Appeals Commission for Alberta Workers' Compensation

Docket No.: AC0300-23-77
Decision No.: 2024-0007

Introduction

[1] This is a worker's appeal. It stems from the worker's disagreement with a July 5, 2023, decision of the Workers' Compensation Board's (WCB) Dispute Resolution and Decision Review Body (DRDRB). In that decision, the DRDRB determined:

- The worker does not have an acceptable claim for a psychological injury, because there was no current diagnosis directly related to any events (from either a traumatic or chronic perspective) or any workplace factors in May 2022, to support a new mechanism of injury that caused and/or contributed to the reactivation of the worker's pre-existing post-traumatic stress disorder (PTSD).

[2] On July 10, 2023, the worker appealed the DRDRB's decision to the Appeals Commission, the final level of appeal under the WCB insurance scheme, within the statutory deadline.

Procedural and administrative history

[3] The Appeals Commission notified the employer and the WCB on July 20, 2023, of the worker's appeal and provided them an opportunity to participate in the appeal process. The employer and the WCB elected not to participate.

[4] The Appeals Commission scheduled a hearing and communicated the hearing details to the attending parties on August 17, 2023.

[5] On November 28, 2023, the Appeals Commission sent the representative an electronic copy of the Appeal Documents Package (ADP) and sent the WCB an ADP Index.

Decision

[6] The panel heard oral submissions, considered and weighed the evidence in its entirety, and decided to reverse the DRDRB's decision. What follows is the panel's assessment of the evidence in the context of relevant policy and legislation and the reasons underlying our decision.

Preliminary Matters

Prior to the hearing

[7] Since the hearing proceeded by videoconference, the Appeals Commission obtained signed privacy agreements from the worker and his representative in advance of the hearing.

[8] On January 26, 2024, the representative submitted two additional documents (a medical report and curriculum vitae) from the worker's current treating psychologist, dated January 5, 2024. The Appeals Commission added the documents to the ADP.

At the hearing

[9] The representative confirmed receiving the 132-page ADP and providing a copy of the ADP to the worker.

[10] The representative did not provide the panel with any additional documents.

[11] The representative did not provide the panel with a written submission in advance of the hearing but submitted his presentation notes following the hearing.

[12] There were no other preliminary issues.

Issue

[13] **Does the worker have an acceptable Workers' Compensation Board claim for a psychological injury?**

Analysis

Legislation and Policy

[14] Throughout the decision, the panel refers to legislation current as of the hearing date (version issued December 7, 2023) and to policy effective when the WCB adjudicator decided the appeal issue (on May 5, 2023), unless directed otherwise.

[15] Relevant excerpts of legislation and policy are included in Appendices A and B respectively.

Jurisdiction

[16] The Appeals Commission's authority to hear this appeal flows from section 13.1(1) of the *Workers' Compensation Act*, RSA 2000, c W-15 (*WCA*), which

provides it with exclusive jurisdiction to examine, inquire into, hear, and determine all matters and questions arising under the *WCA* and its regulations, including this appeal.

[17] When hearing an appeal, section 13.2(6)(b) of the *WCA* directs the panel to follow the WCA and WCB policy relevant to the issue under appeal.

Legislation and policy specifically applicable to the appeal issue

[18] The *WCA* provides that the WCB will compensate a worker who suffers personal injury (physical or psychological) resulting from an accident. (Sections 1(1)(a) and 24(1); Policy 03-01, Part I, Interpretation 1.0).

[19] Part 4 of the *WCA* has a specific set of presumptions that apply to specific classes of workers in relation to PTSD – in this appeal we focus on "first responders" since the worker is a police officer.

[20] Whether the worker has a presumptive psychological injury is determined first by the *WCA*, with policy following legislative direction. The *WCA* provides that if a "first responder" has been diagnosed with PTSD by a physician or psychologist, the PTSD is presumed, unless the contrary is proven, to be an injury that arises out of and occurs during the worker's employment. (Section 24.2(2)).

[21] Policy 03-01 generally provides direction for accepting injuries as compensable. Injuries may be the immediate result of an accident or may develop over time. Injuries of a progressive nature and those with a less obvious relationship to employment require consideration of relevant factors both in and outside employment that may have contributed to or caused the injury. The nature of the injury must have a relationship with the risk so that it is more likely than not that the work activity caused the injury. (Policy 03-01, Part I, Interpretation 4.0).

