

Decision of the Appeal Division**Number: 2001-0574****Date: March 26, 2001****Panel: Marguerite Mousseau, Randy Lane, Teresa White****Subject: Whether Workplace Stress Constitutes a Personal Injury Arising Out of and in the Course of Employment**

PERSONAL INJURY (ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT) (STRESS) – Worker's claim for workplace stress denied – Review Board denied worker's appeal finding insufficient medical evidence to establish causal relationship between disability and worker's employment – Appeal Division adopted approach developed in previous decisions to determine whether worker suffered a traumatically induced psychological impairment – Negative emotional responses to workplace stress do not fall within the meaning of "psychological impairment" – Physician's diagnosis should be based on objective psychological or psychiatric assessment founded on recognized diagnostic criteria – Medical evidence in this case insufficient to support finding of psychological impairment – Worker appeal denied.

Law: WCA (1996): s. 5(1)**Policy:** Decision No. 102, 2 *Workers' Compensation Reporter* 25; RSCM: #13.20, #22.33, #32.10, #32.20; Discussion Paper, 10 *Workers' Compensation Reporter* 257**Decisions:** Dowling v. Prince Edward Island (Workers' Compensation Board) (1995), 7 C.C.E.L. (2d) 157 (P.E.I.C.A.)**Worker:** manager

Workplace Stress [worker appeal (rev. brd.)]
Appeal Division Decision No. 2001-0574

17 *Workers' Compensation Reporter* 347

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- (1) The worker is appealing findings of the Workers' Compensation Review Board (the "Review Board") dated May 4, 2000 which confirmed a decision by a case manager conveyed in a letter dated July 15, 1998.
 - (2) In that letter the case manager informed the worker that his "depression/stress/anxiety" which had been attributed to "increasing stress and workload" was not compensable under the policy described in Decision #102 of the *Workers' Compensation Reporter* series.
 - (3) The Review Board found that there was insufficient medical evidence to establish a causal relationship between the worker's disability and his employment. The panel also found that there was no evidence of work related trauma which would establish the occurrence of a personal injury arising out of the employment. The panel found that the worker's circumstances came within the policy situation described in Decision #102 and there was no basis for making an exception to the policy in this case.

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- (4) 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)

- (5) The issue on this appeal is whether the worker’s psychological condition in June/July 1998 constituted a personal injury arising out of and in the course of his employment.

Background

- (6) The worker has been employed with the employer, a retail food outlet, since November 13, 1979. On April 14, 1991 he became a first assistant manager. On June 12, 1998 the worker stopped working citing disability due to his psychological condition as his reason for not working.

- (7) The worker, in his report of injury or occupational disease to the employer, dated June 26, 1998, describes the cause of his injury as “Excessive work demands and expectations – ongoing.” He states:

Excessive work load expectations – resulting in Depression/Anxiety as of April 2nd. I was under [Dr. C.’s] care and on an anti-depressant with the dose having been increased 3 times over the period to when I saw [Dr. B.]. Over the previous 2 months I’ve experienced a 22 lb. weight loss.

- (8) The employer’s report of injury or occupational disease, also dated June 26, 1998, indicates that the worker had first reported this problem to his supervisor on April 2, 1998.
- (9) In his application for compensation, dated July 6, 1998, the worker indicated that he could not specifically identify a date of injury other than Spring 1997 because he did not have documentation of his meeting with the district manager when he had first raised his concerns regarding workload.
- (10) The worker also indicated that he would be returning to work on July 12th but he had a scheduled vacation from that date to July 18th. The worker returned to work on July 18, 1998, to a non-management position as a general clerk and he has been working in that position since then.
- (11) The case manager informed the worker, in a decision letter dated July 15, 1998, that his claim for workers’ compensation was denied. The manager referred to Decision #102 (a decision of the former commissioners), then said: “In other words, the stressful effects of being unable to meet the demands of employment are not compensable.” He stated that a condition of physical and emotional exhaustion was not considered a personal injury nor was it recognized as an occupational disease.

