

## REVIEW DECISION

**Re:** Review Reference #: R0279941  
Board Decision under Review: June 18, 2021

**Date:** March 9, 2022

**Review Officer:** Pearl Poon

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### **Introduction and Background**

In July 2020, the widow of the worker submitted an Application of Widow, claiming the worker's death was due to significant stressors/traumatic events that he had to investigate as a senior claims specialist. In the June 18, 2021 decision under review, the Workers' Compensation Board ("Board"), operating as WorkSafeBC, accepted that the worker's duties as a senior claims adjudicator in serious/catastrophic injuries played a role in a significant aggravation of an underlying mental health condition, which led to his death.

The employer disagrees with this decision, and with the assistance of its representative, submits that the worker's death was unrelated to his duties as a senior claims adjudicator. The estate of the worker is participating with the assistance of its representative, and submits that the Board's decision should be upheld. The employer's representative provides a submission in rebuttal. The submissions were disclosed in keeping with the Review Division's *Practice and Procedures*.

Part 6 of the *Workers Compensation Act* ("Act") gives me the authority to conduct this review. Section 339(2) of the Act requires me to make a decision on the merits and justice of the case, applying the policies of the Board's board of directors applicable in the case. The policies are found in the *Rehabilitation Services and Claims Manual, Volume II*.

The standard of proof under section 339(3) of the Act is "at least as likely as not." Where the evidence supporting different findings on an issue is evenly weighted, section 339(3) requires the issue be resolved in a manner that favours the worker.

### **Preliminary Matter**

The Board cited section 134 of the Act when accepted the worker's claim. I am satisfied that this is a typographical error. I conclude that the Board likely meant to cite section 135(1), the section governing the acceptance of a worker's claim involving the development of mental disorders, and as such, I will proceed with considering the employer's request for review with section 135 in mind.

## Issue

At issue is whether the worker's employment as a senior claims adjudicator aggravated his pre-existing mental health condition, which led to his death.

## Reasons and Decision

Section 135(1) of the *Act* states that a mental disorder may be compensable where it is either a reaction to one or more traumatic events arising out of and in the course of a worker's employment, or predominantly caused by a significant work-related stressor, including bullying and harassment, or a cumulative series of significant work-related stressors. The mental disorder must also be diagnosed by a psychiatrist or psychologist as a mental or physical condition described in the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders* ("DSM"). Further, to be compensable, the mental disorder cannot be caused by a decision of the worker's employer relating to the worker's employment, including a decision regarding a change in the work to be performed or the working conditions, to discipline or terminate the worker's employment.

On July 31, 2020, the employer provided a job description of the worker's job as a claim adjudicator. This job description noted that the worker was requested to manage a caseload of high complexity files, involving the highest level sensitivity (catastrophic injury) of a medical and legal nature. The worker was required to lead cases through all stages of investigation, evaluation, case development, recovery/rehabilitation, material damage, and settlement.

As part of its investigation, the Board had a Field Investigator speak with a number of witnesses, which included a co-worker, FP, who held the same position as the worker. The conversations were documented in a December 14, 2020 memo. FP advised that the files which the worker and FP handled often involved individuals who were quadriplegic, paraplegic, blind, and/or deaf. FP indicated that these files were high profile cases and might have some media presence. Further, all fatality claims were assigned to him or the worker. FP provided general examples of files which had an emotional impact on him. He further advised that as part of the files, he and the worker would receive graphic pictures of motor vehicle accidents, including pictures of bodies and the aftermath of the accidents.

FP also advised that he had gone into the worker's office a couple of times because the worker was having issues with his workload. According to FP, the worker was complaining about the amount of work had to do before the end of the week. FP advised that following his death, he went to the worker's office to pack up his personal belongings, but the worker had already done it.

Another co-worker, KM, advised the Field Investigator that his job was similar but not the same as the worker's. KM reported that on the day of the worker's death, the worker revealed to him that he was having a lot of stress at work and had been losing sleep due to work. According to KM, the worker was overwhelmed by work stress. KM had another conversation with the worker at the office and KM had expressed his excitement that he was almost done paying off his mortgage and he was looking forward to retirement. The worker responded that he would not be able to retire until 65 years of age. KM advised that these two conversations were significant to him because the worker was stoic and did not often comment on his work or workload.

