

# Interim Practice Directive #C3-3

## Mental Disorder Claims

**PRACTICE ALERT:** Legislative Amendments

**DATE:** May 18, 2018

### BACKGROUND

On May 17, 2018, the Legislative Assembly of B.C. gave Royal Assent to Bill 9-2018, which amends section 5.1 of the *Workers' Compensation Act* regarding Mental Disorders. The new legislation provides a mental disorder presumption under s.5.1 of the *Act* to firefighters, police officers, paramedics, sheriffs, and correctional officers.

Effective immediately, WorkSafeBC adjudicates claims for mental disorder for workers in the eligible occupations, above, under the following new subsection to s.5.1 of the *Act*:

(1.1) If a worker who is or has been employed in an eligible occupation

(a) is exposed to one or more traumatic events arising out of and in the course of the worker's employment in that eligible occupation, and

(b) has a mental disorder that is recognized, in the most recent American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, at the time of the diagnosis of the mental disorder under subsection (1) (b) of this section, as a mental or physical condition that may arise from exposure to a traumatic event,

the mental disorder must be presumed to be a reaction to the one or more traumatic events arising out of and in the course of the worker's employment in that eligible occupation, unless the contrary is proved.

### INTERIM DIRECTION TO CLAIMS STAFF

For claims pending adjudication, where the worker is employed in one of the above-noted eligible occupations, the new provisions under s.5.1 (1.1) must be applied with respect to presumption of causation. The current practice directive applies to:

- claims for mental disorder where the worker is not employed, or has not been employed, in one of the eligible occupations, or,
- claims for mental disorder where the worker is employed, or has been employed, in one of the eligible occupations but the requirements for the presumption are not met.

## Objective

This Practice Directive provides guidance in determining a worker's entitlement to compensation for a mental disorder that does not result from an injury. Clarification is provided on specific terminology used in section 5.1 of the *Workers Compensation Act* (the "Act").

## Law & Policy

Section 5.1 of the *Act* provides that a worker will be compensated for a mental disorder that does not result from an injury, but only if the worker's mental disorder:

- Is a reaction to one or more traumatic events arising out of and in the course of the worker's employment; **or**
- Is predominantly caused by a significant work-related stressor, including bullying or harassment, or a cumulative series of significant work-related stressors, arising out of and in the course of the worker's employment;
- Is diagnosed by a psychologist or psychiatrist as a mental or physical condition that is described in the most recent, at the time of diagnosis, American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders* ("DSM"); and
- 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.

Policy item C3-13.00, *Section 5.1 – Mental Disorders*, of the *Rehabilitation Services and Claims Manual, Vol. II* ("RSCM") provides guidance on the adjudication of mental disorder claims.

It is worth noting that in certain situations a single incident may result in a worker establishing a claim that is adjudicated under both sections 5(1) and 5.1. For example, a night clerk at a convenience store is assaulted during a robbery. The assault results in a physical injury (facial laceration), which is compensable under s. 5(1). The worker also suffers a mental disorder as a result of the traumatic incident (violent robbery). Since the worker's mental disorder did not arise directly from the facial laceration (physical injury), it is not adjudicated as a compensable consequence of the injury. Rather, the worker's mental disorder is adjudicated under s. 5.1. Policy item C3-22.30, *Compensable Consequences – Psychological Impairment*, of the *RSCM* addresses compensation in respect of psychological impairment arising from a physical injury (e.g. a worker may develop depression due to the loss of a limb following a workplace accident).

## Adjudicative Guidelines

In all cases the Board Officer should consider the worker's entitlement under both the traumatic event and significant stressor provisions of the *Act*. If, for example, the claim is accepted based on a finding that the DSM diagnosis was caused by a traumatic event, there is no need to go on to consider acceptance of the

claim under the significant stressor provision of the *Act* and *vice versa*. If, however, the claim is being denied, the Board Officer should address both categories of entitlement in their decision letter.

The occurrence of the traumatic event(s) or stressor(s) must be clearly and objectively identifiable. Policy states that the worker's subjective statements and response to the event(s) or stressor(s) are considered, but this question is not determined solely by the worker's subjective belief about the event(s) or stressor(s). The Board Officer also verifies the event(s) or stressor(s) through information provided by the worker, co-workers, supervisory staff, the employer or others.

It is recognized that in some circumstances it may be challenging to obtain evidence which verifies that an event(s) or stressor(s) occurred or the details relating to that event(s) or stressor(s), other than the information provided by the worker. As in any claim, the Board Officer must gather the available evidence, which includes the evidence provided by the worker, and reach a conclusion based upon that evidence.

Due to the nature of the conditions being claimed under section 5.1 it is anticipated some workers may be psychologically fragile. When managing claims for psychologically fragile workers WorkSafeBC officers should consider and follow the guidelines set out in Practice Directive #C12-8 "Managing Claims of Psychologically Fragile Workers".

### **(A) Traumatic Event(s)**

Policy item C3-13.00 defines a "traumatic event" as, "an emotionally shocking event, which is generally unusual and distinct from the duties and interpersonal relations of a worker's employment." The policy recognizes that all workers are exposed to "normal pressures and tensions at work" and that not all events will be considered emotionally shocking or significant stressors. The policy does not contain examples of traumatic events, and each case must be determined based upon the specific facts.