[22] Where the relationship between the nature of the injury and compensable accident is not obvious, there is a need for additional information, particularly medical information, to establish the relationship to the compensable accident. **(**Policy 03-01, Part II, Application 1, Question 1).

[23] Policy 03-01, Part II, Application 6, provides specific guidance when dealing with psychiatric and psychological claims, as in this case. In this instance we have determined the version of policy which applies is the one effective January 1, 2021, with an issue date of January 5, 2021. (Policy 03-01, Part II, Application 6, Question 10).

[24] As with any other injury, the WCB will determine if the psychological injury is compensable by determining if the injury is causally related to the worker's employment. Question 2 outlines three different tests to determine causation (i.e., if the accident arose out of and occurred in the course of employment)

depending on whether the injury is a traumatic psychological injury, a chronic onset injury, or a presumptive psychological injury. (Policy 03-01, Part II, Application 6, Question 6). When dealing with a presumptive psychological injury policy indicates the presumption may be rebutted if there is evidence the psychological condition was caused by a non-work exposure.

Questions to be Answered

[25] The crux of this appeal is whether section 24.2(2) of the *WCA* applies to the worker's circumstances to provide presumptive coverage. To determine the appeal issue, the panel must answer the following questions:

[25.1] Is the worker a first responder?

[25.2] Was the worker diagnosed with PTSD as described in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders (in this case, the DSM-V) by a physician or psychologist? and,

[25.3] Can the PTSD be presumed to be an injury that arose out of and occurred during the worker's employment or is there evidence to the contrary that proves the injury did not arise out of or occur in the course of employment?

Key Submissions

[26] The representative provided oral submissions, a post hearing written submission, and answered questions posed by the panel. As the representative's responses form part of the record what follows is our summarized understanding of his submissions:

[26.1] The worker suffered trauma at work that resulted in a PTSD diagnosis in 2012.

[26.2] The WCB retroactively accepted the worker's 2012 PTSD in January 2023 but then inactivated the worker's claim.

[26.3] After the worker returned to work in 2013, he remained susceptible to recurrent episodes of PTSD as confirmed by his treating psychologist and he performed his pre-accident duties for as long as he could.

[26.4] Between 2013 and 2022 the worker was exposed to chronic workplace stressors and in May 2022, he was no longer able to cope. At that point, he filed a second WCB claim.

[26.5] The WCB denied the May 2022 claim because they took the position that the worker could not prove that a specific traumatic event or even a series

of chronic work event(s) had caused or contributed to reactivation of his PTSD.

[26.6] Effectively, the WCB took the position that presumptive coverage did not apply to the chronic onset policy.

[26.7] The WCB also concluded the workplace events as that the worker described fit within “normal” workplace pressures. The problem is what might be a “normal” stressor or pressure for other first responders is not “normal” for someone with PTSD.

[26.8] The worker and his representative contend the causation threshold should be lower for the worker because PTSD made him more susceptible to reinjury. Further, in someone with PTSD the threshold for an aggravation is lower.

[26.9] In the representative’s experience, most workers with PTSD return to work in a lower stress environment that is not public facing. This worker returned to a stressful, public facing position, albeit one that was less traumatic than his prior unit.

[26.10] There was no specific trauma that led to the May 2022 incident, so they never pursued entitlement under traumatic onset since they wanted to be fair to the WCB in their submissions and approach.

[26.11] They contend the worker reached a breaking point in May 2022. There was no one specific cause or trauma that precipitated the break - it was the worker’s daily exposure to an accumulation of multiple constant stressors over an extended period between 2013 and 2022 that ultimately reactivated the worker’s PTSD and rendered him unable to work.

[26.12] Finally, the worker and his representative contend the worker has met the presumption in s. 24.2(2) and/or the worker has established that the chronic accumulation of workplace stressors has aggravated and reactivated the worker’s PTSD and they ask this panel to direct the WCB to accept the worker’s claim for psychological injury.

[27] The worker agreed with his representative’s submissions and answered questions from the panel. The worker’s summarized evidence, which we accept, is as follows:

[27.1] Although he experienced the typical trials and tribulations of married life and parenting teenage girls there was nothing other than work that contributed to his May 2022 PTSD diagnosis and inability to work.

