

OHS Director's Briefing: Workers' Comp Coverage of PTSD and Mental Stress in Prince Edward Island



PEI covers both acute and gradual onset mental stress but only if it's triggered by traumatic events. But while the triggers are restrictive the coverage presumptions for PTSD and other forms of mental stress are among the broadest and most generous in Canada.

COVERAGE RULES UNDER THE ACT

Under Section 6 of the PEI *Workers' Compensation Act* workers are entitled to compensation for 'personal injury by accident' that they suffer arising out of and in the course of employment. Section 1(1.1) states that 'accident' doesn't include stress other than an 'acute reaction to a traumatic event.' But in 2018, PEI added new Sections 6(4.1)-(4.4) to provide coverage for PTSD and other 'trauma- and stressor-related disorders'

The way it works: Such disorders are now considered to be an 'acute reaction to a traumatic event' for purposes of 1(1.1). New Section 6(4.1) says that trauma- and stressor-related disorders are presumed to arise out of and in the course of employment as long as:

- The worker is diagnosed by a psychiatrist or psychologist;
- The diagnosed disorder is described in the American Psychiatric Association *Diagnostic and Statistical Manual of Mental Disorders* (DSM); and
- The worker has been exposed to events listed in the DSM as triggers for that particular trauma- or stressor-related disorder.

WCB COVERAGE RULES

PEI Workers' Compensation Board (WCB) Policy POL-90 provides the crucial details fleshing out when trauma- and stressor-related disorder claims under Section 6(4.1) are compensable, i.e., payable by workers' comp and when the coverage presumption applies.

The presumption is a big deal because, normally, the worker claiming benefits has the burden of proving, on a balance of probabilities, that all of the coverage requirements have been met. The presumption reverses the burden by presuming that mental stress *is* covered unless expressly proven otherwise. While several other jurisdictions have adopted similar presumptions for mental stress, the PEI presumption is more generous because it's not limited to specific disorders like PTSD and/or classes of workers like emergency responders the way it is in most of the other presumption jurisdictions.

1. Event(s) Must Be Traumatic

For the presumption to apply, the trauma- and stressor-related disorder must be a reaction to one or more 'traumatic events' specifically listed in the DSM as triggers for the particular disorder. Such events, POL-90 explains, involve exposure to actual or threatened:

- Death;
- Serious injury; or
- Sexual violence.

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.

2. Means of Exposure

The disorder can be an acute reaction to a single incident or for claims after June 1, 2018, a gradual onset caused by a series of traumatic events. Exposure must occur via one or more of the following ways:

- The worker directly experiences the traumatic event;
- The worker witnesses, in person, the event occurring to another person(s);
- The worker learns that a close family member or close friend has experienced a traumatic event; or
- The worker experience repeated or extreme exposure to 'aversive details' of the traumatic event, e.g., first responders repeatedly exposed to details of child abuse cases.

3. Must Be Work-Related

The traumatic event(s) must arise out of or in the course of the worker's employment. POL-90 stipulates that disorders are not compensable if they result from the normal work stressors found in all workplaces such as concerns about:

- Termination, discipline, demotion, performance review, work schedules and other inherent aspects of employment; and
- Interpersonal conflicts with management, co-workers or customers; or
- Health and safety.

4. Disorder Must Be Recognized

The disorder the worker suffers in reaction to a traumatic event(s) must be one of the trauma- or stressor-related disorders described in the DSM, e.g., PTSD, anxiety or depressive disorder or acute stress disorder.

5. Must Be Proper Diagnosis

Finally, the disorder must be appropriately diagnosed under DSM guidelines by a psychiatrist or psychologist. The WCB carefully reviews the diagnosis to ensure it meets the DSM criteria.

Rebutting the Presumption

While the presumption makes life easier for workers, it's not conclusive. The WCB can still deny the claim if the presumption is rebutted by showing, e.g., that:

- Non-work-related factors were the predominant cause of the disorder;
- The event wouldn't have been traumatic to a reasonable person in the worker's circumstances;
- The disorder was caused by normal job pressures, employment decisions and/or interpersonal conflicts.

LEGAL SOURCES

- Workers' Compensation Act
- WCB Policy POL-90'Time