The policy does not define "emotionally shocking" or "traumatic". Common to the definitions of those terms is an element of emotional intensity as well as distinctiveness from the ordinary course of events. The following excerpts illustrate some common definitions of the terms. Black's Law Dictionary defines "shock" as, "a profound and sudden disturbance of the physical or mental senses, a sudden and violent physical or mental impression". "Mental shock" is more specially defined as, "shock caused by agitation of the mental senses and resulting in extreme grief or joy". The Merriam Webster online Dictionary defines "shocking" as, "extremely startling, distressing or offensive". The Concise Oxford Dictionary defines "traumatic" as, "deeply disturbing or distressing".

The sight of blood during an operation would not generally be viewed as unusual and distinct from the normal work duties for an operating room nurse and would not be considered an emotionally shocking event. The event would be considered common and/or predictable for that occupation. However, a police officer getting shot at would be viewed as unusual and distinct from the normal work duties, since the event is generally considered an uncommon occurrence. In addition, there is an element of danger or intensity which may support a conclusion that the event was emotionally shocking.

Policy item C3-13.00 recognizes 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). The policy reference is intended to emphasize that employment in a high stress occupation is not a bar to compensation under s. 5.1 of the *Act*. Compensation for a mental disorder may be provided even if an emergency worker was able to tolerate similar traumatic events in the past. For example, a paramedic who attends an accident involving a fatality may have experienced an emotionally shocking traumatic event even though the worker has attended at a number of fatality sites over the course of his or her career.

Most often there will be evidence that the worker experienced the traumatic event first hand; however, this is not a requirement. If the worker did not experience the event first hand, a direct connection between the event and the worker must be obvious in order for the claim to be compensable. For example, a worker employed as an air traffic controller makes an error which causes two passenger planes to collide and crash resulting in a large number of casualties. The event was emotionally shocking and the worker developed a mental disorder as a result. Although the worker did not actually see the two planes collide, he knew the crash was the result of his error, and the connection between the traumatic event and the worker in this scenario is obvious. Conversely, simply learning of a traumatic event while in the course of employment will generally not support a conclusion that the traumatic event arose out of the worker's employment.

Because policy item C3-13.00 requires that the event be clearly and objectively identifiable, it must actually have occurred. An anticipated event, which did not occur, does not qualify as a traumatic event within the meaning of policy. A worker working alone at night who anticipates being robbed because they work alone has not experienced a traumatic event. This is in contrast to a situation where there was a near miss. For example, a worker is almost struck by a falling metal beam while in the course of her employment. Although the worker was not struck by the heavy metal object, the event that may be considered traumatic is the near miss.

In most cases, the reaction to the traumatic event(s) is typically immediate and identifiable. In some situations, however, the reaction may be delayed.

There is no longer a requirement in the *Act* that the reaction be "acute"; however, the timing of the worker's reaction may be relevant to establishing a causal connection between the mental disorder and the traumatic event or workplace stressor.

## **(B) Significant Stressor(s)**

A work-related stressor is considered significant when, "it is excessive in intensity and/or duration from what is experienced in the normal pressures or tensions of a worker's employment." However, a claim for a mental disorder made by a worker employed in an occupation characterized by a high degree of stress or conflict should not be denied simply because they are normally exposed to an intense level of stress. Adjudicating the claim will require obtaining a detailed understanding of the working conditions and the specific stressors the worker is reporting. This will provide the necessary evidence needed to assess

whether the worker has experienced a significant stressor or cumulative work-related stressors that were excessive in intensity and duration from the normal pressures and tensions of their employment.

As noted in policy, interpersonal conflicts between a worker and co-workers, supervisors or customers are not generally considered significant unless the conflict results in behavior that is considered threatening or abusive. The *Act* states that significant work-related stressor(s) includes bullying and harassment. The *Act* and the *RSCM* do not define bullying, harassment, threatening or abusive. In general terms, both bullying and harassment reflect conduct that is intended to, or should reasonably have been known would, intimidate, humiliate or degrade an individual.

Although bullying and harassment are generally considered in terms of a pattern of ongoing behaviour, this does not preclude acceptance of a claim for a mental disorder based upon a single event. A single event of bullying, such as a threat of physical harm, or a single act of harassment may be more appropriately adjudicated as a traumatic event rather than as a single work-related stressor depending upon the nature of that event.

Not all interpersonal conflict or conduct that is rude or thoughtless will be considered abusive behaviour. Each case will need to be investigated to determine the details and nature of the interpersonal conflict. However, conduct that is determined to be threatening or abusive is a significant work-related stressor.

The interpersonal conflict reported by the worker must have an employment connection for the resulting mental disorder to be compensable. The significant stressor or stressors must have happened at a time and place and during an activity consistent with or reasonably incidental to the duties and obligation of the worker's employment. A worker who has a mental disorder that is a reaction to conflict with a co-worker about a personal matter that originates outside of the work environment may not have met the 'arising out of' criteria. For example, the fact that a divorced couple working with the same employer brings their personal dispute to work does not necessarily mean that a mental disorder that results from their actions at work has arisen out of their employment activities.

