

**WCAT Decision Number :** WCAT-2006-01218-RB  
**WCAT Decision Date:** March 14, 2006  
**Panel:** Marguerite Mousseau, Vice Chair

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## Introduction

The worker appeals several decisions regarding her entitlement to compensation for symptoms that developed following occupational exposures to film processing chemicals. These decisions were communicated in three letters of the Workers' Compensation Board (Board) over the course of several years.

In the decision letter of March 27, 1996 the worker was informed that her claim was accepted for temporary symptoms of respiratory irritation and eye irritation up to May 16, 1995. Since the causative agent, a film processor, had been removed on that date, any subsequent symptoms could not be attributed to occupational exposure.

In the decision letter of September 11, 1998 the worker was informed that her claim was accepted for temporary symptoms of headaches, sore eyes and heavy chest between May 16, 1995 and April 1997. Since the worker had not experienced these symptoms after this time, she did not have a permanent condition.

In the decision letter of February 29, 2000 the worker was informed that she was not entitled to vocational rehabilitation assistance on a preventative basis since the x-ray processing methods have changed and she is no longer exposed to chemicals.

The worker's appeal of these decisions was filed with the Workers' Compensation Review Board (Review Board). On March 3, 2003, the *Workers Compensation Act* (Act) was amended to replace the Appeal Division and Review Board with the Workers' Compensation Appeal Tribunal (WCAT). As this appeal had not been considered by a Review Board panel before that date, it has been decided as a WCAT appeal. (See the *Workers Compensation Amendment Act (No. 2), 2002*, section 38.)

Oral hearings were held over a three-day period from November 14 to 16, 2005 with respect to the worker's appeal and the appeals of five co-workers with similar claims histories related to the same occupational exposures. All of the workers are represented by legal counsel retained by their union. They all attended during their representative's opening statements and during the final submissions. Each worker gave evidence at a separate hearing, unattended by any co-workers. The employer is participating and is represented by a management consultant. Prior to the hearings, the employer's representative advised WCAT that he would not attend the hearings nor make any submission with respect to the workers' appeals.

Documents pertaining to a particular claim have not all been maintained on the file of the individual technologist. One file was maintained as a “master” file at least for some period of time by one of the Board officers and copies of most documents were placed on that file. However, documents were also found on the files of the two supervisors, who have also made claims, which were relevant to the claims of the technologists they supervised, but these documents were not always also found on the appropriate claim file. Each of the technologists was asked by WCAT to sign a waiver of confidentiality so that they could have access to each other’s files and that documents on all files could be used in the adjudication of each file.

**Issue(s)**

The issues on this appeal are:

- Did the worker have symptoms after April 1997 that are attributable to occupational exposures?
- If yes, do these symptoms constitute a permanent condition?
- Does the worker meet the criteria for preventative vocational rehabilitation?

**Background**

The worker has been an imaging technologist for approximately 25 years. She started working with magnetic resonance imaging (MRI) technology in 1989.

At the time that the worker made her application for compensation on June 6, 1995, she was one of six MRI technologists who worked in an MRI department in a newly renovated building which had been occupied since June 1994. The department housed a new scanner and film processor. All of the technologists working in the area with the new scanner and processor eventually developed respiratory and/or skin conditions. Some also developed eye irritations, headaches, gastrointestinal and other symptoms.

The employer undertook a series of investigations to determine the cause of the problems. Eventually, it was determined that the x-ray processing machine had not been installed according to the manufacturer’s recommendations. As a result, there was reason to believe that the fumes of film processing chemicals may have been released in the immediate vicinity of the machine in quantities in excess of what would normally occur.

On May 9, 1995 the employer’s occupational health and safety officer wrote to the division head of the MRI unit describing the concerns about air quality and the steps that had been taken to improve ventilation. He noted that the MRI technologists had found the air quality greatly improved and that hives had not been reported since the latest changes had been made but they continued to report dry, sore and itchy eyes.

