WCAT Decision Number: WCAT-2004-00060-RB
WCAT Decision Date: **January 09, 2004**
Panel: David A. Cox, Vice Chair

Introduction

The worker appeals from three separate decisions of officers of the Workers' Compensation Board (Board). An August 21, 2001 decision confirmed the reopening of the worker's May 1, 2001 injury claim. The worker was informed that his claim had been accepted for a concussion, a soft tissue strain/sprain injury sustained to his neck, upper and mid-back. Subsequent psychological review had confirmed that in addition to these traumatic injuries, the worker had suffered a non-disabling, temporary aggravation of a pre-existing non-compensable psychological condition. In the result, counselling on a maintenance basis had been approved.

The worker was informed that the opinion of a Board psychologist had confirmed his temporary total disablement between May 23, 2001 and July 14, 2001 as a result of a concussion. Therefore, his claim would be reopened for that benefit period. Furthermore, the worker was informed that, as he had returned to work with a different employer effective July 15, 2001, there was no indication that further benefits were owed to him under the injury claim.

The September 6, 2001 decision letter of a case manager informed the worker that as he had continued to experience consistent symptoms with respect to his neck, upper and mid-back beyond his return to work date of July 15, 2001, a physiotherapy extension had been accepted for the period July 31 through August 7, 2001 inclusive.

He was also informed that future entitlements with respect to short term disability and health care benefits were outstanding and would be considered under a prior compensable claim.

A January 30, 2003 decision of a case manager informed the worker that medical reports from his attending physician did not constitute significant new evidence from which to reconsider the September 6, 2001 decision.

The case manager informed the worker that the opinion of a Board medical advisor was that the worker's current cervical, thoracic and lumbar symptoms would best be considered under another claim.

Issue(s)

The issues arising out of these three decision letters are whether the worker had entitlement to temporary wage loss benefits beyond July 14, 2001; whether the worker had entitlement to physiotherapy treatment beyond August 7, 2001 and whether there had been significant new evidence provided the Board in which to reconsider the September 6, 2001 decision which ended his physiotherapy treatment on August 7, 2001.

Jurisdiction

These appeals were filed with the Workers' Compensation Review Board (Review Board). On March 3, 2003, the Appeal Division and Review Board were replaced by the Workers' Compensation Appeal Tribunal (WCAT). As these appeals had not been considered by a Review Board panel before that date, it has been decided as a WCAT appeal. (See the *Workers Compensation Amendment Act (No.2), 2002*, section 38.)

WCAT may consider all questions of fact and law arising in an appeal, but is not bound by legal precedent (section 250(1)). WCAT must make its decision on the merits and justice of the case, but in so doing, must apply a policy of the Board's board of directors that is applicable in the case. WCAT has exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact and law arising or required to be determined in an appeal before it (section 254).

Background and Evidence

The physician's first report of the worker's attending physician, based on treatment of the worker on May 1, 2001, reported that the worker had struck his head on a metal bar. There had been no loss of consciousness but one hour later, the worker had felt light headed and the following day had a decrease in balance and was nauseous. The physician diagnosed a mild head injury.

The June 1, 2001 claim log memo of the case manager set out that the worker's claim had been accepted for a blow to his head as a result of a workplace accident on May 1, 2001 when the worker had bent over and struck his head on the bar of a forklift.

A June 18, 2001 chart note of the attending physician noted that the worker had sustained a concussion and had injured his neck. The physician's chart note also noted that the worker had been laid off from his work.

A referral for psychotherapeutic treatment was undertaken by the Board. The referral letter noted that the worker had difficulty sleeping, experienced pain and had financial stresses. Another source of stress was noted as a constant tinnitus related to another compensable injury claim.

The June 29, 2001 consultation report of a registered psychologist reported that after his May 1, 2001 injury, the worker had continued to suffer from low back pain and tinnitus from a compensable injury in 1999. The report noted the worker had been unable to return to work and had been treated by a psychiatrist in June 2001 who had diagnosed depression and referred the worker for psychotherapy, pain management and stress reduction. The psychologist noted that the worker had been under a great deal of stress caused by chronic pain since the 1999 injury and that his current injury had over taxed his abilities to cope. The psychologist reported that the worker experienced high levels of neck and back pain together with the distressing tinnitus. The psychologist stated that the worker would benefit from intervention on the basis of his depressive symptoms.