As part of the investigation, the Field Investigator and a Board officer spoke with the worker's spouse and this conversation was a part of the December 14, 2020 memo. The spouse stated that the worker had been involved in a motor vehicle accident in his twenties and his leg had been amputated. Due to the effects of the accident, the worker had developed depression which was well managed over the years. The spouse indicated that the worker was an extremely capable person. According to the spouse, the worker did not show any problems with handling his caseload until the summer of 2019 when he took on a particular case at work. The spouse indicated that the worker had been distraught for a week. After a week, the worker had told the spouse that he had taken on a difficult file and he was really stressed out and it had brought him to tears. The worker told his spouse at that time that it was becoming too much for him. The spouse explained that that case had caused the worker a lot of emotional issues to the point where he thought he would lose his job. The spouse stated the worker said that if he lost his job, he would probably take his own life.

The spouse reported that on the day of his death, the worker had come home and told her that he had one of "those files". The spouse advised that the worker was distant and she could see the emotional stress on his face. The spouse explained that the worker was not himself during dinner. Later that evening, the worker went to take out the trash and left the residence. This was the last time the spouse saw the worker.

According to a February 21, 2020 coroner's report, the worker's immediate cause of death was a gunshot wound to the head.

In the chart notes from the worker's physician, a March 4, 2015 entry noted the worker was on prescription medication for a post-motor vehicle accident mood disorder. The last chart note of June 17, 2019 reported that the worker's mood was excellent at that time.

In a January 22, 2021 clinical opinion, Dr. C, Board Medical Advisor, advised that the evidence suggested the worker developed depressive symptoms after his left leg was amputated. Dr. C noted that there was no actual DSM diagnosis in any

of the records. The worker's mood disorder was reported to be stable throughout the chart notes on file.

In an April 16, 2021 clinical opinion, Dr. E, Board Psychology Advisor, advised that based on the available clinical records, the worker had a history of Major Depressive Disorder which first emerged following a non-compensable motor vehicle accident and subsequent left leg amputation. Dr. E further stated that the worker's depression was largely stable between March 2015 and June 2019. There were no medical records after June 2019 until the worker's death.

Dr. E advised that there were likely several factors which played a role in the worker's mental health status at the time of his death. Dr. E indicated that these included chronic depression treated with antidepressant medication for many years; chronic work stress, which appeared to have worsened starting in the summer of 2019 after being assigned a difficult case; discontinuation of long-term anti-depressant medication; and a more recent difficult file assignment. Dr. E advised that the worker's most recent employment could be characterized as a major contributing factor in his death with other factors such as discontinuation of his prescription medication one-month before his death likely also playing a major contributing factor.

The employer's representative submits that to accept of the worker's death was due to his employment and stressors related to his job duties is speculative and the Board's decision should be cancelled. The representative indicates that the Board speculated as to the cause of the worker's condition without sufficient evidence. The representative points out that it is not known what the worker meant when he said he was working on "another one of those files". The Board did not consider whether the case the worker was assigned was one involving horrific accident details or whether it was one involving a lawyer who was challenging to deal with. The representative submits there is no context in which to interpret the worker's remark to his spouse.

Further, the representative contends that there is no way to know what the worker meant with he told his spouse in the summer of 2019 that he "had taken on a difficult file". As noted in the Field Investigation memo, the representative indicates the worker was considered stoic and rarely communicated about his work.

As well, the representative contends that according to the "*Depression and Suicide Prevention Resource Toolkit*" produced by the Centre for Suicide Prevention, those suffering from depression are at 25 times greater risk for suicide than the general population. The representative indicates that the very presence of the worker's pre-existing non-compensable Major Depressive Disorder created a risk of suicide. Further, the representative points out that there were other stressors such as the worker's discontinuation of antidepressant

medication; financial stress; worries about the future with his employer; workload and his growing family was placing more financial stress.

The representative submits the evidence supports that the worker's job duties did not involve work that was excessive intensity or duration from what would be experienced in the normal pressures or tensions of his employment. The representative provides an affidavit of October 12, 2021 from MG, consultant, who had done the worker's job previously, that states as a claims adjudicator, the worker was not assigned a file until long after a motor vehicle accident occurred. MG further states that the worker was assigned files involving catastrophic injuries and major accidents, but he would have rarely been exposed to the intimate details of those injuries and accidents given the nature of the role of a senior claims adjudicator. Further, MG reviewed all of the worker's files and confirmed that none of those files contained any pictures of actual accident scenes or of injured/deceased persons.

