
Noteworthy Decision Summary

Decision: A1601379 **Panel:** Herb Morton **Decision Date:** August 16, 2016

Item #C3-14.00 of the Rehabilitation Services and Claims Manual, Volume II – Arising out of and in the course of employment – Item #C3-17.00 of the Rehabilitation Services and Claims Manual, Volume II – Deviations from employment.

This decision is noteworthy for its analysis of whether a worker's conduct was such a significant deviation from the reasonable expectations of employment as to take the worker out of the course of employment.

The worker was a registered nurse employed by a public health authority in a pregnancy outreach program supporting pregnant women and women with young children in a disadvantaged neighbourhood. The worker had dropped a co-worker off at a hotel to visit a client of the program and was returning to her office when she saw an injured person lying on the road. The worker stopped to assist and discovered that the injured person had been stabbed. The worker administered CPR, and in the process got a lot of blood on her hands.

The worker made a claim to the Workers' Compensation Board, operating as WorkSafeBC, for a personal injury resulting from exposure to blood, and for a mental disorder as a reaction to a traumatic incident. The worker's claim was denied. On appeal to WCAT, the issue was whether any injury the worker sustained arose out of and in the course of her employment.

The WCAT panel considered the non-exhaustive list of factors set out in policy item #C3-14.00 of the *Rehabilitation Services and Claims Manual, Volume II* (RSCM II) for determining whether a worker's injury arose out of and in the course of employment. The panel noted that the incident did not occur on the employer's premises, and the worker was not using equipment supplied by the employer. The worker was being paid at the time of the incident. The parties disputed whether the worker's actions were for the benefit of the employer, were pursuant to the employer's instructions, or were part of the worker's job.

The panel also considered item #C3-17.00 of the RSCM II, which provides guidance as to how some of the factors in item #C3-14.00 may be applied when considering the causative significance of a worker's unauthorized activity. Item #C3-17.00 provides that a worker's injury is not likely to arise out of and in the course of employment if the worker's action taken in response to an emergency is that of a publicly spirited citizen, where the worker was doing no more than anyone would do whether or not working for an employer at the time.

The worker acknowledged that as a registered nurse she felt she had an ethical and professional obligation to assist an injured person, which supported a conclusion that she would have acted to assist the injured person regardless of whether she was working at the time. However, the panel did not consider that to be a determinative factor. The panel found the worker was acting in the course of her employment at the time of the incident, and the question for determination was whether her action of going to the assistance of the injured person represented a substantial deviation from the worker's employment. The panel considered it appropriate to take into account the background information regarding the nature of the program in which the worker was employed, the nature of the program's outreach activities, and the

employer's expectations as communicated to its employees regarding the limits of their activities which would be viewed as connected to their employment. Taking into account the factors listed in item #C3-14.00 of the RSCM II and the guidance in item #C3-17.00, the panel found the greater weight of evidence supported the conclusion that the worker's actions, and consequent exposure to blood, arose out of and in the course of her employment.

DECISION OF THE WORKERS' COMPENSATION APPEAL TRIBUNAL

Introduction

- [1] The worker, a registered nurse, was driving back to her office on September 18, 2015, when she saw an injured person (the victim of a stabbing) lying on the road. The worker stopped and performed cardiopulmonary resuscitation (CPR) until an ambulance arrived. In the course of doing so, the plaintiff's hands came into contact with the victim's blood. By decision dated September 29, 2015, an entitlement officer of the Workers' Compensation Board, operating as WorkSafeBC (Board), found that the worker's actions, while admirable, were those of a public spirited citizen and did not arise out of and in the course of her employment. By decision dated February 3, 2016 (*Review Decision #R0199384*), a review officer confirmed the September 29, 2015 decision. The worker has appealed the Review Division decision to the Workers' Compensation Appeal Tribunal (WCAT).
- [2] The worker is represented by her union. By notice of appeal dated February 17, 2016, the worker requested that her appeal be heard in writing. The worker provided a submission on June 8, 2016. The employer provided a submission on June 30, 2016, and the worker provided a rebuttal on July 11, 2016. On July 12, 2016, a WCAT appeal coordinator advised that submissions were considered complete.
- [3] The background facts are not in dispute and the worker's appeal does not involve any significant issue of credibility. I find that the worker's appeal involves questions of mixed fact, law, and policy and can be properly considered on the basis of the written evidence and submissions without an oral hearing.

