

Interested Parties List

Re: Review Reference #: R0119660
Board Decision under Review: August 3, 2010

Copy provided to the following:

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REVIEW DECISION

Re: Review Reference #: R0119860
Board Decision under Review: August 3, 2010

Date: January 25, 2011

Review Officer: Allan Wotherspoon

The worker requests a review of the August 3, 2010 decision of the Workers' Compensation Board ("the Board"), which operates as WorkSafeBC. The worker is represented by a solicitor, who made written submissions in support of the request for review. The employer was given notice of the review, but is not participating.

Section 96(6) of the *Workers Compensation Act* (the "Act") gives a Review Officer authority to conduct this review.

Issue

The issue before me is whether the worker sustained a compensable mental stress injury.

Background and Evidence

The worker is the general manager for a dog tour company. On May 7, 2010, the worker filed an Application for Compensation for Post Traumatic Stress Disorder ("PTSD"). In his application, the worker stated that he had to put down 30% of the company's herd, approximately 70 animals. The Employer's Report of Injury was filed on May 18, 2010. In it, the employer indicated that 100 dogs had been put down on April 21 and 23, 2010. The employer did not protest acceptance of the claim.

On July 5, 2010, the Board received chart notes from Ms. R, a clinical counselor treating the worker. The chart notes indicated that the worker had been treated in late 2009 after euthanizing a number of dogs. The chart notes indicated that the worker was being treated for stress. However after the herd reduction on April 21 and 23, 2010, an April 28, 2010 chart note indicated treatment for PTSD.

On August 1, 2010, the Board Case Manager ("CM") spoke, at the worker's request, with the worker's wife and was told the following:

- The worker developed PTSD as a result of having to put down a large number of dogs. Due to a slow winter season, approximately 100 dogs were euthanized.
- The worker had been employed with the company for many years and had known a lot of dogs over the years. He had named and raised a lot of the dogs that were put down.

- The worker has having panic attacks and difficulty sleeping.
- Attempts were made to adopt out as many dogs as possible.
- Part of the worker's job included herd control; what made it different on this occasion was the large number of dogs involved.

In the August 3, 2010 decision letter before me on this review, the CM did not allow the worker's claim on the basis that his PTSD did not arise out of a sudden and unexpected traumatic event.

Submissions:

In support of the request for review, the worker's solicitor made an extensive written submission which included a statutory declaration from the worker providing additional evidence not before the CM, written argument, additional medical records and case law supporting the solicitor's submissions. I will only briefly summarize its contents.

In his statutory declaration, the worker stated the following:

- His employer provides dog sled tours. His duties include feeding, caring for and generally handling hundreds of dogs. He resides at the same location as the dogs and describes his position as similar to that of a farmer, in that he must be available to attend the animals seven days a week at all hours.
- Among his duties, he occasionally euthanized animals.
- Normally he has euthanized only a single dog at a time, but on rare occasions has euthanized four or five at a time. In the past, he has euthanized dogs due to old age, illness, injury and where there were unwanted puppies. All prior culls were done with the support and approval of a veterinarian.
- In the past, his practice when euthanizing a dog was to take it for a walk in the woods and give them a nice meat meal to distract them. That would make for a calm environment and kept the dogs away from the general population so as not to disrupt them. He would use a gun to euthanize the dogs.
- On April 21 and 23, 2010, he was tasked to cull the employer's herd by approximately 100 dogs. The size of the cull meant that he had no choice but to euthanize the dogs in full view of other dogs slated to be euthanized. A veterinarian was contacted, but refused to euthanize healthy animals. Attempts were made to adopt out the dogs with only limited success.
- The worker had raised many of the dogs he had to euthanize from birth, named them, and had developed a strong emotional bond of mutual love and trust with them.
- On April 21, 2010, he noticed that the dogs were getting harder to handle by about the 15th dog. It appeared to him that the dogs were experiencing

anxiety and stress from observing the euthanasia of other members of the pack and were panicking.

