WORKPLACE/OCCUPATIONAL STRESS

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<th>Section of Act</th>
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| AB             | Under s. 24(1) of the Alberta *Workers’ Compensation Act*, the Board may pay compensation to a worker who suffers "personal injury" due to a workplace accident, unless the injury is attributable primarily to the worker's own wilful misconduct and the injury is not serious. The term "accident" is defined in s.1(1)(a) of the Act as a wilful or intentional act done to the worker by another, a chance event occasioned by a physical or natural cause, a disablement, or a disabling or potentially disabling condition caused by an occupational disease.\(^1\) The Board policy manual expressly states that the term "personal injury" includes physical, psychological, and psychiatric disabilities.\(^2\)

The Board's policy on "psychiatric or psychological disability" allows compensation for mental injuries if they arise from any of the following:

- organic brain damage
- an emotional reaction to a work-related physical disability
- an emotional reaction to the treatment process
- an emotional reaction in response to a single traumatic work-related incident experienced by the worker that is sudden, as well as frightening or shocking, and has a specific time and place (for example, victim or witness to a robbery or hostage-taking incident, witnessing the death or severe injury of a co-worker, a natural disaster)
- an emotional reaction to:
  a) an accumulation of a number of worker-related stressors over time,
  b) a significant work-related stressor that has lasted for a long time, or
  c) both a) and b) together

when the following criteria are met.

- there is a confirmed psychological or psychiatric diagnosis as described in the DSM-IV
- the work-related events or stressors are the predominant cause of the injury
- the work-related events are excessive or unusual in comparison to the normal pressures and tensions\(^3\) experienced by the average worker in a similar occupation; and
- there is objective confirmation of the events

*Normal pressures and tensions include, amongst other things, the duties reasonably expected by the nature of the worker’s occupation, interpersonal relations and conflicts, and routine labour actions taken by the employer to which all workers may be subject from time to time.

In addition, under Policy 03-01, Part II, Application 4 Question 2, there is a presumptive relationship between significant and acute psychological stress and cardiac conditions. Therefore, for this particular mental-physical type of claim the Board policy presumes it was caused by stress if such stress was significant and acute.

The WCB may provide treatment for a psychological condition which is not related to the worker's employment injury if it is of the opinion that treatment could accelerate recovery, or that therapy would lessen any handicap associated with a compensable accident. An offer of treatment for an unrelated condition is entirely at the WCB's discretion and does not imply any acceptance of responsibility for the underlying cause.

If a work-related injury meets the conditions described above and aggravates a pre-existing psychological condition the WCB pays compensation only for the disability directly attributable to the workplace aggravation.\(^4\)

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\(^2\) *Alberta WCB Policies & Information Manual*, Policy 03-01 Part I, I.0.
\(^4\) *Alberta WCB Policies & Information Manual*, Policy 03-02, Part I.

Source: Association of Workers’ Compensation Boards of Canada – 2009

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Under s. 5(1) of the British Columbia Workers Compensation Act, the Board has jurisdiction to compensate workers for any "personal injury" which arises out of and in the course of employment.

Rehabilitation Services and Claims Manual ("RSCM") Policy item #13.20, "Psychological Impairment", provides that the term "personal injury" includes psychological impairment as well as physical injury. Policy item #13.20 also states that:

- A claim for traumatically induced psychological impairment could be accepted even if unaccompanied by any physical impairment.
- Psychological impairment has not been deemed to be an occupational disease.
- Conditions of this type may be accepted if they are a sequela to an accepted personal injury or occupational disease.

On June 30, 2002, the BC Workers Compensation Act was amended and Section 5.1, "Mental Stress", was added. This amendment did not impact the Board's policy regarding compensation for psychological impairment arising as a direct result of a work-related injury. The legislative amendment provides clarification regarding whether or not mental stress that does not arise from an injury is compensable.

Section 5.1 provides:

(1) "Subject to subsection (2), a worker is entitled to compensation for mental stress that does not result from an injury for which the worker is otherwise entitled to compensation, only if the mental stress
   (a) is an acute reaction to a sudden and unexpected traumatic event arising out of and in the course of the worker's employment,
   (b) is diagnosed by a physician or a psychologist as a mental or physical condition that is described in the most recent American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders at the time of the diagnosis, and
   (c) is not caused by a decision of the worker's employer relating to the worker's employment, including a decision to change the work to be performed or the working conditions, to discipline the worker or to terminate the worker's employment."

(2) The Board may require that a physician or psychologist appointed by the Board review a diagnosis made for the purposes of subsection (1) (b) and may consider that review in determining whether a worker is entitled to compensation for mental stress.

(3) Section 56 (1) applies to a physician or psychologist who makes a diagnosis referred to in this section.

(4) In this section, "psychologist" means a person who is registered as a member of the College of Psychologists of British Columbia established under section 15 (1) of the Health Professions Act or a person who is entitled to practice as a psychologist under the laws of another province.

On April 30, 2009, portions of policy item #13.30, Mental Stress, of the RS&CM were struck down by the British Columbia Court of Appeal. Following this decision, on July 14, 2009, the Board of Directors approved amendments to policy. Policy item #13.30 now provides, in part, as follows:

Section 5.1 of the Act sets out that a worker may be entitled to compensation for mental stress that does not result from an injury or occupational disease if the impairment is due to an acute reaction to a sudden and unexpected traumatic event. This is distinct from a worker's entitlement under section 5(1) for psychological impairment that is a compensable consequence of an injury or an occupational disease.

