

WCAT Decision Number : WCAT-2008-02566
WCAT Decision Date: August 29, 2008
Panel: Daphne Dukelow, Vice Chair

Introduction

The worker was employed as a technician in a hospital when she made a claim for skin sensitivity in 1996. Initially, her compensation claim was accepted for permanent sensitivity to film processing chemicals with ongoing respiratory and skin irritations due to that sensitization. The skin irritations were accepted as chronic.

A case manager of the Workers' Compensation Board, now known as WorksafeBC (Board), decided on February 6, 2007 that the worker's claim would not be accepted for multiple chemical sensitivity. The worker sought a review of the case manager's decision.

The review officer's August 9, 2007 decision, now under appeal, confirmed the case manager's decision.

The worker now appeals to the Workers' Compensation Appeal Tribunal (WCAT) seeking a decision that her compensation claim should be accepted for multiple chemical sensitivity.

The employer is participating in this appeal.

Originally this appeal was scheduled to be heard by way of oral hearing. The parties were advised by letter dated November 28, 2007 that the oral hearing was scheduled for March 4, 2008. On January 24, 2008 another letter from the WCAT Registry confirmed the oral hearing date of March 4, 2008. By letter dated February 20, 2008, the worker's representative requested an adjournment. The request was based on the need to obtain further medical information. I did not grant this request because the worker had had a long period of time since the initial decision and she had additional time before that, after the 2006 WCAT decision, to obtain any additional medical evidence. The evidence on a 2007 claim accepted for chemical exposure was referenced in the representative's request for an adjournment. The worker received decisions on her 2007 claim in October and November 2007. By that time all the relevant medical information was on the file. The claim related to periods of time in February to July 2007 when the worker was off work. WCAT is required to provide decisions within a statutory time frame.

I directed the Registry staff to offer the opportunity of proceeding by way of read and review. The worker and her representative agreed to this method of appeal. The worker was provided with an opportunity to make submissions. None were provided. No new evidence was provided.

When I turned my attention to the matter in June 2008, an additional period of time (three months) had passed since submissions were requested in March 2008. No further submissions or new evidence was provided in that time period. As of June 17, 2008, I directed Registry staff to contact the worker's representative as to whether she had any additional medical evidence as of that time. WCAT did not request a submission from the worker's representative. However, she provided one dated June 19, 2008 along with attachments.

The employer's representative was then provided with an opportunity to provide a submission. The employer's representative provided a response dated July 10, 2008. The worker's representative was provided with an opportunity to reply. Her reply is dated August 1, 2008.

I noted that one of the documents said to be attached to the worker's submission was missing. The document was obtained and an opportunity was provided to the employer's representative to make a further submission about it. The employer's representative did make a submission. The worker's representative then had an opportunity to respond to the submission made on behalf of the employer. No further submission was provided.

I have considered all of these submissions and the evidence referenced in the worker's representative's submission of June 19, 2008 in coming to my decision.

Issue(s)

The issue in this appeal is whether the worker's claim should be accepted for multiple chemical sensitivity arising as a consequence of the worker's exposure to film processing chemicals or the other conditions accepted under the claim.

Background and Evidence

The worker had an earlier appeal to WCAT. In that March 14, 2006 decision, the WCAT panel directed the Board to make a decision about the compensability of the worker's sensitivity to multiple chemicals. The worker has a 1995 claim which originally was accepted for temporary aggravation of a pre-existing allergy. The worker recently has been provided with a permanent partial disability award (pension) under her 1995 claim.

The Board case manager requested an opinion from the Board medical advisor in Occupational Disease Services about the issue of multiple chemical sensitivity. He provided an opinion on January 30, 2007. He concludes by saying that he is not able to either support or refute the probability that a work exposure was the cause of the worker's "multiple health complaints which have been labelled" multiple chemical sensitivity. Earlier in the opinion he stated that there was little doubt that multiple chemical sensitivity syndrome exists although a cause is "far from obvious." He also noted that a "more appropriate label" for the syndrome is "idiopathic environmental intolerance" because it does not make any "unsupported judgement" about causation.