Issue(s)

- [4] The general issue raised by the worker's appeal concerns whether she sustained a personal injury which arose out of and in the course of her employment on September 18, 2015.
- [5] The questions which may need to be addressed (subject to consideration of the scope of this appeal) include:
- (a) Did the incident on September 18, 2015 arise out of and in the course of the worker's employment, or did she leave her employment by stopping to assist the stabbing victim?
 - (b) Was the September 18, 2015 incident of causative significance to any physical injury suffered by the worker?
 - (c) If the worker suffered a physical injury, did she also suffer any psychological injury or disability as a consequence of her physical injury?
 - (d) If the worker did not suffer a physical injury, are the requirements of section 5.1 of the Act met for a mental disorder claim?

Jurisdiction

- [6] The Review Division decision has been appealed to WCAT under section 239(1) of the *Workers Compensation Act* (Act). WCAT may consider all questions of fact, law, and discretion arising in an appeal, but is not bound by legal precedent (sections 250(1) and 254 of the Act). WCAT must make its decision based on the merits and justice of the case, but in so doing must apply a published policy of the board of directors of the Board that is applicable (sections 250(2) and 251 of the Act).
- [7] WCAT has jurisdiction to consider new evidence, and to substitute its own decision for the decision under appeal. If the evidence supporting different findings is evenly weighted on an issue respecting the compensation of a worker, WCAT must resolve that issue in a manner that favours the worker (section 250(4) of the Act).

Background and Evidence

- [8] The worker is a registered nurse. She was employed by a public health authority in a pregnancy outreach program. The program provided health and social service supports to pregnant women and women with infants under eighteen months, who were dealing with drug and alcohol issues. The focus of the program was to help the women have healthy pregnancies and positive early parenting experiences.
- [9] The employer provided a report of injury to the Board on September 21, 2015. The employer provided the worker's account of the incident as follows:

I was driving my car and I saw a woman lying on the road and another person was sitting beside her. There was blood and I stopped to see if I could help. The woman had no pulse. I started cpr until the ambulance arrived. I had come in contact with the womans blood on my hands. I went to emergency to seek medical attention. I have been feeling emotional since the incident.

[all quotations are reproduced as written, except as noted]

- [10] The worker's injury was described as follows:

Exposure to blood on both hands[.] Psychological - feeling sad and emotional

- [11] The employer noted an objection to the worker's claim as follows:

Query causation: Did this injury arise out of and in the course of employment. Employee stopped to assist a person in need while on shift. Was health care needed.

- [12] The worker submitted an application for compensation by Teleclaim, in which she described the September 18, 2015 incident as follows:

Worker said she dropped a co-worker off at the [name] Hotel so they could see a client. The worker was driving back to her office at [name of program] at

[address]. Worker said as she was at the corner of ... and ..., she saw a person lying in the middle of the road. Worker stopped to assist. Worker determined the injured party had no pulse so she started CPR. Worker said the other party had been stabbed and there was a lot of blood. Worker said she got a lot of blood on her hands. Worker said she did CPR for an extended period of time, probably 10-15 minutes before the ambulance arrived. Worker did a police report. Paramedics gave the worker something to wash her hands with. Worker returned to the office, reported to the employer, and then was driven to emergency at [name] Hospital.

[13] The worker provided the following additional information in her application:

Worker is a permanent, full-time registered nurse who has been with the health authority for 14 years. No names of witnesses although the worker said there was another person sitting beside the injured person she was helping. Worker was seen by emergency room Dr Brian Lahiff[e]. The doctor said there was no risk to exposure and no blood work was done. Worker said her tetanus is up to date. No anti-retroviral drugs. No time loss. Worker said she is also suffering psychological trauma - worker said she is experiencing depression and anxiety and she is afraid to go in her car. Worker said she has also dreamed about the incident. **Worker said as an outreach worker she helps people in the community all the time. Worker said she considered stopping to assist the injured person just part of her work day as an outreach worker in the community.** Worker reported the person she helped passed away. DOI [date of injury] Sept 18. No time loss. Health care only.

[emphasis added]

[14] The worker was seen by Dr. Lahiffe on September 18, 2015, and a physician's first report was provided to the Board by Dr. Lahiffe. Dr. Lahiffe noted that the worker had splash contact with a large amount of blood on her hands. He advised that the worker had no dermal lesions to her hands, and there was no need for further testing or treatment for blood borne communicable diseases. He indicated the worker was currently at work and was medically capable of working full duties, full time.

[15] The worker reported that she saw a psychiatrist, Dr. Heather Donaldson, on September 22, 2015, who advised the worker to stay off work for two days. On September 28, 2015, the worker followed up with a counsellor, Jennifer Glasgow. The worker had a further appointment scheduled with Dr. Donaldson on October 9, 2015. The worker advised that she was off work commencing September 22, 2015, and hoped to return to work on September 24, 2015.

