

Decision of the Appeal Division

Number: 00-0073

Date: January 18, 2000

Panel: Teresa White, Marguerite Mousseau, Sonja Hadley

Subject: Whether Major Depressive Episode Was a Psychological Injury Arising out of and in the Course of Employment

- (1) The worker appeals the findings of the Workers' Compensation Review Board dated July 28, 1998. The Review Board denied the worker's appeal from decisions of the claims adjudicator dated July 20, 1995 and June 4, 1996.
- (2) The worker claimed he was disabled from working because of a major depressive disorder arising out of and in the course of his employment. The worker claimed that stress at work because of what the worker called "harassment" by his employer was the cause of his depressive disorder and as such it was compensable.
- (3) The claims adjudicator wrote to the worker on July 20, 1995 informing him that the claim had been denied. The claims adjudicator stated that while he sympathized with the worker, his claim did not fall within the realms of a personal injury or industrial disease as recognized by section 5(1) and section 6 of the *Workers Compensation Act*, R.S.B.C. 1996, Chap. 492 (the "Act").
- (4) On June 4, 1996 the claims adjudicator again wrote to the worker, who had submitted additional medical information and a copy of an arbitration decision involving the worker and his employer. The claims adjudicator said there was no new information that would alter the facts or the decision of July 20, 1995.
- (5) The worker was represented in this proceeding by his union. The employer also participated.
- (6) An oral hearing was held in Richmond, B.C. on June 8, 1999.

Issue

- (7) The issue is whether the worker's major depressive episode was a psychological injury arising out of and in the course of his employment as a steel fabricator, or alternatively whether he suffered from a disease due to the nature of his employment.

Background

- (8) Around the time of the incidents leading to this claim occurred, the worker had been employed as a steel fabricator with the same employer for over eight years.
- (9) On May 17, 1995, the worker filed an application for compensation. He stated that the date and time of injury was "harassment over the last 8 months." He had last worked on March 6, 1995.
- (10) The events leading up to the worker's claim are well documented in the file and in submissions made by the worker's representative.
- (11) The events culminated in termination of the worker's employment, followed almost a year later by an arbitrator's decision to reinstate the worker. None of the arbitrator's findings of fact, or the admissibility of the decision in this proceeding were objected to by either party and none of the fundamental facts necessary for the purposes of this decision are controversial. Accordingly, we have made extensive reference to the arbitrator's findings of fact. The essential points follow, summarized from both the file, the evidence given at the oral hearing and the arbitrator's decision.
- (12) The worker made a claim for compensation in May of 1994. The claim involved an incarcerated hernia. The claim was denied by a claims adjudicator on the basis that it was not work related. That decision was appealed by the worker to the Review Board. In a decision dated December 11, 1995, the Review Board allowed the worker's appeal.
- (13) The employer participated in the Review Board proceedings. It challenged the worker's version of the incident that was alleged to have led to the incarceration of the worker's hernia. Of note is that fellow workers and the foreman wrote letters to the employer stating that the incident did not happen as described by the worker.
- (14) The Review Board scheduled two hearing dates that the employer attended, but a hearing did not commence because the worker and/or his representative did not attend. The dates were February 17, 1995 and March 31, 1995. Ultimately there was no hearing and the Review Board made its decision on a "read and review" basis. The reasons are dated December 11, 1995. The employer wrote two letters to the Review Board commenting on the time that had been wasted and blaming the delay on the actions of the worker and his representative. We note that the Review Board awarded the employer its costs for attendance at those two hearing dates. We further note that the first Review Board hearing date was in mid-February 1995, just before the worker's absence that gave rise to this appeal, and the second date is one month later in March of 1995, after the worker had been absent for several weeks.
- (15) The worker said at the oral hearing of this appeal that before the employer disputed the hernia claim he had no problems at work. He said that the dispute about how his hernia injury occurred "started the whole thing off." He said that it was his perception that when he successfully appealed to the Review Board the employer was "not too happy." However, as

noted above, the Review Board findings in the hernia claim were issued December 11, 1995, well after the worker became disabled from working due to his depression and after he was cleared to return to work by his psychiatrist.

- (16) Aside from the disputed hernia claim, there were a number of other events at work that the worker points to as causative of his depression.
- (17) The worker received a disciplinary letter from his employer in September or October of 1994. The letter is not available for our review. However, according to the arbitrator's decision, it dealt with the worker's productivity.
- (18) The worker received a second disciplinary letter in November of 1994. It was signed by the production manager and stated:

SUBJECT: WORK PERFORMANCE

It has been brought to my attention that your current work output is less than satisfactory. As you are probably aware, our work program for the foreseeable future is very good and should provide continuity of employment for our staff as long as we satisfy our clients with respect to delivery dates and quantity of product.

