Noteworthy Decision Summary

Decision: WCAT-2005-04824 **Panel:** T. White, S. Adamson, B. Anderson **Decision Date:** September 14, 2005

Whether an Injury Following a Motion in the Workplace is an Injury Arising Out of and in the Course of Employment – Policy item #15.20[1] of Rehabilitation Services and Claims Manual, Volume II

A three-member, non-precedent panel was appointed to decide this case because of the inconsistency of the approaches to these types of determinations. This decision sets out the questions to be answered in determining whether, under item #15.20 of the *Rehabilitation Services and Claims Manual, Volume II* (RSCM II)*,* a motion in the workplace caused an injury arising out of and in the course of employment: first, is there a deteriorating condition which brings the injury within item #15.10, and renders it noncompensable? Second, was there an "accident," triggering the section 5(4) of the *Workers Compensation Act* (Act) presumption that the accident occurred in the course of employment, or arose out of the employment? If neither apply, three broad questions must be answered in determining whether an injury following a motion in the workplace arises out of and in the course of employment: (1) Did the motion alleged to have caused personal injury take place in the course of employment? (2) Did the motion have enough work connection? (3) Did the motion have causative significance in producing a personal injury?

In this case, the worker, a nurse in a psychiatric unit, felt a sharp pain in his lower back when he bent over to put his meal in the fridge at his workplace. This incident occurred before the worker's normal shift start time, but while he was preparing to begin his shift. His duties of employment included putting things in and taking things out of the fridge for the patients in his care. The worker required an extended period of time off, but eventually returned to work with restriction on movement. There was no history of back pain, and no real indication of a deteriorating condition.

First, the panel found that there was not sufficient evidence to conclude that the worker had a pre-existing deteriorating condition. Second, neither the onset of the pain nor the bending itself was an "accident," so the section 5(4) presumption did not apply.

The panel examined policy item #15.20 of the RSCM II, its historical precedents, and decisions by previous appellate decision-makers, and concluded that the policy can support decisions either way on similar facts. For that reason, they carefully analyzed it with a view to developing an interpretation that could lead to consistent results, and formulated the three broad questions set out above.

The first inquiry involves an application of the various policies addressing "the course of employment" (items #14.00, "non-productive activities"; #21.00, "personal acts"; and #21.10, "work breaks" are mentioned.) In this case, although the worker had not technically started his

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

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

shift, he was in the process of immediate preparations for beginning work, so he was in the course of employment.

The second inquiry involves a consideration of whether performance of the motion exposed the worker to a risk of the employment, as opposed to the risks arising from the natural, everyday motions of the human body to which people are constantly exposed, regardless of their work activities. Whether a motion was awkward or unusual may have some bearing on the second question, but it is not definitive. In this case, the worker's act of bending over to put his meal in the fridge was a natural body motion done in order to complete a personal act: an insufficient employment connection.

The third inquiry is the medical question inherent in all claims. There must be medical evidence supporting the conclusion that the motion had causative significance in causing an actual injury. Although it was not necessary, the panel considered this third question for the sake of completeness. Had there been a sufficient employment connection, the claim would have failed on this ground, since there was insufficient evidence of any biomechanical risk factor to give the movement of bending causative significance.

This decision has been published in the *Workers' Compensation Reporter*:
21 WCR 289, #2005-04824, Three-member Non-precedent Panel - Work-required Motion

WCAT Decision Number:	WCAT-2005-04824
WCAT Decision Date:	September 14, 2005
Panel:	Teresa White, Vice Chair Steven Adamson, Vice Chair Beatrice K. Anderson, Vice Chair

Introduction

The worker appeals an April 14, 2004 decision of the Review Division of the Workers' Compensation Board (Board) to the Workers' Compensation Appeal Tribunal (WCAT). The Review Division denied the worker's request for review of a March 17, 2003 decision of the Board that the worker's lumbar strain was not a personal injury arising out of and in the course of his employment.

The Board's decision was based on the conclusion that the worker was not performing his work duties at the time of his injury, as he was involved in the natural body motion of "simply bending forward" to place his lunch in a fridge, and there was nothing of causative significance in his work as a psychiatric nurse that resulted in the injury.

The worker is represented by legal counsel. The employer is participating, and is represented by a consultant.

