Noteworthy Decision Summary

Decision: WCAT-2010-01291 **Panel:** T. White **Decision Date:** May 10, 2010

Section 55 of the Workers Compensation Act – Policy item #93.22 of the Rehabilitation Services and Claims Manual (Application made out of time) - Special circumstances precluding filing of application within one year timeframe – Reasonable person test

This decision considers whether the "reasonable person test" should be applied when determining whether there were special circumstances that precluded a worker from filing an application for compensation within the one-year timeframe under section 55 of the *Workers Compensation Act* (Act).

The worker submitted that he injured his back in October 1997 when working on a film set as an electrician. The worker initiated his claim with the Workers' Compensation Board, operating as WorkSafeBC (Board), on January 20, 2009. The Board, by decision of March 13, 2009, found that the worker's claim was filed outside the one-year period provided for in section 55 of the Act. A review officer confirmed the Board's decision. The Review Division decision was appealed to the WCAT.

WCAT denied the appeal, finding that there were no special circumstances that precluded the worker from filing an application within one year of the injury. The panel considered two lines of authority as to whether the "reasonable person test" should be applied when determining whether there were special circumstances that precluded the worker from filing an application for compensation on time. The panel noted that *WCAT-2005-03006-RB* stated that the "reasonable person test" was an extremely broad approach to section 55(3) of the Act. Some WCAT panels considered this to require a more stringent approach to analysis under section 55 than previously. Other WCAT panels have not adopted this more stringent approach and specifically addressed the question of whether the worker did what a reasonable person would have done to satisfy their rights and obligations under the Act.

The panel in this case concluded that the correct approach was not to determine whether there were special circumstances solely based on a consideration of whether the worker did what a reasonable person would have done. However, it is appropriate to consider what a reasonable person would have done, for example, when the worker suggests that the reason he or she did not file the claim within the time required was ignorance of the requirements of the Act and policy. It is appropriate to consider all reasonable steps that the worker ought to have taken in order to ensure a timely appeal. The panel went on to note that it is not sufficient to merely identify special circumstances, rather the nature of the special circumstances must be such that they precluded the filing of the appeal on time.

The panel noted in this case that: the worker was able to express and explain what he wanted in English even though English was not his first language; the worker was familiar with the workers' compensation system; and, the worker's description of a relatively sudden onset of low back pain from lifting indicated that the worker had knowledge that the condition may be work related. Accordingly, the panel did not find that there were special circumstances that precluded filing of the 1997 claim within time.

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Panel: Teresa White, Vice Chair

Introduction

[1] The worker appeals a July 27, 2009 decision of the Review Division (*Review Reference #R0103604*) of the Workers' Compensation Board, operating as WorkSafeBC (Board), to the Workers' Compensation Appeal Tribunal (WCAT). The review officer confirmed the Board's decision of March 13, 2009, finding that the worker's claim was filed outside the one-year period provided for in section 55 of the *Workers Compensation Act* (Act), and there were no special circumstances that precluded the worker from filing the application within time.

[2] The employer was notified of this appeal and invited to participate, but did not respond and is not participating.

[3] The worker requested this appeal proceed by way of an oral hearing. He stated that he needed to explain what happened with his doctors. I have considered the rule regarding the holding of an oral hearing set out in item #7.5 of WCAT's *Manual of Rules of Practice and Procedure* and the other criteria set out in that item. I have also considered the predecessor to that item which was in force prior to November 3, 2009. WCAT will normally conduct an appeal by way of written submissions where the issues are largely medical, legal or policy-based, and credibility is not an issue. I have reviewed the issues, evidence, and submissions on the worker's file and have concluded that this appeal may be determined without an oral hearing.

[4] There is no issue of credibility, and the background is well-documented in the file. The worker has provided a number of submissions which address the issue of what happened with his doctors. The outcome turns primarily on the application of law and policy to evidence that is not the subject of significant dispute.

[5] It is apparent the worker's first language is not English. His written submissions reflect that. However, his submissions are clearly understandable and the worker is able to express himself effectively in written English.

