

Policy 1.3.6:

Recommendation for Rescinding and Supporting Rationale

April 03, 2019

I – Introduction:

The *Nova Scotia Workers' Compensation Act* (the "Act") defines stress as an acute reaction to a traumatic event. A Nova Scotia worker who suffers a psychological injury may be eligible for workers' compensation benefits if the injury arose out of and in the course of employment and is causally linked to a traumatic work event.

As in all other provinces, the Workers' Compensation Board of Nova Scotia (WCBNS) also administers the *Government Employees Compensation Act (GECA)* on behalf of The Government of Canada. *GECA* directs all Canadian workers' compensation boards to determine federal workers' entitlement to compensation under the law of the province determining the compensation.

In 2005 the Newfoundland Court of Appeal determined a conflict existed between the definition of accident in their provincial workers' compensation legislation and the federal *GECA*. In reviewing the Newfoundland decision, the WCBNS determined a similar conflict existed with the Nova Scotia legislation. To address this conflict, the WCBNS created "*Policy 1.3.6 – Compensability of Stress as an Injury Arising Out Of and In The Course of Employment – GECA*". At that time, the WCBNS had no other policy specific to the adjudication of psychological injury claims.

Since then, significant work has been done to provide clarity and consistency in the adjudication of psychological injury claims in Nova Scotia. In 2013, the WCBNS undertook significant stakeholder consultation on this issue, which eventually led to the development of a new policy, *Policy 1.3.9 - Psychological Injuries*.

As part of the consultation, amendments to *Policy 1.3.6* were also proposed but stakeholders' view at that time was that changes to this policy were unnecessary so no changes were made.

Given that, the WCBNS currently has two policies related to entitlement of psychological injuries:

- *Policy 1.3.6 – Compensability of Stress as an Injury out of and in the Course of Employment – GECA* which applies to workers employed by the federal government (Appendix 1); and
- *Policy 1.3.9 – Psychological Injury* which applies to all other workers covered by workers' compensation in Nova Scotia (Appendix 2).

Nova Scotia is the only jurisdiction in Canada with two different psychological injury policies. The WCBNS is proposing to rescind *Policy 1.3.6 Compensability of Stress as an Injury Out Of and In the Course of Employment – GECA*. This paper provides background information and the rationale for making this change.

II – Background:

Across Canada there have been a number of legal interpretations and rulings on the compensability of psychological injuries in recent years. In 2014 the Supreme Court of Canada (*Martin v. Alberta (Workers' Compensation Board)*, 2014 SCC 25) found:

“The GECA’s permissive and flexible definition of “accident” is consistent with parliament’s intention to delegate the administration of workers’ compensation to the provincial agencies, and enables different provinces to define eligibility for compensation differently.”

In other words, unless there is an explicit conflict, provincial legislation would apply to federal workers. Given the definition of “accident” in *GECA* is very broad and permissive, the Supreme Court found it did not conflict with the *Alberta Workers’ Compensation Act* definition of accident. Therefore, the Alberta workers’ compensation legislation took precedence.

Section 183(5) of the *Nova Scotia Workers’ Compensation Act* states that all policies adopted by the WCBNS are binding on the Board itself, the chair, every officer and employee of the Board, and on the Appeals Tribunal. Because of this, the WCBNS has continued to apply two psychological injury policies despite the 2014 Supreme Court of Canada ruling.

However, in 2015 the Workers’ Compensation Appeals Tribunal (WCAT) began applying the Supreme Court of Canada reasoning to appeals of psychological injury claims involving *GECA*, finding there is no conflict between the *GECA* and the *Workers’ Compensation Act of Nova Scotia* definitions of accident. Since then WCAT has consistently applied *Policy 1.3.9* to all appeals involving psychological injury claims.

The WCBNS believes the reasoning used by WCAT in applying the Supreme Court of Canada decision is sound. While the intent of the two policies is similar, nuances in the wording between the two policies create unnecessary confusion.

III – Recommendation:

The WCBNS recommends rescinding *Policy 1.3.6 Compensability of Stress as an Injury out of and in the Course of Employment – GECA* in response to the Supreme Court of Canada decision and WCAT appeals indicating it is inconsistent with the *Workers’ Compensation Act of Nova Scotia*.

In considering the impact of rescinding the policy, the WCBNS reviewed over 100 decisions for psychological injury claims between 2017 and 2018. The review determined that the outcome of these decisions would have been the same regardless of whether the *GECA* policy had been in effect.

