

Noteworthy Decision Summary

Decision: WCAT-2013-00694 **Panel:** Elaine Murray **Decision Date:** March 14, 2013

Section 5(1) of the Workers Compensation Act – Policy items #C3-14.00, #C3-15.00, #C3-16.00, and #C3-18.00 of the Rehabilitation Services and Claims Manual, Volume II- Personal Actions - Natural Body Motions at Work – Sufficient Connection to Employment – Pre-existing Deteriorating Condition

This case is noteworthy in its analysis of section 5(1) of the *Workers Compensation Act* and the criteria in policy items #C3-14.00, #C3-15.00, #C3-16.00 and #C3-18.00 of the *Rehabilitation Services and Claims Manual, Volume II* (RSCM II). In this case the worker sought compensation for a left knee injury which she said occurred when she went to retrieve a water bottle from her vehicle in the employer's parking lot. She turned her body to the right while stepping down from the curb to open the car door, and immediately felt pain in her left knee. There was no definitive diagnosis and therefore the panel needed to address causation under several different policies. This case is an example of the analysis required under those different policy items.

The panel determined that the injury occurred in the course of the worker's employment because under item #C3-18.00 of the RSCM II the action of retrieving the water bottle was incidental to her employment. Under policy item #C3-14.00 and #C3-15.00, the panel determined that a natural body motion will be found to have sufficient connection to a worker's employment when the motion occurred while a worker was actually engaged in performing their job functions and the motion was directly related to the performance of those functions. The panel found insufficient connection to employment of the worker's motion in retrieving her water bottle to find that her personal injury arose out of her employment. Further there was no persuasive and reliable medical opinion to establish causative significance. The only medical opinion with an accurate understanding of the mechanism of injury found that it was not plausible that it would have caused the knee injury. The panel also adjudicated the issue under policy item #C3-16.00 and found that the evidence suggested the worker had a pre-existing deteriorating condition that was at a critical point where it was about to become a manifest disability; her employment was not of causative significance. In the alternative, even if the worker's pre-existing condition was not a deteriorating condition, there was insufficient evidence to support a finding that the employment activity affected any pre-existing condition.

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Introduction

- [1] On May 31, 2011, the then 59-year-old ticket agent experienced a sudden onset of left knee pain and swelling. By decision dated July 7, 2011, the Workers' Compensation Board (Board), operating as WorkSafeBC, denied the worker's claim for a left knee injury. The worker requested a review. On February 13, 2012, a review officer decided that while the worker was in the course of her employment when her symptoms arose, her employment was not a cause of her left knee symptoms.
- [2] The worker now appeals the review officer's decision to the Workers' Compensation Appeal Tribunal (WCAT).
- [3] The worker did not request an oral hearing. I have considered the WCAT *Manual of Rules of Practice and Procedure* with respect to when oral hearings are generally held. I am satisfied that an oral hearing is not necessary, and that this appeal can be fairly decided upon the evidence and submissions on file. The worker provided written submissions, along with new medical evidence. The employer is participating in this appeal, and also provided a submission.

Issue(s)

- [4] Is the worker eligible for compensation for left knee symptoms she experienced on May 31, 2011? This requires a determination of whether she sustained a left knee injury arising out of and in the course of her employment on that date.

Jurisdiction

- [5] This appeal was filed with WCAT under subsection 239(1) of the *Workers Compensation Act* (Act). 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.
- [6] 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. The *Rehabilitation Services and Claims Manual, Volume II* (RSCM II), as it has read since July 1, 2010, pertains to this appeal. All references to policy in this decision are to the RSCM II.

Background and Evidence

- [7] The worker contacted the Board's Teleclaim Contact Centre on June 1, 2011. The teleclaim operator recorded the worker's description of what happened the day before as follows:

The worker is a ticket agent for [the employer]. She was retrieving something personal out of a co-worker's car in the employee parking lot when the injury occurred. She wasn't on a break at the time and stated it was common practice for her and her co-workers to step out of the ticket booth beside the parking lot to go to the washroom, or retrieve personal items from their cars when it's not busy. The worker was standing beside the vehicle on an elevated concrete curb about 9" [inches] off the ground with her feet facing the back of the car. She put her right foot down onto the ground while reaching to open the door of the SUV [sports utility vehicle]. When she put her left foot down parallel to the other, a shooting pain went from about 6" below her knee at the back to about halfway up her thigh. She noticed nothing on the ground or anything that could account for the injury. She may have had a slight twist or hyper-extension but isn't sure. She did not slip or trip. Her leg swelled up almost immediately at the back and top of the knee on the left hand side and by the next morning had grown to almost 3x [times] her normal size. The worker is unsure as to what caused the accident.

