

Noteworthy Decision Summary

Decision: WCAT-2005-01278 **Panel:** Elaine Murray **Decision Date:** March 14, 2005

Reopening – Recurrence – Conflicting medical opinions – Section 96(2) of the Workers Compensation Act – Policy item #C14-102.01 of the Rehabilitation and Services Claims Manual, Volume II

This decision is noteworthy as an example of the analysis of whether there has been a recurrence of an injury under former policy item #C14-102.01 of the *Rehabilitation and Services Claims Manual, Volume II*.

The worker, a buckler in the logging industry, injured his back. The Workers' Compensation Board (Board) paid him temporary disability benefits for four months, at which time the worker was considered fit to return to work. Three months later, the worker's doctor reported the worker was disabled from work by his back pain, along with pain in his right hip and groin. A Board Medical Advisor examined the worker and concluded the worker's ongoing symptoms were unrelated to the original work injury. The Board denied the worker's request to reopen his claim. A rehabilitation medicine specialist later examined the worker and concluded he likely had an unresolved ligamentous strain of the sacral ligaments and sacroiliac joint. The worker requested a review by the Review Division of the Board, which confirmed the Board decision. The worker appealed to the Workers' Compensation Appeal Tribunal.

The panel noted that section 96(2) of the *Workers Compensation Act* states that a matter previously decided by the Board may be reopened if there has been a significant change in the worker's medical condition or there has been a recurrence of the injury. The panel noted that the former item #C14-102.01, in effect at the time of the Board decision, did not define "recurrence". However, the amended item #C14-102.01 states that a recurrence may result where the original injury, which had either resolved or stabilized, occurs again without any intervening new injury. Although the amended policy was not applicable to the current appeal, the panel found it helpful in interpreting section 96(2).

The panel decided the worker's subsequent symptoms were related to his original injury. The Board initially accepted the worker's claim for a low back strain with sacral pain. The worker was later diagnosed with a ligamentous strain of the sacral ligaments and sacroiliac joint. In the panel's view, the later diagnosis was simply a more definitive description of the nature of the worker's original injury.

The panel concluded the worker's right hip and groin pain was also related to his original injury. There were conflicting medical opinions on this issue. The panel considered it significant the Board Medical Advisor had failed to take into account the impact of the worker's demanding work activities on his injury after his return to work. The panel also recognized the worker's original injury was more than a mild strain as he was off work for more than three months. The panel acknowledged the worker did not seek medical attention during the three months after he returned to work; however, she accepted he had symptoms during that time as well as his reasons for not seeking medical attention.

The panel considered the factors included in the amended item #C14-102.01. There had been a continuity of symptoms, there were no intervening incidents, and the worker's later symptoms were related to his original injury. The panel concluded the physically demanding nature of the worker's job had played a significant role in worsening his unresolved symptoms to the point that his back pain not only increased, but also radiated to his right hip and groin area.

The worker's appeal was allowed.

An amendment was issued for WCAT-2005-01278 and is attached to this document.

WCAT Decision Number : WCAT-2005-01278
WCAT Decision Date: March 14, 2005
Panel: Elaine Murray, Vice Chair

Introduction

The Workers' Compensation Board (Board) accepted the worker's November 14, 2002 claim for a low back strain. It paid him temporary disability benefits until February 14, 2003, at which time he was considered fit to return to work without limitations. On May 27, 2003, the worker's doctor reported that the worker was disabled from work by his back pain, along with pain in his right hip and groin. By decision dated July 7, 2003, a Board officer informed the worker that his November 2002 claim would not be reopened in relation to his current complaints.

The worker requested a review of the July 7, 2003 decision by the Board's Review Division. On July 12, 2004, a review officer confirmed the Board's decision and found that the worker's symptoms in May 2003 were not related to his November 2002 injuries. Accordingly, the review officer concluded that there had been no significant change in the worker's compensable condition or a recurrence of his injury so as to warrant a reopening of the 2002 claim.

The worker now appeals the July 12, 2004 decision to the Workers' Compensation Appeal Tribunal (WCAT).

The employer was invited to participate in this appeal, but has chosen not to. The worker's representative, Mr. Erwin Wolff, provided a December 20, 2004 submission. The worker requested an oral hearing. I am satisfied, however, that I can properly decide the issue on appeal without holding a hearing, since there are no factual disputes or serious issues of credibility.