- As a result of the panic, mid-way through April 21st, he wounded but did not kill one dog, "Suzie". Suzie was the mother of his family's pet dog "Bumble". He had to chase Suzie through the yard because the horrific noise she made when wounded caused him to drop the leash. Although she had the left side of her cheek blown off and her eye hanging out, he was unable to catch her. He then obtained a gun with a scope and used it to shoot her when she settled down close to another group of dogs. When he went to gather her body he was attacked by one of the other dogs and bitten in the arm. Although because he had a thick shirt on he was not injured, the moment was horrific given his fear when attacked combined with his feelings about the culling of the dogs.
- After disposing of Suzie's body, he noticed that another dog, "Poker" was injured. He realized that when he shot Suzie, the bullet passed through and injured Poker. Poker was covered in blood from a neck wound and covered in his own feces. He believed that Poker suffered for approximately 15 minutes before he could be put down. Poker had not been slated to be euthanized and was one of his favorites.
- On April 21, 2010, he put down approximately 55 dogs. As he neared the end of the cull that day, the dogs were so panicked they were biting him; he had to wrap his arms in foam to prevent injury. He also had to perform what he described as "execution style" killings where he wrestled the dogs to the ground and stood on them with one foot to shoot them. The last few kills were "multiple-shot" killings as he was simply unable to get a clean shot. He described a guttural sound he had never heard before from the dogs and fear in their eyes.
- The incidents on April 23, 2010 were worse than those on April 21, 2010.
- The fear and anxiety in the herd began almost immediately. Many of the killings were multiple-shot-execution-style and it took a great amount of time and wrestling to get the dogs in a position to be put down.
- The first significant incident on April 23, 2010 occurred when he noticed that a female, "Nora", who he had shot approximately 20 minutes before, was crawling around in the mass grave he had dug for the animals. He had to climb down into the grave amidst the 10 or so bodies already there, and put her out of her misery.
- Shortly thereafter, he grazed an uncooperative male, taking off part of his head. The dog bolted and the worker realized he was out of ammunition. When he went to get more, he was attacked by the dog and had to kill the dog with his knife, by slitting its throat while the dog was on top of him.
- After the incident with the male, he switched to using a rifle to euthanize the dogs as the stress level of the herd was so high he felt he would otherwise have to chase after many of them.
- By that point he wanted nothing more than to stop the "nightmare" but he continued because he had been given a job to finish and did not want to prolong the suffering and anxiety of the whole kennel population. He stated that he felt "numb".

- His memory of the final 15 dogs is fuzzy. Some he shot cleanly, others he had to chase. In some cases it was simply easier to get behind the dogs and slit their throats and let them bleed out. By the end he was covered in blood.
- When he finished he cleaned up the mess, filled in the mass grave and tried to bury the memories as deeply as he could.
- Soon afterwards he sought professional help. On April 28, 2010 he saw Ms. R. He had seen her in the past after he had euthanized small numbers of dogs. Ms. R diagnosed him with PTSD.
- Despite counseling, he has continued to deteriorate mentally and emotionally.
- Prior to the mass cull on April 21 and 23, 2010, he did not have any signs of PTSD or dissociative symptoms.

The chart notes from the worker's family physician, Dr. P. indicated that the worker was seen on May 27, 2010, complaining of poor appetite, inability to cope, poor memory and concentration, agitation, anger and hopelessness after the mass culling. They do not contain any indication of PTSD and/or dissociative symptoms prior to April 21, 2010.

In a October 3, 2010 clinical assessment, Dr. M, a psychologist, noted that the worker complained of panic attacks, nightmares, sleeps disturbance, anger, irritability and depressed mood since culling approximately 100 dogs. When first seen by Dr. M, the worker became so distressed when describing the events that it was necessary to stop and begin a series of calming and grounding activities. Dr. M noted that, in addition to the symptoms of PTSD, the worker exhibited dissociative symptoms.

Dr. M provided a diagnosis of PTSD with dissociative symptoms. Dr. M concluded that it was "highly probable" that the dog cull was responsible for the worker's symptoms and condition.

I paraphrase the worker's solicitors' submissions as follows:

- The worker suffered an acute reaction to a sudden, unexpected and traumatic event which gave rise to the diagnosed PTSD condition with dissociative symptoms.
- The claim is not based on the cull itself; rather, it is based on the events which occurred during the cull, specifically the accidental wounding of some of the dogs, the near misses, and what occurred thereafter.
- It does not matter that the worker had euthanized dogs before without suffering such a reaction. In this case, the culling resulted in a number of events that were unexpected and sudden. Additionally, the "mass-cull" was unique in its size, not only in respect of the worker's experience, but in all of Canada.
- While Board policy indicates that a mental stress injury manifesting as a result of a series of cumulative mental stress injuries over time is not

compensable, in this case, the incidents during the cull occurred close enough in time to each other that they should be considered a single event. In the alternative, the final incident where the worker was attacked by the wounded male dog and eventually dispatched with a knife was of as sufficient magnitude in and of itself to have triggered the worker's condition.