The July 3, 2001 chart note of the attending physician noted the worker was to return to work at camp on July 15, 2001. The worker at that time, the doctor reported, felt he must return to work due to financial stress.

In a claim log memo dated July 17, 2001 a Board psychologist set out that the description of the compensable incident and subsequent symptoms were consistent with a grade 2 concussion or mild brain injury.

The July 26, 2001 progress report of the attending physician reported that while at work on July 25, 2001, the worker had lifted a hook off of an excavator and felt a sudden onset of low back pain from which the physician estimated the worker would be disabled one to thirteen days.

The August 1, 2001 report of an otorhinolaryngologist reported that the worker had continued head pain. The specialist noted that when exposed to noise, the worker's tinnitus worsened. The physician suggested that the worker perform work in an occupation where noise exposure could be reduced.

The August 17, 2001 report of the registered psychologist noted a deterioration in the worker's psychological condition. The worker had attempted a return to work at regular duty in a remote logging camp. The return had not been successful due to the worker's severe neck, shoulder and back pain as well as the tinnitus. The psychologist planned to see the worker on a regular basis and to proceed with instruction on long term pain management and stress reduction.

In a claim log memo dated August 21, 2001 the case manager recorded that the employer had been contacted and advised that the worker's claim would be reopened for health care and short term disability benefits based on the medical evidence and an opinion from the Board psychologist.

The memo reported the employer's awareness of the worker's pre-existing problems with his neck and back prior to his injury, which included depression due to an ear injury.

A team meeting memo dated August 21, 2001 discussed the worker's 1999 left ear injury claim and confirmed that it had not been accepted for a low back injury. It was noted that the present claim had been accepted for a concussion as well as soft tissue injuries to the neck and thoracic region. In addition, the concussion had likely temporarily aggravated the worker's pre-existing non-compensable depressive condition. As a result, these conditions would be formally accepted under the injury claim.

The memo set out the opinion of a Board psychologist that the worker had returned to work too early and had remained symptomatic and temporarily totally disabled until July 15, 2001. It was also the opinion of the Board psychologist that after July 15, 2001 the worker's concussive symptoms were not likely disabling. Treatment for the non-compensable depression would be authorized on a maintenance basis only as the psychologist was of the opinion that there had been a mild non-disabling aggravation.

The memo also set out that new claims had been established for the worker regarding a secondary bump to the worker's head on July 22, 2001. The memo recorded that while there was no evidence of a further concussion there was mention of a possible aggravation of the worker's mid-back symptoms. The second claim, registered for a July 25, 2001 incident, was for a low back injury. Documentation from a physiotherapist suggested that the worker had been mainly treated for an acute back strain when seen July 31, 2001. It was also noted that the worker had claimed low back disability as a result of the 1999 claim and a complete investigation was required. It was noted that the worker confirmed a return to work date of July 15, 2001. He had last worked on July 25, 2001.

The August 21, 2001 decision from which the worker has appealed was then issued. The August 22, 2001 claim log memo of the Board psychologist clarified the statements summarized in the team meeting memo. The psychologist stated that on average, post concussive symptoms were experienced for approximately three months with a gradual improvement.

The psychologist noted that by July 15, 2001 the worker was only 2.5 months post-concussion and had returned to work because he was afraid of losing his job and had financial obligations to meet. In the psychologist's opinion, the worker still experienced post-concussion symptoms and was not ready to return to full duties on July 15, 2001. As there was no gradual return to work, the psychologist suggested that the worker would have been off work for at least three months in order to deal with post-concussion symptoms. Also, the psychologist stated, the worker may have needed more time to deal with his back symptoms. The psychologist stated that the worker's depressive symptoms were related to the 1999 injury claim and that he was also experienced depressive symptoms related to a personal family background. The psychologist stated this was further aggravated following the concussion and neck/back strain.

In a further memo to file dated August 28, 2001, the Board psychologist referred to a report of the treating psychologist who had documented to the worker's deteriorating physical condition. The psychologist stated that, considering the worker's present state of depression, he would most likely need to continue with treatment.

