

CLAIM HISTORY AND APPEAL PROCEEDINGS:

I will set out only those portions of the claim history and appeal proceedings most relevant to this decision.

The Worker is employed as a correctional officer.

On June 28, 2004, the Worker noted that an individual had broken into his home. The Worker recognized this individual as a frequent inmate, who was also a close neighbour of the Worker. The Worker escorted the inmate out of the house without a violent encounter. The inmate was arrested at a neighbour's home, but was released on conditions. The next day, the inmate appeared at the Worker's front door. The Worker called the police and the inmate was again arrested, at a different residence.

The Worker testified that he was stressed by these events, especially encountering the inmate during the break and enter. He took a number of days off work at the time as ordinary sick leave, but did not file a workers' compensation claim.

The Worker filed a WCB Accident Report dated March 7, 2005, which was received at the Board on March 11, 2005. On the face of the claim, the Worker pointed to workplace stress owing to the need to deal with the inmates directly. However, in response to questioning by Board employees, the Worker did point to the June 28, 2004 break-in as a traumatic event.

A June 6, 2005 Case Manager decision recognized the Worker's claim. The Employer appealed the Case Manager decision by means of an August 16, 2005 Notice of Appeal to Hearing Officer. That appeal led to the October 26, 2005 Hearing Officer decision which forms the subject matter of this appeal. The Hearing Officer upheld the recognition of the Worker's claim. She concluded that the Worker's generalized anxiety and Post Traumatic Stress Disorder ["PTSD"] arose out of and in the course of his employment. She found that the Worker's inability to work after March 8, 2005 was related to the June 28, 2004 break and enter.

This appeal was commenced by the Employer's filing of a November 23, 2005 Notice of Appeal with the Workers' Compensation Appeals Tribunal [the "Tribunal"].

This appeal proceeded by way of oral hearing, held at Sydney, Nova Scotia on November 24, 2006.

The Employer led evidence by telephone of Dr. Scott Theriault, a psychiatrist who had earlier prepared an independent medical examination report which was already on file. The Employer Representative (a lawyer employed with the provincial Department of Justice) provided submissions at the oral hearing. In addition, RD (the superintendent of

the correctional facility) and TE (the deputy superintendent) attended at the hearing, but did not provide testimony. The Workers' Representative attended at the hearing, and provided submissions. The Worker attended at the hearing, and provided testimony. The Worker's wife attended, but did not testify. I have included in the file a photocopy prepared on my own motion, of a map respecting the streets in the vicinity of the Worker's residence, where the relevant break and enter offences took place.

ISSUES AND OUTCOMES:

A number of issues were raised in this hearing. A preliminary matter concerned whether Dr. Scott Theriault should be permitted to testify by telephone. In terms of the substantive matters, at issue was whether the factual circumstances of the break and enter arose out of and in the course of the Worker's employment, such that recognition of a workers' compensation claim would be possible. Related issues concerned whether the Worker had experienced "an acute reaction to a traumatic event", and whether the Worker's inability to work beyond March 8, 2005 was related to "an acute reaction to a traumatic event".

The Employer's appeal is allowed. In terms of the preliminary issue, it was appropriate for Dr. Theriault to testify by telephone. The June 2004 break-in and related events did not arise out of and in the course of the Worker's employment, and thus cannot form the basis of a workers' compensation claim. If I were wrong on this point, I would have found that the Worker suffered "an acute reaction to a traumatic event". However, I would also have found that the Worker had not demonstrated that the acute reaction materially contributed to his inability to work beyond March 8, 2005.

ANALYSIS:

I have reviewed all the materials in the Board and Tribunal files, the testimony adduced at the oral hearing and the participants' submissions. In particular, I reviewed the tapes of the November 24, 2006 oral hearing. I will set out only those portions of the evidence and submissions most relevant to my reasoning and conclusion.

Preliminary Issue

An issue arose prior to the commencement of the hearing, concerning whether Dr. Scott Theriault, psychiatrist, would be permitted to testify by telephone.

