WORKPLACE SAFETY AND INSURANCE BOARD

APPEALS RESOLUTION OFFICER DECISION

CLAIM:	
OBJECTING PARTY:	WORKER
REPRESENTED by:	Mr. Richard Fink
RESPONDENT:	
HEARING:	Hearing in Writing
HEARD by:	Mrs. J. Morin, Appeals Resolution Officer

ISSUES

The worker objects to the decision dated October 5, 2016 and August 10, 2017 regarding the:

- Denial of psychotraumatic disability entitlement
- Final loss of earnings (LOE) benefit and the closure of LOE effective October 14, 2016.

BACKGROUND

On August 23, 2010 this worker slipped and fell on a wet floor and rolled over onto his right ankle.

Entitlement for a second accident on April 11, 2011 was accepted on an aggravation basis for a low back injury. As outlined in the decision dated September 23, 2011, the Case Manager (CM) concluded the worker returned to his pre-accident impairment level for his low back injury with no ongoing entitlement.

A permanent impairment was accepted for the diagnoses of right healed ankle ulcer and neurogenic pain. In April 2016 the worker was granted a 6.75 percent non-economic loss award.

The worker was referred for work transition services as the injury employer was unable to provide accommodated work. The suitable occupation (SO) established was Professional Occupations in Business Services Management. Subsequently, the worker opted to not participate in work transition services due to his physical and emotional conditions.

The CM's decision dated October 5, 2016 addressed the final LOE benefit review. The worker was considered to be partially disabled and capable of returning to work within the identified SO. The worker's final LOE was based on the worker's ability to earn wages of an experienced worker in the identified SO. The projected earnings within the identified SO fully restored the worker's pre-accident earnings; therefore, LOE benefits were closed as of October 14, 2016.

The Case Manager's (C/M) decision dated August 10, 2017 denied psychotraumatic disability entitlement. The CM concluded the worker's psychological condition was not directly and clearly related to the work-related injury as the medical documentation indicated the majority of factors of the worker's disablement pre-existed.

The CM's letter dated September 20, 2017 advised of the file referral to the Appeals Services Division in order to address the worker's objection.

AUTHORITY

Operational Policy: 15-04-02 – Psychotraumatic Disability
18-03-06 – Final LOE Benefit

ANALYSIS

In considering this objection I had regard for the evidence contained on the file record, the arguments presented by the worker's representative and the applicable legislative authority and policies.

Psychotraumatic Disability

The worker's representative completed an Appeal Readiness Form dated August 29, 2017 and enclosed a submission. It is the worker's representative's position that the Psychologist at the Centre for Addiction and Mental Health (CAMH) advised that the workplace injury directly caused the worker's serious depressive symptomology. In order to substantiate his position the worker's representative referenced the reports from CAMH, particularly page 24 of the report dated May 23, 2017. He also referenced page 25 of the CAMH report dated May 23, 2017 that outlined the Psychologist's opinion that the worker was unable to work due to his workplace injury and his depression. He argued the Psychiatrist at CAMH concurred with the Psychologist's opinion.

Operational Policy 15-04-02 for Psychotraumatic Disability states in part that:

> *A worker is entitled to benefits when disability results from a work-related personal injury by accident. This includes both physical and emotional disability.*
>
> *If it is evident that a diagnosis of a Psychotraumatic Disability is attributable to a work-related injury or a condition resulting from a work-related injury, entitlement is granted, providing the Psychotraumatic disability became manifest within five years of the injury, or within five years of the last surgical procedure.*
>
> *Entitlement for Psychotraumatic Disability may be established when the following circumstances exist or develop:*

Organic brain syndrome, secondary to:

- *Traumatic head injury.*
- *Toxic chemicals including gases.*
- *Hypoxic changes, or*
- *Conditions related to a depression sickness.*

As an indirect result of a physical injury:

- *Emotional reaction to the accident or injury.*
- *Severe physical disability/impairment, or*
- *Reaction to the treatment process."*

The psychotraumatic disability is shown to be related to extended disablement and to non-medical, socioeconomic factors, the majority of which can be directly and clearly related to the work related injury.

