IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *De Jesus v. British Columbia (Workers' Compensation Appeal Tribunal),* 2023 BCSC 1320

Date: 20230731
Docket: S214901
Registry: Vancouver

In the Matter of the *Judicial Review Procedure Act*, R.S.B.C. 1996,c. 241

Between:

Noeleen De Jesus

Petitioner

And

Workers' Compensation Appeal Tribunal and Providence Health Care Society

Respondents

On judicial review from: A decision of the Workers' Compensation Appeal Tribunal dated February 19, 2021 (WCAT Decision No.: A2000955)

Before: The Honourable Justice Basran

Reasons for Judgment

Counsel for the Petitioner:	D. Sabelli
Counsel for the Respondent, Workers' Compensation Appeal Tribunal:	T. Martiniuk
Counsel for the Respondent, Providence Health Care Society:	C. Wong
Place and Dates of Hearing:	New Westminster, B.C. February 15–17, 2023
Place and Date of Judgment:	Vancouver, B.C. July 31, 2023

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Overview and Background

[1] Noeleen De Jesus, the petitioner, applies for judicial review of a Workers' Compensation Appeal Tribunal ("WCAT") decision (decision no. A2000955) dated February 19, 2021 (the "WCAT Decision"), which denies her compensation for a mental disorder.

[2] Ms. De Jesus is a care aide employed at a residential care facility (the "Facility") operated by Providence Health Care Society ("Providence"). The Facility houses adults with various extended care needs.

[3] In September 2017, one of the residents of the Facility who suffered from dementia (the "Resident") grabbed Ms. De Jesus' buttocks. In either October or November 2017, the Resident touched Ms. De Jesus' breasts (collectively, the "Resident Incidents"). As a result of the latter incident, Ms. De Jesus' supervisor changed Ms. De Jesus' work assignment, and this incident was recorded in the Resident's chart. The supervisor confirmed that the Resident had similar issues with other female staff members at the Facility.

[4] Ms. De Jesus brushed off the inappropriate touching and did not report them because she knew the Resident had cognitive and mental health issues.

[5] On December 13, 2017, another care aide was providing a shower to the Resident when Ms. De Jesus entered the shower room. She had some sort of physical interaction with the Resident.

[6] On December 15, 2017, Ms. De Jesus' clinical nurse leader ("CNL") received a report made on behalf of the Resident that Ms. De Jesus had punched the Resident in the chest (the "Resident Complaint").

[7] On December 20, 2017, Ms. De Jesus met with the CNL and the resident care manager ("RCM") to discuss the Resident Complaint (the "December Meeting"). During this meeting, Ms. De Jesus stated that she had tapped the Resident on his chest gently as a greeting. When the CNL advised that the Resident had reported

that Ms. De Jesus had punched him on the chest with a fist, she responded angrily and loudly. Throughout this meeting, Ms. De Jesus' voice was raised, and she made gestures towards the CNL. Ms. De Jesus was critical of the CNL for raising the Resident Complaint rather than addressing the alleged incidents where the Resident inappropriately touched Ms. De Jesus.

[8] The CNL and RCM had not been previously informed of the Resident's behaviours prior to the December Meeting.

[9] Providence eventually determined that the Resident Complaint was unfounded, but it concluded that Ms. De Jesus' conduct during the December Meeting warranted performance management.

[10] On January 12, 2018, a second meeting was held with Ms. De Jesus, her union representative, the CNL, and the RCM regarding her behaviour during the December Meeting (the "January Meeting").

[11] On January 16, 2018, the RCM, on behalf of Providence, issued a letter to Ms. De Jesus stating that she would be suspended for one day without pay as a result of her conduct during the December Meeting (the "Letter").

[12] On January 19, 2018, Ms. De Jesus filed an application to the Workers' Compensation Board of British Columbia, which operates as WorkSafeBC (the "Board"), seeking compensation for a mental disorder (the "Claim"). In the application, Ms. De Jesus identified the date of injury as January 12, 2018, and the location of the incident to be at a meeting room.

[13] Ms. De Jesus filed a grievance regarding the Letter (the "Grievance") that subsequently settled. As part of its resolution, the parties agreed that Ms. De Jesus' conduct in the December Meeting merited some discipline including a one-day suspension.

