

WCAT Decision Number : WCAT-2009-01780
WCAT Decision Date: July 02, 2009
Panel: Kathryn P. Wellington, Vice Chair

Introduction

- [1] This appeal concerns the worker's claim for a condition of Multiple Chemical Sensitivity (MCS).
- [2] In a decision letter dated February 12, 2008, a case manager of the Workers' Compensation Board¹, (Board), advised the worker a Board medical advisor had indicated that MCS is idiopathic² in nature. There was no medical evidence that the worker's employment caused her MCS condition. The case manager disallowed the worker's claim.
- [3] The worker disagreed with this decision and applied for a review by the Board's internal Review Division.
- [4] In an October 8, 2008 decision, (*Review Reference #R0092086*)³, a review officer confirmed the case manager's decision and denied the worker's request for review.
- [5] Now, the worker has commenced an appeal to the Workers' Compensation Appeal Tribunal (WCAT). The worker's union has retained legal counsel to represent the worker. The employer is participating in this appeal and a private consultant represents the employer.

Issue(s)

- [6] Is the worker's diagnosed MCS due to the nature of her employment? Specifically, was that condition caused by the worker's known occupational exposure to processing chemicals?

Jurisdiction

- [7] The worker brings this appeal under section 239(1) of the *Workers Compensation Act* (Act), which confers on WCAT the jurisdiction to hear appeals of final decisions made by review officers.

¹ The Workers' Compensation Board operates as WorkSafeBC.

² The Encarta Dictionary defines idiopathic as describing "a disease or disorder that has no known cause".

³ This decision is available on the Board's website, (www.WorkSafe.BC.com).

- [8] I may consider all questions of fact and law arising in an appeal but legal precedent does not bind me (section 250(1)). I must make my decision on the merits and justice of the case, but in doing this, I must apply a policy of the Board's board of directors that is applicable in the case. I have exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact, law and discretion arising or required to be determined in an appeal before me (section 254).
- [9] This is an appeal by way of rehearing, rather than a hearing *de novo* or an appeal on the record. I have jurisdiction to consider new evidence, and to substitute my own decision for the decision under appeal.
- [10] This appeal involves a compensation issue. Therefore, in this case the standard of proof is the balance of probabilities, subject to section 250(4) of the Act. Section 250(4) states that on an appeal respecting the compensation of a worker if the evidence supporting different findings on an issue is evenly weighted, the issue must be resolved in favour of the worker.

Background Information and Evidence

- [11] The worker's claim has been the subject of several previous appeals and other panels have set out the history of her claim in their decisions, including *WCAT-2006-01155-RB*⁴. The matter I must decide involves the same history and evidence, except that I will be considering the consequences of the worker's previous occupational exposure to chemicals. There is very little in the way of new chronology or new evidence that was not previously described by panels in their earlier decisions. In my decision, I will not repeat the claim history in its entirety, but will supply only those details necessary to frame the matter I must decide in the worker's current appeal.
- [12] The worker is 56 years old. In 1995, the employer, a hospital society, employed the worker as a magnetic resonance imaging (MRI) technologist. The worker had worked in this position on a part-time basis since 1994.
- [13] In 1995, the worker and a number of her co-workers had a prolonged exposure to film processing chemicals in the workplace, and they began to develop a number of symptoms, which they eventually attributed to their work.
- [14] On a June 10, 1995 application for compensation, the worker indicated that she had worked with a new MRI scanner with a faulty ventilation system, which blew recycled air (probably from the processing area) directly over the technologists' main work area⁵. The worker indicated that her symptoms usually disappeared within a few hours, or with

⁴ The interested reader may access this decision on the WCAT website (www.wcat.bc.ca).

⁵ The worker was one of a group of technologists and radiologists exposed as a result of this event. They filed a joint compensation claim.

the use of anti-histamines. She said this exposure had sensitized her to air borne substances, particularly chemicals and pollens, resulting in hay fever-type symptoms, irritation and a facial rash. In addition, the worker complained of hives on her forehead, some occasional chest tightness, headaches, occasional vertigo, sore throat, a chemical taste in her throat, one episode of chest wheezing and a sensation of pressure behind her sternum.

