

As of February 16, 2015, this decision is no longer considered by WCAT to be noteworthy.

WCAT Decision Number : WCAT-2007-03476
WCAT Decision Date: November 07, 2007
Panel: Lois J. Williams, Vice Chair

Introduction

On August 29, 2006 the worker, a transit operator, was stung on the right knee by a wasp. The worker now appeals the March 5, 2007 decision (*Review Decision #R0072907*) of a review officer of the Workers' Compensation Board, operating as WorkSafeBC (Board). The review officer confirmed an entitlement officer's September 12, 2006 decision that denied the worker's claim for compensation on the basis that the worker was not exposed to any greater risk for a wasp sting than the public at large.

The worker requested an oral hearing but did not provide any reasons as to why one should be held. In accordance with the Workers' Compensation Appeal Tribunal's (WCAT) *Manual of Rules of Practice and Procedure*, a provisional decision was made for the appeal to proceed by way of written submissions. The worker is represented on his appeal by a union representative, who provided a written submission. The employer indicated they would participate in the appeal, but did not provide a written submission.

I have considered the issue under appeal, the applicable law and policy, and the written submission. I conclude there are no issues that require an oral hearing, and find that I can fairly decide the appeal by the read and review method.

Issue(s)

Was the worker exposed to a greater risk for a wasp sting than the public at large, thereby meeting the section 5(1) criteria of the *Workers Compensation Act* (Act) that a personal injury must arise out of the employment, as well as in the course of employment?

Jurisdiction

This appeal was filed with WCAT under section 239(1) of the Act. WCAT panels are bound by published policies of the Board pursuant to the *Workers Compensation Amendment Act (No. 2), 2002* (Bill 63). The policies relevant to this appeal are set out in the *Rehabilitation Services and Claims Manual, Volume II* (RSCM II).

Background and Evidence

On his application for compensation, the worker said that on August 29, 2006 at 2:40 p.m., he suffered a wasp sting to the right knee while driving a bus. He reported this to his supervisor at 3:00 p.m. the same day. The employer's report of injury states the worker was stung on his right knee after he opened the door to admit passengers.

Although there is no medical report on file, the worker reported that he suffered "pain, swelling, etc." and that he was treated by a physician, Dr. S. The worker missed one shift from work on August 30, 2006.

The entitlement officer said the bus passengers were at the same risk of a sting at the time the worker happened to be stung, and there were no special circumstances where the worker was placed at a greater risk of exposure. The entitlement officer concluded the worker's injury did not arise out of his employment; rather, it was a due to a hazard of nature. The entitlement officer cited the requirements of section 5(1) of the Act, and Board policy items #17.00 and #17.10 of the RSCM II.

Policy item #17.00 states that where an injury that results from natural elements, such as being stung by an insect, compensation is limited to situations where the job is of such a nature as to place the worker in a greater position of hazard as compared to the public at large.

Policy item #17.10 gives examples of when a claim will be accepted for insect bites, such as a logger stung while working in the bush, or a letter carrier stung while walking through a flower garden in summer to deliver a letter, or a person bitten by a tropical insect while unpacking bananas. The policy states that, on the other hand, an office worker stung by a bee in the course of office work would not generally qualify.

Following receipt of the decision letter denying the worker's claim, the employer's representative, the manager of safety and training, wrote to the Board on September 18, 2006. The manager asked the entitlement officer to reconsider the decision for the following reasons:

- A bus operator has to remain in their seat while admitting passengers, to inspect bus passes and be sure the correct fare is being deposited.
- A bus operator cannot quickly move out of the way of a bee as passengers entering the bus temporarily block egress.
- A bus operator has to keep to the bus schedule.
- Passengers have a little more ability than bus operators to move about the bus freely, and therefore have more options open to them.

- If the bus was in motion when the threat of a sting occurred, the bus operator would not be able to deal with the situation until the bus was safely stopped.

The employer's letter does not appear to have been brought to the attention of the entitlement officer, and the worker went on to request a review of the decision made to deny his claim. Submitted to the review was a copy of e-mails from the employer, in which the employer's representative reviews policy item #17.10 and states it could be argued that the worker was exposed to an elevated occupational hazard as he would not be able to deal with an aggressive insect until he pulled the bus over safely.

In a January 5, 2007 submission to the review officer, the worker's representative submitted the following:

- A driver is stuck in his seat while in control of his transit vehicle.
- The employer supports the worker's claim.
- The worker did get stung in and out of the course of his employment.
- Another transit operator was stung and his claim was accepted.
- When the worker was stung, his knee swelled and he was unsafe to drive.
- The period of disability was only one day.

