

Noteworthy Decision Summary

Decision: WCAT-2014-02791 **Panel:** Elaine Murray **Decision Date:** September 22, 2014

Section 5.1 of the Act – Bullying and harassment – Section 5.1(1)(c) of the Workers Compensation Act – Employer’s decision about worker’s employment – labour relations exclusion – Policy #C3-13.00 of the Rehabilitation Services and Claims Manual, Volume II – Practice Directive #C3-3

Bullying and harassment is interpersonal conflict which, in order to constitute a significant workplace stressor, must contain an element of abusive or threatening behaviour. Rudeness or thoughtless conduct alone is not a “significant” stressor.

The worker, a cardiology technologist, described that she suffered a “breakdown” after the employer failed to adjust her work schedule. The worker also claimed she had been bullied and harassed by the office manager and a co-worker, and made a claim for mental disorder under section 5.1 of the *Workers Compensation Act* (Act). The Workers’ Compensation Board, operating as WorkSafeBC (Board), determined that the claim arose from a decision made by the employer relating to employment and denied the worker’s claim. As well, the conflict complained of could not be characterized as a significant workplace stressor. The Review Division confirmed the Board decision.

The worker appealed to WCAT. WCAT concluded that the employer’s failure to change the work schedule was an employment-related decision specifically excluded under subsection 5.1(1)(c) of the *Act*.

WCAT then determined that the worker had a pre-existing mental disorder which was aggravated. However, after considering the worker’s complaints, the panel found that the workplace events were an interpersonal conflict which did not amount to significant work-related stressors within the meaning of the *Act* and Board policy. The panel considered comments attributed to the co-worker to be a cumulative series of stressors, but determined that they were not “significant” as contemplated by Board policy. In order for an interpersonal conflict to be viewed as “significant”, the interpersonal conflict must have an abusive or threatening nature. Rude or thoughtless conduct in and of itself is not captured as “significant”.

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The reference in paragraph 102 to WCAT-2013-03081 should read WCAT-2013-03061.
This decision was the subject of a BC Court of Appeal decision. See 2019 BCCA 406.
This decision was the subject of a BC Supreme Court decision. See 2018 BCSC 778.

Introduction

- [1] The worker is a cardiology technologist, who began working part-time in a cardiologist's (Dr. C's) office in January 2012. She was hired to work from 9:30 a.m. to 4 p.m., two days per week, with the possibility of adding another day depending on the demand for her services. Her duties were doing stress tests, echocardiograms (ECGs), and holter monitors on patients. She was also to assist in office duties when time permitted.
- [2] The worker applied for compensation for a mental disorder on March 18, 2013. Information on her file established that she had been diagnosed with a psychological illness several years earlier. On Wednesday, March 13, 2013, she came in at the employer's request to do some extra work, after having worked on the Monday and Tuesday of that week. She went in a bit early that day, and asked her employer's office manager¹ if some appointments for patients' stress tests could be moved around. The schedule was not changed. She considered this was a breach of an employment accommodation she had arranged with Dr. C. She went home after work that day and had what she described as a "breakdown."
- [3] The worker also claimed that she was bullied and harassed by not only the office manager on March 13, 2013, but also repeatedly by a co-worker, Ms. D, whom the worker perceived was constantly trying to boss her around and get her fired. The employer was aware of the conflict between the worker and Ms. D and had made an attempt to address it, but it was not sufficient in the worker's view. The worker indicated that the office manager and Ms. D were both contributing to her stress. The worker saw her family physician, Dr. M, on March 14, 2013. She did not return to work after that date, and was terminated on March 1, 2014.
- [4] By decision dated April 26, 2013, a Workers' Compensation Board (Board)² case manager denied the worker's claim for a mental disorder under section 5.1 of the *Workers Compensation Act* (Act). Leaving aside whether the worker had a diagnosed mental disorder as required under section 5.1, the case manager found that failure to adjust the work schedule on March 13, 2013 was a decision by the employer relating to how work was to be done. Board policy specifically provides that a mental disorder caused by a decision of the employer relating to employment, such as the work to be

¹ The office manager is Dr. C's wife.

² Operating as WorkSafeBC.

done, is not compensable under section 5.1. As well, the case manager did not consider the conflict in the workplace could be characterized as significant workplace stressors or traumatic events, as defined in Board policy applicable to section 5.1. In the absence of the conflict meeting that test, the worker's claim was also not compensable.

- [5] The worker requested a review of the case manager's decision. She asked the review officer to consider that she had a pre-existing psychological condition/vulnerability when assessing whether she experienced workplace trauma or significant stressors. She said her pre-existing psychological disorder was aggravated by the events in question.
- [6] The review officer explained in her January 28, 2014 decision (*Review Reference #R0162309*) that even if workers have pre-existing psychological disorders that render them more vulnerable to stress, for compensation to be paid the evidence must still establish that they have been subjected to a traumatic workplace event(s) or a significant workplace stressor(s), in keeping with the law and policy.
- [7] The review officer confirmed the case manager's decision. She found, whether or not the employer accommodated the worker on March 13, 2013, that was a decision by the employer about the worker's employment and any mental stress arising from that decision was not compensable under the Act. Similarly, any stress relating to the employer's efforts to resolve the conflict between the worker and Ms. D was also excluded from compensation. Finally, the review officer found that the incidents the worker described as bullying, harassment, and abuse at work could not be viewed as traumatic events or significant workplace stressors within the meaning of the Act and policy so as to be eligible for compensation.
- [8] The worker now appeals the review officer's decision to the Workers' Compensation Appeal Tribunal (WCAT). An oral hearing was held at WCAT on July 25, 2014. The worker represented herself, and her mother attended as a witness. Dr. C and his representative also attended the oral hearing, and the office manager and Ms. D testified as witnesses for the employer.

Issue(s)

- [9] The sole issue on appeal is whether the worker has a mental disorder which is compensable under section 5.1 of the Act.

Jurisdiction and Standard of Proof

- [10] This appeal was filed with WCAT under subsection 239(1) of the Act. Section 254 of the Act gives WCAT exclusive jurisdiction to inquire into, hear, and determine all those matters and questions of fact, law, and discretion arising or required to be determined in an appeal before it.

- [11] Under subsection 250(1) of the Act, WCAT may consider all questions of fact and law arising in an appeal, but is not bound by legal precedent. WCAT must make its decision on the merits and justice of the case, but in so doing, must apply a policy of the Board's board of directors that is applicable in the case. The *Rehabilitation Services and Claims Manual, Volume II* (RSCM II) applies to this appeal. All references to policy in this decision pertain to the RSCM II as it has read since changes to policy item #C3-13.00 on July 1, 2012.
- [12] The standard of proof is the balance of probabilities, subject to subsection 250(4) of the Act, which provides that if on an appeal respecting the compensation of a worker the evidence supporting different findings on an issue is evenly weighted, the issue must be resolved in favour of the worker.

Preliminary Matter

- [13] The worker provided submissions, e-mails, and other documentation that she thought might be relevant to her claim. Some of this information related to her dissatisfaction with Dr. M, and her belief that he had improperly spoken directly to her employer about her. The Board is not the appropriate forum to address the worker's complaints about Dr. M's professional conduct. The worker has filed a complaint about Dr. M with the physicians' governing body.
- [14] As well, on this appeal, the worker has raised concerns about the employer "continuing to fight" her on her claim, and denigrating her through the claims and appeal process. The parameters of this claim are around the events in the workplace leading up to and including March 13, 2013 and I will not be addressing events thereafter.

Adjudicative Framework

- [15] Entitlement to compensation for mental disorders under the Act is governed by section 5.1, which provides:
- 5.1** (1) Subject to subsection (2), a worker is entitled to compensation for a mental disorder that does not result from an injury for which the worker is otherwise entitled to compensation, only if the mental disorder
- (a) either
- (i) is a reaction to one or more traumatic events arising out of and in the course of the worker's employment, or
 - (ii) is predominantly caused by a significant work-related stressor, including bullying or harassment, or a cumulative series of significant work-related stressors, arising out of and in the course of the worker's employment,

(b) is diagnosed by a psychiatrist or psychologist as a mental or physical condition that is described in the most recent American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders³ 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.

[16] Policy item #C3-13.00 is applicable to claims under section 5.1 of the Act. It basically breaks down the adjudication of mental disorder claims into five key questions:

- Does the worker have a diagnosed DSM (*Diagnostic and Statistical Manual of Mental Disorders*) mental disorder?
- Were there one or more events, or a stressor, or a cumulative series of stressors?
- Was the event "traumatic" or the work-related stressor "significant"?
- Causation (was the mental disorder a reaction to one or more traumatic events arising out of and in the course of the employment, and/or was the mental disorder predominantly caused by a significant work-related stressor, or a cumulative series of significant work-related stressors, arising out of and in the course of the worker's employment)?
- Was the mental disorder caused by a decision of the employer relating to the worker's employment?

[17] I will address the above law and policy, along with a non-binding practice directive (#C3-3, last amended on February 18, 2014)⁴ on mental disorders claims, in the sections of this decision that follow.