- [15] Due to her long term exposure, it was concluded that the worker had developed sensitivity to one or more of the film processing chemicals. That sensitivity was responsible for producing skin irritations, symptoms of rhinitis/sinusitis, pharyngitis and respiratory irritation.
- [16] The Board accepted the worker's claim for temporary respiratory irritation and skin irritation up to May 16, 1995. The worker's respiratory and skin irritations are ongoing and chronic.
- [17] Later, the Board made several decisions concerning the nature and extent of the worker's further entitlement to benefits, and reopened her claim for further healthcare benefits.
- [18] In 2000, the Board informed the worker that she was not entitled to preventative vocational rehabilitation benefits, since the x-ray processing methods used at work had changed and she was no longer exposed to the film processing chemicals.
- [19] The worker disputed three decisions made by Board officers, concerning her benefit entitlement under the 1995 claim. Specifically, the worker disputed the Board's decision that her occupational exposures did not have causative significance in the development of rosacea⁶, sinusitis/rhinitis and pharyngitis. The worker asserted that she had experienced symptoms beyond November 17, 1997, due to occupational exposures and she also asserted that she was entitled to preventative vocational rehabilitation assistance. These disputed decisions were decided in a WCAT appeal.
- [20] In November 2005, WCAT held hearings to consider the worker's appeals, together with a number of appeals from five of her co-workers. At the oral hearing concerning these appeals, the worker sought acceptance of a number of symptoms under her claim, including:
- itchy red forehead,
 - headaches,
 - sore throat,

⁶ A Medical Dictionary of Medical Related Terminology defines this condition as "A facial skin disorder which results from chronic inflammation of the cheeks, nose, chin, forehead and/or eye lids. This is often demonstrated by increased redness or acne-like eruptions in these locations on the face."

- fatigue,
- difficulty breathing,
- metallic taste in the mouth,
- sneezing,
- muscle aches,
- flu-like feeling,
- red itchy eyes,
- upset rumbling stomach,
- sudden diarrhoea, and
- mucous membrane sores, especially in the nose and lip.

- [21] She listed a variety of substances which trigger these symptoms, including: x-ray film, developer/fixer chemistry, perfume, cologne, and other scented products, cleaning products, paint, new furniture, new houses, hair products, and face creams.
- [22] The worker sought acceptance of all of these symptoms and a finding that she was entitled to preventative vocational rehabilitation, should the need arise.
- [23] In her March 9, 2006 decision (*WCAT-2006-01155-RB*), the WCAT vice chair found that the worker had developed sensitivity to film processing chemicals, which likely is permanent. The vice chair also found that the worker's occupational exposures caused her rosacea, and that the worker's rhinitis/sinusitis and pharyngitis likely were chronic symptoms resulting from the worker's permanent chemical sensitivity. The panel found that the worker was not entitled to preventative vocational rehabilitation assistance in February 2002, but added that this did not preclude the Board from exercising its discretion under section 16 of the Act, should it deem that appropriate to do at some point in the future.
- [24] In support of her WCAT appeal, the worker and her co-appellants provided a good deal of evidence, some of which related to MCS, because there was a concern that due to the exposure to processing chemicals the workers had been cross-sensitized to other substances. This evidence included various medical opinions and articles concerning MCS. For the sake of brevity, I will not set out that evidence at this point in my decision but will discuss the relevant evidence when I present my findings and reasons.
- [25] The prior WCAT vice chair concluded that she did not have the jurisdiction to decide whether the worker had developed MCS, due to her occupational exposures.
- [26] In 2007, the Board granted the worker a permanent disability award of 3.0% of a total disability for her compensable Acne Rosacea, Rhinitis/Sinusitis, and Pharyngitis. These ratings were based on the medical information documented on file and were made with reference to the Board's *Additional Factors Outline*.