## (C) Causation

### (i) Traumatic event(s)

The evidence must support that the traumatic event was of causative significance in producing the worker's diagnosed condition. Board Officers should consider the guidance on weighing evidence set out in *RSCM* policy items #97.00 to #97.60.

### (ii) Significant Stressor(s)

Section 5.1 states that workers are entitled to compensation for mental disorders that are predominantly caused by a significant work-related stressor or cumulative series of significant work-related stressors arising out of and in the course of the worker's employment. Policy item C3-13.00, states that "predominant cause" means the work-related stressors were the primary or main cause of the mental disorder.

Deciding whether the work-related stressors were the predominant cause requires consideration of other non-work-related stressors in a worker's life and the role of the different stressors in causing the mental disorder. In most cases, a psychological assessment will provide important evidence with respect to identifying and discussing the relative impact of different stressors in causing the diagnosed mental disorder. The work-related stressors need not be the sole cause. Nor is it necessary that the work-related stressor or stressors outweigh all other stressors combined. It may be that the work-related stressor was still the primary cause of the mental disorder even though the worker had a number of other stressors which, when considered together, were also significant in causing the mental disorder.

## **(D) Diagnosis**

A claim can only be accepted based upon a DSM diagnosis provided by a psychologist or psychiatrist. A claim cannot be accepted based on a diagnosis provided by an attending physician or other health care provider.

Section 5.1 of the *Act* enables WorkSafeBC to appoint a psychologist or psychiatrist to review a diagnosis of a worker's mental disorder. It is not necessary to undertake a review of a diagnosis in every case. A review may be undertaken where, for instance, WorkSafeBC receives medical evidence that conflicts with the diagnosis and which the diagnosing psychologist or psychiatrist may not have possessed or been aware of when making the diagnosis.

## **(E) Pre-Existing Mental Disorders**

Policy item C3-13.00 states that where a worker has a pre-existing mental disorder and claims that a traumatic event or significant work-related stressor aggravated the pre-existing mental disorder, the claim is adjudicated with regard to s. 5.1 and the direction set out in the policy.

## **(F) Section 5.1(1)(c) Exclusions**

Section 5.1(1)(c) explains that a mental disorder is not compensable if it is 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." This is not an exhaustive list and policy item C3-13.00 provides further examples of decisions of the employer that may be covered by this exclusion.

There may be situations that fall outside these "routine" employment issues that give rise to a compensable mental disorder, such as targeted harassment or another traumatic workplace event. It is important to consider the specific facts of each case. An employer has the prerogative to make decisions regarding the management of the employment relationship, but this does not mean that decisions can be communicated in any fashion.

The fact that decisions of the employer were communicated in a manner that was upsetting to the worker is not determinative of the issue. Heated exchanges or emotional conflict at work over matters such as

discipline, performance or the assignment of duties are not uncommon. In order for the conduct of the person communicating the decision of the employer to constitute a significant workplace stressor, one should consider if the conduct was in some way abusive or threatening.

### **(G) Federal Workers – GECA**

Compensation for federal workers is determined by the *Government Employees Compensation Act* ("GECA"). Although WorkSafeBC administers these claims, provincial law and policy is only applicable in so far as it is consistent with *GECA*.

Section 5.1 and Policy item C3-13.00 are not in conflict with the provisions of *GECA*<sup>1</sup>. Mental disorder claims for federal workers are adjudicated using s. 5.1 and policy item C3-13.00.

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<sup>1</sup> See WCAT 2015-00506 wherein the Panel reviewed prior WCAT and Review Division decisions in light of the Supreme Court of Canada decision, *Martin v. Alberta (Workers' Compensation Board)*, 2014 SCC 25, and determined that there was no material conflict between s. 5.1 and policy item C3-13.00 and *GECA*.

## Replaced by PD#C3-3 July 23, 2018

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### Cross References

RSCM Policy     See Policy item C3-13.30 of the *RSCM*

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**History:**     This item replaces Practice Directive #C3-3, *Mental Stress*. Section 5.1 of the *Act* became effective June 30, 2002. An Interim Practice Directive was issued on January 2, 2013 to reflect amendments to section 5.1 of the *Act* made effective July 1, 2012 (*Workers Compensation Amendment Act*, 2011 ("Bill 14")). This Practice Directive was amended to provide additional clarification and issued on June 21, 2013. In February 2014, clarification was added that a single incident may establish one claim requiring adjudication under both sections 5(1) and 5.1. This Practice Directive was amended to clarify that s. 5.1 and the principles stated in policy item C13.30 apply to mental disorder claims for workers covered by GECA.

**Application:** This item is intended to clarify existing corporate practice. This item applies to all decisions made on or after July 1, 2012, in respect of a claim made but not finally adjudicated before July 1, 2012.

*Practice Directive C3-3 – Mental Disorder Claims*

*Issued January 2, 2013*

*amended June 21, 2013*

*amended February 18, 2014*

*amended May 13, 2016*