Noteworthy Decision Summary

Decision: WCAT-2006-00107 **Panel**: Marguerite Mousseau **Decision Date:** January 12, 2006

Reopening – Mental stress – Conflicting medical opinions – Section 96(2) of the Workers Compensation Act – Section 5.1 of the Workers Compensation Act – Policy item #C14-102.01 of the Rehabilitation Services and Claims Manual, Volume II

This decision is noteworthy for the discussion of the factors to consider in weighing conflicting expert opinions. The panel preferred the opinion of an independent psychologist as it was based on a comprehensive interview with the worker, psychological testing, and a review of the medical information on file.

The worker, a machine operator, was involved in a serious motor vehicle accident. The Board accepted his claim for psychological symptoms. Several months later he was provided a diagnosis of major depressive disorder in partial remission and PTSD. He returned to work one year later but stopped working within six weeks as he felt he was being treated unfairly. The Board referred the worker to a psychologist for assessment. The psychologist noted the worker had experienced difficulties at work prior to the accident. He concluded the worker had initially developed a severe Adjustment Disorder with Anxiety and Depressed Mood which had worsened into a Major Depressive Disorder, Single Episode, with Significant Features of Posttraumatic Anxiety. The psychologist concluded the worker's continuing psychological symptoms were the result of an emotionally toxic work environment and were not caused by the accident. The worker successfully completed a graduated-return-to-work plan with the employer. The Board terminated his wage loss benefits.

Four months later the worker stopped working as he was unable to cope with the work situation. The Board denied the worker's request to reopen his claim or to open a new claim for symptoms of stress. The worker requested a review by the Review Division of the Board, which confirmed the decision. The worker appealed to the Workers' Compensation Appeal Tribunal.

The worker presented a medical legal opinion by his treating psychiatrist. She diagnosed the worker as suffering from PTSD caused by the accident. She further concluded it was more than 50% likely that the worker's difficulties on returning to work were caused by the PTSD.

The panel, in considering the weight to assign to the different medical opinions, took the following factors into account:

- the relationship of the specialist to the worker;
- the accuracy and comprehensiveness of the background information and records which informed their opinions;
- the extent to which they addressed stressors other than the accident of May 2001, including evidence of pre-accident stress;
- the consistency of their opinions with other medical evidence;
- whether psychological tests with validity scales were used in the assessment process,
- whether there were corroborative interviews; and

Workers' Compensation Appeal Tribunal 150, 4600 Jacombs Road, Richmond, B.C. V6V 3B1
Telephone: (604) 664-7800; 1-800-663-2782; Fax (604) 664-7898

- the depth of the analysis of the relationship between the symptoms and symptom history and the likely causative stressors.

The panel had a number of difficulties with the treating psychiatrist's opinion. It was unclear at what point in the worker's history she became involved and when she obtained her understanding of his condition and its causes. There was no indication she was aware of previous assessments as to diagnosis and causes of the worker's condition. Her sole source of information appeared to be the worker's report of his symptom history and its causes. In contrast, the psychologist to whom the Board had referred the worker based his opinion on a comprehensive interview with the worker, psychological testing, and a review of all medical information on file to that date. The panel preferred the independent psychologist's opinion.

The panel concluded that if the worker had developed PTSD, it was not a change in his compensable condition given that the independent psychologist's opinion was that he did not develop PTSD as the result of the accident. As a result, the worker did not meet the first criterion for a reopening under section 96(2): a significant change in the compensable condition. The panel also concluded the worker's symptoms were not a recurrence of his injury under policy item #C14-102.01 of the *Rehabilitation Services and Claims Manual, Volume II* in that the series of workplace conflicts were intervening events and it was these events which led to the onset of symptoms after he returned to work.

The worker also did not meet the criteria for a new injury under section 5.1 of the *Workers Compensation Act*, as his symptoms were likely due to ongoing workplace conflict, which does not constitute a sudden and unexpected traumatic event.

