

2012/06/20-2

THE WORKERS' COMPENSATION BOARD OF BRITISH COLUMBIA**RESOLUTION OF THE BOARD OF DIRECTORS****RE: *Workers Compensation Amendment Act, 2011 (Bill 14) Amendments to Section 5.1 of the Workers Compensation Act*****WHEREAS:**

Pursuant to section 82 of the *Workers Compensation Act*, RSBC 1996, Chapter 492 and amendments thereto ("*Act*"), the Board of Directors must set and revise as necessary the policies of the Board of Directors, including policies respecting compensation, assessment, rehabilitation, and occupational health and safety;

AND WHEREAS:

The *Workers Compensation Amendment Act, 2011* ("Bill 14"), which amends section 5.1 of the *Act*, was enacted on May 31, 2012;

AND WHEREAS:

The transitional provisions of Bill 14 provide that the amendments to section 5.1 of the *Act* will come into force on July 1, 2012 and apply to every decision made by WorkSafeBC or the Workers' Compensation Appeal Tribunal on or after July 1, 2012, in respect of a claim made but not finally adjudicated before July 1, 2012;

AND WHEREAS:

Deletion of Item C3-13.00, *Mental Stress*, in the *Rehabilitation Services & Claims Manual*, Volume II ("*RS&CM*") and replacement with new Item C3-13.00, *Section 5.1 – Mental Disorders*, is required to address the Bill 14 amendments to section 5.1 of the *Act*;

AND WHEREAS:

The Policy and Regulation Division has undertaken stakeholder consultation on this issue;

THE BOARD OF DIRECTORS RESOLVES THAT:

1. To implement the Bill 14 amendments to section 5.1 of the *Act*, replacement of Item C3-13.00, *Mental Stress*, of the *RS&CM*, attached as Appendix A to this Resolution, with Item C3-13.00, *Section 5.1 – Mental Disorders*, attached as Appendix B to this Resolution, is approved and applies to every decision made by the Board or the Workers' Compensation Appeal Tribunal on or after July 1, 2012, in respect of a claim made but not finally adjudicated before July 1, 2012.
2. This Resolution is effective July 1, 2012 and applies to every decision made by the Board or the Workers' Compensation Appeal Tribunal on or after July 1, 2012, in respect of a claim made but not finally adjudicated before July 1, 2012.
3. This Resolution constitutes a policy decision of the Board of Directors.

DATED at Richmond, British Columbia, June 20, 2012.

By the Workers' Compensation Board

**GEORGE MORFITT, FCA
CHAIR, BOARD OF DIRECTORS**

APPENDIX A
CURRENT POLICY



WORKING TO MAKE A DIFFERENCE

REHABILITATION SERVICES &
CLAIMS MANUAL

RE: ~~Mental Stress~~

ITEM: ~~C3-13.00~~

BACKGROUND

1. ~~Explanatory Notes~~

~~This policy provides guidance for determining a worker's entitlement to compensation for mental stress.~~

2. ~~The Act~~

~~Section 5.1:~~

- ~~(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.~~

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(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.

POLICY

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 sections 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.

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 the employment.

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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.

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.

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~~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.~~

PRACTICE

~~For any relevant PRACTICE information please consult the WorkSafeBC website at www.worksafebc.com.~~

EFFECTIVE DATE: July 1, 2010

AUTHORITY: Section 5(1) of the *Act*.

CROSS REFERENCES: ~~Item C3-22.30, *Compensable Consequences – Psychological Impairment*.~~

HISTORY: This policy replaces former policy item #13.30 of the *Rehabilitation Services & Claims Manual, Volume II*.

~~Effective April 30, 2009, former policy item #13.30 was amended to delete references identified by the British Columbia Court of Appeal as being contrary to section 15(1) of the *Canadian Charter of Rights and Freedoms*.~~

~~On April 1, 2007, former policy item #13.30 was amended to delete the paragraph requiring workers with a recurrence of mental stress to meet the requirements of section 5.1, if their claims had initially been allowed prior to June 30, 2002.~~

~~On December 31, 2003, former policy item #13.30 was amended to reflect the amendment of section 5.1(1) of the *Act*, to include a reference to a psychologist's diagnosis of mental stress, and the introduction of sections 5.1(2) to (4) of the *Act*. The amended policy applied to acute reactions to traumatic events that occur on or after December 31, 2003. Former policy item #13.30 had been created on June 30, 2002 to set out the scope of coverage for mental stress claims. It applied to all injuries on or after June 30, 2002; permanent disabilities where the permanent disability first occurred on or after June 30, 2002, irrespective of the date of the injury; and recurrences, where the recurrence occurred on or after June 30, 2002, irrespective of the date of the injury.~~

APPLICATION: ~~This Item applies to all claims for mental stress occurring on or after July 1, 2010.~~

APPENDIX B
NEW POLICY



REHABILITATION SERVICES &
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RE: Section 5.1 – Mental Disorders

ITEM: C3-13.00

BACKGROUND

1. Explanatory Notes

This is the principal policy that sets out the decision-making principles for determining a worker's entitlement to compensation under section 5.1 of the *Act*.

