

**IN THE MATTER** of the Accident Compensation Act 2001

**AND**

**IN THE MATTER** of an appeal pursuant to Section 149 of the Act

**BETWEEN** **K B**

(ACR 127/12)

Appellant

**AND** **ACCIDENT COMPENSATION**  
**CORPORATION**

Respondent

**HEARD** at WELLINGTON on 5 February 2013.

**APPEARANCES**

Mr J Miller, Counsel for Appellant.

Mr P McBride, Counsel for Respondent.

**RESERVED JUDGEMENT OF JUDGE M J BEATTIE**

[1] The issue in this appeal arises from the respondent's decision of 13 December 2010, whereby it declined to grant cover to the appellant for a work-related mental injury.

[2] This was a claim for cover made pursuant to Section 21B of the Act, which was a new section inserted into the Act from 1 October 2008 and provided for a claimant to seek cover for a work-related mental injury and where it was not required that it be consequent upon a physical injury. Further comment on this statutory provision will be made later.

[3] In this case, Counsel for the Appellant has requested that the Court make an order forbidding publication of the name of the appellant or of any particulars likely to lead to her identification, and I consider that this request is appropriate in this case, and

therefore there is an order prohibiting publication of the appellant's name or of any particulars likely to lead to her identification.

[4] The event claimed to have given rise to a work-related mental injury did in fact occur on 4 September 2007, and where the appellant, whose employment was that of an embalmer, and where she had attended a police call-out relating to the sudden death of a young male who had hung himself in the wardrobe in his home. The details of this event are set out in a subsequent report of Dr Jan Reeves, who provided a report to the respondent subsequent to the application for cover being made, and this report was made consequent upon Dr Reeves' interview with the appellant. The circumstances of the alleged event as stated by Dr Reeves were as follows:

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On 4<sup>th</sup> September 2007, she attended a police call out which was a sudden death in Milford. A young Mediterranean male, between the ages of 18-25 years, had hung himself in the wardrobe in his home. The police attending were unable to get the father to release the body to them and Victim Support, who were also in attendance, had also been unsuccessful. The father was grief stricken. KB sat on the floor opposite him and engaged him in a dialogue. She eventually persuaded him to assist in getting his son's body on the stretcher. A police officer then threw the rope he had hung himself with onto the deceased. This insensitive action caused considerable distress to the father, which KB noted, and she felt guilt by association with the police. When she drove away from the house she began crying until she arrived at the Auckland Coroner's Mortuary. She recalls at the time it felt quite "surreal" and this feeling appears to have been associated with some dissociative quality.

...

[5] It is the case that the appellant continued in her employment as an embalmer and her employment included doing police call-outs and removals of deceased. The appellant ceased her employment full-time in May 2009 and thereafter worked part-time until December 2009, when she resigned from her employment.

[6] It is a relevant fact that prior to the appellant lodging the claim for cover for a mental injury said to have arisen from the December 2007 incident, it was the case that in May 2009 she lodged a claim for cover for that mental injury, and where the major occasion giving rise to it was said to be an event which occurred in May 2008. A mental injury report provided to the respondent identified a number of work experiences which were said to have led to the appellant's condition, and it was on that basis that the respondent declined to grant cover by decision dated 21 July 2009, because the claim did not meet the statutory criteria relating to a single traumatic event.

[7] That decision was taken to review, and by review decision dated 3 May 2010, the Reviewer upheld the respondent's decision, concluding that it was clear that the appellant's condition was the cumulative effect of a number of sad or distressing events and not a single incident.

[8] It was subsequent to that decision that the appellant then lodged the present claim for cover asserting that her mental injury arose from the event of December 2007 previously referred to.

[9] For the purposes of the respondent determining the appellant's entitlement under her second claim, it sought the opinion of Dr Jan Reeves, Psychiatric Assessor, and in her assessment she also identified the fact of a number of events which had earlier been referred to in the earlier claim for cover. In her report, and having regard to the statutory requirements of Section 21B, Dr Reeves then stated as follows:

...

