

February 22, 2022

MYRIAM MICHAIL

744 WONDERLAND RD S UNIT 1103

LONDON ON N6K 4K3

CANADA

Claim number: [REDACTED]

Name:

MYRIAM MICHAIL

Copy To: LONDON DISTRICT CATHOLIC SCHOOL BOARD,  
OFFICE OF THE WORKER ADVISER,  
SISKINDS THE LAW FIRM

Contact [accessibility@wsib.on.ca](mailto:accessibility@wsib.on.ca) if you require this communication in an alternative format.



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## NOTICE – TIME LIMIT TO OBJECT

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Enclosed is the decision regarding the objection.

The parties have the right to appeal this decision to the Workplace Safety and Insurance Appeals Tribunal under Section 125(1) of the *Workplace Safety and Insurance Act*. Please note the following limitation:

Section 125(2) - "The person shall file a notice of appeal with the Appeals Tribunal within six months after the decision or within such longer period as the Tribunal may permit. The notice of appeal must be in writing and must indicate why the decision is incorrect or why it should be changed."

To pursue the objection further, please contact the:

**Workplace Safety and Insurance Appeals Tribunal**  
**505 University Avenue, 7<sup>TH</sup> Floor**  
**Toronto, Ontario, M5G 2P2**

**Telephone: (416) 314-8800**

**Fax: (416) 326-5164**

**Toll free within Ontario 1-888-618-8846**

Further information is available on the Tribunal website at [wsiat.on.ca](http://wsiat.on.ca)

The Appeals Services Division publishes some decisions on the Canadian Legal Information Institute website at [canlii.org](http://canlii.org). Should this decision be published, the names and other identifying information are not included in the decision.

If the decision is allowed or allowed in part, the Case Manager will undertake to implement the decision within 30 days, but this will depend on the circumstances in the case. If there any questions about the status of the claim, please call the general enquiry number at 1-800-387-0750.

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## APPEALS RESOLUTION OFFICER DECISION

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**CLAIM:** [REDACTED]

**OBJECTING PARTY:** DUAL (WORKER AND EMPLOYER)

**EMPLOYER  
REPRESENTED by:** LONDON DISTRICT CATHOLIC SCHOOL BOARD  
CHRISTOPHER A. SINAL, SISKINDS LLP

**WORKER:  
REPRESENTED by:** MYRIAM MICHAIL  
NICK LELYK, OFFICE OF THE WORKER ADVISOR

**HEARING:  
HEARD by:** HEARING IN WRITING  
SUJETHRA NADARAJAH, APPEALS RESOLUTION OFFICER

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### **ISSUES**

This is a dual objection by the worker and employer.

1. The employer objects to two issues:
  - a. The Case Manager's (CM) July 15, 2019 decision accepting initial entitlement to *Chronic Mental Stress (CMS)*, and
  - b. The CM's September 13, 2019 decision accepting Loss of Earnings (LOE) benefits.
2. The worker objects to two issues:
  - a. The Non-Economic Loss (NEL) Clinical Specialist's March 11, 2020 determination of the NEL benefit, which was rated at 20% for the psychological impairment, and
  - b. The CM's November 9, 2020 determination relating to the final LOE benefit review.

### **BACKGROUND**

Starting in 2010, this worker, a teacher, experienced a mental stress injury while at work. The worker reported numerous instances where they experienced harassment and was victim of vexatious behaviour from the employer, colleagues, vice principal, principal and labour relations officer.

On May 17, 2012, Dr. Brownstone, psychiatrist diagnosed the worker with depression.

The employer terminated the worker's position on October 20, 2014. The worker did not return to work with the employer or the workforce in general after this date.

The January 27, 2016 decision determined the worker's claim did not meet the criteria for allowance under policy 15-03-02, *Traumatic Mental Stress*. The worker objected to this decision and upon reconsideration, there was no change in the decision.

On July 15, 2019, the worker's claim was reconsidered using policy 15-03-14, *Chronic Mental Stress*, and allowed for initial entitlement to depression and anxiety.

Following this, the decision of September 13, 2019 allowed entitlement to LOE benefits beginning October 20, 2014 and ongoing. This letter also noted that because the worker continued to receive regular treatment for their mental stress injury, their final benefit review would be deferred.

The worker achieved maximum medical recovery (MMR) on October 2, 2019 with a permanent impairment for adjustment disorder.

The employer representative (ER) submitted an Intent to Object Form dated December 13, 2019 objecting to the July 15, 2019 and September 13, 2019 decisions and on reconsideration, there was no change in the decisions.

On January 31, 2020, the worker was granted a 10% NEL benefit. The worker representative (WR) objected to this decision and on reconsideration, the worker's NEL benefit increased to 20% on March 11, 2020.

The November 9, 2020 letter determined that at the time of the final LOE benefit review, the worker was capable of working in the suitable occupation (SO) of a tutor, working 27.5 hours per week. Accordingly, the worker would receive partial LOE benefits until their 65<sup>th</sup> birthday, at which time LOE benefits would stop.

On November 23, 2020 the WR submitted an Intent to Object Form, objecting to the November 9, 2020 decision and on reconsideration, there was no change in the decision.

The WR submitted their Appeal Readiness Form (ARF) on June 7, 2021. On September 29, 2021, the ER submitted their ARF. The basis of this appeal is formed by the following objections:

1. The employer's objection to the allowance of entitlement to CMS and LOE benefits, and
2. The worker's objection to the NEL quantum and final lock-in decision.

