

DECISION OF THE WORKERS' COMPENSATION APPEAL TRIBUNAL

WCAT Decision Number:

A2400757

WCAT Decision Date:

September 4, 2025

Panel:

Christopher Ramsay

Introduction

- [1] This decision concerns whether the worker developed an occupational disease due to an exposure at work on May 17, 2023.
- [2] The worker, a refrigeration mechanic at a mill, reported on May 17, 2023 that he was exposed to unknown gases and developed symptoms.
- [3] In a decision dated August 10, 2023, the Workers' Compensation Board (Board), operating as WorkSafeBC, denied that the worker developed an occupational disease due to the May 17, 2023 exposure.
- [4] The worker requested a review of the Board's decision. In a decision dated March 13, 2024, the Review Division (*Review Reference #R0310957*) confirmed the Board's decision.
- [5] The worker appealed to the Workers' Compensation Appeal Tribunal (WCAT). The worker is representing himself in his appeal. The employer is participating in the worker's appeal and is represented by a claims consultant.
- [6] The worker requested that the appeal proceed by way of an oral hearing. An oral hearing was held on October 24, 2024 in Richmond. Testimony was heard from the worker and two witnesses called by the worker.
- [7] For reasons that will be explained, the parties provided further evidence after the hearing and written submissions on the merits of the appeal.

Preliminary Matter(s)

Scope of the appeal

- [8] Item #3.3.1 of WCAT's *Manual of Rules of Practice and Procedure* (MRPP) states that where a decision of the Review Division is appealed to WCAT, WCAT has jurisdiction to appeal any issue determined in either the Review Division decision or the Board decision(s) under review, subject to the statutory limitations on WCAT jurisdiction.

- [9] I note that the worker's claim file for the May 2023 claim included documents from a prior claim. Of note, a report from Dr. Greer, a registered psychologist, dated July 1, 2023, which followed an assessment of the worker dated May 1, 2023 was disclosed in the May 2023 claim. The assessment referred to a workplace event of September 2, 2020 when the worker smelled natural gas and subsequently developed cognitive and speech symptoms.
- [10] However, the August 10, 2023 Board decision which underpins this appeal only referred to the May 17, 2023 exposure.
- [11] Further, the March 13, 2024 Review Division decision also only considered whether the worker developed an occupational disease due to the May 17, 2023 exposure.
- [12] Also, I note that in a memorandum dated May 29, 2023, a Board adjudicator indicated that the worker had not sustained a personal injury and "routed"¹ the worker's claim to the Board's Occupational Disease Services.
- [13] I further note that policy item C3-12.00 indicates that a disability caused by the general absorption of a chemical through the skin, by inhalation or otherwise is an example of a disease.
- [14] I find that the decisions before me only considered whether the worker developed an occupational disease as a result of an exposure at work on May 17, 2023. I confirmed to the parties that this was the issue in the appeal.

Evidence introduced at the hearing

- [15] At the outset of the oral hearing, the worker sought to introduce evidence, some of which had not previously been provided to the Board or WCAT.
- [16] I noted at the hearing that the evidence was late. In this regard, item 14.1.4 of the MRPP states that new documentary evidence should be sent to WCAT at least 21 days in advance of the hearing.
- [17] The worker advised that he was under the impression that if he brought the evidence to the hearing then it would be accepted.
- [18] I considered whether an adjournment of the hearing was necessary for the employer to fairly consider the worker's evidence. However, the employer did not object to the admission of the evidence and was not seeking an adjournment. Rather, it was prepared to address the evidence post-hearing.
- [19] Therefore, the oral hearing proceeded, and testimonial evidence was provided by the worker and two witnesses called by the worker.

¹ All quotations are reproduced as written, unless otherwise indicated.