I find the worker sustained a psychotraumatic condition resulting from the workplace accident. I find that the psychological condition was directly and clearly related to the work related injury. In reaching this conclusion, I had regard for all of the available evidence and found the following details particularly relevant:

- Dr. Berger's report of April 12, 2010 advised that this worker had problems with depression intermittently since his high school years. Even looking back to the age of 6, the worker recalled getting into trouble for setting fire to a neighbour's home. The worker had been struggling emotionally recently and he attributed that to a number of issues. The worker had chronic pain related to degenerative disc disease. It affected his sleep, which further caused irritability, anger, and sadness. The worker has gotten into a conflict with his boss. He felt his boss did not understand the restaurant business as he did and he had been written up for challenging his boss. He expressed some suicidal ideation. Dr. Berger advised that although the worker said that he was adaptable, one got the sense that he could be rigid, uncompromising and principled. Dr. Berger's impression was that the worker was very unhappy and an angry man. The worker was also suffering from chronic pain disorder, which was affecting his mood.

- I reviewed the clinical notes provided by the worker's treating physician. I note the clinical note of July 30, 2010 advised the worker suffered with depression and chronic back pain.

- CAMH's report of May 15, 2017 advised the worker was reliable and a consistent historian. The worker's condition was diagnosed as major depressive disorder resulting from his ongoing pain resulting from the workplace accident. Maximum psychological recovery was not reached. It was recommended both Pharmacological and Psychological treatment prior to initiating a return to work or further engagement in work transition services. Psychological treatment needed to be accessible to this worker and that it should be close to home.

- The CAMH report dated May 23, 2017 for the worker's psychological assessment on April 26, 2017 advised of the worker's complaints of pain symptoms, and his acceptance of the resulting loss in social and occupational functioning, reduced mobility, anxiety related to having to leave home, and depressive thoughts. The worker shared his suicidal ideation.

  The worker's current functioning was significantly different from what it was pre-accident. He reported that previously he spent most of his day out of his home with working or socializing with friends. Presently, the worker spent most of his time at home alone with his dog. He reported leaving only for appointments.

  In regards to psychological treatment, the worker reported seeing a psychotherapist once every three week starting January 2016.

  In relation to the worker's past history he was getting into trouble from the age of 18 including being arrested on four occasions within a period of six months due to cannabis possession. He was in a romantic relationship until January 2011, a few months following the workplace accident. He attributed this loss to changes in his physical and social functioning. He lost friendships following the workplace accident. His social life fell apart after his first surgery.

  He was mandated to visit a guidance counsellor for a year (in second grade) as a result of behavioural conduct issues. He struggled with depression on a number of occasions with symptoms appearing to be exacerbated following family stressors. He reported seeing a family doctor in regards to his low mood and being provided with samples of anti-depressant medication in his late teens. He reported being prescribed anti-depressant medication at the age of 24, including Cymbalta which resulted in psychiatric hospitalization. He reported problematic pattern of cannabis use, wherein he continued to smoke despite significant interpersonal and social problems. He denied having a criminal record and stated that all charges have since been pardoned.

  Page 23 of this report notes that this worker reported having pre-existing difficulties with depressive symptoms during his early adolescence and in his early 20s. According to the file record it appeared that there were some pre-existing symptoms of depression in 2010 (prior to the index event) although these were non-impairing with respect to functional capacity. In addition, he described a period of chronic and mildly problematic cannabis use at the age of 18; however, his consumption did not appear to cause any problems or interfere with his functioning in the years immediately prior to the index event.

