



FINDINGS

<u>REVIEW BOARD APPEAL NO.</u>	<u>WORKERS' COMPENSATION BOARD CLAIM NO.</u>	<u>DATE OF DECISION BEING APPEALED:</u>
902573-A	XY90083279	July 3, 1990

APPELLANT: George McCARNEY
(the "worker")

RESPONDENT: Ministry of Solicitor General
(the "employer")

PANEL: Clinton W. Foote, Vice Chairman
Guy W. Downie, Member
Kevin G. Johnson, Member
(the "panel")

DATE OF HEARING: September 16, 1991
Vancouver, B.C.

DATE OF FINDINGS: JUL 20 1992

REPRESENTATIVES:

For Appellant: Sandie Keddie

For Respondent: Frank Potts

DATE OF MAILING: W.C.R.B. JUL 20 1992
MAILED



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Introduction

Mr. George McCarney, a 51 year old correctional officer employed at the Lower Mainland Regional Correctional Centre (LMRCC, Oakalla), was absent from work from February 14, 1990 to September 10, 1990.

Mr. McCarney submitted an Application for Compensation (Form 6) dated February 25, 1990, to the Workers' Compensation Board (the Board), in which he indicated that he had been exposed to threats and intimidation in the course of his employment. He said a government doctor had ordered him not to go to work, and that information regarding his injuries should be sought from his doctors. He referred to damage to his vehicle, threats and harassment to himself and his family by peers and supervisors at work, to his anger towards an Insurance Corporation of B.C. (ICBC) investigator he considered incompetent, and to his concern for the safety of witnesses to his problems. He said his problems related to exposure to these stresses from February 1986.

Mr. McCarney's employer, through local director Bruce Kilby, submitted a report of injury (Form 7) dated March 2, 1990, which indicated that Mr. McCarney's injuries were "mental stress", noting Dr. Jepson-Young's report of "situational stress of an occupational nature". The employer said Mr. McCarney claimed occupational stress, but indications were it arose from peer pressure. He questioned whether the injury was work related, noting that Mr. McCarney had gone through a serious personal crisis in 1989 culminating in stress leave in December 1989 - January 1990 from accumulated stress.

In a letter dated July 3, 1990, a Claims Adjudicator told Mr. McCarney that, having considered his claim, the Board was unable to conclude that he had suffered a personal injury arising out of and in the course of his employment as required by Section 5(1) of the Workers Compensation Act, and that, as a state of physical or emotional exhaustion does not fall within the scope of Section 6(1) of the Act, his claim was also not accepted as an industrial disease.

Mr. McCarney appealed this decision to the Review Board. In his Notice of Appeal, he said the Board's decision letter was not responsive to his claim. He said he was claiming assault to his person starting in March 1986 at the direction of Mr. Negrin, the



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East Wing Director at LMRCC, in the process of covering up a crime. He said Mr. Negrin blamed him for suspensions and firings of his peers, failed to call in the RCMP to investigate a crime, and consorted with others to commit unlawful acts to his person continuously since March 1986. He said by February 1990, he was about to "perform physical violence", and was ordered off work by a government doctor because of job induced injuries.

Issue

Following extensive discussion, the panel, Mr. McCarney, and the employer agreed that the sole issue before the panel was whether Mr. McCarney suffered from a condition diagnosed as post-traumatic stress syndrome (PTSS) or a stress disorder arising out of and in the course of his employment.

Method of Appeal

Mr. McCarney requested a hearing before a three person panel, which was granted. He also requested that the news media be present at the hearing. This request was opposed by the employer, but following consideration as a separate issue by the panel, this also was granted with written reasons.

Evidence

A brief outline of the hearing proceedings is necessary at this point. While the issue is essentially a medical one, and the panel considers the medical evidence to be critical to its deliberations, there are non-medical aspects which the panel decided had to be addressed. Mr. McCarney's fundamental claim was that he suffered from stress occasioned by the unlawful actions of his organizational superiors at LMRCC, the activities of his peers as a consequence of these unlawful actions, and his own inability to engender an investigation to reveal these unlawful actions and thus have them dealt with in the justice system. Mr. McCarney told the panel that his stress thus arose to a significant degree from the injustice and cover up that he saw, and his frustrations at his failure to expose it.

In cataloguing the evidence, the panel considers it appropriate to record evidence on which it relied in its findings, evidence which we considered important and relevant, and, in some cases, evidence which we did not accept and the reasons for these decisions.



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With regards to Mr. McCarney's evidence, which is important to the case, the panel thought that although Mr. McCarney did tend to exaggerate, he was generally truthful, which is to say he did not deliberately lie to us. He can be an affable and generous man. On the other hand we found that by far the greater part of his testimony dealt with hearsay or rumour, and that he placed an unwarranted value on that hearsay and rumour, which was frequently without any evidentiary support. His testimony also showed the panel that Mr. McCarney had unreasonable expectations from the Corrections organization, and that when these were not met to his full satisfaction he made assumptions and drew conclusions regarding a conspiracy which the events did not justify. On a number of occasions in the proceeding Mr. McCarney overtly displayed his frustrations but these outbursts are understandable given Mr. McCarney's medical condition and the difficulties he has had.

The panel, noting Mr. McCarney's very serious allegations of coverup, and also his desire for publicity, very deliberately allowed wide latitude in the presentation of evidence. Thus, the hearing, which covered six days of testimony, other evidence, and argument, included a significant amount of material which was, in retrospect, not relevant to the issue. We also heard a substantial amount of testimony which, when evaluated as evidence, must be judged to be of little value. We heard much evidence which must be characterized as unsubstantiated hearsay, multiple hearsay, or rumour. The value of such evidence is, of course, minimal, and the panel will comment on this where necessary. This wide latitude in presentation of evidence can properly be permitted by a Review Board panel, if it is considered essential to a fair hearing. In many cases, its admission was predicated on future confirmation which did not come. The panel considered that its objective was met in that Mr. McCarney had the opportunity to fully present his case.

Following the last day of the appeal hearing additional evidence was requested by the panel which has finally now been received along with written submissions on this evidence by the representatives of Mr. McCarney and the employer.

Before detailing the medical evidence, we will outline the earlier events. Mr. McCarney's position is that his problems all stem from an incident on March 20, 1986, when an LMRCC inmate, Benjamin Rouse, was assaulted. The accepted evidence was that Rouse was



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taken to an access tunnel by Corrections Officer Dolan and Officer Threlfall, and left there unattended for a period, with an access gate left deliberately unlocked. During this period unidentified inmates assaulted Mr. Rouse. He was then taken by Officer Dolan to the office where Mr. McCarney worked, and Mr. McCarney, who had seen him before, now saw him again. Mr. McCarney told the panel Mr. Rouse had been severely beaten. He said, in part:

...Mr. Rouse had no eyes. The swelling was incredible. ... I grabbed ... Rouse and realized the man was unconscious ... while still on his feet. I didn't recognize him as Benjamin Rouse at the moment ... until Dolan put a name to it ...

He said he told Dolan to take Rouse to the base hospital, and then:

He was looked at by the nurse there. He had sustained broken bones, ribs, teeth knocked out of his mouth. He was in terrible agony with the raw roots exposed. ... He was in fear because within the hour to hour and a half of arriving at our own base hospital officers approached him and threatened him that if he spoke he would be dead meat....

[There was subsequent confirmation regarding loss of teeth, but none regarding broken bones or threats in the hospital].

