

Decision of the Workers' Compensation Appeal Tribunal

Number: 2004-02347

Date: May 5, 2004

Panel: Anthony F. Stevens, Vice Chair

Subject: Mental Stress Claim under Section 5.1 — Claim for Mental Stress Denied Because the Events Were Not “Sudden and Traumatic” as Contemplated in Item #13.30 of the *Rehabilitation Services and Claims Manual*

Introduction

The worker appeals the November 13, 2003 decision (Review Reference #2660) of the Workers' Compensation Board (Board). A review officer undertook that decision to confirm the Board's earlier decision of February 3, 2003 to deny the worker's claim for mental stress. The review officer referred to section 5.1 of the *Workers Compensation Act* (Act) and Board policy as outlined in item #13.30 of the *Rehabilitation Services and Claims Manual, Volume II (RSCM)*, and concluded that the circumstances in the worker's January 7, 2003 employment were not equivalent to the required “sudden and unexpected traumatic event” for claims acceptance. In particular, the review officer concluded that Board policy provided an objective test of what constitutes a traumatic event, with there being a requirement that the event generally be accepted as being traumatic and capable of being severely emotionally disturbing. The review officer also expressed concern with the diagnoses of major depression and post-traumatic stress disorder that had been undertaken by the attending physician. Specifically, the review officer noted that in cases such as this it was a requirement that a diagnosis be made that is described in the most recent *American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM)*, such that it was critical that the diagnosis follow objective assessment with regard to established diagnostic criteria. In turn, the review officer noted that according to the *DSM*, symptoms must be present for at least one month in order to diagnose post-traumatic stress disorder, and for at least two weeks in order to diagnose major depressive disorder. In expressing her concern, the review officer noted that the diagnoses were undertaken by the attending physician on January 14, 2003, or only approximately one week after the work event to which the worker's claim was directed.

This appeal was considered by way of an oral hearing convened on April 27, 2004. The worker provided direct evidence and was represented. The respondent employer participated in the appeal and was also represented.

Issue(s)

The issue in this appeal is whether the worker is entitled to compensation for mental stress pursuant to section 5.1 of the Act.

Jurisdiction

This appeal was filed with the Workers' Compensation Appeal Tribunal (WCAT) under section 239(1) of the Act.

Under section 250 of the Act, effective March 3, 2003, WCAT may consider all questions of fact and law arising in an appeal, but is not bound by legal precedent. It must make its decision based on the merits and justice of the case, but in so doing it must apply policies of the Board of Directors of the Board which apply to the case, except in circumstances as outlined in section 251 of the Act.

This is an appeal by way of rehearing, rather than a hearing *de novo* or an appeal on the record. WCAT has jurisdiction to consider new evidence, and to substitute its own decision for the decision under appeal.

Background and Evidence

A clear description of the events at issue is particularly relevant in considering whether the worker was involved in a sudden and traumatic event in the course of her January 7, 2003 employment. There are somewhat differing descriptions of that event on file. On January 7, 2003 the worker was employed as a receptionist with a community service office of a branch of government. The descriptions of the January 7, 2003 work events are as follows:

The worker indicated in her application for compensation that a female client came from an upstairs room at about 3:30 p.m. and asked to speak to a representative. The client then went back upstairs, a representative went up after her, and then later the client and several representatives came back to the reception area. The worker described that the client was "ranting and raving," and the police were called. The worker indicated that after all of that occurred she was upset, she took a breather, and then she returned to her workstation.

The employer described in their report to the Board that an angry client had sat in the waiting area and was "yelling and swearing." The employer indicated that the client was upset and refused to leave the building until the police were called. The employer indicated that the client was in the waiting room for about ten minutes, during which time the worker remained seated at her workstation behind the counter answering phones, while two other employees attempted to calm the angry client down. The employer acknowledged that the worker appeared to have been visibly upset, her hands were shaking, and she left the front office area.

According to the attending physician's initial medical report the worker advised that she had witnessed the assault of a co-worker at work.

