

## Noteworthy Decision Summary

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**Decision:** WCAT-2015-03855      **Panel:** Guy Riecken      **Decision Date:** December 22, 2015

***Applicable policy – Physiological change attributed to stress.***

This decision is noteworthy for its conclusion that where a worker attributes a physiological change to workplace stress, but does not have a diagnosed mental disorder, the compensability of the condition is determined under section 5(1) of the *Workers Compensation Act* (Act).

The worker sustained a compensable groin injury in 2007, which became permanent and prevented her from returning to her pre-injury occupation. The Workers' Compensation Board, operating as WorkSafeBC (Board), also accepted chronic pain under the worker's claim. The employer offered the worker a number of positions which it believed would accommodate her restrictions and limitations. The worker did not agree that some of the positions were appropriate, but accepted a casual, part-time position. The worker was laid off from that position in 2013.

The worker was preparing to file a grievance and had arranged to meet with a union representative. Before the meeting the worker experienced what she thought was a heart attack, but which was subsequently diagnosed as coronary artery spasm (CAS). Prior to that event, the worker had been experiencing episodes of anxiety. The worker's physician attributed the CAS to an anxiety disorder. The worker was not diagnosed with a mental disorder by a psychiatrist or psychologist. The worker attributed her anxiety to the stress arising from disagreement with the employer about accommodation of her medical restrictions and functional limitations.

The Board concluded that the worker's CAS was not a compensable consequence of the conditions accepted on the worker's claim. The Board also considered section 5.1 of the Act, and policy item #C3-13.00 of the *Rehabilitation Services and Claims Manual, Volume II*, concerning mental disorders. The Board noted that policy item #C3-13.00 recognizes that there is no entitlement to compensation for mental disorders caused by a decision of the employer concerning the worker's employment. The Board concluded that the stress the worker reported experiencing arose from labour relations matters, and was not compensable; consequently, the CAS was also not compensable.

In a summary decision, the WCAT panel found that CAS is a physiological condition, not a mental disorder, and concluded that in the absence of clear statutory language of the Act indicating that stress-related physiological event such as CAS are intended to be adjudicated under section 5.1, that section does not apply. Accordingly, such a condition, even though it is thought to be a reaction to a stressful event or series of stressful events, is appropriately adjudicated under section 5 of the Act, as a personal injury.

**WCAT Decision Number :**

WCAT-2015-03855

**WCAT Decision Date:**

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**Panel:**

Guy Riecken, Vice Chair

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## Introduction

- [1] This is a preliminary decision to refer a matter to the Workers' Compensation Board (Board)<sup>1</sup> for determination under section 246(3) of the *Workers Compensation Act* (Act).
- [2] The worker is appealing a decision (*Review Reference #R0185479*) of the Review Division of the Board respecting her claim for compensation for a coronary condition, diagnosed as a coronary artery spasm (CAS) that occurred in December 2013. When the worker reported the CAS to the Board she attributed it to work-related stress, including stress caused by the employer's refusal to accommodate her permanent functional limitations resulting from her compensable 2007 groin injury. The Board denied the CAS as a compensable consequence of the 2007 claim injury. The Board also determined that the worker's stress did not meet the requirements for a mental disorder claim under section 5.1 of the Act, and denied the CAS as a compensable consequence of a mental disorder.
- [3] In the April 24, 2015 decision the review officer confirmed the Board's decision, finding that the worker's CAS was not a compensable consequence of the 2007 groin injury, and that the worker is not entitled to compensation under section 5.1 of the Act. In addition, the review officer decided that the worker does not have a psychological problem as a compensable consequence of her accepted groin injury.

## Issue(s)

- [4] The issues in the appeal are:
- 1 whether the worker's CAS is a compensable consequence of her accepted 2007 groin injury;
  - 2 whether the worker has a psychological problem as a compensable consequence of her accepted groin injury; and,
  - 3 whether the worker is entitled to compensation for a mental disorder and for her CAS under section 5.1 of the Act.

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<sup>1</sup> The Board operates as WorkSafeBC.

- [5] In considering the worker's appeal I noted that the Board did not decide whether the CAS is a new compensable personal injury under section 5 of the Act. I found that there is a preliminary issue as to whether this is a matter the Board should have decided but did not, and which should be referred to the Board for determination.

## **Jurisdiction and Method of Hearing**

- [6] 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.
- [7] Section 246 of the Act describes how WCAT may conduct an appeal. Sections 246(3) and (4) provide that:
- (3) If, in an appeal, the appeal tribunal considers there to be a matter that should have been determined but that was not determined by the Board, the appeal tribunal may refer that matter back to the Board for determination and suspend the appeal proceedings until the Board provides the appeal tribunal with that determination.
- (4) If the appeal tribunal refers a matter back to the Board for determination under subsection (3), the appeal tribunal must consider the Board's determination in the context of the appeal and no review of that determination may be requested under section 96.2.
- [8] 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.
- [9] 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* (RSCM II).
- [10] The worker is representing herself. The employer is participating in the appeal and is represented by a consultant.
- [11] In the notice of appeal the worker requested that the appeal proceed in writing (through written submissions). The worker and the employer's representative have each provided written submissions.
- [12] The appeal is proceeding on the basis of the record and the written submissions.

