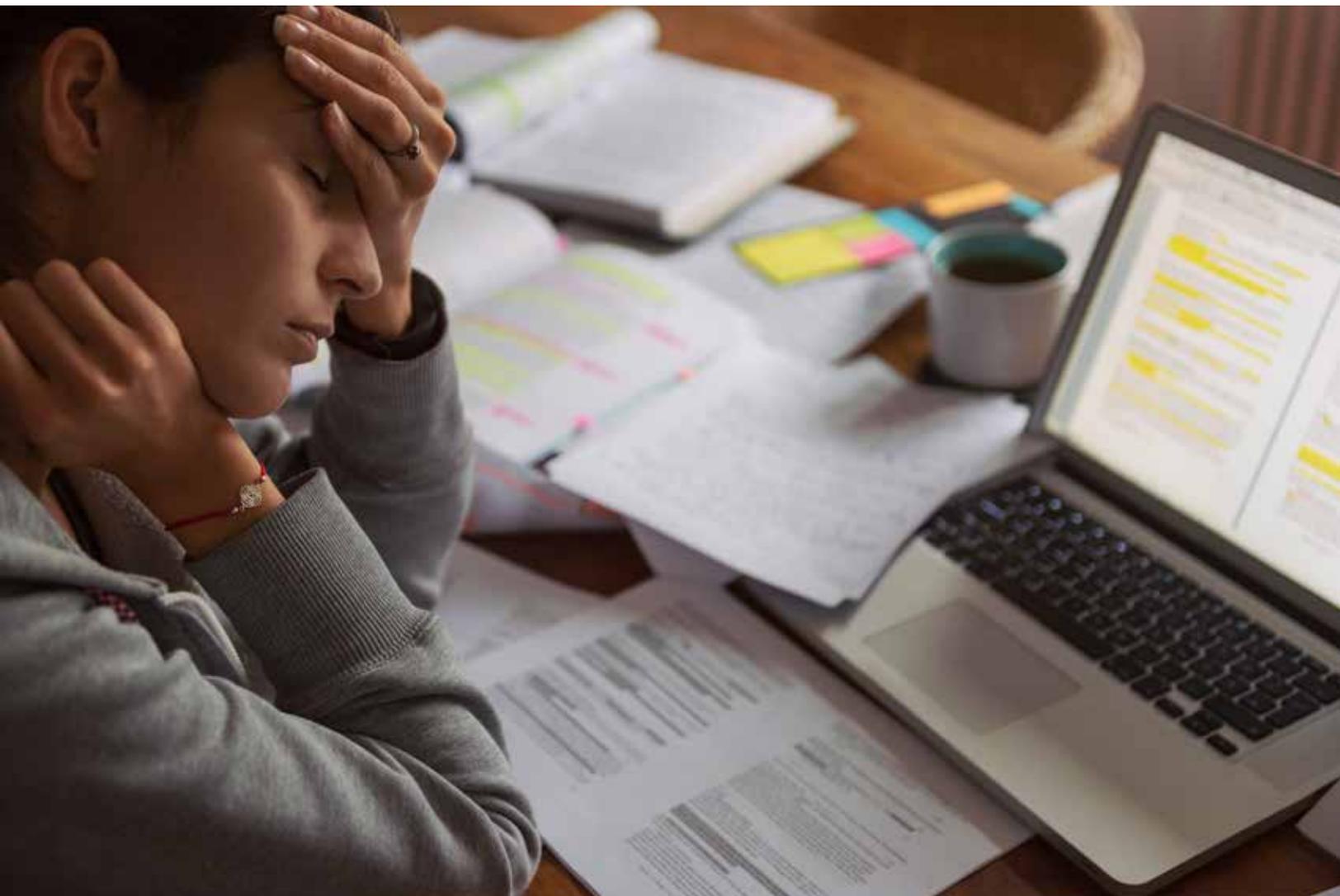


# Policy Background Paper

## Work-related Mental Stress



November 17, 2023

# CONTENTS

1. PURPOSE	1
2. CONSULTATION APPROACH	1
3. CHANGES TO LEGISLATION	2
4. WHAT IS MENTAL STRESS?	3
5. DRAFT POLICY: PSYCHOLOGICAL INJURY – CLAIMS FOR GRADUAL ONSET AND TRAUMATIC MENTAL STRESS	4
6. PROVIDING YOUR COMMENTS	5
APPENDIX A: RELEVANT SECTIONS OF THE ACT RELATED TO MENTAL STRESS	6
APPENDIX B: NEW DRAFT POLICY	8
APPENDIX C: POLICIES REQUIRING UPDATING DUE TO CHANGES TO THE ACT RELATING TO MENTAL STRESS	11

