Noteworthy Decision Summary

Decision: WCAT-2004-01807 **Panel**: I. Macdonald **Decision Date**: April 7, 2004

Injuries following motions at work - Item #15.20 of the Rehabilitation Services and Claims Manual

The employer appealed an October 20, 2003 decision made by a review officer. The review officer had found that the lower back pain experienced by the worker on January 24, 2003 while she was filling her cup with water from a water cooler was due to personal injury arising out of and in the course of her employment.

The review officer's decision was varied. The panel noted that the fact that a motion the worker performed while "in the course of" her employment could have caused a back injury is, as discussed at policy item #15.20[1] of the *Rehabilitation Services and Claims Manual*, not sufficient to give the motion "work status". 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. In this case there was no episode of externally induced force, or any instance of slip, trip, jerk, or other sudden shifting of position likely to induce a traumatic strain of the musculature of the worker's low back. The worker made a simple normal body motion that would not have come anywhere near to approaching the limits of a normal range of motion. That she did so at work while obtaining a cup of water from a water cooler was coincidence. Accordingly, the motion occurred "in the course of" the worker's employment, but the occurrence of the injury at that time was coincidental, and was not due to any aspect of the employment thus it did not arise out of the employment.

[1] The board of directors of the Workers' Compensation Board has enacted policy item #C3-15.00 to replace item #15.20. The new policy item #C3-15.00 is applicable to all claims for injuries occurring on or after July 1, 2010. This decision applies the old policy in force prior to July 1, 2010.

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Panel: Iain M. Macdonald, Vice Chair

Introduction

The employer has appealed an October 20, 2003 decision made by a review officer. The issue decided by the review officer was whether the worker's back injury had arisen out of and in the course of her employment. The review officer decided that the lower back pain experienced by the worker on January 24, 2003 while she was filling her cup with water from a water cooler was due to personal injury arising out of and in the course of her employment.

Issue(s)

The issue is whether the motion resulting in the worker's low back pain on January 24, 2003 caused personal injury arising out of and in the course of her employment.

Jurisdiction

This appeal was filed with the Workers' Compensation Appeal Tribunal (WCAT) under section 239(1) of the *Workers Compensation Act* (Act). The employer appeals an October 20, 2003 decision of the Review Division.

Relevant Information

At the time of injury, the worker, a teacher, was 36 years old. On January 24, 2003 while bending over to fill her cup with water from a water cooler, she experienced a sudden onset of pain in her low back. Three days later the worker consulted a chiropractor, who diagnosed discogenic lower back pain. The chiropractor noted that the worker had experienced mild low back pain over the two-month period leading up to the sudden onset of pain. The chiropractor suggested that the worker's back pain had been aggravated by bending over at the water cooler. Two days after that, on January 29, 2003, the worker reported an injury to her employer.

On February 6, 2003, the worker's physician diagnosed a lumbar strain.

In her application for compensation, the worker said that she had not worked since the day of injury. She said she had not immediately notified her employer because she had not realized the severity of the injury. She also said she had not reported to first aid because the bell had gone at school, and she had needed to get back to her classroom. She had taken two pain relievers and had tried to keep working. She had however mentioned the incident to her students, and to a colleague. The worker said there had

also been many other people in the staffroom where her injury had occurred, however she had not said anything to them at the time.

In describing the circumstances of her injury, the worker said:

> I was carrying my lunch bag, a cup, and some papers. I bent to get water from the water cooler. I felt pain immediately in my lower back. It did not go away when I stood.

The worker said that she had noticed over the previous few months that she often experienced pain in her low back when sitting with students and bending over their work to help them. Her symptoms were also apparent when lifting or carrying heavy books or materials, and when standing for prolonged periods of time.

In a report submitted on February 7, 2003, the employer said that the worker had told them she had been bending over the water cooler in the staffroom and had felt something give in the lower left side of her back. She had been bending over to get a drink of water, and had been holding books and papers in one arm and her cup and lunch bag in the other. The worker's pain had become worse over the weekend. The employer confirmed that there had been a witness.

On February 14, 2003, an entitlement officer spoke with the worker, and wrote:

> The claimant was in the lunch room, bent over to fill her cup with water. She had a cup and some paper in her hand. Weight under 5 lbs. She used her left hand to flip the [lever]. When she bent over to fill her cup with water she had an instant pain in her low back. The pain did not go away when she stood up. There was nothing awkward, she merely bent forward. There was no slip, twist or fall.

The entitlement officer referred to policy item #15.20 of the *Rehabilitation Services and Claims Manual, Volume 2* (RSCM) and observed that an injury is not compensable simply because the pain comes on at work. The entitlement officer found no causative significance in bending over to fill the cup and decided that the worker's claim should be disallowed. The entitlement officer conveyed this decision to the worker, who in turn appealed it to the Board's Review Division.

In her submission to the Review Division, the worker maintained that the movement she performed at the water cooler was not only awkward and unusual, it had further injured a pre-existing work injury that was manifesting itself as occasional low back pain while bending. This low back pain had been increasing over the time leading up to January 24, 2003.

The worker said what had not been acknowledged during her conversation with the entitlement officer was the fact that because she had her lunch bag tucked under her left arm, she was actually bending and twisting at the same time when she leaned forward in order to lift the spigot on the water cooler to fill her cup. She wrote:

> This twist was significant as I was reaching across my body with my elbow firmly against my side in order to lift the spigot that was on the right side of the water cooler while holding my cup under the spigot with my right hand. I did feel immediate pain in my lower back and when I stood up, my cup filled with water, the pain did not subside.

The worker then re-stated and expanded upon her reasons for not having reported the problem immediately to the first aid attendant or to the principal or vice principal.

