IN THE MATTER OF AN ARBITRATION

B E T W E E N:

HEALTH SCIENCES NORTH

("the Employer")

- and -

CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1623

("the Union")

AWARD

Before: **Lindsay Lawrence, Arbitrator**

Re: Grievance of Celine Quenneville CC2023-022

Appearances

For the Employer: Kelsey Orth (Counsel), Baldeep Bathal (Counsel), Maxine Prud'Homme

For the Union: Jessica Greenwood (Counsel), Lise Morrissette, Mike Bellerose, Robin Campagnaro, Celine Quenneville

Hearing Dates: March 28, 2025, February 10 and 25, 2026

1. This case concerns a June 13, 2023, grievance filed on behalf of Celine Quenneville, an administrative employee who has worked for the Employer since 2008. The grievance alleges that the Employer violated the collective agreement by denying Ms. Quenneville's claim for short term disability benefits. There was no dispute about my jurisdiction to hear and determine this grievance, and no preliminary issues were raised.

2. For the reasons that follow, I find that Ms. Quenneville was entitled to short term disability benefits for the period claimed and the grievance is allowed. I also find that this is an appropriate case for an award of damages for mental distress.

Evidence

3. At the time of the events in dispute, Ms. Quenneville worked as a Clerk/Typist in the Employer's Cardiac Outpatient Centre. Her duties included scheduling patients for testing, as well as processing referrals and registering patients when they come in for testing. She described a busy office environment with the phone ringing constantly. She noted that mistakes in her work could have serious consequences, including harm to patients from delay in testing, with the result of delay in being able to see physicians and/or to obtain surgery.

4. On February 17, 2023, Ms. Quenneville's husband was diagnosed with lung cancer that had metastasized to the brain. She described the physical impact that this news had on her. She was nauseous, could not sleep, could not concentrate and felt as though her world "had been turned upside down". She saw her family doctor who diagnosed her with an adjustment disorder. On February 21, 2023, her doctor wrote a medical letter advising that she would be off work for medical reasons and would be re-assessed in eight weeks.

5. In clinical notes in early March 2023 Ms. Quenneville reported struggling, being unable to eat or sleep and constantly worried. She was caring for her husband, who had by that point had surgery, and for her mother who had been admitted to hospital. Her doctor offered her a prescription drug to help her sleep, which she declined. Ms. Quenneville testified that she wanted to try more natural alternatives first and that her physician did not indicate any disagreement.

6. In early March 2023, Ms. Quenneville submitted an Attending Physician Statement ("APS") as part of the application for short term disability benefits. On the form, she noted her husband's diagnosis and her mother's admission to hospital and then wrote that she was not sleeping or eating and was constantly nauseous. Under "nature of illness", Ms. Quenneville's doctor wrote "stress, fatigue, anxiety". Her doctor checked the box indicating the presence of a "mental health condition with recognized diagnosis as per the DSM-V". Under "current or

proposed treatment/ programs", the doctor wrote "self-care, supportive listening" and noted that there was compliance with the prescribed treatment. The doctor noted no physical restrictions but checked boxes indicating various cognitive limitations (reproduced in the paragraph below).

7. Organizational Solutions Inc. ("OSI") is an administrator retained by the Employer to review medical information and to provide recommendations regarding absence authorization. OSI's log notes show that, on March 13, 2023, an OSI representative sent an email to the Employer providing the cognitive limitations set out on the APS form. The OSI representative wrote as follows:

> I recently received Celine's capabilities and they are as follows: Concentration: Rare (0-5%), Ability to provide/follow instructions: Occasional (6-33%), Attention to detail: Occasional (6-33%), Verbal communication: Frequent (34-66%). I am wondering if you would be able to accommodate these capabilities and offer meaningful modified work for Celine…

OSI's log notes record a call from an Employer representative to OSI on March 14, 2023. The upshot of that call was recorded as "Employer unable to accommodate duties but can accommodate [modified] hours."

8. By March 16, 2023, OSI had determined that Ms. Quenneville's short term disability absence was "not supported" and did "not meet the criteria under HOODIP." OSI gave her until March 23, 2023, to submit her intent to appeal and until April 14, 2023, to submit any additional medical information.

9. In a letter of appeal dated March 22, 2023, Ms. Quenneville's doctor provided a diagnosis of an adjustment disorder, described symptoms such as poor concentration, fatigue and severe stress "on a daily basis at a severe level". The doctor provided a GAD of 21 and a PHQ score of 24, which her physician described as highlighting the severity of Ms. Quenneville's illness. She noted that Ms. Quenneville was "enrolling in counseling through our office as the support offered through the EAP program at work was limited."

10. Darlene Simpson, an OSI Disability Specialist, testified for the Employer in this matter. She

was one of two “appeal reviewers” who reviewed Ms. Quenneville’s appeal and decided to maintain OSI’s decision of “non-support”. In explaining the rationale for that decision, Ms. Simpson said there was no objective medical evidence on file, and the information was subjective and self-reported by the employee. She also said there was no “proof of treatment for the disabling condition.” She explained that suggestions were made that Ms. Quenneville should apply for an alternate leave of absence from work. In cross-examination, she said “we don’t determine disability based on a family member” and that it must be based on the employee. She said that the limitations marked on the APS form “did not have any support” other than self-reporting. She confirmed that she had reviewed the OSI call log as part of the appeal review, but could only say that it was practice to relay any listed limitations and inquire as to whether the Employer could accommodate. She suggested that the doctor could have done a “mental status examination” and she indicated that any treatment being provided was “not in line with a diagnosis of adjustment disorder.” Ms. Simpson also said that she did not have evidence of Ms. Quenneville attending counselling, only a statement that she was enrolling in counselling.

