NOVA SCOTIA WORKERS' COMPENSATION APPEALS TRIBUNAL

2017 CanLII 4004 (NS WCAT)

Appellant:	**[X] (Worker)**
Participants entitled to respond to this appeal:	**[X] (Employer)** and **The Workers' Compensation Board of Nova Scotia (Board)**

APPEAL DECISION

Representatives:	[X]
Form of Appeal:	Oral Hearing: Port Hawkesbury, NS, July 28 & 29, 2016; and Halifax, NS, November 30, 2016
WCB Claim Nos:	[X]
Date of Decision:	January 27, 2017
Decision:	The appeal of the June 2, 2014 Board Hearing Officer Decision is denied, according to the reasons of Appeal Commissioner Andrea Smillie.

CLAIM HISTORY AND APPEAL PROCEEDINGS:

The Worker began part-time employment as a deputy sheriff in June, 2006, and in the fall of 2008 moved to a new location. On June 6, 2012, she filed a report of accident with the Board claiming that she had been off work since June 7, 2011, due to Post-Traumatic Stress Disorder ["PTSD"]. The claim was linked to events at work in April 2010 when the Worker filed an occupational health and safety complaint against a co-worker. The Worker did not file any medical information and eventually the Board closed the file.

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A second injury report for PTSD was filed on January 9, 2014, alleging a sexual assault on November 13, 2008. The Worker came forward regarding the assault, on June 1, 2013, and ceased work June 11, 2013. Accompanying the report of accident was a report from Dr. Gail Andrew, in which she diagnosed the Worker with PTSD.

On February 5, 2014, the Worker's case manager concluded that there was insufficient evidence that she had sustained a work-related injury on November 13, 2008, and noted that the Employer had objected to the claim because the incident occurred at the Worker's home. The case manager found that the Worker was not in the course of her employment and consequently, in accordance with the *Workers' Compensation Act* [the "*Act*"] and Board Policy 1.3.7, had not suffered a compensable injury.

In a very brief decision dated June 2, 2014, the Hearing Officer upheld the case manager's decision for the following reasons:

> The Worker was not in the course of her employment on November 13, 2008. According to the information before me, the Worker was at home on her day off when her boss dropped by her home for a visit. There is no indication that the Worker's 'personal injury by accident' arose out of her employment. According to the information before me, the rendezvous had not been planned to discuss work-related issues as part of the Worker's employment. Although the boss in question showed up at the Worker's home wearing his uniform, there is no indication that he was at her home for work purposes or to further the interest of his Employer.
>
> While I have compassion for the Worker's situation, I cannot find that her stress injury is compensable because it did not arise out of and in the course of her employment and therefore the criteria for claim acceptance pursuant to Section 10(1) of the *Act* had not been met.

The Worker appealed this decision to the Tribunal and provided written arguments on June 26, 2014. On October 26, 2015, the Worker's representative filed a June 12, 2015 report from Dr. Andrew and asked if the Board would reconsider the decision regarding recognition of the Worker's claim. On January 28, 2016, the case manager indicated

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This document contains personal information and may be published. For this reason, I have not referred to the participants by name.

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that the new report from Dr. Andrew would not change the decision.

At the hearing before the Tribunal, K.H., a former spouse, G.S., a former neighbour, J.F., a former co-worker, M.M., a former supervisor and the Worker provided sworn testimony. The Employer did not call any witnesses. Notes from the Worker's former co-worker were filed as Exhibit 1 and a transcript of the preliminary inquiry into criminal charges laid against J.S., the Worker's former boss, was filed as Exhibit 2. The Employer filed a book of documents and authorities. The Worker's representative and the Employer's representative provided submissions. The Board did not file evidence or submissions and did not attend the hearing.

ISSUE AND OUTCOME:

Is the Worker's claim barred by s. 83 of the *Act*?

No. The Worker's claim was filed within the notice provisions provided by s. 83 of the *Act*.