[14] On or around February 14, 2018, the Board referred Ms. De Jesus to a counsellor in its Social Work – Outreach and Transition Services ("SWOTS"). During

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her first session with the SWOTS counsellor, Ms. De Jesus stated that a prior instance where she was accused of abusing a resident at the Facility was a trigger to the issues currently at her job and that she felt "picked on at work", and she was very upset with the way she was treated by her employer.

[15] On February 22, 2018, the Board denied the Claim, finding that the December Meeting and/or the January Meeting (collectively, the "Meetings"), were not traumatic events or significant work-related stressors, and that the Resident Incidents were not significant work-related stressors (the "First Board Decision").

[16] Ms. De Jesus disagreed with the First Board Decision and filed a Request for Review of it with the Board's Review Division. The Review Division's officer concluded that further investigation of the Resident Incidents was required and referred the Claim back to the Board for an investigation (the "First Review Division Decision").

[17] The Board undertook further investigation by, among other things:

a) obtaining a report of an independent medical examination of Ms. De Jesus by Dr. Richford, a psychiatrist, dated July 30, 2018; and

b) arranging for Ms. De Jesus to participate in a psychological assessment with Dr. Cheung, a registered psychologist.

[18] The Board reviewed the Claim and agreed with Dr. Cheung's assessment that the main cause of Ms. De Jesus' diagnosis was her interactions with her managers. On August 1, 2019, the Board again denied the Claim (the "Second Board Decision").

[19] Ms. De Jesus filed a Request for Review of the Second Board Decision with the Board's Review Division and on March 23, 2020, the Board's Review Division's officer confirmed the Second Board Decision. Ms. De Jesus appealed the Second Board Decision to WCAT (the "Appeal").

[20] The oral hearing for the Appeal was held on November 19, 2020.

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[21] On February 19, 2021, WCAT released the WCAT Decision in which it denied the Appeal, confirmed the Second Review Decision, and found that Ms. De Jesus was not entitled to compensation for a mental disorder pursuant to s. 135 of the *Workers Compensation Act*, R.S.B.C. 2019, c. 1 [*WCA*] for the following reasons:

a) The Resident Incidents were not traumatic events;

b) Ms. De Jesus' mental disorder was not in reaction to a traumatic event arising out of and in the course of her employment at the Facility;

c) the mental disorder presumption for eligible occupations set out in s. 135(2) of the *WCA* (the "Mental Disorder Presumption") did not apply;

d) WCAT was not persuaded that the Resident Incidents were significant work-related stressors, but that even if they were accepted as such, they were not the predominant cause of Ms. De Jesus' mental disorder; and

e) the predominant cause of Ms. to Jesus's mental disorder was her reaction to Providence's legitimate exercise of its authority to manage the workplace, and the manner in which it exercises that authority did not remove it from the protection of s. 135(1)(c) of the *WCA* (the "Labour Relations Exclusion").

[22] The petition at bar is a judicial review of the WCAT Decision. Ms. De Jesus submits that various aspects of the WCAT Decision are patently unreasonable. Specifically, she asserts that WCAT's findings that that the Resident Incidents were not traumatic and not a significant stressor are patently unreasonable.

Dr. Brown's Mental Disorder Diagnosis Of Ms. De Jesus

[23] On February 7, 2018, Ms. De Jesus' family physician, Dr. Brown, diagnosed her with adjustment disorder and recurrent depression. Dr. Brown further opined that Ms. De Jesus would be fit to return to work once reassured by supervisory staff that they are aware of her triggers.

[24] In a letter dated June 11, 2018, Dr. Brown reported that Ms. De Jesus suffered from recurrent depression and anxiety. Among other things, he identified Ms. De Jesus' workplace triggers to include hypersensitivity to questions regarding her work ethic, difficulty controlling her anxiety when faced with criticism from a superior and being placed in a confrontational position when receiving criticism.

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The Independent Medical Examination Of Dr. Richford

[25] Dr. Richford's July 30, 2018 report of the psychiatric interview with Ms. De Jesus contained a detailed review of her statements with respect to the events leading up to her leave. It focused on her interactions with management during the Meetings and their coding of her as engaging in unprofessional behaviour. Ms. De Jesus described that the Resident had touched her inappropriately in the context of explaining why she spoke loudly during the December Meeting. She was upset that she was being accused of abusing the Resident but noted that she had not reported the inappropriate touching incidents to the management because she knew the Resident had mental health issues.