Issue(s)

Does the evidence satisfy the requirements for a reopening of the worker's November 14, 2002 claim on account of his symptoms on May 27, 2003 and beyond?

Jurisdiction

This is an appeal of a Review Division decision pursuant to subsection 239(1) of the *Workers Compensation Act* (Act).

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

Background and Evidence

The worker is now 27 years old. He has been a buckler in the logging industry since 1997. Sometime in October 2002, his saw jammed and twisted in a log. This caused the worker to twist his back while being pulled forward in a flexed position. He continued to work, but reported his worsening back pain to his supervisor on November 14, 2002, stopped working, and sought medical attention.

On November 14, 2002, Dr. Hackey, a general practitioner in a medical clinic, diagnosed the worker as having mechanical low back pain. On examination, the worker had pain, but full range of motion and normal neurological signs.

A November 28, 2002 x-ray did not reveal any significant abnormalities in the worker's lumbar spine or sacroiliac joints.

Dr. Hancock, another general practitioner in the medical clinic, reported on December 2, 2002 that the worker continued to have back pain at the sacral (S1 and S2) level.

Upon admission to a work conditioning program (WCP) on December 20, 2002, the worker had full lumbar flexion with pain on the right side of L4. Flexion and external rotation of the worker's hips were also measured. His right hip flexion was reduced by 15 degrees compared to the left side, and it caused pain on the right side of his lumbar spine. External rotation of the worker's hip was reduced by 20 degrees on the right, and caused right-sided pain.

The worker was examined by Dr. J, a Board medical advisor, on January 30, 2003. At that time, the worker reported that he was feeling stronger and fitter with treatment in the WCP, but continued to have back pain with certain activities. In particular, the worker said that flexion of his spine caused pain when he returned to the upright position. Dr. J reported that the worker's physical examination was normal, and he did not demonstrate any magnified disability behaviour or non-organic signs. He thought that it was appropriate for the worker to return to work on a graduated basis.

The worker attended the WCP until February 14, 2003. During the last two weeks, he also participated in a nine-day work trial where he did his regular job as a buckler for eight hours a day. He reported progressively more pain in his low back during his work day, but was able to relieve it by stretching and applying heat. Upon discharge, the worker told the WCP staff that he had constant tightness in his low back, but only intermittent heavy, sharp and shooting pain. He said that sitting, standing in one spot, kneeling, walking on uneven surfaces, squatting/crouching, lying on his side and stomach, lifting, carrying, driving, sneezing, and reaching overhead aggravated his pain. The WCP staff thought that the worker could return to work safely if he continued his exercises.

The worker returned to his full-time regular duties on February 14, 2003.

The Board heard nothing further from the worker until Dr. Horton, another clinic physician, reported on May 27, 2003 that the worker "continued to have back pain & now has pain R hip and groin areas". Dr. Horton commented that the worker had tried hard to return to work, but needed further investigation and reassessment by the Board. The worker stopped working on May 29, 2003.

On June 3, 2003, the worker told a Board officer that he returned to his regular job duties in February 2003 with the understanding that his back pain would resolve over time. He said, however, that his back pain persisted, and he began to develop progressive right hip pain approximately one month after returning to work. He did not see a doctor because he was working in the bush and had difficulty getting time off work.

On June 4, 2003, the Board officer spoke to Mr. M, the worker's co-worker, who is also the first aid attendant. Mr. M said that he usually works alongside the worker, and in early May he noticed that the worker was hunched over "like an old man". The worker told Mr. M that he had pain going into his hip. Mr. M encouraged him to document his complaints and seek treatment, but the worker did not do so at that time. He continued to work, and Mr. M noticed that he appeared to be in discomfort at the end of the work day.

On June 6, 2003, the worker told the Board officer that his back was worsening despite being off work.

Dr. J re-examined the worker on June 18, 2003. The worker told Dr. J that his back pain persisted and increased after returning to work, and he then developed right hip pain after working for about one to one and one-half months. He said that he was reassigned to the bush in late May 2003 to do rigging and chasing, but only lasted two days before his pain became so severe that he could no longer continue.

