

CLAIM HISTORY AND APPEAL PROCEEDINGS:

The Worker is a civilian employee in the Department of National Defence. He filed a Report of Accident dated March 2, 2005, claiming that he had developed stress in the workplace over time. In a decision dated June 6, 2005, a Board Case Manager denied the Worker's claim. The Worker appealed that finding.

On July 22, 2005, the Board of Directors of the Workers' Compensation Board approved Policy 1.3.6, entitled "Compensability of Stress as an Injury Arising out of and in the Course of Employment-*Government Employees Compensation Act* (GECA)". It establishes criteria for the adjudication of stress claims under GECA and is stated to apply to all decisions made on or after July 25, 2005.

In correspondence dated September 8, 2005, the Board's Chief Hearing Officer advised the Worker that his file would be returned to the Case Manager for re-adjudication in accordance with Board Policy 1.3.6.

The Worker's claim was again denied by a Case Manager by way of an April 20, 2006 decision. The Worker appealed to a Hearing Officer who, in a decision dated July 7, 2006, confirmed the Case Manager's findings. The Worker appealed to this Tribunal.

This appeal proceeded by way of oral hearing in Halifax on December 7, 2007. Prior to the hearing, the Worker's representative filed the following documentation:

- 1) Chart notes from the Worker's family physician, Dr. Soudek;
- 2) Statement prepared by "PR", dated May 16, 2006;
- 3) Document entitled "Harassment-Complaint Form" prepared by the Worker and dated November 8, 2005; and
- 4) Undated written complaint prepared by the Worker.

The Worker testified at the hearing, and his representative presented submissions on his behalf. A witness ["PR"] also testified on behalf of the Worker. Exhibit No. 1 filed at the hearing was a reference letter dated January 25, 2006.

Neither the Board nor the Employer attended the hearing.

Following completion of the hearing, the Board and the Worker were given until February 5, 2007 to file additional written submissions. The Board filed submissions on January 22, 2007, and the Worker's representative filed rebuttal submissions on January 24, 2007.

ISSUE AND OUTCOME:

Did the Worker suffer a personal injury by accident arising out and in the course of his employment, in the form of stress?

No, the Worker did not suffer a compensable stress injury. There was no “accident” triggering possible compensation under GECA. The Worker’s appeal is denied.

ANALYSIS:

The Worker submits that he suffered a psychological injury which disabled him from work in February 2005, as a result of harassment and a physical assault in the workplace.

As the Worker is a federal government employee, his entitlement to benefits is determined pursuant to the *Government Employees Compensation Act*, R. S. C. 1985, c. G-8 [“GECA”]. Eligibility for compensation under the provisions of GECA is provided at subs. 4(1) and, under subs. 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 [“Act”].

The definition of “accident “ in the *Act* contains an exclusion for stress which reads as follows:

- s. 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,
- but does not include stress other than an acute reaction to a traumatic event; [emphasis added]**

The definition of “accident” in GECA includes “a wilful and intentional act, not being the act of the employee, and a fortuitous event occasioned by a physical or natural cause”. Section 4 of GECA relates to entitlement and states:

- s. 4 (1) Subject to this Act, compensation shall be paid to
- (a) an employee who
 - (i) is caused personal injury by accident arising out of and in the course of employment, or
 - (ii) is disabled by reason of an industrial disease due to the nature of the employment; and
 - (b) the dependents of an employee whose death results from such an accident or industrial disease.
- (2) The employees or the dependents referred to in subsection (1) are, notwithstanding the nature or class of the employment, entitled to receive compensation at the same rate and under the same conditions as are provided under the law of the province where the employee is usually employed respecting compensation for workmen and the dependents of deceased workmen, employed by persons other than her Majesty, who
- (a) are caused personal injuries in that province by accidents arising out of and in the course of their employment; or
 - (b) are disabled in that province by reason of industrial diseases due to the nature of the employment.

In *Nurnber v. Nova Scotia Workers' Compensation Board et al.* (2004), 224 N.S.R. (2d) 276 (C.A.), [“Nurnber”], the Court of Appeal noted that the purpose of GECA was to provide compensation to federal employees on the same terms and conditions as their provincial counterparts. Justice Cromwell also acknowledged, however, that there were complex issues concerning the interaction of the two statutes, one such issue being the presence of a stress exclusion in the *Act*, and its absence in GECA.