The worker's appeal was denied.

WCAT Decision Number: WCAT-2006-00107
WCAT Decision Date: January 12, 2006
Panel: Marguerite Mousseau, Vice Chair

Introduction

The worker appeals *Review Division Decision #22585*, dated February 23, 2005, in which a review officer of the Workers' Compensation Board (Board) confirmed that the worker was not entitled to a reopening of his 2001 claim for mental stress and that there was no basis for a new claim for compensation for mental stress.

The Workers' Compensation Appeal Tribunal (WCAT) has jurisdiction to consider this appeal under section 239(1) of the *Workers Compensation Act* (Act) as an appeal from a final decision made by a review officer under section 96(2) of the Act.

The worker is represented by a union representative who had provided a submission and additional medical evidence on his behalf. The employer is participating and has also provided a submission regarding the worker's appeal.

Issue(s)

The issues are whether the worker's circumstances in June/July 2004 satisfy the criteria for a reopening under section 96(2) of the Act and, if not, whether his condition and the related workplace events at that time satisfy the criteria for compensation for mental stress under section 5.1 of the Act.

Background

On May 28, 2001 the worker, who was employed as a machine operator, was involved in a serious motor vehicle accident which resulted in two fatalities. The worker did not suffer physical injuries but had a significant psychological reaction and his claim was accepted for psychological symptoms. He attempted to return to work in June 2001 but was unsuccessful. He was referred for counselling and was assessed by Dr. Saju Antony on December 11, 2001. At that time, Dr. Antony provided a diagnosis of major depressive disorder in partial remission and posttraumatic stress disorder (PTSD) with residual symptoms.

In January 2002 the worker's counsellor reported that the worker had been "re traumatized" when criminal charges were laid against him. The Board referred the worker to an occupational rehabilitation program from which he was discharged on March 26, 2002 as fit to return to work without limitations. During this period, he continued to see his counsellor who also indicated, in a report dated March 13, 2002,

that the worker was socially and mentally prepared to return to work. Accordingly, the worker returned to work on April 1, 2002.

On May 15, 2002 the worker's counsellor reported that the worker was no longer working. He was disillusioned and upset as a result of several incidents at work in which he felt unfairly treated. He had worked for the first two weeks in April and his employer had informed him that he was unsafe at work. In early May, he was called back into work on an emergency basis and he worked for several more days but was then advised to take time off. The counsellor contacted the employer who said that the worker had damaged some equipment. He considered that the worker was behaving erratically, was not safe, and was not psychologically ready to return to work.

In the report of May 2002, the counsellor stated that, other than lingering but improving sleep problems, there were few signs of depression, anxiety, agitation or hyperactivity. The worker had, however, admitted to an increase in dreams about the accident and the impending court case. The counsellor felt that he could not recommend that the worker return to work, as it did not appear to be a supportive or productive environment for him and that he would be prejudged based on historical experience, with an expectation of failure. He could only offer the worker supportive counselling with reinforcement of the coping/adjustment skills he had learned prior to March 2002.

The worker was then referred by the Board for assessment by Dr. Buch, psychologist, to determine his psychological status, its causes and his capacity to return to work. Dr. Buch assessed the worker on June 13, 2002. His report and opinion, dated June 17, 2002, are based on an interview of the worker, the results of the Minnesota Multiphasic Personality Inventory – 2 (MMPI-2) which he administered to the worker, and his review of the medical and psychological reports contained on the worker's file.

Dr. Buch's report documents the accident, the worker's difficulties following that accident, and other stressful events in the worker's life after the accident. He also provides the worker's view of his workplace for some years prior to the accident and his experiences on returning to work. He notes that the worker was on a two-month stress leave some years prior to the accident due to his sense that a foreman was "riding him." Subsequently, the worker was able to distance himself from the foreman as a result of transferring to another division although he did not wish to do so. Problems had also arisen in the new location where he felt that he was resented by other workers and that he had been "screwed out of a position as auxillary [*sic*] foreman."

