

Noteworthy Decision Summary

Decision: WCAT-2005-00929 **Panel:** Susan Polsky Shamash **Decision Date:** February 23, 2005

The meaning of “trivial” and “frivolous” under section 31(1)(c) of the Administrative Tribunals Act – Summary Dismissal of Appeal - What constitutes a Reviewable Decision – Definition of “Decision” in Review Division Practices and Procedures - Rights of Review and Appeal - Health Care Expenses

In this appeal, the WCAT panel concluded:

- Although the amount of money at issue in an appeal may clearly be trivial and worthy of summary dismissal under section 31(1) (c) of the *Administrative Tribunals Act*, the appeal is not trivial or frivolous if it also involves the denial of a party’s right of review or appeal.
- It is a reviewable decision, and not simply the provision of information, when a Board officer determines that an expense incurred by a worker is not covered as a health care expense.

In this case, the worker sought reimbursement from the Board for a hot/cold pack worth \$12.92, including tax. Although the worker was entitled to health care benefits under the Act, the Board payment officer advised the worker by letter that the hot/cold pack was not an item covered by the Board as a health care expense. The worker requested a review of this decision and the review officer found that the letter simply provided information and did not constitute a reviewable decision. The review officer refused to review the decision. The WCAT panel determined that it was a reviewable decision and sent it back to the Review Division for review.

The WCAT panel stated that “rights of review and appeal are important components of the compensation system and issues related to the exercise of those rights are not trivial or frivolous.” The panel found that the decision of the payment officer, while couched in language that was apparently informational, in reality was an interpretation and application of Board policy. The Review Division’s Practices and Procedures defines a “decision”, in part, as a “letter or communication that records the determination of a Board officer as to a person’s entitlement to a benefit” and the WCAT panel determined that the payment officer’s decision constituted a determination of the worker’s entitlement to a benefit.

Although the WCAT panel did not dismiss the worker’s claim on the basis that it was trivial, the panel did refer favourably to the 1997 decision of the Ontario Board of Inquiry (Human Rights Code) in *Potocnik v. Thunder Bay (City)* where the tribunal defined “trivial” to mean something “insignificant enough to be a waste of the tribunal’s time.”

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Introduction

The worker appeals an October 30, 2003 decision of a review officer (*Review Reference #5747*) declining to review a June 26, 2003 letter written by a payment officer of the Workers' Compensation Board (Board). The review officer concluded that the June 26, 2003 letter did not contain a reviewable decision, but was an information letter advising the worker that his request for reimbursement of a hot/cold pack was not covered by the Board as a health care expense.

The worker is representing himself. The employer is not participating in this appeal although advised of the right to do so. This appeal has been conducted based on a review of the claim file and the worker's written submissions.

Issue(s)

Does the payment officer's June 26, 2003 letter contain a reviewable decision?

Jurisdiction

Section 239(1) of the *Workers Compensation Act* (Act) provides that a final decision made by a review officer in a review under section 96.2, including a decision declining to conduct a review, may be appealed to the Workers' Compensation Appeal Tribunal (WCAT).

Background

The following events are relevant to this appeal:

- February 13, 1999 – the worker injured his lower back and right thigh at work. The Board accepted his claim for health care benefits only because he did not miss any time from work.
- July 17, 2001 – the worker's request to reopen his claim was denied on the basis that his injury had resolved and he was able to participate in unrestricted work and recreational activities in the intervening years. The worker appealed this decision to the Review Board.

- October 22, 2002 – the Review Board allowed the worker’s appeal and found that his ongoing symptoms were related to his compensable injury condition. However, as he did not miss time from work until January 2002 and that time loss was the subject of a new claim for compensation, he was only entitled to reimbursement of health care costs from May to December 2001.
- The worker subsequently submitted a receipt for \$12.92 including tax for a hot/cold pack he purchased on July 2, 2001 as well as a May 19, 2001 receipt for Advil.
- June 26, 2003 – a payment officer advised the worker that the hot/cold pack was not an item covered by the Board as a health care expense which includes such things as doctors’ visits, hospital treatment or medicines related to a compensable condition. The worker was reimbursed for the Advil.
- July 8, 2003 – the worker requested a review of this decision from the Review Division on the basis that his doctor, Board staff and literature all recommended the use of a hot/cold pack. He forwarded a submission which included an outline of his efforts to obtain an explanation for this decision as well as excerpts from Board policy.

