

WCAT Decision Number: WCAT-2012-01374
WCAT Decision Date: May 24, 2012
Panel: Jill Callan, Vice Chair
Warren Hoole, Vice Chair
Debbie Sigurdson, Vice Chair

Introduction

- [1] The Workers' Compensation Board¹ (Board) accepted the worker's claim for a concussion, a neck and right shoulder strain, and an undisplaced fracture of the tip of the spinous process at C7 as arising out of and in the course of her employment on January 9, 2002. The Board has accepted the worker developed permanent chronic pain and depression as consequences of her work injuries.
- [2] On April 26, 2005 the Board provided the worker with a permanent partial disability award on a loss of function basis equal to 2.5% of total disability, effective May 5, 2003, to compensate for her permanent chronic pain. The Board denied the worker a loss of earnings award. Subsequent Review Division and Workers' Compensation Appeal Tribunal (WCAT) decisions have returned the issue of the worker's entitlement to a loss of earnings award back to the Board for further consideration.
- [3] On March 23, 2009 a Board officer in Disability Awards concluded the worker was entitled to a partial loss of earnings award of \$1,613.59 per month effective May 5, 2003. The Board officer concluded the worker would have been capable of working 20 hours per week as a bookkeeper earning \$1,341.00 per month, or \$18.00 per hour. The worker requested a review of that decision.
- [4] On August 27, 2009 a review officer confirmed that the worker was capable of working 20 hours per week as a bookkeeper by May 5, 2003². He varied the Board decision to find that the worker would maximize her earnings in that occupation at \$11.85 per hour. The worker has appealed this decision. She disputes that the position of bookkeeper is either suitable or reasonably available to her in the long term, and seeks an increase to her loss of earnings award.

Issue(s)

- [5] Did the Board properly assess the worker's entitlement to a permanent partial disability award calculated on a loss of earnings basis?

¹ Operating as WorkSafeBC.

² See *Review Reference #R0104215*.

Jurisdiction

- [6] Section 239(1) of the *Workers Compensation Act* (Act) provides that a decision made by a review officer under section 96.2 may be appealed to WCAT. Section 250(1) and section 254 of the Act allow WCAT to consider all questions of law and fact arising in an appeal, subject to section 250(2), which requires that WCAT apply the relevant Board policy, and make its decision based on the merits and justice of the case.
- [7] The standard of proof in compensation matters is the balance of probabilities, subject to the provisions of section 250(4) of the Act, which provides that when the evidence on an issue is evenly weighted, the matter is resolved in favour of the worker.
- [8] The worker's entitlement in this case is adjudicated under the provisions of the Act that preceded changes contained in the *Workers Compensation Amendment Act, 2002* (Bill 49). 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.
- [9] The worker's appeal was originally considered by a WCAT panel in *WCAT-2010-01367*. That decision was the subject of a request for reconsideration, which was denied on common law grounds³. The worker requested a judicial review of the two WCAT decisions.
- [10] In *Young v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2011 BCSC 1209 (the judicial review decision), Humphries J. set aside the two WCAT decisions and remitted the matter back to WCAT for reconsideration on the basis of her reasons.
- [11] The WCAT chair has appointed a three-member non-precedent panel to decide this appeal pursuant to section 238(5) of the Act.
- [12] The employer was provided with notice of the appeal but is not participating. The worker is represented by legal counsel. The worker, her representative, and a Board vocational rehabilitation consultant attended an oral hearing on February 22, 2012.

³ See *WCAT-2010-03282*.