IV – Providing Your Feedback:

We are interested to hear your thoughts on the proposed rescinding of *Policy 1.3.6 Compensability of Stress as an Injury Out of and In the Course of Employment - GECA*.

If you do not agree the policy should be rescinded, we are particularly interested to understand why you do not believe claims for federal government workers should be adjudicated under the same policy as all other workers in Nova Scotia. Your comments will ensure all issues are considered when making a final policy decision.

Please note that the names of all organizations providing feedback and your comments will be posted publicly on the WCBNS website.

You can provide feedback by:

1. E-mailing Caroline Read at caroline.read@wcb.ns.ca
2. Or writing to:

Caroline Read
Policy Analyst
Workers' Compensation Board of Nova Scotia
PO Box 1150
Halifax, NS B3J 2Y2

The deadline for comments is May 31, 2019

APPENDIX A – Policy 1.3.6 – Compensability of Stress as an Injury Arising out of and in the Course of Employment – *Government Employees Compensation Act* (GECA)



POLICY

NUMBER: 1.3.6

Effective Date: July 25, 2005

Topic: Compensability of Stress as an Injury Arising out of and In the Course of Employment – *Government Employees Compensation Act* (GECA)

Date Issued: July 27, 2005

Section: Entitlement

Date Approved by Board of Directors: July 22, 2005

Subsection: General

PREAMBLE

The purpose of this policy is to establish criteria for the individualized adjudication of stress claims under the *Government Employees Compensation Act* (GECA).

DEFINITIONS

This policy and the definitions contained herein have their foundation in medical literature including the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders – 4th edition” (DSM IV).

1. The DSM IV is a compendium of psychiatric diagnoses produced by the American Psychiatric Association. The manual codes and describes all recognized psychiatric diagnoses and is regarded as the definitive work on the subject. (Source: The Canadian Health Care Glossary).
2. “Traumatic Event” has all of the following elements¹:
 - The person has experienced, witnessed or was confronted with an event that involved actual or threatened death or serious injury or a threat to physical integrity of self or others; and
 - The person's response involved intense fear, helplessness, or horror.

¹ American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders. Fourth Edition, pgs.424 and 427.

Examples of traumatic events include:

- 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; and
- Witnessing or being involved in an armed robbery.

POLICY STATEMENT

Stress is not an accepted medical diagnostic term, but is a commonly used term that describes an individual's non-specific physical and psychological response to the events or changes that occur in his or her life. These events are known as stressors. Some level of stress is healthy. However, when a person's ability to cope with the stressors is overwhelmed, distress, a negative form of mental stress, can develop and result in diagnosable psychological or psychiatric injuries as defined by the DSM IV.

The WCB will consider claims for compensation under the GECA when the condition results from one of the following:

- Traumatic onset stress that is a reaction in response to a traumatic event; or
- Gradual onset stress that is a reaction to unusual and excessive work-related stressors acting over time

and the specified criteria outlined below are satisfied.

Traumatic onset Stress

Claims for psychiatric or psychological injuries resulting from traumatic onset stress may be compensable if all of the following four criteria are satisfied:

- i. There must be a traumatic event as defined herein;
- ii. The traumatic event must arise out of and in the course of employment;
- iii. The worker is diagnosed with a mental or physical condition that is described in the DSM IV; and
- iv. The condition is diagnosed in accordance with the DSM IV by a health care provider being either a psychiatrist or a clinically trained psychologist registered with the Canadian Register of Health Service Providers in Psychology.

Gradual onset Stress

Claims for psychological or psychiatric injuries resulting from gradual onset stress may be compensable if all of the following four criteria are satisfied:

- i. The work-related events or stressors experienced by the worker are unusual and excessive in comparison to the work-related events or stressors experienced by an average worker in the same or similar occupation;
- ii. The worker is diagnosed with a mental or physical condition that is described in the DSM IV;
- iii. The mental or physical condition is caused by the work-related events or stressors; and
- iv. The condition is diagnosed in accordance with the DSM IV by a health care provider being either a psychiatrist or a clinically trained psychologist registered with the Canadian Register of Health Service Providers in Psychology.

Non-Compensable Work-related Events

Mental or physical conditions are not compensable when caused by labour relation issues such as a decision to change the worker's working conditions; a decision to discipline the worker; a decision to terminate the worker's employment or routine employment related actions such as interpersonal relationships and conflicts, performance management, and work evaluation.