During telephone contact with the Board (see claim log entry dated February 3, 2003) the worker indicated that from the conversation that occurred around her on January 7, 2003 she believed that a co-worker had been assaulted upstairs, although she herself did not witness an assault or other violent criminal act. The worker also indicated that she was behind the counter and was not herself threatened, nor did she witness an event that involved death or injury. She said that she could see the client when standing, and was otherwise aware of where the client was when a representative was addressing her.

The worker first sought medical attention on January 14, 2003. The attending physician noted that the worker had previous problems with postpartum depression. The attending physician concluded that the worker had major depression and post-traumatic stress disorder. There was no information contained in that or subsequent reports describing what assessment, if any, had been undertaken to establish those diagnoses.

The Board denied the worker's claim, and provided her with a February 3, 2003 decision in that regard. The case manager who undertook that decision concluded that the worker had not been involved in a sudden and unexpected traumatic event, as contemplated by section 5.1 of the Act and defined by item #13.30 of the *RSCM*.

Subsequent to that decision, a Board nurse advisor contacted the attending physician, who advised that the worker had indicated to him that she had witnessed the incident described on the claim. According to the associated March 20, 2003 claim log entry the attending physician indicated that he did not take issue with the decision of the Board.

In her request for the Board's Review Division to review the February 3, 2003 decision, the worker contended that she had witnessed a traumatic event at work. Her representative undertook submissions to describe that when the client initially came down to the reception area she slammed two gym bags on the counter in front of the worker and looked her in the eye. The worker's representative contended that the worker had been diagnosed with a condition as described in the *DSM*. The worker's representative further asserted that the worker had been in her employment for approximately one and one-half months, she was not expecting there to be violent incidents in her work, and the January 7, 2003 events caused her to feel "pure terror." The submission, therefore, was that the worker witnessed an unexpected event that caused her to feel terrified and shocked, or the state of mind of the type envisaged by item #13.30 of the *RSCM*. The worker's representative also argued that the worker's "threshold" was lowered by the fact that she was recovering from postpartum depression at the time.

The employer's representative supported the decision of the Board. The employer's representative suggested that the further description of bags being slammed on the counter provided by the worker's representative was at odds with the events described on file by the worker. The employer's representative also noted the attending physician's information that he had been informed that the worker had witnessed an assault of a co-worker, and in that way questioned whether post-traumatic stress disorder was appropriately diagnosed. The employer's representative further argued that the events that occurred on January 7, 2003 were not unusual, as he believed it was normal to have such events occur a few times each week.

In the end, the review officer issued the November 13, 2003 decision that is the subject of the present appeal.

At her oral hearing the worker described that she had previously been bumped from an employment position as a receptionist, due to a lack of seniority. She said that she then worked elsewhere as a dispatcher in another employment setting, until she received a call that further work as a receptionist was available in another location. The worker said that she was shown around the new office and where she was to work, but the types of clients that she would have to deal with were not explained to her. Emergency response information was provided to her, which the worker indicated dealt with earthquake preparedness, dealing with a bomb threat, and handling difficult clients.

The worker described her workstation as being, in essence, three tiered. She said that she worked behind a tall counter that was about two feet wide, and from where there was no access to her workstation from the reception area. The worker said that there was a lower portion in that counter that she sat behind, and she indicated that was the second tier of her workstation. The third tier as described by the worker was the actual counter from which she performed her work. The worker noted that she was a tall individual, and suggested that she could see over the tall counter even when seated. The worker said that clients cannot go around the counter to make direct contact with her, although she supposed that someone could go over the counter if they really had a mind to.

The reception area itself, according to the worker, held about 20 people. There was also access to an elevator, which took clients to rooms on the second floor where meetings with family members could occur. The worker also indicated that representatives in that office also provided monetary payments, met with clients, and met with other individuals whose interest was common to the type of work that was performed. The worker indicated that people were always coming in to the office, and that she was their first contact. She said that she advised the representatives at the office when clients had arrived. In addition, she answered phone calls, filed documents, and processed mail.