Dr. Buch considered that the interview produced information that was likely a reliable and valid reflection of the worker's experience and the MMPI-2 results were valid and produced an interpretable clinical profile.

Dr. Buch did not consider that the worker had developed PTSD as a result of the accident. He felt that the worker had initially developed a severe Adjustment Disorder with Anxiety and Depressed Mood which had worsened into a Major Depressive Disorder, Single Episode, With Significant Features of Posttraumatic Anxiety 296.25 per the *Diagnostic and Statistical Manual of Psychiatric Disorders, 4th Edition, 3rd Revision* (DSM-lV-TR). At the time of Dr. Buch's assessment, he considered that this latter disorder was in partial remission. He did not consider that the laying of criminal charges against the worker had had any significant or lasting effect on the worker's psychological condition.

With respect to the worker's recent period of disability in April/May 2002, Dr. Buch said that he could not account for the worker's problems at work on the basis of post-accident causal factors. He considered that any significant accident-related return to work barriers would have been apparent prior to the worker returning to work and, in particular, would have arisen during the worksite visit with his counsellor. Although the employer felt that the worker was psychologically disabled from working, Dr. Buch considered that the problems experienced by the worker in returning to work were primarily due to "worksite politics" which had been at play both before and after the accident. Dr. Buch considered that, if the worker's narrative regarding workplace issues was true, the worker's rapid psychological deterioration after returning to work was more likely due to longstanding worksite issues rather than post-accident factors.

Dr. Buch considered that the worker's depression was in partial remission but he had recovered sufficiently to return to work. He thought that the resurgence of depressive symptoms following the two return-to-work attempts in April and May were likely related to workplace conflict. He suggested that a Board officer might remind the employer of their "duty to accommodate" and the need for prevention of psychological injury.

Dr. Buch also noted the worker had admitted to nervousness about driving a tandem truck and Dr. Buch thought it prudent to obtain the services of a psychologist for eight hours of exposure-based training on an actual tandem truck to assist the worker in returning to truck driving.

In addition, he thought the worker would benefit from a counsellor during the impending court case. If the charges were dropped or overturned, the worker's primary vulnerabilities for relapse into depression would be unresolved guilt regarding the accident and, in particular, workplace conflicts. He noted that vulnerability was not the semantic equivalent of causality. At the time of the assessment, Dr. Buch was of the view that the worker was temporarily partially disabled with respect to tandem truck driving but he had sufficiently recovered from depression to return to full-time work duties, except for that aspect.

He concluded by saying that his recommendation for training on the truck was a prudent but not a mandatory measure. In his view, "The cause of future work return failure is likely to be found in workplace conflict or perhaps in the pending court case."

Subsequent to this assessment, the worker remained on wage loss benefits and was reassessed by Dr. Buch on October 24, 2002 (report dated October 27, 2002) and again on September 23, 2003 (report dated October 6, 2003). Dr. Buch's diagnosis of the worker, assessment of disability and recommendations for treatment remained much the same as in the first assessment report, which was the most comprehensive.

In the final report, Dr. Buch stated that the worker's current level of depression did not impair the worker from a gradual return to work and should not preclude cordial relations at work with management and co-workers. However, he noted that his recommendation of an eight-hour exposure based psychological treatment for lingering nervousness about driving a tandem dump truck had not been implemented. He considered that the worker's anxiety in performing this activity was his only psychological limitation.

Dr. Buch said that he now attributed the worker's "lingering anxious depression to his perception of an emotionally toxic work environment; that is, the primary source of his depression has shifted from vehicular trauma to labour-relations' issues, as demonstrated by the recent exacerbation of his depression following a worksite visit."

The worker was subsequently referred to Dr. Etches for treatment as recommended by Dr. Buch, for exposure-based psychological treatment with respect to driving the tandem truck. Dr. Etches met with the worker and his wife and reviewed Dr. Buch's reports. In his report of November 10, 2003, Dr. Etches stated that he agreed with Dr. Buch's diagnosis and that he was consulting with the vocational rehabilitation consultant (VRC) regarding a graduated return to work plan.

