

Consultation Summary

The Workers Compensation Board of PEI (WCB) continually monitors emerging trends, challenges, and opportunities in workers compensation systems across the country in order to adapt to today's changing landscape and to better meet the evolving needs of our clients. An important aspect of this work is to explore opportunities for modernized approaches to the treatment of complex injuries.

Proposed amendments to the policy, **Psychological and Psychiatric Conditions (POL-01)**, will introduce compensation coverage for psychological or psychiatric conditions resulting from work-related harassment. To be eligible for compensation coverage, the condition must be diagnosed by a psychologist or psychiatrist according to the *Diagnostic and Statistical Manual of Mental Disorders* (DSM) and must result from an acute reaction to workplace harassment. Housekeeping changes have also been made to update policy language and definitions to align with the *Occupational Health and Safety Act - Workplace Harassment Regulations*.

In addition to the proposed amendments, the policy has been updated and re-organized in accordance with WCB's client-centred approach to policy design, which is intended to enhance clients' understanding.

The attached draft policy is presented with the non-substantive changes applied. The proposed amendments are tracked, new content is **bolded** and content to be deleted is shown with a ~~strike through~~. A copy of the current policy is attached for comparison.

POLICY NUMBER: POL-01

Chapter:
CLAIMS

Subject:
PSYCHOLOGICAL OR PSYCHIATRIC CONDITION

Effective Date:
April 1, 1993

Last Updated On:
~~July 3, 2018~~ DRAFT January 11, 2024

PURPOSE STATEMENT:

The purpose of this policy is to describe how the Workers Compensation Board determines whether a psychological or psychiatric condition is compensable.

REFERENCE:

Workers Compensation Act R.S.P.E.I.1988, Cap. W-7.1, Sections 1(1) (1.1), 6(1), 6(4.1-4.4), 18
Workers Compensation Board policy, POL-90, Time Limit for Workers to File a Claim

DEFINITIONS:

In this policy:

“Accident” means a chance event occasioned by a physical or natural cause that causes personal injury to a worker. This includes a wilful and intentional act that is not the act of the worker, any event arising out of and in the course of employment, or thing that is done and the doing of which arises out of and in the course of employment, and an occupational disease. Stress is included only when it is an acute reaction to a traumatic event arising out of and in the course of employment.

“Acute reaction” means a significant or severe reaction by a worker resulting in the diagnosis of a psychological or psychiatric condition, and including trauma- and stressor- related disorders such as Post-traumatic Stress Disorder. “Acute” does not necessarily mean

POLICY NUMBER: POL-01

immediately after an event. Rather, acute refers to the significance or severity of the reaction, whenever it occurs.

“DSM” means the Fifth edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

“Harassment” means any inappropriate conduct, comment, display, action or gesture or any bullying that the person responsible for the conduct, comment, display, action or gesture or the bullying knows, or ought reasonably to know, could have a harmful effect on a worker's psychological or physical health or safety, and includes:

- I. conduct that is based on any personal characteristic such as, but not limited to, race, creed, religion, colour, sex, sexual orientation, marital status, family status, disability, physical size or weight, age, nationality, ancestry or place of origin, gender identity or pregnancy, and**
- II. inappropriate sexual conduct that is known, or ought reasonably to be known, to the person responsible for the conduct to be unwelcome, including, but not limited to, sexual solicitations or advances, sexually suggestive remarks, jokes or gestures, circulating or sharing inappropriate images, or unwanted physical contact.**

For greater certainty, harassment as defined above includes both:

- (a) repeated inappropriate conduct, comments, displays, actions or gestures or incidents of bullying that have a harmful effect on the worker's psychological or physical health or safety; and**
- (b) a single occurrence of inappropriate conduct, comment, display, action or gesture or bullying that has a harmful effect on the worker's psychological or physical health or safety.**

“Personal injury” means a diagnosed physiological or psychological injury or condition caused by an accident arising out of and in the course of employment.

“Traumatic event” means exposure to actual or threatened death, serious injury or sexual violence, as defined in the DSM.

