

REVIEW DECISION

Re: Review Reference #: R0328195
Board Decision under Review: August 1, 2024

Date: April 30, 2025

Review Officer: Kevin Rooney

Introduction and Background

On June 24, 2024, the worker, a Paramedic, filed a complaint of bullying and harassment with the Workers' Compensation Board ("Board"), operating as WorkSafeBC. The worker stated she had been disciplined by the employer on several occasions between November 19, 2017 and May 16, 2024. The worker stated the employer's disciplinary proceedings amounted to bullying and harassment. The worker reported 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 did not comply with its own harassment policy.

On August 1, 2024, a Board officer issued an Inspection Report to the employer which declined to issue an order under section 21(1)(a) of *Workers Compensation Act* ("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 August 1, 2024 decision refusing to issue an order to the employer. The worker disagreed with the Board's decision and requested a review. The worker submits that the employer's response to her bullying and harassment complaint was not sufficient. In particular, the worker noted that as a result of a complaint she filed with the BC Human Rights Tribunal ("BCHRT"), she was able to obtain affidavits and documents in regard to the employer's investigations. Based on that evidence, the worker submits that the employer's investigations were not fair, as they did not interview all witnesses and often only took one biased account of what transpired. The employer participated in the review and provided a written submission in support of the Board's decisions. 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 for greater than 26 years. The worker reported that the bullying and harassment started in 2017 when a coworker made a complaint against her and her partner. The worker stated that her partner was able to resolve the complaint informally. However, she was not provided the same opportunity. Instead, a formal hearing was held, and the worker was given a written warning. The worker stated that no witnesses were called and a previously issued letter of expectation was inappropriately used against her. Consequently, the worker states the formal hearing which resulted in her written warning was not appropriate.

The worker stated she was subsequently required to attend a disciplinary hearing in 2018, in regard to swearing in the workplace. The worker confirmed that she did not receive discipline as a result of that meeting; however, she advised that swearing was common in the workplace and not all workers are brought in for discipline meetings because of it.

The worker stated that she subsequently had a series of patient complaints from which she ended up receiving a two-day suspension. The worker stated that B, the main complainant, lied during the hearing. The worker also stated that no witnesses were called in regard to the incidents and that R, a former Unit Chief, was soliciting complaints against her.

The worker stated she next received a four-day suspension in regard to an interaction she had with two Firefighters at an accident scene. The worker felt the whole incident was a big misunderstanding. The worker noted that witness testimony at that hearing was split.

The worker stated that a further incident occurred when she was on vacation. She ran into four coworkers at a dock. The worker stated that she told the coworkers about why she had been off work and mentioned that she had obtained audiotapes through a BCHRT hearing discovery process that proved B had lied on his affidavit in her human rights complaint. The worker told the coworkers that B would be fired because of it. The worker noted that a second incident occurred when B's wife overheard a private conversation the worker was having with a. The worker stated the coworker knew about the BCHRT complaint and they would occasionally talk about it.

The worker was called into a hearing in regard to these conversations. She tried to present evidence to prove that B had lied; however, she was denied the opportunity. She was given an eight-day suspension on May 16, 2024.

The worker advised that she raised concerns about the discipline process to the employer. Her complaints were referred to V, a Senior Executive. V advised the worker that the employer had a right to manage the workforce.

On review, the employer submits that after receiving the worker's bullying and harassment complaint from the Board officer, the employer conducted an investigation into the worker's complaint. On July 23, 2024, the employer advised the worker that proper investigation procedures were followed pursuant to the culture of respect policy and that reasonable actions were taken by the employer, such as providing employees with disciplinary action. The employer stated that these steps were not considered bullying and harassment or disrespectful behaviour.

In support of its submission, the employer provided copies of a complaint filed by B on January 8, 2024, in regard to the worker's behaviour. The employer also provided a copy of the letter of discipline the worker received on May 16, 2024, as well as correspondence in regard to the grievance process, including the employer's response to the grievance filed by the worker's union, and the withdrawal letter from the worker's union regarding the discipline.

