

DECISION OF THE WORKERS' COMPENSATION APPEAL TRIBUNAL

WCAT DECISION DATE: April 30, 2019
WCAT DECISION NUMBER: A1801910
WCAT PANEL: Lyall Zucko

Appellant and Decision(s) Under Appeal

Appellant Name: James Windsor

Re: James Windsor

WCAT No. A1801910

Date of Decision Appealed: June 7, 2018

WorkSafeBC File No. R0231798, Claim No.(s): 29333311

WCAT DECISION DISTRIBUTION LIST

This decision is also sent to the following additional parties:

Kim Harding
202 - 9292 200th Street
Langley BC V1M 3A6
(Appellant/Applicant Representative)

Trevor Evans, Dynamic Windows & Doors Inc
30440 Progressive Way
Abbotsford BC V2T 6W3
(Respondent)

Steven Hodgins, Employers' Advisers Office
207 - 32555 Simon Avenue
Abbotsford BC V2T 4Y2
(Respondent Representative)

COPY

DECISION OF THE WORKERS' COMPENSATION APPEAL TRIBUNAL

Introduction

- [1] On September 25, 2017, the worker, a woodworker, submitted a mental disorder claim to the Workers' Compensation Board, operating as WorkSafeBC (Board). The worker related his mental disorder to a series of workplace incidents. He noted that the most recent incident included physical contact.
- [2] In an October 25, 2017 decision letter, the Board denied the worker's mental disorder claim on the basis that the requirements under section 5.1 of the *Workers Compensation Act* (Act) had not been met.
- [3] In *Review Division Decision #R0231798*, dated June 7, 2018 a Board review officer confirmed the October 25, 2017 Board decision letter. He concluded that the worker's mental disorder claim did not meet the requirements of section 5.1 of the Act.
- [4] The worker appealed *Review Division Decision #R0231798* to the Workers' Compensation Appeal Tribunal (WCAT). He requested that this appeal proceed by way of written submissions. I am satisfied, after reviewing the criteria set out in item #7.5 of the *WCAT Manual of Rules of Practice and Procedure*, that this appeal may be completed in such a manner.
- [5] The worker was represented by his union during the course of this appeal. The employer also participated in this appeal and was represented by an employers' adviser. WCAT received written submissions from both the worker and the employer.

Issue(s)

- [6] Is the worker entitled to acceptance of a mental disorder claim for post-traumatic stress disorder (PTSD) under section 5.1 of the Act?

Jurisdiction

- [7] This appeal was filed with WCAT under subsection 239(1) of the *Workers Compensation Act* (Act), which provides for appeals of final decisions by review officers regarding compensation matters, subject to the exceptions set out in subsection 239(2) of the Act.
- [8] Section 254 of the Act gives WCAT exclusive jurisdiction to inquire into, hear, and determine all those matters and questions of fact, law, and discretion arising or required to be determined in an appeal before it.
- [9] This is an appeal by way of rehearing, in which WCAT considers the records and also has jurisdiction to consider new evidence, and to substitute its own decision for the decision under

appeal. WCAT has inquiry power, including the discretion to seek further evidence, but is not obliged to do so. WCAT exercises an independent adjudicative function and has full substitution authority. WCAT may confirm, vary, or cancel the appealed decision.

- [10] I am required to apply the published policies of the board of directors of the Board, subject to the provisions of section 251 of the Act.
- [11] The standard of proof is the balance of probabilities, subject to subsection 250(4) of the Act. Subsection 250(4) states that if the appeal tribunal is hearing an appeal respecting the compensation of a worker and the evidence supporting different findings on an issue is evenly weighted in that case, the appeal tribunal must resolve that issue in a manner that favours the worker.