A September 6, 2001 team meeting memo noted that the purpose of the team meeting had been to identify claim responsibility for the worker's temporary total disability. The case manager noted that a review of three claims in the year 2001 had made it clear that the worker had significant pre-existing compensable and non-compensable issues.

Under the May 1, 2001 injury claim, the worker had returned to work on July 15, 2001 and while he had not completely recovered from his compensable conditions, a gradual deterioration and eventual further temporary total disability beyond July 25, 2001 related to pre-existing factors. As a result, it was determined that no further short term disability benefits under the May 1, 2001 claim were payable. Health care benefits would be extended to include four physiotherapy treatments provided. Also, further psychological involvement would be referred to the worker's 1999 injury claim.

The worker's claim of an injury to his neck and low back as a result of a specific incident on July 25, 2001 was discussed. In the opinion of a Board medical advisor and psychologist, the worker's ongoing temporary total disability more likely related to a gradual decline in his psychological state and as a result, consideration of a reopening upon discontinuation of work on July 25, 2001 would be made under the worker's 1999 claim. It was noted that while the worker had claimed a new injury involving his low back on June 25, 2001, there was no documentation to confirm the injury was reported to the employer. Rather, the worker had described a gradual increase in symptoms upon return to work which he related to his injuries sustained under the May 2001 claim.

The case manager set out that the treating physiotherapist had been contacted and agreed that the worker had likely aggravated his pre-existing compensable symptoms. It was therefore the case manager's opinion that the evidence did not support that the worker had sustained a new injury and that it was the Board's responsibility to accept the worker's treatment between July 31 and August 7, 2001 under the May 1, 2001 injury claim. However, no further responsibility would be accepted for the worker's ongoing treatment which was to be examined under the 1999 injury claim.

The September 6, 2001 decision from which the worker has appealed was then issued.

The December 12, 2001 claim log memo of a Board medical advisor set out the difficulty in contrasting and sorting out the medical information with regard to the worker's symptoms and what duration of those symptoms would be applied to any particular initiating injury or event.

A claim log memo dated December 17, 2002 set out the case manager's decision not to accept the worker's treatment for back and neck complaints under the May 2001 injury claim. In addition, the case manager noted there had been no significant new evidence from which to warrant reconsideration of the previous decision.

The January 30, 2003 decision from which the worker has appealed was then issued.

A submission dated July 21, 2003 was received on the worker's behalf from a workers' adviser of the provinces Compensation Advisory Services. This submission set out the worker's position that the May 1, 2001 compensable claim, in combination with a moderate pre-existing condition, had created an unresolved neck and back problem which was the Board's responsibility until such time that the condition returned to its pre-injury state. It was the position of the worker that the work incident had aggravated the pre-existing condition which had not resolved nor returned to its former state.

The adviser stated that many of the worker's problems were related to and accepted under the 1999 injury claim. The exception was the neck and back problems.

The adviser furnished the July 15, 2003 opinion of the worker's attending chiropractor. This report indicated that the worker had initiated treatments in 1997 for a work related neck sprain/strain. The chiropractor recalled that in 1998 the worker had episodic neck and back pain but had been able to function at full capacity. Also, in 1999 the worker had been treated for similar complaints. The chiropractor's noted that in the year 2000 the worker had been treated seven times for a lumbosacral strain and once for a mid-thoracic sprain. In the year 2001 he had been treated for mid-cervical thoracic symptoms and on May 1, 2001 had suffered cervical thoracic and mid-thoracic soft tissue injuries.

The chiropractor noted that the worker, on July 22, 2001 had re-injured his pre-existing soft tissue injuries and had reported chronic neck, mid-back and headache pain since.

The chiropractor set out the present diagnosis of a chronic cervical thoracic musculoligamentous soft tissue injury and stated the opinion that the worker's current complaints were more severe than his pre-injury episodes treated between 1997 and 2001. The chiropractor attributed the soft tissue injuries to the May 1, and July 22, 2001 work related injuries.

It was the adviser's opinion that since May 2001 the chiropractor, and the attending physician had reported an increase in the worker's neck and back symptoms. The adviser stated that, even following a December 1999 injury, the worker's pattern of reports and treatment for neck and back problems had changed very little. After May 2001 the neck and back problems were so severe that he regularly complained to health care providers. In the adviser's opinion it was more reasonable to conclude that the worker had suffered a significant aggravation of a pre-existing condition which would explain the worker's current level of disability. The adviser stated as the worker was currently covered under the 1999 claim his only remedy to the appeal would be the provision of health care. The acceptance of the appeal, however, would require that the Board re-evaluate its assistance to the worker.

