

## Noteworthy Decision Summary

---

**Decision:** WCAT-2006-02262    **Panel:** Lesley Christensen    **Decision Date:** May 26, 2006

***Normal body motion – Policy item #15.20<sup>1</sup> of the Rehabilitation Services and Claims Manual, Volume II – whether injury arose out of employment***

This decision is noteworthy because it is a good example of the application of the policy found at item #15.20 of the *Rehabilitation Services and Claims Manual, Volume II* to cases involving natural body motions. It also considers the three questions set out in *WCAT Decision #2005-04824* for determining whether an injury following a motion in the workplace arises out of and in the course of employment.

The worker, a high school teacher, filed an application for compensation stating that on February 22, 2005, while he was teaching a physical education (PE) class, he kicked a soccer ball and hurt his back. He went to the hospital on February 23, 2005. The Workers Compensation Board (Board), accepted a medical advisor's opinion that this was not a work related injury, because the worker was physically fit, he had kicked a soccer ball countless times without incurring an injury and the symptom onset was not immediate but started within ten minutes.

The issue was whether the worker's back complaints of February 22, 2005 constituted an injury that arose out of and in the course of his employment. The panel considered the three questions set out in *WCAT Decision #2005-04824* for determining whether an injury following a motion in the workplace arises out of and in the course of employment.

The panel allowed the appeal, finding that: (1) the motion of kicking the soccer ball, which was alleged to have caused the injury, took place in the course of the worker's employment as a PE teacher; (2) the act of kicking the soccer ball had sufficient work connection as it was a motion required of a PE teacher involved in playing soccer with his students; and, (3) the motion of kicking the soccer ball had causative significance in producing the back injury as the evidence showed that the symptoms began within one minute of the incident, not ten minutes as presented to the Board medical advisor, and because it is biologically plausible that a back strain can arise from kicking a soccer ball.

---

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 Policy item #15.20 has been replaced by policy item #C3-15.00.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

**WCAT Decision Number:** WCAT-2006-02262  
**WCAT Decision Date:** May 26, 2006  
**Panel:** Lesley A. Christensen, Vice Chair

---

## **Introduction**

The worker appealed a decision from the Workers' Compensation Board (Board) Review Division dated November 1, 2005. In the decision, the review officer confirmed the Board's decision of March 15, 2005, finding that the worker's back complaints of February 22, 2005 were not the result of an injury that arose out of and in the course of his employment.

## **Issue(s)**

Do the worker's back complaints of February 22, 2005 constitute an injury that arose out of and in the course of his employment?

## **Jurisdiction**

This appeal is brought under section 239(1) of the *Workers Compensation Act* (Act) which permits appeals of Review Division findings to WCAT.

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 governing body that is applicable in the case. WCAT has exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact and law arising or required to be determined in an appeal before it.

## **Procedural Matters**

The worker requested and was granted an oral hearing of his appeal. The appeal took place on May 9, 2006 in Richmond, British Columbia.

The worker's employer was invited to participate in the appeal, but declined to do so.

The worker received disclosure of his claim file on January 12, 2006.

## Relevant Information

The worker is employed as a high school teacher, having been so employed for approximately ten years. The worker filed an application for compensation stating that on February 22, 2005, while he was teaching a physical education class and playing soccer, he kicked a soccer ball and hurt his back. He also provided information that he did not see his physician on February 22, 2005 as he was hoping that the back pain would ease with home medication (Robaxacet). He had back pain in the past, but it was seven years before and was not as bad as this occasion.

The employer's report of injury states that the worker was playing soccer with his physical education class. Within ten minutes of kicking a soccer ball, he had difficulty moving his back due to pain. He advised that he did not kick the ball any differently than he normally did and he was not sure why this particular occasion caused back pain. The worker is an active person who plays soccer regularly.

The worker spoke with a Board officer on March 11, 2005 and described the incident of February 22, 2005. He stated that he was playing soccer with his physical education class and was going for a goal when he kicked the soccer ball. He did not feel anything at first, but within ten minutes he could not move his back. He reported the injury right away to the school vice principal, and the following day he booked off work. He went to the hospital on February 23, 2005. When questioned as to prior back problems, the worker advised that seven years before he had been to a chiropractor, but he had no problems since. He indicated he was very active. His back was fine when he started work on February 22, 2005.