11. An OSI call log entry from May 2, 2023, indicates that an OSI representative called Ms. Quenneville to explain that her appeal had been denied. The call log reads: “employee began using profanities towards recovery facilitator”, “employee mentioned she will be going to social media and to her lawyer then hung up phone” and “employee then called back requesting all information be sent to her.”

12. When asked to describe the May 2, 2023, call, Ms. Quenneville said that it was the day that her husband had been brought home because he wished to die at home. There was nothing more that could be done for him other than palliative care. He had just been brought upstairs to his bed when the phone rang. Ms. Quenneville answered and it was OSI advising that her benefits were denied. She described the call as the last straw on a terrible day.

13. She subsequently received a letter, dated May 2, 2023, denying her appeal. In the letter, OSI advised as follows:

> Your submitted documentation has been considered for an appeal, and as per OSI's internal process your file has been reviewed by two independent Recovery Facilitators within OSI, whose findings are detailed below.
>
> Further to our comprehensive review of the documentation provided, medical standards and previous information on file, we find that although a medical illness was confirmed, the functional information is not in line with a totally disabling condition. Furthermore, no active treatment was noted in the medical reviewed, which would indicate the condition was not at a severity that would have prevented you from performing your duties at work. As such, the non-support decision is upheld. …

14. On May 7, 2023, Ms. Quenneville's husband died.

15. In a further letter of appeal dated May 23, 2023, Ms. Quenneville's doctor repeated to OSI the information previously provided, gave updated GAD and PHQ scores (20 and 18 respectively), and described Ms. Quenneville as compliant with treatment. The doctor advised that Ms. Quenneville had attended counselling with a social worker from the doctor's office twice, before being referred to a social worker at Supportive Care and had, prior to that, obtained counselling through the Employer's Employee Assistance Program.

16. Julia Furino is a Director of Client Integration for OSI and described herself as the "Health Lead" for the Employer. She testified that there is normally only one level of appeal but that she was asked to conduct a further appeal review of this file. As part of that review, Ms. Furino reviewed the original file as well as clinical notes provided from Ms. Quenneville's doctor. Overall, she described the notes as containing little information and lacking in objective information. When asked what a doctor could do to assess a mental health condition, other than collecting self-reported information, she said that she would normally see a mental status examination, including a doctor's comments on matters such as appearance, hygiene, eye contact etc. She said that an expectation of being off work for 8 weeks from the onset was longer than what would typically be seen. She drew attention to clinical notes related to Ms. Quenneville taking care of her husband and looking after his medicines and said there was nothing suggestive of someone who was not functioning in their day to day. She noted that there would typically be an "escalation in treatment" that was not present here, usually the prescription of anti-depressants

or an increase in dose, and attendance at counselling.

17. Through Ms. Furino, the Employer introduced a document described as an excerpt of the "MD Guidelines" with the heading "Adjustment Disorder with Anxiety". She said the text was used by OSI as a reference for various disabilities to determine what medical information would support a diagnosis and to determine what treatment is appropriate. The excerpt is lengthy but some of the text relevant to this case includes:

- In an adjustment disorder, a psychological response occurs to an identifiable stressor or life event. This response includes significant emotional or behavioral symptoms that are usually manifested as decreased performance at work and temporary changes in social relationships. The life stressor may be a single event (…). A life stressor can also consist of multiple events (…)

- The development of emotional or behavioral symptoms must occur within 3 months of the onset of the stressor(s), with disproportionate, marked distress and/or significantly impaired social and occupational functioning. After the stressor(s) have resolved, symptoms persist for no more than an additional 6 months (DSM-5).

- A diagnosis of adjustment disorder should only be made when the magnitude of distress exhibited in alterations in mood, anxiety, or conduct exceeds what would normally be expected given the context surrounding the stressor event(s). Adjustment disorders may be diagnosed, for example, following the death of a loved one when the intensity, quality, or persistence of grief reactions are greater than normally expected when cultural, religious, or age-appropriate norms are considered.

- Many people with adjustment disorders find treatment helpful, and they often need only brief treatment. Others, including those with persistent adjustment disorders or ongoing stress, may benefit from longer treatment. Treatments for adjustment disorders include talk therapy, medicines or both.

18. In her testimony, Ms. Furino said "there was nothing suggestive of something going above and beyond what a normal response might be". In her opinion, "the clinical notes did not support the limitations being there". Ms. Furino pointed to gaps between medical appointments, the absence of medication prescription or adjustments to existing medication, the lack of referral to a psychotherapist, the clinical notes not recording any discussion about elevated PHQ or GAF scores, and the clinical notes including reference to Ms. Quenneville as being well-dressed and making eye contact, etc.

19. In cross-examination, Ms. Furino was asked a number of questions about the MD Guidelines and their use in claims adjudication. She testified that the document came from a subscription-based web platform licensed to "the Reed Group". She testified that she had copied and pasted the text concerning "adjustment disorder with anxiety" from that webpage. She acknowledged that, in the print copy placed into evidence, she had marked parts of the text in bold but denied having made any other change to the text.