Did the Worker sustain a personal injury by accident arising out of and in the course of her employment?

No. The Worker's claim for post-traumatic stress disorder does not meet the criteria in Policy 1.3.7. The incident which occurred on November 13, 2008 was not incidental to the Worker's employment.

ANALYSIS:

Section 186 of the *Act* requires that this appeal be decided in accordance with the real merits and justice of the case. The Worker is also entitled to the benefit of the doubt on any issue involving compensation under s. 187 of the *Act*. So, where there is doubt on an issue and the disputed possibilities are evenly balanced, the issue must be resolved in the Worker's favour.

The standard of proof to be met by workers and employers differs. The standard of proof expected of workers is less stringent then that to be met by an employer, which is the civil standard, the balance of probabilities, or "more likely then not".

<u>statutory notice provisions</u>

In accordance with s. 83 of the *Act*, a worker must give the employer notice of the accident (injury) as soon as practical after the happening of the accident and must make a claim for compensation within 12 months. In the case of an occupational disease, the worker must give the employer notice as soon as practical, after the worker learns that they suffer from an occupational disease and they must make a claim within 12 months of learning that they suffer from an occupational disease. Failure to give notice bars the right to compensation. [s. 83(5)]. Section 83(6) states:

> Subsection (5) does not apply where five years or more have elapsed from (a) the happening of the accident; or (b) the date when the worker learns that the worker suffers from an occupational disease, as the case may be.

The Employer submits that the claim is barred by s. 83 of the *Act* because the Worker is linking her claim to an incident that occurred in 2008. If there had been an acute reaction to the incident it would have been known well before 2014 when the claim was filed. They argue that the five-year absolute bar applies.

The Worker's representative submits that the Tribunal has held previously that the time limit in s. 83 starts to run from the point at which the worker becomes disabled or learns that they have had an injury related to work, in the case of a disablement, such as post-traumatic stress disorder. She argues that the claim should not be barred by s. 83 of the Act because the Worker was not aware of the injury until 2011, and not aware of the cause at that time. It was not until September 2011 when the Worker first saw Dr. Andrew and was diagnosed with post-traumatic stress disorder that the time limits in s. 83 began to run. If the statute bar starts to run from June 2011 then the Worker is within the timelines outlined in s. 83 of the *Act.*

I find the Worker's representative's arguments are reflective of the approach of the Tribunal in previous cases. For psychiatric disablement, the Tribunal has interpreted the provisions in s. 83 as akin to the provisions for occupational disease claims and have required that claims be filed within five years of a diagnosis or five years of the presentation of symptoms. The reasoning for this is found in Decision *2006-311-AD* (March 13, 2008, NSWCAT), where it was noted that there is a significant distinction between occupational disease claims and other claims so it is appropriate for occupational disease claims to have the five-year absolute bar run from when the worker learns they have an occupational disease. This suggests that actual knowledge is necessary for the bar to apply.

Decision *2010-697-AD* (December 12, 2012, NSWCAT), considered a claim for a psychological injury involving an acute reaction to a traumatic event and found that the five-year limitation period would begin to run when the worker's psychological reaction became manifest.

Dr. Gail Andrew's February 3, 2014 report for Manulife indicates that she began to see the Worker on June 18, 2013, however, her subsequent report and the Worker's testimony suggests that the Worker became a patient on September 21, 2011 when she was referred through an employee assistance program. Dr. Andrew indicated that the Worker's post-traumatic stress disorder was linked to a sexual assault by her supervisor, which she disclosed on June 11, 2013.

The Worker testified that after the incident in 2008, she struggled but was able to continue working. In 2010, there was an episode with a co-worker who did not follow

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appropriate procedures and this resulted in inmates not being contained. She found it very frightening to be working with someone she viewed as careless. She testified that prior to this incident she wasn't sleeping and was struggling mentally but it was not until the episode in 2010 that she became "really emotional". She was very scared and she was not sure what was happening. She got to the point where she couldn't go to work because she was shaking, crying, and unable to catch her breath. This led to the appointment with Dr. Andrew.

