

Practice Directive #C3-3 (INTERIM)

Mental Disorder Claims

General principles

For workers in certain occupations who have been exposed to traumatic event(s) and have been diagnosed with a mental disorder, the mental disorder is presumed to be caused by the worker's employment.

If the presumption does not apply, a worker's mental disorder that does not result from an injury may still be accepted as compensable where the mental disorder is work-related.

Adjudicating mental disorders - presumption

When an officer is adjudicating a worker's claim for a mental disorder, the officer first determines if the mental disorder presumption applies.

Section 135(2) of the *Act* establishes a presumption for workers in eligible occupations who are exposed to one or more traumatic events in their work and are diagnosed with a mental disorder which may arise from trauma. In these situations the mental disorder is presumed to have been caused by the worker's employment. In determining whether the presumption applies to a worker's claim, the officer considers the following questions:

- Is the worker employed, or has been employed, in an eligible occupation (firefighters, police officers, emergency medical assistants, sheriffs, correctional officers, emergency response dispatchers, health care assistants and nurses)?
- Was the worker exposed to one or more "traumatic" events arising out of and in the course of the worker's employment?
- Does the worker have a mental disorder recognized in the most recent DSM¹ as a mental or physical condition that may arise from exposure to a traumatic event?

If the answer is "yes" to all three considerations, the requirements of the presumption are met. If the answer to any question is "no", the presumption does not apply.

¹ *Diagnostic and Statistical Manual of Mental Disorders* published by the American Psychiatric Association

Occurrence of traumatic event(s)

The occurrence of the traumatic event(s) must be identifiable.

Because policy requires that the event be 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 their employment. Although the worker was not struck by the heavy metal object, the near miss is an identifiable event that may be considered traumatic.

In gathering information about the event, the officer considers the extent of the evidence, including the level of detail that is required, in order to establish the occurrence of the event(s). In all cases, the officer determines whether the evidence gathered is sufficiently complete and reliable to arrive at a sound conclusion with confidence. If the evidence gathered is not sufficiently complete and reliable, the officer considers what other evidence might be obtained and proceeds to seek that evidence.

It is recognized that in some circumstances it may be challenging to obtain evidence that an event(s) occurred or the details relating to that event(s), other than the information provided by the worker. As in any claim, the officer must gather and consider the available evidence, which includes the evidence provided by the worker, and reach a conclusion based upon that evidence. Even if additional evidence cannot be obtained, the worker's evidence must be considered.

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

Defining traumatic event(s)

Policy defines a "traumatic event" as, "an emotionally shocking event." Not all events will be considered emotionally shocking. Each case must be determined based upon the specific facts.

Common to the definitions of the terms "emotionally shocking" or "traumatic" is an element of emotional intensity. 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 specifically 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".

Experiencing or witnessing the traumatic event

Most often there will be evidence that the worker experienced or witnessed the traumatic event; however, this is not a requirement. If the worker did not experience or witness the event, a direct connection between the event and the worker must be obvious in order for the claim to be compensable. For example, a correctional officer makes an error which allows two inmates (who have a history of conflict) to

come into contact with each other and a violent altercation ensues that leads to the death of one inmate. Although the correctional officer did not actually see the violent altercation, the correctional officer knew the death was the result of their 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 their employment will generally not support a conclusion that the traumatic event arose out of the worker's employment.

Subjective and objective analysis of a traumatic event

In determining whether an event is traumatic, the worker's subjective statements and response to the event are considered. This question is not determined solely by the worker's subjective belief about the event. Policy indicates that it involves both a subjective and objective analysis. This is a single analysis of both subjective and objective factors. The officer considers whether a reasonable person, in the worker's situation and with the general characteristics of the worker, would expect to find the event traumatic.

DSM 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.

The mental disorder must be recognized in the most recent DSM, at the time of diagnosis, as a mental or physical condition that may arise from exposure to a traumatic event. Some mental disorders recognized in the DSM explicitly list exposure to a traumatic event as a diagnostic criterion. Therefore, exposure to a traumatic event is required for the diagnosis (e.g., post-traumatic stress disorder and acute stress disorder). In addition, there are mental disorders recognized in the DSM which do not require exposure to a traumatic event but may still arise from trauma. These include depressive disorders, anxiety disorders and substance use disorders.

Causation

Once an officer is satisfied that a worker, in an eligible occupation, has been exposed to a traumatic event and meets the diagnostic criteria for a mental disorder, the causal link between the traumatic event and mental disorder is presumed. In other words, there is no need to establish that any particular traumatic event is causative of the worker's diagnosed mental disorder.