In the meantime, the employer requested a further, "independent" psychological assessment of the worker prior to embarking on a return to work plan. The worker agreed and he was assessed by Dr. Lees on December 12, 2003. Dr. Lees also considered that the worker was psychologically ready to start a graduated return to work with the continued support of regular psychological counseling for the first few months. Dr. Lees did not provide a diagnosis.

A formal graduated-return-to-work plan was drawn up following this assessment with the participation of the employer, the case manager, the worker and the VRC. The plan extended from January 26, 2004 to February 23, 2004 and included counselling sessions with Dr. Etches, including sessions on the tandem truck. The worker returned to full-time duties on February 23, 2004, with the employer reporting that the graduated return to work had worked out well. The worker was informed, in a letter dated February 27, 2004, that his wage loss benefits were concluded as of February 20, 2004

because the worker had successfully concluded his graduated return to work, his injuries had resolved and he was no longer temporarily totally disabled.

In his final report dated March 2, 2004, Dr. Etches reported that the worker had responded well to treatment. While driving the truck with Dr. Etches, he demonstrated good driving skills with minimal emotional distress, even at the site of the accident. Following this exposure session, the worker had continued in his graduated return to work by sharing the driving duties with another employee.

In a follow-up telephone conversation with the worker on February 17, 2004, the worker had reported that he was working independently without any significant problems and it was agreed that no further treatment was required at that time although the worker was aware that he could contact Dr. Etches if the need arose. Dr. Etches stated that any PTSD-related symptoms should not unduly interfere with the worker's ability to perform all of his job duties.

On March 16, 2004 the worker called the Board to say that he was having problems at work, that he was being harassed and that his employer was riding him. The worker had damaged some equipment and had been suspended one day without pay. The worker was having difficulty obtaining union representation to act on his behalf and he was feeling discouraged. He felt that the employer wanted to fire him.

On June 11, 2004 the worker's physician reported that the worker had been having difficulty for the last month with stress-related headaches and shoulder and chest pain. He stated that the worker perceived that he was being harassed at work and was having difficulty coping with these stressors. He indicated that the worker should continue working and if there was increasing difficulty with management, he would need to review his psychological restrictions and be referred for counseling. In his next report, dated July 6, 2004, the worker's physician indicated that the worker had not worked since he last saw him and that he was unable to cope with the work situation at this time.

The worker also contacted the Board and said that he had been under significant stress. He said the employer had recorded numerous incidents with regard to equipment damage which were unreasonable and he felt the employer was trying to fire him. The worker was on sick leave benefits.

After this conversation with the worker, the Board officer issued the decision letter of July 15, 2004 which forms the basis of this appeal. In that letter, the officer stated that he would not reopen the worker's claim because there had been no significant change in the worker's compensable condition nor had there been a recurrence of his injury. The officer also said that he would not establish a new claim for compensation for the worker's symptoms of stress because stress caused by decisions to discipline a worker or to terminate a worker's employment is not compensable.

The worker requested a review of these decisions and the decisions were confirmed by a review officer. The worker is appealing the review officer's decision.

Law and Policy

The questions of whether the worker's claim should be reopened or whether a new claim should be opened are adjudicated under the Act as amended by the *Workers Compensation Amendment Act, 2002* (Bill 49) and the *Workers Compensation Amendment Act, (No. 2), 2002* (Bill 63). Applicable policy is found in the *Rehabilitation Services and Claims Manual, Volume II* (RSCM II).

Section 96(2) of the Act states that a matter that has previously been decided by the Board may be reopened if there has been a significant change in a worker's medical condition that the Board had previously decided was compensable, or a recurrence of the worker's injury.