Background and Evidence

- [12] In a September 18, 2017 harassment investigation form, the employer's human resources manager outlined the following information:
- The worker reported a recent workplace incident with a co-worker. The co-worker threw a piece of wood onto the floor in front of the shaper machine. The co-worker told the worker to "f*** o**." The worker then bent down to pick up the piece of wood but the co-worker stepped onto the wood causing it to pull out of his hand. The worker felt that the co-worker prevented him from standing. The co-worker then picked up the piece of wood and held it up like he was going to hit the worker. The worker backed away from the co-worker.
 - The co-worker acknowledged that he kicked a piece of wood towards the shaper machine. He then stated that the worker came towards him and they started to "swear" at each other. He then placed his foot on the piece of wood and slid it towards himself as the worker bent down. The worker did not touch the piece of wood. He then picked up the piece of wood. Another co-worker came towards them and told them to separate. He then went and cut the piece of wood into pieces and put it in the trash.
 - Another co-worker advised that he witnessed that last part of a workplace incident between the worker and the co-worker. He came around the corner and the worker and the co-worker were "yelling at each other." The co-worker told the worker to "stop being such a baby." The worker then told the co-worker to "f*** o**." He told the worker and the co-worker to stop and go back to work. He did not notice a piece of wood.
 - Another co-worker advised that he was working on a veneer saw. He observed that the worker and co-worker were "yelling" at each other. He did not see the worker bend down. He saw the co-worker move his foot and then bend down to pick up a piece of wood. The co-worker held the piece of wood at his side.
- [13] In a September 20, 2017 letter, the employer advised the worker and the co-worker that they were expected to work cooperatively, respect each other, refrain from using vulgar language and not speak or act aggressively. The employer also noted that any further workplace incidents could result in unpaid suspensions.

- [14] On September 21, 2017, the worker attended at a walk-in-clinic for medical attention. Attending physician Dr. Insanally recorded the worker's report of bullying at work, specifically being physically assaulted on August 31, 2017. Dr. Insanally indicated that the worker had developed stress because of the workplace bullying.
- [15] In a September 25, 2017 written statement, the worker provided the following additional information about three recent workplace incidents with the same co-worker:
- The worker had previously commuted to work with the co-worker in question. However, he decided to get his own car because the co-worker regularly smoked marijuana during the commute.
 - In July 2017, he needed an empty wood scrap box for his chop saw. He found a scrap box in a corner with a small bundle of sash blanks. He placed the bundle of sash blanks on an empty flat cart near the speed sander. He then turned around to take the scrap box but the co-worker "got in his face" in an aggressive manner. The co-worker shouted that it was his cart. The co-worker grabbed the bundle of sash blanks and aggressively forced them into his hands. The co-worker then knocked the bundle of sash blanks out of his hands, pushed passed him with the cart and ran over the bundle of sash blanks with the cart.
 - He reported the July 2017 workplace incident to his employer. The co-worker subsequently came over to the worker and indicated that the workplace incident was a "bad moment." However, the co-worker refused to shake his hand.
 - In July 2017, several days later, he was working on grids. The co-worker held up a grid that was on his work bench and shouted. He held up his hand in response because he had to finish gluing a grid. He then walked over to the co-worker's work bench to retrieve the grid but the grid had been thrown on the floor. He picked up the grid, noticed that one corner had been damaged and then returned to his work bench to repair the grid.
 - On August 31, 2017, he went to work on the shaper machine which was near the co-worker's work bench. He noticed a five-foot piece of wood on the floor in front of the machine. He asked the co-worker if it was his piece of wood. The co-worker said "yes" and "f*** o**." He then bent down to pick up the piece of wood because it was a safety hazard. The co-worker stepped on the piece of wood so he could not pick it up. The co-worker also stood over him with his knee against his ribs so he was not able to stand up. The co-worker then bent over and picked up the piece of wood so he stood up. The co-worker looked him in the eye and in a mocking fashion said "Whoaaaaa." He then mocked the co-worker in the same fashion. He also shouted at the co-worker that he was a "moron" and the co-worker shouted back that he was a "baby". The co-worker raised the piece of wood in a threatening manner as if he planned to strike the worker. As a result, he turned and walked away.
 - On August 31, 2017, later in the day, he walked by the co-worker's workbench near the end of the shift and the co-worker blew sawdust on him with a high pressure air hose. He told the co-worker that he did not like that and stated that, if he "wants problems", he will "give him problems." He then put his tools away and left the workplace as quickly as possible. He

was worried about what the co-worker might potentially do to him in the parking lot or on the drive home. He had difficulty sleeping that night, even though he had started a two-week vacation. He reported the incident to his union shop steward and provided a written statement.