Evidence

[18] The parties provided a significant amount of evidence, often containing great detail. My summary of the evidence, including that from the oral hearing, cannot possibly capture every detail and nuance, and I have not attempted to do so. I have, however, carefully reviewed the entire file, all submissions, and my notes from the oral hearing in making this decision.

³ Referred to as the DSM.

⁴ The Board developed Practice Directive #C3-3 to assist in the adjudication of mental disorder claims. I am not bound to follow practice directives; however, they can provide useful guidance where consistent with Board policy.

Worker's evidence concerning the events on and around March 13, 2013

- [19] What led the worker to file a claim were the events of March 13, 2013. She first spoke to her case manager on April 3, 2013. I have reproduced his documentation of their conversation below, as it provides the initial context for this claim:

[The worker] was diagnosed with a bipolar disorder 8 or 9 years ago. She currently takes Fluoxal, Imovane and Welbutrin.

[The worker] stated that she has experienced some bullying in the workplace, by the office transcriptionist. I asked her to describe the bullying behaviour. She indicated that the transcriptionist [(Ms. D)] would "bark" at her. I asked for an example. She said that once [Ms. D] asked her if she was bored, and then shoved a halter [holter monitor] under her nose.

In August 2012 she asked [Ms. D] in an assertive manner to stop bullying her. In [the worker's] eyes, the employer did not handle this properly. Rather than address the issue an agreement was worked out whereby [Ms. D] would stay in the front office and [the worker] would stay in the lab.

[The worker] said that she is a strong person and is focused on her work, and as a result, she has been able to put up with the problems she has with [Ms. D]. The issue for which she is claiming has to do with an event that took place March 13, 2013.

[The worker] had been called in to work that day as there were 5 stress tests that needed to be done. She went in early to talk to [name of officer manager] about rescheduling one of the appointments to the afternoon, as she felt that 5 in the morning would be too rushed. She said that [the office manager] snapped at her and said "you can do it".

[The worker] has been working with an accommodation due to her pre-existing illness. [The worker] feels that the accommodation has been violated, though she managed to do all 5 of the tests in the morning. It was that evening she felt upset by what she perceived as lack of support by the employer to not reschedule as she had asked them to do.

Much of our discussion involved what happened after she went to see Dr. [M].

...

I told [the worker] that we are dealing with her reaction that followed the events of March 13, 2013. It appears that her reaction is related to a

decision of the employer not to reschedule a patient into the afternoon. She agreed. I explained that decisions of the employer are excluded from coverage. She said that because of her pre-existing disorder she is more vulnerable. I told her I would consider this aspect and delay providing her with a decision until I had a chance to explore it.

[all quotes are reproduced as written,
unless otherwise indicated]

- [20] The worker saw Dr. M on March 14, 2013. He wrote the worker had a terrible day at work when she went in on her day off and did five stress tests in the morning with results, and was only paid for four hours. She felt stressed and said her co-worker was short with her and disrespectful. She went home that afternoon and cried. She felt depressed and suicidal, and came to see him.
- [21] The worker later provided a three-page summary of what happened on March 12, 13, and 14, 2013. The office manager asked her on March 12, 2013 if she could come in on her day off to do five urgent stress tests. The worker agreed, and said she could come in the morning or afternoon or both, but if they had six stress tests, she could use the extra hours. At the end of the day, the worker saw that she had been scheduled for five stress tests from 9:30 to 11:30 a.m. and then only one in the afternoon. She said she felt depressed about what the office manager had done to her when she had worked so hard for conditions not to do five in a row.
- [22] The next morning she arrived at work at 9:15 and before she even had her coat off the office manager asked her if she wanted to do the holter monitor. The worker said no. The office manager asked again, and the worker again replied no, and said she wanted to talk to the office manager for a couple of minutes before starting work. The office manager agreed, but first she had to work out some time off for Ms. D. Then, the office manager showed the first patient in early without speaking to the worker. The worker again asked for a couple of minutes. The office manager said she was busy, but agreed after the worker asked again for just a few seconds. The worker asked if she could bump one of the morning stress tests to the afternoon. She contends the office manager very sternly and angrily said no that she could not telephone someone at 9:30 in the morning to reschedule. The worker said it was just a request because five in a row is hard to do, and the office manager said: "You can do it." The office manager also told the worker that she was to do the stress tests, check with Dr. C, and then deliver the results to the patients. The worker said okay and did so, finishing by 12:30 p.m. when a drug representative came in with lunch. She ate lunch with the representative, the office manager, Dr. C, and Ms. D. The worker noted the office manager was so nice to the drug representative when she had been so mean earlier.
- [23] The worker then did a stress test at 1:30 p.m. and, once finished, asked Ms. D whether the office manager was gone. Ms. D "grumbled yah" without even looking at the worker. The worker found this very disrespectful. Then, while downloading holter monitor

results, an ECG patient arrived. Ms. D told the patient that the worker would be right with him, but she added that she did not know what the worker was up to. Later, when the worker was leaving that day, she said something to Ms. D about “not being with it in the head” (meaning she was tired), to which Ms. D replied sarcastically: “Well, we don’t want you to be not right in the head.” The worker replied: “Yah, I am too important” and went out the back door. Once home, the worker felt than no one had treated her nicely. She felt devalued and hated. That day snapped her into depression.

- [24] The worker also submitted to the Review Division that when Ms. D made the comment to her about not being right in the head, she realized Ms. D knew of her mental disorder when she was not supposed to, picked on her about this, and this hurt her further.
- [25] The worker telephoned the employer on March 18, 2013 to say that she would not be at work. She then e-mailed the office manager to express concern about March 13, 2013. She wrote that the work that day “broke her” and she suffered a work-related injury.
- [26] On April 5, 2013, the worker wrote to Dr. C and the office manager to ask them why they overworked her past her point of her ability on her day off, even when she requested they not do so and when they knew of her disability. Further, she wrote that she was asked to give patients their test results and this added to her stress. She said she regretted doing them a favour because it had hurt her immensely. She later explained in an April 5, 2013 letter to the Board that she found her job stress-free for the most part because she did not give stress test results.
- [27] The worker told her case manager on April 25, 2013 that she had been able to put up with the problems with Ms. D, and the issue she was claiming for was the March 13, 2013 event.

Employer’s evidence concerning the events on and about March 13, 2013

- [28] Dr. C and the office manager wrote to the Board on March 21, 2013 that they were surprised the worker was claiming a work-related injury because she had previously worked three days in a week and done five stress tests in the morning with no difficulty.
- [29] Dr. C also wrote a letter to the Review Division on September 12, 2013, in which he questioned a number of the worker’s allegations. He wrote that the worker asking to have one stress test moved on March 13, 2013 was the first time this had been requested. Neither he nor the office manager had any recollection of the worker previously complaining about or requesting that five stress tests not be scheduled in a row. According to Dr. C, the worker did not tell the office manager that she was not feeling well or her accommodation was being contravened on March 13, 2013. Rather, she said she wanted to be paid for a full day. Dr. C understood that the office manager encouraged the worker to do the stress tests by saying “You can do it”, and she did not speak aggressively. There was a patient waiting for his stress test a few feet away and the office manager knew to keep her tone low.

- [30] As for giving stress test results, Dr. C agreed that he asked the worker to do so on March 13, 2013 because all of the results were normal. If they had been abnormal, he would have spoken to the patient. He noted that occasionally he would ask the cardiology technicians to give stress test results, and it was part of their job duties.
- [31] Dr. C further explained that the worker sat in his office, along with the office manager and Ms. D, to listen to a drug representative's presentation and eat lunch together that day. According to Dr. C, the worker appeared relaxed and animated. After lunch, she did another stress test, uploaded a holter monitor, and did an ECG. The office manager left shortly after 1 p.m., and from then until the worker left around 2:50 p.m., Dr. C was unaware of the worker complaining to anyone about a work-related injury.
- [32] On December 5, 2013, Dr. C also wrote to the Review Division⁵, in response to the worker's allegation that the instructions by the employer on March 13, 2013 were intentionally abusive and not for a legitimate work purpose:

[The office manager] and I strongly deny that we intended to abuse [the worker]. Why would we abuse our only cardio tech? Because on March 12, a GP [general practitioner] had asked for two stat, two urgent and two semi-urgent stress tests and consultations, [the office manager] and I were under pressure to fit these cases into a very busy schedule. First, I agreed to work on my day off, Friday, to do the consultations. Then, [the worker] agreed to come into work on the Wednesday and do the stress tests. Time was limited because I had to leave at 3:30 p.m. If any stress test was worrisome, I would see the patient in consultation during my lunch hour, instead of seeing the drug rep. who was scheduled. The instructions to [the worker] to follow the schedule were legitimately work related, dealing with potentially serious heart conditions as identified by their GP. Also, an insurance company called on March 12 to say that a client could only do his stress test on Wednesday morning and could we fit him in. He became the 11:30 patient. Often our office has to be flexible and respond to such requests.

- [33] In response to one of the worker's statements that she "begged" the office manager not to expect her to do five stress tests in a row, Dr. C wrote:

[The worker] did not beg. After [the office manager] said, "You can do it" in an encouraging manner, [the worker] immediately responded with "Then I want to be paid for a whole day." She did not say that she was not feeling well. She did not mention that it contravened any accommodation. What she mentioned was wanting more money. When more hours were offered to her, she refused the work.

