Noteworthy Decision Summary

Decision: WCAT-2004-01432-RB Panel: Rob Kyle Decision Date: March 22, 2004

Bus driver – The act of turning a steering wheel on the worker's bus was a work-required motion

The worker, a bus driver for a local transit company, was making a sharp turn in his bus in a bus loop when he felt pain his left shoulder and neck. The Workers' Compensation Board accepted his claim and the employer appealed.

The act of turning the steering wheel on a bus was one in which this worker would only carry out while working. While driving and turning a steering wheel would certainly be considered a motion undertaken in numerous other aspects of the worker's life, the act of turning the steering wheel on a bus was part of operating a piece of industrial equipment. It is distinct from the "general activities of life" as described in policy item #15.20[1]. Turning the oversize steering wheel on a transit bus differs significantly from the activity required to turn the wheel on a car or other vehicle commonly used for household activities. It was not an activity that he would carry out in everyday life, given the type of turn required at that time and the forces involved. The activity not only arose in the course of his employment, but arose out of his employment. The worker was carrying out a work-required motion at the time of symptom onset, and this motion was a significant contributing factor to his injury.

[1] Policy item #15.20 has been replaced by policy item #C3-15.00. The new policy applies to all claims for injuries occurring on or after July 1, 2010.

Workers' Compensation Appeal Tribunal 150, 4600 Jacombs Road, Richmond, B.C. V6V 3B1
Telephone: (604) 664-7800; 1-800-663-2782; Fax (604) 664-7898

WCAT Decision Number: WCAT-2004-01432-RB
WCAT Decision Date: **March 22, 2004**
Panel: Rob Kyle, Vice Chair

Introduction

The employer appeals an April 2, 2002 decision letter of the Workers' Compensation Board (Board), which informed the worker and the employer that the worker's claim for a left shoulder strain occurring on February 13, 2002 had been accepted by the Board for health care and wage loss benefits. In that decision letter, the entitlement officer concluded that the worker's actions of turning a steering wheel on a bus had resulted in a left shoulder strain.

A compensation consultant represents the employer. The worker was invited to participate in this appeal by way of a letter from the Workers Compensation Review Board dated April 26, 2002, but did not respond.

There was no request for an oral hearing. After reviewing the evidence, and the policy for considering an oral hearing in item #8.70 of the Workers' Compensation Appeal Tribunal (WCAT) - *Manual of Rules, Practices and Procedures*, the panel concludes that an oral hearing is not required to ensure a full and fair consideration of the issues. There is sufficient information in the claim file to decide the issue in front of the panel.

Issue(s)

1) Was the act of turning the steering wheel on the worker's bus on February 13, 2002 a work required motion?

2) If the answer to 1) is "yes", was that work required motion a significant contributing factor to the worker's left shoulder and neck injury?

Jurisdiction

This appeal was filed with the Review Board. On March 3, 2003, the Appeal Division and Review Board were replaced by the 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).

Workers' Compensation Appeal Tribunal 150, 4600 Jacombs Road, Richmond, B.C. V6V 3B1
Telephone: (604) 664-7800; 1-800-663-2782; Fax (604) 664-7898

WCAT may consider all questions of fact and law arising in an appeal, but is not bound by legal precedent (section 250(1) of the Act). WCAT must make its decision on the merits and justice of the case, but in so doing, must apply (a) policy(ies) of the Board's board of directors that is (are) applicable in the case (Section 250(2)). WCAT has exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact and law arising or required to be determined in an appeal before it (section 254).

Background

At the material time to this appeal, this now 46-year-old worker was employed as a bus driver for a local transit company. On February 13, 2002, he was making a sharp turn in his bus when he felt pain in his left shoulder and neck. That night he felt pain in his left shoulder but did not consider it serious, so he continued to work the next day and thought it might resolve after his regular days off. The worker reported the injury to his employer on February 18.

The worker was first examined by his attending physician, Dr. T, on February 18, 2002. He diagnosed a left shoulder and scapular strain. He recorded that this injury occurred while turning the steering wheel of his bus to make a tight turn and that the worker first noticed his left shoulder pain that evening. He recorded that the worker would be able to return part-time to driving a bus as of March 4 on a graduated basis. The worker did return to work on a part-time basis as of March 4, 2002.

The entitlement officer documented an analysis of the events leading to the worker's injury in a March 13, 2002 claim log memo. Included in that memo is a summary of data supplied by the employer regarding the forces involved in turning the steering wheel of a bus such as that which the worker was driving. In turning the bus wheel while the bus was in motion, the average force required to make a left turn ranged between 4.4 kg and 5.4 kg. With a stationary bus, the average forces required to turn the wheels ranged between 6.2 kg and 7.8 kg. The entitlement officer concluded that this type of bus would require a total of eight revolutions of the steering wheel to one side for the wheel to be turned from straight to the maximum range.

