

February 16, 2004

Memo To: Jill Callan, Chair
Workers' Compensation Appeal Tribunal

Memo From: Beatrice K. Anderson, Vice Chair
Workers' Compensation Appeal Tribunal

RE: Section 251(2) Referral

Date of Decision: July 16, 2003

I have concluded that I am unable to apply a policy of the Workers' Compensation Board to the facts of a case which I have heard. Specifically, the policy is item #15.50 of the *Rehabilitation Services and Claims Manual (RSCM)* with respect to umbilical hernia.

The worker was a 56-year-old paramedic. On April 29, 2002, while bent over transferring a heavy patient and stretcher onto a bed, he had an onset of acute pain in his belly. An umbilical hernia was subsequently diagnosed. At the time the worker sought medical attention, the hernia was incarcerated and required immediate surgery.

The worker's claim was initially denied by a Board officer on the basis of the diagnosis and the policy. Item #15.50 of the RSCM (both volumes) says:

These are clearly congenital herniae and are not related to stress, strain, work effort or trauma, except in most unusual circumstances.

The Review Division officer sought a further opinion from a senior Board medical advisor about what would constitute this kind of circumstance. In a memo dated May 22, 2003, Dr. Martin suggested that a blunt trauma directly to the abdominal wall near the naval area would be such a "causative" circumstance.

Attached to the notice of appeal to the Workers' Compensation Appeal Tribunal (exhibit #2) is a letter from the worker's abdominal surgeon, Dr. Woodhead. Dr. Woodhead's opinion can be summarized as saying that Board policy is medically wrong. He writes that in adults, the umbilical hernia is almost always acquired rather than congenital, although he says that the view that such herniae are congenital is common in the "non-medical community". He also says that straining to lift heavy objects is sufficient to produce the hernia. He also states that

repetitive stress on the abdomen leads to fascial and abdominal wall-weakening. He provides authorities for his opinions.

If this were any other type of injury, I would have to conclude that it meets the requirements in section 5(1) of the *Workers Compensation Act* (Act). The worker was at work and, had an acute onset of abdominal pain while bent over, lifting a heavy weight. Moreover, it would be intellectually dishonest of me to characterize this as a most unusual circumstance – quite the reverse, this is an entirely routine action for a paramedic. I suppose that I could define a most unusual circumstance to mean any circumstance that met the requirements of section 5 of the Act. However, I suspect that would not only be tautological but would defeat the purpose of the policy which is to limit or eliminate claims for this condition. Because the circumstances of this claim so definitely meet the requirements to found a claim, the only justification for a policy restricting such claims would be that medically, they are never related to work effort or activity, or accident.

I have expert evidence that, in the first instance, the herniae are not congenital which undermines the basis for excluding them as compensable injuries, and, secondly, that such activity as the worker was engaged in at the time is a known mechanism of injury.

Board policies must surely have a sound medical and scientific basis where they make such plain statements about cause and effect. Any policy that is medically wrong and which provides the basis for denial of claims, must be so patently unreasonable that it is not capable of being supported by the Act and its regulations.

Both the worker and the employer are participating in this appeal, although the latter did not attend the hearing but sent submissions.

Beatrice K. Anderson

BKA/jkw