There is also a record of a meeting held on May 25, 1995 which was attended by Dr. P, the employer's employee health physician, a Board occupational health physician, the division head of the MRI unit and others. A list of affected technologists was set out in the memo, which included the worker. Dr. F, the MRI division head, stated that the carpet had been removed and the film development processor had been drained of chemicals two weeks earlier. Since then, only one person had had symptoms. It was believed that the affected workers had likely developed a sulphide/metabisulphite sensitivity which had caused asthma-like effects. It was stated that an overriding concern was that the affected workers were now sensitized. Dr. P recommended that the workers undergo methacholine and metabisulphite testing and pulmonary function testing. The sensitizing material remained unclear.

Around this time the film processor was shut down and the six technologists reported improvement in their symptoms. The first decision letter was based on the assumption that the worker's symptoms would dissipate once the film processor was no longer in use. This did not occur, however, and further steps were taken to reduce the exposure of the affected MRI technologists to x-ray film since the film itself appeared to be triggering symptoms. As procedural changes were implemented to eliminate exposure to film, a number of the technologists started to develop symptoms which appeared to be triggered by other substances, including fragrances, exhaust, tar products, personal hygiene and household cleaning products.

In November 1997 the film manufacturer advised the Board's occupational health physician that the Material Safety Data Sheets (MSDS) for photo chemicals that contain sulphite and bisulphite salts were being revised to add that sulphites, in contact with strong acids or if heated, could liberate sulphur dioxide gas which is irritating to the respiratory tract. Some asthmatics or sulphite-sensitive individuals could experience wheezing and chest tightness.

Under "ingestion" the MSDS was being revised to add that the product might be harmful if swallowed. Some asthmatics or sulphite-sensitive individuals "may experience wheezing, chest tightness, stomach upset, hives, faintness, weakness and diarrhea." The manufacturer noted that this information appeared consistent with the statements made by the technologist(s) and that, although the incidence of such reactions was "extremely low," it was felt that current science supported the addition of this information to the MSDS.

On May 22, 1998 the film manufacturer responded by letter to previously held discussions between a Board occupational health medical advisor and the manufacturer. Two x-ray film samples had been sent to the manufacturer for investigation and quantities of sulphite had been extracted from both samples. One sample had been processed in late 1997 and the other sample was an older film taken from the hospital library. The amounts found were described in ug/cm<sup>2</sup>, which is micrograms per square centimeter; there was more sulphite found on the older films.

The manufacturer described these amounts as “minute traces” and said that normally it would be expected that even these minute traces would be removed in the washing process of the processor. It was thought that there may have been an insufficient wash to remove the sulphite at the time the films were developed. A person with hypersensitivity to sulphite could possibly have a reaction to these amounts of sulphite.

The products used in film processing contain glutaraldehyde and hydroquinone. The MSDS information for these products state that hydroquinone is at a low hazard for inhalation but, when inhaled, it causes skin irritation and allergic skin reactions. Glutaraldehyde is described as being harmful if it is inhaled. It may cause respiratory tract irritation and severe burns and allergic skin reactions.

*Occupational Health and Safety Regulation – BC Regulation 296/97* (Regulation) establishes exposure limits for each of these substances. It identifies both hydroquinone and glutaraldehyde as “sensitizers” and “ALARA substances.” Sensitizers are defined as “substances [which] have been shown to produce an allergic type of response in some workers after an initial exposure, resulting in the development of symptoms upon subsequent exposure at much lower concentrations.”

ALARA substances are defined as “substances to which exposure of workers must be kept as low as reasonably achievable.”

Section 5.57 of the Regulation states that, where a substance which has been designated as a sensitizer is present in the workplace, the employer must, whenever practicable, replace it with a material which reduces the risk to workers. It also states that where a substance is used in the workplace which is both a sensitizer and an ALARA substance “the employer must implement an exposure control plan to maintain workers’ exposure as low as reasonably achievable below the exposure limit listed in the Table” if it is not practicable to substitute the substance with a lower risk alternative.

Section 5.51 of the Regulation states “If there is exposure to a mixture of 2 or more substances with established exposure limits, the effects of such exposure must be considered additive...” This section goes on to provide a formula for establishing the exposure limit in this situation.

The Board accepted that the film processing machine had not been installed according to the manufacturer’s recommendations and that the MRI technologists had likely been exposed to film processing chemicals in quantities greater than what would normally occur. The Board accepted that the worker had developed symptoms in response to this exposure. The Board also subsequently accepted that, after this exposure, the worker had started reacting to x-ray film. The extent and duration of her symptoms are at issue.