- [27] Meanwhile, starting in 2006, through her representative, the worker asked the Board to provide a decision as to whether she had developed MCS due to her exposures in the workplace. At the same time, the other co-appellants also approached the Board for similar decisions as to their entitlement.
- [28] On receiving this request, the case manager requested a medical opinion from a Board medical advisor.
- [29] In a February 12, 2008 claim log memo, a Board medical advisor provided the requested opinion, noting that MCS more properly is labelled idiopathic environmental intolerance (IEI). A review of the medical and scientific literature indicated that the cause of the condition is not known. In providing his medical opinion, the Board medical advisor wrote, in part, as follows:

In this case, there are several workers with similar occupational chemical exposures who have developed similar health complaints. **This certainly suggests an occupational cause in spite of the inability of the medical profession to supply objective supporting evidence.**

Based on the above and without speculating, I can neither support nor refute a probable occupational cause or aggravation of IEI...

[emphasis added]

- [30] Based on this medical opinion, the case manager disallowed the worker's claim for MCS, because there was no medical evidence that work had caused the worker's condition.
- [31] The worker disputed this decision and, when she was not successful on her request for a review, she instituted her current appeal. Meanwhile, the co-workers involved in the earlier appeal also received negative decisions and each proceeded separately to pursue their entitlement through the review and/or the appeal process.

Hearing Evidence

- [32] WCAT convened an oral hearing on March 26, 2009 to consider the worker's appeal. The worker attended, accompanied and represented by legal counsel, retained by her union. The employer is inactive but its successor indicated an interest to participate in the appeal. Neither the successor employer nor its representative attended the hearing.

- [33] Prior to the hearing, the worker's legal counsel submitted a document, comprising 21 scientific and medical articles, concerning multiple chemical sensitivities. The worker's legal counsel also provided these articles to the employer's consultant prior to the hearing.
- [34] At the hearing, I received into evidence and marked as exhibit #1 a chart of the worker's restrictions and irritants.
- [35] The worker submits that her MCS is the result of her exposures to film processing chemicals in 1994 and 1995. She seeks acceptance of the condition of MCS under the claim, and a referral back to the Board. She also seeks reimbursement for time loss to attend the hearing.
- [36] The worker affirmed to tell the truth. A summary of her evidence follows.
- [37] According to the worker, her general health is good. She has no known systemic diseases. She does experience a seasonal allergy each March. According to the worker, she has had mild hay fever since 1992, but has not needed to take time away from work. She uses antihistamines when necessary.
- [38] The worker has been a technologist since 1971, and she has worked with MRI technology since 1985. Prior to 1994/1995, she had no previous problems with x-ray chemicals, although she had considerable past exposure to these processing chemicals.
- [39] The worker briefly described the manner in which she became sensitized to film processing chemicals. In January 1994, the employer started a renovation project to install a new scanner. In June 1994, the staff moved into the newly renovated area. Several of the staff became generally unwell. They all experienced various, but similar, symptoms at work, while they felt better on their days off work.
- [40] In about January 1995, the workers started to discuss what was happening and they investigated to determine the cause of their symptoms. They discovered they had been exposed to low-level fumes from the film processor.
- [41] The employer removed the processor, but the workers continued to handle films for a further 18 months. According to the worker, a "chemical soup" covered the films. While the employer has made a number of attempts to decrease or eliminate workplace exposures and by 2000, no film was present in the work area, to some extent, exposure continues.
- [42] The worker described how her symptoms have progressed over time. She indicated that, in about 1999 or a bit later, her symptoms lessened somewhat.

- [43] Currently, she experiences rosacea, hives, and a flushed face and neck daily. These symptoms are worse if the worker is near a photocopier machine. In addition, the worker experiences colds, rhinitis/sinusitis, and a cough. She has intermittent diarrhoea three or four times a month (sometimes, in response to ingesting foods). Her symptoms last a matter of hours.
- [44] The worker also experiences severe, unexplained fatigue when exposed to hair dressing odours⁷, paint or film. (This last occurred in 2003). Associated with this fatigue, the worker also experiences aching, flu-like symptoms, and headaches. These headaches happen at work; they are sudden and are alleviated by going outside for fresh air. The worker develops itchy, red eyes at work for no apparent reason.
- [45] The worker experiences ear discomfort when she is exposed to perfume or when she is exposed to hair salon odours. She also described a condition of “brain fog”, where she feels as though she cannot function, which occurs with severe exposures.
- [46] The worker listed a number of triggers for her symptoms, including:
- Paint
 - Dust
 - New furniture
 - Cleaning solutions, especially scented ones
 - Bleach
 - Perfume and other scented products, such as skin lotion.
 - Laundry products
 - Diesel fumes and other fumes
 - Sulphites
 - Ammonia
 - Permanent wave solutions
 - Glues
 - Fax machines and photocopiers
 - Smoke
 - Down comforters and pillows.
- [47] The worker’s symptoms sometimes have developed in circumstances where she has not been exposed to film processing chemicals. As an example, the worker said she moved into a new office in July 2003. New paint and new furniture was present. The area had poor ventilation. Both the worker and her co-worker developed symptoms. She missed a few days of work. She applied for compensation and the Board accepted her claim.