⁵ Dr. C provided three separate letters to the Review Division, all dated December 5, 2013.

- [34] According to Dr. C, the office manager offered the worker office work if she wanted to stay for the whole day. The worker replied that was “grunt work” and “Ms. D’s work” and she declined to do it. At that point, the office manager said okay and left the worker to begin her work.
- [35] Ms. D provided a statement on April 3, 2013 that the worker was asked to work on March 13, 2013 because of several urgent referrals. Ms. D understood the worker had done stress tests in the morning and then there were two holter monitors to do, when a drop-in ECG patient arrived. The office manager had already left by this time, so Ms. D took the patient’s information and told him that the worker might be able to do the ECG after she finished what she was doing. Ms. D recalled the worker did so, and may have done another stress test or two. The worker left a note for the office manager telling her the time she left. Ms. D recalled saying good night or have a pleasant evening, and the worker said something to the effect that she was special and walked out. The next day, the worker came to pick up her cheque, much later than usual. The office manager was busy with a patient, so Ms. D handed her the cheque while she was typing. She said she did acknowledge the worker was in the office.
- [36] Ms. D also provided two letters dated December 12, 2013 to the Review Division. She indicated she recalled hearing the worker ask the office manager to move one stress test from the morning on March 13, 2013, but the office manager could not do this because the patients were already on their way to the office. It was Ms. D’s impression that the office manager was encouraging in tone about doing the extra stress test, and did not yell or threaten the worker. Finally, Ms. D noted the worker claimed she said to Ms. D on March 13, 2013 that her head hurts and Ms. D replied: “We can’t have that” in a nasty manner. Ms. D wrote that she did not recall saying that.

Events prior to March 13, 2013

- [37] The evidence about events prior to March 13, 2013 has been challenging to assemble in a coherent and chronological manner. The many letters, e-mails, and submissions from the parties have added bits and pieces of detail at various times throughout the claim file history. What follows is my attempt to best summarize those events.
- [38] At times leading up to and during May 2012⁶, the worker claims the following behaviour of Ms. D amounted to bullying and harassment:
- Asking the worker, in front of the employer, if she took the elevator to go up one flight of stairs.
 - Saying: “Oh, you bother me” when the worker had to speak loudly to patients.
 - Saying: “What are you doing here?” in front of the employer when she came to pick up her paycheque on her days off.
 - Constantly bossing her around and being aggressive.

⁶ Some of these events may have happened after May 2012.

- Calling her a “ditz” and a “weirdo”.
- Saying: “Why did you buy [the office manager] an acupuncture mat” in front of the office manager in a sarcastic tone.
- Constantly over-scheduling the stress test patients (more so after August 24, 2012).

[39] On May 23, 2012, the worker e-mailed her mother the following:

man i am so pissed with [Ms. D], she starts off the day with stupid gloating story to [the office manager] about how someone (a women) told her she was so beautiful with her blue eyes and blond hair and oh so gorgeous, who does that???.....oh boy, then after [the office manager] left this pm, she stated she will be “taking over”...with such authority, taking over what????.....the phone barely rang and she did nothing.

so the doctor was done with a patient and she said to me, “[name of worker] you are up” as i was phoning in an order i need by monday.....i said “i know” and the doctor said she is just changing, i said i am just ordering and will be done in one minute, he said ok.

she is such a bitch and i cannot take it anymore, i will cool down but write an email to [the office manager] tonite so [Ms. D] does not get a step ahead of me by gossiping tomorrow. she did not like me today and it was oh so obvious. I was busy doing my job and downloading a holter when the doctor said to me “what are you doing?”...I said downloading the holter, he said oh, ok, then i quipped “actually i am playing “angry birds””, he laughed as it is a game on the iphone he has. It was funny, what else would i be doing i thought.

i feel [Ms. D] has done a number on me with them, i dunno why, i don't know why women can be so vicious.

I just hate her. it is time to make my point with them. I did alot of office work so was around [Ms. D] alot today. It feels right to finally say her controlling is out of control, no matter where the chips fall. i think how i state it they will see my point or correct me.

[40] The worker then e-mailed the office manager that day to say that she was having trouble with Ms. D's “control issues.” She described Ms. D as “bossy” and at one point she told the worker “she was up” when the patient was not even ready. The worker also expressed concern that Ms. D was speaking negatively about her to the office manager and Dr. C. The office manager e-mailed back to say that Ms. D had seemed a little irritated the day before, and maybe the three of them should have a talk. She also wrote that Ms. D was not speaking negatively to her or to Dr. C about the worker. In fact, Ms. D had told the office manager how rare it was for an office group to get along as well as they did.

[41] On May 30, 2012, the office manager followed up with an e-mail to the worker that she had spoken to Ms. D about how she was feeling the week before. Ms. D apparently said that she needed to concentrate to get some work done when the worker wanted to chat and, instead of telling the worker this directly, she had directed curt comments her way. The office manager suggested that they should all explain how they were feeling in the future, adding that she and Ms. D have to concentrate intently most of the time to keep the office running smoothly.

[42] The worker also provided a draft⁷ of an e-mail to the office manager she prepared on May 30, 2012, in which she wrote, among many things:

- ...[Ms. D] is very controlling (as you know) and likes to puff herself up all the time, make herself seem greater than she may be...so sooner rather than later, me and [Ms. D] need to meet with hopefully you [name of office manager] there so there is no misinterpretation of things and i need to tell [Ms. D] to stop bossing me around.
- ...me and [Ms. D] just need to be clear with eachother about our pet peeves and what makes us feel most comfortable, she called me weird also on last Wednesday, i do not need names especially when we are suppose to have mutual respect and i am working on my confidence, ditz came in to play by her too. i was miffed.
- anyhow [Ms. D] and me are so very different and i believe we can work together and be friends if only "I" tell her how i feel and maybe her express how she feels. As [Dr. C] says i should "not let her boss me around" but i am not one to make issue of anything in public just will tell people directly what i think in private. I hope i can get that chance soon for stress sake. I hope you have not told her i think her bossy as i would like to tell her myself, i like not to speak of others behind their back unless really necessary.

[43] On June 27, 2012, the worker e-mailed the office manager that she thought Ms. D was keeping tabs on her and suggesting the worker was milking the system when she asked the worker if she was still there at work. The worker objected to this because Ms. D is not her boss, and the worker is only accountable to the office manager and Dr. C about her hours. The office manager replied that she was not aware of Ms. D doing this, but if she heard her say anything, she would address it. She then thanked the worker for staying longer to address a last minute patient.

⁷ I do not know if she sent the e-mail to the office manager; however, I have included some excerpts from it as it describes how the worker was feeling at the time.

- [44] On July 11, 2012, the worker e-mailed the office manager about Ms. D shoving a holter monitor under her nose the week before and asking her if she was bored. The worker expressed that she did not like Ms. D trying to boss her around like that. She asked for a meeting, as earlier suggested. She wanted to “lay her cards on the table” and share with Ms. D how she made her feel when she intruded on her work or acted like her boss. The worker said she would never be rude and overstep her boundaries like that with Ms. D.
- [45] When it became apparent to the worker that Dr. C and the office manager were not going to address her concerns about Ms. D, she went into the office on her day off, Friday, August 24, 2012, to hang some of her art work (Ms. D worked alone in the office on Fridays). She asked Ms. D to go for coffee with her as she wanted to talk to her about her being bossy. Ms. D refused to go for coffee, threw her arms up in the air, and said “go home!” The worker believed Ms. D constantly wanted her fired and complained about her to the employer, after the worker stood up to her bullying and harassment.
- [46] In September 2012, the worker asked Dr. C for a letter of reference. He wrote one on September 18, 2012, indicating the worker had performed her duties in an exemplary manner, and she was a valued employee. The worker e-mailed the office manager on September 20, 2012 to ask if Dr. C could revise the letter. She explained she had an active case about her previous employer discriminating against her on the basis of her age and her mental disability. She asked for a strong letter from Dr. C that her mental disability was not at all evident in her work. She also asked that none of this be disclosed to Ms. D for privacy reasons.
- [47] Dr. C wrote a letter confirming the worker performed eight to ten stress tests per day, two days per week, as well as doing holter monitors and ECGs, and office work as time permitted. He commented her work was superior to previous cardio technologists, and at no time had her “mental disability” affected her work. He added her positive nature and sensitivity to others made her a valued member of the team. He pointed out that despite her father’s recent death, she returned to work so the office schedule would not be affected.
- [48] The worker contends that Ms. D did not say she was sorry to the worker when the worker’s father passed away, and this was another example of her bullying and harassing ways.
- [49] On September 27, 2012, Dr. M also provided a note advising that the worker had been under his care for six years; she had last seen her psychiatrist in 2010; she likely had Bipolar Disorder; she was being treated with combined medications; she had not been hospitalized since 2004; and she had no appreciable psychiatric symptoms over the last six years.