[6] In reviewing this claim and the worker's submissions it became apparent that the worker had other claims with the Board. A 1996 claim following a motor vehicle accident (MVA) contained documents that are clearly relevant to the issue before me. As a result, I asked the WCAT appeal liaison to write to the worker and inform him that I would be reviewing his 1996 claim in conjunction with the 1997 claim. I noted that he

received a July 2009 WCAT decision in relation to his 1996 claim, and that he received disclosure in January 2009. The worker was invited to make submissions and informed that if he wished another copy of the claim disclosure he should request one.

[7] The worker did not respond in writing although a record of a telephone call on April 7, 2010 states that the worker was very confused and upset that his 1996 claim would be reviewed, and that WCAT was using a denied appeal on a 1996 claim to decide a new application. The worker said WCAT was going in circles and making the matter more complicated, and then hung up the telephone.

[8] I reiterate that the 1996 claim is relevant and that it contains relevant information, such as clinical records from the year and month the worker was injured. The worker was given an opportunity for updated or new disclosure, and was invited to make submissions. None other than the telephone call set out above was received.

Issue(s)

[9] The issue is whether special circumstances precluded the worker from filing the application within one year of the date of injury, and if so, whether discretion should be exercised in favour of allowing the worker's application to be considered on its merits.

Jurisdiction

[10] This appeal is brought under section 239(1) of the Act, which permits appeals of final Review Division decisions to WCAT.

[11] Subject to section 250(4) of the Act, the standard of proof in an appeal is the balance of probabilities. Section 250(4) provides that in a matter involving the compensation of a worker, if the evidence supporting different findings on an issue is evenly weighted, the issue must be resolved in a manner that favours the worker.

[12] Section 250(2) of the Act says that WCAT must make its decision based on the merits and justice of the case and (except in specific circumstances which do not arise in this case) WCAT must apply published policies of the board of directors of the Board that are applicable in the case. The *Rehabilitation Services and Claims Manual, Volume I* (RSCM I) contains the published Board policy applicable to this appeal.

Background and Evidence

[13] On February 4, 2009 the Board received a note from a physician (it appears, although the signature is illegible) dated May 5, 2008. The note says that the worker was injured in October 1997 and since then he reports that he has been unable to work and has ongoing pain, and is under treatment.

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[14] The worker initiated this claim by way of a Teleclaim application on January 20, 2009. He said that on October 3, 1997 he was working on a film set as an electrician. The job involved unloading three trucks full of electrical equipment and setting up the equipment. This involved heavy lifting and the weather was bad.

[15] The Teleclaim application states that the worker started to notice pain in his lower back area in the early evening of January 3, 1997 I observe that the January 3, 1997 date does not accord with other evidence on the file. I consider it likely is a typographical error, and I am giving the worker the benefit of any doubt. I consider the date should have been October 3, 1997.

[16] The worker said his back had been problem free before October 3, 1997. He sought medical attention with a chiropractor on October 4, 1997, and the chiropractor told him to stop working. The worker never returned to work for the employer. He has seen numerous physicians since October 3, 1997 because of his lower back pain.

[17] The Board sent the worker a January 27, 2009 letter advising him of the problem with section 55 of the Act, asking him to send a detailed description of the special circumstances he felt existed which prevented him from filing within the required one-year time period.

[18] The worker also completed an application for compensation, which was received by the Board on February 4, 2009. He said he was performing heavy lifting and operating heavy machinery in poor weather conditions. Since then, the injuries have become disabling. The worker stated he attached a record of employment, a family physician's note, and a qualified practitioner's note. These documents are not attached to the application for compensation on the Board's file.

[19] However, there is a record of employment dated November 3, 1997 on the file, which states his first day worked was October 3, 1997 and last day for which he was paid was October 18, 1997. The work was as a lamp operator for an entertainment company.

[20] A further application for compensation was received by the Board on April 16, 2009. This refers to an October 3 and 4, 1997 date of injury. It also states the injury was back pain from operating heavy machinery in poor weather conditions.