The case manager said in his decision that the Board medical advisor had not provided medical support for an occupational cause or aggravation of multiple chemical sensitivity. He noted that he considered section 99 of the *Workers Compensation Act* (Act) and found that there was no positive evidence of a work relationship. He found that there was no medical support or evidence to support the speculation that the worker was reacting to chemicals at work. He found the evidence was not evenly balanced. As a result, he did not find that the worker's multiple chemical sensitivity was due to the nature of her employment.

The worker requested a review of the case manager's decision. The review officer confirmed the decision. The review officer found that the Board medical advisor's opinion was persuasive in light of the lack of any evidence to the contrary. She referred to policy item #26.22 of the *Rehabilitation Services and Claims Manual, Volume 1* (RSCM I), which indicates that a speculative possibility of work relationship is not sufficient to establish a causal relationship for purposes section 6 of the Act. Section 6 of the Act is the section which provides for compensation for disability resulting from occupational disease due to the nature of employment.

The worker now has appealed to WCAT. As noted above, the worker's representative has supplied additional evidence. Both parties have provided written submissions. I will refer to these in my reasons, below.

Evidence and Reasons

This appeal was brought under section 239 of the Act. As a member of WCAT I am required to apply the policies of the Board (section 250(2) of the Act) unless they are patently unreasonable. Except as noted, the RSCM I applies since the worker's injury occurred before June 30, 2002. The former legislation applies for the same reason. The date of disablement from an occupational disease is taken as the date of injury (section 6(2) of the Act).

Section 250(4) of the Act provides that, if the evidence supporting different findings on an issue is evenly weighted, I must resolve that issue in a manner that favours the worker.

In her submission to me, the worker's representative has directed my attention to the evidence of two physicians which was on the claim file at the time of the earlier WCAT appeal. One of the specialists is an immunologist and the other an occupational medicine specialist. The immunologist has treated the worker since 1995. These documents were not specifically referenced by the Board medical advisor, the case manager or the review officer.

The occupational medicine specialist provided an October 19, 2005 letter which referenced her May 2004 assessment. In the assessment she discussed multiple chemical sensitivity and the worker's symptoms. The May 2004 assessment is not directed at the worker only. It includes information concerning co-workers. It does not provide an opinion about multiple chemical sensitivity, work causation, and the worker. It provides some general commentary, only, about that condition. The document, however, does support the diagnosis of multiple chemical sensitivity in the worker's case.

The occupational medicine specialist indicates that the worker is identified as "technician #1" in the assessment. The assessment relies upon what is known as the "consensus definition" of multiple chemical sensitivity. The assessment notes that four of the five technicians studied met the criteria for diagnosis of multiple chemical sensitivity. Their demographic characteristics match the typical patient profile. The technicians all experienced an identifiable environmental exposure (subject of the prior WCAT panel's decision), their symptoms involved more than one organ system, their symptoms reappear and subside in response to predictable stimuli and are elicited by exposures to a variety of chemicals even at low exposure levels. The assessment states that the final and important factor is that other differential diagnoses have been ruled out. The author concludes that four of the five technicians that were the subject of the assessment meet the criteria for multiple chemical sensitivity. The worker's representative submits that the worker is one of those four technicians because of the statement made by the study's author about the impact of the chemical sensitivity developed by "technician #1" on her general functioning. It is also of significance that the assessment notes the worker did not have a history of allergies, asthma, hay fever or eczema.

The symptoms the worker developed which were related directly to her exposure to the chemicals at work were accepted under the claim. She now seeks acceptance of a more generalized sensitivity to chemicals attributable to the exposure to the film processing chemicals and the allergic and or sensitization responses she developed to those chemicals.

I have found the immunologist's letter of January 6, 2005 helpful. Like the occupational medicine specialist, he does not refer to any previous allergic or sensitization conditions of the worker and I have considered this significant in coming to my decision. He states that she had no significant respiratory problems prior to her exposure to the film processing chemicals. He did not diagnose multiple chemical sensitivity syndrome. However, he explained why he considers the worker has developed "cross-reacting sensitivities" to other chemicals and non-specific irritant reactions to other substances. The immunologist states that this will likely be a life-long sensitivity. His prognosis is that the worker will likely have an increased sensitivity to developing chemicals and other non-specific irritants such as perfumes, cigarette smoke, and dust. He stated that he thought it unlikely that she will lose her sensitivities completely even with complete avoidance of developing chemicals for the rest of her life. He notes the similarity between the worker's case and that of workers who suffer from western red cedar asthma who remain sensitive to it indefinitely after removal from exposure to it and also have non-specific hyper-reactivity of their lungs indefinitely.