On questioning, Mr. McCarney acknowledged that he was not at the hospital, and did not witness these things he said occurred there, but that Mr. Rouse subsequently told him of the threats. At this point, in response to questions about how this impacted on his post-traumatic stress syndrome, Mr. McCarney said:

Well at this point it didn't. ... I am an ex-firefighter and I've probably seen just about every conceivable kind of [injury].

On questioning, Mr. McCarney acknowledged that he did not know about broken bones at the time, but learned of them afterwards [never confirmed]. However, he said:



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To give a clear statement ... when I first observed the inmate his one eye his good eye was completely closed. His face was swollen to such a size that I couldn't recognize the person at all. He was limp and in a state of deep shock ... I had to grab the inmate to keep him from collapsing ... I saw boot marks ... the label of the boot itself in his face stamped and that remained in his face for almost a week ... the face both sides were completely huge. The forehead and everything was swollen down over the brow. There was blood all over. The mouth was distorted. The lips looked like they had disappeared.

He acknowledged that he learned later about the missing teeth.

Mr. McCarney noted that he had encountered trauma before, and gave some gruesome examples. He confirmed several times that he wasn't traumatized by the sight of blood. He said he was severely upset by Mr. Rouse's beating, but his distress arose from his view that it should never have happened, while Rouse was in the care of the Corrections Branch.

Mr. McCarney testified that he saw Mr. Rouse again two days after the incident, at the base hospital, and said he didn't know the human body could swell so badly. On this occasion, Mr. McCarney said, Rouse told him that he had been threatened by officers, and that he had spoken to his lawyer, and that he wanted to press charges, but not while he was in jail. In a later conversation, he said, Rouse told him that he had been approached by the R.C.M.P. regarding the assault, but had declined to tell them anything. [This latter item is confirmed by the police officer].

The only corroborative testimony regarding the grievous condition of Mr. Rouse was from Mr. Kassian, who claimed to have gone to the hospital three or four days after the incident, and to have seen Mr. Rouse. However, his explanation of his visit there, and his description of what he saw, were totally unsatisfactory, and the panel could ascribe no value at all to his evidence. Mr. McCarney also told the panel that Mr. Rouse remained in the hospital for the remainder of his stay at Oakalla.



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At this point Mr. McCarney began to explain to the panel the reason that he thought there was a conspiracy to cover up the Rouse incident, and that his own testimony was key to preventing such a cover up, and that as a consequence he was blamed and harassed in retribution for the outcome.

Mr. McCarney told the panel that, in a case of a significant assault, there were steps in investigation that should be followed, and that they had not been followed. He said that because of the severity of the injuries, Mr. Rouse should have been taken to the Vancouver General Hospital. He said the R.C.M.P. should have been called immediately as a matter of policy. He said management should have come to him (McCarney) immediately to request a report, although he acknowledged he hadn't reported the incident to anyone. He said he should have been informed about the investigation.

Subsequent evidence included documents to show that policy provided that the decision to call police rested with Oakalla management. When Mr. McCarney was questioned regarding policy, he said that he hadn't seen the documents in which it was covered, but was sure they existed. He said:

A police investigation is at the time of the incident. Two things happen. The victim's life is primary so you deal with that medically, and the scene is preserved and the proper authority are called in and names taken and interviews are done. None of these things took place. ... There was no superior coming around to me. The lights started going on one at a time. No one enquired with me. I and S [Inspections and Standards] didn't come to interview me. I went into the hearing and I went once and that was it. Sum total. That was my sum total involvement in the whole situation. No R.C.M.P. constable came to me to take a statement. ...

At this point, Mr. McCarney acknowledged that his superiors had told him the police were involved, but he didn't believe them. He had checked six times with the R.C.M.P., he said, and found that they had no file on a Rouse investigation.



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Mr. McCarney acknowledged that he was asked for a report on the incident by Mr. Schmidt, a part of Oakalla management, and he provided it. He acknowledged that he had been called as a witness to a formal enquiry, and had attended. He acknowledged that, as a consequence of that enquiry, four people lost their jobs and one resigned. However, he was not satisfied that the proper procedure had been followed.

Mr. McCarney had not seen the findings of the formal enquiry, which as a matter of policy were confidential.

The panel heard evidence from Mr. Negrin, the Director of the East Wing, and Mr. Riou, the Director of the South Wing, that procedures had been correctly followed in the investigation. Relevant documents were provided in support. The employer's evidence shows Rouse was asked before the formal hearing whether he would lay charges against his assailants and he refused. The evidence gained in the investigations and hearings were given to the RCMP liaison officer Yerxa. Burnaby Crown Counsel decided against charges being laid.

Mr. McCarney alleged that Mr. Negrin, the Director of the East Wing, and Mr. Merchoff, a Senior Corrections Officer in that area, had publicly labelled him a rat and McRat, and publicly stated that he was responsible for the discharge of the five people who left following the Rouse enquiry, and deliberately planned to make him a scapegoat for this, and had encouraged Mr. McCarney's peers not to support him if he got into difficulty at work. Mr. McCarney had not himself been witness to any of these events, but had been told of them by others. Witnesses in this regard were Mr. Kassian, and Mr. Langenbach, a Corrections Officer in the East Wing. In his testimony, Mr. Langenbach said he heard "rumours and innuendos" about George McCarney being "in some way connected to that incident [Rouse] where [people were] let go of their jobs, and the word was in the East Wing that Mr. McCarney was responsible". He also said that he was present at one incident, during a break in the internal enquiry, when Mr. Merchoff came to a main floor office [not the staff room] in the East Wing, and said "if it wasn't for fucking McCarney we would probably be able to get those guys off". His further testimony was that he had heard the term rat and McRat applied to Mr. McCarney in the East Wing. He said as a consequence, some staff refused to work with Mr. McCarney. He felt that Mr. McCarney's problems in this regard "more or less ended" when he was transferred to the South Wing. He was not aware of any



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direct consequences of the label to Mr. McCarney. Mr. Langenbach told the panel that in his own view there was justification for the dismissals, but that he thought many people didn't bother to find this out. His evidence was well presented.

Mr. Kassian, a Corrections Officer, was a direct witness against Mr. Merchoff, and the only one against Mr. Negrin. In his testimony in this regard, Mr. Kassian said that he and Messrs. Ford, Langenbach, Burns, and others had been in the staff room in the East Wing about a week after the Rouse incident, and Mr. Negrin and Mr. Merchoff came in to get coffee, and Mr. Negrin made a statement that if anybody gets suspended or terminated over this incident it's because of McRat. He said that was an exact quote, however, when asked to repeat it, he changed it. He said Negrin said "we could have covered them up" and Merchoff piped in and said "yeah he's nothing but a rat. He's causing a lot of problems." Mr. Kassian said that four minutes later Merchoff said McCarney "was causing the problem because he went and investigated and talked to the inmate who supposedly got beat up in the tunnel...." He said Merchoff said "because of McRat [that is when he named him] we don't know what is going to happen to the staff members. He said six to eight officers were present at this time including officers Ford, Burns and Langenbach. This testimony was not corroborated by any of the persons said to be there, although Langenbach gave evidence on other matters.

Mr. Kassian then said that "a couple of weeks after the first time" Mr. Negrin and Mr. Merchoff were in the director's office, with the door open, and he [Kassian] was in an adjacent office. He overheard Mr. Merchoff saying "maybe we should use McCarney for the escape [sic] goat". He thought there was another officer with him at the time, but could not identify him. He then spoke of another occasion when Mr. Merchoff, in the staff room, spoke of Mr. McCarney over the public address system as a rat.