## Background and Evidence

- [13] The worker's 2007 claim file is lengthy. Given the relatively narrow issues in this summary decision, it is not necessary to summarize all of the claim history and medical details here. In addition, the claim has been the subject of a number of review and appeal decisions, and the history and medical evidence have been summarized in detail in some of those decisions<sup>2</sup>.
- [14] The worker was injured in her employment as a log scaler on November 7, 2007 when she fell (or jumped to avoid falling) approximately 5 feet and landed on a log in a squatting position. The Board accepted her claim for a left groin sprain (left-sided iliopsoas sprain). Later a review officer accepted bilateral groin symptoms.
- [15] The Board subsequently accepted permanent chronic bilateral groin pain. The worker received a permanent partial disability award of 2.5% of total disability for chronic groin pain under section 23(1) of the Act. As a result of an appeal decision (*WCAT-015-2840*), a low back strain has been accepted as resulting from the 2007 work accident, as well as chronic low back pain. The worker has recently received an additional 2.5% award for permanent chronic low back pain.
- [16] The Board accepted that the worker has a medical restriction to avoid heavy lifting, and functional limitations for work in the light classification and to avoid repetitive squatting, kneeling, and crouching. The Board determined that as a result, the worker is unable to return to her time of injury employment as a log scaler.
- [17] The Board determined that her award should be paid on a loss of earnings basis. The worker has another appeal pending (the "K" appeal) with regard to her partial loss of earnings award, which is not being addressed in this decision. Some aspects of the worker's loss of earnings award are, however, relevant as they provide part of the context for this decision.
- [18] Without setting out all the details of the discussions between the worker, her union, the employer and the Board, it is sufficient to say for present purposes that a number of positions with the employer were discussed with respect to whether they would appropriately accommodate the worker's medical restriction and functional limitations. The worker did not agree that some of the positions offered were appropriate. She accepted employment offered by the employer in a position as a weigh scale attendant, but this is a casual position, not a full-time permanent position.
- [19] The worker reported to the Board in a February 13, 2014 letter, that she was laid off by the employer from her casual weigh scale attendant job on December 6, 2013. She was preparing to file a grievance and had arranged to meet with a union representative

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<sup>2</sup> *WCAT-2011-00856*, *WCAT-2013-01679*, *WCAT-2014-02713*, and *WCAT-2015-02840* are accessible on WCAT's Internet site ([www.wcat.bc.ca](http://www.wcat.bc.ca)).

on December 9, 2013. Prior to the meeting she experienced what she thought was a heart attack. She was taken to a local hospital, and then transferred to a larger hospital in Victoria, where she was diagnosed with CAS. The worker stated that this is a stress-related condition, and that she had been referred to a psychiatrist to manage anxiety, stress and depression.

- [20] With her submissions to the Review Division in support of her request for review of the Board's October 7, 2014 decision denying compensation for her CAS, the worker provided a copy of a February 3, 2014 consultation report from Dr. Dhansay, general internist. Dr. Dhansay states that the worker's medical conditions include recent an acute coronary syndrome secondary to coronary vasospasm. He states that the worker had presented in her local emergency room with central chest discomfort with radiation down her left arm, and had been under significant stress for the preceding two days, which likely precipitated this episode. She was transferred to a larger hospital where additional tests were carried out, and was then diagnosed with CAS. Prior to that the worker had been having ongoing anxiety episodes. The worker has features suggestive of a generalized anxiety disorder and underlying depression. Her history includes a 1997 myocardial infarction, although she had normal coronary arteries at that time.
- [21] In a March 2, 2014 report respecting the worker's application for short-term disability benefits under the workplace benefits plan, the worker's attending physician indicated that the worker's diagnoses include CAS triggered by an anxiety disorder. Her additional conditions include anxiety and depression. Her ongoing complaints include symptoms of anxiety and depression and chronic pain. The estimated return to work date is not known, but will be determined after the anxiety and depression are fully treated. The worker was "awaiting psychiatry."
- [22] In the worker's communications with the Board respecting the CAS, she has referred to the stress as being related to her dealings with the employer, and in particular with the stress arising from disagreements about what she says is the employer's failure to properly accommodate her medical restriction and functional limitations. She has also referred to psychological problems including the anxiety and depression mentioned in the above-noted physicians' reports.
- [23] Although the case manager did not refer to policy item #22.00, "Compensable Consequences of Work Injuries<sup>3</sup>," in the October 7, 2014 decision letter, he addressed the issue of whether the CAS was a consequence of the worker's accepted 2007 claim injury. The case manager found that there was no indication that the CAS had arisen directly from the compensable chronic pain condition or from treatment for it. He noted that the worker attributed the CAS to stress from dealing with the employer, and concluded that the CAS was not a compensable consequence of the conditions accepted under the claim.

