

CLAIM HISTORY AND APPEAL PROCEEDINGS:

This decision addresses an appeal by the Worker from a Hearing Officer's June 28, 2007 decision, which denied recognition of the Worker's claim for a personal injury by accident arising out of and in the course of her employment. The Worker filed a Notice of Appeal with the Tribunal on August 1, 2007 alleging that the Hearing Officer erred in finding that the medical evidence regarding her pre-existing asthma and anxiety conditions was not relevant to her claim for workers' compensation benefits. In addition, the Hearing Officer erred in applying and interpreting s. 10 of the *Workers' Compensation Act*, S.N.S. 1994-95, c.10, as amended [the "Act"], and s. 4(1) of the *Government Employees Compensation Act*, R.S.C. 1985, c. G-8 ["GECA"] and Board Policy 1.3.6.

Prior to the hearing of this appeal, the Worker's representative filed documentation not previously on file with the Board, including:

1. Consultant letter from Dr. Roger Michael dated December 1999.
2. Consultant letter from Dr. Roger Michael dated June 15, 2000.
3. Correspondence from Jonathan Fox, Environment Health Centre dated January 24, 2001.
4. October 20, 2006 report from Dr. Holly Zwicker.
5. December 5, 2006 report from Dr. Holly Zwicker.
6. Report from Dr. J.J. Whelan, Register Psychologist, dated September 12, 2007.
7. Report from Dr. Diane McIntosh, Psychiatrist, dated January 21, 2004.
8. Report from Dr. Holly Zwicker dated September 6, 2007.
9. Report from Dr. Marian Zazula, dated April 18, 2001.

The Employer's representative filed a floor plan and digital photographs of the Worker's separate office. At the hearing, the Worker provided sworn testimony by teleconference and the representatives made oral submissions. The Board did not participate in the appeal.

ISSUE AND OUTCOME:

Did the Worker suffer a personal injury by accident arising out of and in the course of her employment?

No. The Worker's injury, an aggravation of her pre-existing anxiety, does not meet the criteria of Board Policy 1.3.6 for recognition of a gradual onset stress claim.

ANALYSIS:

The Worker is seeking recognition of a compensable injury. It has been characterized as an aggravation of her pre-existing asthma/multiple chemical sensitivity and in addition an

aggravation of her pre-existing anxiety/panic disorder caused by exposures in her workplace.

The Worker's representative submits that the claim should be adjudicated under s. 10(5) of the *Act* which addresses injuries due in part to an aggravation, activation or acceleration of a pre-existing disease or disability. The Worker suffers from a pre-existing psychological disability (anxiety) and a pre-existing physical disability (multiple chemical sensitivity), so she argues that it is inappropriate to apply Board Policy 1.3.6 because the Worker's injury is not purely a psychological one.

Nature of the Injury

There is evidence from Dr. Michael in 1999 and 2000 confirming the Worker's diagnosis of asthma/multiple chemical sensitivity. Dr. Fox confirmed on January 24, 2001 that the Worker was being treated for asthma and that workplace exposures had the potential to exacerbate her asthmatic condition. Dr. Zazula also confirmed in 2001 that the Worker was having ongoing symptoms related to sports-induced asthma and multiple chemical sensitivities.

There is no further evidence regarding the Worker's pre-existing asthma/multiple chemical sensitivity until Dr. Zwicker's report in the fall of 2006. She confirms that she has been the Worker's family physician since September, 1999. In the fall of 2006, the Worker saw her for increased symptoms of anxiety and asthma resulting from exposures or potential exposures to chemicals in her workplace. She was experiencing heightened anxiety around the issue of further potential exposures and a lack of reassurance for her safety in her workplace. On April 23, 2007, Dr. Zwicker wrote to the Board and indicated that the Worker had not suffered a traumatic event but had indeed suffered from gradual onset stress because her Employer had not taken the necessary steps to prevent a further exposure. She noted that the Worker had subsequently been allowed to work from home.

The Worker saw Dr. Whelan, a Psychologist, from February, 2006 through to September, 2007 for treatment of her panic disorder. Dr. Whelan's report to the Worker's representative on September 12, 2007 is in response to a request to comment on whether or not the Worker had an aggravation of her asthma in the workplace, which had given rise to an aggravation of her anxiety disorder. Dr. Whelan states:

As shown, in terms of physiological reactivity, including respiratory distress, there is a high degree of symptom overlap between these two disorders. Furthermore, both asthma and panic disorder are known to be worsened by various forms of stress (e.g., interpersonal conflict, emotional distress, or physical fatigue). Research findings report that asthma is strongly associated with panic disorder. In some studies as high as 20%-30% of subjects have both disorders. An hypothesised explanation is that asthma and panic attack form a vicious cycle whereby the fact of having asthma-a

potentially life-threatening condition-may increase the person's overall level of anxiety, and in term can cause panic in some individuals and panic could in turn trigger an episode of asthma.

