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|  Yukon Workers' Compensation Health and Safety Board | Part: | Entitlement | | |
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ADJUDICATING PSYCHOLOGICAL INJURIES

GENERAL INFORMATION

Some work-related injuries are psychological, in particular those that occur as a result of traumatic events in a workplace.

The definition of “injury” at section 3 in the *Workers’ Compensation Act* S.Y. 2008, c. 12 (the Act) includes the disablement of post-traumatic stress.

Section 17.3 of the Act creates a rebuttable presumption that may apply when certain emergency response workers have been exposed to a traumatic event or series of traumatic events, and later receive a diagnosis of post-traumatic stress disorder.

Yukon Workers’ Compensation Health and Safety Board (YWCHSB) policy HC-09, “Psychological Treatment”, outlines under what circumstances decision makers may authorize payment for psychological treatment.

PURPOSE

This policy outlines the criteria used by YWCHSB decision makers to decide whether a worker’s post-traumatic stress disorder or other psychological injury is work-related.

This policy clarifies under what circumstances post-traumatic stress disorder will be presumed to be work-related for emergency response workers. It also provides direction to YWCHSB decision makers, and information to workers about how a claim for compensation is decided if the presumption does not apply.

This policy also outlines when psychological injuries are not work-related and specifies what YWCHSB considers to be normal pressures and tensions of a workplace.

DEFINITIONS

- 1. Diagnostic and Statistical Manual of Mental Disorders (DSM):** a compendium of psychiatric diagnoses published by the American Psychiatric Association.

2. **Emergency response worker:** a firefighter, a paramedic, or a police officer, as defined in subsection 17.3(1) in the Act.
 - a) “firefighter” means a worker who is a full-time firefighter, a part-time firefighter, or a volunteer firefighter, as defined in subsection 17.1(1);
 - b) “paramedic” means a worker who is trained to give emergency medical care to individuals who are seriously ill or severely injured with the aim of stabilizing them before transporting them to a medical facility; and
 - c) “police officer” means a worker who is engaged in police work and is a member of a police force, and includes an auxiliary member of a police force referred to in paragraph 6(1)(e) of the Act.
3. **Injury:** as defined by subsection 3(1) of the Act means:
 - a) an injury as a result of an event, or series of events, occasioned by a physical or natural cause;
 - b) an injury as a result of a wilful and intentional act, not being the act of the worker;
 - c) a disablement, but does not include the disablement of mental stress or disablement caused by mental stress, other than post-traumatic stress;
 - d) an occupational disease, which includes a disease from causes and conditions peculiar to or characteristic of a particular trade or occupation or peculiar to the particular employment; but does not include an ordinary disease of life; or
 - e) death as a result of an injury.
4. **Post-traumatic stress disorder:** post-traumatic stress disorder as that condition is described in the most recent edition of the DSM published by the American Psychiatric Association.
5. **Psychiatrist:** a medical practitioner who holds a specialist’s certificate in psychiatry issued by the Royal College of Physicians and Surgeons of Canada.
6. **Psychologist:** an individual who is licensed or registered to practice in a province as a psychologist.
7. **Traumatic event:** exposure to actual or threatened death, serious injury, or violence in one (or more) of the following ways:
 - a) directly experiencing the event(s);

- b) witnessing, in person, the event(s) as it occurred to others; or
- c) experiencing repeated or extreme exposure to details of the traumatic event(s).

Examples of traumatic events include, but are not limited to:

- a) witnessing a fatality or a horrific injury;
- b) responding to or investigating a fatal or horrific injury;
- c) being subjected to violence; and
- d) being subjected to threats of violence when there is reason to believe the threat is serious and potentially harmful to self or others (for example, bomb threat or confrontation with a weapon).

PREVENTION

Preventing work-related injuries by identifying and addressing potential hazards is the responsibility of everyone in the workplace. YWCHSB encourages employers, workers, health care providers and other parties to work together to prevent work-related injuries. When an injury occurs, workers, employers and YWCHSB must co-operate to return the worker to safe and suitable work as soon as functionally possible. This helps to prevent disability and, ultimately, to lower assessment rates.

YWCHSB is also responsible for administering and enforcing the *Occupational Health and Safety Act* and *Regulations*. All workplace parties are legally obligated to know how this legislation applies to their work.

POLICY STATEMENT

1. Post-Traumatic Stress Disorder

Single Event

Compensation for post-traumatic stress disorder will be considered where an injury develops following exposure to a single traumatic event arising out of and in the course of employment.

Series of Events

Due to the nature of their occupation, some workers, over a period of time, may be exposed to multiple traumatic events arising out of and in the course of employment. The cumulative effect is considered to be a final reaction to a series of traumatic events.

YWCHSB recognizes that each traumatic event in a series of events may affect the worker psychologically. This is true even if the worker does not show the effects until the most recent event. As a result, entitlement may be accepted because of the cumulative effect, even if the last event is not the most traumatic.

