Noteworthy Decision Summary

Decision: WCAT-2006-01456 **Panel**: Gail Starr **Decision Date:** March 29, 2006

Medical opinions – Factors to consider in assigning weight – Reopening – Section 96(2) of the Workers Compensation Act – Policy item #C14-102.01 of the Rehabilitation Services and Claims Manual, Volume II

This decision is noteworthy for the discussion of the factors to consider in weighing unopposed expert opinions. If a medical opinion takes into account all available evidence, includes persuasive analysis and explanation, addresses the question to be answered and is unopposed by any other medical opinion, it will be considered to be relevant and entitled to significant weight.

The worker, a hospital housekeeper, injured her back. The Workers' Compensation Board (Board) accepted her claim for low back strain and paid her wage loss benefits for three months. Eight months later, the worker fell down the stairs in her home. Nine months after the original injury, the worker reported continuing symptoms in her back. The Board denied her request to reopen the claim on the basis of an opinion by a Board medical advisor (BMA) that there was no link between the worker's current symptoms and her compensable injury. The worker requested a review by the Review Division of the Board which confirmed the Board decision. The worker appealed to WCAT.

The worker submitted the Board should have investigated the cause of the worker's new back symptoms by ordering either a CT or MRI scan of her back.

The panel noted that under section 96(2) of the *Workers Compensation Act* and policy item #C14-102.01 of the *Rehabilitation Services and Claims Manual, Volume II*, the worker's claim could only be reopened if there had been a significant change in the worker's compensable condition.

The panel found the BMA's opinion persuasive. It took in all the relevant information and addressed the issue before the panel. There was no conflicting medical opinion. Although the workers' compensation system in British Columbia is based on an inquiry model, the Board is not obliged to obtain every possible piece of evidence that may be used in making a decision on medical issues. A medical opinion will not be accepted simply because it is a medical opinion; but where it plainly takes account of all available evidence, includes persuasive analysis and explanation, addresses the question to be answered and is unopposed by any other medical opinion, it is both relevant and entitled to significant weight.

The worker's appeal was denied.

Workers' Compensation Appeal Tribunal 150, 4600 Jacombs Road, Richmond, B.C. V6V 3B1
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Introduction

This is the worker's appeal from *Review Decision #27988* dated July 25, 2005. In that decision, the Review Division of the Workers' Compensation Board (Board) confirmed a Board case manager's decision of February 4, 2005 that the worker's 2004 low back claim would not be reopened for benefits in response to new medical information about her condition in and after November 2004.

The worker brings this further appeal to the Workers' Compensation Appeal Tribunal (WCAT), and the matter has been assigned to me to be dealt with under the authority conferred on WCAT panels by section 239(1) of the *Workers Compensation Act* (Act). Among other provisions of the Act relevant to my authority and jurisdiction, the following should be noted. Under section 254, I am authorized to inquire into, hear and determine all questions of fact and law which may arise or need to be determined in the appeal. My decision is required to be made on the merits and justice of the case. While not bound by legal precedent, I must apply such policy of the Board's board of directors as is applicable to the case, except in circumstances described in section 251.

The worker has had the assistance of a union representative in this appeal. An oral hearing was requested at the time of filing the notice of appeal. This was denied by the WCAT registry. I have considered the matter anew in deliberating on the appeal, and have concluded an oral hearing is not necessary. There is no issue of credibility, and no particular reasons supporting the request for an oral hearing were provided. I have reviewed the matter in the context of item #8.90 of the WCAT *Manual of Rules of Practice and Procedure*, and have concluded the appeal can be fully canvassed and fairly decided without an oral hearing. The worker's representative provided a brief written submission of January 17, 2006. Although it indicated its desire to participate and was invited to provide submissions, the employer has not made any submissions in this appeal.

Issue(s)

Should the worker's 2004 low back claim be reopened in relation to her reported medical condition in and after November 2004?

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Background and Evidence

While performing her regular duties as a hospital housekeeper, this worker sustained a blow to her low back on February 17, 2004. Her claim was accepted for low back strain/sprain, and wage loss benefits were paid up to and including May 7, 2004.