I accept that there is a discrepancy between the definitions of “accident” as found in the *Act* and GECA. This is consistent with decisions of this Tribunal in which claims for stress in GECA cases have been recognized without the requirement of a traumatic event (see, for example, *Decision 97-933-TAD* (October 27, 1998, NSWCAT) and *Decision 98-007-TAD* (April 19, 1999, NSWCAT)). The very history of the *Nurnber* appeal and the adoption by the Board of Policy 1.3.6 points to the existence of this conflict.

On July 22, 2005, the Board of Directors approved Policy 1.3.6 entitled “Compensability of Stress as an Injury Arising out of and in the Course of Employment-*Government Employees Compensation Act* (GECA)”. It establishes criteria for the adjudication of stress claims under GECA and is stated to apply to all decisions made on or after July 25, 2005.

What test applies to the recognition of the Worker's claim?

The Court in *Nurnber* held that this Tribunal had erred in determining that the nature of the workplace incidents complained of (and whether other workers would have found them stressful) was irrelevant to the question of a causal link between the incidents and the psychological condition. At paragraph 8 of his decision, Cromwell, J., indicated that the fourth issue before him was “what the test for recognition of gradual onset stress claims should be.” He then stated:

The contest here is primarily between a three-part test arising from some Ontario workers' compensation decisions and sometimes applied by WCAT (see, for example, Tribunal Decision No. 2002-601-AD (Feb. 28, 2003, NSWCAT) and a variant of that, a two-part test, which was used by WCAT in this case. One of the major differences between these two approaches is that the former requires that the employee's reaction to the workplace incidents be reasonable whereas the approach adopted by WCAT in this case rejects this requirement.

The Court declined to answer the question of whether a stress-based injury must be a reasonable response to the triggering event or events. It noted that the Tribunal itself had been divided on the issue, and left it to the Tribunal to develop its jurisprudence.

The three-part test to which the Court referred was adopted by the Tribunal in *Decision 1997-269* (June 30, 1999 NSWCAT) from *Decision No. 1030/89* (1991), 20 W.C.A.T.R. 46 (W.C.A.T., Ontario), and is as follows:

- (a) There must be evidence of a psychological disability which disables the worker from performing the functions of the job.
- (b) The disability must be work-related. This requires an evaluation of various stressors in the workplace, including a consideration of whether they are usual or unusual, whether other workers were affected, and whether the stressors are typical, expected or unexpected.
- (c) The workplace must contribute significantly to the development of the disability. This involves a comparison of the worker's personal situation with the contribution of the work situation.

In *Decision No. 1030/89, supra*, the Panel found for the worker on the basis that he had suffered an aggravation of a pre-existing condition. This does not seem to accord with the application of an objective test. The Ontario Panel stated:

In general, the weight of thinking now is that it is the perception of the stressor by the person and his or her selection of ways to cope that determine the type and the degree of the response to the stressor and not just the stressor per se.

Bearing in mind, however, Justice Cromwell's comments on the objectivity required by the three-part test, I accept that the test requires an objective look at the stressors alleged, and the worker's reaction to those stressors.

Furthermore, given Justice Cromwell's comments in *Logan v. Workers' Compensation Board (N.S.) et al.*, 2006 NSCA 88, I conclude that the correct approach to the question of whether a personal injury by accident has occurred is an objective one. I note that the issue in *Logan* was the appropriate test to determine what constitutes a traumatic event for the purposes of the stress exclusion. Justice Cromwell stated at p. 24 of the decision:

In my view, **WCA's** [the *Act's*] approach to the necessary links among the workplace, the accident and the injury do not suggest that whether there has been an accident should be judged subjectively. In fact, the opposite is the case.

And further:

There must be an objectively determinable accident which arose out of and in the course of employment.

A similar view was taken 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 determining what constituted a "traumatic event" for the purposes of the New Brunswick Workers' Compensation Act, said at paragraph 48 that the law should not readily embrace an entirely subjective test when adjudicating compensation claims. It went on to say that, "At some point, the reaction of the employee to the precipitous event must be measured against the reasonable person standard." The Court stated that if it were to adopt a subjective test, it would effectively be applying the "thin skull" principle.