The worker described his pain to Dr. J as a crushing sensation in his low back when bending and returning to the upright position. He said that the pain radiated to his right hip and groin, and the toes on his right foot had gone numb on occasion. He reported some improvement since being off work.

On examination by Dr. J, the worker reported low back pain, with tenderness to palpation over the anterior aspect of the right hip and with deep palpation of the sacrum. Dr. J again commented that the worker had no magnified symptom behaviour.

Dr. J thought that some of the worker's symptoms might be explained by a right L4 nerve root compression, and he arranged for a CT scan to look for evidence of a disc herniation. He also ordered right femur and hip x-rays to rule out other causes such as osteoarthritis or a bone lesion. In the absence of a significant nerve root compression, Dr. J said that he would not be able to relate the worker's ongoing and increasing symptoms to the November 2002 work injury. He explained that a pattern of increasing pain, in particular hip pain, was not consistent with a soft tissue injury to the back seven months earlier.

A June 24, 2003 right hip and femur x-ray showed very early right hip osteoarthritic change, without any other evidence of osteoarthritis.

A June 24, 2003 lumbar spine CT scan revealed diffuse disc bulging at L4-5 and L5-S1, but no herniations or obvious impingement of the exiting L4 or L5 nerve roots.

In a July 2, 2003 claim log entry, the Board officer noted that he had reviewed the CT scan and x-ray results with Dr. J, and had "confirmed, that apart from some degenerative changes there is no evidence of pathology to support either a recurrence of the original injury or a significant change in the worker's compensable medical condition" so as to reopen the worker's claim.

The Board officer then rendered the July 7, 2003 decision.

On December 11, 2003, Dr. Rocheleau, a physical and rehabilitation medicine specialist, reported that he examined the worker on November 10, 2003 at the request of Dr. Ney, another of the clinic physicians. At that time, the worker reported lumbosacral pain, primarily in the midline and also to the right sacroiliac area, with some radiation to the right inguinal region. The worker said that his pain was quite severe at times. He reported that bending, lifting, prolonged sitting, and walking increased his pain.

On examination, Dr. Rocheleau noted some restriction in the worker's spine as a consequence of lower back pain, but no neurological abnormalities. The worker was quite tender in his low back area, especially in the right sacral/sacroiliac region. Dr. Rocheleau reviewed the worker's x-ray and CT scan results, and did not note them to be of any significance. He ordered a bone scan, which also did not show anything of relevance to the worker's current complaints. Dr. Rocheleau thought that the worker had been misdiagnosed. In his opinion, the worker had a "probable unresolved ligamentous strain of the sacral ligaments and sacroiliac joint", and commented that these can be very slow to recover.

In the decision under appeal, the review officer found that the worker's current symptoms were not consistent with a strain injury for several reasons: The worker did not seek medical attention for three and one-half months after returning to work; no serious pathology was identified in his back; he had new symptoms on May 27, 2003; and his back pain did not improve on June 6, 2003 despite being off work. As a result, the review officer concluded that there had not been a recurrence of the worker's November 2002 injury so as to reopen his claim.

Applicable Law and Policy

The Act was amended as of June 30, 2002 by the *Workers Compensation Amendment Act, 2002* (Bill 49), and further amended as of March 3, 2003 by the *Workers Compensation Amendment Act (No. 2), 2002* (Bill 63). The worker's injury occurred after June 30, 2002, and the Act, as amended by Bill 49, applies to his benefit entitlement. In addition, since a decision concerning reopening of his claim was made after March 3, 2003, the reopening provisions, as amended by Bill 63, apply to this matter.

The *Rehabilitation Services and Claims Manual, Volume II* (RSCM II) applies to this appeal.

Reasons and Findings

Mr. Wolff points out that the worker was not symptom-free when he returned to work. He submits that the worker persevered through his pain with the use of medication, but his symptoms worsened and he was no longer able to continue working. Mr. Wolff further contends that the absence of a CT scan in November 2002 failed to afford a proper diagnosis concerning the significance of the original injury. Finally, he maintains that the worker's symptoms in May 2003 were clearly related to his original injury, and his claim should be reopened.

Section 96(2) of the Act states that a matter that has previously been decided by the Board may be reopened if there has been a significant change in a worker's medical condition that the Board had previously decided was compensable, or there has been a recurrence of the worker's injury.

