
NOTEWORTHY DECISION SUMMARY

Decision: WCAT-2005-02559**Panel:** Guy Riecken**Decision Date:** May 18, 2005***Injuries Following Motions at Work (Work Required Motions) – Normal Body Motion – Whether Injury Arising in Course of and Out of Employment – Causative Significance – Meaning of Back Injury – Section 5(1) of the Workers Compensation Act – Policy Items #13.00, #14.00, #15.00 and #15.20¹ of the Rehabilitation Services and Claims Manual, Volume II***

A motion is a work-required motion where there is a “tangible relationship between the motion and the job,” or in other words, where the purpose of the motion was the accomplishment of the worker’s job. However, the fact that a motion is a work-required motion does not necessarily mean that an injury that occurred at the time of that motion arose out of the worker’s employment. All of the circumstances, and not just the temporal relationship between the work-required motion and the onset of symptoms, must be considered. The evidence must show that the work-required motion was of causative significance in producing the injury.

In this case, a worker injured his back while bending over to pick up an aerosol can that he used in the course of his work. The Workers' Compensation Board (Board) denied his claim. The Review Division confirmed the Board decision. It found that although the worker’s injury arose in the course of his employment, it did not arise out of his employment as it was the result of a normal body motion. The worker appealed to WCAT. The worker argued that picking up the can was a work-required motion.

On appeal, the WCAT panel confirmed the denial of the worker’s claim. Although the panel concluded that picking up the can was a work-required motion (in addition to being a normal body motion), it also concluded that such a finding was not determinative of whether the injury arose of the worker’s employment. Item #15.00 of the *Rehabilitation Services and Claims Manual, Volume II* (RSCM II) provides that it is necessary to determine whether something in the employment relationship was of causative significance in producing the injury.

The panel considered the nature of the motion. It was not awkward. There was no evidence that the worker tripped or slipped at the time of the bending motion or at the time of the onset of the pain. The evidence does not indicate that the bending involved any twisting or turning of the back. Nor does it indicate that the bend was unusually deep for the worker, that it was sustained or that it was forceful. He was not bending repeatedly.

Thus, the WCAT panel concluded that there was insufficient evidence that the worker’s bending motion to pick up the can was of causative significance in producing the injury. While the motion was required by the worker’s job, it did not result in the injury as contemplated by item #15.20 of the RSCM II. It was a temporal coincidence that the onset of the injury happened to occur at work. The injury did not arise out of the worker’s employment, and because both parts of the test for causation under section 5(1) of the *Workers Compensation Act* are not satisfied, the worker is not entitled to compensation.

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

WCAT Decision Number : WCAT-2005-02559
WCAT Decision Date: May 18, 2005
Panel: Guy Riecken, Vice Chair

Introduction

On March 18, 2004 the worker was employed as an electrical technologist when he experienced the acute onset of low back pain. The Workers' Compensation Board (Board) disallowed his claim for a low back injury.

The worker appeals the November 26, 2004 decision of a review officer of the Board (*Review Decision #19150*). The review officer confirmed the April 7, 2004 decision of a Board entitlement officer to disallow the worker's claim for a low back injury. The review officer found that although the worker's back symptoms arose in the course of his employment, they occurred as a result of a normal body motion and did not arise out of the worker's employment.

The worker and his union representative attended an oral hearing in Richmond, B.C. on May 10, 2005. The employer did not participate in the appeal.

Issue(s)

The issue to be decided in this appeal is whether the worker suffered a personal injury to his back on March 18, 2005 that arose out of and in the course of his employment.

Jurisdiction

The worker's appeal of the review officer's decision was filed with the Workers' Compensation Appeal Tribunal (WCAT) under section 239(1) of the *Workers Compensation Act* (Act).

WCAT may consider all questions of fact and law arising in an appeal, but is not bound by legal precedent (section 250(1)). WCAT must make its decision on the merits and justice of the case, but in so doing, must apply a policy of the board of directors of the Board that is applicable in the case. WCAT has 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 (section 254).

