

Noteworthy Decision Summary**Decision:** WCAT-2003-01170-RB **Panel:** Cecil Memory **Decision Date:** June 26, 2003***Injuries occurring outside the province – Worker was an independent operator with personal optional protection – Worker’s residence was in Alberta, but his main job functions were in B.C. – Whether his injury was compensable – Interpreting section 8(1)(b) of the Workers Compensation Act, and applying policy item #112.20 of the Rehabilitation Services and Claims Manual***

The worker was self-employed, operating a mobile welding rig based at his residence in Alberta. He had purchased personal optional protection with the Workers' Compensation Board of British Columbia (Board). He sustained a ruptured tendon in his left knee in June 2002, while servicing his mobile welding rig following a week of working in a British Columbia town. Although he usually cleaned his rig at the worksite because he got paid for that time, on this occasion he was under some time constraints and travelled back to his residence first. When he got home he was doing maintenance work on the welding deck of the rig and, while getting down from the deck, stumbled forward and struck his left knee on a milk crate. The Board disallowed his claim for compensation on the basis that he did not meet the requirements of section 8(1)(d) of the *Workers Compensation Act* (Act) which the entitlement officer understood as requiring the worker to have a place of residence in British Columbia. The worker appealed.

Board policy respecting section 8 of the Act is set out in policy item #112.00 of the *Rehabilitation Services and Claims Manual, Volume I*. Item #112.20 states that where there is an out-of-province injury, the first question that must be asked is where, at the time in question, the claimant was performing his main job functions. Although section 8(1), including its residence requirement, applies where the main job functions at the time are being performed out of province, it has no application if the main job functions are being performed within the province. In the latter scenario, a claimant only has to meet the requirements of section 5(1). At all material times, the worker’s residence was in Alberta, approximately 400 yards from the British Columbia border. Upon review of the invoices for 2001 and 2002, the panel observed that all his welding work in 2001 was done in British Columbia, and that, with the exception of three occasions, this pattern continued in 2002. The panel concluded that the vast majority of his welding work in 2001 and 2002 up to the date of injury in June 2002 was done in the province of British Columbia.

The panel found that the main job function of the worker in June 2002 was being performed in British Columbia, and accordingly, section 8(1) had no application. The Board had accepted the worker’s application for personal optional protection, which declared his Alberta residence, but did not make any enquiry as to where his main job function would be carried out. The Board had also accepted premium payments from time to time. In the absence of any enquiry, and in the presence of the declaration and acceptance of premium payments, the Board is obliged to go beyond the mere reliance on residence to deny insurance coverage. The panel further found that the injury arose out of and in the course of the worker’s employment, hence the requirements of section 5(1) were satisfied. Accordingly, it found that the worker was entitled to compensation in respect of his left knee injury.

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Panel: Cecil S. Memory, Vice Chair

Introduction

1. The worker resides in Alberta. He is self-employed operating a mobile welding rig which is based at his residence in Alberta. The worker sustained an injury to his left knee on June 14, 2002. The injury occurred while the worker was servicing his mobile welding rig at the location of his homebase and residence in Alberta.
2. The worker had applied for personal optional protection with the British Columbia Workers' Compensation Board; the application was accepted with coverage effective July 2, 2001. The worker completed a form 6-7 application for compensation for the ruptured tendon in his left knee. In the appealed July 3, 2002 decision letter the Board disallowed his claim on that basis that he did not meet the requirement of section 8(1)(b) of the *Workers Compensation Act* (the Act) which the entitlement officer understood required the worker to have a place of residence in the province of British Columbia.

Issue(s)

3. Board policy respecting section 8 of the Act is set out in item 112.00 of the *Rehabilitation Services and Claims Manual, Volume 1* (RSCM) and its subsections. In particular, item 112.20 sets out policy where the claimant is working in British Columbia but is injured outside the province while in the course of his employment. The policy states,

Where there is an out-of-province injury, the first question that must be asked is where, at the time in question, the claimant was performing his main job functions. The concern will not be with the particular activity being engaged in at the moment of the injury. If the claimant's main job at the time is being performed outside of the province, the claim must satisfy the requirements of Section 8(1), including the requirement that he be a resident of the province. If those functions are being performed in the province, he only has to meet the requirements of Section 5(1) and Section 8(1) has no application.