[16] By letter dated October 30, 2015, Dr. Donaldson advised:

During the course of her workday on Friday, September 18, 2015, in the [location], [the worker] saw a woman who had been stabbed and administered CPR to her. [The worker] had a difficult time over the weekend and tried to go to work on Monday, September 21, 2015. She could not attend to her usual tasks

and sought support from her case manager here at the [location] Mental Health Team that day. She saw me the next day on Tuesday, September 22, 2015. She was still struggling emotionally with what had happened. We emphasized the importance of self-care in her recovery from this incident and I supported her in taking time off work with a plan for her to return to work Thursday, September 24, 2015.

[17] The worker missed two shifts from work on September 21 and 22, 2015.

[18] By decision dated September 29, 2015, an entitlement officer of the Board denied the worker's claim for compensation. The entitlement officer reasoned:

The specific reasons for my decision are:

- On Sept 18, 2015 by stopping to assist the injured person, you removed yourself from the course of your employment. This means you were no longer engaged in any work or employment duties and your actions became those of a public citizen.
- While your actions were admirable; the reason for your actions were to assist an injured party and were unrelated to your employment.
- Therefore, your exposure to the blood was not related to your employment and nothing about your employment or work contributed to the exposure.

[19] On October 2, 2015, the worker forwarded an email to her supervisor, with a copy of the September 29, 2015 decision. She commented:

The primary reason I needed to make a claim in this circumstance was because of the psychological impact that this situation had on me and for which I had to take 2 day off work. I have been a nurse for 29 years and have seen a lot of bad things, but this is, by far, the worst. It is because of not knowing what the long term effects will be on me that I need to appeal this claim. There is no mention of the psychological impact in this letter as it only refers to my exposure to blood and body fluids.

I work as a nurse in [location] and outreach is a part of my job description. I was returning from outreach when this incident occurred. We either walk or drive to our outreach visits. We claim mileage when we are driving on outreach, so we must be "at work". Are we not covered or considered to be at work during this time? **It is hard for me to believe that "stopping to assist an injured person" is not part of my employment duties as an outreach nurse in the [location].**

[emphasis added]

[20] In a further email to her manager on October 9, 2015, the worker noted that the stabbing victim was a client of the employer (in a separate program). The woman had been stabbed and had run out into the street and collapsed. The worker advised she would be appealing the September 29, 2015 decision. She explained:

...I think there is a need to clarify what [the employer] considers to be my job duties. My job description has always included outreach and I am entitled to claim mileage when I am travelling to and from outreach visits, which I was doing when I stopped to help this woman. **As a nurse working in the [location] and walking around this neighbourhood on outreach, I frequently come across people who are lying on the sidewalk and may need medical assistance. I always stop to assess them and help if needed.**

Is this not what [the employer] wants and expects their nurses to do?

Should I not have stopped and done CPR in this circumstance because it is “not in my job description” or the person is not a [name of program in which the worker was employed] client? Is the street not actually also my workplace? Am I “at work” when I am visiting a client in her home, in an SRO [single room occupancy], in a tent, or in a back alley or a park? Finally, as a Registered Nurse and CRNBC [College of Registered Nurses of British Columbia] member, I feel that I have an ethical and professional obligation to provide assistance to the best of my abilities to any person who is in distress.

[emphasis added]

[21] On October 9, 2015, the worker’s manager replied:

I really appreciate the detail and am committed to understanding [the employer’s] position as is [name], our director. I also want to say I think you have asked some very important questions. And, finally, ..., I want to say how deeply proud I am of the actions you took on the 18th. You exemplified all that is beautiful about the commitment we have made to our clients in the [location].

[22] On October 23, 2015, a workability advisor with the employer commented:

[The employer] has contacted [the Board] to say that we are in support of this body fluid exposure claim being accepted and that we believe it happened at work and during work. We hope [the Board] accepts and this will result in the sick time being credited back to [the worker].

My director will talk with the Workplace Health Call Centre Manager ... to have that team updated on the roles and responsibilities of [the employer’s] staff who work in the [disadvantaged neighbourhood] in order to hopefully avoid this from happening again in the future.

[23] In an email to her union representative on October 26, 2015, the worker commented:

I also think there has to be something more formal done about defining the nursing job description at [name of program].

[24] The worker provided copies of these emails to the Review Division in support of her request for review. By submission dated January 18, 2016, the employer simply asked that the Review Division proceed with the review on the basis of the available evidence.

