Noteworthy Decision Summary

Decision: WCAT-2007-03559 **Panel**: Sherryl Yeager **Decision Date:** November 15, 2007

Long Term Wage Rate – Corroboration of Status as Apprentice – Exception to the General Rule – Section 33.1(2) of the Workers Compensation Act

This decision is noteworthy for its analysis of the requirement for corroboration of the worker's status as an apprentice when considering the exception to the general rule for setting the long term wage rate.

The Workers Compensation Board, operating as WorkSafeBC (Board) set the worker's long-term wage rate at 86% of the class average for construction helpers and 12% of the class average for security guards. The Review Division of the Board found the class average earnings for construction helpers should not be pro-rated, as there was no provision for this in law or policy. The worker was hired on a full-time basis and therefore the full-time class average for construction labourers should be used.

The worker appealed to WCAT arguing that he should receive the journeyman rate for carpenters/framers because he had completed level 1 and 2 of an apprenticeship program to become a framer and worked 700 hours for the accident employer prior to his injury.

The panel confirmed this part of the Review Division decision. The panel reviewed the law and policy related to setting a worker's long-term wage rate. Section 33.1(2) of the *Workers Compensation Act* (Act) provides that, for most workers the long-term, or 10-week, wage rate is established based on their earnings in the one-year period prior to the injury. This is commonly referred to as the "general rule." There are, however, a number of exceptions to the general rule. Section 33.2 of the Act states that if a worker at the time of injury is an apprentice in a trade, the determination of his average earnings must be based on his gross earnings, for the 12 month period immediately preceding the date of injury, of a qualified person employed at the starting rate in the same trade, occupation or profession. Policy item #68.40 of the *Rehabilitation Services and Claims Manual, Volume II* provides that an "apprentice in a trade" is an apprentice as defined under the terms and conditions in the provincial *Industry Training and Apprenticeship Ac*t or equivalent statute. The Board considers that an "apprentice in an occupation or profession" is a worker who must complete an "apprenticeship" in order to obtain the license or professional designation required to work in the occupation.

The panel found there was insufficient evidence to support a conclusion that the worker was an apprentice carpenter/framer at the time of his injury. The information on the provincial Industry Training Authority website indicated that simply working the required number of hours in the field was not sufficient; the employer must agree to take on a training role. The worker did not provide any documentary evidence that the employer had agreed to take the worker on as a formal apprentice. The panel considered that it was essential that there be some form of confirmation that the worker was in an apprenticeship program for there to be an exception to the general rule. In the absence of corroborating evidence, any individual who had completed the basic training and was working in the related occupation could potentially be considered an apprentice, even if they were not actually under the guidance of a supervisor who was providing further education and training towards an official certification.

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Introduction

The worker was employed in construction in February 2006 when he fell from a height of approximately 25 feet, landing on a gravel surface below. The worker sustained a burst fracture of his L1 vertebra. The Workers' Compensation Board (Board), operating as WorkSafeBC, accepted his claim and provided wage loss and health care benefits.

In October 2006, the worker stopped attending a Board sponsored occupational rehabilitation (OR2) program. A Board officer advised the worker in a letter dated October 25, 2006 that his wage loss benefits would be suspended until such time as he resumed his treatment program. The worker did not receive benefits from October 4 to 9, 2006.

The worker requested a review of this decision. A review officer denied the worker's request in *Review Decision #R0074637*, dated March 5, 2007.

In the interim, a Board officer advised the worker by letter dated November 3, 2006 that his long-term wage rate would be based on 86% of the class average for construction helpers, as this was the amount of time he had actually worked in this occupation. The officer applied the same reasoning to the class average for security guards, and pro-rated the worker's earnings based on 12% of this amount, as that was the percentage of time he had worked in this occupation prior to the injury. The worker requested a review of this decision.

A review officer granted the worker's request, in part. The review officer found the class average earnings for a construction helper should not be pro-rated, as there was no provision for this in Board policy. The worker was hired on a full-time basis and therefore the full-time class average should be utilized. The review officer confirmed the Board's determination that the worker was not a permanent employee of the security firm, and therefore his actual earnings from this position should be used to calculate his wage rate.

The worker has appealed both Review Decision decisions.

Issue(s)

Should the worker's wage loss benefits be suspended for non-compliance with a treatment program?

Was the worker's long-term wage rate correctly determined?