The worker wrote:

> It is my understanding that an injury of this kind is rarely the result of a one time accident but rather the result of repetitive movements that weakened the area and made me more vulnerable to slipping a disc.
>
> My work as a Learning Support Teacher requires that I am constantly bending over students' work and twisting as I work between students sitting on either side of me. Unfortunately, I now understand that my posture was often awkward as I worked to get close enough to my students' work. This repetitive movement was causing me increasing lower back pain in the time leading up to January, 24. This pain was out of the ordinary for me. It was also causing me to experience pain when I needed to carry books and materials around as well as when I stood for prolonged periods of time. I have now learned new strategies to cope with this situation in order to protect my back and avoid a repeat of the injury, I also used a back support in my chair.

The employer, in a July 25, 2003 submission, expressed concern over the worker's delay in reporting her injury, and observed the information that the worker had been experiencing low back pain for several weeks prior to January 24, 2003. Further, the employer mentioned that the worker had been involved in a motor vehicle accident less than 12 months prior to January 24, 2003, and that the worker had been seeing a chiropractor for more than a year. The employer argued that the activity of drawing a glass of water did not "arise out of the course" of employment and had no causative significance in injuring the worker.

The principal who supervised the worker's activities in the school took issue with the tone of the employer's submission. The principal said that the worker was an honest, dedicated and loyal employee and that her integrity was not in question.

In an October 2, 2003 letter, the worker clarified that the Tylenol No. 3 which she had taken before she consulted the chiropractor had previously been prescribed to her fiancé, and not to her. The worker again explained why she had delayed in reporting her injury to the employer and in seeking medical attention.

With regard to the previous motor vehicle accident, the worker said that she had neither required nor sought any treatment as a result of it. There had been no visible damage to her vehicle, and the accident had not been reported to ICBC.

The worker concluded by referring to the "inaccuracies and assumptions" that had been stated in the employer's submission.

The review officer did not address the issue of existing back symptoms for several weeks prior to January 24, 2003, but rather focused on the sudden flare-up of low back pain while leaning forward to fill up a cup at the water cooler. The review officer identified section 5(1) of the Act as the applicable law in the matter. The review officer also identified policy items #14.00, #15.00, #15.20, #21.00, and #21.10 of the RSCM. The review officer noted:

- Policy item #14.00, *Arising out of and in the Course of Employment*. This policy states that there are activities that are included in the employment relationship that would not be considered productive work, but may meet the test of "arising out of the employment". It lists various indicators to determine whether an injury should be classified as one arising out of and in the course of employment.

- Policy item #15.00, *Natural Causes*, provides that it is necessary to distinguish between injuries resulting from employment and injuries resulting from purely natural causes. Only injuries resulting from employment are compensable. An injury is not compensable, simply because it happened at work. There must also be something in the employment relationship that caused the injury.

- Policy item #15.20, *Injuries Following Motions at Work,* refers to situations where an injury has resulted from a motion at work. The policy distinguishes between work-required and non-work required motions and notes that some motions are considered natural or normal bodily functions, and the only connection between them and the employment is a coincidental fact that the worker was on the job at the time of the injury.

- Policy item #21.00, *Personal Acts.* This policy item notes that the activities of workers are not neatly divisible between employment functions, and workers' personal lives. It states in part, "where the

> common practice of an employer or an industry permits some latitude to employees to attend to matters of personal comfort or convenience in the course of employment, compensation for injuries occurring at those moments is not denied simply on the ground that the employee is not at the crucial moment in the course of production. This is within the scope of the established doctrine relating to acts which, though not in themselves productive, are nevertheless a normal incident of employment."

- Policy item #21.10, *Lunch, Coffee and Other Breaks.* This states that when a worker is involved in incidental activities he is also considered to be acting in the course of employment. If a worker is injured while engaged in such activities, the claim is acceptable. Again, the claim must meet the requirements of section 5(1) of the *Act*. The policy goes on to state in part, "it was considered that more was involved here than such activities as blowing a nose, smoking a cigarette, or going to the toilet, which would normally be accepted as incidental to the employment. The [rationale] for accepting such activities is that they benefit the employer by making his employees comfortable while they are working and, therefore, in the long run, more efficient."

The review officer decided that the worker had reached awkwardly to fill her cup from the water cooler and had felt an immediate onset of lower back pain at the time. Given the proximal nature of the back pain to the activity, the review officer accepted that it was the activity which had resulted in the back injury. The review officer accepted that the injury occurred while the worker was at work. Filling her cup with water before proceeding to the classroom was an incidental activity and not sufficiently significant to take the worker out of the course of her employment. The review officer referred to policy item #14.00, which acknowledges that acceptance of a claim is not limited to injuries occurring from "productive" work, and in the broader sense, includes some incidental activities. The review officer also decided that there was a lack of any significant back problems prior to the flare up of back pain on January 24, 2003 and that, given the timing of the worker's back pain, there was a relationship between her injury and the activity of filling the cup with water at the cooler. The motion was sufficiently awkward that medically it could cause a lumbar strain, as diagnosed. The review officer concluded:

> I find the weight of the evidence is that the injury arose out of the awkward motion as the worker filled her cup with water, and was not arising from purely natural causes or from a normal bodily function.

The review officer accepted the worker's reasons for the delay in reporting the incident to the employer and consequently varied the Board officer's February 27, 2003 decision.

The employer appealed the review officer's decision. The employer argued that the worker had a pre-existing non-occupational back pain that had been aggravated by a non-work related activity, i.e. getting a cup of water. The employer said that the worker's back injury did not arise out of, or from her work activity. The "twisting" motion to which the worker referred had been due to carrying her lunch bag under her arm, and had nothing to do with carrying papers in her other hand. The employer maintained that nothing in the employment relationship had caused the injury and that the review officer had mistakenly assumed that there were no previous significant back problems, and that the motion could cause injury. The employer made no further submissions.