RSCM II policy item #C14-102.01 (in effect at the time of the decision under appeal) provides that a "significant change" means a change in the worker's physical condition (not a change in the Board's knowledge about the worker's medical condition) that would, on its face, warrant consideration of a change in compensation or rehabilitation benefits.

Neither the Act nor policy #C14-102.01 defines a "recurrence". The policy states that a recurrence of the original compensable injury occurs without an intervening second compensable injury.

I note that a recent resolution of the Board's board of directors (*Resolution 2004/11/16-04*) has amended RSCM II policy item #C14-102.01 to clarify ambiguities in the Board's policies with respect to the reopening of a claim. The resolution is effective January 1, 2005, and applies to all decisions (not appellate decisions) made on or after that date. The amended language states that a recurrence of an injury for purposes of section 96(2) may result where the original injury, which had either resolved or stabilized, occurs again without any intervening new injury.

The amended policy states that the following questions may assist in determining whether there is a recurrence or a new injury:

- Have there been any intervening incidents, work-related or otherwise?
- Has there been a continuity of symptoms and/or continuity of medical treatment?
- Can the current symptoms be related to the original injury?

Although the amended policy is not applicable to this appeal, I find that it offers useful interpretive guidance in considering the meaning of a "recurrence of a worker's injury" in the context of section 96(2) of the Act.

I do not consider Mr. Wolff's submission concerning the lack of an earlier CT scan to be of relevance. The medical opinions on file do not suggest that any of the CT scan findings were causative of the worker's symptoms on May 27, 2003 and beyond. Furthermore, Mr. Wolff relies on the diagnosis provided by Dr. Rocheleau, which is not a condition that would be shown on a CT scan.

The initial matter for determination is whether the worker's symptoms on May 27, 2003 were causally related to his November 2002 injury. If not, then it cannot be said that there was a significant change in the worker's previously compensable condition or a recurrence of that injury.

In the decision under appeal, the review officer concluded that the worker's "ongoing symptoms" were not related to the work incident of November 14, 2002 and, therefore, his claim would not be reopened. The review officer relied on Dr. J's June 18, 2003 opinion that he could not relate the worker's ongoing and increasing symptoms to the November 2002 injury because the worker's pattern of pain, especially his hip pain, was not consistent with a soft tissue injury to the low back.

On the other hand, Dr. Rocheleau was of the opinion that the worker's symptoms were related to his original injury because they probably arose from an unresolved ligamentous strain of the sacral ligaments and sacroiliac joint. Dr. Rocheleau commented that such a strain would be slow to recover. I note, however, that Dr. J was not given an opportunity to comment on Dr. Rocheleau's opinion, since the July 7, 2003 decision was already in the review/appeal process.

I will first address the worker's low back pain. Dr. Rocheleau considers a ligamentous strain of the sacral ligaments and sacroiliac joint to be a new diagnosis. I question whether this is an accurate characterization. The Board accepted the worker's claim for a low back strain. The medical evidence showed that the worker had sacral (S1 and S2) pain in particular. In my view, Dr. Rocheleau's diagnosis is simply a more definitive description of the nature of the worker's original strain injury.

Furthermore, I note that the worker complained of crushing low back pain when bending and returning to the upright position when he saw Dr. J in June 2003. I am struck by the similarity of that complaint to his description to Dr. J in January 2003 of how flexion of his spine caused the most pain when he returned to the upright position. Moreover, I accept the worker's evidence that his sacral pain never resolved after February 14, 2003. Rather, it increased with his demanding work activities. I also note that the worker has no prior claims for low back injuries or complaints of low back problems before November 2002. In my view, the weight of the evidence suggests that the worker's low back pain on May 27, 2003 is related to his November 2002 injury.

I turn next to the worker's right hip and groin pain. There is no mention of right groin pain prior to May 27, 2004 and I accept that it was a new symptom. However, on admission to the WCP, the worker had reduced right hip flexion and external rotation, as compared to his left side, and he experienced right-sided lumbar pain with those movements. Dr. Rocheleau thought that the worker's right hip and groin pain arose from a strain of the sacral ligaments and sacroiliac joint.