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- (12) The worker appealed this decision to the Review Board. In its findings, dated May 4, 2000, the Review Board panel found that there was insufficient qualified medical evidence to establish a causal relationship between the worker's employment and his disability and "pursuant to the application of the Board's general policy concerning psychological disability arising through generalized stress in the workplace over time, the worker's claim must fail." The panel found that the worker's circumstances fell within the situation envisioned by the former commissioners in Decision #102 and there was no basis for making an exception to that policy.
- (13) The worker is appealing this decision to the Appeal Division. In a submission dated September 28, 2000 the worker's representative submitted that the worker's diagnosed anxiety, depression and stress was a compensable injury under section 5(1) of the Act.
- (14) She submits that there is adequate evidence that the worker suffered a disabling psychological injury and that the central issue is whether the injury is compensable under the existing law and policy.
- (15) The representative submits that there were a number of events in the workplace, specifically: "streamlining with concomitant increase in duties, new policy and marketing strategies, transfer of manager and illness of the second assistant store manager." She submits that these stressed the worker's psyche in the same manner that "added force would stress a bone." She submits that a resulting injury to the bone would be compensable and that an "injury to the brain is no different."
- (16) The representative states: "The simultaneous removal of both the store manager and the second assistant manager, and a poorly trained third man, leaving him in the position of taking on the responsibility of three worker, (sic) while at the same time trying to implement sweeping changes in the workplace, are clearly identifiable, significant, and traumatic in the psychological sense."
- (17) She submits that the worker had no difficulty coping with his regular duties but he experienced unexpected and unaccustomed events at work that constituted trauma and took him outside of the application of Decision #102. The representative has also suggested that these events could be viewed as accidents which would bring into play the presumption in section 5(4) of the Act.
- (18) The representative states: "... no one has any doubt that were it not for the out of the ordinary and totally impossible expectations placed on him, he would not have become disabled."

Law and Policy

- (19) The following are the relevant provisions of the Act:

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.

6 (1) 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.

1 “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;

(20) The following are the relevant passages from the *Rehabilitation Services and Claims Manual* (the “Manual”):

Item #13.20 Psychological Impairment

“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 #22.33 Psychological Problems, Chronic Pain Problems

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.

Item #32.10 Psychological/Emotional Conditions

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 conditions as occupational diseases related to employment.

Item #32.20 Physical and Emotional Exhaustion

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.

- (21) *Workers' Compensation Reporter* Decision No. 102 (1975), 2 *Workers' Compensation Reporter* 25 ("Disablement through Exhaustion"), is the decision referred to under item #32.20. That decision involved a claim for compensation for a state of physical and emotional exhaustion alleged to have been caused by the stress of work.
- (22) The worker had been employed at a residential treatment centre for children with behaviour disorders for six years. The worker said that the nature of the work itself was very demanding. In addition, there had been a number of changes in treatment methods during that time and the program had expanded. The worker said that the work had been exhausting and that her fatigue had accumulated over time. She said that she was becoming edgy, nervous, depressed and depleted in performing just her usual duties. Her doctor had diagnosed "physical and emotional exhaustion due to the nature of my work." He had prescribed approximately two months off work.
- (23) In their decision the former commissioners stated that a state of 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 construed and understood by the Board. However, the commissioners went on to consider whether this kind of disablement should be recognized by the Board as an industrial disease.
- (24) The commissioners concluded that the recognition of exhaustion as an industrial disease would not be practicable or sound policy. They noted that every occupation involves some physical and emotional demands and that the onus was on employers to choose appropriate workers and to create work conditions which would prevent the job from having debilitating effects.
- (25) In the discussion paper "Psychological Disabilities and Workplace Stress" (10 *Workers' Compensation Reporter* 257) the former chief appeal commissioner identified concerns regarding the ambiguity in the policies and the absence of a statutory basis for making a distinction between traumatically induced psychological injuries and psychological injuries arising over time.
- (26) The worker's representative has also provided a 1995 decision of the Prince Edward Court of Appeal in support of the worker's appeal. In *Dowling v. Prince Edward Island (Workers' Compensation Board)* (1995), 7 C.C.E.L. (2nd) 157 the court dealt with the compensability of a psychological condition developing over time. The applicable legislative provisions for compensation were similar to those in the Act and a policy had been applied which was similar to #13.20 of the Manual, as set out above. The worker had claimed for a reactive depression caused by lengthy exposure to stressors and tension at work.