Reasons and Findings

August 21, 2001 Decision

The remedies available to the worker on the issues that arise from this decision have been minimized by subsequent actions of the Board. For instance, the worker's continued psychological symptoms have been assigned to the 1999 injury claim. The preponderance of the evidence regarding the decline of the worker's psychological condition is that ongoing depressive symptoms were related to a psychological state primarily developed from the 1999 injury claim. There has been no contrary evidence furnished to support an opinion opposed to that of the Board psychologist who opined that the concussive symptoms from the May 1, 2001 compensable incident may have aggravated the worker's depression but had not caused it nor disabled the worker. I therefore find that acceptance of depressive symptoms under this injury claim was properly characterized as a temporary aggravation of an underlying psychological condition and that under the circumstances of the May 2001 claim, the worker was not disabled alone by his psychological symptoms.

With regard to the worker's entitlement to wage loss benefits beyond July 14, 2001, the worker confirmed a return to work date of July 15, 2001. He remained at his employment until July 25, 2001. He reported to his physician that he had a sudden onset of low back pain after a lifting incident on that date. He had also previously reported striking his head at work on July 22, 2001.

The progress reports and chart notes of the attending physician do not confirm a continuity of symptoms related to the May 2001 concussion but confirm disability in relation to these separate incidents. Secondly, wage loss benefits were reopened on July 15, 2001 by way of a Board decision dated September 19, 2001. At this time, the worker's depressive symptoms were accepted as disabling as a result of the 1999 injury claim. The incident of July 22, 2001 led to an injury claim which was consolidated into the 1999 claim.

September 6, 2001 Decision

The outstanding issue arising from the September 6, 2001 decision is whether the worker had entitlement to further health care treatment for his neck, upper and mid-back beyond an extension of physiotherapy treatment to August 7, 2001.

I have reviewed the worker's 1999 injury claim and note evidence in the form of radiological investigations for the thoracic, cervical and lumbar spine dating to 1994. The chiropractic evidence was that the worker had received intermittent care for cervical thoracic problems since 1997. There is also medical discussion regarding the symptoms from the 1999 claim (tinnitus) superimposed over the worker's reported neck pain, post-May 2001. The difficulty in assigning symptomatology from the medical evidence to a particular initiating injury or event is well documented by the Board medical advisor's claim log entry of December 12, 2002.

I do not find the chiropractor's report, furnished for the purposes of this appeal, entirely enlightening. It is apparent that the worker has a longstanding history of neck, upper and mid-back complaints. The chiropractor has also attributed the severity of the worker's ongoing symptoms to an incident separate from the May 1, 2001 injury claim. It is obvious the May 1, 2001 compensable incident was not the initiator of these complaints. There is also strong suggestion that the chronic nature of the ongoing complaints is related to psychological issues accepted under the 1999 claim. This is a claim where a number of causes are inextricably intertwined and as noted by the Board medical advisor, it is difficult to determine one cause has worked independently of other causes in the development of the worker's chronic complaints. In the context of this appeal, there is insufficient medical evidence from which to determine the chronicity of the worker's ongoing neck and back complaints as specifically related to the May 1, 2001 injury claim. Nor may I conclude that these complaints were accelerated by the May 1, 2001 injury.

January 30, 2003 Decision

For the above reasons, I concur that the reports of the attending physician did not constitute significant new evidence from which to warrant a reconsideration of the September 6, 2001 decision. The clinical findings of the physician I find, do not meet the requirement of new or significant evidence. These reports did not support new medical findings or provide new insight into the worker's conditions.

Conclusion

The August 21, 2001, September 6, 2001 and January 30, 2003 decisions of Board officers are confirmed. No costs are allowed.

David A. Cox
Vice Chair

DAC/cmm

Workers' Compensation Appeal Tribunal 150, 4600 Jacombs Road, Richmond, B.C. V6V 3B1
Telephone: (604) 664-7800; 1-800-663-2782; Fax (604) 664-7898