In confirming the entitlement officer's decision, the review officer referred to section 5 of the Act and policy item #14.00 which he stated provides that it is not sufficient that the worker was in the course of his employment; the work activities must be a significant factor in the development of the injury. The review officer reviewed the circumstances of the worker's sting, and concluded that the worker's occupation, which he said primarily involves driving a closed transit bus, does not expose the worker to the same extent as the occupations cited in Board policy.

On the notice of appeal to WCAT, the worker's representative submitted that being in the driver's seat in a bus is not the same situation as the public, as the worker cannot get out of his seat while driving, to avoid a bee sting. In a June 15, 2007 submission, the worker's representative said the worker was in the course of his employment and does not have "the same luxury" as a passenger to move around if a bee comes at him. He has to keep control of his bus in a safe manner. He could not keep things from coming into the bus when he opened the doors to let passengers on.

Reasons and Findings

Policy items #17.00 and #17.10 have been discussed in the review officer's decision which is available on the Board's website at www.worksafefbc.com.

There is no dispute that the worker was in the course of employment as a transit operator at the time he was stung, and I confirm that he was a worker in the course of his employment and that he suffered a personal injury. The remaining criterion to satisfy the requirements of section 5(1) of the Act is to determine if the injury arose out of the employment.

The Board has developed policies, by which I am bound, to determine when injuries from hazards of nature will be compensable. The policies state that to be compensable, the nature of the occupation must expose the worker to a greater hazard than that of the general public. Therefore, policy items #17.00 and #17.10 require the circumstances of the claim to be evaluated to see if the worker's risk was less than or equal to that of the general public. If it was a greater risk, then the hazard is seen to have arisen out of the employment, and the claim is allowed. If the worker's risk was the same or less than that of the general public, the hazard would not be seen to arise out of his employment, and his claim would be denied.

The difficulty in determining the extent of a hazard risk has been discussed in prior appellate decisions (for example, *WCAT Decisions #2003-0024, #2003-01040, and #2004-01916-RB*). In *#2003-0024*, the panel found that a forklift operator was at greater risk of an insect sting than the general public because he had to shove his hand into a pile of lumber to remove dunnage. If he had been stung while merely operating the forklift, and there were no other relevant factors, his claim would not have been allowed. In *#2003-01040*, the panel found that a mower operator who was driving down a street was at greater risk for an insect sting because the mower was covered with grass and weeds. The panel found that the general public would not normally be engaging in such activity and those driving a car, bicycle, or truck down the same road would have a lesser risk of being stung. In *#2004-01916-RB*, the panel noted that the worker was not sure what bit him, or what material (from spilled laboratory bottles) he was cleaning up in a bus. The panel said it would be speculative to conclude there was some insect-attracting power of the material, and concluded that a worker hosing down the inside of a bus on or near a city street is in no more danger of being bitten or stung than any other member of the public.

Turning to this worker's case, he was sitting in the driver's seat on his transit vehicle and had opened the doors to admit passengers, when he was stung by a wasp. No information has been presented that the geographical area or the route of the bus exposed the worker to the risk of being stung by a wasp higher than the risk to the general public. I am not persuaded that having to open the bus door to admit passengers caused a greater level of exposure to wasp stings. The public at large, walking by, or opening doors and windows on private vehicles, had such exposure.

I do not find that the worker was exposed to a greater risk than the general public by having to be on the road, operating a transit vehicle over a specified route, and meeting the demands of a timetable. Nothing in these parameters causes a greater risk for a wasp sting than the risk to the public at large.

I am also not persuaded that having to remain in the operator's seat when threatened by the wasp caused the worker a greater level of exposure to a wasp sting. Any person operating a vehicle, including members of the public at large, must stay in control of their vehicle when threatened by a wasp.

There is no evidence that there was anything on or around the bus that would have attracted the wasp and thereby increased the risk of a wasp sting.

I conclude that the worker was not exposed to a higher level of risk to this hazard of nature than the public at large, as required by the Board policies. Therefore, I find that his injury did not arise out of his employment, as required by the Act. His claim is not accepted.

Conclusion

I deny the worker's appeal and confirm the review officer's March 5, 2007 decision.

The worker was not exposed to a higher level of risk of a wasp sting than the public at large; therefore, his injury did not arise out of his employment. His claim was properly denied.

No appeal expenses were requested and none are apparent. I make no order regarding such expenses.

Lois J. Williams
Vice Chair

LJW/ml