WCAT Decision Number: WCAT-2004-00089
WCAT Decision Date: **January 12, 2004**
Panel: Jane MacFadgen, Vice Chair

Introduction

The January 7, 2003 decision of the Workers' Compensation Board (the Board) denied the worker's claim for respiratory complaints due to exposure to a co-worker's cologne. The May 6, 2003 decision of the Review Division of the Board confirmed the Board's decision that the worker's symptoms were not an allergic reaction to a substance at work, but were due to a viral infection unrelated to his work.

The worker now appeals the Review Division decision to the Workers' Compensation Appeal Tribunal (WCAT), seeking acceptance of the claim. His request for an oral hearing was denied on a preliminary basis. I am satisfied that this appeal may be properly determined without an oral hearing as the underlying facts are not in dispute.

Issue(s)

Whether the symptoms for which the worker sought medical attention on and after October 22, 2002 were due to his employment.

Jurisdiction

This appeal is brought under section 239(1) of the *Workers Compensation Act* (the Act), which permits appeals from Review Division findings to WCAT. Section 250 of the Act provides that WCAT must make its decision based on the merits and justice of the case but, in so doing, must apply relevant policies of the board of directors of the Board. Section 254 gives WCAT exclusive jurisdiction to inquire into and determine all matters of fact and law arising or required to be determined in an appeal before it.

Background and Evidence

The worker is a postal worker. On October 21, 2002 he reported to the employer that he had a reaction to a co-worker's aftershave, with symptoms of coughing, and runny eyes and nose.

His November 20, 2002 application for compensation described an onset of coughing, accompanied by a runny nose and itching eyes, when a co-worker wearing strong aftershave entered his work area on October 21. His coughing symptoms continued throughout his shift, and he felt his throat closing up as the coughing continued. He left work early on October 23 and was off work until October 31 because his symptoms were not improving; being at work worsened his condition as he was sensitive to all

odours and dirt/dust. His doctor advised time off work to clear his system. The worker wrote that he was very sensitive to odours, and had a prior history of allergies/allergic reactions before this exposure. Several years earlier he had a similar allergic reaction to a cougar skin, and it had taken two weeks for his symptoms to resolve completely.

The employer protested the claim, submitting that the criteria for a Schedule B claim for respiratory irritation were not met. The worker had worked alongside co-workers who wore scented personal hygiene products for nine years. He had only worked beside the co-worker in question for part of the shift, and then removed himself from that individual. If his symptoms were related to the aftershave, one would have expected them to resolve after his removal from the offending source. The employer suggested the worker's claim was an attempt to remove himself from a shift that he did not like.

Dr. How's October 22 report diagnosed an irritated throat caused by a co-worker's cologne the night before. The worker's symptoms were clearing and he was fit to work.

The October 23, 2002 report of Dr. Giles, the worker's regular physician, diagnosed an allergic reaction with persistent symptoms of coughing and itchy/watery eyes, induced by an October 21 exposure to a co-worker wearing a strong fragrance. She prescribed an antihistamine and an inhaled corticosteroid/bronchodilator, and reported he was disabled from working. Her report noted he had a prior history of allergies.

Dr. Giles' October 25 chart note recorded that the worker had been coughing all night and had a headache (this appears to be based on a telephone discussion, not an examination). He left work early on October 23 and took October 24 off. She gave a note for him to be off work until October 31 to reduce his reactivity. On October 28, 2002 Dr. Giles noted his allergy symptoms were improving, but he was very sensitive to fumes; stamp pads and newspaper ink caused him to cough. His voice was less hoarse but his nasal congestion was thicker and stickier, and he was sneezing several times a day. She diagnosed a secondary viral upper respiratory tract infection.

A Board officer spoke with the worker on October 30, 2002, and noted that he was fine at the start of his shift on October 21. He had just started a new shift schedule and was working with different staff. Five hours into his shift a co-worker wearing a strong cologne came to work near him, and about 15 minutes later the worker felt as if his throat was closing up. His chest became tight and he started coughing. His eyes were extremely sore and itchy. He continued working and noticed that he was experiencing the same symptoms in response to other co-workers wearing perfume or cologne, such that he was constantly coughing until the end of his shift. His coughing and itchy eyes continued when he went home, and he had difficulty sleeping.