[25] By decision dated February 3, 2016, the review officer made the following preliminary finding regarding the scope of her review:

My jurisdiction is limited to the issue that was addressed in the decision under review. The September 29, 2015 decision considered only the worker's exposure to blood as a personal injury under section 5(1) of the *Act*. While the worker alleges that she sustained a psychological injury as a result of the September 18, 2015 incident, the Board did not address a psychological condition as a compensable consequence of a personal injury and did not consider the worker's claim under section 5.1 of the *Act*. As I do not have jurisdiction to consider a psychological injury, my review is limited to determining the worker's entitlement to exposure to blood under section 5(1) of the *Act*.

[26] The review officer confirmed the September 29, 2015 decision. The review officer reasoned:

I find it significant that the worker's exposure to blood did not occur while she was on the premises of her employer and did not occur during an actual visit with a client. While the incident in question occurred during the worker's hours of employment, on the basis of the evidence before me, I am unable to conclude that it was reasonable for her to assume that assisting an unknown individual on the street was a requirement of her job.

In my view, the worker's actions reflect those of responsible and conscientious "public spirited" individual, and while her actions are commendable, they do not form part of her job. The fact that it was later discovered that the injured individual was a client who belonged to another program that was administered by her employer is coincidental, and does not, in my view, establish employment causation. While the worker's job requires her to work with a subgroup of women, it is not reasonable to conclude that the injured person, who was female, was a client of hers, and that it was therefore necessary for the worker to provide emergency medical treatment.

The worker's job is specific to a subgroup of women. It does not extent to providing emergency care to the general public. In my view, it is coincidental that, at the time the worker stopped to assist an injured stranger, she was working. However, her actions do not form part of her employment and are not compensable.

[27] Following the Review Division decision, the worker's representative wrote to the Board on February 25, 2016 to request adjudication of her claim under section 5.1 of the *Act*. No response was provided to the worker.

Law and Policy

- [28] In this decision, I will apply the policies in Chapter 3 of the *Rehabilitation Services and Claims Manual, Volume II* (RSCM II) which were in effect at the time of the incident on September 18, 2015.¹
- [29] Item #C3-14.00, “Arising Out of and In the Course of the Employment”, is the principal policy that provides guidance in deciding whether or not an injury or death arises out of and in the course of the employment. Policy at item #C3-14.00 provided:

The test for determining if a worker’s personal injury or death is compensable, is whether it arises out of and in the course of the employment. The two components of this test of employment connection are discussed below.

In applying the test of employment connection, it is important to note that employment is a broader concept than work and includes more than just productive work activity. An injury or death that occurs outside a worker’s productive work activities may still arise out of and in the course of the worker’s employment.

A. Meaning of “Arising Out of the Employment”

“Arising out of the employment” generally refers to the cause of the injury or death. In considering causation, the focus is on whether the worker’s employment was of causative significance in the occurrence of the injury or death.

Both employment and non-employment factors may contribute to the injury or death. **The employment factors need not be the sole cause. However, in order for the injury or death to be compensable, the employment has to be of causative significance, which means more than a trivial or insignificant aspect of the injury or death.**

B. Meaning of “In the Course of the Employment”

“In the course of the employment” generally refers to whether the injury or death happened at a time and place and during an activity consistent with, and reasonably incidental to, the obligations and expectations of the employment. Time and place are not strictly limited to the normal hours of work or the employer’s premises.

[emphasis added]

¹ The board of directors of the Board approved a revision to the policies in Chapter 3 of the RSCM II, and the revised policies apply to injuries or accidents that occur on or after July 1, 2010.

[30] Policy at item #C3-14.00 set out a non-exhaustive list of nine factors to be considered in determining whether a worker's injury arose out of and in the course of the worker's employment. The policy stated that all of these factors may be considered, but no one factor may be used as an exclusive test. Relevant factors not listed in policy may also be considered, and other policies in Chapter 3 may provide further guidance. The nine factors are addressed under the analysis below.

[31] Item #C3-17.00, "Deviations from Employment", provided:

A. Introduction

Item C3-14.00, *Arising Out of and In the Course of the Employment*, is the principal policy that provides guidance in deciding whether or not an injury or death arises out of and in the course of the employment. In some circumstances, evidence supporting one component of the employment-connection test may be clear, while evidence supporting the other component is questionable, because the worker did something that was unauthorized by the employer, the employer condoned an unsafe practice, or some emergency forced the worker to act.