This appeal is proceeding by way of a read and review of the evidence and submissions on file. We consider this an appropriate method of resolving the issues, which turn primarily on the application of law and policy to facts that are not significantly in dispute. Counsel for the worker submitted that if the need for the worker to take a lunch to work, or the fact that he took things out of the same refrigerator to feed residents was "in dispute," an oral hearing was required. Neither of these points is significantly in dispute. We accept that the worker brought a meal to work, and that the same fridge was used to store items used for patients.

Section 238(5) of the *Workers Compensation Act* (Act) provides the authority to appoint a three-person panel where the chair determines that a matter under appeal requires it. This three-member panel was appointed by the chair, although this decision does not constitute a precedent decision under section 250(3) of the Act.

Jurisdiction

This appeal is brought pursuant to section 239(1) of the Act.

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

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.

The law and policy applicable to this appeal is found in the *Rehabilitation Services and Claims Manual, Volume II* (RSCM II).

Issue(s)

The issue is whether the worker suffered a personal injury arising out of and in the course of his employment.

Background and Evidence

The worker has been employed by the employer as a psychiatric nurse since 1971. On February 4, 2003 the worker, then 52 years old, made application for compensation stating that he felt a sharp pain in his lower back when he bent over to put his meal in the fridge. This incident occurred before the worker's normal shift start time, but after he had arrived at the workplace and while he was preparing to begin his shift. According to submissions from counsel for the worker, this occurred just before the daily meeting of the nurses from the day and afternoon shifts.

The Board's entitlement officer spoke to the worker on March 12, 2003. The claim log memo in the worker's electronic file notes that the worker said he was putting his lunch in the refrigerator (fridge), which he described as a normal house-style fridge. There was no water on the floor and he did not slip on anything. He simply bent over and was putting his lunch into the fridge.

The entitlement officer recorded in the claim log that the claim did not meet the requirements of section 5(1) of the Act. The worker was performing a "normal body motion that he could have been performing in his home or in his social life."

The worker does not have any previous workers' compensation back claims. The worker's evidence, which we accept, is that he works on a unit with approximately 25 to 27 residents with dementia. Some of them can be unpredictable and aggressive, and they require physical assistance with standing or transferring into bed.

The worker saw a physician the same day. The physician's first report states that the worker leaned forward to put food in the fridge, and had sudden low back pain. The report states that the worker had no major back pain in the past. He had no pain to his legs, no numbness and sphincter control was "OK."

On February 12, 2003 the worker's regular family physician, Dr. Dugdale, reported that the worker continued to be disabled from work due to pain in his back. The worker was reported to be unable to stand or sit for prolonged periods. Reflexes were normal and the worker could straight leg raise to 60 degrees. Dr. Dugdale estimated that the worker would be off work for 7 to 13 days.

By February 19, 2003 Dr. Dugdale was reporting that the worker should be able to start back to work on February 23, 2003, with no heavy lifting. An x-ray was reported as normal, and the worker had increased range of motion (ROM) and decreased pain and no root signs.

The return-to-work was not successful. Dr. Dugdale reported on February 26, 2003 that the worker had been unable to do heavy lifting. By the end of the shift he had decreased ROM and tenderness of the paravertebral musculature of the spine. The worker needed physiotherapy. Dr. Dugdale estimated that he would return to work in 7 to 13 days. The worker ultimately did return to work but required an extended period of time off, and a graduated return-to-work.

An x-ray of July 2, 2003 showed no pathology.

The worker had a private MRI done, also on July 2, 2003. It identified a generalized disc bulge at L4-5 with no focal disc or nerve root changes. There was also no evidence of spinal stenosis. At L5-S1 there was a generalized disc bulge with subtle left posterolateral/proximal foraminal focal disc herniation and annular tear resulting in a very subtle posterior displacement of the proximal left S1 nerve root prior to its entrance into the lateral recess. The foraminal portion of the left L5 nerve root also contacted the disc material but there was no significant displacement at that level.

The worker was referred to a neurosurgeon, Dr. Chan. In a December 2, 2003 report, Dr. Chan said that from a clinical standpoint the worker's L5 and S1 nerve roots were functioning well, and surgery was not indicated. Dr. Chan said that the small protruded disc contained 60% mucopolysaccharide, which was water content. As long as the worker had no further injury it would continue to dry up, and this would correspond to continued clinical improvement.

The worker has been examined by an occupational health physician a number of times in respect of his return-to-work. He has returned to work, but has restrictions on lifting, pushing, pulling and rolling, bending, twisting, and awkward postures.