To ensure that our favourable trading position is maintained, we depend on the full cooperation and support of all our employees. If you have personal problems which may be contributing to the current situation please do not hesitate to keep us informed, otherwise we will expect your participation in helping to improve the overall effectiveness of our work performance.

- (19) The worker disagreed with the contents of both letters. It is apparent from his testimony at the oral hearing that he was particularly concerned that the employer seemed to be suggesting he had problems at home. He said that the suggestion came "right out of the blue."
- (20) Regarding his personal life, the worker told the panel at the oral hearing that he had taken time off in the past to help his girlfriend (with whom he had lived common law since 1988), who had a disabling condition, to get to her physician's appointments. The worker's evidence was that the time off was taken prior to the hernia claim, and over a number of years. He said that his employer approved the time off and that there were no disputes about the time. In this proceeding, the employer did not disagree with the worker's evidence on this point.
- (21) The worker also said in response to questions from the panel that his girlfriend's condition had deteriorated in approximately 1991 when she went from walking with a cane, to using a walker and then to requiring a wheelchair. He said she began living in a long-term care facility approximately 2½ years prior to the oral hearing date, and before that had received home support services.

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- (22) A “grievance form” dated November 21, 1994 and signed by the worker and the union steward appears to have been handwritten by the worker and states:

In the last 6 months with this company I’ve been subjected to Discrimination, Harassment and now Slander. Through no fault of my own. I’ve been passed over for charge hand because of my union activities and standing up for my rights (Discrimination) Recently I gave 10 days notice in writing. Wanting 1 banked day off, 2 days before the requested day off, I was informed they were too busy and I couldn’t have the day off. In the same time frame another employee took 1 week off banked time (Discrimination) Now I have received a memo from [a supervisor] and presumably [a foreman] stating that my productivity is less than satisfactory, according to who and compared to who. In the approx. 8 years I’ve worked for this company this has never been mentioned, quite to the contrary (Harassment) In the same memo it was mentioned that perhaps I have personal problems. This is completely without foundation (Slander).

[reproduced as written]

- (23) Under the form’s heading “Adjustment Required,” the worker noted that he was seeking the resignation of the supervisor and foreman, and a written apology from “[the production manager] and [the foreman], if [the foreman] turns out to have any input into this memo.” He was also seeking “a promise to stop the discrimination, harassment and the slander,” payment of a 6% charge hand rate, “damages from the courts from [the employer], [the production manager] and [the foreman] personally. For Stress, Discrimination, Harassment, Deformation of character and slander.”
- (24) The employer gave evidence at the oral hearing that there was no “charge hand” position for which the worker was “passed over.”
- (25) A record of a November 25, 1994 meeting with the production manager, the shop steward, a union representative and the worker notes that “[I]t was decided that the letter to [the worker] would be rescinded.” The memo further states “[d]iscussed both sides would make an effort to communicate problems and try to deal with them as they arise. [The worker] would recognize company concerns and deal with them.”
- (26) On February 10, 1995 the worker received another letter from the production manager. The subject was “work performance.” The letter states:

It has come to our attention that your work effort is well below acceptable practice.

On November 16/94 you were advised that a better effort was expected.

On November 24/94 you attended a meeting with ourselves, and officials of the [the worker’s union] at which we again expressed our concerns but agreed to work with you in an effort to improve your situation.

On February 6/95 your new foreman asked for your cooperation and advised you that he expected a fair days effort and was prepared to overlook past problems. Unfortunately on Thursday February 9/95 it was clear according to your foreman that your work effort on that day amounted to less than 4 hours of productive work and when confronted at 7:30 AM on Friday February 10/95 you were unable to provide an acceptable answer for your reduced output.

It should also be noted that your time spent away from your work station is excessive and is a contributing factor to your poor output.

Please rectify this situation forthwith.