In a January 25, 2004 letter, the worker said that the review officer's decision was complete and that any inaccuracies of which she had been aware had been corrected. The worker added:

> However, given the decision to review this case, I anticipate acknowledgement of the information which was submitted by [the chiropractor] in regard to his assertion that my injury was the result of repeated work related strain in the time leading up to January 24, 2003.

Reasons and Findings

The relevant law is contained in Section 5 of the Act, which is concerned with the acceptance of a claim for personal injury.

Section 5(1) states that:

> Where, in an industry within the scope of this Part, personal injury or death arising out of and in the course of the employment is caused to a worker, compensation as provided by this Part must be paid by the Board out of the accident fund.

Section 5(4) states that:

> In cases where the injury is caused by accident, where the accident arose out of the employment, unless the contrary is shown, it must be presumed that it occurred in the course of the employment; and where the accident occurred in the course of the employment, unless the contrary is shown, it must be presumed that it arose out of the employment.

Section 53(4) states that:

> (4) Failure to provide the information required by this section is a bar to a claim for compensation under this Part, unless the Board is satisfied that

(a) the information, although imperfect in some respects, is sufficient to describe the disease or injury suffered, and the occasion of it;

(b) the employer or the employer's representative had knowledge of it; or

(c) the employer has not been prejudiced, and the Board considers that the interests of justice require that the claim be allowed.

Relevant policy is found in the following portions of the RSCM:

Policy item #13.00, *Personal Injury*, states that "Personal injury" is defined as any physiological change arising from some cause, for example, a limitation in movement of the back or restriction in the use of a limb. It is not confined to injuries which are readily and objectively verifiable by their outward signs, e.g. breaks in the skin, swelling, discolouration, deformity, etc. It includes, for example, strains and sprains.

Policy item #14.00, *Arising Out of and in the Course of Employment*, provides that confusion often occurs between the term "work" and the term "employment". Whereas the statutory requirement is that the injury arise out of and in the course of employment, it is often urged that a claim should be disallowed because the injury is not work related or did not occur in the course of productive activity. There are, however, activities within the employment relationship which would not normally be considered as work or in any way productive. For example, there is the worker's drawing of pay. An injury in the course of such activity is compensable in the same way as an injury in the course of productive work.

Lack of control of a situation by the employer is not a reason for barring a claim otherwise acceptable. Control by an employer is an indicator that a situation is covered under the Act at a particular time, but if that control does not exist there may be other factors which demonstrate an employment connection.

Various indicators can be and are commonly used for guidance. These include:

a. whether the injury occurred on the premises of the employer;

b. whether it occurred in the process of doing something for the benefit of the employer;

c. whether it occurred in the course of action taken in response to instructions from the employer;

d. whether it occurred in the course of using equipment or materials supplied by the employer;

e. whether it occurred in the course of receiving payment or other consideration from the employer;

f. whether the risk to which the employee was exposed was the same as the risk to which the employee is exposed in the normal course of production;

g. whether the injury occurred during a time period for which the employee was being paid;

h. whether the injury was caused by some activity of the employer or of a fellow employee. productive work.

This list is by no means exhaustive. All of these factors can be considered in making a judgment, but no one of them can be used as an exclusive test.

Policy item #14.10, *Presumption*, states that the word "accident" has been interpreted in its normal meaning of a traumatic incident. It has not, for example, been extended to cover injuries resulting from a routine work action or a series of such actions lasting over a period of time.

Policy item #14.20, *Occurrence or Non-Occurrence of a Specific Incident*, provides that where there is no "accident", there is no presumption under section 5(4) and the evidence must support a conclusion that the injury arose out of the employment as well as a conclusion that it arose in the course of the employment.

It is not a bar to compensation when an injury occurs over a period of time rather than resulting from a specific incident. To be compensable, however, the evidence must warrant a conclusion that there was something in the employment that had causative significance in producing the injury. A speculative possibility that this might be so is not enough.

This does not mean that the presence or absence of a specific incident is never relevant in the decision of a claim for compensation. What it does mean is that the absence of a specific incident is not of itself ground for denying a claim.

Policy item #15.00, *Natural Causes*, provides that it is necessary to distinguish between injuries resulting from employment (which are compensable), and injuries resulting from purely natural causes (which are not compensable).

An injury is not compensable simply because it happened at work. It must be one arising out of and in the course of employment. If it happened at work, that usually indicates that it arose in the course of the employment. But 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.

But if the injury was one arising out of purely natural phenomena – the internal workings of the human body – the employment situation may then be an irrelevant coincidence, and if so, the injury is not compensable.

Policy item #15.10*, Worker Has Pre-Existing Deteriorating Conditions*, recognizes that there may be cases where an organ of the body is deteriorating, possibly through disease, and it has reached a critical point at which it is likely to become a manifest disability. Some immediate activity might trigger the final breakdown.

But if it had not been one thing it would most likely have been another, so that it is only chance or coincidence whether it happened at work, at home, or elsewhere. The disability is one that the claimant would not have escaped regardless of the work activity, and hence the causative significance of the work activity is so slight that the disability is treated as having resulted from the deteriorating condition. The disability is the result of natural causes and is not compensable.

Policy item #15.20, *Injuries Following Motions at Work*, refers to cases where an injury has followed a motion at work, but there was no deteriorating condition to bring the case within policy item #15.10.

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 given is that of a mechanic who has his neck in an unusual position while working under a vehicle, and turns his head. Through some unusual movement of the muscles he suffers a neck 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. The example given is turning one's head to look at something while at work as a matter of curiosity to see what someone else was doing, and suffering a neck strain. The motion was not required as part of the job therefore the injury is not compensable. A further example is that of a worker using a toilet at work who suffers an injury solely because of a bowel movement. That would not be compensable.

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

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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. 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 point is that it is not enough to consider only whether the motion is one which is undertaken at home, or only whether the motion was required by the worker's job. Illustrations are not intended to be substitutes for the exercise of judgment.