Counsel for the worker made a number of submissions. We have reviewed and considered all of them, and specifically note the following.

The Board should have applied the presumption found in section 5(4) of the Act, because it is undisputed that the worker had an "accident" as defined in section 1 of the Act. The Board did not consider policy items #14.10 and #14.20 which provide guidance in the interpretation of section 5(4). The worker's injury was caused by the "accident" of bending down, which falls into the definition of a "fortuitous event occasioned by a physical or natural cause."

The Board failed to properly apply section 5(1) and policy item #14.00, which addresses "arising out of and in the course of employment," and policy item #19.00, which addresses use of facilities provided by the employer.

Counsel submitted that bending down to put food in the fridge was a movement requirement by the worker's employment because the same fridge was used to store food that the workers used to care for and feed patients. In addition, the worker needed to bring a meal to work because the cafeteria at the workplace was not open during afternoon shifts, and the worksite was relatively isolated.

Counsel submitted that it was reasonable to conclude from the physician's reports on file that the worker's employment had primary causative significance in the onset of his lumbar strain and non-surgical subtle L5-S1 disc herniation and annular tear found on the July 2, 2003 MRI.

Counsel pointed to policy item #14.00 in the RSCM II, which states that there are activities, such as the worker's "drawing of pay" which although not normally considered productive activities, may lead to a compensable injury. She also pointed to policy item #19.00 which states that where a worker is injured using some facility supplied by the employer, the use of the facility may be part of the employment relationship. She also noted policy item #19.20, which discusses injuries occurring in parking lots, for reasons which are unclear.

Counsel submitted that we should issue a decision "akin" to *WCAT #2003-00357-RB*, and in particular following the reasoning set out in paragraphs 19, 20, 21 and 26 of that decision. She suggested that the fact that the worker was required to "bend down to take food in and out of the lower refrigerator section to care for and feed patients" should be incorporated into the language of that decision, which should be used as a template. Counsel submits, essentially, that the fact that the worker used the fridge as

part of his work duties means that the action of placing his own lunch in the fridge is similarly work connected.

Counsel also submitted that the worker's job requirements include heavy lifting, because many of the residents on the ward have dementia and require assistance to stand and roll into bed. Counsel submitted that the worker's case fell within the numerous compensable back injuries accepted under policy item #15.20, and cited *WCAT #2003-01390-RB*, *#2003-02475-RB*, *#2004-00121*, *#2004-01807*, and *#2004-02418-RB*.

The employer's representative submitted that the worker was performing a normal body movement. It was a personal act, and the employer had concerns about whether the worker's complaints had any connection to his employment.

Reasons and Findings

This appeal illustrates the difficulties that arise when the Board is asked to adjudicate a claim involving what is termed an injury following a "motion at work."

Policy item #15.00 requires the adjudicator to distinguish between injuries resulting from employment and injuries resulting from purely natural causes. Policy item #15.10 discusses how to adjudicate claims where a worker has a pre-existing deteriorating condition that is on the verge of becoming a manifest disability. If the worker would not have escaped the disability regardless of the work activity, the disability is considered to have been caused by the deteriorating condition. Where no pre-existing condition exists, policy item #15.20 applies.

Policy item #15.20 of the RSCM II is titled "Injuries Following Motions at Work." It is the policy referred to when a worker alleges an injury caused by a "motion" of the human body, such as turning the head, or bending over to pick something up. A "motion at work" is distinct from an event such as a fall or an incident where a worker is struck by something.

The intent of policy item #15.20 is to assist in the adjudication of claims that arise where there is no obvious accident, incident or event either at or immediately before the appearance of the injury. These claims are distinguished by a seemingly innocuous activity that the body usually performs without injury, which is followed by a constellation of symptoms. Policy item #15.20 specifically states that it does not apply where there is a deteriorating condition as contemplated by policy item #15.10.

Is there a deteriorating condition in this case to bring it within policy item #15.10?

Dr. Chan's opinion could be interpreted as linking the worker's clinical symptoms to the worker's subtle disc herniation and annular tear. If indeed that is the source of the

worker's symptoms, and the evidence established that bending over caused the disc herniation, then policy item #15.10 would apply, on the basis that if such an inconsequential motion caused a disc herniation, the only reasonable conclusion must be that the worker had a pre-existing deteriorating condition. The deteriorating condition was such that it could have become manifest at any time, removing any employment significance.