In certain situations, a single incident may result in the Board accepting a worker's claim for compensation for a physical injury under section 5(1), and mental stress that is not a compensable consequence of the physical injury, under section 5.1.

“Mental stress” is intended to describe conditions such as post-traumatic stress disorder or other associated disorders. Mental stress does not include “chronic stress”, which refers to a psychological impairment or condition caused by mental stressors acting over time. Workers, who develop mental stress over the course of time due to general workplace conditions, including workload, are not entitled to compensation.

Section 5.1 of the Act provides as follows:

(1) Subject to subsection (2), a worker is entitled to compensation for mental stress that does not result from an injury for which the worker is otherwise entitled to compensation only if the mental stress

5 Plesner v. British Columbia Hydro and Power Authority, 2009 BCCA 188.

Source: Association of Workers' Compensation Boards of Canada – 2009

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(a) is an acute reaction to a sudden and unexpected traumatic event arising out of and in the course of the worker’s employment,

(b) is diagnosed by a physician or a psychologist as a mental or physical condition that is described in the most recent American Psychiatric Association’s *Diagnostic and Statistical Manual of Mental Disorders*, at the time of diagnosis, and

(c) is not caused by a decision of the worker’s employer relating to the worker’s employment, including a decision to change the work to be performed or the working conditions, to discipline the worker or to terminate the worker’s employment.

(2) The Board may require that a physician or psychologist appointed by the Board review a diagnosis made for the purposes of subsection (1)(b) and may consider that review in determining whether a worker is entitled to compensation for mental stress.

(3) Section 56(1) applies to a physician or psychologist who makes a diagnosis referred to in this section.

(4) In this section, “psychologist” means a person who is registered as a member of the College of Psychologists of British Columbia established under section 15(1) of the *Health Professions Act* or a person who is entitled to practise as a psychologist under the laws of another province.

Under subsection 5.1(1)(a), the Act establishes a two-part test:

1. There must be an acute reaction to a sudden and unexpected traumatic event.
2. The sudden and unexpected traumatic event must arise out of and in the course of the employment.

An “acute” reaction means – “coming to crisis quickly”, it is a circumstance of great tension, an extreme degree of stress. It is the opposite of chronic. The reaction is typically immediate and identifiable. In certain situations, however, the acute reaction may be delayed. In all cases, the evidence must establish that the acute reaction is due to a sudden and unexpected traumatic event that arose out of and in the course of employment.

For the purposes of this policy, a “traumatic” event is an emotionally shocking event. In most cases, the worker must have suffered or witnessed the traumatic event first hand.

In all cases, the traumatic event must be

- clearly and objectively identifiable; and
- sudden and unexpected in the course of the worker’s employment.

This means that the event can be established by the Board through information or knowledge of the event provided by co-workers, supervisory staff, or others. The “arising out of” determination is discussed in policy item #14.00.

In considering the matter of work-relatedness, the Board must determine if there is a connection between the work-related traumatic event and the resulting acute reaction. This requires consideration of personal factors in the worker’s life, which may have contributed to the acute reaction. For compensation to be provided, the work-related traumatic event must be of causative significance to the worker’s mental stress. If the work-related traumatic event is not of causative significance, the worker’s mental stress will not be compensable.

It is recognized that some workers, due to the nature of their occupation, may be exposed to traumatic events on a relatively frequent basis (e.g., emergency workers). If such a worker has an acute reaction to a sudden and unexpected traumatic event, compensation for mental stress may be provided even if the worker was able to tolerate past traumatic events.

In all cases concerning entitlement to compensation for mental stress, the worker’s mental stress must be diagnosed by a physician or a psychologist as a mental or physical condition that is described in the most recent American Psychiatric Association’s *Diagnostic and Statistical Manual of Mental Disorders*, at the time of diagnosis. A “psychologist” means a person who is a registered member of the College of Psychologists of British Columbia or a person who is entitled to practise as a psychologist under the laws of another province.

The Board may appoint a physician or psychologist to review a diagnosis of a worker’s mental stress condition. When assessing all of the relevant medical evidence, the Board may consider that review in determining whether a worker is entitled to compensation for mental stress. A diagnosis of mental stress is not reviewed in every case. However, a review may be undertaken where, for instance, the Board receives medical evidence that conflicts with the diagnosis and which the physician or psychologist may not have possessed or been aware of when making the diagnosis.

Source: Association of Workers’ Compensation Boards of Canada – 2009

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### WORKPLACE/OCCUPATIONAL STRESS

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<tr>
<th>There is no entitlement to compensation if the mental stress is caused by a labour relations issue such as a decision by the worker's employer relating to the worker's employment, including a decision to change the work to be performed or the working conditions, to discipline the worker or to terminate the worker's employment.</th>
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<tr>
<td>Note that RSCM Policy item #22.33 “Psychological Problems, Chronic Pain Problems” provides further guidance in this area.</td>
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#### MB

- **Subsection 4(1) of The Workers Compensation Act** states that “[w]here, in any industry within the scope of this Part, personal injury by accident arising out of and in the course of the employment is caused to a worker, compensation as provided by this Part shall be paid by the board out of the accident fund.” Under the definition in subsection 1(1) of the Act, “accident” means “a chance event occasioned by a physical or natural cause” which results in injury to a worker. This definition includes the wilful and intentional acts of others, any event which arises out of and in the course of employment, thing that is done and the doing of which arises out of and in the course of employment, and an occupational disease.