RSCM II policy item #C14-102.01, which was in effect in July 2004, provides that a "significant change" refers to a change in the worker's physical condition (not a change in the Board's knowledge about the worker's medical condition) that would, on its face, warrant consideration of a change in compensation or rehabilitation benefits.

I also note that relevant amendments to the reopening/reconsideration policies were made by Resolution of the board of directors *#2004/11/16-04*. The resolution states that it is effective January 1, 2005 but to the extent that the policy constitutes a clarification of lawful practice, I consider it appropriate to take that policy into account in this case. That policy amplifies on the meaning of recurrence and states that a recurrence of the original compensable injury occurs when the original injury, which had either resolved or stabilized, occurs again without an intervening new injury. It is distinguished from a new injury that entitles the worker to make a new claim.

With respect to a new claim for mental stress, section 5.1 of the Act provides that certain criteria must be met in order to receive compensation for mental stress. The stress must be "an acute reaction to a sudden and unexpected traumatic event" that arose out of and in the course of the employment and the worker must have been diagnosed with a condition that is described in the most recent *American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders*, which in this case is the DSM-lV-TR.

In addition, this condition must not have been 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."

Submissions and New Evidence

In her submission to WCAT, the worker's representative submits that the worker developed PTSD as a result of a very serious motor vehicle accident. She submits that the worker continues to have distressing recollections of the accident and that, throughout the claim file, the employer expressed concerns regarding the worker's ability to work. She submits that the worker's ongoing problems were not due to labour relations issues; rather, they were symptoms of his PTSD. In this regard, she refers to the medical legal opinion of Dr. Kim Hope, whom she describes as the worker's treating psychiatrist. She notes that Dr. Hope links the worker's ongoing psychiatric symptoms and the loss of his job to PTSD. She submits that Dr. Hope's opinion supports that the worker continued to experience symptoms of PTSD that prevented a successful return to work and led to his job loss. She states that this is not a new claim or a claim for stress; it is a case of continuous PTSD that has disabled the worker from work.

In the medical legal report dated June 18, 2005 Dr. Hope provides responses to the following issues identified posed by the worker's representative:

- whether the worker has a psychological condition and, if yes, its cause,
- whether the psychological condition is disabling,
- whether "stress induced erratic behaviour" is characteristic of the diagnosed condition,
- whether it is characteristic of PTSD to wax and wane or to be triggered by activities some time after the original accident,
- whether the worker requires further treatment and whether his condition should be considered temporarily disabling or permanent, and
- whether it was more or less than 50% likely that the symptoms and work difficulties experienced by the worker after he returned to work were caused by the diagnosed condition.

In response to these questions, Dr. Hope states that the worker suffers from Post-Traumatic Stress Disorder, Chronic 309.81, and that the cause of his condition is "his exposure to the traumatic events associated with his motor vehicle accident which occurred on May 28, 2001." She states that the worker continues to suffer recurrent and intrusive distressing recollections of the accident; he has intrusive nightmares, ongoing marked insomnia caused by associated hyper arousal, outbursts of anger, difficulty concentrating, and hyper-vigilance to events around him "particularly with any exposure to heavy equipment or the possibility, no matter how small, of small accidents occurring."

The worker also continues to avoid activities, places or people that arouse recollections of the trauma or the response of others to it, "particularly with respect to people blaming him for it, despite his exoneration by police and in the Courts." He endures significant anxiety when travelling in a motor vehicle and avoids it whenever possible.

Dr. Hope states that all of the above cause clinically significant distress and impairment in his social and occupational functioning. She states the worker has attempted brief exposures to using heavy equipment in a contained environment in the past six to nine months, apparently without success. His symptoms had periodically and now more consistently worsened and were contributed to by numerous stressors, including financial. She states the worker wants to return to work but cannot at this point because of his enduring symptoms.

Dr. Hope agrees that stress induced erratic behaviour can be associated with PTSD "particularly when the stressors are reflective of criticism of performance in [the worker's] case." She considered that inappropriate blame placed on the worker regarding his heavy equipment operating performance was a significant trigger back to the original accident. She said that it was therefore not surprising that the worker "would experience outbursts of anger and disorganized behavior in response to cues in a similar vein stemming from the noted labor relations issues."