We do not consider the evidence in this case a sufficient basis upon which to conclude that the worker had a pre-existing deteriorating condition. During our consideration of this appeal, we asked the worker's attending physician if the worker had any history of back complaints. His response was that there was no such history, and there is none evident on the medical records and reports on file. Consequently, we have considered this appeal in the context of policy item #15.20 of the RSCM II.

This appeal is the classic incarnation of this type of claim. That is the situation where a worker bends over to pick something up, or as in this case, to put something in a fridge, and experiences a relatively sudden onset of back pain. Understandably, the worker believes that the act of bending over caused an injury to his back. Given the sudden onset of pain, and the subsequent complaints, plus the discovery of positive findings on the MRI, the worker's physician also suggests that the "bending over" caused the worker's back condition.

These types of claims are challenging to adjudicate, because of the difficulty determining whether the "motion" was one arising out of and in the course of a worker's employment, or simply a "natural body motion" with no connection to the employment, and also whether the bodily motion actually caused an injury. The starting point in any analysis of whether a worker is entitled to workers' compensation benefits for a personal injury is always section 5 of the Act.

Section 5 requires that a personal injury arise out of and in the course of employment. 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.

Policy item #14.00, "Arising Out Of and In The Course of Employment", outlines eight indicators, which are not determinative, but provides guidance on whether an injury should be classified as one arising out of and in the course of employment. 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; and,
(h) whether the injury was caused by some activity of the employer or of a fellow employee.

Policy item #15.20 provides:

#15.20 Injuries Following Motions at Work

This heading 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 of this principle is a Board decision where the worker's injury resulted from bending down and, for this worker, bending down was a required movement of the job. Another Board decision illustrates the point as follows:

> "An automobile mechanic working under a car is bending himself in unusual ways when he turns his head to look at something. Through some unusual movement of the neck muscles, he suffers a muscle strain. The employment activity may well have had causative significance and the injury is therefore compensable."

The same applies where a job requires a series of different motions, and an injury results from the series.

On the other hand, there may be situations where an injury resulted from some motion of the human body that was not required as part of the job. This would be an indication that the injury would not be compensable. Suppose, for example, that on walking along a road on an industrial site in the course of employment, a worker's head turns sideways as a matter of

curiosity to see what someone is doing. Because of some peculiar movement in the neck muscles, a muscle strain occurs. That would not be an injury "arising out of" the employment, and therefore not compensable. Again, suppose a worker is using the toilet at work and, in doing so, suffers an injury resulting only from the bowel movement. That would not be compensable.

The injury may result not from any particular motion at any particular time and place, but rather from repetition of the same kind of motion over time, perhaps several weeks, perhaps several years. If the motion is one that the worker undertakes in the course of employment, or predominantly in the course of employment, this would be an indication that the resulting injury would be compensable. But if the motion is of a kind that is undertaken at home and in the worker's social life as well as at work, this would be an indication that the resulting injury was not compensable. This point is illustrated in another Board decision:

> "If the injury is one that resulted from the natural condition of the worker together with the general activities of life, it would not be compensable simply because work was one of those activities. To be an injury arising out of the employment, there must be something in the employment that had a particular significance in producing the injury. For example, if a worker 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 worker uses stairs at work as well as at home and elsewhere."

It may often, in practice, be difficult to distinguish between work-required and non-work-required motions. Moreover, a work-required motion will often be a motion which the worker commonly engages in at home. This would suggest that the illustrations set out above are contradictory. However, 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 worker was at work." The difficulty with this argument is that it renders meaningless the first half of the test contained in section 5(1). If causation is to be measured solely by the fact of employment, why did the Legislature include a requirement that the injury must also "arise out of" the employment? Clearly something more is required.

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 result is that virtually every body motion or activity could be said to be "normal" or "natural", capable of occurring off the job and therefore non-compensable. Clearly something less restrictive is required.

Claims of the kind under discussion here must be adjudicated with great care. Nevertheless, 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 not 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 worker 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.

The Act requires a decision-maker to consider whether the section 5(4) presumption applies. Was there an "accident" arising out of the employment, or occurring in the course of employment? If either is true, then section 5(4) of the Act provides a worker with a benefit of a presumption that the accident occurred in the course of employment, or arose out of the employment as the case may be.