Background and Evidence

- [13] The employer operates a communications company. This now 67-year-old worker was employed as a customer service representative at the time of her injury.
- [14] On January 9, 2002 the worker was struck on the back left side of her head when a fold-up banquet table leaning against a wall fell on her.
- [15] The history of the worker's claim is set out in *WCAT-2008-03456* and we refer the reader to that decision. We will not repeat the claim history in this decision except to the extent necessary to decide the issue.
- [16] The worker commenced a graduated return to work on April 7, 2003, and progressed to full-time hours by May 5, 2003, at which time the Board terminated her temporary disability benefits. The employer laid her off on July 4, 2003.
- [17] The worker attended a functional capacity evaluation and on November 3, 2005, an occupational therapist reported that the worker had participated with full effort, such that the results were reliable. The occupational therapist concluded that while the worker would be able to perform some of her pre-injury job functions, she was precluded from returning to her pre-injury employment due to limitations in her ability to engage in prolonged standing, engage in medium to heavy lifting, and engage in prolonged computer work.
- [18] Dr. Bingen, psychologist, assessed the worker on April 21, 2006 and provided an opinion that the worker's depressive symptoms would cause her to become fatigued over the course of a regular workday. She would also likely experience difficulties with concentration, distractibility, irritability and impatience with co-workers. In his assessment report Dr. Bingen noted the worker had completed the necessary courses for a business degree except for a required accounting class.
- [19] Dr. Strauss, psychologist, assessed the worker on April 11, 2007; however, the test results were variable and Dr. Strauss questioned the worker's motivational status. Dr. Strauss was not able to make any firm diagnostic conclusions regarding the worker's psychological status. She reported the worker presented with significant fatigue, which would impair her ability to maintain a regular work schedule.
- [20] In *WCAT-2008-03456* (dated November 19, 2008), the panel considered the worker's entitlement to a loss of earnings assessment. The panel found the worker could not return to her pre-injury employment. While the worker had been able to return to work for a brief period of time in 2003, she was not able to perform her full duties. The worker's pain had subsequently worsened. The panel also found that an accommodated or alternate position with the accident employer was not reasonably available. She directed the Board to provide the worker with a new decision on her entitlement to a

loss of earnings award after conducting an employability assessment and taking into account all of the worker's compensable limitations.

[21] The Board has accepted the following limitations arise from the worker's permanent conditions:

- Inability to lift and carry more than five pounds on an occasional basis;
- Difficulty with sustained computer-based work due to limitations related to sustained neck flexion;
- Difficulty tolerating sustained periods of standing;
- Sedentary to limited strength capacity with ability to perform certain aspects within;
- Light strength capacity;
- Problems with concentration, distractibility, irritability, and impatience;
- Issues with fatigue; and
- Due to focus on pain and associated symptoms and beliefs, and her physical stamina, she
 - Likely would not be able to maintain a full time position; and
 - Would need frequent breaks.

[reproduced as written]

[22] A Board vocational rehabilitation consultant completed an employability assessment on February 10, 2009 after meeting with the worker to discuss possible alternate part-time employment as a bookkeeper. The vocational rehabilitation consultant was of the opinion the worker was capable of managing a daily routine that required she get up at a set time based on the worker's ability to "work out at a gym" (regularly attend an aqua therapy class). The worker was of the opinion that part-time employment as a call centre representative was not suitable. The vocational rehabilitation consultant formed the opinion from her meeting with the worker that the worker believed she was unemployable, as any suggestion for alternate employment was met with barriers and resistance.

[23] The vocational rehabilitation consultant reviewed the duties, physical requirements, and employment requirements for a bookkeeper, and concluded that the worker's transferable skills, employment history, education and labour market information supported this choice of employment. She also reviewed statistical information regarding the availability and average earnings of bookkeepers. The vocational rehabilitation consultant noted that employers often employ bookkeepers to complete books and payroll and "have no difficulty with the bookkeeper doing the work from their home as space is limited in their office". The vocational rehabilitation consultant noted this type of work would allow the worker to work from home, take breaks as needed, and work part time. The Board would provide the worker with training and ergonomic tools to assist her in performing the work of an accounting bookkeeper. The vocational rehabilitation consultant concluded the worker would be capable of working 20 hours

per week and potentially earn a maximum, over the long term, of \$18.00 per hour and \$360.00 per week.

