

### Noteworthy Decision Summary

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**Decision:** WCAT-2009-00149 **Panel:** L. Alcuítas-Imperial **Decision Date:** January 16, 2009

***Disclosure of claim file not adequate communication of decision – Policy Item #99.20 of the Rehabilitation Services and Claims Manual, Volume I - Practice Directive #C14-2***

This decision is noteworthy as it provides an analysis of why disclosure of a claim file is not an appropriate method for communication of a decision.

In May 2001, the worker, a labourer, was pulling steel beams when he injured his right shoulder. The Workers' Compensation Board, operating as WorkSafeBC (Board), accepted the claim and provided a permanent partial disability award for a right shoulder injury, a C6-7 discectomy and fusion, and chronic pain. The Board further accepted that the worker developed depression as a result of his compensable injury. The employer requested a review of the Board's decision. The Review Division found, in part, that it did not have jurisdiction to address the issue of the acceptance of depression as the Board made the decision to accept depression in a May 25, 2005 memorandum and that memorandum, which was communicated to the parties through disclosure of the claim file, was not before the review officer. The employer appealed to WCAT.

The WCAT panel varied the Review Division decision to the extent of finding that the review officer's determination that she lacked jurisdiction to review the matter of the compensability of the worker's depression was incorrect. First, the panel noted that there was some doubt as to whether a final decision on the compensability of the worker's depression was recorded at the May 25, 2005 team meeting. Second, the panel found that even if it accepted that the May 25, 2005 claim log entry recorded a "decision," no written or verbal communication of the decision to accept depression was ever made to either party, and disclosure of a claim file was not an appropriate method for communication of a decision.

**WCAT Decision Number :** WCAT-2009-00149  
**WCAT Decision Date:** January 16, 2009  
**Panel:** Luningning Alcuitas-Imperial, Vice Chair

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## Introduction

- [1] In May 2001, the worker, a labourer, was pulling steel beams when he injured his right shoulder. The worker applied for compensation from the Workers' Compensation Board (Board), operating as WorkSafeBC. The Board accepted the worker's claim for a right shoulder injury, later diagnosed as a C6-7 disc herniation, and chronic pain. The Board also accepted the worker's claim for a C6-7 discectomy and fusion, which was performed on October 18, 2001. The worker also received a permanent partial disability award.
- [2] On July 27, 2007, a Board officer accepted that the worker developed depression as a result of his compensable injury. The Board officer also accepted that the worker's depression was permanent, but did not accept that the depression caused any further limitations. The Board officer referred the worker's claim to the Board's Disability Awards (DA) Department for assessment.
- [3] The employer requested a review of the Board's decision. In *Review Decision #R0084693*, dated March 6, 2008, a review officer first dealt with a preliminary matter. She determined that it was not open to her to address the issue of acceptance of depression in the context of the review, as she considered that the Board made the decision to accept depression in a May 25, 2005 memorandum and that memorandum was communicated to the parties through disclosures of the claim file. The review officer went on to confirm the Board's decision to refer the worker's claim to the DA Department for assessment of the permanent depression.
- [4] The employer now appeals this review officer's decision to the Workers' Compensation Appeal Tribunal (WCAT).

## Issue(s)

- [5] The following issues arise on this appeal:
1. Does WCAT have the jurisdiction to review the issue of whether the worker's depression is a compensable consequence of his May 2001 compensable injury? If so, is the worker's depression a compensable consequence of his May 2001 compensable injury?

2. Is the worker's depression a permanent condition? If so, should his claim be referred for assessment by the Board's DA Department?

## **Jurisdiction**

- [6] The employer brings this appeal under section 239(1) of the *Workers Compensation Act* (Act), which permits appeals of Review Division decisions to the WCAT. Section 241 of the Act provides that employers may bring appeals under section 239(1) of the Act.
- [7] Among other provisions of the Act relevant to my authority and jurisdiction, the following should be noted. Under section 254, I am authorized to inquire into, hear and determine all questions of fact, law and discretion that may arise or need to be determined in this appeal. My decision is required to be made on the merits and justice of the case. While not bound by legal precedent, I must apply policy of the Board's board of directors that is applicable to the case, except in the circumstances described in section 251. I am authorized to consider new evidence, and to substitute my decision for the decision under appeal. The standard of proof is the balance of probabilities, subject to section 250(4) of the Act. Section 250(4) of the Act states that on an appeal respecting the compensation of a worker if the evidence supporting different findings on an issue is evenly weighted, the issue must be resolved in favour of the worker.
- [8] The employer requested that this appeal proceed by way of read and review of the documentary evidence. In any event, I have reviewed Rule #8.90 of WCAT's *Manual of Rules of Practice and Procedure* (MRPP) to see whether an oral hearing might still be required. I have concluded that it is not, as there is no issue about credibility, and the issues presented in the appeal are largely medical, legal and policy ones. I do not find that an oral hearing would assist me in deciding the appeal. The employer is represented by legal counsel in this appeal. The worker is participating and is represented by a workers' adviser.

