

Noteworthy Decision Summary

Decision: WCAT-2012-00447 **Panel:** E. Murray **Decision Date:** February 15, 2012

Section 5(1) of the Workers Compensation Act – Rehabilitation Services and Claims Manual, Volume II – Policy Items #C3-15.00 “Natural Body Motion”. #C3-14.00 “Causative Significance” and #97.34 “Conflicting Medical Evidence”

This decision is noteworthy as an example of an organized analysis of the causative significance of a natural body motion, and for the weighing of conflicting medical evidence.

The worker, a hospital equipment sterilizer, had been removing a rolling metal cart from a sterilizing machine when she felt a sudden onset of low back pain, which was diagnosed the following day as a lumbosacral strain. The Workers' Compensation Board, operating as WorkSafeBC (Board), and the Review Division, based on a Board medical advisor's opinion, determined that the injury was not causally related to the worker's employment, and denied her claim for compensation.

The worker appealed to WCAT, and submitted a report from her attending physician, Dr. H, who had diagnosed the worker's injury and treated her. Dr. H offered the opinion that the worker had been working faster than usual with her neck and torso turned as she walked backwards pulling the cart, and that this had caused her lumbosacral strain. This opinion was in contrast to the Board medical advisor's opinion that despite the temporal connection between the work activity and the onset of pain, there was less than a 50% biological plausibility that the strain injury derived "causative origins" from the work activity as described by the worker in her application for compensation and in a telephone conversation with the entitlement officer.

The WCAT panel accepted that the worker sustained a personal injury and that the natural body motion that accompanied it was connected to her employment. However, the key issue was whether the employment activity (pulling a cart while walking backwards and turning to look behind her) was of causative significance in producing the back strain.

The panel referred to policy item #C3-15.00 of the *Rehabilitation Services and Claims Manual, Volume II*, and was satisfied that there was a strong temporal relationship between the work activity and the injury, and that there was no persuasive evidence that the worker had a non-work related condition that contributed to her low back strain. The panel was also accepted that back strains can occur spontaneously or from trivial motions. What was left to be determined was the likelihood that the reported mechanism of injury had causative significance in producing the worker's low back strain. Given that there were two conflicting medical opinions in this regard, the panel had to analyze each opinion and determine where the preponderance of the evidence lay.

The panel noted that the Board medical advisor and Dr. H had relied on somewhat different non-medical facts in reaching their opinions, the most significant being that the Board medical advisor understood that the worker turned her head to "peek" where she was going, while Dr. H understood that she turned her torso and her head/neck. The panel concluded that this was a significant difference, and that it was this difference in understandings of non-medical fact that caused the conflicting conclusions that the doctors reached. The panel subsequently gave the opinion of the Board medical advisor more weight because she was satisfied that the Board

medical advisor had the more accurate understanding of the mechanism of injury. The panel thus concluded that the worker's employment related motions were not of causative significance in her low back strain.

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Panel: Elaine Murray, Vice Chair

Introduction

- [1] On January 1, 2011, the then 40-year-old hospital sterilization processing technician had an immediate onset of left-sided low back pain while moving a cart at work.
- [2] By decision dated February 3, 2011, the Workers' Compensation Board, operating as WorkSafeBC (Board), denied the worker's claim for a lumbar strain.
- [3] The worker requested a review of the Board's decision to the Review Division. In an August 5, 2011 decision (*Review Reference #R0127670*) a review officer confirmed the Board's February 3, 2011 decision.
- [4] The worker, through her representative, Ms. M, now appeals the review officer's August 5, 2011 decision to the Workers' Compensation Appeal Tribunal (WCAT). The employer is participating in the appeal.
- [5] The worker and Ms. M attended an oral hearing on February 10, 2012. Neither the employer nor its representative attended.

Issue(s)

- [6] Did the worker sustain a lumbar strain arising out of and in the course of her employment on January 1, 2011?

