Noteworthy Decision Summary

Decision: WCAT-2015-01712 **Panel:** Guy Riecken **Decision Date:** May 29, 2015

Meaning of "caused by a decision of the worker's employer – Section 5.1(1)(c) of the Workers Compensation Act – Policy item #C3-13.00 of the Rehabilitation Services and Claims Manual, Volume II – Section 5.1 exclusion.

This decision is noteworthy for the interpretation of "caused by a decision of the worker's employer" in the context of section 5.1(1)(c) of the *Workers Compensation Act* (Act) and policy item #C3-13.00 of the *Rehabilitation Services and Claims Manual, Volume II* (RSCM II).

The worker was an elementary school teacher. The class of 24 students assigned to her included two children who had severe behavioural problems, including yelling and screaming at the worker and other students, violence directed towards other children, tantrums, running away, and other forms of non-compliance. The class did not have a certified educational assistant assigned to it. After approximately two months, the worker reported experiencing sleep disruptions, anxiety, panic attacks, and difficulty concentration; her family physician diagnosed and adjustment disorder. Subsequently, a psychiatrist diagnosed the worker's condition as adjustment disorder with mixed mood anxiety and depressed mood.

After an extensive review of the evidence, the panel found that the worker had been diagnosed by a psychiatrist with a mental disorder described in the appropriate volume of the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders*. The panel further found that incidents of severe student behaviour amounted to a cumulative series of significant work-related stressors arising out of and in the course of the worker's employment. The uncontradicted medical evidence was that the worker's mental disorder was predominantly caused by her experience with the severe behaviour of the two students in her class. However, the employer argued that section 5.1(1)(c) of the Act disentitled the worker to compensation because the placement of the two students in the worker's class without the assistance of a certified educational assistant resulted from decisions of the employer relating to the worker's employment, specifically, the worker's working conditions.

The panel considered the meaning of "caused by" in the context of section 5.1(1)(c) and the Act as a whole, noting that policy item #C3-13.00 of the RSCM II recognizes that all employment involves a range of events and interpersonal relationships that can cause stress, but not all upsetting or stressful events or stressors can result in compensable mental disorders. Only mental disorders resulting from "traumatic" events or "significant" stressors can qualify for compensation. The panel found the language of section 5.1 is consistent with an intention to distinguish between two general kinds of work-related stresses: routine or normal stresses that workers experience in their employment, and stresses involving "traumatic" events or "significant" stressors, and that suggested that the exclusion in section 5.1(1)(c) is concerned with the former kinds of stresses.

The panel noted that some WCAT panels have interpreted the exclusion in section 5.1(1)(c) of the Act as absolute, and does not take into consideration the tone or manner in which a decision relating to the worker's employment is communicated. Other panels have concluded that although most employment related matters are covered by section 5.1(1)(c), employer misconduct in the course of employment relations matters is not. The panel concluded that the

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Telephone: (604) 664-7800; 1-800-663-2782; Fax (604) 664-7898

section 5.1(1)(c) exclusion is not limitless, and that mental disorders caused by employer misconduct, such as bullying and harassment, abuse, threats, or criminal behaviour, occurring in the context of decisions about the worker's employment, may still be compensable. The panel concluded that the term "caused by" in section 5.1(1)(c) requires more than a basic "but for" connection between the employer's decision respecting employment and the resulting mental disorder before the exclusion applies. Further, even if it is concluded that the employer's employment-related decision or decisions collectively were more than a trivial cause of the worker's mental disorder, that may yet be insufficient to establish on a balance of probabilities that the disorder was "caused by" those decisions within the meaning of section 5.1(1)(c).

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WCAT Decision Number: WCAT-2015-01712
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Panel: Guy Riecken, Vice Chair

Introduction

[1] The worker, an elementary school teacher, is appealing a decision (*Review Reference #R0174197)* of the Review Division of the Workers' Compensation Board (Board)[1] respecting her claim for compensation for a mental disorder said to arise from the behavior of two students in her class.

[2] In the August 13, 2014 decision the review officer confirmed the Board's decision that the worker's claim did not satisfy the requirements of section 5.1 of the *Workers Compensation Act* (Act) because the behaviour of the two students involved neither a traumatic event (or series of traumatic events), nor significant work-related stressors within the meaning of the Act. In addition, the review officer found that the circumstances on which the worker based her claim resulted from the principal's decision to place the two students in the worker's class without a plan or support in place, and the claim was therefore excluded under paragraph 5.1(1)(c) of the Act, which addresses mental disorders resulting from decisions by an employer respecting a worker's employment.

Issue(s)

[3] The issue in this appeal is whether the worker suffered a mental disorder that is compensable under section 5.1 of the Act.

Jurisdiction and Method of Hearing

[4] Section 239(1) of the Act provides for appeals to the Workers' Compensation Appeal Tribunal (WCAT) of final decisions by review officers regarding compensation matters.

[5] This is an appeal by way of rehearing, in which WCAT considers the record and also has jurisdiction to consider new evidence and to substitute its own decision for the decision under appeal. WCAT has inquiry power, including the discretion to seek further evidence, but is not obliged to do so.

[6] WCAT must make its decision on the merits and justice of the case, but in doing so, must apply a policy of the Board's board of directors that is applicable in the case. The applicable policy is found in the *Rehabilitation Services and Claims Manual, Volume II*.

[1] The Board operates as WorkSafeBC.

[7] The worker is represented by an advocate from her union. The employer, a school district, is participating in the appeal and is represented by its health and safety manager.

[8] In the notice of appeal the worker requested that the appeal proceed in writing (through written submissions). Both parties have provided written submissions and new evidence.

[9] Having considered the criteria for determining the appeal method in item #7.5 of WCAT's *Manual of Rules of Practice and Procedure* (MRPP) I find that the matter can be decided without an oral hearing on the basis of the record and the written submissions and evidence provided by the parties.

Background and Evidence

[10] The Board opened a claim for the worker after receiving a physician's first report from Dr. Docherty, the worker's family physician, respecting a November 4, 2013 visit. Dr. Docherty noted that the worker was a grade one teacher who described working with a very emotionally and behaviourally difficult special needs student who was disruptive, physically aggressive and combative. The child had run in front of a car (but was not hurt). The worker reported feeling traumatized from dealing with the child, and had experienced sleep interruptions, anxiety, panic attacks, and difficulty concentrating. The child had been removed for ten days but had returned. Dr. Docherty noted the worker was clearly tearful and anxious. She diagnosed an adjustment reaction, prescribed clonazepam, and recommended that the worker take two weeks leave from work, receive counseling, and return in two weeks for reassessment.

[11] In her next report on November 18, 2013 Dr. Docherty noted that the worker had received one counseling session and had another scheduled. She felt calmer but was still having poor sleep and felt distracted, with poor focus. She was less agitated at school. The child was still in her classroom, but only one hour per day. The worker reported having a panic attack the previous week, and still had some anxiety. Dr. Docherty recommended that the worker continue with counseling, and try working for only three hours per day for two to three weeks.

[12] The worker submitted a November 20, 2013 application to the Board. She referred to ongoing exposure at work to a difficult classroom assignment from September to November 2013. She was primarily responsible in a supervisory and education ("educable") role for the actions and tendencies of students, including those with severe behavioural concerns and special needs. The worker described a number of symptoms, including abdominal cramping, nausea, diarrhea, sleep disturbances, inability to focus, headaches, agitation, irritability, nervousness, confusion, uncontrollable periods of crying, memory difficulties and detaching behaviours.

[13] The employer submitted a report of injury. The employer was unaware of any injury or claim incident. The worker had taken sick days on September 16 and October 30, 2013, and had been off work since November 4, 2013. The employer reported that that the worker's supervisor (the principal) had been working with the worker, a school based team, and the district behaviour support team to develop a behaviour support plan for a grade one student in the worker's class. As part of the plan the student had come to school for the past seven days for 60 minutes per day. On those days a behaviour trainer (a school counsellor) was present to work with the student, or another adult was in the classroom working with the student.

[14] The worker responded to a mental disorder claim interview questionnaire from the Board by providing a typewritten statement dated December 29, 2013, which included the following information. The worker had been an elementary school teacher for 17 years. The incidents starting in September 2013 involved two students (referred to by the worker as A and B[2]), who had severe behavioural concerns. In September 2013 Student A, who had a history of behavioural problems, was returning to the school. Student B was new to the school, and the file that arrived from his former school showed he also had a history of behavioural problems.

[15] The worker said that incidents when Student A and Student B were out of control were witnessed by various people, including the principal, the vice-principal, a counsellor, a support teacher, a prep teacher, a resource teacher, and two other teachers.

[16] The worker's class consisted of 24 students, including Students A and B. She did not have a certified educational assistant assigned to her class. Many daily incidents occurred in her classroom. There were so many, and she became so distressed, that she was unable to communicate what was going on effectively to anyone. The incidents described by the worker involved the following kinds of behaviour by Students A and/or B:

- yelling and screaming at other students and the worker;
- hitting, scratching, kicking, and poking other students with objects (one girl was hit near the eye with a pencil and her parents pulled her from the school for two days);
- inappropriate touching of another student;

[2] As explained in item #19.1 of the MRPP, WCAT is required (subject to some exceptions) to provide public access to its decisions in a manner that protects the privacy of the parties to the appeal. In addition, WCAT must comply with the confidentiality and privacy provisions of the Act and the *Freedom of Information and Privacy Act.* In general, panels write decisions without parties' personal identifiers so that no severing of indentifying information is required. In addition, as set out in MRPP item #19.2.2, the names of lay witnesses are not used in decisions. Instead they may be identified by their role (for example, principal or manager), or by initials. I consider that the privacy provisions also apply to non-witnesses, such as the students referred to in this decision. Throughout this decision I use initials to refer to the two students, and refer to adult lay witnesses by their role or by initials, which in some cases are not the real initials, particularly when a person's initials could be confused with another's initials.