The worker indicated that she had been employed at that office for about one and one-half months by January 7, 2003. She became emotional when she described a conversation that she had during her first week of work with someone at a hospital. The worker said that the subject matter of that earlier conversation disturbed her, as she was sensitive to matters involving children. The worker indicated that particular conversation was about a sexual assault on a child.

The worker further noted that she had suffered from postpartum depression following the August 2000 birth of her son. She said that she was taking Zoloft on January 7, 2003, but had been weaning off it and was down to 50 milligrams from the 150 milligrams she had taken previously. The worker also suggested that her postpartum depression was not affecting her in her work leading up to the January 7, 2003 work events.

The worker described that around lunchtime on January 7, 2003 the person who usually was also behind the counter with her was not there, as she was on her break. The worker said that one client came in and “spilled his guts” about his child, and his female partner who he described as a drug user and prostitute. The worker said that she found that conversation to be upsetting, but she “worked through it” and continued with her work. The worker said that other people came back from lunch, and she then went off to have her own break.

The worker said that after she returned to her workstation following her lunch break two pre-kindergarten-aged children were taken by a representative to a room upstairs. She said that they were to meet with their parents, who came in separately thereafter. The worker said that both clients went upstairs, and then the female client came back downstairs to ask for a particular representative who was not there at the time. She said that the female client went back upstairs, but sometime later she came out of the elevator into the reception area and started ranting and raving. The worker said that there were two representatives with her at the time. The worker said that the phone then rang, which she answered. She said that she then heard a bang in front of her, and when she looked there had been two gym bags on the middle tier of her workstation. The worker said she did not know who put the gym bags there, but

later the female client retrieved them. The worker also said that the female client continued to rant and rave, and generally not make sense. She said she continued to deal with people on the telephone, and attempted to shield the phone so that the callers were not aware of what was occurring there. She said that she also attempted to remain pleasant on the phone with the callers that she dealt with.

The worker further described that from the conversations of the representatives that were around she ascertained that the female client had an argument with her partner when they were upstairs. The worker noted that if they were in a room with a representative at the time there had been potentially no escape for the representative. She also said that a representative had described that a colleague had been hit by the female client. The worker said that during the time that these conversations were taking place the female client continued to rant and rave, she went outside but re-entered the building, and eventually the police came because they had been called earlier.

On questioning, the worker indicated that she did not see the female client touch anybody. She said that at one point the female client had looked at her, although she did not come over to her. The worker said that the comments of the female client were centred on the fact that her partner was an intravenous drug user, and he used drugs while in front of the children.

The worker described how she felt when all this took place by saying that she was confused, scared, feeling vulnerable, and feeling like she had no control of the situation. The worker said that she did not know what to do, or how to react. She said that the most upsetting thing for her was that she had no control of what was happening in front of her, and that she did not "need to know that stuff." When asked what she meant by that last comment, the worker indicated that she did not have the training to deal with situations such as when a child is sexually assaulted. She also said that she really did not want to know what the female client's partner was doing with his drugs. The worker further indicated that she did not want to hear the discussion being undertaken by the representatives, as it was "like a bombardment of what was happening" that she wanted to stop.

The worker said that she continued to direct the phone calls that came in. She said that she then started to shake and cry, and that a "weight came over me." She said that she had a debriefing the following day at work, and was advised about their employee assistance program. The worker said that she saw a counsellor through that program. She suggested that person indicated that she had post-traumatic stress disorder. She also said that when she saw her doctor, he increased her Zoloft to 100 milligrams, then to 300 milligrams, and finally he reduced it to 200 milligrams. She said that she was also provided with an anti-anxiety medication.

The worker said that she was off work for about two months. She said that she did not want to return to that place of employment, and consequently obtained another receptionist position. The worker said that she did that work for about three weeks, and then accessed another employment position in a library setting. She said she continues in that employment currently.