- [8] The worker added that she sought first aid treatment at work on May 31, 2011. The following day, she saw a medical clinic physician, Dr. Dinu, who told her that she either had a ligament tear or a Baker's cyst.¹ Dr. Dinu also told the worker that a ligament tear would be unusual and would need to be determined through an MRI scan.
- [9] The employer provided copies of three medical notes written by Dr. Dinu on June 1, 2011. One of those notes prescribed a knee brace for a left LCL (lateral collateral ligament)² tear. Another prescribed physiotherapy for a left knee "?LCL tear" and a Baker's cyst, and also noted that an x-ray and MRI scan were pending.
- [10] Dr. Dinu's request for a left knee x-ray suggested the tentative diagnosis was a Baker's cyst, and the clinical findings were pain. A June 3, 2011 left knee x-ray revealed only a small joint effusion. The x-ray report begins with "History: Baker's cyst. Pain", and then provides the findings. The review officer thought that this meant the worker had a history (prior to May 31, 2011) of a Baker's cyst and left knee pain. I do not interpret this as the worker having a history of a Baker's cyst and left knee pain; rather, I consider

¹ A Baker's cyst, also called a popliteal cyst, is a fluid-filled cyst that causes a bulge and a feeling of tightness/pain behind the knee. It is usually the result of a problem with the knee joint, such as arthritis or a cartilage tear. Both conditions can cause the knee to produce too much fluid, which can lead to a Baker's cyst.

² The LCL is a ligament on the outer side of the knee.

the "History" simply documented what Dr. Dinu observed when she saw the worker and described the reason Dr. Dinu provided for requesting an x-ray.

- [11] On June 7, 2011, a Board entitlement officer spoke to the worker and documented the worker's description of events on May 31, 2011. They were the same as described in the teleclaim application other than the worker added that she was standing on the curb with both feet parallel to the curb itself and both feet facing the back of the vehicle. The vehicle was on the worker's right hand side and she turned towards the vehicle to open the front passenger door. As she turned, she grabbed the front door with her right hand and stepped down from the curb with her right foot first. She then stepped down with her left foot and felt immediate left knee pain.

- [12] The worker saw her regular family physician, Dr. Robbertse, on June 11, 2011. Dr. Robbertse understood that the worker "misstepped" out of her ticket booth and had immediate pain and dysfunction of her left knee. He reported the worker was experiencing left knee pain, swelling, and instability. In the section of the report where a diagnosis is to be provided, he wrote "contusion left knee." On examination, he observed effusion (colloquially known as water on the knee) with a small Baker's cyst, lateral compartment pain, and some pain with varus stress localizing in the lateral compartment. He did not consider her fit to work as she was having difficulty standing and walking.

- [13] On June 17, 2011, Dr. Robbertse reported that, as before, the worker's left knee felt full and was unstable. She was unable to walk without pain or stand for any period of time. He noted that she was waiting for an MRI scan.

- [14] On June 27, 2011, Dr. Robbertse reported that the worker's physiotherapist was concerned about a ligament injury in the worker's left knee. Dr. Robbertse requested an expedited MRI scan.

- [15] In a July 4, 2011 memorandum, the entitlement officer documented that she had spoken to Dr. Craven, a Board medical advisor. She had asked him whether there was a compensable diagnosis and what the likelihood was of the worker sustaining a left knee injury as a result of stepping off a curb with the right foot first and then the left foot, noting the worker's weight would have been on her right foot before she lifted her left foot off of the curb. On July 6, 2011, Dr. Craven confirmed that the entitlement officer's following summary accurately reflected their discussion and his opinions:

Dr. Craven opined that it is medically not plausible for worker to have sustained a knee injury based on the mechanism she describes. The worker was simply stepping off a curb without any twisting motion, tripping or other significant action. This was a normal body motion which would not result in an injury or in the description of an unstable knee, inability to walk or stand without pain, or need for MRI as indicated in the June 17 GP [general practitioner] report.

There is no compensable diagnosis - the gp has given a dx [diagnosis] of a left knee contusion - there is no evidence that worker fell onto her knee and therefore the dx of contusion as a result of her stepping off a curb is not medically plausible.