She testified that initially Dr. Andrew linked the post-traumatic stress disorder to the incidents with her co-worker because she was scared to report the incident with her boss. He was still her boss and she wanted to continue working. She did not tell Dr. Andrew about the sexual assault until 2012. In 2013, she had another "meltdown" while on duty in a courtroom when she heard testimony from a sexual assault victim. Eventually she told the Union what had happened in 2008 and this led to the filing of her second claim for post-traumatic stress disorder on January 9, 2014.

I find on the basis of the medical evidence that the earliest point at which the Worker would have become aware that she was suffering from a psychiatric condition that could be related to her employment was September 2011, when she was first seen by Dr. Andrew. Dr. Andrew's reports are not detailed and it is not clear when the actual diagnosis of PTSD was made. Assuming that it was made during the first appointment in September 2011, the filing of a claim in January 2014 was within the time limits established by s. 83*. C*onsequently, I find the Worker's claim is not barred by s. 83 of the *Act*.

credibility

During the course of the hearing before the Tribunal, there were attempts to discredit the Worker's story regarding the sexual assault. I found the Worker to be a forthright and credible witness and I accept her testimony regarding the events of November 13, 2008. It was not contested by any of the other witnesses.

The Worker's testimony before the Tribunal was consistent with her testimony at the preliminary inquiry as recounted in Exhibit 2. As a result of the preliminary inquiry, J.S. was committed to stand trial on the charge of sexual assault.

The evidence substantiates the Worker's testimony that a few months prior to the event, she had switched job locations and was splitting her time between facilities in Port Hawkesbury and Sydney. She was working as both a corrections officer and a deputy sheriff.

On November 13, 2008, she was at home when she got a call which she realized was from a work number. She was surprised to get a call from J.S. as she had had very little association with him at work previously. He asked her what she was doing and what she was wearing and then indicated that he was coming to visit. She testified that she didn't believe he was coming because it didn't make sense to her. He called again

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to ask for her trailer number and she gave it to him. She remembered seeing his car pull into her driveway and then seeing him at the door. She was wondering what was he doing there but she let him in. She was concerned that she was in trouble at work. She had never seen him outside of work and he had never visited her before.

He sat down and she asked him if he wanted a drink. As she was walking towards the sink he grabbed her arm and pulled her towards him. He then sexually assaulted her. She testified that she kept telling him to stop. He had her pinned and she became very scared and starting screaming. She was not sure why but he just stopped. Afterwards, they sat at her kitchen table and cigarettes were lit. She doesn't remember him leaving but she remembers seeing his car leave.

She testified that she didn't remember much else afterwards until she spoke to M.M. her immediate supervisor the next day at work. She told him that she needed to talk to him but not at work. She called him at home and asked if they could meet. She testified that she was shaking when she spoke to M.M. This was confirmed by M.M. who testified that the Worker was crying and very upset when she told him about what happened with J.S. He had never seen her like that before. She begged him not to tell anyone else.

M.M. testified that as a result of the conversation with the Worker he went to speak to J.S. At first J.S. was angry and denied anything had happened but eventually admitted that something had happened. M.M. told him he didn't want to hear anything else. M.M. spoke to the Worker again and asked what she was going to do about it. She didn't know but she wanted it kept quiet and made him swear not to tell people. The Worker testified that she didn't want the attention that comes from an accusation of sexual assault and she felt she had to "suck it up" and get over it.

I find the totality of the evidence supports the Worker's assertion that she was sexually assaulted on November 13, 2008. Her testimony regarding the immediate effects of the incident is corroborated by the testimony of her former neighbour, her former spouse, and M.M. I find the Worker's explanations for why she didn't come forward about the assault at the time and why she didn't use restraint tactics that she would employ as a deputy sheriff are reasonable. She didn't want to do anything that would jeopardize her job. I also find based on testimony from the Worker, which is supported by the testimony from her former spouse, her former co-worker and M.M., that the assault has had a significant negative impact on the Worker.