- [20] Following the oral hearing, the employer provided documentary evidence which included witness statements. The worker was provided with an opportunity to respond to the employer's new evidence/submissions.
- [21] The worker requested a reconvened hearing for the purpose of replying to the employer's evidence by, in part, calling additional witnesses. I had a WCAT appeal coordinator ask the worker if he wanted to cross-examine the employer's witnesses regarding their statements. The worker responded that he did not want to cross-examine the employer's witnesses.
- [22] I considered the worker's request. However, I declined to reconvene the hearing as the worker had already provided evidence to the Board and at the oral hearing concerning what transpired on May 17, 2023.
- [23] Further, the worker's request to call additional witnesses, in my view, would only serve to corroborate his evidence that he had symptoms immediately following the May 17, 2023 exposure. I advised the parties that I was able to weigh the worker's evidence against the employer's evidence without additional witnesses to corroborate the worker's evidence.
- [24] I will discuss the evidence regarding the worker's exposure in more detail below in my reasons and findings regarding the worker's appeal.

IHP request

- [25] The worker also requested that WCAT retain the services of an independent health professional (IHP) under section 302 of the *Workers Compensation Act* (Act). The worker says that I ought to exercise my discretion to do so because the Board medical advisor who provided an opinion on the claim file had not examined him first.
- [26] I was not persuaded that the assistance of an IHP was required based on the worker's request. I advised the parties of my decision in a memorandum dated April 30, 2025. The memorandum indicated that the worker was free to make a further request for an IHP if he felt that there were other reasons why an IHP was warranted.
- [27] In the worker's written submissions regarding the merits of his appeal, he reiterated his request for the assistance of an IHP.
- [28] I will discuss my reasoning on this matter in more detail below as I find that the worker's request touches on the sufficiency and reliability of the evidence that is before me in this appeal.

Additional disclosure

- [29] It came to my attention after the oral hearing that the parties received incomplete disclosure of a June 12, 2023 two-page document from the claim file (only part of the document was visible). The document pertained to the employer's investigation of the May 17, 2023 incident. I had a WCAT appeal coordinator provide the complete documents to the parties and invited

submissions as to any procedural remedies the parties sought regarding the additional disclosure.

Issue(s)

- [30] Did the worker develop an occupational disease due to an exposure in the workplace on May 17, 2023?

Jurisdiction

- [31] The appeal was filed with WCAT under subsection 288(1) of the Act, which provides for the appeal of a final decision by a review officer regarding compensation matters. Section 308 of the Act gives WCAT 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 it.
- [32] This appeal is a rehearing by WCAT, which means that WCAT reviews the record from previous proceedings and can hear new evidence. WCAT has inquiry power and the discretion to seek further evidence, although it is not required to do so. WCAT exercises an independent adjudicative function and has full substitutional authority. It may confirm, vary, or cancel the appealed decision or order.
- [33] The standard of proof in this appeal is the balance of probabilities, subject to subsection 303(5) of the Act. Subsection 303(5) provides that if WCAT is hearing an appeal regarding the compensation of a worker and the evidence supporting different findings on an issue is evenly weighted in that case, the appeal tribunal must resolve that issue in a manner that favours the worker.
- [34] I am bound to apply the published policies of the board of directors of the Board, subject to the provisions of section 304 of the Act. The applicable Board policies for this appeal are set out in the *Rehabilitation Services and Claims Manual, Volume II* (RSCM II).

Background and Evidence

- [35] The following is a summary of evidence relevant to the issue under appeal.

Evidence in the worker's claim file

- [36] A May 17, 2023 first-aid report indicated that the worker was experiencing headaches and confusion after he smelled condensate in his work area.
- [37] Dr. Belgraver, a general practitioner, completed a physician's first report on May 18, 2023, which indicated that the worker was exposed to a condensate leak on May 17, 2023. He immediately placed a gas mask on and reported the incident. He developed a headache that lasted for a few hours. He developed confusion, and brain fog.