- (27) In February of 1995 the worker received a one day disciplinary suspension for taking a day off which he claimed was due to snow conditions. The worker's union did not pursue a grievance on the worker's behalf.
- (28) On February 10, 1995, the worker received another written warning regarding lack of productivity. The union filed a grievance.
- (29) At the arbitration proceedings, the worker testified that he was distressed by the written warning and was angry with both his employer for questioning his productivity, and his union for not representing him adequately. He told the panel that he believed the allegations of performance problems in the letters were fabricated.
- (30) The worker expressed his anger and frustration in conversations with co-workers, including suggesting to a co-worker that he would go on stress leave and a reference to his employer's workers' compensation rates rising. Others who observed the worker during this period describe him as angry, upset and "pissed off." The worker gave evidence at the arbitration that he was extremely agitated. A co-worker gave evidence at the arbitration that during the last week of February, 1995 the worker said "I think I'll go on stress leave for two weeks, and then go on holiday." The worker then used an obscenity and made an aggressive gesture.
- (31) On March 6, 1995 the worker wrote a lengthy letter to his union for the expressed purpose to "lay a complaint" against two of his co-workers. The substance of the worker's complaint about his co-workers was that he believed they "instigated" the process that led to a warning letter. The worker states that he found "my Brothers' actions deplorable and I respectfully request a hearing of this matter at your earliest convenience."
- (32) The worker requested and was granted a one week unpaid holiday from March 7 to March 13, 1995. He gave evidence at the arbitration that he took the holiday because he was not feeling well. He said he was depressed, sleeping poorly, forgetting things, dropping things, unable to concentrate and "jumpy."
- (33) The worker saw his general practitioner, Dr. W on March 7, 1995. Dr. W filled in a form called "Attending Physician's Statement," presumably for the worker's sick leave plan. The diagnosis was adult situational adjustment reaction. The worker was described as having an anxiety

reaction, insomnia, disjointed thoughts and poor concentration. Dr. W did not file a physician's first report with the Board after this first visit, or for some time later. The physician's first report ultimately filed by Dr. W was undated, but was received by the Board on May 12, 1995.

- (34) The evidence at the arbitration was that the consultation with Dr. W was very brief (10 to 15 minutes). The worker explained his symptoms to the physician who then filled out the form. The form states "unable to work from March 7, 1995–March 7, 1995." [sic]
- (35) On March 13, 1995 the worker's girlfriend telephoned the employer and said that the worker would be on stress leave for a couple of weeks. The employer responded by sending a letter to the worker that stated:

Further to your telephone conversation this morning advising us you are suffering from stress, please furnish a written assessment from your specialist confirming your condition. The receipt of this will be conditional on your returning to work for [the employer].

- (36) The worker sent the employer the attending physician's statement described above and an application for indemnity from the union's health and welfare fund. The worker also contacted his general practitioner for referral to a psychiatrist. He did not see a psychiatrist until April 28, 1995. It appears from the worker's medical records maintained by the worker's family physician, Dr. W, which were obtained by the panel in this proceeding, that the worker was referred by Dr. W to the psychiatrist (Dr. M) on March 31, 1995. The medical records also contain a note from Dr. W dated May 5/98 which states "[p]ossible W.C.B. related depression – [Dr M] thinks so – will try it through W.C.B."
- (37) The worker's union responded to his March 6, 1995 letter in a letter dated March 14, 1995. The letter states:

[Worker's first name], I do not support your charges against these brothers. I believe that both Foremen are only carrying out their duties as Foremen.

If you proceed with the charges through the [union leadership] I will immediately countercharge you. The charge against you will be from the [union's head office].

- (38) There was no communication between the worker and the employer between March 15, 1995 and March 28, 1995. On March 28, 1995, having heard nothing from the worker, the employer wrote to the worker informing him that his employment had been terminated. The employer questioned the worker's assertion that he was disabled from working. We note that the termination of the worker's employment occurred after he had already been off work claiming he was disabled from working due to his psychological condition.
- (39) The worker wrote a letter to an officer of his union's international office on April 11, 1995. It details the circumstance of the termination of his employment from the worker's perspective. It further alleges that the union and in particular the local business agent were not representing the worker fairly.

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- (40) Ultimately, the arbitrator found that from a labour relations perspective it was the obligation of the worker to contact the employer, and not the other way around. As stated above, the arbitrator found that although there was cause for discipline, dismissal was an excessive disciplinary response on the employer's part. The arbitrator reinstated the worker effective March 28, 1995.
- (41) As noted above, the worker saw the psychiatrist, Dr. M, on April 28, 1995. Dr. M's provisional diagnosis, communicated in a letter to Dr. W dated May 2, 1995 was major depressive episode precipitated by stress generated in the workplace. He prescribed Paxil and psychotherapy. Dr. M related the worker's report that he first became aware that he was not feeling well in late November of 1994. Dr. M's history includes the fact that the worker's employment had been terminated. He did not express any opinion regarding the contribution of the discharge to the worker's mental state.
- (42) It was not until May 17, 1995 that the worker signed his application for compensation. He had been off work since March 7, 1995 and had been seen by the psychiatrist almost three weeks earlier.
- (43) The worker continued to see Dr. M, who certified him fit to return to work effective August 21, 1995. Dr. M wrote a letter to the Board dated March 25, 1996. It states, in part:

