

Section Title: Benefits Administration – Adjudication and Compensation
Subject: Adjudication of Psychological Injuries
Effective Date: November 1, 2012, for all claims regardless of accident date

POLICY PURPOSE

A compensable claim for psychological injury can arise as an injury by itself with no physical injury or as a result of a physical injury.

This policy deals with the first type of psychological injury. The policy's purpose is to explain the way that claims for psychological injuries will be adjudicated, and the reason that some types of psychological injuries will not give rise to a compensable claim.

A. POLICY

Claims for psychological injuries will be adjudicated in the same way as claims for physical injuries. The WCB will determine whether:

- there has been an accident arising out of and in the course of employment;
- the worker has suffered an injury; and
- the injury was caused by the accident.

Accident

The definition of accident in *The Workers Compensation Act (WCA)* has various components. A psychological injury can be caused by:

- a chance event;
- a wilful and intentional act; or
- the injury can be an occupational disease (an acute reaction to a traumatic event or post traumatic stress disorder).

Any of these events can injure a worker physically. However, they can also injure a worker psychologically without injuring the worker physically.

Some events will be accidents under more than one part of the definition. The WCB will start by looking at the beginning of the definition. If it does not find an accident at the beginning of the definition, it will continue until it either finds an accident or finds that there was no accident under any part of the definition.

Claims for psychological injuries cannot arise under the part of the definition of accident that refers to any (i) event arising out of and in the course of employment or (ii) thing that is done and the doing of which arises out of and in the course of employment. That part of the definition applies to repetitive strain injuries such as carpal tunnel syndrome, musculoskeletal injuries and so on.

Presumption Regarding Post-Traumatic Stress Disorder (PTSD)

Subsection 4(5.8) of the *WCA* creates a rebuttable legislative presumption that may apply when a worker is exposed to a traumatic event or events and later receives a diagnosis of PTSD as described under the most recent version of the *Diagnostic and Statistical Manual of Mental Disorders*, published by the American Psychiatric Association.

For claims involving PTSD, as with other psychological injuries, the WCB will consider whether there is an accident under any part of the definition. In the majority of cases, an event(s) that triggers PTSD will be a chance event caused by a physical or natural cause, a wilful and intentional act by someone other than the worker, or a "traumatic event" as that term is used in the definition of occupational disease. The WCB will most often consider a claim under the presumption when the necessary causal connection between the worker's employment and the injury is not clear.

In such cases, the *WCA* provides that the PTSD is presumed to be an occupational disease the dominant cause of which is the worker's employment unless the contrary is proven. If there is evidence demonstrating on a balance of probabilities that the worker's employment is not the dominant cause of the occupational disease, the presumption will be rebutted.

For the presumption to apply, the diagnosis must be made on or after January 1, 2016 by a physician or psychologist.

Injury

The WCB will next determine whether the worker suffered an injury as a result of the accident. People can react differently to the same situation. Not every worker who experiences the same event will suffer a psychological injury.

Like physical injuries, psychological injuries range in severity from minor to major. A specific diagnosis is not necessary in order for a psychological injury to be compensable, except under the legislative presumption regarding PTSD. The severity of the injury is a factor to consider in determining the benefits payable. It does not determine whether the claim is compensable.

Non-Compensable Psychological Injuries

Psychological injuries that occur as a result of burn-out or the daily pressures or stressors of work will not give rise to a compensable claim. The daily pressures or stressors of work do not fall within any part of the definition of accident because there is no chance event, no wilful and intentional act and no traumatic event.

Discipline, promotion, demotion, transfer or other employment related matters are specifically excluded from the definition of accident.

Psychological injuries that occur as a result of voluntary personal relationships or their breakdown will not usually give rise to a compensable claim, even if both parties are in the same workplace or met in, or as a result of, that workplace because these matters arise out of the personal relationship, not out of the employment.

B. REFERENCES

The Workers Compensation Act, subsections 1(1), 1(1.1), 4(1), 4(5.8) and 4(5.9).

History:

1. Directive dated February 15, 1984, established procedure for psychological conditions.
2. Board Order 114/84, Psychological Conditions, approved August 30, 1984. Established circumstances under which psychological conditions were compensable, and that responsibility could not be accepted for chronic stress.
3. Policy amended by Board Order 22/86, Psychological Conditions, effective January 29, 1986, for clarification, including the term "chronic stress". Board Order 114/84 rescinded.
4. Policy re-written and approved by Board Order 9/91 on June 19, 1991, for inclusion in the Policy Manual as Policy 44.20.60, *Psychological Conditions*.
5. Policy correction approved by Board Order 14/95 to re-incorporate provisions of Board Order 22/86 into the policy statement and to reflect legislative changes. No change to existing policy or practice.
6. The Adjudicative Guidelines were deleted from this policy – December 2002.
7. Policy 44.20.60 Psychological Conditions was repealed and replaced by this Policy effective November 1, 2012. Policy confirms that psychological injuries are adjudicated like physical injuries and explains the various components of the definition of "accident". Policy was approved on October 30, 2012, by Board Order 24/2012, effective November 1, 2012.
8. Policy amended by Board Order 54/2015 on December 17, 2015. Policy was revised to reflect the legislative presumption regarding Post-Traumatic Stress Disorder (PTSD).