Jurisdiction

- [7] This appeal was filed with WCAT under subsection 239(1) of the *Workers Compensation Act* (Act).
- [8] Under subsection 250(1) of the Act, WCAT may consider all questions of fact and law arising in an appeal, but is not bound by legal precedent. WCAT must make its decision on the merits and justice of the case, but in so doing, must apply a policy of the Board's board of directors that is applicable in the case. Section 254 of the Act gives WCAT exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact, law and discretion arising or required to be determined in an appeal before it.

Background and Evidence

[9] The worker sterilizes operating room equipment in a hospital. She experienced lower back pain at work on January 1, 2011. She went to a hospital emergency department the following day, where she was diagnosed with a soft tissue injury to her back.

[10] In her January 4, 2011 teleclaim application for compensation, the Board call-taker described the mechanism of injury on January 1, 2011 as follows:

Worker pulled an empty cart out of the cart washer, something she does several times a day. She is standing up straight while pulling this out and has to move backwards and twist slightly with both hands to pull it out by the handles. Cart is about 5 feet tall by 3 feet wide, weighs about 30 lbs. She does not recall doing anything differently while pulling this cart out and is not sure why this time it bothered her. She felt a sharp pain in her left side lower back upon pulling the cart backwards. This pain has started shooting down her left leg.

[11] The worker's family physician, Dr. Hainc, examined the worker on January 6, 2011. He reported that she had lumbar spasms and reduced flexion in her low back. He diagnosed a lumbosacral strain.

[12] The worker continued to see Dr. Hainc, and she attended physiotherapy. Her physiotherapist reported on January 17, 2011 that she had pain mostly on the left side of her low back, along with left-sided radiating pain to her calf.

[13] On January 19, 2011, an entitlement officer spoke to the worker by telephone. The entitlement officer recorded the following in a memorandum:

The washer is in the wall. The cart is pushed through a door into the washer from the dirty side. There is another door on the opposite side (the clean side). There is no lip, step or dip into the washer.

The cart was empty. There were no instruments in it. The cart looks similar to what is used by flight attendants on planes, except her cart is 2-3 times larger. It is made of stainless steel. She estimates that it is 5'x3' and weighs 30 lbs when empty. It is not hard to push/pull – it is easy to move.

These carts have been used for the past 2 years. Depending on the number of operations, they can wash 40 carts a day.

Jan 1/11 was the weekend and holiday so they were very busy. It was only she and another coworker on shift.

She went around to the clean side to remove the cart. She placed her hands on the cart at waist level and walked straight backwards out of the washer. When she got the cart out, she turned her head to peek to where she was going in order to direct the cart properly. She was still walking straight backwards. She felt immediate onset of pain in her low back.

It takes about 5 seconds to remove the cart from the washer. The washer was already in motion when she peeked and felt the low back pain. There was no hazard on the floor, she did not trip/stumble, the cart did not catch on anything.

There was nothing unusual about the way she removed the cart as compared to previous times.

She was sore that night and took some Ibuprofen. The next day she could hardly move.

- [14] With the above description of the incident provided, the entitlement officer asked a Board medical advisor, Dr. Meetarbhan, to answer the following question:

What is the likelihood that pulling the cart as described caused the diagnosis? Is the described body position or motion significant to cause an injury?

- [15] On January 31, 2011, Dr. Meetarbhan reviewed the worker's medical and claims history¹ and responded as follows:

I have reviewed the mechanism of injury as per your summary and also as per the January 19, 2011 phone log entry by [name of entitlement officer], the entitlement officer. I concur with the entitlement officer that there is no unusual event, such as a sudden jolt or trip, and despite recognizing a strong temporal relationship between the onset of symptoms and the activity described by the worker, it did not involve a traumatic mechanism and appeared to involve a normal body movement; it is my medical opinion that based upon the bodily motions described, there is less than a 50% biological plausibility of a lumbar strain deriving causative origins from the description provided as above.