⁷ She explained that her work area is located in an area close to the facility where long term care patients have their hair styled and where they have permanent waves.

- [48] In the fall of 2003, the worker again developed symptoms. The building in which she worked was close to a location where the roofs were being tarred. The air intake vent was near a newly tarred roof. The worker experienced a recurrence of her symptoms.
- [49] On still another occasion, the worker entered a new housing unit and had to leave when her symptoms recurred. She also described other incidents in November 2004 and in 2005.
- [50] In 2005, the worker was scheduled to undergo some training at Lion's Gate Hospital. She was unable to complete the third day of the program, because of her increased symptoms, and she had to go home.
- [51] According to the worker, because she works in a job share, her time off between shifts allows for recovery from her exposures. To date, she has not lost any time from work, due to MCS condition, however her work partner (also one of the workers exposed to the film processing chemicals) has been quite ill. The Board has accepted the work partner's claim for MCS and has awarded her partner a permanent disability award for this condition.
- [52] The worker said that because of her MCS, she has had to alter many aspects of her life. She cannot work full time. In order to eliminate her exposure to scents, she has had to change the products she uses to clean. Her employer has had to make modifications in the workplace.
- [53] The worker said she has been compelled to alter her career path. She might have gone to work at another health care facility but is reluctant to do so, given her many sensitivities. No one else in her family has this sort of problem.
- [54] The worker underwent allergy testing in 2003, performed by immunologist, Dr. Stark. In 1994/1995, she had skin patch testing, which demonstrated allergies to perfume and possibly to latex. She was not tested for sensitivity to sulphites. Dr. Stark undertook a number of other tests, including lung function studies. The worker has no known underlying systemic diseases.

Submissions

- [55] On her notice of appeal from the Review Division decision, the worker asserted that she has developed MCS because of her exposure to film processing chemicals under this claim. She seeks acceptance of MCS under the 1995 claim.
- [56] The worker asserts that the medical evidence filed in the previous WCAT appeal supports a finding that she suffers from multiple chemical sensitivities.

- [57] The employer's consultant wrote to the Review Division on June 25, 2008, concerning acceptance of MCS under the claim. The employer took a neutral position on this matter and did not provide a submission.
- [58] Through her legal counsel, the worker filed a very comprehensive March 26, 2009 written submission to WCAT in support of her appeal.
- [59] This submission touches on a number of noteworthy points, and I think these are worth repeating in this decision.
- [60] The worker asserts that the Board has employed an incorrect test to determine that she does not suffer from compensable MCS. Furthermore, the preponderance of medical and scientific evidence establishes that the worker does, indeed, suffer from MCS. There is sufficient evidence to meet the proper legal test for acceptance of her claim.
- [61] In support of the appeal, the worker relies on the medical opinions of Drs. Stark and Yassi, dated January 6, 2005 and May 2004, respectively. The worker submits that there is a huge body of recent medical and scientific literature which now soundly supports MCS as a diagnosis and which has explained how this condition may develop. The worker referred to the volume of bound documents, comprising 21 articles, submitted in support of her appeal.
- [62] The worker made submissions, concerning the relevant Board policy, sections of the Act, and other relevant decisions she wishes me to consider.
- [63] The worker submitted that the evidence establishes a strong probability that the work had causative significance in the development of her MCS. She has established, at the very least, that the possibilities are evenly balanced. To say that it was only speculative to ascribe her ongoing wide spectrum of symptoms to the work exposure would be entirely unreasonable and unsupported by the facts.
- [64] The worker asks me to consider that:
- The Board already has accepted that she has a compensable sensitivity to processing chemicals;
 - She meets virtually all the criteria articulated as identifying MCS in the foremost literature on the subject;
 - She has no other identifiable organic or psychiatric pathology to explain these symptoms;
 - Other than a mild seasonal hay fever condition, the worker has no significant history of any kind of allergies or sensitivities. Drs. Stark and Yassi have considered this condition of insufficient importance to alter their diagnosis of MCS;
 - MCS has been diagnosed by an allergist and in immunologist with extensive experience in this area;