- threatening to throw objects at the worker, throwing objects around the classroom, picking up a rock outside and refusing to put it down or give it to the worker;
- pounding walls, cupboards, desks, crawling under furniture, running away from the classroom, and "tantruming";
- Student A throwing himself onto objects and onto the floor, and banging his head repeatedly on the linoleum floor, walls and furniture;
- Non-compliance, refusal and various forms of aggression.

[17] The worker stated that she felt personally unsafe, and felt that other students were unsafe. It was so loud in her classroom at times that she had some students covering their ears and rocking to soothe themselves.

[18] When the worker took her students outside to do daily physical activity on the playground, Students A and B would often run off and refuse to come back into the building and the other school staff would have to try to apprehend them and bring them back in. On one occasion when Student A was running away he came close to being struck by a car driven by a parent in the school parking lot.

[19] The worker referred to the fact that as a teacher she is has responsibilities for the safety of the children in her class, and referred to the stress she experienced as a result of her concern for the safety of Students A and B, and the other children in her class.

[20] The worker thought that Students A and B triggered each other, such that when Student A would begin to lose control, Student B would do things to mimic him or encourage him to continue what he was doing.

[21] The worker stated that she began to document some of what was going on the school's behaviour incident forms that were handed out in late September at the monthly staff meeting. Other teachers and staff also filled out behaviour forms for these students. She considered the behaviour forms to be a snapshot, and not the entire picture. The worker provided a summary of the information in the behaviour forms that she and others filled out for incidents on October 1, 2, 3, 4, 7, 8, and 9, 2013.

[22] Without repeating all of the details here, I note that the worker's summary of what she reported in the forms is generally consistent with the information about the behaviour of Students A and B summarized above from the worker's written statement to the Board. I will discuss the incidents in more detail later in this decision.

[23] The worker stated that sometime during the week of October 14, 2013 she realized that she was not functioning normally and did not understand why she was feeling this way, especially considering that by this time Student A had been removed from the situation. She phoned Dr. Docherty's office (the date is not provided), and the earliest appointment was for November 4, 2013. During that appointment Dr. Docherty filled out a medical leave of absence note, and advised her that it was a workers' compensation

matter. The worker took time off from work as advised by Dr. Docherty, and had returned to work part time.

[24] The employer provided a number of documents to the Board. These include the following.

[25] In a January 15, 2013 email to the Board the school principal outlined the chronology of the issues with one of the students (this would appear to be the one identified by the worker as Student A). The principal noted that the first behaviour tracking report filed by the worker was dated October 2, 2013, and was followed by a school staff member meeting with Student A's mother on October 3, 2013. On October 7, 2013 there was a meeting with JE, from Child and Youth Mental Health (part of the Ministry of Children and Family Development). It was determined that JE would look into that agency getting some support for Student A. This would be shared with the school counsellor. However, the principal explained that as two people could not be working with Student A at the same time, so that avenue was closed as long as JE was working with Student A. JE continued up to the present time working with Student A most Thursdays, which results in him attending (the school) only for four days. On October 10, 2013 JE made contact with Dr. S (a pediatrician) to make him aware of the escalating behaviour at school. Dr. S advised of an appointment with Student A scheduled for October 21, 2013. The vice principal contacted Student A's parents to advise that Student A would not be allowed to go to school beginning October 9, 2013. On October 9, 2013 the school counsellor contacted the Ministry of Children and Families, and a "District Intervention Screener" was completed by the counsellor, with the results indicating it was important to contact the district behaviour specialist co-ordinator. The first meeting with GM, district behaviour specialist coordinator, at the school was on October 10, 2013. GM's advice was to draw up a safety plan. It was decided that GM would discuss Student A's case with the district's director of special education, Dr. M.

[26] In her email to the Board the principal went on to explain that Student A was not allowed at the school until a plan had been designed to ensure his safety and the safety of those around him. The plan that was developed, and put in place on October 28, 2013, involved three individuals, including GM, the school counsellor, and another person working with Student A for the entire time he would be in class.

[27] The principal attached a copy of the re-entry plan for Student A to her email, as well as a behaviour plan.

[28] On January 17, 2014 the case manager interviewed the worker on the telephone and documented the worker's information in a lengthy memo. The information is generally consistent with information provided by the worker earlier in her December 29, 2013 statement, and I will not repeat the details here.

[29] In a January 21, 2014 memo the case manager placed a hyperlink on the file to an online B.C. Ministry of Education document, *Special Education Services: A Manual of Policies, Procedures and Guidelines*[3], September 23, 2013 (Ministry Manual), and noted that Part B, "Roles and Responsibilities" was relevant. Part B of the Ministry Manual describes the roles and responsibilities of the Ministry of Education, school districts, schools (including teachers, and teachers' assistants), parents, and students.

[30] Because at times the worker and the employer refer to such terms as "Ministry designation" and "H" designation without providing definitions of these terms, I pause in the chronology to summarize some parts of the Ministry Manual relevant to those terms.

[31] Part E, "Special Needs Categories," includes descriptions of various categories of special needs students. It states that the categories are established to assist school districts in identifying the needs of students and providing appropriate education programs to them. The categories include intellectual disabilities, learning disabilities, gifted, behavioural needs or mental illness, physically dependant, deaf/blind, physical disabilities or chronic health impairments, and autism spectrum disorder. Various kinds of programs and supports are described for students in each category.

[32] One of the topics in the Ministry Manual is access by districts and schools to Ministry resources to support students in these categories. Part H, "Appendices," includes "H.16 Summary: Funding Special Needs Policy." The policy statement explains that the Basic Allocation, a standard amount of money provided per school age student enrolled in a school district, includes funds to support the learning needs of students who are identified as having learning disabilities, mild intellectual disabilities, and students requiring moderate behavior supports.

[33] Additional supplementary funding recognizes the additional cost of providing programs for students in certain other categories, including intensive behavioural problems/serious mental illness students. The policy describes three levels of special needs funding for the different categories of special needs, which are designated by letters A through H. The category of Intensive Behaviour Interventions or Serious Mental Illness (H) is in Level 3, which is assigned the lowest amount of special needs funding of the three levels.

[34] When the parties to the appeal refer to a student having a "Ministry" designation or an "H" designation, I understand them to refer to these categories and funding level designations.

[3] The case manager's memo contains a link to the document at www.bced.gov.bc.ca; accessed May 13, 2015.

[35] In the January 23, 2014 decision letter the case manager noted that there was no evidence the worker had been diagnosed with a mental disorder as required by section 5.1 of the Act (which requires a worker to have a diagnosis by a psychiatrist or a registered psychologist of a mental disorder found in the latest edition of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM), which at the time of the worker's claim would have been the DSM-5[4]). However the case manager also went on to consider whether the worker satisfied other requirements of section 5.1, and found that she did not.

Evidence submitted to the Review Division

[36] The worker submitted a March 4, 2014 psychiatric consultation report from Dr. Milanese to the Review Division. Dr. Milanese's assessment was that the worker had an adjustment disorder with mixed mood anxiety and depressed mood. Dr. Milanese noted the purpose of the consultation was medication management. He noted the history of prescriptions for clonazepam and Cipralex, and did not think that a change in medication was required. He also noted that the worker had received private counseling and was participating in group therapy for anxiety.

[37] The worker also submitted the following to the Review Division:

- the worker's written statement dated May 21, 2014;
- a witness statement by K, another elementary school teacher, dated May 21, 2014, regarding her observations of part of an October 4, 2013 incident involving Student A;
- copies of the "Behaviour Incident" forms completed by the worker and other teachers and staff members for October 1 to 9, 2013 regarding Students A and B;
- a witness statement dated May 28, 2014 by F, a resource teacher whose room was across the hall from the worker's room, in which see states that on many occasions she witnessed the worker becoming frustrated and upset by the behaviour of two students in her class; one of whom in particular was prone to run away from the class, leaving the worker to choose between chasing after him and leaving her class unsupervised, or vice versa; this student could also be violent, hitting, kicking and screaming both at staff and other students.

[38] Along with its written submission to the Review Division the employer provided a copy of a July 21, 2014 email response from the school principal to a number of questions from the employer's representative. Among other things, the principal responded to question #5 about how the worker's class composition compared to other classrooms in the school. She stated that there was another grade one class with significant higher needs, including "two Ministry Designations, one sexually violated student, one severe anaphylactic student, one diabetic student (no pump), and several students who saw a

[4] *Diagnostic and Statistical Manual of Mental Disorders*, 5th edition, American Psychiatric Association, May 18, 2013.

counsellor frequently." The principal stated that in relation to other classes in the school, the worker's class had a "much less diverse class with few designations."

[39] In responding to the employer's submissions the worker provided a copy of a document from the school district's web site that describes the role of a behaviour specialist, and the kinds of students that qualify for this service. Students qualify if they are designated or are in the process of being designated (as outlined in the Ministry Manual) within the "Moderate Behaviour Support/Mental Illness or Intensive Behaviour Intervention/Serious Mental Illness" categories.

[40] The worker also provided a copy of an April 29, 2013 article from the union's magazine about the decline of "severe-behaviour incidents" in another school district in British Columbia (B.C.) The article states that the district had announced it was on track to maintain its goal of seeing no more than 1% of its student population involved in severe-behaviour incidents. The article states that in the 2011-2012 school year, the last year data was available, there were 19 students involved in severe-behaviour incidents out of a district population of 51,210, a rate of 0.12%.

[41] The worker also provided a copy of the sections of the employer's policies and procedures manual dealing with the student's code of conduct and discipline matters. The worker referred to this manual in pointing out that the suspension of Student A from the school for ten days involved the maximum length of definite suspension provided for in the district policy, and reflected how unusual the behaviour was for such a young student.