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- (27) The worker's claim was denied under the "Psychological Conditions Policy" which said that a psychological condition was compensable if it was "the direct result of a psychologically traumatic event in the workplace that is both excessive and unusual." The *Workers Compensation Act*, S.P.E.I. provided that compensation was payable where "personal injury by accident arising out of and in the course of employment is caused to a worker."
- (28) The court found that there was nothing in the definition of the word accident which required that a psychological condition be the direct result of a psychologically traumatic event. The court found that the policy was invalid because it constituted an "unauthorized narrowing of the definition of 'accident' and of the scope of compensation provided by the legislators."
- (29) The worker's representative also referred to two Appeal Division decisions in her submission to the Review Board. The decisions of the Appeal Division do not constitute policy but they may be used to provide some guidance in the interpretation of policies. The Appeal Division has issued a number of decisions in which the panels have discussed approaches to interpreting and applying the policies relating to psychological impairment in a manner consistent with the provisions of the Act. Many of these have considered the meaning of the term "traumatically induced" in policy item #13.20 and have concluded that it should be given a broad interpretation in keeping with the language of the Act and the remedial nature of workers' compensation legislation.
- (30) It has been suggested that "unusual" events resulting in psychological impairment would be sufficient to constitute "traumatically induced psychological impairment" under item #13.20. It has also been suggested that the question of whether there were unusual events in the workplace, which could have caused psychological impairment, should be objectively determined in keeping with the legislative requirements that an injury arise out of the employment.
- (31) Since psychological disorders frequently affect perceptions, some objective assessment of whether workplace events are "unusual" is required to determine whether events in the workplace caused a psychological impairment as opposed to the worker perceiving events in the workplace as traumatic or unusual because of the psychological impairment.
- (32) The first question then in considering whether a worker has suffered a traumatically induced psychological impairment is whether the evidence supports a conclusion that the worker has suffered a psychological impairment or injury.
- (33) Once the evidence establishes that some form of psychological impairment or injury exists, then consideration is given to whether this impairment was "traumatically induced" in order to determine whether it arose out of the employment. The following questions for assessing whether the psychological impairment was traumatically induced has been used in a number of Appeal Division decisions:

Did the workplace circumstances or events involve unusual stimuli?

Were the workplace circumstances or events reasonably capable of causing psychological injury?

If so, were the workplace circumstances or events of causative significance with respect to the worker's psychological condition for which compensation is sought?

- (34) Although the Appeal Division is not bound by its previous decisions, it is recognized that consistency in decision making promotes fairness and certainty. Accordingly, we have used the approach described above in considering the worker's appeal.

Reasons and Decision

- (35) The first question is whether the worker suffered a psychological injury.
- (36) The medical evidence with regard to the occurrence of a psychological injury includes the clinical records of Dr. C., the worker's physician, from November 1994 to April 2000, which the worker's representative submitted to the Review Board; the reports that the worker's physician submitted to the Board; and a letter submitted to the Board by the worker's physician at the worker's request.
- (37) In her clinical records the worker's physician first noted psychological concerns in an entry dated October 10, 1997. This entry refers to anxiety and queries early depression. Dr. C. indicated that the worker should try a one-month trial course of St. John's Wort. She noted that, if the symptoms continued, the worker may need Paxil.
- (38) Subsequently, the worker saw his physician on October 30, 1997, December 15, 1997 and February 2, 1998 for physical problems but none of the entries for these visits refer to anxiety or depression.
- (39) The next reference to psychological concerns is found in an entry dated April 2, 1998. Dr. C. notes that she provided "prolonged counselling" regarding increased depression and that the worker has decreased interest, mood and concentration and is irritable. She notes "++stress at work." She indicates that she has prescribed Zoloft.
- (40) In the next entry, dated April 17, 1998, Dr. C. noted that the depression was "slightly improved" although she also noted "sleep still not great" and that the worker's concentration was still reduced.
- (41) On May 1, 1998 she noted that the worker's appetite was improving, but his sleep was not back to normal, there was still some lethargy and he had reduced motivation. She notes "work remains stressful but he is coping better with the demands" and that the depression is "slowly improving."
- (42) On May 19, 1998 Dr. C. noted that the worker was "feeling no better no worse." She noted that the worker was still not back to normal but overall he had improved. She noted that his sleep remained disrupted but his appetite was improving. She also noted that there had been "no further improvement" in the depression.