- [38] A teleclaim application was completed on May 23, 2023, which indicated that the worker was exposed to an unknown gas at work. He noted that there was a bad smell. He found out that there was a process system that was not working properly. He developed headaches and then confusion and grogginess.
- [39] The employer's report indicated that the worker was wearing a monitor at the time of the exposure and the alarm did not go off. The worker was offered modified duties.
- [40] Dr. Hocking, a physician at the same clinic as Dr. Belgraver, provided a progress report dated May 31, 2023, which indicated that the worker continued to have headaches. He was lightheaded and his arms were rubbery. He had balance issues and fatigue.
- [41] A Board adjudicator spoke with the worker on June 7, 2023. He had ongoing issues with his speech since the 2020 incident. He was exposed to gas again on May 17, 2023 and he was not the only employee affected. The employer denied that there had been a leak.
- [42] The worker provided a more detailed description to the Board on June 8, 2023 of the events of May 17, 2023. The worker and a co-worker detected a smell in the machine shop. The worker thought that the smell was condensate (a mixture of methanol, turpentine compounds, and sulphur compounds). He went to his truck to get a mask and walked through a "wall of the smell." His H₂S² monitor did not go off. He drove to the gatehouse to report the smell. Over the next couple of hours, he received pager messages to avoid the shops building and road due to the odour. He developed a headache and continued working. He developed brain fog and confusion. He reported his symptoms to the employer. That night he had a headache, and he woke up the next day with a headache. A safety bulletin was issued on June 7, 2023 which noted a noxious gas release on May 17, 2023.
- [43] An incident investigation report provided by the employer listed a sequence of the May 17, 2023 events. Of significance to this appeal, a superintendent noticed a foul smell at 10:08 a.m. The worker noticed a condensate odour in the shop at 10:30 a.m. At 12:01 p.m. a message was sent out that the odour around the shops was dissipating.
- [44] A Board adjudicator spoke with a safety manager on June 8, 2023. He indicated dirty condensate was released due to operator error. There was an odour, but the emission was not harmful as it was diluted with water. Other workers reported the odour, but did not require first aid. A welder reported a headache.
- [45] Dr. Hocking's June 15, 2023 progress report indicated that the worker reported frequent headaches.
- [46] An employer incident report concerning the May 17, 2023 incident indicated that:
- With the review it was identified that a step in the procedure was missed. This allowed condensate to be sent to the Brown Stock rather than to the disposal tank.

² A hydrogen sulfide monitor.

- Review of the distributed control system screens also identified that there was no warning message or alarm that identified this condition of the condensate not being diverted.
- At 12:01 a message was sent out that the odour around the shops was dissipating.

[47] A Board adjudicator contacted a Board occupational hygiene officer on June 22, 2023 for assistance with determining the severity of the worker's exposure. The Board occupational hygienist provided the employer's material safety data sheet (MSDS) and the NIOSH (National Institute for Occupational Safety and Health) pocket guide for "foul condensate." It was indicated that foul condensate had the same components as dirty condensate, except the latter was diluted with water "so the percentage of ingredients is much less."

[48] The MSDS for foul condensate listed the following chemicals:

- Methanol
- Ethanol
- Methyl mercaptan
- Dimethyl sulfide
- Dimethyl disulfide
- Hydrogen sulfide
- a Pinene
- b Pinene
- Acetone
- Methyl ethyl ketone
- Guaiacol

[49] Symptoms from exposure included irritation to the skin and eyes; harmful if swallowed or inhaled; and potential for dermatitis and vision problems. Medical attention was required if breathing was difficult.

[50] Dr. Hocking's June 22, 2023 attending physician's statement in support of the worker's claim for group disability insurance benefits indicated that the worker had fatigue, "dead arms [and] legs," cognitive dulling, and memory impairment.

[51] A Board occupational hygienist indicated in a July 11, 2023 email to a Board adjudicator that hydrogen sulphide is a component of dirty condensate. The monitor had a pre-set limit, but that could be changed by the user.

[52] Dr. Hocking referred the worker in July 2023 to a neurologist for "assessment of cognitive changes since a chemical exposure" at the mill.