[42] The review officer found that with the receipt of Dr. Milanese's report, the requirement for a DSM diagnosis had been met. However, the worker did not meet the other requirements of section 5.1 of the Act, particularly with respect to having experienced a traumatic workplace event (or events), or a significant workplace stressors or cumulative series of significant workplace stressors. In addition, the review officer found that the worker's mental disorder was caused by the decision of the employer to place the two students in the worker's class without assigning a certified education assistant, and was excluded from compensation under paragraph 5.1(1)(c) of the Act.

New Evidence Submitted to WCAT

[43] In support of her appeal the worker submitted a medical-legal opinion from Dr. Milanese dated November 20, 2014. Dr. Milanese states that his opinion is based on his March 4, 2014 assessment of the worker, her presentation during appointments on May 6 and August 19, 2014, and the materials that were supplied to him. The worker also provided a copy of the October 23, 2014 from her representative to Dr. Milanese. This indicates that the materials provided to Dr. Milanese included the review officer's decision, and the worker's May 21, 2014 statement about the events she experienced with the two students. The letter also set out the questions from the representative to Dr. Milanese.

[44] In answering the questions from the worker's representative, Dr. Milanese states that the worker's symptoms and associated decline in mental functioning were consistent with a diagnosis of adjustment disorder with mixed anxiety and depressed mood, based on the criteria in the DSM-5. In his opinion this condition was due to the stressors in the worker's work environment, which he characterizes as significant work-place stressors and traumatic events. In his report he refers to the stressors experienced by the worker in relation to the disruptive and aggressive behaviour of two students in her class, which led her to develop anxiety and depressive symptoms. He is also of the opinion that the work-place stressors were the predominant cause of the worker's mental disorder, and were in fact the only cause.

[45] The worker also provided the following:

- A statement by W, a teacher who has taught with the worker for 13 years at another elementary school, and who asserts that in spite of having taught students with various categories of special needs, in her 27 years of teaching she has "NEVER experienced the deplorable classroom conditions that [the worker] has described" [emphasis in the original]; A also states that she retired from teaching early so that she would not have to teach the two students in the worker's class with behavioural problems.

- A November 1, 2014 statement from K who asserts that in her 24 years of teaching all elementary school grade levels, including working with children with behaviour issues and learning difficulties, she has never had children throw things at her or at other students in the class, scream in the face of the teacher or other students, or threaten her safety or the safety of other students the way Students A and B did; K states that this is not typical behaviour that teachers expect to deal with in the classroom.

- An October 6, 2014 statement from L, another teacher, expressing the opinion that the worker's classroom environment in the fall of 2013 resulted in her full-time medical leave of absence from her teaching position.

[46] The employer also provided new evidence to WCAT. It provided the principal's written response to the representative's questions about some of the worker's evidence, including the May 2014 statement by the worker and the letters from W, K and L. It also provided a *curriculum vitae* and a statement of Dr. M in response to questions from the employer's representative.

[47] Dr. M's *curriculum vitae* indicates, among other things, that he has a Ph.D. in educational psychology and special education. He has a teacher certification. He has been the director of instruction student support services since 2001 for the employer (the school district). He has previously also worked as a district psychologist and a classroom teacher, among other positions.

[48] In answering the representative's questions, Dr. M states, in part, that preparations had been made for a designation for "the student in question" (which I understand to be Student A) in the fall of 2012. The student was officially designated under Category H Intensive Behaviour Support/Serious Mental Health at the end of January 2013. Dr. M summarizes the student's background before kindergarten and during kindergarten that led to the designation. He goes on to state that the request from the school counsellor for a consultation with the district behaviour specialist about the student came in the fall of 2013.

[49] The employer asked Dr. M if it would be a normal occurrence for this student to be in a classroom, and he answered:

> Yes, for this student and students with similar levels of concern the objective is to have them included in regular classrooms. Given the indentified concerns, it was suggested the school consider modifying the student's schedule to build on his strengths rather than constantly responding to his inappropriate behaviours.

Findings and Reasons

[50] For the following reasons I find that the worker is entitled to compensation for a mental disorder under section 5.1 of the Act.

[51] The Board is required to pay compensation to a worker for a mental disorder only if the claim satisfies the requirements of section 5.1 of the Act.

[52] Section 5.1 of provides:

> (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
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> (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 Disorders[5] 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.

[53] Policy item #C3-13.00 is binding policy that applies to claims under section 5.1 of the Act. The Board has also published Practice Directive #C3-3, "Mental Disorder Claims" (Practice Directive), which is not binding policy, but provides useful guidance on the Board's application of section 5.1 and policy item #C3-13.00.

[54] As explained in the Practice Directive, the policy breaks down the adjudication of mental disorder claims into five key questions:

- Does the worker have a diagnosed DSM mental disorder?
- Was 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?

Does the worker have a DSM diagnosed mental disorder?

[55] The review officer's finding that the worker has a mental disorder described in the DSM, namely an adjustment disorder with mixed anxiety and depressed mood as diagnosed by Dr. Milanese, is not disputed. The employer did not address this issue in its submissions to WCAT. Based on Dr. Milanese's March 4 and November 19, 2014 reports, I find that the worker was diagnosed by a psychiatrist with a mental disorder that is described in the DSM, and meets the requirement under section 5.1(1)(b) of the Act.

[5] The current version is the DSM 5, which was published prior to the incidents on which the worker's claim is based, and is applicable to her claim.

Was there an identifiable event or events, or a stressor, or a cumulative series of stressors?

[56] Policy item #C3-13.00 explains that, in all cases, the traumatic event or events, or stressor, or series of stressors, must be clearly and objectively identifiable.

[57] The employer submits that many, if not all, of the events involving Students A and B were not seen by other witnesses. The employer emphasizes that the Practice Directive states that "adjudication should not be made solely on the worker's subjective beliefs about the events."

[58] The part of the Practice Directive cited by the employer, "Adjudicative Guidelines," states:

> The occurrence of the traumatic event(s) or stressor(s) must be clearly and objectively identifiable. Policy [item #C3-13.30] states that the worker's subjective statements and response to the event(s) or stressor(s) are considered, but this question is not determined solely by the worker's subjective belief about the event(s) or stressor(s). The Board Officer also verifies the event(s) or stressor(s) through information provided by the worker, co-workers, supervisory staff, the employer or others.
>
> It is recognized that in some circumstances it may be challenging to obtain evidence which verifies that an event(s) or stressor(s) occurred or the details relating to the event(s) or stressor(s), other than the information provided by the worker. As in any claim, the Board Officer must gather the available evidence, which includes the evidence provided by the worker, and reach a conclusion based upon that evidence.

[59] Neither the policy nor the Practice Directive state that the occurrence of the events or stressors described by a worker must be verified by other eye witnesses. Instead the Board is required to consider a worker's account of the events or stressors, to seek verification through information from other employees and supervisors, and to adjudicate the claim on the basis of the available evidence, including the worker's account of what happened.

[60] In this case I consider that it would be unlikely that many of the incidents involving Students A and B in the worker's classroom could be verified by other witnesses. The incidents took place mostly in her classroom when the only other people present were Students A and B and the other grade one students. I find that the lack of corroboration of all the incidents from other eye witnesses is not a basis to conclude that the incidents are not clearly and objectively identifiable.

[61] In her January 15, 2014 statement to the Board the principal pointed out that although the worker has referred to incidents that occurred prior to the beginning of October

2013, the first time the worker provided a behaviour incident report was October 2, 2013. It is perhaps implied in this statement that it is not possible to verify the incidents occurring before the worker began to report them in writing.

[62] The worker has stated that the behaviour incident reports were distributed to teachers at a staff meeting at the end of September 2013, and has also explained a delay in reporting some of the incidents to the employer by the fact that because she was under stress she was finding it difficult to respond to the situation she was dealing with in her classroom.

[63] I consider the fact that not only the worker, but also other teachers and staff began to complete behaviour incident reports respecting Students A and B at the beginning of October 2013, a process that was established by the school to track such incidents, tends to corroborate that the incidents occurred. The alternative is that the worker and other school staff who completed the behaviour incident reports were not truthful. This is not expressly argued by the employer, and in any event, the fact that school staff, including the principal and others, responded to the reports from the worker and others by taking a number of steps, such as making contact with Student A's parents, contacting the district special needs coordinator, developing a plan that was aimed at ensuring the safety of Student A and others, suspending Student A from the school for two weeks until the plan could be developed, and developing a plan for his re-entry at the end of the suspension, all tend to show that the school principal, other school staff, and district staff, believed that severe behaviour incidents had occurred and needed to be addressed.

[64] As to the worker's description to the Board of the behaviour of Students A and B prior to the first behaviour incident report at the beginning of October 2013, I accept that such incidents likely occurred before the worker and other staff began to begin to fill out the reports. To conclude otherwise would be to assume that the behaviour of the two students suddenly changed markedly for the worse at the beginning of the October 2013. This would not be consistent with the evidence as a whole. The information provided by Dr. M confirms the worker's evidence that Student A's behaviour and learning problems had been observed prior to his entering the worker's class in September 2013. According to Dr. M, as early as 2012 Student A's problems had been noted, and during his kindergarten year (in early 2013) the process of assessing Student A's learning and behaviour problems, and "designating" him, had begun. That Student A did not exhibit such behaviour in the worker's class prior to October 2013 seems to me improbable.

[65] Although Student B was apparently not the subject of a formal "designation," the worker states that his kindergarten records showed that his behaviour problems also pre-dated his arrival in the worker's class. I also consider it improbable that the kinds of behaviours by Student B described in the incident reports only began on October 1, 2013.