The employer noted that with respect to the eight-day suspension, the complaint was brought forward on January 8, 2024 by B. It was investigated by M, a Human Resources Manager, and K, the Director of Clinical Operations. The investigation resulted in the worker receiving an eight-day suspension. The employer submits that the employer has an effective investigation process and that they used the process appropriately and without bias or discrimination. Further, the employer denies that it bullied or harassed the worker by taking unreasonable or retaliatory actions against her contrary to the *Act*.

The employer submits that the 2024 disciplinary proceedings was not initiated by the employer. Rather, it was initiated by B. The employer has an obligation under the *Act* and policy, the collective agreement, as well as the collective agreement with its union to investigate reports of breaches of the fostering a culture of respect policy and other workplace policies. The employer noted that the worker's grievance against the employer in regard to the 2024 discipline was in regard to the employer not exercising due process. However, the union, after its investigation, withdrew their grievance.

The employer notes that the worker alleged the employer had a lack of process in the investigation of her 2024 discipline because the employer refused to permit the worker to enter evidence from the BCHRT as a defense for behaviour in breaching confidentiality and gossiping about B. The worker was advised at the hearing, that the evidence she wished to present was not relevant to the issues under investigation. The employer submits that the refusal to hear this evidence does not demonstrate a lack of process.

In comments provided on this review, the Board officer stated that on June 26, 2024 after receiving the worker's complaint of bullying and harassment, he requested an executive summary of the investigations conducted by the employer with respect to multiple complaints raised by the worker.

On August 1, 2024, M provided copies of the employer's written policy statement, procedures, and training on bullying and harassment.

On August 1, 2024, the Board officer decided not to issue an order with respect to the worker's complaint of bullying and harassment and to confirm that the process the employer uses was fair, consistent, and appropriate, not just for the worker, but for all workers of the employer. The Board officer stated that the process used by the employer to investigate worker concerns was consistent

with both procedures used to investigate other workers and consistent with the intent of the *Act*. The Board officer noted the prevention mandate was not to determine whether the worker's complaints of bullying and harassment were valid. The Board's mandate was to determine whether the employer took reasonable steps in addressing the worker's complaint. In particular, the Board officer stated he was satisfied the employer's investigation was carried out in compliance with the regulatory requirements of the *Act*. Consequently, the Board officer stated the employer had taken reasonable steps as set out in policy item P2-21-2.

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 that the employer acted reasonably in investigating complaints made by patients, coworkers, and other parties against the worker over the years, culminating in the disciplinary meeting which resulted in the worker/which resulted in an eight-day suspension to the worker.

In reaching this conclusion, I note the employer has an obligation to investigate complaints of inappropriate behaviour made against the worker. In each instance, it appears the worker had an appropriate employer representative conduct the investigation. The worker was promptly notified of the outcome of the investigation, and in each case, the worker had the ability to grieve that decision.

In the executive summary provided by the employer of the May 16, 2024 decision to suspend the worker for eight days, I note the investigation was conducted by M and K. Given the roles of these individuals within the organization, it appears that they had reasonable qualifications in conducting this type of investigation.

The evidence supports that they clearly communicated with the parties, obtained evidence from B, and the worker. In addition, they interviewed approximately nine witnesses and made decisions based on a reasonable weighing of the evidence provided to them. I acknowledge the worker has argued the employer did not allow her to present certain documentary evidence which she obtained through a discovery process with the BCHRT. However, I accept the employer's submission that the worker's request was considered; and the Adjudicators determined the evidence was not relevant to the investigation they were conducting.

In my view, it was reasonable for the Adjudicators to consider the potential relevance of the evidence the worker wished to present and to determine whether to allow that evidence into the hearing. There is no evidence the Adjudicators made their decision in bad faith. As noted above, the worker was notified of the decision promptly. Further, there is no dispute the worker had the ability to obtain assistance in grieving the decision of the employer.

Based on this evidence, I find the employer took reasonable steps to investigate complaints of inappropriate conduct made by a number of parties against the worker and, in particular, by B in June 2024. Consequently, I agree with the Board's decision that the employer has 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 and discipline of the worker.

Kevin Rooney
Review Officer
Review Division