## 1. PURPOSE

On November 9, 2023 the Nova Scotia Government made changes to *the Workers' Compensation Act* (the "Act") affecting claims for work-related mental stress. This background consultation document will:

- Provide information on the legislative changes related to work-related mental stress
- Provide an overview of the WCB's proposed draft mental stress policy
- Describe how you can participate in the policy consultation

## 2. CONSULTATION APPROACH

Considering the WCB's Policy 10.3.11 – Policy Consultation and the Board of Director's policy consultation framework, the WCB is initiating a One-Stage consultation process to obtain feedback on the draft policy that consists of:

- Posting the policy background paper and draft policy to the WCB website for comment from November 17, 2023 to February 15, 2024.<sup>1</sup> Stakeholders and interested parties are asked to provide written feedback on the draft policy language; and

- Notifying those who have subscribed to the WCB's "Policy Consultation List" that a policy item has been posted to the website and consultation is in progress.

Stakeholders and interested parties can also contact the WCB Policy Team with questions about the draft policy. Please see section 6. Providing Your Comments for information on how to connect with the Policy Team.

<sup>1</sup> The Board of Directors determined a One-Stage consultation process is appropriate because the government, through the recent changes to the Act, has (in effect) set out the framework and topics that should be addressed by the policy. The draft policy, in turn, defines terms, and provides criteria and guidance consistent with the recent changes to the Act for the adjudication of psychological injury claims resulting from work-related mental stress. Please see the Board's consultation framework here <http://www.wcb.ns.ca/About-Us/Policy/Policy-Development-and-Consultation.aspx>

### 3. CHANGES TO LEGISLATION

On November 9, 2023 changes to the Act were made by the legislature related to mental stress. Prior to these changes, gradual onset stress was excluded from coverage under the Act. With these recent changes the Act now allows for entitlement to compensation for work-related gradual onset mental stress. Work-related traumatic stress continues to be covered by the Act. Other key changes to the Act related to mental stress are:

- For work-related mental stress (gradual onset or traumatic) to be compensable, it must be wholly or predominantly caused by one or more significant work-related stressors, or cumulative series of significant work-related stressors.
- Accepted claims for work-related mental stress under section 10J(1) of the Act are not subject to apportionment of benefits.
- The Act does not cover mental stress caused by interpersonal conflicts (except for workplace harassment or bullying); or actions or decisions of the employer relating to the worker's employment.

- These changes do not impact the adjudication of post traumatic stress disorder (PTSD) claims made under Section 12A of the Act and Sections 40–45 of the *Workers' Compensation General Regulations*.
- The changes to the Act come into force on September 1, 2024.

Other important information:

- Workers with claims pending (meaning a claim has been made but no final decision has been made) as of September 1, 2024 will have their claims decided under the new rules related to work-related mental stress.
- Workers who have received final claim decisions before September 1, 2024 are not eligible to re-file the claim.

Please see Appendix A for the sections of the Act dealing with mental stress.



## 4. WHAT IS MENTAL STRESS?

Mental stress is a commonly used term that describes an individual's non-specific physical and psychological response to the events, changes, or interactions that occur throughout our lives. These experiences are known as stressors. We all experience some level of stress in our lives. However, sometimes a person's ability to cope with stress is overwhelmed. This can lead to distress, a negative form of mental stress, that may result in diagnosable psychological injuries. Examples include anxiety, depression, and PTSD. Just like physical injuries, work-related psychological injuries may be eligible for compensation under the Act.