## **Medical Evidence**

The medical evidence includes the clinical records of the worker's physician, Dr. Oakey. These indicate that the worker was reporting heaviness in her chest, sore eyes and itchy skin from early in 1995.

Dr. Yeung, respirologist, assessed the worker on April 29, 1997. She also noted symptoms of sore eyes, itchy skin and a sensation of pressure in the chest. Dr. Yeung said that she was convinced the worker was sensitized to one of the film processing chemicals and that once someone is sensitized, exposure to minute amounts of those chemicals often leads to recurrence of symptoms. Dr. Yeung noted the accommodations that had been undertaken by the employer but the worker was handicapped in that she would be unable to work in any other radiology department. She thought the Board should consider recognizing the worker's symptoms as being related to her work after the processor had been removed since the processed film also contains the chemicals.

In a follow-up consultation report, dated May 12, 1997, Dr. Yeung reported that the results of the pulmonary function tests were normal. In addition, allergy skin tests with 26 common allergens were negative. Dr. Yeung thought that the worker's symptoms could be explained by the development of a sensitivity to one of the film processing chemicals.

On September 15, 1997 Dr. Morton, dermatologist, assessed the worker. He noted that her only problem in the past had been a minor reaction to jewelry. Her primary complaints at that time were sore eyes, headaches, and asthma on one occasion. Patch testing revealed an immediate reaction to fragrance, a questionable 48-hour reading to methyl methacrylate and a definite positive response to gold sodium thiosulphate.

Dr. Morton's consultation report is the final entry in the clinical records on the worker's file that refers to symptoms of this nature. However, there are two incident reports on the worker's file dated April 2, 1997 and December 3, 1997. The first incident report describes symptoms of headaches, eye irritation and general fatigue, and irritated eyes with pustules on the eyelids. The second incident report describes a rash on the chin, sore; red, itchy eyes; and, a headache. The report indicates that these symptoms developed in relation to a strong "gas" odour at work.

In a memo dated June 24, 1998 a Board officer said that she had spoken to the worker and the worker had informed her that she had no symptoms at all since the films had been bagged (in April 1997). The memo also states that the worker has been working in the MRI unit of another hospital without any problems. At the oral hearing the worker stated that she did not recall telling the Board officer that she no longer had any symptoms and she stated that she had worked at the other MRI unit without problems prior to 1994/95.

In a memo dated August 21, 1998 a Board medical advisor (BMA) stated that the worker's complaints of itchy eyes, itchy skin on the face, coughing, chest pain and shortness of breath were all consistent with exposure to an airborne irritant or allergen. Although it was less easy to explain the headaches on this basis, they were almost certainly related if they occurred at the same time as the other symptoms.

A sensitivity to a chemical emanating from x-ray film was probably the cause of her symptoms based on the temporal relationship between exposure and symptoms. He thought the worker probably had contact dermatitis and an attack of asthma which were either caused or precipitated by exposure to something at work.

There is also a physician's progress report, dated March 9, 2000, which describes a pruritic skin rash on the worker's neck and upper chest which her physician diagnosed as an allergic reaction to x-ray film processor chemicals. The worker had developed this skin rash after two hours in a new MRI facility without physical contact with any film.

Another physician's report was submitted on October 15, 2003 which described headaches, red eyes and fatigue in a newly renovated MRI office. The previously mentioned decision letter of November 27, 2003 was issued after this report was submitted to the Board.

The worker's representative submitted a medical-legal opinion by Dr. Stark, dated January 6, 2005, in support of the worker's appeal. Dr. Stark has provided a medical-legal opinion with respect to each of the workers in the MRI unit. In his opinion of January 6, 2005, Dr. Stark states that he is a specialist in Allergy and Clinical Immunology and has also received specialist certification in Internal Medicine. In his accompanying *curriculum vitae*, he provides an extensive list of publications and further information with respect to his field of expertise.

Dr. Stark states that he first saw the worker on October 16, 2003. He describes her history of employment in the MRI unit in 1994/95 and resulting exposure to film processing chemicals. He described the worker's symptoms at that time and subsequently, including the recurrence of more significant symptoms in 2000 and then again in 2003 with the move to a renovated facility. Laboratory allergy skin tests revealed no significant reactions and spirometry results were normal.

