Noteworthy Decision Summary

Decision: WCAT-2006-02511 **Panel**: Tony Stevens **Decision Date:** June 14, 2006

Capital cost allowance – Depreciation – Self-employed worker – Average earnings – Revenue-generating equipment – Policy item #68.62 of the Rehabilitation Services and Claims Manual, Volume II

Capital cost allowance (CCA) deductions made in relation to a motor vehicle that does not generate revenue for a self-employed worker should be added to the worker's net earnings and be treated as personal income for wage-loss calculation purposes.

The worker was employed as a sub-contractor for another company when he sustained bilateral calcaneal fractures. The Workers' Compensation Board (Board) calculated the worker's long-term rate of compensation based on his one-year earnings figure derived from employment income as a worker, together with income from his self-employment that could reasonably be considered to be personal income. The Board added the deductions the worker had made for home office use and motor vehicle expenses back into his net business income. However, the Board declined to add the CCA deduction made by the worker in relation to the motor vehicle to his net business income. The worker requested a review by the Review Division of the Board which confirmed the Board's decision. The worker appealed to the Workers' Compensation Appeal Tribunal.

The panel noted that policy item #68.62 of the *Rehabilitation Services and Claims Manual, Volume II* states that the Board will depreciate any revenue-generating equipment used by a labour contractor who is not covered by personal optional protection in order to determine the labour component of the labour contractor's remuneration. The panel noted that the motor vehicle in question was the worker's only vehicle, which he used for personal use and to drive to and from work when he was self-employed, and that he would transport small hand tools, but no major equipment or materials. The panel concluded the worker's car did not generate revenue for the worker, and thus item #68.62 did not apply.

The panel also noted that the Board had acknowledged the personal benefit the worker derived from the use of his motor vehicle during his self-employment, in that it added back as earnings the expenses associated with its operation. The panel concluded that, although the worker had declared a business expense associated with the CCA for the motor vehicle for income tax purposes, this would artificially reduce the amount of personal income he generated from his self-employment.

The worker's appeal was allowed. The worker's CCA deductions were added to his net earnings and treated as personal income in the one-year period prior to the injury.

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Introduction

The worker appeals the July 26, 2005 decision (*Review Decision #28336*) of the Review Division of the Workers' Compensation Board (Board) that was undertaken in relation to his 2004 work-related injuries to his feet. The review officer who issued that decision confirmed the Board's earlier December 21, 2004 decision, through which a case manager advised the worker as to his long-term rate of compensation. The review officer concluded that it had been appropriate to use the worker's cumulative earnings from self-employment, and as a worker, in the one-year period prior to his injuries. The review officer also concluded that the case manager had appropriately added the "Business Use of Home" expenses to the worker's income, and that the motor vehicle expenses in the amount of $1,656.80 had correctly been deducted. The review officer further concluded that the depreciation figure derived from item #68.62 of the *Rehabilitation Services and Claims Manual, Volume II* (RSCM II), or the capital cost allowance (CCA) figure, was appropriately not added into the worker's net business income, as the motor vehicle in question was not a revenue-generating piece of equipment.

The worker did not request an oral hearing, and an oral hearing was not arranged during the registration of his appeal. I accept that the worker's appeal can be properly considered without an oral hearing, as there is no apparent significant factual dispute or issue of credibility involved. As such, I have decided the worker's appeal following a review of his claim file, and with regard to the submissions that were provided by his representative, a workers' adviser. The worker's employer is not participating in his appeal, although it was invited to do so.

Issue(s)

The sole issue that was raised by the worker's representative was whether the CCA deduction in relation to the motor vehicle in question ought to be added to the net business income figure, and constitute additional earnings for the worker.

Jurisdiction

This appeal was filed with the Workers' Compensation Appeal Tribunal (WCAT) under section 239(1) of the *Workers Compensation Act* (Act).

Under section 250 of the Act, WCAT may consider all questions of fact and law arising in an appeal, but is not bound by legal precedent. It must make its decision based on the merits and justice of the case, but in so doing it must apply policies of the board of directors of the Board that apply to the case, except in circumstances as outlined in section 251 of the Act. Section 254 of the Act provides that 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.

This is an appeal by way of rehearing. WCAT has jurisdiction to consider new evidence, and to substitute its own decision for the decision under appeal.

Background and Evidence

The Board established this claim for bilateral calcaneal fractures that the worker sustained in the course of his January 26, 2004 employment as a carpenter. He was ultimately provided a permanent disability award of 7.18% of total.

The worker's previous employment history for a large number of years was to work at times as an employee of another company, or at other times in self-employment as a subcontractor. The worker was employed as a sub-contractor for another company when he sustained the injuries to his feet.

The Board concluded that the worker's long-term rate of compensation would be calculated on the basis of his cumulative one-year earnings figure derived from employment income as a worker, together with income from his self employment that could reasonably be considered to be personal income. That is not in dispute in the present appeal. The worker also does not take exception to the figure for income that was used in relation to his employment as a worker, nor does he dispute the dollar amounts for home office use and motor vehicle expenses that were added back to the net business income. As noted above, the sole issue in dispute has to do with the CCA figure that was used for Canada Custom and Revenue Agency (CCRA) reporting purposes.

