

Noteworthy Decision Summary

Decision: WCAT-2007-01340 **Panel:** Andrew Waldichuk **Decision Date:** April 27, 2007

Weighing of Evidence – Work Required Motion – Item #15.20¹ of the Rehabilitation Services and Claims Manual, Volume II

This decision is noteworthy as an illustration of a well-reasoned decision involving the weighing of evidence when determining a claim for a left shoulder injury following a work-required motion.

The Workers' Compensation Board, operating as WorkSafeBC (Board), denied the worker's claim for a left shoulder injury.

The panel allowed the worker's appeal. The panel found that the worker was engaged in a work-required motion when he reached to his left, while standing on a step ladder, and used the back of his hands to press against a ceiling tile. This particular motion was awkward and one that was sufficiently connected to the worker's employment activities so as to acquire work status. This was not a normal body motion. The panel found that the worker's work activities were likely of causative significance in producing his left shoulder injury.

The panel accepted the worker's evidence that he felt pain on the day of the work activity. The worker had reported an injury to his supervisor on the morning after the work activity. Although the worker had reported a history of bilateral shoulder pain, the panel found that there was no compelling medical evidence that the worker was experiencing ongoing shoulder problems prior to the work activity.

The panel accepted the worker's explanation as to why he delayed in seeking medical treatment. He accepted that the worker had not sustained any further injury to the left shoulder after this work activity either during or outside of work. His finding that the worker was not troubled by prior shoulder problems and that he was engaged in a work-required motion undermined the Board medical advisor's opinion used to support the decision to deny the worker's claim. The panel was thus gave little weight to it.

¹ Policy item #15.20 has been replaced by policy item #C3-15.00.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.

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Introduction

By decision dated April 6, 2006, a case manager at the Workers' Compensation Board, operating as WorkSafeBC (Board), denied the worker's claim for a left shoulder injury related to his employment activities as an operations manager for a telephone company on June 29, 2005.

The worker submitted a request for review of the entitlement officer's decision to the Board's Review Division. On August 29, 2006, a review officer decided that the worker had not sustained a compensable injury.

The worker, who is unrepresented, now appeals the review officer's decision to the Workers' Compensation Appeal Tribunal (WCAT).

The employer was notified of the appeal, but did not indicate that it wished to participate.

The worker attended an oral hearing on April 11, 2007, and testified under oath.

Issue(s)

Did the worker sustain a personal injury arising out of and in the course of his employment?

Jurisdiction

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

Under section 250(1) of the Act, WCAT may consider all questions of fact and law arising in an appeal, but is not bound by legal precedent. WCAT must make its decision on the merits and justice of the case, but in so doing, must apply a policy of the board of directors of the Board that is applicable in the case. Section 254 of the Act gives WCAT 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.

Background and Evidence

The now 48-year-old worker completed an application for compensation on January 16, 2006. He wrote that he had been installing telephone wiring above ceiling tiles (otherwise known as panels) on June 29, 2005. While removing a tight tile, he felt something rub or grind in his left shoulder, which resulted in substantial pain and loss of strength. Furthermore, the worker indicated that he had experienced bilateral shoulder pain approximately six or seven years ago. He stated that “it seemed arthritic” and was deep into his shoulders, unlike the pain he experienced in June 2005. In addition, the worker noted that he had reported his injury to his supervisor on the morning of June 30, 2005. He explained his delay in seeking treatment on the basis that he hoped taking Ibuprofen would resolve his shoulder problem; however, it had not gotten better over time. Despite his symptoms, the worker remained at work.

The employer did not protest acceptance of the worker’s claim. As set out in its report of injury, it confirmed the worker’s reporting of his injury and added that he had sought medical attention for it, but not immediately.

The Board obtained the clinical records of the worker’s family physician, Dr. Sebulsky, for the period from September 26, 2001 until January 31, 2006. In addition to these records, Dr. Sebulsky provided the Board with an October 26, 1998 consultation report from Dr. Chamberlain, a general practitioner with an interest in sports medicine, and a November 2, 1998 consultation report from Dr. O’Farrell, an orthopaedic surgeon.