- [24] The Board vocational rehabilitation consultant took a “snapshot” of available jobs on February 6, 2009 that would be potentially suitable for the worker. This job search identified one part-time accounting bookkeeper job with wages between \$14.00 and \$15.00 per hour. The potential employer sought a bookkeeper with some training and two to three years’ experience. Several of the advertised positions were beyond the worker’s capabilities, requiring full-time hours, or requiring physical or cognitive skills the worker lacked because of her accepted limitations. Other potential part-time positions the vocational rehabilitation consultant opined were suitable included telemarketer/call centre positions, community centre attendant, or fundraising campaign manager/public relations representative.
- [25] The worker declined to participate in an accounting retraining program, which would have required she attend classes four hours per day, 20 hours per week for a three-month period. The worker reported to the vocational rehabilitation consultant that in her discussion with the program advisor she had learned there was little work available for bookkeepers and accountants and that her earnings at that occupation would maximize at \$12.00 per hour.
- [26] In the decision dated March 23, 2009 the Board officer confirmed the worker’s entitlement to a permanent partial disability award on a functional basis was equal to 2.5% of total disability effective May 5, 2003. The worker’s gross average earnings at the time of her injury were equal to \$3,582.00 per month, and that rate was used to calculate her entitlement to a permanent partial disability award. The Board officer relied on the vocational rehabilitation consultant’s opinion to determine the worker could work part-time as a bookkeeper and earn approximately \$1,341.00 per month. The Board officer calculated the worker’s entitlement to a partial loss of earnings award at \$1,613.59 per month.
- [27] In a letter dated May 15, 2009 Dr. Hepburn, the worker’s attending physician, provided an opinion that the worker’s increased functional ability and decreased discomfort was due to the fact that she was compliant and diligent in her rehabilitation. Prior to commencing rehabilitation in September 2008, Dr. Hepburn indicated the worker was incapable of any type of work due to her chronic pain and poor range of motion. The worker was taking Lyrica and Gabapentin to mitigate the effects of the neuropathic pain she experienced; however the side effects from that medication caused impairment. Dr. Hepburn provided an opinion the worker could manage up to ten hours of work per week, but that she would not be capable of working 20 hours per week. He noted the worker’s age and physical condition, and provided an opinion that healing does not occur quickly at the worker’s age.

- [28] In submissions to the Review Division dated May 19, 2009 the worker acknowledged that since October 2008 she could work one to two hours per day; however, prior to that time she would not have been capable of gainful employment. Over the long term the worker was doubtful she would be able to maintain a position, as her condition could change from day-to-day. The worker submitted she lacked the education and transferrable skills to be able to work as a bookkeeper or accountant. While she completed earlier training that included some accounting, her various positions over a 35-year work history did not require she perform such tasks. The worker asked the review officer to consider the fact the suggested training program would require she complete 20 hours per week of classroom instruction, not including homework.
- [29] The worker submitted that accounting is an exacting job, and that her limited mental concentration precluded her from such a position. In addition, the worker asked the review officer to consider the fact she would be working on her own without the assistance of others should she experience difficulties. She asked the review officer to consider her age, and questioned whether she would be able to find an employer who would provide a high wage and allow her to work at her own pace without expectations or deadlines. The worker noted she continued to take high doses of pain medications to control her symptoms, which caused various side effects. She continued to be treated for depression and suffered from lack of sleep.
- [30] As noted above, the review officer concluded that part-time employment as a bookkeeper was suitable and reasonably available to the worker in the long term, but due to her age at the time of commencing her alternate employment, her long-term earning potential would maximize at \$11.85 per hour.
- [31] The worker underwent a second functional capacity evaluation on December 17 and 18, 2009. The occupational therapist was unable to determine the worker's true maximal work tolerance as the worker had not demonstrated full physical effort during testing. The worker had demonstrated the ability to work at the sedentary to light-strength level. The occupational therapist provided an opinion that, based on the worker's physical and functional abilities, she would be able to work between two and four hours per day at sedentary or limited work. The occupational therapist noted that her assessment did not consider cognitive function, medical status, or competitiveness of employability.
- [32] On December 28, 2009 Dr. Hepburn confirmed his earlier opinion that the worker would be capable of working ten hours per week. He acknowledged the assessment is subjective, but noted that he has known the worker for several years and that if the worker were to work hours in excess of what she was capable, it would be counter-productive and protract her recovery. The numbers were arbitrary, and ten hours per week would be a starting point.
- [33] In early 2010 the worker undertook her own research into the feasibility of employment as a part-time self-employed bookkeeper. The worker indicated that many employers did not contract out bookkeeping work, or did not allow the work to be completed

off-site. Other businesses had bookkeeping completed off-site at a centralized location, such as a head office. The worker contacted other bookkeepers, and was advised that it is difficult to “get a foot in the door”, and that entry level wages would be \$10.00 to \$12.00 per hour. Another bookkeeper advised the worker she would need to align herself with an accountant to become established, and that it would take a few years to develop a reputation. Other bookkeepers advised her that the job opportunities were limited due to the downturn in the economy. By letter dated March 4, 2010, a bookkeeper with 35 years experience in the industry stated as follows:

Unless a person has an extensive bookkeeping background and is very experienced in computerized bookkeeping there is very little chance of getting work in that field.

