

**Operational
Policy**

Section

Claims - In the Course of and Arising Out of

Subject

Chronic Mental Stress

Policy

A worker is entitled to benefits for chronic mental stress arising out of and in the course of the worker's employment.

A worker is not entitled to benefits for chronic mental stress caused by decisions or actions 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 employment.

NOTE

Additional guidelines apply to first responders and other designated workers who are claiming entitlement for posttraumatic stress disorder, see 15-03-13, Posttraumatic Stress Disorder in First Responders and Other Designated Workers.

Purpose

The purpose of this policy is to provide entitlement guidelines for claims for chronic mental stress.

Guidelines

Definition

Workplace harassment

Workplace harassment occurs when a person or persons, while in the course of the employment, engage in a course of vexatious comment or conduct against a worker, including bullying, that is known or ought reasonably to be known to be unwelcome.

Chronic mental stress

A claim for chronic mental stress (as described below) is distinct from a claim for traumatic mental stress. For information relating to claims for traumatic mental stress, see 15-03-02, Traumatic Mental Stress.

A worker will generally be entitled to benefits for chronic mental stress if an appropriately diagnosed mental stress injury is caused by a substantial work-related stressor arising out of and in the course of the worker's employment. For more information see 15-02-02, Accident in the Course of Employment.

NOTE

The term "work-related stressor" is meant to include multiple work-related stressors, as well as a cumulative series of work-related stressors.

In order to consider entitlement for chronic mental stress the WSIB decision-maker must be able to identify the event(s) which are alleged to have caused the chronic mental stress.

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This means that the event(s) can be confirmed by the WSIB decision-maker through information or knowledge provided by co-workers, supervisory staff, or others.

Substantial work-related stressor

A work-related stressor will generally be considered substantial if it is excessive in intensity and/or duration in comparison to the normal pressures and tensions experienced by workers in similar circumstances.

Workplace harassment will generally be considered a substantial work-related stressor.

Jobs with a high degree of routine stress

A claim for chronic mental stress made by a worker employed in an occupation, or a category of jobs within an occupation, reasonably characterized by a high degree of routine stress should not be denied simply because all workers employed in that occupation, or category of jobs within that occupation, are normally exposed to a high level of stress. In some cases, therefore, consistent exposure to a high level of routine stress over time may qualify as a substantial work-related stressor.

Jobs with a high degree of routine stress would typically have one or both of the following characteristics:

- responsibility over matters involving life and death, or
- routine work in extremely dangerous circumstances.

Interpersonal conflicts

Interpersonal conflicts between workers and their supervisors, co-workers or customers are generally considered to be a typical feature of normal employment. Consequently, such interpersonal conflicts are **not** generally considered to be a substantial work-related stressor, unless the conflict

- amounts to **workplace harassment**, or
- results in conduct that a reasonable person would perceive as egregious or abusive.

Standard of proof and causation

In all cases, the WSIB decision-maker must be satisfied, on a balance of probabilities, that the substantial work-related stressor

- arose out of and in the course of the worker's employment, and
- was the **predominant cause** of an appropriately diagnosed mental stress injury.

For the purposes of this policy, "**predominant cause**" means that the substantial work-related stressor is the primary or main cause of the mental stress injury—as compared to all of the other individual stressors. Therefore, the substantial work-related stressor can still be considered the predominant cause of the mental stress injury even though it may be outweighed by all of the other stressors, when combined.

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Before any chronic mental stress claim can be adjudicated, there must be a diagnosis in accordance with the Diagnostic and Statistical Manual of Mental Disorders (DSM) which may include, but is not limited to,

- acute stress disorder
- posttraumatic stress disorder
- adjustment disorder, or
- an anxiety or depressive disorder.

In most cases the WSIB will accept the claim for adjudication if an appropriate regulated health care professional provides the DSM diagnosis. However, in complex cases, for example where there is evidence that a non-work-related stressor(s) may have caused or contributed to the injury, the WSIB decision-maker may require a further assessment, including an assessment by a psychiatrist or psychologist, to help clarify initial or ongoing entitlement.

Pursuant to the *Regulated Health Professions Act, 1991*, regulated health care professionals who are qualified to provide a DSM diagnosis are

- physicians
- nurse practitioners
- psychologists, and
- psychiatrists.

Pre-existing, non-work-related psychological condition

For information on the effect (if any) of a pre-existing, non-work-related psychological condition on a claim for chronic mental stress see 15-02-03, Pre-existing Conditions.

NOTE

When assessing the impact (if any) of a pre-existing condition on a claim for chronic mental stress, the guidelines in 15-02-03, Pre-existing Conditions, apply except that, when determining whether the pre-existing psychological condition has overwhelmed the work-related mental stress injury, the WSIB decision-maker uses the predominant cause test, rather than the significant contribution test. By doing so the WSIB decision-maker ensures that the causation test used to determine initial entitlement in the claim is consistent with the causation test used to determine ongoing entitlement.

Employers' decisions or actions relating to employment

There is no entitlement for chronic mental stress caused by an employer's decisions or actions that are part of the employment function, such as

- terminations
- demotions
- transfers
- discipline

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- changes in working hours, or
- changes in productivity expectations.

However, workers may be entitled to benefits for chronic mental stress due to an employer's decisions or actions that are not part of the employment function, such as

- **workplace harassment**, or
- conduct that a reasonable person would perceive as egregious or abusive.

Application date

This policy applies to all accidents on or after January 1, 2018. This policy also applies to the claims identified in the "**Transitional provisions**" section, below.

Transitional provisions**New claims (accidents on or after April 29, 2014)**

If a worker has chronic mental stress which occurs on or after April 29, 2014, and the worker has not filed a claim with the WSIB for the chronic mental stress before January 1, 2018, the worker or the worker's survivor may file a claim for the chronic mental stress with the WSIB, as long as such claim is filed on or before July 1, 2018.

Pending claims (as of January 1, 2018)

For the purposes of this policy, "pending claims" means claims for chronic mental stress that are pending before the Workplace Safety and Insurance Board (WSIB) or the Workplace Safety and Insurance Appeals Tribunal (WSIAT) on January 1, 2018. For further clarity, these are claims in which, as of January 1, 2018,

- a chronic mental stress claim has been filed, but the WSIB has not yet made a decision
- there is a right to file a notice of objection in respect of a chronic mental stress claim following an initial entitlement decision and the notice of objection is or has been filed within the appropriate time frame
- there is a right to file a notice of appeal to the WSIAT in respect of a chronic mental stress claim following a final decision of the WSIB, and the notice of appeal is or has been filed within the appropriate time frame, or
- the worker has filed a notice of appeal to WSIAT and a chronic mental stress claim is pending before the WSIAT.

The WSIB applies this policy and makes a decision in all pending chronic mental stress claims, regardless of when the worker's chronic mental stress occurred.

Policy review schedule

This policy will be reviewed within five years of the application date.

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Document history

This is a new document.

References

Legislative authority

Workplace Safety and Insurance Act, 1997, as amended
Sections 2(1), 13, 13.1, 159

Minute

#1, December 18, 2017, Page 553