## **AUTHORITY**

Operational Policy Manual	Published
15-03-14 – Chronic Mental Stress	January 2, 2018
18-03-02 – Payment and Reviewing LOE Benefits (Prior to Final Review)	January 2, 2018
18-05-03 - Determining the Degree of Permanent Impairment	November 3, 2014
18-05-11 - Assessing Permanent Impairment Due to Mental and Behavioural Disorders	July 18, 2008
18-03-06 – Final LOE Benefit Review	January 2, 2018

## **1. ANALYSIS – EMPLOYER OBJECTION TO INITIAL ENTITLEMENT TO CMS AND LOE BENEFITS**

I have carefully considered all of the available information, legislation and relevant operational policies in reaching this decision. I do not find in favour of the employer. As I will explain, the worker is entitled to benefits under the CMS policy and LOE benefits are in order from October 20, 2014 and ongoing.

### Employer's Position

The ER opined in a submission dated September 29, 2021, that this claim should be reconsidered and entitlement be denied for both initial entitlement to CMS and LOE benefits. They provided "the events in question did not amount to workplace harassment or another type of substantial work-related stressor within the meaning of the *Workplace Safety and Insurance Act* (WSIA)".

They argued two of the three criteria for entitlement under the CMS policy were not met:

- They indicated the incidents relating to the vice-principal and the principal at the first secondary school in the years of 2011-2013 did not constitute a substantial workplace stressor within the CMS policy, and their conduct was not sufficiently egregious, malicious, improperly motivated or extraordinary so as to fall outside the employment function exemption in the WSIA. The ER's position remained entitlement was granted for CMS based on individuals that were exercising managerial functions, and/or general workplace disputes, neither of which are compensable under the CMS policy.
- They stated workplace harassment and or another substantial workplace stressor did not cause the worker's mental stress injury. The ER's position remained the worker experienced a disproportionate reaction to otherwise normal workplace interactions, and that the worker's clinical reactions are not predominantly attributable to any substantial workplaces stressors that may have occurred.

In relation to the allowance of LOE benefits starting in October 20, 2014, the ER indicated the worker's termination was not causally linked to their workplace injury and therefore LOE benefits were not in order beyond the termination. They provided the worker's termination was a result of multiple factors including:

- The impossibility of creating a work environment in which the worker would subjectively perceive that she was not being harassed and that their workload was not excessive.
- The role played by workplace stress in exacerbating the worker's pre-existing condition.
- The acknowledged loss of trust between the worker and the employer and the resulting stressful nature of the relationship between them.

The ER indicated the employer was unable to continue to accommodate the worker's pre-existing, non-compensable condition that required a decrease in workplace stress given the worker's "hypervigilance, subjective perception of the workplace, and their inability to work with others".

Further, the ER's position remains the worker is not prevented from working due to their compensable injury, but rather due to the stress associated with the ongoing litigations (which are a post-accident material change in circumstances) and therefore not entitled to full LOE benefits. Accordingly, to the extent that those proceedings are the source of the worker's inability to work, the ER opined the LOE benefits should be limited or denied on that basis.

### Worker's Position

The WR completed the Respondent Form on January 7, 2022 and agreed to proceed with a Hearing in Writing. Their position remains that the decisions to approve CMS and LOE benefits were in keeping with law and policy. In support of their position, they referenced the awards issued by an Arbitrator relating to the 2011-2013 grievances and the finding that the employer had breached the *Human Rights Code* by failing to (1) accommodate the worker's disability, and (2) provide the worker with a workplace free from harassment. They also refer to key incidents where the employer went outside the boundaries of an "interpersonal conflict, including:

- the principal tapping the worker's temples while making a condescending comment

- the vice-principal publically scolding the worker in a meeting
- the worker being publicly chastised about their performance by the principal partly in reprisal to a complaint

In relation to the LOE benefits, the WR's position remains significant weight should be given to the medical reporting of Dr. Reist, psychologist and Dr. Horne, family doctor, who confirmed the worker was unable to work at this time.

The WR submitted the following documents in support of their position:

- the July 2015 arbitration award
- the employer's apology letters of April 2013 and November 2015
- the employer's documents relating to "[worker]-Path of destruction" scheme
- the June 30, 2014 worker's union response to the employer relating to the second investigation
- the fourth grievance dated August 27, 2014
- the worker's character reference documents

#### **A. Initial Entitlement to *Chronic Mental Stress***

In this case, the worker is claiming for numerous events, which are captured in the following documents:

- Arbitration Decision of August 2, 2013
- First Investigation Report of September 6, 2013
- Second Investigation Report of May 29, 2014
- Arbitration Decision of July 23, 2015
- Affidavit of April 7, 2017, along with exhibits A to J

Noting the documents reviewed were extensive and lengthy (approximately 500 pages), I cannot capture every detail and I have summarized what I found to be the key aspects.

The worker was employed as a teacher with the employer starting September 1, 1991. In 2007, the worker began working for the secondary school in which they first experienced mental health issues in 2011.

#### **Summary of Events from the School Year of 2010 to 2011**

From March 2010 to the fall of 2010, the worker took sick leave due to an unrelated permanent medical condition. Upon their return, the worker required accommodations at work, and began working in the guidance department as of February 2011.

Shortly after beginning their new role, the worker felt the head of the department was unwelcoming and felt shunned by a few of the co-workers in the department. Some examples of this were:

- The head of the guidance department indicated the worker should not have the same level of access to electronic student records as other guidance counsellors (only that of the secretary), and should not attend a student interview for reasons of confidentiality. In addition, the worker was excluded from meetings attended by other guidance counsellors.
- Due to a CUPE member grievance, the worker's office internet and phone connection installation was delayed until February 23 and 25, 2011.

On February 23, 2011, the worker approached the vice-principal about their situation in the department and advised the other counsellors were "not happy" about the worker's presence and were "taking it out" on the worker. The vice-principal and human resources person arranged a meeting with the department

to address these concerns. While the worker initially declined, they were persuaded by the human resource staff to attend the meeting.

At the February 25, 2011 meeting, the worker's time at the guidance department was discussed as a temporary accommodation, with the goal of returning the worker to their prior role as a teacher. Towards the end of the meeting, the worker attempted to discuss one more concerns when the vice-principal raised their voice and said "what more do you want".