[26] Dr. Richford diagnosed Ms. De Jesus with adjustment disorder with depressed and anxious mood, mild to moderate, as well as probable cluster B personality disorder including, borderline and histrionic traits. He identified the precipitating factor of the adjustment disorder as the coding of Ms. De Jesus as unprofessional. He also identified the perpetuating factors of the adjustment disorder to include prior mental health issues and past suicidal ideation, Ms. De Jesus's compensation claim and human rights complaint, previous leaves related to conflicts with management, and her personality traits. He further noted that Ms. De Jesus reported that she was sensitive to any criticism, feedback, or communication from people in a position of authority.

The Psychological Assessment Of Dr. Cheung

[27] Dr. Cheung's report dated April 26, 2019 also contains a detailed review of Ms. De Jesus' statements with respect to the events leading up to her leave. Dr. Cheung reported that:

a) Ms. De Jesus was tearful throughout much of the account of her treatments by management but calmed down while talking about other matters;

b) Ms. De Jesus stated that at the time of the Resident Incidents, she brushed them off, and excused the Resident's behaviour because he had

mental health issues, and she was able to put aside those incidents and continue working;

c) Ms. De Jesus developed psychological symptoms after the Meetings and that her mental disorder was likely precipitated by them;

d) the major contributor to Ms. De Jesus' mental disorder was likely the "contention with the accident employer". Dr. Cheung noted that Ms. De Jesus had reported the most upsetting events were those involving the workplace managers as compared with the inappropriate touching incidents, most of her psychological symptoms seem to involve the contention with the accident managers, and her recurring thoughts about the workplace issues had been more prevalent than the thoughts regarding the Resident Incidents. Dr. Cheung noted that this was consistent with Dr. Richford's report; and

e) the Resident Incidents were a moderate but significant contributor.

Relevant Legal Principles

Mental Disorders

[28] Sections 135(1) and (2) of the *WCA* outlines the requirements for compensation for a mental disorder:

> Mental disorder
>
> 135 (1) Subject to subsection (3), a worker is entitled to compensation for a mental disorder, payable as if the mental disorder were a personal injury arising out of and in the course of a worker's employment, if that mental disorder does not result from an injury for which the worker is otherwise entitled to compensation under this Part, and only if all of the following apply:
>
> (a) the mental disorder is either
>
> (i) a reaction to one or more traumatic events arising out of and in the course of the worker's employment, or
>
> (ii) predominantly caused by a significant work-related stressor, including bullying or harassment, or a cumulative series of significant work-related stressors, arising out of and in the course of the worker's employment;
>
> (b) the mental disorder is diagnosed by a psychiatrist or psychologist as a mental or physical condition that is described, at the time of diagnosis, in the most recent Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association;
>
> (c) the mental disorder is not caused by a decision of the worker's employer relating to the worker's employment, including a decision to

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> change the work to be performed or the working conditions, to discipline the worker or to terminate the worker's employment.
>
> (2) If a worker who is or has been employed in an eligible occupation
>
> (a) is exposed to one or more traumatic events arising out of and in the course of the worker's employment in that eligible occupation, and
>
> (b) has a mental disorder that, at the time of the diagnosis under subsection (1) (b), is recognized in the manual referred to in that subsection as a mental or physical condition that may arise from exposure to a traumatic event,
>
> the mental disorder must be presumed to be a reaction to the one or more traumatic events arising out of and in the course of the worker's employment in that eligible occupation, unless the contrary is proved.

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Standard of Review

[29] WCAT is an expert tribunal with a privative clause as defined in s. 1 of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45 [*ATA*]: ss. 308–309 of *WCA*.

[30] The standard of review that applies to all findings made by WCAT in this case is patent unreasonableness: s. 58 of *ATA*; s. 296 of *WCA*.

[31] A decision is patently unreasonable if it is based on "no evidence", is "clearly irrational", "borders on the absurd", or is "clearly, evidently unreasonable": *Law Society of New Brunswick v. Ryan*, 2003 SCC 20 at para. 52; *Speckling v. British Columbia (Workers' Compensation Board)*, 2005 BCCA 80 at para. 33.

[32] Patent unreasonableness is the most deferential standard in the spectrum of review, and it represents the "constitutional limit of deference" and for this reason it has maintained a stable meaning: *The College of Physicians and Surgeons of British Columbia v. The Health Professions Review Board*, 2022 BCCA 10 at paras. 126, 130.

