Decision of the Appeal Division

Number: 00-1682
Date: October 26, 2000
Panel: Marguerite Mousseau
Subject: Whether Worker Suffered Psychological Impairment Constituting a Personal Injury

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(1) The worker is appealing *Workers' Compensation Review Board* (the "Review Board") findings dated October 18, 1999 which confirmed a claims adjudicator's decision as set out in a letter dated May 30, 1997.

(2) The Review Board found that the worker had not suffered a personal injury with respect to stressful events occurring in her workplace in April/May 1997.

(3) The jurisdiction of the Appeal Division in an appeal such as this derives from sections 91(1) and 96(3) of the *Workers Compensation Act* (the Act). In addressing the appeal, the Appeal Division has the discretion "to initiate and to conduct a full enquiry into all of the issues arising out of an appeal once the matter is before it" (governors' Decision No. 75, 10 *Workers' Compensation Reporter* 753).

Issue(s)

(4) The issue is whether the worker's symptoms on April 26, 1997 constituted a personal injury arising out of and in the course of her employment.

Background

(5) The worker was employed as a registered nurse. On April 9, 1997 she was involved in a verbal altercation with a co-worker. On May 8, 1997 the worker submitted an application for compensation. She described her injuries as "anxiety" and "undue stress" and gave April 9, 1997 as the date of injury. In describing the cause of the injury the worker said that she was "the victim of workplace harassment." She said that she had followed the appropriate procedures and that the person in charge of receiving harassment complaints "did not follow the hospitals [sic] own guidelines on workplace harassment." She indicated that reports were attached. She said that she had last worked on April 25, 1997.

(6) The first aid report submitted with the employer's report of injury or industrial disease states that the worker phoned the first aid attendant, from home, on April 26, 1997 and informed her that she was having "stress problems related to her work last night." The report states

that the worker indicated she could not work for the two nights and that she would be seeing her physician.

(7) One of the reports attached to the worker's application for compensation is a report to the "Hospital Officer in Charge of receiving Workplace Harassment Complaints" (the "officer") regarding the verbal altercation on April 9, 1997. In this report, dated April 15, 1997, the worker described the altercation and stated what action she wanted from the officer.

(8) The worker also attached a second report, dated April 15, 1997, written to the "Patient Care Manager" recommending that training be implemented to inform her co-workers and her supervisor as to how they should respond when such altercations occur.

(9) A third document attached to the application for compensation involves a further report to the officer. In this report, dated April 26, 1997, the worker expressed dissatisfaction and distress with actions taken by the officer after she had received the complaint. She was particularly upset by a meeting, which the officer held with other staff on the ward in the worker's absence, in which the altercation and subsequent complaint were discussed. The worker had been informed, by co-workers, of a number of statements made about her at this meeting which were very hurtful. In addition, after this meeting, which she felt involved a significant breach of confidentiality, the worker stated that she was ostracized by the rest of the staff.

(10) The worker set out her demands regarding the manner in which the investigation should be conducted and the outcomes that she was prepared to accept.

(11) In a letter dated May 30, 1997 the claims adjudicator informed the worker that her claim was not accepted on the basis that it stemmed from labour relations matters.

(12) The worker appealed this decision to the Review Board, which denied the worker's appeal on the basis that the evidence did not substantiate a finding that the worker had suffered a "personal injury."

(13) According to a letter, from the worker's representative to the worker's physician, dated September 3, 1998, the worker "was disabled from work on April 10, 26, 27, and May 5, 6, 7, 8, 1997. She was able to return to work after May 8, 1997, when the employer arranged for her to transfer to a different work area. [The worker] was again disabled from approximately August 7, 1997, to February 14, 1998, when the employer transferred her back to the troublesome work area."

Law and Policy

(14) Section 5 of the Act provides:

> **5** (1) 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.

(15) Sections 29 and 30 of the Act provide that compensation is payable for temporary total or temporary partial disability so long as the disability lasts.