[21] The Board received a letter from a chiropractor dated July 9, 2001 To Whom It May Concern, but received by the Board on February 4, 2009. It states that the worker was being treated for neck, mid back, and lower back pain. He was on disability because of chronic pain and inflammation to his spine. It was "absolutely essential" that the worker receive chiropractic treatments at a frequency of once per week. Someone (it appears to be the worker's handwriting) has written "not covered by B.C. Medical Plan" on the letter.

[22] I have summarized and paraphrased the worker's submissions, as follows:

- The worker stopped working immediately after October 3, 1997.
- Despite that the worker stopped working immediately, his qualified practitioner did not file an application with the Board.
- The worker did not know about the Board, and did not have any forms, or the address, as he never had any training about how to report work injuries.
- He did not know that there was a one-year period to apply.
- No medical practitioner would say how serious the injury was and how long it would require treatment. The worker said he expected the treatment to last for one or two weeks.
- The worker had treatment up to ten times a month and paid for treatment himself. His medical practitioner did not refer him to the Board. The worker signed his name after "my apologies."

[23] The worker spoke to a Board entitlement officer on March 9, 2009. The record of the telephone call includes the following:

- The worker advised he did not know he was supposed to put in a claim and no one advised him. He stated he went to a church for free food and was told to go to another place where he got free laundry services, but no one advised him to report to the Board.
- He did not know the address or the Board's phone number and his doctor did not advise him to put in a claim.
- The entitlement officer advised the worker it was not up to his doctor or employer to advise him to put in a claim, that it was his choice and his responsibility to find out what he was supposed to do if he was injured while he was working.
- The worker said he did not have any food. He was receiving social assistance of $8 per day which did not buy him enough food. He said no one should have to live the way he was or in the area were he was living.
- The worker said he had got a ruling from the Supreme Court and had 110 pages of medical reports. The entitlement officer asked him what he meant but the worker did not offer any further information except repeating the same information. (I am

unable to locate any British Columbia Supreme Court decision involving the worker. He may have an action that has not proceeded to a decision.)

- The worker said he came to Canada in 1989 and then went to college to get his electrical certification. He started working in the film industry in 1991.

- The worker said he was working in a Lower Mainland location in October 1997 and his eyes were swollen, he did not lift properly, and he got a disc injury in his spine.

[24] The entitlement officer found the worker to be fluent in English. She noted the worker had a prior compensable injury in September 1996 and he had submitted an application for compensation on September 30, 1996. This showed the worker was aware of the reporting procedures regarding a claim one year before October 1997, and he knew where to get an application and where to send it. The entitlement officer said that as the requirements for section 55 of the Act had not been met, she had disallowed the claim.

[25] I observe that the worker does have a 1996 claim arising from a car accident. A different WCAT panel issued a decision on July 6, 2009. The issue was whether the worker's 1996 claim for soft tissue injuries to his upper back should be reopened. The vice chair noted that the decision did not address injuries suffered during an assault in 1994, which were dealt with under the *Criminal Injuries Compensation Act*, the low back injuries claimed by the worker under this claim number, or injuries suffered during two home invasions in 1999 and August 2005.

[26] The worker was injured in a car accident on September 10, 1996. His claim was accepted for soft tissue injuries to his lower back. The application for compensation is signed by the worker and dated September 30, 1996.

[27] The worker filed a second application for compensation under the 1996 claim, dated February 14, 2008. He stated that he was medicated, wished to return to work, and had "post dramatic stress." He referred to heavy machinery, and weight and size of objects involved. He also wrote "(weather conditions?)", but crossed it out. The worker said he had neck, back, and head injuries. The worker included business cards from various health care providers including his chiropractor, family physicians, and a dentist.

[28] Also on the 1996 file is an application for compensation the worker indicated he signed "1997, October, 7." It refers to operating equipment in poor weather on October 3 and 4, 1997.

[29] In a Review Division proceeding relating to his claim that his 1996 claim should be reopened, the worker said:

> I have returned to work on October 4, 1997, where I operated heavy machinery, performing heavy lifting, in poor weather conditions, where the original injury occurred again without any intervening new injury.

