

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



In New Brunswick, workers' comp coverage of work-related psychological disorders is limited to traumatic onset. Although there's a coverage presumption, it's limited to PTSD and emergency response workers.

## COVERAGE RULES UNDER THE ACT

First of all, mental stress is covered only if it's caused by a discrete and traumatic work-related event, which rules out chronic mental stress that develops gradually and cumulatively over time as well as stress in response to continuous or multiple exposure to workplace stressors that do psychological harm but don't rise to the level of trauma.

Explanation: Section 7(1) of the New Brunswick *Workers' Compensation Act* says that workers are entitled to compensation for personal injury caused by an accident arising out of and in the course of their employment. Section 1 defines 'accident' as including a 'disablement' but not 'mental stress or disablement caused by mental stress, other than as an acute reaction to a traumatic event.'

## WorkSafeNB COVERAGE RULES

As in all other jurisdictions, in New Brunswick the workers' compensation board, WorkSafeNB, adopts policies implementing the provisions of the Act. According to Policy 21-103, for a claim to be compensable, i.e., payable under workers' comp, the mental stress:

- Must be an acute reaction to a sudden and unexpected traumatic event, e.g., witnessing a fatality or horrific injury or being held up at gun point;
- Must have been caused by a traumatic event arising out of and in the course of employment;
- Must be a mental or physical condition described in the most recent version of the American Psychiatric Association's *Diagnostic and Statistical Manual*

*of Mental Disorders* (DSM), e.g., PTSD, anxiety or depressive disorder or acute stress disorder; and

- Must not be caused by a decision of the worker's employer relating to the managing and monitoring of the worker's employment, defined broadly as including decisions regarding:
  - Changes to work or work conditions;
  - Discipline or termination;
  - Interpersonal relationships and conflicts;
  - Health and safety concerns;
  - Union issues; and
  - Performance review.

### **THE PTSD PRESUMPTION**

Normally, the worker claiming benefits for mental stress bears the burden of proving, on a balance of probabilities, that it meets the coverage requirements of Policy 21-103. But Section 7(1) of the Act creates a coverage presumption for appropriately diagnosed PTSD claims of 'emergency response workers,' including:

- Firefighters;
- Paramedics; and
- Police officers.

In other words, if the worker who files the PTSD claim is an emergency response worker, the claim is presumed to be covered. However, the presumption can be rebutted by showing that:

- Non-work-related factors were the predominant cause of the PTSD;
- The PTSD was a pre-existing condition not related to work, i.e., the worker had it before being exposed to the trauma at work;
- The PTSD was caused by decisions of the employer relating to the worker's employment; and/or
- The PTSD was attributable solely to the worker's serious and willful misconduct.

#### **LEGAL SOURCES**

- The Workers' Compensation Act
- WorkSafeNB Policy 21-103 Conditions for Entitlement/Traumatic Mental Stress