Noteworthy Decision Summary

Decision: WCAT-2007-02436 **Panel**: Anthony Stevens **Decision Date:** August 15, 2007

Pre-Existing Asthma – Aggravation – Schedule B of the Workers Compensation Act – Item #29.20 of the Rehabilitation Services and Claims Manual, Volume II

This decision is noteworthy because it provides an analysis of a situation where a worker's claim was accepted for a work-caused temporary aggravation of pre-existing asthma.

The worker was employed in a mill specializing in cedar signs and siding. The Workers Compensation Board, operating as WorkSafeBC, accepted the worker's claim for occupational asthma developed in the course of her employment at the employer's mill. The employer requested a review of that decision by the Review Division. A review officer varied that decision, noting that the worker had been treated for asthma prior to her employment with the employer. Thus, her asthma was a pre existing condition that had did not arise from her employment. However, the review officer also noted that the worker's employment involved working with known respiratory irritants, such that it was likely that she had developed a work caused aggravation of her pre-existing asthma. The employer appealed this decision to WCAT.

The employer's appeal was denied. The panel found that, although the worker had been exposed to known respiratory irritants, the presumption of causation in Schedule B of the *Workers Compensation Act* was rebutted by the fact that the worker had previously been diagnosed with asthma. The panel acknowledged that the skin patch testing was negative, that the worker had performed her own peak flow measurements without the assistance of a technician, and that she had not suffered from respiratory distress during the approximate first year of her employment. The worker had also resumed work for some 12 shifts that involved the application of glue without further respiratory complaints. However, the worker worked in proximity with glue products known to be respiratory irritants. She consistently reported that her respiratory complaints were evident at work and abated while away from work. This temporal relationship was also evident in the medical reports. The worker's peak flow data, as noted by the medical advisor, established a temporal relationship. Although this data was collected without the assistance of a technician, it was relevant information that ought to be considered when evaluating work causation. The panel noted policy item #29.20 of the *Rehabilitation Services and Claims Manual, Volume II* which states that there are many substances which are either known to cause asthma in previously healthy individual, or to aggravate or activate an asthmatic reaction in an individual with a pre-existing asthma condition.

Workers' Compensation Appeal Tribunal 150, 4600 Jacombs Road, Richmond, B.C. V6V 3B1
Telephone: (604) 664-7800; 1-800-663-2782; Fax (604) 664-7898

WCAT Decision Number: WCAT-2007-02436
WCAT Decision Date: August 15, 2007
Panel: Anthony F. Stevens, Vice Chair

Introduction

The employer appeals the December 1, 2006 decision (*Review Decision #R0069834*) of the Review Division of the Workers' Compensation Board (Board). The Board now operates as WorkSafeBC. The review officer who issued that decision varied the Board's earlier June 26, 2006 decision, in part. A case manager rendered the June 26, 2006 decision to accept the worker's claim; the case manager concluded that the worker developed occupational asthma in the course of her employment at the employer's mill. In varying that decision, the review officer noted that the worker had been treated for asthma prior to her employment with the employer, such that her asthma was a pre-existing condition that had did not arise from her employment. However, the review officer also noted that the worker's employment involved working with known respiratory irritants, such that it was likely that she had developed a work-caused aggravation of her pre-existing asthma.

The employer is represented by an employers' adviser. The employer's representative did not request an oral hearing, and an oral hearing was not arranged during the registration of the appeal. I agree that the 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 appeal following a review of the worker's claim file, and with regard to the written submissions that were provided by the employer's representative. The worker did not participate in the employer's appeal, although she was invited to do so.

Issue(s)

The issue to be determined in this appeal is whether the worker suffered from an occupational disease that was due to the nature of her employment, as contemplated by section 6 of the *Workers Compensation Act* (Act).

Jurisdiction

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

Workers' Compensation Appeal Tribunal 150, 4600 Jacombs Road, Richmond, B.C. V6V 3B1
Telephone: (604) 664-7800; 1-800-663-2782; Fax (604) 664-7898

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 worker completed her application for compensation on January 26, 2006. She was employed as a labourer at the time, and had not yet missed any time from work in association with the respiratory difficulties for which she had initiated her claim. The worker also disclosed that she had experienced prior difficulties with asthma about 5 years earlier.