[30] The worker also submitted to the Review Division, received on October 8, 2008, a note with a medical centre address at the top, stating "this patient was injured in Oct'97 and since then he reports that he has been unable to work and has ongoing pain and is under treatment." It is signed but the signature is not legible. The worker submitted his record of employment.

[31] Physician's chart notes on the 1996 claim file contain an entry for October 1, 1997 regarding pain from a MVA eight months before. On November 3, 1997 the notes refer again to neck pain and the accident. On November 6, 1997 the record again refers to post-MVA pain in the neck. On January 16, 1998 the chart notes say the worker was taking muscle relaxant medication, was on social assistance, and had no job for three months.

[32] There is extensive reference in the chart notes to pain in the worker's back, from as early as 1994. The notations include "sees chiropractor." In March 1995 the notes refer to the worker applying for criminal injury compensation in relation to an assault, and back pain.

[33] In December 1995 the chart notes refer to low back pain, chronic pain, and depression.

[34] There is no mention in the chart notes of any incident in October 1997 of lifting in inclement weather or a new back injury. The notes refer instead to post-MVA pain.

[35] Before the Review Division, in the proceeding underlying this appeal, the worker pointed to the following as special circumstances (summarized and paraphrased):

- He did not understand the Board system or how to access it.
- He had limited education, since college did not teach him to understand the compensation system.
- His union did not teach him to understand the compensation system.
- His doctors or qualified practitioners did not teach him to understand the system, despite that he submitted an application for compensation in September 1996 related to an MVA.

- Despite having filed that application, he did not have knowledge of the existence of the Board.

- He also lacked knowledge that an injury or disease might be work related or have delayed onset.

- He has been treated by doctors and medical practitioners.

- Now the pain is strong and he has to continue with prescribed medication, which he is overdue, or chiropractic treatment or massage therapy since he is in pain.

- He has a duty to educate himself about the Board.

[36] In his submission received November 30, 2009 the worker makes reference to a criminal injury compensation claim stating that he did not believe he delayed in claiming. He said he believed his criminal injury claim was a workers' compensation claim.

Reasons and Findings

[37] The issue is whether there were special circumstances that precluded the worker's claim and if so, whether the claim should be adjudicated on its merits.

[38] Section 55 of the Act provides:

> **55** (1) An application for compensation must be made on the form prescribed by the Board or the regulations and must be signed by the worker or dependant; but, where the Board is satisfied that compensation is payable, it may be paid without an application.
>
> (2) Unless an application is filed, or an adjudication made, within one year after the date of injury, death or disablement from occupational disease, no compensation is payable, except as provided in subsections (3), (3.1), (3.2) and (3.3).
>
> (3) If the Board is satisfied that there existed special circumstances which precluded the filing of an application within one year after the date referred to in subsection (2), the Board may pay the compensation provided by this Part if the application is filed within 3 years after that date.

> (3.1) The Board may pay the compensation provided by this Part for the period commencing on the date the Board received the application for compensation if
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> > (a) the Board is satisfied that special circumstances existed which precluded the filing of an application within one year after the date referred to in subsection (2), and
> >
> > (b) the application is filed more than 3 years after the date referred to in subsection (2).
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> (3.2) The Board may pay the compensation provided by this Part if
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> > (a) the application arises from death or disablement due to an occupational disease,
> >
> > (b) sufficient medical or scientific evidence was not available on the date referred to in subsection (2) for the Board to recognize thedisease as an occupational disease and this evidence became available on a later date, and
> >
> > (c) the application is filed within 3 years after the date sufficient medical or scientific evidence as determined by the Board became available to the Board.
>
> (3.3) Despite section 96 (1), if, since July 1, 1974, the Board considered an application under the equivalent of this section in respect of death or disablement from occupational disease, the Board may reconsider that application, but the Board must apply subsection (3.2) of this section in that reconsideration.
>
> (4) This section applies to an injury or death occurring on or after January 1, 1974 and to an occupational disease in respect of which exposure to the cause of the occupational disease in the Province did not terminate prior to that date.