Dr. Stark's impression at that time was that the worker was experiencing increased chemical and fragrance sensitivities with headaches, sore eyes, skin rashes, and episodic dyspnea as a result of previous chemical exposure, possibly that of 1994/95. Recent renovations had caused a flare-up of her symptoms.

He saw the worker again on October 27, 2003 when she continued to have some problems with headaches and eye soreness. He thought the worker had continuing chemical sensitivity. He also thought that dry eyes and eye strain could be contributing to some of her eye symptoms.

Dr. Stark's opinion was that "[the worker's] prolonged exposure to x-ray developing chemicals from June of 1994 until February of 1995 was of causative significance in her development and worsening of her respiratory, ocular, skin, and fatigue complaints." He noted the worker had had no significant problems prior to her exposure to the faulty x-ray processing unit chemicals. He said that she had also become more sensitive to other non-specific irritants.

He thought that the developing chemicals to which the MRI technologists had been exposed could have caused an increased immunological sensitivity and irritant effects. He thought the worker would likely remain sensitive to processing chemicals for years to come. The worker had also developed cross-reacting sensitivities to other chemicals and was experiencing non-specific irritant reactions to other substances and this would likely be a lifelong sensitivity.

The final opinion provided by a BMA with respect to the worker's symptoms is dated April 1, 1999 and it refers to all six technologists. The BMA states that all of the MRI technologists have probably developed sensitivity to a least one of the chemicals used in x-ray film processing. He states that sensitivities are usually permanent but are unlikely to cause disability unless there is re-exposure to the causative agent.

He states that, as a general rule, the sensitivity which constitutes a permanent impairment of the immune system is likely to increase with further exposures to the causative agent, leading to more severe and prolonged reactions. In the case of the technologists, these reactions showed as dermatitis and asthma. Ultimately, these reactions could result in chronic asthma and dermatitis. He stated that if the technologists continued to be exposed to the chemical(s) that caused their sensitivity, they were at a significantly increased risk for a permanent impairment of the respiratory or skin. Further exposures would more than likely precipitate asthma attacks or acute dermatitis.

### **Oral Hearing and Submission**

At the oral hearing the worker stated prior to 1994/95 she had not experienced any eye, skin or respiratory irritations that she would have associated with handling film processing chemicals or exposure to chemical fumes. At the time that the MRI unit was established the worker was working 50% of the time. By March/April of 1995 she had sore eyes, headaches, fatigue and generally did not feel well at work. She also had a feeling of heaviness in her chest and she became aware of wheezing when she was running. She gave up training for the marathon that year. She has run marathons since then and she has worked full-time since approximately 2003.

She stated that she continues to experience red eyes, severe headaches, and "brain fog." The substances that trigger her reactions include smoke, perfume, gas station fumes, paint, new furniture, and cleaning solutions. She said that by September 1998

she was no longer having symptoms at work in the MRI unit but she still had symptoms in other areas and in response to the substances listed above.

In May 2003 she started working in a newly renovated area and she developed symptoms within one week. A decision letter advising her that this claim would not be reopened for those symptoms was sent to her on November 27, 2003. In that letter she was also informed that she should submit a new claim if she required health care or she lost time from work as a result of these symptoms. That decision letter is not before me on this appeal.

The worker's representative submitted that all of the worker's ongoing symptoms should be accepted as compensable and that she should be assessed for a permanent functional impairment award for these symptoms. The worker was also seeking a finding that she is entitled to preventative vocational rehabilitation assistance should the need arise.

The representative submits that the worker's occupational exposures have resulted in permanent sequelae and that all of the medical evidence supports this.

The worker is seeking acceptance of the following symptoms as compensable:

Headaches

Red, itchy eyes

Fatigue

Heaviness in chest

Muscle aches

Tiredness

Brain fog

Light headedness

Dizziness

Sneezing

The following substances or situations trigger these symptoms:

X-Ray Film

Developer/ Fixer Chemistry (radiology, dental offices, photo developing labs)

Perfume, colognes & scented products (including places these are sold, and enclosed spaces where you might be exposed to scented products eg. Parties, meeting, airplanes)

Cleaning Products (especially products containing bleach, ammonia, and scented products)

New products: furniture, carpets, paint, car interiors, new clothing etc.