Dr. Whelan notes that the Worker had her first panic attack in 1985 while in an elevator. In 1998 she was diagnosed with asthma. With both conditions she has experienced continual frustration because of not being taken seriously by authorities and not being supported by her partner. Dr. Whelan references the Worker's reports of occasions where coworkers wore scented products or brought other noxious fumes into the building. Dr. Whelan suggests that a perceived lack of cooperation from her supervisors had led the Worker to a continual state of vigilance and frustration about her work situation.

Dr. Whelan's opinion is confirmed by Dr. Zwicker's report to the Employer on December 5, 2006, that there were no physical limitations to the Worker doing her job. In Dr. Zwicker's opinion it was her anxiety disorder which was having a negative impact on her ability to do her job because she couldn't be at her job without worry of the next exposure. She also noted that the Worker's anxiety triggers were intricately linked to her asthma triggers so that her anxiety regarding an exposure in the workplace could trigger her asthma.

On the basis of this evidence, I find that it was the Worker's pre-existing anxiety not her asthma that caused her to remove herself from the workforce in 2006. There is no evidence that her asthma was so severe that she was physically unable to stay at work. This is confirmed by the Worker's testimony.

She testified that she last saw Dr. Michael for her asthma symptoms in 2000. He advised her to take various inhaler medications and to avoid scented products, perfumes and smoke. Since that time she has tried to keep herself in a scent free environment. There is no evidence of an increase in treatment for the Worker's asthma symptoms, a change in medications, or an increase in the severity of her condition.

The Worker has had recent treatment of her anxiety disorder, including a referral to Dr. Whelan in 2006. Since she started working with the Employer in June, 2003 she has also received treatment from Dr. McIntosh for her panic disorder.

The Worker started at her final employment site in February, 2005. Initially, she was at a work station with three other desks. The situation was not ideal because she was surrounded by smokers and when they came back from their smoke breaks she would react. She worked in various cubicles until she resigned in August, 2005. Her resignation letter indicated that she believed the physical accommodations for her disability were coming along well but the mental aspect was not better. She was still being ridiculed and laughed at by her coworkers who did not seem to believe that multiple chemical sensitivity was a real illness. Her supervisor was not on her side and she felt she could no longer

deal with the ignorance of her coworkers. She stated that she needed an environment free of ridicule and that she was leaving her work at that time because of a lack of support.

Her letter prompted a phone call from head office. She was told that they would not accept her resignation and that they would come up with a solution. This led to the creation of a separate office. It was located outside a boardroom on the same floor where she had previously been stationed. She testified that she came back to work with the understanding that there would be more education about environmental illness in her workplace.

While she was in the separate office she still found it problematic to enter or leave the building. On occasion people using the boardroom were wearing scents. If she left her office to go anywhere she could have a problem. She was very disturbed by an incident in September of 2006. Someone on her floor sprayed an air freshener. When she questioned this she was told to wear her mask. She testified that although she always had one in her purse, she did not like to wear her mask. She felt it made her look "freaky". She also thought that if she wore the mask this would take away from the focus on her coworkers not to wear or use scents.

Subsequent to the Worker's departure from employment in November, 2006, a teleconference was scheduled with Dr. Zwicker to try to find a way to accommodate her work. This led to the Worker's current arrangement where she works from home.

I find the Worker's testimony does not indicate that there were physical reasons for her departure from the workforce in 2006. She left due to ongoing frustration and fear that she would encounter chemical exposures. Her asthma symptoms in and of themselves did not prevent her from continuing with her employment. Consequently, I find that Board Policy 1.3.6 does have application in this case because the Worker's claim is for an aggravation of a pre-existing psychological condition.

Policy 1.3.6

The Board has concluded that the Worker has not satisfied the requirements for either gradual onset or traumatic stress as set out in Policy 1.3.6. Therefore, she is not entitled to recognition of a compensable injury.

Section 187 of the *Act* applies to the Worker's claim, so she is entitled to the benefit of the doubt on any issue involving compensation, if there is doubt on the issue and the disputed possibilities are evenly balanced. However, the evidence suggests that it is more like than not that the Worker left employment in November, 2006 due to a personal anxiety condition which does not meet the criteria in Policy 1.3.6.

The Worker's representative submits that the Worker's circumstances clearly fall within the

traumatic event provisions of the Policy. Claims for traumatic onset stress are compensable if the following four criteria are satisfied:

1. There must be a traumatic event as defined in the policy;
2. The traumatic event must arise out of and in the course of employment;
3. The worker must be diagnosed with a mental or physical condition that is described in the DSM IV; and
4. The diagnoses must be made by a health care provider, either a psychiatrist or a clinically trained psychologist, registered with the Canadian Register of Health Service Providers in Psychology.

Traumatic event is defined in the Policy as a direct personal experience of an event that involves actual or threatened death or serious injury or threat to physical integrity of self or others. The Worker's representative argues the Worker's exposures would constitute a traumatic event.