C. ADMINISTRATIVE GUIDELINES

Accident

The definition of accident is broad. The kinds of events that the WCB considers to be chance events, wilful and intentional acts or acute reactions to a traumatic event as set out in these guidelines are examples or illustrations and are not intended to be comprehensive.

Chance event caused by a physical or natural cause

This phrase describes those things that are considered to be accidents within the ordinary or dictionary meaning of the word accident. Collisions, gas leaks, building collapses and natural disasters are examples of chance events caused by a physical or natural cause. These are examples of the kind of events that the WCB considers to be chance events.

For chance events caused by a physical or natural cause, the WCB will not determine whether the event was traumatic. It will only determine whether the event happened and whether that event is a chance event.

Wilful and intentional act

Not every act is a wilful and intentional act. A wilful and intentional act is one which involves malice or bad faith. Malice or bad faith will be found when the person committing the act actually knew, or a reasonable person would know that the act was offensive or objectionable to the worker.

The WCB will use a two-step process with wilful and intentional act type claims:

- it will first determine whether the act described by the worker happened;
- if it is able to make this finding, it will then determine whether the act was “wilful and intentional”.

Acts such as assault, robbery, hostage-taking, riots, threats and harassment will be considered under the wilful and intentional act part of the definition.

There are often no witnesses to the acts that give rise to harassment-type claims and there is not usually documentary or other evidence. Because of this, the WCB will make determinations of credibility and plausibility to determine if the act occurred. It will make findings of facts based upon all of the relevant evidence that is available.

Acute reaction to a traumatic event

An acute reaction to a traumatic event can be an occupational disease. “Acute” does not mean immediately after the event. Rather, acute refers to the severity of the reaction, whenever it occurs.

Board Policy 44.20, *Disease/General* describes the meaning of the term "traumatic event" as it is used in the statutory definition of occupational disease. It states that a traumatic event "is an identifiable physical or psychological occurrence, occurs in an identifiable time frame that is normally of brief duration, is not a series of minor occurrences, and is capable of causing serious physical or psychological harm consistent with the acute reaction." These events will typically be deeply disturbing or distressing to the worker.

In most cases, an event that qualifies as an occupational disease will also qualify as a chance event or will be a wilful and intentional act. As such, it will not usually be necessary to use this part of the definition.

However, a claim may be considered as an occupational disease when a worker experiences a psychological injury after the last of many traumatic events which occurred over a long period of time. In that type of claim, the WCB may be satisfied that one or more of the events caused the psychological injury but it may not be able to determine the specific event or events that caused the injury.

A claim may also be considered as an occupational disease if there is a single traumatic event as that term is described in the *Disease/General Policy*.

Workers who may experience an acute reaction to a traumatic event include, for example, correctional officers, emergency services personnel, hospital workers or homecare workers. This list of workers is not intended to be comprehensive; these are examples of the kind of claims that may be considered as an occupational disease.

Injury

Causal connection between accident and injury

As with physical injuries, the causal connection between an accident and a psychological injury may not always be clear. The appearance and recognition of symptoms may occur soon after the accident or long after.

A physical reaction that is an expected response to a particular event is an injury, for example, developing a bruise after walking into a piece of furniture. In the same way, a psychological reaction that is an expected response to a particular event can be an injury. For example, a worker may feel psychologically unwell following a shocking or violent event at work and require time off to recover. Psychological ill-health is an expected response to that type of event and is considered to be an injury.

In some cases, the fact that the accident caused the injury will be obvious. For example, if a worker experiences a psychological reaction immediately after being involved in, or witnessing, a near miss or an event that kills or seriously injures another person, the causal connection will be clear. In other cases the causal connection will not necessarily be obvious.

Recognition/Appearance of symptoms

Sometimes a worker experiences poor psychological health after years on the job and numerous accidents. If that happens, it may not be clear that the accident(s) caused the injury. This is because many non-work related events will have occurred during that period of time that might be responsible for the psychological injury.