- [16] By decision dated February 3, 2011, the entitlement officer denied the worker's claim. She did not doubt that the worker experienced symptoms at work while performing her work duties; however, she concluded that the onset of pain was coincidental to the worker's employment rather than caused by any feature of that employment. She

¹ The worker had two prior low back strain claims. One arose from an incident in 1997 and the other arose from an incident in 1998. She also had a previous history of low back pain in 1992.

added that there was nothing unusual in the worker's work on January 1, 2011 and no particular injury incident of causative significance.

- [17] The worker requested a review of the February 3, 2011 decision. Ms. M submitted that the requirement of Board policy had been met to have the claim accepted. She explained that there was a direct connection between the worker's body motion of pulling carts out of the sterilizer and her employment so as to find that the worker's motions at the time have an employment connection. Further, she noted that Dr. Meetarbhan had not relied on the proper test for determining the causative significance of the worker's work-required motions and, therefore, little weight could be given to his opinion. Dr. Meetarbhan failed to understand that the work incident did not need to be the sole cause or even the predominant cause (more than 50%); rather, it only needed to be a significant or material factor (more than trifling).
- [18] As well, Ms. M noted the close temporal relationship between the work-required motion and the worker's injury. She asked the Review Division to consider part of the former policy item #15.20 of the *Rehabilitation Services and Claims Manual, Volume II* (RSCM II), which although not applicable, was helpful in deciding causation of back injuries from work-required motions:

In particular, the present inability of medical science to accurately pin-point the etiology of a great variety of spinal problems, many of which have been shown to arise from the most trivial of incidents, leads to a conclusion that, in appropriate circumstances, such incidents should be seen as causative and if they occur while at work, the resulting injury must be compensable.

- [19] The review officer concluded that the worker's low back strain on January 1, 2011 was not causally related to the worker's employment. First, she rejected Ms. M's submission that Dr. Meetarbhan's opinion could be given little weight. The review officer wrote that the test for causation is "whether, on a balance of probabilities, the work activity was of causative significance." She interpreted Dr. Meetarbhan's opinion as saying that the worker's motion did not meet that test.
- [20] The review officer then went on to make the following determination:

Having reviewed the evidence, I am satisfied that the worker's motion of turning her head had sufficient employment connection. In determining whether the motion was of causative significance in producing the worker's injury, I am directed to the considerations listed in policy item #C3-15.00. I acknowledge that the worker experienced symptoms immediately following the motion of turning her head, which supports causative significance. However, the force involved was minor. Moreover, I find it difficult to relate the worker's low back strain to the

motion of turning her head, and the BMA's [Dr. Meeterbhan's] opinion supports this.

[21] In support of this appeal, the worker provided a December 20, 2011 report from Dr. Hainc. He understood from the worker that she was working at a faster pace than usual on January 1, 2011 because of the lack of staff. He described how the worker developed lower back pain as she was pulling a heavy case cart out of the washer, while walking backwards with her torso and head turned to see where she was going. He then offered the following opinion:

It is evident that there was no trauma or heavy lifting or bending required during the removal of the cart case from the sterilizer. On the other hand, when one works at a faster pace and performs unusual tasks such as pulling heavy weight while walking backwards with torso and neck turned to see where she is going, lumbar sacral strain may occur and in my view this is what happened in [the worker's] case.

Oral Hearing Evidence

[22] The worker gave the following relevant evidence:

- The Board officer did not accurately record their telephone conversation on January 19, 2011. The worker only told the Board officer that the cart was larger than those used by flight attendants. The worker contends that she did not provide an estimate of the dimensions and weight of the cart. She says that she would not have said that it weighed 30 pounds because she uses kilograms and not pounds.²
- She has learned from her supervisor that empty carts weigh about 60 to 80 pounds, and they are about 5 feet 10 inches high.
- The cart washer is elevated and there is a mechanical lift that is raised to the height of the washer doors. The metal platform on the lift is about three metres wide by four metres long. The clean carts are pulled out onto this platform.
- The worker agrees that she told the Board officer that the cart did not catch on anything when she pulled it out; however, she says that the cart's wheels can become stuck in the two "dips" on the metal platform right where the doors from the washer open and the cart is pulled onto the platform. As a result, it is necessary to use a little force to pull the carts out and to jerk them a bit so the wheels do not become stuck in the dips.