2. The Act

Section 5.1:

- (1) Subject to subsection (2), a worker is entitled to compensation for a mental disorder that does not result from an injury for which the worker is otherwise entitled to compensation, only if the mental disorder
 - (a) either
 - (i) is a reaction to one or more traumatic events arising out of and in the course of the worker's employment, or
 - (ii) is predominantly caused by a significant work-related stressor, including bullying or harassment, or a cumulative series of significant work-related stressors, arising out of and in the course of the worker's employment,
 - (b) is diagnosed by a psychiatrist or 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.

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- (2) The Board may require that a psychiatrist 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 a mental disorder.
- (3) Section 56(1) applies to a psychiatrist or psychologist who makes a diagnosis referred to in this section.
- (4) In this section:

“psychiatrist” means a physician who is recognized by the College of Physicians and Surgeons of British Columbia, or another accredited body recognized by the Board, as being a specialist in psychiatry;

“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.

POLICY

The complexity of mental disorders gives rise to challenges in the adjudication of a claim for a mental or physical condition that is described in the most recent American Psychiatric Association’s *Diagnostic and Statistical Manual of Mental Disorders* (“DSM”). The mental disorder may be the result of a number of contributing factors, some of which are work-related and some of which are not.

This policy provides guidance on the adjudication of claims for mental disorders where the mental disorder either:

- is a reaction to one or more traumatic events arising out of and in the course of the worker’s employment; or
- is predominantly caused by a significant work-related stressor, or a cumulative series of significant work-related stressors, arising out of and in the course of the worker’s employment.

Section 5.1 of the *Act* sets out that a worker may be entitled to compensation for a mental disorder that does not result from an injury. This is distinct from a worker’s entitlement under section 5(1) for psychological impairment that is a compensable consequence of an injury.

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A. Does the worker have a DSM diagnosed mental disorder?

Section 5.1 requires more than the normal reactions to traumatic events or significant work-related stressors, such as being dissatisfied with work, upset or experiencing distress, frustration, anxiety, sadness or worry as those terms are widely and informally used.

It requires that a worker's mental disorder be diagnosed by a psychiatrist or a psychologist as a condition that is described in the most recent DSM, at the time of diagnosis.

As set out in the DSM, a DSM diagnosis generally involves a comprehensive, multi-axial and systematic clinical assessment of the worker. A multi-axial diagnosis involves consideration of the following:

- **Axis I: Clinical disorders**
- **Axis II: Personality disorders**
- **Axis III: General medical conditions**
- **Axis IV: Psychosocial and environmental problems**
- **Axis V: Global assessment of functioning**

The Board is responsible for the decision-making process, and for reaching the conclusions on the claim. Under section 5.1(2) of the *Act*, the Board may obtain expert advice to review the diagnosis and where required, may obtain additional diagnostic assessment.

In reviewing the diagnosis, the Board also considers all of the relevant medical evidence, including prior medical history, attending physician reports and expert medical opinion. The findings of this additional information are considered in determining whether there is a DSM diagnosed mental disorder.

B. Was there one or more events, or a stressor, or a cumulative series of stressors?

In all cases, the one or more events, stressor or cumulative series of stressors, must be identifiable. The worker's subjective statements and response to the event or stressor are considered; however, this question is not determined solely by the worker's subjective belief about the event or stressor. The Board also verifies the events or stressors through information or knowledge of the events or stressors provided by co-workers, supervisory staff or others.

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C. Was the event “traumatic” or the work-related stressor “significant”?

All workers are exposed to normal pressures and tensions at work which are associated with the duties and interpersonal relations connected with the worker’s employment.

For the purposes of this policy, a “traumatic” event is an emotionally shocking event, which is generally unusual and distinct from the duties and interpersonal relations of a worker’s employment. However, this does not preclude a worker who, due to the nature of his or her occupation, is exposed to traumatic events as part of their work (e.g., emergency workers).

In most cases, the worker must have suffered or witnessed the traumatic event first hand. The reaction to the traumatic event or events is typically immediate and identifiable. In some situations, however, the reaction may be delayed.

A work-related stressor is considered “significant” when it is excessive in intensity and/or duration from what is experienced in the normal pressures or tensions of a worker’s employment.

Interpersonal conflicts between the worker and his or her supervisors, co-workers or customers are not generally considered significant unless the conflict results in behavior that is considered threatening or abusive.

Examples of significant work-related stressors may include exposure to workplace bullying or harassment.

While specific reference is made to emergency workers under traumatic events above, this does not preclude consideration of emergency workers under the significant stressor provisions.

D. Causation

(i) Was the mental disorder a reaction to one or more traumatic events arising out of and in the course of the worker’s employment?

The *Act* requires that the mental disorder be a reaction to one or more traumatic events arising out of and in the course of the worker’s employment. This requires the Board to determine the following:

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- Did the one or more traumatic events arise in the course of the worker's employment?

This refers to whether the one or more traumatic events happened at a time and place and during an activity consistent with, and reasonably incidental to, the obligations and expectations of the worker's employment.

