

### Noteworthy Decision Summary

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**Decision:** WCAT-2009-01094    **Panel:** Beatrice Anderson    **Decision Date:** April 22, 2009

***Section 55 of the Workers Compensation Act – Limitation period – Policy item #22.00 of the Rehabilitation Services and Claims Manual – Compensable consequences***

This decision determined that the limitation period set out in section 55 of the *Workers Compensation Act* (Act), which requires a worker to apply for compensation within one year of the date of injury or disablement from occupational disease, does not apply to an application by a worker for compensation related to a consequence of the original injury where the Workers' Compensation Board, operating as WorkSafeBC (Board), has already accepted the original injury.

In this case, the worker lacerated her thumb. She reported the injury to her employer but did not make a claim for compensation. Several years after the original injury the worker applied for compensation related to a Hepatitis C condition which she said resulted from the thumb laceration. She had been diagnosed with the condition 18 months after the original injury and had started to reduce the hours that she worked about two years before her application for compensation.

The Board accepted the worker's claim for compensation related to the laceration. The Board's decision did not address the limitation period problem, and that decision was not appealed. The following day the Board issued a second decision and found that the worker's Hepatitis C condition was not related to the laceration. The worker appealed the second decision and in the course of the appeal before WCAT the employer argued that the worker's application was out of time. The WCAT panel found that section 55 of the Act does not apply to compensable consequences of work injuries. Once the Board has accepted the original condition the section 55 threshold has been met. The panel stated that, had the employer appealed the first decision accepting the laceration, the section 55 matter would have arisen.

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**Panel:** Beatrice K. Anderson, Vice Chair

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## Introduction

- [1] The worker received a letter dated May 31, 2007 from an officer of the Workers' Compensation Board<sup>1</sup> (Board). She was advised that the Board had concluded that her hepatitis C had not developed as a result of an injury she had on April 11, 2000, or as a result of the general nature of her employment as a sterile-processing technician.
- [2] The worker appealed this decision but, on January 23, 2008, the Review Division confirmed the Board's conclusions (see *Review Reference #R0082945*). The worker appeals the Review Division decision.

### *Preliminary Matter*

- [3] The decision under appeal contains two issues. The first is whether the worker's hepatitis C was caused by a cut she received at work on April 11, 2000. The second decision in the letter under appeal is whether the worker's general employment as a sterile-processing technician gave rise to the hepatitis C.
- [4] At the start of the appeal process, the employer had sought to raise the issue of the application of section 55 of the *Workers Compensation Act* (Act) because the worker did not make an application for compensation until February 2007. The Review Division decision does not deal with this issue, it merely comments that the adjudicator waived section 55 with respect to the cut injury in April 2000.
- [5] This matter was first assigned to me as a read and review in September 2008 and, after reviewing the file, I held a teleconference with the employer and the worker's representatives on September 17, 2008 to discuss the application of section 55 to the decisions before me. After that teleconference, I concluded that the application of section 55 was an issue in relation to the question of whether the hepatitis C was an occupational disease due to the nature of the worker's employment as a sterile-processing technician. This is because she had missed time from work well before her application.
- [6] However, I advised the parties that it was not clear whether the section 55 issue arose in connection with the worker's claim that her hepatitis C was caused by the accepted

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<sup>1</sup> operating as WorkSafeBC

cut to her thumb back in April 2000. Moreover, after the teleconference, I concluded that an oral hearing would shed some light on the facts in the case and this was held on October 22, 2008.

- [7] I have now had the opportunity to hear the submissions put forward by the employer at the oral hearing as well as in their letter dated April 30, 2008. I have also acceded to the employer's request in the telephone call of March 5, 2009 to issue a separate decision about the application of section 55 to this claim.

**Issue(s)**

- [8] The issue is whether the worker's claim for compensation for hepatitis C is statute-barred by the provisions of section 55 of the Act.

