had caused his psychological symptoms (*WCAT Decision #2004-02674*).

The Board subsequently found that the worker had developed anxiety and depressive symptoms as a result of the assault. The burn injury *per se*, however, did not lead to the worker's anxiety symptoms, although the worker's anxiety reaction to the student's malicious intent was likely aggravated by the fact the worker also sustained physical harm in the incident.

The panel agreed with the report of a Board psychologist stating that the worker's anxiety symptoms were not caused by the physical injury but were a response to the student's malicious intent. The panel noted that the worker's symptoms described in the attending physician's initial report did not appear to have involved intense fear, helplessness, or horror. Rather, the report described symptoms that included stress, depression, and feelings of guilt. This was consistent with the worker having an anxiety reaction to the student's malicious intent that was aggravated by the fact the worker also sustained a physical burn injury.

The panel found that the worker's psychological symptoms were related to his physical injury. Thus, the claim should have been considered under section 5(1) instead of section 5.1 of the Act. Sole causation is not required under section 5(1). When a disability results from the interaction of multiple causes, the compensable event or injury does not have to be the most significant factor. It is sufficient if the injury is a significant contributing factor, or contributes to a material

degree to the disablement. Causative significance includes consideration of whether the physical injury had an aggravating or accelerating effect.

The panel found that claims for physical injury that also include mental stress, where the mental stress is not the result of a compensable physical injury, may be considered under either section 5(1) or section 5.1 of the Act. Thus, the panel concluded that the worker's psychological symptoms should be accepted under section 5(1) as a compensable consequence of his injury.

The panel also noted that had it accepted the employer's position that the physical injuries had not caused the stress reaction, the panel would have found that the worker's psychological reaction met the requirements for a claim of mental stress under section 5.1 of the Act. Claims for physical injury that include mental stress may also be considered under section 5.1. Situations may arise where a physical injury occurs alongside mental stress that is independent of the physical injury, but also a result of the circumstances that gave rise to the physical injury.

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Panel: Susan Marten, Vice Chair

Introduction

The worker is a teacher. On November 29, 2002, a student dropped a hot object down the back of his shirt. The worker claimed workers' compensation benefits. The Workers' Compensation Board (Board) accepted his claim for health care benefits for a burn injury to his neck. The Board did not accept a diagnosed acute stress adjustment disorder. The Board advised the worker of these conclusions in a decision dated February 20, 2003.

The worker appealed the denial of the acute stress adjustment disorder to the Review Division. The review officer considered the issue of whether the worker developed a psychological condition as a result of an incident at work. *Review Division Decision #3576* denied the worker's appeal. The worker appeals the review officer's decision.

Both the case manager and the review officer adjudicated the compensability of the worker's psychological symptoms under section 5.1 of the *Workers Compensation Act* (Act) and policy item #13.30 in the *Rehabilitation Services and Claims Manual, Volume II* (RSCM II).

In *WCAT Decision #2004-02674*, I concluded there was a matter that should have been determined by the Board. The appeal was suspended, pursuant to section 246(3) of the Act. The Board was asked to determine the matter of whether the worker's physical injury was of causative significance with regard to the psychological symptoms that were initially documented in Dr. David's December 2, 2002 report. The Board completed its determination, in a decision dated July 14, 2004. The appeal is now reactivated.

Issue(s)

Whether the worker's psychological symptoms should be accepted as part of his entitlement under his claim.

Jurisdiction and Procedural Matters

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

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

The worker's injury occurred after June 30, 2002, the transition date for relevant changes to the Act. Entitlement under this claim is adjudicated under the provisions of the Act as amended by Bill 49, the *Workers Compensation Amendment Act, 2002*. The policies relevant to this appeal are set out in the RSCM II.

Legal counsel represents the worker. The employer is participating in the appeal and is represented by a consultant. An oral hearing was held on April 28, 2004. The worker, his representative, and the employer's representative attended.

After the Board issued the July 14, 2004 decision, WCAT arranged for disclosure to be provided to both parties to the appeal along with an opportunity for additional submissions. I also provided the parties with notice and invited their comment on whether WCAT had the jurisdiction to consider the additional determinations made by the case manager in the July 14, 2004 decision. The worker's representative provided a submission on August 23, 2004. The employer's representative provided a submission on August 24, 2004.

