

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



In Yukon, workers' comp coverage of PTSD and other work-related psychological disorders is extremely limited.

GENERAL RULES

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

Explanation: Section 4(1) of the *Workers' Compensation Act* says that workers are entitled to compensation for a 'work-related injury.' Section 3(1) defines 'injury' as including a 'disablement' but not 'mental stress or disablement caused by mental stress, other than post-traumatic stress.'

YWCHSB PTSD COVERAGE RULES

The Yukon Workers' Compensation Health and Safety Board (YWCHSB) Policy EN-09 sets out the specific rules implementing the PTSD coverage provisions of the Act.

Triggers

Single event: PTSD is covered if it develops as an acute reaction to a sudden and unexpected traumatic event arising out of or in the course of employment. 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.

Series of events: PTSD developed as a result of exposure to a series of traumatic events is covered if:

- There's 'objective and documented evidence' confirming that the disorder arose out of and in the course of the worker's employment;
- A Clinical Psychologist or Psychiatrist provides a confirmed diagnosis; and
- The diagnosed disorder is defined in the *Diagnostic and Statistical Manual of Mental Disorders* (DSM), e.g., e.g., PTSD, anxiety or depressive disorder or acute stress disorder.

THE BILL 8 PTSD PRESUMPTION

Normally, the worker claiming benefits for PTSD bears the burden of proving, on a balance of probabilities, that the disorder meets the EN-09 Policy requirements. But in November 2017, Yukon adopted Bill 8 creating the presumption that appropriately diagnosed PTSD is work-related when suffered by 'emergency response workers,' which includes:

- Firefighters;
- Paramedics; and
- Police officers.

Result: If the worker who files a YWCHSB claim for PTSD is an emergency response worker, the EN-09 Policy requirements are presumed to be met. 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, i.e., the worker had it before being exposed to the trauma at work; and/or
- The PTSD was caused by discipline, performance evaluation, termination, harassment or other employment actions or decisions of the worker's employer.

YWCHSB COVERAGE RULES FOR OTHER PSYCHOLOGICAL DISORDERS

Policy EN-09 also specifies that other non-PTSD psychological disorders are also covered if:

- There's 'objective and documented evidence' confirming that the disorder arose out of and in the course of the worker's employment;
- A Clinical Psychologist or Psychiatrist provides a confirmed diagnosis; and
- The diagnosis is defined in the DSM.

Note that the Bill 8 PTSD presumption doesn't apply to these disorders even if the worker is an emergency response worker.

LEGAL SOURCES

- The Workers' Compensation Act
- Bill 8: Act to Amend the Workers' Compensation Act and Occupational Health and Safety Act (2017)
 - YWCHSB Policy EN-09'Adjudic