Given my review of the law canvassed above, I reach the same conclusion as did recently a panel of my colleagues in *Decision No. 2006-425-AD* (February 19, 2007, NSWCAT). In that decision, the Panel rejected the two-part subjective test used by the Tribunal in *Decision 2002-764-AD* (May 29, 2003, NSWCAT). Although the test has been expressed in various ways by courts and tribunals, the essence is the same: there is no room for a subjective view of the events, or the worker's reaction to them, in determining whether or not an accident occurred under GECA.

Board Policy 1.3.6 is stated to apply to all decisions made on or after July 25, 2005 pursuant to GECA. Under it, compensation for claims will be considered when a worker's condition results from either traumatic onset stress or gradual onset stress.

In order for a claim resulting from traumatic onset stress to be compensable, Policy 1.3.6 requires that the following four criteria be established:

- 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.

Policy 1.3.6, as it applies to claims for gradual onset stress, reads as follows:

Claims for psychological or psychiatric injuries resulting from gradual onset stress may be compensable if all 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.

The Policy goes on to state that:

Mental or physical conditions are not compensable when caused by labour relations issues such as 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 filed his claim in February 2005. His representative argues that the *Act* mandates against the retroactive application of a policy where such application would have the effect of limiting or denying benefits to a worker.

In general terms, I accept the Worker's representative's argument; however, I find that the argument is entirely academic in circumstances such as this one where the impugned policy

essentially embodies otherwise-binding jurisprudence. In other words, absent Policy 1.3.6, I would still require the worker to meet a standard set out in the cases and decisions discussed above.

How does Policy 1.3.6 compare with the state of the law as it has developed to date? I concur with the panel's reasoning in *Decision 2006-425-AD, supra*, and find nothing in Policy 1.3.6 which differs materially from the interpretation of s. 4(1) of GECA set out in case law, as it relates to the Worker. The emphasis in the Policy is on the stressors. The Policy suggests that they are to be evaluated objectively, in relation to what an "average worker in the same or similar occupation" would experience. Arguably, it does not deal with the issue of the worker's reaction, unless one could say that if a stressor is found to be unusual or excessive, it would be accepted that a reasonable person would have a disabling reaction to it.

The Worker's evidence

The Worker testified about his employment and medical history. It was evident that the incidents that occurred in his workplace over the past several years have bothered the Worker tremendously. I found the Worker to be a credible witness.

The Worker testified that his problems began after a compensable back injury in 1998. He injured two discs and was off work from June 1998 to March 1999. When he returned to work following that injury, he was transferred to a procurement position in the Formation Logistics department where he remained until February 2005. The position was considered to be a light duty position which met the Worker's limitations resulting from his back injury.

The Worker testified that he did not have to apply for the job in the Formation Logistics department. He believed that he was not welcome there, because he thought that he had taken the job away from another qualified person. He was never told this directly by his supervisors, but he testified that he got this impression from other employees.

The Worker stated that he did not have the proper training or skills for his new position, and that his supervisor ["GF"] repeatedly denied his requests for training. He testified that GF was also very abrupt with him and spoke to him very rudely.

The Worker also described problems he encountered in relation to an issue that arose over parking. The Worker experienced significant back pain as a result of his workplace injury. Walking caused him particular discomfort. His doctor recommended that he be given a parking spot closer to his work location. The Employer provided the Worker with a parking pass which enabled him to park within 50 metres of his office building; however, he subsequently had to relinquish it, allegedly because some of his co-workers complained about what they perceived as preferential treatment. GF and another manager ["RE"] apparently made the decision to take the Worker's parking pass from him.

The Worker testified that he was then only able to find parking a great distance away from his office, which required him to walk long distances. Some days, he had to walk a mile to work in each direction. He experienced an exacerbation in his symptoms as a result. The Worker sought help from his supervisors. He was eventually given a "medical" parking pass in November 1999; however, there was not always a spot available to him. He counted 57 occasions when he could not park in his "medical" spot. He also described being given a parking spot near office doors which had no outside handles on them. Consequently, he had to walk a significant distance to enter the building, despite the fact that, on paper, it appeared that he had been given a parking spot near his office building.