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<sup>3</sup> The Board amended the policies in Chapter 3 of the RSCM II, including the policy respecting compensable consequences, effective July 1, 2010. Because the worker's original accepted injury under the claim occurred before that date, I am referring the version as it read prior to July 1, 2010.

- [24] Because the worker attributed the CAS to work-related stress, the case manager also considered policy item #C3-13.00, "Mental Disorders." He noted that the policy recognized that there is no entitlement to compensation for mental disorders caused by a decision of the employer concerning the worker's employment. The case manager concluded that the stress the worker reported experiencing arose from labour relations matters at work, and could not be considered to be part of her claim, and likewise the CAS or cardiac event that flowed from the stress could not be considered to be part of her claim.
- [25] The review officer also considered the CAS under both the compensable consequences policy and #C3-13.00. In considering the CAS as a possible compensable consequence the review officer noted that the worker's physicians had indicated that the worker had anxiety and depression, and considered not only whether the CAS was a compensable consequence of the injuries accepted under the claim, but also whether the worker has a psychological problem as a consequence of her compensable conditions, under policy item #22.33, "Psychological Problems" as it read prior to July 1, 2010. The review officer concluded she was "unable to conclude that the worker's accepted physical injuries were a significant cause of her psychological condition as per policy item #22.00" (the review officer may have intended to refer to policy item #22.33).

## Summary Decision

- [26] The Act provides for compensation to be paid in three categories of claims, namely: personal injuries arising out of and in the course of employment (under section 5); mental disorders where a worker has been diagnosed with a mental disorder after experiencing a work-related traumatic event or series of traumatic events, or a significant workplace stressor or series of significant workplace stressors (under section 5.1); and, for occupational diseases due the nature of the employment (under section 6).
- [27] Policy item #22.00 addresses the compensable consequences of an accepted personal injury or occupational disease.
- [28] The case manager and the review officer each considered the worker's CAS as a possible compensable consequence of her accepted 2007 personal injury, and in doing so considered the matter under section 5 by way of policy item #22.00. They also considered the CAS as a possible compensable consequence of a mental disorder, and in doing so applied section 5.1 of the Act. Neither the case manager nor the review officer considered whether the worker's CAS could be a personal injury or occupational disease in its own right.

- [29] “Personal injury” is not defined in the Act, but policy item #C3-12.00, “Personal Injury,” includes the following:

“Personal injury” is defined as any physiological change resulting from some cause. It may result from a specific incident or a series of incidents occurring over a period of time.

Personal injury is not confined to injuries which are readily and objectively verifiable by their outward signs, e.g. breaks in the skin, swelling, discolouration, deformity, etc.

- [30] In distinguishing between “personal injury” and “disease,” the policy goes on to provide a number of examples.

- [31] In her submissions to WCAT the worker notes that policy item #C3-12.00, under “C. Distinction Between an Injury and Disease,” states the following:

...

#### 4. Heart Conditions

- a) Physiological changes of the heart attributed to a specific event or cause, or to a series of specific events or causes are classified as injuries.
- b) Physiological changes of the heart involving a gradual onset and not attributed to a specific event or cause, or to a series of specific events or causes, are classified as diseases.

- [32] This version of the “Personal Injury” policy item which came into effect on July 1, 2010 applies to all claims for injuries occurring on or after July 1, 2010. While the worker’s claim for CAS has been adjudicated by the Board under her 2007 injury claim file (because the worker attributed it to the stress of dealing with the employer around the issue of finding a suitable accommodated position for her), the onset of this condition appears to have occurred suddenly on or around December 9, 2013. While the subject matter of the stress to which the worker attributes her CAS appears to be related, at least in part, to issues in her 2007 claim, based on the worker’s description of the CAS as related to the latest in a number of stressful incidents related to discussions about a suitable position for her, these provisions support adjudicating the worker’s CAS as a personal injury under section 5 and Chapter 3 of the RSCM II.