Counsel in this appeal submitted that bending over to get the lunch out of the fridge was an "accident." The review officer did not accept that submission. We agree.

What is an "accident" as such is intended by section 5(4) of the Act? "Accident" is defined in section 1 of the Act as, "includes a wilful and intentional act, not being the act of the worker, and also includes a fortuitous event occasioned by a physical or natural cause."

In our view, the term "accident" requires something more than simply bending over, even if a worker reports the sudden onset of back pain on bending. Neither the onset of pain nor the bending itself is an "accident." The act of bending over was an "act of the worker," and we do not consider it a "fortuitous event." *Black's Law Dictionary, Abridged Fifth Edition*, defines "fortuitous event" as an "event happening by chance, or an accident," "that which happens by a cause which cannot be resisted," and "an unforeseen occurrence, not caused by either of the parties, nor such as they could prevent." In our view, the act of bending over to pick something up is not a fortuitous event such that the presumption in section 5(4) applies. It was a deliberate act of the worker. It was just the type of act that policy item #15.20 is an attempt to address.

We have considered whether the internal bodily occurrence that led to the "sharp pain" could be characterized as the accident. Although the broadest possible interpretation of "accident" could include the onset of sudden sharp pain, we do not consider that the definition of "accident" in the Act is meant to include both the cause and the effect. The "sharp pain" suggests a possible "personal injury" but in cases such as this, the alleged cause of the worker's back pain was nothing more than the natural body motion of bending over, which most of us do many times a day. We do not see how bending over could be called an "accident," any more than reaching for a cup of coffee, or turning one's head is an "accident."

The presumption in section 5(4) does not apply.

Thus, compensability must flow from section 5(1), on the basis that there was a personal injury arising out of and in the course of employment.

Policy item #15.20 can be construed to mean that an injury caused by an insignificant natural body motion is compensable if the motion is work-required. Conversely, it can also be understood to mean that injuries resulting from insignificant motions are not compensable because the injuries did not arise out of the employment.
We have no doubt that bending over from the waist is a normal or natural body motion. Section 5 of the Act requires that a personal injury incurred by such a motion must arise out of the employment. When the motion is normal for the body, the causative role of the employment is often minimal. That is why policy item #15.20 requires these types of claims to be adjudicated with caution.

The former commissioners of the Board addressed the "motions at work" issue in *Decision #286* (reported at (1978), 4 WCR 60). That decision was stated to be a "policy directive" respecting injuries sustained while doing a motion required by a job which is otherwise a normal body motion.

The policy stated in *Decision #286* was based on an earlier decision of the commissioners. *Decision #145* ((1975), 2 WCR 171) addressed a fact situation where a worker suffered a low back injury while bending down.

Both *Decisions #145* and *#286* have been "retired" and no longer have the status of published policy. However, it was from the principles discussed in these decisions that the policy was derived, and they can provide some interpretive guidance.

The commissioners in *Decision #145* stated:

> A person does not normally suffer a disability simply as a result of bending down. For this reason, a claim for disability resulting from the simple act of bending down should not be accepted without further enquiry. But neither is there any rule requiring such a claim to be denied.

The commissioners then classified the more common situations. Under heading No. 4, "*Work-Required Motion*", they stated:

> This heading refers to cases where an injury has resulted from a motion that is required as part of the employment … If a job requires a particular motion, and that motion results in injury, the injury arises out of the employment and is compensable.

Under heading No. 6, "*Motion Not Required By the Employment,"* the commissioners stated:

> This heading refers to situations where an injury resulted from some motion of the human body that was not required as part of the job. Such an injury would not be compensable unless the employment relationship

> had causative significance in some other way. Suppose, for example, that a worker is walking along a road in an industrial site in the course of his employment, when he turns his head sideways as a matter of curiosity to see what someone is doing. Because of some peculiar movement in the neck muscles, he suffers a muscle strain. That would not be an injury "arising out of" the employment, and therefore not compensable.

In *Decision #286*, the commissioners stated the following at pp. 66-67:

> We do not consider it 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 his 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, forces us to conclude that, in appropriate circumstances, such incidents should be seen as causative and if they occur while the worker is at his job, the resulting injury must be compensable.

Although 30 years have passed since these decisions were written, medical science seems no closer to supplying the answer to the origin of many spinal or other physical problems. If the causes of these problems were clear, there would be less controversy adjudicating claims.