## **Background and Evidence**

- [9] I reviewed the worker's claim file, as well as evidence and submissions presented by the parties. I find it is unnecessary to summarize all of the evidence and submissions. I provide the following summary as it relates to this appeal.
- [10] I have also reviewed the worker's claim file to determine whether further information has been placed on it since updated disclosure was last provided to the parties. There are some additional documents and log entries related to the processing of accounts, relief of costs and the subsequent decision of the Board to grant the worker a permanent partial disability award for his depression. I find these documents and

entries are unrelated to the issues I must decide and I have not relied upon them in making my decision. Thus, given the potential for further delay, I have concluded that it would not offend the principles of procedural fairness for me to make my decision expeditiously without providing updated disclosure to the parties.

- [11] As noted above, the worker's compensable right shoulder injury occurred in May 2001. In October 2001, the worker began to report to his family physician that he was experiencing neck pain, headaches and chronic pain.
- [12] The first mention in the claim file evidence about the worker's mood is contained in a January 22, 2002 discharge report from a work-conditioning program. The worker spent nine days in this program. Staff noted that the worker reported being very low in mood, quite depressed and fed up dealing with all of his different symptoms. Staff thought that the worker would benefit from assistance from a clinical counselor for his low mood.
- [13] In a February 7, 2002 intake report for an occupational rehabilitation program, staff noted that a psychosocial assessment revealed the worker had moderate depression, anxiety and severe psychosocial stress. Staff had planned for treatment to improve the worker's ability to actively manage his pain; but the worker ended up finishing the program earlier than expected due to increased symptoms.
- [14] There is medical evidence from 2002 and 2003 that deals with the worker's ongoing neck symptoms. I note that at one point, the orthopaedic surgeon who performed the worker's discectomy reported that the worker had suffered a bit of a collapse in the cervical spine.
- [15] The next specific mention about the worker's mood was made in a June 8, 2004 intake report for a chronic pain program. Staff noted that the worker presented with significant depression, but that he related it to his pain. Staff noted that the worker reported that not having a significant other was also adding to his depressed mood. The worker told staff about a suicide attempt the previous year, that he was experiencing shifts in mood and anxiety attacks, and elements of post-traumatic stress disorder (PTSD) following a 1983 incident where he was buried beneath logs. I note that the worker declined to make a claim for this 1983 incident, although the Board advised him that it was open to him to do so.
- [16] In an intermediate report, staff noted that the worker continued to be depressed during the initial weeks in the program. They noted that the worker had reported suicidal ideation during the first full week of the program, but this had diminished. The worker reported that he continued to isolate himself socially, he felt limited by his pain, his sleep was disrupted, he had an increased headache, and continued to experience features of PTSD. Staff noted that they had advised the worker about behavioural

changes aimed at altering his mood, but the worker said he found them difficult to implement. Staff anticipated that the worker would likely need further counseling and that his medications might need to be adjusted.