<u>arising out of and in the course of employment</u>

In accordance with s.10(1) of the *Act*, a worker is entitled to recognition of their claim if they suffer a personal injury by accident arising out of and in the course of employment. The Board adopted Policy 1.3.7 to assist in determining whether an injury has arisen out of and in the course of employment. It applies to all claims for compensation made on or after September 17, 2009 and states:

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> Generally, an accident, and resulting injury, is considered to have arisen in the course of employment when it occurs under the following circumstances:
>
> (i) at a time that is consistent with when the worker typically performs the employment, or at a time when the worker has been asked to perform activities for the employment;
> (ii) at a place that is consistent with the employment or the employer's premises; and
> (iii) while performing an activity directly or incidentally, related to the employment.

The Policy notes that the time and place of the accident are not strictly limited to the normal hours of employment or the employer's premises. Section 3(a) sets out the following description of "arising out of" employment:

> The words 'arising out of employment' refer to the origin of the cause of the injury. For an accident, and resulting injury, to be considered to have arisen out of employment there must be a causal connection between the worker's employment and the injury they received.
>
> Generally, this means the accident and resulting injury must be caused by some risk related to the employment. The risk may be directly, or incidentally, related to the employment; and the injury may be the result of a single incident, or develop over a period of time. An injury, however, is not necessarily compensable simply because it happened, or symptoms occurred, at the workplace.

The following questions are to be asked when determining whether an injury arose out of and in the course of employment:

> 1. Was the activity part of the job, or a job requirement?
> 2. Did the accident occur when the worker was in the process of doing something for the benefit of the employer?
> 3. Did the injury occur while the worker was doing something at the instruction of the employer?
> 4. Did the injury occur while the worker was using equipment or materials supplied by the employer?
> 5. Was the injury caused by some activity of the employer or another worker?
> 6. Was the worker being paid or receiving some consideration for the activity from the employer at the time of the accident?
> 7. Was the worker on the employer's premises at the time of the accident?
> 8. Was the worker travelling for employment purposes at the time of the accident?

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9. Did the worker’s employment expose him/her to a greater risk of injury than they would have been exposed to as a member of the general public?
10. Was the injury caused by an exposure in the workplace, or as part of the employment activities?

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The evidence gathered is weighed taking into account the benefit of the doubt in s.187 and the statutory presumption in s.10(4), which is a presumption that an accident has arisen in the course of employment when it has been established that it arose out of employment, unless the contrary is shown.

The Hearing Officer’s decision is limited to a finding that the Worker’s injury did not arise out of and in the course of her employment because: the meeting had not been planned to discuss work-related issues; the Worker was at home on her day off; and despite the fact that her boss was wearing a uniform, there was no indication that he was at her home to further the interests of the Employer.

The Employer agrees with the findings of the Hearing Officer, and argues that the Worker’s claim does not meet the requirements in Policy 1.3.7 because she was not doing something for the benefit of the Employer at the time of the incident. There was no nexus which would place the incident in the realm of a work accident and no causal connection between the employment and the injury because there was no risk associated with the Worker’s employment that led to the injury.

The Worker’s representative argues that her claim must be adjudicated on the merits and justice of the case. It is not a situation contemplated by Policy 1.3.7 but regardless it fits within the criteria of the Policy. There is a causal connection between the injury and the Worker’s employment because the employment relationship was the reason for her supervisor’s visit. She argued that it is clear from the Policy that injuries arising out of employment do not have to occur during normal hours of operation or at the worksite. It is sufficient that the injury occurred while the Worker was doing something at the instruction of her Employer and there is no requirement that the injury result from productive work.