- In January 1992, major legislation amending the Act came into effect. One of the amendments passed explicitly prevents compensation for stress, other than an acute reaction to a traumatic event. In addition, the new legislation clarified that compensation is not paid for stress arising out of personnel actions like promotions, transfers, demotions lay-offs or terminations. These changes were brought about by modifying the definitions of occupational disease and accident, respectively.

- The term "acute reaction to a traumatic event" is defined in policy 44.20 of the WCB's policy manual. An acute reaction is a reaction that creates a condition in the worker that is clearly discrete from the condition previous to the event. The traumatic event is an identifiable physical or psychological occurrence which occurs in an identifiable time frame that is normally of brief duration and is capable of causing serious physical or psychological harm consistent with the acute reaction.

- Even though the term "accident" is defined in the singular, as a matter of statutory interpretation, this would also include the plural. However, it would appear that the worker would have to be able to identify a series of specific events or incidents in order to succeed in obtaining compensation for a psychological condition which developed gradually. There must be an identifiable "chance event" or "events" in order to meet the definition of an accident. If the claimant could show a series of events which caused him or her to develop a stress disorder, then the WCB may adjudicate this type of chronic stress claim as an accident.

- Under **Policy 44.20.60, Psychological Conditions**, the WCB may provide compensation for physical-mental disorders. Examples of these types of disorders include:
  1. organic brain damage from a compensable traumatic head injury;
  2. psychosis resulting from exposure to harmful chemicals at the worksite;
  3. psychosis resulting from the use of drugs used in the treatment of a compensable injury.

- Under this policy, the WCB may provide compensation for mental-mental claims which arise as a direct result of a serious compensable life threatening injury or event. An accident is considered serious when a worker's life is threatened or he or she was directly involved in a life threatening incident or event.

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#### NB

- The definition of "accident" in New Brunswick's **Workers’ Compensation Act** includes reference to occupational disease and stress, as follows:

  ... An accident includes a wilful and intentional act, not being the act of a worker, and also includes a chance event occasioned by a physical or natural cause, as well as a disablement caused by an occupational disease and any other disablement arising out of and in the course of employment, but does not include the disablement of mental stress or a disablement caused by mental stress other than as an acute reaction to a traumatic event.

- As in all cases, the injury must arise out of and in the course of employment. **Policy No. 21-103 Conditions for Entitlement – Stress**, the Commission applies an objective four-part test to determine if a claim for mental stress is compensable. To be compensable, the mental stress must:

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6. Under section 1(1) of the Manitoba Workers Compensation Act, “occupational disease” specifically “does not include … stress, other than an acute reaction to a traumatic event.”


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| Be an acute reaction to a sudden and unexpected traumatic event; | Section of Act |
| The traumatic event must have arisen out of and in the course of the worker’s employment; | NL Under s. 43(1) of the Commission's *Workplace Health, Safety and Compensation Act*, compensation is payable "to a worker who suffers personal injury arising out of and in the course of employment, unless the injury is attributable to the serious and wilful misconduct of the worker." However, s. 43(2) of the Act states that the Commission will be liable to pay compensation notwithstanding the worker's misconduct if he or she is seriously and permanently disabled by a work related injury. |
| Not be caused by a decision of the worker’s employer relating to the management and monitoring of the worker’s employment; and | The term "injury" is defined in s. 2(1)(o) of the Act to include: (i) "an injury as a result of a chance event occasioned by a physical or natural cause", (ii) "an injury as a result of a wilful and intentional act, not being the act of the worker", (iii) "disablement", (iv) "industrial disease", or (v) "death as a result of injury" arising out of and in the course of employment and includes a recurrence of an injury and an aggravation of a pre-existing condition but does not stress other than stress that is an acute reaction to a sudden and unexpected traumatic event. Section 2(2) states: "Notwithstanding paragraph (1)(o), stress that may be the result of an employer’s decision or action relating to the employment of a worker including a decision to change the work to be performed or the working conditions, to discipline the worker or to terminate the worker's employment does not constitute an injury."
| Be a mental or physical condition that is described in the most recent American Psychiatric Association’s *Diagnosis and Statistical Manual of Mental Disorders* at the time of diagnosis. | The term "industrial disease" is defined under s. 2(1)(m) of the Act as a disease enumerated in the regulations, or "another disease peculiar to or characteristic of a particular industrial process, trade or occupation." |

Under s. 19(1) of the Act, the Commission has exclusive jurisdiction to determine whether an injury has arisen out of and in the course of employment, the existence and degree of disability, and whether a particular disease is peculiar to, or characteristic of, a particular industrial process, trade or occupation to which the Act applies. Section 26(1) of the Act gives the Review Commissioner jurisdiction to decide whether the Commission in making a decision has acted in accordance with the Act, regulations and established policy.

The Commission and its Review body have broad jurisdiction to accept or consider any type of work related claim. This would necessarily include claims of a psychological nature. Any injury which could come under the broad heading of a "disablement" or any disease which is "peculiar to" or "characteristic of" a trade, occupation, or industrial process is compensable under the Act if it arose out of employment. The Commission has developed policy directives in the area of physical-mental impairment and mental-physical impairment in relation to cardiac claims. Policy EN-06 of the *Client Services Policy Manual*, titled "Mental Health Adjustments Following Physical Injury" documents the Commission's policy.