POLICY:

Presumption for Trauma- and Stressor-Related Disorders

1. The *Workers Compensation Act* considers stress (i.e., a trauma- and stressor-related disorder as per the DSM, such as Post-traumatic Stress Disorder) as a compensable condition when it is a result of an acute reaction to a traumatic event.
2. For trauma- and stressor-related disorders, including Post-traumatic Stress Disorder, the injury will be presumed to be work-related unless the contrary is shown, where the worker is:
 - Exposed in the course of employment to a traumatic event(s) of a type specified in the DSM as a trigger for trauma- and stressor-related disorders, and
 - Diagnosed with a trauma- or stressor-related disorder, in accordance with the DSM, by a psychiatrist or psychologist.
3. The presumption for trauma- and stressor- related disorders applies to claims with an accident date of June 2, 2018 or later. Claims with an earlier date of accident will be adjudicated using the criteria set out in this policy under the heading, *Criteria for Entitlement for Psychological and Psychiatric Conditions not Covered under the Presumption for Trauma- and Stressor-Related Disorders*.

Traumatic Events

4. Traumatic events, that are considered to be triggers for trauma- and stressor-related disorders, as defined in the DSM, involve exposure to actual or threatened:
 - Death
 - Serious injury
 - Sexual violence.

The exposure must have occurred in one or more of the following ways:

- The worker directly experienced the traumatic event(s).
- The worker witnessed, in person, the traumatic event as it occurred to others.
- The worker has learned that the traumatic event occurred to a close family member or close friend. In the case of actual or threatened death of a family member or friend, the event must have been violent or accidental.
- The worker experienced repeated or extreme exposure to aversive details of the traumatic events. (e.g., first responders collecting human remains, police officers

repeatedly exposed to details of child abuse)

5. For the presumption to apply, the worker must be exposed to the traumatic event(s) in the course of their employment and there must be reasonable, objective and credible evidence that an identifiable traumatic event(s) occurred.

In determining whether a traumatic event(s) occurred, the worker's subjective statements and response to the events will be considered. The Workers Compensation Board will verify events through information and knowledge available through other sources such as co-workers, supervisors or third-party witnesses.

6. The presumption will be rebutted if there is evidence to the contrary that shows that the worker's employment was not the dominant cause of the trauma- or stressor-related disorder.

Criteria for Entitlement for Psychological and Psychiatric Conditions not Covered under the Presumption for Trauma- and Stressor-Related Disorders

7. A worker may be entitled to compensation benefits for a psychological or psychiatric condition where it is established that:
 - There has been an accident
 - The accident caused personal injury, and
 - The injury arose out of and in the course of employment.
8. The condition must be diagnosed by a psychologist or psychiatrist according to the DSM and must result from one of the following:
 - Organic brain damage resulting from a compensable head injury, exposure to toxic chemicals or gases, anoxia, or other work-related injury, disease or condition.
 - An acute reaction resulting from the use of medication, approved by the Workers Compensation Board (WCB) to treat a compensable injury;
 - An acute reaction in response to a compensable injury, disease, condition or disability.
 - **An acute reaction to a single occurrence or the cumulative effects of repeated work-related harassment.**
 - **An acute reaction to a traumatic event or the cumulative effects of multiple work-related traumatic events.**~~, where the date of accident is June 1, 2018, or~~

earlier;

- ~~an acute reaction resulting from the cumulative effects of multiple work related events, with a date of accident of June 1, 2018 or earlier, which:~~
 - ~~individually, may not be emotionally shocking and unexpected in comparison to the work related events or stressors experienced by a worker in the same or similar occupation;~~
 - ~~the worker was able to tolerate before, and,~~
 - ~~in any other occupation, would be considered traumatic.~~

The date of accident for a psychological or psychiatric condition determined to be caused by cumulative effects is outlined in WCB policy, POL-90, "Time Limit for Workers to File a Claim."

9. ~~For a psychological or psychiatric condition to be compensable for cumulative effects:~~

~~the criteria for entitlement must be met;~~

~~the events must be identifiable; and~~

~~the events must be the dominant cause of the diagnosed condition.~~

Non-compensable Causes

~~109.~~ A worker is not entitled to benefits for a psychological or psychiatric condition that is the result of non-work-related factors.

~~1110.~~ A worker is not entitled to benefits for a psychological or psychiatric condition that results from factors or circumstances that are considered to be a part of every workplace and may be associated with necessary and unavoidable aspects of doing business, such as:

- Usual work pressures or **reasonable actions taken by an employer or supervisor relating to the management and direction of the workers or of the workplace**~~an employer's employment decisions or reasonable actions~~, for example:
 - a) Interpersonal relationships and conflicts, **unless they that do not constitute harassment**
 - b) Health and safety concerns
 - c) Decisions to change work being performed
 - d) Decisions to change working conditions

POLICY NUMBER: POL-01

- e) Decisions to discipline or terminate the worker's employment
 - f) Routine workforce management actions made by the employer including work evaluation, performance management, transfers, lay off, demotions and reorganizations.
- Ongoing personal circumstances or regular workplace duties.