The Worker’s representative acknowledged that very few of the questions posed in Policy 1.3.7 could be answered in the affirmative and noted that there is very little case law addressing similar circumstances. Regardless, she argued that in this case the relationship was exclusively employment related and the only reason the Worker let J.S. in her home was her assumption that he was there for a work-related purpose. Also, he had her phone number and knew where she lived because he was her boss. It was not unreasonable for her to let him in her home and “but for” the employment relationship the assault would not have happened.

I agree with the submission of both representatives that there is very little case law addressing similar circumstances. The American text, Larson’s Workers’ Compensation Law, Desk Edition (Matthew Bender, Release 57, June 2006), discusses in Chapter 29

the phrases “arising out of” and “in the course of” and indicates that together they are in essence a work-relatedness test. In other words, there must be some employment connection for an injury to be compensable. The text states that in situations where the actual injury occurs outside of work hours, referred to as delayed-action injuries, the “course of employment test” has been used inappropriately in many cases.

There is conflicting evidence regarding the reason for the supervisor’s attendance at the Worker’s home. The Worker confirmed that he had never been to her house before and that generally the work schedule was done by M.M. and communicated by M.M. The Worker testified that prior to the episode on November 13, 2008 she would have worked approximately 10 to 15 shifts in the same facility as J.S. They had never met outside of work and “the visit came out of the blue”. The Worker testified that it was not appropriate for him to show up at her house and not part of his job. She didn’t recall any discussions about work while he was there.

The former co-worker, J.F., testified that he worked with the Worker and his supervisor was also M.M. He testified that there was a chain of command for scheduling purposes. He testified and his notes filed as Exhibit 1 indicate, that the Worker disclosed to him in June of 2013 that she had been sexually assaulted by J.S.at her home years earlier. His notes indicate that the Worker told him that J.S. called a few times on the day of the incident regarding “shift and on the final call asked her what she was wearing.” J.F. testified that there was a schedule that came out every Thursday and that many times he would get a phone call at home regarding the shifts but no one ever came to his house to discuss shifts and he had never heard of that happening.

M.M. confirmed that in his role as a supervisor he would have handled the scheduling and that it was generally done through someone in his position. He did not know the reason J.S. had called the Worker.

While there has been some suggestion that J.S. may initially have mentioned a shift or scheduling when he called the Worker, the evidence as a whole establishes that it is very unlikely J.S. was contacting the Worker to discuss shifts. This was not the way shifts were usually scheduled and the Worker was very clear in her testimony that she had no idea why he was at her home. He had indicated that he was, “just coming to visit”. There was no reason for him to be there and he didn’t give her a reason.

I find that at the time of the assault, the Worker was not doing something for the benefit of the Employer and J.S. was not acting at the instruction of the Employer. The activity (meeting) was not part of the job or a job requirement. J.S. was not there for any employment related purpose. It was simply one person going to another person’s home. The fact that they knew each other from work did not create a work-related reason for the visit.

Tribunal Decision *2005-465-AD* (December 29, 2006, NSWCAT) is the case most on point. The Tribunal denied recognition of a claim of a corrections officer who was suffering from PTSD which he linked to a break and enter of his home by a former

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inmate. The Appeal Commissioner considered whether the circumstances of the break and enter were work-related and noted that there did not appear to be any decisions of the Tribunal concerning work-related contacts outside the hours of employment or employment-related activities.

I agree with the Appeal Commissioner's statement that the phrase "in the course of employment" refers to the time, place, and circumstances under which the accident takes place and "arising out of employment" refers to the origin of the cause of the injury. While this case was decided prior to the coming into force of Policy 1.3.7, I find the requirement referenced in *2005-465-AD* that there be some causal connection between the conditions under which the employee worked and the injury received is still applicable. The Appeal Commissioner found that the break and enter incident did not arise out of and in the course of the worker's employment and was not incidental to the worker's employment.