In considering whether an injury or death arose out of and in the course of the employment, all relevant factors are taken into consideration including the causative significance of the worker's conduct in the occurrence of the injury or death and whether the worker's conduct was such a substantial deviation from the reasonable expectations of employment as to take the worker out of the course of the employment. An insubstantial deviation does not prevent an injury or death from being held to have arisen out of and in the course of the employment.

Once it has been established that a worker's injury or death arose out of and in the course of the employment, consideration may be given to whether the injury or death is attributable solely to the serious and wilful misconduct of the worker under section 5(3) of the *Act*. (See Item C3-14.10, *Serious and Wilful Misconduct*.)

If a worker's injury or death is the result of a crime or an emergency action to prevent a crime, there may be entitlement to benefits under the *Crime Victim Assistance Act*, S.B.C. 2001, c.38, distinct from those available under the *Workers Compensation Act*.

The following provides guidance as to how some of the factors in Item C3-14.00 may be applied when considering the causative significance of a worker's unauthorized activity in the worker's personal injury or death.

B. Instructions of the Employer

It is clearly impossible for an employer to lay down fixed rules covering every detail of a worker's employment activity, so workers may be uncertain as to the limits of their work.

Carelessness or exercising bad judgment are not bars to compensation where it is reasonable that a worker would exercise some discretion as part of the worker's employment. Thus an act that is done in good faith for the purpose of the employer's business may form part of a worker's employment, even if not specifically authorized by the employer.

On the other hand, a worker's injury or death may not be considered to arise out of and in the course of the employment if the worker's act is specifically prohibited by an employer or is known or should reasonably have been known to the worker to be unauthorized, or if the worker has been previously warned against doing it. This is so even if the act could legitimately benefit the employer.

C. For Employer's Benefit

A worker's injury or death may be considered to arise out of and in the course of the employment if the worker is acting to protect the employer's interests during an emergency. This may include protecting the employer's property or protecting an individual who is associated with the employment, such as a fellow worker or customer.

A worker's injury or death is not likely to be considered to arise out of and in the course of the employment if the emergency action is that of a public spirited citizen, where the worker was doing no more than anyone would do, whether or not working for an employer at the time.

The distinction can perhaps best be illustrated by an example. A worker's injury or death may be considered to arise out of and in the course of the employment where the worker receives a telephone call at work indicating that there is a fire in a portion of the employer's premises. The worker races from the office and, due only to haste, trips over his or her own feet, falls, and injures an arm. There is no doubt that in light of the relationship of the emergency to the employment, this injury would be compensable. On the other hand, a worker's injury or death is not likely to be considered to arise out of and in the course of the employment where the worker receives a telephone call to the effect that a family member has been seriously injured in an accident. Once again the worker races from the office and, due only to haste, falls and injures an arm. The reason for the worker's departure is unrelated to the employment and nothing about the employment contributed to the injury.

The fact that the employment places a worker in a position to observe an emergency cannot be of itself a determinative factor in granting compensation.

[emphasis added]

[32] Policy at item #C3-12.30, "Infectious Agent or Disease Exposures", provided:

A worker may be entitled to compensation in respect of an infectious agent or disease exposure where the exposure:

- (a) occurs as a compensable consequence of a personal injury (e.g. where a rabid dog bites a veterinarian, breaking the veterinarian's skin, the exposure to rabies is a compensable consequence of the broken skin);
- (b) has caused the onset of an occupational disease; or
- (c) is accepted as compensable itself, in the absence of an objectively identifiable physical trauma, before conclusive evidence of the worker's infectious status is available (e.g. where exposure to an infectious disease with a long incubation period, such as HIV/AIDS or Hepatitis B, occurs as a result of infected bodily fluid splashing onto a worker's mucous membrane or non-intact skin).

An exposure, as described in (c) above, may be accepted as compensable itself, where the following four conditions are satisfied:

- (i) there is objective evidence that the worker was exposed, or was very likely to have been exposed, to an infectious agent or disease;
- (ii) the exposure arises out of and in the course of the worker's employment;
- (iii) there is a moderate to high risk that, based on the mechanism and amount of exposure that occurred, the exposure will result in the worker developing a disease with health consequences that are so serious it may be life-threatening; and
- (iv) the effects of the exposure can be significantly mitigated or prevented by the immediate provision of post-exposure prophylaxis ("PEP").

Medical evidence is required to assess the degree of risk and necessity of PEP on a case-by-case basis.

