WCAT Decision Number: WCAT-2004-00168
WCAT Decision Date: **January 14, 2004**
Panel: Daphne Dukelow, Vice Chair

Introduction

The worker's compensation claim was accepted in 2000. He was undergoing retraining in 2003 when, walking home from his course, he was struck by a car. The Workers' Compensation Board (Board) found that the injuries he suffered did not arise out of and in the course of his employment within the meaning of the *Workers Compensation Act* (Act) and policy. The worker appealed from the case manager's decision to the Review Division. The review officer denied his appeal, agreeing with the case manager. The worker now appeals from the finding of the Review Division dated August 18, 2003.

Issue(s)

The issue in this appeal is whether the worker is entitled to compensation for injuries sustained while on his way home from classes sponsored by the vocational rehabilitation department of the Board.

The worker also has raised an issue whether the worker should receive benefits for the time during which he work on his Board-sponsored course work at home while he was unable to attend the classes in his training course.

Jurisdiction

The worker's appeal is brought under the authority of section 239 of the Act as amended. Section 239 permits appeals from certain decisions of the review officers of the Review Division to the appeal tribunal (WCAT).

Section 239(2)(b) provides that a decision by a review officer respecting matters referred to in section 16 of the Act may not be appealed to WCAT.

Section 16 of the Act deals with the provision of vocational rehabilitation services to injured workers.

Background and Evidence

The worker was injured in 2000. His claim for compensation was accepted. The Board undertook to retrain the worker. He was enrolled in a course of study at a community college. On his way home from class on February 10, 2003, he was struck by a car and injured. The Board denied his claim for these injuries in a letter dated February 17, 2003. The worker appealed from the Board's decision. The review officer

confirmed the Board's decision in her decision of August 18, 2003. The worker now appeals to this panel. The review officer found that the worker was attending the courses at the college on a regular basis. The review officer found that this regular attendance was analogous to commuting to work at a regular location. The review officer found that Board policy did not contemplate compensation for injuries sustained in circumstances such as these.

Reasons and Findings

On the notice of appeal to WCAT the worker's counsel indicated that the worker admitted for purposes of the appeal that he was not entitled to benefits as a worker for injuries sustained as a result of the motor vehicle accident. That is the sole issue which was before the review officer. Since the worker admits agreement with the findings of the review officer, no issue remains for me to decide. Regardless of this admission, I have considered the circumstances of the worker's injury in February 2003 and am in agreement with the decisions of the other adjudicators.

Counsel for the worker raises another issue which is that the worker should receive benefits for the six weeks he was unable to attend class because he did work, as requested by the Board, on his course of study at home during those weeks. The worker states that he was able to complete his course of study on time and that as a result of this he should receive benefits for those six weeks.

This issue is not properly before me. It is clearly one which deals with "matters referred to in section 16", that is compensation while taking courses as part of a vocational rehabilitation program sponsored by the Board.

Also, so far as I can determine, this issue has not been addressed by the Board on an initial basis. The worker should take up this request with the Board and the Board should make a determination whether the worker should receive vocational rehabilitation benefits during the period in question after the worker's non-compensable February 2003 injury.

Conclusion

I deny the worker's appeal. I confirm the review officer's decision. Counsel for the worker has raised an issue not formally addressed by the Board. This issue, concerning payment of benefits during the six weeks the worker was not able physically to attend his courses but did course work at home should be determined by the Board.

Daphne Dukelow
Vice Chair
DD/jda

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