[66] The employer has not disputed the worker's evidence that the behaviour incident reports were handed out to teachers at a staff meeting around the end of September 2013. Rather than the severe behaviour incidents beginning only at the beginning of October 2013 when the first incident reports were submitted, I consider the more likely explanation for the lack of earlier written incident reports is that, consistent with the worker's evidence, the forms were only handed out at a staff meeting around the end of September 2013.

[67] Without addressing at this point whether these were "traumatic" events or "significant" stressors, I accept that the incidents described by the worker occurred. These included the incidents described by the worker and others in the behaviour incidents reports, and in the worker's written claim information. With one exception, I also accept generally that the incidents occurred as described by the worker in her May 21, 2014 statement submitted to the Review Division (the exception will be addressed later in this decision). As parts of the copies of the incident reports that were submitted to the Review Division are illegible or difficult to read, I rely in part on the worker's written summary of those reports from her statement attached to the December 29, 2013 questionnaire. The incidents that I accept occurred are the following (all references to dates are in 2013):

- September 3 to 19 – As described in the worker's May 21, 2014 statement Student A did not seem to understand what she was saying to him, and appeared to not understand what the class was doing in general. He was defiant and at times refused to stay with the class group. He would run off and the worker would take the entire class out to look for him in the hallways and playground. The worker noted her observation that Student A was very fast and had good gross motor skills. He engaged in frequent screaming and slamming of doors. He yelled in the worker's face and in the faces of other children.

- September 19 – While the worker was on a class field trip Student A refused to leave the fieldtrip location, holding up the departure of the buses. The worker had difficulty removing him from the site as he was yelling, kicking, and screaming at her. Another teacher arranged for a parent to supervise her students so she could assist the worker. The worker was finally able to get Student A onto the bus by bribing him with a treat and agreeing to give him a toy from the class treat box when they returned to school.

- October 1 – Student B refused to line up with other students and re-enter the school after the morning break, and Ms. O had to call upon Ms. S to help her with Student B.

- October 1 – Student A ran through the parking lot during the lunch break, and when caught by the noon hour supervisor kicked and hit her, as well as other children.

- October 2 – Student A was "tantruming" in the worker's classroom: yelling at the worker, hitting himself with his own fists, refusing to leave to get on the school bus at the end of the day; multiple adults, including the worker, were needed to try to get Student A onto the bus, and at one point Student A narrowly missed getting hit by a parent driving a car in the school parking lot before another teacher got Student A onto a waiting school bus.

- October 3 – as reported by another teacher, Student A was climbing up the side of the gym on unsafe apparatus, and after the teacher was able to get him down, Student A threw a piece of equipment at another student (hitting her), and then ran off so that the gym teacher had to get help from another teacher to get him.

- October 3 – another teacher reported that during the afternoon recess Student B was making sexually inappropriate gestures towards other children, and was yelling; upon re-entry to the worker's class he continued to be non-compliant, touched another student inappropriately, refused to line up to leave the classroom, stomped, and crawled under furniture.

- October 4 – Student B refused to join in afternoon activities, yelled at the worker, stomped around with arms folded, crawled into a cubby, ran around the room laughing at other children and the worker, and crawled around the floor and under furniture.

- October 4 (morning) – Student A came in very agitated and angry, began yelling and screaming at the worker and other students, ran around the room, threw chairs, crawled under furniture, slammed cupboards, pounded his fists on walls and cupboards, demanded that he get what he wanted, screamed into the microphone of the classroom sound system, pounded himself in the face and head with his fists, threw a bag of food at the worker from across the room, grabbed items off the worker's desk and shoved them into his pack and pockets, and refused to leave the room for a break.

- October 4 (after lunch) – Student A ran around the room uncontrollably, scratched another student, and ran off; he continued to be out of control until both school administrators and F came to assist the worker. The worker saw Student A on the floor of F's office, where they were trying to get him to go out to the school bus. F began pulling Student A on the floor. A had his arms over his head and was screaming and crying. He was dragged across the floor a very short distance (the worker says F was trying to be playful), and then F picked him up in her arms and was trying to soothe him. The worker last saw Student A being carried down the hallway in F's arms.

- October 7 – Student B was yelling at the worker and other students within 20 minutes of entering the room; he ran around the room trying to antagonize Student A and get him to react, poking him and teasing him. He ran out of the classroom and a

certified learning assistant found him in the hallways. He continued to kick the walls and furniture, and the worker had to physically stop him punching Student A in the head. Student B also spanked another student's bottom. The worker believes that the vice principal came and got Student B from the classroom.

- October 7 – Student A's outbursts began after Student B was out of the room. He began "tantrumming": yelling, screaming, throwing a small hard ball from across the room narrowly missing the right side of the worker's face and eye, throwing furniture, banging his own head repeatedly on the hard flooring, walls and chairs; he also hit another student, and kicked and punched a chair that another student was sitting in (that student left crying).

- October 7 – as reported by the playground supervisor, Student A was spitting on other children in the playground, trying to bite them, running away, screaming and being defiant; he ran into the school and slammed the door of K's classroom so hard that a school clock was dislodged from the wall and shattered glass while other children were in the room.

- October 8 – as reported by the gym teacher Student A would not follow instructions; he ran around, tried to climb apparatus that was not safe, and tried to run off so that two teachers had to block the doors to the gym and try to distract him; he threw a cone at another student.

- October 8 – Student B refused to stay with his class in the morning, was moving randomly around the room, refusing to follow directions, trying to antagonize Student A by mimicking him and laughing in his face. He began throwing chairs around. He hit Student A in the back of the head, yelled at the worker, crawled under furniture, opened and closed cubby doors loudly, and ran in and out of the classroom until another staff member came and removed him for a period of time.

- October 8 – Student A entered the classroom in the morning and refused to join in the regular activities; he yelled at the worker from a close proximity, and then moved to the back of the room and yelled at her some more. He threw jiffy markers. When the worker took the class outside Student A picked up a rock and smiled at the worker. She felt she was planning to throw the rock at her or another student and she asked him for the rock. He refused to give it to the worker and ran off. The worker took the class away and contacted the vice principal. She told him that she would not take her class back into the room because she considered it unsafe due to Student A having the rock in his possession. Both principals sought out Student A and found him hiding in an office.

- October 9 – Student B was crawling around the school hallways making noises while the worker was trying to do some early learning testing of other students.

[68] I note that according to the worker's evidence, other staff, the principal and the vice principal were at times involved in assisting the worker or otherwise intervening in some of these incidents. To the extent that those individuals had personal knowledge of the incidents the worker relies on in her claim, it was open to the employer to provide any evidence that might directly contradict the worker's accounts of the incidents. The employer refers to the various statements by the principal in its submission to WCAT. After summarizing a number of the principal's comments, at page 3 of its submission, the employer says that they challenge the worker's assertions regarding events involving the two students in question.

[69] Yet none of the comments by the principal directly contradict the worker's evidence that these incidents occurred. For example, one of the principal's comments is with respect to Student A's removal from the resource teacher's office. I understand from the principal's statement that this refers to an incident on October 4, 2013 when Student A was removed from F's office. The principal states:

> I arrived at the closure of the event. I went to the end of the hall across from [the worker's] class to find [Student A] had positioned himself in the resource room under a table. He was agitated and frustrated and from my first impression, feeling very much cornered, as there were three adults within close proximity. [The worker] was visibly upset, so once we were able to convince [Student A] to remove himself to dismissal, I entered her classroom with my Vice-Principal to see if we could offer some support as [the worker] was very emotional. She clearly did not want to talk about the situation, but we gathered with a short conversation that [Student A] was upset that he was not chosen to take home a special stuffed frog for the weekend.

[70] The principal's account does not address the details of the student's behaviour in the classroom on October 4, 2013 as described by the worker, nor does it directly contradict her account of seeing F pulling Student A across the floor in her office, or the description of F cradling Student A in her arms. That the principal observed that the worker appeared upset, that she went to classroom to speak to her, and that the worker volunteered that Student A had been upset because he did not receive a toy frog, do not provide a basis for me to reject the worker's account of Student A's behaviour before the principal arrived.

[71] This is an example of the evidence provided by the employer. I consider it to be typical of the employer's evidence, in that it offers the principal's perspective about parts of the worker's evidence, but does not directly contradict the worker's evidence about the behavior of Students A and B in her class. Nor does the principal's evidence directly contradict information in the behaviour incident reports from other teachers or staff. I am not persuaded by the employer's arguments and evidence that the incidents described by the worker did not occur, or that her descriptions of them reflect only her subjective experience.

[72] I find that the incidents summarized above were clearly and objectively identifiable events and/or workplace stressors.

Were the above-noted either "traumatic" events or "significant" work-related stressors?

[73] Paragraph 5.1(1)(a) requires evidence that the event was "traumatic", or the work-related stressor "significant". The Act does not define these terms.

[74] 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".

[75] The Practice Directive provides the following guidance on the meaning of "emotionally shocking" and "traumatic":

> The policy does not define "emotionally shocking" or "traumatic". Common to the definitions of those terms is an element of emotional intensity as well as distinctiveness from the ordinary course of events. The following excerpts illustrate some common definitions of the terms. *Black's Law Dictionary* defines "shock" as, "a profound and sudden disturbance of the physical or mental senses, a sudden and violent physical or mental impression". "Mental shock" is more specifically defines 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".

[76] Policy item #C3-13.00 describes a significant work-related stressor as "excessive in intensity and/or duration from what is experienced in the normal pressures or tensions of a worker's employment." As noted in Practice Directive #C3-3, deciding whether a stressor meets this definition will require obtaining a detailed understanding of the working conditions and the specific stressors the worker is reporting in order to determine whether the claimed stressors were excessive in intensity and duration compared to the pressures and tensions normally experienced in the employment.