I obtained from [the worker] a history of problems in the work place beginning during September, 1994. A new plant manager appeared to take a dislike to [the worker]. The manager sent a letter to [the worker] alleging that his production was low. An investigation by the Union decided that the accusation was false and the letter of remand was removed from [the worker's] file. In November, 1994, another letter of remand originated from the plant manager and was signed by the foreman. Again, the complaint was low productivity. [The worker] became upset by the harassment, which he felt was unfair. The stress precipitated a major depressive episode. When I made the initial assessment, [the worker] complained of all the classical symptoms of a major depressive disorder. In particular, concentration was very much impaired and he was indecisive. He found himself becoming, awkward and dropping things at work. He felt that he was becoming a danger to himself and others in the factory. He saw his family doctor, who placed him on medical leave.

In my opinion, it was stress generated by the manner of treatment in the workplace that precipitated [the worker's] major depressive disorder. I feel that [the worker] was totally disabled between March 7th, -August 21st, 1995.

- (44) A total of four physician's progress reports were filed by Dr. W, dated May 16, June 8, August 4, and August 18, 1995. The last one states "still has occ'l sleeplessness but could work." He also states "likely could R.T.W. but job was terminated on 31-3-95."
- (45) The worker returned to work on February 27, 1996, after the arbitrator's decision. It is apparent from documents the worker provided at the oral hearing that his relationship with the employer continued to deteriorate. There are notes dated March 22, 1996, May 1, 1996 and May 2,

1996 discussing performance issues such as cutting “box stiffeners” incorrectly. The worker was given a written warning regarding workmanship on May 3, 1996. On May 7, 1996 he was given another written warning relating to his “failure to advise us that you would not be returning to work on March 28, 1995.”

- (46) On May 9, 1996 the employer wrote to the worker noting that he had been disciplined on May 3, 1996, and then had been away for three days vacation. On May 8, 1996 the worker gave the employer a note from his physician stating he would be absent from work for an undetermined period of time as a result of stress arising from workplace harassment. We note here that the worker did not claim compensation for this second absence. The employer’s letter states:

The law recognizes that the employer/employee relationship may, from time to time, contain some coercive overtones made necessary to bring forcefully to an employee’s attention those circumstances where the employer is not satisfied with the employee’s performance or behaviour. Those situations will recur and you will not be exempt from them. Therefore, we ask that the medical report specifically deal with your psychological ability to work in an environment having those characteristics. We are not prepared to exempt you from normal discipline in the workplace.

- (47) The worker’s psychiatrist, Dr. M, responded to the employer’s letter in a letter dated June 12, 1996, as follows, in part:

From a medical point of view, [the worker] is emotionally stable and should be able to perform as well as he did for the first 7 years, that he served your company. He accepted the normal direction and discipline of the work place without stress or incident. He proved his ability to be a cooperative, team player.

It is my opinion that if [the worker] is treated impartially, the same as his fellow employees, he should have no difficulty in continuing to offer your company his skills and experience in a satisfactory manner for mutual benefit.

- (48) The employer responded to the above letter from Dr. M and discussed the worker with Dr. M on the telephone. The essence of the employer’s response was that the worker was not treated any differently than other employees and that he would continue to be subjected to the normal relationship between employer and employee, which includes direction and discipline.

- (49) Dr. M wrote a further letter dated June 20, 1996, which states, in part:

First of all, I would like to correct your assumption that I inferred “[the worker] will not be able to maintain regular employment because he feels persecuted at the workplace and you can expect a repetition of absenteeism.” In my letter, I pointed out that [the worker] apparently performed satisfactorily for 7 years. If he is treated the same as he was during that time span, he should give you a good level of performance. Thanks to my telephone conversation with you, June 18th, I now have the other side of the story.

I confronted [the worker] with your concerns about behaviour, attitude, and performance. He is the only one who can control his behaviour, and the only one who can change it. There is no medical reason why he should not do well in your shop.

[The worker] expressed his intention to make changes in the areas where you had concerns. I suggested to him that he should contact yourself and offer you the same reassurance.

- (50) Upon receipt of the above letter from Dr. M, the employer again wrote to the worker on June 25, 1996, expressing the conclusion that there was no medical reason for his absence and his employment was terminated, effective immediately.
- (51) There are a number of other reports from Dr. M detailing the worker's symptoms and expressing opinions regarding whether the worker was truly depressed and/or truly disabled from working. We do not find it necessary to set out the details of those reports. We accept that the worker suffered from a major depressive episode.