She considered that activities acting as cues back to the original event and associated blame and undeserved guilt remained an important aspect of the worker's symptoms and could characterize a waxing and waning course of PTSD. She thought the worker's condition could be considered temporarily disabling but he would require relocation to an alternative workplace with the employer in order to avoid his condition becoming permanently disabling. In her view, it was more than 50% likely that the symptoms and difficulties experienced by the worker when he returned to work were caused by PTSD resulting from the May 2001 accident.

The employer's representative submits that all of the evidence indicates that the worker was handling his job quite well when he returned to work in February 2004. He submits that the cause of the worker's stress is the discipline imposed on the worker when he damaged equipment after his return to work. The worker perceived this discipline as harassment and felt that he was being picked on because of the 2001 accident. The representative states, however, that it is company policy to discipline workers who damage equipment and that it is standard practice in the industry. The worker was treated no differently than any other worker would be who damaged equipment. He also submits that the medical evidence submitted by the worker's representative is insufficient to counter all of the other medical opinion evidence on the worker's file.

Reasons and Decision

Turning to the representative's argument that the worker's current symptoms reflect a continuous PTSD condition caused by the accident that have prevented him from successfully returning to work, if the worker believes this to be the case, his remedy is to request an extension of time to request a review of the decision of February 27, 2004. As previously noted, that decision informed the worker that his wage loss benefits had been brought to conclusion because the worker had successfully

concluded his graduated return to work, his injuries had resolved and he was no longer temporarily totally disabled. That decision stands and is not before me. The issues before me are whether the worker meets the criteria for reopening of his claim or the criteria to establish a new claim.

As previously noted, a worker's claim may be reopened if there has been a significant change in his compensable condition or a recurrence of his previous injury. With respect to whether there has been a change in the worker's compensable condition, there is a difference of opinion regarding the diagnosis of the worker's compensable condition. Dr. Buch considered that the worker suffered a severe Adjustment Disorder with Anxiety and Depressed Mood which had worsened into a Major Depressive Disorder, Single Episode, With Significant Features of Posttraumatic Anxiety and Dr. Hope considered that the worker developed PTSD as a result of the accident. Dr. Antony, whose opinion dated back to December 11, 2001, thought that the worker had developed a major depressive disorder which was in partial remission at that time and PTSD with residual symptoms at that time. Dr. Etches agreed with Dr. Buch's assessment.

In weighing the different opinions I have taken into account the following:

- the relationship of the specialist to the worker,
- the accuracy and comprehensiveness of the background information and records which informed their opinions,
- the extent to which they have addressed stressors other than the accident of May 2001, including evidence of pre-accident stress,
- the consistency of their opinions with other medical evidence,
- whether psychological tests with validity scales were used in the assessment process,
- whether there were corroborative interviews, and
- the depth of the analysis of the relationship between the symptoms and symptom history and the likely causative stressors.

Taking this approach, I find a number of difficulties with Dr. Hope's medical legal opinion. One problem is that she states her opinion is based on her clinical experience with the worker but she does not state when she first met him, how long she has been treating him, or how often she has met with him. Accordingly, it is not known at what point in the worker's history she became involved and when she obtained her understanding of his condition and its causes.

In addition, she provides her opinion as to the diagnosis of the worker's condition and its cause with no indication that she is aware of the previous assessments as to diagnosis and causes of the worker's condition. She does not indicate that she has reviewed any psychological assessment and/or treatment reports, or medical or other evidence which address the worker's condition between December 2001, when the first

assessment was done, and the date that he returned to work. Accordingly, it is not clear where she has obtained her understanding of the worker's condition in the years after the May 2001 motor vehicle accident and particularly his condition at the time he returned to work. Her sole source of information appears to be the worker's report of his symptom history and its causes which is, of course, a very valuable source of information but has its limitations. Objective testing and a review of the above noted reports would help to address those limitations.