- [17] In a July 23, 2004 discharge report, program staff noted that the worker still identified his mood as depressed. Staff also noted that the worker admitted to suicidal ideation as recently as the night before but that he denied any plan or intent to harm himself. Staff also recorded that the worker denied that the 1983 incident was the issue, as he was dealing with it. The worker maintained that he wanted to talk to his family physician, Dr. Barss, about his current condition.
- [18] The Board held a team meeting on August 11, 2004 to review the worker's claim. In a claim log entry of that date, a Board psychologist noted that there was no American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders*, 4<sup>th</sup> edition (DSM-IV) diagnosis of a depressive disorder on file. She noted that the worker had depressive symptoms, which might be related to chronic pain.
- [19] In claim log entries dated August 13, 2004 and August 16, 2004, a Board medical advisor and the Board psychologist both expressed the opinion that there was not enough information on file to understand the causation of the worker's depression.
- [20] In the meantime, the worker continued to see Dr. Barss. In a September 2, 2004 progress report, Dr. Barss noted that the worker's depression and mood had improved, but I note that he did not detail the reasons for this improvement.
- [21] In a March 2, 2005 claim log entry, a Board officer recorded that the worker's representative requested that the Board make a formal decision on the acceptance of the worker's depression.
- [22] In response, the Board psychologist reiterated in a March 21, 2005 claim log entry that she was unable to provide definitive diagnosis or etiology based on the current information on file.
- [23] The Board then sent the worker for a psychological assessment with Dr. Neilson, registered psychologist. In an April 19, 2005 report, Dr. Neilson first recorded the worker's history. She noted that the worker had a 15-year relationship end in 2002, that he had briefly lost consciousness during his 1983 accident and that he had been taking Effexor (an anti-depressant medication) for 4 years. She noted that the worker denied having any prior mental health issues and that he denied ever being treated by a psychiatrist or undergoing counseling.
- [24] Dr. Neilson diagnosed the worker along Axis I of the DSM-IV with a major depressive disorder and a pain disorder (associated with both psychological factors and a general medical condition).

- [25] In dealing with the causation of the worker's depression, Dr. Neilson noted that there was little mention of the worker's mood in the file; but that the worker told her that he was prescribed anti-depressant medication within a few months of his accident. Dr. Neilson thought that this suggested that the worker's depressive symptoms appeared following his May 2001 accident.
- [26] Dr. Neilson concluded that there was a strong relationship between the worker's experience of pain and his depressive symptomatology. She stated that the worker's depression appeared to be a significant limitation with regards to the worker's development of pain management strategies and an increase in his level of functioning. Dr. Neilson described this as the worker had developed a "vicious cycle." She thought that the worker might benefit from supportive individual therapy aimed at helping him to cope with depression and develop more active pain management strategies. She also noted that a referral for psychiatric consultation regarding medication issues was warranted.
- [27] The Board psychologist reviewed Dr. Neilson's report in a May 4, 2005 claim log entry. She noted that Dr. Neilson's methodology and procedures were appropriate. Although the Board psychologist admitted that she had not seen the worker, she concluded from a review of the file and Dr. Neilson's report that the information provided was consistent with a diagnosis of major depressive disorder and a pain disorder.
- [28] In a May 25, 2005 claim log entry, a Board case manager told the worker's representative that the worker's claim was to be discussed at a team meeting. The worker's representative advised that the Board case manager did not have to contact him as he could access the results of the team meeting over the e-file system.
- [29] In another May 25, 2005 claim log entry, the results of the team meeting were noted. In the category of "issues," a Board officer recorded that depression was now accepted, but that there were questions about whether the condition was temporary or permanent; treatment if the condition was only temporary; and what were the worker's restrictions and limitations due to the depression. The claim log entry also noted that the Board psychologist stated that, based on Dr. Neilson's report, depression was a permanent condition. Under the category of "action plan," the Board officer noted that the Board case manager was to make a final decision about whether the worker's depression was temporary or permanent.
- [30] Dr. Barss then continued to file numerous progress reports with the Board throughout 2005, 2006 and 2007 noting the worker's depression and chronic pain.
- [31] On November 30, 2005, Dr. Stevenson, psychiatrist, conducted a psychiatric assessment of the worker. He noted that the worker maintained that things were going well for him until he was injured in 2001. He also noted that the worker felt that he had

been depressed since 2001 and felt that he had been worse in the past than he was currently. In terms of the worker's family history, Dr. Stevenson noted that the worker's father, brother and sister all abused alcohol. The worker admitted to excessive use of alcohol in the past. Dr. Stevenson diagnosed the worker on Axis I of the DSM-IV with a major depressive disorder chronic in partial remission. Dr. Stevenson noted that the worker agreed to go for a trial of psychotherapy and that he was not making any change in the worker's medications.