I do not find that in this case exposure to scents or chemicals in the workplace constitutes a traumatic event as contemplated by the Policy. Examples of traumatic events listed in the Policy include: violent physical assaults, horrific accidents, a hostage takings or an armed robbery.

The Worker testified that she continues to go out in to the community to engage in activities such as shopping. If she experiences an exposure, she moves away from the offending odour or chemical and takes some asthma medication upon her return home. If these exposures were truly traumatic in the sense contemplated by the Policy, the Worker would not at any point place herself in a position of experiencing an exposure. Also, there is no medical evidence suggesting that the Worker's asthmatic reactions have ever been life threatening.

The Worker's description of her injury supports a gradual onset process, not a traumatic event. In a note attached to her Report of Accident, the Worker describes her illness as occurring over a period of time. It first started to flare up after April 27, 2006, when she was exposed to chemical products worn by a coworker. She indicates that her injury happened as a result of continued exposure to chemicals in the workplace along with a lack of support and understanding. The anticipatory anxiety and fear of such exposures and a continuous fight to justify her medical condition aggravated her anxiety disorder to a level that she could no longer work. She couldn't be at work with out worrying about the next exposure. I find this is evidence that the Worker's injury does not fall within the traumatic onset portion of the Policy.

Policy 1.3.6 provides criteria for recognition of gradual onset stress claims where the injury results from a gradual onset of a psychiatric or psychological illness in the form of stress. The following four criteria must be satisfied:

- 1) The work-related events or stressors experienced by the worker must be unusual and excessive in comparison to the work-related events or stressors experienced by an average worker in the same or similar occupation;
- 2) The worker must be diagnosed with a mental or physical condition that is described in the DSM IV;
- 3) The mental or physical condition must be caused by the work-related events or stressors; and
- 4) The condition must be diagnosed by health care provider who is registered with the Canadian Register of Health Service Providers in Psychology.

I find that the Worker's situation does not meet the criteria for a gradual onset stress claim because the events or stressors experienced by her were not unusual or excessive in comparison to events or stressors experienced by an average worker in the same occupation.

Occasional exposure to perfumes or scents in the workplace does not constitute an unusual or excessive event. These are events that the Worker continues to experience while out in the community and would experience in similar office environments.

The Employer has made reasonable attempts to accommodate the Worker and provide her with as safe and as manageable an environment as possible. Eventually, they arranged for her to work at home. She continues to enter the building monthly to update her computer.

The Worker experienced a heightened state of her anxiety disorder. This was not attributable to excessive or unusual events in her workplace. In fact, the evidence as a whole suggests that over the course of the Worker's employment, her exposures have been gradually minimized. When she left work in November, 2006, she would have had much less exposure to the general public and the possibility of exposures than she would have had been previously. Consequently, I do not find that it was unusual or excessive events or stresses which led the Worker to leave her employment in November, 2006. She has not met the criteria for recognition of a claim for gradual onset stress under Board Policy 1.3.6.

I find that the average worker in a similar occupation would, on occasion, experience reactions from coworkers that were not completely sympathetic to medical conditions. There is no doubt that the Worker's mental condition is at least partially related to work-related events or stressors. I accept Dr. Zwicker's and Dr. Whelan's opinion in this regard. However, I find that the stressors experienced by the Worker were not unusual or excessive compared to the work-related events or stressors experienced by an average worker in the same or similar occupation. I accept that the Worker was experiencing occasional exposures to scented products which she feared would cause an asthma

attack. There is no indication that the nature of these exposures was excessive or unusual. In fact, it seems likely that the Worker's exposures would have been minimal in comparison to the average worker because she was in a secluded office with signs asking that patrons to the building respect a scent free policy. It was the Worker's pre-existing anxiety disorder which caused her to have a heightened fear of the possibility of an asthma attack which translated these potential exposures into stressors for the Worker. The events in and of themselves were not unusual or excessive.

Policy 1.3.6 does not provide a blanket recognition of all work-related circumstances which lead to the experience of stress. There needs to be an "accident". A failure by coworkers to fully appreciate, and in the Worker's mind accommodate, her pre-existing disabilities is a situation dealt with by many employees. These events do not amount to an accident. The evidence establishes that the Worker's employment situation was improving with respect to the instances giving rise to exposures. Regardless, she continued to experience a heightened fearfulness or anxiety, which made her unable to do her work.

The Worker is not entitled to recognition that she has suffered a compensable injury by accident arising out of and in the course of her employment.

CONCLUSION:

The appeal is denied. The Worker has not suffered a personal injury by accident arising out of and in the course of her employment under s. 4(1) of GECA or s. 10(1) of the *Act*.

DATED AT HALIFAX, NOVA SCOTIA, THIS 30th day of October, 2008.

Andrea Smillie
Appeal Commissioner

