

REVIEW DECISION

Re: Review Reference #: R0327147
Board Decision under Review: July 11, 2024

Date: February 27, 2025

Review Officer: Kevin Rooney

Introduction and Background

On May 1, 2024, the worker, a part time Teacher, filed a complaint of bullying and harassment with the Workers' Compensation Board ("Board"), operating as WorkSafeBC. The worker stated she had been bullied and harassed from October 2023 until February 2024. The worker stated that she had filed complaints of bullying and harassment with the employer on several occasions. The worker advised that the employer's response to this matter was not adequate and it did not comply with its own harassment policy.

On July 11, 2024, a Board officer issued an Inspection Report to the employer in which he declined to issue an order under section 21(1)(a) of the *Act*. The Board officer found that the employer's response to the worker's bullying and harassment allegation was reasonable.

The worker requested a review of the Board's July 11, 2024 decision refusing to issue an order to the employer. The worker's representative states that the employer's response to the worker's bullying and harassment complaint was not sufficient, and that the person who conducted the investigation on behalf of the employer should have known she was a respondent to the allegation. The employer participated in the review and provided a written submission in support of the Board's decision. At my request, the Board officer was asked to provide comments on this review. The Board officer's comments were distributed to the parties and they were provided an opportunity to respond.

Section 20(3) of the *Act* gives me the authority to conduct this review. Section 339(2) of the *Act* requires me to make a decision on the merits and justice of the case, applying the policies of the Board's board of directors applicable in the case. The policies are found in the *Prevention Manual*. The standard of proof that applies to this review is the balance of probabilities.

Issue

The issue on this review is the Board's decision not to issue an order under section 21(1)(a) of the *Workers Compensation Act* (the "*Act*").

Reasons and Decision

Under section 21(1)(a) of the *Act*, an employer must ensure the health and safety of workers working for that employer and any other workers present at a workplace at which the employer's work is being carried out. This provision is a general duty section of the *Act*, meaning the employer must take reasonable steps to comply with its obligations under the section.

Policy P2-21-2, *Employer Duties – Workplace Bullying and Harassment*, discusses the nature of the employer's obligations as it relates to bullying and harassment in the workplace. The policy sets out reasonable steps an employer can take to prevent, where possible, or otherwise minimize, workplace bullying and harassment. These steps include:

- Developing a policy statement regarding bullying and harassment not being acceptable or tolerated;
- Developing and implementing procedures for workers to report complaints or incidents, including procedures for a worker to report if the employer, a supervisor, or person acting on behalf of the employer is the alleged bully and harasser;
- Developing and implementing procedures for how the employer will deal with complaints and incidents;
- Applying and complying with the employer's policies and procedures on bullying and harassment.

The Board has created Guideline G-P2-21(1)-3, *Bullying and Harassment*. The Guideline clarifies that the Board's focus is on ensuring that employers have the appropriate policies and procedures to address bullying and harassment, and that supervisors and workers meet their obligations under the policy.

In her bullying and harassment questionnaire, the worker advised that she had worked for the employer at a different work site. She transferred to the current worksite in September 2023. The bullying and harassment at the current location began in October 2023. The worker confirmed the employer had a bullying and harassment policy statement and reporting and investigation procedures. However, the worker advised the employer had not provided bullying and harassment training.

The worker advised that she had filed bullying and harassment complaints with the employer at a different workplace on two occasions. However, the employer allowed the bullying to continue and her mental health was deteriorating. She requested a transfer for the 2023 - 2024 school year because she recognized the bullying was affecting her.

The worker stated that she had concerns at the new workplace in regard to workload, and a lack of teachers. A few weeks after coming to the new school, she was struggling with the exceptional demand that came with the new position and asked for help. The worker advised that she was offered support the following week, but when the day came and the support did not arrive, she was advised that the support teacher had been pulled somewhere else and that the worker should work it out with the support teacher as to when she could get help. The worker then talked to support teacher and was told that she should be grateful that the support teacher was willing to help since staff at the school were expecting the worker's position to go to the support teacher. The worker stated that this made her feel very uncomfortable, and she communicated her concerns about this being a situation where she would have to let herself be disparaged in order to get the support she needed in her new job.