The worker's representative referred to her previous submission to the Board's Review Division. She argued that the worker had been diagnosed as having post-traumatic stress disorder and major depression, and as such that requirement of section 5.1 of the Act had been met. The worker's representative further argued that the attending physician was qualified to undertake such diagnoses, and there was no valid reason why the diagnoses as made should

be questioned. She also argued that although the worker had pre-existing postpartum depression, that alone was not a sufficient reason to deny the claim. In particular, the worker's representative argued that section 5.1 of the Act still involves the question of causation, and that the "thin skull rule" would still apply in such a determination. In terms of the January 7, 2003 work events, the worker's representative argued that they constituted a "sudden and traumatic event." In particular, she argued that the listing within item #13.30 is not an exclusive list, the worker suffered an acute reaction that came on quickly, and it was the nature of the reaction specific to a particular work event that must be addressed. In that regard, the worker's representative argued that the suggestion by the review officer that there was an objective test was in error, and rather it is the subjective beliefs and individualized reaction that is paramount. As such, the worker's representative argued that the workplace events involved a violent outburst that was out of control. She submitted that event was clearly identifiable, it involved suddenness particularly when the client burst into the room and banged the bags on the counter, and the worker was not otherwise trained to deal with such a situation.

The employer's representative accepted that the nature of the worker's employment was likely stressful. However, she noted that the worker's claim to the Board initially involved the yelling of the client, it subsequently included information about the bags on the counter, and now apparently also includes information related to a child who had been sexually assaulted. The employer's representative noted that the worker had not been directly assaulted, although she said that it was possible that the female client could have gone over the counter if she was inclined to do so. That said, the employer's representative argued that the worker had not been assaulted, she did not witness someone else being assaulted, and there was no sudden and traumatic event as required by section 5.1 of the Act and item #13.30 of the *RSCM*. The employer's representative supports the decision of the Board.

Findings and Reasons

Section 5.1 of the Act provides:

A worker is entitled to compensation for mental stress that does not result from injury for which the worker is otherwise entitled to compensation, only if the mental stress

- (a) is an acute reaction to a sudden and unexpected traumatic event arising out of and in the course of the worker's employment,
- (b) is diagnosed by a physician as a mental or physical condition that is described in the most recent American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders at the time of the diagnosis, and
- (c) is not caused by a decision of the worker's employer relating to the worker's employment, including a decision to change the worker to be performed or the working conditions, to discipline the worker or to terminate the worker's employment.

Board policy at item #13.30 of the *RSCM* states:

“Mental stress” is intended to describe conditions such as post-traumatic stress disorder or other associated disorders. Mental stress does not include “chronic stress”, which refers to a psychological impairment or condition caused by mental stressors acting over time. Workers, who develop mental stress over the course of time due to general workplace conditions, including workload, are not entitled to compensation.

In the worker’s case specifically, I have some difficulty accepting that she had an acute reaction as contemplated in section 5.1(a) of the Act. The worker had been diagnosed as having postpartum depression previously, and was on medication for that condition for quite some time leading up to and including the work events of January 7, 2003. Moreover, and despite the suggestion by her representative otherwise, I tend to believe that the worker was having difficulty of varying degrees during her one and one-half months of employment in that position. In particular, the worker’s evidence was that matters involving children were disturbing to her. I need only note that the nature of the operation that the worker had been employed in was to intervene in matters involving children. It is also apparent from the worker’s emotional display and direct evidence that she had difficulty previously during an earlier conversation with a hospital as the subject matter was an assault on a child. Further, she indicated that prior to her lunch on January 7, 2003 another client talked to her about her child and partner, and she also found that to be disturbing although she was able to shake it off. It is also apparent that the female client after lunch, although ranting and raving, had relayed her concern with the fact that her partner was using intravenous drugs in front of her children. She said that she did not want to hear what the woman was saying, but could not shut her comments off. My point in noting the above is to establish that there are other moments defined in the worker’s employment in that particular setting that suggest she was ill-suited for that type of work given her general concern for the well being of children, and that she had experienced emotional difficulties previously. As such, I am not inclined to accept that the January 7, 2003 reaction was a sudden acute reaction, as has been argued in the present appeal. There appears to be more of a chronic problem with the worker coping in the situations involving children in her employment.