The background circumstances were as follows. Dr. Theriault prepared an independent medical examination report on the Employer's behalf; this report was dated October 7, 2005 and was filed with the Board on that same date. In the course of various pre-hearing discussions involving the participants and the Tribunal Registrar, it was generally expected that Dr. Theriault would testify in person at the oral hearing. In correspondence sent after

business hours on November 20, 2006, the Employer Representative requested that the Tribunal hear Dr. Theriault's testimony by telephone, given that his attendance at other court proceedings made appearing at the hearing in Sydney very difficult. On November 21, 2006, the Workers' Representative indicated his opposition to receiving Dr. Theriault's evidence in this manner, and he set out his reasons more fully in correspondence faxed to the Tribunal and the participants on November 22, 2006. The Tribunal advised the participants on November 22, 2006 that it would receive Dr. Theriault's evidence by telephone. The Workers' Representative again expressed his strong objection to this course of proceeding, in additional correspondence addressed to the Tribunal and copied to the other participants. The question of Dr. Theriault's testimony was again addressed at the commencement of the oral hearing.

I chose to accept Dr. Theriault's telephone testimony for a number of reasons. First, the Tribunal operates under relaxed rules of evidence. Second, Dr. Theriault had already filed an independent medical examination report, which was already before the Tribunal. The telephone testimony would relate primarily to evidence which was already in the Tribunal's possession. Third, the Employer Representative openly acknowledged that she assumed the risk of less weight being attached to Dr. Theriault's testimony, given that it was adduced via telephone as opposed to in person. Fourth, accepting Dr. Theriault's testimony did not constitute a breach of natural justice, in that the Workers' Representative had an opportunity to cross-examine Dr. Theriault. In fact, accepting Dr. Theriault's evidence via telephone placed the Worker in a stronger position with respect to Dr. Theriault's evidence, given that Dr. Theriault's independent medical examination report would have remained on file even if he did not testify by telephone. In that circumstance, the Worker would have had no opportunity to cross-examine Dr. Theriault with respect to the contents of the independent medical examination report. Fifth, the Workers' Representative confirmed that he made no effort to subpoena Dr. Theriault, particularly given that he understood Dr. Theriault would appear in person. The Worker accepted the risk of not subpoenaing Dr. Theriault, which was the only sure method of ensuring his personal attendance at the hearing. Given that Dr. Theriault was not subpoenaed, it would have been open to the Employer Representative to decide simply not to call Dr. Theriault, but to rely on the independent medical examination report. Sixth, Dr. Theriault's testimony related to his expert medical opinion, and did not concern credibility issues *per se*. As a result, the importance of directly observing Dr. Theriault while testifying was diminished.

Notwithstanding my ruling, I express general sympathy with some of the Workers' Representative's frustration at the course adopted. It would have been preferable for the Workers' Representative to have been provided with greater advance notice of the Employer's intended course of proceeding. (I also understand that the Employer Representative only became aware of this situation at the last minute). In addition, the ideal course would have been for Dr. Theriault to testify in person, notwithstanding the Tribunal's capacity to accept evidence adduced by telephone.

Dr. Theriault's evidence was not relevant with respect to my conclusion on the main issue: the break-in, and the Worker's reaction to the break-in, did not arise out of and in the course of employment. If anything, Dr. Theriault's testimony assisted the Worker in that it supported my finding in the alternative that the Worker had suffered "an acute reaction to a traumatic event".

Testimony of Dr. Theriault

Dr. Theriault testified that he examined the Worker for approximately 75 minutes. He indicated that psychiatrists are trained to perform an assessment in 60-90 minutes, so that a 75-minute examination was not inappropriate. Dr. Theriault diagnosed the Worker as suffering from major depression, in partial remission. In the alternative, he diagnosed the Worker with a depressive disorder NOS, or an anxiety disorder NOS. Dr. Theriault testified that the NOS diagnosis constitutes a form of default diagnosis, when the clinical presentation or symptoms do not meet a more specific diagnosis. Dr. Theriault further indicated that the Worker did not suffer from PTSD.