On the one hand, it is said that it should be sufficient to show only that the injury came on while the claimant was at work. The difficulty with this argument is that it renders meaningless the first half of the test contained in section 5(1).

On the other hand, it has been suggested the Board should disallow any claim for compensation where the motion which caused, or apparently caused, the injury is one which occurs constantly in the course of daily living. This argument would inevitably lead to absurd conclusions. Very little physical activity or body movement in a worker's employment differs significantly from that at home.

The necessity for the exercise of judgment will result occasionally in what may appear to be inconsistency or the application of slightly different criteria. This is inevitable in any situation where it is virtually impossible to draw a line. It is neither advisable nor just to state that claims for injuries without accident can only be accepted where there was some demonstrable act on the part of the claimant which was so directly connected with work that the relationship is indisputable. In particular, the present inability of medical science to accurately pin-point the etiology of a great variety of spinal problems, many of which have been shown to arise from the most trivial of incidents, leads to a conclusion that, in appropriate circumstances, such incidents should be seen as causative and if they occur while at work, the resulting injury must be compensable. On the other hand, the simple act of walking up stairs or turning one's head to speak to a co-worker or of looking down at one's hands while performing a certain job, fall so clearly into the realm of "natural" or "normal" bodily functions that the only connection between them and the employment is the coincidental fact that the worker was on the job at the time.

Simply by adding a few more facts to these situations or others it might well be possible, in individual cases, to find that a work relationship existed.

For example, (and these examples are not to be taken out of context without consideration of the discussion above), if the worker were forced into an awkward position in order to properly perform the job and either while in that position or when arising from it suffered a sudden and severe onset of pain and discomfort, and the evidence shows no previous difficulty, it might well be that the only reasonable conclusion is that the apparently minor incident was causative. Similarly, if a worker bends to pick up an object, and that motion is required by the job (e.g. a piece of debris while on clean-up, a piece of mail while working in the mail room, an item of equipment or machinery in a plant) and, unrelated to the lifting of the object, suffers an onset of disabling pain, that apparently insignificant motion might also establish some work relationship. In either of these cases, the motion although natural was performed as a matter of the worker's duties and may in that sense gain "work" status.

Policy item #19.00, *Use of Facilities Provided By the Employer*, indicates that where a worker is injured in the course of using some facility supplied or provision made by the employer, the use of such facility or provision may be part of the employment relationship; and injuries resulting therefrom may be injuries arising out of and in the course of employment.

Policy item #19.30, *Lunchrooms*, states that claims for injuries occurring in lunchrooms are acceptable if the lunchroom is provided by the employer. Again coverage is limited to reasonable use of the premises and would not extend to injuries sustained through eating food, unless this had been provided by the employer, and the employees had been specifically required to eat food provided by the employer, or it was provided as part of the worker remuneration.

Policy item #19.31, *Injury Results From Claimant's Personal Property*, states that it is not essential that the worker's personal property that causes the injury be intrinsically hazardous. It is sufficient that it causes the injury in the particular case. In general, injuries are not compensable where they result entirely from personal property brought onto the employer's premises by claimants for their own purposes and have no connection with their employment.

Policy item #21.00, *Personal Acts*, recognizes that there is a broad area of intersection and overlap between work and personal affairs, and somewhere in that broad area the perimeter of workers' compensation must be mapped. An incidental intrusion of personal activity into the process of work will not require a claim, otherwise valid, to be denied. For example, it has long been accepted that compensation is not limited to injuries occurring in course of production. Where persons are injured while at work in the broader sense of that term, claims will not be denied on the ground that at the precise moment of injury they were blowing their noses, using the toilets or having their coffee break. Similarly it has long been accepted that when a truck driver stops for a meal in the course of a long journey and is injured while crossing the road the driver is just as much entitled to compensation as a factory worker injured on the way to the

works canteen. Conversely, the intrusion of some aspect of work into the personal life of an employee at the moment an injury is suffered will not entitle the employee to compensation. For example, if someone slips in the living room at home and is injured, that person is not entitled to compensation simply on the ground that at the crucial moment the person was reading a book related to work. In the marginal cases, it is impossible to do better than weigh the employment features of the situation in balance with the personal features and reach a conclusion (which can never be devoid of intuitive judgment) about which should be treated as predominant.

Where the common practice of an employer or an industry permits some latitude to employees to attend to matters of personal comfort or convenience in the course of employment, compensation for injuries occurring at those moments is not denied simply on the ground that the employee is not at the crucial moment in the course of production. This is within the scope of the established doctrine relating to acts which, though not in themselves productive, are nevertheless a normal incident of employment.

Policy item #21.10, *Lunch, Coffee and Other Breaks*, provides that a worker is considered to be acting in the course of employment not only when doing the work the worker is employed to do but also while engaged in other incidental activities. For example, a worker does not cease to be in the course of employment while having a lunch or coffee break on the employer's premises, while going to the toilet, having a smoke or other such activities. Therefore, if while engaged in such activities the worker is injured by virtue of some aspect of the work environment, a claim will be accepted. On the other hand, not all injuries occurring while engaged in such activities will be compensable. The injury must "arise out of" the employment as well as "in the course of" it. Thus, for example, if a worker has a heart attack while having a smoke during working hours a claim will likely be denied. This is because the heart attack probably arose from natural causes and was not caused by any aspect of the employment rather than because, in having a smoke, the worker was no longer in the course of employment.

A person is considered to be in the course of his employment while entering and leaving his employer's premises at the start and end of his shift and at other recognized coffee or lunch breaks.

The policy references have been set out so extensively in this document because it is important to recognize that there is a broad scope for attributing some form of responsibility to employment when adjudicating the compensability of an injury that arises while the worker is on the employer's premises. Employment, as pointed out in policy item #14.00 describes a relationship, and while it encompasses work, it is not limited to it. The key points to remember are that the policy must be applied in the context of the facts of the case, and that the interpretation of the policy must remain consistent with the provisions of the statute; in this case section 5 of the Act.

