WCAT Decision Number: WCAT-2004-00156-RB
WCAT Decision Date: **January 14, 2004**
Panel: Lynn M. Wilfert, Vice Chair

Introduction

The worker, a ramp attendant with an airline, made an application for compensation in February 2002 for a back injury he felt occurred on September 16, 2000. He has appealed a February 25, 2002 decision of a Board entitlement officer which denied acceptance of his claim as the conditions of section 55 of the *Workers Compensation Act* (Act) had not been met. The worker had not made application within one year following the date of injury and he indicated that the reason he did not file sooner was because of the advice from his acquaintances. In the view of the entitlement officer, this did not constitute special circumstances as outlined under section 55 of the Act.

Issue(s)

- Did the worker meet the requirements of section 55 of the Act?
- Were there special circumstances which precluded the worker from filing his application within one year?

Jurisdiction

This appeal was 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 this appeal 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).

Background and Evidence

The worker had a claim accepted for a back injury in 1994. He made a further claim for back symptoms in 1995 but that claim was suspended for lack of information. The worker again claimed for back problems in 1996 and that claim was accepted. He sought reopening of his 1996 claim but that was denied in 1998. The worker also applied for benefits and had a claim accepted for left arm injury in 1998.

On February 6, 2002, the worker made an application for compensation for back problems that he related to work activities lifting bags onto the airplane. He told the Board entitlement officer that he had had ongoing back complaints since his original injury in 1994. On September 16, 2000, he had worked the day before and his back

was sore as usual. When he got up the next morning on September 16, there was no specific incident but his back "went out on him". The worker subsequently required an L5-S1 disc surgery. He told the entitlement officer that he did not apply sooner as he was under the impression from friends that he could not apply due to his prior claims. In his application for compensation, he stated that he was told recently that he should file as his back problem was from working. He was currently off again for his back. A report from the worker's physician on February 15, 2002 documented a recent flare of acute back pain radiating into the right leg and noted that the worker previously had a right L5-S1 discectomy in 2000.

On his notice of appeal, the worker stated that he did not have the energy to fight and argue with anyone to try and get compensation for his back. He thought that as he had previous back injuries, he would be denied and he could not afford to wait to try and get money. He took the easy way out and went on insurance.

The worker represented himself at the oral hearing. He described the history of his back symptoms from his first claim in 1994. In 1994, he had been working as a roofer when he slipped off some scaffolding and fell. He was diagnosed with a muscle spasm in a walk-in clinic and was off for one month. He then started as a refuelling attendant and again filed a claim for back problems in 1996. Under that claim, he was off one or two months, attended a chiropractor and returned to work as a refueller. In 1997, he went to Newfoundland and continued to have back problems. He phoned his adjudicator to try and have his claim reopened. She denied reopening of the claim and he did not pursue the issue further since he was in Newfoundland.

The worker moved back to British Columbia and again became employed as a refueller. In July 1998, he fell out of an airplane and cracked his left elbow. In his view, because he was compensating for his left arm problems, he used his back more. In 1999, the worker's back was not too bad although he would take occasional sick days when his back was stiff and sore. He made no claim for compensation. In the beginning of 2000, he found his back problems worsened and even getting out of bed was difficult. He had a pulsing pain in his back and hips. His doctor referred him for a CT scan which showed a disc protrusion. He was referred for physiotherapy.

The worker stated he was losing time from work due to his back problems but made no claim as his doctor related his problems to heavy work he had done over the years in construction and mining. In September 2000, his back was really sore and he walked to his kitchen to get some coffee and was unable to move. He was taken to hospital by ambulance. He subsequently underwent back surgery in September 2000.

The worker had been advised by his co-workers that he would have to fight to get compensation. His wife had recently left him with three children aged six months, three years and seven years. He was very stressed by these circumstances and his parents had to come out from Newfoundland to help him with the children while he was in the

hospital. He was very worried about finances and chose to go on disability insurance rather than claim compensation so he would get his money quickly.

He was off as a result of his surgery until mid November 2000 and had no significant problems with his back for one year, and then it started to get worse. He noticed his back tightening up and he was getting spasms into his hip while he was lifting and twisting at work in November 2001. When he got home, his symptoms worsened. He lay down and when he went to get up, his back seized. He was off work from November 2001 until May 2002 when he returned to work on a graduated basis.

In January 2002, there was a new union representative who advised the worker to file a claim and he did so.

The worker stated his back has continued to be bothersome and he has had numbness in his right foot since his surgery. He had a CT scan in March 2003 which shows a disc problem which is increasing and he was referred back to the orthopaedic surgeon in June 2003. He had an MRI in August 2003 and is awaiting the results. He is concerned for the future and is considering alternate work since refuelling is very heavy work.

In the worker's view, the special circumstances which precluded him from filing were his concern for his children's welfare if there were any delays in having his claim accepted. He had had delays in getting funding under his prior claims and, with the stress of impending surgery, the break-up of his marriage and the responsibility of his children, felt unable to deal with any extra stresses.

The worker confirmed that he was aware of reporting procedures, applications for compensation were available in the staff lunchroom and he did have a union representative. He did not discuss his case with the union representative and it was not until there was a new representative that he chose to make application.

Reasons and Findings

Section 55(2) of the Act provides that no compensation is payable unless an application is filed or a claim established within one year after the date of injury. Section 55(3) of the Act provides that when a worker applies for compensation outside of the one-year time frame, the Board may pay compensation if there are special circumstances that precluded the worker from filing an application within the one-year period. Item #93.22 of the *Rehabilitation Services and Claims Manual* (RSCM) sets out the Board's policy that in determining whether special circumstances existed, the concern is solely with the claimant's reasons for not submitting an application within the one-year period. No consideration is given to whether or not the claim is otherwise a valid one. If no such special circumstances existed, an application cannot be considered on its merits.

The worker has previously filed claims with the Board and, as a result, has some knowledge of what is required. He is employed in a unionized environment and has access to advice through his union. Applications for compensation are readily available and provided in the staff lunchroom. The worker's primary reason for not making an application in a timely fashion was that he was concerned about his family and finances and wished to avoid any delays in receiving funding. He has also stated he was under considerable stress over his marriage break-up and family responsibilities and did not wish to add to those stresses through any involvement with the Board. Understandably, the worker made what to him was a reasonable choice at the time and chose coverage under his insurance carrier rather than make application to the Board. The worker also chose again in November 2001 to not make a claim for compensation although he clearly feels his back problems are work-related. In this case, the worker was not prevented or precluded from filing an application but made a conscious choice not to. I cannot conclude that the desire to avoid the stress or potential problems in dealing with the Board constitute special circumstances which would preclude him from filing an application within the statutory time limit of section 55 of the Act. I find the worker's claim is statute-barred as it has not met the statutory requirements of section 55 of the Act.

Conclusion

I deny the appeal and confirm the Board's decision that the worker's claim is statute-barred in accordance with section 55 of the Act.

Lynn M. Wilfert
Vice Chair

LMW/jkw