

2009/07/14-06

THE WORKERS' COMPENSATION BOARD OF BRITISH COLUMBIA**RESOLUTION OF THE BOARD OF DIRECTORS****RE: Mental Stress****WHEREAS:**

Pursuant to section 82 of the *Workers Compensation Act*, RSBC 1996, Chapter 492 and amendments thereto ("*Act*"), the Board of Directors must set and revise as necessary the policies of the Board of Directors, including policies respecting compensation, assessment, rehabilitation, and occupational health and safety;

AND WHEREAS:

On April 30, 2009, the British Columbia Court of Appeal released a decision in *Plesner v. British Columbia Hydro and Power Authority*, 2009 BCCA 188, which struck down portions of the mental stress policy as being contrary to section 15(1) of the *Canadian Charter of Rights and Freedoms* ("*Charter*");

AND WHEREAS:

In light of the Court of Appeal's decision, the Board of Directors has reviewed policy item #13.30 of the *Rehabilitation Services & Claims Manual* ("*RS&CM*"), Volume II, which provides direction on the adjudication of mental stress claims under section 5.1 of the *Act*;

AND WHEREAS:

The Board of Directors has considered how the policy amendments approved in this resolution should be implemented in light of the principles outlined in Governors' Decision No. 36 concerning the retroactivity of policy changes;

AND WHEREAS:

The Board of Directors has considered the payment of interest on any retroactive awards as a result of the policy amendments approved in this resolution in light of policy item #50.00 of the *RS&CM*, Volume II;

AND WHEREAS:

The Board of Directors, by Resolution 2007/10/04-04, approved changes to the mental stress policy as part of the re-write of Chapter 3 of the *RS&CM*, Volume II, with an effective date of January 1, 2009;

AND WHEREAS:

The Board of Directors by Resolution 2008/03/19-04 revised the effective date of the mental stress policy changes that occurred as part of the re-write of Chapter 3 of the *RS&CM*, Volume II to January 1, 2010.

THE BOARD OF DIRECTORS RESOLVES THAT:

1. Amendments to policy item #13.30 of the *RS&CM*, Volume II, attached as Appendix A, are approved and apply to all decisions, including appellate decisions, on or after April 30, 2009.
2. Amendments to Item C3-13.00 of the *RS&CM*, Volume II, attached as Appendix B, are approved and replace Item C3-13.00 approved by the Board of Directors by Resolution 2007/10/04-04 and apply to all claims for mental stress occurring on or after January 1, 2010 in accordance with Board of Directors Resolution 2008/03/19-04.
3. Interest will not be paid on any retroactive payments as a result of the policy amendments approved in this resolution.
4. This resolution constitutes a policy decision of the Board of Directors.
5. This resolution is effective April 30, 2009.

DATED at Richmond, British Columbia, July 14, 2009.

By the Workers' Compensation Board

**DR. ROSLYN KUNIN, CM, ICD.D
CHAIR, BOARD OF DIRECTORS**

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Additions In Bold, Deletions Struckthrough

#13.30 Mental Stress

~~The Board provides compensation for psychological impairment where the condition results directly from a compensable physical injury or occupational disease. [See policy items #13.20 and #22.33.]~~

Section 5.1 of the Act sets out that a worker may be entitled to compensation for mental stress that does not result from ~~an physical injury or occupational disease~~ if the impairment is due to an acute reaction to a sudden and unexpected traumatic event. **This is distinct from a worker's entitlement under section 5(1) for psychological impairment that is a compensable consequence of an injury or an occupational disease.**

In certain situations, a single incident may result in the Board accepting a worker's claim for compensation for a physical injury under section 5(1), and mental stress that is not a compensable consequence of the physical injury, under section 5.1.

"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.

