

OHS Director's Briefing: Workers' Comp Coverage of PTSD and Mental Stress in Alberta



Alberta covers both acute and gradual onset psychological injury and stress whether triggered by traumatic events or significant but non-traumatic workplace stressors. In addition, it has generous coverage presumptions for both traumatic injury and PTSD.

COVERAGE RULES UNDER THE ACT

Under Section 24 of the *Workers' Compensation Act*, workers are entitled to compensation for 'personal injury' they suffer in an accident arising out of and in the course of their employment.

WCB COVERAGE RULES

The Act doesn't specifically discuss compensation for psychological disorders (other than PTSD, which we'll discuss below). That leaves it to the Alberta Workers' Compensation Board (WCB) to address the issue. WCB Policy 03-01 states that claims for 'psychiatric or psychological injury' are compensable, i.e., payable under workers' comp when 2 conditions are met:

Condition 1. Confirmed DSM Diagnosis

First, the worker must be diagnosed with a psychiatric or psychological injury that's recognized in the most current version of the American Psychiatric Association *Diagnostic and Statistical Manual of Mental Disorders* (DSM), e.g., PTSD, anxiety or depressive disorder or acute stress disorder.

Condition 2. Accepted Cause

The DSM-recognized condition must also result from one of the triggers listed in Policy 03-01,* the most important of which are:

- Traumatic onset psychological injury or stress; and
- Chronic onset psychological injury or stress.

>What 'Traumatic Onset' Means

Psychological injury or stress is covered if it develops as an emotional reaction to one or a series of traumatic work-related events, which Policy 03-01 defines as:

- Specific, sudden, frightening or shocking;
- Involving actual or threatened death or serious injury to oneself or others; and/or
- Involving threats to physical integrity.

Examples include:

- Witnessing a co-worker's death or severe injury;
- Being the victim of a robbery or hostage-taking; or
- Providing assistance to victims of severe physical trauma or fatalities.

Policy 03-01 notes that traumatic event(s) may include workload or work-related interpersonal events that are excessive and unusual in comparison to the pressures and tensions experienced in normal employment, e.g., threats of harm, workplace harassment or privacy violations.

In either case, the WCB uses an objective standard to

determine if an event qualifies as traumatic. In other words, the fact that the particular worker was traumatized by the event is relevant but not conclusive; the event must also be one that a reasonable person in the worker's situation would have found traumatic.

>What 'Chronic Onset' Means

Psychological injury or stress is also covered if it develops chronically, i.e., cumulatively and over time as a result of continuing or repeat exposure to work-related stressors that are significant but less than traumatic, e.g., harassment that's non-traumatic but still serious. Such claims are compensable if the work-related events are excessive or unusual compared to the normal pressures and tensions experienced by the average worker in a similar occupation. Thus, for example, chronic onset stress can't be triggered by discipline, termination, demotion, deadlines, performance review and the other normal pressures of employment. As with traumatic onset stress, the WCB uses an objective standard to adjudicate chronic onset claims.

THE COVERAGE PRESUMPTIONS

Normally, the worker claiming benefits for psychological injury has the burden of proving, on a balance of probabilities, that the coverage requirements have been met. That's not easy. But like many jurisdictions, Alberta has revised its workers comp laws to establish coverage presumptions for psychological injury. The presumption shifts the balance of proof in a claim proceeding. In other words, the psychological injury is presumed to be work-related unless expressly shown otherwise. In Alberta, there are 2 different presumptions depending on the nature of the claimed injury:

The Traumatic Onset Presumption

The presumption that traumatic onset psychological injury or stress applies if the worker:

- Is diagnosed with a DSM-recognized psychological injury by a physician or psychologist; and
- Has been exposed to one or more traumatic events during the course of his/her employment.

The PTSD Presumption

Until spring 2018, PTSD was presumed to be work-related for first responders, i.e., emergency medical technicians, firefighters, police officers and peace officers. Bill 30 extends the PTSD presumption to cover all workers, provided that:

- The injury or stress occurs after April 1, 2018;
- The worker is properly diagnosed with PTSD by a physician or psychologist in accordance with DSM criteria;
- The work-related events or stressors are the predominant cause of the injury or stress; and
- The work-related events or stressors are excessive or unusual compared to the normal pressures and tensions experienced by the average worker in a similar occupation.

Rebutting the Presumption

While the presumption makes it easier for the worker to make out a claim for psychological injury or stress, it can still be rebutted by showing, e.g., that:

- Non-work-related factors were the predominant cause;
- The injury or stress was the result of the worker's serious and willful misconduct;
- The injury or stress was caused by termination, discipline, work changes or other employer actions or decisions relating to the worker's employment; or
- In the case of PTSD, the workload, interpersonal relationships or other work-related events or stressors

weren't excessive or unusual but normal for the particular job.

Note

* The other 3 triggers of psychological injury or stress listed in WCB Policy 03-01 are:

- Organic brain damage caused by a work-related head injury, exposure to toxic chemicals or gases, anoxia or other work-related injury, disease, or condition;
- An emotional reaction to a work-related physical injury such as depression caused by prolonged disability or an amputation; and
- An emotional reaction to a work-related treatment process such as complicated recovery from surgery or pain caused by the treatment.

LEGAL SOURCES

- Workers' Compensation Act
 - WCB Policy 03-01, P