It is my opinion that the incident she described with the Mediterranean deceased did not involve a real threat of significant harm to KB or others. The young man was already deceased and there was no threat of any physical harm occurring at the scene KB attended. Her response to the event was to feel sad and upset, which was entirely appropriate, given the circumstances. She reports that at no stage did she feel frightened.

I do feel that KB was exposed to a number of very distressing situations in the course of her rostered police work. It appears that she did not receive any training in how to deal with these situations and, despite her requests to her employer, there were no debriefings afterwards. It appears that she was expected to cope with these without any additional support. There is evidence that she developed anxiety symptoms as a result of this exposure and possibly also an aggravation of depressive symptoms, but the traumatic event she has identified in her letter to ACC that she feels subsequently resulted in her eventual sign off period, does not meet the criteria for it to be considered a traumatic event according to the ACC Guidelines for Work Related Trauma.

...

Even if she did have full PTSD around the time she went on leave in May 2009, it is my opinion that the Post Traumatic Symptoms and/or full Post Traumatic Stress Disorder was caused by exposure to multiple police call out incidents and that these had a cumulative effect on her. There was no constellation of persistent PTSD symptoms present prior to 2009 and, by that time, she had been exposed to multiple distressing events. ...

...

Previously, it may have been argued that KB developed "delayed onset PTSD" as a result of the incident in September 2007 with the Mediterranean male deceased. However, a recent review of studies concerning "delayed onset PTSD" confirmed that symptom onset is almost never delayed.

...

[10] It was following consideration of Dr Reeves' report that the respondent issued its decision declining to grant cover.

[11] For the purposes of a review of that decision Counsel for the Appellant sought a report from Dr G Ruthe, Consultant Clinical Psychologist, and he provided a report dated 5 September 2011, and further comment on 10 February 2012. In his report of September 2011, he refers to an earlier report he made to the respondent in September 2009. The Court has not been provided with a copy of this report, but there is some statements from it in Counsel for the Appellant's submissions.

[12] The main points of Dr Ruthe's report of September 2011 are as follows:

...

I am of the opinion that the event of September 2007 is the primary cause of KB's current mental condition. While she has dealt with other traumatic events, it is this particular event that caused her significant distress, such that she took sick leave from work, and initiated psychological assistance. No other event has resulted in her taking this measure. In the course of treating her over the past two years, I can verify that KB consistently and spontaneously refers to this event (September 2007), when discussing her trauma. Other traumatic events are mentioned minimally in comparison, and it is clear to me that the event of September 2007 was the "crippling" factor. KB references to other traumatic incidents have not been accompanied by the same level of emotional distress, as the September event.

...

You ask me whether the experience of KB on 4 September 2007 was outside the range of normal experience. Having worked closely with emergency service personnel (Police, St John, disaster victim identification teams, mortuary staff, urban search and rescue teams, hospital staff, fire-fighters), for well over twenty years, I am of the opinion that this September event was capable of provoking extreme distress in most people, including a good proportion of emergency service personnel.

In my report to ACC (September 2009) I state: "The traumatising event for KB was not the retrieval of a body post-suicide per se, but was the consequence of having to deal with a severely distressed and highly emotional father at the very time she was retrieving the body. He was reluctant to release his son and KB was forced to counsel the father, to effect release of the body. The consequence of this is that the psychological mechanisms she would normally rely on to prevent over-identification with the case/victims and to enable her to maintain a healthy professional/emotional distance, were eroded and unavailable to her. The nature of this event was unexpected for KB and was outside of her normal work experience. The level of the father's distress that KB was subjected to, at the same time as she was dealing with the body, has proved to be a combination of specific events that has proved traumatising."

...

[13] In a subsequent letter to the appellant's counsel, Dr Ruthe advised that the date on which the appellant first received treatment for the mental injury of PTSD was 2 July 2009, and he noted that previous counselling was focussed upon relationship matters and that it was not until the appellant met with him on that date that treatment was

specifically focussed on the psychological injury she was suffering from as a consequence of the incident she had experienced during the course of her work.