I accept this expert opinion to the effect that the worker has developed cross-reacting sensitivities to other chemicals and non-specific irritant reactions to other substances. This set of symptoms has been identified by the occupational medicine specialist, in the assessment referenced above, as multiple chemical sensitivity (see above). Although the immunologist does not use that term, I accept the term as the diagnosis for the worker's symptoms of respiratory and skin allergy problems.

The worker's representative has provided a copy of an occupational medicine specialist's opinion prepared for the equivalent of WCAT in Ontario. It is entitled, *Report to: Ontario Workplace Safety and Insurance Appeals Tribunal Regarding, Interim Decision No. 1888/051, WSIAT #03-2239*. This is an opinion about multiple chemical sensitivity. It contains responses to questions posed by the tribunal about a particular worker's claim for compensation. The exposure of the worker was to quite different chemicals than those to which this worker was exposed. As a result, I have not found this report particularly helpful except to confirm some of the general commentary of the two specialists who have provided medical evidence about the worker's whose appeal is before me.

The worker's representative has also submitted a copy of a 2007 study, entitled *The Medical Perspective on Environmental Sensitivities*, done for the Canadian Human Rights Commission. This is a report which covers more conditions than multiple chemical sensitivity. That condition is described as an aspect of environmental sensitivity. The report, while providing an interesting overview of the state of knowledge on the general topic, was not of particular assistance in deciding this appeal.

The worker's representative has also referred me to a recent decision of the Review Division. The May 16, 2008 decision on *Review Reference #: R0086989*. Although that review decision concerns another worker, the worker was employed in the same work and developed symptoms along the same lines as the worker's. The review officer was provided with medical evidence, concerning that worker, which is very similar to the evidence as in this worker's case. The Board medical advisor's opinion was very similar and the two specialists whose evidence supported the worker's appeal were the same as on this worker's claim. I reach the same conclusion as the review officer in the referenced review decision did for essentially the same reasons.

I consider that the evidence of the immunologist should be given much greater weight than the very general and ultimately inconclusive opinion of the Board medical advisor. The immunologist treated the worker over a period of time. He did not provide the diagnosis of multiple chemical sensitivity. However, he did indicate that the worker has become sensitized to numerous chemicals and substances in the general environment. He has explained why this is related to the compensable conditions which have been accepted as due to the worker's exposure to the film chemicals in her employment.

The opinion contained in the assessment by the occupational medicine specialist is supportive of the diagnosis of multiple chemical sensitivity, although I acknowledge that the specialist merely said the worker met the criteria for that condition. The Board was asked to adjudicate that condition as a compensable consequence of the worker's previously accepted conditions. Like the review officer in the decision referenced above, concerning another worker, I find that on the balance of probabilities the onset of the worker's sensitivities to multiple chemicals, which I equate with multiple chemical sensitivity, is a compensable consequence of the worker's occupational exposure to film processing chemicals. As the review officer pointed out in his decision, policy item #22.00 only requires that the evidence support a conclusion that the occupational exposure was a "significant cause" of the condition. I consider that the evidence to which I have referred does support that conclusion. Although policy item #22.00 is written in terms of compensable consequences of injuries, it has application in the case of a compensable consequence of an occupational disease or diseases. The explanation offered by the immunologist is that the reactions produced by the worker's exposure to the film processing chemicals at work have led to the worker's sensitivities to other chemicals and substances. This means that the exposure to the film processing chemicals was of some causative significance in producing the worker's later condition of being sensitive to multiple chemicals and substances.

The Board will need to determine the benefits to which the worker is entitled as a result of my finding.

Section 7 of the *Workers Compensation Act Appeal Regulation* authorizes WCAT to make certain orders about expenses related to appeals. No expenses were requested.

Conclusion

I allow the worker's appeal. I vary the review officer's decision of August 9, 2007. I find that the worker's multiple chemical sensitivity is a compensable consequence of the exposure to film processing chemicals and the conditions accepted as arising from that exposure.

Daphne Dukelow
Vice Chair

DD/gw