Effective June 1, 2001, the Commission's policy on physical-mental claims promotes early intervention of mental health treatment where there are difficulties that result from serious physical injuries or the onset of an industrial disease. However, for injuries that are not life threatening, mental health treatment and compensation benefits will be limited to a three month period. If, after three months, a worker requires continuing mental health care in order to complete his or her return to work program or medical rehabilitation the Commission will cover periodic professional services only where the worker is participating in his or her return to work program or medical rehabilitation. Once the return to work programming or medical rehabilitation is completed, the Commission shall not provide coverage for mental health care. If a worker does not engage in return to work programming or prescribed medical treatments after three months of support, compensation entitlement under this policy will end. A Permanent Functional Impairment (P.F.I.) rating is not warranted for this circumstance because the Commission accepts the condition on a temporary basis only. All claims are decided based on the individual circumstances of the case.

Mental-mental type claims are addressed under the Board's Mental Stress policy (*Client Services Policy Manual*, EN-18) introduced in June 1999. A legislative amendment under section 2(o) which took effect in January 1999 redefined "injury" so that stress other than stress that is an acute reaction to a sudden and unexpected traumatic event was excluded from coverage. Furthermore, section 2(2) was added which further clarifies that notwithstanding paragraph (1)(o) (i.e. definition of "injury"), stress that may be the result of an injury is attributable to the serious and wilful misconduct of the worker. However, s. 43(2) of the Act states that the Commission will be liable to pay compensation notwithstanding the worker's misconduct if he or she is seriously and permanently disabled by a work related injury.

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9 *ibid.*, s.26(1).

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<td>employer's decision or action relating to the employment of a worker including a decision to change the work to be performed or the working conditions, to discipline the worker or to terminate the worker's employment does not constitute an injury.</td>
<td><strong>Workers’ Compensation Act</strong> (s. 1(1), 10)</td>
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<td>The legislation now makes a clear distinction between stress which is acceptable, and stress that may be the result of an employer's decision or action relating to the employment of a worker, which does not constitute an injury.</td>
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<td>Board policy on mental stress provides further adjudicative guidance by defining key terms such as &quot;acute reaction&quot; and &quot;traumatic event&quot;. Although the merits and justice of each case must be considered, generally mental stress which develops as a result of a traumatic event is considered an acute reaction, even though the reaction may be delayed for days, or even weeks. Delayed acute reaction is not the same as a gradual onset of mental stress which is generally not compensable.</td>
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<td>A sudden and unexpected traumatic event is one which is considered uncommon with respect to inherent risks of the occupation and is usually horrific, or has elements of actual or potential violence. Examples of traumatic events include but are not limited to: witnessing a fatality, being the victim of an armed robbery or hostage-taking incident, being subjected to physical violence (see also Policy EN-06 Psychological Conditions Associated with Physical Injuries), being subjected to death threats where there is reason to believe the threat is serious.</td>
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<td>Both these qualifiers (acute reaction and a sudden unexpected traumatic event) must be present before the condition is considered compensable. Claims arising from events that are not considered traumatic, but are traumatic to an individual because of a pre-existing psychological condition are not covered.</td>
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<td>A diagnosis under the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV) is not a requirement for initial adjudication, although the mental stress must be confirmed by the treating physician. This allows acceptance of claims promptly where an obvious traumatic incident is confirmed and the medical evidence is consistent with an acute reaction. Where the disability becomes long term, a diagnosis under the DSM-IV may be necessary to substantiate continuing entitlement. All claims are decided based on the individual circumstances of the case.</td>
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<td>NT/NU Under Section 10 of the Workers’ Compensation Act, workers may be entitled to compensation benefits for a personal injury or disease suffered by the worker arising out of and during the course of employment. A “disease” is defined as an unhealthy condition of the body or mind.</td>
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<td><strong>Policy 03.09 – Psychiatric and Psychological Disability</strong> – outlines how the WCB will accept and compensate for claims for psychiatric and psychological disability. A worker may experience an event or series of events which leads to mental stress and psychiatric or psychological disability. The event must satisfy criteria of work-relatedness, trauma and objective verification. To be compensable, the psychiatric or psychological disability must result from physical or emotional reactions to workplace trauma and be diagnosed by a psychiatrist or psychologist according to the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV), published by the American Psychiatric Association.</td>
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<td>Diagnoses may include, but are not limited to:</td>
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<tr>
<td>• Acute stress disorder</td>
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<td>• Post traumatic stress disorder</td>
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<td>• Adjustment disorder</td>
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<td>• An anxiety or depressive disorder</td>
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<td>To be compensated, a claimant must be diagnosed by a psychiatrist or psychologist with a disorder that leads to a disability and results from one or more of the following:</td>
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<td>• A work-related head injury, exposure to toxic chemicals or gases, anoxia or any other work-related injury, disease or condition causally connected to organic brain damage. This also includes mental disorders resulting from medication used to treat a work–related injury.</td>
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<tr>
<td>• An emotional reaction to a work-related physical disability.</td>
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<td>• An emotional reaction to a treatment process.</td>
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<tr>
<td>• An emotional reaction in response to a sudden, single, traumatic, work-related incident that is frightening or shocking to the worker, and has a specific time and place.</td>
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<tr>
<td>• An emotional reaction to an accumulation of a number of work-related traumatic events over time.</td>
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<tr>
<td>Work-related traumatic events do not include the usual pressures and tensions reasonably expected by the nature of the worker's occupation and duties.</td>
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Changes to the Nova Scotia *Workers’ Compensation Act*, which came into force on February 1, 1996, provide a definition of "accident" in Section 2(a), as follows:

"accident" includes …

(iii) disablement, including occupational disease, arising out of and in the course of employment, but does not include stress other than an acute reaction to a traumatic event.