The worker's representative submits that the worker's family physician, Dr. G, in a January 17, 2022 report, reports that the worker, over the years, advised that he was experiencing stress and emotion distress due to the nature of his job duties. Dr. G states that the worker reported the source of his stress was due to the similarities between the subjects of his files and his own injuries.

Further, the representative submits that the medical records show that the worker was compliant in taking his antidepressant medication as he was taking it regularly but perhaps not every day, extending a prescription to 4 to 6 months rather than the normal 3 months.

The worker's representative also submits that the Board's decision was based on the statements of the worker's co-workers and spouse as well as the job description provided by the employer. The representative requests that the decision be upheld.

In rebuttal, the employer's representative submits that Dr. G's evidence should not be relied on because Dr. G does not identify where and when these conversations took place. Further, a review of the chart notes do not support Dr. G's statements in the January 17, 2022.

Policy item C3-24.00, *Section 135 – Mental Disorders*, provides direction on the application and interpretation of section 135. This policy states that where a worker has a pre-existing mental disorder and claims that a traumatic event or a significant work-related stressor aggravated the pre-existing mental disorder, the claim is adjudicated with regard to section 135 and the direction in policy. Policy item C3-24.00 outlines five factors that should be considered in determining whether a worker has an acceptable mental disorder claim.

I will address each factor in turn.

- *Does the worker have a DSM diagnosed mental disorder?*
- *Was there one or more events, or a stressor, or a cumulative series of stressors?*
- *Were the events “traumatic” or the work-related stressors “significant”?*
- *Causation*
- *Section 135(1)(c) Exclusions*

*A. Does the worker have a DSM diagnosed mental disorder?*

Policy item C3-24.00 explains that section 135 of the *Act* requires more than the normal reactions to traumatic events or significant work-related stressors, such as being dissatisfied with work, upset or experiencing distress, frustration, anxiety, sadness or worry, as those terms are widely and informally used. The *Act* requires that a worker have a mental disorder that is diagnosed by a psychologist or a psychiatrist as a condition that is described in the most recent *DSM*. The policy notes that, as set out in the *DSM*, a *DSM* diagnosis generally involves a comprehensive and systematic clinical assessment of the worker.

According to Dr. E, the worker had a pre-existing Major Depressive Disorder. This is confirmed in the chart notes from the family physician, as well in Dr. G's January 2022 report. I am aware that there is no comprehensive assessment on file. However, I conclude that Dr. E's clinical opinion is sufficient for the purposes of this review, given that he had the benefit of all of the evidence on file including the statements from the worker's spouse and his co-workers as well as the medical evidence. As such, I find that this factor is met.

*B. Was there one or more events, or a stressor, or a cumulative series of stressors?*

Policy item C3-24.00 explains that the events or stressors complained of must be identifiable. According to the worker's spouse, the worker was struggling since the summer 2019 when he had been assigned a difficult file. Further, KM provided evidence that the worker's cases were causing him stress, causing him to lose sleep.

I acknowledge the submission from the employer's representative that the worker's job would not have exposed him to pictures or details of the motor vehicle accidents, relying on the affidavit from MG, who had worked in that position some years prior. However, I chose to place significant weight on the evidence from FP, who was in the same position and at the same time as the worker rather than MG, who worked in that position many years before. FP indicated that he and the worker received complex cases which would include the review of pictures and details of motor vehicles accidents and these cases could involve graphic pictures. FP further testified to the emotional impact these accident details had on him.

I am aware that MG also commented that there were no graphic pictures associated with the files assigned to the worker. However, it is difficult to evaluate this given MG's review occurred many months after the fact.

As such, I am satisfied that there is an identifiable series of stressors.

*C. Were the events "traumatic" or the work-related stressors "significant"?*

For the purposes of policy item C3-24.00, a "traumatic" event is an emotionally shocking event. The Board's Practice Directive C3-3, *Mental Disorder Claims*, explains that some common definitions of the terms "emotionally shocking" and "traumatic" include "extremely startling, distressing or offensive" and "deeply disturbing or distressing."

I am satisfied that the events as described were not traumatic given that the Practice Directive indicates that the worker would be a witness to these events. As the worker did not directly witness these events, I find that these events do not rise to the level of emotionality as contemplated by the law and the policy.

