

Noteworthy Decision Summary

Decision: WCAT-2012-02319 **Panel:** David Newell **Decision Date:** August 31, 2012

Section 5(1) of the Workers Compensation Act – Policy items #C3-14.00 and #C3-15.00 in the Rehabilitation Services and Claims Manual, Volume II – Natural Body Motions at Work – Sufficient Connection to Employment

This decision is noteworthy for its analysis of the criterion in policy item #C3-15.00 in the *Rehabilitation Services and Claims Manual, Volume II* (RSCM II) that a natural body motion must be sufficiently connected to the worker's employment before any resulting injury can be accepted as compensable. The worker sought compensation for an injury to her left shoulder, which she said occurred when she used her arms to push herself out of a reclining chair in a lunchroom where she had been sitting during a paid break from work.

The panel referred to the examples given in policy item #C3-15.00 and reviewed a number of WCAT decisions analyzing the factor of sufficient connection to the worker's employment, and also referred to WCAT-2005-04824, a noteworthy decision that considered the policy that immediately preceded the current policy #C3-15.00 in the RSCM II. In cases where a natural body motion was found to have sufficient connection, the motion occurred while the worker was actually engaged in performing job functions and the motion was directly related to the performance of those functions. In cases where there was insufficient connection, the natural body motions did not have the same direct relationship to the performance of the worker's job functions. In this case, there was insufficient work connection.

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Introduction

- [1] The worker applied to the Workers' Compensation Board (Board), operating as WorkSafeBC, for compensation for an injury to her left shoulder, which she said occurred when she used her arms to push herself out of a chair in which she had been sitting during a paid break from work. The Board denied the worker's claim in a letter dated April 26, 2011. The Review Division confirmed the Board's decision in its decision dated December 2, 2011. The worker appealed to the Workers' Compensation Appeal Tribunal (WCAT).

Issue(s)

- [2] The issue in this appeal is whether the worker is entitled to compensation on the basis that her left shoulder injury arose out of and in the course of her employment.

Jurisdiction

- [3] Section 239(1) of the *Workers Compensation Act* (Act) gives WCAT jurisdiction with respect to an appeal from a final decision of a review officer respecting a compensation matter.
- [4] The worker did not request an oral hearing. I have considered the criteria of WCAT set out in rule #7.5 of the *Manual of Rules of Practice and Procedure*. I am satisfied that this appeal may be considered fully and fairly on the basis of the evidence and the submissions on the file. There are no significant issues of credibility or complex matters of fact. The appeal involves the application of law and policy to the facts that are described in the claim file, expert opinions, and the parties' submissions.
- [5] WCAT may consider all questions of fact, law and discretion arising in an appeal, but is not bound by legal precedent (section 250(1) of the Act). WCAT must make its decision on the merits and justice of the case, but in doing so, must apply policy of the board of directors of the Board that is applicable in the case.
- [6] All references to policy in this decision, unless otherwise specified, pertain to the Board's *Rehabilitation Services and Claims Manual, Volume II* (RSCM II).

Evidence, Reasons and Findings

- [7] The worker is a nurse. On April 9, 2011 the worker was sitting in a reclining chair in a lunchroom during a paid break. As she rose from the chair, the worker placed her hands on the arms or sides of the chair to push herself up from the chair. In her claim for compensation to the Board, the worker stated she felt a “twinge” in her left shoulder. She finished her shift but the pain in her left shoulder worsened and she sought medical attention the next day. The worker saw her family physician, Dr. Reid, on April 12, 2011. Dr. Reid diagnosed the worker’s condition as left shoulder rotator cuff tendinitis. An ultrasound scan of the worker’s left shoulder on April 29, 2011 showed no convincing evidence of a rotator cuff tear, but did show tendinopathy within the supraspinatus tendon.
- [8] Policy #C3-14.00 sets out the fundamental principles for determining whether a personal injury is compensable under section 5(1) of the Act. The policy states that “the test for determining if a worker’s personal injury or death is compensable is whether it arises out of and in the course of the employment.” “Arising out of the employment” generally refers to the cause of injury. In considering causation, the focus is on whether the worker’s employment had causative significance with respect to the injury.
- [9] Policy #C3-14.00 makes it clear that both employment and non-employment factors may contribute to the injury, and the employment factors need not be the sole cause. It is sufficient if the employment was more than a trivial or insignificant cause of the injury. “In the course of the employment” generally refers to whether the injury occurred at a time and place and during an activity consistent with and reasonable incidental to the worker’s employment.
- [10] Policy #C3-14.00 also makes it clear that employment is a broader concept than work, and includes more than productive work activity. An injury that occurs outside a worker’s productive work activities may still be considered to arise out of and in the course of employment. Policy #C3-20.00 deals specifically with injuries occurring in facilities provided by an employer, such as parking lots and lunchrooms. Policy #C3-20.00 states that “injuries or death occurring in lunchrooms may be considered to arise out of and in the course of the employment if the lunchroom is provided by the employer.” In this case, the fact that the worker’s injury occurred in the lunchroom does not preclude a conclusion that it arose out of and in the course of her employment. I will return to the application of policy #C3-20.00 but it is first necessary to consider policy #C3-15.00.
- [11] Policy #C3-15.00 concerns injuries following natural body motions at work. The policy states that policy #C3-14.00 is the principle policy for determining whether a worker’s injury arose out of and in the course of employment, but it provides additional guidance for determining the compensability of injuries that do not result from an accident, but