Mr. Kassian further testified that three and a half weeks after the Rouse incident, Mr. Merchoff was playing cards in the staff room while Kassian was there. Merchoff said on that occasion that McCarney had gone to the Alouette River Unit (ARU) to interview Rouse. Mr. Kassian subsequently investigated and found Rouse was not at ARU. He attached great importance to Merchoff's apparent lie about the location of the interview and said this made him doubt everything Merchoff had said and completely change his attitude to one of support for Mr. McCarney. On the same occasion



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he said Merchoff instructed the officers present, including Kassian, Burns, and others not identified, that if McCarney got into trouble at work they should not assist him.

Following this, Mr. Kassian said he became supportive of Mr. McCarney, and addressed Ford, Langenbach, Burns and others in the staff room, telling them McCarney was being wrongly accused. He said that Mr. Merchoff later told him to keep his nose out of the matter, or he would be "framed" with drugs put into his locker or pockets.

In cross examination the employer's representative, Mr. Potts, cast doubt on the objectivity of Mr. Kassian's testimony. Mr. Kassian acknowledged that he had been off work for the same time, with an identical medical diagnosis, that he had been involved with Mr. McCarney in a picketline incident with Mr. Peckham, and that they both were involved in essentially identical legal actions for damages in the order of 1.5 million dollars. During the cross examination Mr. Potts reviewed Mr. Kassian's testimony regarding Mr. Merchoff, step-by-step. When inconsistencies in testimony were revealed, it appeared to the panel that Mr. Kassian simply adapted his testimony to resolve them. He also acknowledged that he had conflicts with Mr. Negrin prior to the Rouse incident. Mr. Kassian said even although he observed and heard of numerous harassments to Mr. McCarney following the Rouse incident and spoke a number of times to staff in McCarney's favour, the first time he mentioned McCarney's problems to management was casually and "off the record" to Mr. Riou one and one half years following the Rouse incident when Mr. McCarney transferred to Riou's South Wing. On that occasion Kassian didn't ask Riou to do anything. Kassian at first said McCarney had told him he had nightmares but not what they were about. When confronted with other evidence he admitted McCarney told him the nightmares were of wheels coming to him [obviously referring to the Peckham running down incident]. Kassian said he told some, but not all staff he dealt with of what he alleges Negrin and Merchoff said about McCarney. Mr. Kassian said he next mentioned the harassment to McCarney and himself (after Riou) to Bruce Kilby in or about October, 1989. Kilby was then acting director of South Wing. Kassian told Kilby he wanted a notice put out to stop the harassments. Kassian says Kilby said he couldn't stop the rumour mill but that he would talk to Mr. Gobillot. He said he couldn't recall what grievances were filed then but recalls they did not proceed. Kassian says Kilby arranged a meeting with him, McCarney, Kilby and Gobillot when McCarney and Kassian asked



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Gobillot to fire or charge three staff or investigate them for harassment, and that Gobillot should inform police if corrections could not do anything. [Ultimately Gobillot requested Inspection and Standards to investigate a different matter but that office refused and directed McCarney and Kassian to civil suit.] Kilby gave evidence that the October, 1989 meeting was mainly about the Peckham incident with McCarney alleging staff were being encouraged to give false evidence. Kilby said that before this meeting he knew generally there was no love lost between McCarney and East Wing staff.

As a consequence of being labelled a rat, Mr. McCarney told the panel, he feared for his personal safety at Oakalla, and was afraid to go into the East Wing, where Mr. Negrin and Mr. Merchoff were in charge. He said that he had at one time refused an assignment there, for which he was reprimanded. Here he may refer to a refusal to work the East Wing April 20, 1988, when he received a letter of reprimand and apologized formally. However, in other testimony, he told the panel his regular duties took him into the East Wing several times daily. He spoke of rumours and stories from inmates that conspiracies were developed to harm him, but there was no corroboration of these stories. Mr. McCarney acknowledged that he had not been assaulted by inmates or other guards. He said he had been labelled a rat, which he said is a serious term to apply in prison, as it can lead to personal danger. His evidence regarding this label is supported by Mr. Langenbach, and by Mr. Lusken, but not by officer Cable who in his own case in a similar situation treated the matter more lightly.

Mr. McCarney told the panel that he had a significant amount of stress from his marriage, which culminated in a divorce action initiated by his wife about May 1988, and his eviction from the house in June 1988. In June, 1987 the worker referred himself to the Government Employee Health Services Office (GEHS) for concerns of his wife about changes in his behaviour. He said he had been subject to severe childhood abuse. He referred to the Rouse incident and subsequent harassments.

Marriage problems were apparent as early as 1980, according to Dr. Merrill's evidence. Mr. McCarney thought that problems regarding vehicle damage, plus anonymous phone calls to his home following the Rouse incident exacerbated his marital problems, and in any case, the period around 1988 was a stressful time in his marriage. Mr. Riou, who was the Director of South Wing from April



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1988 to February 1989 told the panel that Mr. McCarney had been through a "traumatic marriage breakup" in that period, and had discussed with him the financial difficulties which arose as a result. Mr. Bruce Kilby, who was director in the South Wing from February 1989 to January 1990 spoke to the panel in regard to Mr. McCarney's stress at that time. He said, in part,

George took ... a very strong and active role in the union that summer ... his own issues was that he had a family crises at the same time. ... Working in the south wing was no problem. It was just that he seemed to run with everybody's issues. ... As the union shop steward he would play a very active [role] in the particular officer's concerns and perhaps going in my view overboard. I felt that sometimes with his own personal things going on ... he could have backed away from some of it. We talked a little about it ... Mr. McCarney and I ... he was going a fairly stressful time with his family court issue. He was situated with the incident at the gate house ... on the picketline ... his motor vehicle incident with the business manager [Peckham] ... All these kinds of issues that were hanging and I felt if he would back off on his union role a little bit it might help him out...

Mr. McCarney saw GEHS a number of times in 1988. In May, 1988 he said he was being counselled, out of a mental health centre - his wife had told him to move out and had served divorce papers. In August he complained of high blood pressure and terrible financial difficulty from having to pay as support nearly all of what he earned. (It is perhaps not suprising then, the Court Divorce file indicates Mr. McCarney was in considerable arrears of maintenance and did not pay nearly one-third of the maintenance). In October he described a multitude of problems with the marriage and general dissatisfaction with the authority of the worksite and with his high support payments. He was on medication for high blood pressure.

Evidence was introduced that, as a result of an incident on a picketline on September 18, 1988 when he said he was struck by a



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vehicle driven by Mr. Peckham, an employer business manager, Mr. McCarney initiated a law suit for damages. In an affidavit provided to ICBC by his solicitor, it was claimed that "until the date of the incident on September 18, 1988 Mr. McCarney had enjoyed excellent health and was in excellent physical condition ... and that afterwards he suffered ... severe recurrent headaches ... marked rise in blood pressure ... sleeping disorder.... .

In the statement of claim in the law suit which followed, the relevant injuries were characterized as ... nervous tension and headache ... depression and anxiety ... apprehension and shock....