Although symptoms of a psychological injury may not be recognized until long after the event, the injury has often occurred earlier in time. As such, when gathering and reviewing evidence of non-work events such as substance abuse, relationship breakdown or difficulties with family or friends, the WCB will determine whether, on a balance of probabilities, the psychological injury caused or contributed to these non-work events or whether the non-work events caused the psychological injury.

An event does not have to be "serious" from the perspective of an impartial observer in order to qualify as an accident. However, it will be more difficult to find that the accident caused an injury when the accident is an objectively minor event.

For example, a ceiling tile falling to the floor in a worker's office is a chance event but it is unlikely that a worker would suffer a psychological injury as a result.

Legislative Presumption Regarding Post-Traumatic Stress Disorder

Subsection 4(5.8) of the *WCA* creates a rebuttable legislative presumption in certain cases that Post-Traumatic Stress Disorder ("PTSD") is an occupational disease the dominant cause of which is the worker's employment. PTSD can have many causes. The presumption establishes a causal connection between PTSD and the worker's employment, unless it is rebutted.

When considering a claim under the presumption, the WCB must determine whether:

- 1.) the worker was exposed to a traumatic event or events specified in the most recent version of the Manual as a trigger for PTSD;
- 2.) the worker has received a diagnosis of PTSD;
- 3.) there is evidence to rebut the presumption.

1.) Was the worker exposed to a traumatic event or events specified as a trigger for PTSD?

For the presumption to apply, the *WCA* requires that the worker be exposed to a traumatic event or events specified as a trigger for PTSD in the most recent version of the Manual, which is currently in its Fifth Edition.

The Manual specifies that the worker must have been exposed to actual or threatened death, serious injury, or sexual violence. It also specifies the ways in which exposure to a traumatic event or events must occur.

The traumatic events described in the Manual as triggers for PTSD are typically sudden and catastrophic and have a significant impact on the worker. They must be identifiable and reasonably assessed as involving actual or threatened death, serious injury or sexual violence.

Not all events that a worker experiences as traumatic will qualify as triggers for PTSD under the Manual. Events that do not involve actual or threatened death, serious injury or sexual violence can still have a traumatizing effect on an individual. Claims based on such events may be compensable under the "acute reaction to a traumatic event" branch of the definition of occupational disease.

By reviewing the evidence in the claim file, the WCB determines whether a worker has been exposed to a traumatic event or events specified in the Manual as a trigger for PTSD. If there is insufficient evidence to make this determination, the WCB will conduct additional investigation.

If the evidence does not establish that the worker was exposed to a traumatic event or events as specified in the Manual as a trigger for PTSD, the presumption does not apply.

2.) Has the worker received a diagnosis of PTSD?

The *WCA* defines PTSD with reference to the diagnostic criteria set out in the Manual. For the presumption to apply, the *WCA* requires that the worker be diagnosed with PTSD on or after January 1, 2016. A physician or psychologist must provide the diagnosis.

When the WCB receives a diagnosis of PTSD, it will review the evidence in the claim file to determine whether the diagnosis fulfills the diagnostic criteria of the Manual. If there is insufficient evidence to make this determination, the WCB will conduct additional investigation.

If the WCB cannot confirm a PTSD diagnosis in accordance with the Manual's criteria, the presumption does not apply.

3.) Is there evidence to rebut the presumption?

Subsection 4(5.8) of the *WCA* creates a rebuttable presumption. The effect of the presumption is that the evidence need not establish a causal connection between the worker's employment and the worker's PTSD. This presumption will be rebutted if the evidence establishes that the worker's employment was not the dominant cause of the PTSD.

If the statutory requirements for the application of the presumption are met, the WCB will determine if there is evidence to rebut the presumption. If the evidence of non employment-related causes exceeds the evidence of employment-related causes, the presumption is rebutted. Where the evidence regarding employment and non-employment related causes is evenly balanced, the presumption is not rebutted.

Burn-out/Stress (no accident)

Burn-out or stress can occur in a number of situations, such as when a worker has:

- performed a difficult or demanding job for a lengthy period of time;
- performed a boring or repetitive job for a lengthy period of time;
- a difficult, demanding or unpleasant supervisor;
- difficult or unpleasant co-workers and/or clients;
- been passed over for a promotion to which he or she believed he or she was entitled.

Claims based on these criteria are not compensable, as these circumstances do not give rise to an accident.

Personal relationships (not arising out of employment)

While a voluntary personal relationship may have begun in the workplace, and the breakdown may have consequences in the workplace, neither event arises out of the employment. Even if the actions of one of the parties in the workplace fall within the definition of wilful and intentional act, any resulting injury will not usually be compensable because the incidents and the injury arose out of the personal relationship, not out of the employment.