- [50] On September 29, 2012, the worker e-mailed the office manager with concern that she saw/overheard Dr. C and Ms. D speaking and they immediately stopped talking when the worker turned around. The worker thought they may have been speaking about her/her illness. The office manager e-mailed back that Dr. C did not remember what he was talking about, but it certainly was not about the worker. She added that confidentiality in the office was of paramount importance. The worker replied that she trusted the office manager and Dr. C wholeheartedly.
- [51] In October 2012, the worker asked for a workplace accommodation.
- [52] Dr. C and the office manager wrote a November 2, 2012 letter to the worker to formalize their discussion about her request for accommodation. They wrote that they had adjusted the schedule so the worker would not have to do more than eight stress tests per day, noting there may be nine on the day sheet, but one or two were usually cancelled at the time. They also agreed the worker could take a 15-minute afternoon break, she could present her hours of work at the end of the work week (usually a Tuesday), and she would be paid every two weeks with her cheque ready for pick-up on Thursday mornings.
- [53] According to the employer's notes, there were then meetings on November 5 and 6, 2012 to address the conflict between the worker and Ms. D, as they had each complained about the other. The worker complained that Ms. D was bossing her around, and she thought Ms. D was talking about her with other people. Ms. D said she did not want to do so; rather, she just wanted to concentrate on transcription and managing the office when the office manager was not around (when the office manager was not there, Ms. D was in charge of monitoring the flow of patients through the stress test lab). Ms. D complained the worker was harassing her. She complained that the worker referred to her as "God"; and also spoke in a loud, mocking manner to her in front of patients. The employer wrote in its notes that co-workers were to be treated with respect at all times, personal information about co-workers was to be treated with confidentiality, and the front office was public space where there should be no personal remarks or outbursts. Any conflict should be reported to the office manager at the end of the work day in the lunchroom.
- [54] On November 9, 2012, Dr. C and the office manager wrote to the worker and Ms. D to confirm they had met with them during the past week to go over the stated sources of conflict. Dr. C and the office manager wrote that the worker and Ms. D agreed to work on a positive working environment. They noted the worker and Ms. D were essential workers. If either of them experienced a problem, they were asked to write it down and let the office manager know. She would then meet with both of them at the end of the day to resolve the issue.
- [55] The following day, the worker was given a raise because of her excellent work over the past year.

- [56] On November 20, 2012, the worker told Ms. D that a 20-year-old patient was not urgent. She claims that Ms. D “sniped” that she was, in front of the patient. Later, the worker says that Ms. D “sucked up” to her and said she was glad that patient was not urgent. The worker then heard Ms. D telling the office manager her side of the story and she heard her name. When they saw her, they stopped talking. The worker asked to speak to the office manager at the end of the day, and she “sternly agreed” that they needed to talk. The worker asked that Dr. C be there too.
- [57] Around this time, the worker provided the office manager and Dr. C with 17 pages of her side of the story, defending herself against Ms. D’s accusations. She said that Ms. D had harassed her (by bossing her and now resenting her), and she thought she knew of the worker’s disability and purposely preyed on that. She suggested that Ms. D was trying to get rid of her, and Ms. D was not indispensable. She thought Ms. D had an agenda to get the worker fired, or work from home, or have a lighter schedule, or be the boss of everyone.
- [58] On November 22, 2012, the worker wrote to Dr. C that she had seen Dr. M, as he requested (Dr. C had asked her to see Dr. M after reading the worker’s 17-page letter). The worker then reiterated that Ms. D had bossed her so much between January and August 2012 that it felt like bullying and belittling and, since August 2012, Ms. D was behaving insufferably towards her and wanted her fired. The worker said her letter was her reaction in part to Ms. D sabotaging her job with false accusations. The worker also noted that Dr. C had told the worker that Ms. D wanted her fired. The worker wanted to know why, and noted that he would not tell her. In any event, the worker wrote she was willing to work hard on her end to prevent Ms. D from disliking her and she hoped Ms. D would work on what the worker needed from her. She thought with minimum future contact, things should be much better.
- [59] Dr. C and the office manager wrote the worker and Ms. D a letter on November 24, 2012, in which they advised that Ms. D was willing to try the plan outlined in the November 9, 2012 letter, but the worker was not. They added that since the November 9th letter, they had met with the worker about a conflict that happened on November 20, 2012, where the patient received mixed messages from the worker and Ms. D. They indicated that must not happen again. Dr. C and the office manager also wrote that during their meeting with the worker on November 20, 2012, they agreed to her request for boundaries between her and Ms. D. To that end, the worker was to enter and leave the office through the lunchroom door, not do any work in the office, and have her lunch and other breaks outside the office. As well, a washroom key was placed in the lunchroom drawer for her use, and paper for shredding could be stored elsewhere. The only reasons for the worker to enter the front office would be to order supplies and download holter monitors on the computer and this could be done when Ms. D was having lunch. They indicated they would try this system for the next four weeks to see it was workable and then reassess the situation. They hoped it would only need to be temporary and expressed shock that they had to institute such measures to minimize conflict between two skilled professionals.

- [60] The worker provided an excerpt from her log book/diary from December 3 and 4, 2012 to indicate that things were going well and she was not concerned about what Ms. D was saying or doing to get her fired.
- [61] On January 21, 2013, the worker wrote the office manager that Ms. D came into the lunchroom when the coffeemaker was not working and said: "Well, it helps if you turn it on." The worker said: "yah, I did." She claims that Ms. D said: "I am joking, I know you are more clever than that." The worker replied: "I am smarter than the average bear thinks I am." The worker believed Ms. D's intent was to insult her and hurt her feelings, and it was not her intent to be funny. She also added that Ms. D had no business being back there when the worker was taking lunch. The worker asked that the office manager not discuss the incident with Ms. D as she thought Ms. D would only react negatively. She added she thought things were going well.
- [62] Then, the events of March 13, 2013 took place.

Employer's evidence concerning the allegations of bullying and harassment by Ms. D

- [63] In one of his submissions to the Review Division, Dr. C wrote that he was aware of the worker's May 23, 2012 e-mail confiding that she was having a conflict with Ms. D. In Dr. C's view, the worker and Ms. D appeared to get along well between January and August 2012. He was so pleased with the cooperation in his office that he hosted birthday dinners for everyone in March, July, and August 2012. However, right after the late August 2012 birthday dinner, the worker and Ms. D had a conflict on a Friday when neither he nor the office manager was in the office. After that, each of them came to him and the office manager privately and wanted the other one fired.
- [64] Dr. C indicated that at no time did he witness any behaviour from the worker or Ms. D that could be called abusive or threatening to each other. He believed they had personal animosity towards each other, which they were able to control on most occasions. The worker had told the office manager that the conflict was because Ms. D was "an oldest child" and the worker was "the youngest child."
- [65] Dr. C acknowledged the worker was eager to have a face-to-face meeting with Ms. D, but he and the office manager thought that, given the intensity of the animosity between them, such a meeting would be counter-productive. The office manager consulted with Service BC and the B.C. Human Rights Tribunal about how to deal with conflict between employees. After much thought, they asked each employee to write down their version of an incident and present the report to the office manager. The worker refused. When the worker presented her 17-page letter, Dr. C and the office manager met with her to suggest she see a psychiatrist. It was Dr. C's professional opinion that the worker was showing signs of paranoia. The worker did not see a psychiatrist. Instead she saw Dr. M, who thought she was stable.

- [66] In response to the worker's request for boundaries against Ms. D, Dr. C explained that they established work zones in the office, and this solution seemed to work between November 2012 and February 2013. That month, he noticed the worker had started to move outside her work zone and was asking for office work to do. He noted that the worker and Ms. D had shared lunch together and seemed to be getting along.
- [67] In her two December 12, 2013 letters, Ms. D explained that she sits in the far left hand corner of the main office with her back to the rest of the office and filing cabinets block her from the worker's work area. She wears a headset and types all day. Her contact with the worker was minimal, perhaps at lunch or when she was uploading a holter monitor or doing other work in the main office. If the office manager was ill or out of the office for her regularly scheduled Wednesday afternoon appointments, then Ms. D would be in charge of the flow of patients in and out of the stress lab.
- [68] Ms. D learned from the office manager in May 2012 that the worker had a problem with Ms. D's "control issues." Ms. D then tried to minimize her contact with the worker; however, she continued to drop in on Fridays when Ms. D was alone in the office. Ms. D wondered why the worker would do that if she was bullying her.
- [69] Ms. D described how on August 24, 2012, the worker dropped by the office and asked Ms. D to go for coffee. Ms. D said she did not have time to go for coffee. According to Ms. D, the worker became very abusive and began yelling. After a few weeks, Ms. D confided in the office manager about this incident and expressed concern about the worker as an employee.
- [70] Dr. C and the office manager met with Ms. D several times about the complaints the worker and Ms. D had about one another. This led to the work zones, which Ms. D thought seemed to work effectively in December 2012, and in January and February 2013. The worker then began moving around the office more, doing office work, and coming in the front door. Ms. D thought she seemed comfortable doing so and was friendly towards Ms. D.