In addition, since she does not indicate when she first treated the worker, it is also not known at which point in the worker's history she obtained this information from the worker. Dr. Hope also does not indicate any awareness of the worker's pre-injury history of disaffection and difficulties with his employer. All of these factors affect the weight that may be given to her medical legal opinion.

In contrast, Dr. Buch's initial assessment and opinion are based on a comprehensive interview with the worker, psychological testing, and a review of all medical information on file to that date. He has taken into account pre-accident issues identified by the worker, as well as providing a comprehensive description of the post-injury symptoms and stressors. His opinion is supported by an analysis of all of the evidence reviewed by him in the assessment process and it has every appearance of an objective, comprehensive and well-informed opinion as to the worker's diagnosis soon after the incident and then later, at the time that he assessed the worker, as well as the causes of the worker's symptoms initially and later, at the time of assessment.

As a result of the above, I prefer Dr. Buch's assessment regarding the diagnosis of the psychological condition that was caused by the May 2001 accident, the course of that condition, and how it was affected by various stressors after the accident until he returned to work in February 2004. Accordingly, if the worker has developed PTSD, I do not consider it a change in his compensable condition given that I prefer Dr. Buch's opinion that the worker did not develop PTSD as the result of the accident. As a result, the worker does not meet the first criterion for a reopening under section 96(2): a significant change in the compensable condition.

I do accept that the worker has developed significant symptoms since his return to work. His physician reported significant symptoms of stress several months after he had returned to work which he attributed to the worker's perceptions of harassment at work. Although Dr. Hope has diagnosed these as PTSD, I have also taken into account that they may, in the alternative, represent a relapse or recurrence of the worker's depression. In this regard, I note that Dr. Buch was of the opinion that this could occur. In his view, however, the causes of any relapse would lie in the unresolved workplace conflict, at least some of which predated the accident of May 2001. In Dr. Buch's view, these conflicts were also the cause of the worker's rapid psychological deterioration resulting in the failed return to work attempts in April/May 2002; he did not attribute that deterioration to the accident a year earlier.

For the reasons previously stated, I do not consider it appropriate to place substantial weight on Dr. Hope's opinion as to the cause of the worker's condition in June 2005. More specifically, Dr. Hope does not appear to be aware of the work done by Dr. Etches with the worker with respect to exposure-based psychological training on the tandem truck which formed part of the worker's graduated return to work and the worker's apparent success as a result of that work. Given the resolution of symptoms described by Dr. Etches, the worker, and the employer, I consider it unlikely that the outbursts of anger and difficulty concentrating with any exposure to heavy equipment described by Dr. Hope are due, to any significant degree, to the accident four years earlier.

I do not consider the worker's symptoms a recurrence of the worker's injury as that is described by policy in that I do not consider it a recurrence of the injury, in the absence of an intervening event. I accept Dr. Buch's opinion that any subsequent recurrence would more likely be due to worksite conflict than to the effects of the accident. I consider that the equipment damage and disciplinary proceedings were intervening events and it was these events which led to the onset of symptoms after the worker returned to work.

Given all of the above, I find the worker does not meet the criteria for reopening under section 96(2) of the Act.

Turning to the issue of whether the worker's symptoms in June 2004 constituted a new injury which would entitle the worker to compensation for mental stress, I find that the worker does not meet the criteria in section 5.1 of the Act. The worker's symptoms are more than likely due to ongoing workplace conflict, which does not constitute a sudden and unexpected traumatic event.

Conclusion

The worker's circumstances in June/July 2004 do not satisfy the criteria for a reopening under section 96(2) of the Act. In addition, his condition and the related workplace events at that time do not satisfy the criteria for compensation for mental stress under section 5.1 of the Act.

I confirm *Review Division Decision #22585*, dated February 23, 2005.

Marguerite Mousseau
Vice Chair

MM/gw