Law and Policy

Sections 96.2(1)(a) and 96.3(1)(a) of the *Workers Compensation Act* (Act) allow parties to request a review of a Board decision respecting a compensation or rehabilitation matter under Part 1 of the Act.

The *Review Division - Practices and Procedures* defines “decision” as follows:

A letter or other communication to the person affected that records the determination of a Board officer as to a person's entitlement to a benefit or benefits or a person's liability to perform an obligation or obligations under any section of the *Act* other than one that authorizes the Board to issue orders.

Section 31(1)(c) of the *Administrative Tribunals Act* (ATA) provides that, at any time after an appeal is filed, the tribunal may dismiss all or part of it if the appeal is trivial. Section 31(2) requires the tribunal to give the parties an opportunity to make written submissions or otherwise be heard before dismissing the appeal.

Analysis

The review officer characterized the Board’s June 26, 2003 letter as informational only when she concluded that it did not constitute a decision as defined by the Review Division.

The worker's position is that Board policy in items #77.00, 77.10 and 77.29 of the *Rehabilitation Services and Claims Manual, Volume 1* (RSCM I) sets out the types of drugs, appliances and other supplies the Board will consider as necessary health care benefits. He argues that there is nothing in policy that prevents payment for hot/cold packs and that it could be included within the category of "other supplies". The only requirement is that there be a doctor's prescription or a medical report verifying their necessity.

In view of the small dollar amount the worker has claimed, I considered whether I ought to dismiss this appeal on the basis that it is trivial, as permitted by section 31(1)(c) of the ATA. I notified the worker and provided him with an opportunity to comment. His written submission was received on February 8, 2005.

As this is very recent legislation, WCAT has not yet invoked this section to dismiss an appeal. I therefore looked to other tribunals to assist me in determining whether a small dollar amount, in and of itself, is "trivial".

In *Potocnik v. Thunder Bay (City)* ([1997] O.H.R.B.I.D. No. 18; 1997 Carswell Ont 6126) the Ontario Board of Inquiry (Human Rights Code) addressed this question when considering an application for costs. They favoured using the ordinary meaning of the word "trivial", rather than the more esoteric definitions found in a legal dictionary. They said:

...for the complaint to be trivial or frivolous, the issues must be unimportant, petty, silly, or insignificant enough to be a waste of the tribunal's time.... [A] complaint completely without factual or legal basis might be considered trivial or frivolous.

On a superficial reading, this appears to be a trivial appeal in the sense that the amount ultimately at stake for the worker is "insignificant enough to be a waste of the tribunal's time."

However, on further consideration, I have decided not to dismiss the appeal. The issue before me is not whether the worker is entitled to reimbursement of the hot/cold pack. If it were I would be inclined to dismiss the appeal as trivial. Rather, the issue before me is whether the Review Division correctly refused to review a Board decision.

Rights of review and appeal are important components of the compensation system and issues related to the exercise of those rights are not trivial or frivolous. The issue in this case involves the distinction between an adjudication and provision of information.

The June 26, 2003 decision of the payment officer, while couched in language that is apparently informational, in reality is an interpretation and application of Board policy.

The payment officer denied the worker's request for reimbursement of a health care expense. This constitutes a determination of the worker's entitlement to a benefit as defined in the Review Division's *Practices and Procedures*.

I therefore find that the June 26, 2003 letter of the payment officer contains a reviewable decision.

Conclusion

I vary the review officer's October 30, 2003 decision. The worker is entitled to have his review of the June 26, 2003 payment officer's decision proceed at the Review Division.

Susan L. Polsky Shamash
Vice Chair

SLPS/dc