

**Noteworthy Decision Summary**

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**Decision:** WCAT-2006-01608    **Panel:** Daphne Dukelow    **Decision Date:** April 5, 2006

***Hearing expenses – Attendance of physician – Fee Schedule – Reference Guide for General Practitioners – Section 7 of the Workers Compensation Act Appeal Regulation***

The Workers' Compensation Board (Board) should reimburse workers for the expense of a general practitioner's attendance at a Workers' Compensation Appeal Tribunal (WCAT) hearing an amount equivalent to the Board tariff fee for a medical legal report.

The worker had several appeals that were heard by a WCAT panel (original panel). The original panel directed the Board to reimburse the worker for expenses related to her physician's attendance at the oral hearing under section 7 of the *Workers Compensation Act Appeal Regulation*. The Board implemented the decision by paying the worker \$295, equating the physician's attendance at the hearing to attendance at a job-site meeting. The worker requested a review by the Review Division of the Board, which confirmed the Board decision. The worker appealed to WCAT.

The panel noted the original panel did not refer to any of the detailed items concerning hearing expenses in Board policy. However, the original panel did refer to the Board tariff. The panel understood this to mean the schedule of fees agreed to by the Board and the British Columbia Medical Association entitled "Schedule B: Fee Schedule for WCB Unique Fees and Form Fees" (Fee Schedule). However, the panel noted the Fee Schedule does not contain an item relating to attendance at an oral hearing to give opinion evidence.

The panel noted that the Board's *Reference Guide for General Practitioners* refers to two items relating to medical-legal expenses. Fee Item 19932 (Medical Legal Report) provides for a fee of \$765 and is applicable to all physicians. Fee Item 19933 (Medical Legal Opinion) provides for a fee of \$1275 and is applicable to specialists with relevant qualifications or other physicians with recognized expert knowledge.

The panel concluded the physician had provided an expert opinion to the original panel. Both general practitioners and medical specialists can give expert medical opinions to WCAT. However, the schedule of fees differentiates between general practitioners and specialists or other physicians with recognized expert knowledge. There was no evidence the worker's physician, a general practitioner, possessed expert knowledge. Thus, in the panel's view, the physician's attendance at the hearing was properly characterized under item 19932 of the tariff. The physician's attendance at the hearing was much closer to providing a medical-legal report than to attending a job-site meeting as the latter does not require a physician to prepare or provide evidence.

The worker's appeal was allowed. The panel directed the Board to reimburse the worker \$795, less \$295 already paid, upon proof of the invoiced amount.

**WCAT Decision Number :** WCAT-2006-01608  
**WCAT Decision Date:** April 05, 2006  
**Panel:** Daphne Dukelow, Vice Chair

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## Introduction

The worker has several claims for compensation. The worker had several appeals which were heard by a panel of Workers' Compensation Appeal Tribunal (WCAT). As part of the WCAT decision, the vice chair directed that the worker be reimbursed for expenses related to her physician's attendance at the oral hearing before WCAT. The WCAT decision is dated September 30, 2004 and was amended January 21, 2005.

The Workers' Compensation Board (Board) implemented the WCAT decision by paying \$295 in relation to the physician's attendance at the hearing, equating the physician's attendance to a job-site meeting. The Board provided a decision dated November 15, 2004 which included this implementation decision. The worker appealed the implementation decision to the Review Division. The Review Division confirmed the Board's decision. The worker now appeals to this panel.

## Issue(s)

The issue in this appeal is whether the Board properly implemented the WCAT decision concerning reimbursement of the worker for attendance of her physician at an oral hearing before WCAT.

## Background

The worker had an appeal before WCAT relating to four compensation claims. WCAT held an oral hearing. The worker's physician attended the hearing at her request. The WCAT vice chair who conducted the hearing made the following order in his decision dated September 30, 2004.