Following this incident, the worker went on medical leave until November 2011 and upon their return, they were sent as an over-compliment assignment at a different secondary school. Shortly after, on January 6, 2012, the worker was assigned to yet another secondary school.

In relation to the above incidents, the Arbitrator's August 2, 2013 decision found:

- The department head refused to allow the worker to observe student interviews and denied the worker full access to electronic data on students. The department head and a co-worker made it clear the worker was not welcome at departmental meetings. As the worker was promised mentorship when joining the guidance department, the activities in which the worker was excluded from, are part of the activities in which it was reasonable for the worker to expect to participate in.
- The vice-principal conceded they were aware in February 2011 that certain members of the guidance department excluded the worker from work activities. The vice-principal, acting on behalf of the employer, did not tell the individuals excluding the worker, to include the worker in work activities. Accordingly, they failed to take reasonable steps to ensure the worker was treated with dignity and respect by their co-workers. The employer's abdication of responsibility for controlling the worker's co-workers violated s 5(1) of the *Human Rights Code*.
- The unjustified delay in providing the worker access to the internet and phone in their office violated s 5(1) of the *Human Rights Code*, because it contributed to undermining the worker's sense of dignity and self-respect. The employer was held liable as the vice-principal was part of the employer's management team. The vice-principal conceded during testimony the delay was not legitimate.
- At the meeting on February 25, 2011, the vice-principal had scolded the worker in front of the worker's co-workers when they said "what more do you want". Further the vice principal should not have asked the worker to face their antagonists, and the vice principal should have ordered the guidance department employees to include the worker in meaningful guidance activities.
- The public scolding was a "single and spontaneous incident of intemperate remarks fall short of harassment".
- The employer contravened s 5(1) of the Human Rights Code when they delayed in getting clarification on the worker's restrictions when there was an open position at the same secondary school due to the department head going on long-term sick leave. The employer did not provide the worker an opportunity to return to that secondary school in November 2011 because it would have required the worker to work with the vice-principal, and the human resource staff determined the worker was not capable of this. It was noted the vice-principal had never apologised nor undertaken to mend their ways.
- Another violation of s 5(1) of the *Human Rights Code* took place when the worker was offered a position in a different school that aggravated the worker's stress and fatigue, which affected their unrelated medical condition.

#### Summary of Events from the School Year of 2012 to 2013

On February 27, 2012, the worker returned as a guidance counsellor to the first secondary school.



*Incident on December 11, 2012 relating to the principal and a co-op teacher about a student*

On December 10, 2012, the worker approached the principal to discuss a particular student who was on school premises when they were supposed to have left by 12 pm. The worker suggested they could discuss this situation with the co-op teachers, to ensure the student left the premises at the appropriate time. The principal agreed to this idea and accordingly, the worker sent an email to the co-op teachers, the vice-principal and the principal to ensure the request reached all of the teachers in rotation.

One of the co-op teachers approached the principal on December 11, 2012 to discuss they were not happy with the worker's email. The principal indicated they understood why the co-op teacher was upset and did not indicate that the worker had discussed this issue with them prior to sending the email to the co-op teachers.

The co-op teacher approached the worker that day to discuss the email, and when the worker indicated the principal was aware of the worker sending the email, the co-op teacher indicated the principal had not told them that.

Due to this, later in the day, the worker and a colleague approached the principal to discuss the situation. The principal, began yelling about "his need for representation and about being sick and tired of being dragged into disputes about emails". The principal then brought the co-op teacher into the meeting to resolve the issue and the principal exited telling the worker and the co-op teacher to work it out themselves.

On December 21, 2012, the worker was having a conversation with two colleagues when the principal approached the worker and praised the worker and indicated they were not mad at the worker or the other co-op teacher. The worker did not engage with the principal and when the principal left the conversation, the two other colleagues indicated the principal had offered an "olive branch" and asked the worker why did not accept it. The worker had clarified to the colleagues that the principal had not actually apologised. In response, one colleague asked the worker whether they wanted to be 'healthy or right'.

The September 6, 2013 investigation report, made the following findings:

- the principal exacerbated the situation by failing to fully inform the co-op teacher about providing the worker consent to reach out to the co-op teacher about the student
- the principal did not apologise to the worker on December 21, 2012, for their conduct at the meeting

The investigator also concluded the principal's behaviour in the following matters were sufficiently serious to constitute harassment:

- the principal failed to notify the co-op teacher that they had agreed to the worker reaching out to the co-op teachers relating to the matter of the student on school premises
- the principal told the co-op teacher they understood why the co-op teacher was upset
- displayed anger and raised their voice in the meeting with both the worker and co-op teacher

The Arbitrator in their July 23, 2015 decision noted the following findings:

- The Arbitrator agreed with the findings of harassment made by the investigator relating to the principal's conduct on December 11, 2012.

*Incident on December 11, 2012 relating to the principal about the PA system*

On December 11, 2012, another incident took place between the worker and the principal. As a result of an announcement that came over the public address (PA) system, the worker approached the principal to discuss issues with the PA system. The worker indicated the PA system had not been working since the worker was placed there, and the principal responded by tapping the worker's temples with their index fingers and said "and how would I know? You have to tell me".

On January 4, 2013, the worker emailed human resources to address their concerns related to the two incidents on December 11, 2012. The worker requested a written commitment by the principal indicating they would treat the worker with "dignity and respect and will not resort to yelling and screaming or other harassing actions".

The employer did not conduct an investigation into the allegations from the email of January 4, 2013. In the employer's response on February 12, 2013, the employer denied the worker's request for a written commitment from the principal, but indicated, "that this is a commitment which the Board is able to provide you and it is consistent with the Board's expectations of all employees". The email also noted that the employer was advised the principal had apologised to the worker on December 21, 2012.