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He saw a doctor at a walk-in clinic the next day, and was told his symptoms should settle if he stayed away. He worked his October 22 shift with ongoing symptoms of coughing, itchy eyes and a runny nose. His symptoms continued at home, although his eyes felt a little less itchy. He saw his own doctor on October 23. She thought he was reacting to something at work and gave him antihistamines and a puffer. He worked that day with the same symptoms, as well as a slight headache. He left his shift about an hour and a half early and took an antihistamine, which seemed to reduce his symptoms somewhat.

He did not work on October 24 or 25 because of ongoing symptoms and a worsening headache, although his cough began to lessen. He phoned his doctor who advised him to stay away from work. On October 26 his cough and eye symptoms were greatly diminished. He did not seek medical attention or go to work. On October 27 he started to sneeze and his nose was congested with a more sticky phlegm. When he saw Dr. Giles on October 28, she said he now likely had a viral infection, and that his initial reaction may have left him more susceptible to developing a cold. His symptoms were gradually resolving and he intended to return to work on November 1.

The claims adjudicator noted the worker appeared to be an atopic individual with a post-nasal drip and prior reactivity/allergies to various environmental triggers. The worker said that he had had similar symptoms with an allergic reaction to a cougar skin about 10 years earlier. He had positive allergy tests to dust, cat hair and wheat.

The worker described that there had been some renovations in the plant a week prior to his symptom onset. He and a co-worker had complained of respiratory problems from the welding fumes, and were given dust masks to help their symptoms. The worker queried if his symptoms were related to the dust stirred up by the renovations.

The adjudicator asked Dr. Davison, a Board medical advisor, for her opinion on the diagnosis and cause of the worker's symptoms. Dr. Davison's December 31, 2002 memo concluded that there was no evidence to support an allergic reaction. The worker's symptoms did not abate after he was removed from exposure to the co-worker's cologne, but continued and worsened, even after he had ceased working. His doctor reported no abnormal physical findings and eventually diagnosed a viral upper respiratory infection (a cold), which accorded with the worker's symptoms. The evidence suggested that the worker's exposure to perfume/cologne drew his attention to the fact that his cold was starting.

Based on Dr. Davison's opinion, the adjudicator issued the January 7, 2003 decision under appeal denying the worker's claim. He concluded that the worker's respiratory symptoms were not due to a work injury or occupational disease, but were due to a common viral infection which was unrelated to his work.

The worker requested a review of this decision by the Board's Review Division. He wrote that although he later developed a cold, his initial complaints were a work-related allergic reaction which required him to take time off work. The Review Officer's May 6, 2003 decision confirmed the decision to deny the claim, concluding that the medical evidence did not support that he had an allergic reaction to a substance at work.

The worker appeals the Review Division decision, seeking acceptance of the claim and wage loss benefits related to his absence from work for part of his shift on October 23, 2002. His statement detailed the onset and evolution of his symptoms following his October 21 exposure to a co-worker wearing an overpowering cologne.

The worker's representative submitted that the medical evidence supported that on October 21 he suffered an allergic reaction which was primarily due to workplace exposure to fragrance(s), and shortly thereafter he contracted a non-work related viral infection. Both the clinic doctor and Dr. Giles diagnosed allergy symptoms based on the worker's initial presentation. Dr. Davison erred in stating that the worker's symptoms were not clearing when he was away from work as the first doctor's report noted that his symptoms were clearing. A viral infection was not diagnosed until October 28, at which time Dr. Giles noted his allergy symptoms were improving. Dr. Giles did not consider the two diagnoses to be mutually exclusive; both conditions appeared to be active concurrently.

