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ONTARIO'S WSIAT EXPANDS CIRCUMSTANCES IN WHICH TRAUMATIC MENTAL STRESS BENEFITS CAN BE OBTAINED

Historically, under Ontario's workplace safety and insurance compensation system, awards for traumatic mental stress ("Traumatic Mental Stress") suffered by an employee were only granted when the employee could demonstrate that such stress was the result of a traumatic event which posed a threat to their physical well-being. The threat did not need to be real; threats could also be implied, however, it was imperative that there be some risk of physical harm to the individual.

It now appears, however, based on a recent decision from the Workplace Safety and Insurance Appeals Tribunal ("WSIAT") of Ontario, that this link between a threat to an employee's physical welfare and a claim for Traumatic Mental Stress is not always required for a claim to be successful.

WSIAT Decision 483/11 appears to have expanded the circumstances in which awards for Traumatic Mental Stress benefits can be claimed. After filing an initial complaint with the Workplace Safety and Insurance Board ("Board") which was denied, the employee in this case appealed her decision to the WSIAT. The employee argued that as a result of being exposed to an unexpected traumatic event at work, she was entitled to benefits for Traumatic Mental Stress.

The employee was an educational assistant who was accused of striking a student in class. Though the employee was later cleared of all allegations following an investigation, she was diagnosed with major depression and claimed for Traumatic Mental Stress benefits. The basis for her claim was that she experienced an acute reaction to the sudden and unexpected traumatic event which fit within the required definitions of the *Workplace Safety and Insurance Act, 1997*. The WSIAT considered whether the employee's diagnosis of depression qualified as a psychological condition for which entitlement to benefits could be granted.

In this case, the WSIAT ultimately agreed with the employee and held that in addition to post-traumatic stress disorder, there are a number of other psychological conditions (within a prescribed list of disorders) which can result from a traumatic event and which would allow her to qualify for worker's compensation benefits despite no connection to a real or implied threat to her physical wellbeing. The finding in Decision 483/11 is an important one; although a claim for Traumatic Mental Stress benefits will *usually* involve a real or implied threat to an employee's physical well-being, this is no longer a prerequisite. Various psychological conditions, if properly diagnosed by a psychiatrist or psychologist, will be considered sufficient to fall within the definition of Traumatic Mental Stress.

It remains to be seen how future cases will be dealt with in light of the findings of Decision 483/11. It is fair to say that employers in Ontario are likely to see an increase in the number of Traumatic Mental Stress claims advanced in the coming months. It is important to keep in mind, however, that employees continue to bear the burden of

pointing to an objective but unexpected traumatic event in the workplace that results in a psychological condition listed on a prescribed list of disorders and illnesses. The challenge, however, lies in determining just where the line is likely to be drawn; to what extent the Board and the WSIAT will continue to allow claims for traumatic stress which are not linked to a real or implied threat to an employee's physical well-being and whether a similar approach will be taken in other jurisdictions.

We will keep you informed as this area of the law continues to develop. In the interim, please contact e2r Solutions® should you have any questions regarding the foregoing.

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