  The worker's symptoms were consistent with depressive disorder, with persistent major depressive episode, with anxious distress and maladaptive coping using cannabis. Given the worker's significant depressed mood, suicide risk and anxious symptoms, he was considered to be unable to work. The worker experienced repeated failed medical interventions and failed return to work opportunities that posed a significant barrier to returning to work. The likelihood of a return to work would be optimized with mood-focused treatment.

The worker's condition was diagnosed as persistent depressive disorder, with persistent major depressive episode with anxious distress (moderate severe).

The assessors opined the workplace injury was directly related to the onset of the worker's persistent depressive disorder and anxious distress. The worker was considered to be unable to return to work in any capacity due to his low mood, resulting from his frequent episodes of tearfulness and suicide ideation, etc.

It was recommended the worker receive at least 16-20 sessions of cognitive behavioural therapy for depression including psychoeducation, activation and cognitive strategies. It was suggested that it would be beneficial to target the worker's suicidal ideation and feelings of hopelessness in regards to his future and significant behavioural de-activation.

- The CAMH discharge summary report dated May 18, 2017 (case conference date of May 11, 2017) advised that the worker's psychological condition was major depressive disorder (singles episode, chronic, severe – with anxious distress and panic attacks).

  The medical assessors at CAMH advised that the workplace accident was a major contributor to the worker's major depressive disorder. The medical assessors noted pre-existing contributors that included the worker's history of depression (remitted at the time of the workplace accident), and history of cannabis use disorder (long remitted at the time of the workplace accident). Co-existing contributors included the worker's difficulty to return to work/perception of a lack of support, discontinuation of work, occupational uncertainty, and relationship breakup, loss of friends, limited social support, and medical complications in the course of physical recovery and low frequency of psychological treatment.

  The medical assessors opined the worker was not able to return to work in any capacity due to his poor concentration, low mood and anxiety, panic attacks, fatigue, avoidance, reluctance to leave his house and a low level of daily functioning. The worker's pain behaviour was the primary determinant of his capacity to work. The prognosis for a return to modified or pre-accident work was poor.

  The worker's psychological condition did not reach maximum medical recovery as he had not received sufficient treatment.

I find that psychotraumatic disability entitlement is in order. I find the compensable psychological condition caused this worker to be unable to return to any form of employment. I find that the workplace accident was the significant driving force for this worker to discontinue working and to seek psychological attention. In coming to this conclusion I held weight to the opinion expressed by the Psychologist and Psychiatrist at CAMH. As outlined throughout CAMH's reports; such as the discharge report of May 18, 2017, the medical assessors advised that this worker had a prior psychological condition; however, the workplace accident was a major contributor to the worker's major depressive disorder. I accept the opinions expressed by the assessors at CAMH as I note they are consistent. Additionally, I accept the assessors' opinions from CAMH as the worker attended a thorough assessment.

I find the worker's psychological condition was an indirect result of his physical ankle injury and the unsuccessfulness of the treatment (including surgery). I find the reports from CAMH are consistent in clearly linking the worker's psychological condition to the workplace accident.

I recognize that the worker endured psychological conditions prior to the workplace accident; however, I find that this should not negate psychological entitlement. Additionally, I cannot disregard the opinions expressed by the assessors at CAMH that clearly linked the worker's psychotraumatic condition to the workplace accident. I also cannot ignore that the worker was able to continue working and was able to fully function prior to this workplace accident even with his prior psychological condition.

Final LOE Review

Operational Policy 18-03-06 for Final LOE benefit review states in part that the final LOE benefit review may be deferred if the worker is co-operating in health care measures the WSIB considers appropriate and/or in work transition activities with the injury employer or a work transition program for re-entry into the labour market.

Operational Policy 18-03-06 also states in part that the WSIB may review the LOE benefits up to 24 months after the expiry of the 72 month period, if the worker is involved in health care measures and/or work reintegration activities. The final review must be completed by the 24-month period or sooner if either the health care measures or work reintegration activities have been completed.