- On September 18, 2017, he returned to work after his two-week vacation. He told the shop steward that he wanted the August 31, 2017 workplace incident to be treated as workplace harassment and assault.
- On September 20, 2017, he was called into a meeting with his foreman, the shop steward and the co-worker. The foreman advised the worker and the co-worker that any further workplace incidents would result in unpaid suspensions. He left the meeting after calling the co-worker a "liar."
- He concluded by stating that the August 31, 2017 workplace incident went well beyond harassment and crossed the line into assault. He also indicated that this workplace incident had affected his health and well-being resulting in anxiety, difficulty sleeping and difficulty eating.

- [16] In a September 28, 2017 employer's report of injury, the employer advised that an investigation into the worker's report of an August 31, 2017 workplace incident with a co-worker had not provided adequate proof of what happened. The employer noted that a witness had supported the co-worker's description of the incident.
- [17] On September 29, 2017, walk-in-clinic physician Dr. Krueger examined the worker and documented his report of long-term workplace bullying. The worker stated that, in July 2017, a co-worker deliberately knocked a piece of wood out of his hand. The employer was advised of this workplace incident but did not do anything. The worker also stated that, on August 31, 2017, the same co-worker stepped on a piece of wood that the worker was trying to pick up off the ground. The co-worker also used intimidating language, "swore" at him and lifted a piece of wood as if to hit him. Dr. Krueger noted that the worker advised that he continued to relive those workplace incidents and was "scared" and "anxious" because he felt the co-worker might attack him. Dr. Krueger diagnosed anxiety.
- [18] In an October 3, 2017 letter to the Board, the employer advised that there had been some workplace interpersonal conflict between the worker and a co-worker over the last couple of months. The employer indicated that its investigation of the August 31, 2017 workplace incident had not revealed proof that the co-worker had assaulted the worker.
- [19] In an October 3, 2017 letter to the worker, the employer indicated that it was open to the worker to return to work on the afternoon shift so he did not have to work with the co-worker.
- [20] On November 8, 2017, Dr. Krueger re-examined the worker and documented his report of ongoing flashbacks of the workplace incidents with the co-worker. The worker experienced great anxiety when contemplating a return to work. Dr. Krueger noted that the worker had lost 15 pounds and had low mood. Dr. Krueger diagnosed an adjustment disorder related to

situational stress/anxiety. Dr. Krueger recommended that the worker continue to stay away from work until December 22, 2017.

- [21] On January 16, 2018, Dr. Krueger re-examined the worker and documented that psychological testing had revealed moderate anxiety and depression.
- [22] In a February 23, 2018 written submission to the Board's Review Division, the worker's union representative questioned whether the employer's investigation of the August 31, 2017 workplace incident was complete. The employer did not take into consideration the surroundings of the work area in question. For example, the employer did not take into consideration that the witnesses would not have been able to see the August 31, 2017 workplace incident. The witnesses were only able to hear the worker and the co-worker. The representative stated that the employer acknowledged that the co-worker knocked a piece of wood out of the worker's hand, "yelled" at the worker and "argued" with the worker. The representative then stated that the August 31, 2017 workplace incident was clearly a traumatic event as the worker was threatened, abused, intimidated and humiliated. Therefore, the worker's mental disorder claim should be accepted as it meets the criteria under section 5.1 of the Act. The representative also provided a drawing of the work area and seven photographs of the work area.
- [23] In an April 3, 2018 written submission to the Board's Review Division, the employers' adviser indicated that the employer supported the decision of the Board to deny the worker's mental disorder claim under section 5.1 of the Act. The criteria for acceptance of a mental disorder claim had not been met. The worker had not been diagnosed with a psychological condition. The described workplace incidents with the co-worker were normal workplace interpersonal interactions rather than traumatic events or a series of workplace stressors. The worker had not been threatened or abused by the co-worker. There was nothing emotionally shocking, unusual or distinct about the workplace incidents. The described workplace incidents also were not of an intensity or duration that would be considered excessive.
- [24] In a May 1, 2018 written rebuttal submission to the Board's Review Division, the worker stated that the August 31, 2017 workplace incident clearly was traumatic as it included physical contact with the co-worker.