Jurisdiction

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

This is an appeal by way of rehearing, rather than a hearing *de novo* or an appeal on the record. WCAT has jurisdiction to consider new evidence, and to substitute its own decision for the decision under appeal.

Background and Evidence

Suspension of benefits

The worker was diagnosed with a fracture to the L1 vertebra on February 2, 2006. The surgeon who assessed him in hospital noted that surgery may be required in the future for his injury.

On August 31, 2006 a Board medical advisor provided an opinion that there was no contraindication to the worker attending an 0R2 program at this point in his recovery. The program would offer the worker physical therapy and address his pain issues and functional restoration. Hopefully the worker would be able to begin a graduated return to work to his pre-injury job at the end of the program.

The worker spoke to his case manager on September 1, 2007 and queried his ability to attend the OR2 program. The case manager strongly recommended to the worker that he attend the program.

The worker's physician requested a delay of one week to allow the worker to settle his nerves, as he was very upset about his injury. The case manager agreed to this delay. At the intake on September 20, 2006, the worker reported having changed bladder function and high pain levels in his thoracolumbar spine and left leg. He reported his physiotherapy in July 2006 had caused increased pain. He was taking medication for pain, and to help him sleep.

The worker subsequently began attending the OR2, but after two days reported that he was feeling unwell, had a bad cough, and constipation. He discontinued the program. His physician provided a note dated September 27, 2006, advising the worker should

not have physiotherapy for three days for medical reasons. Another physician from the same clinic provided a note dated October 1, 2006 advising the worker was unable to work at his heavy work for a further week, and physiotherapy at that time was questionable.

The worker was discharged from the OR2 program on October 6, 2006 for non-attendance. He attended 6 out of 13 days, and his level of participation was below satisfactory when he was in the clinic.

A Board team meeting was held on October 10, 2005. At that time, the medical advisor opined that there did not appear to be a contraindication to the worker attending the OR2 program. The team anticipated the worker would return to his pre-injury job, and that the worker would have some permanent impairment due to his compression fracture.

The worker met the case manager on October 10, 2006 and told him he had asthma and a chest infection. He had tested positive for blood in his stool, which his doctor attributed to the medication he took for constipation. The worker said he did not return the case manager's calls because he had already provided medical notes excusing him from the program. The case manager reported the worker told him he was delivering papers to 50 homes in his neighbourhood and trying to register for a class 1 driver training program. The worker indicated at the end of the meeting that he would restart the OR2 program.

On that same date, the case manager determined the worker's benefits would be suspended from October 3, 2006 until he recommenced the OR2 program. In his notations to the file, the case manager indicated he did not accept the worker's reasons for the absence from the program. He felt he had been very reasonable with the worker up to that point.

The worker resumed the OR2 program on October 13, 2006.

The worker was discharged from the OR2 in December 2006 as fit to return to work without limitations. He demonstrated minimal improvement in his physical abilities, with the exception of pushing/pulling a cart, and increasing his sitting and standing tolerance. He did not demonstrate maximal effort on functional testing. The worker reported an increase in the level of pain in his low back and leg during the program. During testing, the worker demonstrated non-organic findings, and there was discrepancy in the neurological testing.

The Board determined the worker was at medical plateau as of December 20, 2006 and transferred his claim to Vocational Rehabilitation Services for assistance in locating a new job. The worker continued to report symptoms he attributed to his injury, and his doctor referred him to an orthopedic surgeon.

The worker's physician referred him to an orthopaedic surgeon, Dr. Sovio, who assessed the worker on February 22, 2007. The worker reported problems with his bladder, pain down the left leg to the ankle, and numbness on the lateral side of his thigh.

An MRI on April 12, 2007 indicated a burst L1 compression fracture with spinal canal stenosis and mild to moderate conus/cauda equina compression that may be the cause of the worker's symptoms.

On April 19, 2007 Dr. Sovio recommended the worker be referred to a specialist.

On May 3, 2007 the participants in a team meeting determined the worker's claim should be transferred back to wage loss, as the new diagnosis from Dr. Sovio and the recent MRI may significantly change the worker's level of function and limitations. The participants also determined consideration would be given to transferring the vocational rehabilitation funds back to the temporary disability "budget."