Policy item #15.20 says that if a worker is required by the employment to bend down and bending down causes an injury, then the injury is compensable despite the fact that it is a natural body motion. Conversely, the policy also says that walking up the stairs or turning one's head to speak to a co-worker or glancing at one's hands while performing a job are not compensable because they are only natural body motions, even though they may also be work-required.

Policy item #15.20 can support decisions either way, on similar facts. This cannot have been the intention of the policy-makers, who were attempting to provide guidance in adjudication of these types of claims, with the overall goal of consistency in adjudication. For that reason, we have carefully analyzed policy item #15.20 with a view to developing an interpretation that could help lead to consistent results.

We do not consider that everything done while at work, is, by definition, a work-required motion. Whether or not a particular motion is "work required" requires careful analysis using well-established principles of workers' compensation law and policy.

As policy item #15.20 acknowledges, there is "very little physical activity or body movement in the worker's employment that differs significantly from that at home." As

human beings, we stand, walk, bend, reach and lift. We have little doubt that the worker in this case uses a fridge at home, and in using it, bends down to put things in it. He likely also bends down to pick things up off his kitchen floor. These are obvious examples. They do not assist in arriving at a consistent approach to the analysis of policy item #15.20. Workers may lift a heavy item at work, or at home. An injury sustained doing so at work would likely be compensable. An injury sustained at home would clearly not be.

Therefore, both the connection of the motion to work and the significance of the motion in causing the injury are necessary considerations in order to found a claim for compensation.

The difficulty in adjudicating these types of claims is illustrated by the different approaches taken by previous appellate decision-makers, and perhaps to some extent the inconsistency in results. Many of these approaches are summarized in *WCAT #2004-01807*. Some of them include:

- If a worker is performing a work-related motion at the time of onset of discomfort, the mere fact that the motion was work-required would satisfy the requirement for "causative significance" set out in policy item #15.00.
- Where an expert medical opinion is that it is unlikely that the natural body motion caused the injury and the motion is only "coincidentally" required by the employment, the claim should be denied. (*Review Decision #2576*, November 17, 2003)
- No matter how trivial the motion, if it has "work status," the claim must be accepted.
- The decision-maker must look at whether there is something in the work-required motion that had causative significance.
- A motion must be "awkward" in order to satisfy policy item #15.20.

In our view, there are essentially three broad questions that arise when adjudicating a claim arising from a "natural" or "normal" body motion. We consider it necessary to consider all three questions in order to promote consistency in adjudication in accordance with the Act, and the policies having an impact on these claims.

These questions are:

1. Did the motion alleged to have caused personal injury take place in the course of employment?
2. Did the motion have enough work connection?
3. Did the motion have causative significance in producing a personal injury?

We have analyzed these three questions generally, and in the context of this appeal, as follows, keeping in mind the law and published policy, as well as some general principles of workers' compensation law.

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

Did the motion alleged to have caused the personal injury take place in the course of employment?

The answer to this question is not specific to the “motions at work” issue. Nor is the question answered in the affirmative simply because the worker was at work when the symptoms occurred. It involves the application of the policies which address the “course of employment.” For example, a worker may have deviated from the course of employment by going to his car to pick up a personal item, or have been engaged in some other personal act, such as horseplay. Conversely, a worker injured in the immediate approach to the worksite, even though still on a highway, may be in the course of employment because the injury is a “spill-over” from the employer’s premises.

Policy item #14.00 of the RSCM II states there are activities within the employment relationship which would not normally be considered as work or in any way productive. However, an injury in the course of some of these activities is compensable in the same way as an injury in the course of productive work. The policy item then goes on to list some indicators specific to the question of whether the worker was in the course of employment.

Under item #21.00 of the RSCM II, titled “Personal Acts,” it is recognized that sometimes it is difficult to separate work activities from personal activities. In mapping out the area where workers are compensated, policy item #21.00 notes that an incidental intrusion of personal activity into the process of work will not result in the denial of an otherwise acceptable claim. For this reason a worker who is blowing his or her nose, using a toilet, or having a coffee break when the injury occurs will not necessarily have the claim denied. 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 their employment, compensation for injuries occurring at those moments are not denied simply on the grounds that the worker was not in the course of production at the crucial moment.