Pursuant to section 7 of the *Workers Compensation Act Appeal Regulation*, I order that the worker be reimbursed for her expenses of travelling to the oral hearing, and that she be reimbursed for her doctor's expenses of travelling to the oral hearing, as well as a fee for the doctor's attendance, according to the Board tariff for such matters.

Earlier in his decision he had gone into more detail saying:

In this case, the attendance of the worker's family doctor at the oral hearing was useful in expanding upon his earlier reports, even though there was some duplication of the material contained in those reports. His evidence at the hearing was useful in coming to the conclusion that the

de Quervain's tenosynovitis was compensable. The worker's union paid the expenses for the doctor's attendance at the oral hearing, and also paid him a fee for attending. I consider that this amounts to an expense incurred by the worker. I order that the worker, or her union, be reimbursed for the doctor's fee in attending at the oral hearing, according to the Board's tariff for such matters, as well as the doctor's travel expenses according to the tariff.

The November 15, 2004 decision letter of the Board contained decisions on several issues and in relation to four claims. The case manager determined that the worker should be paid \$295 for the physician's attendance at the oral hearing. The case manager noted that this was a figure equivalent to code 19942 for a Board job-site meeting. He noted that the fee was "all inclusive" for the physician, covering transportation, travel time and expenses. When the worker sought a review of the decision, the only issue was the payment of the physician's expenses. The review officer confirmed the Board's decision.

In his amended decision dated January 21, 2005, the WCAT vice chair added the following sentence to the portion concerning reimbursement for the physician's fees to read as follows:

**I also order that the worker be reimbursed for the costs of the doctors two medical reports.**

[reproduced as written, emphasis in original]

By means of the amended decision, he also added a reference to the two medical reports in the final paragraph of the decision.

Section 239 of the *Workers Compensation Act* (Act) authorizes this appeal. The employer is not participating in this appeal although advised of its right to do so.

### **Submission**

The worker's representative submits that the attendance at an oral hearing is not equivalent to attendance at a job-site meeting. She states that the Board tariff, agreed between the Board and the B.C. Medical Association (BCMA), does not contain an item for attendance at an oral hearing. She submits that the physician should be paid in accordance with the BCMA's own tariff for "expert testimony in court, per day". The amount for a full day is \$2081 and the amount for a half day is \$1301. Court preparation by an expert witness is at the rate of \$310 per hour.

The worker's representative submits that since no item is specified in the Board tariff, the Board has discretion to pay the actual invoiced charge which the representative advises was \$1250.

The worker's representative takes issue with the Review Division's finding that the physician's opinion was not equal to an opinion from a medical specialist since the physician is a general practitioner. The worker's representative submits that in the context of the worker's appeal and of the WCAT hearing, the physician was giving an expert medical opinion/evidence to the panel.

In her submission to the Review Division, upon which she also relies, the worker's representative made an argument based on the dialogue between the worker's representative and the vice chair at the beginning of the WCAT oral hearing in 2004. She noted that the vice chair assumed that the amount reimbursed would be equivalent to a medical opinion at \$1275.

### **Reasons and Findings**

The worker's representative has referred to the BCMA's own tariff of fees. I do not consider that relevant except to the extent it provides guidance and a context for the worker's request and the WCAT vice chair's order regarding fees for the physician. The vice chair referred to the Board's tariff and this clearly is not a reference to the BCMA tariff.

Section 7 of the *Workers Compensation Act Appeal Regulation*, BCREg 321/2002 (Appeal Regulation) states:

#### Expenses

- 7 (1) Subject to subsection (2), the appeal tribunal may order the Board to reimburse a party to an appeal under Part 4 of the Act for any of the following kinds of expenses incurred by that party:
- (a) the expenses associated with attending an oral hearing or otherwise participating in a proceeding, if the party is required by the appeal tribunal to travel to the hearing or other proceeding;
  - (b) the expenses associated with obtaining or producing evidence submitted to the appeal tribunal;
  - (c) the expenses associated with attending an examination required under section 249 (8) of the Act.
- (2) The appeal tribunal may not order the Board to reimburse a party's expenses arising from a person representing the

party or the attendance of a representative of the party at a hearing or other proceeding related to the appeal.