YWCHSB will consider a claim for post-traumatic stress disorder when:

- a) there is objective and documented evidence confirming that, on a balance of probabilities, the facts as related by the worker can be corroborated and confirm that the disorder arose out of and in the course of the worker's employment;
- b) there is a confirmed diagnosis by a psychologist or psychiatrist; and
- c) the diagnosis meets the criteria described in the most recent edition of the DSM.

2. Presumption Respecting Post-Traumatic Stress Disorder for Emergency Response Workers

- a) If an emergency response worker is diagnosed with post-traumatic stress disorder by a psychologist or psychiatrist on or after November 27, 2017, the post-traumatic stress disorder is presumed to be work-related unless the contrary is shown.
- b) The diagnosis of post-traumatic stress disorder must meet the criteria described in the most recent edition of the DSM.

The presumption applies to firefighters, paramedics and police officers. The presumption may also apply to other workers when their employment responsibilities are consistent with the definition of paramedic, such as when a primary health care nurse of a community responds to an emergency medical call.

If there is evidence to the contrary or if reporting is unclear, the presumption may be rebutted and further investigation may be required. Examples of situations where the presumption for emergency response workers may not apply include, but are not limited to:

- a) when a report from a psychologist or psychiatrist indicates a worker's injury resulted from a non-work-related traumatic event;
- b) when evidence indicates a worker has not been exposed to or directly involved in a work-related traumatic event or series of traumatic events; or
- c) when evidence shows the traumatic event or series of traumatic events did not arise out of and in the course of their employment, for example, when a worker

removes themselves from the course of employment for personal reasons or when there is an act of serious and wilful misconduct.

When the presumption is not applicable, a claim for post-traumatic stress disorder will be adjudicated by applying policy EN-01, “Arising Out Of and In The Course Of Employment”, and the other provisions of this policy.

3. Other Psychological Injuries

YWCHSB will consider a claim for other psychological injuries when:

- a) there is objective and documented evidence confirming that, on a balance of probabilities, the facts as related by the worker can be corroborated and confirm that:
 - i. the injury occurred in the course of the worker’s employment; and
 - ii. the worker’s employment was a significant causal factor of the injury;
- b) there is a confirmed diagnosis by a psychologist or psychiatrist; and
- c) the diagnosis meets the criteria described in the most recent edition of the DSM.

4. Normal Pressures and Tensions of Work

A worker is not entitled to benefits under the Act for mental stress or an injury, disablement or disorder that results from mental stress, other than post-traumatic stress.

In addition to the duties reasonably expected by the nature of the worker’s occupation, reasonable 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 and firing employees, promotions, demotions, lay-offs, termination, transfer, workload fluctuations or assignment changes, timeline pressures, interpersonal conflict, discipline, performance evaluation, burnout, and dissatisfaction with the work environment.

Injuries that occur as a result of normal pressures and tensions of employment will not give rise to a compensable claim.

5. Pre-Existing Conditions

A worker with a work-related injury may also have an illness, disease, prior injury or other physical or psychological condition that existed before the work-related injury occurred. Such conditions are considered “pre-existing”. The work-related injury may make the pre-existing condition worse than it was before the work-related injury. If it does, YWCHSB decision makers must decide the worker’s entitlement to compensation in relation to both the work-related injury and any worsening of the pre-existing

condition, and determine when the worker has returned to their pre-injury condition. In doing so, the decision maker must apply policy EN-07, "Pre-Existing Conditions".

APPLICATION

Section 17.3 of the Act, "Presumption respecting post-traumatic stress disorder for emergency response workers" applies to emergency response workers diagnosed with post-traumatic stress disorder on or after November 27, 2017.

EXCEPTIONAL CIRCUMSTANCES

When the circumstances of a case are such that this policy cannot be applied or doing so would bring an unfair or unintended result, YWCHSB will decide the case based on YWCHSB policy, EN-02, "Merits and Justice of the Case." Such a decision will be for that case only and will not be precedent setting.

APPEALS

Workers, the dependent(s) of a deceased worker, and employers may request a hearing officer to review a YWCHSB decision made under this policy, as provided by subsection 53(1) of the Act. They may appeal hearing officer decisions to the Workers' Compensation Appeal Tribunal, under section 54(1) of the Act. Requests for review and notices of appeal must be filed within 24 months of the date of the decision being reviewed or appealed, in accordance with section 52 of the Act.

ACT REFERENCES

Workers' Compensation Act, Sections 3, 6.1, 17.1, 17.3, 40, 52, 53 and 54
Occupational Health and Safety Act

POLICY REFERENCES

EN-01, "Arising Out of and In the Course of Employment"
EN-02, "Merits and Justice of the Case"
EN-07, "Pre-Existing Conditions"
HC-09, "Psychological Treatment"

HISTORY

EN-09, "Adjudicating Psychological Disorders", effective July 1, 2008, revoked July 1, 2019.

CL-57, "Adjudicating Psychological Disorders", effective March 20, 2007, revoked July 1, 2008.