[27.2] He was diagnosed with PTSD in 2012, returned to work in 2013, was moved to a different unit and worked in that unit uninterrupted until May 2022.

[27.3] He did not file a WCB claim in 2012 but rather, went on long term disability (LTD) through work, acting on the advice of his former treating psychologist. He received treatment and returned to work in 2013. The WCB accepted his 2012 claim and diagnosis retroactively in 2023.

[27.4] He struggled in 2018/2019 when the case that was instrumental in his original PTSD diagnosis went to trial. He sought and received treatment in 2019 but did not file a claim for this incident. He has also received treatment since 2022 and is currently undergoing treatment for PTSD.

[27.5] When he filed the May 2022 claim with the WCB in September 2022, he thought it was a continuation of the 2012 diagnosis. His representative asked the WCB whether it was a recurrence, but the WCB told him that the events in May were new and to file a new claim, so that is what they did.

Evidentiary Findings, Reasons and Conclusion

[28] The WCA provides presumptive coverage for a specific condition, PTSD, for a specific class of worker including first responders, where three conditions are met:

[28.1] One: The worker must be a first responder;

[28.2] Two: A physician or psychologist must confirm the worker has been diagnosed with a DSM-V (the most current version) condition of PTSD; and,

[28.3] Three: There must be evidence that the PTSD arose out of and occurred in the course of the worker's employment.

[29] When these three conditions are met, the *WCA* mandates that the worker is entitled to WCB coverage for his PTSD, absent any evidence that the PTSD was triggered by a non-work exposure. The onus of rebutting the presumption rests with the WCB.

[30] In this instance, the WCB does not dispute that the worker is a "first responder" who has a "confirmed DSM-V diagnosis of PTSD" from a psychologist. Based on our review of the medical evidence we agree the first two conditions are met and see no reason to disturb these findings.

[31] As for the third condition, we find there is recent, unequivocal, and uncontroverted medical evidence that reactivation of the worker's PTSD in May 2022 was causally linked to the worker's employment and to workplace stressors. We note specifically the psychologist's January 5, 2024, opinion:

> ". . . based on all the information I assessed in relation to [the worker's] workplace, occupational injury which was formally diagnosed in 2012 as Posttraumatic [*sic*] Stress Disorder by [a psychotherapist] and confirmed by [a psychiatrist], [the worker] continues to meet criteria for PTSD, chronic. The most current activation phase of his complex PTSD condition was aggravated by multiple stressors and risk factors in his workplace. . . The severity of his initial symptoms was partially mitigated through psychological care but not erased. The original PTSD was not in remission, as first noted in my letter dated June 17th, 2022, to [the family physician]. It became evident through ongoing bi-weekly psychological care from June 2022 to December 2023 that [the worker's] PTSD had not been in remission in relation to his original diagnosis.
>
> The most recent aggravation of symptoms (specifically his PTSD) in which [the worker] had to go off work was due to workplace stressors, which were recognized in a letter dated October 2, 2022 [*sic*] to [the family physician]. His PTSD is a medical condition which renders him unable at times to know exactly what will trigger the re-activation of his brain's stress response center. It is not a choice to re-enter into a PTSD cycle. . ."

[32] Moreover, based on our review of the medical evidence in the ADP (reporting from the family physician, the psychologist who made the original PTSD diagnosis and several reports from the current treating psychologist), in conjunction with the worker's evidence at hearing and his responses on various forms in the ADP, we are satisfied there were no other non-work exposures identified to account for the reactivation of the worker's PTSD in and around May 2022.

[33] We acknowledge the resolution specialist had access to reporting from the current treating psychologist at the time he rendered his decision but was not moved by its content. Conversely, we were persuaded by her reporting, however, we acknowledge that in addition to the psychologist's earlier reporting, we also had access to her more recent reporting which the resolution specialist did not. We compared the July 17, 2022, and October 2, 2022, reports to the January 5, 2024, report to determine if there were any inconsistencies or issues that suggested a causal non-work exposure. In concluding there were not, we found the following to be noteworthy:

[33.1] The October 2, 2022, report clearly indicates that the worker came into her practice on May 16, 2022, with "significant distress, PTSD activations and hyper-vigilance in relation to a re-activation of his PTSD, due to workplace stressors."