Submissions

- [25] In a December 7, 2018 submission to the WCAT, the worker's union representative reiterated that the worker's position was that the circumstances of his claim were consistent with the criteria for a mental disorder claim under section 5.1 of the Act. The representative then outlined the following:
- The worker had recently been diagnosed with a mental disorder. Registered psychologist Dr. Penner diagnosed post-traumatic stress disorder (PTSD) related to workplace incidents with a co-worker. Dr. Penner's consultation report was also attached.
 - Policy item #C3-13.00 of the Board's *Rehabilitation Services and Claims Manual, Volume II* (RSCM II) provides information about what constitutes a workplace traumatic event or series

of traumatic events and what constitutes a workplace stressor or cumulative series of stressors. Traumatic event or events are “emotionally shocking” which is generally unusual and distinct from the duties and interpersonal relations of a worker’s employment. A significant stressor or stressors are identified as stressors that are different from the normal workplace stressors and would be assessed by a reasonable person as significant. It also outlines that interpersonal conflicts are not considered significant unless the conflict results in behaviour that is considered threatening or abusive.

- The Board and the Board review officer placed too much emphasis on the results of the employer’s investigation of the workplace incidents, especially the August 31, 2017 workplace incident. A close look at the descriptions of the workplace incidents reveal a pattern of threatening behaviour on the part of the co-worker. He knocked a box out of the worker’s hand. He damaged a piece of property he thought belonged to the worker. He also “yelled at” the worker and “name-called.” The worker even reported feeling fearful when he was in physical proximity with the co-worker and worried that he would be physically assaulted.
- A reasonable person would be expected to consider the co-worker’s workplace behaviours, which all took place in a short period of time, to be threatening. Those workplace incidents were not normal pressures of employment and go beyond what can be deemed to be regular interpersonal conflicts in the workplace.
- The employer’s investigation was concerned with determining the appropriate labour relations response. It was not undertaken to determine the level of trauma sustained by the worker. Therefore, the clinical records and reports need to be considered in order to assess the impact the workplace incidents had on the worker. Dr. Penner diagnosed PTSD related to traumatic workplace events.
- In summary, the described workplace incidents meet the criteria for traumatic workplace events or a cumulative series of workplace stressors. Furthermore, Dr. Penner has linked the worker’s PTSD diagnosis to the described workplace incidents. Therefore, the worker’s mental disorder claim should be accepted under section 5.1 of the Act.

[26] The worker’s union representative also attached the following new document:

- In a November 19, 2018 medical letter, Dr. Penner recorded that the worker was examined on September 28, 2018 and underwent psychological testing on October 3, 2018. Dr. Penner advised that the worker reported experiencing psychological and emotional difficulties following a series of workplace incidents in the summer of 2017. The worker reported ongoing nightmares, intrusive memories related to the workplace incidents and actively avoided reminders of those incidents. Dr. Penner diagnosed PTSD and noted that the worker questioned himself constantly and was overwhelmed with feelings of worthlessness, helplessness and powerlessness. Dr. Penner also concluded that the worker’s diagnosed PTSD was caused by workplace incidents occurring in the summer of 2017.