[39] There is also published policy. Policy item #93.22 in the RSCM I states that before an application for compensation can be considered on its merits, it must satisfy the requirements of section 55 of the Act. It is important to distinguish between the decision on the merits of the claim and the decision made under section 55, since the distinction may affect the rights of appeal which a person has to challenge the decision. A separate decision on the effect of section 55 must always be reached on a claim.

[40] Policy states that the general effect of these provisions is that two requirements must be met before an application received outside the one-year period can be considered on its merits. These are:

- There must have existed special circumstances which precluded the application from being filed within that period, and
- The Board must exercise its discretion to pay compensation.

[41] Regarding special circumstances, policy states:

> 1. Special Circumstances
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> It is not possible to define in advance all the possible situations that might be recognized as special circumstances which precluded the filing of an application. The particular circumstances of each case must be considered and a judgment made. However, it should be made clear that in determining whether special circumstances existed, the concern is solely with the claimant's reasons for notsubmitting an application within the one-year period. No consideration is given to whether or not the claim is otherwise a valid one. If the claimant's reason for not submitting an application in time are not sufficient to amount to special circumstances, the application is barred from consideration on the merits, notwithstanding that the evidence clearly indicates that the claimant did suffer a genuine work injury.
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> The following facts illustrate a situation where special circumstances were found to exist. The claimant suffered a minor right wrist injury on October 20, 1976, which at the time caused him no disablement from work and did not require him to seek medical attention. There was, therefore, no reason why he should claim compensation from the Board, nor any reason why his doctor or employer should submit reports to the Board. It was not until 1978 when the claimant began to experience problems with his right wrist that he submitted a claim to the Board. It was only then that he was incurring monetary losses for which compensation might be appropriate.

[42] Policy item #93.21 of the RSCM I is titled "Time Allowed for Submission of Application." It states:

> Section 55(2) provides that "Unless an application is filed, or an adjudication made, (6) within one year after the date of injury, death or

> disablement from occupational disease, no compensation is payable, except as provided in subsections (3), (3.1), (3.2) and (3.3)." (Subsections (3) and (3.1) are discussed in policy item #93.22.)
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> Where the worker's condition results from a series of injuries rather than just one injury, section 55(2) is complied with if the application is filed within one year of the last injury in the series.
>
> *The section is not complied with simply by reporting the injury to the first aid attendant or having it confirmed by witnesses.* The one-year period commences at the date of injury or death, and except in the case of occupational diseases, not at the date of subsequent disablement. In the case of occupational diseases, reference should be made to policy item #32.50.
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> [my emphasis]

[43] In *WCAT-2005-03006-RB* (June 9, 2005), a noteworthy decision, the panel noted the following:

> In *WCAT Decision #2003-01810* (available on WCAT's website) the chair considered the requirements of section 243(3)(a) of the Act. Specifically, section 243(3)(a) provides that an extension of time to appeal a decision to WCAT can be allowed where the chair is satisfied that "special circumstances existed which precluded the filing of the notice of appeal in the required time period". Although the chair's decision concerns whether an extension of time to file an appeal would be allowed, the legislation considered was for all intents and purposes the same as section 55(3) of the Act. In considering the above-quoted phrase, the chair wrote as follows:
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> > The definition of "special" in *Webster's New Twentieth Century Dictionary of the English Language,* 2nd ed. *(Webster's)* includes "unusual; uncommon; exceptional; extraordinary".
> >
> > The concept of special circumstances that precluded meeting a statutory time frame is also set out in section 55(3) of the Act, which concerns the situation in which a worker has failed to file an application for compensation within one year from the date of injury or disablement from an occupational disease. Accordingly, decisions by appellate tribunals and policies concerning the application of section 55(3) are of assistance in interpreting section 243(3)(a).