² I note that the January 4, 2011 call-taker on the worker's teleclaim application also recorded the worker as saying the cart was about 5 feet by 3 feet and weighed about 30 pounds.

- The worker had a photocopied photograph, which was evidence at the Review Division, to show the worn-out dips in the platform from the constant wear of the cart wheels.
- She was turning her head to her left when she felt her low back pain.
- She had not had any back problems since approximately 1998 or 1999.
- Following her January 1, 2011 injury, she returned to work on light duties and was back to full duties by approximately February 8, 2011.
- Currently, her back is okay. She has low back pain, which comes and goes.

Submissions at the Oral Hearing

- [23] Ms. M asks that I rely on her submissions to the Review Division as part of her WCAT submission. In addition, she makes the following points:
- [24] The criteria under policy items #C3-12.00 and #C3-15.00 of the RSCM II are satisfied. In particular, policy item #C3-15.00 does not require any unusual, specific, or traumatic body motions; rather, there need only be a body motion that has an employment connection. In this case, that is easily established. As for the causative significance of that motion, the worker was turning her head while yanking, jerking, and pulling the cart so the wheels would not get caught in the dips. There was clearly a close temporal connection between her motions and the onset of her symptoms. Finally, Dr. Hainc's opinion supports a causal connection. In the alternative, the medical evidence is evenly weighted and the decision should be in favour of the worker.

Reasons and Findings

- [25] As the worker's injury is claimed to have occurred after July 1, 2010, the version of Chapter 3 of the RSCM II that became effective July 1, 2010 applies. All references to policy in this decision are to the RSCM II.
- [26] Subsection 5(1) of the Act provides that a claim will be accepted when the evidence establishes that a worker sustained a personal injury arising out of and in the course of the employment. Accordingly, the evidence must establish three things: (1) the worker sustained a personal injury; (2) that injury arose in the course of work activities; and (3), some aspect of the work activities played a causative role in the injury.

- [27] There is no dispute that the worker has been diagnosed as having a lumbar strain. In keeping with policy item #C3-12.00, sprains and strains are a personal injury under the Act. Thus, I find that the worker sustained a personal injury. As well, her evidence has consistently been that she first experienced symptoms of her back strain on January 1, 2011. I have no reason to doubt her evidence in this regard and find that she sustained her lumbar strain on that date.
- [28] Turning next to whether the worker's injury arose in the course of her work activities, there is also no dispute. Policy item #C3-15.00 provides that where there is no accident and it is alleged that an injury follows a natural body motion at work, it is generally clear that the injury arose in the course of the employment.
- [29] Once it is established that an injury followed a natural body motion at work, the adjudication rests on whether the injury also arose out of the employment. To determine this, policy item #C3-15.00 provides that the Board must consider whether the body motion had an employment connection, and whether it was of causative significance in producing the injury.
- [30] Policy item #C3-15.00 explains that a natural body motion is sufficiently connected to the worker's employment where the motion is required or incidental to the employment. As an example, the policy explains that sufficient employment causation may exist where a health care worker undertakes the employment activity of bending over to retrieve a lunch tray to serve a patient.
- [31] Again there is no dispute that the worker's natural body motion had an employment connection. She was pulling a large cart as part of her employment duties. While walking backwards, she turned her head to her left to see where she was going. These motions were clearly required in her job.
- [32] The key issue on this appeal is whether the worker's employment activities when she experienced her low back strain on January 1, 2011 were of causative significance in producing that back strain. "Causative significance" is defined in policy item #C3-14.00 as meaning more than a trivial or insignificant aspect of the injury. Policy item #C3-15.00 further explains that a natural body motion is of causative significance in producing the injury where the evidence, especially the medical evidence on causation, shows that the motion was more than a trivial or insignificant aspect of the injury. Where there is insufficient evidence that the motion had causative significance in producing the injury, it is not compensable. In the event that the medical evidence on this issue is evenly weighted, subsection 250(4) of the Act directs me to resolve that issue in favour of the worker.