The facts in this case are that the worker had experienced episodes of back pain for several weeks prior to January 24, 2003. On the afternoon of January 24, 2003 she told her co-worker that while in the lunch room at school earlier that day, she had leaned forward to fill her cup with water and had felt immediate low back pain. The worker was holding the cup, along with some papers in her right hand, and had her lunch bag tucked under her left arm at the time. She held the cup under the spigot with her right hand, and, while holding her left elbow against her side, operated the spigot with her left hand. This movement meant that the worker, while leaning forward, also turned to the right. The flare up of low back pain occurred while the worker was carrying out this motion.

Initially, when completing her application for compensation, and discussing the information with the entitlement officer, the worker did not report any awkward or strenuous movement. Later, in her submission to the Review Division, the worker said that she had her lunch bag tucked under her left arm, and when she bent over she was actually bending and twisting at the same time. She said that the twist was significant as she was reaching across her body with her left elbow pressed firmly against her side, in order to lift the spigot handle.

I accept the worker's description of holding the lunch bag tucked under her left arm, with her left elbow held closely against her side, while reaching forward and across with her left hand to operate the spigot on the water cooler. I prefer the evidence given by the worker closer to the time of the injury, both written by her in her application for compensation, and spoken to the entitlement officer that there was nothing unusual about the motion. Given the nature of the worker's claim, the entitlement officer would have been well aware that the nature of the motion at the time of the flare up of symptoms would be a key piece of evidence, and would surely have asked the worker about it before noting that "...there was nothing awkward, she merely bent forward. There was no slip, twist or fall." Similarly, when asked in her application for compensation to mention "...all contributing factors..." the worker would have referred to awkwardness or twisting if that had been significant at the time of injury. I do not suggest that the worker is deliberately attempting to misrepresent her circumstances. It is understandable that in trying to understand how an injury could have occurred, a person would be well aware that had there been twisting, the motion could more reasonably be seen as significant, and therefore a more likely cause of the subsequent back pain. Simply turning to the right while leaning forward, with no slip, twist, jerk, or other movement, is less significant in the context of a likely cause for the diagnosed back sprain injury, and therefore the person might have reasoned, rather than remembered that there must have been significant twisting. For these reasons, I do not accept the later evidence that the worker "twisted", although I find it reasonable to conclude that she turned toward the right while leaning forward. In this, I have drawn from the evidence a conclusion of fact different from that drawn, and relied upon by the review officer.

The worker referred to the lunch bag tucked under her arm as a cause for her to move awkwardly when obtaining the water. I have found that the movement was not awkward in any significant sense, when determining the cause of the back injury. If the circumstances had been different, and lunch bag had in fact caused the worker to move awkwardly, and that movement in turn had injured her back, it would have been necessary to consider policy item #19.31. This policy addresses the compensability of an injury at work where personal property introduced by the claimant to the workplace plays a part in causing the injury.

The policy at item #19.30 makes it clear that the worker, while on a scheduled break in the lunchroom on the employer's premises, remained in the course of her employment. The act of filling her cup with water, although a personal act, was incidental to the worker's employment, and did not serve to remove her from the course of it. Policy item #19.00 indicates that where a worker is injured in the course of using some facility supplied or provision made by the employer, the use of such facility may be part of the employment relationship; and injuries resulting therefrom may be injuries "arising out of" the employment. Policy item #21.10 provides however that not all injuries occurring while engaged in such activities will be compensable. The injury must be caused by some aspect of the employment.

Leaning forward and turning to the right is not an "accident" within the meaning of section 5(4) of the Act. The provisions of section 5(4) can not therefore be applied to the adjudication of this claim. There is no presumption that since the injury arose "in the course of" the employment; it also arose "out of" the employment. There must be evidence that something in the employment caused the injury. According to policy item #14.20, a speculative possibility is not enough.

The fact that a motion the worker performed while "in the course of" her employment could have caused a back injury is, as discussed at policy item #15.20, not sufficient to give the motion "work status". 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. It is not sufficient to show only that the injury came on while the claimant was at work. It is, on the other hand, according to the Board's policy, not just to state that claims for injuries without accident can only be accepted where there has been some demonstrable act on the part of the claimant which was so directly connected with work that the relationship is indisputable.

Several WCAT panels have dealt with the issue of injury following motions at work.

In *WCAT Decision #2003-00357-RB* the panel, in dealing with policy item #15.20, said that the distinction, established as policy, between compensable normal body motion and non-compensable normal body motion is whether there is a tangible relationship between the motion and the job. If the purpose of the motion is the accomplishment of the worker's job, then the motion is "causative" and the injury resulting from that motion

is compensable. If the motion is unrelated to the accomplishment of the job, then even though performed at work the motion is not "causative" and the injury did not arise out of the employment, and is not compensable.

This line of thinking was followed by the panel in *WCAT Decision #2003-00694-RB*, which considered whether the worker's motion was required by the job, or was merely coincidental to it. Since bending and gripping was a motion required by the job, and the injury occurred while so doing, the motion was "causative" and the claim should be accepted.

In *WCAT Decision #2003-01390-RB*, the panel found that the connection between the action and the employment was not coincidental. The action clearly was required as part of the employment and therefore sufficient to bring the worker within the ambit of section 5(1).

In *WCAT Decision #2003-01967-RB*, the panel found that the worker had bent down to pick up an object at work. The pain had occurred before the worker picked up the object. The panel decided that the worker's movement of bending down was required by his work. The movement was not so mundane as to be a normal motion of daily living. For the panel to conclude that the injury arose out of and in the course of employment, it was sufficient that the worker felt sharp pain while performing the work-required motion.