- [27] In a December 19, 2018 submission to the WCAT, the employers' adviser acknowledged the submission from the worker's union representative, including the expert opinion evidence, but noted that the "reasonable test" was one of law and policy and not simply based on expert opinion evidence. The adviser then suggested that a change in friendship was not a work-related issue and went beyond the workplace so was not compensable under the mental disorder provisions. This situation was clearly in the realm of personal interactions and so not compensable.
- [28] In a January 2, 2019 rebuttal submission, the worker's union representative reiterated that the evidence supported that the worker's situation meets the statutory criteria for acceptance of a mental disorder under section 5.1 of the Act. The workplace incidents described by the worker were clearly traumatic as they were unusual and distinct from his work activities and interpersonal relations. The workplace incidents were not part of the worker's expected workplace duties or relations. The co-worker's interactions with the worker increased in intensity and severity over the course of a short period of time moving from normal workplace interpersonal conflicts to traumatic and significant workplace events and interactions. The representative concluded by stating that the evidence with respect to the workplace incidents coupled with Dr. Penner's diagnosis of PTSD demonstrated that the worker developed a compensable mental disorder.
- [29] In a January 3, 2019 additional rebuttal submission, the worker's union representative requested that the worker receive reimbursement for the cost of Dr. Penner's expert opinion evidence. She also attached Dr. Penner's November 19, 2018 invoice which equaled \$175.00.

Reasons and Findings

- [30] On May 17, 2018, the *Workers Compensation Amendment Act, 2018* ("Bill 9") came into force by Royal Assent. Bill 9 adds a mental disorder presumption to the Act for correctional officers, emergency medical assistants, firefighters, police officers and sheriffs who are exposed to one or more traumatic events as part of their employment.
- [31] The Board amended policy item C3-13.00 (Section 5.1 – Mental Disorders) of the RSCM II and added policy item C3-13.10 (Section 5.1(1.1) – Mental Disorder Presumption) to the RSCM II effective July 23, 2018 to address Bill 9. These amendments apply to all decisions made by the Board and WCAT respecting claims that involve section 5.1 of the Act made on or after July 23, 2018. As such, the amended policy items apply to this appeal.
- [32] The worker did not submit, nor does the evidence establish, that he was employed in an eligible occupation pursuant to subsection 5.1(1.1) of the Act. As such, the presumption in subsection 5.1(1.1) does not apply in this case. I will adjudicate the worker's claim pursuant to subsection 5.1(1) of the Act and policy item C3-13.00 of the RSCM II.

[33] Subsection 5.1(1) of the Act provides:¹

Subject to subsection (2), a worker is entitled to compensation for a mental disorder that does not result from an injury for which the worker is otherwise entitled to compensation, only if the mental disorder

(a) either

- (i) is a reaction to one or more traumatic events arising out of and in the course of the worker's employment, or
- (ii) is predominantly caused by a significant work-related stressor, including bullying or harassment, or a cumulative series of significant work-related stressors, arising out of and in the course of the worker's employment,

(b) is diagnosed by a psychiatrist or psychologist as a mental or physical condition that is described in the most recent American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders² at the time of the diagnosis, and

(c) is not caused by a decision of the worker's employer relating to the worker's employment, including a decision to change the work to be performed or the working conditions, to discipline the worker or to terminate the worker's employment.

[34] Policy item C3-13.00 of the RSCM II sets out the decision-making principles for determining a worker's entitlement to compensation under subsection 5.1(1) of the Act. The policy essentially breaks down the test in subsection 5.1(1) of the Act into five questions, which I will consider below.

[35] I have also considered Interim Practice Directive #C3-3 (Mental Disorder Claims). While not binding on me, this practice directive provides guidance on the interpretation of the Act and policy items regarding mental disorders.

A. Does the worker have a DSM-5 diagnosed mental disorder?

[36] I accept the uncontradicted opinion evidence of Dr. Penner. Dr. Penner conducted a psychological assessment and concluded that the worker has developed a DSM-5 diagnosed mental disorder, namely PTSD.