- [32] In a November 3, 2006 claim log entry, the Board psychologist reviewed the conclusions of the two clinicians. The Board psychologist referred the Board case manager to her previous May 2005 claim log entry about causation. She noted that Dr. Stevenson did not provide an opinion on causation. In terms of the nature of the worker's condition, the Board psychologist stated that it was likely that the worker's condition had not resolved entirely if everything continued the way it was noted by Dr. Stevenson on November 30, 2005. The Board psychologist concluded that without any psychotherapy, it was possible that the worker's chronicity might continue for the next 12 months.
- [33] On April 20, 2007, the worker's representative contacted the Board via e-mail. He noted that he had first contacted the Board in May 2005 to request acceptance of a psychological condition on the worker's claim. He further noted that the Board psychologist had now reviewed the worker's claim.
- [34] In an April 24, 2007 claim log entry, a Board officer recorded a conversation with the worker. The worker told the Board officer that he did not follow up with Dr. Stevenson about further treatment for his psychological condition.
- [35] In a June 12, 2007 claim log entry, a Board medical advisor stated that there was no medical evidence that the worker's depression was likely to significantly change over the next 12 months. The Board medical advisor also stated that there was no evidence that any medical restrictions were appropriate regarding the psychological diagnosis, noting that the worker himself did not describe any limitations relating to the diagnosis.
- [36] As noted above, the employer's counsel requested a review of the Board decision underlying this appeal. In support of this request, counsel provided a written submission. He argued that the Board had made a wrong decision on causation of the worker's depression, as there was evidence that the worker had pre-existing symptoms. He cited a May 2, 2001 diagnosis of depression for which Effexor was prescribed; as well as other evidence about possible causes of the worker's depression (including the 1983 incident, pain in the legs, unfair treatment by the Board, the end of the worker's 15-year relationship and the worker's upbringing). The employer's counsel also noted that the worker had not undergone the recommended psychotherapy and

pointed out inconsistencies in the worker's evidence. He argued that the reports of Dr. Neilson, Dr. Stevenson and the Board psychologist could not be relied upon because they were based on the worker's own subjective reports.

- [37] As noted in the review officer's decision, there have been a number of previous review and appellate decisions on this claim. I have not reviewed them here, but will deal with two specific points.
- [38] I point out a portion of *WCAT Decision #2006-03755* (dated September 29, 2006) as it was noted in the submissions of the parties (which I will review in more detail below). In this previous decision, the WCAT panel looked at the issues arising from the Board's decision to award the worker a permanent partial disability award to recognize the permanent impairment arising from his cervical disc herniation and surgery. The WCAT panel concluded that the worker was not entitled to a projected loss of earnings award, but noted that the compensability of a psychological condition and its impact on the worker's employability was not before her. The WCAT panel considered that the Board had not provided the worker with a decision letter on that matter.

### **Submissions**

- [39] The employer's counsel provided a June 27, 2008 written submission to the panel. He relied on his previous submission to the Review Division, arguing that the worker's depression was not compensable and not permanent, as there was evidence that the condition improved dramatically.
- [40] The worker's representative provided a July 7, 2008 written submission. He interpreted the employer's counsel's submission as arguing that the prior WCAT decision mentioned above was determinative in concluding that the worker's depression was non-compensable. However, the worker's representative argued that the previous WCAT panel determined that the issue of the worker's psychological condition was not before the panel. Therefore, the worker's representative argued that the Board was entitled to consider afresh the worker's entitlement under sections 29, 30 and 23 of the Act following the Board decision to accept the worker's depression.
- [41] While the worker's representative admitted that the worker had pre-existing depression, he argued that he had not received formalized treatment for that depression and that the depression had not been disabling prior to the 2001 compensable injury. He noted the evidence of the worker's suicide attempt, which was subsequent to the 2001 compensable injury. The worker's representative cited the evidence of various psychological assessments that confirmed the causal connection between the worker's current depressive symptoms and the 2001 compensable injury and its aftermath. Moreover, the worker's representative noted that there was no contrary opinion on the causation of the worker's depression. He asked that the panel confirm the review officer's decision.



- [42] In rebuttal, the employer's counsel provided a July 22, 2008 written submission. He argued that the worker's representative had misinterpreted his argument about the effect of the previous WCAT decision. Counsel submitted that the worker had already been compensated for the depression in the previous WCAT decision.
- [43] The employer's counsel also disputed the argument that the worker had never received formalized treatment for depression prior to the 2001 claim. He argued that the worker had sought medical attention for depressive symptoms and had been prescribed anti-depressant medication.
- [44] As for the argument of the worker's representative that the worker's depression did not impact his employability, the employer's counsel pointed to the worker's own evidence that he had limited employment between 1984 and the commencement of his employment with the accident employer. The employer's counsel argued that it was reasonable to assume that the pre-existing condition of depression must have had some impact on the worker's employability, as he was receiving treatment for that condition.
- [45] As for the worker's history of symptoms, the employer's counsel noted the worker's own evidence that he was psychologically doing as well as ever. As well, the employer's counsel questioned whether there was corroborating evidence to support the worker's statement that he had attempted to commit suicide.
- [46] I note that both parties expressed disagreement with the review officer's determination that she had no jurisdiction to review the issue of whether the worker's depression was a compensable consequence of the worker's May 2001 compensable injury.

