



BCTF

Summer Leadership Conference

2020

Filing Mental Disorder Claims
with WorkSafeBC

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Topics on this workshop

- WorkSafeBC: a backgrounder
- Filing a Claim with WorkSafeBC
- Confidentiality
- Claim Process: What happens next?
- Diagnostic and Statistical Manual of Mental Disorders (DSM-5)
- Mental Disorders
- Bullying and Harassment
- Causation
- Mental Disorder claims: exclusions
- Compensable Consequences
- Return to Work Considerations



WorkSafeBC: a backgrounder

- A British Columbia provincial crown agency that is operated independently of the legislature and cabinet, by a Board of Directors.
- Mandated to promote and enforce occupational health and safety, provide rehabilitation and compensation to the injured.
- The Board of Directors oversee the management of WorkSafeBC. The Board consists of representatives from the employer community, worker community, the public interest, and other.

WorkSafeBC: a backgrounder (continued)

- The elected BC government (cabinet) appoint the members of the Board of Directors to terms.
- No fault-insurance system providing coverage for most workers in British Columbia.
- Employees cannot pursue civil remedy against employer or employees.
- Entirely funded by premiums paid by employers, the “Accident Fund.”

WorkSafeBC: a backgrounder (continued)

- The insurance premiums are paid entirely by the employers.
- WorkSafeBC is structured into many different departments. The largest departments are Compensation and Prevention (Health and Safety).
- The focus of the presentation will be the Compensation Division.

WorkSafeBC: a backgrounder (continued)

- WorkSafeBC is a creation of provincial legislation, the *Workers' Compensation Act (WCA)*, which we call the enabling legislation.
- The WCA can only be changed by the members of the legislative assembly in Victoria.
- It is a broad legal framework.

Filing a Claim with WorkSafeBC

Compensation Department:

- work-related injuries and occupational diseases including mental health claims
- must file a claim for compensation: the form 6
- compensation decisions apply the binding *Rehabilitation Services & Claims Manual* (Vol. I, II)

Phone Teleclaim: 604-231-8888

Toll Free: 1-888-WORKERS (1-888-967-5377)

- or submit online:
www.worksafebc.com/en/resources/claims/forms/application-for-compensation-and-report-of-injury-or-occupational-disease-form-6?lang=en
- **The worker must file the claim directly to WorkSafeBC within one year of the date of injury.**

It is not the same as reporting an injury to the employer (form 6A) or the employer reporting of an injury (form 7).

Confidentiality

The contents of a WCB claim are confidential personal records subject to the secrecy provision in the *Workers Compensation Act*. If you are not the claimant/injured worker, it is illegal under the *Act* to share disclosure of a claim with anyone, except:

- if you share the information to comply with the law of British Columbia or Canada
- if you have received a valid subpoena or court order requiring that you share the information
- for the purpose of preparing an appeal under the *Workers Compensation Act*
- If you have the consent of the person the information concerns.

Claim Process: What happens next?

1. An entitlement officer (EO) or case manager (CM) will be assigned to adjudicate the merits of the claim. They are responsible for making decisions on a claim, including financial and health care decisions, and claim acceptance.
Entitlement Officer: One position below the CM, makes a decision on claim acceptance for more simple claims.
2. CM/EO will adjudicate the claim by requesting disclosure of any relevant medical evidence (physician visits, psychologist, psychiatrist and counsellor visits).
3. CM will ask for a written statement and/or telephone interview.
4. A medical advisor or psychology advisor opinion may be requested to assist with adjudication.
5. Worker may be required to undergo a psychological assessment.

Claim Process: What happens next?

(continued)

6. Identify any pre-existing mental health conditions.
7. CM then applies policy from the RSCM Vol. II (policy manual) policy 24.00.
8. CM sends the worker a decision letter, allowing or denying the claim.
9. If claim allowed, will determine financial and health benefits.
10. If claim denied, the worker has 90 days to file a request for review of the decision.
11. The employer is copied on the decision, and the employer has the right to review the decision.

Diagnostic and Statistical Manual of Mental Disorders 5 (DSM-5)

- DSM-5, published by the American Psychiatric Association, now in its fifth edition published in 2013.
- To have a valid claim, a worker must have an affirmative diagnosis of a DSM-5 disorder diagnosed by a registered psychologist or psychiatrist.
- A physician or counsellor opinion not sufficient.