The decision discussed instances where there is targeting of a victim owing to a workplace relationship or incident. For example, when a disgruntled or terminated employee attacks his former supervisor and the attack occurs outside the workplace. The Appeal Commissioner considered 1342/98 (1998), 48 W.S.I.A.T.R. 212, a decision of the Ontario Workplace Safety and Insurance Appeals Tribunal. It addressed an appeal from the family of a police officer who was shot to death in a bar while off duty, months after he had charged the individual who shot him. The injury/death was found to have originated in the course of employment, even though it was consummated outside the course of employment.

The Appeal Commissioner in *2005-465-AD* found one significant distinction between the shooting of the police officer and the inmate breaking into the worker's home. It was that there was no indication that the inmate broke into the worker's home for any reason related to the worker's employment. In other words, there was no indication that the worker had been targeted in the break-in as it appeared to be a random attack.

In Decision 1173/00, 2000 ONWSIAT 1301 (CanLii), the Ontario Workplace Safety and Insurance Appeals Tribunal considered a situation where an off-duty police officer was assaulted by an unknown man who approached his car. The Tribunal ultimately determined that the injury sustained by the police officer arose out of and in the course of his employment although initially it had been determined that the claim should be denied because the worker was engaged in personal activities. The decision turned on the fact that after the initial punch, he identified himself as a police officer, which resulted in a further vicious attack. The Tribunal ultimately concluded that it was the worker's identification of himself as a police officer that led to an escalation of the conflict and at that point the worker was clearly within the ambit of his employment and deserved to have his injury recognized. I find the circumstances of this case are distinquishable from the Worker's situation in this appeal. At no point did she go on duty.

In Decision 2084/01, 2003 ONWSIAT 1529 (CanLII), the Ontario Workplace Safety and

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Insurance Appeals Tribunal considered another case where an assault occurred outside of the workplace. In this case, the worker seeking coverage was the victim of a prank by his supervisor. He reported the prank to the human resources manager and advised the manager that he was concerned that the supervisor would assault him if he became aware of the complaint. Days later the supervisor entered his home and assaulted him. The Appeals Tribunal determined that the circumstances leading to the assault had their root in the prank incident at work and the reporting of that incident. The remoteness of the location of the assault did not break the employment nexus. Consequently, the worker had suffered an accident arising out of and in the course of his employment.

The issues in this appeal are similar. Both involve the compensability of an injury sustained as a result of an assault by a co-worker which occurred away from the workplace, in the home of the victim. However, I find the facts are distinguishable as is the legislative framework within which the Ontario Appeals Tribunal operates. They considered operational policies that do not form part of our legislation. Also, the Tribunal determined that the assault had its roots in a workplace incident which was the prank leading to the complaint. Without this incident, there would have been no relationship between the co-workers and arguably no assault. In this appeal, there is no evidence that there was an incident or any interaction or relationship at the workplace that would have carried over and resulted in the sexual assault that occurred in the Worker's home.

The Worker's representative referenced an earlier decision of the Ontario Appeals Tribunal in 806/96, 1997 CanLII 13554 (ON WSIAT) and indicated that it was similar to the situation in this appeal because the worker was sexually harassed by a supervisor both inside and outside their place of employment. The Tribunal determined that it was the employment relationship that was key to a finding that the harassment constituted an injury arising out of and in the course of employment. I find the facts of this case are distinguishable as well. In 806/98, there was clear harassment both at the worksite and outside of the work environment and while it is similar in that the relationship was exclusively work-related, it does not offer guidance in a situation such as the Worker's where the incident happened away from the workplace and there is no suggestion that there was any sexual harassment or injury that occurred in the workplace.

Decision No. 2396/07, 2008 ONWSIAT 524 (CanLII) considered another case where a worker was sexually harassed by a co-worker both at work and outside of work. The Appeals Tribunal found that the events leading to the worker's injury were unrelated to her employment and were at best incidental. The worker had limited contact with the perpetrator in the workplace. The panel stated:

> The WSIA and the policies cited require that such circumstances must be at least incidental or related to the worker's employment. The Panel did not find such a relationship to exist in this case. While the worker no doubt suffered a negative experience, we viewed the events that transpired as outside the employment of the worker and not in the control

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or under the supervision of the employer.