On June 8, 2007 Dr. Dvorak assessed the worker at the Visiting Specialists Clinic. He believed the fracture had partly remodelled but was significantly impinging on the very tip of the conus medullaris. He recommended decompression surgery and reconstruction. The worker agreed to proceed with the surgery.

Long-term wage rate

The worker disagreed with the initial rate set on his claim. That rate was set based on the worker's actual earnings at the time of injury.

In an undated letter contained on the claim file, the worker indicated his employer was limiting him to 50 to 60 hours bi-weekly. He had started working for the employer on November 2, 2005. Although he wanted to work 8 hours a day, the employer was calling him in later in the day and sending him home early. He had stayed on because the employer promised to increase his pay after three months.

The worker's records regarding his security work indicated he earned $139.78 for two pay periods, then $104.83 for two pay periods, $139.78 for a pay period, and $74.26 for the week prior to his injury.

The worker requested a review of the February 21, 2006 decision setting his initial wage rate. A review officer considered the policy regarding workers with two jobs, and for variable shift workers. He found the worker was a variable shift worker because he only worked five or six hours a day. In *Review Decision #R0063677*, dated May 15, 2006, the review officer directed the Board to determine the worker's wage rate based on his actual earnings from his employment with both employers in the three months prior to his injury.

The worker did not appeal that decision.

On October 25, 2005 an officer in the long-term rate setting unit (LTRSU) set the worker's long-term wage rate based on the class average information for full-time construction helpers and security guards. The LTRSU officer determined the worker's actual earnings in three months prior to his injury equated to 86% of a full-time worker for the company. Therefore, she pro-rated the class average for full-time workers in the construction labourer category ($35,550) by 86% to reach a figure of $30,573. The estimated annualized earnings as a full-time security guard from the second employer were $19,292. The worker had earned 18% of this amount ($3,377.40); therefore, she applied 18% to the class average in this category of $31,440, to reach a figure of $5,659. The worker's annual earnings were set at $33,950.40, creating a gross weekly wage rate of $539.31.

The worker requested a review of this decision. In support of his request for review, the worker's legal representative provided a submission dated November 3, 2006. He argued the worker's wage rate should be based on the class average on a full-time basis for his primary employer. Although not stated explicitly, he appeared to argue the worker's secondary employment should be based on a part-time class average basis.

The review officer noted there was no basis in law or policy for the LTRSU to establish the wage rate on a pro-rated basis. While the worker may not have been working full time since his hire, the employer's records indicated he was hired on a full-time basis, and there was no indication he would not be working full time and/or overtime in the future.

The worker spoke to a VRC on January 10, 2007. At that time, he requested information regarding positions with police forces and BC transit. He advised he had a class 1 licence, an occupational first aid level 1 certificate, and his basic security training (BST) level I and ll. The worker reported he had taken a six-month framing and forming course.

Pre-hearing submissions

Prior to the oral hearing, the worker provided a number of submissions, many of which contained information from the claim file already summarized above. They also included documentation regarding safety courses and labour market information for carpenters. I have reviewed these in their entirety.

In a May 1, 2007 submission, he provided a certificate of completion from an accredited college for the construction forming and framing program, dated August 20, 2005. He also included a letter date May 17, 2006 from the Industry Training Authority (ITA), advising him he had successfully completed levels 1 and 2 of the course work. The letter advised the worker that if he was working with a new employer, he should submit

an updated Trainee/Apprentice and Sponsor/Employer Registration form from the ITA website to keep his apprenticeship records current.

The worker also provided a letter dated June 7, 2007 on letterhead from the security company. This stated he worked as a "permanent" part-time security guard at a fun park site from November 2006 through February 2007 [*sic*]. The word "permanent" was handwritten on the letter and initialled. The letter went on to state that the worker's regular shifts were Fridays and Saturdays, four hours each day.

Oral Hearing

Suspension of benefits

The worker said that during the first six months, because he was wearing the back brace, he did not have significant pain levels. However, after that, if he exercised too much, he could not sleep. The worker said he had problems with his urinary function from the beginning of his injury, and sexual dysfunction was evident after his brace was removed.

The worker said he was taking different types of pills, including sleeping pills, because his condition was very severe.

The worker said he was also constipated during this time. If he tried to exercise, he felt like vomiting. He had blood in his stool and in his saliva. He told the OR2 staff this, but they did not care and told him to do the exercises. The worker said all his symptoms started as soon as the brace was removed.