Decision and Reasons

- (52) The *Workers Compensation Act*, R.S.B.C. 1996, Chap. 492 (the "Act") sets out the circumstances whether a personal injury or occupational disease is compensable. Section 5(1) provides as follows:

Where, in an industry within the scope of this Part, personal injury or death arising out of and in the course of the employment is caused to a worker, compensation as provided by this Part must be paid by the board out of the accident fund.

- (53) Section 6(1) provides for occupational diseases. It states:

Where

- (a) a worker suffers from an occupational disease and is thereby disabled from earning full wages at the work at which the worker was employed or the death of a worker is caused by an occupational disease; and
- (b) the disease is due to the nature of any employment in which the worker was employed, whether under one or more employments, compensation is payable under this Part as if the disease were a personal injury arising out of and in the course of that employment. A health care benefit may be paid although the worker is not disabled from earning full wages at the work at which he or she was employed.

(54) Section 1 of the Act defines an occupational disease as follows:

“Occupational disease” means any disease mentioned in Schedule B, and any other disease which the board, by regulation of general application or by order dealing with a specific case, may designate or recognize as an occupational disease, and “disease” includes disablement resulting from exposure to contamination;

(55) Depression does not appear in Schedule B, nor has it been designated as an occupational disease by regulation.

(56) The *Rehabilitation Services and Claims Manual* (the “Manual”) contains a number of sections applicable to this claim. They are set out below.

“Personal injury” includes psychological impairment as well as physical injury. A claim for traumatically induced psychological impairment could be accepted even if unaccompanied by any physical impairment. Psychological impairment has not been deemed to be an occupational disease. Conditions of this type however may be accepted if they are a sequela to an accepted personal injury or occupational disease.

[Item #13.20]

Where an injury occurs at work as a result of any traumatic experience or external cause, it is usually from an accident to which the presumption in Section 5(4) applies. Thus, once it is established that the injury was caused by accident, and that the accident arose in the course of employment, the injury is presumed to have arisen out of the employment unless there is affirmative evidence that the injury was caused by factors external to the employment.

Consider the example of a worker who slips on the floor at work and is injured. Of course the worker could have slipped elsewhere and suffered a similar injury, but the worker didn't. The injury resulted from an accident in the course of employment. It is therefore presumed to have arisen out of the employment, and the injury is compensable, unless there is affirmative evidence that it was caused entirely by factors extrinsic to the employment.

Where there is no “accident”, there is no presumption under Section 5(4) and the evidence must support a conclusion that the injury arose out of the employment as well as a conclusion that it arose in the course of the employment.

It is not a bar to compensation when an injury occurs over a period of time rather than resulting from a specific incident. To be compensable, however, the evidence must warrant a conclusion that there was something in the employment that had causative significance in producing the injury. A speculative possibility that this might be so is not enough.

This does not mean that the presence or absence of a specific incident is never relevant in the decision of a claim for compensation. What it does mean is that the absence of a specific incident is not of itself ground for denying a claim. The existence of a specific incident may still be relevant in that:

1. There are some disabilities that are classified as resulting from an “injury” if they arise out of a specific incident, but are classified as resulting from a “disease” if they occur over time. (2)
2. The etiology of a disabling condition is always relevant, and the presence or absence of a specific incident may have some evidentiary value in establishing whether it was caused by any feature of the employment.

Note (2) See #13.12.

[Item #14.20]

Psychological problems arising from a physical or psychological injury are acceptable as compensable consequences of the injury. However, there must be evidence that the claimant is psychologically disabled. It cannot be assumed that such a disability exists simply because the claimant has unexplained subjective complaints or is having difficulty in psychologically or emotionally adjusting to any physical limitations resulting from the injury.

When the existence of a psychological disability is suspected, the worker’s claim file will normally be referred by a Board Medical Advisor or Rehabilitation Centre Physician to a Board Psychologist for evaluation. The Board Psychologist’s report will be returned to the Board Medical Advisor or Rehabilitation Centre Physician who will document their resulting recommendation on the claim file.

Because of the complexity of psychological problems in permanent disability claims, they will be referred, by the Adjudicator in the Disability Awards Section, to the Senior Disability Awards Medical Advisor for review by the Board’s Chief Psychologist. When an evaluation has been performed, the worker’s claim file will again be reviewed by the Board’s Chief Psychologist and the Senior Disability Awards Medical Advisor for confirmation of the level of functional impairment.

