

## **REVIEW DECISION**

**Re:**                      **Review Reference #: R0327016**  
                              **Board Decision under Review: July 8, 2024**

**Date:**                    **January 17, 2025**

**Review Officer:**      **Seeley Munro**

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### **Introduction and Background**

The worker submitted a complaint of bullying and harassment to the Workers' Compensation Board ("Board"), which operates as WorkSafeBC. In her May 14, 2024 Bullying and Harassment Questionnaire ("Questionnaire"), the worker reported that she had told her supervisor about being upset after witnessing a colleague being publicly berated by a supervisor ("X"). The worker also said she was chastised by a union shop steward ("Y").

A Board Occupational Safety Officer ("OSO") issued an Inspection Report ("IR"), dated June 21, 2024, asking the employer for two things: materials, including its bullying and harassment policies and procedures; and an executive summary regarding its response to the worker's report of bullying and harassment.

The Board then issued two further IR's, one dated July 8, 2024, which is the subject of this review. In this IR, the Board stated that the employer's response was compliant with the Board's requirements. I interpret this IR as containing a decision of the Board refusing to issue an order to the employer under section 21(1)(a) of the *Workers Compensation Act* ("Act"). As a result, sections 20(3) and 268(1)(a) of the *Act* give me the jurisdiction to review this matter. In the second IR, dated July 11, 2024, the Board found that the employer's bullying and harassment policy and procedures were also compliant with Board requirements.

The worker requests a review of the July 8, 2024 IR, and has provided brief written submissions on her initial request for review form indicating that the Board should have issued orders of non-compliance against the employer. There are no other parties to this review.

In her request for review, the worker asked for an oral hearing. In a September 16, 2024 letter, a Review Officer advised the worker the issues could be properly determined based on the file content and any written submissions. I have reviewed this matter and confirm that an oral hearing is denied. I am satisfied that I can complete this review based on the information that is before me. Accordingly, I will proceed without holding an oral hearing.

At the Review Division's request, the OSO who issued the July 8, 2024 IR provided brief comments reiterating his decisions not to issue an order to the

employer. These comments were disclosed to the worker, who did not provide further submissions in response.

In the course of conducting this review, in January 2025 I contacted the worker via telephone to clarify a separate compensation matter she had raised in her request for review. As a result of that discussion another review was initiated with respect to a compensation decision by the Board. To be clear, in this review I am only addressing the Board's July 8, 2024 decision not to issue an order to the employer under section 21(1)(a) of the *Act*, and not any other matters, as they are not before me.

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 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 before me on this review is whether the Board should have issued an order to the employer under section 21(1)(a) of the *Act*.

## **Reasons and Decision**

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

Further to section 21 of the *Act*, policy P2-21-2, *Employer Duties – Workplace Bullying and Harassment*, discusses the nature of an employer's obligation as it relates to bullying and harassment in the workplace. This policy states that bullying and harassment:

- (a) includes any inappropriate conduct or comment by a person towards a worker that the person knew or reasonably ought to have known would cause that worker to be humiliated or intimidated; but,
- (b) excludes any reasonable action taken by an employer or supervisor relating to the management and direction of workers or the place of employment.

Policy P2-21-2 also sets out reasonable steps that an employer should take to prevent, where possible, or otherwise minimize, the hazard of 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 incidents or complaints including how, when and to whom a worker should report incidents or complaints;
- developing and implementing procedures for how the employer will deal with incidents or complaints, including how and when investigations will be conducted, what will be included in the investigation and roles and responsibilities of employers, supervisors, workers and others;
- training supervisors and workers on recognizing, responding to and reporting bullying and harassment; and
- applying and complying with the employer's policies and procedures on bullying and harassment.

In addition, Guideline G-P2-21(1)-3, *Bullying and Harassment*, provides guidance on the application of the Board's policy. The Guideline explains that the Board's focus is to ensure that employers have implemented policies and have an appropriate framework for dealing with bullying and harassment, including investigating complaints and taking corrective action if bullying and harassment has occurred.

As a result, the Board's role is not to decide the merits of the worker's bullying and harassment complaint or to resolve labour relations disputes between the worker and the employer. If the employer took reasonable steps, as contemplated in the policy, in investigating the worker's complaint and addressing any workplace bullying and harassment, it has met its obligations under section 21(1)(a) of the *Act*, and an order should not be issued.

In terms of an employer's investigation into a worker's complaints, the Guideline provides that such an 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 interests of the parties, and maintain confidentiality to the extent possible in the circumstances;
- Be focused on finding facts and evidence, including interviews of the complainant, the subject, and any witnesses; and
- Incorporate, where necessary, the need for both the complainant and the subject of the investigation to have assistance during the investigation process.