- [53] A Board adjudicator spoke with a union safety representative on July 14, 2023. He confirmed that there was a release of dirty condensate and the worker's shop was 60 feet from the source. Sweeps were done but the monitors did not go off. He could not say what the worker was exposed to or at what concentration, but he believed the worker's symptoms. Others were exposed, but their symptoms were less severe.
- [54] A Board adjudicator requested an opinion from a Board medical advisor regarding the question "Is it biologically plausible that the worker could be poisoned by dirty condensate when it was at such a low concentration that his H2S monitor didn't go off."
- [55] Dr. Maruti, a Board medical advisor and specialist in public health and preventive medicine, provided an opinion dated August 7, 2023 that the working diagnosis was toxic effect of a noxious substance. Dr. Maruti went on to note that it was not "biologically plausible" for the worker to have been poisoned "as the worker's H2S monitor didn't go off, the levels in the air were within the safe limit..." and as "the worker didn't spend a long time being exposed to the substance as he sensed the smell and immediately removed himself from its location."
- [56] Dr. Spithoff, a physician at the same clinic as Dr. Hocking, provided a progress report dated July 27, 2023 which indicated that the worker continued to experience symptoms of headaches, rubber arms, fatigue, and irritability.

WCAT Evidence

- [57] The worker introduced the following evidence on appeal:
- A May 17, 2023 first aid report.
 - A May 17, 2023 incident report with the worker's handwritten notes and an incident investigation form.
 - A map of the worksite.
 - An August 28, 2023 occupational health and safety report.
 - The worker's 2023 hours.
 - The Board's homepage.
 - Dr. Hocking's June 29, 2023 note.
 - A November 21, 2017 Board inspection report.
 - Dr. Reebye's³ October 17, 2024 report.
 - A July 14, 2023 Board follow-up inspection report.

³ Dr. Reebye is a physiatrist.

- [58] The first-aid report pertained to another worker. It noted that the “[i]njury [d]ate” was May 17, 2023 at 10:30 and the “[r]eported” time was 16:40. The worker reported exposure to condensate and developed a headache. The worker also felt “tired and out of sorts. They started to feel better in fresh air.”
- [59] The worker’s handwritten changes to the incident report noted that he had had trouble logging into his computer before lunch (as opposed to “after lunch” as indicated in the original document) and he was dissuaded from reporting the matter as one that required first aid.
- [60] The occupational health and safety report noted an investigation undertaken by the health and safety at the request of the joint occupational health and safety committee into why gasses were being released that were making some people sick.
- [61] Dr. Hocking’s June 29, 2023 note recommended physiotherapy “related to acquired brain injury from chemical exposure.”
- [62] The November 17, 2017 inspection report requested production of a number of documents pertaining to a release of hazardous materials between September 27, 2017 and November 16, 2017.
- [63] Dr. Reebye’s October 17, 2024 report noted that the worker had an “acquired brain injury after hydrogen sulfide exposure in the workplace on numerous occasions.” Further, Dr. Reebye indicated that “I feel he has had vulnerability with added multiple exposures, making it more likely for even lesser exposure to cause more symptoms.”
- [64] The July 13, 2023 follow-up inspection report referred to a 2020 incident that involved the release of “harmful levels of hazardous gases including but not limited to hydrogen sulfide” due to disabling the dilute non-condensable gas collection system.
- [65] Following the hearing, in response to the worker’s evidence, the employer provided written documentation. The evidence consisted of the following:
- A September 19, 2020 Board inspection report.
 - A copy an incident report following the May 2023 exposure without the worker’s handwritten notations.
 - A November 8, 2024 letter from a safety manager, outlining his recollection of the worker’s May 17, 2023 first aid reporting. Embedded in the letter were an exposure report form and a first aid record book report dated May 17, 2023.
 - November 5, 2024 handwritten notes of a safety superintendent who interviewed the first aid attendant who treated the worker on May 17, 2023.
- [66] The incident report indicated that the worker smelled condensate at 10:15 a.m. He walked into a “wall of very bad odor” at 10:30 a.m. The worker retrieved personal protective equipment (PPE) from his truck and drove to the gatehouse to file an odour report. Around 10:50 a.m. the worker

started to get a headache. The worker took ibuprofen and the headache subsided. The worker attended the gatehouse at 2:30 p.m. and completed a first-aid report.

- [67] The safety manager provided a statement that the worker refused first aid on two occasions on May 17, 2013 prior to completing a first-aid report at 2:40 p.m.

Testimonial evidence from the October 2024 hearing.

