

Noteworthy Decision Summary

Decision: WCAT 2003-04167 **Panel:** Jill Callan **Decision Date:** December 17, 2003

Refusal to review by the Review Division upheld because the statement in question in the case manager's decision letter did not constitute a decision, but instead was for information purposes only

In a January 2003 letter, a case manager informed the worker that the Workers' Compensation Board (Board) had accepted his claim and would authorize surgery to remove a plate should the worker wish to undergo the surgery. The case manager also commented that "The Board Medical Adviser has advised that the expected recovery period from the proposed plate removal surgery would be two to three weeks". The worker contended that a longer period of recovery should be accepted under the claim and sought a review of the matter. The Review Division declined to conduct a review on the basis that the issue raised did not constitute a reviewable decision; the case manager had merely repeated the medical advisor's opinion. As the worker had not undergone the surgery and the Board had not made a determination concerning the worker's entitlement to benefits related to the surgery, the review officer found the issue was not reviewable. The worker appealed. The issue was whether the January 2003 letter contained a decision that was reviewable by the Review Division.

The panel agreed with and adopted the review officer's analysis and found the statement concerning the expected recovery time should the worker undergo surgery did not constitute a decision reviewable by the Review Division. It was information intended to assist the worker with any plans he may make related to the surgery. A decision concerning the worker's entitlement to benefits related to the surgery will be issued at a future time when the worker undergoes the surgery and information necessary to determine his entitlement to benefits is available. If and when that decision is ultimately issued, it would be reviewable by the Review Division.

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WCAT-2003-04167
December 17, 2003
Jill Callan, Chair

Introduction

This appeal was filed with the Workers' Compensation Appeal Tribunal (WCAT) under section 239(1) of the *Workers Compensation Act* (the Act). The worker appeals a June 4, 2003 decision of the Review Division, which informed him that the review officer would not be conducting a review of the January 28, 2003 letter of a case manager of the Workers' Compensation Board (the Board).

Counsel for the worker takes the position that the January 28, 2003 letter is reviewable by the Review Division.

Although invited to do so, the employer is not participating in the appeal.

Issue(s)

The issue is whether the January 28, 2003 letter contains a decision that is reviewable by the Review Division.

Background and analysis

The worker sustained a compensable injury to his right wrist in December 1998.

In a consultation report dated October 8, 2002, Dr. S. Patel, an orthopaedic and hand surgeon, stated that the worker was experiencing wrist pain related to tendonitis of the extensor tendon, which was likely caused by the plate that had been inserted in the worker's wrist when he had undergone surgery. Dr. Patel stated that removal of the plate could be considered if the pain continued.

On November 18, 2002, counsel forwarded a copy of Dr. Patel's report to the Board. Counsel requested that the Board "issue a decision letter accepting tendonitis, irritation from the plate and possible removal of the plate".

In the January 28, 2003 letter, a case manager informed counsel that the Board had accepted extensor tendon tendonitis under the worker's claim. He also stated that the Board would authorize surgery for removal of the plate should the worker wish to undergo the surgery. The case manager also made the following comment, which was the focus of counsel's request for review to the Review Division:

The Board Medical Adviser has advised that the expected recovery period from the proposed plate removal surgery would be two to three weeks.

Counsel contends that a longer period for recovery time should be accepted under the claim.

In the June 4, 2003 Review Division decision, the review officer determined that the issue raised by counsel does not constitute a reviewable decision. She noted the case manager had merely repeated the medical adviser's opinion. As the worker had not undergone the surgery and the Board had not made a determination concerning the worker's entitlement to benefits related to the surgery, she found the issue was not reviewable.

Counsel has filed a notice of appeal with WCAT, in which he states that the January 28, 2003 letter constitutes a decision which the Review Division ought to have reviewed.

I agree with counsel's position to the extent that I view the January 28, 2003 letter as a decision in which the Board accepted extensor tendon tendonitis under the claim and indicated it would approve the surgery. Since the Board has decided both of these issues in favour of the worker, there is no basis on which the worker may request a review related to these issues.

I agree with and adopt the review officer's analysis concerning the comment about the likely recovery time if the worker undergoes the surgery. I do not view this comment as constituting a decision. I view it as information intended to assist the worker with any plans he may make related to the surgery. A decision concerning the worker's entitlement to benefits related to the surgery will be issued at a future time when the worker undergoes the surgery and information necessary to determine his entitlement to benefits is available. If and when that decision is ultimately issued, it will be reviewable by the Review Division.

Conclusion

I confirm the June 4, 2003 Review Division decision. I find the statement concerning the expected recovery time should the worker undergo surgery does not constitute a decision reviewable by the Review Division.

Jill Callan
Chair

JC/dlh