Policy item #21.10 in the RSCM II deals specifically with lunch, coffee and other breaks. It states that a worker is considered to be acting in the course of employment not only when doing the work he or she is employed to do, but also while engaged in other incidental activities. Policy item #21.10 goes on to list examples of trips out to parking lots being covered or not depending on the circumstances. The policy states there will be trips for personal reasons unrelated to work, which cannot be said to be simply incidental to that work and in these cases no coverage will be extended.

In this case, the worker was already at work, on the employer’s premises, and using the employer’s fridge. Although technically he had not started his shift, he was in the process of immediate preparations for beginning work. We have concluded that he was in the course of his employment, despite the fact that he had not actually begun receiving pay from the employer.

This situation is similar to that which would arise if the worker had been injured when the locker supplied by his employer fell on him while he was changing into his uniform. The worker would likely be found to be "in the course of" his employment. The locker was a hazard of the employment and changing into the uniform a requirement of the employment. Similarly, a factory worker burned by the malfunctioning of a shower provided by the employer for use after a shift in a dirty environment would also likely be in the course of her employment. We recognize that these examples are of "accidents". However, they illustrate situations where a worker may be in the course of employment even though the workday has not begun.

On the other hand, had the worker been injured by the hatchback of his car falling on his head while taking his lunch out of the back of his car, it is unlikely he would have been in the course of his employment.

In this case, the worker had already entered the workplace and was in the process of more immediate preparations for work. We conclude that the worker was in the course of his employment.

Did the motion have enough work connection?

Once it is established that the motion took place in the course of employment, the inquiry turns to whether there is a personal injury arising out of the employment. This is the second half of the test in section 5 of the Act.

This involves consideration of whether the motion was directly required by or incidental to the employment. It could also be characterized as whether performance of the motion exposed the worker to a risk of the employment, as opposed to the risks arising from the natural, everyday motions of the human body, to which we are all constantly exposed, and which it could be said take on more significance as our bodies age, regardless of our work activities.

Policy item #15.20 gives some examples of motions that do not have sufficient work connection. 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," are given as examples of motions that fall "so clearly into the realm of "natural" or "normal" bodily functions that the only connection to employment is the coincidence that the worker happened to be in the course of employment at the time. To this list, we would add such things as getting up from a chair, scratching one's back, and drinking from a cup of coffee. Activities such as getting up from a chair are so much a part of normal human life that unless there is some related hazard particular to the employment, we do not consider that sufficient work connection exists.

However, motions that are specifically required by a worker's employment, such as bending over to pick up a box, however light in weight, in order to move it, are

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sufficiently work-connected. There must be some direct connection between the employment and the motion.

In this context, one may ask whether the Act and policy require that the motion need be awkward, or unusual in some way. We do not consider that the Act or policy necessarily require an awkward or unusual motion in order to find a sufficient connection between the motion and the employment.

Policy item #15.20 makes a number of statements relating to this question, summarized as follows:

- A motion may be so directly connected with work that the relationship is indisputable.
- Very little physical activity or body movement in a worker's employment differs significantly from that at home. The result is that virtually every body motion or activity could be said to be "normal" or "natural", capable of occurring off the job and therefore non-compensable.
- A worker is "forced into" an awkward position in order to properly perform the job. While in that position or when arising from it the worker has sudden and severe onset of pain and discomfort. The evidence shows no previous difficulty. It "might well be" that the only reasonable conclusion is that the apparently minor incident was causative.
- If a worker bends to pick up an object, and that motion is required by the job and, unrelated to the lifting of the object, suffers an onset of disabling pain, that apparently insignificant motion might also establish some work relationship.
- The simple acts 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 coincidental.

If there is an "awkward" or "unusual" motion, is this enough of a connection? A motion that is awkward or unusual may be so simply because of the way an individual happened to move, but totally unrelated to the employment. It could also be so because the employment itself required an awkward or unusual motion. Where the motion is required by the employment to be awkward or unusual, it may expose the worker to an employment hazard. Where it is simply an unfortunate movement brought about by happenstance, and not attributable to a hazard of the employment, it is not employment-related.

Although whether a motion was awkward or unusual may have some bearing in answering the second question, it is not definitive. The intrinsic connection to the employment must still be there. For example, an awkward twist of the head to talk to a co-worker or an inopportune shoulder motion while scratching one's back may not be employment-related, but a similarly awkward posture required to look into a poorly

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placed cupboard at work could be. This determination will always require the application of common sense and judgement.