The worker advised that following her reports of bullying and harassment, the response from the employer was dismissive. She felt she was being patient because staff shortages made solutions hard to find. However, in a meeting in February 2024, the principal advised her that she thought the problem had been resolved in October 2023. The worker said this was unexpected because she had continued to file complaints, as the teachers involved continued to behave inappropriately. The worker noted that following the meeting, the support person was promoted to full time, and her principal stopped pretending to be supportive and started being mean.

The worker noted that the teachers who disparaged her at her old school were friends of the teachers at the new school, so she was worried that the same cliques and gossip that made her old school such an unhealthy and unsafe place would follow to her new workplace.

The worker continued to complain about the lack of support from the support teacher. Subsequently, the District Superintendent and the worker's principal did not feel the worker's concerns were valid and the Special Education Manager responded to the worker's concerns by belittling and berating her. The worker stated she was crying uncontrollably.

On review, the worker's representative submits that the employer's investigation did not provide the level of fairness required by Board policy. In particular, the representative submits that the employer's investigation was conducted by B, the Director of Human Resources, even though it would have been appropriate for the employer to employ a third-party Investigator in the circumstances of the case, given B should have been a respondent to the complaint.

In addition, the worker's representative noted that on review, the worker had provided a submission that B used information from the bullying and harassment questionnaire and from a document they requested from the worker's doctor to belittle and shame her. The worker also stated that B, along with two others,

took actions that were malicious and cruel and aggravated her mental disorder symptoms. Consequently, the worker's representative submits that as B was a respondent to the complaint, she should not have conducted the investigation.

In addition, the worker's representative states that B did not provide the worker an opportunity to respond to the respondents' version of events. After interviewing the respondents, the Investigator did not seek the worker's response to new allegations against the worker and facts the worker may not have been aware of. The representative noted that the worker believed some of the comments provided by the respondents during the investigation may have amounted to a defamation of character.

The worker's representative acknowledges that the employer was concerned regarding the worker's mental health and had questioned the Board Officer about contacting the worker. The Board Officer had advised that the worker was able to provide/willing to provide a statement; however, would prefer it to be by email. In addition, the representative submits that the worker's opportunity to provide a statement was too short and was requested on the wrong form. Consequently, the representative submits the employer's investigation into the worker's bullying and harassment complaints were not in compliance with the Board's policies.

On review, the worker submits that there were many false statements made in the employer's investigation. The worker believes these statements amount to a defamation of character. The worker noted that she left her former school after two rejected Board complaints. By rejecting the complaints, the Board enabled the toxic work environment she was complaining about.

The worker stated that she informed the union and her school administrators on June 4, 2023. The worker noted that the Human Resources Manager only investigated her complaint after being ordered to do so by the Board officer. The worker also noted that her medical and financial information was accidentally shared with the payroll department for a different school district. The employer was not responsible to her concerns about this privacy breach even after she filed a complaint with the Office of Information and Privacy Commissioner.

The worker noted that she filed a Freedom of Information request and found many concerning interactions between the Union President and the employer about her. The Union President told the employer they were not willing to represent the worker and allowed the employer to lie about her without questioning or fact-checking her. The worker stated that the employer rejected two Doctors' notes supporting her request for accommodation for her diagnosis of persistent depressive disorder. In addition, B then used the information from the document they requested from her Doctor to belittle and shame the worker. The worker believes this was a gross misuse of sensitive medical information for the sake of humiliating her for struggling with depression. The worker stated that the way that the employer handled the investigation aggravated her symptoms.

On review, the employer's representative submits the Board's decision should be confirmed. The employer noted the worker went on medical leave of absence from her employment in March 2024. In or about the first week of May 2024, the worker filed correspondence with the Board for a mental disorder, which referenced several work-related and non-work-related stressors including alleged bullying and harassment by J.