Hair products (scented)

Face and body creams (scented)

Smoke

Smog

Gas stations

[reproduced as written]

## Law and Policy

In this case, the worker's exposure and the symptoms that form the basis of the decisions under appeal occurred before June 30, 2002. As a result, the worker's entitlement to compensation is adjudicated under the provisions of the Act that preceded changes contained in the *Workers Compensation Amendment Act, 2002* (Bill 49). WCAT panels are bound by published policies of the Board pursuant to the *Workers Compensation Amendment Act (No. 2), 2002* (Bill 63).

Policy relevant to this appeal is set out in the *Rehabilitation Services and Claims Manual, Volume I* (RSCM I), which relates to the former (pre-Bill 49) provisions of the Act.

There are several policies which address entitlement to compensation in cases of skin and respiratory reactions to occupational exposures. The relevant portions of these policies are set out below:

Item #29.10 of the RSCM I addresses compensation for respiratory diseases. It provides:

Schedule B lists "Acute upper respiratory inflammation, acute pharyngitis, acute laryngitis, acute tracheitis, acute bronchitis, acute pneumonitis, or acute pulmonary edema (excluding any allergic reaction, reaction to environmental tobacco smoke, or effect of an infection)" as an occupational disease. The process or industry listed opposite to it is "Where there is exposure to a high concentration of fumes, vapours, gases, mists, or dust of substances that have irritating or inflammatory properties, and the respiratory symptoms occur within 48 hours of the exposure, or within 72 hours where there is exposure to nitrogen dioxide or phosgene".

There are many agents used in industry and commerce in the province which have irritating or inflammatory properties, and which in sufficient concentrations can produce respiratory symptoms if inhaled. Symptoms associated with the inhalation of such substances can vary from mild transient symptoms (such as a mild burning sensation affecting the eyes, nose and throat) to significant symptoms throughout the respiratory tract (such as dyspnea and respiratory distress). Significant exposure to some substances may result in persistent respiratory symptoms.

Onset of symptoms can occur within a few minutes or several hours of the exposure, depending on the substance. For the presumption in Section 6(3) of the Act to apply, the symptoms must appear within 48 hours of the exposure, unless the exposure is to nitrogen dioxide or phosgene, in which case the onset of symptoms must occur within 72 hours.

A claim for compensation made by a worker who has developed persistent or chronic respiratory symptoms considered to be due to exposure to a substance with irritating or inflammatory properties, must be considered on its own individual merits without the benefit of a presumption in favour of work causation (unless the claim meets the requirements of one of the other items of Schedule B). In particular, claims for chronic bronchitis, emphysema, chronic obstructive pulmonary disease, obliterative bronchiolitis, reactive airways dysfunctional syndrome (RADS), chronic rhinitis, and conditions considered to be due to exposure to tobacco smoke, are determined on the merits and justice of the claim without the benefit of any presumption. The same is true of a claim made by a worker

with acute respiratory symptoms where the requirements of Section 6(3) of the Act are not met (see #26.22). Where a worker who develops an acute reaction to a substance with irritating or inflammatory properties subsequently develops a persistent or chronic respiratory condition, a decision will be made based on the merits and justice of that claim on whether the chronic condition is a compensable consequence of the acute reaction.

Item #29.20 of the RSCM I addresses compensation for asthma. It provides in part:

Compensation is not payable because a worker develops an allergy or sensitivity to a substance or substances as a result of their employment. Compensation may be paid where a workplace exposure to the allergen or substance results in an asthmatic reaction.

In the case of a compensable asthma or a reaction of the respiratory tract to a substance with irritating or inflammatory properties, temporary disability benefits are payable until the temporary disability ends or until the worker's symptoms become stabilized. Where the worker's symptoms do not entirely resolve and he or she is left with a permanent impairment of the respiratory system, a disability award may be granted. However, no such award can be made when the worker's symptoms have resolved and they are simply left with the underlying allergy or sensitivity. Not only is the worker not now suffering from the occupational disease set out in Schedule B, but they are not disabled from working. The Board cannot grant a permanent disability award to a person who has the same physical capabilities as they had previous to the occurrence of the occupational disease, but who is precluded from a limited number of occupations because of a remaining allergy or sensitivity. No permanent disability award can be made to a worker with a pre-existing condition when they have returned to their pre-exposure state.