The Worker subsequently filed a Human Rights complaint against his Employer in 2000 for failing to accommodate his physical disability. In October 2003, after nearly 2 ½ years, the claim was settled in the Worker's favour. One of the settlement conditions was that the Worker would be able to pursue a workers' compensation claim without it being contested by the Employer.

The Worker testified that his battle with the Employer took its toll on him. He felt sad and worthless - he expected better treatment from his Employer.

In the intervening time that it took for the Worker's Human Rights complaint to be resolved, he experienced other workplace stressors which he believes also led to his stopping work in February 2005.

The Worker testified that his was one of many problems that existed in the Formation Logistics department. In 2002, an independent workplace assessment was conducted because of the problems that existed in the department. Of the approximately 15 employees in the department, 12 had apparently requested to be moved out of the department.

The results of the workplace assessment were classified as "confidential". Copies were provided to all employees on the understanding that they could lose their security clearance if they were to divulge any of the information contained in the report. The Worker obtained permission to make a copy of the report to provide to his doctor. On November 25, 2002, the Worker was making a copy of the report. A manager, RE, saw the Worker copying the report and told him he was not allowed to make a copy it. The Worker testified that he showed RE his permission letter; however, RE ignored it and tried to grab the report from the Worker. In doing so, he pushed the Worker against the photocopy machine, pinning the Worker's back against it.

The Worker testified that he repeated to RE that he had permission to copy the report. RE finally backed away and confirmed with another manager that the Worker did, in fact, have permission to copy the report. The Worker stated that the entire incident lasted approximately five minutes. His back hurt from being pushed against the photocopier, and he was shaking and very upset over what had happened. He testified that he had never been assaulted by an employer before, and that he always looked over his shoulder after

that incident. He also said that RE never apologized to him.

The Worker testified that although he continued to work at Formations Logistics after this incident, he also filed a union grievance and a formal complaint with his Employer. The Worker also described RE as a “bully”, and testified that he had observed RE verbally abusing other individuals in the department.

The Worker described one more stressor that occurred prior to his stopping work in February 2005. He testified that a reclassification occurred in November 2004, which was going to result in GF becoming his supervisor once more. He had not reported to her since 2001, and he said that he was “terrified” with the prospect of having to report to someone who had previously abused him. He raised this issue with his supervisor, and it is documented in several emails in November and December 2004. In the end, other arrangements were made, and the Worker did not have to work under GF.

In a meeting with his Employer in November 2004, the Worker also raised issues regarding the Employer’s failure to accommodate him in the workplace. Specific mention was made of the November 25, 2002 altercation. An agreement was reached that the Worker would be able to obtain counselling through the Employer’s Employee Assistance Program [“EAP”] to help him deal with workplace violence issues. Following an EAP referral, the Worker consulted with a psychologist in January 2005.

On the advice of his family doctor, the Worker stopped working on February 14, 2005. He returned to work in a different department in July 2005.

The Worker testified about other events that occurred after he returned to work in 2005. On October 4, 2005, he and PR (who is a shop steward) were discussing some matters when the Worker’s supervisor [“BP”] confronted them. BP “blew up” at them, shouting profanities and other comments (including inappropriate sexual remarks) in a raised voice and pointing his finger at them. BP was approximately four feet away from the two men when the exchange occurred. The Worker testified that this incident brought back all his fears and made him nervous. He said that he is fearful of being attacked again.

The Worker continued working after this incident but filed a harassment complaint with his Employer. At the time of the hearing, the Worker indicated that his harassment complaint had progressed from alternative dispute resolution to the grievance stage.

The Worker also testified that he filed another Human Rights complaint on a different matter, and that he has also filed a grievance regarding an overtime issue. With respect to the latter issue, the Worker stated that there was still “bullying” occurring in his workplace, as his Employer was refusing to pay him for overtime worked.

The Worker was transferred to a different department in November 2005, where he continues to work.

PR's testimony

PR is a shop steward who testified on behalf of the Worker. Although he did not work directly with the Worker in any capacity, he was aware of the Worker's situation, and he corroborated much of the Worker's testimony regarding problems that existed in the Formation Logistics department.

PR also filed a Human Rights complaint against his Employer for failing to accommodate his disability. It, too, involved RE and a parking issue. The matter was settled in his favour after 22 months. PR suggested that the Employer exhibited a pattern of failing to accommodate the needs of its employees.