- [68] The worker provided testimony at the hearing. He described previous exposure incidents that happened on October 12, 2017, and September 22, 2020 which resulted in symptoms.
- [69] Of relevance to the appeal, he described the May 17, 2023 exposure incident and his resulting symptoms. In summary, the worker's testimony was that on May 17, 2023 he noticed a strong smell. He reported the odour to the gatehouse. He put on his PPE, but there was a crack in it.
- [70] He went back to work but developed cognitive symptoms involving his memory and concentration. He was dissuaded from reporting the exposure as a first-aid matter. He left work and sought medical attention. He saw his doctor several times. His symptoms were headaches, rubbery arms, balance issues, cognitive issues. He does not have another condition, such as Parkinson's that could explain his symptoms.
- [71] In summary, witness testimony from Ms. X (not her real initial), was that many people at the plant had symptoms following the 2017 gas exposure. On May 17, 2023 she noticed a strong smell. A number of people became ill as a result of the 2023 exposure.
- [72] Mr. Z, not his real initial, testified that he was involved in sweeps following the 2017 and 2020 incidents. He did not recall the May 17, 2023 incident in particular.

Submissions

Worker's submission

- [73] The worker says that he was exposed to a cocktail of various toxic chemicals and compounds due to operator error. He had no symptoms immediately upon exposure but developed symptoms of headaches 15 to 20 minutes after the exposure and then developed mental confusion. He was dissuaded from initially reporting the matter as a first-aid incident.
- [74] The worker says that he developed an acquired brain injury from chemical exposure as supported by Dr. Hocking and Dr. Reebye. He does not agree with Dr. Murati's opinion and it should be disregarded as it was not based on a physical assessment. Dr. Reebye's opinion ought to be provided greater weight.
- [75] The worker says that he was wearing a personal monitor but it did not register any toxic gas leak. However, there has never been a situation where a leak has been detected by a monitor.

- [76] The worker says that a February 2021 Board order is relevant as the employer failed to remedy a workplace condition and was fined. Other employees lost time due to inhalation exposures.
- [77] He says that the presumption in section 134 ought to apply as he was exposed to dirty condensate.

Employer's submission

- [78] The employer agrees with the Review Division's decision. The worker has claimed that he sustained injuries as a result of his employment on May 17, 2023, however, the overwhelming weight of objective evidence does not support a conclusion that a gas exposure on that date resulted in any physical or other injuries to the worker.
- [79] The employer says that the worker's symptoms prior to May 2023 may be a significant factor in his claim and this appeal.

Reasons and Findings

- [80] I deny the worker's appeal. I confirm *Review Reference #R0310957*. I find that the worker did not develop an occupational disease due to the May 17, 2023 exposure.
- [81] I note that the worker argued that he is entitled to benefits based on the presumption of entitlement found in subsection 134(3) of the Act. However, this presumption only applies to personal injuries caused by an accident.
- [82] As noted above, the worker's claim has been adjudicated under the occupational disease provisions under sections 136 and 137 of the Act. Therefore, the presumption in section 134 is not applicable to this appeal and does not assist the worker.
- [83] Subsection 136(1) of the Act provides that compensation is payable where a worker suffers from an occupational disease that is due to the nature of any employment in which the worker was employed.
- [84] Subsection 137(2) of the Act provides, "If, on or immediately before the date of the disablement, the worker was employed in a process or industry described in column 2 of Schedule 1 opposite the occupational disease that has resulted in the disablement, the occupational disease must be presumed to have been due to the nature of the worker's employment unless the contrary is proved."
- [85] Section 1 of the Act defines an occupational disease as any disease set out in Schedule 1 to the Act and any other disease that the Board has designated or recognized as an occupational disease.
- [86] Relevant to this appeal, Schedule 1 lists a number of diseases in by poisoning, infections, cancers, respiratory diseases, and other diseases which benefit from a presumption of

entitlement based on the description of the disease in column 1 and the description of the process or industry in column 2.