[44] In reaching her decision, the chair also made the following comments:

> It is not sufficient for the appellant to merely identify special circumstances. The nature of the special circumstances must be such that they precluded the filing of the appeal on time. In determining whether an appellant was "precluded", all reasonable steps that the appellant ought to have taken in order to ensure a timely appeal must be taken into account.
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> The word "preclude" is capable of being strictly interpreted to mean "prevent" or "make impossible". However, in *Webster's*, "preclude" is more broadly defined to mean:
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> > to hinder, exclude, or prevent by logical necessity; to bar from access, possession, or enjoyment; to make impossible, especially in advance; as, these facts *precluded* his argument.
>
> Accordingly, "preclude" may be interpreted to include "hinder", which is defined in Webster's to mean:
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> > 1. to make difficult for; to impede; to retard; to check in progression or motion; to obstruct for a time, or to render slow in motion; as cold *hinders* the growth of plants.
> >
> > 2. to keep back; to restrain; to get in the way of.
>
> In *Decision #91-0851* (*Section 55 and Grain Dust Asthma*, 7 WCR 211), the Appeal Division considered the appropriate interpretation of "preclude" in the context of section 55 of the Act. At pages 220-221, the panel stated:
>
> > In the final analysis to interpret any statutory provisions one has to determine the substance of its words in the context of the ideas expressed in the whole [A]ct and in light of the social purpose that was a driving force behind the legislation. Considering all of these factors this panel is not satisfied that the stringent interpretation of the word "preclude" is justified. The rigid interpretation of preclude as "absolutely prevent" is harsh and narrow. It has never been adopted by previous commissioners [of the Board] and finds no place in the governors' policy.

[45] I agree and find that in the context of section 55 of the Act "preclude" should be interpreted in the broader manner supported by the definition in *Webster's*.

[46] The panel in *WCAT-2005-03006-RB* also noted that a number of previous decisions, including decisions of the former Appeal Division, had found guidance in the judgment of the Federal Court of Appeal in *Canada v. Albrecht*, [1985] 60 N.R. 213, which interpreted the language of the *Unemployment Insurance Act (1971)*, noting that the *Albrecht* decision interpreted legislation that provides a worker could "show good cause for his delay." The Court concluded that this requirement was satisfied when the worker did what a reasonable person in his situation would have done to satisfy himself as to his rights and obligations under the legislation. A partially subjective appreciation of the circumstances is involved, which excludes the possibility of any exclusively objective test.

[47] The panel commented that in considering a section 55 issue, using the "reasonable person test" would provide an extremely broad view of the issue:

> The *Albrecht* decision was addressed by a WCAT panel in *Decision #2004-05968.* The panel noted that the requirement of having good cause for the delay under the *Unemployment Insurance Act* was less stringent than section 55 of the Act, which requires that there be special circumstances that precluded filing in a timely manner. As such, the panel concluded that using the "reasonable person test" would provide an extremely broad view of the issue before it.

[48] Since *WCAT-2005-03006-RB* was issued, a number of WCAT panels have adopted the reasoning that the "reasonable person test" provides an extremely broad approach to section 55(3) of the Act. Some panels have considered this to require a more stringent approach to analysis under section 55 than previously. I do not necessarily agree that the panel in *WCAT-2005-03006-RB* intended to exclude any consideration of whether the worker's actions were reasonable. Rather, she was pointing out that this allowed for a broad approach and wider consideration of the factors in the worker's favour.

[49] Other WCAT panels have not adopted this more stringent approach and specifically addressed the question of whether the worker did what a reasonable person would have done to satisfy their rights and obligations under the Act.

[50] I agree that, overall, whether there were special circumstances cannot be determined solely based on consideration of whether the worker did what a reasonable person would have done. That is not the test set out in the Act or in published policy. However, I do consider it appropriate to consider what a reasonable person would have done, for example, when the worker suggests that the reason he or she did not file the claim within the time required was ignorance of the requirements of the Act and policy. It is appropriate to consider all reasonable steps that the worker ought to have taken in order to ensure a timely appeal.