[33.2] The psychologist only determined that the worker's original PTSD injury was never fully in remission after she treated the worker consistently from June 2022 through December 2023, which post-dates the DRDRB decision.

[33.3] The psychologist opines that even though the worker's PTSD *injury* from 2012 was never fully in remission, his *symptoms* prior to the May 2022 recurrence were in remission, a finding similarly noted by the family physician. Although these concepts may seem at odds, we find they accurately reflect the challenge and complexity of the worker's PTSD and support his explanation of the impact of the PTSD on his life. We interpret this report as supportive of the worker's explanation of an ongoing PTSD condition, that originated from a 2012 workplace accident, with periodic episodes of symptom management in intervening years, that never fully went into remission, and culminated with a reactivation in May 2022 due to workplace stressors.

[33.4] The only identifiable trigger for the May 2022 reactivation of the worker's PTSD was his work.

[34] Finally, we reiterate that section 24.2(2) of the *WCA* places the onus of proving that the worker's PTSD reactivation was caused by a non-work exposure squarely on the WCB. In the absence of any persuasive evidence to the contrary, we find the worker is entitled to presumptive coverage for PTSD under s. 24.2(2). Having failed to rebut the presumption we agree with the representative that it is not necessary for the worker to also prove either a precipitating traumatic or chronic event resulting in his PTSD diagnosis, because requiring him to do so shifts the burden from the WCB to the worker which directly contradicts the legislation. Moreover, it erodes the benefit accorded by the PTSD presumption, which exists to address the unique challenges of this specific psychological injury when faced by this specific class of worker (a first responder).

Conclusion

[35] We find the weight of medical evidence supports that the worker has met the three conditions required to establish presumptive PTSD coverage under section 24.2(2) of the *WCA*. Specifically, the worker is a first responder with a confirmed DSM-V diagnosis of PTSD, chronic, from a psychologist who unequivocally opines that the worker's PTSD condition in May 2022 either arose out of and occurred or was reactivated during the worker's employment.

Decision

[36] The worker has an acceptable WCB claim for a psychological injury, specifically, PTSD, chronic.

[37] We allow the appeal and reverse the July 5, 2023, decision made by the Dispute Resolution and Dispute Review Body.

This decision is made with the full agreement of the hearing panel.

Decision signed in Calgary, Alberta on March 5, 2024.

G. Wong
Hearing Chair
(on behalf of the panel)

Hearing Panel:	G. Wong	– Hearing Chair
	P. Paquette	– Commissioner
	F. Anderson	– Commissioner

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Appendix A

Legislation – *Workers' Compensation Act*, RSA 2000, c W-15 (*WCA*)

Section 1(1)(a) states:

"**Interpretation**

1(1) In this Act,

(a) "accident" means an accident that arises out of and occurs in the course of employment in an industry to which this Act applies and includes

(i) a wilful and intentional act, not being the act of the worker who suffers the accident,

(ii) a chance event occasioned by a physical or natural cause,

(iii) disablement, and

(iv) a disabling or potentially disabling condition caused by an occupational disease;"

Section 13.1(1) states:

"**Power of Appeals Commission**

13.1(1) Subject to sections 13.2(11) and 13.4, the Appeals Commission has exclusive jurisdiction to examine, inquire into, hear and determine all matters and questions arising under this Act and the regulations in respect of

(a) appeals from decisions of a review body under section 9.4,

(b) repealed 2020 c32 s3(8),

(c) appeals from determinations of the Board under section 21(3), and

(d) any other matters assigned to it under this or any other Act or the regulations under this or any other Act,

and the decision of the Appeals Commission on the appeal or other matter is final and conclusive and is not open to question or review in any court."

Section 13.2(6) states:

"**Appeals**

. . .

13.2(6) In the hearing of an appeal under this section, the Appeals Commission

(a) shall give all persons with a direct interest in the matter under appeal an opportunity to be heard and to present any new or additional evidence,

(b) is bound by the board of directors' policy relating to the matter under appeal,

c) shall, subject to subsection (6.1), permit the Board to make representations, in the form and manner that the Appeals Commission directs, as to the proper application of policy determined by the board of directors or of the provisions of this Act or the regulations that are applicable to the matter under appeal,

(d) may confirm, reverse or vary the decision or determination appealed,

(e) may direct that its decision be implemented within a specified time period, and

(f) may refer any matter back to the review body or the Board, as the case may be, for further action or decision, with or without directions.