(16) The Act does not define the terms "personal injury" or "disability." The definition of personal injury provided in the policies at item #13.00 of the *Rehabilitation Services and Claims Manual* (the Manual) describes personal injury only in terms of physiological change. There is no definition to assist in determining whether psychological/emotional experiences amount to a personal injury.

(17) Section 13.20 of the Manual provides:

> "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.

(18) The policies do not provide a definition of impairment.

Evidence, Reasons and Findings

(19) According to the policy noted above a psychological "personal injury" is defined as traumatically induced psychological impairment. The interpretation of the term "traumatically induced" has been considered in several recent Appeal Division decisions. Typically, in these decisions the panels have concluded that this term must be interpreted very broadly in accordance with section 5 of the Act. In addition, it has also been concluded that there is no basis in law or policy for denying compensation for traumatically induced psychological impairment on the basis that the traumatic incidents involved labour relations matters.

(20) The first issue though, is whether the worker has suffered psychological impairment. If it is found that there was psychological impairment, consideration is given to its cause; that is, whether it was traumatically induced in relation to work events.

(21) The medical evidence of the worker's condition consists of medical reports submitted to the Board by her physician, Dr. B., and one of his associates, Dr. H., as well as a medical-legal report provided by Dr. B. in response to a request from the worker's representative.

(22) Dr. H. submitted the first report to the Board. He indicated that he had first seen the worker on April 26, 1997. He briefly outlined that the worker had charged a co-worker with verbal harassment and that subsequently (on April 25th) the investigator had held a meeting with staff including the "harasser" but not the worker. Dr. H. states; "She was ostracized by co-workers and eventually told of the meeting. She is very distressed emotionally & unable to work till situation rectified."

(23) Dr. H. diagnosed "acute stress reaction." The treatment plan consisted of a prescription for 15 tablets of Lorazepam.

(24) The second report, submitted by Dr. H., was based on a visit on May 1, 1997. He stated that the worker was "still not sleeping, restless, agitated." He also noted, "symptoms augmented by conflict at home with husband. Will be getting psychotherapy thru psychologist contracted for employer. Awaiting meeting with union rep & harassment committee." The treatment plan consisted of a prescription for ten tablets of Imovane (7.5 mg).

(25) Dr. B. saw the worker on May 5, 1997. He summarized the events at work and stated that he advised the worker that the Board might not accept her claim because "stress is generally not a compensable condition." However, he also noted that the employer had advised her to seek workers' compensation. He stated: "Meanwhile she's still quite distressed & will be seeing a counsellor."

(26) In the subsequent report, dated May 13, 1997, Dr. B. stated that the worker was "Angry & Frustrated But Not Depressed" [reproduced as written]. He said that he had advised the worker to return to work but not on her usual ward.

(27) In the next report, dated May 22, 1997, Dr. B. described the worker as "still quite frustrated" and he recommended that she continue to work on a different ward until the situation was resolved. In a report, dated May 29, 1997, Dr. B. indicated that the worker continued to work on a different ward and that she was "still frustrated & upset."

(28) The next and final report from Dr. B., dated September 2, 1997, states that the worker has asked him to continue sending progress reports. He states; "Has been off work since August 15/97 Due to ongoing conflict in work place." He notes "Stress Related Psychological Distress" and "No Specific Treatment." He also noted that the worker was awaiting the outcome of the grievances she had submitted and that she was seeing a counsellor.

(29) In the medical legal report, dated September 8, 1998, Dr. B. states that he has certification and fellowship in family medicine and a diploma in sports medicine. In response to the representative's question as to his diagnosis of the worker's condition, Dr. B. stated:

> It was clear to me that [the worker] did suffer a "personal injury" that was traumatically induced. The traumatic incident was the verbal abuse and threats she received from the male co-worker. This psychological trauma was further enhanced by the employer's refusal to adequately reprimand the male co-worker. In fact, [the worker] ultimately was forced to move to another area of the hospital to work. She also missed a considerable period of time from work. The "personal injury" was a psychological and emotional injury and the main symptoms were that of anxiety and depression. The treatment primarily involved counselling, although she did have some mild tranquilizers early on.