The worker said he went to the doctor, and was given medications and notes to stay off exercise. His blood and stool were sent to the laboratory for examination. The worker said he was seeing physicians in walk-in clinics when he could not get an appointment with his regular doctor.

The worker said when his symptoms of asthma, coughing and vomiting stopped he said was okay to return to the program. When he returned to the program, he was in pain and tired all the time. He did not get any better during the program, he got worse.

Wage rate

The worker said he had completed level 1 and 2 at the college to be a framer, and provided a certificate verifying this from the accrediting college.

As part of the apprenticeship program, after he worked 1000 hours he would begin the third-year course. The worker said he had approximately 700 hours towards this mark at the time of his injury. The worker said he had the long-term dream of opening his

own business as a carpenter/framer.

He believed he was in an apprenticeship program towards becoming a journeyman carpenter. After someone has experience of one year with the full qualifications, the salary would increase to $24 to $25 an hour.

The worker said he did not receive the May 17, 2006 letter from the college initially, and submit the requested forms, because he had moved. Therefore, he received the letter after the date of injury.

The worker said he completed the course in August 2005, then worked as a handyman, organizing and renovating a pizzeria. This job took approximately one month, and he did it at his own pace. He then worked with another carpenter for a few days, before beginning his position with the injury employer in November 2005. The worker said that in those three months with the injury employer he had worked 700 hours.

He said he gave the employer the form to sign approximately two or three days before the injury accident. The employer reportedly said he would complete and sign it, but did not.

The worker said the employer had promised him that after 12 weeks his wage rate would go up to $22 or $23 an hour. The accident happened before that occurred.

The worker said the security company hired him on a regular part-time basis. When questioned about the word “permanent’ that had been handwritten on the letter, the worker said this was done by the secretary when he pointed out it was missing, but the employer knew this addition had been made when he signed the letter. The worker said regular shifts implied permanent.

The worker said he contacted the employer because of the review officer’s comments about his temporary status. The employer denied making the reported statements to the review officer. He argued that the review officer also did not give him an opportunity to respond to this evidence before making his decision.

The worker said he had his BST I and II, and the security job was his first position in security. He had been looking for part-time work in security prior to obtaining that position. He wanted to work a lot and “get rich.”

Submissions

The worker’s representative argued that the symptoms that stopped the worker from going to the OR2 program were those that were recorded throughout the file, and for which he now required surgery. He explained the symptoms he was experiencing at that time, and was told by the doctor not to participate.

He argued the medication the worker was on for pain control was giving him side effects. When those medications were altered, he was able to re-enrol in the program. The reasons the worker could not attend the program were directly attributable to the injury.

The worker's representative submitted that the worker should receive the journeyman rate for the apprenticeship program. He also should receive a class average rate for his security job. The comment attributed to an unnamed person at the employer's office should be given less weight than the worker's evidence.

Findings and Reasons

Suspension of benefits

Section 57 of the Act provides, in part, that the Board may reduce or suspend compensation where a worker refuses to participate in medical or surgical treatment which the Board considers, based on expert medical opinion, is reasonably essential to promote recovery.

Policy #78.13 of the *Rehabilitation Services and Claims Manual, Volume II* (RSCM II) sets out Board policy with respect to section 57(2) of the Act. This policy provides, in part, that subsection 2(b) is not intended to exclude all patient choices, and even where the terms of the subsection are satisfied, the adjudicator is not bound to reduce or suspend compensation: there is discretion. The policy notes that there must be evidence that the worker was in a position to make a choice, and refused the treatment. Also, the worker must be given a chance to explain before any decision is made.

In determining application of section 57, the three major factors are refusal by the worker, the presence of an expert medical opinion, and the reasonably essential nature of the treatment.

In the matter before me, the medical advisor provided an opinion in August that the treatment was appropriate at that time to facilitate the worker's recovery. Whether this can be considered as confirmation that the treatment was reasonably essential is debatable. The treatment certainly was recommended as the next step in the worker's recovery. However, the issue does not turn on this factor.

The policy directs that a worker must be given a chance to explain before any decision to suspend benefits is made. The worker was given this opportunity on October 10, 2006. At the conclusion of the meeting, the worker indicated he would be participating in the OR2 program. Despite this confirmation by the worker of his intention to participate, the case manager suspended his benefits retroactively.