Worker's written submissions prior to the Oral Hearing

- [71] In her notice of appeal, the worker wrote that the Review Division decision was wrong because:

Events Unusual leading to injury (distinct from normal or Allowed duties); review div. did not consider "real" accommodation of "no more 5 in a row" (I can prove my employer is misleading about this); I was humiliated and intimidated by abusive coworker, pattern of ongoing behaviour, cumulative plus very hurtful comment day of injury (see attached) – she wanted me fired (significant ongoing stressor); My employer WAS reckless and threatening day of injury, wanted me to quit, or looking for just cause; I reached threshold (suicidal ideation),...legis. & policy not correct.

[72] In an attachment to her notice of appeal, the worker indicated the “unusual” events that led to her injury included:

- The employer disclosed her mental disorder to Ms. D, and Ms. D set her up to be fired.
- The employer did not sufficiently address the bullying by Ms. D.
- The office manager was threatening and reckless on the day of injury, particularly giving her five stress tests in a row and having her give test results to patients.

Oral Hearing Evidence

Worker’s evidence

[73] The worker provided a 7-page typewritten statement, which she read at the oral hearing as her evidence. She asked as well that her 17-page letter to Dr. C and the office manager be considered as it was provided to them to be helpful in resolving the bullying by Ms. D.

[74] Although much of the worker’s evidence in her statement confirms her previous evidence, she added more details of the August 24, 2012 meeting between her and Ms. D. She wrote that when she asked Ms. D that day to please not boss her around because it was hurtful and suggested they could go for coffee and talk, Ms. D threw her arms up in the air and said she was just going to ignore the worker and her comment and she wanted her to leave the office. The worker described Ms. D as irate and throwing a fit, but added this is what she had expected of her when confronting her about her behaviour. She explained that was why she had wanted to have the office manager be a witness at a simple coffee or lunch, but that had not been arranged despite her requests.

[75] In the worker’s view, after August 24, 2012, Ms. D continued to “sabotage” her by trying to have her fired by, for example, over-scheduling stress tests. She added that this over-scheduling by Ms. D is what led to her requesting the accommodation.

Worker’s mother

[76] The worker’s mother was, understandably, very supportive of her daughter. She offered her belief that Ms. D was a bully, and the employer failed to properly address the situation, thus leading to her daughter’s injury. In particular, the worker’s mother noted how hard her daughter had worked to overcome her illness and be a productive worker, only to have to deal with a bully in her dream job. She testified that her daughter would call her and e-mail her about the significant stress she was experiencing dealing with

Ms. D's bullying, and she also testified that her daughter was suicidal four or five times after March 13, 2013.⁸

Office manager

[77] The office manager went over in detail, both on direct examination and when questioned by the worker, about how the schedule for March 13, 2013 was set. She confirmed the worker asked her around 9:20 that morning if one stress test could be bumped to the afternoon, and she replied that it could not. She agreed she said: "No, you can do it", but reiterated that her words were solely meant to encourage the worker, thinking she lacked confidence at that moment. According to the office manager, the worker replied that she wanted to be paid for the whole day, and the office manager offered that she could do office work, which the worker refused. The office manager confirmed on questioning by the worker that the scheduling of tests was in no way intended to have the worker quit.

[78] The office manager also testified:

- She and Dr. C agreed to the accommodation, without proof of medical disability, and the accommodation was for no more than eight stress tests in a row, as set out in the accommodation letter.
- She had no idea that doing five stress tests in a row was an issue, and it was therefore not part of the accommodation.
- The worker had asked to meet with her and Ms. D for lunch before the summer holidays in 2012, but she put the worker off because it was a busy time. She suggested August 16, 2012 instead. The worker did not pursue having lunch that day, and so she and Ms. D did not bring it up with her.
- Ms. D then came to her on August 29, 2012 to say there was a problem.
- Ms. D told her that she was upset about being confronted by the worker on August 24, 2012.
- Ms. D said to her: "We've got to get rid of her", and she replied: "We have to be patient, we are professionals." Ms. D never repeated her comment about firing the worker again, and she wrote it off as Ms. D being upset.
- She and Dr. C did not initially see the conflict between the worker and Ms. D as being their problem.
- But, in November 2012, when Ms. D and the worker argued in front of a patient, they realized they had to do something. That resulted in the work zones being created.
- The 17-page letter was shocking to them because it was so different from the worker's previous succinct style of communication.

⁸ The worker provided evidence that after March 13, 2013, the office manager put in a false record of employment (stating she had made money after March 13, 2013) to Employment Insurance, and this made her injury worse. Evidence about the extent of the worker's condition after March 13, 2013 is not relevant to deciding whether or not her claim is compensable.

- Their reaction was concern for the worker and they met with her.
- During the meeting, she was worried that the worker was experiencing paranoia.
- Neither she nor Dr. C disclosed to Ms. D that the worker had a mental disability.

Ms. D

[79] Ms. D denies knowing of the worker's mental disability until "this mess", meaning not until after the worker filed her claim. To provide some context to Ms. D's testimony, the following are some examples of Ms. D's responses to some of the worker's questions:

Q: Did you call me a ditz or a weirdo?

A: I don't use that language.

Q: Did you ask me one day why did I take the elevator and what did this mean or imply?

A: Why would I ask that?

Q: Did you continually boss me around in 2012?

A: What would be the reason for that?

Q: Did you want me fired since November 2012 or August 2012?

A: Hah, no. I'm afraid that has nothing to do with me at all. You're an employee, as I was. It isn't my story to tell anybody to fire anybody.

Q: Did you call me unprofessional in August 2012?

A: Why would I do that?

Q: Did you defame me to [the office manager] and [Dr. C]?

A: Why would I do that?

Q: Did you shove a holter monitor under my nose one day and ask "are you bored?"

A: You were wandering around, apparently looking for something to do. I wasn't sure you knew it was there. I said this needed to be done and left it at that.

Q: Was that not bossy of you?

A: Informative.

Q: Did you put down my gifts to [Dr. C and the office manager]?

A: What would be the purpose in doing that?

Q: Did you often complain about me working there because I was loud?

A: That isn't what I said...but my hearing is quite clear.

[80] The employer's representative asked one question of Ms. D in reply:

Q: You seem upset to be here?

A: Yah, I have work waiting for me to do at home. The longer this takes, I now have to work another eight hours to finish what I have to do.

Analysis and Findings

[81] Of the five questions outlined in policy, I shall begin by addressing diagnosis and causation.

Diagnosis and Causation

[82] The worker claims she sustained an aggravation of her pre-existing Bipolar Disorder.

[83] Policy item #C3-13.00 provides that a claim for an aggravation of a pre-existing mental disorder is adjudicated under section 5.1 of the Act. That section provides that a claim can only be accepted based upon a DSM diagnosis from a psychologist or psychiatrist.

[84] For purposes of her request for review, the worker provided a November 18, 2013 brief handwritten note from Dr. Falconer, psychiatrist. He wrote that he had the opportunity to reassess the worker (he did not say when), who had been his patient in 2010 and, at that time, she had a bipolar mental illness that had been stable for several years. He then wrote that due to work-related stressors culminating on March 13, 2013, "she had her pre-existing condition of BAD (bipolar affective disorder) and with her threshold exceeded she had a relapse of her condition with signs and symptoms of BAD making it impossible for her to return to work for the foreseeable future. This will need to be reassessed regularly." He offered nothing further in his note.

[85] Based on this evidence, I conclude that the worker has a pre-existing mental disorder under the current DSM, and it was aggravated (in that the worker had a relapse after several years of stability) when she saw Dr. Falconer, presumably in November 2013.

[86] The employer does not dispute the diagnosis of a mental disorder or that it was aggravated; however, it considers Dr. Falconer's opinion on causation is insufficient for purposes of section 5.1 of the Act.

[87] Causation requires a determination whether the aggravation was a reaction to one or more traumatic events arising out of and in the course of the employment, and/or was predominantly caused by a significant work-related stressor, or a cumulative series of significant work-related stressors, arising out of and in the course of the worker's employment.

[88] I am not satisfied that Dr. Falconer's note is sufficient to address causation. This would not be fatal to the worker's claim, however. In the event I were to find the requirements under subsection 5.1(1)(a) of the Act are met, I could arrange for the worker to be assessed by a psychiatrist or psychologist, who could provide a thorough analysis and reasoned opinion on causation. Nonetheless, that is not necessary because I am unable to find the worker's claim meets the necessary requirements for compensation to be paid. My reasons follow.

Traumatic events and/or significant workplace stressors

[89] I agree with the review officer the events described by the worker do not amount to a traumatic event or events arising out of and in the course of the worker's employment. Policy item #C3-13.00 defines a "traumatic" event as an emotionally shocking event, which is generally unusual and distinct from the duties and interpersonal relations of a worker's employment. Practice Directive #C3-3 notes that policy does not define "emotionally shocking" or "traumatic", but common to those terms is an element of emotional intensity as well as distinctiveness from the ordinary course of events. The directive notes that *Black's Law Dictionary* defines "shock" as a "profound and sudden disturbance of the physical or mental senses, a sudden and violent physical or mental impression." "Mental shock" is more specifically defined as "shock caused by agitation of the mental senses and resulting in extreme grief or joy." The *Merriam Webster Online Dictionary* defines "shocking" as, "extremely startling, distressing or offensive"; the *Concise Oxford Dictionary* defines "traumatic" as, "deeply disturbing or distressing".