(30) It is unclear who provided the counselling mentioned by Dr. B. or whether the worker did, in fact, receive any counselling. Although Dr. B. made references in his progress reports to the worker receiving counselling from the employer's counselling service, the worker's report of April 26, 1997 indicates that she chose not to avail herself of this service.

(31) In this detailed report, in which the worker described the workplace issues, she stated:

> Because of the reception of my co-workers on last night's shift, I have advised my Union Representative, [name of representative], of my observations and he has suggested that I not return to work. I have accepted his advice and contacted the Occupational Health Nurse, [name of nurse], and she had advised me that I may wish to seek the assistance of the Employee Assistance Program because of the *undue distress* of this entire affair. In fact, she quite properly asked me if I was "**suicidal**". While I am certainly not suicidal, I can disclose that "anger" and "hurt" do not adequately describe the emotions I hold as a result of these events. I am most appreciative of her advice and have opted to seek the counsel and treatment of my family physician . . . Words cannot express my outrage at this moment of the consequences of the public meeting that took place without my knowledge, and in the exact opposite spirit in which I was asked to keep the matter confidential. [reproduced as written]

(32) It is difficult to set a standard or the evidentiary criteria for establishing whether psychological symptoms amount to psychological impairment. But, factors which should be considered include: the diagnosis, the qualifications of the person making the diagnosis, the treatment provided, and whether the evidence substantiates that the worker is or was disabled due to the condition.

(33) In this case the worker has not been diagnosed with any psychological disorder recognized in the Diagnostic and Statistical Manual of Mental Disorders, 4th ed. (D.S.M.-IV). This is not to say that compensation is only payable where a D.S.M.-IV diagnosis has been provided by a professional qualified to make such a diagnosis. But, it does assist in distinguishing between symptoms of distress and anxiety which are a normal response to a stressful situation and a response which amounts to a disabling injury.

(34) The workplace is a source of numerous stresses stemming from a variety of sources from workload to interpersonal conflict. Most people, at one time or another in their work life, experience anger, anxiety and a number of uncomfortable feelings which do not disappear simply because the workday ends. But, feelings of anger, frustration, distress, stress and anxiety, stemming from workplace events, are not sufficient to establish a basis for compensation.

(35) In addition to the lack of a diagnosis of a recognized mental disorder, there has been no psychologist or psychiatrist involved in either the diagnosis or treatment of the worker. A family practitioner, such as the worker's physician, will no doubt have some degree of expertise in recognizing psychological distress and has the qualifications to provide some level of treatment. But, the opinion of a specialist qualified to make a psychiatric diagnosis, particularly when supported by an appropriate assessment, is usually more persuasive with respect to the nature and the extent of a psychological impairment.

(36) Finally, I have considered the evidence overall and whether it supports a finding that the worker was disabled due to psychological injury. The contemporaneous medical evidence does not reveal disabling symptoms. As noted above, the physician's report of May 13, 1997 specifically states that the worker is angry and frustrated but not depressed.

(37) In addition, the most comprehensive report submitted by the worker in support of her application for compensation is dated April 26, 1997. This is also the date when the worker first became disabled according to the physician's first report. In this report the worker describes her own state of mind as, "complete distress," "outrage," "greatly 'inconvenienced'," and "incensed."

(38) These statements as to her state of mind are consistent with those made by her physician. In my view, these feelings of anger and distress do not constitute psychological impairment. In the absence of a diagnosis of a mental disorder and a lack of evidence to substantiate that the worker was psychologically impaired I am unable to conclude that the worker suffered a personal injury arising out of and in the course of her employment.

(39) The worker's appeal is denied.

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.*