[33] A court on judicial review is not permitted to re-weigh the evidence, second-guess the conclusions drawn from the evidence considered by WCAT, or substitute different findings of fact or inferences drawn from those facts: *Shamji v. Workers' Compensation Appeal Tribunal*, 2018 BCCA 73 at para. 39 and *Speckling* at paras. 33, 37.

[34] A decision is not patently unreasonable if there is some evidence capable of supporting the tribunal's finding of fact: *British Columbia (Workers' Compensation Appeal Tribunal) v. Fraser Health Authority*, 2016 SCC 25 at para. 39.

Adequacy of Reasons

[35] Every element of the reasoning provided by WCAT does not have to independently pass a test for reasonableness. The question is whether the reasons taken as a whole provide tenable support for the decision. A reviewing court should not seize on one or more mistakes in a decision which do not affect the decision as a whole: *Air Canada v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2018 BCCA 387 at para. 68.

[36] Even if there are aspects of the reasoning which the Court considers flawed, defective, or unreasonable, so long as they do not render the decision taken as a whole to be patently unreasonable, the decision is not patently unreasonable: *Phillips v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2011 BCSC 576 at para. 33, aff'd 2012 BCCA 304; *Steadman v. Workers' Compensation Appeal Tribunal*, 2021 BCSC 477 at para. 28.

The Issue Before WCAT

[37] The issue decided on the appeal was whether Ms. De Jesus was entitled to compensation for a mental disorder under s. 135 of the *WCA*. Pursuant to this section, a worker is entitled to compensation for a mental disorder that does not result from an injury for which the worker is otherwise entitled to compensation, only if all of the following criteria are met:

a) the mental disorder is either:

   i. a reaction to one or more traumatic events arising out of and in the course of the worker's employment; or

   ii. predominantly caused by a significant work-related stressor, including bullying or harassment, or a cumulative series of significant work-related stressors, arising out of and in the course of the worker's employment;

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b) the mental disorder is diagnosed by a psychiatrist or psychologist as a mental or physical condition that is described, at the time of diagnosis, in the most recent Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association; and

c) the mental disorder is not caused by a decision 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 worker's employment.

[38] If any one of the criteria above are not met, the worker is not entitled to compensation under s. 135 of the *WCA*.

[39] WCAT concluded, based on its review of the evidence before it, that Ms. De Jesus's Claim did not satisfy the criteria under s. 135 of *WCA*. Specifically:

a) WCAT did not find the existence of any traumatic events as contemplated in s. 135(1)(a)(i);

b) WCAT was not persuaded that the Resident Incidents were significant work-related stressors, as contemplated in s. 135(1)(a)(ii);

c) even if Resident Incidents were significant work-related stressors, they were not the predominant cause of the mental disorder, as contemplated in s. 135(1)(a)(ii); and

d) the predominant cause of Ms. De Jesus' mental disorder was her reaction to decisions made by Providence relating to her employment, which were excluded from compensation pursuant to the statutory exclusion in s. 135(1)(c).

Was WCAT's Conclusion That The Resident Incidents Were Not Traumatic Events Patently Unreasonable?

Positions of the Parties

[40] Ms. De Jesus asserts that she was sexually assaulted by the Resident and that WCAT minimized the seriousness of this misconduct by its use of language in the WCAT Decision and by failing to find that this was a traumatic event.

[41] Ms. De Jesus also asserts that WCAT did not make any findings on her truthfulness or credibility and in so doing failed to apply a modified objective test.

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She further asserts that WCAT relied on irrelevant evidence and myths and stereotypes about how victims of sexual assault are expected to behave.

[42] Providence submits that WCAT conducted an extensive review of the evidence provided by Ms. De Jesus and noted that during the early stages of the Claim, she did not indicate that she was afraid of the Resident. Instead, she consistently and regularly attributed her injury to the Meetings and not to the conduct of the Resident.

Discussion

[43] Ms. De Jesus identified the date of injury to be January 12, 2018, the date of the January Meeting. This suggests that at the time she made the Claim, she attributed her mental disorder to the events that transpired during the January Meeting. This is consistent with Ms. De Jesus' comment in February 2018 to a SWOTS counsellor that the felt "picked on at work".

