

O W A

Office of the Worker Adviser

Helping Injured workers

B C T

Bureau des conseillers des travailleurs

Au service des travailleurs blessés



Chronic Mental Stress: Statistics & Cautions

OHCOW – Spring into Action Event

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Latest Statistics

Summary of Claims

Table 1: Summary

Claim Attributes	Total (159)
1. Claim Registration	159
• Claims registered from January 1, 2018	125 (79%)
• Claims registered in 2017	33 (21%)
• Claims registered prior to 2017	1 (1%)
• Date of the oldest registered claim	15-Feb-2008
2. Claims where there was a prior decision under the TMS policy	8
• Claims registered in 2008	1 (1%)
• Claims registered in Q1 2017	1 (1%)
• Claims registered in Q2 2017	1 (1%)
• Claims registered in Q3 2017	4 (3%)
• Claims registered in Q1 2018	1 (1%)
3. Claims handled in an area outside MSIP prior to the CMS decision	7
• Areas include Service Delivery and ODSB	7 (4%)
4. Claims allocated to a Triage Case Manager (CM)	156 (98%)
• Claims reviewed by a Triage CM for an entitlement decision or transfer	132 (83%)
• Claims where a decision was rendered by the Triage CM	32 (20%)
• Claims reviewed by a Triage CM and transferred to an Eligibility CM for a decision	100 (63%)
5. Claims assessed by an Eligibility CM for a decision	127 (80%)
• Claims that had not been reviewed by a Triage CM for a possible decision	27 (17%)
6. Entitlement Status	159
• Allowed	10 (6%)
• Denied	149 (94%)

Entitlement Status

<ul style="list-style-type: none">• Claims that had not been reviewed by a Triage CM for a possible decision	27 (17%)
6. Entitlement Status	159
<ul style="list-style-type: none">• Allowed	10 (6%)
<ul style="list-style-type: none">• Denied	149 (94%)

CMS Policy - Cautions

OWA Mandate

- Represent non-unionized worker's in worker compensation appeals
- Chronic mental stress claims are triaged on a priority basis

Policy #15-03-14 – Chronic Mental Stress

- CMS entitlement generally allowed when:
 - an **appropriately diagnosed** mental stress disorder,
 - has been **predominantly caused**,
 - by a **substantial work-related** stressor/series of stressors
- Work related stressors generally considered:
 - If **excessive** in intensity and/or duration compared with **normal** pressures and tensions experienced by people working in **similar** circumstances

Appropriately Diagnosed

- Worker's may face challenges getting treatment and a diagnosis for chronic mental stress before launching a claim
- A DSM diagnosis is required for adjudication
- The symptoms of these mental health injuries may make it challenging for workers to participate in claims approximately

Predominant Cause

- Physical vs. mental injuries
- Significant contributing factor test vs. Predominant cause
- Related to previous point, health care professionals may not make the clear distinction in initial reporting to identify that a workplace situation is the predominant cause of the diagnosis.
- Pre-existing conditions

A. Patient and Employer Information (Patient to complete Section A)

Last Name		First Name			Init.	Sex <input type="checkbox"/> M <input type="checkbox"/> F	
Address (number, street, apt.)			City/Town		Prov.	Postal Code	
Telephone		Date of Birth dd mm yyyy		Language <input type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Other			
Employer Name		Supervisor/Contact Name			Telephone		
Employer Address				Patient's Job Title/Occupation			
<small>The Workplace Safety and Insurance Board (WSIB) collects your information to administer and enforce the Workplace Safety and Insurance Act. Questions should be directed to the decision maker responsible for the file or toll free at 1-800-387-0750.</small>							

B. General Section

1. Is your patient indicating that their psychological condition is due to work? yes no

Date patient first sought medical care for psychological condition	dd mm yyyy	Date of onset of symptoms/signs	dd mm yyyy
2. Does your patient continue to exhibit the psychological condition? <input type="checkbox"/> yes <input type="checkbox"/> no		If no, indicate date of last symptoms or when symptoms resolved	dd mm yyyy

3. What is your understanding of the work-related situation(s) resulting in the reported psychological condition? Please explain.

C. Clinical Information Section

1. Document the diagnosis and criteria for the DSM diagnosis, if met.

Diagnosis (provide DSM diagnosis if possible):	DSM criteria for the diagnosis, if met:
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2. Are you aware of any pre-existing or co-existing psychological conditions, or other relevant/contributing factors?
 yes no unknown

If yes, please describe briefly (e.g. diagnosis, date of onset, previous treatment if known):

Form CMS8

Substantial Work-Related Stressor (SWRS)

- Obtaining evidence of identifiable event:
 - Witnesses; coworker, employer, supervisor
 - Coworkers may face pressure not to participate
 - Possible need to subpoena witness in appeal, possible tension in the workplace as a result
- Stigma against pre-existing conditions may exist
- Worker's may not make a claim given the challenges they face to obtain initial entitlement

Concerns about Substantial Work-Related Stressor

- People with mental health impairments are treated differently than those with physical disablements.
- Thin Skull Doctrine
- Average Person Test

Harassment & Substantial Work-Related Stressor

- Policy uses the same definition of workplace harassment as Occupational Health & Safety Act:
 - When a person or persons, while in the course of employment, engage in a course **of vexatious comment or conduct against a worker**, including bullying, that is known or ought to reasonably to be known to be unwelcome.

Not considered CMS

Employer Action

- “mental stress caused by decisions or actions 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 employment.”
- Physical vs mental

Interpersonal

- Policy specifies that conflicts between workers and:
 - their supervisors,
 - co-workers, or
 - customersare not generally considered to be a substantial work-related stressor unless:
 - it amounts to harassment or
 - would be seen as egregious or abusive.

Review: To Fit Within CMS Policy

- Specific events leading to a specific mental health condition
- Substantial work-related stressor
- A specific diagnosis under the DSM by specific health professional
- Predominant cause
- Conduct not considered part of employment function

Substantial Work-Related Stressor & High Stress Jobs

- Policy specifies that jobs with a high degree of routine stress would typically have one or both of:
 - Responsibility over matters involving life and death, or
 - Routine work in extremely dangerous circumstances
- But we know from research (*Decision 2157/09*) that stress disorders arise when workers have high job demand and low levels of control

What is the Average Worker Test (AWT)?

WSIAT described this test in *Decision No. 2416/03*:

1. Is it reasonable that workers of average mental stability would perceive the workplace events to be mentally stressful?
2. If so, would such average workers be at risk of suffering a disabling mental reaction to such perceptions?

If the answer to either question is “no,” the psychological damage would not be compensable

What's wrong with the Average Worker Test?

- It conflicts with the thin skull principle.
- It imposes an additional legal burden on mentally injured workers, who are required, unlike physically injured workers, to show that an “average worker” would also have suffered that injury. It is arguable that this distinction between physical and mental injuries violates the Charter.

Any Questions?

- **Office of the Worker Adviser**
- 1-800-435-8980 (in English)
- 1-800-661-6365 (in French)
- 1-866-445-3092 (TTY)

- owa.gov.on.ca