Can stress be an industrial accident?

Desmond Rutledge assesses recent case law on stress and benefit claims

Industrial injuries benefit is a form of non-fault compensation for work accidents and diseases. Before any claim can be considered, the claimant has to show that the injury was due to an accident. The legal debate on stress in the social security context has been concerned with this gateway question of whether stress can qualify as an accident. This article assesses the findings of relevant Commissioners and court decisions, and suggests tactics for claimants who are trying to claim industrial injuries benefits for stress related injuries at work. It applies to England, Wales and Scotland.

Stress in the work place

Media coverage tends to take a sceptical attitude towards compensation claims for stress at work, equating stress with an inability to cope with the pressures of everyday life. Stress reaction, however, is a recognised psychiatric condition and the symptoms can include: constantly reliving the traumatic event, suicidal thoughts, loss of self-esteem, loss of concentration and sleep disturbance. The duty of care for employers has also been held to include the risk of psychiatric harm due to stress.[1]

Objections to treating stress as an accident

Even so, the Department for Work and Pensions continues to raise two objections to stress related claims for benefit.

The first is that stress injuries will be due to a continuous process and not an identifiable accident event. Such a distinction between process and accident does not appear in the legislation but has been developed by the courts to help decide borderline cases where the injury developed over a period of time.[2] The continuous process objection, therefore, requires evidence to help determine whether the stress related injury arose out of the general effects of the job or out of an event or series of incidents singled out by the claimant.

The second objection is that some types of incident should not fall within the ordinary meaning of accident. It has been argued that words said during a disciplinary hearing could not amount to an identifiable event capable of causing injury as such hearings are a normal part of employment practice. The argument gains much of its persuasive force from the fact that most people outside legal circles would not think of describing the effects of a conversation as an industrial accident. However, the ordinary meaning given to accident has to be seen within the context of a scheme created to indemnify injured workers.[3]

Accident or process?

The current industrial injuries benefits scheme has its origins in the Workmen's Compensation Acts 1897 - 1943. Courts have been prepared to give a broad meaning to what constitutes an accident, which includes any unintended or unexpected occurrence which produces loss of hurt.[4] The distinction between the injury and the accident need not always be apparent. An example of such a case is where a worker suffers heart failure undertaking the routine task of tightening a nut with a spanner.[5]

The definition of accident can also include an injury that developed over a period of time. One test case concerned injury due to blood poisoning where a series of cuts had come into contact with poison.[6] Injury resulted from the cumulative effect of the contacts and happened gradually instead of suddenly. This made no difference. The injury can be the result of a series of accidents each of which is specific and ascertainable even though their actual influence on the resulting illness cannot be precisely fixed.[7] This extended meaning of accident was not allowed to move so far away from the popular meaning so as to lose the distinction between an injury caused by a mishap or untoward event, and an injury due to the normal wear and tear of ordinary work.

Trigger events

In CI/554/92, an early test case on stress at work, the claimant alleged that he had suffered a mental breakdown as a result of his working conditions and a heavy workload. The claimant had been under serious stress for a considerable time as a result of the extent and nature of his caseload. The crunch came when he was asked to negotiate with staff representatives, a task which he strongly felt went against his

conscience. He asked his supervisor to relieve him of this role but was told to get on with it. He went back to his office and was overwhelmed by depression. He argued that this incident was the effective trigger for his depression and his subsequent breakdown and hospitalisation a month later.

The Commissioner reviewed the case law in relation to internal physical injuries and noted that there was no distinction in principle between a physical and a psychological injury. This means someone can meet with an accident whether they suffered a physical rupture or a 'rupture of the mind' so long as the injury was due to an identifiable event.

The decision was based to a large extent on the particular facts of the case. The claimant was especially susceptible to stress and his mental health had been weakened by a heavy workload. Therefore, as matters reached a crisis point, the claimant was vulnerable to being 'tipped over' the edge by a single triggering event. **CI/3608/98** gives support to such an approach where a claimant suffered an accident because a performance appraisal interview with a supervisor was accepted as an identifiable triggering event (para 5).