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- (43) The next entry, dated June 11, 1998, is in different handwriting. Presumably this and subsequent entries were made by Dr. B. who replaced Dr. C. while she was on maternity leave. Dr. B. noted that the worker had lost twenty-two pounds in the last two months. She noted that there had been no improvement in the worker's emotional state, that his job was "too stressful," that there were "too high expectations" and that the worker was working sixty hour weeks. She indicated that she had had a "long discussion" with the worker.
- (44) Dr. B.'s assessment of the worker was provided as "stress/anxiety/depression" and she indicated that she was recommending one month "medical leave." She also noted that she supported the worker's decision to change to a clerk's job.
- (45) Dr. B. submitted a physician's first report to the Board at this time in which she provided the information described above. She described the worker's statement of what had happened as: "Increasing stress and workload causing stress & depression." She described his complaints as "weight loss, depression, insomnia, stress, dreading going to work." She also indicated that "depression" had been diagnosed in April and the worker was being treated with Zoloft and that his physical examination was normal. She provided a diagnosis of "depression/stress/anxiety" and indicated that the worker was disabled from working as of June 11, 1998. She also noted that the worker would likely be fit to return to work as of July 12, 1998.
- (46) In the clinical entry, dated June 22, 1998, Dr. B. noted that the worker had stopped taking the Zoloft on June 12, 1998. She noted that he was not sleeping well but he felt that his state of mind was "stable." She noted concern regarding the job change and that the worker "hasn't decided what to do yet." Her assessment was "anxiety – stable."
- (47) In her report to the Board, based on that visit, Dr. B. stated that the worker was "Feeling better, appetite good, weight increasing" and that he now had insomnia. She described him as "mentally stable and somewhat improved" and she noted that he could likely return to work on July 11, 1998.
- (48) The chart note entry for July 2, 1998 notes only "WCB." The physician's progress report of that date describes the worker's current symptoms as "having trouble sleeping." The diagnosis is "depression, anxiety, insomnia." Dr. B. also noted that the worker is able to return to work full time on modified duties as a clerk. She also notes that he will not go back to work as an assistant manager "until situation improves." She also indicates that she has prescribed Zoloft again.
- (49) A second report submitted for the same date describes the worker's symptoms as: "Feels okay. Still having trouble sleeping. Taking Gravol to help sleep." Dr. B. indicates that the worker "Plans to go back to work as a clerk on afternoon shift – full-time position." She also notes that he is returning to work on July 11, 1998 but has holidays from July 12, 1998 to July 18, 1998.
- (50) The chart note entry for July 16, 1998 notes that the worker is going back to work on Monday as a clerk on the afternoon shift. The report to the Board of the same date notes that the worker is still not sleeping well, that he has returned to work as a clerk, and that she has increased the dosage of Zoloft to address the insomnia.

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- (51) In addition to these records there is also a letter from Dr. C., the worker's usual physician, who was on leave from her job when the worker stopped working. This letter provides a summary of the information provided in the chart notes. Dr. C. also notes that she saw the worker again in October 2, 1998 and she said that she had noted at that time, that, "his condition had greatly improved since he had relinquished his position as assistant manager, and was now doing more general work . . ." She also said that when she saw him at that time "he had no evidence of depression or anxiety, and has remained depression and anxiety free since that time."
- (52) The worker has also given evidence regarding his symptoms in April 1998 and onwards. At the Review Board oral hearing the worker's representative asked the worker what had led him to seek medical attention for depression in April 1998. The worker said that he recognized that he was showing symptoms of clinical depression as a result of something he had seen in the media, either in print or on television. He said that he investigated clinical depression on the internet and that he read a number of articles and completed some questionnaires. He said that he came to the conclusion that he was showing signs of depression and that he should seek help.
- (53) The worker said that his physician prescribed Zoloft at that time to help him cope with his feelings of anxiety and depression and that his physician had also offered him an opportunity take time off work. The worker said that he had not taken time off at that time because he had already scheduled a vacation to Disneyland and he felt that the break would help him to refocus when he returned to work.
- (54) In an undated letter written by the worker and submitted to the Review Board the worker also noted that his physician "on two or three occasions offered me the opportunity to take some time off work" between April 2, 1998 and early June 1998. He also said: "Taking time off was not an option that I wanted at that time. I wanted to work through this!"
- (55) This letter is addressed to someone at work whose position is not indicated. It starts with a portion of a letter that was written on April 2, 1998 and the worker states that he had taken this letter with him when he went to see his physician at that time in order to "help explain the situation at work." The remainder of the letter was apparently written while the worker was off work between June 11, 1998 and July 16, 1998.
- (56) In the first portion of the letter the worker describes some of his feelings with respect to his work. He states:

We recently had our presentation on the Superior Service program. Unfortunately I did not leave this meeting charged, ready to tackle it anew.

I left it depressed, knowing that although I have only appeared negatively once on any shop since the birth of this program I could improve in my dealings with the customer. Also, that with the proper time and effort spent I could help other employees. This is hard to balance and stay focused, when the specials are empty, the bakery is wiped, we are out of yogurts, they need all help up front

and schedules have to be posted by 6:00, it's 4:00 now and you've been to [sic] busy to even start them. Where's the satisfaction or pride in that. It becomes stressful and when it can't be resolved it becomes depressing.