- [34] Another bookkeeper responded to the worker’s enquiries by indicating that if the worker were to obtain experience and knowledge in the field, such as with common accounting software, there is a good market for contract bookkeeping work. The worker was unsuccessful in her attempt to find a part-time home-based bookkeeping position.
- [35] At the oral hearing, the worker stated in 2004 she had trained as a natural health professional. It took her one year to complete a course that is normally completed in three weeks. She then tried to set up a home clinic where she would provide herbal nutritional information and complete “live blood” analyses. This business venture did not “get off the ground”. She has had occasional clients, but when she considers her business expenses, she has not earned any money as a natural health professional.
- [36] The worker confirmed in 2010 she had researched the feasibility of part-time employment as a bookkeeper by contacting potential employers and bookkeepers by telephone, email, letter, and in one case meeting in person. She indicated that most businesses wanted a bookkeeper with experience and very few businesses would allow the books to be taken off site.
- [37] The worker had difficulty recalling her activities of daily living prior to 2008. She recalled sleeping a lot and trying various techniques to cope with her pain. She was able to prepare meals, but avoided heavy lifting, vacuuming, cleaning, and gardening. In 2008 she commenced participation in an aqua-size program, which she found improved her condition. The worker stated her pain has increased as time goes on, and not lessened. She is taking more medications today than she previously did in order to control her pain symptoms.
- [38] The worker is of the view she could manage working up to two hours per day, but she questioned who would hire her for such a short period of time. The worker doubted her ability to perform the work of a bookkeeper due to her lack of experience and knowledge of that occupation.

- [39] The vocational rehabilitation consultant testified that she was very impressed with the worker's transferrable skills and employment history. The worker had completed post-secondary education⁴ and had extensive relevant work experience. If the worker were a fresh graduate of an accounting course, the vocational rehabilitation consultant was of the opinion that the worker would be able to secure part-time employment, particularly if she were provided on the job training.
- [40] The vocational rehabilitation consultant stated that through her labour market research, she formed the opinion that there were part-time jobs available that were within the worker's physical abilities. She opined that alternate employment as an accountant/bookkeeper would allow the worker to receive retraining, provide for a gradual re-entry to the workforce, and allow the worker to maximize the use of her skills and abilities. The vocational rehabilitation consultant did not restrict alternate employment to home-based work, as a workplace office space could be accommodated.
- [41] The vocational rehabilitation consultant provided an opinion that the worker's age was not a barrier to her obtaining suitable employment. In her experience, employers view older workers favourably. A number of workers re-enter the workforce and obtain gainful employment after age 60. The vocational rehabilitation consultant acknowledged she did not contact potential employers to see if they would consider hiring this worker with her limitations.
- [42] The vocational rehabilitation consultant stated that the worker's fatigue and cognitive deficits could be accommodated in a bookkeeping position by taking mini breaks. She was of the view that if the worker's medication regime were stable, she would adjust to the side effects of the medications and could function as a bookkeeper.

Reasons and Findings

- [43] The issue in this appeal is the worker's entitlement to a loss of earnings award. In this regard, the Board relied on the opinion of the vocational rehabilitation consultant, who had concluded that the worker would have been able to work 20 hours per week as an accounting bookkeeper from May 5, 2003, and earn \$18.00 per hour in the long term. The worker has disputed that employment as a bookkeeper is suitable or reasonably available to her and she has disputed that she would be capable of working 20 hours per week.
- [44] Section 23(3) of the Act provides for consideration of a worker's loss of earnings resulting from the compensable injury with regard to the difference between what the worker earned prior to the injury and the amount which the worker is able to earn in suitable employment. RSCM I item #40.10 directs the decision maker to consider earnings that maximize a worker's long-term potential with regard to jobs that are

⁴ The worker completed university courses in the 1960s and upgraded her skills in the mid 1980s.

suitable and reasonably available. This policy item also requires consideration of the medical evidence, the compensable limitations, and the fitness of the worker to perform different types of work.

- [45] RSCM I item #40.12 clarifies that an available job is one that is reasonably available to the worker in the long run. If there are always numerous better qualified applicants and the reality is that the worker is not likely to obtain a particular job, it is not a reasonably available job.
- [46] The decision maker must also consider the limitations imposed by the residual compensable disabilities and assess the worker's earning potential in light of all possible rehabilitative measures that might be of assistance. A reasonably available job must be one that the worker is fit to undertake and which would not involve adverse health consequences compared to other jobs.
- [47] The *Judicial Review Procedure Act* at section 6 provides that when reconsidering a matter referred back, the tribunal must have regard to the court's reasons for giving the direction and to the court's direction. In this case, we are directed to reconsider the matter on the basis of the reasons of the court.
- [48] In the judicial review decision, Humphries J. noted that the worker was 57 years old at the time of her injury and 65 years old at the time of the original WCAT decision⁵. She further noted that the worker had never been a bookkeeper and that the worker's own job search efforts were unsuccessful. Humphries J. found that the relevant policy required consideration of whether the selected employment was reasonably available to the worker with her disability if there were other qualified candidates for any position that might come up. The court found that an essential consideration under policy item #40.12 is the determination of whether a job is reasonably available, and stated as follows:

[65] The Board does not have to show that the petitioner would get immediate employment, or even that she would get employment within a reasonable time of completing her training. However, they must consider whether over the long term, given the petitioner's age, lack of experience, and functional limitations, including distractibility, impatience, fatigue and concentration deficit, is it even a possibility, let alone "likely" that anyone would ever hire her as a bookkeeper if there are other part time bookkeepers available?

[66] That question must be addressed and answered by WCAT by reference to their policy which they are bound to apply. It was not. To fail to do so renders the decision patently unreasonable.

⁵ WCAT-2010-01367 dated May 18, 2010.

- [67] I note as well that no consideration was given as to how many hours the petitioner would have to work soliciting business and doing administrative work associated with running her own business in order to be able to bill for 20 hours per week of home-based bookkeeping. In addition, there was no consideration of the effect of the passage of time, which was due to errors within the Board's appeal process and not to any fault of the petitioner, on her ability to retrain and start up a new business. The Vice Chairman did mention that she was 60 years old at the date of the initial award, but she was 65 by the time of his decision. Whether that should form part of the relevant considerations should be addressed as well.
- [49] The panel in *WCAT-2008-03456* found the worker was not able to return to work at her pre-injury employment as a customer service representative, and that the employer was not able to provide the worker with an accommodated position in the long term. At the direction of WCAT, the Board revisited the issue of the worker's entitlement to a loss of earnings award, and concluded she could work on a part-time basis at 20 hours per week as a bookkeeper, and thus sustain only a partial loss of earnings. We are unable to agree with that determination for reasons that follow.
- [50] The worker's evidence regarding her employment and education history indicates that her only training at bookkeeping had occurred 25 years prior to the suggestion she retained the transferrable skills to engage in this occupation. She did not complete her university degree because she had not completed a required accounting course. We accept the worker did not have the requisite current skills to be able to adapt to the position of a bookkeeper without further training.
- [51] The vocational rehabilitation consultant in the employability assessment described the employment requirements for an accounting bookkeeper to include completion of a two-year college program in accounting and bookkeeping or completion of courses in accounting or bookkeeping *combined with* several years of experience as a financial or accounting clerk. We find that the three-month part-time training program the vocational rehabilitation consultant had offered the worker would not have been sufficient for her to meet the employment requirements of this occupation, given that the worker did not have previous work experience as a financial or accounting clerk.
- [52] We also question whether the worker would have been considered as a candidate for a potential bookkeeping position upon completion of the three-month training program. The worker did not have previous experience as a bookkeeper. The bookkeeping position the vocational rehabilitation consultant identified in her snap-shot of available jobs indicated that two to three years experience was required. This is consistent with the worker's research into the feasibility of employment as a bookkeeper, which indicated that some experience would be required to obtain a suitable position. While the worker has excellent and extensive customer service experience, we are unable to

find that this means, in itself, that she is able to adapt to a position as an accounting bookkeeper, particularly when during her lengthy work history the worker has not performed that type of work and in fact provided evidence that she avoided working with numbers and had other people perform those types of tasks.