- [33] A number of WCAT decisions have considered cases in which a worker experiences both psychological or emotional stress and physiological symptoms, and whether stress-related physiological changes should be adjudicated under section 5 or

section 5.1 of the Act. The following from *WCAT-2015-02389* summarizes the different approaches:

[39] WCAT has considered other cases in which workers experienced both psychological and physiological symptoms. In particular, in *WCAT-2005-03766*, a panel found a worker's (heart condition) claim was more appropriately adjudicated under section 5 of the Act. The panel found that section 5.1 of the Act did not apply, as an interpretation that attempts to import physiological change thought to be a result of an emotional reaction into section 5.1 of this Act was, in her view, a strained interpretation. The panel in *WCAT-2013-01096* agreed with and adopted the reasoning from *WCAT-2005-03766* (but then denied that worker's appeal as she found there was not a sufficient sudden acute stressful incident that was sufficiently connected to work). In contrast, the panel in *WCAT-2008-03756* found a worker's mental stress with resulting cardiomyopathy did not meet the criteria set out in section 5.1 of the Act, and therefore that worker's claim for compensation should not be accepted.

[34] In *WCAT-2015-02389* a worker's condition, diagnosed as Takotsubo syndrome, was described by a Board medical advisor as a transient heart dysfunction that mimics an acute heart attack in individuals who encounter a stressful situation. Because the condition was said to be induced by the stress experienced by the worker in a number of discussions with the employer about her employment, the Board adjudicated the claim under the predecessor of the current section 5.1, which referred to claims for "mental stress." While the current version of section 5.1 no longer refers to "mental stress", both provisions have in common a requirement that the worker must have been diagnosed with a mental disorder under the most recent version of the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders* (DSM) at the time of diagnosis.

[35] In addition, both provisions contain a labour relations exclusion, which exclude from compensation a mental disorder caused by a decision by the employer respecting the worker's employment.

[36] In *WCAT-2005-03766* the panel reasoned:

I find that section 5.1 of the Act and policy #13.30 of the RSCM II concerning mental stress do not apply to this appeal. In the absence of clear statutory language defining mental stress to include such physiological events and in the particular circumstances of the worker's case, an interpretation that attempts to import physiological change thought to be a result of an emotional reaction into section 5.1 of this Act is, in my view, a strained interpretation. The worker's physiological



condition is not a mental or physical condition that is apparently described in the most recent DSM. Her claim could not be accepted under section 5.1(1)(b) even if it otherwise met the requirements of sections 5.1(1)(a) and (c). I therefore disagree with the client services manager's statement that he would accept the claim for such a cardiac event if it involved a hostage-taking or other physical violence situation in a compensable context. While I agree that such a claim would generally be considered to have met the requirements of section 5.1(1)(a) and (c) of the Act, it could never meet the requirements of section 5.1(1)(b) because such a heart attack or heart condition is not apparently a mental or physical condition that is a diagnosis described in the most recent DSM.

- [37] In *WCAT-2008-03756* the panel applied section 5.1 to a claim respecting a stress-related physiological condition without detailed analysis of the possible relevance of section 5 of the Act.
- [38] While not bound by previous WCAT decisions, I agree with the analysis in *WCAT-2005-03766* and *WCAT-2015-02389* and find that it is applicable in the circumstances of this case. Since heart attacks and heart conditions are apparently not mental or physical conditions included in the DSM, they could never meet its requirements. In the absence of some express language in section 5.1 indicating that stress-related heart events or physiological conditions of the kind diagnosed in this case are intended to be adjudicated under that section, I am unable to find that section 5.1 applies to such a physiological change, even though it is thought to be a reaction to a stressful event or series of stressful events. I conclude that the worker's CAS is appropriately adjudicated under section 5.
- [39] I find that the Board should have determined whether the worker's CAS is a personal injury arising out of and in the course of employment under section 5 of the Act and Chapter 3 of the RSCM II, but did not do so.
- [40] I am therefore suspending this appeal and referring the file back to the Board under section 246(3) of the Act to determine whether the worker is entitled to compensation under section 5 of the Act for her condition on or around December 9, 2013, diagnosed as CAS.
- [41] In determining this matter it will be useful if the Board would obtain a medical opinion, after obtaining the medical records respecting the worker's CAS, including the records pertaining to the CAS from the hospitals that she attended, from Dr. Dhansay's office, and from the office of her family physician. To that end, in a separate document, I am also referring the file to the Board for further investigation under section 246(2)(d) with respect to the CAS (and other conditions).

- [42] Once the Board has issued a determination addressing the above matter, the appeal will be reactivated, and the parties will be given an opportunity to respond with written submissions to any new evidence on file and to the Board's determination.
- [43] As a result of section 246(4), the Board's determination with respect to the above matters is not subject to review by the Review Division. I will address the determination in the context of these appeals.
- [44] If the Board makes other new decisions that are a consequence of this referral, but which do not directly address the matter referred to above, those new decisions should be set out in a separate decision letter, as they may be subject to the worker's right to request a review by the Review Division.

## **Conclusion**

- [45] I suspend the appeal of the April 24, 2015 review decision and refer back to the Board the matter identified above for the Board's determination.

Guy Riecken  
Vice Chair

GR/cv