Rebutting the presumption

The presumption is rebutted if opposing evidence shows that the contrary conclusion is more likely. The standard of proof to be applied in determining whether the presumption is rebutted is on a balance of probabilities. Balance of probabilities means "more likely than not." If the officer weighs all of the relevant evidence and concludes that something other than exposure to a traumatic event caused the mental disorder, then the contrary has been established and the presumption is rebutted.

The presumption is not rebutted if there is a lack of evidence to support work causation. If the evidence does not show that it was more likely than not that the mental disorder resulted from factors unrelated to

a work-related traumatic event(s), the mental disorder is presumed to have arisen out of and in the course of the worker's employment.

Evidence of multiple causative factors is not sufficient to rebut the presumption. There must be evidence that the contrary conclusion is "more likely than not" in order to rebut the presumption.

Presumption not met

If an officer determines that the worker's case does not meet the requirements of the presumption, the claim is adjudicated under section 135(1) of the *Act* and policy Item C3-24.00.

Adjudicating mental disorders – non-presumption

Section 135(1) of the *Act* and policy allow a worker to be compensated for a mental disorder that does not result from injury if the mental disorder is work-related. To adjudicate the acceptability of a mental disorder, the officer considers the following questions:

- Does the worker have a diagnosed mental disorder?
- Were there one or more events, or a stressor or a cumulative series of stressors?
- Was the event "traumatic" or the work-related stressor(s) "significant"?
- Causation:
 - Was the mental disorder a reaction to one or more traumatic events arising out of and in the course of the worker's employment, and or
 - Was the mental disorder predominantly caused by a significant work-related stressor or a cumulative series of significant stressors, arising out of and in the course of the worker's employment?
- Was the mental disorder caused by a decision of the employer relating to the worker's employment (the labour relations exclusion)?

DSM 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.

Although legislation 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, the officer 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.

Traumatic event(s)

As the non-presumptive policy (C3-24.00) also defines a traumatic event as "an emotionally shocking event", officers should consider the guidance in the prior sections of this Practice Directive to determine

whether the policy definition of a traumatic event is met. (See earlier sections titled *Occurrence of traumatic event(s)*; *Defining traumatic event(s)*; and *Experiencing or witnessing the traumatic event.*)

The officer also applies the “subjective and objective analysis” stated earlier to determine whether an event is traumatic. (See *Subjective and objective analysis of a traumatic event.*)

All workers are exposed to “normal pressures and tensions at work” and not all events will be considered emotionally shocking or significant stressors. Each case must be determined based upon the specific facts.

A worker’s reaction does not have to be “acute” or immediate in order to be compensable; 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.

High stress occupations and traumatic event(s)

Policy recognizes that some workers, due to the nature of their work, may be exposed to traumatic events on a relatively frequent basis. Employment in a high stress occupation is not a bar to compensation. Compensation for a mental disorder may be provided even if a worker was able to tolerate similar traumatic events in the past. For example, a nurse who attends to an agitated or aggressive patients may have experienced a traumatic event even though the worker has attended to a number of agitated or aggressive patients over the course of their career. Take for example the situation of a nurse who is in close proximity to an agitated patient suddenly waving a pocket knife. This situation would involve an element of emotional intensity and would be deeply disturbing or distressing for the nurse and also from an objective standpoint.

Causation test – traumatic event

The evidence must support that the traumatic event arose out of and in the course of the worker’s employment and was of causative significance in producing the worker’s diagnosed condition. Officers should consider the guidance on weighing evidence set out in *RSCM* policy items #97.00 to #97.70.

Significant stressor(s)

As the occurrence of the stressor(s) must be identifiable, officers apply the guidance provided earlier in the *Occurrence of traumatic event(s)* section to determine the occurrence of the stressor(s) and for gathering evidence about the stressor(s)

In policy, 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.”

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. Significant work-related stressor(s) includes bullying and harassment. 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.

Assessing stressor(s)

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 considered 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(s) 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.

In determining whether the stressor is significant, the worker's subjective statements and response to the stressor are considered. This question is not determined solely by the worker's subjective belief about the stressor. It involves both a subjective and objective analysis. The officer undertakes the same sort of analysis done with significant stressor(s) as is done with traumatic event(s). (See *Subjective and objective analysis of a traumatic event*). Officers should consider policy items #97.00 to #97.70 on gathering and weighing evidence to determine whether a work-related stressor(s) was the predominant cause of the mental disorder.

High stress occupations and significant stressor(s)

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.

Causation test– significant stressor(s)

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. In policy, "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(s) outweigh all other stressors combined. It may be that the work-related stressor(s) 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.