For example, a compensable exposure may result where a patient's blood splashes into the eyes of an attending nurse. If there is objective evidence that the nurse was exposed to an infectious disease such as HIV (e.g. if the patient is known to be HIV positive), and if a physician concludes there is a moderate to high risk the nurse will develop HIV, a potentially life-threatening disease which

cannot be immediately detected following exposure, and if PEP will mitigate or prevent the onset of HIV, the exposure can be accepted as compensable.

If a worker has an adverse reaction to PEP or develops a disease following a compensable exposure, entitlement in respect of the resultant injury, increased disablement, disease or death is adjudicated in accordance with Board policies on compensable consequences of employment-related injuries.

No compensation is payable to a worker who withdraws from work or changes employment because of concern that exposure to the conditions at work may cause an injury or disease which does not yet exist.

Wage-loss benefits are not payable to a worker who remains off work or who changes employment to prevent a reoccurrence of a personal injury or occupational disease that has resolved, or to prevent an aggravation, activation, or acceleration of a personal injury or occupational disease which has stabilized or plateaued. However, vocational rehabilitation assistance may be provided to a worker in this situation. Where the worker is left with a permanent impairment, the worker may be entitled to a permanent disability award.

[33] Section 5.1 of the Act provides in part:

5.1 (1) Subject to subsection (2), a worker is entitled to compensation for a mental disorder that does not result from an injury for which the worker is otherwise entitled to compensation, only if the mental disorder

- (a) either
 - (i) is a reaction to one or more traumatic events arising out of and in the course of the worker's employment, or
 - (ii) is predominantly caused by a significant work-related stressor, including bullying or harassment, or a cumulative series of significant work-related stressors, arising out of and in the course of the worker's employment,
- (b) is diagnosed by a psychiatrist or psychologist as a mental or physical condition that is described in the most recent American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders at the time of the diagnosis, and
- (c) is not caused by a decision of the worker's employer relating to the worker's employment, including a decision to change the work to be performed or the working conditions, to discipline the worker or to terminate the worker's employment.

- [34] Policy regarding mental disorder claims under section 5.1 of the Act is set out in RSCM II, item #C3-13.00.

Submissions

- [35] The worker submits that her claim ought to be accepted for both exposure to blood and bodily fluids and a psychological condition as a compensable consequence under section 5(1) of the Act. The worker also submits that her claim ought to be adjudicated and accepted under section 5.1 of the Act.
- [36] The worker notes that she works in a pregnancy outreach program supporting pregnant women and women with young children in a disadvantaged neighbourhood. Her job description included delivering medical care to clients in the area during outreach visits over the course of her work day. These outreach visits occurred in a variety of locations including a client's home, an SRO, a tent, a back alley, or a park. She walked or drove in attending such outreach visits, and her employer paid for her mileage when she drove.
- [37] The worker submits that her actions were not simply those of a public spirited citizen. Providing medical assistance to people in the neighbourhood in which she worked was part of her job description, and she was in the middle of a shift treating clients in this area when the incident occurred. She felt obliged to stop and provide medical assistance to the injured woman when she encountered this situation during her work day.
- [38] The employer submits that the worker removed herself from her employment to assist the stabbing victim. The worker was acting as a good Samaritan, and the incident did not arise out of and in the course of her employment.

Reasons and Findings

(a) *Preliminary – scope of appeal*

- [39] The only issue adjudicated in the September 29, 2015 decision by the entitlement officer, and the February 3, 2016 decision by the review officer, concerned whether the worker's exposure to blood in the September 15, 2015 incident arose out of and in the course of her employment. The entitlement officer and review officer both found that the worker had removed herself from the course of her employment, and was acting as a public spirited citizen, at the time of the incident which resulted in her exposure to blood. Accordingly, it was not necessary for the entitlement officer or review officer to proceed to consider whether the worker's exposure to blood resulted in a personal injury of a physical nature (as contemplated by policy at RSCM II item #C3-12.30). It was similarly not necessary to proceed to address whether the worker suffered any psychological disability as a result of any physical injury, or whether the requirements of section 5.1 of the Act for a mental disorder claim were met. Submissions have not been provided concerning the application of the policy at item #C3-12.30, section 5.1 of the Act, or policy at item #C3-13.00. In these circumstances, I consider it appropriate to limit this decision to the narrow issue which has been adjudicated, namely, whether the September 15, 2015 incident (and exposure to blood in that incident) arose out of and in the course of the worker's employment.