[77] The worker's position is that her mental disorder is due to both traumatic events and significant work-related stressors. She submits that the traumatic events include an incident on October 4, 2013, in which she watched Student A's head bouncing up and down on the floor as he was being dragged out of a room.

[78] I note that while other aspects of this incident are described in a behaviour report and in the worker's statement attached to the claim questionnaire, the description of watching the child's head bouncing up and down on the floor was included in neither of those documents. It first appears in the worker's May 14, 2014 written statement that was submitted to the Review Division. The review officer commented that she would have

expected the detail of the student's head bouncing on the floor to have been included in the October 4 incident report if it had occurred.

[79] I do not consider the simple omission of that detail from the behaviour incident form is, in itself, a sufficient reason not to accept that it occurred. The apparent purpose of the form was for teachers to provide descriptions of students' behaviour, not to provide a record of all the details that occurred surrounding the behaviour. There is nothing in the form that suggests that a teacher would be expected to record that, while another staff member (in this case F) was trying to manage a student's behaviour, the writer of the report found an aspect of the incident upsetting. In addition, I note that the space on the one-page form for the incident descriptions is limited. Therefore, the mere omission of a detail of the incident does not surprise me.

[80] However, in addition to the omission of the head bouncing detail from the behaviour incident report, I note that the worker's earlier description of F dragging Student A on the floor is somewhat at odds with the May 14, 2014 statement. In her earlier December 29, 2013 claim statement to the Board, the worker described the incident on October 4, as including F dragging Student A a short distance on the floor of her office. The worker described this as F trying to be playful with Student A. Nothing about the earlier description suggests that F's dragging Student A involved enough force to result in his head bouncing on the floor as he was being dragged along, and the reference to F being playful is at odds with that amount of force.

[81] I do not accept the worker's explanation that the omission from her earlier statements was due to her mental and emotional state resulting from her adjustment disorder. Dr. Milanese stated that as a result of the stress she experienced the worker became overcome by anxiety and depression to the point that she could not carry out her teaching duties. I do not interpret Dr. Milanese's assessments of her condition as indicating that it was so severe that the worker was unable to report the incidents when, or a reasonable time after, they occurred.

[82] Where there is an apparent contradiction between the worker's October 2013 incident reports or her December 29, 2013 statement to the Board, and her May 2014 statement to the Review Division, I place more weight on the earlier statements, and find that given their closer proximity to the events in question they likely provide a more reliable account compared to the later account. I find that there is such a contradiction concerning the worker's evidence about Student A's head banging against the floor as he was being dragged by F, and I do not accept that this detail of the incident occurred.

[83] It follows that I do not accept the worker's argument that the incident in which she watched Student A's head bouncing on the floor as he was being dragged along by F was a traumatic event.

[84] While the worker asserts that many of the incidents were both significant stressors and traumatic events, she has not identified other specific incidents as traumatic events. Given the definitions of these terms in policy item #C3-13.00 I recognize that many, if not most, events that come within the definition of "traumatic" would also likely satisfy the definition of "significant stressor," although the reverse would not always be true. Having considered the evidence and submissions, I conclude that while many of the incidents experienced by the worker were likely distressing and upsetting to her, she did not experience a traumatic event or a series of traumatic events within the meaning of section 5.1 and policy item #C3-13.00.

[85] As noted earlier, aside from the head bouncing, I accept that the remainder of the October 4 incident occurred as described by the worker in the behaviour incident report and in her written claim statement dated December 29, 2013.

[86] Aside from the worker's argument about traumatic events, she submits that the severe forms of behaviour exhibited by the two students in her class amounted to significant work-related stressors. She submits that the two students' behaviour was not normal or typical student behaviour in any classroom, and that it was "excessive in intensity and/or duration from what is experienced in the normal pressures or tensions" of a teacher's employment.

[87] The employer disagrees, arguing that the incidents the worker complains of do not amount to significant work-related stressors; instead, the evidence aligns with the finding of the review officer that "in general modern class rooms consist of students with a variety of challenges and includes those with severe and inappropriate behaviours." The essence of the employer's position is that dealing with the two students' behaviour was part of the worker's job duties, and part of the normal pressures or tensions of a teacher's employment.

[88] In addressing this issue I considered *WCAT-2014-02502*, in which the panel found that the behaviour of a special needs student, diagnosed with Down's Syndrome, who was placed in the appellant's regular second grade classroom, amounted to a cumulative series of significant stressors which were the predominant cause of the appellant's mental disorder. The panel relied, in part, on evidence from third parties that it was unusual for a student with the behaviour exhibited by that particular student to be placed in a regular class rather than a smaller class with a specialized teacher. The student's behaviour in that case was described as disruptive in many ways, and included striking other children. In addition the student had a tendency to bolt from the classroom and from other staff members. As in any appeal, that case was decided on its own facts.

[89] While the facts in this case are different, there are some similarities, in that the behaviour of Students A and B was at time highly disruptive, and included the tendency of Student A at times to run away from the class, from the worker and from other teachers, sometimes putting himself at risk.

[90] In support of her position the worker refers to the statements by W (undated), K (November 1, 2014), and C (October 6, 2014). The worker notes that W stated she retired from teaching early so that she would not have to work with the Students A and B in her grade two class. W also states that based on her 27 years of teaching, it is not normal to experience what the worker was subjected to in terms of student behaviour.

[91] K stated that for six years she taught grade one at the same school as the worker, and that although she has worked with children with behaviour and learning challenges, she has never had children throw things at her or other students in the class. She states that this is not typical or expected behaviour that teachers deal with in the classroom. C commented on the responsibilities that teachers have to provide students with a safe and calm environment, and in her opinion it is impossible to do so with two students disrupting the class to the extent that Students A and B did in the worker's classroom.

[92] The worker also relies on the information in the Ministry Manual, which says that it is expected that children designated in the intensive behaviour and/or mental disorder category will make up less than 1% of the student population in the province. The worker also relies on the evidence that in another school district the number of severe behaviour incidents was reduced to well under 1% as further evidence that such incidents are not part of the usual or typical work-related stressors for teachers. The worker also refers to the length of time that Student A was removed from the school as unusual for a grade one student, and the evidence of the Dr. M regarding the designation of Student A and the plan developed for his safety and the safety of others, as evidence that his behaviour was beyond the usual or expected stressors encountered by teachers in their employment.

[93] In its submission the employer refers to a number of statements by the principal in her emails. These include her account of her conversation with W about W's retirement plans. The principal asserts that W spoke about various reasons for her decision to retire, but that W (a grade two teacher) said nothing to her about retiring because she wanted to avoid teaching the two students from the worker's grade one class.

[94] With regard to the statement by K, the principal states that the working relationship between K and the worker is very tight, and their support, both professionally and personally, is extremely close. It comes as no surprise to the principal that K agreed to write a letter of support for the worker's appeal.

[95] With regard to other parts of K's evidence, the principal states that it is not the norm, nor has it ever been, that students with severe behaviour problems have a certified education assistant (CEA) attached directly to the individual student. Rather the CEAs are shared among several students. The principal also states that Student A's behaviour in the kindergarten classroom the previous year did not warrant any behaviour or safety plan to be created. Instead, the principal asserts, it was not until behaviours were exhibited under the care of the worker that a need for intervention was required and acted upon. I note that this directly contradicts the evidence of Dr. M, who

states that the process of designating Student A began in January of his kindergarten year.

[96] The principal also notes that as K did not witness the incidents first hand, she was not in position to state that Student A was a danger to himself and others, "mostly because [A] never did injure himself or cause injury to others."

[97] The principal states that C was never at the school, did not witness the incidents the worker complains of, and only learned of them from what the worker told her.

[98] The employer also refers to the principal's response to the worker's evidence that during the first day of school a parent asked if her child could be moved from the worker's class to be away from Student B. The principal explained that the parent actually asked that her child be removed from the class because the child and Student B already spent so much time together outside of school.

[99] The employer also noted the principal's comment that it is not uncommon to have a student stay home from school for at time in order to get strategies in place to help better meet the needs of the child.

[100] The employer refers to a statement by the principal that after one incident (involving the removal of Student A from F's office), the worker was visibly upset, so the principal and vice principal entered the worker's classroom to see if they could offer some support to her.

[101] The employer also relies on the statement by Dr. M as demonstrating that the behaviour of Student A, and the response of the school and the district, were not unusual parts of the school environment.

[102] Both parties recognize that in determining whether the stressors the worker complains of were excessive in intensity and/or duration (the meaning of "significant" in the context of policy), it is necessary to consider the normal duties, pressures and tensions of the employment.

[103] As noted by the panel at paragraph 122 in *WCAT-2015-00506*[6], which has been identified by WCAT as a noteworthy decision, section 1 of the Act defines employment in broad terms as follows:

> 'employment', when used in Part 1, means and refers to all or part of an establishment, undertaking, trade or business within the scope of that Part, and in the case of an industry not as a whole within the scope of Part 1 includes a department or part of that industry that would if carried on separately be within the scope of Part 1;

[6] WCAT decisions can be accessed on the WCAT website, www.wcat.bc.ca.

[104] The panel in that decision went on to state:

> [123] We find that the concept of "employment" in the context of section 5.1 of the Act and policy item #C3-13.00 is not as broad as the concept of "occupation"; nor does it refer to the worker's specific job and worksite location at the time of injury. Rather, employment in section 5.1 of the Act and policy item #C3-13.00 includes consideration of a person's type of work, trade, or profession. We find that the claimed traumatic event or significant stressor must also be viewed specific to the circumstances of the particular claim. This requires both a subjective and an objective assessment of the working conditions normal to the employment.