Exclusions to accepting a mental disorder

Legislation 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 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. The officer considers 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. For the conduct of the person communicating the decision of the employer to constitute a significant workplace stressor, the officer should consider if the conduct was in some way abusive or threatening.

Traumatic event vs. significant stressor

In all cases the officer considers 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, one of the provisions is not met, the officer should consider the other provision before arriving at the decision of whether the claim should be accepted or not.

Other adjudicative Issues

Physical injuries and mental disorders

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 134 and 135. 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 section 134(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 section 135(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). A similar approach applies in certain situations where a single incident involving an eligible worker for whom the mental disorder presumption applies. In these cases the worker's claim is adjudicated under both sections 134(1) and 135(2).

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 135 and the mental disorder policies are not in conflict with the provisions of *GECA*². Mental disorder claims for federal workers are adjudicated using section 135 and the applicable relevant mental disorder policies.

Preliminary determinations

A worker may experience an interruption in income while awaiting a decision on the eligibility of their claim. Wage-loss benefits may be paid to a worker and certain health care benefits provided during this period.

Conditions required for a preliminary determination

A preliminary determination is an administrative action taken by an officer to provide temporary financial relief to the worker until the officer receives the necessary information to determine the validity of the claim.

When an officer is adjudicating a worker's claim for a mental disorder, the officer makes a preliminary determination on the worker's claim when all of the following conditions are met:

- WorkSafeBC has received an application for compensation.
- It is not a third party claim.
- The worker appears to be currently disabled from work.
- On the available evidence, it appears probable that the worker has a compensable mental disorder, or at least it appears that the evidence is evenly weighted.
- There is some significant delay in obtaining evidence necessary to arrive at a conclusion on the validity of the claim, and WorkSafeBC is unable to avoid that delay.

² 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 (of the *Act* at the time of the decision) and policy item C3-13.00 (of the *RSCM* at the time of the decision) and *GECA*.

- The worker is not causing the delay.
- The delay appears to be causing an interruption of income for the worker.

If the answer is “yes” to all of the above conditions, the requirements for a preliminary determination are met, even if an employer is protesting the acceptance of the claim. If the answer is “no” to any of the above conditions, a preliminary determination does not apply.

In all cases, the officer considers the worker’s individual circumstances when making a preliminary determination.

A preliminary determination applies to new claims as well as reopening of a prior claim.

Probable compensable mental disorder

Policy requires that on the available evidence, it appears probable that the worker has a compensable mental disorder, or at least it appears that the evidence is evenly weighted. The standard of proof that applies is “at least as likely as not.” If the evidence supporting different findings is evenly weighted, the issue is resolved in favor of the worker.

The officer undertakes the necessary investigation and gathers the available evidence to be satisfied that the worker has a “probable” compensable mental disorder. The Merriam Webster online Dictionary defines “probable” as “likely to be or become true or real”. The Concise Oxford Dictionary defines “probable” as “likely to happen or be the case”. Determining whether there is a probable compensable mental disorder will be dependent on the evidence available as well as the particular facts and circumstances of the case (i.e., merits and justice of the case).

The officer may conclude that the worker has a compensable mental disorder for the purpose of the preliminary determination if the available evidence is equally weighted for and against the acceptance of the claim. This approach is not taken if the evidence indicates that one possibility is more likely than the other.

For example, the officer may make a preliminary determination if they are satisfied there is sufficient evidence to conclude the worker meets all of the following considerations:

- The worker is in an eligible occupation under section 135(2) of the *Workers Compensation Act*.
- The worker has been exposed to a traumatic event arising out of and in the course of the worker’s employment.
- The officer has received medical evidence (including evidence from an attending physician) that the worker has a mental disorder recognized in the most recent DSM³.
- There is a significant delay in obtaining evidence necessary to determine the eligibility of the claim such as obtaining a mental disorder diagnosis from a psychologist or psychiatrist.

³ *Diagnostic and Statistical Manual of Mental Disorders* published by the American Psychiatric Association

Determining wage-loss and health care benefits

The officer applies the following guidance when determining wage-loss and health care benefits that are payable under a preliminary determination.

A preliminary determination is not a reviewable decision

A preliminary determination is not a “decision” that is subject to review or appeal. In addition, the reconsideration restrictions do not apply to a preliminary determination. Once the officer receives the necessary information to determine the acceptance of the worker’s claim, the officer makes a decision. The appellate and reconsideration provisions apply to that decision.