[reproduced as written]

- [16] On July 7, 2011, the entitlement officer informed the worker by telephone that her claim would not be allowed because she was not participating in a work-related duty when she experienced her left knee symptoms, and the mechanism of injury could not reasonably cause an injury without any specific reason. The worker replied that she had twisted her knee when she stepped off the curb.

- [17] In her decision of July 7, 2011, the entitlement officer informed the worker that her claim was denied for two reasons: (1) her action of retrieving a personal item from a co-worker's vehicle would not be considered as "arising out of" her employment (I believe she meant to say that it would not be considered as arising "in the course of" her employment); and (2) it was not biologically plausible that her left knee symptoms arose from the described activity.

- [18] On July 18, 2011, Dr. Robbertse reported the worker still had pain and swelling of her left knee, with very restricted range of movement. His diagnosis remained a left knee contusion.

- [19] In her submission to the Review Division, the worker made three points:
 - The personal item she was retrieving was her water bottle and was incidental to her work activity. Employees drink their own water because the employer-provided filtered water in the lunchroom does not taste right. The worker provided various testimonials from staff to the effect that they bring their own water to work, as they will not drink the water from the employer's taps, even though filtered.
 - While her feet were parallel to the curb before stepping off of it, her left foot turned perpendicularly to make the step down from the curb, and thus there was twisting.
 - Dr. Robbertse has told her that the Baker's cyst was benign until the May 31, 2011 accident caused it to develop serious complications. He explained to her that people commonly break bones in "the act of simply stepping off a curb."

- [20] Dr. Robbertse provided a November 10, 2011 note that simply reads it is his opinion that the worker's pain was caused by her work-related duties.

- [21] The employer also provided an employee medical assessment form completed by Dr. Robbertse on December 12, 2011, in which he diagnosed chronic left knee pain and a Baker's cyst.

[22] In his January 12, 2012 report, Dr. Robbertse now offered a diagnosis of a left knee Baker's cyst. He noted the worker had ongoing left knee pain and weakness, and she was still not able to return to work despite two attempts.

[23] On January 30, 2012, Dr. Robbertse provided a report for purposes of the worker's request for review at the Review Division. He explained that his November 2011 opinion on causation was based on the history and physical examination of the worker. He confirmed that he was not the original examining physician, and when he saw the worker three weeks after the injury, she presented with a history of contusion of her left knee when she stepped out of her booth to retrieve water from her vehicle. He then offered the following:

As you are aware bakers cyst can be caused from degenerative changes or underlying cartilage tear. Since [the worker] was fully functional with no history of knee pain or dysfunction prior to this incident it appears most likely as a result of this incident. Ultrasound examination of her knee confirmed the bakers cyst but is not adequate to exclude underlying internal derangement of her knee.

[reproduced as written]

[24] The review officer first addressed the Board's finding that the worker's actions of stepping off a curb to retrieve a personal item from a vehicle would not be considered as arising out of and in the course of her employment. He noted the Board relied on the principles under policy item #C3-18.00 (Personal Acts), which provides guidance for differentiating between a worker's employment functions and a worker's personal actions, when determining whether a personal injury arises out of and in the course of the employment.

[25] The review officer concluded that it is common practice for the worker and other co-workers to leave the ticket booth while working to go to the washroom or to a vehicle (parked on the employer's premises) to retrieve personal items, such as water bottles. He noted that the quality of the drinking water was not at issue; rather, what had to be decided was whether the worker had removed herself from her employment when she went to get her water bottle. He referred to policy item #C3-18.00, which provides that where the common practice of an employer or an industry permits some latitude to workers to attend to matters of personal comfort or convenience in the course of employment, compensation for injuries or death occurring at those moments is not denied simply on the ground that the worker is not in the course of productive work activity at the crucial moment. This is within the scope of the established doctrine relating to acts which, though not in themselves productive, are nevertheless a normal incident of employment.

[26] The review officer was satisfied the worker had some latitude in her work day to attend to matters of personal comfort or convenience while remaining in the course of her employment. He concluded that her action of retrieving her water bottle was incidental

to her employment, and therefore she was in the course of her employment on May 31, 2011 when she was injured.