[51] I also agree with and adopt the chair's analysis in *WCAT-2003-01810*, which, although in relation to an extension of time to appeal, considered very similar statutory language. It is not sufficient for the appellant to merely identify special circumstances. The nature of the special circumstances must be such that they precluded the filing of the appeal on time. Further, in determining whether an appellant was "precluded," all **reasonable steps** that the appellant ought to have taken in order to ensure a timely appeal must be taken into account.

[52] "Preclude" does not mean absolutely prevent or "make impossible." It includes such meanings as "hinder," "impede," and "obstruct for a time."

[53] The appropriate approach is to consider whether unusual or extraordinary circumstances existed and, if so, whether such circumstances made it difficult or otherwise hindered the worker from filing her application in a timely manner. In addition, I agree with the many previous WCAT decisions that cite the following factors as potential "special circumstances":

- Characteristics of the worker such as language difficulties, which would create obstacles to understanding that there is a system of workers' compensation and how to access it.

- Lack of knowledge that an injury or disease might be work related because of delayed onset of the condition, minor nature of the original injury, or failure to recognize that it is related to work.

- Reliance on the advice of others, such as a physician or employer, where the worker is dependent on such advice owing to language difficulties.

This list is not exhaustive.

[54] The relevant period for determining whether there were special circumstances that precluded the worker from applying for compensation is the one-year period from October 3, 1997 (the date of the alleged injury) to October 1998. The worker made his Teleclaim application in January 2009, which is over ten years outside the time allowed in the Act.

[55] The worker's first language is not English. It is evident from the documents he has written that this manifests itself primarily in spelling and grammatical errors. The worker is able to express himself well in English. For example, he wrote a letter to WCAT requesting additional time for submissions. The meaning of the letter is clear.

[56] The worker wrote a handwritten letter to the Board on his 1996 claim. The letter is dated October 19, 1997. The worker said he was still in need of medical treatment

because of persisting pain and discomfort in his neck area and lower back. He wished to receive chiropractic treatment instead of taking medication.

[57] It could be that the worker had help writing the 1997 letter. However, it is written in what appears to be the same handwriting and shows similar spelling and grammatical errors as the worker's more recent letters to WCAT.

[58] I cannot conclude that, during the relevant period, the worker's difficulties with English as a second language were special circumstances. He was able to express himself clearly and explain what he wanted to the Board under the 1996 claim.

[59] I also find, based on the worker's interactions with the Board in respect of his 1996 claim, that the worker was well-familiar with the workers' compensation system. He was seeking additional compensation under his 1996 claim, the same month that he alleges the 1997 claim arose. There are also records showing the worker telephoned the Board on numerous occasions.

[60] Given the worker's description of a relatively sudden onset of low back pain from lifting in bad weather, I cannot conclude that lack of knowledge that the condition may be work related is a factor. Furthermore, the worker's interactions with the Board and thus his knowledge of the system do not suggest that he was reliant on his physicians or other health-care providers. I recognize that the worker has some difficulties with English, but as stated above, he is capable of communicating effectively in written English, and was so-capable when he says this claim arose.

[61] I considered the worker's submission that he thought his criminal injury claim was a workers' compensation claim. The difficulty with that submission is that the criminal injury compensation claim was not in respect of the work he was doing on October 3 and 4, 1997. From the information available in the files, it appears to have been in relation to an assault. It does not make sense to me that the worker would think filing a criminal injury compensation claim for an assault would start a workers' compensation claim for a back injury due to lifting heavy equipment in poor weather. I do not find that any misunderstanding the worker had was special circumstances that precluded filing of the 1997 claim within time.

[62] Having reviewed both the 1996 and 1997 claim files, I can find no special circumstances that precluded the worker from applying for workers' compensation within one year of the injury he states he sustained on or about October 3 and 4, 1997.

Conclusion

[63] The worker's appeal is denied and the Review Division decision confirmed. There were no special circumstances that precluded the worker from filing an application within one year of the injury the worker states he sustained on or about October 3 or 4, 1997.

[64] No expenses were claimed and none are ordered to be paid.

Teresa White
Vice Chair

TW/hb

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