Diagnostic and Statistical Manual of Mental Disorders 5 (DSM-5) (continued)

- Members struggling with mental health concerns should seek help from a mental health specialist, not just their physician.
- What disorders most likely to effect teachers?
- Other workers?

Mental Disorders

Section 135 of the *WCA* 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 134 for psychological impairment that is a compensable consequence of an injury.

Mental Disorders (continued)

- Does the worker have a DSM-5 diagnosed mental disorder?
- Was there one or more events, or a stressor, or a cumulative series of stressors?
- Was the event “traumatic” or the work-related stressor “significant”?

Mental Disorders (continued)

- Causation

WCA Section 135 (1)(c) Exclusions

Traumatic events

*For the purposes of the 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)**

**Rehabilitation Services & Claims Manual, Vol. II, Policy 24.00*

Mental Disorders

- Causation

WCA Section 135 (1)(c) Exclusions

Work-related stressors:

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**

**Rehabilitation Services & Claims Manual, Vol. II, Policy 24.00*

Bullying and Harassment

- Examples of significant work-related stressors include exposure to workplace bullying or harassment.
- A worker is bullied and harassed when someone takes an action that he or she knew, or reasonably ought to have known, would cause that worker to be humiliated or intimidated. When an employer or supervisor takes reasonable action to manage and direct workers, it is not bullying and harassment (*see OHS policy P2-21-2 for more information*).
- Examples of behaviour or comments that might constitute bullying and harassment include verbal aggression or insults, calling someone derogatory names, harmful hazing or initiation practices, vandalizing personal belongings, and spreading malicious rumours.

www.worksafebc.com/en/health-safety/hazards-exposures/bullying-harassment

Causation

- WCB is required to determine whether the evidence supports a finding of one or more traumatic events that are of causative significance in the mental disorder that arises out of and in the course of the worker's employment, **or**
- 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.

Causation (continued)

Examples:

- A paramedic becomes disabled from PTSD after responding to a call and treating a member of the public who dies at the scene of an accident.
- A waiter becomes disabled by depression after being subjected to a series of sexualized comments from customers.
- But, a paramedic who becomes disabled from PTSD after they witness a death while mountain climbing, would not have a claim as this does not arise in the course of their employment.
- A waiter who becomes disabled from depression after being subjected to sexualized comments while participating in a dart league, would not have a claim as this does not arise in the course of their employment.

Causation (continued)

What are some examples of events/stressors teachers may be exposed to that may cause disability from work?

Examples:

- violence in the classroom
- bullying and harassment from students, parents, other teachers, or admin
- difficult and/or vulnerable students, e.g. student tells teacher they were sexually abused, or student threatens to kill themselves.

Mental Disorder claims: exclusions

WCA Section 135 (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, 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.

Under policy, 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.

Compensable Consequences

- Once it is established that an injury arose out of and in the course of the worker's employment, the question arises as to what consequences of that injury are compensable.
- Looking at the matter broadly and from a "common sense" point of view, the Board considers whether the compensable injury, or the worker's condition resulting from the compensable injury, was of causative significance in the further injury, increased disablement, disease, or death.

Rehabilitation Services & Claims Manual Vol. II Policy Item #22.00; 22.10; 22.20.; 22.30; 22.40

Compensable Consequences (continued)

Within the context of the teaching profession, the most common will be a mental health disorder arising as a compensable consequence from a concussion (head) injury.

Example:

- Teacher suffers concussion after being hit by a ball while supervising students.
- Teacher goes on disability and develops depression and anxiety as a consequence of the physical injury.
- There is significant overlap in symptoms, e.g. impaired memory, slow cognitive processing, reduced concentration, impatience/irritability, fatigue.

Return to Work Considerations

Examples:

- lack of accommodation
- stigma
- unable to return to pre-injury job e.g. due to reduced concentration, problems with memory and processing speed
- unable to return to full-time employment, e.g. due to chronic fatigue
- chronic mental health issue/symptoms prevents return to any work

Return to Work Considerations (continued)

Examples:

- lack of family/social supports may exacerbate problems
- labour relations issues, i.e. unwillingness or inability of the employer to accommodate, or a breakdown in the relationships.

Members should refer themselves to BCTF Health and Wellness Program to speak to a rehab consultant, who will work with the member to develop a gradual return to work plan.

To sum up...

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