[44] In a telephone conversation with a Board representative on February 20, 2018, Ms. De Jesus stated that she did not want to make it a "big deal" when residents touched her because some of them may be mentally ill. Specifically, she did not report the first Resident Incident for the same reason. This is consistent with Dr. Cheung's April 26, 2019 assessment of Ms. De Jesus in which she confirmed that the had "brushed off" the Resident Incidents because the Resident had mental health issues.

[45] Ms. De Jesus first mentioned being afraid of the Resident in a June 6, 2018 submission, after the Board's initial decision to deny the Claim, i.e., the First Board Decision.

[46] At the hearing, Ms. De Jesus testified that she was frightened of the Resident after the first of the Resident Incidents that occurred in September 2017 and she continued to be afraid of him thereafter, including on December 13, 2017, when she interacted with him in the shower room.

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[47] WCAT noted that Ms. De Jesus' evidence regarding the impact of the Resident Incidents evolved over the course of her Claim such that her testimony at the hearing was not internally consistent with prior statements she had made and the evidence she had provided to the Board and medical experts.

[48] WCAT preferred Ms. De Jesus' earlier evidence to her later contrary evidence because the earlier evidence was provided closer to the events in question and was, therefore, less burdened with the benefit of hindsight. It found that in considering the evidence as a whole, Ms. DeJesus' testimony at the hearing that the Resident Incidents had an immediate impact on her at the time of these occurrences was not plausible.

[49] Ms. De Jesus does not dispute WCAT's finding that the evidence she provided evolved over the course of her Claim nor does she dispute that her testimony at the hearing was inconsistent with her prior evidence.

[50] I am satisfied that WCAT's finding of the implausibility of Ms. De Jesus' evidence is synonymous with a finding that Ms. De Jesus' evidence was not credible. WCAT provided detailed reasons and assessed the fluctuating nature of Ms. De Jesus' evidence over time. There is no basis to assert that WCAT's credibility assessment and findings were patently unreasonable.

[51] I disagree with Ms. De Jesus' contention that even if she did not find the Resident Incidents to be traumatic, they could nevertheless be found to be traumatic based on a purely objective assessment.

[52] The Resident Incidents were presumptively traumatic because this sort of behaviour is undeniably reprehensible. However, Ms. De Jesus' reaction to these incidents is a relevant and important consideration. She brushed them off when they happened—she did not want to make it a "big deal" because the Resident had mental and cognitive issues. While it is possible that Ms. De Jesus had a delayed response to the Resident's aberrant behaviour, it is also possible that she sought to

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recharacterize the seriousness of the effects of these Resident Incidents on her once her Claim had been denied.

[53] It is not patently unreasonable for WCAT to not apply the modified objective test in the face of clear evidence that Ms. De Jesus did not consider the Resident's conduct to be a cause of her mental disorder. It was also not patently unreasonable for WCAT to consider Ms. De Jesus' subjective responses to the Resident Incidents and her statements regarding them in its assessment of whether they were traumatic events.

[54] On the contrary, in my view, it would be unreasonable for WCAT to conclude that an incident constitutes a traumatic event for the purposes of s. 135 of the *WCA* where the totality of the evidence before it, including the evidence of Ms. De Jesus herself, does not support such a finding.

[55] Furthermore, this argument was not raised during the Appeal, so it cannot be raised on judicial review: *Steadman* at paras. 68–69.

Was WCAT's Conclusion That The Resident Incidents Were Not A "Significant Stressor" Patently Unreasonable?

Positions of the Parties

[56] Ms. De Jesus submits that the WCAT Decision, in which WCAT determined that the Resident Incidents were not a significant stressor, as defined in s. 135(1)(a)(ii) of *WCA*, is patently unreasonable because it:

a) did not consistently follow the guidance in a non-binding practice directive and a policy document;

b) failed to apply the modern principles of statutory interpretation in analyzing if the Resident Incidents were a significant stressor, specifically that this conduct was not a normal pressure or tension of work as a care aide;

c) misapprehended the evidence of a team leader; and

d) failed to separately analyze if the Resident Incidents were a significant stressor.