This legislation virtually eliminates any mental-mental claims unless they are an acute reaction to a traumatic event.

On September 3, 1999 the Board of Directors approved Policy 1.3.5 "Criteria for psychiatric condition: Occupational Stress." The Policy provides the following criteria:

- An emotional reaction following an industrial injury is usually nothing more than a "startle reaction", or a short period of anxiety or depression which subsides very quickly.

- This initial emotional reaction, although minor in most cases can, however, increase depending on several factors. Every worker reacts differently to stressful situations, according to his or her individual personality. Factors include:
  a) the severity of the injury;
  b) whether or not the accident was of a frightening nature; and
  c) the prior emotional stability of the worker.

- The reaction to the injury may be aggravated as a result of prolonged medical treatment. Other factors, such as extended disablement and/or severe functional limitations, may also increase the emotional reaction to the point that the worker's ability to carry out the activities of daily life is affected.

- The emotional reaction is generally a temporary condition and the worker is left with no permanent psychiatric impairment. In considering cases of permanent impairment, for claims purposes, a clear causal relationship must be established between the injury and the emotional reaction (i.e. the injury must be shown to be a significant contributing factor).

Chronic stress claims for non-traumatic workplace events are precluded under the definition of "accident" in the legislation.

Under s. 13(1) of the Ontario *Workplace Safety and Insurance Act*, the Board has jurisdiction to award compensation to any worker who suffers a personal injury by accident arising out of and in the course of employment. The word "accident" encompasses the wilful and intentional acts of others, chance events, or any "disablement" which arises out of and in the course of employment. If the worker can demonstrate that his or her accident arose out of the employment, then pursuant to s. 13(2) of the Act, "it is presumed to have occurred in the course of the employment unless the contrary is shown."10 If the weight of the evidence presented is equally balanced, then the Board is required to decide in favor of the claimant, under s. 119(2) and s. 124(2) of the Act.

By exception, mental stress claims are specifically excluded from these insured injuries in s. 13(4). According to s. 13(5), only when the mental stress is an acute reaction to a sudden or unexpected traumatic event can the provision of benefits under the insurance plan be considered. Even so, the acute reaction cannot be in relation to stress caused by employment decisions such as a change in work requirements, working conditions, discipline or termination of employment.

The Board has separate provisions for occupational diseases under s. 15. Workers are eligible for compensation if they have an occupational disease as defined, if this disease impairs them, and if the disease occurred due to the nature of the employment.

The Board does have a policy on "psychotraumatic disorders", or physical-mental claims.11 The policy indicates that a worker is entitled to benefits when disability/impairment results from a work-related personal injury by accident. Disability/impairment includes both physical and emotional disability/impairment.

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**Notes:**

10 *Workplace Safety and Insurance Act*.

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Psychotraumatic conditions include any psychological impairment, which arises within five years from the date of the worker's physical injury, or five years from the date of his or her last surgery for it. A worker may be entitled to compensation for this type of disability if he or she develops an organic brain disorder due to a head injury or exposure to toxic chemicals, or suffers from emotional problems due to the severity of the initial physical injury, or the nature of the treatment process. In most cases the Board considers psychotraumatic disability to be a temporary condition.\(^\text{12}\)

In all cases of psychotraumatic injury where there is a history of a prior psychiatric condition, the claimant's prior psychiatric history is considered by the Board in determining whether or not the cause of the disability was entirely work-related, or if the workplace injury was merely a factor which aggravated a pre-existing condition. However, according to Operation Policy Manual Policy # 15-04-02, the Board may elect to treat the underlying psychological problem which was aggravated by the workplace injury or incident so long as such treatment enhances the recovery from the physical disability in the Board's opinion. The Board adheres to a firm policy of dealing with psychotraumatic illnesses as soon as they appear in order to ensure that the worker makes an optimal recovery in the shortest possible time.

Even though the Board does not have an express policy in relation to “mental-physical” impairment, such as a heart attack or an aneurysm brought on by stress, the Board considers these types of claims compensable. It will generally allow the claim if the claimant can demonstrate that he was exposed to acute emotional stress at work immediately prior to the physical injury and the nature of the physical injury was wholly or predominantly caused by the work environment. The Board considers these types of claims to be an aggravation of a previously existing non-compensable condition.\(^\text{13}\)

On January 1, 1998 the Board implemented a policy on mental-mental stress claims based on s. 13(5) of the Act which states:

A worker is entitled to benefits for mental stress that is an acute reaction to a sudden and unexpected traumatic event arising out of and in the course of his or her employment. However, the worker is not entitled to benefits for mental stress caused by his or her employer's decisions or actions relating to the worker's employment, including a decision to change the work to be performed or the working conditions, to discipline the worker or to terminate the employment.