Dr. Theriault testified that there are only two conditions in the DSM IV which arise in response to a traumatic incident - PTSD, and acute stress disorder. Although Dr. Theriault acknowledged that the break and enter event would be objectively stressful for anyone, he opined that it did not constitute a traumatic incident which would trigger PTSD, per the clinical understanding of a traumatic incident. Dr. Theriault also noted the existence of a condition known as delayed PTSD, which occurs some six months after the traumatic incident.

In general, Dr. Theriault opined that the Worker's condition arose over time, in response to his stressful working conditions. Dr. Theriault noted that the Worker first experienced symptoms in approximately 2000, and was treated by Dr. Munshi - a Psychiatrist - in 2002. Dr. Theriault further opined that the Worker would have eventually gone off work due to his depressive disorder, even without the break and enter incident.

Dr. Theriault stated that the Worker did not suffer from PTSD because he did not exhibit some of the symptoms which form part of that diagnosis. However, under cross-examination by the Workers' Representative, Dr. Theriault acknowledged that the Worker did in the past suffer from some of the symptoms he identified as not existing at the time of his assessment of the Worker - for example, nightmares related to the incident.

In response to the Tribunal's questions, Dr. Theriault indicated that the major depressive disorder, depressive disorder NOS and anxiety disorder NOS constitute psychiatric illnesses. He also indicated that these illnesses could be aggravated by an experience such as interrupting a break and enter.

Worker's Testimony

Before setting out the Worker's testimony, I note that the Worker demonstrated difficulty in relating the precise time of events, as well as the chronology of events. In short, there was a significant degree of imprecision in the Worker's testimony.

The Worker testified that he was employed for close to 30 years with Correctional Services. He worked throughout the correctional facility, usually in contact with the inmates in their living quarters. He stated there was sometimes violence in the workplace, directed either at other inmates or sometimes at the guards. Over a number of years, the Worker became distressed, and experienced stress in his employment. He eventually sought professional help, including seeing Dr. Munshi - a psychiatrist - in approximately 2002. Dr. Munshi prescribed medication. The Worker eventually weaned himself off the medication, but soon began to experience stress again. The Worker did not miss any time from work during the period of treatment with Dr. Munshi.

On June 28, 2004, the Worker and his wife were at home. They heard a noise in the kitchen area, and the Worker investigated. The Worker saw the inmate, who was going through the Worker's wife's purse. The inmate was quite intoxicated. The Worker spoke to the inmate and the inmate eventually recognized the Worker's voice, calling him by his first name. The Worker led the inmate out of the house without violence. The inmate left the area, and the Worker called 911. The inmate was eventually arrested in the home of a neighbour. The inmate was apparently released from custody on bail, and knocked on the front door of the Worker's house on or about June 29, 2004. The Worker did not answer the door. The Worker testified that the inmate noted that the Worker was looking at him, but did not immediately leave the property. The Worker called the police, and the inmate left the property prior to the police arriving. The police again arrested the inmate, apparently in the home of another neighbour. It appears that the inmate was sentenced to house arrest, but broke the terms of the house arrest and was then incarcerated.

The Worker testified that he did not go to work for approximately a week following the break and enter incident. However, the Worker did not file a workers' compensation claim. The Worker returned to his former employment duties upon returning to work; in other words, there was no modification of the Worker's employment duties when he returned to work. The Worker testified he was at one point assigned to the protective custody section, which is where the inmate was always housed. The Worker did not wish to have any contact with the inmate, and had his partner deal with the inmate to the greatest extent possible. The Worker asked to be transferred away from that section, to avoid contact with the inmate. The deputy warden proposed transferring the inmate to Dartmouth, to finish his sentence. The inmate was indeed transferred to Dartmouth.

The Worker never had a violent confrontation with the inmate in prison, though there was shouting on at least some occasions.