20. In cross-examination, Ms. Furino was also asked about Ms. Quenneville's stated limitations and the fact that OSI was aware, before the first denial, that the Employer said it could not accommodate those restrictions. She described the process as OSI "not accepting or denying" the limitations, rather it was simply "the normal process" and at one point in her testimony said that the assessment of disability was "completely independent" from the process of looking for modified work. Ms. Furino was asked to identify the point at which OSI communicated to Ms. Quenneville that OSI did not accept the restrictions set out by the doctor. Ms. Furino responded that "it would not have been that way" and that "we would have said that her claim was non-supported as a whole". When questioned about what "objective medical" evidence OSI was looking for, Ms. Furino suggested a mental status exam but acknowledged that this also had a subjective element. Ms. Furino agreed that, at least by the time of her appeal assessment, OSI had the clinical notes indicating that Ms. Quenneville had been prescribed a medication for sleep and had accessed some counselling services.

21. The Union filed a grievance on June 13, 2023, alleging that the Employer had violated the collective agreement by denying Ms. Quenneville's short term disability benefits.

22. When testifying about her experience, Ms. Quenneville described feeling disrespected and unheard by OSI. She was taking care of her critically husband, but OSI was disregarding her symptoms and her doctor's letters. She testified that she was doing what she could to care for him, but that her application for disability benefits was based on her own illness and symptoms. She described not being able to do her job. She could not imagine going back to work – she had not slept, she was "a mess" and was "constantly crying". She found some help in counselling through the Supportive Care program (part of Cancer Care). Although she initially declined

prescription medication, she ultimately agreed and took prescribed medication for sleep when her symptoms persisted. She described increased stress from the financial situation, with neither her income nor her husband's. She said "you would think you would be supported by your employer when you are going through such an ordeal", but that it "turned out that was not the case" and that it caused her significant additional stress.

23. She ultimately returned to work in September 2023.

Collective Agreement and HOODIP

24. The relevant provision of the collective agreement under which the grievance arises is as follows:

> Article 13 – SICK, INJURY AND DISABILITY
>
> 13.01 – HOODIP
>
> (The following clause is applicable to full-time employees only)
>
> (a) The Hospital will assume total responsibility for providing and funding a short-term sick leave plan equivalent to that described in the August 1992 booklet (Part A) Hospitals of Ontario Disability Income Plan Brochure. …

25. The sick leave plan is, as agreed by the parties, under the Hospitals of Ontario Disability Income Plan (HOODIP) January 1, 1992, which contains the following definition:

> Total Disability and Totally Disabled means the Member has a medically determinable physical or mental impairment due to injury or illness which prevents her from performing the regular duties of the occupation in which she participated immediately preceding the start of the disability. …

26. The relevant portion of the Brochure reads as follows:

> **Entitlement**
>
> Benefits shall be paid to a Member who satisfies the following conditions:
> 1. she is Totally Disabled on the date her Qualifying Period expires; and
> 2. she supplies proof of Total Disability satisfactory to the Participating Employer when she has been absent for three or more days (subject to a periodic review thereafter). However, such proof may be required at any time in order for her to qualify for benefits; and

3. she is not entitled to receive benefits for a compensable accident such as an accident covered by the Worker's Compensation Act.

Exclusions and Limitations

…

A Member is not considered Totally Disabled unless she is under the active, continuous and medically appropriate care of a Physician and is following the treatment prescribed by the Physician for that disability.

Submissions

27. The Union argued that Ms. Quenneville was entitled to short term disability benefits. She had been diagnosed with an adjustment disorder, a "mental impairment" within the meaning of HOODIP's "total disability" definition, and she had restrictions and limitations that prevented her from performing the regular duties of her occupation. The Union relied heavily on the exchange between OSI and the Employer in the log notes, where the Employer was advised of Ms. Quenneville's limitations, including her inability to concentrate, and the Employer responded that it could not accommodate these restrictions, only modified hours. The Union stressed that at no point did OSI or the Employer inform Ms. Quenneville that it did not accept the limitations set out by her doctor.

28. Overall, the Union argued that OSI had relied upon the MD Guidelines to compare Ms. Quenneville to the "typical situation" including the typical evolution of and treatment for this diagnosis, without considering her particular situation, her illness and the care appropriate for her. Moreover, the Union submitted that no reliance could be placed on the MD Guidelines, for reasons which included the lack of information about the document's source, the absence of any information about whether the document was peer-reviewed, and the fact that the Employer had been able to alter the document (by excerpting it and by bolding portions of the text).

29. The Union submitted that I should make an order of compensation for the value of the benefits as well as an award of damages for mental distress. The Union argued that the remedy should put Ms. Quenneville back in the position she would have been in had her claim been

assessed in a balanced and reasonable manner, and the negotiated benefits had been properly provided. Following the Supreme Court of Canada in *Fidler v. Sun Life Assurance Co. of Canada* [2006] 2. S.C.R. 3, the Union submitted that in addition to the value of the benefits there should be some measure to compensate Ms. Quenneville for the loss of what should have been a "peace of mind" contract.

30. The Union also relied upon the following cases: *Haldimand War Memorial Hospital v. Ontario Nurses' Association*, 2017 CanLII 61807 (ON LA) (Levinson); *Expertech Network Installation Inc v. Unifor*, 2017 CanLII 43166 (ON LA) (Stout); *Expertech Network Installation Inc. v. Unifor*, 2014 CanLII 29946 (Stout); *Central West Specialized Developmental Services v. Ontario Public Service Employees' Union, Local 249*, 2016 CanLII 44833 (ON LA) (Marcotte); *GP Northwoods LP v. Unifor, Local 99-P*, 2024 CanLII 14002 (ON LA) (Goodfellow); *Ontario Power Generation Inc. v. Society of Energy Professionals (Taggart)*, Re, 2014 CarswellOnt 4901 (O'Neil).