The September 6, 2013 investigation report, the investigator made the following findings:

- the principal's conduct relating to the tapping incident created a 'hostile or intimidating environment'

The investigator also concluded the principal's behaviour in the following matter was sufficiently serious to constitute harassment:

- the principal tapping the worker on the temple while making a condescending comment

The Arbitrator in their July 23, 2015 decision noted the following findings:

- While the principal tapped the worker lightly and not in anger, their misconduct was compounded by the fact that the principal made elaborate efforts to cover their tracks. The principal repeatedly denied tapping the worker's temples and provided a different account of the events related to the co-op incident (one that cast the worker in a much worse light).
- The human resource person's failure to properly investigate the worker's complaint (the email of January 4, 2013 relating to the two incidents on December 11, 2012), violated the worker's rights under the employer's harassment policy.

#### *Incident on January 30, 2013 relating to the Secretary about an Email to a College*

The worker noted they had requested the secretary provide a student with a particular form multiple times, and on the evening of January 28, 2013, the worker emailed the secretary asking for an update on the form. The following day, early in the morning, the secretary responded indicating the form was ready for the worker. Prior to the worker making it into work however, the student had come to the guidance department and the secretary told the student the form would be completed and sent to the required college before the deadline. The secretary sent an email to the college indicating the same. However, when the worker came into work that day, the secretary did not provide the worker with the details of the student's visit.

The secretary then emailed the worker on the following day with all the details. Upon reviewing the email on January 30, 2013, the worker went to see the secretary in the main office where the worker 'challenged' the secretary to explain their conduct.

Following this interaction, the secretary emailed the principal indicating the worker had confronted the secretary in the mail office and made the secretary uncomfortable. The principal in response sent an email to human resources, accusing the worker of 'accosting' and 'attacking' the secretary.

This incident raised as a concern against the worker at a meeting on February 14, 2013, which is described in the next incident below.

The Arbitrator agreed with the findings of the investigator, indicating the principal demonstrated a bias against the worker when the principal reached their conclusion before affording the worker an opportunity to provide their account of the incident in question.

*Incident on February 14, 2013 relating to the Principal and Human Resource staff about the Worker's Performance Concerns*

On February 13, 2013, the principal emailed the worker indicating there would be a meeting on February 14, 2013 to discuss concerns and performance. The worker responded to this email, asking for further clarification on the meeting; however, the employer did not provide a detailed response with the particulars of the meeting.

On February 14, 2013, the meeting took place between the principal, worker, a human resource staff and a union member. The employer brought the following issues forth:

- The principal received complaints from students' parents, grandparents and a social worker on January 29, February 4, 5, 7, and 13, 2013, relating to the worker and the services they provided those students.
- On January 30, 2013, the principal was notified of an incident between the worker and the secretary in the guidance department. The employer had listened to the version of events by the secretary, who had accused the worker of invading the secretary's personal space in an intimidating manner.
- On February 13, 2013, the worker sent an email to several staff concerning one teacher's mistake, which was an oversight that did not require all parties to be informed. The principal indicated this was contributing to a negative work environment
- The principal was notified that some students were uncomfortable when meeting with the worker as the fluorescent lights were off and students were sitting beside the worker, not across from them.

The worker did not respond to these allegations at the meeting, and at the end, no disciplinary action was taken against the worker. Following this meeting, the worker was off work until February 21, 2013.

The Arbitrator in their July 23, 2015 decision noted the following findings:

- The acting head of the guidance department noted the worker's sitting arrangement was common, and testified they did not observe any issues with lighting in the worker's office.
- The principal was aware of the worker's complaints at the time the principal organized this meeting to discuss the worker's performance concerns.
- The principal and the human resource staff demonstrated a bias against the worker after the worker lodged their complaint for the two incidents on December 11, 2012.
- The manner in which the "performance issues were addressed was at least in part a reprisal for the [worker's] complaint. This reprisal contravened [the employer's harassment policy] of the collective agreement conferring a right to be free from harassment".
- The worker was chastised by the principal for allegedly poor performance in the presence of those at the meeting.

Additional Findings in the Arbitrator's report of July 23, 2015

- The superintendent's letter to the principal following receipt of the investigator's report was deficient as it did not indicate there was any disciplinary or remedial action on the principal's part. "In my view, the employer's failure to take meaningful action, based on the investigator's findings, compounded its liability for his initial violation" of the employer's harassment policy.
- The human resource staff who prepared a memorandum on September 2, 2014, about the worker's employment history, provided an incomplete description of the Arbitrator's findings, including the four *Human Rights Code* violations by the vice-principal. Also this individual did not disclose to the administrative council, that the investigator had concluded the principal had not conducted the performance review in retaliation based on "a false premise". Accordingly, the human resource staff provided an incomplete and deliberately misleading memorandum motivated by their biases for the principal and vice-principal.
- "My award of damages is based on the following factors: (1) [the principal's] touching of the [worker's] temples while making a condescending comment; (2) [the principal's] angry use of a raised voice during the coop bus fiasco which he had already fueled by failing to acknowledge his approval of the [worker] contacting coop teachers; (3) the [worker] being publicly chastised about her performance partly in reprisal for her complaint about [the principal]; (4) the psychological distress and physiological harm to the [worker] resulting from all of the foregoing; (5) her known psychological and physiological vulnerability; (6) the employer's failure to discipline [the principal], or require him to take any remedial action, based on the findings of the investigation report; and (7) as a mitigating factor, the employer's decision not to contest adverse findings by the investigator."

Summary of Events from the School Year of 2013 to 2014

The worker was transferred to a different secondary school for fall of 2013. The worker indicated their experiences at this new school were no different from the previous school, as the worker felt the staff in the guidance department were unwelcoming and the work environment became poisoned.

