**WCAT Decision Number:** WCAT-2004-00062-RB
**WCAT Decision Date:** **January 09, 2004**
**Panel:** Nora Jackson, Vice Chair

---

## Introduction

In a decision letter dated November 27, 2001, a Workers' Compensation Board (Board) entitlement officer confirmed that the worker's claim had been accepted for a low back strain and injuries to his left shin. Wage loss benefits were paid from June 29, 2001 to July 4, 2001. The worker's request for payment of wage loss benefits for July 13, 2001 and July 20, 2001 had been denied, as the entitlement officer had determined that there was no medical evidence of disability. The entitlement officer also advised the worker that his request for reimbursement for prolotherapy treatments had been denied, as they were not accepted under the Board's health care benefits guidelines. The worker appeals that decision (Appeal A).

## Issue(s)

Was the worker disabled from working as a result of his compensable injury on July 13, 2001 and July 20, 2001?

Was the worker entitled to reimbursement for his prolotherapy treatments?

## Jurisdiction

This appeal was filed with the Worker' Compensation Review Board (Review Board). Pursuant to Bill 63, the *Workers Compensation Amendment Act (No. 2), 2002*, the former Review Board and Appeal Division have been replaced by the Workers' Compensation Appeal Tribunal (WCAT) effective March 3, 2003. Section 38 of the legislation provides that all Review Board appeals are to be transferred to WCAT to be completed as WCAT appeals, unless a panel of the Review Board had completed an oral hearing, or unless written submissions were completed and a panel of the Review Board had commenced deliberations, before March 3, 2003.

As this appeal was not considered by a Review Board panel by March 3, 2003, it was transferred to WCAT and has been considered as a WCAT appeal except that no statutory time frame applies to the making of this decision. One effect of this change is that WCAT must apply policies set by the board of directors and the former governors of the Board.



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

**Evidence**

I have reviewed the evidence in the claim file, any submissions made by the worker and the accident employer in support of their respective positions, the *Workers Compensation Act* (Act) in effect at the time of the events here in question, and applicable Board policy as set out in the *Rehabilitation Services and Claims Manual, Volume I* (RSCM). Interested parties have received full disclosure of the claim file, and the medical and claim history will not be repeated in detail here except as relevant to the current appeal.

The worker was employed by the employer as a quality control appraiser. In 2001, the worker was 47 years old; he began working for the employer in May 1999.

The worker submitted an application for compensation to the Board for an injury to his back on April 4, 2001. That claim was denied. Nonetheless, the worker was off work between April 6 through April 15, 2001, and again on April 18, 2001. The diagnosis at that time was lumbar back strain with radiculitis.

On June 28, 2001, the worker was injured when he bumped into a container full of liquid UV coating. His left shin hit the lid of the container, and the worker fell forward, landing face down, first on his knees, then on his elbows and hands. He submitted an application for compensation to the Board on August 27, 2001.

In investigating the worker's claim, the entitlement officer received chart notes from the worker's physiotherapist, his attending physician, Dr. Yang, and from Dr. Yasin, who was treating the worker with prolotherapy. The worker had been receiving physiotherapy treatments since March 2000. He was treated as early as September 2000 by Dr. Yang, for low back complaints, and there were numerous indications in Dr. Yang's chart notes that there were ongoing aggravations which caused an increase in the worker's symptoms, and that he often had pain radiating down his left leg.

The employer protested acceptance of the worker's claim, because the worker was not being careful when he bumped into the container, and because of the worker's long-standing history of pre-existing non-compensable back complaints. Nonetheless, the worker's claim was accepted for injuries to his left shin and a low back strain. Wage loss and health care benefits were paid, and the worker returned to work on July 4, 2001.

The worker had ongoing complaints, but his attending physician, in the physician's progress reports, noted no objective findings. A September 29, 2001 report from Dr. Yasin, indicated that the worker had received two prolotherapy treatments before his compensable injury, and two after his injury, the first on July 20, 2001 and the second on September 6, 2001.