Since it came into force, the Act only covered psychological injuries resulting from work-related traumatic mental stress. Now, with the recent changes, the Act also covers psychological injuries resulting from work-related gradual onset stress.

**Generally, the distinction between traumatic and gradual onset mental stress is the nature of the stressor(s)**

### **Traumatic Mental Stress**

VS

### **Gradual Onset Mental Stress**

Involves work-related events that are generally accepted as **traumatic in nature**

Involves work-related events that are **non-traumatic in nature**

.....

.....

#### **Example**

A grocery store clerk is held up at gunpoint

#### **Example**

A grocery store clerk is subjected to humiliating jokes, demeaning conduct, and persistent criticism by a co-worker over several years

## 5. DRAFT POLICY: PSYCHOLOGICAL INJURY – CLAIMS FOR GRADUAL ONSET AND TRAUMATIC MENTAL STRESS

The changes to the Act related to mental stress mean that the existing Policy 1.3.9R – Psychological Injury, is no longer adequate for the adjudication of work-related mental stress claims. Therefore, Policy 1.3.9R will be rescinded and the new draft

policy will set out criteria and guidance for the adjudication of work-related psychological injury claims (both traumatic and gradual onset) for decisions made on or after September 1, 2024.

**The draft policy contains the following three key entitlement criteria for mental stress claims:**



### **Diagnosed Psychological Injury**

- The worker must have a psychological injury that is diagnosed under the ***Diagnostic and Statistical Manual of Mental Disorders*** (DSM) by a health care provider being either a psychiatrist or a clinically trained psychologist registered with the Nova Scotia Board of Examiners in Psychology.



### **Significant Work-related Stressor**

- The worker's mental stress psychological injury is caused by a **significant work-related stressor(s)**. These are stressors that are generally considered excessive in intensity and/or duration in comparison to the normal pressures, tensions or events experienced by workers in similar circumstances.
- Significant work-related stressor includes experiencing a work-related traumatic event or workplace harassment or bullying.



### **Predominant Cause**

- Entitlement to compensation may be granted when the mental stress psychological injury is **wholly or predominantly caused** by one or more significant work-related stressors, or cumulative series of significant work-related stressors.
- Once a claim is accepted, benefits are not subject to apportionment.

Please see the draft Policy XX – Psychological Injury – Claims for Gradual Onset and Traumatic Mental Stress in Appendix B.

The changes to the Act related to mental stress have also required us to update several other policies. Please see Appendix C for the proposed wording changes for these policies.

## 6. PROVIDING YOUR COMMENTS

We are interested to hear your comments on this proposed policy and the information presented in this paper. We appreciate all feedback provided, however please note that requirements contained in the Act cannot be changed through policy.

The consultation period concludes on **February 15, 2024**. This consultation period is necessary so the WCB can ensure the policy is in place and staff are ready to begin implementing the policy when the legislative changes become effective on September 1, 2024. This paper is also available at [www.wcb.ns.ca](http://www.wcb.ns.ca).

Please provide your written feedback by **February 15, 2024** to:

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You can also reach us at [Policy.Email@wcb.ns.ca](mailto:Policy.Email@wcb.ns.ca) with questions.

## APPENDIX A: RELEVANT SECTIONS OF THE ACT RELATED TO MENTAL STRESS

### Amendment to the Workers' Compensation Act for Gradual Onset Stress

#### Interpretation

- 2** In this Act,
- (a) “accident” includes
- (i) a wilful and intentional act, not being the act of the worker claiming compensation,
  - (ii) a chance event occasioned by a physical or natural cause, or
  - (iii) disablement, including occupational disease, arising out of and in the course of employment;