Dr. Rocheleau had an accurate understanding of the mechanism of injury in 2002, and considered it “probable” that the mechanism of injury was responsible for the worker’s ongoing low back pain, and hip and groin complaints. I also note that much focus was placed on the worker’s right hip and groin complaints in May 2003; yet the evidence suggests that the worker’s low back pain was his primary complaint. Furthermore, the evidence does not suggest that the worker’s right hip and groin pain was present in the absence of his significant low back pain.

I also cannot ignore that the WCP staff observed the worker to have restricted right hip movements that caused right-sided pain in January 2003. Moreover, I note that Dr. J did not address those findings when providing his opinion.

While I am mindful of Dr. J’s opinion in this matter, I also consider that he failed to take into account the impact of the worker’s demanding work activities on his injury after his return to work. The evidence supports that the worker had not fully recovered from his strain when he returned to his full-time job. Upon discharge from the WCP, he continued to have lower back pain, which was relatively stable, but increased with activity. He complained that most all activities aggravated his symptoms. He was told to persevere, and he did so for just over three months. However, I have no reason to doubt his evidence (Dr. J noted that the worker did not magnify his pain) that his lower back pain increased and then began to radiate to his right hip and groin, given the nature of his physically demanding job.

I also recognize that the worker’s original injury was more than a mild strain. His injury led to him being off work for three months, and there is no suggestion that he was able to return to work before that time. When he returned, he was still quite symptomatic. Mr. M’s evidence supports that the worker persevered through significant pain, even when it had been suggested that he seek medical attention. The worker was in a remote area and explained that it was difficult to seek treatment. He also accepted what he had been told, namely, that his pain would resolve with time. He only sought medical attention when he could no longer manage at all.

Based on all of the above, I find that the worker’s right hip and groin pain in May 2003 was also related to his original injury. In addition, I acknowledge that the worker did not seek medical attention between February 14 and May 27, 2003; however, I accept his evidence that he had symptoms during that time and his reasons for not seeking medical attention.

Consistent with the factors set out in the amended RSCM II policy item #C14-102.01 concerning recurrences, I find that there was a continuity of symptoms from February to May 2003 and beyond, there were no intervening incidents, and the worker’s symptoms in May 2003 were related to his original injury. I consider that the nature of the worker’s physically demanding work played a significant role in worsening the unresolved

symptoms in his sacral area to the point that his back pain not only increased, but also radiated to his right hip and groin area.

I find that the worker's low back strain injury was worsened to the point of disability by his ongoing work activities, so as to conclude that his original injury recurred within the meaning of RSCM II policy item #C14-102.01. I allow the worker's appeal, and find that his claim should be reopened as of May 27, 2004. The Board will determine the nature, duration, and extent of benefits payable to the worker.

Conclusion

I vary the July 12, 2004 Review Division decision.

No expenses were requested and none are awarded.

Elaine Murray
Vice Chair

EM/ml

WCAT Amended Decision Number : WCAT-2005-01278a
WCAT Amended Decision Date: April 5, 2005
Panel: Elaine Murray, Vice Chair

Amended Decision

In *WCAT Decision #2005-01278* issued on March 14, 2005, I allow the worker's appeal and find that his claim should be reopened as of May 27, 2003. In a memo dated March 22, 2005, the worker's representative requested clarification on the reopening date referred to in the decision. After reviewing the original decision, based on the statutory authority set out in section 253.1(1) of the *Workers Compensation Act* regarding correction of decisions, I am amending paragraph #6 on page 7 and paragraph #2 on page 9 respectively of the original decision as follows (changes in bold):

I turn next to the worker's right hip and groin pain. There is no mention of right groin pain prior to **May 27, 2003** and I accept that it was a new symptom. However, on admission to the WCP, the worker had reduced right hip flexion and external rotation, as compared to his left side, and he experienced right-sided lumbar pain with those movements. Dr. Rocheleau thought that the worker's right hip and groin pain arose from a strain of the sacral ligaments and sacroiliac joint.

I find that the worker's low back strain injury was worsened to the point of disability by his ongoing work activities, so as to conclude that his original injury recurred within the meaning of RSCM II policy item #C14-102.01. I allow the worker's appeal, and find that his claim should be reopened as of **May 27, 2003**. The Board will determine the nature, duration, and extent of benefits payable to the worker.

Elaine Murray
Vice Chair

EM/ml