The Policy on "Mental Stress" indicated that traumatic events are to be interpreted as events that would be generally recognized as traumatic and must be uncommon in the normal course of the worker's employment. Such events are usually horrific, or have elements of actual or threatened violence to the worker.

In April 2002, the Board revised its Operational Policy on Mental Stress and introduced the new policy entitled “Traumatic Mental Stress”, OPM# 15-03-02. The revised policy has been expanded to include traumatic stress arising from criminal acts and harassment, as well as actual harm or threats to a co-worker, the worker's family or others. The event must be clearly and precisely identifiable, objectively traumatic, and unexpected in the normal course of work. Sudden and traumatic events now includes being the object of harassment that could involve violence or threats of violence or harassment that puts the worker in a life-threatening or potentially life-threatening situation. The concept of "cumulative effect" has also been added. This recognizes that repeated exposure to traumatic events may lead to an acute stress reaction even though the most recent event is not the most traumatic of all the events the worker experienced.

The revised policy also recognizes that acute reactions to such traumatic events and the onset of mental stress may be immediate or may be delayed. If the acute reaction occurs within four weeks of the trauma, it is immediate, and after that it is delayed. Therefore, while the Board does not compensate for mental stress that develops gradually over time, this is not to be confused with delayed acute reactions and related mental stress that is not immediately evident after a traumatic event.

In all cases of traumatic mental stress, a DSM-IV Axis I diagnosis is required to allow the claim. For delayed acute reactions and for the cumulative effect, a DSM-IV Axis I diagnosis must be provided by a psychiatrist or a psychologist before the claim is allowed.

The “Traumatic Mental Stress” policy has a retroactive application to any single traumatic event, or in the case of the cumulative effect, the most recent traumatic event that occurs on or after January 1, 1989.\(^\text{14}\)

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Source: Association of Workers’ Compensation Boards of Canada – 2009

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<td>Section 6 of the Workers’ Compensation Act states, &quot;[w]here, in any industry within the scope of this Part, personal injury by accident arising out of and in the course of employment is caused to a worker, the Board shall pay compensation as provided by this Part out of the Accident Fund.&quot; Under section 1(1)(a), &quot;accident&quot; means a chance event occasioned by a physical or natural cause and includes: &quot;a wilful and intentional act that is not the act of the worker&quot;, any &quot;event arising out of, and in the course of employment&quot;, or &quot;thing that is done and the doing of which arises out of, and in the course of, employment, and an occupational disease&quot; the result of which is an injury to a worker. In addition, the definition of &quot;occupational disease&quot; does not include &quot;an ordinary disease of life&quot;. The Board has a policy POL04-21, “Psychological Conditions” which includes mental stress.</td>
<td>Workers Compensation Act (s. 1, 6)</td>
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<td><strong>QC</strong></td>
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<td>Section 2 of the Quebec Workers’ Compensation Act, An Act respecting Industrial Accidents and Occupational Diseases, defines an “employment injury” to be an injury or a disease arising out of or in the course of an industrial accident, or an occupational disease, including a recurrence, relapse or aggravation. An “industrial accident” is defined as a sudden and unforeseen event, attributable to any cause, which happens to a person, arising out of or in the course of his employment and resulting in an employment injury to him. As to &quot;occupational disease&quot;, it is defined as a disease contracted out of or in the course of employment and characteristic of that employment or directly related to the risks peculiar to that employment. Since the Act makes no distinction between a physical injury and a psychological injury, a stress-related employment injury can therefore be considered a psychological disease that:</td>
<td>Act Respecting Industrial Accidents and Occupational Diseases (s. 2)</td>
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<td>• results from an industrial accident, or</td>
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<td>• is accepted as an occupational disease.</td>
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| Psychological diseases are not contained in the list of occupational diseases in Appendix I of the Act, therefore the presumption of an occupational disease provided for in Section 29 of the Act does not apply. In spite of this, a psychological disease can be accepted as an occupational disease if the worker is able to demonstrate, among other things, that the disease is characteristic of the employment or that it is directly related to the risks peculiar to that employment. Since a psychological or psychiatric diagnosis is not considered an injury, the legal presumption of employment injury provided for in s. 28 of the Act, where a worker sustains an injury that happens in the workplace while the worker is at work, does not apply either. The worker must then clearly demonstrate the existence of an unforeseen and sudden event arising out of and in the course of employment and establish the relationship between the event and the disease. In fact, the psychological diseases in question must be related to a particular event or a series of events that occur over a relatively long period of time and fit with the definition of "unforeseen and sudden event" required by the Act. The CSST has no specific policy regarding this type of employment injury. Consequently, claims are processed on a case-by-case basis according to the facts reported and the preponderance of evidence. As a general rule, there must exist objective facts and not only the worker’s or the employer’s subjective perception of the facts. The situation must be beyond the normal scope of the work, outside the normal and foreseeable relationship between the employer and the employee. Furthermore, in some cases, a series of events may constitute an unforeseen and sudden event, and fits the definition of an employment accident. More specifically, claims relating to work relations problems are generally refused. Indeed, the situations relating to the employer’s right to manage in terms of staff management, such as hiring employees, giving (bad) evaluations, reprimands, disciplinary measures, staff assignments, transfers, promotions, demotions, termination, dismissal or lay-off are considered as usual and current events in the employment, particularly when these situations originate from the worker’s behaviour. Consequently, these events have to be beyond the normal scope of the work, taking the environment into consideration. Claims relating to interpersonal conflicts with the superior, colleagues, subordinates or customers are generally refused, unless such conflicts generate an unusual and unacceptable behaviour such as a clearly aggressive or dangerous behaviour. Claims alleging harassment may be acceptable, depending upon the case, when the psychic injury is related to an abusive or discriminatory behaviour of a superior or colleagues, which is proved by objective facts beyond the exclusive worker’s subjective perception. The whole series of events which may be minor when
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<td>taken separately are then repeated during a rather long period of time and often in an escalating context. Each event must be unforeseen and sudden. The whole series of events have to be sufficiently traumatizing to be the cause of a psychic injury.</td>
<td>Workers’ Compensation Act, 1979 (s. 28, 29)</td>
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<td>Claims relating to the stress associated with the tasks to be performed and the work organization may be acceptable, depending upon the case. Situations such as work overload, work under pressure, tension or assignment modifications must exceed the normal scope of the work. When such situations occur in the context of an administrative re-organization – which is frequent – the claims are generally refused, unless these modifications substantially change the workload. In such cases, it is the conjunction of objective facts which constitute an unforeseen and sudden event, when these facts are considered as a whole. Some parameters have to be taken into account. For instance, is it the assignments which differ significantly from the usual tasks, either quantitatively or qualitatively? Is it a situation on which the worker has little or no control and where there is little or no social support? A situation which lasts a rather long period, etc.?</td>
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<td>In conclusion, claims relating to chronic stress may be accepted in certain cases, but the factual and medical evidence produced by the worker must be rigorously evaluated in order to determine if it may constitute under the law an employment accident or, more rarely, an occupational disease.</td>
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The Saskatchewan Workers’ Compensation Board has broad jurisdiction to compensate for all types of work injuries. Section 28 of its governing legislation states, “where, in an industry, a worker suffers an injury, he is entitled to compensation which shall be paid by the board out of the fund”. Section 29 of the Act adds that, “where an injury to a worker arises out of his employment, it is presumed that it occurred in the course of his employment and where the injury occurred in the course of his employment it is presumed that it arose out of his employment.” Section 2(k) of the Act defines the term “injury” in a very broad manner. It includes the results of the wilful and intentional acts of others, the results of a chance event occasioned by a physical or natural cause, or “any disablement” which arises out of and in the course of employment.