The worker was not seeking wage loss benefits for the majority of time he was off work, given the close proximity of the viral infection. The submission argued that his symptoms until at least October 23, 2002 were due to a work-related exposure to airborne irritants/fragrances. His symptoms subsequent to October 23 were likely more related to the viral infection which was ultimately diagnosed on October 28. The worker's representative submitted that the employer's allegation that the claim was filed to avoid an undesirable shift was unfounded.

The employer supported the denial of the claim. It submitted that if a true allergic reaction had occurred, the worker would have quickly recovered when away from the source of the alleged reaction. He worked a full shift on October 22, the day after his alleged exposure reaction, and did not have any trouble with perfume. The fact that his symptoms worsened despite not being at work clearly indicated that work was not a causative factor in his claimed allergic condition. The employer stated that the doctors' October 22 and 23 reports were based on the subjective symptoms described by the worker. The correct diagnosis of a viral infection was only subsequently made on October 28. As Dr. Davison confirmed, this diagnosis was consistent with the worker's symptoms which were present from the beginning of the claim. The employer suggested that several non-claim related factors (a change to an undesirable shift, interpersonal conflict with a co-worker) led to this claim.

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Reasons and Findings

I find that the weight of the medical evidence supports that the worker's initial symptoms for which he sought medical attention on October 22 and 23, 2002 were likely due to an allergic reaction to fragrance worn by a co-worker on October 21.

I consider that, as a general practitioner, Dr. Giles would likely be aware of the difference between the symptoms of an allergic reaction and those of a common cold or similar viral infection. I accept her October 23, 2002 diagnosis of the worker's presenting symptoms of coughing and itchy/watery eyes as residual symptoms of an allergic reaction to scent at the workplace on October 21, for which she prescribed an antihistamine and inhaled corticosteroid and bronchodilator. In making this diagnosis, Dr. Giles was aware of the worker's prior history of reactivity/allergies.

I place more weight on Dr. Giles' opinion than that of Dr. Davison regarding the appropriate diagnosis for the worker's symptoms on October 23, 2002, because Dr. Giles' diagnosis was based on personal observation and examination of the worker. By October 28, 2002 when Dr. Giles re-examined the worker, she concluded that his allergy symptoms were improving, and that he had also now developed a viral upper respiratory tract infection, with nasal congestion and sticky mucous. She noted his residual sensitivity to fumes, such as stamp pads and newspaper ink, which would precipitate coughing. It is apparent from Dr. Giles' chart notes that her later diagnosis of a viral infection did not cause her to revise her earlier diagnosis of an allergic reaction. I conclude that she diagnosed the worker as suffering from two separate disease processes – initially symptoms of an allergic reaction, which were later superseded by symptoms of a viral infection. I accept her opinion on this matter.

The more difficult question is determining when the worker's symptoms and associated disability became primarily those of a non-compensable viral infection, as diagnosed on October 28, rather than the initial symptoms of the allergic reaction which were predominant when he was examined by the doctors on October 22-23, 2002. The submission by the worker's representative concedes that the viral infection is non-compensable and, as a result, he only seeks compensation for the residual allergic symptoms which caused him to leave work early on October 23, 2002 (approximately 1.5 hours of time loss). I consider this is reasonable in the circumstances of this case.

On balance I conclude that the worker had ongoing symptoms of an allergic reaction in response to a workplace exposure which caused him to miss a brief period of time from work for part of his shift on October 23, 2002. I vary the Review Division decision accordingly. I find that the period of time loss beyond October 23, 2002 was likely due to a non-compensable viral infection.

Conclusion

I vary the May 6, 2003 decision of the Review Division as follows. I find that the worker sustained a compensable allergic reaction to exposure to fragrance(s) at the workplace which caused him to miss part of his shift on October 23, 2002. In accordance with *Rehabilitation Services and Claims Manual Volume 2* policy #26.04, I find that the merits and justice of this case warrant the recognition of the diagnosed allergic reaction as an occupational disease by order dealing with this specific case, under section 1 of the Act.

Jane MacFadgen
Vice Chair

JM/cd

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