- [33] Policy item #C3-15.00 contains a number of factors the Board must consider when reviewing medical evidence to determine causative significance:
- the likelihood that the reported motion had causative significance in producing the injury given the reported force and/or physical placement;
 - whether the symptoms are known to occur spontaneously or are more likely to occur following a specific motion or series of motions;
 - if there is a temporal relationship between the motion and the onset of symptoms;
and
 - evidence of any non-work-related medical conditions which contributed to the injury.
- [34] Looking at the four suggested factors to consider when reviewing medical evidence, I am satisfied there is a strong temporal relationship and there is no persuasive evidence of the worker having a non-work-related condition that contributed to her low back strain. As well, while I am mindful that back strains can occur spontaneously, they can equally arise from trivial motions. The key factor on this appeal is determining the likelihood that the reported mechanism of injury had causative significance in producing the worker's low back strain given the reported force and/or physical placement. There are two medical opinions in this regard.
- [35] Dr. Meetarbhan relied on the worker's description of the mechanism of injury recorded by the entitlement officer on January 19, 2011 in reaching his opinion that there was less than a 50% biological plausibility of a lumbar strain deriving causative origins from the description provided. Ms. M submitted to the Review Division that Dr. Meetarbhan's opinion could be given little weight because it was not based on the causative significance test. While not binding on me, *WCAT-2010-01448* has a helpful discussion of the causative significance test. The panel in that decision explained the causative significance test is a value judgment, and the value may not be the same depending on the role of the person making the judgment. For example, there are different judgments for the assessment of causation made by a medical authority and for one made by a legal authority. From a medical perspective whether a cause is significant is primarily a question of what science considers to be significant. Dr. Meetarbhan's phrasing of the test may be somewhat confusing; yet, I am satisfied it is reasonable to interpret him as saying, from a medical perspective, that the described mechanism of injury was simply not of causative significance. I note, in particular, that Dr. Meetarbhan used the term "causative origins". This suggests to me that he understood the work activity did not need to be the sole or predominant cause; rather, it just needed to be a cause.
- [36] On the other hand, I am satisfied that Dr. Hainc thought, from a medical perspective, that the mechanism of injury could be more than a trifling causative factor and, therefore, it could be of causative significance. In reaching his opinion, he described

the mechanism of injury as the worker pulling heavy weight at a faster pace than usual while walking backwards with her neck and torso turned to see where she was going.

- [37] Dr. Meetarbhan and Dr. Hainc have reached very different conclusions on the causative significance of the mechanism of injury, but this does not necessarily mean that there is a conflict in the medical evidence. Policy item #97.34 provides that where there are differences of opinion among doctors, or other conflicts of medical evidence, the Board must analyze the opinions and conflicts as best as possible on each issue and arrive at her or his own conclusions about where the preponderance of the evidence lies. If it is concluded that there is doubt on any issue, and that the evidence supporting different findings on an issue is evenly weighted in that case, the Board must resolve that issue in a manner that favours the worker.
- [38] That said, policy item #97.34 further explains that it should never be assumed that there is a conflict of medical opinion simply because the opinions of different doctors indicate different conclusions. A difference in conclusion between doctors may or may not result from a difference in medical opinion. For example, the difference could result from different assumptions of non-medical fact. In those situations, the Board must consider whether the relevant non-medical facts have been clearly established.
- [39] It is apparent that Drs. Meetarbhan and Hainc relied on somewhat different non-medical facts in reaching their opinions. This leads me to address some necessary factual findings before proceeding to consider whether one opinion is more persuasive than the other or whether they can be evenly weighted.
- [40] Both doctors understood that the worker was very busy on her January 1, 2011 shift because there was only the worker and one other employee on shift. They also both understood that she was walking backwards while pulling the cart. As for the weight of the cart, Dr. Hainc thought it was “heavy”, but this was not defined. Dr. Meetarbhan thought it weighed about 30 pounds. The worker contends that Dr. Meetarbhan did not understand that the cart was much larger and heavier because the entitlement officer apparently gave her own estimate of the height and weight. Whether that is true or not, and regardless of the cart’s weight and dimensions, I note the worker did not dispute that she told the entitlement officer the cart was not hard to push/pull and, in fact, it was easy to move. Thus, I am satisfied that even if Dr. Meetarbhan relied on the wrong weight and dimensions of the cart, it had no material impact on his opinion.
- [41] Neither of the doctors understood that there were dips in the platform caused by the wheels on the carts wearing the platform metal down. The worker contends that she had to use “a little force” to pull the carts out of the washer and jerk them “a bit” so the wheels would not become stuck in the dips. While neither of the doctors was aware of this fact, the evidence does not suggest that the cart wheels became stuck in any way on January 1, 2011. Nor does the evidence suggest that this was a particularly onerous movement. Moreover, it was not during this particular motion that the worker experienced the immediate onset of back pain. Rather, both doctors understood that