Item #100.30 of the *Rehabilitation Services and Claims Manual* (RSCM) provides that expenses of witnesses should be paid in the same amount as for a worker. The worker's original appeal dealt with four claims from 2001 to 2003. All four claims are referenced for purposes of this decision. I have referred to the items as they appear in RSCM II. However, I note that the items to which I refer are essentially the same in both volumes of the RSCM. Expenses associated with hearings are referred to in item #100.00 and section 7 of the Appeal Regulation is referenced. Item #100.60 points out that the decision regarding expenses is made by WCAT in relation to appeals. The payment of expenses of a worker is referred to in item #100.14. Items #82.20 (transportation), #83.20 (meals and accommodation) and #83.13 (lost time from work) apply.

The vice chair relied on section 7 of the appeal regulation in making his order concerning fees. The vice chair did not refer to any of the above-noted items of Board policy. The vice chair made a reference to the Board tariff. I take that as a reference to the BCMA/Board agreed schedule of fees, the relevant portion entitled "Schedule B: Fee Schedule For WCB Unique Fees And Form Fees." Unfortunately, that schedule of fees does not contain an item which relates to attendance at an oral hearing to give opinion evidence. It does, however, contain two items concerning medical-legal fees. It is usual, in the context of an administrative or legal hearing, to refer to medical opinion evidence as medical-legal.

The *Reference Guide for General Practitioners* available on the Board's website ([www.worksafebc.com](http://www.worksafebc.com)) contains the following information regarding the schedule of fees unique to the Board:

Medical Legal Fees – significant fee increases

Fee Item 19932 – Medical Legal Report – \$765 – applicable to all physicians

Fee Item 19933 – Medical Legal Opinion – \$1275 – applicable to specialists with relevant qualifications or other physicians with recognized expert knowledge

Fees require prior approval by the Review Division or Workers' Compensation Appeal Tribunal (WCAT) or Senior Medical Advisor or Director of the Board or Client Service Manager

Fees include examination, review of records and other processes leading to a written Opinion or Report

The schedule itself contains the following general information concerning the two items and this information is reproduced at WCAT's *Manual of Rules of Practice and Procedure* (MRPP) at #13.23:

1. Medical-Legal Report is applicable to all medical Physicians.
2. Medical-Legal Opinion is applicable only to specialists with relevant qualifications, or other Physicians with recognized expert knowledge.

The description of item 19932 in the schedule is:

Medical-Legal Report: a report which will recite symptoms, history and records and give diagnosis, treatment, results and present condition. This is a factual summary of all the information about when the injured worker will be able to return to work and might mention whether there will be a permanent disability.

The description of item 19933 in the schedule is:

Medical-Legal Opinion: an opinion will usually include the information contained in the Medical-Legal Report and will differ from it primarily in the field of expert opinion. This may be an opinion as to the course of events when these cannot be known for sure. It can include an opinion as to long-term consequences and possible complications in the further development of the condition. All the known facts will probably be mentioned, but in addition there will be the extensive exercise of expert knowledge and judgment with respect to those facts with a detailed prognosis.

I agree with the review officer that it is the words of the WCAT decision that the Board is required to implement and not any verbal discussion between the representative and the vice chair which may have occurred at the WCAT hearing. Thus, the amount discussed at the hearing is not relevant. It is the words of the decision which must be interpreted by the Board.

I agree with the worker's representative's submission that the attendance and giving of evidence by a physician at an oral hearing is the provision of an expert opinion, in the sense used in the law of evidence, to the tribunal. It matters not whether the physician is a general practitioner or a medical specialist. Physicians with both qualifications can and do give expert medical opinions to the tribunal. The issue is how this should be characterized for purposes of the Board's tariff. In my view the proper characterization is under item 19932.

