

CLAIM HISTORY AND APPEAL PROCEEDINGS:

This is an appeal of a decision of a Hearing Officer of the Board, dated April 12, 2006, in which the Hearing Officer determined that the Worker had not suffered a personal injury by accident arising out of and in the course of employment pursuant to the *Government Employees Compensation Act*, R.S.C. 1985, c. G-8 [“G.E.C.A.”]. The Worker appealed this decision to the Workers’ Compensation Appeals Tribunal on May 16, 2006. This appeal proceeded by way of oral hearing at which the Worker testified.

ISSUES AND OUTCOMES:

Did the Worker suffer personal injury by accident arising out of and in the course of his employment pursuant to *G.E.C.A.* ?

No. The circumstances that led to the Worker’s lay off do not amount to an accident arising out of and in the course of employment.

ANALYSIS:

The Worker is a federal employee, and therefore, his entitlement to benefits is determined pursuant to *G.E.C.A.* Eligibility for compensation under the provisions of *G.E.C.A.* is provided in s. 4(1), and pursuant to s. 4(2), the rate of compensation and conditions for payment of compensation are determined under the *Workers’ Compensation Act*, S.N.S. 1994-95, c.10, as amended [the “*Act*”]. Applicable to this appeal is Board Policy 1.3.6. The preamble to the Policy states that its purpose is to establish criteria for the individualized adjudication of stress claims under *G.E.C.A.* Policy 1.3.6 provides guidance in determining whether a worker has suffered a personal injury by accident arising out of and in the course of employment. Pursuant to s. 183(5) of the *Act*, every policy adopted by the Board shall be binding on the Tribunal if it is consistent with the *Act*.

The Worker filed a report of accident with the Board on September 21, 2005, for a lay-off which had commenced on July 19, 2005. The Worker testified at the hearing as to the circumstances that gave rise to his leaving work on July 19, 2005. The Worker explained how in 2004 he had been selected to open a new unit in the correctional institution in which he worked. He had been with the Employer for 13 years at the time. This new unit employed an open living concept which was new to the institution. The Worker was responsible for setting up the unit, including establishing the rules that would apply to the unit, and choosing the inmates who would live in it. He was required to travel to various centres in Canada to consult with other institutions.

When the Worker took on the new responsibility, he was also the correctional supervisor of another housing unit. In addition, he had to take on the “visiting and correspondence “ function and was responsible for the supervisor’s desk. He testified that he was one man doing four jobs during this period of time. The Worker referred to issues surrounding overtime and cutbacks that seem to have contributed to his stress and overwork.

The Worker described the problems he had with respect to getting some of the more long-time staff members to embrace the concept of the new unit. He testified that after approximately a year of being overworked, he was mentally exhausted and he was stressed and angry in his dealings with his staff. He described himself at that time as very angry. The Worker testified that he was overwhelmed, overloaded, and burnt-out at the time he left work in July, 2005.

In his Employee’s Statement attached to his report of accident he stated:

During past year work load and direct clashes with staff have contributed to this stress claim. Uncompliant [sic] staff have put continuous pressure on the new 58 unit which I was assigned to open.

The Employer’s Statement, filed by the Worker’s supervisor and attached to the report states:

[The Worker] has had the responsibility of opening a new unit and keep the old unit open and running. With opening the new unit some staff fought the new procedures and took their frustrations out on [the Worker] making his job just so much harder. Trying to do all these things made [the Worker’s] life hard and he had to go off to try and get control of his health issues. I support his claim for stress related WCB claim.

The Worker testified that he suffered from depression approximately 6 years ago but had not missed time from work as a result.

The first medical report on file is from the Worker’s family doctor, Dr. Begin, dated July 27, 2005. Dr. Begin states that the Worker is suffering from “anxiety and inability to cope with stress at work.” The diagnosis is given as “anxiety”, and a full recovery was expected. The objective symptoms reported by Dr. Begin in his report of August 11, 2005 include irritability, poor sleep, and poor concentration. His diagnosis is noted as “major depression”. Again a full recovery was expected. The Worker’s testimony before the Tribunal was that he was feeling much better and a plan was in progress to get him back to work on site.