31. The Employer submitted that the Union had the onus of demonstrating that Ms. Quenneville met the definition of "total disability", both in terms of the initial entitlement and through the duration of the absence. The evidence was required to be "satisfactory" to the Employer, and the evidence presented by the Union did not meet this standard. The collective agreement incorporates the plan brochure, making it a requirement for eligibility that claimants have an illness, be under "active, continuous and medically appropriate care" and be following the treatment prescribed. The mere presence of a diagnosed mental health condition did not establish total disability. In assessing the extent to which an illness was disabling and the extent to which care was "active, continuous and medically appropriate", the Employer was entitled to have regard to normative standards, including here to the MD Guidelines, and to make its own assessment on the information available.

32. The problems identified by the Employer included: gaps between medical appointments, the absence of medication being prescribed or adjustments to existing medication, the lack of referral to a psychotherapist, the clinical notes not recording any discussion about elevated PHQ or GAF scores, and the clinical notes including reference to Ms. Quenneville being well-dressed and making eye contact, etc. The Employer acknowledged that Ms. Quenneville was going

through a difficult time during the relevant period, but noted that she was continuing to care for her husband and other family members and was carrying on with the activities of daily living.

33. The Employer also argued that the information from the physician was largely based on Ms. Quenneville's self-reported symptoms. There was a lack of evidence, in particular objective evidence, and the Employer was justified in being wary of doctors acting as patient advocates. The Employer further submitted that it was not required to request or seek out additional information. The non-support letters and the appeal form documents set out the types of information that could support an appeal and there was no requirement to specify exactly what information would support a claim for benefits.

34. In the alternative, if the Employer's determination was incorrect and there was an entitlement to benefits, the Employer argued that the claim to damages was not appropriate. The Employer had not engaged in bad faith or callous behaviour, and had not been given information such as the clinical notes until the grievance process. It was argued that, far from attracting damages for mental distress, the Employer had gone above and beyond its normal procedure, not only allowing the usual appeal process but granting and conducting a second appeal.

35. The Employer relied upon the following cases: *Sanders v. Clarica Life Insurance Co.,* 2005 BCSC 88 (CanLII); *Hamilton Health Sciences v. Ontario Nurses Association*, 2007 CanLII 73923 (ON LA); *Expertech Network Installation Inc. v. UNIFOR (KL Grievance)*, 2014 CanLII 29947 (ON LA); *Expertech Network Installation Inc. v. UNIFOR (CM Grievance)*, 2014 CanLII 29953 (ON LA); *Cambridge Memorial Hospital v. Ontario Nurses Association*, 2023 CanLII 56339 (ON LA); and *Ontario Nurses Association v. Health Sciences North*, 2024 CanLII 65149 (ON LA).

Analysis and Decision

36. Having carefully considered the evidence and the submissions of the parties, I conclude that the grievance must be allowed and that the claim for short term disability benefits must be approved and paid. I have also concluded that this is an appropriate case for an award of damages for mental distress. The benefits and damages issues are determined in turn below.

Entitlement to Benefits

37. It is well-established in the authorities provided by the parties that the Employer is responsible for the payment of short-term disability benefits where the claimant has established the claim under the benefits plan, regardless of the advice of the benefits administrator as intermediary. As Arbitrator Surdykowski wrote in *Hamilton Health Sciences,* at paragraph 28:

> As a general matter there is nothing to prevent an employer from contracting out the information gathering or assessment of medical information function, as the Hospital has done in this case. But the party to whom the employer has contracted out this function stands in the shoes of the employer and has no greater right to or need for information than the employer has if it performs the function itself. And the employer is responsible for the conduct of any third party that performs such a function for it. …

For the conclusion that an employer cannot abdicate its collective agreement responsibilities by retaining the services of a benefits administrator, see also *Expertech (KL Grievance)* at paragraph 21, *Expertech (CM Grievance)* at paragraph 21, and *GP Northwoods* at paragraph 2.

38. It is equally well-established that the question before me is one of correctness. For purposes of entitlement to benefits, the question "is not whether or not the decision to deny benefits was honest and reasonable," but rather, whether the contractual provisions "have been complied with by the parties and was the decision to deny benefits correct." (See, for example, *Expertech (KL Grievance)* at paragraph 23). The onus is on the Union in this case to show, on the balance of probabilities, that Ms. Quenneville qualified for short term disability benefits.

39. In order to qualify for short term disability benefits, the Union must demonstrate that Ms. Quenneville was totally disabled, within the meaning of the HOODIP, 1992 plan and Brochure (excerpted above). This requires demonstrating a "medically determinable physical or mental impairment due to injury or illness which prevent[ed] her from performing the regular duties of the occupation in which she participated immediately preceding the start of the disability." Proof of the disability must be "satisfactory to" the employer. Total disability will not be found unless she was "under the active, continuous and medically appropriate care of a Physician" and "following the treatment prescribed by the Physician for that disability."

40. In this case, the evidentiary obligation has been met. The evidence before me is clear that Ms. Quenneville was suffering from a disability that precluded her from performing the regular duties of her position during the period in question. She saw her doctor, who diagnosed her with an adjustment disorder. Her doctor marked clearly on the APS form that Ms. Quenneville was experiencing a mental health condition with a recognized diagnosis as per the DSM-V, and set out specific cognitive limitations, including with respect to attention to detail, concentration and following instructions, all of which were essential to the performance of her regular duties. Here, as in the case before Arbitrator Goodfellow in *GP Northwoods* (see paragraph 28), the APS form alone clearly established that the grievor was disabled and unable to perform the regular duties of her occupation. The APS form was sufficient to establish her initial entitlement to short term disability benefits.