WCAT # 2005-465-AD

In reviewing the Worker's testimony, it appears that he took an interest in the inmate's status. He made a number of phone calls to the police, to ascertain the status of the charge and proceedings against the inmate. He also made inquiries within the correctional system as to the status of the inmate's sentence. Further, following the incident, the Worker learned various facts concerning the inmate's activities in previous neighbourhoods in which he had lived.

Of great relevance, the inmate was a close neighbour of the Worker, in addition to being known to the Worker from previous incarcerations. The apartment in which the inmate and his wife lived abutted the backyard of the Worker's house. The Worker could see the inmate's residence from his kitchen window. The Worker indicated that the inmate lived at that residence for a number of months prior to the break and enter incident, and continued to live there for approximately six to eight months after he was released from custody. The Worker testified that he spent two thousand dollars on a fence, so that he would not see the inmate's residence. The Worker testified that he felt better when the inmate eventually moved away from the neighbourhood.

The Worker laid off work in early March of 2005. He returned to work in approximately August 2005, when he was assigned to work solely in the control centre, or the "bubble". The Worker previously worked in the "bubble" on shift, but this was the first time he worked solely in the bubble. He has been able to continue working since his August 2005 return, given that he is accommodated by working solely in the bubble, where he does not have to experience direct contact with the inmates. It appears that the inmate in question did eventually return to the correctional centre where the Worker is employed, though the Worker's evidence was somewhat unclear on this point. Further, the inmate was eventually released, and returned to the apartment residence close to the Worker's home. The Worker was able to continue working in the bubble, notwithstanding that the inmate was again a close neighbour.

In cross-examination by the Employer Representative, the Worker acknowledged that he may have missed only three days of work after the June 2004 initial break and enter incident. It appears that the Worker took only short term sick leave, and did not file a Form 444 (a personnel form). The Worker also confirmed there was no violence when he removed the Worker from his home. The Employer Representative questioned the Worker with respect to the content of the March 7, 2005 WCB Accident Report, which referred only to generalized workplace stress, and which did not reference any specific event. The Employer Representative also questioned the Worker concerning various Contact Sheets on file, particularly those dating from March 11, 2005, when the questioning by Board employees resulted in the Worker focusing on the June 2004 break and enter incident.

I also questioned the Worker. The Worker indicated that the inmate was the only individual whom he ever made any effort to have transferred to another facility. The Worker was quite unclear about the chronology of various events, and could not confirm when the

inmate's period of incarceration ended. My sense was that the inmate eventually did return to the correctional facility where the Worker was employed. The Worker confirmed that he continued to work in the "bubble" after the inmate moved back to the apartment close to the Worker's home. I asked the Worker how he would have reacted if a neighbour, who did not have previous contact with the Worker in the prison, had broken into his home. The Worker replied that he could not answer how he would have reacted if the person who broke into his home were only a neighbour, with whom he had no previous employment exposure in the correction facility.

Employer's Submissions

First, the Employer argued that the Worker's problems flowed from a general depressive disorder, caused at least in part by his general history of contact with the inmates in the workplace. No reference was made to the June 28, 2004 incident until (1) the Board advised the Worker that such an incident was necessary to a successful claim, and (2) the Board questioned the Worker to determine whether such an incident had occurred. In this connection, the Employer Representative pointed to the content of the WCB Accident Report and to the medical evidence describing the Worker's illness, which pointed to gradual onset stress caused by the general employment duties.

Moreover, the Employer argued that the circumstances of the break and enter were not work-related. The break and enter did not occur during work hours, nor was the break-in incidental to the Worker's employment. This was not an instance where an inmate had targeted a correctional officer for a work-related reason. The Employer Representative suggested the outcome would be different if this had been an instance of targeting, but there was no targeting involved; various homes in the immediate vicinity were also burglarized. With respect to the "course of employment" argument, the Employer Representative referred to paragraph 37 of the Nova Scotia Court of Appeal's decision in *Nova Scotia (Department of Transportation and Public Works) v. Nova Scotia (Worker's Compensation Appeals Tribunal)*, 2005 NSCA 62 ["Puddicombe"].