Since psychological impairment is not included in the Permanent Disability Evaluation Schedule, reference may be made to the American Medical Association Guide to the Evaluation of Permanent Impairment to determine the appropriate percentage of disability.

For the policy of the Board when a claim is submitted for psychological problems resulting directly from the claimant’s employment without the occurrence of any physical trauma, reference should be made to #13.20 and #32.10.

Chronic pain problems are also acceptable if the evidence indicates that they result from the work injury. If the evidence indicates that the condition is disabling but may be amenable to treatment, it will be regarded as a temporary disability and wage loss paid in the normal way. The Board may refer a claimant with a chronic pain problem to a chronic pain management clinic, in which case wage loss is paid during the attendance. On discharge from the clinic, if the claimant still has continuing complaints the condition will not necessarily be considered to have stabilized immediately. Many claimants still require time to build up their endurance. It may therefore be reasonable to regard the condition as temporary and pay wage loss under Section 29 or 30 for a further period of time. (14)

Note (14) See Chapter 5

[Item #22.33]

The Board does accept claims for personal injury where the injury consists of a psychological condition or the psychological condition is a consequence of a physical injury. However, the Board has not recognized any psychological or emotional condition as occupational diseases related to employment.

[Item #32.10]

Physical and emotional exhaustion has not been recognized by the Board as an occupational disease. In a claim made for compensation for a state of physical and emotional exhaustion alleged to have been caused by the stress of work, it was concluded that there was insufficient evidence that employment, as opposed to other factors in the worker's life, were of causative significance in producing this condition.

[Item #32.20]


There are also a number of reported decisions.

- (57) In Decision No. 102 (1975), 2 *Workers' Compensation Reporter* 25 ("Disablement through Exhaustion"), the worker claimed compensation for a physical and emotional exhaustion said to result from the stress of work. The decision states that physical and emotional exhaustion caused by stress over time does not come within the popular understanding of the word "injury," nor is it an "injury" as that word has been interpreted and applied by the Board. The decision also states that the recognition of exhaustion as an industrial disease would not be practicable or sound policy. Workers needing rest periods should be provided for through provisions for vacations, time off for overtime worked, sick leave, or in other ways provided for in the employment contract. The decision refers to the difficulty of adjudication that this type of claim creates, and the public policy purpose of avoiding the related administrative and other expenses.

(58) Decision No. 102 is commented upon in Decision No. 348 (“*Re alcoholism*”), (1982) 5 *Workers’ Compensation Reporter* 127 as follows:

... clearly, if the evidence indicates that a particular condition does result from the employment, adjudication difficulties and costs are not valid grounds for not paying compensation. However, if the difficulty in adjudication arises from the fact that there is insufficient evidence that the employment, as opposed to the other factors in the claimant’s life, caused the condition, then, equally clearly, this is a reasonable ground for not recognizing the condition as an industrial disease. We consider that this was the situation in Decision #102.

- (59) The worker’s representative referred to a published discussion paper prepared by the former chief appeal commissioner and titled “*Psychological Disabilities and Workplace Stress*,” 10 *Workers’ Compensation Reporter* 257. That discussion paper is not binding on the panel. However, the analysis in the paper is useful. The purpose of the discussion paper was to bring some ambiguities in Board policy regarding psychological disabilities to the attention of the governors. The former chief appeal commissioner suggested that the governors may wish to address a number of questions. Included was whether policy item #13.20 intends to exclude psychological impairment that is not traumatically induced from the definition of personal injury.
- (60) We agree with the former chief appeal commissioner that policy item #13.20 can be read as excluding psychological impairment that is not “traumatically induced” from the definition of personal injury.
- (61) In *Dowling v. Prince Edward Island (Workers’ Compensation Board)* (1995), 7 C.C.E.L. (2d) 157, the P.E.I. Court of Appeal considered statutory wording that is similar to the wording of the B.C. Act. The court found that the P.E.I. Board’s policy regarding psychological disability, which required a psychologically traumatic event in the workplace that was both excessive and unusual, was an unauthorized narrowing of the definition of “accident” in the enabling legislation. In so finding, the court stressed the remedial nature of workers’ compensation legislation.
- (62) We have considered the meaning of “traumatically induced” in policy item #13.20 and have concluded that there is ample support in the Act and Manual for an interpretation that makes it unnecessary to either resolve the ambiguity or enter into a discussion regarding whether the reasoning in the *Dowling* decision has some applicability to the B.C. policy.
- (63) In our view the phrase “traumatically induced” does not limit compensation in cases of psychological disability in a manner inconsistent with the Act or policy, because it remains open to an adjudicator to interpret that phrase in a manner that allows a psychological disability to be treated in the same manner as a physical disability.
- (64) The Act and policy regarding compensability of physical injury require that the injury arise out of and in the course of employment. There must be some connection between the injury and the employment. As we see it, that connection is, invariably, “trauma” of some type, if the word “trauma” is given a broad definition. Even in the case of activity related soft tissue disorders (“A.S.T.D.s”) such as tendonitis, carpal tunnel syndrome and epicondylitis, which