Section 24(1) states:

"**Eligibility for compensation**

24(1) Subject to this Act, compensation under this Act is payable

(a) to a worker who suffers personal injury by an accident, unless the injury is attributable primarily to the serious and wilful misconduct of the worker, and

(b) to the dependants of a worker who dies as a result of an accident."

Section 24.2(2) states:

"**PTSD presumptions**

. . .

(2) If a first responder, correctional officer, emergency dispatcher or a member of any other class of worker prescribed by the regulations is or has been diagnosed with post-traumatic stress disorder by a physician or psychologist, the post-traumatic stress disorder shall be presumed, unless the contrary is proven, to be an injury that arose out of and occurred during the course of the worker's employment."

Appendix B

Workers' Compensation Board Policy

Policy 03-01, Part II, Application 6: Psychiatric or Psychological Injury

"**2. *How does WCB determine whether a psychiatric or psychological injury is compensable?***

As with other types of injuries, to be compensable the psychiatric or psychological injury must arise out of and occur in the course of employment.

Traumatic psychological injury
Unless elsewhere specified, WCB uses the but for test to determine causation (see Policy 02-01, Part II, Application 7, Questions 4 and 5).

Chronic onset psychological injury
For chronic onset psychological injury, WCB uses 'predominant cause' to determine compensability. Due to the multifactorial nature of chronic psychological injury and the interaction of those multiple factors, WCB accepts that causation is established when all the criteria set out in policy are met and occupational exposures are the predominant cause of the chronic onset psychological injury (see Questions 6 and 7).

Presumptive psychological injury
When presumption criteria set out in the *WCA* and the *WC Regulation* are met (including periods for which presumptions apply), it is presumed that the condition was caused by the worker's employment. A presumption may be rebutted, if the evidence shows the psychological condition was caused by a non-work exposure.

See Table 1 at the end of this document for details on presumptive coverage for psychological injury.

. . .

6. *What is work-related chronic onset psychological injury?*

Chronic onset psychological injury is compensable when it is an extreme emotional reaction to:

a) an accumulation, over time, of a number of verifiable work-related stressors that do not fit the definition of traumatic event,

b) a significant work-related stressor that has lasted for a long time and does not fit the definition of traumatic event, or

c) bullying or harassment, defined as a repeated incident of objectionable or unwelcome conduct, comment, bullying or action intended to intimidate, offend, degrade or humiliate a particular person or group

and when all the criteria outlined in Question 7 below are met.

7. ***When does WCB accept claims for chronic onset psychological injury?***

As with any other claim, WCB investigates the causation to determine whether the claim is acceptable. Claims for this type of injury are eligible for compensation only when all of the following criteria are met:

- there is a confirmed psychological or psychiatric diagnosis as described in the DSM,
- the work-related events or stressors are the predominant cause of the injury; predominant cause means the prevailing, strongest, chief, or main cause of the chronic onset psychological injury,
- the work-related events are excessive or unusual in comparison to the normal pressures and tensions experienced by the average worker in a similar occupation, and
- there is objective confirmation of the events.

Ongoing compensability for chronic onset psychological injury will be accepted when the medical evidence shows that the work or work-related injury is the predominant cause of the current symptoms.

8. ***What are non-traumatic and non-compensable normal pressures and tensions of employment?***

In addition to the duties reasonably expected by the nature of a worker's occupation, actions taken by an employer relating to management of work and employees are considered a normal part of employment.

Normal employment expectations include, but are not limited to, the following:

- Hiring employees
- Performance evaluations and/or performance corrective actions
- Staff assignments, transfers or restructuring
- Promotions, demotions, lay-offs, and terminations
- Workload fluctuations and management and/or assignment changes
- Timeline/deadline pressures
- Work environment, including health and safety concerns, and union issues.

10 ***When is this policy application effective?***

This policy application (Application 6 – Psychiatric or Psychological Injury) is effective January 1, 2021, and applies to all claims with dates of accident on or after that date, except when noted otherwise in a specific policy section(s)."