There is case law suggesting that if an employment situation exposes a worker to an increased risk of injury, then there is a basis for finding that an incident occurring outside the parameters of the work environment is an injury by accident arising out of and in the course of employment. I do not find there is evidence that the employment situation exposed the Worker to an increased risk of sexual assault.

Decision *2014-770-AD* (June 30, 2015, NSWCAT) considered the precise nature of the risk required to sustain a claim that the injury arose out of and in the course of employment. It involved an appeal from a Hearing Officer's decision that a worker had not sustained a personal injury by accident arising out of and in the course of her employment when she slipped and fell during a paid coffee break while away from the employer's premises. This finding was upheld by the Appeal Commissioner who asked for submissions on an academic article entitled "In Defence of the Increased-Risk Doctrine in Workers' Compensation" from the April 2009 edition of the Journal of Business and Economics Research. The Appeal Commissioner considered Policy 1.3.7 and found that the Worker had to demonstrate that she had suffered an injury both arising out of and in the course of her employment in order to claim compensation. The worker walked alone on her break and was joined by two co-workers on her way back to her office. They walked on a public sidewalk. Money fell from a co-worker's purse and the worker entered into the parking lot of another agency to retrieve the money. She slipped and sustained an injury.

The Appeal Commissioner found that the injury did not arise out of her employment because retrieving money in a parking lot not operated by her employer was not an activity that was reasonably incidental to her employment. Moreover, he found that her employment did not expose her to any greater risk of injury than that faced by the general public. He then stated:

> To more fully illustrate: the Worker's situation is unlike that of a worker who is targeted because of her employment status or her employment activities. For example, if an employee in the Worker's department were injured during a paid coffee break due to an altercation with someone angry at that department then it could be argued the injury arose out of employment. See, for example, the discussions in Decision 2005-465-AD (December 29, 2006, NSWCAT) and Decision 1342/98, 1998 CanLII 16833 (ON WSIAT).

Ultimately, the Appeal Commissioner found that in light of the criteria in Policy 1.3.7 and the fact that the worker's employment did not contribute to the risk of the specific personal injury by accident actually sustained by her, that her injury did not arise in the course of her employment.

I find the reasoning in this decision has application in this appeal. Not only does the Worker's injury not fit within the criteria in Policy 1.3.7, there is no evidence that the

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Worker's employment as a corrections officer contributed to the risk of the specific injury that she sustained. There is no evidence that the assault arose as a result of employment duties or any incident that began in the workplace and was consummated outside the workplace.

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The Worker's representative argues that there is a causal connection between the injury and the Worker's employment because the employment relationship was the reason for the visit from J.S. on November 13, 2008. I find that the evidence does not support this conclusion. The only direct testimony on this comes from the Worker and she stated multiple times that she had no idea why he was there. It was very unusual and made no sense to her. I find that the evidence supports a conclusion that it is most likely that there was no employment basis for the visit. It was an incident that occurred outside of and in spite of the employment relationship.

Consequently, I find that it is most likely that the injury sustained by the Worker did not arise out of or in the course of her employment. It does meet the criteria for compensation in Policy 1.3.7 and s.10(1) of the *Act*.

acute reaction to a traumatic event

Having found that the Worker's injury did not occur out of and in the course of her employment, it is not necessary to determine if she suffered an acute reaction to a traumatic event.

CONCLUSION:

The Worker's appeal is denied. The Worker's claim is not statute barred by s.83 of the *Act* but she is not entitled to recognition of her claim because she did not sustain a personal injury by accident arising out of and in the course of her employment.

DATED AT HALIFAX, NOVA SCOTIA, THIS 27th day of January, 2017.

Andrea Smillie
Appeal Commissioner