Dr. O’Farrell diagnosed the worker as having mild to moderate recurring rotator cuff tendinitis in both shoulders. Dr. Chamberlain, as well, noted that the worker had been experiencing bilateral shoulder pain in the past two months, which had become chronic. He diagnosed a very mild rotator cuff tendinopathy, which was expected to resolve with strengthening of the worker’s scapular stabilizers.

Dr. Sebulsky’s clinical records, which show that the worker had seen a different physician until August 6, 2004, do not contain any reference to the worker’s shoulders until October 3, 2005.

Dr. Sebulsky’s October 3, 2005 clinical note entry mentions that the worker had bilateral episodic shoulder pain with decreased abduction and “flares”. Although somewhat indecipherable, there is also a notation which suggests that the worker plays hockey and baseball, and runs. Moreover, there is a reference to an episode in the past two months when the worker was lifting above his head and felt a grinding sensation, resulting in pain ever since. Again, although difficult to read, Dr. Sebulsky recorded something about point tenderness, while adding that the worker’s range of motion was all right. After addressing some knee complaints that the worker had, she recorded that a left shoulder x-ray would be requisitioned.

An October 14, 2005 x-ray of the worker's left shoulder was normal.

There is further mention of the worker's left shoulder in Dr. Sebulsky's November 7, 2005 clinical note entry, at which time the worker requested a referral to Dr. Oliver, an orthopaedic surgeon. As indicated in the referral note that Dr. Sebulsky completed the next day, the worker wanted to see Dr. Oliver for bilateral shoulder symptoms (more so on the left than the right), which involved grinding, decreased abduction, and flares of pain, in addition to knee symptoms of patellofemoral syndrome.

Dr. Oliver's November 28, 2005 consultation report deals primarily with the worker's knee symptoms and concludes with the following:

Incidentally, he has some soreness of the left shoulder but has full range of motion. I suspect he probably has had some cuff irritation and I gave him advice about this.

A client services representative's January 18, 2006 claim log entry outlines the worker's history. It mentions that the worker had been using the back of his hands to push on a ceiling tile during his work duties on June 29, 2005, when he felt sudden sharp pain to the top of his left shoulder. Consistent with his application for compensation, the worker reportedly felt a rubbing sensation, with symptoms radiating down his left arm, resulting in a loss of strength. Hoping that his symptoms would resolve, the worker explained that he continued to feel shoulder pain with certain movements and activities.

Dr. Sebulsky's January 25, 2006 report is the only medical report on file. After indicating that the worker had previous shoulder discomfort in 1998, Dr. Sebulsky reported that he had experienced sudden left shoulder pain when pushing upward on a ceiling tile on June 29, 2005, for which he had received physiotherapy. Dr. Sebulsky diagnosed a left shoulder strain and recommended that the worker avoid heavy lifting with his left shoulder. She thought that it would be weeks or months before the worker reached maximum medical recovery.

In response to the case manager's request for medical input, Dr. H, a Board medical advisor, addressed whether there was any evidence of a compensable personal injury on June 29, 2005. As set out in her March 28, 2006 claim log entry, Dr. H reviewed the medical evidence on file, and concluded that there was no objective medical evidence of a personal injury having occurred on June 29, 2005. She then went on to state the following:

While the worker does describe the onset of pain, there is no specific incident, merely a normal body motion and there is no medical to support that he sustained any personal injury. The first time he saw a doctor after the incident was on Oct. 3, 2005, some 3 months later and then the

symptoms he described are the symptoms that he has been describing for years.

In response to the question of whether the mechanism of injury was sufficient to have caused the worker's current symptoms, Dr. H responded that "the described mechanism of injury would be considered a normal body motion of lifting up the arm and the current symptoms would be more in keeping with the chronic intermittent problems that he has been having for years."