WCAT's *Manual of Rules, Practices and Procedures* (MRPP) item #14.30 provides that WCAT will generally restrict its decisions to issues raised in the appellant's notice of appeal and submission. The February 20, 2003 decision also advised the worker that his claim was accepted for two burns to his neck. The worker's representative has not disputed that determination. That issue will not be addressed in this decision.

Background and Evidence

I have read and considered all the information on the claim file and that presented on appeal. *WCAT Decision #2004-02674* contains a summary of claim file evidence as well as the worker's evidence at the WCAT oral hearing. What follows is the summary of the additional evidence considered relevant to the issue identified above.

Prior to the February 20, 2003 decision, Dr. B, Board psychologist, reported the worker had seen a counsellor twice, and would be seeing him one more time. Dr. B suggested it may be helpful to obtain the chart notes for the past year, in light of the attending physician's (Dr. David) report of a prior history of a mood disorder.

The case manager did not accept the worker's diagnosed adjustment disorder because she did not consider the November 2002 incident constituted a traumatic event that arose out of and in the course of the worker's employment.

The review officer accepted the worker found the November 2002 incident traumatic and experienced an acute reaction. The review officer concluded the November 2002 incident did not constitute a “severely emotionally disturbing event”, as required by RSCM II item #13.30. The intent of the policy was to require an incident more traumatic than that experienced by the worker. His symptoms also did not constitute “severe emotional shock, helplessness and/or fear”. The event was not an extreme stressor, as required for the diagnosis of a post-traumatic stress disorder (PTSD) and an acute stress disorder in the *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV)*.

In a June 23, 2004 log entry, Dr. B described the history of previous problems with anxiety and stress that were documented in Dr. David’s January 15, 2004 report. Dr. David advised that the chart notes of Dr. Gorman, the previous attending physician, reported the worker was diagnosed with an adjustment disorder in May 1998. Ongoing stress over the past three years was described. In September 1998, Dr. Gorman noted acute anxiety upon a return to school. In January 1999, stress was documented and an adjustment disorder was again diagnosed. The worker did not work between January and March 1999. In April 1999, an anxiety disorder was diagnosed. The worker was doing well in June 1999, when Dr. David became his physician. The first symptoms of stress and depressed mood occurred after the November 2002 incident.

Dr. B provided the opinion that the worker developed anxiety and depressive symptoms as a result of the November 2002 school incident. He would have met the diagnosis of adjustment disorder with mixed anxiety and depressed mood at that time. He was impaired for a period of time as a result of his symptoms of anxiety and depression.

With regard to Dr. Armstrong’s diagnosis of a PTSD and a major depressive disorder, Dr. B did not consider the symptoms reported by the worker’s doctor and counsellor met the criteria for either diagnosis. Adjustment disorder was the appropriate fall-back diagnosis. The worker did experience worry regarding his physical safety in the workshop following the incident, but this related to possible future events rather than his reaction to the student’s behaviour at the time of the incident. Whether the worker met the criteria for the diagnosis of PTSD was somewhat moot, since the treatment would be essentially the same.

With regard to the physical injuries, Dr. B stated the burn injury per se did not lead to the worker’s anxiety symptoms. The intent of the student to do harm, or at least to be malicious, led to those symptoms. For example, if the hot nuts accidentally fell down the worker’s shirt, it was doubtful he would have developed anxiety symptoms. It was probable the worker’s anxiety reaction to the student’s malicious intent was heightened by the fact that he also sustained physical harm. Given the history of previous anxiety, the worker may have been emotionally vulnerable to a degree in developing anxiety symptoms following the November 2002 incident. However, it was difficult to place too much weight on that factor, given that he did well for three years prior to the incident

and the malicious behaviour involving the hot nut was sufficient in itself to cause some degree of stress and anxiety. There was no indication the worker had ongoing significant anxiety or depressive symptoms following the conclusion of psychological treatment in early July 2003. He had no permanent psychological impairment.

The case manager's July 14, 2004 decision advised that she accepted the worker developed anxiety and depressive symptoms as a result of the November 2002 incident. At that time, he met the diagnostic criteria for an adjustment disorder with mixed anxiety and depressed mood and was impaired for a period of time. He did not meet the diagnostic criteria for PTSD or a major depressive disorder. The burn injury per se did not lead to the worker's anxiety symptoms; however, it was probable the anxiety reaction to the student's malicious intent was heightened by the fact that he also sustained physical harm. The history of previous anxiety may have made him emotionally vulnerable. However, it was difficult to place too much weight on that fact as he did well for three years prior to the incident and the malicious behaviour was sufficient to cause some degree of stress and anxiety. There was no ongoing significant anxiety or depressive symptoms following the conclusion of psychological treatment in July 2003. There was no permanent psychological impairment.