41. There can be no doubt that the limitations set out in the APS form prevented Ms. Quenneville from performing the regular duties of her occupation. This should have been obvious from the stated limitations, which included, for example, concentration described as being "Rare (0-5%)". In any event, OSI's log notes show that the cognitive limitations from the APS form were sent to an employer representative who responded that the employer could not accommodate these limitations within Ms. Quenneville's duties. This exchange took place before the initial denial and an appeal letter went out. The Employer itself specifically confirmed that it could not accommodate these limitations. While the OSI witnesses in this proceeding described the process of relaying any listed limitations on the APS form to the employer as being the practice and/or normal process, they provided no cogent explanation for treating the assessment of total disability as entirely separate (or in the words of Ms. Furino "completely independent") from information known to both OSI and the employer about the inability to accommodate the stated restrictions.

42. Given the DSM-V diagnosis, the cognitive limitations and the Employer's inability to accommodate those limitations, Ms. Quenneville's claim should have been approved at first instance. While it should not have been required, further support for Ms. Quenneville's entitlement to benefits was provided by her doctor in the appeal letters. Notably, the March 22,

2023 appeal letter provided: Ms. Quenneville's exact diagnosis, details of the disabling symptoms, GAD and PHQ scores indicating severe anxiety and depression, and information about Ms. Quenneville accessing the EAP program and seeking further counselling services. By the second appeal, OSI had a copy of Ms. Quenneville's clinical notes, which included repeated GAD and PHQ scores consistent with total disability, and references throughout to her symptoms and the challenges she was facing. Finally, in this hearing, I heard Ms. Quenneville's description of her symptoms and cross-examination gave me no reason to question the credibility of her evidence.

43. Based on all of the above, I have no difficulty concluding that Ms. Quenneville qualified for and was entitled to short term disability benefits as of the date the Qualifying Period expired and throughout the appeal process.

Proof of Disability Satisfactory to the Employer

44. The HOODIP 1992 brochure requires "proof of Total Disability satisfactory to the Participating Employer". "Proof satisfactory to the employer" has been considered by arbitrators at some length, including under the 1992 and previous 1980 HOODIP brochures by Arbitrator Surdykowski in the frequently cited *Hamilton Health Sciences* decision. As Arbitrator Surdykowski concluded, "satisfactory" to the employer "does not imply either a subjective test or broad employer discretion with respect to the proof that can be required", but rather "the test is one of objective reasonableness" (see paragraph 58). Moreover, there is a balance to be struck between confidential employee medical information and legitimate employer interests in processing benefit claims. Employers are generally "entitled to less information at the initial stage than at a subsequent stage". Arbitrator Surdykowski (at paragraphs 60-61) explained:

> Accordingly, in the first instance under the 1992 HOODIP the employer is entitled to a statement from a physician, or in the case of a psychological disorder from a physician or other professional satisfactory to the employer, that states that s/he has assessed the employee as being incapable of performing the regular duties of her occupation due to illness or injury for a specified period, the general nature of the illness or injury, that the employee is under his/her active and continuous care, a description of the treatment plan and an attestation that the employee is following the treatment prescribed, and the anticipated return to work date.

> In the first instance under the 1992 HOODIP, the employer is still not entitled to a primary or secondary diagnosis or symptoms, or to particulars of the employee's medical history, or the tests or other investigations performed, or to a prognosis other than the expected return to work date and identification of any accommodation requirements at that time. The employer can only obtain confidential medical information in excess of the broader medical statement it is initially entitled to under the 1992 HOODIP if it has an objectively reasonable basis for doubting the accuracy or truth of the information provided in the first instance.

45. In Ms. Quenneville's case, the Employer has argued that the proof provided in the application and appeals was not satisfactory. In this regard, the arguments fall into four general categories. Broadly summarized, according to OSI/ the Employer, Ms. Quenneville failed to prove entitlement because: (1) her main issue was her husband's illness, not her own, and she was caring for him and carrying on with activities of daily living; (2) her illness and treatment were not in keeping with normative standards; (3) there was a lack of objective evidence; and (4) there was a lack of "escalated treatment". I address and reject each of these arguments in turn below.

Her husband's illness

46. In my view, and having considered all of the evidence, the claims adjudication exercise was coloured by a view that Ms. Quenneville was caring for her ill husband, and the belief that she was therefore both able to carry on the activities of daily living and not experiencing a totally disabling illness of her own right. As Ms. Simpson testified, alternate leaves of absence from work are available when caregiving for ill family members, and "we don't determine disability based on a family member." Ms. Furino drew attention to clinical notes related to Ms. Quenneville taking care of her husband and looking after his medicines and said there was "nothing suggestive of someone who was not functioning in their day to day."

47. It seems possible to me, and even likely (subject to the comments on treatment below), that Ms. Quenneville's claim would have been approved based on the APS form without more question, had she not included on the initial form that she was caring for her ill husband and mother. As noted above, the Employer was not entitled at first instance to disclosure of a diagnosis and could only "obtain confidential medical information in excess of the broader medical statement it is initially entitled to under the 1992 HOODIP if it ha[d] an objectively

reasonable basis for doubting the accuracy or truth of the information provided in the first instance" (*Hamilton Health Sciences,* paragraph 61). To the extent (discussed below) that Ms. Quenneville's symptoms, treatment and prognosis were assessed as against normative standards, this only occurred because OSI behaved as though her husband's illness was an objectively reasonable basis for doubting the accuracy or truth of the doctor's information on the APS form.