- [87] In this case, the worker was exposed to dirty condensate. I accept that this is a more diluted version of foul condensate, which, according to an MSDS provided by the employer, contains a number of chemicals, including methanol, ethanol, dimethyl sulfide, dimethyl sulfide, hydrogen sulfide, acetone, and methyl ethyl ketone.
- [88] The worker's evidence is that dirty or foul condensate contains a number of chemicals, but he has not specifically disputed the veracity of the MSDS.
- [89] I find that the MSDS is the best evidence before me concerning what the worker was exposed to on May 17, 2023.
- [90] Schedule 1 to the Act includes "poisoning by" organic solvents, hydrogen sulfide, and other toxic substances.
- [91] In comparing Schedule 1 to the MSDS, potentially, the presumption of entitlement applies to the worker. I will discuss this in more detail below.
- [92] I will note here that section 136 provides for acceptance of claims for occupational diseases where the presumption does not apply.
- [93] Policy item C4-25.00 (Occupational Disease), under B (Legislative Requirements), provides that for the disease to which section 136 of the Act applies, there are three basic requirements for compensability:
1. The worker must have (or in the case of a deceased worker have had) a disease designated or recognized by the Board as an "occupational disease";
 2. The worker's occupational disease must be or have been "due to the nature of any employment" in which the worker was employed; and
 3. The occupational disease must "disable the worker from earning full wages at the work" at which the worker was employed. ...
- [94] Policy item C4-25.10 (Has a Designated or Recognized Occupational Disease), sets out, in part, that the lack of prior designation or recognition by the Board of a disease as an occupational disease does not mean a claim for such disease will not be considered on its merits.
- [95] Policy item C4-25.20 (Establishing Work Causation), sets out, among other things, guidelines for consideration of an occupational disease where no presumptions apply. An occupational disease is due to the nature of a worker's employment if the employment was of causative significance in producing the disease. Causative significance means more than a trivial or insignificant aspect.

- [96] Turning to the facts of this appeal, I accept that the worker had an exposure at work on May 17, 2023 to dirty condensate. I find that this aspect of the appeal is not in dispute. In addition to the worker's evidence that he was exposed to a number of chemicals on May 17, 2023, a Board adjudicator spoke with a union safety representative on July 14, 2023 who stated that the worker's shop was 60 feet from the source of the release. I find that the employer, largely, does not disagree with the worker's evidence regarding his exposure.
- [97] I note the worker's evidence, essentially, is that he developed symptoms a short period of time after the exposure and that he may have a sensitivity based on past exposures. In this regard, in addition to the worker's testimony, an investigation report noted that the worker reported a headache at 10:50 a.m. after a smell was detected by another worker at 10:15 a.m.
- [98] The employer provided a November 8, 2024 statement from a health and safety manager who indicated that the worker reported an odour but declined to do a first-aid report at that time. The worker subsequently returned at 2:40 p.m. to complete a first aid report.
- [99] The worker adamantly disagrees with the employer's characterization of events as he believes the employer has downplayed his exposure. It was on this basis that the worker sought to call additional witnesses to support the chronology of the onset of his symptoms and their seriousness.
- [100] I find that little turns on the timing of the worker reporting this matter as a first-aid incident. I accept that the worker was exposed to dirty condensate and developed symptoms very shortly after the dirty condensate was discharged at work. That the worker may have initially declined to seek first aid more proximately to the exposure is not determinative of the matter.
- [101] I will state here that I found the worker to be honest and straightforward in his presentation and I accept that he was exposed to dirty condensate on May 17, 2023.
- [102] Policy item 97.32 indicates that a worker's statement about the worker's own condition is evidence insofar as it relates to matters which are within the worker's knowledge. I accept that the worker's symptoms are well within his knowledge, but, as a layperson, his opinion as to causation does not carry much weight.
- [103] In other words, the present case does not turn on the accuracy of the worker's recollections of his symptoms and work activities. Rather, I find that this is a circumstance in which the worker's statements, alone, are not sufficient to establish that he has an occupational disease due to his work.
- [104] That is, while I find that while the worker's evidence as to his exposure is certainly relevant evidence, whether the worker's exposure to dirty condensate caused him to develop an occupational disease requires medical expertise, in keeping with policy item 97.31 pertaining to matters that require medical expertise.