The CCA figure relates to a 1998 Toyota Corolla sedan. The worker's information on file was that this car was his only vehicle, which he used for personal use and to drive to and from work. The worker also indicated that he used that vehicle to drive to and from work when he was self-employed, and that he would transport small hand tools, but no major equipment or materials.

Also on file is a copy of the worker's tax return to CCRA for the 2003 taxation year. The worker had a total CCA of $2,509.04, which he used as a business expense to reduce his net business income. The portion of the total CCA that was for the worker's vehicle was listed as $2,352.00.

According to a November 26, 2004 claim log entry, the case manager concluded that item #68.62 of the RSCM II required that operating costs and expenses must be deducted from business income to determine a net income figure. As was noted by the review officer, expenses associated with the business use of home, and in relation to motor vehicle expenses, were added back to the net business income figure. Those values were accordingly accepted to be "earnings" for the worker, and were treated as such to more accurately reflect the worker's personal earnings that were derived from his self-employment.

In his submission to the Review Division, the worker's representative argued that the worker's vehicle was not a revenue-generating piece of equipment, such as in the case of a courier driver or similar occupation. The worker's representative submitted that the worker claimed the CCA for income tax purposes on the advice of his accountant, but for Board purposes there should not be any deduction in relation to CCA or depreciation. He submitted that the CCA business expense ought to be added back to the net business income figure, and be treated as personal income for the worker.

The review officer disagreed with that particular argument, resulting in this further appeal to WCAT.

The worker's representative submitted that item #68.62 of the RSCM II is not applicable in this case, as it is in relation to revenue-generating equipment, which in his submission the worker's car is not. The worker's representative submitted that irrespective of whether the CCA was incorporated as a business expense for income tax purposes, the worker's use of his car while employed as a sub-contractor was equivalent to simple vehicle use to drive to and from work.

Findings and Reasons

The worker's representative appropriately noted that the review officer concluded the vehicle in question was not a revenue-generating vehicle. However, the review officer also concluded that it was based on that fact that the CCA figure could not be added back to the net business income figure. The review officer specifically referred to item #68.62 of the RSCM II as support for that conclusion.

Item #68.62 of the RSCM II provides:

> In determining a labour contractor's long-term average earnings where the labour contractor's earnings include revenue-generating equipment and the labour contractor does not have coverage under section 2(2) of the *Act*, the Board depreciates any revenue generating equipment in order to determine the labour component of the labour contractor's remuneration.
>
> Operating costs or expenses will be deducted from the gross business income to obtain the business net income (the worker's average

> earnings). When asked to provide earnings information, the labour contractor will also be asked to list the purchase price of the piece of equipment.
>
> The capital cost allowance or depreciation figure listed on the labour contractor's data will not be used. In place of this figure, a percentage will be selected from the straight-line depreciation tables set out below which most closely represents the piece of revenue generating equipment involved. This percentage will then be applied to the purchase price of the item and the resulting figure will, along with the other operating costs or expenses of the business, be deducted from the gross to compute the worker's average earnings.

The annual rate of depreciation for automobiles that is set out in that table is 12.5%.

In the worker's case specifically, I agree with the review officer's conclusion that the worker's car was not a revenue-generating piece of equipment. Had the vehicle been a pick-up truck I would likely conclude differently, as a vehicle of that type could more readily transport larger tools or other equipment or materials, and be said to be a revenue-generating piece of equipment. I accept as reasonable the submission of the worker's representative that the worker's Toyota Corolla was principally used to transport the worker to and from the work.

Although the worker used his vehicle in his self-employment, I nevertheless accept that it was not a revenue-generating piece of equipment as contemplated by Board policy, such as would be the case for a courier driver or the like. I also accept that whether the worker declared a business expense associated with the CCA for that vehicle is not relevant to the issue that is before me. As a result, I conclude that item #68.62 of the RSCM II does not apply in the worker's case, as the vehicle in question was not revenue-generating.

It is also apparent that the Board acknowledged the personal benefit that the worker derived from the use of that vehicle during his self-employment, in that it added back as earnings those expenses that were associated with the operation of that particular vehicle. While the worker declared a further business expense associated with the CCA for that vehicle, I conclude that the associated continued reduction in net business income would artificially reduce the amount of personal income that he generated from that self-employment. Accordingly, I conclude that the appropriate business expenses associated with the CCA reductions of net business income, in the one-year period used, ought to be added back as personal income for the worker.

In summary, I allow the worker's appeal and vary the July 26, 2005 decision of the Board. I conclude that the worker's CCA amounts that were used as business expenses in the one-year period used for wage-loss calculation purposes ought to be added to the net earnings figure and be treated as personal income for the worker.

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No appeal expenses were requested, and none are apparent on which to consider a potential order for reimbursement.

Conclusion

I vary the July 26, 2005 decision of the Board.

Anthony F. Stevens
Vice Chair

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