48. I do not accept that Ms. Quenneville's family situation was an objectively reasonable basis for OSI/ the Employer to doubt the accuracy or truth of the information provided by Ms. Quenneville's doctor. I do not fault OSI or the Employer for providing information about compassionate care benefits or other alternate leaves of absence, and indeed, it was appropriate for them to do so. The fact that another form of leave may have been available, however, did not automatically make Ms. Quenneville's claim suspect, and did not otherwise relieve OSI/ the Employer of the requirement to assess Ms. Quenneville's medical information in its own right or allow them to subject her claim to greater scrutiny.

49. Although *Haldimand War Memorial Hospital* was decided in the context of the 1980 HOODIP language, there are many factual similarities to this grievance, and the holdings are equally applicable here. In that case, a registered nurse was denied short-term disability benefits, even though she was unable to work in the period just after her husband was diagnosed with a life-threatening illness. The arbitrator noted that her reaction to her husband's diagnosis was genuine and "not contrived", and that she was not able to think clearly and "in a state of shock, distraught, confused, lost and defeated". As such, with these reports from the grievor's doctor but *without* a diagnosis being specified, the arbitrator held that the grievor was entitled to short term disability benefits, being unable to perform the duties pertaining to her occupation as an RN for reasons of illness. The arbitrator cautioned against narrowly construing "illness" under the plan. As the arbitrator wrote at paragraph 41:

> In these circumstances, it would seem antithetical to the purposes of the short-term disability benefit under HOODIP to require the precise identification of an underlying psychological basis, if one was identifiable for [the grievor] as a precondition for her to come within the meaning of being unable to perform the regular duties pertaining to her occupation as an RN due to illness. In the present context, illness signifies that [the

> grievor] was unable to perform the regular duties pertaining to her occupation as an RN due to illness because of her health, which was proven.

In that case, the doctor's opinion was held to be determinative, notwithstanding that the grievor was caring for her husband, that the doctor had neither provided a GAF Score nor had he done other testing, and that the primary treatment appears to have been the passage of time and supportive counselling from her doctor.

50. In this case, I also find that the evidence shows Ms. Quenneville had a medically determinable mental impairment due to illness which prevented her from performing the regular duties of her occupation. The information on the APS form, certainly along with the letter providing the diagnosis, describing her symptoms, and providing GAD and PHQ scores, should have been more than sufficient to entitle Ms. Quenneville to short term disability benefits. However, because she disclosed that her husband was ill, compounded by the disclosure of the diagnosis of an adjustment disorder in the appeal process, Ms. Quenneville was required to refute pre-conceived ideas about the typical reaction to a spouse being gravely ill, rather than being given a fair assessment of her medical information. As noted by Arbitrator Stout in *Expertech (KL Grievance)* at paragraphs 62-64, most collective agreements provide some benefits to deal with what might be described as "normal and expected stressful situations", but it can also be "debilitating to the point of manifesting itself in serious mental health disorders such as anxiety, depression and post-traumatic stress disorder" and the question remains individual eligibility under the plan based on the medical information provided.

51. I do not accept the proposition that because Ms. Quenneville was caring for her husband, her functional limitations were not in line with a totally disabling condition. This proposition only reflects unfounded assumptions made by the claims assessors. Ms. Quenneville testified that she did help with medications and other tasks in relation to her husband's illness, but that she also had friends and family helping her and that her husband remained able to look after tasks like taking his medications until close to the end. Moreover, being able to get by at home, while crying, exhausted and unable to concentrate, is not the same as being able to perform one's duties safely in a busy medical office environment.

Normative standards

52. The Employer argued that Ms. Quenneville's illness was not in keeping with normative standards for a diagnosis of adjustment disorder. I pause here to note that, as set out above, OSI was not entitled to a diagnosis at first instance. OSI only obtained Ms. Quenneville's diagnosis by improperly rejecting her initial application and requiring her to appeal. I do not accept that, at least for the initial period of a short term disability leave, the benefits administrator can extract information about a diagnosis solely for purposes of comparing to a norm.

53. Assessment of benefits claims may have regard to norms, including around what might be typical in terms of symptoms, treatment and recovery. It is "neither improper nor unreasonable to utilize normative criteria in assessing claims", however using "normative criteria is not determinative of entitlement": *Expertech (CM Grievance),* at paragraphs 55-56. Determinations "must also take into consideration the specific circumstances of any given claim" because "every person is different and has a different level of tolerance and ability to heal" and "every physician has their own way of treating their patients" (*Expertech (CM Grievance),* at paragraphs 55-56).

54. For the sake of argument, I am prepared to assume, without knowing, that the MD Guidelines for adjustment disorder were appropriate guidance, and that distress in response to a life stressor must be outside of "what would be normally expected" for the proper diagnosis of an adjustment disorder. These are propositions about which: limited evidence was tendered, no expert evidence was called, the Union contested, and I have many unanswered questions and make no conclusion. Even assuming the guidelines were appropriate, OSI's mechanical application of the MD Guidelines did not take into consideration the specific circumstances of Ms. Quenneville's claim.