- [53] We find that in the long term, part-time employment as a bookkeeper was not reasonably available to the worker given her compensable injuries, accepted limitations, lack of previous experience at this occupation, and her age at the time her injuries had stabilized. The vocational rehabilitation consultant acknowledged she did not contact potential employers to determine if part-time employment as a bookkeeper would be reasonably available to the worker given her accepted limitations.
- [54] On the other hand, the worker developed her own evidence on this point. While one potential employer expressed a more positive outlook regarding the potential for employment as a contract bookkeeper, the majority of potential employers the worker had contacted were either not hiring, had centralized their accounting functions, required a person with significant experience, or could not accommodate the worker's limitations.
- [55] The worker has argued that her medication intake and disrupted sleep precludes her from engaging in tasks that require sustained mental concentration. The Board has accepted that the worker has problems with concentration and issues with fatigue. We accept that employment as a bookkeeper would require the worker to perform detailed work with numbers, requiring focus and concentration, and at times meet deadlines. We are unable to find that taking micro-breaks would alleviate the worker's limitations associated with fatigue and concentration. We agree with the worker that employment as an accounting bookkeeper is an exacting type of work that requires sustained concentration, which we find is beyond the worker's accepted limitations.
- [56] We accept that the worker's levels of pain fluctuate such that she would have difficulty maintaining a regular work schedule on a consistent basis. The worker's levels of pain have increased rather than decreased over time, and she has had to increase her medication intake to control those symptoms. While the worker was able to regularly attend a one-hour water exercise class for a period of time, we are unable to find that her ability to attend a water exercise class demonstrates that she would be able to maintain a regular part-time work schedule.
- [57] In 2004 the worker completed a distance retraining program as a natural health professional and then she attempted to establish her own business without success. We accept that the worker's chronic pain, impaired concentration, and fatigue created barriers to her successfully being able to provide this service-based business. In addition, there is insufficient evidence that there is a market for "live blood" analyses and natural health therapy for this to be a reasonable alternate occupation over the long term. We find the worker would not be able to establish a profitable home-based business as a natural health professional.

- [58] The evidence from Dr. Hepburn and the occupational therapist who completed the functional capacity evaluation in December 2009 appears to suggest that the worker may be competitively employable on a very part-time basis. We note that the occupational therapist in December 2009 based her opinion only on the worker's physical capabilities and did not assess her mental and cognitive functioning. While the occupational therapist concluded the worker may be able to work two to four hours per day based on her physical abilities, when we consider the accepted limitations relating to the worker's fatigue and difficulties with concentration and irritability, we are doubtful that even limited part-time employment would be sustainable over the long term.
- [59] We note that Dr. Hepburn has indicated the worker may be capable of working two hours per day and up to ten hours per week; however, given the worker's age, her lengthy absence from the workforce, and the significant delay in determining her entitlement to a loss of earnings award, we find the worker is competitively unemployable. We question the long-term availability of limited part-time work maximizing at two hours per day and ten hours per week.
- [60] Nor do we consider it helpful to return to the Board the issue of whether some other suitable and reasonably available work might be compatible with the worker's circumstances. Such an inquiry would now be nothing more than an academic exercise. Therefore, although we are mindful of the relatively minor nature of the worker's permanent functional impairment, in the unusual circumstances of this appeal, we conclude that the only reasonable conclusion at this late date is to provide the worker with a 100% loss of earnings award.
- [61] The worker has not disputed the Board's determination of her wage rate for calculation of her permanent partial disability award at \$3,582.00 per month and we confirm that aspect of the Board decision. The worker has also not disputed the effective date of her entitlement to a loss of earnings award and we confirm the worker is entitled to her loss of earnings award effective May 5, 2003.

Conclusion

- [62] We allow the worker's appeal and vary the Review Division decision. We find the position of bookkeeper is neither suitable nor reasonably available to the worker in the long term. We find the worker is competitively unemployable by reason of her compensable injuries, such that she is entitled to a 100% loss of earnings award.
- [63] In *WCAT-2010-01367* the panel ordered the Board to reimburse the worker the expense of obtaining Dr. Hepburn's medical-legal opinion of December 28, 2009 in accordance with the Board's Schedule of Fees, and ordered the Board to reimburse the worker \$1,500.00 for the expense of obtaining the December 2009 functional capacity evaluation. We find that it was reasonable for the worker to have provided this expert evidence in the original consideration of her appeal, and we order the Board to

reimburse those expenses in accordance with the directions provided in *WCAT-2010-01367*, if it has not already done so.

- [64] The worker travelled from her home community to another city to attend the oral hearing on February 22, 2012. The *WCAT Manual of Rules of Practice and Procedure* (MRPP) at item #16.1.2 provides that WCAT will generally order reimbursement of expenses for a worker's attendance at an oral hearing when the worker is successful on the appeal. The MRPP at item #16.1.2.1 limits the reimbursement of a worker's travel expenses when the hearing is held in another location that is not closest to the community the worker resides in order to accommodate a representative.
- [65] In this case, the worker requested the oral hearing be held in a different city in order to accommodate her representative's attendance at the oral hearing. WCAT conducts oral hearings in the city where the worker resides. The worker resides within 24 kilometres of that oral hearing location. In such circumstances, we decline to order reimbursement of the worker's travel expenses to attend the oral hearing on February 22, 2012.

Jill Callan
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