The Employer Representative further argued that the June 28, 2004 incident did not constitute a "traumatic event". The Court of Appeal's reasoning in *Logan v. Nova Scotia (Workers' Compensation Board)*, 2006 NSCA 88 indicates that an event must be objectively traumatic to constitute a "traumatic event". The break and enter encounter was not objectively traumatic, in that there was no violence involved and the Worker led the inmate out of his home without incident. Although this would be a stressful event, it does not meet the threshold of a "traumatic event" per the definition of the "accident". Further, Dr. Theriault's medical opinion evidence was that the break and enter encounter would not meet the clinical definition of a traumatic incident, to give rise to PTSD or acute stress disorder.

The Employer Representative also argued that the mere fact the Worker laid off work is not determinative as to whether the encounter was a “traumatic event”. The Employer asserted that the Worker eventually laid off work owing to his generalized depressive condition, a recognized illness which can lead to time loss from work. The mere fact of the lay off from work therefore does not assist in determining whether one is dealing with an acute event or one of gradual onset, as both can result in time off work.

Finally, not every contact between a previous inmate and a correctional officer can be considered work-related. For example, a car accident between a previous inmate and a correctional officer would not constitute a work-related incident. The definition of “accident” and the scope of the workers’ compensation system would be stretched excessively, if any contact between individuals outside of work could be tied to the workplace.

Worker’s Submissions

The Workers’ Representative acknowledged that the Worker did suffer from a pre-existing psychological condition. However, this did not preclude a finding that he experienced “an acute reaction to a traumatic event” due to the encounter. The Worker had previously not missed any time from work due to his depressive illness. However, after the June 2004 break and enter, the Worker did miss time from work. In addition, he recognized the inmate during the break and enter as an individual who was incarcerated on a recurring basis. Moreover, the inmate recognized the Worker. Consequently, there was a workplace connection to the incident. It was clearly a “traumatic event” to encounter an individual breaking into one’s home. Moreover, the Worker experienced stress and concern given his knowledge of the inmate’s criminal propensities. These concerns were exacerbated by the fact that the inmate was a neighbour of the Worker, which resulted in the Worker constructing a \$2,000 fence.

The Law

Subsections 10(1) and 10(4) of the *Workers’ Compensation Act*, S.N.S. 1994-95, c.10, as amended [the “Act”] state:

- 10(1) Where, in an industry to which this Part applies, personal injury by accident arising out of and in the course of employment is caused to a worker, the Board shall pay compensation to the worker as provided by this Part.

- 10(4) Where the accident arose out of employment, unless the contrary is shown, it shall be presumed that it occurred in the course of employment, and where the accident occurred in the course of employment, unless the contrary is shown, it shall be presumed that it arose out of the employment.

The definition of “accident” is set out in s. 2(a) of the *Act*, and “..does not include stress other than an acute reaction to a traumatic event”.

In addition, paragraph 37 of *Puddicombe* states:

Second, WCAT recognized that there are two main aspects of the “arising out of and in the course of employment” inquiry: the nature of the work and the link between the activity of the employee giving rise to the injury and the risk of the work. As Cameron J.A. succinctly observed in *Gellately v. Newfoundland (Workers’ Compensation Appeal Tribunal)* (1995), 126 D.L.R. (4th) 530; [1995] N.J. No. 255 (Q.L.) (C.A.) At p. 534 (D.L.R.):

The words “in the course of employment” refer to the time, place and circumstances under which the accident takes place. The words “arising out of employment” refer to the origin of the cause of the injury. There must be some causal connection between the conditions under which the employee worked and the injury which he received...”

Reasoning

I allow the Employer’s appeal because the break and enter incident did not arise out of and in the course of the Worker’s employment.

There do not appear to have been any decisions of this Tribunal directly on point, concerning work-related contacts occurring outside the hours of employment or employment-related activities. I have noted *Decision 2001-208-AD* (December 31, 2001, NSWCAT), where a co-worker began to berate a worker with respect to a workplace matter, but outside employment hours and outside of the workplace. However, that incident involved the federal *Government Employees Compensation Act*, R.S.C. 1985, c. G-8 [“*GECA*”], and not the materially different provincial definition of “accident”. Moreover, the worker in that decision was not incapacitated from work, but simply refused to work with the verbally abusive co-worker. As a result, the situation was found not to be a workers’ compensation matter, but rather one relating to the labour relations or occupational health and safety context.