[90] The workplace factors acting on the worker have to do with interpersonal conflict at work. I find the circumstances recounted by the worker do not indicate she was subject to an emotionally shocking event or events that rise to the level of being traumatic, as meant by section 5.1 of the Act and policy item #C3-13.00. The worker's submissions, from the outset of her claim, were that the conflicts in the workplace constituted bullying and harassment. Generally, bullying and harassment fall into the category of a work-related stressor.

[91] The focus on this appeal is therefore whether there was a work-related stressor or a cumulative series of such stressors and, if so, whether that stressor or stressors could be considered significant within the meaning of the Act and Board policy.⁹

[92] The alleged workplace stressors can be roughly broken down into three categories: (1) the stressors associated with the events of March 13, 2013; (2) the stressors associated with the worker's belief that the behaviour of Ms. D was not properly handled by her employer; and (3) the stressors arising from the conflict with Ms. D.

⁹ The evidence does not suggest there were any non work-related stressors playing a role in the worker's "breakdown" in March 2013.

Stressors associated with the events of March 13, 2013.

- [93] To begin, I acknowledge the worker contends her accommodation was breached on March 13, 2013 when five stress tests were scheduled in a row, and that was therefore a significant workplace stressor. Yet, there is no compelling evidence the accommodation included a prohibition against five or more stress tests in a row. The worker recognizes it was not written in the accommodation letter, and suggested there was some form of verbal agreement to that effect. Dr. C and the office manager contend they were unaware of the worker requesting that as part of her accommodation, and there was therefore no written or verbal agreement.
- [94] In this situation, I prefer the evidence of the office manager and Dr. C, particularly as it is in keeping with the fact that the worker did more than five stress tests in a row on several occasions after the accommodation was arranged¹⁰ without complaint. The worker may have thought she raised the issue with them but, even if she did, I cannot find that it formed part of any accommodation agreement. Nonetheless, there is no dispute that the worker asked for the schedule on March 13, 2013 to be changed and the office manager declined to do so. Thus, whether or not this refusal breached an accommodation agreement, the worker still contends it was a significant workplace stressor.
- [95] The worker also contends that the request to give stress test results to patients on March 13, 2013 was a significant workplace stressor because she had never done that before. There is some dispute about whether it was part of the worker's job duties to give stress test results to patients, but even if it was not, it is not necessary to address whether the failure to adjust the schedule or to have the worker give stress test results were "significant" work-related stressors because, even if they were, I find they are captured by the exclusion under subsection 5.1(1)(c) of the Act.
- [96] That subsection prohibits compensation where the mental disorder is caused by a decision of the worker's employer relating to the worker's employment, which includes a decision to change the work to be performed or the working conditions, to discipline the worker, or to terminate the worker's employment. Policy item #C3-13.00 provides the statutory list of examples is inclusive, not exclusive. In other words, those are not the only employer decisions that may exclude a worker from compensation. Other examples include decisions of the employer relating to workload and deadlines, work evaluation, performance management, transfers, changes in job duties, layoffs, demotions, and reorganizations.

¹⁰ Workplace records of the number of stress tests the worker performed in mornings and afternoons on days she worked between November 26, 2012 and March 12, 2013 showed her doing five stress tests in a row on eight of her work days.

[97] While the actual decisions by the employer about the work to be done on March 13, 2013 cannot lead to the worker's claim being compensable, she maintains that the way the office manager communicated the decision not to change the schedule amounted to a significant workplace stressor.

[98] Practice Directive #C3-3 states:

There may be situations that fall outside these "routine" employment issues that give rise to a compensable mental disorder, such as targeted harassment or another traumatic workplace event. It is important to consider the specific facts of each case. An employer has the prerogative to make decisions regarding the management of the employment relationship, but this does not mean that decisions can be communicated in any fashion.

The fact that decisions of the employer were communicated in a manner that was upsetting to the worker is not determinative of the issue. Heated exchanges or emotional conflict at work over matters such as discipline, performance or the assignment of duties are not uncommon. In order for the conduct of the person communicating the decision of the employer to constitute a significant workplace stressor, **one should consider if the conduct was in some way abusive or threatening.**

[bold emphasis added]

[99] In a WCAT decision from June 5, 2013 (*WCAT-2013-01593*), the panel noted the practice directive¹¹ appeared to suggest there may be situations that fall outside of routine employment issues that may give rise to a compensable mental disorder. The panel was of the view that the language of subsection 5.1(1)(c) of the Act and related policy did not afford discretion to consider the tone or manner in which the decision regarding employment was communicated. If the actions or words of the employer concerned a decision related to the worker's employment, and those actions or words caused the worker to develop a mental disorder, the resulting mental disorder, while arising out of and in the course of the employment, remained specifically excluded from compensation by subsection 5.1(1)(c).

[100] Other WCAT panels have addressed the analysis in *WCAT-2013-01593*, and have agreed¹², finding the interpretation contained in the practice directive is not consistent with the law or the policy. On the other hand, in *WCAT-2014-00675* (February 28,

¹¹ The panel was referring to Interim Practice Directive #C3-3. There have been changes to that interim directive; however, the current directive (quoted above) has not changed with respect to guidance concerning the subsection 5.1(1)(c) exclusion.

¹² See *WCAT-2014-01979* from June 30, 2014.

2014), the panel addressed the analysis in *WCAT-2013-01593*, and disagreed, writing as follows:

...I consider that while most labour relations matters are covered by section 5.1(1)(c), employer misconduct in the course of labour relations is not. I do not attempt to provide a definition of employer misconduct here, but I consider that it broadly includes bullying, harassment, abuse (physical or psychological), threats, and criminal behaviour. I consider that such behaviour, even if carried out in the course of labour relations matters or matters concerning a worker's employment, is not covered by the exclusion in section 5.1(1)(c).

[101] The panel then provided her reasons for her conclusion, which I will not address in detail, other than to say that I prefer the analysis in *WCAT-2014-00675*, which provides in part:

In this case, I do not consider that looking at the ordinary meaning of and the dictionary definitions of the terms in section 5.1(1)(c) is necessarily helpful. What merely results from such an inquiry is that, in order for the exclusion to apply, there must be a connection between an employer's decision and the worker's employment. It does not address the situation (contemplated in the non-binding practice directive) where an incident of confrontation or conflict may have both a labour relations aspect and have consequences under other sections of the Act (such as bullying or harassment under section 5.1(1)(a)(ii)).

Thus, I consider that the provision must be read contextually with the rest of the Act, particularly section 5.1 as a whole. Other areas of the Act and Board policy provide compensation regardless of employer conduct. The Board also has policies prohibiting bullying and harassment in the workplace. Moreover, section 5.1(1)(a)(ii) specifically provides for compensation for mental disorders predominantly caused by workplace bullying and harassment. This is supported by analysis of the statements made by the government in introducing the changes to section 5.1 of the Act, where The Hon. Margaret MacDiarmid stated that bullying or harassment in the workplace was completely unacceptable but the stress caused by the normal course of business at work was not covered (see Hansard, Vol. 36, No. 36 (May 3, 2012) at 11478). I consider that it would be incongruous to prohibit employers from bullying and harassing employees, but then provide no remedy for mental disorders arising from this prohibited behaviour.

[102] I also find guidance in *WCAT-2013-03081*, which addressed what type of behaviour by an employer in the context of its decisions about employment might not be excluded:

As stated in the practice directive, an employer has the prerogative to make decisions regarding the management of the employment relationship; this does not mean that decisions can be communicated in any fashion. That the employer's decisions were communicated in a manner that upset the worker is not determinative. Heated exchanges and emotional conflict at work over matters such as discipline and performance are not uncommon.

However, I find that in order to decide that the "labour relations exclusion" will not apply to such circumstances would require evidence of extremely egregious conduct on the part of the employer. The statute includes the "labour relations exclusion" in order to ensure that employers remain able manage their workplaces and employees in an effective manner, while acknowledging that such management efforts often occur in difficult or challenging situations and workplaces. Labour relations management can and should include a wide spectrum of actions; the intention of the exclusion is to acknowledge that worker reactions to management efforts in this regard can often be emotionally or psychologically difficult, and thus appear similar to what a worker may experience in response to mental stress. **However, in order for an employer's conduct to cross that line and be viewed as stepping out of the "labour relations exclusion" and into harassment or bullying, in my view it must be extremely egregious behavior, such that an reasonable person considering it would clearly see it as abusive or personally threatening.** I do not find evidence of such extremely egregious conduct by the employer here. While it is true that the worker felt the employer's actions when dealing with her were unfair or that she was singled out, the employer's behaviour was not abusive or threatening.

[bold emphasis added]

[103] I agree with the analysis above concerning the nature of the behaviour required to find the employer's conduct crossed the line, resulting in the exclusion not applying. I do not in any way consider that the office manager's delivery of the decision not to change the schedule amounts to bullying, abusive, and/or threatening behaviour. While the worker perceived the office manager to be angry, curt, and rude to her when she declined to change the schedule, this does not amount to employer misconduct as described above. Moreover, I find the words "you can do it" are encouraging on their face. It was not "do it" or "you must do it". Use of the word "can" clearly denotes encouragement.