Following the initial care she received in the hospital's emergency department, the worker came under the care of general practitioner Dr. Danescu for the balance of her period of temporary disability under the claim. She also came to be investigated by Dr. Sovio (orthopaedic surgeon). Dr. Sovio saw the worker on two occasions, March 16, 2004 and (shortly after her benefits ended) on June 2, 2004.

At the time of the second consultation with Dr. Sovio, the worker had been discharged from an occupational rehabilitation program (effective May 7, 2004) as fit to return to work without limitations. (The discharge report notes the worker did not agree with this, being very anxious and pain-focused. Referring to a ten-year history of low back pain and degenerative changes, the discharge report indicated she had returned to her pre-injury status.) On seeing her the second time, Dr. Sovio noted the worker's opinion she could not return to work and that she was waiting for an appointment at a back pain clinic. On examination, she had almost no movement of her lumbar spine. (Actual measurements, indeed minimal, were reported.) There was an increased reaction to pain, and pain obviously limited her range of motion, although straight leg raising was negative on the tripod test. Dr. Sovio thought it possible the worker had some root irritation, but that she had "significant emotional overlay." She sought retraining, and not at a minimum wage job. Dr. Sovio could not recommend any further investigation, registering surprise that the worker was as disabled as she was. He offered the opinion a significant amount of emotional overlay, desire for retraining and, perhaps, job dissatisfaction, figured in her presentation. He had no further treatment or investigation to recommend and was not optimistic the back pain clinic would help her very much.

Dr. Danescu was later to provide recommendations for a graduated return to work. (There is a copy of his recommendation on the file, but the date is illegible, except to suggest it dates from June or July 2004.) An April 9, 2005 letter from the worker to the Review Division describes her attempts to get the employer to accept her need for a gradual return to work; no light duties were made available, and she eventually returned to full-time work August 4, 2004.

The next medical information available dates from October 20, 2004 (an emergency room report). That report relates to a fall the worker experienced (down eight stairs) at home; it does not indicate any connection with the compensation claim.

There is a further physician's progress report from Dr. Muthayan concerning another emergency room visit on November 25, 2004. On November 25, 2004, it would appear the worker reported the compensation context to emergency room physician

Dr. Muthayan, or else he would not likely have provided a progress report. Dr. Muthayan treated with Toradol, Ativan, Demerol, and Gravol for back pain. He estimated the worker would continue to be disabled for 7 to 13 days. He did not specify a relationship of the worker's need for treatment to the compensable injury.

More recently, physician's progress reports have been provided by another physician at the same office as Dr. Danescu for the dates March 8 and April 12, 2005. (In the previously cited letter to the Review Division, the worker describes Dr. Danescu's apparent exasperation with something about her, the claim or the relationship with the employer and his ultimate refusal to treat her any further.) The first of these two reports shows the worker complained of burning, "horrible" back pain. Flexion was shown as 30 degrees, extension as less than 10 degrees, and lateral flexion was shown as slightly decreased. It was estimated the worker would continue to be disabled for 7 to 13 days. In the second of these two reports, the worker was at work, reporting severe pain. She had been referred for a spine program.

No further medical reports have been sent to the Board or provided in the course of this appeal.

The medical opinion on which the case manager based his February 4, 2005 decision which gave rise to this appeal was authored by Board medical advisor Dr. D in a claim log entry of January 25, 2005. Dr. D reviewed the medical information on file (as summarized above). He also referred to other medical information I have not found it necessary to summarize for purposes of this appeal, although I have reviewed it; briefly, this information was from prior to the worker's compensable injury and showed her history of back pain, particularly as investigated in March and April 2003. At that time there was CT scan evidence of bulging at L4-5, with no impingement. Clinically, no neurological findings had been noted, although there was pain radiating to the thigh and lateral calf (which side not being indicated). Noting that the injury at issue under the claim dated from February 2004, Dr. D observed that, with 5½ months between 2005 medical reports, "it would be difficult to link the current presentation to the presentation of February through May 2004."