may arise over time, the Manual contemplates physical injury and/or occupational disease arising from everyday activities performed repetitively, rather than a specific “trauma.” The Manual has thus applied an extremely broad definition of the word trauma to physical injuries and diseases. However, it is in all cases necessary for some event or process to have occurred that caused, either immediately or over time, injury or disease. The application of a broad definition is consistent with the principle that workers’ compensation legislation should be interpreted liberally with the goal of providing compensation for injuries that reasonably fall within its purview.

- (65) In the case of policy item #13.20, an equally broad definition of “traumatically induced” can be applied in the context of psychological disorders. Thus, the phrase “traumatically induced” need not require a single specific incident. There can be a series of incidents that cause psychological trauma, either individually or cumulatively. However, there must be some “trauma” that arises out of and in the course of the worker’s employment.
- (66) This interpretation of policy item #13.20 does not mean that every time a worker becomes upset, worried or concerned about something that occurred at work the psychological distress is compensable. The workplace has always involved complex interpersonal relationships, and it is human nature that interpersonal relationships can create psychological distress. There is not a working person among us who has not, on occasion, gone home from work feeling some negative emotion flowing from events at work. For this reason, we cannot accept that any workplace event or series of events that the worker perceives as a negative emotional experience can fall within the meaning of the phrase “traumatic event.” The event or series of events must be of significantly greater dimensions than the day-to-day tensions that arise in the workplace.
- (67) Compensation is not paid simply because a worker becomes upset, worried or concerned about something that occurred at work. There must be an injury before compensation is payable. Work stressors must involve events that could be considered “traumatic” in the broadest sense of that term, and the result must be injury or disease. This requirement for psychological claims is not different from the requirement in physical claims. For example, many forms of work involve heavy physical labour and at the end of a work shift a worker may be quite tired. However, being tired does not amount to an injury and no compensation is payable for such a state of being. More is required before compensation is payable.
- (68) We consider that there must be an objective assessment of causation in cases of alleged psychological injury, just as there are in cases of physical injuries. In physical injuries there is a determination of whether there was a work related activity or event that could have caused the worker’s condition. A similar objective assessment must be carried out in cases of psychological injury. It is not usually sufficient to rely on the worker’s belief that certain events have caused either a physical or psychological injury.
- (69) Where psychological injury is alleged, an objective assessment is particularly important because a pre-existing or concurrent psychological condition may have an impact on the worker’s perception of events in the workplace. In other words, the worker may perceive the workplace events as traumatic because of his or her psychological condition as opposed to the worker developing the condition as a result of the workplace events. If one accepts that the

events were traumatic simply because the worker perceived them as traumatic, the nature of the workplace events becomes irrelevant. Such a result is inconsistent with the legislation which provides that compensation is limited to those situations where the employment is of causative significance with respect to an injury.

- (70) It will be clear from the foregoing that the assessment necessary in cases of alleged compensable psychological injury cries out for an objective standard. However, given the fact that the legislation does not differentiate between physical and psychological injury, that standard should not be such that a higher standard of causation is applied to psychological as opposed to physical injury. We consider that the following three-step test provides a foundation for consideration of claims of psychological injury:
1. Did the workplace circumstances or events involve unusual stimuli?
 2. If so, were the workplace circumstances or events reasonably capable of causing psychological injury?
 3. If so, were the workplace circumstances or events of causative significance with respect to the worker's psychological injury for which compensation is sought?
- (71) The first requirement is that the workplace circumstances or events involve unusual stimuli.
- (72) The events giving rise to this claim arose in a unionized workplace and concerned "discipline" meted out by the employer and the worker's reaction to it. The worker also gave evidence that he was upset by the employer's challenge to his credibility in the hernia claim, and that he was upset and angry at fellow employees and his union whom he perceived as failing to support him or somehow "setting him up" with the employer.
- (73) We view the events as capable of causing psychological distress in the sense described earlier and that the worker perceived them as a negative emotional experience. We accept that the worker was upset, worried and concerned about them. However, we do not consider them "unusual" in the sense contemplated by the three-step test set out above.
- (74) All of the events described by the worker and the employer arose in the context of what can be broadly termed "labour relations." They concern the worker's relationship with his employer, his co-workers and his union. We do not consider that it is appropriate or legally defensible under the current legislative scheme of workers' compensation to rely on the "labour relations" foundation of the worker's claim for psychological distress to automatically preclude compensability. However, the "labour relations" context in which this claim arises is relevant in considering whether the workplace circumstances or events involve "unusual stimuli."
- (75) It is a well-established principle in labour relations jurisprudence that discipline meted out by an employer is meant to be corrective rather than punitive. That is precisely why there is a progression of measures available to an employer, ranging from non-disciplinary coaching and counselling, to verbal warnings, written warnings and suspensions. It is only in serious employment offences or where a worker has not responded to previous corrective measures