[104] I accept the office manager's evidence that her tone and words were intended to encourage the worker. Not only are her actual words in keeping with that testimony, I also found the office manager testified in a straight forward, thoughtful, and direct

manner on this matter. I have no hesitation in accepting her testimony as credible in this regard. While I have no doubt she was somewhat exasperated or frustrated by the worker's last minute request, I am satisfied that her delivery of the decision to not change the schedule was not in the nature of bullying, abusive, and/or threatening behaviour.

[105] Further, it was my impression that it was not so much the words or tone the office manager used that caused the worker to question the events of March 13, 2013 than it was the fact the office manager did not accede to the worker's request. As the worker put it when she spoke to the case manager, and in her initial reporting to the Board, she felt upset by the lack of support from the employer, especially when she was doing the employer a favour. Being unsupportive is far removed from being abusive or threatening, however.

[106] Here, the decisions not to change the schedule and to have the worker deliver the stress test results were employment-related decisions on March 13, 2013 and are specifically excluded by subsection 5.1(1)(c) of the Act. Furthermore, the manner in which the decision not to change the schedule was communicated does not overcome the exclusion.

[107] Before leaving this matter, I find, in response to the worker's concern that asking her to work on March 13, 2013 was essentially to "break her", at no time was the worker's job in any real jeopardy. That the employer asked her to work on March 13, 2013 cannot by any stretch be reasonably viewed as an attempt to force her to quit, as the worker believes.

Stressors associated with the worker's belief that the behaviour of Ms. D was not properly handled by her employer

[108] It is abundantly clear that the worker was terribly dissatisfied with the employer's failure to address her concerns about Ms. D prior to August 24, 2012, and the employer's solution to address her concerns after that date.

[109] It is also clear that the employer initially thought it need not involve itself in what it viewed as interpersonal conflict between the two women; however, eventually it became necessary. At that point, it then intervened and tried to come up with solutions, albeit not all to the worker's satisfaction. Whether the worker was satisfied or not with the employer's failure to address her concerns or the eventual solution(s) is not of relevance. This is because even if the employer ought to have dealt with the worker's concerns in another manner, its decisions whether, when, and how to address her concerns were decisions by the employer about employment. This means they too are captured by the exclusion under subsection 5.1(1)(c) of the Act.

Stressors arising from the behaviour of Ms. D

- [110] It is my view that even if the stressors arising from the conflict with Ms. D could be considered significant workplace stressors, it is unlikely the evidence would support a finding that those stressors were the “predominant” cause of the aggravation of the worker’s mental disorder. Indeed, when the worker first filed her application for compensation, she made it clear that she was a strong person and was focused on her work and, as a result, she had been able to put up with the problems she had with Ms. D. Rather, the issue for which she was claiming had to do with the event that took place on March 13, 2013. Moreover, when the case manager told the worker that it appeared her reaction was related to a decision of the employer not to reschedule a patient into the afternoon, the worker agreed. It is also apparent from the worker’s evidence that what led to her “breakdown” on March 13, 2013 was primarily her reflection on how she perceived she was treated that day and how she ultimately did not feel supported by the employer when she was doing it a favour.
- [111] Nonetheless, in the absence of evidence as to the predominant cause of the aggravation of the worker’s Bipolar Disorder, it is necessary to address whether the conduct of Ms. D can be found to be a cumulative series of stressors and, if so, whether any of them are significant within the meaning of the Act and policy.
- [112] The policy first provides that in all cases, the events or stressors must be identifiable. The worker’s subjective statements and response to the event or stressor are considered; however, this question is not determined solely by the worker’s subjective belief about the event or stressor. The Board also verifies the events or stressors through information or knowledge about the events or stressors provided by co-workers, supervisory staff, or others.
- [113] I was not impressed with Ms. D’s testimony. From my observation (I earlier gave examples of Ms. D’s testimony to provide the flavour of her exchanges with the worker), Ms. D frequently answered the worker’s questions in a haughty and dismissive manner. She rarely looked at the worker when responding and, at times, appeared to deliberately turn away from her when responding. As well, to many questions from the worker, Ms. D responded with a question. I consider this manner of response to be evasive, arrogant, and somewhat condescending on Ms. D’s part.
- [114] More importantly, I also find Ms. D was untruthful when denying she wanted the worker fired. The evidence from Dr. C and the office manager is that in August 2012 Ms. D wanted the worker fired and said so to them. I see no reason why Dr. C and the office manager would be untruthful about this. I also consider it is not something that could slip Ms. D’s mind. I therefore find that Ms. D lied under oath. I consider lying about this matter taints her testimony in general.
- [115] What happened between the worker and Ms. D was, for the most part, not witnessed. While Ms. D’s evidence suggests she denies saying or doing most everything the

worker alleges and while the worker's interpretation of Ms. D's words, tone, and gestures is coloured by her belief she was a bully and out to get her, I am satisfied that, based on the worker's evidence, the comments she attributed to Ms. D were made and are reasonably accurate. I will consider them as a cumulative series of stressors the worker experienced.

[116] The next question is whether those stressors were "significant" within the meaning of Board policy.

[117] Policy item #C3-13.00 provides:

A work-related stressor is considered "significant" when it is excessive in intensity and/or duration from what is experienced in the normal pressures or tensions of a worker's employment.

Interpersonal conflicts between the worker and his or her supervisors, co-workers or customers are not generally considered significant unless the conflict results in behaviour that is considered threatening or abusive.

Examples of significant work-related stressors may include exposure to workplace bullying or harassment.

[118] Policy provides no further guidance concerning what amounts to significant workplace stressors.

[119] The practice directive includes the following guidance:

A work-related stressor is considered significant when, "it is excessive in intensity and duration from what is experienced in the normal pressures or tensions of a worker's employment." However, a claim for a mental disorder made by a worker employed in an occupation characterized by a high degree of stress or conflict should not be denied simply because they are normally exposed to an intense level of stress. Adjudicating the claim will require obtaining a detailed understanding of the working conditions and the specific stressors the worker is reporting. This will provide the necessary evidence needed to assess whether the worker has experienced a significant stressor or cumulative work-related stressors that were excessive in intensity and duration from the normal pressures and tensions of their employment.

As noted in policy, interpersonal conflicts between a worker and co-workers, supervisors or customers are not generally considered significant unless the conflict results in behavior that is considered threatening or abusive. The *Act* states that significant work-related stressor(s) includes bullying and harassment. The *Act* and policy do not

define bullying, harassment, threatening or abusive. In general terms, both bullying and harassment reflect conduct that is intended to, or should reasonably have been known would, intimidate, humiliate or degrade an individual.

Although bullying and harassment are generally considered in terms of a pattern of ongoing behaviour, this does not preclude acceptance of a claim for a mental disorder based upon a single event. A single event of bullying, such as a threat of physical harm, or a single act of harassment may be more appropriately adjudicated as a traumatic event rather than as a single work-related stressor depending upon the nature of that event.

Not all interpersonal conflict or conduct that is rude or thoughtless will be considered abusive behaviour. Each case will need to be investigated to determine the details and nature of the interpersonal conflict. However, conduct that is determined to be threatening or abusive is a significant work-related stressor.

- [120] The worker alleges Ms. D's words, tone, and gestures amount to bullying and harassment and are therefore significant workplace stressors. "Bullying" and "harassment" are not defined in policy or the practice directive. The only guidance is in Practice Directive #C3-3, where it provides that bullying and harassment are generally behaviour that "is intended to, or would reasonably have known would intimidate, humiliate, or degrade an individual."
- [121] I pause to note that the worker contends Ms. D's comments implied certain things, particularly as she believes Ms. D knew of her Bipolar Disorder and therefore knew or ought to have known her comments would be humiliating to the worker. While I consider Ms. D's testimony lacked credibility overall, I accept that she did not know the worker had a pre-existing mental disability until after March 13, 2013. I have reached this conclusion because Dr. C and the office manager submitted they did not disclose the worker's illness to Ms. D and, given the nature of their work and their understanding of privacy concerns in health matters, I accept they did not inform Ms. D of the worker's mental health issues.
- [122] Returning to the meaning of bullying and harassment, a number of WCAT panels have referred to the description in the Board's *Prevention Manual* of bullying and harassment. The *Prevention Manual* provides guidance to the Board's occupational safety and hygiene officers when trying to regulate workplace safety. Although the *Prevention Manual* is directed at workplace safety rather than at claims for compensation, panels have found that it may offer some useful guidelines in the absence of clearer direction elsewhere.