The Board officer requested an opinion from a Board medical advisor prior to rendering a decision on the claim. The Board medical advisor reviewed the information on file and provided his opinion on March 15, 2005. He stated that as a physical education teacher, he expected the worker was a very physically fit individual. There were no neurological abnormalities noted. The worker must have kicked a soccer ball countless times in the same way without incurring an injury. There was no leg pain. If the worker strained a muscle by overexertion, he would have had pain symptoms immediately. He also stated that mechanical back pain occurs at least once in 85% of the population younger than 50 years old. Of these patients, only 20% can be given a precise pathoanatomic diagnosis. Low back pain affects men and women equally and occurs frequently in people aged 30-50. The onset of pain can be spontaneous or can occur with movements not associated with the expected injury, such as bending forward to pick up a tissue. In the absence of sciatica, it was medically impossible to be certain of the anatomical reason for the lumbar pain because there are sensory nerve fibers in the discs, facet joints, ligaments and muscles. Muscle spasm is not necessarily indicative of muscle strain. After considering the above noted information, the medical advisor could see no evidence that a work related injury occurred. It was far more likely that the worker experienced a recurrence of mechanical back pain while at work.

The Board officer accepted the Board medical advisor's opinion when rendering the decision to disallow the claim.

In support of his appeal, the worker submitted the following documents:

- A typewritten document listing the dates that he sought treatment with his physiotherapist, his attending physician, his massage therapist, and his chiropractor.
- A letter dated December 12, 2005 from the worker's union to his attending physician, requesting a complete copy of his clinical records with respect to the treatment provided for the worker's back injury.
- Copies of chart notes from Dr. Joshua, the worker's attending physician, from February 28, 2005 to December 9, 2005.
- Document entitled "Outpatient Department", which is a record of the treatment given the worker on February 23, 2005 at his local hospital.
- X-ray report dated February 23, 2005 of the worker's lumbosacral spine, which reported no abnormalities.
- Hand-written letter dated March 14, 2005 from Dr. Joshua to Dr. Olmstead, Orthopedic specialist, requesting that Dr. Olmstead examine the worker.
- CT scan of the worker's lumbar spine dated April 28, 2005. A minor circumferential disc bulge was visualized at the three scanned levels with no significant focal central disc protrusion evident. The neural foramina were adequately patent, and the facet joints were unremarkable.
- Hand-written letter dated May 11, 2005 from Dr. Joshua to Dr. J. Padilla, neurosurgeon, thanking him for reviewing the imaging of the worker's back and providing background information.
- Letter from Dr. Padilla to Dr. Joshua dated May 30, 2005. Dr. Padilla advised that upon reviewing the CT scan done on April 28, 2005, he saw no evidence of surgical lesion, and only a minor circumferential disc bulge at L4-5. Dr. Padilla doubted if there were any neurosurgical alternative open to him.
- Letter dated December 12, 2005 from the worker's union to Richard Van Erp, physiotherapist, requesting a copy of his clinical record with respect to the treatment provided for the worker's back injury.

- Physiotherapy records for the worker from March 5, 2005 to April 2005.
- Letter dated December 12, 2005 from the worker's union to Dr. Randy Mills, chiropractor, requesting a copy of his clinical record with respect to the treatment provided for the worker's back injury.
- Clinical records from Dr. Mills, including a summary of all visits and chart notes dating from May 12, 2005 to December 8, 2005.
- Letter dated December 12, 2005 from the worker's union to Mac Cardinal, physiotherapist, requesting a copy of his clinical record with respect to the treatment provided for the worker's back injury.
- Clinical records from Mac Cardinal dated November 24, 2005.
- Letter dated April 3, 2006 from the worker's union to Dr. Joshua, requesting a medical/legal opinion
- Letter dated April 28, 2006 from Dr. Joshua to the worker's union, providing a medical/legal opinion. Dr. Joshua states that prior to February 23, 2005, when he attended the worker at the local hospital emergency room, the worker was unknown to him. Based on the information provided by the worker (he experienced an onset of pain shortly after kicking a ball, followed by stiffness and an inability to walk upright), Dr. Joshua was satisfied that the alleged incident was sufficient to result in his symptomatology. Further, due to the worker's protracted and unusual recovery period, the incident of kicking the soccer ball may have been significant.