## **Reasons and Findings**

### *Suspension request*

- [47] I note that in the submission of the employer's counsel, he asked that this appeal be suspended pending the outcome of Review Division decisions on the worker's permanent partial disability award for depression and a relief of costs. At the time of the employer's submission, those Review Division decisions were still pending. However, since that time, the Review Division has issued decisions on those matters. The worker and the employer have appealed *Review Decisions #R0089225 and #R0086524*, both dated July 18, 2008 and which deal with the worker's permanent partial disability award for depression, to WCAT. Those appeals are pending before WCAT. I deny the employer's counsel's request to suspend this appeal, as there is no authority in the Act to suspend a WCAT appeal pending the outcome of another WCAT appeal (with the exception of the provisions of section 251 regarding referrals to the Chair). In any event, I consider that it would be beneficial for me to issue my decision

on this appeal before the other WCAT appeals are heard, as the resolution of the issues arising on this appeal may or may not render some of the issues on the other WCAT appeals moot.

- [48] I note that the employer's counsel also appealed to WCAT, *Review Decision #R0086523*, dated March 17, 2008 and which deals with the employer's request for relief of costs. However, WCAT dismissed that appeal in a July 7, 2008 letter issued by a deputy registrar. The deputy registrar determined that WCAT was barred from hearing that appeal, because the review officer had referred matters back to the Board under section 4(d) of the *Workers Compensation Act Appeal Regulation, B.C., Reg. 321/02*.

*Issue #1: Does WCAT have the jurisdiction to review the issue of whether the worker's depression is a compensable consequence of his May 2001 compensable injury? If so, is the worker's depression a compensable consequence of his May 2001 compensable injury?*

- [49] Since the worker's injury occurred before June 30, 2002, the policy relevant to this issue is set out in the *Rehabilitation Services and Claims Manual, Volume I (RSCM I)*, except with respect to policy item #22.00, in which case the *Rehabilitation Services and Claims Manual, Volume II (RSCM II)* applies. Policy item #22.00 of the RSCM I states that for all decisions, including appellate decisions, on or after February 1, 2004, one must refer to item #22.00 of the RSCM II regardless of the date of the original work injury or the further injury.

- [50] As noted above, both parties disagree with the review officer's view of her jurisdiction on the underlying review.

- [51] Although not binding on me, I first reviewed previous WCAT decisions on the issue of what constitutes a reviewable decision. Although I have not disclosed these to the parties, I consider that there is no impact on natural justice as the parties agree that the decision underlying this appeal contained a reviewable decision on the matter of the compensability of the worker's depression. Moreover, these decisions are classified as noteworthy and are publicly available on the WCAT web site at [www.wcat.bc.ca](http://www.wcat.bc.ca).

- [52] In *WCAT Decision #2006-02121*, a three-person panel went through a comprehensive review of the law and policy on this matter in the context of section 96(5) of the Act, which deals with the Board's limited reconsideration power. The panel concluded that a reconsideration decision was not "made" for the purpose of the 75-day time limit in section 96(5) until the final decision resulting from the reconsideration process has been recorded in the file and communicated in some form to the affected party(ies). The panel did not go on to address the method or mechanics of communication of the decision to the interested parties, as it was not necessary to do so for the purposes of their decision. However, the panel commented that from an evidentiary perspective it is

clearly preferable that the decision be communicated in the form of a dated decision letter issued by a Board officer, so that there is no ambiguity about the date and content of the decision.