The job is one that one time I enjoyed and took pride in. It is again having a negative affect on my health and my family life. Through the long hours I have been putting in and seeing little light from under the pile – my usually positive attitude and temperament diminishes. Although I try to put this all aside at work, I am sure I am not successful in doing so all the time. It will occasionally show through to customers and staff as it does to my family.

- (57) All of this evidence indicates that the worker had a heavy workload and that he was feeling anxious, stressed and depressed about this workload and his ability to adequately perform his job in the circumstances. We have no difficulty accepting that this reflects his situation at work.
- (58) Workers have always been required to function within complex systems which challenge individuals at many levels. Most management jobs require an individual to make numerous decisions concerning the priority of tasks and utilization of resources, including the manager's own time. These jobs also frequently involve periods where long hours of work are required due to implementation of new programs and/or staffing issues. Varying degrees of fatigue, anxiety, worry, frustration and other negative experiences and/or emotions are unavoidable when one is responsible for the successful implementation of programs and accountable for the productivity of others.
- (59) We consider that, in common usage, workplace "stress" is generally defined to mean workplace events that give rise to negative emotional responses. Using that commonly understood meaning, it is clear that "management work" is inherently stressful. But, there is a distinction between experiencing negative emotional responses and suffering a psychological injury giving rise to disability. The fact that a worker has suffered a negative emotional response does not necessarily mean there is an injury. There must be a sound evidentiary basis for concluding a worker has actually sustained a psychological injury.
- (60) Workplace stress as defined above can and does result in anxiety, sleep disturbances, job dissatisfaction, difficulty concentrating, short temper and a myriad of physical symptoms such as headache and upset stomach. There are many other forms of "stress" that can have similar effects. These negative emotional responses to stress are common. They are not, without more, "injuries" and we do not consider them to fall within the meaning of "psychological impairment" as set out in policy.
- (61) The term "depression" has also become a term of such common usage that it is used to describe anything from a sense of discouragement to a significant, disabling and chronic psychiatric disorder. Such common usage of this term erodes its meaningfulness as a description of injury. As an example, the worker himself, in the letter noted above, said he was "depressed" when he left a meeting and that the inability to resolve competing pressures became "depressing." At the Review Board oral hearing he said that, after doing some research, he concluded he had symptoms of "clinical depression."

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- (62) We recognize that a D.S.M. IV diagnosis is not a requirement for compensation. However, in this case, the diagnosis depression/stress/anxiety is primarily a description of symptoms or reactions as opposed to a medically recognized entity. "Stress" is not a medical diagnosis. Neither is "anxiety," and as noted above, "depression" is used to describe a wide-range of feelings and conditions. In a case such as this, where it is claimed that these symptoms and/or emotions amount to a psychological injury it is critical that the physician's diagnosis be based on an objective psychological or psychiatric assessment founded on recognized diagnostic criteria.
- (63) We do not consider that an assessment of this nature necessarily requires the involvement of a psychiatrist or psychologist. But, where it is claimed that symptoms such as those described in this case amount to psychological injury and these symptoms are not preceded by any obvious traumatic event, the medical opinion and diagnosis must reflect a considered evaluation or assessment of the symptoms reported and a reasoned basis for concluding that the symptoms constitute an injury.
- (64) We accept that the worker was very anxious about his work. But, when it is claimed that the stress related to workload has resulted in psychological injury there must be sound medical evidence substantiating this claim because of the difficulties noted above. We consider that the evidence presented here is not sufficient because, in our view, the symptoms described do not, in themselves, constitute an injury. And, there is no objective psychological assessment that would lead us to the conclusion that an injury has occurred in this case based on the symptoms described.
- (65) The nature of the diagnosis and of the counselling provided certainly indicate that the worker was having difficulty coping with his job and that he was considering a change of jobs. But, this is not a basis for entitlement to workers' compensation benefits.
- (66) The medical evidence does not provide the necessary substantive basis for finding that the worker suffered psychological injury giving rise to disability. The evidence indicates that the worker stopped working in June 1998 because he was having difficulty coping with the stress of his job and he needed to step back from the workplace and evaluate his options. We are not persuaded, by the evidence, that the worker suffered from an injury or "psychological impairment" as contemplated by the policy. Thus, it is not necessary to go on to consider the application of the three-step test described above.
- (67) Given all of the above we find that the worker did not suffer a personal injury arising out of and in the course of his employment in June 1998.
- (68) The worker's appeal is denied.

Editors' Note: The names of the parties have been removed for privacy considerations. The text of the decision is otherwise unchanged.