- [123] In this regard, *Prevention Manual* policy item D3-115-2 “Re: Employer Duties – Workplace Bullying and Harassment” defines bullying and harassment as including:
- (a) ...any inappropriate conduct or comment by a person towards a worker that the person knew or reasonably ought to have known would cause that worker to be humiliated or intimidated...
- [124] Practice Directive #C3-3 already indicates that, generally, bullying and harassment reflect conduct that a person intended to or should reasonably have known would intimidate, humiliate, or degrade a worker. The *Prevention Manual* adds nothing new in that regard. All the *Prevention Manual* really adds is that bullying and harassment amounts to “inappropriate conduct or comment.” It seems obvious that bullying and harassment would be inappropriate conduct or comment. I therefore question whether the *Prevention Manual* offers any additional or meaningful guidance beyond that found in policy and Practice Directive #C3-3.
- [125] Some panels¹³ have referred to Occupational Health and Safety Guideline G-D3-115-2 on bullying and harassment for assistance in determining the meaning of bullying and harassment in the workplace. I believe that if panels choose to rely on that guideline, they must be cautious because it was not written with the intention of defining when bullying and harassment would be a significant workplace stressor within the meaning of policy item #C3-13.00 and section 5.1 of the Act.
- [126] That said, some panels¹⁴ have indicated their understanding from the wording of the legislation and the policy is that bullying and harassment do not need to be so severe to be labeled a “significant” stressor; rather, bullying and harassment in and of themselves are “significant stressors” which may result in a compensable mental disorder. In the absence of a clear statement to that effect, especially given the lack of a definition of bullying and harassment for purposes of policy item #C3-13.00, I am unable to agree. As well, I cannot ignore that the policy says “examples of significant work-related stressors” may include exposure to bullying and harassment. This suggests to me that bullying and harassment must still meet the “test” of being “significant” stressors for a mental disorder to be compensable. Furthermore, use of the words “may include” also suggests that not all behaviour that might be categorized as bullying and harassment automatically leads to the conclusion that such behaviour is a significant workplace stressor.
- [127] I return to policy item #C3-13.00, which requires for workplace stressors to be compensable there must be a finding they are “significant” stressors. The stressor will only be significant when it is excessive in intensity and duration from what is experienced in the normal pressures or tensions of the worker’s employment. It is also clear from policy that when the alleged stressor(s) arises from “interpersonal conflict”,

¹³ See WCAT-2014-01259.

¹⁴ Again, see WCAT-2014-01259.

such conflict will generally only be viewed as excessive in intensity and duration from what is experienced in the normal pressures or tensions of the worker's employment (and therefore be "significant") when that conflict is abusive or threatening. In other words, it is the abusive and threatening nature of the interpersonal conflict that takes it outside the normal pressures or tensions of employment. That is why conduct that is rude, thoughtless and the like is not captured as being "significant." It must rise to the level of being abusive or threatening to be significant.

- [128] Further, I also can only logically conclude that "bullying and harassment" involves "interpersonal conflict." It follows in my view that, when there is conduct alleged to be bullying or harassing, such that the alleged bully/harasser intended to or reasonably ought to have known his or her conduct would cause a worker to be humiliated, intimidated, or degraded, there should generally still be some element of threat or abuse in that conduct. Otherwise, interpersonal conflict that is generally not abusive or threatening could be a significant workplace stressor provided it was categorized as bullying and harassment. In the absence of a clear definition of what interpersonal conflict amounts to bullying and harassment, I think it appropriate to consider that bullying and harassment will also generally only be considered significant when there is an element of abuse or threat in that conduct.
- [129] Before leaving this matter, I am mindful that the practice directive states the terms bullying, harassment, abusive, and threatening are not defined. This might suggest that abusive or threatening interpersonal conflict may be a different entity than bullying and harassment. On the other hand, the statement in the practice directive that a threat of physical harm could be a single event of bullying, suggests an overlap, at least between bullying and threatening interpersonal conflict. Again, I do not see how bullying and harassment can be viewed other than as "interpersonal conflict", and certainly abusive or threatening interpersonal conflict should equally be viewed as bullying and harassment. If someone is going to threaten or abuse a worker, it goes without saying that they either intended to or should reasonably have known the worker would be intimidated, humiliated, or degraded. If one is going to humiliate or degrade a worker, it is difficult to imagine how that would not be viewed as abusive. Likewise, if one is going to intimidate a worker, it is difficult to imagine how that would not be threatening and/or abusive.
- [130] Simply put, if "interpersonal conflict" is generally required to be abusive and threatening to be a significant workplace stressor, labeling interpersonal conflict as "bullying" and "harassment" should not change that requirement.
- [131] As many panels have previously commented, "threatening" and "abusive" are not defined in policy or practice. The panel in *WCAT-2013-01593* noted the definitions of those terms as follows:

"Abusive" is defined in the *Oxford English Dictionary* as "extremely offensive and insulting; characterized by illegality or physical abuse". It is

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

[reproduced as written, except changes noted]

- [132] I have reviewed the detailed information the worker has provided regarding Ms. D's conduct in the workplace. The evidence establishes there was clearly interpersonal conflict between the worker and Ms. D. As Dr. C described it, there was animosity between the two of them. It came to the point they were assigned to work in different zones so as to limit their interaction. In general, the worker's conflict with Ms. D related to her perception of Ms. D being bossy, rude, sarcastic, curt, and dismissive in word, gesture, and tone of voice. Based on Ms. D's presentation during the oral hearing, I have little doubt that she likely presented at times in that manner when interacting with the worker.
- [133] It was my impression from the evidence that most of Ms. D's objectionable behaviour occurred prior to the worker confronting her in August 2012. Indeed, the only objectionable comments the worker referenced after that date were made by Ms. D on January 21, 2013 and March 13, 2013. It was my impression from the evidence that once the employer advised Ms. D (after August 24, 2012) that the worker would not be fired as she suggested, Ms. D limited her interaction with the worker even before the work zones were set up.
- [134] What emerges from the evidence is that Ms. D was a "no-nonsense" worker, who was not overly impressed with the worker's outgoing, talkative, and loud personality in the workplace. Ms. D simply wanted to get her job done and basically ignore the worker (even before August 24, 2012). The picture of the worker that emerges is that of a dedicated employee who had struggled with her pre-existing mental disorder and finally found a career and corresponding job that she believed was perfect for her. What also emerges is that, while the worker was initially somewhat uncertain of herself in her job and required much reassurance, she developed confidence and resented Ms. D trying to "boss" her in any way, as the worker perceived she was doing. As her confidence grew, it also is apparent she felt strong and secure enough to address this "bossiness". She did not shy away from raising this with the office manager and, when not addressed to her satisfaction, she chose to directly address it with Ms. D.
- [135] It is important to recognize that there are often "strong personalities" in the workplace. As well, some individuals tend to think they know better than others and can often be "bossy" when it is not their role to take on. This becomes particularly problematic when there are two strong personalities in the workplace, as I find the worker and Ms. D were.

- [136] While the worker interpreted Ms. D's comments and behaviour as bullying and harassment, I am unable to reach the same conclusion. Before August 24, 2012, I have no hesitation in characterizing Ms. D's behaviour as likely "bossy" and overbearing at times, and she was sarcastic and/or thoughtless in some of her comments. Nonetheless, even if Ms. D's conduct can be labeled as "bossy", being "bossy" is not, in my view, equivalent to her being a bully. She clearly was trying to get a message across that she had little time for the worker and she thought the worker was wasting her and the employer's time. However, I do not find that her comments, tone, and gestures were of an abusive or threatening nature, as those terms were earlier defined, and they were not deliberately intended to or reasonably ought to be known would intimidate, humiliate, or degrade the worker.
- [137] After August 24, 2012, by which time the worker had clearly demonstrated to Ms. D that she was able to stand up for herself and directly address Ms. D about her behaviour, it is even less likely that Ms. D knew or ought to have known that her behaviour would intimidate, humiliate, or degrade the worker. Again, I also do not consider that Ms. D's behaviour towards the worker after that time can be seen as abusive or threatening. Simply put, Ms. D did not like the worker and had trouble not showing her dislike. As unpleasant as that may be in the workplace, I am not persuaded that her behaviour can be captured as a series of significant workplace stressors.
- [138] I consider Ms. D's conduct to be more akin to "rude and thoughtless" conduct that does not amount to a series of significant workplace stressors. What has been described is the kind of unfortunate commonplace tensions that will occur in an employment setting when people who simply do not like one another must interact.

Conclusion

- [139] I must deny the worker's appeal and confirm *Review Reference #R0162309*, dated January 28, 2014.

Expenses

- [140] The worker's mother incurred transportation expenses to and from her home in Kelowna to attend the oral hearing in Richmond, B.C. Item #16.1.3 of the *WCAT Manual of Rules of Practice and Procedure* states that WCAT will generally order reimbursement of expenses for attendance of witnesses where the evidence was useful or helpful to the consideration of the appeal, or it was reasonable for the party to have sought such evidence in connection with the appeal. I consider it was reasonable for the worker to have sought her mother's evidence on this appeal and I therefore direct the Board to reimburse the worker's mother for her return travel expenses from her residence to attend the oral hearing, in accordance with the applicable Board policy.
- [141] Ms. D seeks payment for eight hours of lost wages to attend the oral hearing. As earlier noted, her testimony suggested she would be making up that time. I therefore question

whether she actually lost any wages for attending the oral hearing. If the employer wishes to pursue lost wages on behalf of Ms. D, I direct the Board to investigate whether she did indeed lose wages. In the event she did, I direct the Board to reimburse her in accordance with the applicable Board policy.

[142] No other appeal expenses were requested and I am not aware of any other expenses that were incurred in this appeal.

Elaine Murray
Vice Chair

EM/hb