#### Mental stress

- 10J(1)** Subject to subsection (2), a worker is entitled to compensation under this Part for gradual onset or traumatic mental stress if the stress
- (a) arises out of and in the course of the worker’s employment; and
  - (b) notwithstanding subsection 10(5), is wholly or predominantly caused by one or more significant work-related stressors or a cumulative series of significant work-related stressors.
- (2)** A worker is not entitled to compensation for gradual onset or traumatic mental stress if it is shown that the stress was caused by
- (a) one or more interpersonal conflicts arising out of and in the course of employment, unless the interpersonal conflict constitutes workplace harassment or bullying; or
  - (b) a decision or action of the worker’s employer relating to the worker’s employment, including a decision to
    - (i) change the work to be performed or the working conditions of the worker,
    - (ii) discipline the worker, or
    - (iii) terminate the worker’s employment.
- (3)** Where, before September 1, 2024,
- (a) a worker filed a claim in respect of gradual onset or traumatic mental stress and the claim was denied by the Board; and
  - (b) the claim was either not appealed to the Appeals Tribunal or it was appealed and denied by the Appeals Tribunal,
  - (c) the worker may not re-file the claim under this Section.
- (4)** Subject to the notice requirements set out in Section 83, where a worker files a claim for gradual onset or traumatic mental stress on or after September 1, 2024, the Board shall decide the claim in accordance with subsections (1) and (2), regardless of the date on which the stress first occurred.
- (5)** Subject to the notice requirements set out in Section 83, where a worker files a claim for gradual onset or traumatic mental stress and the claim is pending before the Board on September 1, 2024, the Board shall decide the claim in accordance with subsections (1) and (2).

- (6)** Where a worker has an appeal pending before the Appeals Tribunal on September 1, 2024, respecting a claim for gradual onset or traumatic mental stress, the Appeals Tribunal shall refer the claim back to the Board to be decided in accordance with subsections (1) and (2).
- (7)** For the purpose of subsections (5) and (6), “pending” means
- (a) in the case of a claim before the Board, the Board has not made a final decision in respect of the claim before September 1, 2024; and
  - (b) in the case of an appeal before the Appeals Tribunal, the Appeals Tribunal has not made a final decision in respect of the appeal before September 1, 2024.
- (8)** Subject to subsection 243(1), where, on or after September 1, 2024, a worker files with the Appeals Tribunal a notice of appeal of a final decision of the Board made before September 1, 2024, respecting a claim for gradual onset or traumatic mental stress,
- (a) the Appeals Tribunal shall refer the claim back to the Board; and
  - (b) the Board shall decide the claim in accordance with subsections (1) and (2).
- (9)** Nothing in this Section affects the right of a worker to compensation under Section 12A for post-traumatic stress disorder that meets the requirements of that Section.
- 12A(7A)** Nothing in this Section affects the right of a worker to compensation under Section 10J for gradual onset or traumatic mental stress that meets the requirements of that Section.

## APPENDIX B: NEW DRAFT POLICY: POLICY XX – PSYCHOLOGICAL INJURY – CLAIMS FOR GRADUAL ONSET AND TRAUMATIC MENTAL STRESS

### **Policy Number: TBD**

Topic: Psychological Injury

Section: Entitlement

Subsection: General

Effective: September 1, 2024

Issued: TBD

Approved by Board of Directors: TBD

### **Preamble**

Mental stress is a commonly used term that describes an individual’s non-specific physical and psychological response to the events, changes, or interactions that occur throughout our lives. These experiences are known as stressors. We all experience some level of stress in our lives. However, sometimes a person’s ability to cope with stress is overwhelmed. This can lead to distress, a negative form of mental stress, that may result in diagnosable psychological injuries. Just like physical injuries, work-related psychological injuries may be eligible for compensation under the *Workers’ Compensation Act* (the “Act”). In particular, the Act covers psychological injuries resulting from gradual onset or traumatic mental stress.

Psychological injuries may be the result of a number of contributing factors, some which may be work-related and some which may not be work-related. To be eligible for compensation, Section 10J(1) of the Act requires that psychological injuries resulting from mental stress arise out of and in the course of a worker’s employment and be wholly or predominantly caused by one or more (or a cumulative series) of significant work-related stressors.

A worker is not entitled to compensation for mental stress caused by: 1) one or more interpersonal conflicts (other than workplace harassment or bullying) arising out of and in the course of employment; or 2) a decision or action of the worker’s employer relating to the worker’s employment.

This policy sets out criteria and guidance for the adjudication of psychological injury claims resulting from work-related gradual onset or traumatic mental stress.