Item #30.50 of the RSCM I addresses compensation for contact dermatitis. It provides:

Schedule B lists "Contact dermatitis" as an occupational disease. The process or industry described opposite to it is "Where there is excessive exposure to irritants, allergens or sensitizers ordinarily causative of dermatitis".

The payment of temporary disability benefits and permanent disability pensions are subject to the same general principles as are set out in #29.20 in respect of asthma or a reaction of the respiratory tract to a substance with irritating or inflammatory properties. Therefore, there is no disability for the purpose of the *Workers Compensation Act* unless the worker has an actual loss of body function or physical impairment resulting

from the dermatitis which causes the worker to be disabled from earning full wages at the work at which he or she was employed.

Temporary disability benefits are payable while the disability is a temporary one, but cease when it disappears or stabilizes or becomes permanent. If the worker's symptoms do not entirely resolve and they are left with a permanent impairment, a disability award may be granted. However, neither temporary disability benefits nor a permanent disability pension is payable simply because the worker has developed a susceptibility to react to a certain substance as a result of his or her work which causes periods of temporary impairment if he or she is exposed to the particular substance, but otherwise causes no complaints. Rehabilitation assistance may be provided to assist the worker in obtaining alternative employment which does not expose him or her to the substance in question (see #86.30).

## **Jurisdiction**

Each of the technologists has provided a list of symptoms and a list of precipitating factors. They submit, through their representative, that all of the symptoms described should be accepted as permanent compensable sequelae of their occupational exposures. The implication is that the technologists have developed a condition which manifests itself variously as respiratory, sinus and skin irritations, eye irritations, fatigue, headaches, gastrointestinal symptoms and other symptoms. This condition causes these symptoms to occur with exposure to numerous occupational and non-occupational situations and substances. The representative has not requested that WCAT make a finding that the technologists have developed multiple chemical sensitivity nor has the representative specifically submitted that these appeals involve adjudication of a disorder that may be described as "multiple chemical sensitivities" or, alternatively, in some of the literature, as "darkroom disease." Yet, this view is apparent in the evidence of symptomatology, the medical evidence, and the appellate level decisions relied upon in the submission.

The representative submits that there is a recognized entity known as multiple chemical sensitivity, which is described in the May 2004 report. She also submits that there is precedent for a finding of permanent sequelae to toxic exposure to processing chemicals. In this regard, she relies on appellate decisions of workers' compensation tribunals in other jurisdictions as well as a decision of the former Appeal Division of the Board.

The Appeal Division decision involves a radiographer who was exposed to the same types of chemicals to which the MRI technologists were likely exposed and the Appeal Division found that the worker likely had developed multiple chemical sensitivities as a result of her occupational exposure. The Appeal Division in that case, however, was dealing with an appeal of decisions made by the Board and the

Review Board specifically denying acceptance of multiple chemical sensitivities. The Appeal Division clearly had the jurisdiction to address multiple chemical sensitivities.

With one exception, there is no documentation indicating that the Board was requested to adjudicate the issue of multiple chemical sensitivity nor was evidence submitted to the Board that would support such a diagnosis.

This poses issues with respect to the jurisdiction of WCAT. The decisions that form the basis of the appeals address the compensability of specific symptoms and/or conditions. These decisions date back to 1998, at which time some of the symptoms reported by the technologists had not yet developed and/or had not been reported to the Board. For the most part, those symptoms which had been reported were adjudicated on the basis that they occurred in relation to specific occupational exposures. The submission now is that a wide range of symptoms are present in both occupational and non-occupational settings due to a process of sensitization to occupational substances and cross-sensitization to various unknown and non-occupational substances. In other words, it is submitted that the technologists have developed multiple chemical sensitivities.

There are certain circumstances in which WCAT may consider a new diagnosis for a condition or symptom complex that has been adjudicated by the Board under a different diagnosis. In that situation, neither the symptoms nor the mechanism of injury have changed but new information has become available suggesting a more appropriate diagnosis. Generally, WCAT considers that it has the jurisdiction to decide whether the condition was work related albeit the change in diagnosis.