In *WCAT Decision #2004-01288-RB* the panel found an absence of pre-existing problems as contemplated in policy item #15.10, and that the employment had "substantial causative significance". Since the worker was performing a work-required motion, the low back injury arose out of and in the course of employment as contemplated by section 5(1).

In *WCAT Decision #2003-01461-RB* the panel said that the description of the injury mechanism clearly established that the motion was an integral part of the worker's employment. There was a temporal relationship between the onset of severe symptoms and the work required motion. The work required motion of pushing a bed was the predominant cause of the symptoms. The panel decided that the claim should be accepted.

In *WCAT Decision #2004-00469-RB* the panel decided that the act of bending forward had causative significance in producing the worker's back strain. The panel acknowledged that many work required motions are often the same as those in which a worker commonly engages at home. There was no question that the act of leaning over to look into a drawer was a motion required by the worker's job, and that the motion had the character of a natural or normal body function. Nevertheless, the motion had caused the back strain, and the claim should be accepted.

The upshot of these WCAT decisions is that the test for "arising out of" is satisfied as long as the motion preceding the injury had "work status". No matter how trivial the motion might have been, the resulting injury is compensable. I agree that the designation of "work status" for a natural body motion means that an injury resulting from that motion can not be dismissed outright as non-compensable.

Other WCAT panels have examined both the purpose of the motion and the likelihood that the motion, as opposed to some dysfunction in the internal workings of the body, caused the injury. The panels decided that where, on a balance of possibilities, it was more likely that the motion, or series of motions, had caused the injury, the claim should be accepted. Where, on a balance of possibilities, there was not sufficient evidence that the motion, or series of motions, had caused the injury, then even if the motion had been work related, the claim should not be accepted. I agree with this approach, and find that while it may not always be consistent with a plain reading of published Board policy, it is consistent with the wording of section 5(1) of the Act. Where policy is unclear, the decision-maker should interpret it in light of the wording of the statute.

In *WCAT Decision #2003-02931-RB* the panel found no evidence of pre-existing problems in the area of injury. The worker had been asymptomatic at the start of the shift. Over the course of the shift, the worker had moved through a series of awkward or unusual postures. The worker had not developed any symptoms while in the course of these movements; however symptoms appeared quickly after the shift ended. The panel found on a balance of possibilities that the work motions had caused the onset of back pain. This appeared to the panel more likely than the idea of a spontaneous onset of back pain with no apparent cause.

In *WCAT Decision #2003-00800* the panel reasoned that even if symptoms developed in the course of employment there must be evidence that something in the employment had causative significance in producing injury. If there is no evidence to show that work caused the injury, then the claim does not meet the provisions of section 5(1) and must be rejected.

In *WCAT Decision #2003-00935-RB* the panel said that development of pain in the course of employment does not necessarily constitute personal injury. Although the worker developed pain while doing a work-required motion, there was nothing in that motion to put stress on the back or otherwise cause injury. The panel interpreted the Board's policy to say that a decision maker must look at whether there is something in the work-required motion that might have causative significance in producing the onset of symptoms. The simple motion of turning to the right without any straining or stressing had no "causative significance". The panel decided that the claim must be rejected.

In *WCAT Decision #2004-00484-RB* the panel found that the worker had no previous difficulty in the injured area. The work-required position assumed by the worker

immediately prior to the onset of symptoms was awkward. The worker experienced a sudden and severe onset of pain while moving through that position. The panel decided that the diagnosed strain arose out and in the course of employment.

In *WCAT Decision #2003-03910-RB* the panel acknowledged that the worker had pre-existing osteoarthritis in the cervical spine, but that this had nothing to do with the diagnosed shoulder injury. Although the worker performed the same work-related motion many times in the course of his employment, he had on this occasion made an abrupt movement, followed by a sudden onset of symptoms. The panel concluded that the worker had engaged in a work required motion, that was not a "normal" body motion, and his injury had arisen out of and in the course of employment.

In *WCAT Decision #2003-0091-RB*, the panel acknowledged the presence of a pre-existing condition that was not a deteriorating condition within the meaning of policy item #15.10. The motion required by work was a "normal" body function, but not so "natural" that the only connection between the worker's symptoms and the employment was the coincidental fact that the worker was on the job at the time of the onset of pain. The motion had involved a twist, and the panel found that the worker would likely not have become symptomatic and disabled without the movement at work at that time. The panel found that the claim should be accepted.

In *WCAT Decision #2003-01034-RB,* the panel decided that walking back from a coffee break fell into the realm of normal bodily functions. It was sheer coincidence that the worker was on the employer's premises at the time of the onset of symptoms. There was nothing out of the ordinary, and the guideline criteria set out in policy item #14.00 to suggest that the injury should be seen as having arisen out of the employment. The panel concluded that nothing at work had caused the injury, it had simply happened at work.

In *WCAT Decision #2003-03787-RB* the panel concluded that even though symptoms had come on while the worker was engaged in a motion at work, the motion did not cause an injury. Since the motion did not cause injury, the claim was rejected under section 5(1).

Similarly, in *WCAT Decision #2003-03909-RB* the panel found that the worker had pre-existing osteoarthritis in his knee. The panel acknowledged that the worker was kneeling at work when the symptoms came on. The panel decided however that kneeling was a natural body motion that did not cause an injury. This meant that the worker's onset of symptoms was not caused by personal injury arising out of and in the course of employment, and the claim was rejected

In *WCAT Decision #2003-04171-RB* the panel acknowledged that the worker had felt the onset of symptoms while kneeling on his left knee and leaning forward with his right knee bent. The panel said that there was no medical opinion to suggest that this

motion would cause a right knee medial meniscus tear, and so decided that even though the motion was work-required, the claim should be rejected because the evidence did not show that the subsequent injury had been caused by the work-required motion.