The August 23, 2004 submission of the worker's representative contended the case manager did not make a clear decision on whether she accepted the worker sustained a temporary psychological disability. She did make a clear decision that he was not left with any permanent psychological impairment. The worker's position was that the claim should be accepted for a psychological injury arising out of and in the course of his employment on November 29, 2002. It was of no consequence to the worker whether that injury was accepted under section 5(1) or 5.1 of the Act. The claim should be accepted for an adjustment disorder with mixed anxiety and depressed mood. The worker should be paid wage loss benefits for the short period of disability he suffered. The worker did not claim that he was left with a permanent psychological impairment.

The August 24, 2004 submission of the employer's representative advised that the employer disagreed with the interpretation of the case manager's letter provided in the appeal liaison officer's August 9, 2004 correspondence. The worker's evidence at the oral hearing included that his anxiety did not occur immediately. He began to imagine different scenarios and other imagined consequences. He saw his doctor on the next Monday to check on his burns, but he did not go to work as he was more shaken by his ideas of the incident. The case manager stated the burn injury per se did not lead to the anxiety symptoms, which did not mean the psychological symptoms were accepted. The case manager also stated the anxiety reaction may have been enhanced by the burn injury but was not caused by the burn, which was a considerable difference. The burn injury was not of causative significance.

Reasons and Findings

Preliminary Issue

In *WCAT Decision #2004-02674*, the Board was asked to determine the matter of whether the worker's physical injury was of causative significance with regard to the psychological symptoms that were initially documented in Dr. David's December 2, 2002 report. The request was made under section 246(3) of the Act.

Section 246(4) of the Act provides that:

If, in an appeal, the appeal tribunal refers a matter back to the Board for determination under subsection (3), the appeal tribunal must consider the Board's determination in the context of the appeal and no review of that determination may be requested under section 96.2.

Accordingly, the Board's reply on the issue of whether the worker's physical injury was of causative significance with regard to his psychological symptoms is within this panel's jurisdiction.

However, the case manager's reply went beyond the matter referred to the Board. The case manager also advised the worker that he was considered impaired for a period of time in his ability to perform his school duties. There was no indication he had ongoing significant anxiety or depressive symptoms following the conclusion of psychological treatment in July 2003 and no indication of permanent psychological impairment.

WCAT Decision #2004-02674 did not ask the Board to determine those matters. The issue under appeal concerns acceptance of the worker's psychological symptoms and does not include the nature or extent of any subsequent disability or whether there is a permanent psychological impairment. I have considered whether the Board's conclusions on these additional matters should be included in my decision. On balance, I conclude they should not.

My reasons include that the procedures set out in section 246 of the Act provide for a defined review of "a matter" the appeal tribunal considers should have been determined. The results of such a review then forms part of the panel's determination. The referral procedures under section 246 of the Act require a panel to provide a clear definition of the matter that needs to be determined. I do not consider the procedures also require that a panel is then obliged to determine any and all issues that a Board officer may then take the initiative to decide, especially in the absence of any such request from the appeal tribunal. In the particular circumstances of the worker's appeal, I consider that an approach that determines the issues set out in the decisions of the Board and the Review Division, as well as the particulars of the request made in the section 246(3) referral to be appropriate and consistent with the terms of the procedures set out in section 246 of the Act.

I will therefore not address whether there is any permanent psychological impairment or the nature or extent of any temporary disability the worker may have experienced

because of his psychological symptoms. Those matters did not arise in the Board's decision that informed the worker his acute stress disorder was not accepted as part of his entitlement under the claim and no wage loss or health care benefits were therefore payable. They also did not arise in the Review Division's decision that informed the worker his psychological condition was not accepted.

Psychological Symptoms

Section 5(1) of the Act provides that compensation is paid where a personal injury arises out of and in the course of the employment.