Although, as has been noted by many previous decision-makers, policy item #15.20 is somewhat confusing, the direction provided by policy item #15.20 can be simply stated. The motion must be one that is sufficiently connected to the employment, in the sense that it was required by the employment, and exposed the worker to a hazard of the employment itself. This is contrasted with the physical, commonplace, everyday activities of life, that continue throughout the day, even while we are working, and cannot be said to directly expose us to a hazard born of the employment itself.

Applying this analysis to the worker's case, we conclude that the motion of bending over to put his meal in the fridge was not sufficiently connected to the employment.

The motion of bending over is a commonplace, day-to-day activity of life. The worker was not lifting anything required to be lifted by his employment. He simply bent over, which is a natural body motion, performed many times a day and in this case, done in order to complete a personal act. Even if the worker was compelled by circumstances to bring a lunch to work, placing it in the fridge did not expose the worker to a hazard (in the broadest sense), of the employment. Moreover, if, as submitted by counsel, the worker had occasion during his shift to take things in and out of the fridge as part of his duties in caring for the patients, he was not doing that activity at the relevant time. There is insufficient employment connection.

It is thus not necessary to progress to the third question in this particular case. However, for completeness, we set out below our analysis of the third question.

Did the motion have causative significance in a producing a personal injury?

Once it has been established that the worker was in the course of employment, and the motion had enough employment connection, the final question is whether the motion actually caused an injury. This is the medical question inherent in all claims. Law and policy requires that there be an injury, and that the work-required motion have caused it.

There is usually a report from the physician who examined the worker after the incident claimed to have caused injury. If this report does not provide sufficient information to resolve the matter, an opinion from the worker's physician or another medical expert may be sought to determine whether it is likely that the motion caused an injury.

This is the question that leads to analysis of the nature of the motion, and the medical significance of the motion in causing injury. The generally accepted standard in workers' compensation is causative significance. The decision-maker must consider whether the evidence, and in particular evidence relating to medical causation, supports

a conclusion that the motion had causative significance in causing an injury. It must be kept in mind that pain itself is not necessarily evidence of an injury. There should be some medical evidence of an actual injury.

There are also a number of other criteria that should be considered in deciding whether the motion had causative significance. Inquiry should be directed to whether it makes biological sense that an injury could result from the particular motion. This is not a requirement for medical certainty. It means that, taking all of the circumstances into account, it is biologically likely that the motion could cause an injury.

Temporality is also an important criterion. The injury must follow the motion, in some demonstrable way. A close temporal relationship may support a causal relationship.

An individual worker may have risk factors that increase the likelihood of an injury occurring with a particular motion. Inquiry should be directed to pre-existing conditions, and the likelihood that the motion caused an aggravation.

It is here that the decision-maker may again ask whether the motion was awkward, or unusual and as such as likely to have caused an injury. This is distinct from the situation where the motion simply brought a pre-existing condition to the worker's attention, and from the situation contemplated by policy item #15.10.

Bending forward is not generally a motion that, by itself, has the kind of significance required to establish medical causation to the standard required. It is in every sense a natural body motion, an action that the human bones, muscles, and other tissues were designed to do without injury.

That is not to say that bending forward can never cause a compensable injury. Consideration must be given to such things as whether the motion was awkward, whether the "bent-over" position was sustained, whether the worker was required to lift or carry something while bent over, and other factors that could increase the biomechanical risk of the activity. In this case, the worker was simply placing his lunch in the fridge.

There is insufficient evidence of any biomechanical risk factor to support a conclusion that the bending over movement had causative significance.

Even if we had found sufficient work connection between the motion in this case and the worker's employment, we would have denied this appeal on the basis that the evidence does not support a conclusion that the bending over motion had causative significance in producing a personal injury. The worker's reach was not awkward, and there was no additional circumstance to distinguish this particular action and somehow connect the employment as a psychiatric nurse to the injury, other than the fact he was

at the work premises, preparing for work at the time of the onset of symptoms. This alone is not sufficient to establish a claim for compensation.

Conclusion

The worker's appeal is denied and the Review Division decision of April 14, 2004 confirmed.

The worker's attending physician, who provided copies of his chart notes and a transcription of same, is entitled to payment in accordance with policy and practice. No other expenses were claimed and none are awarded.

Teresa White
Vice Chair

Steven Adamson
Vice Chair

Beatrice K. Anderson
Vice Chair

TW/dw/jkw