**WCAT Decision Number:** WCAT-2005-06667
**WCAT Decision Date:** December 15, 2005
**Panel:** Lisa Hirose-Cameron, Vice Chair

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## Introduction

On April 4, 2002, the worker, a machinist, applied to the Workers' Compensation Board (Board) for compensation for his back injury which he stated occurred on February 25, 2002. The Board concluded that there was insufficient evidence to support that the low back pain was caused by an incident at work and denied the worker's claim for compensation. The worker appealed the Board's decision to the Workers' Compensation Review Board (Review Board). In a Review Board decision dated March 28, 2003, the Review Board panel confirmed the Board's decision and denied the worker's appeal. He now appeals the Review Board's decision.

Although the worker is represented in this appeal, only submissions of the worker have been provided in support of the appeal. The employer is participating in the appeal process. Both the employer's director of Human Resources and the employer's representative have provided submissions.

## Issue(s)

The issue under appeal is whether the worker's low back injury arose out of and in the course of his employment.

## Jurisdiction

The Workers' Compensation Appeal Tribunal (WCAT) received the worker's notice of appeal on July 14, 2003. The date for filing an appeal within time was May 5, 2003. The worker sought an extension of the 30-day statutory time limit to appeal the Review Board decision date March 25, 2003. In a decision of the WCAT dated February 18, 2004, the worker's extension was granted. On March 3, 2003, the Appeal Division of the Board and the Review Board were replaced by the WCAT. Section 41(3) of the *Workers Compensation Amendment Act (No. 2), 2002* authorizes WCAT to hear this appeal as it arises from a finding issued by a Review Board panel that was seized of the appeal on March 3, 2003.

The submissions provided on behalf of the employer point out that no new evidence relevant to this appeal has been provided by the worker. The WCAT has jurisdiction to consider new evidence, and to substitute its own decision for the decision under appeal. The worker is not obligated to provide any new evidence.


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The worker requested that this appeal be decided on the basis of a review of evidence on file and written submissions. The Review Board panel held an oral hearing on the matter on January 28, 2003. The hearing was recorded and I have had an opportunity to listen to the recording. As there has already been an oral hearing on the matter and given the time which has passed since February 25, 2002, I find that a further oral hearing would not assist me in this appeal. I find, therefore, that the appeal may be fairly adjudicated on the method of appeal as requested by the worker.

**Background and Evidence**

A detailed history of the worker's claim file and the evidence related to the issue under appeal are documented in the Review Board decision dated March 28, 2003 and therefore, will not be repeated here in significant detail.

The worker's claim for compensation indicated that he had right-sided back pain from constantly reaching into a machine and lifting and installing metal parts. In response to whether he had any previous pain or disability in the same area, the worker checked "No" on the application form. He later telephoned the Board to advise he had made a mistake on the form and that he had experienced pain in the area of his injury prior to the date of injury.

The Review Board panel held an oral hearing on January 28, 2003 which was attended by the worker, his representative, and the employer's representative. At the hearing, the worker provided a handwritten note of Dr. Jackson, dated January 23, 2003. In this note, Dr. Jackson stated that he felt the worker's work environment had contributed to his ongoing back condition. He also reported that there had been documentation of at least two acute injuries in the past year.

The worker gave evidence at the oral hearing that prior to February 25, 2002, there were two other work incidents which caused him back pain: the first involved tightening a chuck on a machine manual and the second, while shovelling chips out of a bin. Both incidents were not reported to the employer by the worker. The worker stated that the pain previously felt, was the same as that felt by him on February 25, 2002. The worker felt that his back had reached a breaking point on February 25, 2002 which led him to attending first aid.

On questioning by the Review Board panel, the worker stated that he believed his pain came on while lifting heavier parts in and out of a machine, but was not entirely sure. He commented that the pain was no different than what he felt before but that on this occasion, his pain just "lasted too long."

He recalled no specific lift which caused the pain, but was not entirely sure on this point either. He had been performing the work for approximately one hour and a half before he attended first aid. First aid applied ice to his back for approximately 20 minutes. Although the first aid report indicated that the worker had full range of motion without

pain, at the hearing, the worker felt that he did have pain. Following attendance at first aid, the worker went back to work performing the same work activities.

He first reported his injury to his physician on March 15, 2002. The medical report of that date did not describe the incident which caused his pain. However, in the following physician's report dated March 28, 2003, the worker reported immediate pain in his lower back with lifting 50 pounds while leaning forward. When questioned by the panel regarding the contents of this report, the worker then stated that he believed his pain was from one specific incident rather than gradually occurring.