- [105] Related to this point, the worker has asked that I obtain an IHP. As I noted in my April 2025 memorandum to the parties, section 302 of the Act permits WCAT to request the assistance of an IHP.
- [106] This is a discretionary power and, as noted in WCAT MRPP item 9.1 the question as to whether the evidence is sufficiently complete and reliable to arrive at a sound conclusion with confidence is one which rests with the panel. It is not WCAT's responsibility to evaluate the appeal and then notify parties of the weaknesses in the case for the purpose of obtaining further evidence.
- [107] Subsection 302(1) and (1.1) of the Act state as follows:
- (1) Subject to subsection (8), if, on its own initiative, the appeal tribunal determines that independent assistance or advice from a health professional would assist in reaching a decision on an appeal, the presiding member may retain a health professional to provide such assistance or advice.
 - (1.1) Subject to subsection (8), the presiding member must retain a health professional to provide independent assistance or advice in an appeal if all of the following apply:
 - (a) the appeal tribunal receives a request under subsection (1.2) from an employer, a worker or a dependant of a deceased worker;
 - (b) the medical condition of the worker is at issue in the appeal;
 - (c) the appeal tribunal determines that the independent assistance or advice would assist in reaching a decision on the appeal.
- [108] I find that the first two criteria in subsection 302(1.1) have been met as the worker has requested an IHP and the worker's medical condition is at issue. However, I find that a further opinion would not assist me in reaching a decision. Therefore, the third criterion is not met and I decline to obtain an IHP.
- [109] I appreciate that the worker is representing himself in these proceedings and has discounted Dr. Murati's opinion on the basis that Dr. Murati did not assess him and based his opinion on claim file evidence.
- [110] However, I need only seek such IHP evidence where there is insufficient other reliable evidence already before me. I find that is not the case here.
- [111] A duly qualified physician, such as Dr. Murati, can provide an opinion if they are provided with accurate evidence concerning the exposure and clinical symptoms.
- [112] In this regard, Dr. Murati was provided with the claim file, which included the MSDS sheet for foul condensate, the worker's clinical records and reporting of exposure, and the employer's

investigation report which detailed the sequence of events on May 17, 2023 and the likely cause of the discharge.

- [113] I find that Dr. Murati had a sound evidentiary record from which to provide an opinion.
- [114] While the worker provided additional evidence in support of his appeal including an inspection report and a Board order and accounts of others being ill as a result of the May 17, 2023 exposure, I found the worker's testimony at the hearing to be consistent with the documentary evidence. I find that the additional evidence does not change the evidentiary base such that Dr. Murati's opinion was unreliable.
- [115] In other words, I am not persuaded that I would be assisted by obtaining an IHP as it would be another opinion based on essentially the same facts that were before Dr. Murati.
- [116] Further, while I note that the worker disagrees with the opinion of Dr. Murati, disagreement is not a sufficient basis to obtain an IHP, in my view.
- [117] In addition, I note that the worker relies on the reports of Dr. Hocking and Dr. Reebye in support of his appeal as he finds the reports to be supportive of his position.
- [118] With respect to the merits of the worker's appeal, I will begin with the presumption of entitlement in Schedule 1 based on the observation that dirty condensate contains chemicals, including hydrogen sulfide.
- [119] I pause at this point to note that for the worker to benefit from the presumption, it is not enough for the evidence to show simply *exposure* to any of the chemicals listed in the first column of Schedule 1. Rather, the worker need demonstrate that he was *poisoned by* the chemicals.
- [120] In this regard, none of the worker's treating physicians diagnosed the worker with poisoning by any particular exposure, let alone, due to prolonged exposure. Dr. Hocking diagnosed the worker with an acquired brain injury due to chemical exposure.
- [121] Dr. Reebye's October 17, 2024 report noted that the worker had "exposure in the past to hydrogen sulfide contributing to an acquired brain injury."
- [122] In the case of hydrogen sulfide, the evidence must show that he had "prolonged exposure." In this case, the worker's exposure was brief, and his monitor did not register a level of hydrogen sulfide to set off an alarm.
- [123] In essence, both doctors state that the worker has brain damage from exposure to chemicals at work as opposed to a poisoning from the May 17, 2023 event.
- [124] Even if I were to interpret Dr. Hocking and Dr. Reebye's opinions to be that the brain injury is the consequence of poisoning, I find that I prefer Dr. Marutti's opinion with respect to causation.