In this case, however, the decision letters (with one exception) address whether the workers have developed respiratory and/or skin conditions and eye irritation as a result of exposure to film processing chemicals which are recognized as causing those types of symptoms. Those decisions are based on specific histories of exposures, knowledge of the symptoms which may develop as a result of such exposures and a temporal relationship between exposure and the onset of symptoms of that nature. This is different in kind from adjudicating a multiple chemical sensitivity disorder which involves reactivity to a wide variety of unknown substances resulting in multiple organ dysfunction and which is “undiagnosable with any degree of certainty” and “the pathophysiology is unknown” as stated by the authors of the May 2004 report.

Generally, WCAT also has jurisdiction to address a diagnosis which has been made prior to the initial adjudication by the Board despite the Board not having addressed that diagnosis. In *WCAT Decision #2003-02677*, which may be viewed at the WCAT website under *Noteworthy Decisions*, the panel explained the basis on which it would consider an alternative diagnosis for the worker's condition as follows:

...in the decision letter, the case manager dealt with only one of the diagnoses on file. The case manager did not address the matter of

cervical radiculopathy secondary to degenerative disc disease. The panel considers that WCAT has jurisdiction to consider not only the condition of bursitis/tendonitis but also cervical radiculopathy, since the worker initiated a claim for a symptom complex that could have been caused by either condition or both in combination, and the medical reports clearly identified both conditions.

In the current appeal, there was no alternative diagnosis of multiple chemical sensitivity when the decisions were made regarding entitlement to compensation in 1996 and 1998. In this regard, I note that the medical legal opinions of Dr. Stark speak to the conditions of the technologists in 2005 and the May 2004 report speaks to their conditions in 2004.

It may be that the technologists have developed conditions involving multiple symptoms to unknown substances as permanent sequelae of their occupational exposures in 1994/95 and afterwards. This is a question, though, that is adjudicated as an issue of compensable consequences.

In view of all of the above, I do not consider that I have the jurisdiction to decide whether the individual technologists have developed multiple chemical sensitivity as a result of their occupational exposures, except where that matter appears to have been considered at the time the decision was made that forms the basis of the appeal.

### **Reasons and Decisions**

In this case, as in the case of four of the other MRI technologists, the Board has accepted that the worker developed allergic reactions to film processing chemicals. The issue is the extent and duration of the symptoms that have developed in response to these exposures.

The decision of September 11, 1998 includes a statement that the worker does not have a permanent condition. Although the Board officer stated that the worker denied having symptoms after April 1997, this is inconsistent with Dr. Morton's report of September 15, 1997 and the incident reports submitted by the worker on April 2, 1997 and December 3, 1997. The worker does not recall making this statement to the Board officer and it appears that there likely was a misunderstanding on the part of the Board officer as to the ongoing nature of the worker's symptoms. The medical reports, incident reports and the worker's testimony, indicate that she has had ongoing symptoms.

In addition, the decision of September 11, 1998 does not specifically address chemical sensitivity. However, prior to that decision being issued it was Dr. Yeung's opinion that the worker had become sensitized to at least one of the film processing chemicals. The BMA's opinion is consistent with this view in that he also considered that the worker has likely developed a sensitivity to at least one of the film processing chemicals and that such sensitivities are likely permanent.

Given that Dr. Yeung's opinion was on file prior to the decision of September 11, 1998 and that decision letters sent to other technologists with the same types of symptoms related to the same types of exposure refer to chemical sensitivity, I consider it appropriate to address that issue.

Based on the opinions of Dr. Yeung and the BMA, I find that the worker has developed permanent sensitivities to one or more film processing chemicals.

With respect to skin irritations, in an opinion dated August 21, 1998, the BMA gave his opinion that the worker had developed itchy eyes, itchy skin on the face, coughing, chest pain, shortness of breath and contact dermatitis as a result of occupational exposures. I accept that opinion.

I find the worker continued to suffer respiratory and eye irritations, headaches, itchy skin and chest symptoms beyond September 11, 1998. These are recurring symptoms associated with her permanent chemical sensitivities.