In resolving this appeal, I refer to textbook sources and to previous Ontario decisions. In particular, I address my attention to whether the break and enter incident occurred “in the course of” employment. This question is addressed at chapter 29 of the American text - *Larson’s Workers’ Compensation, Desk Edition* (Matthew Bender, Release 57, June 2006). In particular, *Larson’s* considers whether workplace-related attacks occurring outside of business hours fall within “the course of” employment. In these situations, one is dealing with the targeting of a victim owing to a workplace relationship or incident. For example,

these situations can arise when a disgruntled or terminated employee attacks his (former) supervisor, or when striking workers attack strike breakers away from the workplace. *Larson's* indicates that the American authorities are divided, even in those instances where one is dealing with a worker who was targeted for employment-related reasons. Some authorities indicate that such an attack, when it occurs outside of the workplace and employment hours, does not occur in the course of employment. Other authorities accept such incidents as work-related, predominantly on the theory that the assault originated in the course of employment, though it was only actuated or consummated outside of the workplace. *Larson's* also suggests that a general "work relatedness" test can be applied. In other words, *Larson's* suggests there should be no need to meet the "course of employment" and "arising out of employment" branches of the test separately and independently.

To address whether there is a single "work relatedness" test, I refer to the words of s.10(1) of the *Act*; they refer to both the "course of employment" and "arising out of employment". Moreover, the presumption found in s.10(4) of the *Act* suggests that both branches of the test must be met separately and independently. There would be no need for the s.10(4) presumption if there were a single "work relatedness" test. Further, if the Legislature wished to provide that any "work related" accident were to be compensable, it could alter the test simply by amending the wording of the *Act*. (The Tribunal has considered the s. 10(4) presumption in, for example, *Decision 2000-686-AD* (March 30, 2001, NSWCAT)).

I have also considered *Decision No. 1342/98* (1998), 48 W.S.I.A.T.R. 212, a decision of the Ontario Workplace Safety and Insurance Appeals Tribunal. The Ontario decision concerned a situation where a police officer arrested a member of the Police Services Board for impaired driving. The individual charged was found guilty of the offence. Some months later, that individual saw the police officer in a bar, then procured a firearm and shot the police officer in the bar. The Ontario Tribunal found that the shooting had arisen out of and in the course of the police officer's employment. The Ontario Tribunal accepted that the shooting originated in the course of employment, even though it was consummated outside the course of employment.

One significant distinction between the current situation and those set out in *Larson's* and in *Decision No. 1342/98*: there is no indication that the inmate broke into the Worker's home for any reason related to the Worker's employment. The materials appended to the April 12, 2005 response to the Freedom of Information application indicate that the inmate broke into a number of homes in the immediate vicinity. In this connection, I refer to the photocopy from a Sydney city map which I have included in the file. In any event, it is accepted that all the homes broken into were in the immediate vicinity of the inmate's residence. Moreover, the Worker testified that the inmate was intoxicated at the time. The obvious inference is that the inmate was involved in an alcohol-fueled crime spree, and was opportunistically breaking into homes in the immediate vicinity of his own residence. There is no indication that he targeted the Worker in the June 28, 2004 break-in.

I now address the second incident, where the inmate knocked on the Worker's door, which apparently occurred on or about June 29, 2004. It is unclear as to the reason for which the inmate knocked on the Worker's door. The Worker testified that the inmate saw him, but did not immediately leave the premises. There is no evidence that the inmate went onto the Worker's property, or attempted to contact the Worker, subsequent to June 29, 2004. Hence, it is impossible to conclude that the inmate targeted the Worker based on the June 29, 2004 incident.