The worker laid off work in mid-February 2014 as a result of workplace stressors and did not return to work. Subsequently, on October 29, 2014, the employer took the position there was no reasonable prospect of the worker's healthy and safe return to work from a medical leave and therefore the employer terminated the worker's employment noting a frustrated employment contract.

The worker filed two grievances related to incidents that took place on February 20, 2014 and February 21, 2014 against two staff at the guidance department. These two individuals also made counter allegations against the worker, and so the employer hired an external investigator to report their findings on these allegations.

The report dated May 29, 2014 provided there was an "atmosphere of mutual suspicion" in the school, and the worker contributed to the toxic work environment. Further, the investigator concluded:

*There was no broad conspiracy to ensure that [the worker] did not succeed at [the school], as she seemed to believe. Incidents of frustration and even occasional rudeness are hardly unknown in any workplace, but [the worker] concluded that every such occurrence formed part of a shared effort to target her. There was no such acting in concert, in my view.*

To the worker's numerous allegations, the investigator was not persuaded that they amounted to a course of vexatious comment or conduct toward the worker.

At the conclusion of the report, the second investigator did not find the counter allegations against the worker held merit, and determined the two staff members were not victims of workplace harassment.

### Medical Information

In this case, the worker's family physician, internal medicine physician, psychologist and psychiatrist have submitted numerous letters relating to the worker's physical, emotional and psychological condition throughout this period. Below I provide the information from key medical documents.

Dr. Horne, family physician provided a note dated February 28, 2011 indicating the worker was unable to work due to increased stress at work, specifically since attending a staff meeting on February 25, 2011.

On November 4, 2011, Dr. Reist, psychologist indicated the worker "has experienced intensification of her medical and psychological symptoms associated with her attempt to return to work in February 2011 (i.e. co-workers' reactions to her medical accommodations and return to work plan, February 25, 2011 meeting addressing return to work issues) as well as her most recent attempt to resume working in October 2011".

Dr. Reist's letter of May 15, 2012 provided details about the worker's distress related to their employment situation. The psychologist noted:

*....[the worker's] sense of confidence and self-worth deteriorated, she felt rejected and ostracized, and she became increasingly anxious and depressed within this workplace environment... in addition [the worker] experienced harassment from her vice-principal during a meeting she attended on February 25, 2011....unfortunately this incident further intensified [the worker's] psychological symptoms. Specifically, she experienced persistent feelings of sadness, frequent crying, reduced interest in typically enjoyable activities, withdrawal from daily activities and social connections, lethargy and reduced energy, and sleep disturbance.... Indeed, during treatment sessions following the February 25 2011 meeting, [the worker] frequently became tearful, required guidance and reassurance, and felt helpless to change her situation. [The worker] was medically placed off work by her family physician as a result of her symptoms from February 28, 2011 until June 20, 2011, which was a decision I supported. Consequently [the worker's] absence from work was a direct result of the stress she experienced within her workplace setting.*

Further, the report indicated the worker was shocked and distressed that they were not permitted to return to work as the employer requested additional information from their doctor on the day they were expected to return to work in October 2011. The delay in return to work "caused her significant stress and perpetuated her emotional distress and sense of feeling rejected, which impaired her sense of self-worth and intensified her depression symptoms".

On May 17, 2012, Dr. Brownstone, psychiatrist noted, "she was quite frustrated in trying to have accommodations put in place and had experienced some harassment by co-workers, as well as what she felt was lack of support from the principal and vice-principal. At various points at work, she felt humiliated by the process as well as by various persons... over the course of this process, [the worker] became clinically depressed".

On January 14, 2013, Dr. Horne stated the worker reported the principal tapped the worker's temples, and the worker had significant stress from the principal yelling at the worker.

The worker was seen again by the family physician on February 19, 2013 and reported distress following the February 14, 2013 meeting at work.

Dr. Reist's letter of October 2, 2013 provided details of the ongoing psychological depression and anxiety symptoms the worker experienced because of workplace-related stressors. The psychologist noted,

*.... It is my opinion that [the worker's] psychological and physical symptoms were perpetuated and exacerbated by multiple harassment experiences she continued to suffer over the course of 2012-2013 school year... I am concerned that the impact of these multiple and ongoing harassment incidents, negative interactions with several staff members... have resulted in [the worker] developing posttraumatic symptoms in addition to causing a deterioration of her psychological state....*

In addition, Dr. Reist noted the worker felt humiliated and distressed at being treated like a child, and felt violated by the fact that the principal had touched the worker in such an insulting manner. The worker had noted they did not feel safe around the principal and was fearful of possible negative future encounters with the principal. The psychologist also indicated symptoms the worker experienced including feeling overwhelmed by intrusive memories of the meeting and its sequelae, sleep disturbances, energy and concentration difficulties, continued feeling of weakness, dizziness, tearful, reduced stress tolerance and feelings of helplessness and hopelessness of the incidents of harassment. The worker also began to develop panic attacks while at work when having to deal with the principal. The worker also reduced socialising, appeared timid and fearful during treatment sessions, and acknowledged struggling with daily tasks and stressors.

The October 2, 2013 psychologist report concluded with "I am concerned that if these negative experiences do not cease [the worker will need to go on medical leave due to their impact on her psychological state and on her functioning".

On May 8, 2014, Dr. Reist provided another detailed letter confirming the worker's diagnoses of major depressive disorder and anxiety disorder. The report also confirmed the worker was placed off work in February 2014 "due to experiencing depression and anxiety symptoms that were impairing her ability to work". The psychologist also provided the worker continued to struggle with persistent feelings of sadness, tearfulness, low interest in previously enjoyable activities, significantly reduced energy and low motivation, sleep disturbance, fatigue, low appetite and difficulties with concentration, memory, processing speed, and making daily decisions. In addition, the report provided the worker would not "be able to counsel students, attend and participate in meetings, and cope with deadlines and the workload. Furthermore, she would not psychologically be able to manage the ongoing harassment and negative interactions from several staff members with whom she works".