In accord with this mandate, the Saskatchewan Board has developed a clearly defined policy in relation to psychological or stress related disorders that arise out of employment. Its perspective is that if a worker suffers a psychological injury due to emotional stress, this is always due to a pre-existing condition or “personality variation” in the individual. Therefore, psychological disorders produced by stress can always be viewed as an aggravation of a pre-existing condition. The fact that an individual has a propensity to become psychologically disabled is not a bar to compensation. The Board recognizes the “thin-skull” rule, and it views all emotional breakdowns to be an aggravation of a pre-existing non-compensable condition.

When a breakdown occurs and is manifested by inability to function normally in day-to-day life situations including work, it cannot be denied that an injury has occurred. Claimants must be able to show that they suffered an emotional "breakdown" due to the stressful nature of their work in order to be eligible for compensation.

The Board has classified stress related injuries into three different categories:

1. "Post-traumatic stress syndrome": This category represents the emotional impact of physical injury and loss of body integrity. These physical-mental claims are generally viewed as part of the worker's physical injury and are usually compensable without the diagnosis being clearly stated or the condition being specifically treated. The Board views psychological disorders of this nature to be temporary because once the worker has recovered from his or her physical injuries, or adjusted to a disability, the psychological symptoms are usually alleviated.

2. "Acute stress syndrome": This is defined as a psychological breakdown caused by witnessing, or being involved in, life threatening situations, or horrendous accidents with human death or injury. This type of claim is usually referred to as a mental-mental injury because the shock of experiencing a traumatic event does not usually involve physical contact or injury. The Board's policy directive provides examples of traumatic events that would produce disorders which fall into this category. Breakdown in these situations is considered to be a work injury.

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17 Directives of the Workers’ Compensation Board: Adjudication and Procedure Guidelines, Directive 2/92, s. 22(2).
18 Directives of the Workers’ Compensation Board: Adjudication and Procedure Guidelines, Directive 2/92, s. 22(2).
20 WCB of Saskatchewan, Directives of the Workers’ Compensation Board: Adjudication and Procedure Guidelines, Directive 2/92, s. 22(2)(2).
21 WCB of Saskatchewan, Directives of the Workers’ Compensation Board: Adjudication and Procedure Guidelines, Directive 2/92, s. 22(3)(a) and (b).