Upon being notified of the injury claim, the employer gathered additional information in order to complete its report of injury. Part of this information gathering process included an interview with J on May 10, 2024. The employer noted that when they were contacted by the Board officer regarding the worker's bullying and harassment complaint, the Board officer did not provide the employer with a bullying and harassment questionnaire. The first time the employer learned that the worker intended to file a bullying and harassment complaint with respect to those matters was when they were contacted by the Board officer on May 13, 2024.

Consequently, on May 15, 2024, B provided the Board officer with a copy of her notes from her interview with J, in response to the Board officer's request for an investigation summary. The employer confirmed that they were instructed by the Board officer that the worker's preference was to be contacted by email. After discussions with the Board officer on May 22, 2024, the employer also contacted the witness referred to in the worker's bullying and harassment complaint. On May 24, 2024, B asked the worker to provide a written statement regarding the bullying and harassment allegations to be investigated. B also asked the worker to advise if she was unable to provide the requested information.

On May 29, 2024, B received clarification from the worker detailing the bullying and harassment allegations to be investigated. Based on this information, B determined that the employer would not need to retain an external third-party investigator in order to investigate the bullying and harassment complaint. As such, B conducted the employer's investigation into the bullying and harassment complaint with the assistance of the worker's local Union President. B conducted her investigation through a combination of in-person interviews with the respondents and witnesses identified along with a review of documents provided by the worker. In particular, B interviewed J, D, and M. B also conducted interviews with two witnesses the worker identified.

On June 21, 2024, B provided an executive summary of her investigation finding regarding the worker's bullying and harassment complaint to the Board officer.

The employer's representative submits that B was never named as a respondent to the worker's bullying and harassment complaint and, therefore, it was appropriate for B to conduct the investigation. The employer noted that in regard to a previous complaint made by the worker in 2019, the employer had retained a

third-party investigator. As such, the employer was well aware of its option and the considerations involved in deciding whether to hire a third-party investigator to investigate a bullying and harassment complaint.

The employer's representative notes that the worker was not interviewed by B, as the worker requested communication to be by email only. The representative submits the worker was sufficiently able to communicate the contents of her the bullying and harassment complaint in writing to the employer and that allowed B to complete her investigation. The employer noted that it was ultimately within the discretion of the Investigator to determine if and when they have sufficient information in order to decide the matter under investigation after gathering information from the complainant, the respondents, and any witnesses.

The employer's representative state that B did not believe there were any particular credibility issues and that no further information was required from the worker in order for her to complete her investigation into the matter. Further, there were concerns by the employer that the worker's mental health might be negatively impacted by such a conversation.

Finally, the employer's representative submits the worker had sufficient time to provide a written statement to the employer as to her concerns regarding bullying and harassment. In addition, B made it clear to the worker that if she required additional time, she could contact B.

In comments provided on this review, the Board officer stated that following receipt of the worker's bullying and harassment questionnaire, he contacted the employer. The employer provided copies of its written policy statement, procedures, and training around workplace bullying and harassment. The Board officer stated he reviewed those procedures and he found they were compliant with the intent of the *Act*. The Board officer also stated he believed the employer had investigated the matter raised by the worker consistent with its bullying and harassment policies.

In particular, the Board officer stated that he contacted B on May 13, 2024. The Board officer stated that B provided a long history of events with the worker and the follow-up investigations which the employer and union had conducted. On May 15, 2024, the employer provided copies via email of the employer's written policy statement, procedures, and training around workplace bullying and harassment. The employer also provided an investigation that was conducted in the past in relation to a previous complaint. The Board officer contacted B and advised he was rejecting that investigation summary and informed them that they needed to investigate the current complaint.

The Board officer stated the worker had listed three people as alleged bullies in her submitted bullying and harassment questionnaire. These were: J, a coworker; D, a Manager; and M, a Manager. The Board officer noted that B was

not named as a respondent in either the current investigation summary or in the previous investigation summary. In addition, the Board officer noted that when he talked to the worker on May 22, 2024, the worker asked that all communication be via email.

