



WSIB & Chronic Mental Stress Claims

AMCTO Conference
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forward thinking at work™



overview

- sources of authority
- chronic mental stress claims
- interplay with human rights



WSIB law & policies

governed by three sources:

- WSIA
- WSIB policies
- case law



chronic mental stress



charter challenges to WSIB

- a number of decisions successfully challenged stringent approach taken by WSIB in denying chronic mental stress claims, particularly in harassment cases



decision 2157/09: facts

- RN had worked with hospital since 1974
- filed Form 6 claiming subjected to unwarranted, demeaning and vexatious conduct from Dr. L
- claimed entitlement to mental stress benefits



decision 2157/09: facts

- Dr. L became rude and demeaning:
 - insisted the RN only communicate through written notes
 - then complained notes were too long



decision 2157/09: facts

- worker stopped going for rounds because Dr. L did not allow her to participate
- Dr. L embarrassed worker in front of other workers
- worker unable to continue working because of stress



decision 2157/09: facts

ARO denied entitlement



WSIAT findings

- limiting entitlement to “acute reaction” to sudden and unexpected event violated equality rights under Charter
- unequal treatment between physical and mental injuries and illnesses



outcome

the government did not seek judicial review



decision 1945/10

- corrections officer
- stress-related disablement
- employer actions that caused the worker to feel he was the object of discrimination and harassment by employer



decision 1945/10

- initially denied entitlement at WSIB
- WSIAT followed Decision 2157/09
- found Charter breach
- granted entitlement



new WSIB policy: chronic mental stress

substantial work-related stressor

- identifiable
- multiple or cumulative
- includes bullying or harassment



standard of proof and causation

- must arise out of and in the course of employment
- predominant cause of appropriately diagnosed mental stress injury by qualified health care professional who must provide DSM diagnosis
- work-related stressor must be the greatest single contributor to the mental stress injury

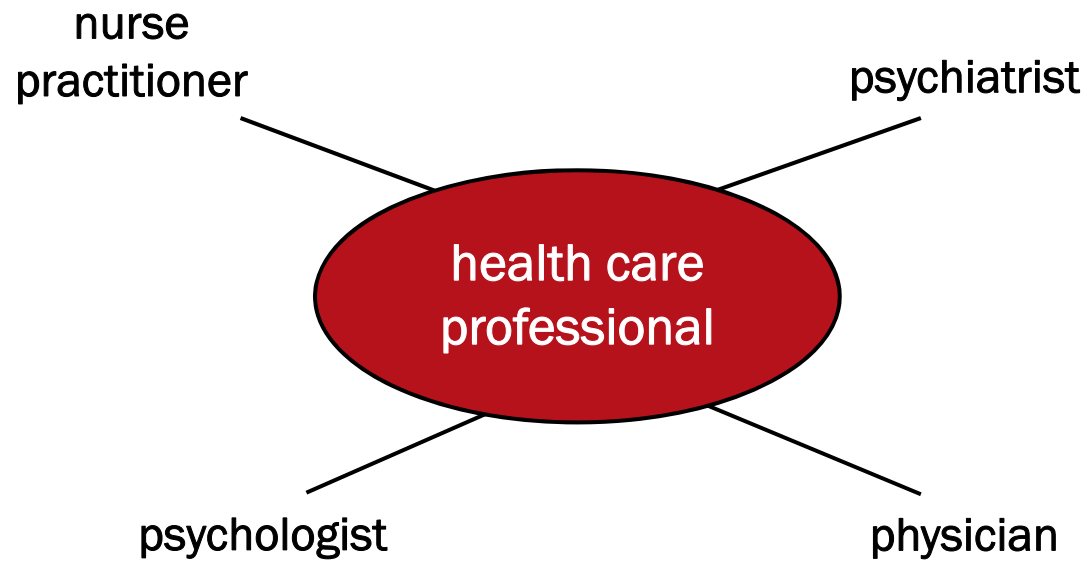


standard of proof and causation

- “substantial work-related stressor” = excessive in intensity and/or duration compared to normal pressures of job experienced by workers in similar circumstances



qualified health care professional



appropriate diagnosis

- work-related stressor substantial if
 - excessive in intensity compared to normal pressures of the job
 - caused or significantly contributed to stress
- in complex cases, further assessment may be needed by psychologist or psychiatrist



complex cases

- how do you determine whether it is work-related or non-work related stressors?
- if there is evidence of non-work-related stressors, may require further assessment by psychiatrist or psychologist to clarify ongoing or initial entitlement



standard of proof and causation

- employees with:
 - high degree of routine stress as part of job
 - responsibility over life and death matters, or
 - working in dangerous conditions
- may not necessarily be denied compensation for CMS due to nature of work



standard of proof and causation

- however, consistent exposure to high degree of routine stress may qualify as substantial work-related stressor



standard of proof and causation

- an appropriate regulated health professional must provide diagnosis based on DSM



harassment defined

- where person or persons while in the course of employment engage in a course of vexatious comment or conduct against a worker, including bullying, that is known or ought reasonably to be known to be unwelcome



**rules applicable to
both TMS and CMS**



no entitlement under CMS and TMS if....

- related to general workplace conditions
- arising from employment decisions made in the ordinary course
- normal interpersonal conflict



no entitlement if...

- stress is related to management action:
 - discipline, demotions, terminations
 - transfers
 - changes in work hours
 - changes in productivity expectations



interpersonal conflict in the workplace

- will not generally be considered to be substantial work-related stressor, unless it amounts to harassment or bullying OR if it resulted in conduct that reasonable person would consider abusive



difference between TMS and CMS

- TMS stress involves events that are generally accepted as traumatic, such as criminal act or horrific accident
- in most cases, traumatic event will be sudden and unexpected
- CMS is caused by substantial work-related stressor or series of stressors



interplay with human rights



concurrent liability for harassment claims

- worker receiving LOE benefits from WSIB can also seek damages elsewhere, including human rights and arbitration
- employees right to sue may be barred



human rights and WSIA

- denial of benefits under WSIA does not insulate employers from human rights complaints
- must still meet duty to accommodate



impact on employers

- costly
- need to be ready for change and increase in stress claims



impact on employers



impact on employers

- opens the door for mental stress claims for:
 - bullying & harassment
 - humiliating events
 - abusive/threatening interpersonal conflict
 - lack of managerial support
 - workload issues



where to go from here

- take steps to protect the psychological well-being of employees
- reduce stress
- provide resilience training



recent updates on CMS

- 94% of CMS claims have been denied in 2018 from Jan to May (10 of 159 claims)
- 3 reported ARO decisions have denied entitlement to CMS benefits



recent updates on CMS

- adjudicators are carefully scrutinizing investigation reports, but will not differ to findings
- focus on analysis is on whether sustained workplace stressor exists, or whether the conduct is found to be egregious and abusive



recent updates on CMS

- in one case, even where worker was able to show that workload had increased and caused her anxiety which was diagnosed by doctor, ARO found increase on workload was part of normal work function
- no report decision at WSIAT level yet



where to go from here

- prevent and respond to conflict and harassment
- properly train managers and supervisors
- document ongoing and new mental stress cases
- Collaboration and information sharing among HR and occupational health, labour relations may be necessary to respond to claims



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where to go from here

- implement the *National Standard for Psychological Health and Safety in the Workplace*



questions