- [53] In *WCAT Decision #2006-02669*, a panel reviewed the outcome of *WCAT Decision #2006-02121*. The panel concluded that a decision is not made until the Board issues a decision via a letter or an oral communication. There is no requirement that the decision be issued in writing to be effective.
- [54] In *WCAT Decision #2007-01927*, a panel found that a Board letter gave rise to review rights. Although the panel accepted that a previous oral communication of the decision was sufficient for the purposes of the 75-day time limit on reconsideration under section 96(5) of the Act, the panel found the Board letter was a reviewable decision, as it was the first time that an issue had been specifically addressed in any written correspondence on the claim. The panel noted that the situation arising on the appeal before her illustrated the profound good sense behind policy item #99.20 of RSCM I.
- [55] In this case, the review officer found that the July 27, 2007 Board decision did not contain a reviewable decision on the issue of the compensability of the worker's depression. The review officer found that the Board had already recorded a decision to accept the worker's depression in the May 25, 2005 claim log entry recording the results of a team meeting. The review officer found that this decision had been communicated to the parties as the parties received disclosure of the claim file.
- [56] I agree with the parties that there are serious flaws in the review officer's analysis. Firstly, there is some doubt as to whether a final decision on the compensability of the worker's depression was recorded at the May 25, 2005 team meeting. This is the first part of the test set out by the panel in *WCAT Decision #2006-02121*. There is ambiguity in the way that the results were recorded, as the acceptance of the worker's depression was merely recorded under the category of "issues." As well, the entry appears to imply that a final decision (albeit perhaps limited in scope to the question of whether the depression was temporary or permanent) was to be made by the case manager.
- [57] Secondly, even if I accept that the May 25, 2005 claim log entry records a "decision," I cannot agree with the review officer's analysis that there was communication of the decision. Although I agree that it is not mandatory that the Board issue a decision letter in writing (as I agree with the analysis of the panel in *WCAT Decision #2006-02669* and I have also referenced the Board's Practice Directive #C14-2), I note that no verbal communication of the decision to accept depression was ever made to either party. I consider that disclosure of a claim file is not an appropriate method or mechanism for communication of a decision. I have serious doubts that a party who receives disclosure of a claim file for other purposes (as was the case here where the employer received disclosure for the purposes of another WCAT appeal) would be combing through a large and complex claim file for Board decisions that have not been

communicated to the parties. I think that would be an unfair obligation to place on parties. My comment is that this situation shows the benefit of issuing a decision letter to the parties who are adversely affected by a Board decision, as outlined in Board policy in item #99.20 of the RSCM I.

[58] I conclude that the July 27, 2007 Board decision contained a reviewable decision on the issue of the compensability of the worker's depression. Therefore, I have jurisdiction to address this issue, given that item #14.30 of WCAT's MRPP states that WCAT has jurisdiction to address any issue determined in either the Review Division decision or the Board decision which was under review.

[59] I will now go on to determine the substantive issue of whether the worker's depression is a compensable consequence of his May 2001 compensable injury.

[60] Item #22.00 of the RSCM II provides that once it is established that an injury arose out of and in the course of employment, the question arises as to what consequences of that injury are compensable. The minimum requirement before one event can be considered as the consequence of another is that it would not have happened but for the other.

[61] Item #22.00 goes on to state that:

Not all consequences of work injuries are compensable. A claim will not be reopened merely because a later injury would not have occurred but for the original injury. Looking at the matter broadly and from a "common sense" point of view, it should be considered whether the work injury was a significant cause of the later injury. If the work injury was a significant cause of the further injury, then the further injury is sufficiently connected to the work injury so that it forms an inseparable part of the work injury. The further injury is therefore considered to arise out of and in the course of employment and is compensable.

[62] Having reviewed the evidence, I am satisfied that the worker's May 2001 compensable injury was a significant cause of his depression.

[63] I acknowledge the employer's counsel's argument that there is some evidence that the worker had other stressors in his life related to the 1983 incident and the end of his relationship. However, there is no supporting medical opinion or psychologist's opinion that shows these other stressors or events were a significant cause of the worker's depression. On the contrary, the weight of the opinions of the worker's treating physician and the psychologists who interviewed him or reviewed his file is that the worker's May 2001 compensable injury was a significant cause of his depression. Law and policy only requires that the compensable injury be a significant cause of the later

condition, not necessarily its sole cause. I rely on and accept the opinions of the Board psychologist, Dr. Barss, and Dr. Neilson in this regard. I note that I agree with the Board psychologist that Dr. Stevenson did not express an opinion on causation. While I acknowledge that Dr. Barss and Dr. Neilson do not give detailed reasons to support their opinions, I found their opinions persuasive. I cannot agree with the argument of the employer's counsel that their opinions should be discounted because they rely on the worker's subjective reports. It is reasonable to me that the diagnosis of a psychological condition would rely to a large extent upon a patient's subjective reports of symptoms. I also note Board policy in item #97.32 of the RSCM I provides that a worker's own evidence about matters within his or her knowledge cannot be rejected simply on the assumption that it must be biased.

