

Are Injuries Suffered During Seizure at Work Compensable?



SITUATION

A truck driver is standing in his employer's repair shop, waiting for repairs to his truck to be done. He suddenly has a seizure and collapses onto a concrete floor, suffering a broken nose, fractured shoulder, face lacerations and torn rotator cuff. The driver files a workers' comp claim, arguing that the seizure was caused by fatigue and sleep deprivation due to excessive work hours. For example, after a 12-hour shift the day before the seizure, he traveled more than three hours to a second location so he could start another 12-hour shift the next morning after only five or six hours sleep. The driver has never had a seizure before. But he does have a history of alcohol use. And a report by a doctor who examined him indicates that the seizure was likely related to alcohol withdrawal because the driver had had no alcohol for the prior four days. However, the doctor's report also notes that sleep deprivation and excess fatigue caused by his work responsibilities and hours caused mental stress for the driver and were additional risk factors for his seizure. The workers' comp board denies the driver's claim on the grounds that his seizure wasn't work-related. The driver appeals.

QUESTION

Are the driver's seizure-related injuries compensable?

- A) Yes, because the injuries occurred at work, during work hours.
- B) Yes, because a workplace hazard was a contributing factor for the seizure, which caused the injuries.
- C) No, because the driver's seizure was due to mental stress, which is never covered by workers' comp.
- D) No, because the driver wasn't actually working when he suffered the seizure.

ANSWER

B. The driver's injuries are compensable because fatigue and sleep deprivation due to his 12-hour shift and extra work travel were contributing factors to the seizure that caused them.

EXPLANATION

This hypothetical is based on a decision by an Alberta workers' comp appeals commission that involved a claim for injuries suffered by a truck driver after he had a seizure at work. The commission explained that a work-related hazard didn't have to be the sole cause of an injury for it to be covered by worker's comp; it was enough if workplace hazards *contributed* to the injury. The commission found that the driver's long work hours resulted in 'sleep deprivation and excessive fatigue.' These work-related hazards were contributing factors to his seizure and resulting injuries. So although a neurologist's report indicated that the seizure could be due to a non-compensable medical condition related to alcohol withdrawal, the commission found that the employment factors contributed to the seizure, which occurred while the driver was 'acting under his employer's directions, during the course of his employment.' Thus, the injuries arose out of his employment and were compensable.

Insider Says: Fatigue is a serious safety hazard in many

industries, including transportation. Learn how to implement a [fatigue risk management system](#). You can also adapt this [model fatigue management policy](#) and [fatigue self-reporting form](#) for your workplace.

WHY THE WRONG ANSWERS ARE WRONG

A is wrong because not every injury that occurs in the workplace or while a worker is on duty is compensable. The injury must arise out of the worker's employment. For example, a worker injured while at work may not be entitled to workers' comp if the injury arose during [horseplay between workers](#), which took their conduct 'out of the course of employment.' So in this case, the fact that the driver was on duty and in the workplace when he was injured doesn't automatically mean the injuries he suffered are covered by workers' comp.

C is wrong because workers' comp *may* cover mental stress in certain circumstances. Ten jurisdictions provide workers' comp coverage for [mental stress](#) provided that the stress is an acute reaction to a traumatic event that occurs or arises out of the worker's employment, such as seeing a co-worker killed on the job. Here, although the driver's lack of sleep and long hours may have caused him mental stress, it's unlikely that workers' comp would cover such stress. But his claim wasn't for mental stress—it was for the physical injuries he suffered after a seizure that was also caused by sleep deprivation and fatigue. So any stress he may have suffered in addition is irrelevant as to this claim.

D is wrong because a worker needn't be engaged in a specific job task at the moment he's injured for the injury to be compensable. If the injury arises when the worker is acting under his employer's directions and in the course of his employment, then the injury arises out of the employment and is compensable. (For example, injuries suffered by workers on [meal breaks](#) may be compensable.) So although the driver wasn't actively working when he had the seizure, he was waiting in

his employer's repair shop for his truck to be fixed so he could resume his work activities. Thus, he was acting in the course of his employment at that time.

SHOW YOUR LAWYER

[Decision No.: 2013-0327](#), [2013] CanLII 41033 (AB WCAC), June 26, 2013