PR testified that he was present on October 25, 2002 when the RE confronted the Worker at the photocopier. He telephoned the Worker later that day and described the Worker as being "upset" over the incident. He also said that the Worker is a "different person" since this incident and now appears to have difficulty trusting others.

PR also referred to the workplace assessment report which gave rise to this incident. He described the department as a dysfunctional "sick, poisoned, work environment". Soon after the report was released, anonymous death threats were made in the department.

PR also described the incident that occurred on October 4, 2005. His evidence was consistent with that of the Worker's. He, too, has filed a grievance in relation to that matter.

Medical Evidence

There is no history of the Worker's having any psychological or social problems prior to his 1998 workplace injury. Although the Worker may have mentioned his workplace problems to his family doctor (as is suggested by his testimony that he was copying the workplace assessment report on November 25, 2002 to give to his doctor) there appeared to have been no need to refer him for psychological counselling prior to 2005. The Worker's psychological condition first came to the Board's attention in 2005, when he filed his claim.

In a Form 8/10 dated April 12, 2005, the Worker's family physician, Dr. Soudek, indicated that the Worker had been off work "on 'stress leave' due to conflict at work", since February 15, 2005, and referred to a recent report from the Worker's treating psychologist, Silvia Frausin.

There are three reports from the Ms Frausin, a registered clinical psychologist, on file.

In her February 10, 2005 report, Ms Frausin stated that the Worker was referred to her for counselling, and that she had met with him on January 20 and February 3, 2005.

Ms Frausin expressed the opinion that the Worker had been "experiencing symptoms of

Generalized Anxiety Disorder” for more than six months. These symptoms included “restlessness, fatigue, difficulty concentrating, irritability, muscle tension, and sleep problems”. She indicated that, although the Worker did not present as being clinically depressed, he exhibited some symptoms of depression.

Ms Frausin further opined that the Worker’s mental health would deteriorate if he were not accommodated in another work setting. She expressed concern that “he will become clinically depressed if his situation is not resolved in a timely matter”. Ms Frausin strongly recommended that the Worker not return to the Formation Logistics department, and she indicated that the Worker should be granted sick leave if immediate work accommodation could not be accomplished.

It was on the basis of this report that the Worker subsequently stopped working and filed his Report of Accident with the Board.

In a report to the Worker’s representative dated September 16, 2005, Ms Frausin confirmed that the Worker had been referred to her in December 2004. She indicated that, despite the stress he was experiencing at work, the Worker was apparently able to perform his work satisfactorily, as evidenced by his performance evaluations. However, she noted that, “...this experience has affected him deeply and his level of trust will likely never be restored for this organization...”.

In response to being asked to identify the source or cause of the Worker’s problems, Ms Frausin responded as follows:

[The Worker] felt that his basic human rights were not respected in his workplace and when he stood up for his rights he was further victimized.

I would like to emphasize that a cause-effect relationship is difficult to determine; however, I would like to comment that if:

*there has not been a change in the number of (sic) stressors at home ([the Worker] reports a stable home environment;

*there is no change in the number of financial stressors ([the Worker] reports no such stressors);

*there has not been a change in other significant areas ([the Worker] reports no significant change other than a physical injury and increase in his blood pressure, the latter, I believe, came **after** the stress at work); and

*the only significant change is the stress in the workplace... and if the stress in the workplace is unusual for a client ([the Worker] reports no previous or similar conflicts in a work setting and if apart from his self-reporting, his vocational history also does not identify him as a “trouble maker”) than... a

reasonable hypothesis can be drawn based on the facts of the particular case.

In a subsequent report addressed to the Worker's representative on November 18, 2005, Ms Frausin indicated that the Worker had identified three significant incidents as being workplace stressors.

The first pertained to the Worker's frustration surrounding his attempts to secure a parking spot close to his work area in 1999. Ms Frausin stated that the Worker believed that Employer failed to acknowledge his physical disability, and that "this was the beginning of what he perceives to be ongoing harassment and unfair treatment by his supervisors".

The second stressor identified by Ms Frausin occurred from approximately April to November 2004, when the Worker believed that he was not given appropriate training for a new computer system. His repeated requests for training were ignored; eventually, he was given 20 minutes of training, which he believed was inadequate. Ms Frausin also stated that the Worker believed that his supervisor withheld from him for several months the password necessary to gain entry to the new computer system.