Shortly after this incident Mr. McCarney went on leave which was characterized as "stress leave" from October 31, 1988 to January 9, 1989. In his evidence to the panel Mr. McCarney said "I never discussed this incident [Peckham incident] with my doctor. Mr. Potts said "did you ever discuss it with Dr. Merrill". Mr. McCarney replied "never did". Mr. Potts then went on, "in all of your meetings with Dr. Merrill when you went for whatever - 20 sessions - you didn't tell her about the picketline incident?" Mr. McCarney said "no". Mr. Potts said "did you tell her that as a result of that picketline incident that you were suffering from nervous tension and headaches". Mr. McCarney replied "I didn't discuss the picketline incident".

In contact with GEHS in January and February 1989 Mr. McCarney referred to difficulty with the accident injuries and some time loss from work because of it. Mr. McCarney told the panel that he had been designated the prime suspect in a murder case, as part of the ongoing harassment by staff at LMRCC, on September 22, 1988. He believed Mr. Merchoff made the tip. He said this caused him considerable stress, and that even today he still had not been told that he was cleared. Constable Walton of the R.C.M.P. gave testimony that the police force had received a tip, the source of which he was unable to identify, suggesting that Mr. McCarney's voice was similar to that on a tape which police had circulated broadly for identification. Constable Walton said Mr. McCarney had not been told he was a prime suspect, had not, as he had suggested, been under surveillance in the matter, that the interview with Mr. McCarney convinced the police that he was not involved in the case, and that Mr. McCarney had been so informed.



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Other witnesses called included Mr. Negrin and Mr. Merchoff, both of whom completely and absolutely denied Mr. McCarney's charges of harassment and coverup.

Mr. Riou testified that when he had been director of South Wing that, contrary to Mr. McCarney's evidence, he had never issued a directive that Mr. McCarney should not be assigned to the East Wing. He further said that such a directive would never have been issued, because a man is expected to work where he is needed, without exception.

Riou recalled a stormy meeting in May, 1988 called at his request, which McCarney and Merchoff attended. McCarney had told him he was having problems in the East Wing. Merchoff was angry at McCarney going into the East Wing and stirring things up and Riou thought his anger was justified. McCarney was overtly angry too (McCarney said he was the soul of composure at the meeting and said nothing). McCarney told Riou after the meeting of various harassments but did not implicate Merchoff - McCarney did not ask for action: if he had, Riou said he would have had it investigated with management. Riou said McCarney got along well in his South Wing and had to be on his toes there because the inmates require much attention. Riou said he was never aware of any abuse to McCarney or of McCarney being called a rat. Riou denied being told by Kassian that McCarney was being labelled a rat and so on. Riou said he had no reason to think Negrin and Merchoff did the things he recently found out McCarney and others attribute to them.

Mr. Kilby, later a director of the South Wing (February to December 1989) and director of West Gate B until June 1991, gave evidence regarding Mr. McCarney's relations with his peers. He said that a number of the staff blamed Mr. McCarney for an illegal work stoppage (the Phillips incident - July 27, 1988) for which all involved had been disciplined. He said that over a broad period staff were not happy with Mr. McCarney's taping activities. He said staff said "these guys [Kassian and McCarney] were carrying tape recorders and we don't like it and we don't know if we can have conversations without being taped ...". He had personally told McCarney he didn't want him to tape conversations, and that, if a record was required, he would make it.

Mr. Kilby said that in 1989 Mr. McCarney had complained to him about activities of East Wing staff during an investigation by an ICBC investigator (Mr. Advocat). It appears both Kassian and



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McCarney filed a grievance which had something to do with their allegation that staff were being encouraged or coerced as to the evidence they should give to Advocat. The grievances did not proceed. Kassian gave this panel the impression the primary purpose of the meeting with Kilby and Gobillot was to apprise them of harassments to Kassian and McCarney. Kilby confirms the harassments were mentioned but indicates the primary matter by far was the Peckham incident and the investigation of that. Mr. McCarney did not want his complaints to go to Mr. Negrin, the East Wing director, as he didn't trust him, so Mr. Kilby arranged a meeting with Mr. Gobillot, who, in a letter of October 12, 1989, recommended to his regional director, Mr. Neufeld, that Mr. McCarney's charges concerning the Peckham incident be investigated by the Inspection and Standards Division. Subsequently, Inspection and Standards advised that the matter should be pursued by Mr. McCarney in Civil Court, and he was so informed.

In October, 1989 Mr. McCarney referred himself again to G.E.H.S. saying that the Director of Corrections suggested he have a psychiatric assessment. Dr. Jepson-Young saw him then and said:

Basically I see no problems with this man's mental state although the recurring nightmares [related to the Peckham incident] could be indication of a post-traumatic syndrome although he does not seem to be affected in any other way and certainly is functioning back at work in spite of perhaps the intense environment.

Mr. McCarney saw Dr. Jepson-Young again in December 1989 when Mr. McCarney was found to be pre-occupied with "the situation at Oakalla, the pending charges". Mr. McCarney said he was bringing charges against his union. He was quite angry and agitated and spoke at great length about problems. Dr. Jepson-Young thought then Mr. McCarney was not fit for work and needed counselling. Mr. McCarney did get counselling and by examination on January 10, 1990 was a little improved. Mr. McCarney's physician cleared Mr. McCarney for return to work January 29, 1990. Mr. McCarney was all along continuing his blood-pressure medication. Dr. Lugsdin swore an affidavit May 30, 1989 in Mr. McCarney's divorce matter that Mr. McCarney was "quite ill", with "dangerously high blood pressure". Mr. McCarney began working at Westgate B at Oakalla



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February 2, 1990. On February 8, 1990 he angrily refused an order to work the East Wing. Corrections expressed concern to G.E.H.S. of whether Mr. McCarney was fit to work.

On February 11, 1990 Mr. McCarney came to work, at Westgate B and found his locker painted with the word "McRat". This panel received photographs of this taken by Mr. Kassian. Also, a paper had been placed on a windowsill addressing Mr. McCarney derogatorily. Mr. McCarney laid a complaint with Mr. Kilby about this harassment.

In response to the complaint Mr. Kilby acted strongly. He had the locker painted and, given complaints of other officers about similar harassments to them, he issued a letter February 14, 1990 to all staff in Westgate B condemning work place harassment of all kinds. He also had meetings with union and staff to help to end work place harassment. Mr. Kilby has given evidence that other instances of harassment included racial, derogatory and sexist comment. Mr. McCarney agreed with Mr. Kilby that he was not the only person in Westgate B who received this sort of harassing treatment. Mr. Kilby said that following his action, the harassments seemed to stop.

Dr. Jepson-Young saw Mr. McCarney February 16, 1990. He found Mr. McCarney out of control, angry and tearful. He found Mr. McCarney was not able to return to work and diagnosed "post-traumatic stress disorder". The situation had not improved at all by March 1990 and Mr. McCarney was referred to Dr. Merrill.

Mr. Hunt, the director of Inspection and Standards, told the panel that his organization was set up to investigate matters regarding administration of the Corrections Act, for the Attorney General or the Assistant Deputy Minister. He said his branch took part in the investigation initiated by the Rouse incident in 1986, by monitoring the conduct of the enquiry in 1986, and by investigating allegations of other inmates. The Board of Inquiry findings were provided to I and S, and he said I and S monitored the inquiry to make sure policy and procedures were followed.