RSCM II item #13.00 provides that "personal injury" is defined as any physiological change arising from some cause. Item #13.20 provides that personal injury includes psychological impairment as well as physical injury. Item #22.33 provides that psychological problems arising from a physical or a psychological injury are acceptable as compensable consequences of the injury. There must be evidence the worker is psychologically disabled. It cannot be assumed that such a disability exists simply because a worker has unexplained subjective complaints, or is having difficulty in psychologically or emotionally adjusting to any physical limitations resulting from an injury.

On June 30, 2002, Bill 49 amended the Act by adding section 5.1 which provides for compensation in cases of "mental stress". At the time of the case manager's decision, section 5.1 provided that a worker is entitled to compensation for mental stress that does not result from an injury for which the worker is otherwise entitled to compensation, only if the mental stress:

- (a) is an acute reaction to a sudden and unexpected traumatic event arising out of and in the course of the worker's employment
- (b) is diagnosed by a physician as a mental or physical condition that is described in the most recent American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders at the time of the diagnosis, and
- (c) is not caused by a decision of the worker's employer relating to the worker's employment, including a decision to change the work to be performed or the working conditions, to discipline the worker or to terminate the worker's employment.

The version of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM) current at the time of the worker's claim is the DSM-IV-TR. Section 5.1 has been amended to provide that a psychologist may provide a diagnosis with respect to section 5.1 of the Act.

RSCM II item #13.30 provides that subsection 5.1(1)(a) establishes a two-part test: there must be an acute reaction to a sudden and unexpected traumatic event; the acute reaction to the traumatic event must arise out of and in the course of employment. An acute reaction means "coming to crisis quickly". It is a circumstance of great tension, an extreme degree of stress. The reaction is typically immediate and identifiable. The response by the worker is usually one of severe emotional shock, helplessness and/or fear. It may be the result of such events as a direct personal observation of an actual or threatened death or serious injury, a threat to one's physical integrity, witnessing an event that involves death or injury, or witnessing a personal assault or other violent criminal act. For the purposes of this policy, a "traumatic" event is a severely emotionally disturbing event. It may include such events as an armed robbery, a hostage-taking, an actual or threatened physical violence, an actual or threatened sexual assault, and a death threat.

The worker's representative initially submitted the worker's psychological symptoms should be accepted under section 5(1) of the Act. In her August 2004 submission, she indicated it was of no consequence to the worker whether the worker's psychological symptoms were accepted under section 5(1) or 5.1 of the Act.

Section 5.1 applies when the mental stress does not result from an injury for which the worker may be otherwise entitled to compensation. I do not, however, interpret that to mean that every claim for physical injury that also includes mental stress cannot be considered under section 5.1. Situations may arise where a physical injury occurs alongside mental stress that is independent of the physical injury, but also a result of the circumstances that gave rise to the injury. RSCM II item #13.30 supports such an approach. In the example referred to above about the female worker who is sexually assaulted, the policy states that the worker may be entitled to compensation for mental stress in addition to a potential claim for physical injury. The individual circumstances of each worker's claim must be considered.

On balance, I do not consider the weight of the evidence supports that the worker's physical injury is independent of his psychological symptoms, such that the claim is appropriately considered under section 5.1 of the Act. The weight of the evidence in the opinions of Dr. Armstrong and Dr. B both indicate that the incident and the occurrence of the physical injury were intertwined with the worker's resulting psychological symptoms.

In reaching this conclusion, I have considered the submissions of the employer's representative that the employer does not agree with the interpretation of the case manager's comments. The case manager's decision stated the burn injury per se did not cause the worker's anxiety symptoms. Rather they were caused by the intent of the student to do the worker harm and may have been enhanced by the burn injury, which is a considerable difference.

The case manager's comments were an excerpt of the opinion provided by Dr. B. That opinion also stated the worker developed anxiety and depressive symptoms as a result of the November 2002 incident. In addition, it was probable that the worker's anxiety reaction to the student's malicious behaviour was heightened by the fact that he also sustained physical harm. The malicious behaviour involving the hot nut was sufficient to cause some degree of stress and anxiety.

In passing, if I were to accept the employer's position that the case manager's decision indicates the physical injuries were not of causative significance, I would consider that Dr. B's comments also support that the worker's psychological reaction met the requirements for the acceptance of his symptoms under section 5.1 of the Act.