Section 5.1 of the Act provides as follows:

- (1) Subject to subsection (2), a worker is entitled to compensation for mental stress that does not result from an 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 or a psychologist as a mental or physical condition that is described in the most recent American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders*, at the time of diagnosis, and

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- (c) is not caused by a decision of the worker's employer relating to the worker's employment, including a decision to change the work to be performed or the working conditions, to discipline the worker or to terminate the worker's employment.
- (2) The Board may require that a physician or psychologist appointed by the Board review a diagnosis made for the purposes of subsection (1)(b) and may consider that review in determining whether a worker is entitled to compensation for mental stress.
- (3) Section 56(1) applies to a physician or psychologist who makes a diagnosis referred to in this section.
- (4) In this section, "psychologist" means a person who is registered as a member of the College of Psychologists of British Columbia established under section 15(1) of the *Health Professions Act* or a person who is entitled to practise as a psychologist under the laws of another province.

Under subsection 5.1(1)(a), the *Act* establishes a two-part test:

1. There must be an acute reaction to a sudden and unexpected traumatic event.
2. The ~~acute reaction to the~~**sudden and unexpected** traumatic event must arise out of and in the course of **the** employment.

An "acute" reaction means – "coming to crisis quickly", it is a circumstance of great tension, an extreme degree of stress. It is the opposite of chronic. The reaction is typically immediate and identifiable. **In certain situations, however, the acute reaction may be delayed. In all cases, the evidence must establish that the acute reaction is due to a sudden and unexpected traumatic event that arose out of and in the course of employment.** ~~The response by the worker is usually one of severe emotional shock, helplessness and/or fear. It may be the result of:~~

- ~~• a direct personal observation of an actual or threatened death or serious injury;~~

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- ~~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.~~

~~For the purposes of this policy, a "traumatic" event is a severely emotionally disturbing event. It may include the following:~~

- ~~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.~~

For the purposes of this policy, a "traumatic" event is an emotionally shocking event. In most cases, the worker must have suffered or witnessed the traumatic event first hand.

In all cases, the traumatic event must be

- clearly and objectively identifiable; and
- sudden and unexpected in the course of the worker's employment.

This means that the event can be established by the Board through information or knowledge of the event provided by co-workers, supervisory staff, or others; ~~and is generally accepted as being traumatic.~~ The "arising out of" determination is discussed in policy item #14.00.

In considering the matter of work-relatedness, the Board must determine if there is a connection between the **work-related traumatic event** ~~employment~~ and the resulting acute reaction. This requires consideration of personal factors in the worker's life, which may have contributed to the acute reaction. For compensation to be provided, the **work-related traumatic** ~~place circumstances or~~

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events must be of causative significance to the worker's mental stress. If ~~there is no causal link to~~ the work-related **traumatic event is not of causative significance** factors, the worker's mental stress will not be compensable.

It is recognized that some workers, due to the nature of their occupation, may be exposed to traumatic events on a relatively frequent basis (e.g., emergency workers). If such a worker has an acute reaction to a sudden and unexpected traumatic event, compensation for mental stress may be provided even if the worker was able to tolerate past traumatic events.

In all cases concerning entitlement to compensation for mental stress, the worker's mental stress must be diagnosed by a physician or a psychologist as a mental or physical condition that is described in the most recent American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders*, at the time of diagnosis. A "psychologist" means a person who is a registered member of the College of Psychologists of British Columbia or a person who is entitled to practise as a psychologist under the laws of another province.

The Board may appoint a physician or psychologist to review a diagnosis of a worker's mental stress condition. When assessing all of the relevant medical evidence, the Board may consider that review in determining whether a worker is entitled to compensation for mental stress. A diagnosis of mental stress is not reviewed in every case. However, a review may be undertaken where, for instance, the Board receives medical evidence that conflicts with the diagnosis and which the physician or psychologist may not have possessed or been aware of when making the diagnosis.

There is no entitlement to compensation if the mental stress is caused by a labour relations issue such as a decision by the worker's employer relating to the worker's employment, including a decision to change the work to be performed or the working conditions, to discipline the worker or to terminate the worker's employment.