which follow a natural body motion at work. Policy #C3-15.00 gives as examples of natural body motions, standing up from a chair or turning one's head to speak to someone.

[12] Policy #C3-15.00 states:

A natural body motion is of causative significance in producing the injury where the evidence, and in particular the evidence relating to medical causation, shows that the motion was more than a trivial or insignificant aspect of the injury.

When reviewing medical evidence, the Board considers whether:

- the force and/or physical placement involved in performing the motion has the likelihood to be of causative significance in producing the injury;
- the symptoms are medically known to have a spontaneous occurrence, or are more likely to occur following a specific motion or series of motions;
- there is a temporal relationship between the motion and the onset of symptoms; and
- there is evidence of any non-work-related medical conditions that contributed to the injury.

[13] The worker submitted a medical-legal letter from her physician, Dr. Reid, dated April 22, 2012. Dr. Reid wrote that the worker came to her on April 12, 2011 with a history of experiencing a "tug" in her left shoulder when she pushed up from the side arms of a chair at work on April 9, 2011. Dr. Reid noted that the worker had significant pain in her left shoulder by the end of her shift one hour later, and decreased range of motion later in the day. Dr. Reid said the clinical findings on April 12, 2011 were consistent with left rotator cuff tendinitis. The April 29, 2011 ultrasound scan showed definite evidence of supraspinatus tendinopathy, which Dr. Reid stated was completely consistent with the worker's clinical presentation and the diagnosis she provided.

[14] The employer submitted that a medical opinion was not required to determine the outcome of the appeal because the diagnosis of the worker's condition was never raised as an issue, and that the worker had "enlisted help from a physician to make an adjudicative decision." The employer submitted that I should give little weight to Dr. Reid's opinion because it was unnecessary and provided "non-medical support" for the worker.

[15] I agree that the diagnosis of the worker's condition has not been contested, and neither the Board's decision letter nor the Review Division decision underlying this appeal suggests that the condition did not result from the worker's action in rising from the lunchroom chair on April 9, 2012. However, WCAT is required to make a decision on

the merits and justice of the case and may consider new evidence that was not before the Board or the Review Division. Evidence from the worker's treating physician regarding her clinical observations, her diagnosis, and her expert opinion regarding causation are directly relevant to the issue in this appeal. I disagree with the employer's characterization of Dr. Reid's evidence as "non-medical" and unnecessary. I found Dr. Reid's report to be relevant and helpful.

- [16] Despite the submission that Dr. Reid's evidence was "non-medical" and irrelevant, the employer submitted that the distinction between Dr. Reid's diagnosis of "tendinitis" and the ultrasound scan finding of "tendinopathy" was significant. The employer submitted that tendinitis is an inflammatory condition but tendinopathy is a degenerative condition, implying that the worker's condition existed before April 9, 2012 and the action of rising from the chair simply drew her attention to it. A casual perusal of medical literature casts considerable doubt on the precision of the terms "tendinitis" and "tendinopathy" with respect to the characteristics or aetiology of particular conditions. In general, "tendinitis" appears to be used with respect to inflammatory conditions, "tendinosis" appears to be used with reference to degenerative conditions, with or without inflammation, and "tendinopathy" appears to be used as a broader term encompassing both. In any event, I accept Dr. Reid's opinion that the condition seen in the ultrasound scan, described as supraspinatus tendinopathy, was consistent with her diagnosis of rotator cuff tendinitis.
- [17] The worker submitted that the analysis in *WCAT-2008-00362* was relevant to this appeal, even though that decision concerned former policy #15.20 that was replaced by policy #C3-15.00. The panel in *WCAT-2008-00362* concluded an injury following a natural body motion at work was compensable if there was something in the employment that had causative significance in producing the injury, and there was no requirement that there be something unusual in the work to cause an injury. Previous WCAT decisions are not binding, but I think the reasoning in *WCAT-2008-00362* was sound and nothing in policy #C3-15.00 has the effect of changing the principle that emerges from it. I conclude that if a natural body motion had causative significance in producing an injury, it remains unnecessary to establish that there was something unusual in the worker's employment or a change in the worker's employment in order for the injury to be compensable.
- [18] The worker stated that she felt a "tug" or a "twinge" in her left shoulder as she pushed herself out of the chair with her arms, and then experienced progressively worsening symptoms. The strong temporal connection between the action of rising from the lunchroom chair and the onset of symptoms, together with Dr. Reid's evidence is sufficient to establish that the action of rising from the chair, which I find was a natural body motion, had causative significance with respect to the worker's left shoulder rotator cuff tendinitis. However, that conclusion is not sufficient on its own to determine compensability of the worker's injury; it is also necessary to establish that the natural body motion was sufficiently connected to the worker's employment.