4. The issue, therefore, is where, in June 2002, the worker was performing his main job function. If the main job function was being performed in British Columbia, then, by item 112.20 of the RSCM section 8(1) of the Act has no application and

the worker must meet the requirements of section 5(1) of the Act for compensability.

Evidence

5. At all material times the worker's residence was in Alberta. At the hearing the worker explained that he owns four acres of land just off a highway located approximately 400 yards from the British Columbia border. The nearest town is in British Columbia, 12 miles away. The nearest Alberta town is approximately 50 miles away.
6. Because of the proximity to the BC border the worker's telephone number is a British Columbia telephone number with the prefix '250'.
7. The worker utilizes an accounting firm in British Columbia for his business accounting.
8. The worker's business vehicles are registered in Alberta. At the hearing the worker stated that registration costs would be less in British Columbia but he is required to register the vehicles in Alberta because of his residence in Alberta.
9. Subsequent to the hearing the panel requested the application form and declarations made by the worker with respect to obtaining the personal optional protection coverage. These were provided under cover of letter dated June 19, 2003 in which a Board officer confirmed that the coverage was effective July 2, 2001. A review of the application completed and signed by the worker indicates that he declared his home address and mailing address in Alberta. He requested monthly coverage of \$2,500. The application is dated June 25, 2001. The date of acceptance by WCB was July 2, 2001.
10. Entered as exhibit 1, 2 and 3 at the hearing were invoices for the calendar years 2001 and 2002. Exhibit 1 was the invoices for welding work in British Columbia in 2001. At the hearing the worker stated that this represented all his invoiced business income in 2001. All of the welding business was done in or near a northern city in British Columbia. At the hearing the worker explained that he formerly resided in that northern city and he has many friends and contacts in that area and accordingly that was where his mobile welding services were used.
11. Exhibit 2 was invoices for 2002 for welding work done wholly in British Columbia. Exhibit 3 was three invoices for work done in Alberta in 2002. After review of these invoices I find, as a finding of fact, that the vast majority of the worker's welding work in 2001 and 2002 up to the date of injury on June 14, 2002 was done in the province of British Columbia.

12. The injury occurred on a Friday, June 14, 2002. At the hearing the worker stated that he had worked in the northern city in British Columbia for that week and had arrived at his residence in Alberta on Friday afternoon without having taken the usual time to clean his rig at the worksite. He explained that he would usually do it there because he would get paid for that time. However, he had some time constraints and travelled back to his residence first. That evening he was on the welding deck of the rig doing maintenance work and, while getting down from the deck, stumbled forward and struck his left knee on a milk crate.

Reasons and Findings

13. I find that the main job function of the worker in June 2002 was being performed in British Columbia. Accordingly, section 8(1) of the Act has no application.
14. I note, in passing, that the worker declared, as he should have, his Alberta residence and mailing address on his application for personal optional protection. With that declaration in hand the Board accepted his application without further enquiry as to where his main job function would be carried out. The Board also accepted his premium payments from time to time. In the absence of any enquiry, and in the presence of the declaration and acceptance of premium payments the Board would be obliged to go beyond the mere reliance on residence to deny insurance coverage.
15. I find that the worker was in the course of his employment at the time of the injury and that the injury arose out of his employment. Accordingly, I find that the requirements of section 5(1) of the Act are satisfied.
16. In summary, I find that the worker is entitled to compensation respecting the injury to his left knee on June 14, 2002.

Conclusion

17. For the foregoing reasons and findings the appeal is allowed.

18. The worker is entitled to reimbursement of travel expenses to attend at the oral hearing in Prince George. At the hearing the worker advised that the distance to Prince George from the BC border was 424 kilometres. He was required to arrive the day prior to attend the oral hearing at 9 a.m. the following morning. Accordingly, he is entitled to reimbursement of accommodation expenses and meals.

Cecil S. Memory
Vice Chair

CSM/hf