

# HONG KONG SAFETY SNAPSHTOS: ARE EMPLOYEES ENTITLED TO STATUTORY COMPENSATION FOR WORK-RELATED STRESS?

In a recent Hong Kong District Court decision [Chow Kai Yan v Kingsway Cars T Service Ltd \[2022\] HKDC 165](#), the Court confirmed that an employee who suffered a stroke at work had not sustained an "*injury by accident*" which would entitle him to statutory compensation under the Employees' Compensation Ordinance (Cap.282) (**ECO**). This case provides helpful guidance on what will amount to an "*injury by accident*" for the purposes of the ECO, particularly in the context of stress-induced conditions.

## Background

Mr Chow (**Employee**), an employee of Kingsway Cars T Service Ltd (**Employer**), suffered an acute cerebral stroke during work at the Employer's workshop. The stroke caused a cardiac arrest and in turn insufficient blood supply to the brain, and the Employee has since fallen into a coma.

The Employee (represented by his mother) commenced an application for statutory employees' compensation under the ECO, on the basis that he had suffered an "*injury by accident*" at work. In particular, the Employee claimed that the stroke had been caused or contributed to by the stress at work.

## The proper approach to section 5 of the ECO

Section 5 of the ECO provides that: "...*if in any employment, personal injury by accident arising out of and in the course of the employment is caused to an employee, his employer shall be liable to pay compensation in accordance with this Ordinance.*" (emphasis added)

The core issue of the case is whether the stroke which resulted in the Employee's loss of consciousness constituted an "*injury by accident*" under section 5 of the ECO. After considering a line of English and Hong Kong authorities, the Court determined that, in order to satisfy the requirements under section 5 of the ECO, an applicant must:

1. **identify an external event or a series of external events which constitute an "accident".** The event or series of events, which can be expected or unexpected, must either have some effect on the bodily or mental functioning of the applicant where the injury is suffered, or be in the form of noticeable bodily activities of the applicant when the accident occurred;
2. **show that the accident caused or contributed to the injury.** To this end, the Court clarified that an accident is distinct from an injury, as an injury is the effect of an accident; and
3. **prove that the accident arose out of and in the course of the employment.** The applicant may be able to rely on the presumption under section 5(4)(a) of the ECO which deems that an accident that arose in the course of the employment to also have arose out of the employment. However, that presumption will not apply if there is evidence to the contrary, and the applicant will then face the burden of proving that the accident arose both out of, and in the course of, their employment.

In the present case, the Court found that the Employee was not able to satisfy all of the requirements set out above, and dismissed the Employee's claim for the following reasons:

- a) The Employee's stroke was an internal injury and not an "accident". Although the Employee relied on the fact that there had been a substantial increase in the Employee's overtime work, there was no

proper identification by the Employee of the specific event or series of events (eg. the exact day or days of the Employee's overtime work) which constituted the "accident"; and

- b) Even if the overtime work and related stress had constituted an "accident", the Employee was not able to prove, through medical expert evidence, that overtime work and work-related stress caused or had any real contribution to the stroke.

#### **"Accident" vs. "process"**

Another argument advanced by the Employer in this case is that work stress is a "continuous process" and therefore cannot amount to an "accident" under the ECO. The Court cited the dicta in the English authority *Chief Adjudication Officer v Faulds* [2000] 1 WLR 1035 and noted that, in some cases which concern diseases or conditions of the like, it may not be possible to clearly distinguish between an "accident" and a "process". In such cases, the mere fact that the disease or condition may be due to a "process" will not be sufficient to defeat the applicant's claim.

#### **Key takeaways**

This case clarifies the requirements for employees to be entitled to statutory compensation under section 5 of the ECO and provides helpful guidance in particular to employers who are handling ECO compensation claims in relation to conditions or diseases that may be triggered by general stress at work. Employers are also reminded of their general duty to maintain the safety and health of employees at work, which may extend to managing employees' stress level at work.

\*Note: This case is currently on appeal in CACV No 165 of 2022.