### **Oral Hearing Evidence**

The worker gave affirmed evidence at the oral hearing.

The worker is currently 34 years old, and has been teaching for ten years. He currently teaches physical education (PE), mechanics and social studies, and during the term in which his back injury occurred, he was teaching mechanics, metal work, and senior PE. He taught PE for five or six blocks per week.

The worker confirmed that he does not have a history of back complaints or injuries, apart from one incident seven years ago, when his back became sore after building a shed. He advised that he was symptom free within one week, was not disabled as a result, and has not had any recurrences since that time.

The worker provided information as to the sequence of events on February 22, 2005. He advised that the PE class he was teaching was the last block of the day, with the class starting at approximately 2 p.m. The class was playing indoor soccer, and there

were enough students for three teams, one of which sat out while the other two teams played. At approximately 2:40 p.m., the worker kicked a soccer ball with his right foot and scored a goal. He advised that he did not kick the ball any differently and nothing untoward occurred during the kick. After he scored the goal, the game stopped, and he walked from the goal net back to the other end of the gymnasium to re-start the game. During the walk down the gymnasium, he began to feel muscles tightening in his lower back, so when he arrived at the end of the gymnasium, he sat down on a bench. While he was sitting, his back felt tighter and tighter and although he tried to stretch his back, he was unable to do so. Approximately ten minutes later, he walked to the vice principal's office to report his injury. The worker advised that his back was in spasm during the walk to the office, and he had difficulties getting there. He described the spasms as mainly on the right side of his back.

After he spoke with the vice principal, he left the school and drove himself home. He advised that he had trouble driving because his truck has a manual transmission and he had difficulty using both feet. When he arrived at home, he took Robaxacet, iced his back, and laid on the floor. He went to school the next morning, but was immediately advised by the school administration to go the local Hospital Emergency Department. He saw Dr. Joshua at the hospital at approximately 8:30 a.m., and he was given muscle relaxants and pain medication and was sent home.

The worker's representative questioned the worker as to the account of his conversation with a Board officer on March 11, 2005, contained in the Board file. The worker advised that it was an accurate recounting of their conversation.

The worker was off work until September 5, 2005. He returned on a full-time basis, with the understanding that he could modify his participation in his PE classes as necessary. When questioned as to the current condition of his back, the worker advised that it is mostly okay, although it gets stiff if he is inactive.

The worker also commented that he has been consistent in how he has described his injury. He has always stated that he had trouble walking within ten minutes of kicking the soccer ball, and had symptoms within one minute.

## **Submissions**

A legal representative made submissions on behalf of the worker. The representative argued that every medical practitioner who has seen the worker has attributed the incident of kicking the soccer ball to the worker's back injury. The Board medical advisor is the only exception. However, there is a discrepancy in the information that was presented to the medical advisor prior to the provision of his opinion. The Board officer introduced the idea of a ten minute delay in symptom onset, despite that the worker consistently reported that he began to have back pain within one minute of

kicking the ball. The medical advisor also placed weight on the worker's history of back pain, when the worker's history was clearly minor and irrelevant.

It is more likely than not that the worker's back pain on February 22, 2005 arose out of and in the course of his employment. He had no significant history of back pain, and he had no symptoms before he kicked the soccer ball. He was engaged in his duties as a teacher at the time of his injury. Although his symptom onset was not instantaneous, it was rapid. The worker did everything right, in terms of reporting his injury and seeking medical attention. All of the evidence is in favour of the worker.

### **Findings and Reasons**

The issue under appeal is whether the worker's back complaints of February 22, 2005 constitute an injury that arose out of and in the course of his employment.

Section 5 of the Act requires that a personal injury arise out of and in the course of employment. Section 5(4) of the Act 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; 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.

The worker's evidence in this matter does not support the notion that an accident occurred while he was playing the soccer game and kicking the ball, and it is not the worker's position that his injury arose from an accident. Thus, the presumption in section 5(4) of the Act does not apply. Compensability must flow from section 5(1) of the Act, on the basis of a personal injury arising out of and in the course of employment.

Policy item #15.10 of the RSCM II 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. Is there a deteriorating condition in this case to bring it within policy item #15.10?