Dr. Begin, in his report of September 3, 2005, notes that the Worker was anxious and

angry regarding unresolved issues at work. He noted that the Worker was feeling depressed, angry and stressed out. The diagnosis was “depression and anxiety”.

A report from the Worker’s treating psychologist, Dr. Matwychuk, dated November 7, 2005, notes that the Worker has a major depression disorder. Dr. Matwychuk states that the Worker is experiencing a significant depression which is, “seemingly etiologically related to work, role and position.” She cites, “Work and family problems.”

The Worker feels that the gradual stress he was subjected to over time, forced him to go off work on July 19, 2005. He feels he should be compensated for his time lost as a result of gradual onset stress.

Section 4(1) of *G.E.C.A.* states as follows:

s. 4(1) Subject to this act, compensation shall be paid to

(a) an employee who

(i) is caused personal injury by an accident arising out of and in the course of his employment, or

(ii) is disabled by reason of an industrial disease due to the nature of the employment.

The term “accident” is defined in s. 2 of *G.E.C.A.* is as follows:

2. In this act, “accident” includes a willful and intentional act, not being the act of the employee, and a fortuitous event occasioned by a physical or natural cause;

The definition of “accident” in *G.E.C.A.*, unlike the definition in the *Act*, does not expressly exclude chronic or gradual onset stress.

Board Policy 1.3.6 applies to all decisions made on or after July 25, 2005 pursuant to *G.E.C.A.* Policy 1.3.6 states as follows with respect to 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 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.

Policy 1.3.6 goes on to specifically set out what work-related events will not be considered compensable as follows:

Mental or physical conditions are not compensable when caused by labour relations issues such as the 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.

The Worker testified that an average worker in the same occupation as the Worker, would not be doing, as he put it, "the jobs of four people." He attributes his psychological difficulties, to being overworked.

I find that the Worker's stress arose out of a labour relations issue; in this case a change to the Worker's working conditions. This is the type of situation specifically excluded by Policy 1.3.6 from being compensable. The exclusion of labour relations issues (a non-exhaustive list of which is included in the policy) from the ambit of compensation for stress, takes into account the realities of the modern workplace and implies, that these types of events do not fall to the inquiry of whether or not they are unusual or excessive stressors.

There was a change in the Worker's working conditions. His new responsibilities were heavy and, I accept, stressful, in that they involved a learning curve for both the Worker and his staff, as well as travel for the Worker. I do not doubt that the Worker suffered from "burn out" when he went off work in July of 2005, however, the Worker's stress is not compensable.

I find support for my decision in the judgement of the New Brunswick Court of Appeal in *D.W. v. New Brunswick (Workplace Health, Safety and Compensation Commission)* (2005), 257 D.L.R. (4th) 594; 2005 NBCA 70. The Court in that case considered the definition of "accident" in the New Brunswick version of the Worker's Compensation Act, in the context of a stress claim. The definition of "accident" in the New Brunswick legislation

is similar to its definition in *G.E.C.A.*, except in its inclusion of disablement by occupational disease, and disablement arising out of and in the course of employment, (dealt with in s. 4 of *G.E.C.A.*), and the specific exclusion of disablement caused by mental stress, other than as an acute reaction to a traumatic event. The Court had this to say at paragraph 41 of its judgement:

Stress is the product of the psychological or emotional pressure that we experience in both our personal and work lives. Often it is difficult to isolate the stress in one situation from that in the other and to determine the impact that stress in one domain has on stress in the other. But there may come a point that the “stressors” encountered in the workplace lead to the inability to function in a work environment. The clearest manifestation of this involves employees who suffer what is commonly referred to as “burnout”. A claim for compensation benefits in such circumstances is outside the purview of the definition of accident.

The Court viewed the specific exclusion of stress in the definition, as further support for its view that the situation described was not compensable.

CONCLUSION:

The appeal is denied. The Worker did not suffer a personal injury by accident arising out of and in the course of his employment.