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CASE SUMMARY: PTSD IN THE WORKPLACE: WHAT MUST THE CLAIMANT ESTABLISH TO BE ENTITLED TO BENEFITS UNDER THE WORKERS COMPENSATION ACT?

The appellant's claim for Workers' Compensation benefits was denied after she experienced a traumatic event at her job as a correctional officer. The appellant was eventually diagnosed with PTSD, but the Workers' Compensation Tribunal upheld the Commission's decision that this was not new evidence that would substantially affect its original decision denying benefits. The Court of Appeal found the Tribunal made several errors that materially affected the outcome. The Tribunal's decision was set aside and an order was made to provide the appellant benefits retroactively to the date of the original claim.

Administrative law – Decisions reviewed – Workers' Compensation Tribunal – Benefits – Psychological injuries – Judicial review – Appeals – New evidence

Perry v. New Brunswick (Workplace Health, Safety and Compensation Commission), [2018] N.B.J. No. 291, 2018 NBCA 80, New Brunswick Court of Appeal, November 29, 2018, K.A. Quigg, B.V. Green and R.T. French JJ.A.

The appellant, Bona Perry, worked as a correctional officer for 18 years. After attending a parole hearing with an inmate – where she heard the inmate recount specific and horrific details how he and an accomplice randomly attacked a stranger in the park and stomped him to death – Ms. Perry suffered an acute reaction which led to mental distress. Although Ms. Perry initially tried to return to work, she eventually commenced a claim for Workers' Compensation benefits.

Her claim, however, was declined by the Workplace Health, Safety and Compensation Commission (the "Commission"). Ms. Perry sought reconsideration of the decision. As part of this, Ms. Perry was referred for a psychological assessment by the Commission to help it establish if her condition met the entitlement for "stress" under the New Brunswick *Workers' Compensation Act*. The assessing psychologist determined that she did not qualify since her condition was due to a gradual increase of emotional distress related to a series of workplace stressors – some traumatic and some not. On this basis, the Commission upheld its original decision concluding there was no new evidence that would substantially affect the original decision.

Ms. Perry again sought reconsideration. By this point, her treating doctor had updated her diagnosis to "Major Depressive Disorder and Post-traumatic Stress Disorder due to cumulative exposure to violence in the workplace". An updated report was prepared which described the "acute stress reaction" Ms. Perry experienced in response to the parole hearing. Nevertheless, the Commission upheld its original decision. A hearing proceeded before the WCAT, which dismissed Ms. Perry's appeal. Ms. Perry appealed to the New Brunswick Court of Appeal.

Ms. Perry advanced several grounds of appeal. One of the key issues was whether the WCAT erred by failing to consider the medical evidence from her treating physician, which updated her diagnosis to PTSD, as "new evidence or facts that would substantially affect the original decision". Ms. Perry's original claim was rejected on the basis that she had not suffered a traumatic event. Given this, the Court of Appeal found it was an error of law for WCAT to conclude that the new PTSD diagnosis could not have substantially affected the original decision since, by definition, a person with PTSD has experienced at least one traumatic event. Further, the PTSD diagnosis was not challenged by the Commission, nor was any evidence adduced to call it into question. As the Court of Appeal noted, "It was the psychologist's role to make a diagnosis, and, in the absence of contrary evidence, it was WCAT's role to apply the law in the context of that diagnosis". The failure to do so amounted to an error in law.

In addition, the Court of Appeal concluded that WCAT failed to apply the appropriate legal test when assessing Ms. Perry's claim. Previous case law established two categories of PTSD cases that attract a slightly different analysis: where a stress-related condition results in PTSD (the traumatic event is proven by the diagnosis itself) and those where it does not (the traumatic event must be independently proven). WCAT treated Ms. Perry's claim as the latter, but it ought to have treated it as the former. If WCAT had applied the appropriate test – namely, the traumatic event is proven by the diagnosis of PTSD itself – the Court of Appeal held it was clear that her appeal would have been allowed and she would have been entitled to benefits since her acute reaction was caused by a traumatic event.

In the end, the Court of Appeal had little trouble in finding that these errors materially affected WCAT's decision to dismiss Ms. Perry's appeal since her claim was denied on the basis that she did not experience a "traumatic event". If WCAT had applied the appropriate analytical framework, properly considered the updated medical evidence and the appropriate medical standards, the Court of Appeal concluded that Ms. Perry's experience at the parole hearing could have been treated as a traumatic event, thereby entitling her to compensation benefits. For these reasons, the Court of Appeal set aside the decision of WCAT and ordered the Commission to pay Ms. Perry's benefits retroactive to the date of her original claim.

This case was digested by Adam R. Way, and first published in the LexisNexis® Harper Grey Administrative Law Netletter and the Harper Grey Administrative Law Newsletter. If you would like to discuss this case further, please contact Adam R. Way at away@harpergrey.com.