The entitlement officer also considered the configuration of the bus loop in which the incident occurred and with which he was familiar. He concluded that to make a similar turn to that under scrutiny here would require the operator to turn the wheel many times quickly in a short period of time while driving slowly. The bus was not completely stationary while the turn was made and he estimated that the force required would have been between 5.5 kg and 7.8 kg. He also concluded that a total of eight full revolutions of the steering wheel would be required to turn the bus wheels completely to the left. The entitlement officer concluded that the worker was using the hand-over-hand technique while making this turn. In order to complete eight full revolutions of the steering wheel, the entitlement officer estimated that the worker would have had to

make from 10 to 14 turns of the wheel in order to make the turn required at the time of symptom onset.

The employer protested the claim from the outset, stating that its buses were equipped with power steering and there was no mechanical problem with the steering wheel prior to the incident. The employer questioned whether this was a work-related injury. The employer further stated that the worker was accustomed to this type of work. In a March 11, 2002 letter to the Board, the employer's representative questioned whether this worker's injury arose out of and in the course of his employment.

The Board issued the decision letter under appeal here on April 2, 2002. The entitlement officer reviewed the facts as described by the worker. He found the worker credible. The entitlement officer also reviewed the information provided by the employer describing the forces required when turning a bus steering wheel. A Board medical advisor had provided an opinion that the worker's left shoulder injury was compatible with the worker's description of turning the steering wheel. Based on the above information, the entitlement officer concluded that the worker's injury was compensable under section 5(1) of the Act.

The employer now appeals the Board's April 2, 2002 decision to a WCAT panel.

Submissions

Employer's Submission

The employer provided a submission to the Board dated September 16, 2003. The employer makes much the same argument as presented in its protest of claim acceptance. The employer argues that the requirements of section 5(1) of the Act and *Rehabilitation Services and Claims Manual, Volume II* (RSCM) policy item #15.20 regarding work required motions have not been met.

The employer submits that the act of turning a steering wheel is considered a low-risk activity with respect to any possible injury. The employer also submits that the entitlement officer dismissed the delays in reporting the injury and seeking medical attention. The employer states that the delays are important and cast doubt on the activity of turning the steering wheel as being the causative factor with regard to the worker's injury.

The employer's position is that this particular turn was not out of the ordinary and the worker was well accustomed to the work activity which he performed on a regular basis. The employer submits that turning a steering wheel is a normal body motion and that it was only coincidental that this body motion occurred while at work. The employer concludes that it has not been proven that the left shoulder injury was caused by

employment activity and that the provisions of section 5 of the Act have not been met. As a result, the claim is not acceptable.

The employer requests that the Board's decision be set aside and that the claim be denied.

Worker's Submission

The worker is not participating in this appeal, so did not provide a submission.

Analysis

Board policy governing work required motions is found in RSCM policy item #15.20, as noted above. This policy is identical in both Volume I and Volume II of the RSCM. Volume 1 is applicable here. That policy states, in relevant part:

> If a job requires a particular motion, and that motion results in injury, that is an indication that the injury arises out of the employment and is compensable. An example of this principle is a Board decision where the claimant's injury resulted from bending down and, for this worker, bending down was a required movement of the job. Another Board decision illustrates the point as follows:
>
> > 'An automobile mechanic working under a car is bending himself in unusual ways when he turns his head to look at something. Through some unusual movement of the neck muscles, he suffers a muscle strain. The employment activity may well have had causative significance and the injury is therefore compensable.'
>
> The same applies where a job requires a series of different motions, and an injury results from the series.
>
> On the other hand, there may be situations where an injury resulted from some motion of the human body that was not required as part of the job. This would be an indication that the injury would not be compensable. Suppose, for example, that on walking along a road on an industrial site in the course of employment, a worker's head turns sideways as a matter of curiosity to see what someone is doing. Because of some peculiar movement in the neck muscles, a muscle strain occurs. That would not be an injury "arising out of" the employment, and therefore not compensable. Again, suppose a worker is using the toilet at work and, in doing so, suffers an injury resulting only from the bowel movement. That would not be compensable.

The worker in this case was engaged in his regular work activities at the time he first noticed symptoms in his left shoulder and neck. In examining the above example of the automobile mechanic, I note that the policy states that this worker was "bending himself in unusual ways." That wording could create the perception that a particular motion causing an injury would have to be something unusual before being considered as resulting in a compensable injury. The panel in *Appeal Division Decision #2001-1815* considered that wording and concluded that there was nothing in the Act that required a personal injury to arise from something unusual in order to be compensable. The panel interpreted the policy as simply providing an example of a type of injury that would be compensable, but not setting out a requirement of an unusual movement. I agree with that interpretation.

Policy item #15.20 further states:

> The injury may result not from any particular motion at any particular time and place, but rather from repetition of the same kind of motion over time, perhaps several weeks, perhaps several years. If the motion is one that the worker undertakes in the course of employment, or predominantly in the course of employment, this would be an indication that the resulting injury would be compensable. But if the motion is of a kind that is undertaken at home and in the worker's social life as well as at work, this would be an indication that the resulting injury was not compensable. This point is illustrated in another Board decision:
>
> > 'If the injury is one that resulted from the natural condition of the worker together with the general activities of life, it would not be compensable simply because work was one of those activities. To be an injury arising out of the employment, there must be something in the employment that had a particular significance in producing the injury. For example, if a claimant has an injury to his knee and medical evidence indicates that this is caused by the use of stairs, it would not be compensable simply because the claimant uses stairs at work as well as at home and elsewhere.'