[19] Policy #C3-15.00 states:

A natural body motion is sufficiently connected to the worker's employment where the motion is required or incidental to the employment.

Sufficient employment connection may exist where, for example, a health care worker undertakes the employment activity of bending over to retrieve a lunch tray to serve to a patient. Sufficient employment connection may not exist where, for example, a worker undertakes the personal action of bending over to retrieve his or her lunch from the office refrigerator.

If the natural body motion is not sufficiently connected to the employment, the personal injury did not arise out of the employment and is therefore not compensable.

[20] The worker referred to policy #C3-20.00 and submitted that there was sufficient employment connection because the injury occurred in a lunch room provided by the employer. Policy #C3-20.00 states that "injuries or death occurring in lunchrooms may be considered to arise out of and in the course of the employment if the lunchroom is provided by the employer." The word "may" indicates that policy #C3-20.00 does not mean all injuries that occur in an employer-provided lunchroom will be considered to arise out of and in the course of employment; rather, it means that injuries occurring in a lunchroom, which might otherwise be considered not to arise out of and in the course of employment, may be considered to do so if the lunchroom was provided by the employer. I do not think policy #C3-20.00 supplants policy #C3-15.00; rather, it should be read in conjunction with it. The combined effect of policies #C3-15.00 and #C3-20.00 is that an injury following a natural body motion in a lunchroom provided by the employer may be considered to arise out of and in the course of employment if the natural body motion is sufficiently connected to the worker's employment. The fact that an injury following a natural body motion occurred in a lunchroom provided by the employer is not on its own sufficient to establish a sufficient employment connection but it does not preclude a conclusion that there was such a connection.

[21] The employer submitted that the correct test is whether the natural body motion was sufficiently connected to the worker's employment to be considered a requirement of her employment. In my view, that interprets policy #C3-15.00 too narrowly. The test in policy #C3-15.00 is whether there is a sufficient connection between the natural body motion and the worker's employment. That test is met if the motion was required by the worker's employment, but it may also be met if the motion was incidental to the employment.

[22] The employer submitted that the worker was on a break and was not required to sit in the lunchroom chair or stand up from it. I agree; however, the question remains whether the motion of rising from the chair was incidental to the worker's employment.

The example given in policy #C3-15.00 gives some insight into what is or is not incidental to a worker's employment. In the example, a healthcare worker bends over to retrieve a lunch. Serving lunch to a patient is a requirement of the worker's employment. If the worker has to bend over to retrieve the lunch tray in order to serve it to the patient, the motion of bending over is incidental to her employment and a sufficient connection is established. Eating his or her own lunch is not a requirement of the worker's employment; consequently, the same action of bending over to retrieve a lunch from a lunchroom refrigerator is not incidental to the employment, and a sufficient connection is not established.

- [23] The worker referred to the noteworthy decision of a three-person panel in *WCAT-2005-04824*, another decision that considered the policy that was replaced by policy #C3-15.00. Other WCAT panels (such as in *WCAT-2012-01889*) have concluded, as do I, that the reasoning in *WCAT-2005-04824* continues to provide useful guidance in applying policy #C3-15.00. The panel in *WCAT-2005-04824* described the analysis of the sufficiency of connection between employment and a natural body motion in the following way:

This involves consideration of whether the motion was directly required by or incidental to the employment. It could also be characterized as whether performance of the motion exposed the worker to a risk of the employment, as opposed to the risks arising from the natural, everyday motions of the human body, to which we are all constantly exposed

