

Quiz: Does Workers' Comp Cover Mental Stress Caused by Knowing a Co-Worker Was Harassed?



SITUATION

Dora works at the Grindem Down Machine Plant. Both of her parents do, too. But, alas, family ties aren't always a positive thing as in this case where Dora's parents are physically harassed and bullied by the same person, a tall and scary-looking supervisor who works in the Flute Grind Dept. After years of abuse, mom and dad decide they've had enough and leave the company. A month later, Dora is transferred to Flute Grind. The prospect of having to face the same supervisor who tormented her parents aggravates her preexisting depression and anxiety. So, she takes a leave of absence. After a psychiatrist diagnoses her as having a mental stress illness, she files a workers' comp claim.

YOU MAKE THE CALL

Is Dora entitled to workers' comp benefits for a mental stress illness'

1. Yes, because the mental stress illness was properly diagnosed
2. No, because her mental stress illness wasn't work-related

3. Yes, because it's objectively reasonable to expect somebody in Dora's situation to suffer mental stress
4. No, because workers' comp doesn't cover mental stress from workplace bullying and harassment

ANSWER

2) Dora's claim is not compensable, i.e., payable under workers' comp, because the mental stress illness injury wasn't work-related.

EXPLANATION

This scenario, which is based on an Ontario case, illustrates the basic workers' comp coverage rules for mental stress resulting from being bullied and harassed at work. Historically, workers' comp covered mental stress only if it was an acute reaction to a discrete traumatic event, such as being robbed at gunpoint or watching a co-worker get killed. The harassment her parents experienced, while no doubt upsetting, was clearly not traumatic.

The good news for Dora is that recent changes have expanded coverage to include not just traumatic but also chronic stress that builds up over a period of time as a result of disturbing but less than traumatic events, *including* workplace bullying and harassment. The conditions:

- The mental illness caused by the stress must be properly diagnosed; and
- The events that caused the stress must be work-related.

Although Dora passes the first test, she fails the second. The problem is that she wasn't the one who got bullied and harassed. Her parents did. And there's no evidence to suggest that Dora ever witnessed the bullying and harassment her parents endured. Result: Dora's mental stress illness isn't work-related and B is the right answer [[20190069 \(Re\)](#), 2019

CanLII 26556 (ON WSIB), April 4, 2019].

WHY WRONG ANSWERS ARE WRONG

1 is wrong because getting a proper diagnosis is just one of the conditions that a worker must meet to qualify for workers' comp mental stress illness benefits.

3 is wrong because the 'objectively reasonable' test generally applies when determining whether an event (or series of events) is traumatic. This would have been the case had Dora based her claim on the trauma suffered as a result of witnessing her parents being harassed. But this wasn't Dora's contention.

4 is wrong because workers' comp in most jurisdictions does cover stress from bullying and harassment as long as it's properly diagnosed and work-related. But Dora's mental stress isn't work-related because she neither suffered nor witnessed the bullying and harassment that caused it.