However, this does not remove the obligation of employers to protect the physical and psychological health and safety of workers by implementing measures to promote and maintain a healthy and safe workplace.

HISTORY:

July 3, 2018 – Amended to reflect presumptive legislation for Trauma- and Stressor-Related Disorders effective June 2, 2018.

September 12, 2016 - Non-substantive changes to reference Workers Compensation Board policy, POL-90, "Time Frame Limitations for Claims Filing and Invoicing."

April 28, 2016 - This policy was amended to broaden the definition of traumatic event and the criteria under which psychological and psychiatric conditions are compensable. The changes recognize the unique circumstances inherent to occupations that may have a higher exposure to traumatic events.

September 25, 2008 - The policy was updated as a result of the 60 month policy review process. As a result of the review, the name was changed from "Psychological Conditions" to "Psychological Or Psychiatric Condition".

January 24, 2002 - Replaces Policy and Practice "Psychological Conditions" dated April 1, 1993.

Board of Directors Approval Date: April 1, 1993

POLICY NUMBER: POL-01

**Chapter:
CLAIMS**

**Subject:
PSYCHOLOGICAL OR PSYCHIATRIC CONDITION**

**Effective Date:
April 1, 1993**

**Last Updated On:
July 3, 2018**

PURPOSE STATEMENT:

The purpose of this policy is to describe how the Workers Compensation Board determines whether a psychological or psychiatric condition is compensable.

REFERENCE:

Workers Compensation Act R.S.P.E.I.1988, Cap. W-7.1, Sections 1(1) (1.1), 6(1), 6(4.1-4.4), 18
Workers Compensation Board policy, POL-90, Time Frame Limitations for Claims Filing and Invoicing

DEFINITIONS:

In this policy:

“Accident” means a chance event occasioned by a physical or natural cause that causes personal injury to a worker. This includes a wilful and intentional act that is not the act of the worker, any event arising out of and in the course of employment, or thing that is done and the doing of which arises out of and in the course of employment, and an occupational disease. Stress is included only when it is an acute reaction to a traumatic event arising out of and in the course of employment.

“Acute reaction” means a significant or severe reaction by a worker resulting in the diagnosis of a psychological or psychiatric condition, and including trauma- and stressor- related

POLICY NUMBER: POL-01

disorders such as Post-traumatic Stress Disorder. “Acute” does not necessarily mean immediately after an event. Rather, acute refers to the significance or severity of the reaction, whenever it occurs.

“DSM” means the Fifth edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

“Personal injury” means a diagnosed physiological or psychological injury or condition caused by an accident arising out of and in the course of employment.

“Traumatic event” means exposure to actual or threatened death, serious injury or sexual violence, as defined in the DSM.

POLICY:

Presumption for Trauma- and Stressor-Related Disorders

1. The *Workers Compensation Act* considers stress (i.e., a trauma- and stressor-related disorder as per the DSM, such as Post-traumatic Stress Disorder) as a compensable condition when it is a result of an acute reaction to a traumatic event.
 2. For trauma- and stressor-related disorders, including Post-traumatic Stress Disorder, the injury will be presumed to be work-related unless the contrary is shown, where the worker is:
 - exposed in the course of employment to a traumatic event(s) of a type specified in the DSM as a trigger for trauma- and stressor-related disorders; and
 - diagnosed with a trauma- or stressor-related disorder, in accordance with the DSM, by a psychiatrist or psychologist.
 3. The presumption for trauma- and stressor- related disorders applies to claims with an accident date of June 2, 2018 or later. Claims with an earlier date of accident will be adjudicated using the criteria set out in this policy under the heading, *Criteria for Entitlement for Psychological and Psychiatric Conditions not Covered under the Presumption for Trauma- and Stressor-Related Disorders*.
-

Traumatic Events

4. Traumatic events that are considered to be triggers for trauma- and stressor-related disorders, as defined in the DSM, involve exposure to actual or threatened:
- death;
 - serious injury; or
 - sexual violence.