The June 23, 2016 letter from Dr. Reist provided a history of the worker's workplace harassment and listed the previous updates they provided in relation to each of the incidents that exacerbated the worker's psychological condition. The psychologist opined the "accumulating psychological impact of these experiences has been so significant that [the worker] is psychologically unable to work in any capacity". Immediately following the worker's termination in October 2014, the worker's symptoms and panic attacks intensified significantly. "Given that her sense of identity and self-worth was derived from her vocation as a teacher both the fact that she was terminated and the way that she was terminated substantially impaired her self-esteem and sense of worth". Since the worker's termination, they had participated in a prolonged and difficult arbitration that led the worker to feeling overwhelmed, distressed and distraught because at its outcome, the worker felt it was unjust.

On July 29, 2019, the worker's family doctor provided a letter that confirmed they treated the worker monthly for supportive psychotherapy. Dr. Horne provided details of the worker's visits from 2016 to 2019, and the majority of all sessions related to medication side effects and the legal proceedings from the work-related stressors. With relation to returning to the worker's previous job, the doctor opined, "I believe this would be quite impossible based on what I know about her clinical situation. I am also skeptical she will find any other gainful employment because of her psychological and medical problems and because of her age and job qualifications".

Dr. Reist provided another letter on July 30, 2019 indicating they had continued to treat the worker on a regular basis since January 2016. They advised the worker's treatment mainly revolved around the impacts of the worker's termination in October 2014, the cumulative and continuous litigations, and the worker's diminished self-worth. It was noted the worker's psychological symptoms had not reduced and rather they intensified since 2016, and the worker's functioning had become further impaired. The psychologist confirmed the worker continued to meet the DSM-IV diagnostic criteria for major depressive disorder and anxiety disorder (with features of post-traumatic stress disorder). The worker's symptoms included persistent sadness, frequent tearfulness, and perceptions of helplessness and hopelessness about their situation. The worker experienced significantly reduced interest in previously enjoyable activities, social interactions, daily tasks and activities of daily living, and the worker's cognitive processes remained impaired. In relation to work, it was noted, "[the worker's] occupational functioning has been impaired by her psychological symptoms such that she is unable to work in any capacity and she is receiving CPP Disability benefits".

### Chronic Mental Stress Decision

The first issue to be determined is whether the worker's diagnosed depression was a result of a substantial work-related stressor as defined by the CMS policy.

Policy 15-03-14, *Chronic Mental Stress*, states, in part:

*A worker is entitled to benefits for chronic mental stress arising out of and in the course of the worker's employment.*

*A worker is not entitled to benefits for chronic 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.*

.....

### **Definition**

#### **Workplace harassment**

*Workplace harassment occurs when a person or persons, while in the course of the employment, engage in a course of vexatious comment or conduct against a worker, including bullying, that is known or ought reasonably to be known to be unwelcome.*

#### **Chronic mental stress**

.....

*A worker will generally be entitled to benefits for chronic mental stress if an appropriately diagnosed mental stress injury is caused by a substantial work-related stressor arising out of and*

*in the course of the worker's employment. For more information see **15-02-02. Accident in the Course of Employment**.*

.....

### **Substantial work-related stressor**

*A work-related stressor will generally be considered substantial if it is excessive in intensity and/or duration in comparison to the normal pressures and tensions experienced by workers in similar circumstances.*

**Workplace harassment** will generally be considered a substantial work-related stressor.

.....

### **Interpersonal conflicts**

*Interpersonal conflicts between workers and their supervisors, co-workers or customers are generally considered to be a typical feature of normal employment. Consequently, such interpersonal conflicts are not generally considered to be a substantial work-related stressor, unless the conflict*

- *amounts to **workplace harassment**, or*
- *results in conduct that a reasonable person would perceive as egregious or abusive.*

### **Standard of proof and causation**

*In all cases, the WSIB decision-maker must be satisfied, on a balance of probabilities, that the substantial work-related stressor*

- *arose out of and in the course of the worker's employment, and*
- *was the **predominant cause** of an appropriately diagnosed mental stress injury.*

*For the purposes of this policy, "**predominant cause**" means that the substantial work-related stressor is the primary or main cause of the mental stress injury—as compared to all of the other individual stressors. Therefore, the substantial work-related stressor can still be considered the predominant cause of the mental stress injury even though it may be outweighed by all of the other stressors, when combined.*

### **Diagnostic requirements**

*Before any chronic mental stress claim can be adjudicated, there must be a diagnosis in accordance with the Diagnostic and Statistical Manual of Mental Disorders (DSM) which may include, but is not limited to,*

- *acute stress disorder*
- *posttraumatic stress disorder*
- *adjustment disorder, or*
- *an anxiety or depressive disorder.*

In summary, the following conditions must be met in order for entitlement to be granted for CMS:

- The worker must have experienced one or more substantial work-related stressors,
- The work-related stressor must be the predominant cause of the appropriately diagnosed mental stress injury, and
- An appropriate regulated health professional has provided a diagnosis based on the DSM.



### *Substantial Work-related Stressor*

The first condition is met as I find the worker was subjected to workplace harassment, where members of administration and management, along with colleagues engaged in a course of vexatious comments and conduct against the worker that was known to be unwelcome.

While I am not bound by the findings from the Arbitrator's decisions, I place significant weight on them for multiple reasons:

- The Arbitrator is a qualified and impartial arbitrator with the authority and capacity to make decisions on claims of workplace harassment under the school board's policies and the *Human Rights Code*
- The Arbitrator had access to multiple witness testimonies, statements, and investigation reports, and related documents (including emails, notes and minutes from meetings, medical reports, etc.)
- The Arbitrator's findings are based on the critical analysis of the individual testimonies of all parties involved in each allegation and their position on each incident is provided with clear explanations and rationale

As provided in the summary above, I find the staff in the guidance department in February 2011 did not treat the worker fairly because they felt the guidance role should not be provided to individuals as a work accommodation. As a result, the guidance department head and some colleagues excluded the worker from routine meetings that the worker was reasonably expected to attend and did not provide the worker with the same access to student records as other guidance counsellors.