that termination of employment results. Even then, the discharge is subject to the grievance procedure and an arbitrator has the jurisdiction to reinstate a worker when discharge is found to be an excessive response on the employer's part. That is what happened in this case.

- (76) The disciplinary process in a unionized environment is neither unusual nor does it leave the worker without recourse. There are many instances where an employer's view of events and the necessity for or extent of discipline will not accord with the worker's and/or the union's. There are also instances where the union will not support a worker's assertion that the discipline meted out by the employer was excessive. That is what appears to have happened in the worker's case with respect to the one day suspension he received for staying home due to snow conditions.
- (77) We accept that the worker was unhappy with the events at work. We have no doubt that disciplinary measures taken by an employer can create psychological distress. In the absence of evidence to the contrary, we also accept the opinions of the worker's physicians that he suffered from a major depressive episode. We acknowledge Dr. M's opinion that the employer's "harassment" of the worker caused the depression. However, it is apparent from the exchange of telephone calls and correspondence that occurred between the employer and Dr. M after the worker's reinstatement that Dr. M based his earlier opinion entirely on the worker's description of the events. He believed that the worker was treated differently than his fellow employees, and not "impartially," or that the worker was subjected to some form of harassment. In his letter dated June 20, 1996, Dr. M states he now has the employer's side of the story. He notes that he confronted the worker with the employer's concerns about behaviour, attitude and performance and that the worker was "the only one who can control his behaviour and the only one who can change it." Dr. M had based his opinion on his understanding that the worker was subject to an unusual course of action by the employer. Although it is apparent that the worker's relationship with his employer deteriorated over a period of time, we do not find that the employer's actions went beyond the normal and expected labour relations actions such that they were unusual. We also do not find that the worker was treated less than impartially or differently from other employees.
- (78) Although the employer was actively engaged in attempting to correct the worker's performance problems, and both the employer and the worker were frustrated by the situation, there is no evidence that the employer singled out or "harassed" the worker or treated him less than impartially. It may well be, as was found by the arbitrator, that the first time the worker was discharged the employer's response was, in a labour relations context, excessive. However, that is precisely the reason for the grievance procedure in a collective agreement. In the normal course, grievances are not unusual in a unionized workplace. There may be instances where the employer's actions become "unusual" in the sense contemplated by the test. However, in our view this is not one of those instances.
- (79) In making these findings we have considered whether the employer overstepped the boundaries of normal labour relations practice and into the realm of "harassment." The term "harassment" is used to describe a wide range of conduct, ranging from criticism that is perceived as unjustified to sexual harassment. We consider that many varieties of harassment, if proven, may well constitute an unusual and traumatic event and may well be considered

reasonably capable of causing psychological injury. However, we cannot find on the evidence that the employer “harassed” the worker such that the course of events constituted an unusual stimuli. The arbitrator in the proceeding regarding the worker’s discharge found that the employer had cause for discipline when the worker was discharged, although discharge was an excessive response. Although the arbitrator reinstated the worker, he also refused to award the worker full back pay, in part because the worker was “to a considerable extent the author of his own misfortune.” The arbitrator was referring to the worker’s statements to co-workers about going on stress leave, which reasonably led the employer to question that the worker was truly ill. Consequently, the evidence does not support a finding that the employer “harassed” the worker.

- (80) Given our finding on the first step of the test that the workplace circumstances or events did not involve unusual stimuli, it is not necessary to proceed to the second and third steps.
- (81) The worker’s appeal is denied. His major depressive disorder did not arise out of and in the course of his employment, nor was it due to the nature of his employment.

Editor’s Note: This decision has been edited for publication and for the purposes of complying with the Freedom of Information and Protection of Privacy Act, R.S.B.C. 1996, c. 165.