Payment of wage-loss benefits

Wage-loss benefits are paid starting on the date when the officer makes the preliminary determination. Generally, wage-loss benefits for a period prior to that date are not paid unless it is necessary to avoid hardship to the worker. The officer sends an information letter to the worker and employer to notify them that wage-loss benefits are being paid under the preliminary determination. The employer’s letter will indicate that if the claim is not accepted, cost relief will be provided.

When the officer receives the necessary evidence and decides that the claim is acceptable, the officer pays all wage-loss benefits that the worker is entitled to for the period prior to the determination. The officer sends a decision letter to the worker and employer about the acceptance of the claim and the payment of retroactive wage-loss benefits.

Payment of health care expenses

Generally, ongoing health care expenses will not be paid under a preliminary determination. However, health care expenses may be paid where the health care provided is necessary to assist in the adjudicative process. This includes paying for reporting or form fees, and fees for any WorkSafeBC directed examination, consultation or assessment undertaken on an investigative basis.⁴ The health care expense must contribute materially to providing evidence that will assist the officer in investigating the acceptance of the claim. In the case of mental disorder claims, the officer may seek evidence from a variety of sources, including a registered clinical counsellor, if the examination, consultation or assessment will assist in providing evidence to the officer for determining the acceptance of the claim.

Section 156(1.1) of the *Act* provides authority for WorkSafeBC to provide health care services and supplies before a worker’s mental disorder claim is decided if medical evidence indicates that without such services or supplies, the worker is at risk of significant deterioration in health.⁵

Following the claim eligibility decision

When a preliminary determination has been made on a claim and wage-loss and/or health care benefits have been paid to the worker, the benefits are not recovered from the worker if the officer later decides to

⁴ See policy Item C10-75.00, *Health Care Accounts – General*, Section 4.1, *Before Initial Claims Adjudication*.

⁵ See Practice Directive #C10-6, *Preventative Health Care (Interim)* for guidance on providing health care services and supplies before a worker’s compensation claim is decided, as well as the actions taken if the claim is disallowed.

disallow the claim. However, the benefits may be recovered if the preliminary determination resulted from fraud or misrepresentation of the facts or circumstances upon which the preliminary determination was based.

If the officer later decides to disallow the claim and wage-loss and/or health care benefits have been paid, the officer provides cost relief as described in policy item #113.10, *Investigation Costs*. The employer's sector or rate group will be relieved of the cost of any unrecovered payment.

Cross References

RSCM Policy	#2.20, <i>Application of the Act and Policies</i>
	C3-24.00, <i>Section 135 - Mental Disorders</i>
	C3-24.10, <i>Section 135(2) – Mental Disorder Presumption</i>
	C3-22.30, <i>Compensable Consequences – Psychological Impairment</i>
	C10-75.00, <i>Health Care Accounts – General</i>
	#96.21, <i>Preliminary Determinations</i>
	#113.10, <i>Investigation Costs</i>
Practice Directive	#C10-6, <i>Preventative Health Care (Interim)</i>

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. On February 18, 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 on May 13, 2016 to clarify that section 5.1 and the principles stated in policy Item C3-13.00 apply to mental disorder claims for workers covered by *GECA*. On May 18, 2018, an Interim Practice Directive was issued to reflect amendments to section 5.1(1.1) of the *Act*, made effective on May 17, 2018. This Practice Directive was amended on July 23, 2018 to provide guidance on the adjudication of claims for a mental disorder where the presumption in section 5.1(1.1) applies. The amended Practice Directive also incorporated policy changes to the definition of a traumatic event and how evidence of a traumatic event and significant stressor is assessed. In addition, the Practice Directive was amended to reorganize the content. On May 21, 2019, this Practice Directive was amended to incorporate changes to the *Mental Disorder Presumption Regulation* that came into effect on April 16, 2019. The regulatory amendment added three eligible occupations covered by the mental disorder presumption: emergency response dispatcher, health care assistant and nurse. In addition, the Practice

Directive added a section on preliminary determinations. On February 1, 2020, this Practice Directive was amended (see *Rebutting the presumption* and *Probable compensable mental disorder* sections) to align with the policy changes that came into effect on that date to provide guidance on legal issues of standard of proof, evidence and causation. This Practice Directive was amended to reflect changes to the *Workers Compensation Act* made effective on April 6, 2020 as part of a standard statute revision process. On October 30, 2020, the practice directive was amended in response to section 156(1.1) of the *Act* made effective August 14, 2020 (*Workers Compensation Amendment Act, 2020* ("Bill 23")).

Application: The adjudicative guidelines contained in this Practice Directive are relevant to mental disorder decisions made on and after April 16, 2019, in respect of a claim made but not finally adjudicated before April 16, 2019.