While WCAT and the worker's representative would consider the physician's evidence to be that of an expert, the WCAT panel ordered that the fees be paid in accordance

with the tariff. The schedule items differentiate between a general practitioner and a specialist or one with “recognized expert knowledge.” Although I acknowledge that the physician gave what is commonly referred to as expert evidence (actually opinion evidence, which only experts are qualified to give in a hearing) in the context of the hearing, the schedule of fees differentiates between general practitioners and specialists or “other physicians with recognized expert knowledge.” The physician in question is a general practitioner, according to both the vice chair and the review officer. His own letterhead describes him as a family medicine practitioner. I have not been provided with evidence to show that he is a physician “with recognized expert knowledge” within the meaning of the schedule of fees. Since this differentiation is made in the schedule to which the vice chair directed the Board, it is my view that the difference must be acknowledged and accepted for purposes of implementation of the vice chair’s decision. For that reason, I find that the worker is entitled to be reimbursed under item 19932, the fee for a general practitioner’s medical legal report. The physician is not a specialist and I do not have evidence to show that he is a physician with “recognized expert knowledge” as that expression is used in the schedule of fees. The fee in the schedule in force at the time of the hearing is \$765. The Board is entitled to proof that the worker or her representative was billed \$1250 for the physician’s attendance. I intend the \$765 to be decreased by the amount already paid, the \$295.

I disagree with the review officer that there is no schedule item more closely related to this matter than the job-site meeting fee. A job-site meeting does not require the provision of evidence before a tribunal and does not include the preparation and consideration of that evidence prior to the hearing. The provision of a report or opinion, as described in the schedule, is much closer in terms of content and development to the provision of opinion or expert evidence at a hearing than is a job-site meeting.

Another authority which exists in policy to pay a witness a fee is that which would permit a fee for missed work. Item #100.30, dealing with witnesses, provides that income loss benefits under item #83.13 can be paid to witnesses for lost time from work. The vice chair did not refer to this fee, however.

Also, if a witness is summoned to appear before WCAT, under section 247 of the Act, WCAT has the same powers as the Supreme Court to compel attendance. In that case witness fees are tendered on the individual summoned and the rules of court concerning witness fees apply. The physician attended the hearing voluntarily and thus these provisions do not apply.

The vice chair was quite specific in ordering reimbursement of travel expenses in addition to a fee for attendance. This was not done. In this sense, the WCAT decision was not properly implemented since an all-inclusive fee, only, was provided. The kilometrage which any witness would receive for attending the hearing should be paid as well as any other travel-related expenses. The kilometrage is set out in item #82.20 of the RSCM II. This would include any meal allowance as permitted by item #82.20 and any parking fees. I am making these comments on the assumption that the physician

provided his own transportation to the hearing and did not take a form of public transportation or ride with the worker or her representative. If my assumption is incorrect, then the Board will have to consider reimbursement of travel expenses in the manner appropriate to those circumstances and in keeping with the policy regarding payment of expenses for a witness to attend a WCAT hearing.

The worker's representative has not made any submissions concerning the amended WCAT decision which deals with two medical reports. The review officer commented that no submissions were made to him regarding these reports. I assume payment for those reports has been dealt with appropriately.

The worker has not requested any expenses associated with this appeal. None are awarded.

### **Conclusion**

I allow the worker's appeal. The decision of the review officer is varied. The worker is to be reimbursed for the expenses associated with the attendance of her physician at her oral hearing before WCAT as set out above. Upon acceptable proof of the invoiced amount, the worker is to be reimbursed \$765 less \$295 already paid, plus travel and any meal allowance payable for attendance of the witness. The Board will ascertain whether the amount is payable directly to the worker or to her representative.

Daphne Dukelow  
Vice Chair

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