WCAT Decision Number: WCAT-2004-00082-RB
WCAT Decision Date: **January 12, 2004**
Panel: Nora Jackson, Vice Chair

Introduction

In a decision letter dated December 10, 2001, a Workers' Compensation Board (Board) entitlement officer advised the worker that her claim for injury to her right knee, right hand, wrist and elbow had been accepted for health care benefits only, as there was no evidence that the worker had been disabled from working as a result of her injury. The worker appeals that decision (Appeal A).

Issue(s)

Was the worker entitled to the payment of wage loss benefits? Did she suffer a loss of earnings as a result of the injuries accepted as compensable under her claim?

Jurisdiction

This appeal was filed with the Workers' 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to Bill 63, the *Workers Compensation Amendment Act (No. 2), 2002,* the former Review Board and Appeal Division have been replaced by the Workers' Compensation Appeal Tribunal (WCAT) effective March 3, 2003.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.

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 distance teacher. In 2001, the worker was 58 years old; she began working for the employer in September 1975. The worker was paid a year's salary over a ten-month period; she was not paid for the months of July and August. As a distance teacher, the worker was often required to be available during the months of July and August; if she was required to do so, she was not paid but, rather, reimbursed with time off in lieu of money later in the school year. The worker advised that she had been scheduled to work from July 16 through 27, 2001. She had a three-week vacation scheduled for August 2001.

On July 15, 2001, while attending a professional conference, the worker tripped on a concrete cover and fell onto her right knee and hand. She sustained an injury to her right knee, right hand and right wrist, and right elbow. She attended at the emergency ward of the hospital on July 16, 2001; her attending physician diagnosed a contusion of her right knee, right wrist, right hand and elbow, but did not indicate that the worker was disabled from working. An x-ray of the worker's knee taken in the hospital did not indicate any fractures or dislocations. Although the worker noticed immediate swelling, she was able to continue walking.

A subsequent report from the hospital dated August 2, 2001 indicated almost a full range of motion, mild diffusion, although there was still evidence of contusion about her right knee and shin. There was no evidence of fracture or significant intra-articular pathology. Dr. Rose saw no contra-indication for the worker returning to work. A report dated August 13, 2001 from the worker's family physician, Dr. Kobierski, did not indicate that the worker was disabled from working, and noted that the worker had a sedentary job. The worker submitted an application for compensation to the Board on August 17, 2001. She asked for compensation for the time which she was unable to work in July 2001, as well as missed vacation time in August 2001.

In a decision letter dated December 10, 2001, a Board entitlement officer advised the worker that her claim for injury to her right knee, right hand, wrist and elbow had been accepted for health care benefits only, as there was no evidence that the worker had been disabled from working as a result of her injury. No wage loss benefits would be paid, nor would any consideration be given to rescheduling the period of July 16, 2001 to July 27, 2001 or her vacation time in August 2001.

In support of her appeal of the December 10, 2001 decision, the worker has provided a written submission indicating that the employer gave her days in lieu of pay for the period between July 15 and July 30, 2001, but advised that she had not been reimbursed for the August dates on which she said she was disabled from working and unable to take a planned holiday. The worker acknowledged that she was home-based, and returned to work on August 24, 2001. She does not explain in what way her contusions disabled her from working.

The worker submitted a letter dated June 17, 2002 from Dr. L. Kobierski, her family physician. It states that the worker sustained an injury to her right leg with abrasions and contusions to her knee and lower leg. The worker's injuries caused her to be unable to work from July 15, 2001 until August 20, 2001 when she started to work part-time. The worker returned to work full-time on August 27, 2001. Dr. Kobierski does not specify why the worker is disabled from her distance learning obligations due to her leg contusions.

Also submitted by the worker was a list, dated June 19, 2001, outlining her contractual obligations for the period July 1 through December 31, 2001. It indicates that during the summer, the worker would work from home with full telephone and internet access, and would be available for consultation. There is no indication of any specific teaching duties.

The employer has made no submission in support of its position, although given the opportunity to do so.

Subsequent to the decision here being appealed, the December 10, 2001 letter was reviewed by the Board's Internal Review Division. No change was made in the December 10, 2001 letter denying payment of wage loss benefits on this claim (see letter dated July 4, 2002).

Reasons and Findings

Item #33.00 of the RSCM sets out the Board's policy with regard to the payment of temporary wage loss benefits. It provides, in part "… wage loss benefits are payable where an injury or disease resulting from a person's employment, causes a period of temporary disability from work".

I deny the worker's appeal. The worker was scheduled to work, if required, on the days following her fall. However, her work was sedentary, and generally done from home. There is no medical evidence that she was unable to do whatever work might have been required of her, even though she was using a cane and attending physiotherapy treatments. Although Dr. Kobierski submitted a letter a year after the events in question indicating that the worker was disabled from working, I prefer her report closer to the events at hand, when she acknowledged that the worker did sedentary work, from which she was not disabled.

Conclusion

With regard to the issue of payment of temporary wage loss benefits, I deny the worker's appeal, for the reasons set out above. The Board's December 10, 2001 decision is confirmed. No expenses are awarded.

Nora Jackson
Vice Chair

NJ/jkw

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