Other WCAT panels have found that although the motion was a normal body motion, the evidence showed there was something in the work that introduced an element of risk into the motion that would not likely be present if the worker was performing the same motion away from work. While the motion in and of itself did not present an inherent risk of injury, the manner in which the work caused the motion to be done created a risk of injury. The motion gained "work status", and through work it became inherently dangerous. It was reasonable to conclude that, even though there was no "accident", an injury occurring while or shortly after carrying out the motion, in the absence of evidence of an alternate cause, was likely caused by that motion, and so was compensable. I find this approach is also suitable, because it requires a deduction to be made from the evidence before attributing causative significance to the work motion, or series of motions. This, I find, satisfies the requirement under section 5(1) that the injury arise "out of" the employment.

In *WCAT Decision #2003-01733-RB* the panel said that the worker used the telephone at home as well as at work. There was however a much greater volume of calls at work, and the worker held her head and neck in an awkward position. The repeated movements plus the awkward posture made it likely that the worker's injury had been caused by answering the phone at work. The panel said that the claim should be accepted.

In *WCAT Decision #2003-00804-RB* the panel found that bending over was a normal body motion, but it was also a work required motion, carried out as a matter of the worker's duties. Bending over for ten to fifteen minutes could place a strain on the low back, and so there was a risk of injury present in the work activity. The panel concluded that the "normal" body motion had also been a work required motion, and that it could have caused the worker's back strain. The panel decided that the claim should be accepted.

In *WCAT Decision #2003-00593-RB* the panel stated that if constant bending is part of the work duties and injury occurs during one of those bends, the claim should be accepted. Even though the bending is a normal body motion, it occurs more frequently at work, and so the risk of injury is greater there. If the risk element were not present at work, then a "normal" body motion that results in injury while at work would be non-compensable.

It is apparent as anticipated in policy item #15.20 that when adjudicating claims for injury following motions at work outcomes may appear contradictory or inconsistent. Each of the panels, however, cited and applied published Board policy when reaching

their decisions. In some cases the panel found it sufficient that a work-required motion preceded the onset of symptoms; in others the panel required evidence that the work-required motion caused the injury responsible for the symptoms. In yet other cases the panel was satisfied that if the work-required motion incorporated an element of risk, the injury following the motion would, in the absence of evidence to the contrary, likely be caused by it.
Policy item #15.20 does not expressly require medical confirmation of cause and effect. It is sufficient that a motion, or series of motions, "may well have caused injury".

The key is "work status" of the motion and the absence of alternate non-work related causes. A plain reading of this policy could imply a rebuttable presumption that an injury that occurs while performing a work related motion, or series of work related motions, no matter how trivial, was caused by that motion or series of motions, unless shown to be otherwise. This interpretation however would not be consistent with the statutory provisions of sections 5(1) or 5(4) of the Act, or with policy item #14.10.

Section 5(1) provides that where personal injury arising out of and in the course of employment, is caused to a worker, compensation as provided in the Act must be paid by the Board out of the accident fund. Section 5(4) sets out an expressed rebuttable presumption that in cases where the injury is caused by accident, and where the accident arose out of the employment, unless the contrary is shown, it must be presumed that it occurred in the course of the employment; and where the accident occurred in the course of the employment, unless the contrary is shown, it must be presumed that it arose out of the employment. Section 5(4) can be applied only where there is an "accident". The Board, in policy item #14.10, has interpreted "accident" in its normal meaning of a traumatic incident. It has not been extended to cover injuries resulting from a routine work action or a series of such actions lasting over a period of time. The occurrence of an injury does not, in and of itself, establish an "accident".

Where there is no "accident" within its normal meaning of a traumatic incident, the rebuttable presumption in section 5(4) can not be applied to the adjudication of the claim.

There is no presumption expressed in subsection (1) of section 5 of the Act. To read in a presumption where none is expressed, in the face of an expressed presumption in subsection (4) of that same section, is contrary to the principles of statutory interpretation. Consequently, where there is no "accident", the Board's policy can not be interpreted to create a presumption. In this case then, the evidence must show that the personal injury arose out of, as well as in the course of the employment.

The policy at item #15.20 states that many spinal problems have been shown to arise from the most trivial of incidents. In appropriate circumstances, such incidents should be seen as causative. I agree with the review officer that in the context of policy item #15.20, the act of leaning forward while holding a lunch bag tucked under the left arm,

and reaching forward to operate the spigot and fill a cup with water from a water cooler "may well have had causative significance"; but only in a speculative sense. I find that the issue of "causative significance" must still be weighed and decided. At a minimum, there must be apparent in the motion a potential to cause the injury. A speculative possibility is not sufficient. Further, not all injuries resulting from motions carried out in the course of employment are compensable.

Policy item #15.20 acknowledges that not all motions carried out at work have "work status". Some motions at work are not required as part of the job, and injury arising from such motions, while "in the course of" would not be an injury "arising out of" the employment, and therefore not compensable. This is in contrast to policy item #20.00, which provides that where it is the common practice of the employer to permit some latitude to employees to attend to matters of personal comfort or convenience in the course of employment, compensation for injuries occurring at those moments is not denied simply on the ground that the employee is not at the crucial moment in the course of production. The Board recognizes the established doctrine relating to acts which, though not in themselves productive, are nevertheless a normal incident of employment. The Board clarifies however at policy item #21.10 that not all injuries occurring while a worker is having a lunch or coffee break on the employer's premises will be compensable. If the worker is injured by virtue of some aspect of the work environment, a claim will be accepted. If on the other hand the injury arose from natural causes and was not caused by any aspect of the employment, the claim will likely be denied.

I agree with the panel in *WCAT Decision #2003-00357-RB,* which concluded that the distinction created through policy between compensable injuries resulting from natural body motions, and non-compensable injuries resulting from natural body motions, is whether there is a tangible relationship between the motion and the job; i.e. whether the purpose of the motion was the accomplishment of the worker's job. I find that where the natural body motion has a tangible relationship to the job, the motion gains "work status". Where the injury happens when the worker is not in the course of production, and it results from a natural body motion that was not required as part of the worker's job, the motion does not gain "work status". "Work status", while a necessary element, is not alone sufficient to meet the "out of" test in section 5(1). The evidence must also show that the motion had causative significance in producing the injury.