This is an appeal by way of rehearing, rather than a hearing *de novo* or an appeal on the record. WCAT has jurisdiction to consider new evidence, and to substitute its own decision for the decision under appeal.

Background and Evidence

The worker's evidence concerning the onset of his back symptoms is straight forward. On March 18, 2004 just after beginning his shift he was at a work bench preparing for his work duties that day. This involved assembling the tools and supplies he needed in the course of his shift. The supplies he would use included a roll of conduit. He also needed some lubricant to thread the conduit. As he bent down to pick up an aerosol can of lubricant he felt the acute onset of severe low back pain. He testified that the pain began just as he reached the low point of his bend, as he put his hand on the aerosol can. The pain was the same, and in the same location, as a previous back injury in 2003. He had not picked up the can yet when the pain began. In any event the can was not particularly heavy. The worker estimated it weighed about one pound. He described and demonstrated the bending motion. He leaned forward and down, standing on one foot while his other leg and foot were raised slightly behind him in what I would describe as a counterbalance position.

The pain was so severe the worker had difficulty moving over to a nearby bench to lie down. He described himself "shuffling" over to the bench. Some co-workers saw his difficulty and helped him over to the bench. He felt unable to go to first aid, and the first aid attendant came to him. He then left work by taxi and went to the clinic where his regular physician, Dr. Curry, practices. Dr. Curry told him he thought he had a recurrence of a back problem he had previously. He took a taxi home from the clinic.

Dr. Curry's report from March 18, 2004 indicates the worker reported reinjuring his back that day on bending over. Dr. Curry diagnosed a lumbar strain. He recommended Robaxisol and physiotherapy. He estimated the worker would be off work for 14 to 20 days.

Dr. Curry's March 25, 2004 report indicates the worker was much improved with rest and medication. He recommended the worker continue with medication and physiotherapy. He estimated the worker could return to work in 7 to 13 days.

On March 30, 2004 Dr. Curry indicated that the worker could return to work on light duties.

The worker testified that he was off work for two weeks and then phoned the employer to ask if he could return on light duties. When he returned he worked mainly on the computer for four hours per day for one week. He then resumed his normal duties and has not lost any time from work since then. Since that time he has worn a back support belt at work. He does not wear it outside of work. His work activities are now somewhat limited, in that his work mates know he has a weak back, and if he asks them, they do heavy lifting for him.

Findings and Reasons

The worker's representative submits that the aerosol can was needed for the worker's job, and that the motion of bending down to pick it up was a "work required motion" as described in *Rehabilitation Services and Claims Manual, Volume II* (RSCM II) item #15.20. The resulting back injury is therefore compensable. The representative submits that both the entitlement officer and the review officer erred. The entitlement officer denied the claim in part because of an erroneous finding that bending down to pick up the aerosol can was not a work-required motion. The review officer misapplied item #15.20 by stating that to be a work-required motion a natural body motion, such as bending down, had to be a motion predominately performed at work.

Section 5(1) of the Act provides that the Board must pay compensation where a worker suffers a personal injury arising out of and in the course of the worker's employment.

"Personal injury" is not defined in the Act. In RSCM II item #13.00 it is defined as any physiological change arising from some cause, including injuries, such as strains and sprains, that are not readily verifiable by outward signs.

RSCM II item #14.00 provides the following criteria to assist in determining whether an injury arose out of and in the course of employment:

- 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.

The policy states that this is not an exhaustive list of relevant factors. All of these factors can be considered in making a judgement, but no single one of them can be used as an exclusive test.

RSCM II item #15.00 addresses the distinction between injuries that result from purely natural causes, which are not compensable, and injuries that result from employment, which are compensable. The requirement in section 5(1) of the Act that the injury both arises in the course of, and out of, the employment, means there must be something in the employment situation or relationship that had causative significance in producing the injury.

