

Noteworthy Decision Summary

Decision: WCAT-2006-01197 **Panel:** Marguerite Mousseau **Decision Date:** March 13, 2006

Occupational exposure – Meaning of lead poisoning in Schedule B to the Workers Compensation Act – Distinction between exposure and disease

In occupational exposure claims, while certain types of exposure may cause disease, exposure, in itself, is not a disease.

The worker, an electrician, submitted an application for compensation on January 6, 2005 for an injury described as “high toxic metals” which he attributed to the accumulated effect of occupational exposures over more than 40 years. He has been employed by a coal terminal since May 1985.

Under section 6(3) of the *Workers Compensation Act* (Act) there is a rebuttable presumption of work causation in certain cases listed in Schedule B to the Act. Lead and Cadmium “poisoning” are included as occupational diseases in Schedule B. The processes listed opposite those diseases which attract the section 6(3) presumption are where there is an exposure to lead or lead compounds, or exposure to cadmium or cadmium compounds. The worker submits that the raised levels of cadmium and lead found in the worker's blood constitutes “poisoning” for the purposes of Schedule B. He submits that there is no policy definition of “poisoning” and, in the absence of such a policy, there is no basis for rejecting his claim. He submits that it is not necessary to have acute poisoning symptoms in order to meet the criteria under the Act.

The panel acknowledged that there was no policy definition of poisoning and observed that policies do not usually provide definitions for medical terms. She referred to *The Merck Manual* for descriptions of lead and cadmium poisoning and was not satisfied that the worker suffers from either. Increased blood levels may be viewed as a warning that the worker needs to be aware of exposures to these metals, but this does not constitute an occupational disease. Certain types of exposure may cause disease, but exposure, in itself, is not a disease.

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Panel: Marguerite Mousseau, Vice Chair

Introduction

The worker appeals *Review Division Decision #30453*, dated August 18, 2005, in which the review officer confirmed the decision of the Workers' Compensation Board (Board) to deny the worker's claim for an occupational disease.

The Workers' Compensation Appeal Tribunal (WCAT) has jurisdiction to consider this appeal under section 239(1) of the *Workers Compensation Act* (Act) as an appeal from a final decision made by a review officer under section 96.2 of the Act.

The worker is represented by a workers' advocate. The employer is participating in the appeal. An oral hearing was held by WCAT in Richmond on February 24, 2006. It was attended by the worker and his representative and the employer's representative. The worker's supervisor attended as an observer.

Issue(s)

The issue on this appeal is whether the worker has an occupational disease that is due to the nature of his employment.

Background

The worker submitted an application for compensation on January 6, 2005 for an injury described as "high toxic metals" which he attributed to the accumulated effect of occupational exposures over more than 40 years.

The worker is an electrician and has worked in that capacity since 1966. He has been employed with his current employer, a coal terminal, since May 1985. He provided a list of employers since 1962 and a description of his duties over those years with his application for compensation.

After receipt of this application a Board officer wrote to the worker's naturopathic physician, Dr. Ng, informing him that the worker had submitted an application for compensation for exposure to toxic metals and requesting Dr. Ng to provide copies of all relevant chart material, consultation reports, and testing results related to the worker's "toxic metal" poisoning.

In response, Dr. Ng submitted a naturopath's first report, a health history questionnaire

completed by the worker on March 17, 2003, and test results from two urine analyses described as 24 hour urine toxic metals reports. One of these was completed on December 17, 2004 and the other on January 29, 2005; both indicated elevated levels of cadmium and lead. In the health history questionnaire completed by the worker on March 17, 2003, he had indicated that his reasons for attending the clinic were: a runny nose and eyes, low energy, and poor sleep.

Dr. Ng's naturopath's first report is dated February 18, 2005. He describes the cause of injury or disease as "exposure" and he indicates "low energy" as a pre-existing or associated condition. His examination findings on that date were: a temperature of 37 degrees, pulse rate of 64 beats per minute, blood pressure of 120 over 80, height of six feet, one inch, and weight of 233 pounds. The worker's eyes, ears, throat, heart sounds, lung sounds and reflexes were described as normal. As a diagnosis he provided "Chronic low level heavy metal exposure." The treatment was EOTA chelation therapy. This is the only report submitted by Dr. Ng.

A case manager and an occupational hygiene officer spoke to the worker on February 14, 2005, and at that time he provided further information regarding his current health and occupational duties over the previous 40 years.

After this discussion, the medical information obtained from the worker's naturopathic physician was provided to a Board medical advisor (BMA) for review. In an opinion dated February 22, 2005 the BMA stated that there was no evidence of disease or injury on the file. The only recorded complaint appeared to be disturbed sleep and there could be many causes for this problem, including many which would not be classified as a disease.

At the oral hearing the worker expanded on his main occupational duties over the course of his working life. I have reviewed and considered his evidence regarding his employment activities, but do not find it necessary to describe those activities since this decision turns primarily on the issue of whether the worker has an injury or disease.

Law and Policy

Section 5(1) of the Act provides that compensation is payable where a worker suffers a personal injury arising out of and in the course of employment.

Section 6 of the Act provides that compensation is payable to a worker who suffers an occupational disease that is due to the nature of his or her employment. The Act provides different ways for establishing that a disease is an occupational disease.