He then said that at Mr. McCarney's request he met with McCarney on January 4, 1990 and that Mr. McCarney turned over to him about 200 pages of documents relating to some 25 incidents indicating that corrections management had behaved improperly. Mr. McCarney wanted these matters investigated. These were his first complaints to I



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and S. He said that one of McCarney's complaints was that the Rouse incident had not been properly investigated and that a cover up had been attempted. As he had himself been involved in that investigation, he said "I gave [McCarney] a synopsis of my knowledge of what had occurred ... and the discipline that had ensued". He had made it clear to Mr. McCarney that the I and S had been involved in the enquiry, but Mr. McCarney was not satisfied that the matter had been properly investigated, and suggested that Mr. Merchoff was "around the Board of Inquiry room". He said Mr. McCarney did not appear to know that Merchoff was a member of the Board of Inquiry.

Mr. Hunt accepted all the documents, reviewed them, and met again with Mr. McCarney at the beginning of February, to get further information. He then investigated each of the complaints. He said that "with the majority of them there had been action taken by managers or by personnel or others. I understand that Mr. McCarney didn't agree with the action, or thought it was inappropriate ...". He said that some of the complaints had been dealt with between management and the union, pursuant to the collective agreement, and solutions had been agreed, but Mr. McCarney still complained. He complained about the union's lack of support for his position.

At a meeting with Mr. McCarney on February 26 Mr. Hunt told him that "I didn't feel a further full investigation into these matters [was] appropriate given that virtually all of them had been addressed, apart from a couple which I thought ... appropriate for me to recommend to the [Assistant Deputy Minister], who had asked me to review this material in the first place, that the follow up be done by the management line ... that is the usual process."

Mr. Hunt then said his recommendations were followed, the ADM referred the remaining problems to Mr. Neufeld, the Regional Director, and that he [Hunt] met with Neufeld on August 29 to discuss all the material and to clarify that it was now in Mr. Neufeld's hands and to have Mr. Neufeld notify Mr. McCarney of this.

Mr. Hunt summarized his evidence to say that he was satisfied, regarding the Rouse enquiry, that there was no evidence of a conspiracy to cover up the incident. He also said it was unusual for I and S to go to these lengths to satisfy a corrections officer.



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Following submission of his material to Mr. Neufeld, Mr. McCarney had been sent a letter dated June 29, 1990 saying that, having reviewed the material, Mr. Neufeld disagreed with Mr. McCarney's perceptions of one of the issues, but acknowledged his intention to review the other issues raised.

On July 18, 1990 Mr. McCarney met with Mr. Neufeld and turned over to him a series of documents charging misconduct by Corrections Branch officers. Mr. Neufeld's response to Mr. McCarney, on October 11, 1990, detailed his position on each complaint.

Mr. Cable, a corrections officer, gave evidence and denied charges that he had made anonymous threats to Mr. McCarney or Mr. Kassian, and that he had tried to persuade officer Ford to give false information to the ICBC investigator. He said Kassian had that morning apologized to him for wrongly saying Cable had made threatening phone calls. Mr. Cable said he worked in all parts of Oakalla from 1986 and never heard McCarney referred to as a rat or McRat in any frequent or serious sense. Cable said that following the Peckham incident when he heard he was accused by McCarney and Kassian he confronted them but they would not talk to him.

Medical Evidence

Dr. Lesly Merrill, Clinical and Consulting psychologist gave evidence for Mr. McCarney's case at the appeal hearing. She also filed her reports dated August 20, 1990 and September 8, 1990. Dr. Merrill diagnosed Mr. McCarney's condition as post-traumatic stress disorder, brought on by the trauma of the Rouse incident and increased in extent and intensity largely by the threats and harassments directed to him in the work place. Dr. Merrill made the diagnosis based on Mr. McCarney's statements to her of his experiences and the way he said he reacted to them. Dr. Merrill says in her report that the major traumatic incident was Mr. McCarney being "appalled" on the sight of Rouse after the beating. Dr. Merrill appears to have gotten Mr. McCarney's story wrong because she gives the impression Mr. McCarney said he first saw Rouse beaten when by chance Mr. McCarney "later" was visiting someone in the hospital. Mr. McCarney's evidence is that he saw Rouse after the beating as he had been taken back to his records office from the tunnel. There is not too much importance to attach to this difference save that Mr. McCarney was hardly avoiding any trauma of seeing Rouse by seeing and talking to him in the hospital following the day he saw him beaten and this does support



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Mr. McCarney's own evidence that seeing Rouse beaten was not a trauma for him. The evidence before us does not establish that Mr. Rouse was as badly beaten as Mr. McCarney claims. The evidence of Mr. Negrin who saw Mr. Rouse in the days following his beating seemed to indicate Mr. Rouse was not so severely beaten.

Dr. Merrill's report lists the following as contributing events to the initial trauma.

1. Direct threats to Mr. McCarney by officers.
2. Damage to Mr. McCarney's property.
3. Threatening phone calls to Mr. McCarney's wife and children.
4. The Peckham running down incident.
5. Notice of a conspiracy of inmates and officers to harm Mr. McCarney.
6. The "McRat" locker painting.
7. The McGinn incidents.
8. Disappearance of records and documents following official complaints.
9. Harassment of witnesses upon investigation of complaints.
10. The February 8, 1990 incident with Mergatroid when the worker refused the East Wing.

Dr. Merrill states in her report August 20, 1990 that she saw Mr. McCarney 18 times between April 2 and August 14, 1990. She said that at first Mr. McCarney found it difficult to talk about the tunnel and related incidents, for fear of "going out of control". (It is noteworthy Mr. McCarney apparently had less difficulty describing his experiences earlier and particularly in 1990 when he obtained a detailed investigation of his complaints through Mr. Hunt in inspection and standards). Dr. Merrill found from what Mr. McCarney said that he had symptoms which compelled the diagnosis of post-traumatic stress disorder. The symptoms are noted as follows:

1. The incidents resulting from the labelling of Rat and McRat were persistently re-experienced through nightmares, flash-backs, recurrent and intrusive distressing recollections and intense distress on exposure to persons and places associated with the trauma.
2. Persistent avoidance of stimuli associated with the trauma or numbing of general responsiveness.



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3. Persistent symptoms of increased arousal.
4. Emotions frequently associated with victimization including deep anger towards the corrections people who have caused him so much difficulty, obsessively talking about the work incidents, re-victimization through the slowness of the bureaucracy to investigate his claims, feelings of exploitation, reduction of socio-economic status and marked mood swings.

Dr. Merrill said:

The above symptoms are the fairly predictable reactions of a normal person who has been subjected to a unique type and intensity of stressor. Admittedly, work in a correctional institution involves dealing with stressful situations from time-to-time. But when one is set up to be the object of ridicule, belittlement and harassment by peers and superiors, when attempts are made to injure or maim, when one's property is repeatedly destroyed and several severe threats are made to one's family, the trauma obviously falls outside the range of normal related experience. ...

A combination of circumstances in this situation greatly increased the extent and intensity of the trauma experienced by the client. Firstly, the length of time that the trauma went untreated (four years), and the constant, unrelenting harassment which never seemed to let up until he left LMRCC in February 1990. Secondly, the closed system of the correctional institution which did not allow him to talk freely to those outside the institution, and the act of isolating him from his peers, which meant he could not talk or seek comfort from those inside the institution. His only outlet for his feelings seemed to be in documenting what he saw as the unlawful incidents. Thirdly, the continuous threats, intimidations and harassments against



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himself, his property and his family served to create a feeling of distress, tension, and anxiety, and took away any sense of security.

Dr. Hans Beihl, Board Psychology Department, conducted a Psychological Assessment of Mr. McCarney on May 16, 1990 and concluded in his Impression:

...If one accepts that the various threats made on Mr. McCarney's life, and other forms of harassment and intimidation, fall outside the range of usual human experience, then his stress reactions to these events might well be construed as a post-traumatic stress disorder.