**NOTE:** Throughout the remainder of the policy the phrase “mental stress” refers to both gradual onset and traumatic stress unless otherwise indicated.

### **Definitions**

“**DSM**” means the most current edition of the Diagnostic and Statistical Manual of Mental Disorders, published by the American Psychiatric Association.

“**Significant work-related stressor**” is a work-related stressor that is generally considered excessive in intensity and/or duration in comparison to the normal pressures, tensions or events experienced by workers in similar circumstances. Examples of significant work-related stressors include, but are not limited to, personal experience of, or directly witnessing, a work-related traumatic event or experiencing workplace harassment or bullying.

“**traumatic event**” means an event that:

- is sudden;
- is frightening or shocking;
- is specific to a time and place; and
- involves actual or threatened death, or serious injury, to oneself or others; or threat to one’s physical integrity.

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

- A direct personal experience of an event that involves actual or threatened death or serious injury;
- An actual or threatened violent physical assault;
- Witnessing or experiencing a horrific accident;
- Witnessing or being involved in a hostage taking;
- Witnessing or being involved in an armed robbery.

“**Workplace harassment or bullying**” means objectional or unwelcome conduct, comment, bullying or action that, whether intended or not, humiliates, offends, degrades or threatens. It may be directed at a particular person or group, or directed at no person in particular but creates an intimidating or offensive work environment. It includes, but is not limited to, discrimination based on any of the protected characteristics as set out in the *Nova Scotia Human Rights Act*.

## 1. Scope

This policy applies to initial entitlement of psychological injury claims resulting from work related mental stress. The policy does not apply to psychological injuries that are secondary injuries associated with an initial physical injury.

Two types of work-related mental stress are eligible for compensation under the Act:

- Gradual onset stress
- Traumatic stress

Notwithstanding the criteria in this policy, a claim for a psychological injury that is post traumatic stress disorder (PTSD) by a frontline or emergency response worker will be adjudicated under Section 12A of the Act and Sections 40–45 of the *Workers’ Compensation General Regulations*.

*References: Workers’ Compensation Act (Chapter 10, Acts of 1994-95), Section 2(a), 10J(9), 12A(7A)*

## 2. Criteria for compensable psychological injuries

Claims for psychological injury in response to being exposed to work-related mental stress are eligible for compensation when all of the following criteria are met:

- The injury arose out of and in the course of the worker’s employment. See *Policy 1.3.7R – General Entitlement – Arising out of and in the Course of Employment* for guidance on determining if an injury arose out of and in the course of employment.
- The injury is wholly or predominantly caused by one or more significant work-related stressors, or cumulative series of significant work-related stressors:
  - For traumatic mental stress, the worker had direct personal experience of (or directly witnessed) one or more, or a cumulative series of, traumatic events.
  - For gradual onset stress, the worker experienced one or more, or a cumulative series of, significant work-related stressors that are not otherwise considered a traumatic event(s) as described in this policy.
- The work-related stressors causing the mental stress are not\*:
  - interpersonal conflicts (except for workplace harassment or bullying); or
  - actions or decision of the employer relating to the worker’s employment;
- There is a psychological injury diagnosis made in accordance with the DSM, by a health care provider being either a psychiatrist or a clinically trained psychologist registered with the Nova Scotia Board of Examiners in Psychology;
- The WCB decision maker is able to identify the event(s) which are claimed to have caused the mental stress. This will be done by considering information from a variety of sources, including but not limited to, the worker, health care professionals, co-workers, and the worker’s supervisory staff.

\*See Section 4 for more information on these exclusions.

*References: Workers’ Compensation Act (Chapter 10, Acts of 1994-95), Section 2(a), 10J(1) and (2)*

### 3. Predominant cause

If a psychological injury resulting from mental stress is causally linked to multiple stressors (both work-related and non-work related), the significant work-related stressor(s) will be considered the predominant cause(s) when they outweigh all other stressor(s) combined (i.e 51%).