[105] While *WCAT-2015-00506* dealt with employment in a markedly different sector than the education sector (it concerned a correctional officer), I agree with the panel's reasoning with respect to the meaning of "employment" in policy item #C3-13.00. In this case I consider the worker's employment is her employment as a public school elementary teacher in B.C., and is not limited to the circumstances of her particular job or place of work.

[106] Thus, while the fact that another grade one class in the worker's school had two (and not just one) "designated" students, or the fact that the worker's class was less "diverse" that other classes in the school, are relevant to an understanding of the circumstances of the employment, it is not possible to determine from those facts alone whether the worker experienced stressors that were beyond the usual pressures and tensions of the employment. In particular, I note that the employer's evidence does not indicate in what category(ies) the two students in the other class were designated (keeping in mind that the Ministry Manual includes numerous categories of special needs students, and designations A – H for students warranting increased funding from the Ministry). That the worker's class was "less diverse" than another grade one class in the school does not tell me a great deal about the prevalence among elementary school classes generally of the kinds of severe behaviour exhibited by Students A and B.

[107] To a considerable extent the employer's position rests on the fact that, as reflected in the Ministry Manual and the evidence of the principal and Dr. M, students with various special needs are to the greatest extent possible included in regular class settings, with a resulting expectation that teachers will manage the needs of such students while providing education along with the other students in the class. This includes those categories of special needs students that are designated by the Ministry as warranting additional funding to a school district, such as the designation "H" students with severe behaviour and/or mental health issues. On that basis, the employer's position is that it is expected that the challenges of dealing with such students' behaviour will form part of the normal pressures and tensions of employment as a public elementary school teacher.

[108] While I recognize that various categories of special needs students are included in regular classrooms, I do not accept that this means that all mental disorders that might result from the pressures and tensions of dealing with such students' behaviour are excluded from compensation under section 5.1 of the Act. I consider the situation to be somewhat analogous to the inclusion in a job description of exposure to certain risks, as discussed by the panel in *WCAT-2015-00506.* In that case the employer argued that the inclusion of the exposure to certain hazards, pressures and risks in the job description meant that such hazards, pressures and risks were part of the normal pressures of the employment. While the worker's written job description has not been explicitly cited in this case, the employer's argument here is analogous. The employer says, in effect, that the worker's job includes teaching special needs students within regular classes, and it is therefore part of the worker's job to deal with any related severe behaviour incidents, including any stresses or pressures in respect of such incidents. In *WCAT-2015-00506* the panel stated:

> [128] In our view, the inclusion in a job description of the potential for a specific event to occur is insufficient to establish that the event is part of the normal pressures and tensions of the workplace. The inclusion of the potential of exposure to trauma and risk of psychological injury in the job description does not exclude from compensation any resulting mental disorder. Rather, it is the specific facts of any given incident that must be considered in order to determine whether the event is unusual and distinct from the duties and interpersonal relationships of the worker's employment, or is an event that is excessive in intensity or duration from what would be considered the normal pressures or tension of the worker's employment. The inclusion of a traumatic event in the job description does not mean the event is part of the normal pressures and tensions of the job.

[109] By analogy, I do not consider that the inclusion in teachers' employment of responsibilities for special needs students in regular classes, including those with severe behaviour and/or mental health issues, is sufficient in itself to establish that all events or stressors resulting from working with such students are part of the normal pressures and tensions of the employment. Instead, it is the specific facts of the given incidents that must be considered in order to determine whether the event is unusual and distinct from the duties and interpersonal relationships of the worker's employment, or whether the stressor is excessive in intensity or duration from what would be considered the normal pressures or tensions of the worker's employment.

[110] I consider this consistent with the following commentary in the Practice Directive with respect to significant stressors:

> …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.

[111] In assessing the claimed stressors, I find that the information in the Ministry Manual that students in the intensive behaviour intervention or serious mental illness category are expected to be less than 1% of the student population province-wide provides some support for the worker's position. While that may be a prediction rather than a measurement, I assume that it is based on information available to the Ministry. It provides some evidence of the prevalence of special needs students with severe behaviour and/or mental health issues in the province's classrooms. Accepting that 1% figure as having some weight, and assuming that regular classes in B.C. have many fewer than 100 students per class, it follows that while it is expected that such students receive education in regular classes, not every regular class has such students.

[112] I also place some weight on the evidence provided by the worker regarding the occurrences of severe behaviour incidents in another district, where the numbers of such incidents was much less than 1%, with less than 200 incidents during a school year, out of total student population of over 50,000. I recognize a number of limitations of such statistics, including the fact that they are not from the district where the worker teaches. In addition, the article provided by the worker does not identify how the severe behaviour incidents were defined, indentified and quantified. However, neither party has provided statistics from the province as a whole, or from the employer's district. In the circumstances, I place some weight on this evidence, and find that it is consistent with an inference that severe behaviour incidents are not widely prevalent in the employment, and with the above-noted inference that not all regular classrooms include special needs students with intense behaviour designations.

[113] I place some weight on the evidence of the worker that although she has taught in the province for 17 years, including previously teaching some special needs students, she had never previously experienced the kinds of behaviour exhibited by Students A and B. While the matter cannot be approached solely on the basis of the worker's experience, I find that her evidence is consistent with the other available information that indicates that severe behaviour incidents of the kind described by the worker are relatively uncommon in the employment.

[114] The employer places considerable emphasis on the fact that once Student A's behaviour was reported, the principal and other staff took appropriate steps to put a plan in place, as seen in the evidence of Dr. M and the principal. The employer also places emphasis on the fact that the Ministry, the district and the school have policies and protocols in place to address severe behaviour issues. The implication of the

employer's arguments about the processes that were followed is that the existence of such processes recognizes that assessing and planning for severe behaviour students is an expected and normal part of the employment.

[115] I do not agree that the fact that such processes and protocols exist means that the stressors associated with Student A's behaviour were part of normal pressures and tensions of the employment. Many employers in different sectors of employment, as part of planning to address challenging situations that can arise in their workplaces, have put in place processes and protocols to follow in the event of such contingencies. I do not consider that planning and establishing a process to deal with a known risk or hazard means that the risk or hazard, when it happens, cannot be an unusual occurrence.

[116] I do not accept that because Student B was not the subject of a formal designation by the Ministry with respect to his behaviour, his behaviour did not involve significant stressors. I do not regard the designations (or lack of designations) as determinative of the facts in the worker's claim, since they reflect the application of the Ministry Manual guidelines and district procedures, and not matters under section 5.1 and policy item #C3-13.00. This appeal is not concerned with whether appropriate protocols were followed by the employer with respect to the behaviour of Students A and B, or with whether Ministry designations apply to particular students. The issue before me is limited to deciding whether the incidents the worker complains of involved significant work-place stressors within the meaning of section 5.1 and policy item #C3-13.00. That one of the two students was "designated" by the Ministry, and the other was not, is of interest, but does resolve the issue I have to decide.

[117] I find that many of the incidents described by the worker involve significant stressors. I consider that such behaviour as Student B's inappropriate touching of another student, punching Student A on the head, repeatedly defiantly banging furniture and doors, and running away and not participating in class activities involved stressors that were of excessive intensity from the normal pressures and tensions of the worker's employment.

[118] I make the same finding with respect to the behaviours of Student A such as his running away from the worker and other teachers in the playground and on the field trip, running from the classroom out to the playground, banging his head against a hard linoleum floor, furniture and other objects in the classroom, hitting himself in the head, screaming at the worker from a close proximity, throwing objects at the worker, and striking other children.

[119] I recognize that a grade one teacher may well at times have to deal with the misbehaving children, including tantrums, acts of defiance, and inappropriate behaviour. In my view the incidents described by the worker, which included violence directed at other students by both Students A and B, and in Student A's case, violence directed at himself, and repeated incidents where Student A ran away and/or refused to go into

class, at time placing himself at risk, were greater in intensity than normal pressures or tensions of a teacher's employment. Even if some of these, considered individually, are within the kinds of behaviour elementary school teachers may on occasion deal with, taken together I find that the incidents I have identified are greater in intensity than the normal pressures or tensions of the employment.

[120] In reaching this conclusion, in the addition to the evidence of the worker, the Ministry Manual, and the article about severe behaviour incidents in another school district, I place some weight on the statements of W and K about their experience with elementary students over many years. While I do not accept that W retired solely so that she could avoid having Students A and B in her grade two class (which I find implausible), I accept that their evidence is consistent with the conclusion that the behaviour of the two students was greater in intensity than that normally seen in regular elementary school classrooms.

[121] I find on the preponderance of the evidence that, while it is not in itself unusual for special needs students to be assigned to regular classrooms, the stresses occasioned by the behaviour of Students A and B exceeded in intensity those ordinarily occurring in a regular elementary classroom.

[122] I find that the incidents of severe student behaviour identified above amounted to a cumulative series of significant work-related stressors.

Causation - Was the worker's adjustment disorder predominantly caused by a significant work-related stressor or the cumulative series of significant work-place stressors arising out of and in the course of the worker's employment; was her adjustment disorder caused by a decision of the employer relating to the worker's employment?

[123] Policy item #C3-13.00 explains that paragraph 5.1(1)(a) of the Act requires the mental disorder be 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. Paragraph 5.1(1)(c) provides that compensation is only payable for the mental disorder if it is not caused by a decision of the employer relating to the worker's employment. While these sections are often addressed separately and sequentially, because they both involve issues of causation, and the employer maintains that the worker's adjustment disorder was caused by decisions of the employer, it is useful to consider them together.

[124] There are two parts to the requirement that the significant stressors arose out of and in the course of employment. The first part is the determination whether the significant stressor or cumulative series of significant stressors arose out of and in the course of employment. This requires the Board to determine the following:

- *Did the significant stressor or cumulative series of significant stressors arise in the course of the worker's employment?*

[125] This refers to whether the significant stressor, or cumulative series of significant stressors, happened at a time and place and during an activity consistent with, and reasonably incidental to, the obligations and expectations of the worker's employment.