Sudden injury

The facts of **CI/554/92** show that an apparently minor event precipitated a dramatic change in the claimant's condition. The Commissioner adopted the phrase 'sudden injury', as this was appropriate to those facts. However, the decision should not be read as imposing a requirement that there must be a sudden onset of mental injury before any stress related claim can be held to constitute an accident. The decision merely emphasises that there must be some degree of injury, whether it be an initial injury or an aggravation of an existing condition, which is attributable to the specific incident alleged to constitute the accident.[8]

In another case involving a heavy workload, the claimant worked as a principal research officer in local government as head of a unit employing two full time staff and one part time. One by one the staff left but were not replaced. In the end the claimant was left to carry on the work of the unit more of less on her own and she eventually collapsed across her desk at work from exhaustion. She was retired on medical grounds and subsequently diagnosed as suffering from chronic fatigue syndrome.

A tribunal held that the injury was due to a process and refused to issue an accident declaration. A Commissioner allowed the appeal in **CI/1196/98**, instructing the new tribunal to make findings about what exactly occurred when the claimant collapsed and any significant difference in the claimant's physical or mental condition immediately before and after her collapse or at a later stage after the collapse. A new tribunal issued an accident declaration accepting on the balance of probabilities that the dramatic change in the claimant's condition was caused by a specific, albeit minor incident.

Conversations

The facts of **CI/105/98** were that a senior lecturer alleged that during three interviews with his supervisor he was exposed to unreasonable and aggressive criticism, and as a result suffered from depression. On appeal a tribunal issued an accident declaration accepting that the claimant had suffered an industrial injury arising from the cumulative effect of the three interviews. The tribunal took into account that prior to the meetings the claimant had been holding a responsible position for many years and had an excellent sick record. However, within six months of the events the claimant was reduced to being, in the words of his doctor, 'distressed, depressed and tearful'.

The Department appealed, placing reliance upon **CI/7/71** for the principle that words alone could never be the direct cause of injury. Mr Commissioner Rowland noted that an injury could be 'caused by accident' where it arose out of an untoward event or if it was the result of an untoward reaction to an ordinary event. As the industrial injury scheme covers injury due to deliberate physical assault,[9] it would clearly cover verbal threats made by a supervisor if the effect of the words said caused the claimant to fear immediate violence or to feel sexually or racially harassed.[10] Silence on the end of a phone may also qualify relying on the findings of **R v Ireland** and **R v Burstow**, where it was held to amount to actual bodily harm.[11]

The tribunal was, therefore, entitled to regard the three interviews as accidental causes of any injury that flowed from them because, given the tribunal's findings, the interviews were clearly untoward. Where the harm is caused by the words said then the manner in which a meeting was conducted and the events surrounding the meeting could also amount to an accidental cause of the harm. A conversation resulting in stress disorder can also amount to an accident when it had reopened an issue which had traumatised the claimant in the past (**CI/2414/98**).

In **CI/105/98** the Commissioner emphasised that psychological illness must also be due to the conversation itself and not due to a claimant's contemplation of criticism or the consequences of dismissal. The Commissioner agreed that a perfectly proper conversation did not constitute an accident but distinguished the appeal from **CI/5249/1995** in which the claimant had suffered depression following his suspension for alleged misconduct. In that case the argument that the suspension was an accidental cause of his illness was rejected. The claim could not be considered under the scheme because the personal injury was not caused by an ascertainable untoward event. In contrast to the facts in **CI/105/1998**, there was no evidence of any meeting between the claimant and his employer that could form the basis for an accident.