APPLICATION

This policy applies to all decisions made on or after July 25, 2005 pursuant to the *Government Employees Compensation Act*.

REFERENCES

The *Government Employees Compensation Act*, section 4(1).

The *American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders – Fourth Edition*.

APPENDIX B – Policy 1.3.9R – Psychological Injury

WORK SAFE. FOR LIFE.
WORKERS' COMPENSATION BOARD OF NOVA SCOTIA

POLICY

NUMBER: 1.3.9R

Effective Date: October 26, 2018

Topic: Psychological Injury

Date Issued: February 14, 2019

Section: Entitlement

Date Approved by Board of Directors: January 31, 2019

Subsection: General

PREAMBLE

The purpose of this policy is to establish criteria for the individualized adjudication of psychological injury claims under the *Nova Scotia Workers' Compensation Act*.

DEFINITIONS

1. The “DSM” is the most current edition of the Diagnostic and Statistical Manual of Mental Disorders, which is a compendium of psychiatric diagnoses produced by the American Psychiatric Association. The manual codes and describes all recognized psychiatric diagnoses and is regarded as the definitive work on the subject. (Source: The Canadian Health Care Glossary).
2. “Traumatic Event(s)” is defined as a direct personal experience of an event or directly witnessing an event that is:
 - Sudden;
 - Frightening or shocking;
 - Having a specific time and place; and
 - Involving actual or threatened death or serious injury to oneself or others or threat to one’s physical integrity.
3. “front-line or emergency-response worker” means front-line or emergency-response worker as defined in Section 12A(1)(a) of the *Workers' Compensation Act* and Section 41 of the *Workers' Compensation General Regulations*.

4. The “traumatic event(s)” must be assessed using an objective standard, which is a legal standard based on conduct and perceptions external to a particular person. The objective standard used is the reasonable person standard, which is considered an objective standard because it does not require a determination of what the individual was thinking. Rather it is based on a hypothetical person who exercises the degree of attention, knowledge, intelligence, and judgment that society requires of its members for the protection of their own and others’ interests. The reasonable person acts sensibly, does things without serious delay, and takes proper but not excessive precautions².

Examples of Traumatic Events may include, but are not limited to:

- 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; and
- Witnessing or being involved in an armed robbery.

POLICY STATEMENT

The WCB will consider claims for compensation under the Nova Scotia *Workers’ Compensation Act* when the condition results from stress that is a reaction to one or more Traumatic Events and the specified criteria outlined below are satisfied.

More specifically, the WCB will consider claims for compensation in respect of:

An acute response to one or more Traumatic Event(s) which involves witnessing or experiencing an event(s) that is objectively traumatic. Due to the nature of some occupations, some workers, over a period of time may be exposed to multiple traumatic events. If the worker has an acute reaction to the most recent traumatic event, entitlement may be considered even if the worker may experience these traumatic events as part of the employment and was able to tolerate the past traumatic events. An example is a drugstore pharmacist after multiple robberies.

Criteria for Traumatic Onset Stress

Claims for psychiatric or psychological injuries resulting from Traumatic Events may be compensable if all of the following four criteria are satisfied:

- I. There must be one or more Traumatic Event(s) as defined herein;
- II. The Traumatic Event(s) must arise out of and in the course of employment;
- III. The response to the Traumatic Event(s) has caused the worker to suffer from a mental or physical condition that is described in the DSM; and

² Black’s Law Dictionary, Ninth Edition, 2009

- IV. The condition is diagnosed in accordance with the DSM and by a health care provider being either a psychiatrist or a clinically trained psychologist registered with the Nova Scotia Board of Examiners in Psychology.

Notwithstanding the criteria listed above, a claim for a psychological injury that is post-traumatic stress disorder (PTSD) by a front-line or emergency response worker will be adjudicated under Section 12A of the *Workers' Compensation Act* and Sections 40 – 45 of the *Workers' Compensation General Regulations*.

Non-Compensable Work-related Events

Mental or physical conditions are not compensable when caused by labour relations issues such as a decision to change the worker's working conditions; a decision to discipline the worker; a decision to terminate the worker's employment or routine employment related actions such as interpersonal relationships and conflicts, performance management, and work evaluation.

APPLICATION

This policy applies to all decisions made on or after October 26, 2018 pursuant to the *Nova Scotia Workers' Compensation Act*.

REFERENCES

Workers' Compensation Act (Chapter 10, Acts of 1994-95), Section 2.

The most current edition of the *American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders*