

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



Ontario covers both acute and gradual onset mental stress whether triggered by traumatic events or significant but non-traumatic workplace stressors. It also has a coverage presumption but only for PTSD and limited to first responders and other designated classes of workers.

COVERAGE RULES UNDER THE ACT

Under Section 13(4) of the Ontario *Workplace Safety & Insurance Act*, workers are entitled to benefits for 'chronic and mental stress' arising out of and in the course of their employment. But Section 13(5) clarifies that this doesn't apply to mental stress caused by work changes, discipline, termination or other employment-related decisions or actions of their employer. PTSD is presumed to be work-related when the worker is in one of the high-stress occupations listed in Section 14 (see below for the list).

WSIB COVERAGE RULES

Ontario is one of several jurisdictions where both traumatic and chronic mental stress claims are 'compensable,' i.e., payable under workers' comp. The Ontario Workplace Safety and Insurance Board (WSIB) fleshes out the Act by explaining the rules for adjudicating each type of claim.

Traumatic Stress

WSIB Policy 15-03-02 lists the 4 conditions of compensability of mental stress caused by one or more traumatic events:

1. Event(s) Must Be Traumatic

To be traumatic, events must be 'clearly and identifiable' and 'objectively traumatic.' Examples:

- Witnessing a fatality or horrific accident;
- Witnessing or being the victim of an armed robbery or hostage-taking;
- Being the target of physical violence or death threats; or
- Being the object of workplace harassment involving acts or threats of violence or life-threatening danger.

Previous policy also required that traumatic events be 'sudden and unexpected' but revised Policy 15-0302 drops that language starting with claims for incidents happening on or after Jan. 1, 2018. While most traumatic events actually are sudden and unexpected, the revision leaves the door open to prolonged exposure to serious harassment being covered as traumatic.

The phrase 'objectively traumatic' means that WSIB uses an objective rather than subjective standard to decide if an event is traumatic. In other words, the fact that the particular worker was traumatized by the event is relevant but not conclusive; to be deemed traumatic, the event must also be one that a reasonable person in the worker's situation would have found traumatic whether an event is traumatic is determined

While trauma-induced stress normally happens as a result of a single incident, Policy 15-03-02 acknowledges that it may also happen as a result of cumulative buildup from exposure to multiple traumatic events over a period of time. Delayed reaction stress may be deemed traumatic 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 and can't be related to normal employment stresses like termination or changes to work conditions.

3. Disorder Must Be Recognized

The disorder the worker suffers in reaction to one or more traumatic events 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 disorder must be appropriately diagnosed under DSM guidelines by a properly accredited physician, psychiatrist, psychologist or nurse practitioner.

Chronic Stress

WSIB Policy 15-03-14 addresses claims for chronic mental stress with accident dates of Jan. 1, 2018 or later. The 5 basic conditions of compensability:

1. Event(s) Must Be Stressors

The biggest difference between traumatic and chronic mental stress is that the latter are triggered by 'substantial work-related stressors,' i.e., actions or

conditions that don't rise to the level of trauma but are still significant enough to inflict psychological damage such as workplace harassment not involving violence. According to Policy 15-03-14, to be deemed 'substantial,' stressors must be identifiable and more 'excessive in intensity or duration' than the normal pressures associated with the job. Thus, for example, while interpersonal conflict is seen as a normal stress of the workplace, it crosses the line when it involves harassment or abuse.

2. Must Be Predominant Cause

The worker must show that the substantial workplace stressor was the predominant cause of the chronic stress. That's significant because proving the link between workplace stressors and chronic stress is generally harder than tracing traumatic stress back to the traumatic event(s) that caused it.

3. Must Be Work-Related

As with traumatic events, stressor(s) must arise out of or in the course of the worker's employment and can't be related to normal employment stresses like termination or changes to work conditions.

4. Disorder Must Be Recognized

The chronic stress disorder must be recognized in the most recent version of the DSM.

5. Must Be Proper Diagnosis

Finally, the diagnosis must come from a physician, psychiatrist, psychologist or nurse practitioner and meet DSM criteria.

THE PTSD PRESUMPTION

As noted above, normally the worker claiming mental stress benefits 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, Ontario has revised its workers comp laws to establish coverage presumptions which shifts the balance of proof in a claim proceeding. In other words, the mental stress is presumed to be work-related unless expressly shown otherwise.

Ontario's presumption is relatively limited since it applies to just one form of mental stress'PTSD. Again, there must be a proper DSM diagnosis. And the presumption covers only specific kinds of workers, including:

- Firefighters (full-time/part-time/volunteer);
- Fire investigators;
- Police officers;
- Emergency response team members;
- Paramedics;
- Emergency medical assistants;
- Ambulance service managers;
- Workers in a correctional institution;
- Workers in a place of secure custody or temporary detention;

- Workers involved in dispatch;
- Nurses who are College of Nurses of Ontario members who provide direct care;
- Bailiffs;
- Probation officers or workers who directly supervise them; and
- Special constables.

Rebutting the Presumption

While the presumption makes it easier for these workers to make out a claim for PTSD, it can still be rebutted by showing, e.g., that:

- Non-work-related factors were the predominant cause of the PTSD;
- The PTSD was the result of the worker's serious and willful misconduct;
- The PTSD was a pre-existing condition not caused by substantial workplace stressors; and
- The injury was caused by termination, discipline, work changes or other employer actions or decisions relating to the worker's employment.

LEGAL SOURCES

- Workplace Safety & Insurance Act
- WSIB Policy 15-03-02 Traumatic Mental Stress
- WSIB Policy 15-03-14 Chronic Mental Stress
- WSIB Policy 15-03-13 PTSD in First Responders and Other Designated Workers