The entitlement officer relied on Dr. H's opinion to deny the worker's claim and outlined the following reasons to support her decision: There was no evidence of a personal injury on June 29, 2005; there was excessive delay in the worker seeking medical attention; there were medical findings and a diagnosis unrelated to his work; and he had a non-compensable pre-existing condition.

In his request for review, the worker sought acceptance of his claim in an effort to have the Board provide coverage for his physiotherapy and prescriptions. In doing so, the worker provided a June 26, 2006 letter from his employer, which described him as an honest, hard working individual with integrity, such that there was no reason to believe that his reported injury did not occur on the job. Additionally, the worker provided the Review Division with a statement, where he acknowledged his previous bilateral shoulder discomfort and added that there is no indication in the clinical records that he was having shoulder problems beyond 1998.

Consistent with his application for compensation, the worker also explained to the Review Division that his previous shoulder pain originated from an area deeper in his shoulders than what he was now experiencing. He argued that the motions associated with installing wiring overhead cannot be characterized as normal body motions. Lastly, the worker took issue with the entitlement officer's finding that he did not seek medical attention until January 25, 2006. He pointed out that it was actually October 3, 2005 when he saw a doctor, after realizing that his shoulder was not healing. In the worker's view, it was "ridiculous" to think that there was no evidence of him having sustained a compensable personal injury.

In confirming the entitlement officer's decision, the review officer found it was significant that the worker presented to Dr. Sebulsky on October 3, 2005 with complaints of bilateral shoulder pain, which was inconsistent with his report of only a left shoulder injury arising from his work activity on June 29, 2005. The review officer thought that the findings in Dr. Sebulsky's October 3, 2005 clinical note entry were in keeping with the worker's prior shoulder condition.

The review officer accepted Dr. H's opinion regarding causation on the basis that she had considered the relevant medical evidence. Additionally, the review officer decided that the worker's delay in seeking medical attention until October 3, 2005, at which time

he complained of episodic bilateral shoulder pain, weighed against a finding that he had aggravated his pre-existing shoulder condition on June 29, 2005. As such, the review officer decided that the evidence did not support the worker having sustained a compensable shoulder injury on June 29, 2005.

Oral Hearing

The worker, who described himself as a physically active person – someone who runs regularly, plays recreational hockey, and was involved in a softball league in the past – testified that he did not have shoulder problems between 1998 and June 2005. Consistent with the information on file, he explained that his shoulder pain in 1998 was located deep in his shoulder sockets. He thought that he had arthritis at the time. Moreover, the worker attributed his bilateral shoulder discomfort to sleeping on a firm bed, since sleeping on different bed as of 1998 seemed to resolve his symptoms. It is his evidence that he had no shoulder problems in the year prior to June 2005.

Turning to the events of June 29, 2005, the worker testified that he was installing wiring in the ceiling of a law firm which was in the process of being renovated. He said that he was leaning over the top of a step ladder and using the back of his hands (to avoid finger prints) to press up on a two-foot by four-foot ceiling panel to remove it from the metal grid in the ceiling (“T bar”). As he demonstrated, he had to lean approximately two feet to his left, while reaching over the top of the ladder, because he was working around desks and credenzas. His arms were extended away from his body, with his left hand further away, as he pressed upwards on the tight panel. Noting that the panel would have weighed approximately three to four pounds, the worker attributed the tightness of the panel to the “T bar” being off a bit.

The worker said that he was in an awkward position, since he normally positions the ladder directly beneath the panel that he has to remove, which is something that he has done thousands of times. However, as he exerted himself on June 29, 2005, he felt a shooting pain in his left shoulder and upper arm region, along with immediate weakness. He did not recall feeling a grinding sensation in his shoulder though. Afterwards, any motion involving his left shoulder was painful and it took approximately one month before he felt any improvement in his symptoms.

The worker recalled that he promptly reported an injury to his supervisor. He also remembered receiving an application for compensation to fill out, but admitted that his delay in completing it boiled down to procrastination.

I asked the worker to explain his delay in seeking medical treatment, to which he responded that he is not someone who goes to the doctor every time he has an injury. While recalling that taking Ibuprofen helped his shoulder somewhat, the worker said that he decided to have it looked at because of its lack of further improvement.