I do not consider this decision consistent with the wording of the policy. The case manager had been unable to contact and communicate with the worker prior to October 10, 2006. Once he did, the worker was in essence "read the riot act" and put on notice that his behaviour up to that point was unacceptable and would not be tolerated in the future. Had the worker refused to attend the program at that point, the case manager would have been acting in accordance with the guidelines in the policy if he had suspended the worker's benefits from that date until such time as he agreed to resume the program.

However, by suspending the worker's benefits retroactively, after the worker had agreed to resume the program, the case manager's decision was effectively a punitive measure.

I also note in passing that once the Board learned of the worker's cauda equina condition, he was again considered temporarily disabled and his claim reverted back to wage loss benefits. The file evidence indicates there was consideration of an administrative decision to revert the worker's vocational rehabilitation budget back to wage loss. This is an indication the worker had continued to be temporarily disabled and was not medically plateaued. If surgical correction was necessary to resolve the worker's symptoms, an OR2 program may not have been reasonably medically necessary to promote his recovery. The worker indicated that his symptoms which are now attributed to the cauda equina were in fact present at the time of his participation in the OR2 program.

I find therefore that the worker's benefits were inappropriately suspended for the period from October 4 to 9, 2006.

The worker's appeal is allowed on this issue.

Wage rate

On a preliminary matter, I note the prior Review Decision regarding this worker's initial wage rate. The review officer found the worker was a variable shift worker and based his initial wage rate on the total of his earnings in the three-month period in his two jobs. Initial wage rates are determined in accordance with section 33.1(1) of the Act and policies #64.00 and #65.00 of the RSCM II. I therefore do not consider this a binding determination for the purposes of the worker's long-term wage rate, which is established based on sections 33.1(2) through 33.7 of the Act, as appropriate.

Section 33.1(2) of the Act provides that for most workers, the long-term, or 10-week, wage rate is established based on their earnings in the one-year period prior to the injury. This is commonly referred to as the "general rule." There are, however, a number of exceptions to the general rule.

One of these is Section 33.2 of the Act, which provides:

> If a worker at the time of injury is an apprentice in a trade, an occupation or a profession or is a person referred to in paragraph (b) of the definition of "worker", the Board's determination of the amount of average earnings under section 33.1(2) must be based on the gross earnings, as determined by the Board, for the 12 month period immediately preceding the date of injury, of a qualified person employed at the starting rate in the same trade, occupation or profession
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> > (a) by the same employer, or
> > (b) if no person is so employed, by an employer in the same region.

Policy #68.40 of the RSCM ll establishes that the Board considers that an "apprentice in a trade" is an apprentice as defined under the terms and conditions in the provincial *Industry Training and Apprenticeship Ac*t or equivalent statute. The *Industry Training and Apprenticeship Regulation* or equivalent provides a list of trades that require compulsory certification.

The Board considers that an "apprentice in an occupation or profession" is a worker who must complete an "apprenticeship" in order to obtain the license or professional designation required to work in the occupation.

The *Industry Training Regulation* establishes that a carpenter is a "red seal trade" designated for inclusion in the interprovincial standards apprenticeship program.

The provincial ITA indicates on its website, currently located at http://www.itabc.ca, that the work-based training component of an apprenticeship is a key component of the program. The ITA notes that successful completion of both schooling and work-based training is required before an apprentice earns a ticket or certificate.

The ITA goes on to stipulate:

> The work-based training component of an apprenticeship represents an important commitment between the apprentice and the employer. It is recommended that employers have facilities and work opportunities that will expose apprentices to all aspects of a trade, and that they ensure a well-qualified individual oversee an apprentice's work and training.
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> Apprentices and their employers are required to register their apprenticeship or industry training agreements (sometime referred to as an "indentureship") and to document the work-based training completed.

> It's up to prospective apprentices to find an employer willing to hire them and commit to their training.

I could not identify a similar prior WCAT decision that addressed the issue of the standard of evidence necessary to conclude a worker was an apprentice at the time of a compensable injury.

There are a number of Review Division decisions on this issue, which are publicly available on the Board's website. These decisions are not binding on me and I refer to them only for guidance. In particular, I note *Review Decision #26619*, dated May 31, 2005. In that matter, the Board had classified the worker as a casual worker and based her wage rate on her actual earnings to that date. The worker argued she was an apprentice carpenter and provided a certificate of registration in the ITA as an apprentice that a different employer had filed a few months prior to her compensable injury. She also provided a "training registration card" certifying she was a registered apprentice in the trade. The evidence provided by the worker that she was accruing hours towards her apprenticeship satisfied the review officer and he found the exception under section 33.2 of the Act should be applied.