**Background and Evidence**

- [9] The worker is a 50-year-old sterile-processing technician at a large inner city hospital. On April 11, 2000, she cut her thumb on a stitch-cutter, an implement that was used in the sterile-processing area to pry bone chips and other matter left on surgical tools after operations. The incident had been reported at the time to the employer but no claim made to the Board.
- [10] The worker was diagnosed with hepatitis C in November 2001, 18 months after the cut to her thumb.
- [11] The worker did not make an application for compensation until February 2007 although she started to reduce the hours she worked about two years before her application. At the time of the cut and when she was diagnosed, she had a 0.8 position (8/10 of a full-time position). She began to reduce her hours well before her application for compensation.
- [12] There is virtually no mention of section 55 in the claim log which documents the collection of information and decision-making process. The telephone log contains a message from the adjudicator to the worker on March 20, 2007. The adjudicator wrote that she called the worker to say that she found that "special circumstances exist that precluded her from putting in an application within one year of the incident". The worker was also told that any "possible sequelae" to the wound would be reviewed by the Occupational Disease Department of the Board.
- [13] On May 30, 2007, the Board issued a brief letter written to the employer and copied to the worker stating that the worker's claim had been accepted for right thumb laceration. The letter went on to say that the worker had been informed that her claim for hepatitis C had been disallowed and that a decision about this was being sent.

- [14] In a separate decision, dated the following day, May 31, 2007, the adjudicator considered two issues; whether the worker had developed hepatitis C as a result of the general nature of her employment or whether it had arisen as a result of the thumb cut on April 11, 2000. The adjudicator decided that the worker's hepatitis C was related to neither the employment nor the injury in 2000. That is the decision that was appealed by the worker.
- [15] The employer did not appeal the May 30, 2007 decision to accept the stitch-cutter injury.

### **Reasons and Findings**

- [16] Section 55 is the portal through which every claim must pass whether it is acknowledged or not. Particularly, section 55(2) requires that an application for compensation be made within one year of the date of an injury, or one year of the date of disablement for an occupational disease. Before the Board can accept a claim outside these time limits, there must be special circumstances which precluded the filing of the claim in the time limits.
- [17] In most cases, the matter never arises because the application for compensation is made well within these time limits. However, in my view, section 55 arises in connection with the worker's claim.
- [18] The worker's application in February 2007 for an injury to her thumb in April 2000 clearly raises the issue. The laceration to the thumb was a personal injury and her application was almost six years after the one-year time limitation had passed. The Board acknowledged this in the log entries and adjudicated it, despite the fact that there is no mention of this consideration in the decision letter of May 30, 2007 which accepted the claim. Had the employer appealed that decision, in my view (despite the absence of any reference to section 55 in that letter), the matter would clearly have arisen in connection with the late application for the stitch-cutter injury.
- [19] I also consider that it arises in connection with the adjudication in the decision before me which concerns the relationship between the hepatitis C and the worker's employment as a sterile-processing technician. The Board was adjudicating whether the occupation caused the disease under section 6(1) of the Act.
- [20] The worker was disabled by symptoms of the hepatitis, as evidenced by cutting back her hours of work well before her application in February 2007. Given the length of time between the diagnosis, the disablement and the application for compensation, I consider that the issue of whether the claim is statute-barred by the provisions of section 55 is a live issue.