I interpret Dr. B's comments as indicating the worker's anxiety reaction to the student's malicious intent was aggravated by the fact that he sustained a physical burn injury. The intent of the student was a relevant consideration. I also consider the weight of the evidence supports that the November 2002 incident should be viewed in its entirety. In other words, the whole of the evidence concerning the incident includes both the intent and the actions of the student who dropped the hot nut down the worker's shirt. The incident can be distinguished from the accidental tumbling of similar items from a shelf. The worker's reaction was not only to the action but to the events that led up to it, that is, the intent of a particular student to be malicious or to cause the worker physical harm or injury. The weight of the evidence also supports Dr. B's opinion that the malicious behaviour, that is, the November 2002 incident was sufficient to cause stress and anxiety. The worker's evidence was that his anxiety about the incident included that the student he initially suspected was not someone he considered a problem as well as the random nature of the event, which he came to consider an attack.

The Act does not require sole causation. If a disability results from the interaction of multiple causes, it is improper to require that the compensable event or injury be the most significant factor. It is sufficient if the injury was a significant contributing factor, or contributed to a material degree to the disablement [Professor Ison's *Worker's Compensation in Canada* (2nd Edition), at page 58; *Athey v. Leonati*, (1996) 3 S.C.R. 458]. As noted in *WCAT Decision #2004-02674*, causative significance includes consideration of whether the physical injury had an aggravating or accelerating effect.

After careful consideration, I find that the weight of the evidence does not support the review officer's conclusions. My reasons include that my conclusion differs about which section of the Act is appropriate for the consideration of the worker's psychological symptoms. New evidence has also been presented to WCAT, which includes the opinions from Dr. Armstrong, the treating psychologist, and Dr. B. Dr. David's review of the worker's previous history of psychological problems provides more detail on that history and the worker's pre-injury status. The worker's evidence at the oral hearing provided additional information on his psychological reaction to the November 2002 incident.

With reference to the opinions provided, I consider Dr. Armstrong's opinion to be generally consistent with that of Dr. B. Dr. Armstrong stated the worker's psychological symptoms were a direct result of the psychological injury that occurred in November 2002. Both Dr. Armstrong and Dr. B consider the November 2002 incident was of causative significance with regard to the worker's psychological symptoms.

On balance, I found Dr. B's assessment comprehensive, in that he considered the worker's pre-injury history and the role of the November 2002 incident as it pertained to the worker's reaction to both the intent of the student and the physical injury. I also found his comments about the appropriate diagnosis compelling. I agree with his assessment that the symptoms described by Dr. David in his initial report and by Dr. Armstrong do not appear to have involved intense fear, helplessness, or horror. Dr. David's December 2, 2002 report described symptoms that included stress, depression, and feelings of guilt. The DSM-IV-TR states at page 679 that the essential feature of an adjustment disorder is a psychological response to an identifiable stressor or stressors that results in the development of clinically significant emotional or behavioural symptoms. The symptoms must develop within three months of the onset of the stressor (criterion A). The clinical significance of the reaction is indicated either by marked distress that is in excess of what would be expected given the nature of the stressor or by significant impairment in social or occupational functioning (criterion B). The subtype, adjustment disorder with mixed anxiety and depressed mood, should be used when the predominant manifestation is a combination of depression and anxiety.

As noted above, I have not reached any conclusion about the benefits to which the worker may be entitled, and refer that matter to the Board. The Board should consider whether the worker is entitled to interest in its implementation of my decision.

Conclusion

I vary *Review Division Decision #3576*. I allow the worker's appeal to the following extent. I find the worker's psychological symptoms should be accepted under section 5(1) of the Act, as a compensable consequence of his injury. I have not reached any conclusion about the benefits to which the worker may be entitled, and refer that matter to the Board. The Board should consider whether the worker is entitled to interest in its implementation of my decision.

The *Workers Compensation Act Appeal Regulation* (B.C. Reg. 321/02) provides for the reimbursement of expenses associated with an appeal. The worker requested reimbursement of wages that he lost to attend the oral hearing. He is successful on the appeal. I agree that this expense should be reimbursed (item #13.22 of the MRPP). The worker also requested reimbursement for the cost of Dr. David's January 15, 2004 report (\$260) and Dr. Armstrong's March 23, 2004 report ((\$150). I agree it was reasonable for the worker to have obtained this report for her appeal (item #13.23 of the MRPP). I order the Board to reimburse the cost of this expense, according to the appropriate tariff.



Susan Marten
Vice Chair

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