The worker recalled his appointment with Dr. Sebulsky on October 3, 2005 and said that it may have been the first time he had seen her for anything. It is the worker's evidence that Dr. Sebulsky's reference to his bilateral shoulder problems is nothing more than his history. As the worker explained, Dr. Sebulsky had taken over from his former physician, Dr. Nash, and he wanted to inform her of his shoulder problems in the past.

I also asked the worker about Dr. Sebulsky's reference to his bilateral shoulder problems, as mentioned in her referral form to Dr. Oliver. In response, the worker stated that he can sometimes hear "popping" sounds in both of his shoulders, which he tried to reproduce by rotating both of his shoulders. He claimed, however, that his left shoulder is easily aggravated since the June 29, 2005 incident, which was not the case previously. To this day, he takes Naproxen for his left shoulder symptoms which still persist, albeit not on a constant basis.

Reasons and Findings

The worker's entitlement in this case is adjudicated under the provisions of the Act as amended by the *Workers Compensation Amendment Act, 2002* (Bill 49). WCAT panels are bound by published policies of the Board pursuant to the *Workers Compensation Amendment Act (No. 2), 2002* (Bill 63). Policy relevant to this appeal is set out in the *Rehabilitation Services and Claims Manual, Volume II* (RSCM II).

Section 5(1) of the Act states that a personal injury must arise out of and in the course of the employment before compensation can be paid.

At the outset, I find that the worker was not experiencing shoulder problems prior to his work activities on June 29, 2005, as there is no compelling medical evidence that suggests this. I accept the worker's evidence that his previous shoulder problems resolved sometime around 1998, which is supported by the medical evidence. The clinical records that the Board obtained from Dr. Sebulsky do not indicate that the worker had ongoing shoulder problems between 1998 and June 29, 2005. Moreover, I am satisfied on my review of Dr. Sebulsky's clinical records that she saw the worker as a patient for the first time on October 3, 2005, since it is evident that the previous clinical note entries were completed by the worker's former physician, Dr. Nash. This weighs in favour of the worker's evidence that the reference to his episodic bilateral shoulder pain in Dr. Sebulsky's October 3, 2005 clinical note entry was an account of his history and not a record of his symptoms at that time, which I accept.

I also accept that the worker did not sustain any further injury to his left shoulder after June 29, 2005 either during or outside of work.

The policy in item #15.20 of the RSCM II addresses situations where an injury has followed a motion at work and there is no evidence that the worker has a deteriorating

condition. While recognizing that it may be difficult to distinguish between a work-required and a non-work-required motion, this policy states, through the use of examples, that if a job requires a particular motion, and that motion results in an injury, that is an indication that the injury arises out of the employment and is compensable. One such example illustrates how if a worker were forced into an awkward position to properly perform a job and either while in that position or arising from it suffered a severe and sudden onset of pain and discomfort, and the evidence showed no previous difficulty, it might well be that the only reasonable conclusion is that the apparently minor incident was causative.

I accept that the worker was engaged in a work-required motion when he reached to his left, while standing on a step ladder, and used the back of hands to press against the ceiling tile. Although not a requirement of policy item #15.20 of the RSCM II, I find that this particular motion was awkward and one that was sufficiently connected to the worker's employment activities so that it acquired "work" status, given that his employment activities of installing telephone wiring required him to perform it. As the worker explained, the presence of desks and credenzas meant that he had to reach for the ceiling panel while applying pressure to it because he was unable to place his ladder beneath it. In my view, it was not a normal body motion of lifting up his arms, as Dr. H opined.

There is no requirement under the Act or Board policy that a worker seek medical attention upon the initial sign of symptoms having developed at work. The worker testified during the oral hearing that he is not someone who runs to a doctor every time he has an injury. He hoped that his symptoms would resolve over time by taking Ibuprofen. I accept his explanation for his delay in seeking medical treatment.