¹ all quotations are reproduced as written, unless otherwise indicated

² Currently the DSM-5

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

- [37] Policy item C3-13.00 advises that in all cases, the event(s) and stressor(s) must be identifiable. The worker's subjective statements and response to the event(s) or stressor(s) are considered, and the Board also verifies the event(s) or stressor(s) with information from co-workers, supervisory staff, and others.
- [38] I am satisfied that the evidence demonstrated that the worker was exposed to identifiable events and stressors. The worker provided descriptions of two workplace incidents in July 2017 and a further more serious workplace incident on August 31, 2017. The employer conducted an investigation which confirmed that those workplace incidents occurred. I do note that the employer questioned whether the August 31, 2017 workplace incident occurred in the exact manner described by the worker based on evidence provided by the co-worker and several witnesses.
- [39] I accept that the two July 2017 workplace incidents occurred as described by the worker and summarized above.
- [40] I also accept that the August 31, 2017 workplace incident occurred basically as described by the worker and summarized above. The worker went to work on the shaper machine which was near the co-worker's work bench. He noticed a five-foot piece of wood on the floor in front of the machine. He asked the co-worker if it was his piece of wood. The co-worker said "yes" and "f*** o**." He bent down to pick up the piece of wood because it was a safety hazard. The co-worker stepped on the piece of wood so he could not pick it up. The co-worker also stood over him with his knee against his ribs so he was not able to stand up. The co-worker then bent over and picked up the piece of wood so he stood up. The co-worker looked him in the eye and in a mocking fashion said "Whoaaaaa." He then mocked the co-worker in the same fashion. He also shouted at the co-worker that he was a "moron" and the co-worker shouted back that he was a "baby". However, I do not accepted that the co-worker raised the piece of wood in a threatening manner as if he planned to strike the worker. The witness evidence indicated that the co-worker held the piece of wood at his side.

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

- [41] In the written submission on this appeal, the worker's union representative has suggested that the worker was exposed to both traumatic events and significant work-related stressors.
- [42] The practice directive notes that policy item C3-13.00 of the RSCM II does not define the terms "emotionally shocking" or "traumatic," but that common to those terms is an element of emotional intensity as well as distinctiveness from the ordinary course of events. The practice directive notes that *Black's Law Dictionary* defines "shock" as, "a profound and sudden disturbance of the physical or mental senses, a sudden and violent physical or mental impression." "Mental shock" is more specially defined as, "shock caused by agitation of the mental senses and resulting in extreme grief or joy." The *Merriam Webster Online Dictionary* defines "shocking" as, "extremely startling, distressing or offensive." The *Concise Oxford Dictionary* defines "traumatic" as, "deeply disturbing or distressing."

- [43] I find that the July 2017 workplace incidents described by the worker were not sufficiently unusual and distinct as to rise to the level of being traumatic pursuant to the Act and Board policy. In my view, those described workplace incidents lacked an element of danger or intensity to establish that they were emotionally shocking.
- [44] On the other hand, I find that the August 31, 2017 workplace incident was sufficiently unusual and distinct as to rise to the level of being traumatic pursuant to the Act and Board policy. The co-worker physically dominated the worker. He stepped on the piece of wood so the worker could not pick it up off the ground. He stood over the worker with his knee in the worker's side stopping him from rising. He then picked-up the piece of wood and held it at his side while shouting and swearing at the worker. These actions of the co-worker, when taken as a whole, created a clear and very real physical threat which was emotionally shocking and had an element of real danger. The worker feared for his safety and, after that incident, left the workplace as quickly as possible because of that fear.

D. Causation

- [45] Policy item C3-13.00 of the RSCM II advises that the Act requires that the mental disorder be predominantly caused by a significant work-related stressor, or a cumulative series of significant work-related stressors, arising out of and in the course of the worker's employment.
- [46] Once again, I accept the uncontradicted opinion evidence of Dr. Penner. Dr. Penner concluded that the worker's PTSD was caused by the workplace incidents in the summer of 2017, including the August 31, 2017 workplace incident.