If my conclusion concerning whether the fact situation arose out of and in the course of employment were incorrect, I would have found that the break and enter incident constituted "an acute reaction to a traumatic event" per the definition of "accident". *Decision 2004-183-AD* (October 18, 2004, NSWCAT) found that an aggravation of a pre-existing psychological condition can constitute "an acute reaction to a traumatic event", provided the aggravating incident involved "an acute reaction to a traumatic event". In this appeal, although the preponderance of medical evidence indicates that the Worker does not suffer from PTSD, it is accepted that he suffered and suffers from a depressive condition. Dr. Theriault accepted that the break and enter incident could have aggravated the pre-existing depressive or anxiety-related condition. I have considered Dr. Theriault's opinion that the break and enter incident would not meet the clinical definition of a traumatic incident giving rise to PTSD or acute distress disorder. However, I find one should assess whether an incident was objectively traumatic from the perspective of a reasonable person, and not that of a psychiatrist considering the technical criteria found in the DSM IV. I find that a reasonable person would view interrupting a break and enter in one's own home as a "traumatic event". Interrupting such a break and enter would be as objectively traumatic as the situation which considered by the Court of Appeal in *The Children's Aid Society of Cape Breton-Victoria v. Nova Scotia (Worker's Compensation Appeals Tribunal)* (2005), 230 N.S.R. (2d) 278; N.S.J. No. 75 (Q.L.), which was found to objectively constitute a "traumatic event".

In addition, I would have also found - in the alternative - that the Worker experienced an "acute reaction". The Worker suffered from a pre-existing depressive condition. However, he had not missed work prior to the break and enter incident. Subsequent to the break and enter incident, the Worker apparently missed three days from work. Consequently, I would have found that he suffered an "acute reaction", both temporally proximate to the event and of sufficient severity that he could not work. In short, if the break and enter incident had arisen out of and in the course of employment, I would have found that the Worker suffered "...an acute reaction to a traumatic event".

Notwithstanding my alternative finding that the Worker had suffered an "acute reaction to a traumatic event", it does not necessarily follow that the Worker's inability to work in March 2005 was due to that event. Dr. Theriault opined that the Worker would have eventually left work owing to the pre-existing depressive condition. After his return to work in July 2004, the Worker returned to his former employment duties, which involved contact with

WCAT # 2005-465-AD

inmates. Hence, after the immediate reaction to the break-in, the Worker was able to continue his previous employment duties. The medical opinion evidence and the WCB Accident Report indicate that it was the long-term dealing with the inmates which gave rise to the Worker's condition in March 2005. Moreover, I refer to a May 6, 2005 Contact Sheet involving a conversation with the Worker. The Worker stated he was burned out, and could not work around the inmates. This suggests that the Worker's difficulties or inability to work beyond March 2005 was due to his general employment duties, which involved contact with the inmates.

I have also noted an April 12, 2005 Contact Sheet. The Worker stated he was concerned with respect to the inmate's upcoming release, which was stated to be in May 2005. However, I note that the Worker was able to continue working in the "bubble" after August 2005, even though the inmate was residing close to him. The Worker has been able to continue working since August 2005, in the "bubble", given that he is not obliged to deal directly with the inmates in their living quarters. This leads to the conclusion that the Worker's inability to work between March 2005 and August 2005 was due to his employment duties requiring him to have contact with the inmates, as opposed to any concern with respect to the particular inmate. Thus, the Worker's inability to work beyond March 2005 was due to the depressive condition flowing from his general employment duties (which is not compensable), as opposed to "an acute reaction to a traumatic event".

CONCLUSION:

The Employer's appeal is allowed, for the above reasons. In terms of the preliminary issue, it was appropriate for Dr. Theriault to testify by telephone. The June 2004 break-in and related events did not arise out of and in the course of the Worker's employment, and thus cannot form the basis of a workers' compensation claim. If I were wrong on this point, I would have found that the Worker suffered "an acute reaction to a traumatic event". However, I would also have found that the Worker had not demonstrated that the acute reaction materially contributed to his inability to work beyond March 8, 2005.