To ensure consistency, the WCB will continue to use the predominant cause test when determining ongoing entitlement to compensation. As an example, Temporary Earnings Replacement Benefits (TERB) would continue to be paid as long as the evidence shows that the significant work-related stressor(s) is the predominant cause of the worker's inability to work.

*References: Workers' Compensation Act (Chapter 10, Acts of 1994-95), Section 2(a), 10(J)(1)(b)*

### 4. Exclusions

#### 4.1 Interpersonal conflicts

Interpersonal conflicts between workers and their supervisors, co-workers, or customers are generally considered to be a typical feature of employment. A worker is not entitled to compensation if it is shown that a worker's mental stress was caused by one or more interpersonal conflicts arising out of and in the course of employment, unless it amounts to workplace harassment or bullying.

#### 4.2 Employer decisions and actions relating to a worker's employment

Actions taken by an employer relating to management of work and employees are considered a normal part of employment. A worker is not entitled to compensation if it is shown that a worker's psychological injury resulting from mental stress was caused by a decision or action of the employer relating to the worker's employment, including, but not limited to, a decision to:

- change the work to be performed or the working conditions. Examples include: transfer to a new location, changes in working hours, productivity expectations, physical layout of the workplace, change of reporting structure.
- discipline the worker. Examples include: demotion, probation, or suspension.
- terminate the worker's employment. Examples include: lay-off (temporary or permanent), termination for cause, or non-renewal of contract.

*References: Workers' Compensation Act (Chapter 10, Acts of 1994-95), Section 2(a), 10(J)(2)(a) and (b)*

### 5. Final mental stress decisions before September 1, 2024

If a worker filed a claim for entitlement to benefits for gradual onset or traumatic mental stress and the claim was denied by the WCB and either not appealed to the Workers' Compensation Appeals Tribunal, or appealed and denied by the Appeals Tribunal, before September 1, 2024, the worker may not refile the claim under Section 10J of the Act.

*References: Workers' Compensation Act (Chapter 10, Acts of 1994-95), Section 10(J)(3)*

#### Application

This policy applies to all decisions made on or after September 1, 2024.

## APPENDIX C: POLICIES REQUIRING UPDATING DUE TO CHANGES TO THE ACT RELATING TO MENTAL STRESS

To view each policy in its entirety please see the WCB Policy Manual by clicking here.

Policy	Proposed wording change to policy	Comment
<b>1. Policy 1.2.14</b>  <b>General Entitlement – Occupational Disease Recognition</b>	<b>Definitions</b>  Accident – is defined in section 2(a) of the Act and includes (i) a wilful and intentional act, not being the act of the worker claiming compensation, (ii) a chance event occasioned by a physical or natural cause, or (iii) disablement, including occupational disease, arising out of and in the course of employment;  <del>but does not include stress other than an acute reaction to a traumatic event.</del>	Removed reference to exclusion of non-traumatic stress. Makes the definition in the policy consistent with definition in the Act.
<b>2. Policy 1.3.5R1</b>  <b>Criteria for psychiatric conditions: occupational stress</b>	<del>2. Section 2 (a) of the Workers’ Compensation Act states that the definition of accident does not include stress other than that which is an “acute reaction to a traumatic event.”</del>	Removed this statement. This is no longer true.
<b>3. Policy 1.3.7R</b>  <b>General Entitlement – Arising out of and in the Course of Employment</b>	<b>Definitions</b>  “accident” – as defined in Section 2 (a) of the Act, includes (i) a wilful and intentional act, not being the act of the worker claiming compensation, (ii) a chance event occasioned by a physical or natural cause, or (iii) disablement, including occupational disease, arising out of and in the course of employment,  <del>but does not include stress other than an acute reaction to a traumatic event.</del>	Removed reference to exclusion of non-traumatic stress. Makes the definition in the policy consistent with definition in the Act.
<b>4. Policy 3.9.11R1</b>  <b>Apportionment of Benefits</b>	The following statement is added:  <u>7. Mental stress claims accepted under section 10(J) of the Act are not subject to apportionment. See Policy TBD for the requirements related to work-related mental stress claims.</u>	The Act in Section 10(J)(1) (b) specifies that these types of claims will not be subject to apportionment.