The third identified stressor occurred on November 25, 2002, when a supply manager pushed the Worker against a photocopier in an attempt to prevent the Worker from copying a report which addressed problems in the workplace. Ms Frausin indicated that the Worker felt that his managers did not support him.

Ms Frausin added that the Worker felt that he was being continually monitored in the workplace, and that he "felt disrespected and demoralized". His request that he be moved to a different work location and assigned to a different manager were apparently "minimized, ignored and denied".

Discussion

Causation need not be determined with scientific certainty, and it is appropriate to use common sense to infer causation: *Farrell v. Snell* [1990] 2 S.C.R. 311 and *Athey v. Leonati* (1966), 3 S.C.R. 458. Whether or not any particular inference is reasonable is a question of fact that depends on the circumstances of each case: *Workers' Compensation Board (N.S.) v. Johnstone et al.*, 1999 NSCA 164.

While medical opinion evidence may often be of great assistance, it is neither necessary nor necessarily conclusive. The Worker must show on the whole of the evidence that there is a reasonable inference of causation that is at least evenly balanced with any other possible inference (*Canada Post Corporation v. Nova Scotia (Workers' Compensation Appeals Tribunal)*, 224 N.S.R. (2d) 276 (C.A.)).

In the present case, I am unable to conclude that the Worker suffered a personal injury arising out of and in the course of his employment. While I accept the medical diagnosis

of Generalized Anxiety Disorder, the evidence does not support a finding that there was an “accident” triggering possible compensation under *GECA*.

There are many similarities between this case and the circumstances that arose in *Decision 2006-425-AD, supra*. Both workplaces appear to have been fraught with interpersonal problems (including physical violence) which led to filings of grievances.

The evidence in this case suggests the existence of a very negative work environment ripe with fear, intimidation and bullying. The number of grievances and Human Rights complaints filed by employees supports such a conclusion. It is unfortunate that such an atmosphere has persisted for so long. That being said, however, the existence of such an environment does not automatically give rise to recognition of a stress-type injury.

In the present case, the Worker’s psychologist identified three stressors. The first was the Worker’s frustration surrounding his attempts to secure a parking spot. The parking issue first arose in 1999. The Worker filed a Human Rights complaint in 2000, and the matter was resolved in the Worker’s favour in October 2003. During that entire time, the Worker continued to work. There is no medical evidence suggesting that the Worker sought treatment for, or was diagnosed with, any psychological injury during that time. It also does not appear that he missed any time from work, and his performance evaluations were very favourable.

While I acknowledge the Worker’s battle with his employer over the parking issue would have likely caused him some grief, I cannot conclude that this event was an “accident” that triggered a stress injury in 2005. On the contrary, the Worker actively pursued a Human Rights complaint for more than two years while continuing to work. In my view, the parking issue is more akin to a labour relations issue, not a workers’ compensation matter.

The second identified stressor was the Worker’s distress over not being provided with adequate computer training in 2004. Although this may have been frustrating for the Worker, I cannot conclude that it constituted an “accident” so as to trigger a stress injury in 2005. I note that the Worker did not testify at the hearing about this lack of training in 2004; rather, his testimony was that he was denied training in 1999.

In any event, however, there is documentary evidence on file that the training issue resurfaced in late 2004; however, it appears to have been superceded by the Worker’s concerns over having to report to GF, a prospect that he testified “terrified” him. It is puzzling that Ms Frausin’s reports contain no reference to the Worker’s concern over having to report to GF. If the prospects of reporting to GF “terrified” him, surely he would have reported his concerns to his psychologist. The logical conclusion is that, as the matter had been resolved by the time he met with Ms Frasin, it was no longer a particularly worrisome event to the Worker; consequently, it could not have been a stressor that disabled him from working in February 2005.

While it may be argued that the lack of training in 1999 and 2004 demonstrates a pattern

that the Worker was not provided with adequate training, I do not find that these events constitute an accident arising out of and in the course of his employment. Once again, there is no evidence that it materially affected his ability to work. It cannot reasonably be interpreted as an unusual or excessive workplace event giving rise to a potentially disabling psychological condition. As was the case with the parking issue, the Worker dealt with the issue at the time through labour relations channels.