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[57] Providence submits that the reasons show that WCAT properly analyzed the evidence of the working conditions in the Facility, including noting that some of the Resident Incidents, had been documented. It did not conclude that because Ms. De Jesus was a care aide, the Resident Incidents were automatically not significant stressors. It relied on Ms. De Jesus' own evidence in reaching this conclusion. Providence denies that the Resident Incidents are always objectively significant stressors.

[58] Providence denies that WCAT misapprehended any evidence and instead asserts that it relied on the evidence provided by Ms. De Jesus in reaching its determination.

[59] Providence also points out that that the statutory interpretation argument was raised for the first time at the judicial review. It was not argued on appeal to the WCAT.

Discussion

[60] I reject Ms. De Jesus' contention that the Resident Incidents qualify as a significant stressor notwithstanding her own evidence that they did not affect her. She seems to suggest that this type of conduct must always qualify as a significant work stressor regardless of the specific circumstances and the evidence of those involved.

[61] Each case must be determined on its own facts. The facts in this case are that Ms. De Jesus did not consider the Resident Incidents to be serious because of the Resident's mental and cognitive issues. Dr. Cheung concluded that she "brushed off" the incidents, excusing the Resident's behaviour as a result of his mental health issues. Ms. De Jesus stated that she was able to put aside these incidents and continue working. This was her evidence close in time to the events in question. WCAT was entitled and indeed required to consider this evidence.

[62] Ms. De Jesus' working environment was a long-term care facility housing some residents with cognitive issues. WCAT considered the evidence of Ms. De

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Jesus and her colleagues in concluding that the Resident Incidents were not a significant stressor in the context of her employment. I am not persuaded that this determination was based on no evidence or that it was clearly or evidently unreasonable given the evidence and the reasons provided.

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[63] A review of WCAT's reasons reveals that it thoroughly considered the evidence. It is not required to refer to every piece of evidence in its reasons and, similarly, its failure to do so does not indicate that it failed to consider relevant evidence. It did refer to the evidence of the team leader. Accordingly, I reject the assertion that it somehow misapprehended this evidence.

[64] I am satisfied that WCAT properly analyzed the evidence of Ms. De Jesus and her colleagues in concluding that the Resident Incidents were not a significant stressor. There is nothing on the record to suggest that its findings on this issue were patently unreasonable.

Was WCAT's Conclusion That The December Meeting And The Letter Were Not A "significant Stressor" Patently Unreasonable?

Positions of the Parties

[65] Ms. De Jesus submits that the December Meeting and the Letter constituted bullying and harassment. She refers specifically to the comment in the Letter that she may be transferred to another site if her behavioural issues continued. She also asserts that WCAT's alleged failure to apply the modified objective test to the assessment of this issue was patently unreasonable.

[66] Providence submits that it was entitled to manage its workplace and employees in an effective manner, and it did so during the December Meeting and by issuing the Letter.

Discussion

[67] Section 135(1)(c) of the *WCA* specifically excludes mental disorders from compensation if they are caused by a decision of the worker's employer relating to their employment, including, but not limited to decisions to change the working

conditions or to discipline a worker. This ensures that employers can manager their workplaces and employees effectively while acknowledging that these performance management conversations can be difficult and stressful for workers.

[68] In my view, an employer's warning to an employee of consequences of continued unacceptable behaviour is not, in and of itself, threatening or abusive behaviour. I appreciate that it may subjectively interpreted in this manner by Ms. De Jesus, but employers must retain the ability to properly manage their workplaces. Doing so often involves having difficult, sometimes acrimonious and emotional conversations with employees regarding their work performance and behaviour. These performance management conversations are integral to a manager's role in maintaining and fostering a properly functioning workplace.

[69] If issuing a warning in response to misconduct is sufficient to amount to threatening or abusive behaviour, employers would be significantly constrained in managing their workplaces because a worker could use an allegation of bullying and harassment as a shield against the legitimate performance management of them. This would undermine the statutory purpose of the Labour Relations Exclusion.

[70] Managers must not abuse this authority by bullying or harassing employees. A review of the evidence in this case suggests that Ms. De Jesus was the aggressor during the December Meeting. She responded forcefully to the Resident's accusation.

[71] The evidence does not support the contention that Ms. De Jesus was bullied or harassed. Ms. De Jesus' union and Providence agreed that her conduct was inappropriate and merited discipline and a one-day suspension. This suggests that she accepted some responsibility for her own behavior. It certainly does not indicate that the manager's conduct during the December Meeting or the subsequent issuance of the Letter was anything other than the normal exercise of a supervisor's function in managing an employee.