Reasons and Decision

Mental stress claims are dealt with under section 5.1 of the Act which provides that a worker is entitled to compensation for mental stress only if the following conditions are met:

- The mental stress is an acute reaction to a sudden and unexpected traumatic event arising out of and in the course of the worker's employment;
- The mental stress is diagnosed by a physician 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 Disorders (the "DSM") at the time of the diagnosis, and;
- The mental stress 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.

The policies relating to this review are found in *Rehabilitation Services and Claims Manual*, Volume II ("RSCM"). The board of directors has approved changes to the policies on compensation for personal injury in Chapter 3 of the RSCM; however, these new policies only apply to claims for injuries, mental stress or accidents that occur on or after July 1, 2010. Since the worker's injury occurred before July 1, 2010, the previous Chapter 3 policies apply to this review.

The policy with respect to mental stress claims is set out in policy item #13.30, of the RSCM, *Mental Stress*. The policy provides that there is a two step test.

1. There must be an acute reaction to a sudden and unexpected traumatic event.
2. The sudden and unexpected traumatic event must arise out of and in the course of employment.

The policy notes that an acute reaction is one which comes to crisis quickly; typically it is immediate and identifiable. The policy does note however that the acute reaction may be delayed. A traumatic event is an emotionally shocking event that is clearly and objectively identifiable and sudden and unexpected in the course of the worker's employment.

Amendments to policy item #13.30 were approved by the Board of Directors on July 14, 2009 (and made effective to all decisions, including appellate decisions, on or after April 30, 2009). The amendments included the addition of a definition of a "traumatic" event as an emotionally shocking event and deletion of the requirement for the event to be generally accepted as traumatic. The effect of this deletion is that an adjudication of whether a reasonable person would have considered the event to be traumatic is no longer needed.

The only evidence before me with respect to what occurred on April 21 and 23, 2010 is that set out in the claim file and the worker's statutory declaration. There is no contradictory evidence before me; thus I accept the worker's account of what occurred without reservation.

Applying the two step test together, I find that there was a sudden and unexpected traumatic event arising out of the worker's employment. I find that I do not need to decide whether all of the incidents which occurred on April 21 and 23, 2010 were close enough together in time that they should be considered a single event. I am satisfied that the final incident described by the worker, where he was attacked by the wounded male dog on April 23, 2010 was both unexpected and traumatic. Notwithstanding the absence of physical injury to the worker, the circumstance where the worker found himself on his back, fighting off a wounded sled dog and eventually dispatching it with a knife, was emotionally shocking such as to constitute a sudden and traumatic event within the provisions of the new policy item #13.30.

I also find that the worker had an acute reaction to the accident. Although it is not clear exactly when the worker's PTSD symptoms first manifested, they were documented by Ms. R in her April 28, 2010 chart notes. As noted in policy item #13.30, the reaction is typically immediate and identifiable. However, in certain situations, the acute reaction may be delayed. In all cases, the evidence must establish that the acute reaction is due to a sudden and unexpected traumatic event that arose out of and in the course of employment.

Although it may not have been immediate, I conclude that the worker's reaction was acute, in that it manifested within five days of the incident.

In my view, the reports from Ms. R, Dr. P and Dr. M support that the worker's psychological symptoms, diagnosed by Dr. M as PTSD with dissociative symptoms, arose out of and in the course of the worker's employment on April 23, 2010. Although I do note that the worker had earlier received counseling from Ms. R for stress arising out of an earlier culling of five dogs, in this case, Dr. M has provided a diagnosis for the worker's psychological symptoms separate and apart from his earlier symptoms. I accept Dr. M's diagnosis and his conclusion that it resulted from the mass cull. I find that the worker has been diagnosed with a mental condition, specifically PTSD with dissociative symptoms, described in the DSM and that this mental condition is an acute

reaction to a sudden and unexpected traumatic event which occurred on April 23, 2010. Accordingly, I allow the worker's request for review.

The worker sought reimbursement for costs incurred in producing evidence, specifically Dr. P's chart notes and Dr. M's medical-legal report.

Board policy #100.50, *Expenses Incurred in Producing Evidence*, authorizes the reimbursement of expenses involved in the production of evidence in certain circumstances. I find that Dr. P's chart notes and Dr. M's medical-legal report fall within the ambit of this policy. It appears reasonable for the worker to have assumed that obtaining this evidence was necessary. The Board is therefore directed to reimburse the worker for the cost of these medical opinions, up to the rate specified in the Board's fee schedules. If no rate is specified, the worker should be reimbursed up to the rate that the Board would normally pay for these types of medical reports.

Conclusion

As a result of my review, I vary the decision of the Board dated August 3, 2010.

Allan Wotherspoon
Review Officer
Review Division