- [27] As for whether her left knee injury also arose out of her employment, the review officer was unable to find in the worker's favour. On reviewing the medical evidence, he noted that Dr. Dinu had not offered an opinion on causation. And while Dr. Robbertse had done so, the review officer thought his opinion was based on a misunderstanding of the actual mechanism of injury. The review officer was satisfied, however, that Dr. Craven had considered all the evidence, and in particular, the accepted mechanism of injury of stepping off a curb without any evidence of a twisting motion, slip/fall, or any other significant actions to cause a personal injury. The review officer accepted Dr. Craven's opinion that it was not medically plausible to sustain a left knee "contusion" by stepping off a curb in the absence of a fall and/or an impact to her knee. Thus, the review officer concluded that work causation had not been established.

New Evidence and Submissions on Appeal

- [28] On this appeal, the worker asks that the following be considered:

- She was wearing mandatory steel-toed boots on May 31, 2011, which are very heavy and awkward to turn in.
- She had not experienced left knee symptoms until May 31, 2011.
- It was obvious something happened to her left knee at work because she had immediate pain and swelling.

- [29] She also provided a copy of the May 31, 2011 first aid treatment report, which documented swelling and decreased range of motion of her left knee. The incident and injuries were described as follows:

Walking towards (co-worker's) friend's car @ toll plaza, step down from curb with R [right] foot, reaching towards passenger door, stepped down with L [left] foot immediately felt shooting pain in L knee, posterior-medial aspect. 8/10 pain rate.

...No increased pain while palpating or sitting. poss. twisting of knee while manuvring body towards car. Knee feels "weak" 40 min. after + numbness.

[reproduced as written]

- [30] The worker contends the above first aid report confirms that she twisted her left knee. In a December 2, 2012 submission, she also wrote that she "slipped on a curb, twisting" her knee while manoeuvring to reach the door handle.

- [31] The worker also provided the results of a March 21, 2012 MRI scan that Dr. Dinu had originally requested. The MRI scan showed a slightly increased signal in the inferior pole of the LCL, suggesting to the radiologist that there had been a previous LCL strain or a partial LCL tear. There was no evidence of a complete tear. The medial collateral ligament was normal, but the radiologist thought there was a degenerative medial meniscus tear, mild tri-compartmental osteoarthritis, and patellofemoral chondromalacia. Finally, he noted joint effusion, and a Baker's cyst.
- [32] The employer submits to WCAT that the worker is relying on the first aid report to say that she had twisted her left knee; however, that report only noted that there was a "poss. twisting", meaning she "possibly" twisted her knee. If she had twisted her knee, the employer submits that she would have said so unequivocally. At best, there is only speculation that she twisted her knee, and her comments about twisting are really made in hindsight as she searches for a cause for her knee pain.
- [33] The employer further submits that Dr. Robbertse's opinions cannot be given weight because they were offered in the absence of him having knowledge of the MRI scan results, which show "widespread left knee degeneration and osteoarthritis." The employer provided an article from the *New England Journal of Medicine* with respect to osteoarthritis of the knee joint. The employer submits that it suggests, among other things, that MRI scans showing osteoarthritis and meniscal tears are common in middle-aged and older adults with or without knee pain.
- [34] Given the MRI scan results, the employer is of the view that the worker's underlying degenerative condition caused her symptoms, and the activity of stepping off a curb was not of causative significance to her symptoms.
- [35] In reply, the worker submits that she reported honestly that she was uncertain whether she had twisted her left knee or not, but she is certain that she went to work with no knee problems and left with a swollen, red, and painful knee that lasted for months. That she has "mild" osteoarthritis is not surprising, but the fact remains, in her view, that her pain and swelling was caused by stepping off the curb while turning her body.

Reasons and Findings

- [36] Subsection 5(1) of the Act states that a personal injury must arise both "out of" and "in the course" of the employment before compensation can be paid. For compensation to be paid, three questions must be answered affirmatively: (1) did the worker sustain a personal injury; (2) did that injury arise in the course of employment; and (3) did it also arise out of the employment.

First component – personal injury

- [37] The worker had immediate objective signs of swelling, and loss of range of motion, in addition to significant left knee pain. Policy item #C3-12.00 defines personal injury in

subsection 5(1) of the Act as any physiological change resulting from some cause. The first component is established, since the evidence clearly documents the worker's left knee underwent a physiological change on May 31, 2011 from some cause, be it work-related or otherwise.

