

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



In Nova Scotia, mental stress is covered only if it's caused by a discrete and traumatic work-related event. While PTSD is presumed to be work-related, the presumption applies only to emergency response workers.

COVERAGE RULES UNDER THE ACT

Section 10 of the Nova Scotia *Workers' Compensation Act* says that workers are entitled to compensation for personal injury 'by accident arising out of and in the course of employment.' The definition of 'accident' under Section 2 specifically excludes 'stress, other than an acute reaction to a traumatic event.'

WCB COVERAGE RULES

The Nova Scotia Workers' Compensation Board (WCB) Policy 1.3.9 sets implements the provisions of the Act by laying out 4 things that must be true for mental stress to be compensable, i.e., payable under workers' comp:

1. Event(s) Must Be Traumatic

Mental stress is covered if it develops as 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 by the event 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.

While acute reaction to a traumatic event normally happens in a single incident, Policy 1.3.9 acknowledges that it may also be the result of cumulative buildup from exposure to multiple traumatic events over a period of time. This kind of delayed reaction stress is covered as long as the most recent episode that triggers it is a traumatic event. Example: A paramedic that has responded to 10 fatal and gory traffic accidents gets pushed progressively closer to the edge until finally snapping when exposed to those same traumatic events during response 11.

2. Must Be Work-Related

The traumatic event(s) must arise out of or in the course of the worker's employment.

3. Disorder Must Be Recognized

The physical or mental disorder the worker suffers as a result of an acute reaction to a traumatic event must be described in the American Psychiatric Association *Diagnostic and Statistical Manual of Mental Disorders* (DSM), e.g., PTSD, anxiety or depressive disorder or acute stress disorder.

4. Must Be Proper Diagnosis

Finally, the physical or mental disorder must be appropriately diagnosed under DSM guidelines by a psychiatrist or clinically

trained psychologist registered with the Nova Scotia Board of Examiners in Psychology.

THE BILL 7 PTSD PRESUMPTION FOR EMERGENCY RESPONSE WORKERS

Normally, the worker claiming benefits for mental stress has the burden of proving, on a balance of probabilities, that the disorder meets the coverage requirements. That's not easy. But in October 2017, Nova Scotia adopted Bill 7 creating the presumption that appropriately diagnosed PTSD is work-related when suffered by 'front-line or emergency response workers.' While several other provinces have PTSD presumptions for emergency responders, Nova Scotia's is among the broadest in terms of workers covered, including:

- Continuing-care assistants;
- Correctional officers;
- Emergency response dispatchers;
- Firefighters;
- Nurses;
- Paramedics; and
- Police officers.

Result: Front-line and emergency response workers who file a claim for PTSD must still meet the Policy 1.3.9 coverage requirements. The difference is that the balance of proof shifts and the PTSD is presumed to be work-related unless it's specifically rebutted by showing that:

- Non-work-related factors were the predominant cause of the PTSD;
- The PTSD was a non-work related pre-existing condition, i.e., the worker had it before being exposed to the traumatic event(s) at work;
- The PTSD was caused solely by the worker's serious and deliberate misconduct; and/or
- The PTSD was caused by a decision or action taken by the worker's employer relating to the worker's employment,

including a decision to:

- Change the work or working conditions;
- Discipline the worker; or
- Terminate the worker's employment.

LEGAL SOURCES

- ‘ The Workers’ Compensation Act
- ‘ Bill 7: Workers’ Compensation Act (amended)
- ‘ WCB Policy 1.3.9’Psychological Injury