As outlined in memo 241 dated June 15, 2016, the worker advised that he had an appointment scheduled with a psychiatrist on June 23, 2016. As documented in memo 246 dated July 25, 2016 the final LOE benefit review was deferred as the worker was participating in work transition services. Memo 249 dated September 1, 2016 advised the worker was referred to a psychologist in his community and was awaiting an appointment date. As documented in the worker's representative's correspondence dated September 27, 2016 the worker had a psychological appointment with Dr. Ball on October 21, 2016. The CAMH report dated May 23, 2017 indicates this worker has been seen by a psychotherapist once every three weeks commencing January 2016. Based on my review, I note that these psychological reports need to be obtained for completeness of the file record.

As outlined in memo 252 dated September 30, 2016 along with the decision of October 5, 2016 the worker's discontinuance in the work transition plan was due to his physical and psychological conditions. The worker's entitlement to LOE benefits were discontinued as there was no further wage loss as the potential earnings within the identified suitable occupation restored this worker's pre-injury wages.

The memo dated March 20, 2017 outlines the worker's referral to a mental health speciality clinic in relation to the worker's psychological condition. As documented throughout the medical file record, the worker was seen at CAMH commencing in April 2017.

As documented in the above body of my decision, I found psychotraumatic disability entitlement was in order. In review of the medical documentation on record, I concur with the worker's representative that the worker was totally impaired resulting from his psychological condition. I came to this conclusion as I held significant weight to the opinion expressed by the medical

assessors at CAMH. As documented throughout the medical reports from CAMH, such as the reports dated May 18, 2017 and May 23, 2017, the medical assessors opined this worker was unable to return to any form of employment resulting from his psychological condition. Additionally, the medical assessors opined the worker did not achieve maximum psychological recovery as he received insufficient psychological treatment. As documented in the CAMH report of May 23, 2017 the assessors recommended the worker attend at least 16-20 sessions of cognitive behavioural therapy for depression including psychoeducation, activation and cognitive strategies.

I find the worker was totally impaired resulting from his compensable psychological condition. I find the worker is entitled to full LOE benefits commencing October 14, 2016 to the date of the latest psychological report on record dated May 11, 2017 from CAMH. I find the final LOE decision was premature noting the allowance of psychotraumatic disability entitlement and that maximum psychological recovery was not achieved. According to the file record the worker attended psychological treatment (with Dr. Ball and these reports are required for the file record) and was referred to CAMH in order to address the psychological component of his injury. Therefore, I find the worker was participating in health care measures for his psychological condition.

I recommend the Operating Area assist this worker with arranging psychological treatment (if not already arranged) that was recommended by the medical assessors at CAMH. I request that the Operating Area determine the worker's entitlement to LOE benefits (including the final LOE) beyond May 11, 2017 once the outstanding medical documentation pertaining to the worker's psychological condition is received and the worker receives the appropriate psychological treatment.

CONCLUSION

As outlined in the body of this decision I find that:

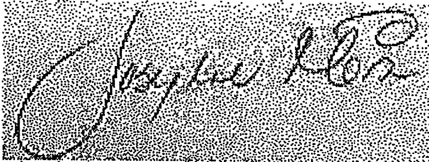
- Psychotraumatic disability entitlement is in order. The worker has not achieved maximum psychological recovery.

- The worker is entitled to full LOE benefits commencing October 14, 2016 to May 11, 2017. I find the final LOE was premature noting psychological entitlement was granted and maximum psychological recovery was not achieved and the worker attended psychological treatment including his assessments at CAMH.

  I recommend the Operating Area assist this worker with obtaining any outstanding psychological reports. I also recommend the Operating Area assist this worker with arranging the psychological treatment (if not already arranged) that was recommended by the medical assessors at CAMH.

The worker's objection is allowed.

DATED November 29, 2017



Mrs. J. Morin
Appeals Resolution Officer
Appeals Services Division