~~Examples where there is likely entitlement to compensation for mental stress:~~

- ~~• A person commits suicide by jumping in front of a bus. The bus driver is not physically injured by the incident, but is unable to work due to mental stress arising from the event. The bus driver's physician or psychologist confirms the driver is suffering from a condition described in the American Psychiatric Association's *Diagnostic and Statistical*~~

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~~Manual of Mental Disorders, and requires time off and professional counseling.~~

- ~~• A worker directly witnesses a very serious accident to a co-worker. The worker suffers no apparent symptoms for the first two weeks after the accident, but then calls in one morning to say he/she is unable to work because he/she is haunted by the images of the event. A diagnosis by a physician or psychologist confirms that the worker suffers from post-traumatic stress disorder as described in the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders*.~~
- ~~• During a prison riot, inmates hold a guard hostage. The guard is subsequently diagnosed by a physician or psychologist as suffering from a mental condition described in the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders*, and requires time off from work to recover.~~
- ~~• A female worker attends at work and is confronted by her male supervisor who sexually assaults her. As an immediate and direct result of the assault, the worker suffers an acute reaction and is subsequently diagnosed with a mental condition described in the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders*. In addition to a potential claim for physical injury, the worker may be entitled to compensation for mental stress.~~

Examples where there is likely no entitlement to compensation for mental stress:

- ~~• A worker is subjected to frequent sexual innuendo, humour in poor taste, practical jokes, and other forms of inappropriate attention from co-workers. One day the worker calls in to say the stress is too much, and he/she cannot work.~~
- ~~• A worker in a machine shop characterized by high levels of sudden noise calls in one morning to say he/she is unable to work due to mental stress. The worker also cites impossibly high production quotas, machine pacing of work and constant threats of termination by the foreperson as reasons for the mental stress.~~

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Effective Date: April 30, 2009
Application: To all decisions, including appellate decisions, on or after April 30, 2009.
History: April 1, 2007 – Former policy item #13.30 was amended to delete the paragraph requiring workers with a recurrence of mental stress to meet the requirements of section 5.1, if their claims had initially been allowed prior to June 30, 2002.

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RE: Mental Stress

ITEM: C3-13.00

BACKGROUND

1. Explanatory Notes

This policy provides guidance for determining a worker's entitlement to compensation for mental stress.

2. The Act

Section 5.1:

- (1) Subject to subsection (2), a worker is entitled to compensation for mental stress that does not result from an 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 or a psychologist as a mental or physical condition that is described in the most recent American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders at the time of the diagnosis, and
 - (c) is not caused by a decision of the worker's employer relating to the worker's employment, including a decision to change the work to be performed or the working conditions, to discipline the worker or to terminate the worker's employment.
- (2) The Board may require that a physician or psychologist appointed by the Board review a diagnosis made for the purposes of subsection (1)(b) and may consider that review in

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determining whether a worker is entitled to compensation for mental stress.

- (3) Section 56(1) applies to a physician or psychologist who makes a diagnosis referred to in this section.**
- (4) In this section, “psychologist” means a person who is registered as a member of the College of Psychologists of British Columbia established under section 15(1) of the *Health Professions Act* or a person who is entitled to practise as a psychologist under the laws of another province.**

POLICY

#13.30 ~~Mental Stress~~

Section 5.1 of the *Act* sets out that a worker may be entitled to compensation for mental stress that does not result from an injury or occupational disease if the impairment is due to an acute reaction to a sudden and unexpected traumatic event. This is distinct from a worker’s entitlement under section 5(1) for psychological impairment that is a compensable consequence of an injury or an occupational disease.

In certain situations, a single incident may result in the Board accepting a worker’s claim for compensation for a physical injury under section 5(1), and mental stress that is not a compensable consequence of the physical injury, under section 5.1.

“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.