55. The testimony at hearing of both of OSI's witnesses was devoid of any meaningful individualized assessment, including what stressor(s) occurred and Ms. Quenneville's circumstances. No one from OSI showed any recognition that there was a sequence of events including Ms. Quenneville's husband's diagnosis, surgery, decisions about palliative care, return

home, death and bereavement, even though this information was disclosed in the call logs and appears in the clinical notes. Moreover, no one from OSI seems to have paid any attention to information suggesting Ms. Quenneville's circumstances were not typical. For example, the clinical notes indicate that Ms. Quenneville's first husband had died when her daughter was young and that she had not, at the time, been able to process or properly grieve, and that this was a second devastating loss of a spouse. From the evidence, I do not know what difference, if any these facts may have made. What I do know is that there was a failure to conduct any meaningful individualized assessment of Ms. Quenneville's claim. On this basis, I reject the argument that her claim was "not supported" because her illness was not in keeping with the MD Guidelines.

56. When comparison to a norm is at issue, it is incumbent on the claims assessor "to advise the employee of the issue and seek a reasonable explanation from the attending physician" (*Expertech (CM Grievance)*, paragraph 57). There is an obligation "to advise the employee or their physician of the nature of the concern and seek an explanation or elaboration" (see for example, *Expertech (CM Grievance)*, paragraph 51). As Arbitrator Goodfellow stated in *GP Northwoods* at page 211, when substantial medical information has been provided and a different conclusion expressed, basic fairness demands more than that an employee and their physician be left to guess as to why the information they have submitted was inadequate.

57. According to the OSI witnesses and the Employer, the reasons for the denial of Ms. Quenneville's claim were set out in the "non-support" letter, and a form letter "clearly identified" the types of information that would support an appeal. I agree that there was no requirement, as the Employer argued, to specify exactly what results must be produced for a supported decision. That was not, however, what happened here. Rather, Ms. Quenneville and her physician provided the information to support her claim. This information included: a diagnosis by her doctor, functional limitations listed by her doctor, the Employer's agreement that it could not accommodate those limitations, and some information on active treatment. At least at the point at which OSI/ the Employer rejected her stated limitations and compared Ms. Quenneville's information to undisclosed guidelines for a typical adjustment disorder and found her

information wanting, there was a requirement to advise of the issue and seek an explanation or elaboration. Instead, Ms. Quenneville and her physician were left to guess at why the information was inadequate.

Lack of objective evidence

58. I do not accept the Employer's argument that it was justified in rejecting Ms. Quenneville's claim for lack of "objective" evidence of disability. First, the plan brochure requires proof of total disability satisfactory to the employer, which as above, is a test of objective reasonableness. There is no requirement of sufficient objective medical evidence. Second, "mental disabilities by their very nature are not always readily apparent and often involve subjective reporting of how one is feeling" and therefore a "nuanced approach is more appropriate" (*Expertech, (JP Grievance),* at paragraph 37.) Third, although the OSI witnesses stressed that there was no "objective" evidence, they were largely unable to specify, even at hearing, what that would be.

59. Testing such as the GAF and PH-Q scores are often used by medical practitioners to measure and assess the presence and severity of some mental illnesses. In some of the caselaw presented before me, insurers expressed concern when such testing had not been conducted: see, for example, the summary of evidence in *Haldimand War Memorial Hospital* and the arbitrator's comments at paragraph 39. Those scores were, however, provided by Ms. Quenneville's doctor and no one suggested at hearing that the reported scores were not severe and/or in line with a disabling condition at the time the application was made and when the appeals were made.

60. The OSI witnesses suggested at hearing that the doctor's notes should have reflected a "mental status examination." I do not doubt that this may be part of a clinician's observations and may be helpful in some circumstances to a benefits administrator. I do not accept, however, that the absence of these observations in an appeal letter or in clinical notes is sufficient to effectively override a physician's diagnosis and assessment of limitations, particularly where detailed appeal letters have been submitted and GAF and PHQ scores have been provided.

Lack of treatment/ escalated treatment

61. I also do not accept the Employer's argument that Ms. Quenneville was not totally disabled and/or her claim was not supported because she was not receiving "typical" treatment, notably prescription medication and "escalation in treatment." The plan brochure does not require typical treatment, prescription of medication, escalation in treatment or treatment in keeping with the MD Guidelines. The plan brochure does not require anything more than "continuous and medically appropriate care of a Physician" and, where in doubt, confirmation that the employee "is following the treatment prescribed by the Physician for that disability."

62. The absence of prescribed medication and/or "elevated treatment" does not mean the absence of illness or indeed the absence of "total disability". This is particularly so at the outset of a short-term disability claim. In the usual course, as time passes, one might expect, in the face of continued disability, more and "elevated" treatment options to be explored, particularly for conditions resistant to treatment. I note that, even accepting the MD Guidelines as applicable, they state that "medicines such as antidepressants and anti-anxiety drugs may be used" and make no other reference to medication. There is also nothing in the MD Guidelines that would suggest one must be prescribed and take medication, much less immediately be prescribed and taking medication, to receive "medically appropriate care". Likewise, while the MD Guidelines describe psychotherapy as "the treatment of choice" for adjustment disorders, there is no requirement of an immediate referral to a psychotherapist rather than other forms of therapy. Given the sequence of events and the changing circumstances, the initial recommendations for "self-care" and supportive listening were the treatment recommended by Ms. Quenneville's physician and I have no reason to conclude that this was insufficient or inappropriate in her circumstances. As stated in *Expertech (JP Grievance)* at paragraph 39*,* "[p]roper medical care must be determined in the context of the situation and based on what the treating physician has decided in consultation with their patient."