The employer provided the Board with a report to note that the worker commenced her employment at their mill on September 9, 2004. According to that report, the worker reported difficulties with breathing, as well as rosacea on her face.

Other information that was provided by the employer to the Board was an accident investigation report, which outlined that the worker was possibly suffering from an allergic response. Moreover, Material Safety Data Sheet (MSDS) information indicated that a product the worker used in her employment (Duro-Lok 360) could cause skin irritation, and was also known to cause irritation of the nose, eyes and respiratory tract. Another product used in the worker's employment (a catalyst) was known to be an extremely irritating corrosive that could irritate the eyes, skin and respiratory tract.

The case manager contacted the worker on January 31, 2006 to obtain further information regarding the nature of her complaints. The case manager documented the following. The worker believed her complaints arose from exposure to cedar. The mill specialized in making cedar signs and siding. The worker ran a press and finger joiner. The press was used to make cedar siding. The majority of her work involved applying glue to sections of cedar siding, which were then bonded together in the press. The glue was mixed manually on a daily basis, at which time the glue base and a resin were mixed using a handheld device. Although the MSDS information recommended that respiratory protection be worn when mixing the glue, she hardly ever wore such protection. In contrast, she did wear a cartridge-type face mask when working in high dust areas.

The worker's further information to the case manager was that her symptoms commenced about two months previously, and that she had not as yet missed any time from work. The worker described that she experienced difficulty with breathing, particularly towards the end of her work shifts. She also noted that her face would flush, turn red and feel hot. The worker advised the case manager that her complaints lasted

Workers' Compensation Appeal Tribunal 150, 4600 Jacombs Road, Richmond, B.C. V6V 3B1
Telephone: (604) 664-7800; 1-800-663-2782; Fax (604) 664-7898

into the evening after work, and that they were absent when she was away from work such as during vacation or on the weekends. She also noted that her attending physician had referred her for asthma testing, but those tests had been negative. She said her physician had advised her to change jobs.

On file is a report in relation to a pulmonary function test that had been performed on December 21, 2005. That report indicated that spirometry had been normal.

Of note, that report also provided historical information in relation to the worker, in that it indicated the worker had smoked for about 1 year, having quit about 6 years previously. That report also noted that the worker used Ventolin and Advair. Her brother was also noted to have asthma.

Although the worker's pulmonary function tests were normal, when subsequently examined by the attending physician on January 25, 2006 the worker was found to have bilateral wheezing. The attending physician recommended that she continue to use Ventolin and Advair, and to look into retraining into other employment. The attending physician also noted that the worker was known to have suffered from asthma in the past.

The case manager wrote the worker on February 2, 2006 to indicate that a Board medical advisor recommended that she carry out peak flow monitoring over a period of at least two weeks, in order to compare her respiratory function while at work and while away from work. Information on file indicates that the Board medical advisor recommended that such monitoring take place, with the view to confirming whether the worker was experiencing an asthmatic response at work. The Board medical advisor also recommended skin patch testing to determine whether or not the worker had skin sensitivity to phenyl formaldehyde resin glue.

On February 14, 2006 the attending physician arranged for the worker to undergo allergy testing for phenol sensitivity. The attending physician also provided the worker with a prescription to obtain a peak flow meter, so that she could monitor her peak flows in the morning and throughout her workday.

Clinic notes in relation to prior treatment indicate that the worker was prescribed Ventolin since at least November 14, 2001. A clinic note for a January 29, 2003 visit indicated that the worker was given a further prescription for Ventolin.

The worker monitored her peak flows throughout the days of February 22, 2006 to March 7, 2006, inclusive, and provided the results to the Board.

The worker remained employed in her regular position until March 20, 2006, although she missed some time from work in both February and March 2006. On March 20, 2006 she began to work in an alternate position that involved driving a forklift outside of the plant, and away from the production area. That change in work followed March 1,

2006 complaints of shortness of breath that developed part-way into her shift, which were sufficient that the worker was put on oxygen while at the work site. When she saw the attending physician later that day she had bilateral wheeze, and was given Ventolin and Pulmicort, which settled her complaints.

The attending physician referred the worker for skin patch testing to determine if she was suffering from an allergic response. The March 27, 2006 patch testing was negative, including in relation to cedar dust and phenol formaldehyde resin.