- [38] There is no confirmed diagnosis for the worker's left knee symptoms. A diagnosis is not required for adjudication. It can, however, be helpful as different diagnoses may be adjudicated under different policies. In the absence of an MRI scan, Dr. Dinu thought the worker's symptoms might be from an LCL tear and/or a Baker's cyst. The recent MRI scan shows a Baker's cyst and it also suggests that the worker might have had a partial LCL tear or an LCL strain. In his initial reports to the Board, Dr. Robbertse noted a left knee contusion (bruising) as the diagnosis; however, the first aid attendant's, Dr. Dinu's, and even Dr. Robbertse's examination findings did not document any left knee contusion. In his later reports to the Board, Dr. Robbertse changed the diagnosis to a Baker's cyst. His most recent report suggests a diagnosis of Baker's cyst related to either degenerative changes or an underlying cartilage tear. When offering his diagnosis, he had also not seen the MRI scan. That scan reveals a number of degenerative changes in the worker's left knee. The findings on the MRI scan could support a diagnosis of a Baker's cyst, an LCL tear, or an LCL strain.
- [39] Although there is no definitive diagnosis, it is clear that the worker had immediate and severe symptoms of swelling and pain, followed by symptoms of weakness, instability, and difficulty walking and standing. All of these symptoms suggest a fairly significant left knee problem. As I do not have any definitive diagnosis, and as the worker's left knee symptoms may have arisen from an aggravation of a pre-existing condition (including a pre-existing asymptomatic Baker's cyst and/or a pre-existing asymptomatic LCL tear and/or pre-existing osteoarthritis to name a few), I will need to address causation under several different policies. Policy item #C3-14.00 is the starting point.
- [40] Policy item #C3-14.00 (Arising Out of and in the Course of the Employment) provides that it is the "principal policy" setting out the decision-making principles for determining a worker's entitlement to compensation for personal injury under subsection 5(1) of the Act. It offers guidance when determining whether the remaining two components in subsection 5(1) have been met.

Second component – arising "in the course of" the employment

- [41] Policy item #C3-14.00 explains that arising "in the course of" employment generally refers to whether the injury happened at a time and place and during an activity consistent with, and reasonably incidental to, the obligations and expectations of the employment.
- [42] The review officer was satisfied that the worker's actions of retrieving the water bottle happened at a time and place and during an activity reasonably incidental to her employment. I agree for the reasons provided by the review officer. I am therefore

satisfied that the second component of subsection 5(1) of the Act is established. I note the employer's submission to WCAT was solely focused on the remaining and third component. I agree that it is the key matter for determination on this appeal; namely, whether the worker's left knee injury also arose "out of" her employment.

Third component – arising "out of" the employment

- [43] Policy item #C3-14.00 explains that arising "out of" the employment" generally refers to the **cause** of the injury. In considering causation, the focus is on whether the worker's employment was of causative significance in the occurrence of the injury. Both employment and non-employment factors may contribute to the injury, and employment factors need not be the sole cause. However, in order for the injury to be compensable, the employment has to be of causative significance, which means more than a trivial or insignificant aspect of the injury.
- [44] When determining causative significance, policy item #C3-14.00 explains that the Board considers both medical and non-medical evidence. When reviewing medical evidence, the Board considers whether:
- there is a physiological association between the injury or death and the employment activity, including whether the activity was of sufficient degree and/or duration to be of causative significance in the injury or death;
 - there is a temporal relationship between the work activity and the injury or death; and
 - any non-work related medical conditions were a factor in the resulting injury or death.
- [45] Before considering the medical evidence, it is first necessary to consider the non-medical evidence; namely, the nature of the employment activity itself that is purported to be of causative significance. This requires me to address whether the worker slipped and/or twisted her left knee on May 31, 2011, since this will underpin the adjudication of this matter.
- [46] Generally, the evidence closest to the event (known as the contemporaneous evidence) is the most reliable. The most contemporaneous evidence is found in the May 31, 2011 first aid report and the June 1, 2011 teleclaim application.
- [47] On May 31, 2011, it was documented that the worker thought it was "possible" her left knee twisted. Consistent with this was her comment on June 1, 2011 that she "may" have "slightly twisted" her left knee when she reached for the car door and stepped down. The worker confirmed in her submission on this appeal that she was uncertain whether she had twisted her knee. I can understand why she might speculate about twisting her left knee, given the immediate severity of her symptoms from what would

appear to be such an innocuous activity. But, there is nothing other than speculation in this regard. It follows that I am unable to find as a fact that the worker twisted her left knee during the process of opening the car door.