- [24] A review of WCAT decisions that considered the connection between a worker's employment and natural body motions in the context of policy #C3-15.00 is instructive.
- [25] In the following cases which considered the application of policy #C3-15.00, natural body motions have been found to have sufficient connection to the worker's employment to make an injury compensable (in some cases compensation was denied for other reasons, including lack of causative significance of the motion):
- *WCAT-2012-01688* - an administrative assistant bending at the waist to pick up files from the floor;
 - *WCAT-2012-01600* - a delivery driver stepping up into a delivery van;
 - *WCAT-2012-01416* - a nurse carrying a piece of equipment used in the operating room and putting it in its normal storage place;
 - *WCAT-2012-01089* - a nurse bending over to adjust a blood-pressure cuff on a patient's arm;
 - *WCAT-2012-00995* - a care aide guiding a patient's arm to the armrest of a chair;
 - *WCAT-2012-00867* - a security guard standing and opening a door for bank customers;
 - *WCAT-2012-00864* - a special education assistant sitting down at her desk and pulling a book towards her;

- *WCAT-2012-00796* - a home-care worker rising from a couch in which she had been sitting to complete paperwork related to her visit to a client;
- *WCAT-2012-00634* - a forklift operator twisting his upper body and bending forward to speak to a co-worker;
- *WCAT-2012-00494* - a bus driver bending down to pick up a pencil which he used to fill out work-related forms and which was a tripping hazard to bus passengers entering the bus;
- *WCAT-2011-02654* - a hospital worker turning her head to see where she was going while walking backwards pulling a supply cart;
- *WCAT-2012-00570* - a bus driver turning and rising from his seat in order to manipulate a control button;
- *WCAT-2012-00562* - A bus driver turning in her seat to observe passengers as they entered and exited the bus;
- *WCAT-2012-00496* - a construction worker reaching behind his back to obtain a tool from his toolbelt;
- *WCAT-2011-02808* - a ticket agent repeatedly twisting and reaching to process ticket transactions;
- *WCAT-2011-02684* - a care aide turning to obtain a wash cloth from a supply cart in order to wash a patient;
- *WCAT-2011-02654* - a nurse turning to deposit documents in a box while sitting at his work station; and
- *WCAT-2011-02201* - an electrician crouching over to install electrical boxes then standing up.

[26] In the following cases natural body motions were found to not have sufficient connection to the worker's employment to make an injury compensable:

- *WCAT-2012-01889* - a community care worker walking quickly from a client's home to her car in order to travel to another client's home;
- *WCAT-2012-00020* - a security guard bending down to tie his shoe;
- *WCAT-2011-03034* – a delivery driver descending stairs to return to his vehicle after delivering items;
- *WCAT-2011-02751* – a maintenance worker ascending a few stairs in a carpentry shop; and
- *WCAT-2011-02623* – a customer service clerk walking quickly down a store aisle to help a customer.

[27] The common thread in the cases where a natural body motion was found to have sufficient connection to the worker's employment is that the motion occurred while the worker was actually engaged in performing their job functions and the motion was directly related to the performance of those functions. In the cases where a sufficient employment connection was not found, the natural body motions did not have the same direct relationship to the performance of the worker's job functions.

- [28] Among the previously decided cases, the natural body motion most analogous to the facts in this case was the home-care worker rising from a couch in *WCAT-2012-00796*. However, in that case the worker was sitting while completing paperwork related to her visit to a client, while in this case the worker was sitting in the chair during a break. In my view that is a subtle but real distinction. In terms of the examples given in policy #C3-15.00, the facts in this case are more analogous to the healthcare worker bending to retrieve her own lunch from a lunchroom refrigerator than to the healthcare worker bending to retrieve a lunch tray to give to a patient. I find that the motion of pushing herself up and out of the chair at the end of her break was a natural body motion that was neither required by nor incidental to the worker's employment and did not have sufficient employment connection to make the resultant injury compensable.

Conclusion

- [29] I deny the worker's appeal and confirm the Review Division decision dated December 2, 2011 (*Review Reference #R0131456*) denying the worker's claim for left shoulder tendinitis.

Expenses

- [30] The worker was assisted by her union in this appeal. The union paid for Dr. Reid's medical-legal letter dated April 29, 2012. They requested that the union be reimbursed directly for that expense. Item #16.1.3 of the *WCAT Manual of Rules of Practice and Procedure* states that WCAT will generally order reimbursement of expenses for obtaining or producing written evidence, regardless of the outcome of the appeal, where the evidence was useful or helpful to the consideration of the appeal or it was reasonable for the worker to have sought the evidence in connection with the appeal. Dr. Reid's letter was helpful. It was reasonable for the worker to have sought it. Accordingly, pursuant to section 7(1)(b) of the *Workers Compensation Act Appeal Regulation*, I order the Board to reimburse the worker's union for the expense of Dr. Reid's medical-legal letter dated April 29, 2012 up to the maximum amount in the Board's schedule of fees.

David Newell
Vice Chair

DN/pm