I find that the worker had not developed asthma as a result of her occupational exposures as of September 11, 1998. Although she had symptoms frequently described as asthma attacks, Dr. Yeung did not consider that the worker had asthma and there were no pulmonary function test results that would support a diagnosis of asthma. This may have changed since that time.

Turning to the request by the representative that all of the worker's symptoms be accepted as compensable and recognized as permanent symptoms with a referral for a permanent functional impairment assessment, I have largely addressed that issue in the section on jurisdiction. I do not have the jurisdiction to adjudicate a multiple chemical sensitivity disorder in this appeal.

If the worker considers that she now has a permanent functional impairment due to symptoms resulting from sensitization, she will need to request the Board for such an assessment.

Finally, there is the issue of entitlement to preventative vocational rehabilitation assistance. The employer has made substantial efforts to accommodate the conditions that the six MRI technologists have developed since the exposure of 1995/95. Steps have been taken to practically eliminate exposure to x-ray films by implementing digital film processing and taking various other precautionary measures to avoid any exposures to film. Despite these measures, there are instances when the worker is exposed to film in the course of her employment with this employer. Despite attempts by the employer to establish a fragrance-free workplace, there are also unavoidable exposures to perfume. By and large, however, the incidence of exposure to perfume and film processing chemicals and other chemicals to which the worker has been sensitized has been substantially reduced through the efforts of the employer.

The steps taken by the employer to accommodate this worker and her co-workers has resulted in a unique workplace in which the worker is able to function albeit with some difficulties. As I understand the position of the worker, there is a concern that she is limited in employment opportunities, present and future, because of her compensable conditions and sensitivities. In addition, earlier submissions expressed a concern that the employer might undergo organizational changes resulting in the elimination of the MRI unit.

Section 16 of the Act provides that the Board may take measures "To aid in getting injured workers back to work or to assist in lessening or removing a resulting handicap..."

Item #86.30 of the RSCM I discusses preventative vocational rehabilitation assistance. It states:

Preventative rehabilitation is intended to provide assistance to workers who can return to their old jobs, but have been medically deemed to be at undue risk of:

1. permanent disability due to vulnerability, or
2. increased permanent disability.

Cases involving occupational disease or prior claims for the same injury (mainly joints and backs) are the primary focus of preventative rehabilitation.

Once eligibility for preventative assistance has been established, the rehabilitation process set forth in #87.00 applies.

Section 16 provides the Board with discretion to provide certain types of assistance to injured workers. Since the worker has continued to work in the same occupation with the pre-injury employer, there is no basis for the Board to exercise this discretion at this point. In the future, a situation may arise where the worker is not able to continue working at her pre-injury employment and she may request the Board, at that time, to provide vocational rehabilitation assistance. It is not possible to foresee the situations in which it may be appropriate for the Board to exercise that discretion and WCAT does not have the jurisdiction to direct the Board to exercise its discretion by providing any vocational rehabilitation assistance requested by the worker in the future.

Accordingly, I agree that the worker was not entitled to preventative vocational rehabilitation in February 2000. That does not preclude the Board from exercising its discretion under section 16 of the Act should that be deemed appropriate at some point in the future.

**Expenses**

Item #13.22 of WCAT's *Manual of Rules of Practice and Procedure* states that WCAT will generally order reimbursement of the party's expenses to attend the oral hearing under section 7(1)(a) of the *Workers Compensation Act Appeal Regulation* if the party was successful on the appeal.

The worker is entitled to her expenses for a full day of wage loss to attend the hearing on November 14, 2005.

**Conclusion**

I vary the decisions of the Board officer dated March 27, 1996 and September 11, 1998. I find the worker has developed a permanent sensitivity to film processing chemicals as a result of her occupational exposures.

The worker has ongoing symptoms of eye, skin and respiratory irritations and headaches due to her chemical sensitivities.

I confirm that the worker did not have occupational asthma as of September 11, 1998.

I confirm the Board officer's decision of February 29, 2000. As of February 29, 2000 the worker was not entitled to preventative vocational rehabilitation assistance.

WCAT does not have the jurisdiction to make a decision as to whether the worker has developed multiple chemical sensitivities due to her occupational

Marguerite Mousseau  
Vice Chair

MM/gw