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[72] There is no evidence of egregious conduct by Providence's managers (i.e., the Facility's CNL and RCM) that would require the displacement of the application of the Labour Relations Exclusion. There was nothing patently unreasonable in WCAT's finding that neither the December Meeting nor the Letter were significant stressors.

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Was WCAT's Finding That The Mental Disorder Was Predominantly Caused By Interactions With Management And Not The Resident's Conduct Patently Unreasonable?

Positions of the Parties

[73] Ms. De Jesus submits that her mental disorder was caused by her interactions with the Resident. She asserts that WCAT, in the WCAT Decision, relied on irrelevant evidence and misapprehended relevant evidence in its assessment of Dr. Richford's and Dr. Cheung's evidence. She specifically relies on Dr. Cheung's finding that the Resident Incidents were a primary causal factor regarding one of Ms. De Jesus's diagnosed mental disorders.

[74] Ms. De Jesus also submits that WCAT's reasons regarding causality are inadequate because they did not properly consider Dr. Cheung's comment that she developed psychological symptoms, among other things, in response to being inappropriately touched by the Resident. She suggests that WCAT did not consider that her reaction in the December Meeting and to the Letter were in response to the Resident Incidents.

[75] Providence asserts that WCAT properly assessed Dr. Richford's and Dr. Cheung's evidence and concluded that although the Resident Incidents had some significance, both identified the Meetings as the main contributor to Ms. De Jesus' mental disorders.

Discussion

[76] The WCAT Decision reflects a thorough review of the evidence. Dr. Richford identified the precipitating factor for Ms. De Jesus' mental disorder to be "the coding of her as unprofessional", which was noted as having occurred during the January

Meeting based on her behaviour at the December Meeting. The date of the January Meeting is also the date Ms. De Jesus herself described as the date of her injury in the Claim. Therefore, Ms. De Jesus believed at that time that her mental disorder arose out of the events that transpired during this meeting.

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[77] The Decision also thoroughly reviews Dr. Cheung's evidence who found that Ms. De Jesus' mental disorder was:

> […] likely precipitated by the meetings on December 20, 2017 and January 12, 2018 with management. Even though the accepted events involving the resident occurred prior to these meetings, [the worker] was able to put aside these events […]. In the meeting of December 20, 2017, [the worker] felt shocked and distressed by the management's questions whether she had abused her resident. The January 12, 2018 meeting involved being coded as unprofessional that distressed her. Following these meetings, she reported development of [the mental disorder].

[78] Dr. Cheung identified Ms. De Jesus' conflict with her employer as "the major contributor" to her mental disorder and, by contrast, described the Resident Incidents as a "moderate but significant contributor". Dr. Cheung clearly identified the former as the predominant cause of Ms. De Jesus' mental disorder and this finding is consistent with the opinion of Dr. Richford. WCAT accepted this consistent medical evidence. Doing so is imminently reasonable and definitely not patently unreasonable.

[79] In my view, Ms. De Jesus is emphasizing certain aspects of Dr. Cheung's report while downplaying and minimizing her overall conclusions. When read in full, this report clearly identifies Ms. De Jesus' interactions with management as predominant cause of her mental disorder.

[80] There is nothing openly, clearly, or evidently unreasonable about WCAT's conclusions on causation in light of the medical evidence of Dr. Richford and Dr. Cheung, specifically in regard to the distinctions drawn between the interactions with management and the Resident Incidents as the predominant cause of Ms. De Jesus' mental disorder. WCAT thoroughly reviewed and considered this evidence,

and its findings were within the range of reasonable outcomes. They certainly were not patently unreasonable.

[81] Ms. De Jesus is inviting the Court to reweigh the evidence before WCAT on the impact of the Meetings and the Letter, reassess causation, and come to a different conclusion. I decline to do so because I am satisfied that the WCAT Decision sets out a coherent and rational explanation for its conclusions based on the criteria for compensation in s. 135 of the *WCA*. The WCAT Decision is not clearly irrational or openly, clearly, or evidently unreasonable. It is not patently unreasonable.

Disposition and Costs

[82] The petition is dismissed.

[83] Providence is entitled to its costs from Ms. De Jesus. There will be no order of costs for or against WCAT.

"Basran J."

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