Findings

In careful consideration of the whole of the evidence before us, including the evidence mentioned particularly in this judgement, we find

1. Mr. McCarney's stress condition and disability did not likely arise from employment and are not compensable.
2. Mr. McCarney's evidence in the Rouse enquiry was relatively insignificant. It really only confirmed Rouse's story that he had been led into the terminal by a particular person. The transcript of what Mr. McCarney said in the Rouse inquiry does not indicate Mr. McCarney expanded significantly on that.
3. The Rouse incident was not a traumatic event for Mr. McCarney in the context of a diagnosis of post-traumatic stress disorder. We had first had the impression from the evidence of Mr. McCarney and Dr. Merrill that the mere observance of Rouse beaten was so traumatic to Mr. McCarney, his stress resulted from that. But Mr. McCarney gave clear and unequivocal evidence to this panel that the sight of Rouse was not traumatic to him - he said seeing injured and beaten people was relatively not new to him. Mr. McCarney said the thing that upset him about the Rouse incident was his belief that it had not been properly investigated. We find from the employer's evidence it is likely the Rouse and similar incidents were quite properly investigated by the employer. Mr. McCarney adduced no objective evidence to show the



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employer's investigation was insufficient. Independent ministry staff were satisfied with the inquiry. Mr. McCarney suggested he should have been given a copy of the transcript of the proceedings or the findings and the reasons but no reasonable basis for that has been made out.

4. Neither Negrin nor Merchoff likely made the statements about Mr. McCarney that Mr. McCarney, Mr. Kassian and Mr. Langenbach ascribed to them. Mr. Negrin and Mr. Merchoff absolutely and clearly deny making the statements and their evidence is consistent. No motive is established to harm Mr. McCarney. Mr. McCarney's evidence in Rouse was insignificant. Mr. Negrin and Mr. Merchoff are long time corrections personnel and there is no objective evidence they are not competent employees. Mr. McCarney had few dealings with Mr. Negrin and Mr. Merchoff in the course of his work. If conditions with management and staff were as tense as the evidence suggests and in any case, it begs reason for any management staff, such as Negrin and Merchoff to say anything of the sort ascribed to them.

We find Mr. Kassian's evidence unreliable - not false by intent but unreliable. Mr. Kassian has commenced a civil suit in his own right for damages arising out of the Peckham incident, just as Mr. McCarney has done. Mr. Kassian has an almost exact same case before the Review Board as Mr. McCarney does. It is certainly in Mr. Kassian's interest to wholly support Mr. McCarney's case, to better establish his own case. His denial of interest is unacceptable. These circumstances do not demand rejection of Mr. Kassian's evidence, only that his evidence be regarded with some suspicion as to accuracy. Mr. Kassian's reason for doing an about face to actively support Mr. McCarney - that he perceived Mr. Merchoff had lied as to the location of interviewing Rouse - is not credible. Location is unimportant - there is no dispute that an interview occurred. Mr. Kassian's reasons, if any, for a one and a half year delay in mentioning the worker's troubles to a superior are insufficient for a man Mr. Kassian says he was who knew something was very wrong and was shocked and was standing up for Mr. McCarney. Mr. Kassian does not even mention work problems in his affidavit in 1989 in the matrimonial cause. There is no evidence Mr. McCarney asked Mr. Kassian not to say anything to management. When he did mention Mr. McCarney's troubles to management, it was only



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casually to Mr. Riou at the time of Mr. McCarney's transfer to South Wing, not with a view the information would be a formal report or complaint -the discussion in fact was to be "off the record". The first semi-formal report was to Mr. Kilby in 1989 when both Mr. McCarney and Mr. Kassian filed grievances, about what Mr. Kassian cannot remember. Mr. Kassian says the purpose of reporting to Mr. Kilby was to apprise him of the harassment of Mr. McCarney and that this was accomplished - yet, grievances did not proceed and Mr. Kassian does not know what if anything was done by Mr. Kilby about the harassment information. Mr. Kilby gave evidence to the effect that he does not recall much, if any, discussion of Mr. McCarney's problems at the time although he knew generally there "was no love lost" between Mr. McCarney and East Wing. Mr. Kilby said the complaints had to do with complaint by Mr. McCarney and Mr. Kassian that East Wing staff and supervisors had encouraged people involved in the Peckham incident to give false statements to an I.C.B.C. investigator. Mr. Kilby states a meeting was held about the complaints with him, Mr. McCarney and Mr. Kassian and Mr. Gobillot, District Director in attendance. A memorandum by Gobillot in evidence dated October 12, 1989 shows the meeting dealt only with the Peckham investigation and Gobillot requests Ministry Inspection and Standards conduct the investigation for a sense of fairness. If Mr. McCarney's problems were discussed with Mr. Kilby as Mr. Kassian says, it is likely Mr. Kilby would have acted on it given his strong actions to stop harassment of Mr. McCarney and others following on the locker painting incident in 1990. This is one of a number of examples suggesting Mr. Kassian's memory is somewhat selective.

Mr. Langenbach gave evidence for Mr. McCarney and alleged he heard Mr. Merchoff say in an office of shift supervisors words to the effect that if it was not for Mr. McCarney the corrections officers disciplined for Rouse and similar incidents would get off. He did not know who else, if anyone, may have heard this as well. Mr. Merchoff flatly denies he said anything of the sort. We find Mr. Langenbach's evidence in this respect less credible than Mr. Merchoff's. Mr. Langenbach gave evidence suggesting he is likely quite anti-management in outlook. Mr. Merchoff is a part of management. Mr. Langenbach was quite active as shop steward in his union and had personnel problems of his own. He was aware that many people tape conversations with management and



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seems to condone it from distrust of management. It is difficult to believe that Mr. Langenbach can give such particular evidence of Mr. McCarney's problems, yet not remember who else heard Mr. Merchoff say the things about Mr. McCarney attributed to him. All of this suggests Mr. Langenbach might well have misinterpreted any statements of Merchoff with a negative bias.

5. For some period of time following the Rouse incident Mr. McCarney was known by some Oakalla staff as "Rat" or "McRat". We do not however accept that this label was nearly so pervasive or derogatory as Mr. McCarney and his witnesses state. Key staff and managers gave evidence they did not know of the label to Mr. McCarney. There is no objective evidence at all of any genuine threat or assault to Mr. McCarney's physical life and safety - yet that is how Mr. McCarney understood the words. Mr. McCarney was certainly exposed to danger in Corrections and particularly in South Wing where he worked with dangerous inmates. Mr. McCarney admitted he was in and out of East Wing frequently in the course of a day. Mr. McCarney alleged a threat to his safety if he worked East Wing and cited a directive by Riou stating he was not to work East Wing. Riou denies that any such directive existed and we accept that evidence - Mr. McCarney apologized for his refusal and this gives some weight to the suggestion he did not really feel his safety was in jeopardy. If the term "Rat" or "McRat" and alleged harassments were so pervasive as Mr. McCarney and some others say, it is likely Mr. McCarney would have complained about it to the employer well before he did in December 1989 (to Inspection and Standards). Mr. McCarney attempted to explain that a corrections officer does not complain but we do not find this credible given that he complained throughout for the issues of others and that he seeks to convince this panel that he was throughout deeply angered, frustrated and fearful from the harassments. There is credible evidence before us that the term "Rat" to staff does not have the same serious meaning Mr. McCarney and others give it as it would apply amongst the inmate population, and that it is more of a tasteless comment of a lighter nature. Given the lack of reliable objective evidence of assaults or threats or harassments, it is more likely the term "Rat" to Mr. McCarney was in the lighter vein or, if intended to be serious, related to dislike staff had for Mr. McCarney on matters wholly apart from the Rouse incident.