"Personal injury" is defined in policy item #13.00 of the RSCM II as any physiological change arising from some cause.

Policy item #97.32 of the RSCM II discusses how the worker's statement about his or her condition is evidence insofar as it relates to matters that would be in the worker's knowledge and should not be rejected simply on the assumption that it must be biased. It also states that there is no requirement that the worker's evidence be corroborated, but explains that it must be compared against the other evidence on file.

Even though the worker did not seek medical attention until October 3, 2005, I give weight to the fact that he reported an injury to his supervisor on the morning of June 30, 2005. Furthermore, I accept his evidence that he felt shooting pain in his left shoulder and upper arm region, along with immediate weakness, after trying to dislodge the ceiling panel.

In accepting the worker's evidence, I am mindful of what the British Columbia Court of Appeal stated in *Faryna v. Chorny*, [1952] 2 D.L.R. 354:

...the real test of the truth of the story of a witness...must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

As such, I am satisfied that the worker's testimony about what transpired on June 29, 2005 is in accordance with the preponderance of the probabilities that one would readily recognize as reasonable. I accept that the worker likely experienced shooting pain in his left shoulder and upper arm region, along with immediate weakness, as he tried to remove the ceiling panel. On the worker's evidence alone, I accept that his symptoms on June 29, 2005 amounted to a physiological change and therefore a personal injury, since there is no compelling evidence that he was suffering from similar symptoms prior to that time.

My finding that there was a personal injury is buttressed by Dr. Sebulsky's report of January 25, 2006, where she diagnosed a left shoulder strain based on facts that the worker had sudden left shoulder pain when pushing upward on a ceiling tile. I assume that this report was completed on the basis of the information in her October 3, 2005 clinical note entry, which mentions the worker feeling grinding and pain in his left shoulder since an episode of lifting above his head.

Dr. H documented in a March 28, 2006 claim log entry that the worker engaged in a normal body motion during his work activities on June 29, 2005 and that the chart notes indicated that the worker had a longstanding "chronic intermittent problem of rotator cuff tendinopathy." In offering her opinion that the worker had not sustained a compensable personal injury, she indicated that there was no specific incident and characterized the described mechanism of injury to be a normal body motion. Moreover, she pointed out that there was no medical evidence to support a personal injury, while adding that the worker's symptoms were in keeping with the chronic intermittent shoulder problems that he had been having for years.

My finding that the worker was not troubled by shoulder problems for many years prior to June 29, 2005 undermines Dr. H's opinion that the worker had not sustained a personal injury. In addition, my finding that he engaged in a work-required motion that day weakens her opinion on causation. As such, I give little weight to all aspects of Dr. H's opinion.

Policy items #14.20 and #15.00 of the RSCM II spell out the requirement that there be something in the employment relationship or situation that had causative significance in producing the injury, and that causation is not established on a speculative possibility.

I accept that it is biologically plausible that the worker's left shoulder motion while trying to dislodge the ceiling tile could have resulted in a left shoulder strain, as diagnosed by Dr. Sebulsky. Judging by the worker's testimony, I find that his work activities were likely of causative significance in producing his left shoulder injury.

Unlike the review officer, I had the benefit of the worker's oral hearing testimony, which clarified the state of his shoulders prior to June 29, 2005, what happened that day, his reasons for not seeking medical attention until October 3, 2005, and the nature of his initial appointment with Dr. Sebulsky. This new evidence allowed me to weigh the evidence differently.

Given the above, I find that the worker sustained a personal injury arising out of and in the course of his employment, in accordance with section 5(1) of the Act. I allow the worker's appeal.

Conclusion

I vary the Review Division's August 29, 2006 decision.

I find that the worker sustained a personal injury arising out of and in the course of his employment on June 29, 2005. The Board will determine the nature, duration, and extent of any benefits payable to the worker.

No expenses were requested, and it does not appear from a review of the file that any expenses were incurred in relation to this appeal. Accordingly, I make no order regarding expenses.

Andrew Waldichuk
Vice Chair

AW/ec