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### WORKPLACE/OCCUPATIONAL STRESS

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<th>3. “Chronic stress syndrome”: The Board’s perspective is that everyone is subjected to emotional stress, and stress is not in itself inherently harmful. Those persons who breakdown emotionally do so because of underlying personality traits which make them susceptible to psychological disorders. Therefore, the primary issue to be resolved during adjudication is whether or not the breakdown was the result of a natural progression of the worker’s underlying personality variation, or if it was due to workplace factors or resulted from life stresses outside employment. As a general rule, chronic stress will only be compensable if the work stress was excessive and unusual in comparison to pressures and tensions experienced by the average employee and if workplace stress was the predominant cause of the injury. Good faith disciplinary actions, transfers, demotions, lay-offs, or terminations are considered to be normal work-related stressors, and injuries arising from these actions are not compensable.</th>
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<td>a. The Board will classify the claim as improbable that work injury exists when the claimant has had a history of suffering from chronic depression or anxiety, and is employed in an occupation in which “burn out” is not known to be a problem. In these situations it is very difficult for the worker to demonstrate the work stress was excessive and unusual and was the predominant cause of the injury. Therefore, compensation is generally denied in these circumstances.</td>
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<td>b. It will classify a claim as doubtful that work injury exists when the worker is engaged in an occupation which is not ordinarily considered stressful, but the worker does not have a history of psychological problems. When these types of cases arise, the Board investigates the circumstances surrounding the breakdown by interviewing the worker, and his or her family members, co-workers, and employer. After the information obtained through in-depth interviews has been assessed, if the Board is not convinced that the worker’s disorder is in fact work-related, it may order a complete psychological and psychiatric assessment of the claimant to arrive at an estimate of the probability that a ‘work injury’ has occurred.</td>
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<td>c. The Board will define an injury as probable that work injury exists, if the claimant was engaged in a stressful occupation, such as air traffic controlling or teaching, at the time of his or her breakdown. If this is the case, then the Board will assume that the disorder is work related unless investigation of the claim reveals that personal factors may have been involved. The Board’s perspective on these situations is that the worker has entered the wrong occupation because they cannot deal with high stress environments. Although the worker may be able to function for a period of time without incident, their inherent psychological weaknesses will eventually cause them to suffer an emotional collapse.</td>
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Chronic stress syndrome is sub-divided into three groups:

- a. The Board will classify the claim as improbable that work injury exists when the claimant has had a history of suffering from chronic depression or anxiety, and is employed in an occupation in which “burn out” is not known to be a problem. In these situations it is very difficult for the worker to demonstrate the work stress was excessive and unusual and was the predominant cause of the injury. Therefore, compensation is generally denied in these circumstances.

- b. It will classify a claim as doubtful that work injury exists when the worker is engaged in an occupation which is not ordinarily considered stressful, but the worker does not have a history of psychological problems. When these types of cases arise, the Board investigates the circumstances surrounding the breakdown by interviewing the worker, and his or her family members, co-workers, and employer. After the information obtained through in-depth interviews has been assessed, if the Board is not convinced that the worker’s disorder is in fact work-related, it may order a complete psychological and psychiatric assessment of the claimant to arrive at an estimate of the probability that a ‘work injury’ has occurred.

- c. The Board will define an injury as probable that work injury exists, if the claimant was engaged in a stressful occupation, such as air traffic controlling or teaching, at the time of his or her breakdown. If this is the case, then the Board will assume that the disorder is work related unless investigation of the claim reveals that personal factors may have been involved. The Board’s perspective on these situations is that the worker has entered the wrong occupation because they cannot deal with high stress environments. Although the worker may be able to function for a period of time without incident, their inherent psychological weaknesses will eventually cause them to suffer an emotional collapse.

The Board views these situations as analogous to an individual with degenerative disc problems working as a manual labourer. Although the worker may be able to do this for a while, it is inevitable that his back problem would eventually become aggravated to the point at which the worker must change occupations. Therefore, compensation is required in order to allow the worker to develop other skills and find alternative employment.

The Board does not have an express policy in relation to mental-physical claims. However, given the broad scope of its jurisdiction, and the fact that it does provide compensation for mental-mental claims of both the chronic and traumatically induced variety, it is reasonable to conclude that the Board would consider providing compensation for these types of injuries in appropriate cases.

Psychological claims are referred to staff trained for these types of claims, and he or she is responsible for conducting a field investigation to ascertain the circumstances surrounding the claim. The case management staff member also requests a Medical Officer to conduct an appropriate examination of the worker, and the Medical Officer has discretion to order a psychiatric evaluation if the physician believes it to be necessary. Once the claim has been thoroughly investigated, adjudication is conducted by a committee composed of a Director of Case Management, and the staff who were already involved in the investigation.

It is important to note that the Saskatchewan Board places acute stress disorders, or those in which witnessing or participating in a traumatic event triggered the worker's disability, into the physical-mental category. Many other Boards would classify this type of occurrence as a mental-mental claim.

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Under s. 4(1) of the Act, “a worker who suffers a work related injury is entitled to compensation unless the injury is attributable to conduct deliberately undertaken for the purpose of receiving compensation.” The term “injury” is defined in s. 3 of the Act as “a work related incapacity as determined by the board, including post-traumatic stress, a permanent impairment, or a worker's death.” The definition departs from the traditional dichotomy of “accidents” and occupational or industrial “diseases” in favour of the general meaning encompassed by the term “injury”. Under s. 105 of the Act the Board has exclusive jurisdiction to decide all matters pertaining to whether or not a worker's injury was work related, and the degree and duration of an injury.

Given the broad mandate and jurisdiction of the Board, and the definition of an injury contained in the Act, the Board has the power to provide compensation for all work-related physical or psychological injuries. The Yukon has developed a policy, Adjudicating Psychological Disorders, that includes direction on dealing with Post-traumatic stress disorders.

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