- All six of the MRI technologists who were exposed to the film processor developed symptomatology and were subsequently accepted as having, at least, sensitivity to processing chemicals.

[65] The worker provided the decision of another WCAT panel in the successful appeal of one of the other MRI technologists for my consideration (*WCAT 2008-02566*). This decision also contained a reference to a further Review Division decision, allowing the request for review from another of the MRI technologists.

Findings and Reasons

[66] WCAT panels are bound by published Board policies, pursuant to the *Workers Compensation Amendment Act (No.2), 2002* (Bill 63). The worker's occupational exposure occurred in 1995. Accordingly, in deciding this appeal, I have applied relevant policy as set out in the *Rehabilitation Services and Claims Manual, Volume I (RSCM I)*.

[67] In particular, I have reviewed the following policy items: #22.00; #26.22; #97.00 through #97.60. Policy item #22.00 concerns compensable consequences of work injuries⁸. It states, in part that:

Once it is established that an injury arose out of and in the course of employment, the question arises as to what consequences of that injury are compensable. The minimum requirement before one event can be considered as the consequence of another is that it would not have happened but for the other.

Not all consequences of work injuries are compensable...If the work injury was a significant cause of the further injury, then the further injury is sufficiently connected to the work injury so that it forms an inseparable part of the work injury. The further injury is therefore considered to arise out of and in the course of employment and is compensable.

[68] Notwithstanding that I am dealing with an occupational disease as opposed to a personal injury, I conclude that the principles set out in policy item #22.00 may also be applied to adjudication of occupational disease claims.

⁸ This policy, found in the RSCM in chapter 3, came into effect on February 1, 2004, and applies to all decisions, including appellate decisions, made on or after February 1, 2004 regardless of the date of the original work injury or the further injury.

- [69] Policy item #26.22 concerns Non-Scheduled Recognition and the Onus of Proof, and states, in part, as follows:

...if, on weighing the available evidence, there is then a preponderance in favour of one view over the other, that is the conclusion that must be reached. ...

...

...if the weight of the evidence suggesting the disease was caused by the employment is roughly equally balanced with evidence suggesting non-employment causes, the issue of causation will be resolved in favour of the worker. This provision does not come into play where the evidence is not evenly weighted on an issue.

If the Board has no or insufficient positive evidence before it that tends to establish that the disease is due to the nature of the worker's employment, the Board's only possible decision is to deny the claim.

- [70] Policy item #97.00 concerns evidence and reiterates much of the principle set out in policy item #26.22.
- [71] In denying the worker's request for review, the review officer was unable to clearly connect the worker's various symptoms at home and at work with her prior work exposures. She concluded that Dr. Stark had speculated in concluding that the worker's additional sensitivities to non-specific irritants had resulted from her work exposures.
- [72] The review officer noted that the worker had a prior history of seasonal allergies.
- [73] In assessing Dr. Yassi's exposure impact report, the review officer concluded that the evidence did not establish a conclusive medical link between the worker's other reported sensitivities and the occupational exposures between 1994 and 1995.
- [74] The review officer preferred the February 12, 2008 opinion of the Board medical advisor. The Board medical advisor could neither support, nor refute, a probable occupational cause or aggravation without speculating. The review officer found that the evidence of an occupational relationship was speculative. There was no new medical evidence before her to support of a diagnosis of MCS or a relationship to the worker's prior occupational exposures. As a result, the review officer concluded that the worker's symptoms are not compensable under section 6(1) of the Act.