The exposure must have occurred in one or more of the following ways:

- The worker directly experienced the traumatic event(s).
 - The worker witnessed, in person, the traumatic event as it occurred to others.
 - The worker has learned that the traumatic event occurred to a close family member or close friend. In the case of actual or threatened death of a family member or friend, the event must have been violent or accidental.
 - The worker experienced repeated or extreme exposure to aversive details of the traumatic events. (e.g., first responders collecting human remains, police officers repeatedly exposed to details of child abuse)
5. For the presumption to apply, the worker must be exposed to the traumatic event(s) in the course of their employment and there must be reasonable, objective and credible evidence that an identifiable traumatic event(s) occurred.

In determining whether a traumatic event(s) occurred, the worker's subjective statements and response to the events will be considered. The Workers Compensation Board will verify events through information and knowledge available through other sources such as co-workers, supervisors or third party witnesses.

6. The presumption will be rebutted if there is evidence to the contrary that shows that the worker's employment was not the dominant cause of the trauma- or stressor-related disorder.

Criteria for Entitlement for Psychological and Psychiatric Conditions not Covered under the Presumption for Trauma- and Stressor-Related Disorders

7. A worker may be entitled to compensation benefits for a psychological or psychiatric condition where it is established that:
- there has been an accident;

POLICY NUMBER: POL-01

- the accident caused personal injury; and
 - the injury arose out of and in the course of employment.
8. The condition must be diagnosed by a psychologist or psychiatrist according to the DSM and must result from one of the following:
- organic brain damage resulting from a compensable head injury, exposure to toxic chemicals or gases, anoxia, or other work-related injury, disease or condition;
 - an acute reaction resulting from the use of medication, approved by the Workers Compensation Board to treat a compensable injury;
 - an acute reaction in response to a compensable injury, disease, condition or disability;
 - an acute reaction to a traumatic event, where the date of accident is June 1, 2018, or earlier;
 - an acute reaction resulting from the cumulative effects of multiple work-related events, with a date of accident of June 1, 2018 or earlier, which:
 - individually, may not be emotionally shocking and unexpected in comparison to the work-related events or stressors experienced by a worker in the same or similar occupation,
 - the worker was able to tolerate before, and,
 - in any other occupation, would be considered traumatic.

The date of accident for a psychological or psychiatric condition determined to be caused by cumulative effects is outlined in Workers Compensation Board policy, POL-90, "Time Frame Limitations for Claims Filing and Invoicing."

9. For a psychological or psychiatric condition to be compensable for cumulative effects:
- the criteria for entitlement must be met;
 - the events must be identifiable; and
 - the events must be the dominant cause of the diagnosed condition.

Non-compensable Causes

10. A worker is not entitled to benefits for a psychological or psychiatric condition that is the result of non-work related factors.

POLICY NUMBER: POL-01

11. A worker is not entitled to benefits for a psychological or psychiatric condition that results from factors or circumstances that are considered to be a part of every workplace and may be associated with necessary and unavoidable aspects of doing business, such as:
- Usual work pressures or an employer’s employment decisions or reasonable actions, for example:
 - a) interpersonal relationships and conflicts;
 - b) health and safety concerns;
 - c) decisions to change work being performed;
 - d) decisions to change working conditions;
 - e) decisions to discipline or terminate the worker’s employment; or
 - f) routine workforce management actions made by the employer including work evaluation, performance management, transfers, lay off, demotions and reorganizations.
 - Ongoing personal circumstances or regular workplace duties.

However, this does not undermine the obligation of employers to protect the physical and psychological health and safety of workers by implementing measures to promote and maintain a healthy and safe workplace.

HISTORY:

July 3, 2018 – Amended to reflect presumptive legislation for Trauma- and Stressor-Related Disorders effective June 2, 2018.

September 12, 2016 - Non-substantive changes to reference Workers Compensation Board policy, POL-90, “Time Frame Limitations for Claims Filing and Invoicing.”

April 28, 2016 - This policy was amended to broaden the definition of traumatic event and the criteria under which psychological and psychiatric conditions are compensable. The changes recognize the unique circumstances inherent to occupations that may have a higher exposure to traumatic events.

September 25, 2008 - The policy was updated as a result of the 60 month policy review process. As a result of the review, the name was changed from “Psychological Conditions” to

POLICY NUMBER: POL-01

“Psychological Or Psychiatric Condition”.

January 24, 2002 - Replaces Policy and Practice “Psychological Conditions” dated April 1, 1993.

Board of Directors Approval Date: April 1, 1993

Current Policy