(b) Arising out of and in the course of the employment

- [40] Item #C3-14.00 is the principal policy that provides guidance in deciding whether or not an injury or death arises out of and in the course of the employment. The nine factors in item #C3-14.00 are: (1) On Employer's Premises, (2) For Employer's Benefit, (3) Instructions From the Employer, (4) Equipment Supplied by the Employer, (5) Receipt of Payment or Other Consideration from the Employer, (6) During a Time Period for which the Worker was Being Paid or Receiving Other Consideration, (7) Activity of the Employer, a Fellow Employee or the Worker, (8) Part of Job, and (9) Supervision.
- [41] The September 18, 2015 incident did not occur on the employer's premises. The worker was not using equipment supplied by the employer. The incident occurred during a time period in which the worker was being paid. She was alone, and not being supervised at the time of the incident. The evidence is in dispute as to whether the worker's actions were for the employer's benefit, were pursuant to instructions from the employer, or were part of the worker's job. Other policies in Chapter 3 provide additional guidance in this regard.
- [42] Policy at RSCM II item #C3-17.00 provides that in considering whether an injury or death arose out of and in the course of the employment, all relevant factors are taken into consideration including whether the worker's conduct was such a substantial deviation from the reasonable expectations of employment as to take the worker out of the course of the employment. An insubstantial deviation does not prevent an injury or death from being held to have arisen out of and in the course of the employment.
- [43] Policy at item #C3-17.00 provides guidance as to how some of the factors in item #C3-14.00 may be applied when considering the causative significance of a worker's unauthorized activity in the worker's personal injury or death. The additional guidance which is particularly relevant to this case concerns the second and third factors (For Employer's Benefit, and Instructions From the Employer).
- [44] Item #C3-17.00 provides that a worker's injury or death is not likely to be considered to arise out of and in the course of the employment if the emergency action is that of a public spirited citizen, where the worker was doing no more than anyone would do, whether or not working for an employer at the time. Policy further provides that the fact that the employment places a worker in a position to observe an emergency cannot be of itself a determinative factor in granting compensation. Accordingly, the fact that the worker would likely not have seen the injured woman lying in the street, but for the fact she was employed in that neighbourhood, does not assist the worker's claim.
- [45] Relevant background to the policy in item #C3-17.00 is contained in Decision No. 252, Re Scope of Employment, 3 W.C.R. 147. That decision concerned a worker at a marine supply shop located close to the airport, who observed a light plane crash into the Fraser River. He decided to attempt the rescue of the occupants of the plane, and took the shortest route between his office and the scene of the accident. This involved descending the fire escape of the company premises, and he was injured when one of the rungs on the ladder gave way and he fell. A board of review found that the worker's claim was acceptable, adopting a "positional risk" theory whereby a worker going to the rescue of a stranger would be considered to be in the course of their employment if the employment brought the worker to the place where they

encountered a moral obligation to rescue a stranger. The Board found that the fact the employment placed one in a position to observe an emergency cannot be of itself a determinative factor in granting compensation. However, the worker's claim was found to be acceptable on the basis that it was suffered in an emergency and arose out of a hazard on the employment premises. This prior decision illustrates the fact that responding to an emergency to rescue a stranger would not necessarily involve a departure from the worker's employment. An evaluation is required as to the extent of any employment connection.

- [46] The worker acknowledged that as a registered nurse she felt she had an ethical and professional obligation to provide assistance to the best of her abilities to any person in distress. The worker's evidence supports a conclusion that she would have acted to assist an injured person in the street if she had encountered a similar situation outside of work hours, and in a different part of the city than the neighbourhood in which she worked. The review officer found, in this context, that it was simply coincidental that the worker was working at the time she stopped to assist an injured stranger.
- [47] I do not consider, however, that the fact the worker would have similarly stopped to assist a stranger under other circumstances can be determinative of the question as to whether the incident arose out of and in the course of her employment. For example, if the injured person had been a co-worker who was stabbed by a client, and collapsed inside the employer's office, the worker's actions in assisting her injured co-worker would clearly have had an employment connection. It is necessary to assess the evidence in the particular case, to evaluate the extent of any employment connection, for the purpose of determining whether the worker removed herself from the scope of her employment in going to the assistance of an injured stranger.
- [48] I have examined a map of the neighbourhood in which the incident occurred. This shows that the stabbing incident occurred approximately 1.5 blocks from the employer's premises (in which the worker was employed). It was in the neighbourhood served by the employer in its outreach program.
- [49] The worker's evidence is that in performing her outreach work, in the disadvantaged neighbourhood in which she was employed, she frequently came across people who were lying on the sidewalk (in possible need of medical assistance). She advised that she had always stopped to assess such persons, and would help if needed. In her application for compensation, she stated that she considered stopping to assist the injured person just part of her work day as an outreach worker in the community.
- [50] The employer's clientele (in the program in which the worker was employed) were pregnant women and new mothers with drug and alcohol issues. The worker's provision of assistance to persons found lying on the sidewalk, as described by the worker (not limited to pregnant women and new mothers with drug and alcohol issues), could tend to enhance the reputation or acceptance of the employer's outreach program in the community.
- [51] The worker appears to have been surprised by the notion that performing such actions would fall outside the scope of her employment. She subsequently requested guidance from the employer, and the initial response provided to her (on October 23, 2015) was that her actions in the September 18, 2015 incident were viewed as having happened at work and during work so as to support the acceptance of her claim.

