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OHS & Workers' Compensation

M A N A G E M E N T U P D A T E

WSIAT Expands the Scope of Entitlement for Traumatic Mental Stress

A recent decision of the Ontario Workplace Safety and Insurance Appeals Tribunal ("the Tribunal") has significantly expanded the scope of entitlement for workplace events that cause traumatic mental stress.

Traditionally, traumatic mental stress benefits were only granted when a claimant experienced a traumatic event which presented a real or implied threat to a person's physical well being. In *Decision 483/11*, the Tribunal held that a threat to a person's physical welfare is not required for a finding of entitlement to benefits based on traumatic mental stress.

The claimant in question was an educational assistant who sought benefits for mental stress after being falsely accused of striking a Grade 5 student in class. The claimant was suspended to allow the school to investigate the allegation, and was reinstated after being exonerated by the investigation. However, the claimant was diagnosed with major depression and was unable to continue her duties.

The Tribunal found that the false allegations and subsequent events were objectively unexpected and traumatic, and resulted in a disabling psychological condition. A report from the claimant's treating physician indicated that the claimant experienced flashbacks of the moment of her suspension, and avoided children and places like schools and playgrounds. Medical evidence also showed the claimant experienced sexual and emotional abuse in her childhood, memories of which were triggered by the incident.

In an earlier decision released in May 2011,¹ the Tribunal found that the claimant would be entitled to benefits for traumatic mental stress, but for an apparent requirement in the applicable Workplace Safety and Insurance Board ("the Board") policy², that the traumatic event must involve a real or implied threat to a person's physical well-being. The Tribunal adjourned the claimant's application to receive submissions from the Board on an apparent inconsistency between the Board's traumatic mental stress policy and the *Workplace Safety and Insurance Act, 1997* on this point, as well as inconsistencies within the Board policy itself. The Tribunal also asked the Board to clarify whether a diagnosis of post-traumatic stress disorder ("PTSD") is a pre-requisite for entitlement under the Board's policy.

In response to the Tribunal's request, the Board advised that a real or implied threat to a person's physical well-being is not required to find entitlement to traumatic mental stress benefits. The Board also clarified that PTSD is not the only DSM-IV diagnosis that can form the basis for entitlement; any Axis I diagnosis may suffice.

After receiving the Board's response, the Tribunal granted the claimant benefits for traumatic mental stress.

Decision 483/11 is significant because it considerably widens the scope of compensable events in traumatic mental stress cases to situations that result in traumatic stress without the presence of a threat to physical well-being. As a result of this decision, employers should expect to receive more claims for traumatic mental stress. Employers can take some comfort, however, in the fact that all claimants seeking entitlement to traumatic mental stress have a significant evidentiary burden to meet. To be successful in a traumatic mental stress claim, it must be demonstrated that the claimant was exposed to a workplace event that is identifiable, objectively traumatic

and unexpected in the normal course of the worker's employment, and that a disabling psychological injury occurred as a result, as demonstrated by an Axis 1 DSM-IV diagnosis.

We understand that none of the parties to *Decision 483/11* are seeking reconsideration or judicial review of the Tribunal's decision. *Decision 483/11* can be accessed at the following website: <http://canlii.ca/t/fmltw>.

If you would like to know more about *Decision 483/11* or the impact it may have on your workplace, please contact Charlotte Willson or any member of our OHS & Workers' Compensation Practice Group.

¹ *Decision No. 483/11*, 2011 ONWSIAT 1231, [2011] O.W.S.I.A.T.D. No. 1012.

² WSIB, "Traumatic Mental Stress," *Operational Policy Manual*, OP 15-03-02, online: <www.wsib.on.ca>.

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Charlotte Willson is an associate in Heenan Blaikie LLP's Labour and Employment Group. Charlotte acts for employers in a variety of workplace matters and has particular expertise in workers' compensation, labour arbitration, human rights, employment standards and wrongful dismissal litigation. Charlotte has represented clients at the Ontario Court of Appeal, the Ontario Superior Court of Justice, the Workplace Safety and Insurance Appeals Tribunal, the Workplace Safety and Insurance Board, and the Human Rights Tribunal of Ontario, and before labour arbitrators and employment standards officers. Prior to attending law school, Charlotte worked as a labour relations analyst and consultant with the Ontario Public Service. Charlotte can be contacted by email at cwillson@heenan.ca or by telephone at (416) 643.6909.

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