RSCM II item #15.20 addresses injuries that follow motions at work where there was no pre-existing deteriorating condition. This policy distinguishes between work-required motions and non work-required motions. If a job requires a particular motion, and that motion results in an injury, that is an indication that the injury arises out of the employment and is compensable. The policy cites as an example of this principle the case of a worker whose job requires the worker to bend down, and an injury results from bending down. The policy acknowledges that it may, however, be difficult to distinguish between work-related and non work-related motions. Many work-required motions are also motions that a worker commonly engages in outside of work. A motion, although natural and performed outside of work, may, if also performed as part of work duties, gain "work status."

In *Appeal Decision #2004-01807* the WCAT panel stated that:

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 foregoing statement is not policy and is not binding on other WCAT panels. However, I agree with it and adopt it in this case. It reflects the principle in RSCM II item #15.20 that "If a job requires a particular motion, and that motion **results** in injury, that is an indication that the injury arises out of employment and is compensable" [emphasis added]. The fact that the motion was required by the worker's job alone

does not necessarily mean that an injury that occurred at the time of that motion arose out of employment. All of the circumstances, and not just the temporal relationship between the work-required motion and the onset of symptoms, must be considered. The evidence must show that the work-required motion was of causative significance in producing the injury.

I found the worker's testimony to be straightforward and consistent with the statements he gave in his application for compensation and to the entitlement officer. I find his evidence to be credible. I accept the following as facts:

- Prior to the onset of severe pain on March 18, 2004, the worker had been experiencing some low back "achiness," but it was not severe and it was not disabling.
- At the time of the onset of severe pain on March 18, 2004, the worker had begun his shift and was engaged in his normal work activities.
- He experienced the acute onset of severe low back pain as he bent down to pick up an aerosol can of lubricant.
- The lubricant was needed for the worker's job that shift and bending down to pick it up was a work-required motion.
- The worker's low back pain was severe enough to stop him from working.
- The worker suffered a low back injury diagnosed by Dr. Curry as a lumbar strain.

I find that the lumbar strain diagnosed by Dr. Curry on March 18, 2004 was a personal injury as defined in RSCM II item #13.00. I also find that it arose in the course of the worker's employment. The remaining issue is whether it arose out of his employment.

Most of the factors in RSCM II item #14.00 support the worker's back strain arising out of and in the course of employment. It occurred on the employer's premises during regular working hours while the worker was preparing to undertake productive work for the benefit of the employer. However, the more specific policies in items #15.00 and #15.20 relating to the distinction between natural causes of injury and work causes must also be considered.

Neither the worker nor his representative has described the worker's motion at the time of the onset of back pain as awkward. There is no evidence that the worker tripped or slipped at the time of the bending motion or at the time of the onset of the pain. The evidence does not indicate that the bending involved any twisting or turning of the back. Nor does it indicate that the bend was unusually deep for the worker, that it was sustained or that it was forceful. He was not bending repeatedly. From the worker's description of what happened, I find that his bending to pick up the aerosol can involved

a natural body motion that occurs in a variety of work and non-work situations. In this case it happened to occur in the course of the worker's employment.

Dr. Curry's reports provide little, if any, opinion evidence of a causal relationship between the bending motion and the back strain. I do not consider Dr. Curry's statement in his first report that the worker "re-injured back today on bending over" to be an opinion on causation. From the context, I find it more likely reflects what the worker told Dr. Curry about what happened.

I find that there is insufficient evidence that the worker's bending motion to pick up the aerosol can was of causative significance in producing the lumbar strain. While the motion was required by the worker's job, it did not result in the injury as contemplated by RSCM II item #15.20. It was a temporal coincidence that the onset of the strain happened to occur at work. The injury did not arise out of the worker's employment, and because both parts of the test for causation under section 5(1) are not satisfied, the worker is not entitled to compensation.

The worker's appeal is denied.

Conclusion

I confirm *Review Decision #19150*, dated November 26, 2004.

The worker's representative requested that the worker be reimbursed for his travel expenses to attend the hearing. In light of the outcome of the appeal, I decline to order the Board to reimburse the worker for his travel expenses.

Guy Riecken
Vice Chair

GR/rb