- [52] Policy provides that an act that is done in good faith for the purpose of the employer's business may form part of a worker's employment, even if not specifically authorized by the employer. Carelessness or exercising bad judgment are not bars to compensation where it is reasonable that a worker would exercise some discretion as part of the worker's employment. However, a worker's injury or death may not be considered to arise out of and in the course of the employment if the worker's act is specifically prohibited by an employer or is known or should reasonably have been known to the worker to be unauthorized, or if the worker has been previously warned against doing it.
- [53] The question as to whether an injury is one which arose out of and in the course of the worker's employment is one to be determined by the Board (or WCAT), rather than the employer. Nevertheless, factual evidence concerning the nature of a worker's job duties, and any prior history of an employer in condoning or prohibiting certain conduct is relevant in making this determination.
- [54] The employer has not furnished any evidence to show that it had discouraged or cautioned its workers against assisting persons in distress while performing other work duties in the neighbourhood, or advised them that such actions would be viewed as being outside the scope of their employment. In this context, I accept that the worker would genuinely have been uncertain as to the limits of her work.
- [55] I do not interpret the email responses by the worker's supervisor or manager as indicating that her actions were inconsistent with the scope of her employment. One manager commended the worker, stating that her actions "exemplified all that is beautiful about the commitment we have made to our clients." These comments suggest that the employer's relationship with the community was important to its functioning, and that there was no clear expectation that its personnel would limit their actions during the work day to the provision of assistance to the pregnant women and new mothers who were its direct clients. The manager's comments suggest that while the worker's direct mandate was to provide assistance to pregnant women and new mothers with drug and alcohol issues, it was not seen as inconsistent with this role to provide incidental assistance to other persons in the neighbourhood who were found to be in medical distress. While the comments of a manager are not necessarily representative of the employer's views, they are germane to consideration of the worker's understanding of the scope of her employment.
- [56] The worker was acting in the course of her employment at the time she saw the injured woman lying in the street. The question for determination is whether her actions of going to assist the woman represented a substantial deviation from her employment. In determining this issue, I consider it appropriate to take into account the background information regarding the nature of the program in which the worker was employed, the nature of the program's outreach activities, and the employer's expectations, as previously communicated to its employees, regarding the limits to their activities which would be viewed as connected to their employment.
- [57] The circumstances of this case are in a grey area. However, based on the facts of this particular case, I am not persuaded that the worker's rendering of assistance to the injured woman should reasonably have been known to the worker to be unauthorized and/or as being outside the scope of her employment. I find that to the extent the worker deviated from her employment, this was not a substantial deviation. Taking into account the nine factors listed in item #C3-14.00,

and the additional guidance provided in item #C3-17.00 concerning the application of these factors, I find that the weight of the evidence supports a conclusion that the worker's actions in the incident on September 18, 2015 arose out of and in the course of her employment, and her exposure to blood in that incident similarly arose out of and in the course of her employment. I allow the worker's appeal on this issue.

- [58] There has been no request for reimbursement of appeal expenses. Therefore, I make no order in that regard. Dr. Donaldson's October 30, 2015 letter concerned an issue which was outside the scope of my decision. Accordingly, if the worker incurred any expense in obtaining that letter, the invoice should be presented to the Board for consideration of reimbursement.

Conclusion

- [59] I allow the worker's appeal and vary the Review Division decision. I find that the September 18, 2015 incident, and the worker's exposure to blood on her hands in that incident, arose out of and in the course of her employment. As set out above, I have refrained from proceeding to address the further questions as to whether the worker suffered a personal injury in the September 18, 2015 incident, whether she was physically or psychologically disabled as a result of any personal injury in the September 18, 2015 incident, or whether she suffered a mental disorder within the meaning of section 5.1 of the Act. These issues are left to be adjudicated by the Board.

Herb Morton
Vice Chair