In terms of section 5.1(b) of the Act I accept that her attending physician is a “physician,” as required, and able to undertake the diagnoses at issue. I also accept that the diagnoses that were undertaken by the attending physician are of the type contained in the *DSM*, as is also required. However, it remains appropriate for me to determine whether the diagnoses as undertaken by the attending physician are reasonably established. My concern in that regard is that I have been given no indication on whether the attending physician has experience in undertaking diagnoses pursuant to *DSM* protocol, and what assessment had taken place specifically with respect to the worker. I am also concerned with the fact that the duration of illness in order to establish either a diagnosis of post-traumatic stress disorder or major depression according to *DSM* criteria did not exist when the attending physician undertook those two diagnoses. As a result, I tend to agree with the conclusion of the review officer at the Board that the diagnoses as undertaken by the attending physician are suspect.

I have considered whether it is appropriate in this appeal to request further information from the attending physician as to the background on which the diagnoses had been made. I have also considered whether this is a case where I should seek health professional assistance

pursuant to section 249 of the Act. I have decided against such further investigation, principally because I have concluded that the worker does not meet the criteria established in section 5.1(a) of the Act. As above, I have some concern on whether an acute reaction had occurred, given that the worker had a pre-existing condition together with her evidence of prior difficulties at work. However, and of more significance in this appeal, is that I am unable to accept that the events as described as occurring on January 7, 2003 constitute a “traumatic and unexpected event” pursuant to section 5.1(a) of the Act.

Item #13.30 of the *RSCM* attempts to define both the terms “acute reaction” and “sudden and unexpected traumatic event.” Policy states that an acute reaction means “coming to crisis quickly.” It lists that acute reaction may result from:

- A direct personal observation of an actual or threatened death or serious injury;
- A threat to one’s physical integrity;
- Witnessing an event that involves death or injury; or,
- Witnessing a personal assault or other violent criminal act.

From the descriptions of the events at issue, none of those circumstances existed for the worker in her January 7, 2003 employment.

Board policy also describes that a traumatic event is a severely emotionally disturbing event, and could include for example:

- A horrific accident
- An armed robbery;
- A hostage taking;
- An actual or threatened physical violence;
- An actual or threatened sexual assault; and,
- A death threat.

Those too were not present in the worker’s January 7, 2003 employment, apart from perhaps the matter of physical violence which she heard may have occurred but which she did not observe or have independent knowledge of. Board policy further notes:

In most cases, the worker must have suffered or witnessed the traumatic event first hand.

Board policy further suggests that the traumatic event must be:

- Clearly and objectively identifiable; and
- Sudden and unexpected in the course of the worker’s employment.

Following my review of the facts and circumstances surrounding the January 7, 2003 events at issue I am unable to accept that they were of the type contemplated by the Act as being a “sudden and traumatic event.” I appreciate that emotional reactions are individualized and differ between people. I also accept the argument that neither the Act nor policy imparts an objective evaluation of the reaction with reference to the average worker. However, to my mind the events on January 7, 2003 are not of the type to which a claim for mental stress ought to be accepted. Specifically, I accept that the room was charged with emotion, the female client

was ranting and raving, and the female client may even have struck a representative some time earlier in a room upstairs. However, I find the events surrounding that particular female client were not of the type contemplated by section 5.1 of the Act, or as defined in item #13.30 of the *RSCM*.

In summary, I deny the worker's appeal and confirm the November 13, 2003 decision of the Board. I find that further information would be necessary to confirm that the diagnoses as undertaken by the attending physician were established. I further find indication that the worker had previous difficulties at work, such that there is indication of there perhaps being more of a chronic, rather than acute, problem. That is particularly so when the subject matter was children, or the type of interaction that was central to the very employment that the worker was involved in. Finally, I find that the events associated with the female client on January 7, 2003 do not constitute the "sudden and unexpected traumatic event" as contemplated by section 5.1 of the Act, and defined by item #13.30 of the *RSCM*.

Conclusion

I confirm the November 13, 2003 decision of the Board.

