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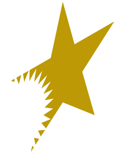

EXPECT THE BEST

Mental Stress Claim Upheld by Workplace Safety and Insurance Appeals Tribunal

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Originally published in *Employment Update* (June 2014)

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In a ground-breaking decision, the Workplace Safety and Insurance Appeals Tribunal has found that a provision in the *Workplace Safety and Insurance Act* (the "*Act*"), which denied benefits to workers suffering from non-traumatic mental stress, is unconstitutional.

Background

The *Act* is designed to provide benefits to employees who have sustained personal injury in the course of their employment. However, the *Act* provides that employees are not entitled to benefits for mental stress unless the stress is "an acute reaction to a sudden and unexpected traumatic event" in the course of employment.

This is seen by many as unjust. The Ministry of Labour has indicated that approximately 30% of disability claims involve mental illness. Nevertheless, employees suffering from workplace stress, unlike employees who have suffered physical injury, are denied access to workers' compensation benefits.

The Decision

This decision involved a claim by a nurse who worked at the same hospital for 28 years. For 12 of those years she claims she was subjected to mistreatment by a doctor who worked with her. She claimed the doctor yelled at her and made demeaning comments to her in front of both colleagues and patients. Coworkers brought her mistreatment to the attention of management, but no steps were taken to deal with the issues and the doctor's behaviour continued.

After a particularly difficult incident, the nurse complained to management about her treatment by the doctor. The hospital responded by demoting her. The worker was so distressed that she sought medical attention. She was diagnosed with an adjustment disorder with anxiety and depression attributable to the stress she suffered in the workplace.

The WSIB denied the claim because the nurse's condition was not the result of an "acute reaction to a sudden and unexpected traumatic event."

The case was appealed to the Workplace Safety and Insurance Appeals Tribunal. The Tribunal concluded that the nurse would have been entitled to benefits but for the restriction on awarding benefits as a result of mental stress.

The Tribunal went on to find that the provisions of the *Workplace Safety and Insurance Act* which deny benefits for mental stress violated the guarantee of equality under the *Charter of Rights and Freedoms*.

Implications of Decision

Although the Workplace Safety and Insurance Board is not bound to follow the decisions of the Tribunal it is expected that this case will form the basis of a new policy by the WSIB to accept claims based on mental stress.

In 2011, the WSIB allowed 677 claims for traumatic mental stress. The potential claims arising out of "non-traumatic" mental stress will no doubt greatly exceed this number. The Government of Ontario has stated that 1 in 5 Canadians are affected by mental illness every year. Certainly not all mental illness arises because of workplace stress. However, if the WSIB allowed 677 claims for traumatic mental stress in 2011, it is a reasonable assumption that there are many more "non-traumatic" claims for workplace mental stress.

Concerns have been expressed that the increased number of claims expected as a result of this ruling will result in sky-rocketing increases in WSIB premiums at a time when employers are already complaining about the high cost of WSIB coverage.

The Appeals Tribunal addressed those arguments. It noted that there was little evidence regarding the cost of mental stress claims in Ontario. It also noted that any argument that people with mental stress claims would put an unjustified burden on the workplace insurance system merely served to "exacerbate the historical disadvantage faced by persons with mental disabilities" because it assumes that they are not deserving of benefits and places the burden on society.

It is likely that the Ontario government will challenge this ruling in the Divisional Court. In the meantime, applications for benefits based on non-traumatic mental stress are likely to be entertained. ■