Stress due to stressful work

The House of Lords case, **Faulds**,[12] concerned a fire officer's work, which required attendance at stressful and traumatic incidents, including an

Checklist for stress related incidents

- Injury can result from either a single incident or a series of ascertainable incidents where the injury that results is a consequence of some or all of them (**Selvage v Burrell and Sons Ltd** [1920] 1KB 355).
- There must be a distinct causative event separate from the injury itself.
- The accident or accidents which the claimant has sustained and which caused the illness in question must be identified (**Faulds (R(I) 1/00)**).
- The onset of mental illness brought on by the cumulative effects of a heavy workload can qualify as an industrial accident if there is an identifiable triggering event (**CI/554/1992** and **CI/1196/1998**).
- Psychological illness due to the effects of words said during supervisory interviews can qualify as an injury by accident if the interviews were conducted in such a manner that they are untoward events (**CI/105/1998** and **CI/3608/98**).
- The context of words and what the words concern may amount to an accident if they reopened an earlier issue causing a claimant to go into a state of shock (**CI/2414/1998**).

aircraft crash where he had to photograph and take detailed notes of badly mutilated bodies. The officer did not sustain any physical injury but was subsequently discharged from the service on medical grounds after being diagnosed as suffering from post-traumatic stress disorder. The Court of Session rejected a submission that trauma suffered in the performance of normal but hazardous duties could not be regarded as an accident.[13] If, despite every effort to minimise the risk, an officer is injured, for example by falling debris, the officer would, in ordinary language, have suffered an injury by accident. It is not the commonness of the hazard that matters but the absence of any intention that the event should occur.

The House of Lords agreed, but went on to consider a different point. Early dicta in case law under the Workmen's Compensation Acts suggested that where a claimant suffered an internal injury and there was no apparent cause, apart from the injury, then the injury itself could be regarded as an accident. On this approach the claimant would only have to show that the stress related disorder developed during the course of employment. The House of Lords held that this approach was wrong in principle. It was always necessary for a claimant to show there is a causative event that is separate from the injury itself.

Faulds gives fresh guidance on the meaning of accident. Whereas a consideration of what is 'unintended' and 'unexpected' provides some guidance on the meaning of accident, neither expectation nor foreseeability provide an acid test of an accident. Nor can an acid test be found in the circumstance that the incident was exceptional. In fact the use of synonyms or dictionary definitions are of limited assistance. The present legislation gives less scope for judicial construction.

Faulds confirms that the principles developed in relation to physical injuries are to be applied to psychological injuries. As the area of injury is more complex greater care needs to taken to apply those principles. In cases of shock or stress sustained in a stressful occupation the activity, which triggers the accident, may consist of the claimant confronting a horrific spectacle. But in every case, although the concepts may overlap, it should be possible to identify an accident as well as the consequent injury.

Faulds also addresses the accident/process distinction and observed that the statutory question is not whether the case is one of injury by accident or injury by process. The question under the Act is simply whether the case is one of personal injury caused by accident or not.[14] The accident/process distinction is a useful tool to identify a certain kind of case which would not qualify under the Act, but should not be allowed to grow into more than that.

Appeal tribunals and accident declarations

The case law on stress is concerned solely with the preliminary question as to whether an incident can be described as an accident. Entitlement to industrial disablement benefit, however, is a two-staged process.

At the declaration stage, the decision maker's opinion on causation is provisional only and the investigation is of a general nature.[15] Once the declaration question has been determined the claim is referred to a medical adviser for the assessment of disablement.[16]. A report is produced stating whether the claimant has suffered any loss of physical or mental capacity as a result of the relevant accident and the percentage of that loss. The percentage disablement may be subject to a reduction (or offset) if part of the disability is due to any causes not related to the accident. A decision maker has to rely on the diagnosis and prognosis of the claimant's medical condition contained in the medical adviser's report. The final decision on the medical consequences of the relevant accident is deferred until the assessment of disablement.