- [75] In reviewing the evidence, I conclude that the most pertinent medical evidence relating to this matter is contained in the medical opinions of Drs. Stark and Yassi, together with the opinion of the Board medical advisor.
- [76] Dr. Stark is an immunologist while Dr. Yassi is an occupational medicine specialist. Dr. Stark has treated the worker, seeing her initially in November 1997. Dr. Yassi interviewed the worker and her co-workers and did an assessment of the work place exposures, and provided a review of the relevant medical literature concerning MCS.
- [77] In his January 6, 2005 medico-legal opinion, Dr. Stark set out a lengthy history of the worker's complaints and he provided an opinion that the worker's prolonged exposure to x-ray developing fumes was of causative significance in her development and worsening of her respiratory and skin allergy problems. Furthermore, he gave an opinion that the worker had developed cross-reacting sensitivities to other chemicals and that she experiences non-specific irritant reactions to other substances. He opined that this likely will be a life-long sensitivity. Dr. Stark set out an explanation as to how this occurred. In my view, this opinion answered the question of why the worker experienced symptoms not only at work but at home on occasion as well. Coming as it does from an expert speaking in his area of expertise, I do not view this opinion as speculative.
- [78] Dr. Yassi did an assessment of the health impact of x-ray processing chemical exposure in imaging technologists, including the worker, in May 2004. She included in her assessment report a literature review which included the health effects of exposure to x-ray processing chemicals and to chemicals used in radiology in general. I found this part of the assessment interesting, since it listed many of the symptoms the worker has described. Dr. Yassi also described some of the problems associated with specific exposure to glutaraldehyde (one of the constituents of x-ray processing chemicals). She noted that glutaraldehyde is a recognized sensitizer, as well as an irritant to skin, respiratory tract, eyes, nose and throat, and exposure also is associated with headache.
- [79] Dr. Yassi discussed MCS, and her assessment report indicates that the worker meets the criteria for acceptance of MCS.
- [80] As noted earlier, the Board medical advisor reviewed the evidence and was not able to provide an opinion as to whether the worker's MCS was due to her earlier work exposure. He did not exclude the possibility. The Board medical advisor concluded that the fact that all the technologists developed similar health complaints certainly suggested an occupational cause.

- [81] I allow the worker's appeal for the reasons which follow.
- [82] In the first place, I accept the worker's assertion that her symptoms meet the criteria for a diagnosis of MCS. Whether one uses this term, or some variation of it, the fact remains that the worker's symptoms involve more than one organ system, her symptoms reappear and subside in response to predictable stimuli and they are elicited by exposures to a variety of chemicals even at low exposure levels. Furthermore, other differential diagnoses have been ruled out.
- [83] Secondly, I am satisfied that the medical evidence is sufficient to support a conclusion that the worker's MCS, more likely than not, is causatively related to her exposure to film processing chemicals at work. The work exposure need not be the only cause, or even the primary cause, in order for the condition to be compensable. The work exposure need only be of causative significance.
- [84] Apart from the fact that the worker had mild hay fever prior to her work exposures (which has been assessed as of no significance), no alternate cause for the worker's symptoms has been postulated. The evidence does not suggest that the worker's hay fever was growing worse.
- [85] I rely primarily on Dr. Stark's medico-legal opinion in support of my conclusion that the work exposure had causative significance in producing the worker's symptoms. Although Dr. Stark did not use the term MCS, he has used the phrase "cross-reacting sensitivities", which I take to mean MCS. I accept that Dr. Stark has provided an expert opinion and that in making this opinion, he was speaking within his area of expertise. I attach considerable weight to his opinion.
- [86] I also attach considerable weight to the evidence provided by Dr. Yassi. She also has had an opportunity to interview the worker and the information she provided in her assessment report was germane to the circumstances in which the worker developed her symptoms.
- [87] I consider that Drs. Stark and Yassi have provided reasoned opinions supported by a thoughtful medical foundation. In my view, their medical opinions go far beyond what the Board defines as a "speculative possibility". Their opinions are more in the order of inferences.
- [88] In a noteworthy decision (*WCAT-2008-02713*), a WCAT panel provided some helpful comments concerning the differences between inference and speculation.