As recorded in a May 23, 2006 claim log entry, the Board medical advisor held the view that a negative response on skin patch testing indicated that the worker did not have occupational contact dermatitis. The Board medical advisor nevertheless noted that there was a temporal relationship between the worker's skin and respiratory symptoms and her employment. He supported a work relationship to both of those complaints on that basis.

The Board medical advisor reviewed the worker's claim once again on June 22, 2006, with particular regard to the peak flow measurements that had been forwarded to the Board by the worker. The Board medical advisor said:

> Peak flow monitoring carried out between February 22, 2006 and March 7, 2006 indicates her normal peak flow rate is approximately 550 l/m. It also shows that with one exception peak flow rates drop to approximately 500 l/m or less on days when she worked in the glue building and remained at approximately 550 l/m on days that she did not go to work. These results support a diagnosis of mild occupationally caused asthma as suggested in the medical opinion dated May 23, 2006.

The case manager accepted that opinion, and issued the June 23, 2006 decision to accept the worker's claim for work-caused asthma.

The employer disagreed with that decision, and contacted the Board to establish their position in that regard. On July 4, 2006 the Board medical advisor again reviewed the worker's file. He provided the opinion that the peak flow data that was provided by the worker provided objective evidence that something in her employment caused or aggravated her asthma.

The employer also initiated a review of the case manager's June 23, 2006 decision. The employer's representative provided a written submission to the Review Division to argue that the worker had a medical history that included pre-existing asthma. The employer's representative also referred to the information on file to argue against the Board's decision to accept the worker's claim for occupationally-caused asthma. To support the employer's request for review, the employer's representative provided an October 10, 2006 opinion from Dr. M. Dr. M indicated that diagnostic evaluation in relation to asthma involved consideration of the history of onset, documented changes

in pulmonary function tests, confirmed peak flow rates at work, skin testing against allergens, and specific bronchial provocation testing. Moreover, Dr. M offered the following comments. Self-monitoring of peak flows was not a valid measurement tool, as such measurements ought to be taken with the assistance of an educated technician to ensure there was optimal patient effort. Although the worker worked in an environment where there were known sensitizers, it was not clear whether she had any significant exposure to those agents. Patch testing may not be diagnostic of sensitization, but more often than not such testing is positive in individuals who are sensitized to an agent. The worker had a history of pre-existing asthma, according to her attending physician. The worker did not have specific bronchial provocative testing, which is considered to be the gold standard for diagnosing asthma. The worker did not have a recurrence of her complaints at work, and that would be the strongest argument against occupational asthma.

Dr. M said:

> In my opinion, there is only presumptive information that would lead to concerns that there is a possibility (due to known sensitizers in the workplace) that Occupational Asthma could occur.

In the end, the review officer issued the December 1, 2006 decision, which is now before me in this further appeal to WCAT. As noted previously, the review officer concluded that the worker did not suffer from work-caused asthma on the basis she had asthma that pre-existed her employment at the mill. However, the review officer accepted that a work-caused aggravation of that pre-existing condition had likely taken place, such that the claim would be accepted on that basis.

The employer's representative provided a written submission to argue that the worker had pre-existing asthma, and had there been work-induced difficulties through exposures at work they ought to have occurred proximate to the worker's September 9, 2004 employment, rather that some significant time later. In turn, the employer's representative submitted that there was no temporal relationship between the worker's complaints and her employment, as had been determined by the Board. The employer's representative also argued the following. The worker was a volunteer firefighter, yet the Board did not investigate potential exposures from that setting. The opinions from the Board medical advisor appeared to be speculative in nature, yet the case manager relied on those opinions to accept the worker's claim. The diagnosis of occupationally-caused asthma had not been confirmed. No testing had been performed to determine potential exposures or exposure levels. The worker subsequently resumed work in the glue area, yet did not experience further difficulties, which weighed against a conclusion that a temporal relationship was established.

The employer's representative also provided new information for consideration. In particular, a first aid attendant outlined in a December 7, 2006 letter that the worker had not complained of breathing difficulties when she resumed work in March 2006 through to August 2006. The first aid attendant noted that the worker resumed work applying glue at the press in August 2006, and did not report any breathing difficulties thereafter. In a further letter of December 7, 2006, the plant manager indicated that the worker had worked at the glue press on July 31, 2006 and for 11 days in August 2006, all without difficulty. The plant manager also described that the building in which the glue press was located was large, with a high ceiling and a large door that was open most of the time.