- [48] Even if I were mistaken and there was some twisting of the worker's left knee, I could only have at best concluded that it was so slight of a twist as to be of no significance; a twist so slight that the worker was uncertain whether it had actually happened.
- [49] With respect to whether the worker "slipped" on the curb, she first mentioned this as a possibility on July 7, 2011 and again in her submission to the Review Division. I note that she did not reiterate this possibility in her submission to WCAT. Even if she had, I would still find that the evidence does not support a conclusion that she slipped. Again, the most contemporaneous evidence does not indicate the worker slipped. Indeed, on June 1, 2011, the worker told the teleclaim operator that she did not slip. I prefer the evidence closer to the event as I consider it more reliable than the worker's later description of the events of May 31, 2011, and I find the worker did not slip on May 31, 2011.
- [50] Finally, the worker asks that I consider she was wearing steel-toed work boots that are heavy and awkward to move in. While this may be true, I am unable to find that the worker's footwear played a role of any significance in causing her left knee symptoms on May 31, 2011. Again, there is nothing more than speculation on the worker's part in this regard.
- [51] The worker has also referred to her injury as arising from an "accident" at work. The word "accident" is defined in policy item #C3-14.20, and has been interpreted in its normal meaning of a traumatic incident. It follows that I find that the worker's motion of turning her body to the right while stepping down from the curb to open the car door on May 31, 2011 was not an accident. Although policy item #C3-14.00 is the principle policy for determining causation in claims where there is no accident at work, policy item #C3-15.00 (Injuries Following Natural Body Motions at Work) may become relevant. It sets out that a natural body motion is one that is commonly performed as part of daily living. Such motions may occur both at work and away from work. Examples given in the policy are standing up from a chair or turning one's head to speak to someone.

Adjudication under policy item #C3-15.00

- [52] Where natural body motions are involved policy item #C3-15.00 provides that the Board must address two questions when determining whether an injury arose out of the employment: (1) whether there is a sufficient employment connection to the body motion; and (2) whether the motion is of causative significance in producing the injury. In other words, policy item #C3-15.00 adds a further component to the question of causative significance set out in policy item #C3-14.00; namely, whether the motion alleged to have caused the injury has sufficient employment connection. I point out that

this is different than the previous determination of whether the worker was actually in the course of her employment when her injury arose. The activity a worker is performing may well place a worker in the course of employment, but the actual body motion during that activity may not have sufficient employment connection.

[53] Policy item #C3-15.00 explains that a natural body motion is sufficiently connected to the worker's employment where it is required or incidental to the employment. Policy goes on to provide that 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. On the other hand, 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.

[54] The latter example strikes me as being of relevance on this appeal. If the motion of bending over to take one's lunch from the office refrigerator³ does not have sufficient employment connection, then I question how it could be said that the motion required to open the car door to retrieve one's water bottle has sufficient employment connection. In my view, the worker retrieving a water bottle is no different than the worker in the example retrieving a lunch bag, in that neither of those motions occurred while actually engaged in performing job functions; the motions were not directly related to the performance of job functions. A recent WCAT decision, *WCAT-2012-02319*⁴, was helpful in this analysis, where the panel wrote:

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.

[55] I agree with the reasoning provided in *WCAT-2012-02319*, and have adopted it as my own on this appeal. Thus, I am satisfied that a natural body motion will be found to have sufficient connection to the worker's employment when that 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."

[56] It may also be helpful to refer to *WCAT-2005-04824* (21 *Workers' Compensation Reporter* 289) 2, which was rendered by a three-person WCAT panel on September 14, 2005. That decision addressed policy item #15.20, which was the predecessor of policy

³ Policy item #C3-18.00 explains that a worker does not cease to be "in the course of" the employment while having a lunch or coffee break on the employer's premises. Just as the worker did not cease to be "in the course of" her employment while retrieving her water bottle on the employer's premises.

⁴ *WCAT-2012-02319* provides a thorough summary of WCAT decisions addressing the "work connection" of a natural body motion.

item #C3-15.00. Policy item #15.20 addressed injuries following motions at work. Previous WCAT decisions are not binding, but I think the reasoning in *WCAT-2005-04824* was sound and nothing in policy item #C3-15.00 has the effect of changing the principle that emerges from it. In fact, the Table of Concordance found on the Board's website with respect to policy item #C3-15.00 explains that the entitlement test under that policy incorporates the framework of *WCAT-2005-04824*. The Table of Concordance further explains that policy item #C3-15.00 "compliments" policy item #C3-14.00 and clarifies the requirements of "significant employment connection" and "causative significance" for injuries involving natural body motions at work.