- *Did the significant stressor or cumulative series of significant stressors arise out of the worker's employment?*

[126] A significant stressor or a cumulative series of significant stressors may be due to employment or non-employment factors. The Act requires that the significant stressors be work-related.

[127] I find that the incidents involving Students A and B described by the worker and the worker's need to respond to the students' behaviour, (the cumulative series of significant stressors) were reasonably incidental to the obligations and expectations of her employment, and I conclude that they arose in the course of her employment. There is clearly a work connection.

[128] The second part is the determination whether the cumulative series of significant work-related stressors was the predominant cause of the mental disorder. As defined in policy, predominant cause means that the significant work-related stressor, or cumulative series of significant work-related stressors, was the primary or main cause of the mental disorder.

[129] According to Dr. Milanese's reports the worker did not have a history of psychological problems prior to the incidents at school in the fall of 2013. Nor is there evidence of non-employment stressors in the worker's life that contributed to her adjustment disorder. In Dr. Milanese's opinion the worker's experience with the severe behaviour of the two students in her class in the fall of 2013 was the predominant cause of her adjustment disorder, and in fact the only cause.

[130] Dr. Milanese's opinion is not contradicted by other specialist medical opinion evidence.

[131] The employer's argument is not based on a criticism of Dr. Milanese's evidence. The employer argues that, because the two students were placed in the worker's class without the assistance of a CEA as a result of decisions by the employer respecting the composition of the worker's class, the worker's mental disorder was caused by a decision of the employer respecting the worker's employment.

[132] Policy item #C3-13.00 notes that the Act provides a list of examples of decisions relating to a worker's employment which is inclusive and not exclusive. The Act mentions a decision to change the work performed by the worker or the working conditions, to discipline the worker, or to terminate the worker's employment. The policy states that other examples may include decisions of the employer relating to workload and deadlines, work evaluation, performance management, transfers, changes in job duties, lay-offs, demotions or re-organizations.

[133] Considering the scope of paragraph 5.1(1)(c) involves a question of statutory interpretation, in *Rizzo & Rizzo Shoes Ltd. (Re),* [1998] 1 S.C.R. 27, the Supreme Court of Canada found:

> [21] ...Elmer Driedger in Construction of Statutes (2nd ed. 1983) best encapsulates the approach upon which I prefer to rely. He recognizes that statutory interpretation cannot be founded on the wording of the legislation alone. At p. 87 he states:
>
> > Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

[134] Further guidance is found in the *Interpretation Act*, R.S.C., 1985, c. I-21, which applies to the interpretation of federal statutes. Section 12 provides:

> Every enactment is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

[135] As noted by the panel in *WCAT-2014-01468*, the term "worker's employer" in paragraph 5.1(1)(c) is not defined in the Act or policy. "Employer" is defined in section 1 of the Act as "every person having in their service under a contract of hiring or apprenticeship a person engaged in work", there is no further explanation of who constitutes the worker's employer for the purposes of paragraph 5.1(1)(c). In *WCAT-2014-01468* the panel considered dictionary definitions, including definition in *Black's Law Dictionary*, where "employer" is defined as "a person who controls and directs a worker under an express or implied contract of hire and who pays the worker's salary or wages." I have employed this definition in this case.

[136] In this case the worker's employer is the school district, as that is the entity with whom she has an employment contract. However, it is clear that the school district employs the principal to administer the school and supervise the teachers employed in it, including decisions about the placement of students and teachers to particular classes. The principal is, in effect, the worker's supervisor, and controls and directs routine

aspects of the worker's job. I accept that while the school district is ultimately the worker's employer, the principal is also the "worker's employer" for the purposes of section 5.1.

[137] Based on the examples of routine employment matters in section 5.1 and in policy, I find that a decision of the principal respecting the assignment of the worker to teach a particular class, a decision to place particular students in the class taught by the worker, and a decision about whether to provide the assistance of a CEA, are decisions "of the worker's employer relating to the worker's employment" for the purposes of paragraph 5.1(1)(c). The remaining question relevant to paragraph 5.1(1)(c) is whether the worker's adjustment disorder was "caused by" the employer's decision(s). The term "caused by" in paragraph 5.1(1)(c) is not defined in the Act or in policy.

[138] *Black's Law Dictionary*, 8th edition defines "cause" as "to bring about or effect". *Dictionary of Canadian Law*, 3rd edition, defines "cause" as a "transitive verb which in its ordinary usage contemplates that someone or something brings about an effect". The *Oxford English Dictionary* defines cause, in part, as "a person or thing that gives rise to an action, phenomenon, or condition; make happen".

[139] In light of these definitions of "cause," under paragraph 5.1(1)(c) there is no compensation for the mental disorder if, applying the standard of proof for compensation matters (subject to section 250(4) of the Act), the mental disorder is brought about, made to happen or arises out of a decision of the worker's employer relating to the worker's employment. The scope of possible meanings of "brought about, made to happen or arises out of" is broad, and on the face of it could support different legal tests of causation.

[140] It is necessary to consider the meaning of "caused by" in context, within section 5.1 and the Act as a whole. There are indications in section 5.1 that the legislature intended that compensation for mental disorders be limited to cases where the cause is outside the range of routine, ordinary or common pressures and stresses of the workplace. This intention is expressed in paragraph 5.1(1)(a) by the requirement that the mental disorder is either a reaction to one or more traumatic events, or is predominantly caused by a significant work-related stressor (or cumulative series of cumulative work-related stressors). The requirement for either "traumatic" events or "significant" stressors, whose meanings I discussed earlier, means that not all upsetting events or stressors can result in compensation for a resulting mental disorder. As recognized in policy item #C3-13.00, all employment involves a range of events and interpersonal relationships that can cause tension and stress. Not all upsetting or stressful events or stressors can result in compensable mental disorders. Only mental disorders resulting from "traumatic" events or "significant" stressors can qualify for compensation (providing the other requirements of section 5.1 are satisfied).

[141] In my view, the distinction between routine and/or normal work-related events and stressors, and those qualified as "traumatic" or "significant," is also reflected in the exclusion of mental disorders caused by employers' decisions under paragraph 5.1(1)(c). The kinds of employer decisions cited in policy, such as decisions to change the work to be performed by a worker or the worker's working conditions, to discipline a worker, or to terminate a worker's employment, are routine employment relations matters, as are the stresses, tensions, and emotional reactions that a worker would be expected to experience when dealing with such decisions. That mental disorders caused by such routine decisions are excluded from compensation is consistent with the limitation in paragraph 5.1(1)(a) that the only mental disorders included for possible compensation are those outside the normal, routine events and stressors of employment ("traumatic" events and "significant" stressors).

[142] In considering the legislative intention I note that in introducing Bill 14, by which the current version of section 5.1 was enacted, the Honourable Margaret MacDiarmid said, in part:

> In relation to bullying, harassment and other significant work-related stressors, we will require a diagnosis to demonstrate that a significant work-related stressor is the predominant cause of the disorder. This is to ensure that compensation is provided only for legitimate work-related mental disorders. As well, claims for mental disorders that arise out of an employment decision, such as discipline, termination or other decisions related to the worker's employment, will be excluded.
>
> To be clear, this amendment will not open up workers compensation coverage for stress that a worker is experiencing as a result of the normal course of business at work or at home. This is a very important bill for workers and employers, and it's critical that we make sure that we have it right and that its intentions are clear.
>
> …

[143] On my reading of section 5.1, the language is consistent with an intention to distinguish between two general kinds of work-related stresses: routine or normal stresses that workers experience in their employment, which do not qualify for compensation for resulting mental disorders, and those stresses involving "traumatic" events or "significant" stressors, which are beyond the routine and normal stresses of employment, and which may result in compensable mental disorders (provided the other requirements of section 5.1 are met). This suggests that the exclusion in paragraph 5.1(1)(c) is concerned with one of the kinds of routine or normal stresses that workers may experience in the course of their employment, those resulting from employers' decisions respecting routine employment relations matters (although there are also other kinds of routine or normal work-related stresses not caused by an employer's decisions).

[144] However, I acknowledge that an interpretation which entirely reduces section 5.1 to a simple binary formulation (an event or a stressor is either embodied in the routine and normal aspects of employment, or exists outside the routine and normal in the realm of the unusual and excessive) risks rendering paragraph 5.1(1)(c) unnecessary. Since one of the principles of statutory interpretation is the presumption that all the words in a statute have meaning, I recognize that while the meaning of paragraph 5.1(1)(c) is informed by the language of section 5.1 as a whole, it has it has its own scope within the Act.

[145] While not necessary for my decision, I would comment in passing that on my reading of paragraph 5.1(1)(c), decisions by employers respecting the employment that involve stresses outside of routine or normal employment relations matters, are not intended to come within the employment relations exclusion. This interpretation is consistent with the Board's interpretation of paragraph 5.1(1)(c) as expressed in the Practice Directive. The Practice Directive recognizes that there may be situations that fall outside "routine" employment issues that give rise to a compensable mental disorder, such as targeted harassment. It states that while an employer has the prerogative to make decisions regarding the management of the employment relationship, it does not mean that decisions can be communicated in any fashion. If the conduct of the person communicating the decision of the employer was in some way abusive or threatening, it could constitute a workplace stressor. This limit on the employment relations exclusion appears to me to be relevant to the fact that many, if not most employers, have a number of employees in roles who carry out control and supervision functions on behalf of the employer. While not an expected, common or routine occurrence, it is conceivable that a person who is authorized to carry out such control and supervision functions may make decisions about a worker's employment while behaving in an abusive or threatening manner toward the worker.