Findings and Reasons

Asthma is a designated occupational disease that has been included in Schedule B of the Act. As such, a presumption of causation is available where there has been established exposure to the following: red cedar dust; isocyanate vapors or gases; fumes or vapors of other chemicals or organic material known to cause asthma.

There is sufficient information before me to conclude that the worker did likely at times have some exposure to cedar dust, although whether it was red cedar is not known. It is also reasonably established that she likely was exposed to fumes from the glue that was applied, which from the MSDS information was comprised of two components, both of which were known to be respiratory irritants.

The patch testing indicates that the worker did not develop sensitivity from potential exposures in her employment. That testing does little to support a conclusion that the worker developed asthma from exposures that may have taken place during her employment at the mill. However, the more significant information on file is the worker's own information, as confirmed by her attending physician, that she had been diagnosed as having asthma in the past. I also observe that the worker was quite consistently prescribed medication in relation to that condition over the years, in advance of her commencing employment with the employer.

As a result, I conclude that even were it established that the appropriate exposures existed from which to bring the presumption of causation into play, that presumption would be rebutted by the fact that the worker was known to suffer from pre-existing asthma. In turn, I conclude that although the worker has been diagnosed as having asthma, that diagnosed condition constitutes a pre-existing condition.

I also accept that there are legitimate concerns in relation to the fact that skin patch testing was negative, the worker performed her own peak flow measurements without assistance from a technician, and she did not suffer from respiratory distress during the approximate first year of her employment. I also acknowledge the employer's further information that the worker resumed work for some 12 shifts that involved the application of glue, yet she did not experience further respiratory complaints.

However, the fact remains that she did work in proximity to the constituent glue products, and they are known to be respiratory irritants. Moreover, the worker was consistent in stating that when her respiratory complaints developed they were evident while at work, and abated while away from work. That temporal relationship of the worker's complaints to her work is also evident in the medical reports, which describe the commencement of complaints while at work and the fact that wheezing was evident on examination. The medical reports also serve to confirm that there was improvement when the worker was away from work, and that it had been recommended that the worker change work locations, which she did. Moreover, the worker's peak flow data did, as noted by the Board medical advisor, establish that a temporal relationship existed between her respiratory complaints and her work. Although those measurements were not obtained with the assistance of a technician, I nevertheless accept that they do provide relevant information that ought to be considered when evaluating work causation.

I am persuaded by the overall evidence, and conclude that it is likely that the worker experienced a temporary aggravation of her pre-existing asthma as a result of workplace exposures. I accept the employer's argument that the worker did not initially experience such complaints, and that she subsequently also did not suffer from further complaints when she resumed working at the glue press. However, when taken together, the evidence indicates that it is more likely than not that for a period of time the worker suffered from respiratory complaints that were associated with workplace exposures.

It is appropriate to note that in claims such as this, it is not necessary that the condition be directly caused by occupational exposures. As noted in item #29.20 of the *Rehabilitation Services and Claims Manual, Volume II*:

> There are many substances which are either known to cause asthma in a previously health individual, or to aggravate or activate an asthmatic reaction in an individual with a pre-existing asthma condition.

In summary, therefore, I deny the employer's appeal and confirm the December 1, 2006 decision of the Review Division. I conclude that the worker likely sustained a work-caused aggravation of her pre-existing asthma condition.

Workers' Compensation Appeal Tribunal 150, 4600 Jacombs Road, Richmond, B.C. V6V 3B1
Telephone: (604) 664-7800; 1-800-663-2782; Fax (604) 664-7898

Conclusion

I confirm the December 1, 2006 Review Division decision.

The employer did not request appeal expenses. I nevertheless allow appeal expenses, if any, in relation to the production of Dr. M's October 10, 2006 opinion.

Anthony F. Stevens
Vice Chair

AFS/gl

Workers' Compensation Appeal Tribunal 150, 4600 Jacombs Road, Richmond, B.C. V6V 3B1
Telephone: (604) 664-7800; 1-800-663-2782; Fax (604) 664-7898