- [125] In this case, as noted by Dr. Marutti, the worker's exposures (including exposure to hydrogen sulfide) were not such that he would have been poisoned by any of the substances in dirty condensate. Dr. Marutti took into consideration the worker's brief exposure, the MSDS, and the resulting symptoms. I find Dr. Marutti's opinion to be thorough and well reasoned.
- [126] I find that Dr. Reebye's opinion was speculative as he indicated that he "feels" the exposure was of causative significance. Further, he did not appear to consider how long the worker was exposed, the significance of what the worker was exposed to, or provide an analysis of how the exposure is related to the worker's particular symptoms. Also, Dr. Reebye did not comment on the lack of an alert on the worker's H₂S monitor, which I find is a key factor in the consideration of whether the worker had prolonged exposure to hydrogen sulfide.
- [127] Dr. Hocking's report is quite brief and simply states that the worker's acquired brain injury followed the exposure without any analysis as to how that conclusion was reached.
- [128] In short, Dr. Marutti's opinion is more persuasive. I find that it is not at least as likely as not that the worker was poisoned by any chemicals listed in Schedule 1. Therefore, the presumption of entitlement in Schedule 1 does not apply.
- [129] This does not dispose of the matter, as in the event the subsection 137(2) presumption does not apply, the matter must still be adjudicated under section 136 of the Act without the benefit of the presumption. In such a case, a different policy contained within chapter 4 of the RSCM II applies.
- [130] That is, as noted above, policy item C4-25.20 of the RSCM II (Establishing Work Causation) sets out the Board principles for claims received under section 136 of the Act. In situations where a condition is recognized under Schedule 1 or recognized in Board policy, the decision as to whether the disease is due to the nature of any employment in which the worker was employed, is determined on the merits and justice of the claim without the benefit of any presumption.
- [131] With respect to causation under section 136, I rely, again, on Dr. Maruti's opinion.
- [132] In short, I find that the two opinions which the worker relies on are not as thorough as Dr. Murati's opinion and, consequently, are not as persuasive. Rather, they both appear to simply relate the worker's symptoms to the exposure as the symptoms followed sequentially after the exposure.
- [133] I prefer Dr. Murati's report which was more thoroughly reasoned and based on a sounder evidentiary basis concerning the events of May 17, 2023.
- [134] While I do not doubt that the worker has had symptoms since May 2023 and the worker's honest-held belief that he developed an acquired brain injury due to the May 2023 gas exposure, I find that it less than 50% likely that this is the case.

Conclusion

- [135] I deny the worker's appeal. I confirm the Review Division decision. I find that the worker did not develop an occupational disease due to an exposure at work on May 17, 2023.

Appeal Expenses

- [136] While the worker did not specifically claim appeal expenses, I note that he travelled to attend the hearing in Richmond.
- [137] Item #16.1.2 of the WCAT MRPP provides that WCAT will generally order reimbursement of certain expenses for a worker's own attendance at an oral hearing if the worker was successful on the appeal. The amount of reimbursement may be limited. WCAT will not normally order reimbursement of expenses for an employer's attendance at an oral hearing.
- [138] As set out in item #16.1.2 of the MRPP, WCAT will generally order reimbursement of certain expenses for a worker's own attendance at an oral hearing if the worker is successful in their appeal. I interpret the MRPP to mean that expenses are not generally awarded to unsuccessful appellants. In this case, the worker was not successful in his appeal and I see no persuasive reason to depart from WCAT's general practice. Therefore, no appeal expenses are awarded.
- [139] No other expenses were requested, and none are apparent. Therefore, there is no order for reimbursement of expenses, pursuant to section 7 of the *Workers Compensation Act Appeal Regulation*.

Christopher Ramsay
Vice Chair