The worker was terminated from his employment on October 21, 2001.

The worker contacted the Board, and requested that further wage loss benefits be paid for July 13, 2001 and July 20, 2001. On July 13, 2001, the worker took the day off work because of increased pain after a massage therapy treatment. On July 20, 2001, the worker again took the day off because of an increase in symptoms after a prolotherapy treatment from Dr. Yasin. The worker also requested that the Board continue to pay for treatments (prolotherapy) recommended by his specialist.

The worker's claim file was reviewed by a Board medical advisor, whose opinion is documented in two memos to the claim log, both dated November 14, 2001. Dr. Cervenko noted that the worker's June 28, 2001 incident was a minor one resulting in only a few days' disability, after which he returned to work. He noted the worker's long-standing problem with musculoskeletal complaints and ongoing treatment for those complaints. In comparing the most recent medical reports with those prior to his compensable injury, Dr. Cervenko noted that the symptoms were the same and appeared to be chronic.

In a decision letter dated November 27, 2001, a Board entitlement officer confirmed that the worker's claim had been accepted for injuries to his left shin and a low back strain. Wage loss benefits had been paid from June 29, 2001 to July 4, 2001.

With regard to the worker's request for wage loss benefits for July 13, 2001 and July 20, 2001, the entitlement officer denied the worker's request. The entitlement officer noted that the worker was doing the job of quality control person, a job confirmed by the employer to be light. It was the opinion of the entitlement officer that there was no medical proof of disability for those days which would justify wage loss benefits being paid.

With regard to ongoing treatment for the worker's prolotherapy treatments, the entitlement officer had reviewed the worker's request with a Board medical advisor, who advised her that the treatment, injection of liquid into the ligaments, was not a standard one, and was usually confined to the management of chronic problems. The worker had had two treatments prior to his compensable injury, as well as two subsequent to it. It was the entitlement officer's opinion that the treatments were being used to treat his chronic problems, and not the minor back strain which had been acceptable. In any event, prolotherapy was not accepted by the Board under its health care benefits guidelines. The worker's request for reimbursement for those payments was denied.

In support of his appeal of the November 27, 2001 decision, the worker has submitted two letters, dated February 12, 2002 and August 23, 2002. With regard to the prolotherapy, the worker argued that because of the June 28, 2001 injury, he had lost the benefit of the two treatments he had received prior to that date. Therefore, the Board should reimburse the costs of those treatments. With regard to the question of wage loss benefits for July 13, 2001 and July 20, 2001, the worker argued that there was medical evidence of disability.

The worker cited the referral made by his attending physician to the massage therapist, which noted new work related injuries to the worker's neck as the reason for the referral. The worker also cited Dr. Yasin's consultation report of September 29, 2001, which indicated that the June 29, 2001 injury at work aggravated the worker's symptoms and caused more injury of the worker's soft tissue. Specifically, Dr. Yasin wrote:

> … He [the worker] stated that since the work related injury he has had [sic] been experiencing more pain to the left side of his back, groin, knee, shoulder, neck and arms. The accident at work aggravated his symptoms and caused more injury to his soft tissue. …
>
> [reproduced as written]

It was the worker's argument that not only had the compensable injury aggravated his pre-existing condition, but that it caused new symptoms, including pain in his neck and shoulders and pain in his left leg, radiating to his left testicle.

The employer did not participate in the worker's appeal, although given the opportunity to do so.