In *Review Decision #R0082873*, dated September 28, 2007, the worker disputed the Board's decision to apply the general rule to the determination of his wage rate. The worker provided a copy of his union card which described him as a member in good standing and a "lather apprentice." The review officer was satisfied the evidence supported a conclusion the worker was an apprentice as defined by the Act and his wage rate should be set on this basis.

These decisions indicate a requirement for some form of collaborative documentation that a worker is registered as an apprentice, either with the ITA, a union, or some other official training agency.

I would concur that it is essential that there be some form of confirmation the worker was in an apprenticeship arrangement in order for an exception to the general rule to be applied. In the absence of corroborating evidence, any individual who had completed the basic training and was working in the related occupation could potentially be considered an apprentice, even if they were not actually under the guidance of a supervisor who was providing further education and training towards an official certification.

The Act sets out apprentices and learners as an exception to the general rule, and the application of a class average generally results in a higher wage rate than would otherwise be the case if pre-injury earnings alone were considered. This indicates recognition by the legislature that these are a different category of workers, who are temporarily earning a lesser amount due to their training, and they may not be fairly compensated for the long term effects of an injury if the general rule is applied.

Registration as an apprentice through the ITA or other equivalent statute designates these workers as having committed to a career path, and having reasonable expectations as to their future earnings in that trade.

In the matter before me, the worker indicated that he had completed numerous hours towards his required total for an apprenticeship. However, he had not registered with the ITA as an apprentice. There is no written documentation from the ITA or forms from the employer confirming that the worker had in fact been hired on an apprenticeship basis. The worker's evidence was that the form had come to him late due to moving, and he had provided it to the employer. The employer had promised to complete it, but then the worker had his accident and it did not get done. I do not consider this sufficient evidence to conclude the worker was hired on an apprentice basis.

The information on the ITA website indicates that simply working the required number of hours in the field is not sufficient, the employer must agree to take on a training role. There was no documentary evidence provided to me that the employer had agreed to take the worker on as a formal apprentice.

I find insufficient evidence to support a conclusion the worker was an apprentice carpenter/framer at the time of his injury. I concur with the reasoning of the review officer that the worker's wage rate should be based on the full-time class average for construction labourers. This decision is consistent with the law and policy and evidence contained on the claim file, that the worker was a full-time, regular worker with the employer for less than 12 months.

In accordance with section 33.3 of the Act, workers in this category are entitled to a wage rate based on the earnings of a similar worker with the same employer. Policy #67.50 provides that the Board may use a class average when this information is not available.

Regarding the worker's earnings as a security guard, I am satisfied that he was hired on a regular part-time basis. The pay stub information indicates a consistency in his shifts. The letter of June 7, 2007 confirms the worker was hired to work regular, scheduled shifts. This evidence was provided in response to the comments of an unidentified source who spoke to the review officer. I prefer this evidence as it is written documentation confirming the worker's employment status by a principal of the company.

In accordance with policy #67.50, I find the worker's earnings from this position should be included his long-term wage rate, based on the earnings of similar employees working for the same employer. If that information is not available, a class average for part time security guards should be utilized.

I allow the worker's appeal, in part.

Conclusion

I vary the decision of the Board set out in *Review Decision #R0074628*, dated February 26, 2007. I find the worker's long-term wage rate should be based on the class average for full-time construction labourers, as directed by the review officer. However, I find the worker was also a regular employee with the employer less than 12 months in his second position as a security guard. I therefore find his earnings for this position should be based on earnings information for a similar employee with the same employer, if available. If this is not available, the worker's earnings should be determined based on the class average for part-time security guards.

I vary the decision of the Board set out in *Review Decision #R0074637*, dated March 5, 2007. I find the decision to suspend the worker's benefits was not consistent with Board policy. Therefore, the worker is entitled to wage loss benefits from October 4 to October 9, 2006.

The worker requested reimbursement for the expense of travel to the oral hearing. As the appeal was successful, this expense is to be reimbursed, in accordance with Board tariffs.

Sherryl Yeager
Vice Chair

SY/ml