[57] In *WCAT-2005-04824*, the panel recognized it may be difficult to distinguish between a work-required and a non-work-required motion, but it explained, through the use of examples, that a job may require a particular motion, such that the motion gains "work status." If the work-required motion results in an injury, then that is an indication that the injury arose out of the employment and is compensable. The panel in *WCAT-2005-04824* set out three broad questions to consider when adjudicating a claim arising from a "natural" or "normal" body motion, as reproduced below:

- Did the motion alleged to have caused personal injury take place in the course of employment?
- Did the motion have enough work connection?
- Did the motion have causative significance in producing a personal injury?

[58] According to the panel in *WCAT-2005-04824*, the sufficiency of connection between employment and a natural body motion in policy item #15.20 could be stated as follows:

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...

[59] I found the above analysis useful, in combination with the analysis in *WCAT-2012-02319*, in reaching the conclusion that while the worker's motion took place "in the course of" her employment, the motion was not one required by or incidental to her employment in the sense that it did not expose her to a risk of her employment itself because she was neither engaged in performing her job functions and nor was the motion directly related to the performance of those functions.

[60] Policy item #C3-15.00 states that if the natural body motion is not sufficiently connected to the employment, then the personal injury did not arise out of the employment and is therefore not compensable. Based on policy item #C3-15.00, I find there is insufficient employment connection to the worker's motion on May 31, 2011 to retrieve her water bottle and, therefore, it follows that I am unable to find her personal injury arose out of

her employment, as contemplated by subsection 5(1) of the Act and policy item #C3-15.00.

[61] If I am mistaken with respect to my finding that there is insufficient work connection to the motion undertaken by the worker, I would also conclude that the second question under policy item #C3-15.00 could not be resolved in the worker's favour. That question is whether the motion is of causative significance in producing the injury. And, that question leads me to the test for causative significance set out under policy item #C3-15.00:

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.

[62] Turning to those questions, I acknowledge there is a strong temporal connection between the worker's motion and the onset of her symptoms. But, I do not consider that is sufficient on its own to establish causative significance. There is simply no persuasive and reliable medical opinion to establish causative significance under policy item #C3-15.00. Like the review officer, I note that Dr. Duni offered no opinion on causation and while Dr. Robbertse offered an opinion, it was based on an incorrect understanding of the mechanism of injury. He believed the worker "misstepped" off the curb. This is a significant fact that underpins his opinion and for that reason I cannot rely on his opinion on causation. Moreover, he was of the understanding that the worker had a contusion to her left knee, which would suggest some sort of impact injury. The evidence does not support any impact injury, as noted by Dr. Craven. This too undermines Dr. Robbertse's opinion.

[63] The only remaining medical opinion is that of Dr. Craven. I accept that he had an accurate understanding of the accepted mechanism of injury. While I am mindful that Dr. Craven did not have the opportunity to review the MRI scan results, he opined that it was not medically plausible that stepping off a curb without any twisting motion, tripping

or other significant action would be of causative significance to a knee injury “**or the symptoms the worker experienced of left knee instability and an inability to walk or stand without pain.** [emphasis added]” Dr. Craven was clearly of the view that the worker’s left knee symptoms could not be causally linked to her employment, given the minor nature of the alleged mechanism of injury. I do not believe the MRI scan results would likely change his opinion, as he focused on the worker’s symptoms regardless of their diagnosis. I am satisfied, given Dr. Craven’s accurate understanding of the mechanism of injury and the nature of the worker’s symptoms, that his opinion is reliable and persuasive. There is no persuasive and reliable opinion to the contrary.

- [64] It follows that even had I found the worker’s body motions in retrieving her water bottle had an employment connection as required under policy item #C3-15.00, I would still have concluded that those motions were not of causative significance to her left knee injury.

Adjudication under policy item #C3-16.00

- [65] In *WCAT-2012-02319*, the panel also explained that in some cases a workplace incident may result in injury to healthy tissues. In other cases, a worker may have a pre-existing condition that is affected by the workplace incident. For example, a workplace incident may cause a previously asymptomatic condition to become symptomatic or a workplace incident may cause a symptomatic condition to become worse.
- [66] As the worker’s symptoms may have arisen from an asymptomatic but pre-existing left knee condition, I will consider her claim under policy item #C3-16.00, which addresses pre-existing conditions. Policy item #C3-16.00 provides that an injury or death is not compensable simply because it happened at work. Again, it is necessary to address the causative significance of that work. Policy provides that a pre-existing condition may be aggravated by an employment-related incident or trauma, or series of incidents or traumas. In such cases, the worker’s resulting injury may be compensable. In adjudicating these types of claims, the Board is to consider:
- the nature and extent of the pre-existing condition or disease;
 - the nature and extent of the employment activity; and
 - the relationship between the pre-existing condition or disease and the employment activity, including the degree to which the employment activity may have affected the pre-existing condition or disease.
- [67] Evidence that the pre-existing condition or disease has been accelerated, activated, or advanced more quickly than would have occurred in the absence of the employment activity, may be confirmation that the aggravation resulted from the employment activity.