The worker's representative submitted at the oral hearing that the worker had ongoing back problems which were work related and that a "traumatic" incident on February 25, 2002 aggravated the prior problems.

The employer's representative provided two reports at the oral hearing. The first was a job site analysis conducted April 24, 2002 and an independent job site assessment completed in January 2003.

The worker's representative argued that the employer's exhibits were mainly to document preventative measures in order to avoid problems in the future and were not relevant to the panel's decision.

The Review Board panel concluded that the worker did feel discomfort in the course of his employment on February 25, 2002, however, was not able to conclude that there was a "traumatic incident" which took place on February 25, 2002 at work. He stated that the worker was not able to recall with any certainty whether he had suffered low back pain while working on that date. He found the worker's evidence to be inconsistent.

The panel preferred to rely on the evidence provided to the Board's client service representative as recorded in the log entry dated March 7, 2002. That is, that the repetitive lifting needed to run the machine led to the worker's back pain.

The panel found that there was insufficient evidence to support a specific accident occurred on that date and as a result, was not entitled to the presumption contained at section 5(4) of the *Workers Compensation Act* (Act). As a result, the panel was left to determine whether the worker's low back complaints arose out of and in the course of his employment. The panel referred to policy item #14.20 which states that the evidence must warrant a conclusion that there was something in the employment that had causative significance in producing an injury. A speculative possibility that this might be so is not sufficient. He also cited policy item #97.00 which sets out that "some basic evidence" is required to establish a proper claim. The Board's decision was confirmed by the Review Board panel.

**Reasons and Decision**

Effective June 30, 2002, the Act was amended by the *Workers Compensation Amendment Act, 2002*. The law and policy as they were immediately before being changed are referred to as the "former provisions." As the date of the worker's injury occurred prior to June 30, 2002, the former provisions apply to this decision.

I have read both the worker's and employer's submissions in their entirety. I acknowledge the worker's dissatisfaction with the appeal process.

With respect to the reports furnished by the employer's director of Human Resources at the oral hearing in 2003 and referred to in his submissions in support of this appeal, I find that they do not assist me in determining the issue under appeal before me. Both the director of Human Resources and the employer's representative requested that the Review Board decision be confirmed.

After reading the worker's claim file, hearing the tape of the oral hearing held on January 28, 2003, and reading the parties submissions, I agree with the Review Board panel's conclusions and confirm the Review Board decision dated March 25, 2003.

The worker requests in his submissions that the WCAT panel recognize that his injury did occur at his place of employment. Section 5(1) of the Act provides that the compensation is payable where a personal injury arises out of and in the course of employment. Generally speaking, "out of the employment" concerns the cause of the injury and "in the course of employment," its time and place. There must be evidence to support both that the injury occurred at work and was caused by work.

Policy item #15.00 of the *Rehabilitation Services and Claims Manual, Volume I* (RSCM I) provides that an injury is not compensable simply because it happened at work. It must also have arisen out of the employment. This means that there must have been something in the employment relationship or situation that had causative significance in producing the injury. Therefore, just because the worker felt pain while at work is not sufficient for the injury to be compensable.

The evidence of the worker changed throughout the compensation process. He first indicated that the injury occurred gradually due to his work activities, but at the oral hearing and to his physician on March 28, 2003 he indicated that there was a specific incident which caused his back pain. From the totality of the evidence, the only conclusion I can make with certainty is that the worker did feel pain in his back on that date while at work. This is consistent with the first aid report which indicates the worker sought treatment on that date.

Although Dr. Jackson is of the opinion that the worker's work environment contributed to his ongoing back condition, I find this determination is not a medical issue but is one that depends on the facts and evidence of the case. I find in this case, that there is insufficient evidence to support the work had causative significance in producing the injury. In other words, I am not persuaded that the worker's injury was caused by the worker's employment activities.

The worker gave evidence that he has had pain in his back prior to February 25, 2002 on at least two occasions. Policy item #15.10 of the RSCM I provides that in some cases, where it is determined that the employment situation had substantial causative significance in triggering a pre-existing disability, the pre-existing deteriorating condition may be compensable. I find that even if the worker had a deteriorating pre-existing back problem, I find there is also insufficient evidence to support the work situation had causative significance in aggravating an existing injury.

I deny the worker's appeal.

**Conclusion**

I confirm the Review Board's decision dated March 28, 2003.

No expenses were requested, and it does not appear from a review of the file that any expenses were incurred related to this appeal. I therefore make no order regarding expenses of this appeal.

Lisa Hirose-Cameron
Vice Chair

LH/hb