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6. At times following the Rouse incident but not related to that incident Mr. McCarney, rightly or wrongly, was not liked or was suspected by some of the staff. The reasons appear to be
- (a) Blame assigned to Mr. McCarney for discipline to staff in the Phillips incident.
 - (b) Penchant of Mr. McCarney to surreptitiously tape conversation he had with staff, about which staff complained to management and management cautioned Mr. McCarney.
 - (c) Reluctance to become involved in cause of Mr. McCarney to establish some conspiracy against him.
 - (d) Overly aggressive manner in which Mr. McCarney pursued personnel problems of staff and fellow union members.

We have insufficient objective evidence before us to conclude any dislike that might have existed for Mr. McCarney was manifested by any physical threat or harm to Mr. McCarney or his property.

7. Harassments alleged by Mr. McCarney to his person and property are not established to have occurred.

Mr. McCarney gave evidence of harassment by saying that his car was damaged while parked at work and in other circumstances. Mr. Kassian says he observed damage. There is no other evidence at all, apart from Mr. McCarney's evidence, that any damage occurred to his car or if any where it occurred or who may have done it. There are no photographs, repair bills, I.C.B.C. claims or the like or even police reports. We join the employer's statement that "coming from a man who condemns others for not investigating criminal acts or pursuing incriminating evidence, Mr. McCarney's oral evidence of this vandalism rings hollow". Even if damage to Mr. McCarney's car at work occurred, there is no likelihood, from the dearth of evidence, that it is work related. The same conclusion applies to the threatening phone calls alleged. There is no objective evidence relating any such calls to work - there is no objective evidence any such calls were made by any one in Mr. McCarney's work environment.

Mr. Kassian and Mr. McCarney gave evidence that they were at their lawyer's house following the Peckham incident and to do with that matter and while discussing the various harassments



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to Mr. McCarney his eight year old son blurted out that he had received a phone call when the caller threatened death to Mr. McCarney. Both Mr. McCarney and Mr. Kassian say they were shocked and deeply affected by this statement. We have no reason to disbelieve Mr. Kassian or Mr. McCarney that the boy made the statement, but the evidence as a whole does not reliably establish the boy heard a call of that nature. The lad was only eight years old and his father and Mr. Kassian were discussing matters of like kind in the boy's presence.

Mr. McCarney gave evidence of an incident in which an inmate told him management had offered favours to other inmates who would physically harm Mr. McCarney. The inmate who is alleged to have said this did not give evidence to these proceedings and there is no other form of corroboration. The conversation alleged is not established to have occurred. There is no objective evidence, such as examples of physical harm that might tend to lend credence to the story.

8. Mr. McCarney suffered severe stress and distress in 1987, 1988 and 1989 from his marriage breakdown and financial support obligations. The content of the Court divorce file (which we have read), the report of his complaints to GEHS and his own evidence and the evidence of Riou and Kilby to whom Mr. McCarney spoke, confirms that the stress from the marriage situation particularly active in 1989 likely contributed in significant part to the symptoms of stress Mr. McCarney displayed in early 1990 which resulted in disability.

It is Mr. McCarney's evidence that the harassments and problems in his job at Oakalla caused great stress in the marriage and contributed significantly to the marriage breakdown. He said for example he once drove his wife's car to work, the car was vandalized at work, and his wife refused to let him take her car to work again. He said his wife refused to answer the telephone due to numerous threatening calls. He said he then changed his phone number but an inmate gave out his mother's phone number and the threatening calls went to his mother which caused her to go to hospital. Mr. McCarney said he personally did not hear threatening calls. And there was the gun incident involving his former wife which in the hearing before this panel Mr. McCarney attributed to his work harassments although in the divorce file to his former wife's problems as a child. Neither



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Mr. McCarney's former wife, nor any member of his family gave evidence to this panel.

There is conflict between the evidence Mr. McCarney gave the panel in respect of his marriage problems, and the sworn and procedural evidence contained in the Court divorce file. The employer has brought out some of the conflict in his argument. We do not consider it necessary to list this conflict in respect of the marriage problems. To a degree the conflict in Mr. McCarney's evidence throughout is likely a product of his medical problems. The conflict in the marriage aspect only heightens the suspicion of unreliability of Mr. McCarney's evidence to the panel already established to our mind. The evidence has failed to establish Mr. McCarney's allegations of significant harassment in the work situation. One important thing however to be gained from the Court divorce file is that nowhere in very extensive sworn evidence by and for Mr. McCarney, particularly in 1989 when Mr. McCarney filed a motion for reduction in maintenance, is there reference to any Oakalla work problem as a cause of the substantial marital stress to which Mr. McCarney and his supporters say he was then subject - there is only reference to the marriage, financial and Peckham matters as cause. Even Mr. Kassian filed an affidavit in the Court divorce matter and made no reference to work problems.

9. The notion advanced by the employer that Mr. McCarney's claim for compensation cannot succeed from anger, stress or frustration in dealing with the grievances of other staff, particularly when he often took up other's causes and problems as a union representative, is correct.
10. The Peckham incident in 1988 is likely to have caused in some significant part the symptoms of which the worker complained in 1990. Mr. McCarney claims in his civil suit filed in 1989 arising from the Peckham incident that he has severe recurrent headaches, marked rise in blood pressure and a sleeping disorder from the incident and that he was in "excellent physical condition" prior to the incident. These are a lot of the same symptoms of which he complained in 1990 were due to work harassment. To the extent the 1990 symptoms are caused by the Peckham incident, they are of course non-compensable as not having arisen out of and in the course of employment. At



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least to 1990 Mr. McCarney had residual of personal injury he sustained in the Peckham incident.

11. Mr. McCarney did not at any relevant time suffer from a post-traumatic stress disorder condition, or if he did the condition does not likely arise out of employment.

With respect Dr. Merrill's diagnosis is unreliable. For each of the events upon which Dr. Merrill relied to define the "trauma" to Mr. McCarney, we have found either there is insufficient evidence to establish they occurred, or the event, such as the Peckham incident, arises outside of employment. Mr. McCarney was very clear the sight of Rouse was not particularly traumatic for him. There is no evidence Mr. McCarney was directly threatened by staff or management - alleged threats came to Mr. McCarney second and third hand. There is no evidence to establish documents required for some relevant purpose are missing let alone destroyed. The McGinn incidents, where Mr. McCarney pursued complaints of others as shop steward of his union, are not compensable. The evidence does not establish a fear of Mr. McCarney to work in the East Wing - he was in the East Wing frequently. There was no directive that Mr. McCarney should not work the East Wing. The locker painting did occur but we find that it is not of the significance Mr. McCarney claims. The evidence clearly establishes Mr. McCarney's locker was not alone for vandalism and other officers were subjected to sexist and racial comment. Mr. Kilby's actions apparently substantially stopped harassment of this kind and Mr. McCarney left off work on the day he viewed the vandalism and only returned to work to a different facility, Allouette River, thus limiting Mr. McCarney's exposure to the vandalism and any fall out from it. Mr. McCarney makes it very clear he did not discuss the Peckham incident at all with Dr. Merrill, probably for the same reason, unknown to us, that he did not want to discuss it with us. Mr. McCarney gave no detail as to cause of his nightmares, yet Dr. Merrill relies on these for a diagnosis. The only evidence of the nature of the nightmares is that they dealt with the Peckham incident (i.e. wheels coming at Mr. McCarney). The Peckham incident did involve Mr. McCarney being pulled from the path of the wheel of a car by Mr. Kassian just in the nick of time. Mr. McCarney probably left out describing his nightmares to the medical doctors attending him because they related to the Peckham incident and