63. Even if prescription of medication and "elevated treatment" within the claim period were required, which I do not accept on the material before me, OSI's assessment of the medical

evidence was unfair. The OSI witnesses testified as though there was no relevant prescription of medication, when in the clinical notes and Ms. Quenneville's testimony it was clear that she was prescribed and ultimately took medication for sleep, even though she opted to try natural alternatives first. Moreover, the OSI witnesses discounted counselling received by Ms. Quenneville. Through the clinical notes, it is clear that she was initially speaking with her family doctor at regular intervals, then had sessions through the Employee Assistance Program, then met with a social worker through her family doctor's office, then received counselling specific to cancer caregivers. It took some time while Ms. Quenneville sought and finally attended each of these appointments, and that does not appear to have been through any fault or failing on her part. There is no recognition of the obvious in the OSI file, and no recognition in the testimony of the OSI witnesses, that some time might be required to secure the right supports, particularly given changing circumstances and limited healthcare resources.

Damages

64. The Union argued mental distress damages should be awarded in addition to compensation for the period of the disability claim, consistent with the Supreme Court of Canada's decision in *Fidler*, and arbitration cases such as *GP Northwoods*, and *Ontario Power Generation* and the cases cited therein. To be clear, the request was specifically for mental distress damages, not for punitive damages.

65. In *Fidler,* the Supreme Court concluded that mental distress damages could arise from a breach of contract where: an object of the contract was to secure a psychological benefit; the breach brings mental distress; that mental distress was within the reasonable contemplation of the parties; and the degree of mental suffering caused by the breach was of a degree sufficient to warrant compensation (at paragraph 47). The Court cautioned that application of this test required "sensitivity to the particular facts of each case" (paragraph 47). The Court made clear that a contract for disability benefits was a contract for benefits that are both tangible, such as payments, and intangible, such as knowledge of income security in the event of disability (paragraph 56). Damages for breach of a disability contract should, as far as money can do so, place the employee in the same position as if the contract had been performed, and that may

include compensation for failures in respect of both the tangible and intangible benefits.

66. Arbitrator O'Neil's decision in *Ontario Power Generation* applied *Fidler* and awarded $5,000 damages for mental distress for breach of a disability contract in a collective agreement context. That case involved the suspension of benefits, for roughly a 6-month period, which benefits had previously been approved. In making the decision, the arbitrator noted the duty of good faith in assessing insurance claims in *Fidler* required an assessment of the merits of the claim in a balanced and reasonable manner. The arbitrator stressed that the decision to suspend benefits in that case had not been made in a balanced and reasonable manner, and there was no evidence that employer representatives had "considered the potential impact on the grievor in terms of her health or income security," despite being in possession of evidence supporting the claim. Arbitrator O'Neil concluded:

> Putting the grievor as fully as possible back in the position she would have been in had the contract been performed ought to mean some measure to compensate for the additional worry and financial insecurity, the antithesis of "peace of mind", that would not have impacted her had the benefits been continued, as I have found they should have been.

67. In *GP Northwoods,* Arbitrator Goodfellow awarded additional damages for failure to pay disability benefits in an arbitration context, remaining seized of the amount if the parties were unable to agree. In making this award, the arbitrator addressed the claim of an employee referred to as "Z". The arbitrator noted that, with respect to Z, "the absence of a single convincing diagnosis that might explain all of Z's reported symptoms" appeared to have stood in the way of continuing or restoring benefit payments, notwithstanding that the particular symptomology was consistently reported and that the symptomology was in fact supported by the medical evidence. Arbitrator Goodfellow concluded that the insurer had sufficient proof of the medical condition that precluded Z from work, and:

> [a]s a result of [the insurance company's] extended failure to recognize this fact, Z was without benefits payments for many months when he should have been receiving them. And the evidence is crystal clear that Z suffered significant, predictable, and clearly communicated mental distress, emotional anguish and financial hardship as a result. As with X and Y, this aggravated harm was not addressed by the making of much belated retroactive benefits payments. It is a separate form of harm that is properly compensable by way of an award of damages.

68. In the instant case, as a result of OSI and the Employer's actions, and what I can only conclude was a failure to assess her claim in a balanced and reasonable manner, Ms. Quenneville was without benefits payments when she should have been receiving them. Both OSI and the Employer were clearly aware of Ms. Quenneville's circumstances, and do not appear to have in any way considered the potential impact on her health or income security in these circumstances. This is not an average denial of benefits case. Ms. Quenneville was denied not only the disability benefits to which she was entitled, but she lost the "peace of mind" that she should have had, at a particularly difficult time in her life. She experienced significant, predictable and clearly communicated mental distress from being required to appeal the denial of her short-term disability benefits, when it was known that she was already in a period of significant mental distress.

69. I find the facts of this case to be comparable to those of the decision of Arbitrator O'Neil in *Ontario Power Generation* in terms of the denial of the benefits and, the impact on the grievor and the length of time the grievor was without pay. Recognizing that decision was now twelve years ago, I find $7,000 to be an appropriate award of damages for mental distress.

Summary and Conclusion

70. For the reasons above, the grievance is allowed. The Employer is directed to compensate Ms. Quenneville for the benefits that were improperly denied, and to pay to her mental distress damages in the amount of $7,000, within thirty days or such other period as the parties may agree. I retain jurisdiction should any issue arise in implementing this award.

Dated at Toronto this 21st day of May, 2026.

"Lindsay Lawrence"

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Lindsay Lawrence –Arbitrator