Although I do not find these incidents can be categorized simply under interpersonal conflict, I do not find the actions of the guidance department staff alone meet the threshold for workplace harassment.

However, I find, in conjunction with the actions of the vice-principal, principal and human resources staff (who acted on behalf of the employer's management team), this claim meets the threshold for workplace harassment and conduct that a reasonable person would perceive as egregious.

As provided in the definition of workplace harassment in the policy, it is said to occur when individuals in the course of their employment, engage in a course of vexatious comment or conduct against the worker that is known or ought to reasonable be known as unwelcome.

In this case, the Arbitrator confirmed that the vice-principal knew from the outset, that some staff in the guidance department were opposed to the worker being accommodated there and during testimony, the vice-principal conceded there was no reason the worker should not have had full access to student data. Further, the vice-principal acknowledged that they also knew the worker felt poorly treated by some colleagues in the department.

Given the vice-principal's knowledge of the toxic work environment, I find they contributed to the substantial work-related stressor when they raised their voice and scolded the worker in front of their colleagues at a meeting on February 25, 2011. In addition, I find the vice-principal did not take the required steps to end or prevent this behaviour, and instead, with their inaction, allowed the staff in the guidance department, to continue to exclude the worker from activities that were reasonably expected from the worker's guidance counsellor role.

In addition, I find the actions of the principal's in the school year of 2012-2013 also contributed to the substantial work-related stressor. As provided in the summary of events above, I find the principal's actions rose to level of harassment and vexatious conduct because of a culmination of the following incidents:

- The principal exacerbated the situation and raised their voice in a meeting with the worker and co-op teacher on December 11, 2012.
- The principal tapped the worker's in the temples while making a condescending comment on December 11, 2012 and later denied their actions.
- The principal demonstrated a bias against the worker in relation to the incident with the secretary January 30, 2013.
- The principal's meeting to discuss the worker's performance concerns on February 14, 2013 were in part reprisal for the worker's complaints against the principal on the matters related to December 11, 2012.

While normal decisions stemming from the employment function are not considered under the *CMS* policy, in this particular instance, as I find the February 14, 2013 performance concern meeting was done in reprisal, I am able to establish it is part of the workplace harassment experienced by the worker. I have determined this because:

- the principal was aware of the worker's complaints against them (for the incidents related to December 11, 2012) when they organized this meeting
- the worker was not provided reasonable notice of the meeting or its details
- many of the concerns raised were not previously discussed with the worker prior to the meeting
- the meeting did not result in any disciplinary actions against the worker

Given the principal's position in the secondary school, and their expectation to control and mitigate issues within the school context, I find their actions were the opposite, exacerbating the worker's emotional distress and psychological symptoms.

Finally, the human resource staff also played a role in workplace harassment as these individuals showed a bias against the worker and created a hostile and intimidating work environment in the following incidents:

- The September 2, 2014 human resource memorandum provided an incomplete and deliberately misleading document because it did not highlight errors in the first investigator's report (made as a result of a false premise) that would have portrayed the vice-principal and principal in a negative light, and instead was biased against the worker.
- The human resources staff did not investigate the worker's complaints related to the two incidents on December 11, 2012.

**I find the conduct by human resource staff clearly demonstrated the worker did not have access to a safe non-discriminatory and harassment-free workplace.**

I note here that the highlighted events qualify as substantial work related stressors, and therefore I do not find it necessary to expand on the incidents described in the second investigation report from the years of 2013 to 2014.

Although the ER argued in their submission, that the incidents noted above do not constitute a substantial workplace stressor within the *CMS* policy, I disagree. Simply put, while each incident may not rise to the threshold in the *CMS* policy, due to the duration of time in which the worker was repeatedly exposed to vexatious conduct or comments (in comparison to the normal pressures experienced by workers in similar circumstances), I find this events and actions do constitute a substantial workplace stressor within the *CMS* policy. Therefore, I find this criterion has been met.

### **Predominant Cause**

The second condition is met as I am satisfied the work-related stressor is the predominant cause of the appropriately diagnosed depression. The medical documents submitted for review (which are captured in detail in the medical information section above) all confirm the worker's predominant concern starting in 2011 was their work-related stressors. The reports from the family doctor, psychologist and psychiatrist clearly documented how the incidents affected the worker and over time, how they compounded and exacerbated the worker's emotional and psychological symptoms.

Further, during this time, the worker's treatment providers did not indicate there were any other non-compensable factors that affected the worker's psychological symptoms to be considered the predominant cause of their diagnoses. **While I acknowledge the worker had a pre-existing unrelated medical condition, given the worker was capable of working with this condition prior to the substantial work-related stressors starting in 2011, I do not find this was the predominant reason for the worker's diagnoses.**

**Although it is the ER's position that these incidents were normal workplace interactions and the worker had a disproportionate reaction to these incidents, I do not agree with this position as I have confirmed the above incidents constitute a substantial workplace stressor and I have established that it is the predominant cause of the worker's depression and anxiety.**

As outlined above, I have concluded the substantial work-related stressor is the predominant cause for the worker's mental stress injury, and so this criterion in the CMS policy has been established.

### **Appropriate DSM Diagnosis**

**The third condition is met as the worker's psychologist and psychiatrist appropriately diagnosed a mental stress injury in accordance with the DSM. In this case, on May 17, 2012, the psychiatrist diagnosed the worker with depression because of the issues related to the accommodation process, along with the incidents of harassment reported by the worker. Further, Dr. Reist diagnosed the worker with major depressive disorder and anxiety disorder on May 8, 2014 as a direct result of the stress the worker experienced within their workplace setting.**

Details related to the worker's symptoms, exacerbations, limitations, etc. are all provided in detail in the above medical information section.