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he did not wish to talk of that incident. Dr. Merrill gave evidence there were objective tests that could have been administered to help to find Mr. McCarney's condition, but that no such tests were performed. Dr. Merrill indicated she did not need these tests because her field of a clinical practice and her clinical findings were enough to support the diagnosis she made. The problem with not having the objective testing, in retrospect certainly, is that most of the events founding the diagnosis are not established to have occurred and those that did occur are outside of employment or are insignificant. Mr. McCarney did not discuss the Peckham incident with Dr. Merrill yet that incident was very significant to Mr. McCarney's stress symptoms. The evidence of distress at exposure to places associated with trauma is lacking. Mr. McCarney worked the East Wing frequently. He continued to work consistently, apart from his stress leave in October 1988 likely due to his marriage and the Peckham problems, without mentioning his problems to management virtually until the beginning of 1990. Far from avoiding the "stimuli associated with the trauma", Mr. McCarney continued to work in the environment and actively pursued his own investigation of allegations. Also, Mr. McCarney told this panel, as he told Dr. Merrill that he wanted to return to work at Oakalla. If Mr. McCarney would try to avoid his "trauma", he could not have likely been able to work at Oakalla at all given the nature of that environment.

In finding Mr. McCarney does not suffer from post-traumatic stress disorder, we have considered the DSM III R. The causation of a post-traumatic stress disorder is an event outside the range of usual human experience and that would be markedly distressing to almost anyone such as a serious threat to one's life or seeing another person who has recently been seriously injured or killed from an accident or physical violence. The evidence does not establish Mr. McCarney suffered the sort of trauma to found the diagnosis of post-traumatic stress disorder. Dr. Merrill attempted to make the point that the trauma was an accumulation of events as has been described. We have already found that the events that are alleged to have occurred are not shown to have occurred or if they did occur they were outside of employment and non-compensable or insignificant.



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Although no more is needed to establish lack of reliability in Dr. Merrill's conclusions, Dr. Merrill stated in her August 20, 1990 report that Mr. McCarney was then still suffering from severe post-traumatic stress disorder and recommended Mr. McCarney not return to work but continue psychotherapy. Dr. Merrill examined Mr. McCarney once again August 27 before Mr. McCarney returned to work September 11, 1990 with Dr. Merrill's approval. Dr. Merrill stated in a September 8, 1990 letter to GEHS that Mr. McCarney was able to return to work since although he still had symptoms they ought not to interfere with his job. This suggests Mr. McCarney achieved a remarkable degree of recovery from just 19 days earlier when his symptoms were severe and wholly disabling. How did this happen? Very possibly from the employer's decision August 27, 1990 in evidence to terminate Mr. McCarney's extended medical benefits September 11, 1990.

If Mr. McCarney did indeed have a post-traumatic stress disorder condition or some other stress condition it is likely the non-occupational and non-compensable stresses in Mr. McCarney's life were far more significant for cause than any actual occupational stress. Dr. Finch, the worker's physician indicates Mr. McCarney had a high blood pressure problem associated with excessive tension even before the Rouse incident. The blood pressure problems continued. The evidence establishes Mr. McCarney was having considerable difficulties with his marriage at least from early 1986. By 1988 Mr. McCarney was suffering intense distress from his marriage breakdown and the loss of his children to the custody of his wife and burdensome financial results. Dr. Finch states in his August 18, 1988 report Mr. McCarney complained of further deterioration of his marriage, without any particular reference to work. This is important because Mr. McCarney claims his marriage foundered due to his reaction to all of the work place harassments he alleged. Mr. McCarney saw Dr. Lugsdin at GEHS in October 1988 and was found to be in the midst of a "hypertensive crisis" for which Mr. McCarney took stress leave. There is no explanation for that judgement, but the current crises of marriage breakdown and the Peckham incident in September 1988 comes strongly to mind as the cause. Mr. McCarney also had problems in his union, which is not work related for compensation purposes.



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Dr. Jepson-Young conducted a mental status examination in October 1989 and found Mr. McCarney had "no difficulties with his mental status examination". Dr. Jepson-Young referred to occasional nightmares from the Peckham incident and said "however, there seems to be no other manifestations of a post-traumatic stress syndrome". Dr. Jepson-Young reported in February 1990 Mr. McCarney had a "situational stress of an occupational nature". But we have found the work situations of which the worker complained are not established to have occurred or are non-compensable matters such as Peckham and McGinn. Further non-occupational or non-compensable stressors in Mr. McCarney's life already mentioned were management discipline for unlawful job action, the Peckham incident and ensuing litigation, persisting symptoms and disability from the Peckham injuries, headaches, nightmares and high blood pressure following the Peckham matter, frustration with his union regarding inadequate grievance procedure or practice for co-workers, and peer group dislike for taping and ongoing investigations.

Dr. Kordner, Director of GEHS, reported of his distillation of the health services file. Apparently the first referral to GEHS was in 1987 when Mr. McCarney indicates he had marital problems and severe physical abuse as a child - yet the GEHS report in mentioning work problem complaints indicates Mr. McCarney had no non-occupational stresses. Mr. McCarney's subsequent complaints to GEHS about his work situation must reasonably refer to the Peckham incident. Dr. Jepson-Young did not diagnose post-traumatic stress disorder and Dr. Kordner is incorrect in that statement, at least in the evidence before us. Dr. Finch's contention along with that of Dr. Merrill that the worker has a compensable stress condition is based on Mr. McCarney's allegations and is therefore unreliable.

We have examined the British Columbia Workers' Compensation Board policy statements and relevant Board Commissioners' decisions in regard to stress related disability. The current policy appears to be somewhat restrictive and ill explained for practical application, but seems to require relation of stress to a physical injury or an industrial disease. Mr. McCarney's case would fail on that basis. We have considered the Ontario Workers' Compensation Board appeal cases. One of these, Decision 980/89 appears to set out



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Ontario Board practice. In Ontario, to assess stress as compensable

1. There must be evidence that a psychological disability exists that disables a worker from performing the functions of the job.
2. The disability must be work related. This requires an evaluation of the various stressors in the work place, including a consideration of whether they are usual or unusual, whether other workers were affected and whether the stressors were typical, expected or unexpected.
3. If there is a disability and the work place made a contribution, the next question is whether the work place contributed significantly to the development of the disability. In this context, panels must examine the contributions of the personal situation of a worker and compare it with the contribution of the work situation.

Should Mr. McCarney satisfy the first test, he would definitely not pass the second and third tests given our findings in this judgement.



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We unanimously disallow Mr. McCarney's appeal. The employer seeks costs against Mr. McCarney but we find it inappropriate to make such an award. Legal costs in Review Board proceedings are not usual and there is no overwhelming reason to change that practice.

This panel is appreciative of the excellence and constructive and helpful manner shown by both advocates in this appeal.

Clinton W. Foote,
Vice Chairman.

Guy W. Downie,
Member.

Kevin G. Johnson,
Member.

CWF/dsm



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