I next considered whether the events as described were significant stressors. Policy item C3-24.00 explains that all workers are exposed to normal pressures and tensions at work which are associated with the duties and interpersonal relations connected with the worker's employment. Interpersonal conflicts between the worker and his or her supervisors, co-workers or customers are not generally considered significant unless the conflict results in behavior that is considered threatening or abusive. A work-related stressor will be considered "significant" when it is excessive in intensity and/or duration from what is experienced in the normal pressures or tensions of a worker's employment.

In determining whether the stressor is significant, the worker's subjective statements and response to the stressor are considered. This question is not determined solely by the worker's subjective belief about the stressor. It involves both a subjective and objective analysis. According to the Practice Directive, consideration is given to whether a reasonable person, in the worker's situation and with the general characteristics of the worker, would expect to find the events to be significant stressors.

In reviewing the evidence, I find that the events as described which involved reviewing difficult files were significant stressors. I acknowledge the submission from the employer's representative that there was no way of knowing what the worker meant when he told his spouse he was dealing with one of "those files".

However, according to the worker's spouse, the worker began to struggle emotionally following the assignment of a difficult and complex file in the summer of 2019. At that time, the worker confided in his spouse that his work was

becoming too much for him and that it had brought him to tears. Given that the worker had confided into his spouse about what "those files" entailed, it is a reasonable conclusion that when the worker mentioned it on the day of his death that he was dealing with another of "those files", he meant the file was difficult and had an emotional impact on him.

Further, on the date of his death, the worker revealed to KM that he was experiencing a great deal of stress from his work, losing sleep as a result. I took into account that the worker is stoic and that for KM, this admission from the worker was quite significant and affirmed KM's own impressions and their emotional impact.

I also took into account FP's assessment of the type of work and cases he and the worker had to deal with. FP stated that these types of cases had an emotional impact on him. As such, I am satisfied that it is as least as likely as not that the cases would have a similar impact on the worker given his situation and general characteristics.

I acknowledge that the employer's representative submits that it is purely speculative that the worker's work had any impact or involvement in his mental health. However, I disagree. I find that it is as least as likely as not that it did given the testimony from FP, KM and the worker's spouse. In this case, I conclude that the worker's cases represented significant stressors, which were in excessive in intensity and duration from what is experienced in the normal pressures or tensions of the worker's employment.

#### *D. Causation*

As outlined in policy item C3-24.00, the *Act* requires that the mental disorder be a reaction to one or more traumatic events arising out of and in the course of the worker's employment or predominantly caused by a significant work-related stressor or a cumulative series of significant work-related stressors.

With respect to significant stressors, consideration is given to whether the events occurred at a time and place and during an activity consistent with, and reasonably incidental to, the obligations and expectations of the worker's employment. Further, the significant work-related stressor must be the predominant cause of the mental disorder. This means that the significant work-related stressor was the primary or a main cause of the mental disorder. Both parts of this requirement must be met for the mental disorder to be compensable.

I am satisfied that the worker's cases were sufficiently connected to his employment. Further, Dr. E addressed whether the worker's job duties were a predominant cause of the aggravation of his pre-existing Major Depressive Disorder. Dr. E stated that the worker's most recent employment was a major contributing factor in his death. I take this to mean that the worker's employment



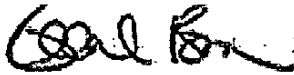
aggravated his pre-existing Major Depressive Disorder, which led to his death. I am aware that Dr. E identified other factors which may have contributed to an aggravation; however, I need not be concerned with those other factors as long as the worker's job duties were the predominant cause of the aggravation. In this case, I am satisfied that the evidence supports such a conclusion.

The employer's representative contends that the worker's pre-existing Major Depressive Disorder was likely the sole cause of his death. However, while there is no doubt that the worker had a pre-existing mental disorder, I find that it is as least as likely as not that the worker's job duties played a predominant role in the aggravation of his pre-existing Major Depressive Disorder.

In summary, I find that the worker had a pre-existing Major Depressive Disorder and that it is as least as likely as not that his employment duties, reviewing complex cases, were significant stressors. I conclude that these significant stressors were the predominant cause in the aggravation of his Major Depressive Disorder. Therefore, I need not address the fifth factor, the exclusion as provided in section 135(1)(c). I deny the employer's request.

#### **Conclusion**

As a result of this review, I confirm the Board's decision of June 18, 2021.



Pearl Poon  
Review Officer  
Review Division