the worker experienced low back pain while turning to look behind her to see where she was going.

- [42] To this point, I am satisfied that the non-medical facts relied upon by Drs. Meetarbhan and Hainc are essentially the same. There is one difference, however. Dr. Meetarbhan understood that the worker turned her head to peek where she was going. Dr. Hainc, on the other hand, understood that she turned her torso and her head/neck. In my view, this is a significant difference. Turning one's head does not engage the back, while turning one's head and torso does. I have carefully reviewed all of the evidence and note the only indication of the worker turning her torso rather than just turning her head is found in Dr. Hainc's December 20, 2011 report. Even during the hearing, the worker did not suggest that she turned her torso, and Ms. M's submissions addressed the worker only turning her head. I also find the reference to the worker turning her head "to peek" to be of persuasive value, as it suggests that only minimal movement was required. In summary, I prefer the more contemporaneous evidence of the worker claiming that she turned her head to look backwards to that she gave to Dr. Hainc almost a year after the event that she turned her head and her torso.
- [43] Returning to policy item #97.34, I am satisfied that the difference in conclusions between Drs. Meetarbhan and Hainc does not result from a difference in medical opinion. I accept that the difference most likely results from different assumptions of non-medical fact. Given my conclusion that Dr. Hainc's opinion is based, to some extent, on his belief that the worker's torso was turned while walking backwards and pulling the cart, I cannot give as much weight to his opinion as I do to Dr. Meetarbhan's. Thus, I find that the medical evidence is not evenly weighted. I give greater weight to Dr. Meetarbhan's opinion since I am satisfied that he had the most accurate understanding of the mechanism of injury. I find that the worker's employment-related motions on January 1, 2011 were not of causative significance in her low back strain on that date.
- [44] I confirm the review officer's August 5, 2011 decision.

Conclusion

- [45] I deny the worker's appeal and confirm the review officer's decision. I find that the worker's lumbar strain did not arise out of and in the course of her employment on January 1, 2011.
- [46] The worker is seeking the expense of Dr. Hainc's December 20, 2011 report in the amount of \$312, based on Dr. Hainc's invoice of the same date. Item #16.1.3 of the *WCAT Manual of Rules of Practice and Procedure (MRPP)* provides that WCAT will generally order reimbursement of expenses for obtaining written evidence, regardless of the result in the appeal, where the evidence was useful or helpful to the consideration of the appeal, or it was reasonable for the party to have sought the evidence. I find it was reasonable for the worker to have sought the opinion of Dr. Hainc in relation to

causation. I order the Board to reimburse the worker the expense of obtaining Dr. Hainc's report in the amount of \$312, which is in keeping with the Board's fee schedule.

- [47] The worker missed one day of work to attend the oral hearing. Practice Directive #16.1.2 of the MRPP states that WCAT will generally order reimbursement of certain expenses for a worker's own attendance at an oral hearing if the worker was successful on the appeal. Given the outcome of the appeal, I see no reason to depart from the practice directive on this matter.

Elaine Murray
Vice Chair

EM/hb