E. Paragraph 5.1(1)(c) Exclusions

- [47] Policy item C3-13.00 of the RSCM II provides that there is no entitlement to compensation if the mental disorder was caused by a decision of the worker's employer relating to the worker's employment.
- [48] The worker has expressed dissatisfaction with the employer's handling of his complaints about the co-worker. However, I am not satisfied that the exclusion in paragraph 5.1(1)(c) of the Act applies because the worker's PTSD has been related to the August 31, 2017 workplace incident not the employer's handling of that incident.
- [49] The co-worker's position included a supervisory component but the evidence did not suggest that the described August 31, 2017 workplace incident was in any way related to his supervision of the worker's work activities. For this reason, I am not satisfied that any of the other exclusions in paragraph 5.1(1) of the Act apply in this case.

Summary

- [50] I find sufficient support in the evidence for a conclusion that the worker's claim for a mental disorder under section 5.1 of the Act ought to be accepted. The worker's mental disorder claim is accepted for his diagnosed PTSD. As a result, I allow the worker's appeal.

Conclusion

- [51] I allow the worker's appeal and vary *Review Division Decision #R0231798*. The worker developed a mental disorder, specifically PTSD, arising out of and in the course of his employment, as contemplated by section 5.1 of the Act.
- [52] Item #16.1.3 of the *Manual of Rules of Practice and Procedure* (MRPP) provides that WCAT will generally order reimbursement of the expense of obtaining written evidence for the appeal regardless of the result in the appeal, if the evidence was useful in the consideration of the appeal, or it was reasonable for the party to have sought the evidence.
- [53] Item #16.1.3.2 of the MRPP provides that WCAT may authorize reimbursement for expenses associated with obtaining or producing evidence submitted to WCAT even if that evidence was previously submitted to the Board or the Board's Review Division. For example, WCAT could provide reimbursement for a report if the Board or the Board's Review Division had previously denied reimbursement for that report but the WCAT panel found the report to be useful or helpful in conducting the appeal.
- [54] I note that WCAT generally reimburses psychological expenses based on the Board's Psychology Fee Schedule.
- [55] I find that it was reasonable for the worker to have obtained Dr. Penner's psychology assessment report to support his appeal. Dr. Penner's fee was also in keeping with the Board's Psychology Fee Schedule. Accordingly, I order the Board to reimburse the worker for the expense of obtaining Dr. Penner's psychology assessment report for the full amount of \$175.00.
- [56] There has been no request for reimbursement of any other appeal expenses. Consequently, I make no other orders in this regard.



Lyall Zucko
Vice Chair

ADVISORY NOTICE

The enclosed WCAT decision is final and conclusive pursuant to section 255 of the *Workers Compensation Act*. It cannot be appealed. The Workers' Compensation Board, operating as WorkSafeBC (Board), must comply with a final decision of WCAT.

A copy of this decision has been sent to the Board to ensure that:

- the decision is placed on the appropriate Board case file;
- the Board takes the necessary steps to implement the decision (if applicable).

NOTE: If you have any questions concerning the implementation of this decision, please contact the Board officer or department that is handling the case file.

For telephone inquiries:

Local call: **604-273-2266**
Toll free: **1-888-967-5377**

If you are writing to the Board, please mail correspondence to:

WorkSafeBC
PO Box 4700 Stn Terminal
Vancouver, BC V6B 1J1

or fax to:

WorkSafeBC
Local fax: **604-233-9777**
Toll free: **1-888-922-8807**

For workplace health and safety inquiries:

Local call: **604-276-3100**
Toll free: **1-888-621-7233**

For employer assessment inquiries:

Local call: **604-244-6181**
Toll free: **1-888-922-2768**

For information on processes that may be available to you after this decision, see WCAT's Post Decision Guide available on our website at www.wcat.bc.ca.

Time limits apply to some of these processes.