- [21] The difficulty here is that the worker is not interested in pursuing this. She makes no argument that her general employment duties caused her hepatitis C. The only argument she makes is that the hepatitis C was caused by the thumb laceration in April 2000 and this is an argument that the hepatitis is a compensable consequence of the accepted thumb laceration. That begs the question of whether the statutory time limits for making a claim applies to a compensable consequence of an accepted claim.
- [22] It is the employer's opinion that it does. They argue that the worker knew in 2001 that she had hepatitis, she started to experience the symptoms and cut back her hours well before she made her application in February 2007. The employer argues that it does not matter that the Board has accepted the stitch-cutter injury. The worker's application was for hepatitis C, an occupational disease about which she had known for years.
- [23] Compensable consequences of work injuries are discussed in policy item #22.00 of the *Rehabilitation Services and Claims Manual, Volume I* (RSCM I) and the *Rehabilitation Services and Claims Manual, Volume II* (RSCM II). Although the wording in that section changed in 2004, the test for determining whether a second injury is a consequence of an accepted claim remains the same.
- [24] The employer provided a previous Workers' Compensation Appeal Tribunal (WCAT) decision which they submit supports their position. In *WCAT-2003-03728*, the worker had suffered a laceration of his hand in 1994. In 2001, he was diagnosed with infectious hepatitis and made an application to the Board for that occupational disease. The worker said that at the same time he had lacerated his hand, he had suffered a needlestick injury. The Board took the position that his claim for hepatitis was statute-barred by section 55.
- [25] The panel did not agree. The vice chair referred the matter back to the Board for adjudication "as a reopening of the 1994 claim to determine if the worker has developed an occupational disease as a **compensable consequence**, arising from the 1994 claim". The panel found that the worker was not statute-barred from applying by section 55 of the Act.
- [26] This decision does not support the employer's argument that compensable consequences are subject to the time limitations set out in section 55 of the Act.
- [27] This is not an issue that has arisen often in other WCAT decisions. However, in *WCAT-2004-03420*, another panel dealt specifically with that matter. In that case (which involved a variety of issues), the worker had a **left** knee injury in 1977 which the Board accepted and for which they paid benefits including a pension. In 2002, the worker returned to the Board arguing that he had injured his **right** knee in 1977 when he fell down some stairs. He attributed this fall to the left knee injury and the consequent instability that had followed the compensable injury. The Board took the position that the worker's claim for **right** knee injury was statute-barred under

section 55 of the Act. the adjudicator said that the worker had not been precluded from applying for compensation within one year of the date of that incident in 1977. At page 13 of the decision, the panel said:

I agree...that section 55 does not apply so as to bar adjudication of compensable consequences of accepted injuries. The worker had met the requirements of section 55 when he submitted an application in connection with his left knee problem. It was not necessary for him to satisfy the requirements of section 55 a second time in order to establish a claim for a compensable consequence of that original accepted injury.

- [28] In both of these decisions, the panel found that the time limitations in section 55 did not apply to compensable consequences of accepted injuries.
- [29] It is common for secondary injuries to arise well after the first injury. The most obvious parallel is the development of osteoarthritis. Osteoarthritis is a disease process and the Board treats it as such. It is common for workers to come back to the Board well after a compensable traumatic injury to a joint and argued that post-traumatic osteoarthritis developed over time as a result of the original injury. In most cases, the worker is well aware of the change in their joint long before they approach the Board for more benefits. There is usually a history of increasing medical consultations and sometimes even disability before the Board is asked to adjudicate the relationship. I have not seen an instance where the Board has said that the conditions in section 55 must be met in order to determine whether the osteoarthritis has arisen as a result of a traumatic injury to a joint.
- [30] The circumstances in this case are somewhat unusual in that the worker's application for the original personal injury occurred at the same time as the consideration of whether the hepatitis C was a compensable consequence of that injury (a day apart). However, I consider that the principle is the same. The section 55 issue arises in connection with the original injury and cannot be applied to the question of whether the disease is compensable consequence of the injury. Once the Board accepted the injury, the worker satisfied the threshold requirements in section 55.
- [31] I find that the worker's application for hepatitis C as a compensable consequence of the accepted thumb laceration in April 2000 is not subject to the provisions of section 55 of the Act.

## Conclusion

- [32] There are no jurisdictional barriers to adjudicating the merits of the claim. This will be done in a separate decision after the rest of the evidence has been gathered. I have the authority to address the issue but it has no application to the issue being pursued by the worker.

Beatrice K. Anderson  
Vice Chair

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