[64] While I acknowledge that the evidence is not clear about when the worker's use of anti-depressant medication began, I find that there is sufficient evidence of a temporal connection between the onset of the worker's depression and his May 2001 compensable injury. The worker's low mood was noted approximately one year after his compensable injury and was consistently reported after that time, which includes the period when the worker faced the difficult challenge of dealing with a possible failure of the surgical procedure. I also accept that there is sufficient evidence of the severity of the worker's depression, given the evidence of the worker's suicide attempts and of the effect of the depression on his functional abilities.

[65] I deny the employer's appeal on this issue and confirm this aspect of the review officer's March 6, 2008 decision.

*Issue #2: Is the worker's depression a permanent condition? If so, should his claim be referred for assessment by the Board's DA Department?*

[66] Since the worker's injury occurred before June 30, 2002, the policy relevant to this issue is set out in the RSCM I, except with respect to policy item #96.20, in which case the RSCM II applies. Policy item #96.20 of the RSCM I states that for all decisions, including appellate decisions, on or after July 2, 2004, one must refer to item #96.20 of the RSCM II.

[67] Board policy in item #34.10 of the RSCM I defines a "temporary" physical impairment as one which is likely to improve or become worse and is therefore not stable. The policy item goes on to state that:

Realistically speaking, ongoing change is a natural feature of human physiology. Impairments resulting from an injury commonly deteriorate or improve over a period of years. However, an impairment is not considered temporary simply because it is possible that, as the worker

becomes older, the condition may change or the worker may have to undergo further treatment. It only remains temporary when such a change can reasonably be foreseen in the immediate future.

- [68] Board policy in item #34.54 of the RSCM I provides guidelines to help determine when a condition is stabilized. It provides that a medical doctor should examine the worker and assess whether the worker's condition has definitely stabilized or not. If the worker's condition has definitely stabilized, the condition is deemed permanent. If it definitely has not yet stabilized, the condition is still temporary. If the doctor is not sure if the condition has definitely stabilized or not, the doctor must determine whether there is a likelihood of minimal or significant change. A condition will be deemed to have plateaued or become stable when there is little potential for improvement or where any potential changes are in keeping with normal fluctuations. In the case of potential for significant change in the condition, Board policy provides that if that change is going to be protracted (generally over 12 months), the condition is considered permanent.
- [69] I find that the weight of the evidence is that the worker's depression is a permanent condition. I rely on and accept the opinions of the Board psychologist and Board medical advisor on this matter. They based their opinions on a thorough review of the worker's claim file and, in particular, the opinions of the assessing psychologists. I cannot agree with the argument of the employer's representative that the worker's depression "improved dramatically." Although I acknowledge Dr. Stevenson said the worker's depression was in partial remission, I also note that there is ample medical evidence up to 2007 of the worker's ongoing difficulties with depression. I also note that there is no dispute that the worker has chronic pain as a result of his May 2001 compensable injury. Moreover, while I acknowledge the argument that the worker made some choices about whether or not to undergo psychotherapy, Board policy contemplates that the necessity for further treatment does not simply lead to the conclusion that a worker's condition is temporary.
- [70] Given my finding that the worker's depression is a permanent condition, I also find that the Board properly referred his claim for assessment to the DA Department. Board policy in item #96.20 of the RSCM II provides that if an actual or potential permanent disability is accepted on the claim, the Board officer will refer the file to the DA Department for assessment.
- [71] I deny the employer's appeal on this issue and confirm this aspect of the review officer's March 6, 2008 decision.

## **Conclusion**

- [72] I deny the employer's appeal and confirm the review officer's March 6, 2008 decision, with the exception that I do not agree with her analysis that she lacked jurisdiction to review the matter of the compensability of the worker's depression. I find that I do have the jurisdiction to review that matter.
- [73] I further find that there is sufficient evidence that the worker's depression was a compensable consequence of his May 2001 compensable injury; the depression is a permanent condition; and it was appropriate for the worker's claim to be referred for assessment by the Board's DA Department.
- [74] There was no request for reimbursement of appeal expenses and accordingly I make no order in that regard.

Luningning Alcuitas-Imperial  
Vice Chair

LA/jkw