The Board officer stated on June 21, 2024, B provided an executive summary of her investigation finding regarding the worker's bullying and harassment complaint. Based on the executive summary provided by B on June 21, 2024 it was the Board officer's opinion the employer was in compliance with the regulatory requirements. The Board officer stated that the employer had taken reasonable steps set out in policy item P2-21-2.

As noted above, the Board's jurisdiction under Policy item #P2-21-2, *Employer Duties – Workplace Bullying and Harassment*, is to ensure that employers take reasonable steps to prevent where possible, or otherwise minimize, workplace bullying and harassment. This includes responding to complaints in accordance with the employer's procedures, and in a fair and impartial manner, as outlined in the Board's Guideline G-P2-21(1)(3), *Bullying and Harassment*.

Board Guideline G-P2-21(1)(3) provides that procedures for responding to complaints must ensure a reasonable response to the complaint or incident and aim to fully address the incident and ensure that bullying and harassment is prevented or minimized in the future. Where an investigation is required, the policy specifically requires that the investigation should:

- Be undertaken promptly and diligently and be as thorough as necessary in the circumstances.
- Be fair and impartial, providing both the complainant and the subject of the complaint fairness in evaluating the allegations.
- Be sensitive to the interest of the parties, and maintain confidentiality to the extent in the circumstances.
- Be focused on finding facts and evidence, including interviews of the complainant, the subject and any witnesses.
- Incorporate where necessary the need for both the complainant and the subject of the investigation to have assistance during the investigation process.

After considering all of the evidence on file, including the submissions made by the parties on this review, I find the employer acted reasonably in investigating the worker's complaint of bullying and harassment. In reaching this conclusion, I find that the employer has demonstrated that it took the worker's complaint of bullying and harassment seriously. The employer assigned B, Director of Human Resources, to investigate the complaint with the assistance of the Union President.

I acknowledge the worker's representative's submission that B should not have investigated the worker's bullying and harassment complaint on the basis that she should be a respondent to the complaint. However, I agree with the Board officer that B was not a respondent to the worker's bullying and harassment complaint. Nor would a reasonable person reading of the complaint infer that B should have been named as a respondent to it. As such, I am satisfied that B was able to conduct a fair and unbiased assessment of the evidence.

Further, given B's position within the employer, it appears that she had reasonable qualifications in conducting this type of investigation. Further, the evidence supports that B clearly communicated with the parties, obtained evidence from the individuals named as respondents and witnesses by the worker, and made decisions based on a reasonable weighing of evidence provided by them.

In reaching this conclusion, I recognize that B did not provide the worker with an opportunity to be interviewed in person. However, given the circumstances of the worker's desire to have communication be by email only, I find the manner in which B conducted the investigation was reasonable.

I also acknowledge the worker's concern that there was a delay in the employer investigating her bullying and harassment complaint. However, based on the information on file, including the Board officer's comments and those provided by the employer on review, I am satisfied that the employer was not aware of the worker's bullying and harassment complaint until May 13, 2024. In my view, the employer's investigation following its becoming aware of the worker's complaint was timely.

I also acknowledge the worker's concerns about B's use of information gathered during the investigation. In my view, B gathered information from the worker in regard to the worker's allegations from a number of sources. The manner in which she used that information within the context of making a decision in regard to the worker's bullying and harassment complaint was reasonable.

Based on this evidence, I find the employer took reasonable steps to investigate the worker's complaint. Consequently, I agree with the Board's decision that the employer had not violated section 21(1)(a) of the *Act*. As such, there was no basis to issue an order under that section. I deny the worker's request.

Conclusion

As a result of this review, I have confirmed the Board's decision not to issue an order under section 21(1)(a) of the *Act*, with respect to the employer's investigation of the worker's bullying and harassment complaints.

Kevin Rooney
Review Officer
Review Division