Under section 6(3) of the Act there is a presumption of work causation in certain cases. Section 6(3) states:

If the worker at or immediately before the date of the disablement was employed in a process or industry mentioned in the second column of Schedule B, and the disease contracted is the disease in the first column of the schedule set opposite to the description of the process, the disease is deemed to have been due to the nature of that employment unless the contrary is proved.

Lead and Cadmium “poisoning” are included as occupational diseases in Schedule B and the processes opposite these diseases are where there is an exposure to lead or lead compounds of exposure to cadmium or cadmium compounds.

A disease may also be recognized as an occupational disease under section 1 of the Act “by regulation of general application.” When a worker develops a disease recognized in this regulation, there is no presumption of work causation but the evidence may establish that the condition is due to the worker’s employment. In addition, a disease may be recognized as an occupational disease “by order dealing with a specific case” under section 1 of the Act. This involves a situation where a worker has a condition which has not been recognized as an occupational disease under Schedule B or by regulation, but there is sufficient evidence to establish that the condition was caused by his employment. In this situation, the condition may be recognized as an occupational disease by order.

Item #13.00 of the *Rehabilitation and Claims Services Manual, Volume I* (RSCM I) provides the following definition of “personal injury”:

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

There is no similar definition for an occupational disease. However, item #13.10 discusses the difficulty in distinguishing between injuries and diseases in certain cases and provides the following examples of diseases:

The following are examples of disorders classified as DISEASES:

1. A disability caused by the gradual absorption of a chemical through the skin, by inhalation, or otherwise.
2. An infection (except when it is incidental to a compensable injury,

when it is treated as part of the injury).

3. Hearing loss caused by exposure to noise over time, or by infection.
4. Osteoarthritis.
5. A disablement resulting from exposure to vibrations over time.
6. Contagious disease.
7. Allergic reactions.

Only diseases which are occupational diseases are compensable. The compensation payable in respect of occupational disease is discussed in Chapter 4.

Reasons and Decision

In this case, the worker is claiming for a condition which he attributes to occupational exposures over 40 years. His representative submitted that the worker suffers from an occupational disease, not a personal injury. As there is no medical evidence of an injury that satisfies the policy definition of personal injury, I find that he has not sustained a personal injury.

Turning to the question of whether the worker has an occupational disease, in order to bring into effect the presumption under section 6(3) of the Act, there must be adequate evidence that the worker suffers from the disease of lead poisoning or cadmium poisoning and that he was exposed to these metals or compounds containing these metals prior to the development of symptoms of disease.

The worker's representative submits that the raised levels of cadmium and lead found in the worker's blood constitute "poisoning" for the purposes of Schedule B. He submits that there is no policy definition of "poisoning" and, in the absence of such a policy, there is no basis for rejecting the worker's claim.

The worker's representative states that the metals are carcinogenic and that their effects do not show up for many years. He submits that, by the time there are symptoms, a worker might well be terminally ill. In his view, it is not intended that "poisoning" be defined in such narrow terms that a worker has to manifest symptoms before he is recognized as having an occupational disease. He submits that it is not necessary to have acute poisoning symptoms in order to meet the criteria under the Act. The presumption under section 6(3) is applicable in the worker's case.

The employer's representative submits that high levels of cadmium and lead are not

considered an occupational disease.

I also acknowledge that there are no policy definitions of “poisoning.” However, the policies do not usually provide definitions for medical terms. Reference is usually made to medical reference texts for information of this nature. In this case, I have referred to a standard medical text, *The Merck Manual, 17th Edition*, for descriptions of lead and cadmium poisoning.

This text describes symptoms of lead poisoning in adults as: personality changes, headache, metallic taste, anorexia, vague abdominal discomfort culminating in vomiting, constipation, and colicky abdominal pain. This is described as a characteristic sequence which may develop over several weeks or longer.

With respect to cadmium poisoning, *The Merck Manual* describes symptoms in relation to cadmium solder. These symptoms are: severe gastric cramps, vomiting, diarrhea, dry throat, cough, dyspnea, headache, shock, coma, brown urine and renal failure.

I appreciate the worker’s concerns regarding his increased blood levels of these substances in view of the serious symptoms that are associated with “poisoning.” In view of the descriptions of lead poisoning and cadmium poisoning, however, I am not satisfied that the worker suffers from either. The increased blood levels may be viewed as a warning that the worker needs to be aware of exposures to these metals, but I do not consider that they constitute an occupational disease. In this regard, I do not accept Dr. Ng’s “diagnosis” of “chronic low level heavy metal exposure” as a diagnosis of a disease. Certain types of exposure may cause disease, but exposure, in itself, is not a disease. I accept the opinion of the BMA that the evidence does not indicate that the worker has either an injury or a disease.

I find that the worker does not have lead or cadmium poisoning for the purpose of section 6(3) of the Act.

I am also unable to find that the worker has any symptoms, condition, disorder or disease that could be recognized as an occupational disease under section 1 of the Act. The examples of diseases in item #13.10 of the RSCM I include “disability” caused by gradual absorption of a chemical but there is no evidence that the worker has a disability.

Since I do not find that the worker has a disease or disorder I have not gone on to consider whether his employment has involved exposure to lead and/or cadmium.

Conclusion

I confirm the decision of the review officer in *Review Division Decision #30453*, dated August 18, 2005.

The worker did not seek expenses for attending the hearing as his time off work to attend the hearing was paid by his employer. Accordingly, no order is made for expenses.

Marguerite Mousseau
Vice Chair

MM/hb