

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



Manitoba's mental stress coverage is among the narrowest in Canada; on the other hand, the province's PTSD presumptions are among the country's broadest.

## COVERAGE RULES UNDER THE ACT

Section 4(1) of the Manitoba *Workers' Compensation Act* says that workers are entitled to compensation 'for personal injury by accident arising out of and in the course of employment.' Section 1(1) defines 'accident' as including an 'occupational disease.' The Section 1(1) definition of occupational disease specifically includes PTSD but excludes 'stress, other than an acute reaction to a traumatic event.'

## WCB COVERAGE RULES

Manitoba Workers' Compensation Board (WCB) Policy 44.05.30 implements the Act provisions by explaining the specific requirements for PTSD and other mental stress claims to be compensable, i.e., payable under workers' comp. Let's start with the general rules.

### 1. Event(s) Must Be Traumatic

Mental stress is covered only if it's the result of an acute reaction to one or more sudden and unexpected traumatic events. The WCB uses an objective standard to determine if an event is traumatic. In other words, the fact that the particular worker was traumatized isn't conclusive; the event must be such that a reasonable person in the worker's situation would have found the event traumatic. Examples:

- Witnessing a fatality or horrific injury;
- Being the victim of an armed robbery or hostage-taking;
- Being subjected to physical violence; and

- Being subjected to threats of physical violence that are serious and believable.

## **2. Must Be Work-Related**

The traumatic event(s) must also arise out of or in the course of the worker's employment. Policy 44.05.30 lists the following as *not* meeting the criterion:

- 'Burn-out/No accident stress resulting from demanding job conditions, difficult or unpleasant supervisors, co-workers and clients, boredom or being passed over for a promotion; and
- Stress from personal relationships outside work even if they begin or have consequences in the workplace.

In addition, Section 1(1.1) of the Act specifically says that employment changes like transfers, demotion, lay-off or termination aren't considered 'accidents' and thus aren't compensable.

## **3. Worker Has Burden of Proof**

The worker has the burden of proving, on a balance of probabilities, that the mental stress claim meets the requirements of Policy 44.05.30. That's often a tough hurdle to clear.

### **PTSD PRESUMPTION**

On January 1, 2016, Manitoba amended the Act to provide more generous coverage for a specific form of mental stress'PTSD. Newly added Section 4(5.8) says that PTSD is presumed to be covered when:

- The worker is exposed to one or more traumatic events listed in the American Psychiatric Association *Diagnostic and Statistical Manual of Mental Disorders* (DSM) as being a trigger for PTSD; and
- A physician or psychologist diagnoses the worker as having PTSD.

The WCB Policy 44.05.30 criteria for general mental stress claims discussed above also apply to PTSD claims. The difference is that once PTSD is properly diagnosed, the burden of proof shifts and coverage is presumed unless specifically shown otherwise. WCB Policy 44.05.30 explains when the PTSD presumption applies.

### **1. Stricter Triggers**

As with other forms of mental stress, PTSD must be the result of an acute reaction to one or more sudden and unexpected traumatic events. But for the presumption to apply, those events must also be listed as PTSD triggers in the DSM. Such events are 'typically sudden and catastrophic' and involve actual or threatened death, serious injury or sexual violence, the Policy notes.

### **2. Must Be Proper Diagnosis**

The WCB must also confirm that the diagnosis comes from a physician or psychiatrist and meets the DSM criteria for a PTSD diagnosis.

### **3. Presumption Can Be Rebutted**

The presumption gives the claiming worker an advantage but doesn't seal the deal since the presumption can be rebutted by showing that:

- Non-work-related factors were the predominant cause of the PTSD;
- The PTSD was caused by burn-out or no accident stress;
- The PTSD was caused by personal relationships outside the workplace;
- The PTSD was caused by a decision or action taken by the worker's employer relating to the worker's employment such as transfer, demotion, discipline, termination or performance review.

#### LEGAL SOURCES

- The Workers' Compensation Act
- WCB Policy 44.05.30'Adjudication of Psychological