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~~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 or a psychologist as a mental or physical condition that is described in the most recent American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders*, at the time of diagnosis, and~~
 - ~~(c) — is not caused by a decision of the worker's employer relating to the worker's employment, including a decision to change the work to be performed or the working conditions, to discipline the worker or to terminate the worker's employment.~~
- ~~(2) — The Board may require that a physician or psychologist appointed by the Board review a diagnosis made for the purposes of subsection (1)(b) and may consider that review in determining whether a worker is entitled to compensation for mental stress.~~
- ~~(3) — Section 56(1) applies to a physician or psychologist who makes a diagnosis referred to in this section.~~
- ~~(4) — In this section, "psychologist" means a person who is registered as a member of the College of Psychologists of British Columbia established under section 15(1) of the *Health Professions Act* or a person who is entitled to practise as a psychologist under the laws of another province.~~

Under subsection 5.1(1)(a), the *Act* establishes a two-part test:

1. There must be an acute reaction to a sudden and unexpected traumatic event.
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For the purposes of this policy, a “traumatic” event is an emotionally shocking event. In most cases, the worker must have suffered or witnessed the traumatic event first hand.

In all cases, the traumatic event must be

- clearly and objectively identifiable; and
- sudden and unexpected in the course of the worker’s employment.

This means that the event can be established by the Board through information or knowledge of the event provided by co-workers, supervisory staff, or others. ~~The “arising out of” determination is discussed in policy item #14.00.~~

In considering the matter of work-relatedness, the Board must determine if there is a connection between the work-related traumatic event and the resulting acute reaction. This requires consideration of personal factors in the worker’s life, which may have contributed to the acute reaction. For compensation to be provided, the work-related traumatic event must be of causative significance to the worker’s mental stress. If the work-related traumatic event is not of causative significance, the worker’s mental stress will not be compensable.

It is recognized that some workers, due to the nature of their occupation, may be exposed to traumatic events on a relatively frequent basis (e.g., emergency workers). If such a worker has an acute reaction to a sudden and unexpected traumatic event, compensation for mental stress may be provided even if the worker was able to tolerate past traumatic events.

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There is no entitlement to compensation if the mental stress is caused by a labour relations issue such as a decision by the worker's employer relating to the worker's employment, including a decision to change the work to be performed or the working conditions, to discipline the worker or to terminate the worker's employment.

Effective Date: ~~April 30, 2009~~

Application: ~~To all decisions, including appellate decisions, on or after April 30, 2009.~~

History: ~~April 1, 2007 - Former policy item #13.30 was amended to delete the paragraph requiring workers with a recurrence of mental stress to meet the requirements of section 5.1, if their claims had initially been allowed prior to June 30, 2002.~~

PRACTICE

For practice information, see any relevant Best Practice Information Sheets or Practice Directives at the www.worksafefbc.com website:

http://www.worksafefbc.com/regulation_and_policy/practice_directives/compensation_practices/default.asp

EFFECTIVE DATE:	January 1, 2010
AUTHORITY:	Section 5.1 of the Act.
CROSS REFERENCES:	Item C3-22.30, <i>Compensable Consequences – Psychological Impairment</i> .

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HISTORY:

This policy replaces former policy item #13.30 of the *Rehabilitation Services & Claims Manual, Volume II*. Effective April 30, 2009, former policy item #13.30 was amended to delete references identified by the British Columbia Court of Appeal as being contrary to section 15(1) of the *Canadian Charter of Rights and Freedoms*. On April 1, 2007, former policy item #13.30 was amended to delete the paragraph requiring workers with a recurrence of mental stress to meet the requirements of section 5.1, if their claims had initially been allowed prior to June 30, 2002. On December 31, 2003, former policy item #13.30 was amended to reflect the amendment of section 5.1(1) of the *Act*, to include a reference to a psychologist's diagnosis of mental stress, and the introduction of sections 5.1(2) to (4) of the *Act*. The amended policy applied to acute reactions to traumatic events that occur on or after December 31, 2003. Former policy item #13.30 had been created on June 30, 2002 to set out the scope of coverage for mental stress claims. It applied to all injuries on or after June 30, 2002; permanent disabilities where the permanent disability first occurred on or after June 30, 2002, irrespective of the date of the injury; and recurrences, where the recurrence occurred on or after June 30, 2002, irrespective of the date of the injury.

APPLICATION:

This Item applies to all claims for mental stress occurring on or after January 1, 2010.