If a claimant appeals against the refusal of an accident declaration, it is heard by a legally qualified panel member sitting alone. If the appeal relates to the diagnosis and percentage questions then the panel will also consist of at least one medically qualified member.[17]

Conclusion

From this examination of the authorities it is clear that:

- a claimant may suffer severe damage to his or her health by the impact through the senses of external events on the mind
- trauma in the form of stress reaction can be triggered by the pressure of a heavy workload or by words said
- an accident declaration can only be issued if a claimant is able to identify an incident or series of incidents, which caused the trauma
- if no such incident can be identified and the claimant's illness arose solely

Benefits

The Legislation

Section 94(1) Social Security (Contributions and Benefits) Act 1992 provides:
'Industrial injuries benefit shall be payable where an employed earner suffers personal injury caused after 4 July 1948 by accident arising out of and in the course of his employment, being employed earner's employment'

Section 29(1) Social Security Act 1998 provides:
'Where, in connection with any claim for industrial injuries benefit, it is decided that the relevant accident was or was not an industrial accident - (a) an express declaration of that fact shall be made and recorded'

Section 30 provides that no decision that an accident was an industrial accident:

(2)'is to be taken as importing a decision as to the origin of any injury or disability suffered by the claimant, whether or not there is an event identifiable as an accident apart from any injury that may have been received.

(3)A decision that, on a particular occasion when there was no event so identifiable, a person had an industrial accident by reason of an injury shall be treated as a decision that, if the injury was suffered by accident on that occasion, the accident was an industrial accident.

(4)A decision that an accident was an industrial accident may be given, and a declaration to that effect be made and recorded in accordance with section 29 above, without it having been found that personal injury resulted from the accident'

from the day to day nature of the work and was not caused or exacerbated by any specific incident then a declaration cannot be issued.

Departmental guidance [18] starts from the premise that stress is due to a process. Such guidance has been modified somewhat since **Faulds** with the publication of a memo. This sets out and accepts the potential that stress related illness can be treated as an industrial accident.[19]

What constitutes or causes injury is a question of fact, but case law provides guidance on the nature of adjudication at the accident declaration stage. The role of the decision maker is limited to studying the relevant incident to determine whether it qualifies as an accident. Some tribunals appear to have proceeded on the assumption that they were entitled to decide the question of causation rather than the question of principle about what could constitute the cause of an accident. A decision maker's opinion as to the medical nature and the possible consequences of an injury is not relevant at this stage.

It is ultimately up to the medical authorities to decide the extent to which the injury should be attributed to the relevant accident. It also has to be borne in mind that an illness may arise out of both a series of events and a separate, albeit related, process.[20] The main lesson for practitioners is the need to provide full details of the relevant incident. For it is only on the basis of detailed evidence about the nature of the incident that the causative event can be specifically identified and the inference be drawn that an accident occurred.

Footnotes

1. Petch v Customs and Excise Commissioners (1993) ICR 789 CA applied in Walker v NCC (1995 IRLR 35
2. Roberts v Dorothea Slate Quarries Co Ltd [1948] 2 All ER 201
3. Trim Joint District School Board of Management v Kelly [1914] AC 667 at pps. 675-679.
4. Fenton v Thorley [1903] 433 AC per Lord Lindley at p.453. See commentary in Willis' Workmen's Compensation Acts 1925 to 1943, 37th ed, p.9
5. Clover & Co v Hughes [1910] AC 242
6. Selvage v Charles Burrell and Sons Limited [1920] IKB 355.
7. Fife Coal Co Ltd v Young [1940] AC 479
8. CI/1196/1998, para 14
9. See footnote 3
10. CI/4642/1997, para 11
11. [1998] AC 147
12. R(I)1/00
13. Based on comments made in CI/15589/96
14. R(I) 1/00, Faulds per Lord Clyde at p.540
15. s.30 SSA 1998 replacing s.60(3) SSAA 1992
16. Reg 11 Social Security (General Benefit) Regs 1982
17. Reg 36(2)(b)(i) SSCS(DA) Regs 1999
18. DMG, Vol 11, paras 66105 - 66107
19. Memo to DMG Vol 12 03/01
20. CI/3370/1999, para 24

Desmond Rutledge *represented the claimant in CI/105/1998 as a member of the Free Representation Unit.*