[68] Policy item #C3-16.00 differentiates between pre-existing conditions that are deteriorating, and pre-existing conditions that are not deteriorating. I shall first address a deteriorating condition.

(a) Pre-existing deteriorating condition

[69] Policy provides that if a deteriorating condition was at a critical point where it was likely to result in a manifest disability, then the employment will not be of causative significance because it is likely the injury is one that the worker would have sustained whether at work, at home, or elsewhere, regardless of the employment activity. The injury is then considered to have resulted from the pre-existing deteriorating condition or disease and is not compensable. If the deteriorating condition was not at a critical point, such that the injury is one that the worker would not have sustained for months or years, but for the exceptional strain or circumstance of the employment activity, then the employment is of causative significance, and the injury may be compensable.

[70] While the medical evidence is not overly helpful in determining the state of the worker's pre-existing left knee conditions, I am struck by how such severe left knee symptoms arose from the described mechanism of injury. This strongly suggests that if the worker's symptoms arose from a pre-existing deteriorating condition, she could easily have sustained the same symptoms regardless of her employment activity. In other words, it was just coincidence that her symptoms developed while at work opening a car door as opposed to elsewhere. Indeed, the severity of her symptoms, given the nature and extent of the employment activity, suggests that the worker likely had a pre-existing deteriorating condition that was at a critical point where it was about to become a manifest disability. In these circumstances, I am unable to find that her employment was of causative significance.

[71] The above analysis may assist in understanding why Dr. Robbertse's comment – that people commonly break bones in the act of simply stepping off a curb – is not helpful to the worker's claim. His comment illustrates how a pre-existing condition can be completely asymptomatic but also be at a critical state where even the most innocuous action could lead to it becoming symptomatic. In those cases, Board policy precludes acceptance of the claim because it is simply coincidence that the symptoms arose at work while stepping from a curb as opposed to stepping from a curb elsewhere.

(b) Pre-existing non-deteriorating condition

[72] Finally, if the worker's pre-existing condition was not a deteriorating condition, then policy item #C3-16.00 provides that the circumstances of the worker, including her condition, are considered to determine whether the employment was of causative significance.

[73] If the worker's symptoms arose from a non-deteriorating pre-existing condition, I would still conclude that there is insufficient evidence to support a finding that the employment

activity affected any pre-existing condition. There is simply insufficient medical or other evidence to support a finding in the worker's favour. As earlier noted, there are only two opinions on causation and one, that of Dr. Robbertse, cannot be relied upon. That leaves Dr. Craven's opinion. I am satisfied for the reasons earlier set out in my analysis under policy item #C3-15.00 that Dr. Craven's opinion supports a conclusion that the worker's employment activity on May 31, 2011 was not of causative significance to her left knee symptoms, regardless of whether those symptoms related to a pre-existing left knee condition or not.

Summary

- [74] The fact the worker's symptoms arose at work does not mean that her work was of causative significance to those symptoms. I am unable to find that the work activity on May 31, 2011 was of causative significance to the worker's left knee injury under subsection 5(1) of the Act, after consideration of her claim under policy items #C3-14.00, #C3-15.00, and #C3-16.00.
- [75] The standard of proof is the balance of probabilities as modified by subsection 250(4) of the Act. That section provides that in compensation cases, where the evidence supporting different findings on an issue is evenly weighted, WCAT must resolve that issue in a manner that favours the worker. There was no issue on which I considered that the possibilities supporting different outcomes on that issue were evenly balanced and thus I did not apply subsection 250(4).

Conclusion

- [76] I deny the worker's appeal, and confirm the review officer's February 13, 2012 decision. I find the worker's left knee injury did not arise out of in the course of her employment on May 31, 2011.
- [77] As no appeal expenses were requested and none are apparent, I make no order with respect to appeal expenses.

Elaine Murray
Vice Chair

EM/hb