The worker's evidence in this respect was that, although he had back pain approximately seven years ago, the pain was of very short duration, did not cause a disability, and has not caused symptoms since. I accept the worker's evidence in this regard. The worker has a relatively active job requiring that he participate with his students in a variety of physical activities on a daily basis. If a back condition was deteriorating, it is more likely than not that the worker would be aware of the condition, given his active and physical lifestyle. I find that the worker did not have a deteriorating condition.

Where no pre-existing condition exists, policy item #15.20 of the RSCM II applies.

Policy item #15.20 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 (such as kicking a soccer ball), 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.

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.

The above-noted policy discussion is mentioned in a previous WCAT decision (*WCAT #2005-04824*) which is identified as noteworthy (although not a precedent panel). In the decision, the panel developed three broad questions to 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? I adopt this method of determining the issue under appeal.

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

In this case, the worker was unequivocally in the course of his employment when he kicked the soccer ball. He is employed as a teacher and he was teaching a PE class at the time that he kicked the ball. The worker is required to participate in the sporting activities with his students, and the students were playing soccer during the PE class.

- (2) Did the motion have enough work connection?

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.

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 sufficiently work-connected. 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.

The action and motion required to kick a soccer ball is not necessarily something that a worker would do in his everyday life. It is a motion required of a PE teacher involved in playing soccer with his students. It may also be a motion that a worker would engage in through his personal life. Another example would be when a worker is required to climb a ladder at work and injures himself while doing so, while he also engages in home repair in his personal life that requires that he climb a ladder. The notion that kicking a soccer ball is an everyday body motion cannot be supported in this case. I find that the act of kicking a soccer ball has sufficient work connection.

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

The medical evidence available to address this question is from Dr. Joshua and from the Board medical advisor. In his medical/legal opinion of April 28, 2006, Dr. Joshua was satisfied that the incident was sufficient to result in the worker’s symptomatology. Dr. Joshua also confirmed that the worker presented on February 23, 2005 with an injury that he diagnosed as a back strain.

The question that arises from the medical evidence is whether it is biologically plausible for a back strain to arise from kicking a soccer ball. There is certainly a temporal connection between the action of kicking the ball, and the onset of symptoms. I accept the worker’s evidence that he began to experience symptoms of pain and back spasm within one minute of kicking the soccer ball, and it is clear from the evidence on the Board file that the worker’s recounting of events has been consistent from the outset. The information provided to the Board medical advisor was inaccurate; he was not advised that the worker had symptom onset within one minute of kicking the ball, but

rather, was told that he experienced symptoms within ten minutes of kicking the ball. It is understandable that the Board medical advisor arrived at the opinion he did, when presented those facts. I therefore prefer Dr. Joshua's opinion, as his opinion was based on an understanding of the facts as I have found them.

Returning to the notion of biological plausibility, can a back strain arise from kicking a soccer ball? I find that it can. The worker kicked the ball with his right leg, and his symptoms were focused on the right side of his back. Kicking a soccer ball necessitates the use of the back muscles, and it is muscle use that potentially leads to muscle strain. If the worker had not been participating in the soccer game, but instead had been standing and coaching from the sidelines, and had developed a back strain, I would find it less likely that the work activity had causative significance in producing the back strain.

Despite that the action of kicking the soccer ball was not awkward or unusual, I find that there are sufficient biomechanical risk factors present in the physical action involved in kicking a soccer ball that could potentially produce a back strain injury.

I find that the worker's back complaints of February 22, 2005 constitute an injury that arose out of and in the course of his employment. I make no finding with respect to the duration of the worker's temporary or partial disability, and refer this matter to the Board for adjudication.

## **Conclusion**

In accordance with the above reasons, I allow the appeal. The review division decision (*Review Decision #R0051741*) dated November 1, 2005 is varied.

I order the Board to reimburse the appellant for expenses incurred in the appeal, including the expense of obtaining Dr. Joshua's medical/legal opinion, the worker's time loss to attend the oral hearing, as well as his travel expenses to the nearest location where WCAT typically holds oral hearings, in accordance with section 7 of the *Workers Compensation Act Appeal Regulation*, and the Board's tariff.

Lesley A. Christensen  
Vice Chair

LAC/tv/jd