The third stressor identified by Ms Frausin was the photocopier incident that occurred on November 25, 2002. Of the three stressors she identified, it is the most compelling - a physical altercation is potentially traumatic.

Although the supervisor's behaviour was inappropriate, I cannot conclude that this incident led to a psychological injury that disabled the Worker either on its own as a traumatic event or as part of a gradual onset injury.

If the injury was as traumatic as the Worker claims, why did he not stop working at that time? Instead, he continued to work for more than two years (performing his job well, as evidenced by his performance evaluations) and filed a grievance over the issue. He also bolstered his Human Rights complaint with a detailed accounting of the event.

The Worker's actions after the altercation do not support a conclusion that he developed a disabling condition that affected his ability to work. On the contrary, he remained in the workplace and took action through appropriate labour relations and Human Rights channels available to him. An objective viewer would be hard-pressed to link this event to the Worker's need to stop working more than two years later.

I also conclude that the combined effect of these events is insufficient to constitute an "accident" for the purposes of *GECA* and the *Act*. When viewed objectively, I cannot find that a reasonable person would conclude that the workplace events described herein were so unusual or excessive so as to give rise to a work-related stress claim.

Although the events may have upset the Worker, he did not lose time from work or require psychological treatment either at or near the times that they occurred. There is nothing in the Worker's performance evaluations between 2002 and 2004 to suggest that these events were taking a toll on him. The Worker's response to these events was to follow appropriate labour relations and Human Rights channels.

The incidents that occurred in 1999 and 2004 arose because of interpersonal conflict and management's refusal to address the Worker's concerns. It cannot be said to be either unexpected or unusual that management may refuse to (or inadequately) deal with a workplace issue, or that interpersonal conflict may occur in the workplace. A reasonable person viewing the situation would not conclude that these stressors were potentially disabling.

While the altercation that occurred in 2002 was potentially traumatic, the Worker's

response to that event was not suggestive of a stress injury. He continued to work, with no apparent disabling reaction for more than two years. Although the Worker may have worked in a stressful environment, I cannot conclude that an “accident” occurred so as to give rise to a claim for compensable stress.

Furthermore, I cannot conclude that these events constituted a pattern of harassment. Although interpersonal conflict and ineffective management contributed to a toxic work environment which allowed such events to occur frequently, the Worker was not the only one in his department experiencing problems with management and pursuing grievances and Human Rights complaints. Other employees, including PR, had also pursued similar actions against the same managers.

The Worker also identified a fourth stressor - the October 4, 2005 incident involving PR and BP. The Hearing Officer did not address this incident, as it occurred after the Worker’s February 2005 Report of Accident. The evidence on file establishes that both PR and the Worker filed complaints and grievances regarding this incident. The Worker also remained working after this incident.

There is insufficient evidence on file for me to make any meaningful determination regarding this incident at this time. There is no medical evidence regarding any impact that this event may have had on the Worker. Although it is clear from his statement and testimony that the incident upset him, the Worker has continued to work since the incident occurred. He has also filed a harassment complaint.

Finally, I note that Policy 1.3.6, as it applies to the Worker in this case, neither changes nor adds anything to the common law. The Worker has a DSM-IV diagnosis and would therefore meet that condition of the Policy. I find that the Worker has failed to demonstrate that he was subjected to stressors that could be considered unusual or atypical. He has not established that a reasonable person would accept that these stressors would be potentially disabling. Moreover, the Worker actually continued working after these events and scored well on performance evaluations.

The specific exclusions in Policy 1.3.6 entitled “non-compensable events” have no impact because the events in question are neither unusual, atypical or something a reasonable person would consider capable of causing a disabling reaction. Regardless of whether Policy 1.3.6 were applied, the outcome of this appeal would be the same.

As an alternative argument, the Worker’s representative submits that if I do not recognize the Worker’s 2005 stress claim, then I should reach a finding that the Worker’s condition is compensable on the basis that it is related to his 1998 injury. He argues that, “but for” the back injury, the Worker would not have required accommodation, and none of the events that later transpired would have occurred. I find the proposed link to be far too remote, based on the evidence currently on file.

CONCLUSION:

The appeal is denied. The Worker did not suffer a compensable stress injury. There was no "accident" triggering possible compensation under GECA.