**Reasons and Findings**

Item #15.10 of the RSCM provides, in part:

> There may be cases where an organ of the body is deteriorating, possibly through disease, and it has reached a critical point at which it is likely to become a manifest disability. Some immediate activity might trigger the final breakdown.
>
> But if it had not been one thing it would most likely have been another, so that it is only chance or coincidence whether it happened at work, at home, or elsewhere. The disability is one that the claimant would not have escaped regardless of the work activity, and hence the causative significance of the work activity is so slight that the disability is treated as having resulted from the deteriorating condition. The disability is the result of natural causes and is not compensable. …
>
> On the other hand, there may be other cases where the deteriorating condition was such that, in the absence of **some exceptional strain or other exceptional circumstance**, it was not likely to reach a critical point and become a disability about the time of the work injury. The worker could well have survived without disability for months or years if something exceptional in the course of his employment had not triggered the disability. Here the employment situation had substantial causative significance and the disability is compensable. … [emphasis added]

The worker had been treated for low back and sciatic complaints for more than two years prior to the compensable injury. He was being seen regularly both by his attending physician and by his massage therapist. He had been referred to a specialist, and referred to prolotherapy some time before the compensable injury, and in fact had already received two of those treatments when the compensable injury occurred.

The Board has accepted that, in addition to left shin injuries, the worker's June 28, 2001 fall exacerbated the worker's pre-existing back condition. But the incident was a minor one, the aggravation was temporary, and the worker returned to work after three days to his light duty job. He then continued to work for 10 days, until, in his opinion, his massage therapy treatment disabled him from working on July 13, 2000. It appears that he then returned to work, until his prolotherapy treatment again disabled him from working on July 20, 2001. Neither of these treatments was mandated by the worker's compensable injury, nor is there, in any event, any medical evidence that the worker was disabled from doing his light duty job by the effects of those treatments. With regard to the issue of whether the worker is entitled to wage loss benefits for July 13, 2001 and July 31, 2001, I deny the worker's appeal.

Section 21 of the Act provides for health care benefits. Board policy with regard to health care is set out in item #73.00 of the RSCM. It provides that the worker is entitled to health care "even though the worker is not disabled from earning full wages at the work at which he or she is employed". Item #73.20 of the RSCM sets out the Board's policy for duration of coverage. Necessary health care continues to be the responsibility of the Board for as long as the worker continues to experience the effects of a compensable injury or occupational disease, even if that worker is not disabled from working or is retired from the work force.

With regard to the nature and extent of health care to be provided, items #78.00 and #78.10 set out the policy that all health care furnished or provided to an injured worker shall at all times be subject to the direction, supervision, and control of the Board. All questions as to the necessity, character and sufficiency of health care to be furnished shall be determined by the Board.

Prolotherapy is a reasonably new and controversial treatment, which the Board has advised is not accepted under its health care benefits guidelines. The Board is entitled to direct, supervise and control the health care benefits for which it is responsible, and I am loathe to substitute my opinion for the Board's unless its decision has been patently unreasonable. That is not the case here. Furthermore, even were I to perceive the benefit of such treatments, the treatments in question were not provided to address the worker's compensable condition.

Rather, they were provided to address the worker's chronic low back complaints. There is no evidence of their efficacy; therefore, to say that their "benefit" had been lost as a result of the worker's compensable injury would be speculative. There is no basis in law

or policy for the reimbursement of the cost of the worker's prolotherapy, either before or after his compensable injury.

Although only indirectly before me, the worker has argued that his left-sided complaints resulted from his June 28, 2001 compensable injury. However, chart notes received from his attending physician show that he had been treated for these complaints for some time prior to the incident here in question. In fact, low back complaints date back to September 2000, at the time of the earliest chart notes and massage therapy treatments. I find myself in agreement with the Board medical advisor that the worker had returned to his pre-injury condition when he returned to work on July 4, 2001. His ongoing complaints are the result of his pre-existing condition and not from the minor incident on July 3, 2001.

**Conclusion**

With regard to the issue of the worker's entitlement to wage loss benefits for July 13, 2001 and July 20, 2001, I deny the worker's appeal, for the reasons set out above. With regard to the worker's entitlement to further health care benefits, I deny the worker's appeal. The Board's November 27, 2001 decision is confirmed. No expenses are awarded.

Nora Jackson
Vice Chair

NJ/jkw