The act of turning the steering wheel on a bus is one in which this worker would only carry out while working. While driving and turning a steering wheel would certainly be considered a motion undertaken in numerous other aspects of the worker's life, the act of turning the steering wheel on a bus is part of operating a piece of industrial equipment. It is distinct from the "general activities of life" as described in the policy quoted just above. Turning the oversize steering wheel on a transit bus differs significantly from the activity required to turn the wheel on a car or other vehicle commonly used for household activities.

The particular activity in which the worker was engaged at the time of symptom onset is not an activity that he would carry out in everyday life, given the type of turn required at

that time and the forces involved. That activity not only arose in the course of his employment, but arose out of his employment. I conclude, therefore, that the worker was carrying out a work required motion at the time of symptom onset; the answer to question 1) above is "yes".

The second part of the analysis is with respect to the significance of this work required motion in leading to the worker's injury. The policy reference just above to the employment having a "particular significance" in producing the injury alludes to the second issue to be determined. It is well established that an injury will be compensable where the work was a "significant contributing factor" or was "causally significant" in producing that injury.

In his book, *Workers' Compensation in Canada*, Terence Ison writes at page 58:

> '... it is not necessary that the worker's employment be the most significant factor in her ongoing condition; it is sufficient that the employment was a significant contributing factor." It is irrelevant to classify one cause as primary and the other as secondary, and it is improper to screen out contributing causes by seeking to identify "the cause". If the employment contributed in a material degree to the disablement or death, it is compensable.

In a leading case from the Supreme Court of Canada on causation of personal injury (*Athey v. Leonati*, [1996] 3 S.C.R. 458), the Court stated:

> … the courts have recognized that causation is established where the defendant's negligence "materially contributed" to the occurrence of the injury: *Myers v. Peel County Board of Education*; [1981] 2 S.C.R. 21, *Bonnington Castings, Ltd. v. Wardlaw*, [1956] 1 All E.R. 615 (H.L.); *McGhee v. National Coal Board*, *supra*. A contributing factor is material if it falls outside the *de minimis* range: *Bonnington Castings, Ltd. v. Wardlaw, supra*; see also *R. v. Pinske* (1988), 30 B.C.L.R. (2d) 114 (B.C.C.A.), aff'd [1989] 2 S.C.R. 979.

I accept "significant contributing factor" as analogous in meaning to "materially contributed".

"*De minimis*" is the shortened version of the legal maxim "*de minimus non curat lex*", defined in the Dictionary of Canadian Law, 2nd edition, as "The law does not bother itself about trifles." Black's Law Dictionary expands on that definition in defining "*de minimis*" as "so insignificant that a court may overlook it in deciding an issue or case."

I have decided that this worker's action in turning the steering wheel was a work required motion. The second and last question to be answered is whether that work required motion was so insignificant that it should be ignored as a contributing factor to

the worker's injury. The worker's evidence, which I accept, establishes a cause and effect relationship in that he first noticed symptoms in his left neck and shoulder area in the process of turning the wheel. The data supplied by the employer indicates that the forces required to turn the steering wheel can be significant, and in this case, given that the worker was in the process of turning the wheel hard while traveling slowly, I accept that the forces required were significant. The worker's attending physician, in his first report, attributed the worker's left shoulder and scapular strain to turning the steering wheel. So did the Board medical advisor in her opinion recorded in a March 20, 2002 claim log memo. The evidence establishes that the work required motion of turning the steering wheel was not so insignificant that it should be ignored; the evidence establishes that it was at least a significant contributing factor to the worker's injury.

In its September 16, 2003 submission arguing against claim acceptance, the employer submits that the act of turning a steering wheel is a natural body movement and that it is only coincidental that this normal body motion occurred while working. The employer also states that the delays in reporting the injury and seeking medical attention throw doubt on the steering wheel activity as being the causative factor with regard to the worker's injury. The employer submits that it is not proved that the left shoulder injury was caused by employment activity, and so the requirements of section 5(1) of the Act have not been met.

Given the analysis above, I do not agree with the employer's position that the worker was engaged in a natural body movement. Also, while it is possible that the delays in reporting the injury and seeking medical attention may indicate another cause for this worker's injury, any conclusions in that regard would be speculative as there is no evidence to support such a conclusion. It is not uncommon for a worker to delay reporting an injury for a period of days with the thought that an apparently minor ache or pain may resolve without the need to involve the Board or the employer.

Given the evidence and analysis above, I conclude that the worker's left shoulder and neck injury did arise out of and in the course of his employment, and this personal injury therefore meets the requirements of section 5(1) of the Act with respect to the worker's entitlement to compensation for a personal injury.

Decision

The employers appeal is denied. The Board's decision as contained in the April 2, 2002 decision letter is confirmed.

Rob Kyle
Vice Chair
RK/jd