Dr. D also acknowledged a worsening of the worker's symptoms some time in November 2004. While he did not explicitly note a connection, I would observe that this is one month after the worker's non-compensable fall down a flight of eight stairs, resulting in the October 20, 2004 emergency room report.

No further medical information has been provided in the course of the appeal. However, I note the submission on behalf of the worker submitted by her representative on January 17, 2006. In that submission, the representative submits the Board should have investigated what was causing the pain in the worker's back in November 2004. It is suggested a CT or MRI scan could have done this. The submission is critical of Dr. D for not having read the emergency room report, and of his opinion that current

symptoms were suggestive of a left-sided disc herniation as yet undiagnosed. It is submitted that those "outstanding questions" should have been investigated prior to denying reopening of the claim.

As my observations above may be taken to indicate, I reviewed the worker's two letters (February 20 and April 9, 2005) to the Review Division, while her appeal was being considered at that level. I note the frustrations she has experienced, between termination of her compensation benefits and the intermittent provision of Employment Insurance sickness benefits. I also note her expression of gratitude to those who have assisted her. Her description of subsequent medical treatment and investigation does not suggest to me that records of that process should be sought for purposes of this appeal. I note that neither she nor her caregivers have, after the documentation described above, provided any new information to the Board.

Decision and Reasons

I am unable to find that the evidence supports the worker's appeal.

As identified by both the case manager and the review officer, the law and policy applicable to the worker's request for reopening her claim is to be found in section 96(2) of the Act and in item #C14-102.01 of the *Rehabilitation Services and Claims Manual, Volume II* (RSCM II). On the facts of the present appeal, as there is *prima facie* no recurrence of the injury, reopening could only be ordered where there is "a significant change in [the worker's] medical condition that the Board has previously decided was compensable."

I find the medical advice offered by Board medical advisor Dr. D was apt and relevant to the question the case manager had to answer in issuing the original decision which underlies this appeal. Dr. D assessed the evidence of the worker's low back condition in November 2004 as different from (and perhaps worse) than it had been when she was first injured in February 2004, and even through her period of temporary disability in May 2004. He reviewed all medical information available and assessed her condition while being treated for, and while temporarily disabled by, the compensable injury as related to the accepted low back strain/sprain. Her condition, as shown by medical reports from October 2004 and subsequently, seemed to him to more likely relate to an as yet undiagnosed left-sided disc herniation, of which there had been no evidence previously. Thus, especially with no reported continuity of treatment or symptoms over the 5½-month period in between, he could not identify a link which would show causation or other medical relationship of the two periods of temporary disability.

I find Dr. D's opinion persuasive. It takes in all the relevant information available, and it is addressed to the very question posed by the request to reopen. I do not accept the worker's representative's criticism that further investigation should have been undertaken by the Board in this case. While it is true that the compensation system

functions on an inquiry model (section 96(1) of the Act and item #98.20 of RSCM II), that does not mean that every possible avenue must be explored in considering what evidence will support decisions required to be made on medical issues. It is often the case that links which seem plausible or implausible to workers or to employers (or to any lay person) do not command the endorsement of medical practitioners or specialists. This is not to say that just any medical opinion must be accepted simply because it is a medical opinion; however, where an opinion plainly takes account of all available evidence, includes persuasive analysis and explanation, addresses the question to be answered and is unopposed by any other medical opinion, it is clearly both relevant and entitled to significant weight. I find that is the situation here, and I accept Dr. D's opinion as, on these facts, determinative. I note, additionally, that neither Dr. Danescu nor Dr. Sovio had recommended any further investigation of the worker's compensable condition; in fact, Dr. Sovio, the appropriate specialist, specifically said no further investigation was recommended.

The worker's appeal, which I find to be without significant medical support, is denied.

Conclusion

For the reasons indicated, the worker's appeal is denied and *Review Decision #27988* is confirmed. No expenses were requested. None are awarded.

Gail Starr
Vice Chair

GS/jy/gl