The cause of the injury occurring when a worker is on a break on the employer's premises need not be a work required motion committed by the worker, in order for the injury to be compensable. The import of the Board's policy at items #19.00, #19.30, #20.00 and #21.10 is that the worker must, however, be injured by virtue of some aspect of the work environment. The injury will not be accepted if it is due to natural causes, or to something that is not an aspect of the employment.

Should the cooler have fallen on the worker and caused injury to her that would clearly be an injury by virtue of an aspect of the work environment. If the water in the cooler

had become contaminated and had poisoned the worker, that too could have been viewed as an injury due to an aspect of the work environment. The risk associated with simply using the water cooler however is so slight that it is virtually non-existent. There is nothing inherently dangerous about filling a cup with water. I find that it was not the work environment that was responsible for the worker's injury.

In this case there was no episode of externally induced force, or any instance of slip, trip, jerk, or other sudden shifting of position likely to induce a traumatic strain of the musculature of the worker's low back. The worker made a simple normal body motion that would not have come anywhere near to approaching the limits of a normal range of motion. That she did so at work while obtaining a cup of water from a water cooler, presumably provided by the employer for that purpose, was coincidence. The motion had an element of awkwardness, in that the worker kept her left elbow pressed against her left side while reaching forward with her left hand to operate the spigot. In my view, however, it is unlikely that the motion would have placed any significant stress on the structures of the worker's back beyond that experienced by her in the course of daily living. I find that the motion occurred "in the course of" the worker's employment, but the occurrence of the injury at that time was coincidental, and was not due to any aspect of the employment. I find that the motion is best characterized as a natural body motion that was not required by the job, and was not affected in any meaningful way by any aspect of the employment.

I find that the natural body motion of leaning forward and to the right does not in this case gain "work status". The worker was engaged in a personal act concerned with her own comfort at the time. While this did not remove her from the course of her employment, it did mean that her injury, in order to be compensable, had to have been caused by some aspect of the employment, and not have been due to some natural occurrence, such as a coincidental dysfunction in the internal workings of her body.

I find that the motion of leaning forward and turning to the right, with no evidence of unusual stress or strain associated with the movement itself, so clearly falls into the realm of "natural" or "normal" bodily function that the only connection between it and the employment is the coincidental fact that the worker was on the job at the time. Even if the motion had "work status" (which it did not) in the sense that the purpose of it was the accomplishment of the worker's job, the injury could not be said to have arisen "out of" the employment. In the result, I find that the back injury occurring while leaning forward and turning to the right to fill a cup of water did not arise out of the employment. The motion did not have "causative significance" as discussed in policy item #15.00. Thus, while the injury arose in the course of the worker's employment, it did not arise out of the employment. The test set out in section 5(1) has not been met, and the claim can not be accepted.

The employer has pointed out that the worker did not immediately report her injury at work when, or shortly after it happened. The worker has explained that she did not

immediately report an injury to the employer because she had to return to class; there was no first aid attendant present at the time; and she did not realize the seriousness of the injury. The co-worker to whom the worker mentioned the incident on January 24, 2003 has confirmed the worker's statement, and the principal at the school has supported the worker's character. I am satisfied that the worker's actions were reasonable in the circumstances. I find that the reasons the worker has given for not immediately reporting the injury are acceptable, and are sufficient to create an exception to the statutory bar to the acceptance of the claim under section 53(4) of the Act.

The worker has said however that although her back pain flared up on January 24, 2003, it had been present and becoming increasingly worse for several weeks before that. The worker's chiropractor had reported that for the couple of months previous to the flare up of pain on January 24, 2003 the worker had been experiencing lower back pain with repetitive and sustained bending at work, usually while standing over her children's desks and/or lifting books. The chiropractor also said that she aggravated her pre-existing back pain while bending over the water cooler at work. The worker believes that her injury was actually caused by her work over time, particularly the requirement to bend over the children's desks, and to carry heavy books and the like.

In the context of the issue over which WCAT has jurisdiction in this appeal, i.e. whether the motion resulting in the worker's low back pain on January 24, 2003 caused personal injury arising out of and in the course of her employment; I find that it did not. The motion was a normal body motion, and it was coincidental that the back pain flared up when the motion was performed at work, rather than elsewhere. I decline to speculate on any possible link between the worker's pre-existing low back symptoms over the several weeks prior to January 24, 2003 and the flare up of low back symptoms while at work that day.

The matter of a claim for an injury occurring over time has not been adjudicated at the Board. The decisions made by the entitlement officer and by the review officer have each dealt only with the causative significance of the motion at the time of the flare up of pain on January 24, 2003. There has been no investigation conducted, nor evidence gathered to support or refute the worker's claim that her back injury was caused by the activities described in her correspondence, and in the chiropractor's report.

I find that WCAT does not, in the context of the present appeal, have jurisdiction to consider the compensability of the worker's claim that her injury was caused by her work activity over time. This is a matter for primary adjudication by the Board, and I make no finding concerning the merit of it.

In summary, I find that the worker's back injury which flared up while she was getting water from the cooler in the lunchroom at work on January 24, 2003 did not arise out of

her employment. The requirements of section 5(1) are not met, and the claim must be disallowed.

I allow the employer's appeal.

Conclusion

In accordance with the foregoing findings and reasons I vary the October 20, 2003 decision of the review officer. There are no requests before me for reimbursement of expenses, and no reimbursable expenses within the meaning of section 7 of the *Workers Compensation Act Appeal Regulation, B.C. Reg. 321/02 are* apparent to me following my review.

Iain M. Macdonald
Vice Chair

IMM/mli

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