[14] In his submissions on behalf of the appellant, Mr Miller referred to the fact that whilst Section 21B requires that the mental injury be suffered as a consequence of a single event, in the case of this appellant it can include all the matters that arose on the occasion of her attending the deceased, and being engaged with the police and the deceased's father in the unfortunate situation that did arise between those two.

[15] Counsel submitted that mental injury would be suffered by people generally if they were called upon to do what the appellant was required to do on that occasion, and he submitted that the series of events that the appellant found herself in, physically dealing with a suicide victim, would reasonably cause a mental injury to any person of reasonable fortitude.

[16] A particular aspect of the event referred to by Counsel was the appellant witnessing the callous act of the police officer with the rope, when he threw the rope with which the deceased had hung himself at the body when the body was removed from its hanging position.

[17] Mr McBride, Counsel for the Respondent, submitted that the circumstances of this case cannot comply with the requirements of Section 21B as the appellant's mental injury cannot be shown to have been caused by the single event asserted in view of the fact that the appellant had initially sought cover for a mental injury in which she asserted a number of events, and where the event now in question was not referred to with any significance at all.

[18] Counsel further noted that the appellant did not begin experiencing PTSD until 2009, and he referred to the medical advice from Dr Reeves that the current medical advice is that the onset of symptoms of PTSD are almost never delayed, he of course referring to the fact that in the case of this appellant, they were delayed some two years.

[19] Counsel finally submitted that on the evidence of this appellant's work circumstances and the number of occasions where she was subject to distressing events, the circumstances pertaining to the September 2007 event cannot be separated from all the others. He submitted that the evidence does not establish that it has been identified as a single event causing the mental injury.

## DECISION

[20] The appeal in this case relates to the respondent's decision declining cover for a work-related mental injury, which is now provided for as an entitlement in accordance with Section 21B of the Act, as inserted from October 2008.

[21] Section 21B requires that the mental injury is caused by a single event that the claimant experiences, and further, that the event is one that could reasonably be expected to cause mental injury to people generally.

[22] The meaning of 'event' is set out in Section 21B(7) and means an event that is sudden or a direct outcome of a sudden event, and includes a series of events that arise from the same cause or circumstance.

[23] In this case, there is no dispute that the appellant is suffering from a mental injury, as was identified in July 2009, but it is equally the case that the appellant was not displaying any evidence of such a mental condition immediately following the September 2007 event.

[24] The evidence identifies that the appellant has experienced a significant number of events in the course of her work which she initially asserted had caused her mental condition, and it is the case that the appellant did advise Dr Reeves of a number of cases she experienced during 2008 and 2009 which were described as 'multiple distressing events'. In Dr Reeves' report she lists twelve such events which had been referred to her by the appellant.

[25] I consider that the statutory requirements of Section 21B make it clear that the single event of a nature which might cause mental injury to people generally must be one that is in effect a one-off event, and which results in the more or less immediate onset of the factors involved in the medical condition of Post Traumatic Stress Disorder, which was the mental injury in this appellant's case.

[26] On the basis that the appellant did experience significant events on a number of occasions, I find that it cannot be identified that only one event, in this case the event of September 2007, caused the onset of the appellant's mental injury some two years after the event itself, particularly when there were a number of subsequent events which the appellant had indicated had caused her significant mental problems.

[27] For the foregoing reasons, therefore, I find that the evidence does not satisfy the statutory requirements of Section 21B, and that the appellant's onset of PTSD cannot be identified as having arisen from a single event. With the finding being as I have made it, it is not necessary to consider whether or not the circumstances of the event could reasonably be expected to cause mental injury to people generally, as the situation has not been able to be reduced to one event.

[28] Accordingly, the respondent's decision to decline cover was the correct decision on the evidence of this case and the appeal is dismissed.

**DATED** this 22<sup>nd</sup> day of February 2013

A handwritten signature in black ink, appearing to read 'M J Beattie', written over a horizontal line.

M J Beattie  
**District Court Judge**