[146] I recognize that WCAT panels have differed in their interpretation of the scope of the employment relations exclusion in paragraph 5.1(1)(c). For example, in *WCAT-2013-01593* the panel interpreted the exclusion in paragraph 5.1(1)(c) as absolute. At paragraphs 49 to 50, the panel concluded that paragraph 5.1(1)(c) did not afford discretion to consider the tone or manner in which the message was communicated. The panel found that the employer's executive director had made comments during two meetings about workplace expectations that were coercive and threatening. However, the panel concluded because 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 employment, was specifically excluded from compensation.

[147] Other panels have concluded that although most employment relations matters are covered by paragraph 5.1(1)(c), employer misconduct during the course of employment relations matters is not (see *WCAT-2014-00675*, and *WCAT-2014-02273*.

[148] I agree with the reasoning in *WCAT-2014-00675* and *WCAT-2014-02273*. I do not think that the exclusion in paragraph 5.1(1)(c) of the Act is limitless, or that mental disorders resulting from employer misconduct, such as bullying, harassment, abuse (physical or psychological), threats, and criminal behaviour, even if occurring in conjunction with decision-making about a worker's employment, were intended by the legislature to be excluded from compensation. I think that the limits to the employment relations exclusion in paragraph 5.1(1)(c) are informed by the context of the rest of section 5.1, including the meaning of "traumatic" events and "significant" stressors.

[149] Returning to the facts of this case, there is no suggestion before me of employer misconduct in conjunction with the employer's decisions about the worker's employment. However, I consider the distinction between the usual or expected stressors of routine employment relations matters, and significant stressors outside such routine or usual matters, to be relevant to the employer's argument that the worker's adjustment disorder was caused by the employer's decisions respecting the worker's employment.

[150] When reading paragraph 5.1(1)(a) as incorporating this distinction between stressors that are part of routine or common employment matters, and those that are "significant," I question whether a routine decision by an employer respecting a worker's employment (for example, to assign the worker to different duties, to work at a certain location, and/or to work with certain co-workers or customers) could, in itself, ever amount to a "significant" stressor within the meaning of paragraph 5.1(1)(b), even if the worker developed a mental disorder as part of a strong subjective reaction to the decision. On the other hand, if the employer's decision-making had the effect of placing the worker in proximity to a particularly abusive customer or co-worker, I would find it difficult to conclude that a resulting mental disorder was "caused by" the employer's decision solely on the basis that the decision resulted in that proximity.

[151] I accept that if the worker's adjustment disorder was "caused by" the employer's decision to place the two difficult students in the worker's class without arranging assistance from a CEA, then compensation is excluded under paragraph 5.1(1)(c).

[152] While not explicit, the employer's argument appears to hinge on the notion that the term "caused by" embodies a kind of "but for" test of causation. In other words, but for the employer's decision to assign the two students as part of the worker's workload, she would not have experienced their behaviour, and would not have suffered a mental disorder.

[153] I have some difficulty accepting the employer's argument because of what it implies about the relationship between the "caused by" requirement in paragraph 5.1(1)(c) and the "predominate cause" requirement in paragraph 5.1(1)(a). Almost all aspects of a worker's employment, including the assignment of duties, work location, and co-workers, involve decisions made by the employer about the employment. Many work-related events or stressors would not happen "but for" the employer's decisions.

In my view, it would be an absurd and unintended result to find that the mental disorder of a worker who experienced a "traumatic" event while serving a particularly aggressive customer was "caused by" a decision of the employer simply because, but for the employer's decision, the worker would not have been working during times when that customer frequented that location. Similarly, it would be an absurd and unintended result of the exclusion clause to conclude that the mental disorder of a worker who experienced a cumulative series of "significant" stressors involving an abusive co-worker was actually "caused by" a decision of the employer simply because, but for the employer's decision, the worker would not have been working closely with that co-worker.

[154] Most, if not all, events and workplace stressors result from a chain (or perhaps a web) of interrelated causes, which will often have included at some point a decision by an employer that placed the worker at a particular location at the time(s) when the events or stressors occurred. In the examples I have referred to, and in similar circumstances, the only causal connection between the employer's decision and the traumatic events or significant stressors is that the employer's decision about the worker's employment placed the worker in proximity to the particular event or stressor. Considering the plain meaning of the term "caused by" in the context of section 5.1 as a whole, I do not think that that kind of basic "but for" connection between the employer's decision and the event or stressor is intended to give rise to the employment relations exclusion in paragraph 5.1(1)(c).

[155] I conclude that the term "caused by" in paragraph 5.1(1)(c) requires more than a basic "but for" connection between the employer's decision respecting the employment and the mental disorder before the exclusion can apply.

[156] Accepting that more than a basic "but for" connection is required, I am aware that this leaves a range of possible legal tests that might apply to the term "caused by" in paragraph 5.1(1)(c). In particular, issues of the interpretation of this term arise when there are claimed multiple causes of a mental disorder, and one or more of the causes is a decision or decisions of the employer respecting the employment.

[157] One approach is that the term "caused by" simply requires that the employer's decision be of more than of negligible or trifling (*de minimis*) significance to the mental disorder. Under that test, it is not necessary that the decision of the employer was the sole cause, the predominant cause, or a major cause of the mental disorder. It would be sufficient if the employer's decision was of causative significance. This is a widely used test of causation in workers' compensation, and is the test of causation applicable to traumatic events in policy item #C3-13.00.

[158] Yet, in cases with multiple causes, I am unable to conclude that the exclusion of compensation for employment relations matters is triggered if the decision of the employer only meets the causative significance test. At the risk of oversimplifying the matter, as I indicated earlier, I consider that section 5.1 generally addresses two kinds

of work-related events or stressors: those that embodied in the routine (usual, common, and/or normal) features of the employment, and those that are outside of that category by reason of satisfying either the definition of "traumatic" (emotionally shocking, and unusual and distinct from the duties and interpersonal relations of the employment, according to policy item #C3-13.00), or the definition of "significant stressor" (excessive in intensity and/or duration from what is experienced in the normal pressures and tensions of the employment).

[159] Without addressing here cases involving "traumatic" events, in my view, subsection 5.1 generally allows for two alternatives where there are multiple causes of a mental disorder under consideration, at least one of which is a significant work-related stressor, and at least one is a decision by the employer about the employment. Either the significant work-related stressor (or the cumulative series of significant work-related stressors) was the predominant cause of the mental disorder, or the mental disorder was caused by a decision of the employer respecting the employment. When I consider the plain meaning of the terms "predominant cause" and "caused by" in the context of section 5.1 as a whole, it is difficult to imagine a situation in which compensation would be excluded solely on the basis that a decision of the employer about an employment relations matter was of causative significance, if the evidence established that a significant stressor was the predominant cause. My analysis does not turn on whether or not "predominant" means the stressor must be the majority (greater than 50%) cause, but simply on a finding that it was predominant as defined in policy (the primary or main cause).

[160] On the facts before me in this appeal, the parties propose two possible causes of the worker's mental disorder: the behaviour of the two students, and the decision of the employer to place the students in the worker's class without assistance from a CEA. I find on the preponderance of the evidence that the severe behaviour of Students A and B, which I have already found amounted to a cumulative series of significant work-related stressors, was the predominant cause of the worker's adjustment disorder. This conclusion is supported by the evidence of Dr. Milanese, who stated that the worker did not have a history of a pre-existing mental disorder, and that in his opinion the stress experienced by the worker in relation to the two students' behaviour was not only the predominant cause of the adjustment disorder, but the only cause. There is no evidence of significant non-work stressors in the worker's life.

[161] I consider that the routine employment relations decisions by the employer, involving the worker's class assignment and the placement of the two students in her class, contributed to the adjustment disorder only by having placed the worker in proximity to the two students. I do not consider this contribution to the situation on its own to be of causative significance. Including the employer's decision not to arrange the assistance of a CEA along with the other decisions, I accept that collectively the employer's decisions respecting the worker's employment may have been of causative significance.

[162] However, I find that even if collectively the employer's decisions were of causative significance, this is not sufficient to establish on a balance of probabilities that the worker's adjustment disorder was "caused by" the employer's decision respecting the worker's employment within in the meaning of paragraph 5.1(1)(c). In the circumstances of this case, I find that the employer's decisions, although part of the chain of causation, were too remote from the worker's mental disorder. If the worker had reacted strongly to learning of the decisions, and began to develop the symptoms of an adjustment disorder at that time, the outcome might well be different. Instead, the evidence of the worker is that her symptoms arose after she began to experience the behavior of the two students in her class. I find the worker's adjustment disorder occurred as a result of her experience of the behaviour of Students A and B. On the evidence before me I find that the worker's adjustment disorder was not caused by the employer's decisions. Accordingly, the employment relations exclusion does not apply.

[163] I allow the worker's appeal. She is entitled to compensation for her mental disorder, diagnosed as an adjustment disorder with mixed anxiety and depressed mood, on the basis that the severe behaviour of Students A and B amounted to a cumulative series of significant stressors, which was the predominant cause of the mental disorder.

Conclusion

[164] I allow the appeal and vary the review decision dated August 13, 2014. The worker is entitled to compensation for her mental disorder, diagnosed as an adjustment disorder with mixed anxiety and depressed mood.

[165] The worker's representative requested reimbursement for the expense of obtaining Dr. Milanese's November 20, 2014 medical-legal opinion, and submitted Dr. Milanese's invoice to the worker's union in the amount of $1,501.21, which is consistent with the fee item for similar evidence in the Board's schedule of fees. It was reasonable for the worker to obtain this evidence, which I found useful in deciding the appeal. I order reimbursement in the full amount of the invoice.

Guy Riecken
Vice Chair

GR/ml