Therefore, based on my review of the medical evidence on file, I accept a regulated health professional has appropriately diagnosed the worker with a mental stress injury. As such, I find the policy criteria pertaining to a mental stress diagnosis has been met.

**In summary, the worker's claim meets the three conditions set out in the policy, and initial entitlement to CMS is in order.**

## **B. LOE Determination**

Policy 18-02-03, *Payment and Reviewing LOE Benefits (Prior to Final Review)*, states, in part:

*A worker who has a loss of earnings as a result of a work-related injury/disease is entitled to payment of loss of earnings (LOE) benefits beginning when the loss of earnings begins. Benefits continue until the earliest of:*

- *the day on which the worker's loss of earnings ceases*
- *the day on which the worker reaches 65 years of age, if the worker was less than 63 years of age on the date of the injury*
- *two years after the date of injury, if the worker was 63 years of age or older on the date of the injury, or*
- *the day on which the worker is no longer impaired as a result of the injury.*

### **Full LOE**

*If the nature or seriousness of the injury/disease completely prevents a worker from returning to any type of work, or if the worker is able to return to some form of work but the WSIB determines no suitable work is available, the worker is generally entitled to full LOE benefits providing the worker co-operates in health care measures and all aspects of the work reintegration process.....*

This policy indicates that LOE benefits are approved and continue as long as the worker suffers a wage loss because of a work-related injury. In this case, I find the worker is entitled to LOE benefits from October 20, 2014 and ongoing.

The medical information from Dr. Horne and Dr. Reist (both provided in detail in the medical information section) confirmed the worker had clinical authorization to remain off work starting February 2014, and it was due to the worker's depression and anxiety, which were a direct result of the workplace stressors. In specific, Dr. Reist's medical report of May 8, 2014 confirmed the worker would not "be able to counsel students, attend and participate in meetings, and cope with deadlines and the workload" and the worker would not be able to handle any further instances of harassment or negative interactions with staff. I find this information supports the worker was unable to return to work with the employer in any capacity in October 2014 due to their work-related mental stress injury.

On October 29, 2014, the employer wrote to the worker's union stating there "is no reasonable prospect of the [worker's] healthy and safe return to work in the future" because of (1) the workers medical condition, (2) the role played by stress in exacerbating the condition, and (3) the loss of trust between the employer and the worker.

Although the contents of this letter points to various different factors for the worker's termination, I find this termination was a direct result of the string of incidents in which the worker repeatedly experienced workplace harassment from colleagues, the vice-principal, principal, and human resource staff. The stress and the lack of trust the worker experienced was not from their pre-existing medical condition, or from the accommodated job itself, but rather because of vexatious conduct and comments from members of the employer. Accordingly, I find this termination is causally linked to the worker's allowed CMS claim and the worker is eligible to receive LOE benefits starting the date of this termination.

The ER argued in their submission that the worker's termination was not causally linked to their workplace injury, and therefore LOE benefits were not in order beyond the termination. I disagree, as the worker demonstrated they were capable of working with the employer with their pre-existing unrelated medical condition until the workplace harassment started in 2011. Until such time, the worker had a good standing with the employer, fellow colleagues and students.

While I acknowledge the employer would have experienced difficulty in identifying a suitable work environment in which the worker would have been harassment-free, the reason for that is by 2014, the worker had formally been diagnosed with depression and anxiety related to multiple workplace stressors, which made it impossible for the worker to trust the employer and return to work. Accordingly, I find the

work-related mental stress injury is the reason why the worker was clinically authorized to remain off work, and therefore I find LOE is in order starting on October 20, 2014.

Moreover, the medical information since October 2014, as evidenced from the summary of medical information above, has continued to support the worker is unable to return to work in any capacity because their psychological symptoms have not improved. The reasons for this include the lasting impacts of the workplace harassment, the ongoing litigations, and the termination along with the financial instability that followed.

Related to ongoing LOE benefits beyond the termination, the ER requested LOE benefits be limited because the worker's stress was associated with ongoing litigations, which are a post-accident material change in circumstance, and therefore the worker should not be entitled to full LOE benefits. In this case, given the worker's litigations are solely related to the workplace harassment and the worker's unjust termination, I find it remains causally related to this claim, and does not fall under the category of post-accident material change in circumstance.

As the medical information on file continues to support the worker is unable to work and there was no evidence of any significant intervening events that have broken the chain of causation, I find the worker is entitled to LOE benefits from October 20, 2014 and ongoing.

## **2. ANALYSIS – WORKER OBJECTION TO NEL QUANTUM AND LOE AT 72-MONTH LOCK IN**

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1. **Identify the main components of the system.**  
 2. **Define the scope and objectives of the project.**  
 3. **Conduct a thorough analysis of the requirements.**  
 4. **Develop a detailed design and architecture.**  
 5. **Implement the system using appropriate technologies.**  
 6. **Test the system thoroughly to ensure quality.**  
 7. **Deploy the system and monitor its performance.**  
 8. **Provide ongoing support and maintenance.**

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[REDACTED]. While I acknowledge the worker requires extensions and grace periods from the courts to handle their own litigations, I find the fact that they have handled (and continue to handle) these proceedings independently is evidence that they do not suffer a marked impairment in this category.

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**CONCLUSION**

1. The employer's issues are concluded as follows:
  - a. Initial entitlement to allow CMS is confirmed, and
  - b. The allowance of LOE benefits from October 20, 2014 is confirmed.
2. The worker's issues are concluded as follows:
  - a. The NEL quantum of 20% for the psychological impairment is confirmed, and
  - b. The worker's final LOE benefit review is confirmed.

The employer objection is denied.

The worker objection is denied.

**DATED** February 22, 2022



Appeals Resolution Officer  
Appeals Services Division

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