- Did the one or more traumatic events arise out of the worker's employment?

This refers to the cause of the mental disorder. Both employment and non-employment factors may contribute to the mental disorder. However, in order for the mental disorder to be compensable, the one or more traumatic events have to be of causative significance, which means more than a trivial or insignificant cause of the mental disorder.

In making the above determinations, the Board reviews the medical and non-medical evidence to consider whether:

- there is a connection between the mental disorder and the one or more traumatic events, including whether the one or more traumatic events were of sufficient degree and/or duration to be of causative significance in the mental disorder;
- any pre-existing non-work related medical conditions were a factor in the mental disorder; and
- any non-work related events were a factor in the mental disorder.

The Board is required to determine whether there is sufficient evidence of one or more traumatic events that are of causative significance in the mental disorder.

Where there is insufficient evidence that the one or more traumatic events arose out of and in the course of the worker's employment, the mental disorder is not compensable. A speculative possibility that the one or more traumatic events contributed to the mental disorder is not sufficient.

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- (ii) Was the mental disorder predominantly caused by a significant work-related stressor, or a cumulative series of significant work-related stressors, arising out of and in the course of the worker's employment?

The *Act* requires that the mental disorder be predominantly caused by a significant work-related stressor, or a cumulative series of significant work-related stressors, arising out of and in the course of the worker's employment. There are two parts to this requirement as set out below.

The first part is the determination of whether the significant stressor or cumulative series of significant stressors arose out of and in the course of employment. This requires the Board to determine the following:

- Did the significant stressor or cumulative series of significant stressors arise in the course of the worker's employment?

This refers to whether the significant stressor, or cumulative series of significant stressors, happened at a time and place and during an activity consistent with, and reasonably incidental to, the obligations and expectations of the worker's employment.

- Did the significant stressor or cumulative series of significant stressors arise out of the worker's employment?

A significant stressor or a cumulative series of significant stressors may be due to employment or non-employment factors. The *Act* requires that the significant stressors be work-related.

The second part is the determination of whether the significant work-related stressor, or cumulative series of significant work-related stressors, was the predominant cause of the mental disorder.

Predominant cause means that the significant work-related stressor, or cumulative series of significant work-related stressors, was the primary or main cause of the mental disorder.

Both parts of this requirement must be met in order for the mental disorder to be compensable.

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(iii) Pre-existing Mental Disorders

Where a worker has a pre-existing mental disorder and claims that a traumatic event or significant work-related stressor aggravated the pre-existing mental disorder, the claim is adjudicated with regard to section 5.1 of the *Act* and the direction in this policy.

E. Section 5.1(1)(c) Exclusions

There is no entitlement to compensation if the mental disorder is caused by a decision of the worker's employer relating to the worker's employment. The *Act* provides a list of examples of decisions relating to a worker's employment which include a decision to change the work to be performed or the working conditions, to discipline the worker or to terminate the worker's employment. This statutory list of examples is inclusive and not exclusive.

Other examples may include decisions of the employer relating to workload and deadlines, work evaluation, performance management, transfers, changes in job duties, lay-offs, demotions and reorganizations.

PRACTICE

For any relevant PRACTICE information please consult the WorkSafeBC website at www.worksafebc.com.

EFFECTIVE DATE:	July 1, 2012
AUTHORITY:	Section 5.1 of the <i>Act</i> .
CROSS REFERENCES:	Item C3-22.30, <i>Compensable Consequences – Psychological Impairment</i> .
HISTORY:	New Item C3-13.00 to reflect changes to the <i>Act</i> resulting from the <i>Workers Compensation Amendment Act, 2011</i> . This policy replaces former Item C3-13.00 of the <i>Rehabilitation Services & Claims Manual, Volume II</i> , in its entirety. Former Item C3-13.00 had replaced former policy item #13.30 by putting it into the new format. Effective April 30, 2009, former policy item #13.30 was amended to delete references identified by the British Columbia Court of Appeal as being contrary to section 15(1) of the <i>Canadian Charter of Rights and Freedoms</i> .

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On April 1, 2007, former policy item #13.30 was amended to delete the paragraph requiring workers with a recurrence of mental stress to meet the requirements of section 5.1, if their claims had initially been allowed prior to June 30, 2002. On December 31, 2003, former policy item #13.30 was amended to reflect the amendment of section 5.1(1) of the *Act*, to include a reference to a psychologist's diagnosis of mental stress, and the introduction of sections 5.1(2) to (4) of the *Act*. The amended policy applied to acute reactions to traumatic events that occur on or after December 31, 2003. Former policy item #13.30 had been created on June 30, 2002 to set out the scope of coverage for mental stress claims. It applied to all injuries on or after June 30, 2002; permanent disabilities where the permanent disability first occurred on or after June 30, 2002, irrespective of the date of the injury; and recurrences, where the recurrence occurred on or after June 30, 2002, irrespective of the date of the injury.

APPLICATION:

This Item applies to every decision made by the Board or the Workers' Compensation Appeal Tribunal on or after July 1, 2012, in respect of a claim made but not finally adjudicated before July 1, 2012.