WCAT Decision Number: WCAT-2004-00035-RB
WCAT Decision Date: **January 08, 2004**
Panel: P. Michael O'Brien, Vice Chair

Introduction

The worker appeals from decisions of officers of the Workers' Compensation Board (the Board) contained in letters of July 18, 2000, September 29, 2000 and April 30, 2001.

In the July 18, 2000 letter the Board officer advised the worker that she had been granted a permanent partial disability award for disfigurement in the sum of $8,890.96. In the September 29, 2000 decision letter a Board officer explained in further detail the details of the calculation of this award. He also said that no translation of decision letters would be provided to the worker whose first language is French.

In an April 30, 2001 decision letter the Board officer advised the worker that certain travel costs claimed by the worker would not be paid by the Board.

Issue(s)

Does the disfigurement award granted properly reflect the degree of disfigurement suffered by the worker? Is the worker entitled to have documents translated into the French language? Is the worker entitled to the transportation costs requested?

Jurisdiction

These appeals were filed with the Workers' Compensation Review Board (the Review Board). On March 3, 2003, the Workers' Compensation Appeal Tribunal (the WCAT) replaced the Review Board as well as the Appeal Division of the Board. As a Review Board panel had not considered these appeals before that date, they have been decided as WCAT appeals. (See the *Workers Compensation Amendment Act (No. 2),* section 38,)

History and Evidence

This is a long and complicated claim, however the issues in front of me are narrow and I will therefore only record those details that are specific to those issues.

On August 12, 1998 the worker was employed in a produce packing shed when she went under a power roller conveyor. Her hair caught on the drive shaft and her scalp

was badly torn. The worker eventually returned to her home province of Quebec and has required ongoing medical and psychological/psychiatric assistance since the injury.

She has been left with a portion of her scalp which lacks hair growth. As a result the worker was considered for a disfigurement award pursuant to section 23(5) of the *Workers Compensation Act* (the Act).

In a memorandum of July 12, 2000 the Board officer set out his calculations of the disfigurement suffered by the worker. Six photographs of the affected scalp area are contained on the claim file. The first of these apparently was taken in November of 1998 shortly after the injury. The other five were taken on May 5, 2000 and identify the injury as having "completely stabilized."

Board policy for calculation of disfigurement awards is set out at item #43.20 of the *Rehabilitation Services and Claims Manual* (the RSCM). That provides for assessment of the disfigurement under five categories (surface area, texture and keloid scarring, colour, visibility, and loss of bodily form) with each category subdivided into four point ranges. An arithmetic formula for calculation of the overall disfigurement based on the categorization noted above, is also set out in the policy.

In the memorandum of July 12, 2000, the Board officer identified the points assigned to each category and then applied the mathematical formula indicated. That produced a disfigurement award of $5,601.30. The officer then went on to say:

> I have also considered the dramatic impact of this disfigurement and [the worker's] youth. In exceptional cases, the Board has the discretion to move within the range of a class. Whereas the calculation based on points awarded, would result in an award of $5,601.30, based on my review of hundreds of cosmetic cases, I believe this to be an exceptional case. Therefore the award will be increased to the maximum allowed for class 2 or $8,890.96.
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> (Reproduced as written.)

The worker was advised of the above decisions in the letters appealed.

The worker, following treatment in the province of Quebec returned to British Columbia and again was employed as a farm labourer. She received further treatment at the Board and then returned to her home province. She sought reimbursement for travel expenses for the return trip to Quebec. That was denied in the decision of April 30, 2001.

The worker has made no written submissions to this appeal although she has provided the tribunal with a number of documents, all of which are medical in nature and refer primarily to psychological or psychiatric difficulties. The tribunal had those documents

translated from the French language to the English language in order to determine their relevance to this appeal. On review I find that they have no such relevance and therefore forward them to the Board for their consideration.

Decision and Reasons

I deny the worker's appeals.

I have carefully reviewed the Board officer's calculation of the worker's disfigurement award based on item #43.20 of the RSCM. Although I might have some disagreement with the Board officer on the specific allocation of points within any given range under the five factors, I have no disagreement with the ranges accepted by the Board officer. That is, for example, although I might have calculated the surface area at 12 points rather than the 10 points assessed by the Board officer, I would have been within the same category, that is the 0 to 24 point category.

Given that the Board officer maximized the award, the minutia of specific calculations becomes irrelevant. I agree with the Board officer in his reasoning for maximizing the award. The disfigurement in this worker's case is exceptional.

With respect to the worker's travel costs, I have reviewed both the file and the appeals documents carefully and find no evidence that the worker's request for travel costs should be considered outside the normal Board policy that denies costs of this nature. The worker's travel to the province of Quebec was for personal reasons and not medical reasons and therefore is not an accepted cost under this claim.

On the issue of translation of the decisions from English to French, I find no such requirement either in the *Act* or in the RSCM and therefore deny the worker's appeal on that issue.

In summary I deny the worker's appeals and confirm the decisions of the Board officers.

P. Michael O'Brien
Vice Chair

PMO/cda