The Guideline further states that, following the investigation, the employer must promptly take any necessary corrective action.

In her May 14, 2024 Questionnaire, the worker confirmed that the employer had a bullying and harassment policy statement as well as reporting and investigation procedures, and that it had provided bullying and harassment training.

The worker also summarized the incidents that formed the basis of her complaint. The worker explained that X had berated (i.e., swore at and ridiculed) a young worker for several minutes in front of many people. The worker noted that the young worker had complained many times about how X had treated him. The worker said she called X and “gently tried to reason with him” because it was very upsetting to witness. However, X denied the incident happened.

The worker said that Y was then sent by management to warn the worker to keep her mouth shut and that it was not her job to worry about other employees. The worker said she was chastised by Y for talking to X and telling X “he shouldn’t yell, swear and publicly berate” the young worker. The worker said that this was hard to do when someone was being bullied.

The worker indicated in her May 14, 2024 Questionnaire that she would like this matter looked into, “as abuse should not be overlooked and condoned.” The worker advised that she had given a statement to her union about the matter that day (May 14, 2024) but had not yet heard back.

I appreciate that the yelling incident between X and the young worker formed the basis for what happened next between the worker and Y. However, according to a May 28, 2024 call log entry entitled “complaint withdrawn,” the worker subsequently reported to the Board that the employer had investigated the issue she had witnessed (presumably the matter involving X and the young worker). The worker further advised that the employer was currently investigating the secondary issue of Y telling her to “keep out of it.” Accordingly, what is relevant for the purposes of this review is the employer’s response to this latter matter.

The employer’s policy and procedures states that investigations of discrimination, bullying and harassment will be done internally, but an external investigator may be hired if a situation is complex or sensitive. Investigations will include interviews with the complainant, respondent and any witnesses. If the “alleged target” and the “alleged bully” agree on what happened, the employer will not investigate further, and will determine if there is any necessary corrective action. The “alleged bully” and the “alleged target” will then be advised of the investigation findings.

I have reviewed the investigation summary the employer provided to the Board, dated May 30, 2024. According to the summary, the employer received a written

complaint from the worker regarding retaliation and harassment by Z, a supervisor.

The summary explains that in an initial phone interview on May 15, 2024, the worker indicated that after confronting X for his behaviour toward another worker, she was approached by another coworker (whom I understand to be Y), who had been directed to tell her she was being overbearing and to focus on her own job. She said she felt threatened by the comments, which she felt were in retaliation for reporting an incident of bullying and harassment she had witnessed. My understanding is that the worker's complaint to the employer was not about Y's behaviour, but about Z's behaviour, in sending Y to talk to her about the incident involving X.

The summary indicates that both the worker and Z were then interviewed in person on May 30 and May 31, 2024, respectively. During her interview, the worker indicated that, upon reflection, she did not feel that Z was trying to intimidate or retaliate. Z acknowledged in his interview that it was inappropriate for him to direct Y to speak to the worker, and how it could be perceived as intimidation. Z said his intent was not to discourage the worker from raising safety concerns, but that the worker follow the appropriate reporting structure to allow management to address the incident she had witnessed.

The summary concludes that while the interaction in question occurred, it did not constitute harassment and the employer's bullying and harassment policy had not been breached.

In my view, the employer undertook its investigation promptly after it received the worker's complaint about Z. In doing so, I find that the employer followed its own policies and procedures by interviewing both the worker and Z. Indeed, Z acknowledged how his actions could have been perceived by the worker, who in fact indicated during her interview that she did not actually think Z was trying to intimidate or retaliate for her reporting of the incident involving X.

I acknowledge that a call log entry dated June 17, 2024 indicates that, following the employer's investigation of her complaint against Z, the worker subsequently told the Board she had been retaliated against for reporting the bullying and harassment issue. It is unclear whether the worker was making a new allegation of retaliation or if she disputed the outcome of the employer's May 2024 investigation. To the extent that the worker was raising new matters, any subsequent response by the employer to further complaints by the worker is not before me on this review.

Furthermore, as noted, the Board's role is not to decide the merits of a worker's bullying and harassment complaint or to resolve labour relations disputes. Rather, the question is whether the employer appropriately investigated the worker's complaint, addressed her allegation of bullying and harassment by Z

and thus met its obligations under section 21(1)(a) of the *Act*. For the reasons noted above, I find that it did.

I conclude that the employer took reasonable steps by appropriately investigating the worker's complaint and addressing her allegation of bullying and harassment and thus met its obligations in compliance with section 21(1)(a) of the *Act*. Therefore, an order is not warranted.

Accordingly, I deny the worker's request on this review.

### **Conclusion**

As a result of this review, I confirm the Board's July 8, 2024 decision.

Seeley Munro (She, Her, Hers)  
Review Officer  
Review Division