[89] The panel wrote, in part, as follows:

Conjecture or speculation does not constitute evidence. In *Jacques v. British Columbia Council of Human Rights* [1988] B.C.J. No. 990 (QL), (May 5, 1998), the B.C. Court of Appeal applied the following analysis of the distinction between conjecture and inference from *Caswell v. Powell Duffryn Associated Collieries Ltd.*, [1940] A.C. 152 (H.L.):

...the precise manner in which the accident occurred cannot be ascertained as the unfortunate young man was alone when he was killed. The court therefore is left to inference or circumstantial evidence. *Inference must be carefully distinguished from conjecture or speculation. There can be no inference unless there are objective facts from which to infer the other facts which it is sought to establish.* In some cases the other facts can be inferred with as much practical certainty as if they had been actually observed. In other cases the inference does not go beyond reasonable probability. *But if there are no positive proved facts from which the inference can be made, the method of inference fails and what is left is mere speculation or conjecture.*

[at pgs. 169-170, italic emphasis added]

[90] I believe it is possible to infer that the worker's MCS is attributable, either wholly or in significant part, to her exposure to film processing chemicals because of the following facts:

- The worker has a known, compensable sensitivity to processing chemicals.
- There is a good temporal relationship between the exposures and the onset of the workers' symptoms.
- The symptoms the Board has accepted as being due to the work exposure are similar to those now attributable to her MCS. All of the symptoms developed in the same timeframe.
- Of the MRI technologists exposed to the chemicals, all subsequently have developed symptoms which the Board has accepted as an occupational disease. Several of the MRI technologists also have developed MCS, which has been accepted, (either on review to the Review Division or on appeal to WCAT) as a compensable consequence of the previous work exposure.
- The literature provided in support of the appeal describe virtually all of the symptoms the worker has reported.

- [91] In her bound documents, the worker has provided a number of recent scholarly articles, concerning MCS. These articles provide further explanation for the manner in which this condition develops.
- [92] The Board medical advisor has indicated that MCS is properly termed “idiopathic environmental intolerance”. He has observed that there is little argument that the condition does exist and there is much speculation on the cause, none of which, in his view, is supported by objective medical evidence. The term “idiopathic” might suggest that MCS never can be attributed to work. The fact that the medical community currently is unable to state with certainty the cause of MCS does not mean that that condition may not be ascribed to work place exposures.
- [93] There exists a body of appeal decisions in which panels have accepted that MCS was due to the nature of the worker’s employment. Since other panels have found as fact that MCS can be due to the nature of the employment, I do not consider that the term “idiopathic” presents any barrier to acceptance of this worker’s claim, as long as the claim meets the test for acceptance as an occupational disease.
- [94] I have considered a number of previous Review Division and WCAT decisions concerning MCS. *WCAT-2008-02566* (which concerns one of the worker’s co-workers), is particularly instructive and is based upon evidence similar to that which I have been provided. I am not bound by that decision but I find the rationale the vice chair has provided instructive and helpful.
- [95] In that decision, the vice chair noted a May 16, 2008 decision (*Review Reference #R0086989*), which involved another of the technologists. She wrote, in part:

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.

- [96] I agree with the reasons the WCAT vice chair has given in her decision and I adopt them as part of my reasons for allowing the worker's appeal.
- [97] I find that the worker's MCS is a compensable consequence of her work place exposure to film processing chemicals.

Conclusion

- [98] I find that the worker developed MCS, due wholly or in significant part, to her exposure to film processing chemicals at work. MCS is a compensable consequence of the worker's accepted condition under her 1995 claim.
- [99] I allow her appeal and vary the review officer's October 8, 2008 decision.
- [100] The worker lost time (½ day) to attend her hearing and she travelled from her place of work to WCAT's Richmond office, where the hearing was held. The worker is entitled to receive reimbursement for her hearing expenses, pursuant to the *Workers Compensation Appeal Regulation*, section 7 and in accordance with item #13.22 of the MRPP.

Kathryn P. Wellington
Vice Chair

KPW/tv