

Noteworthy Decision Summary

Decision: WCAT-2013-01169 **Panel:** Warren Hoole **Decision Date:** April 30, 2013

Section 6 of the Workers Compensation Act – Occupational disease – Asthma – Pre-existing condition – Occupational health and safety standards – Mould

The fact that workplace irritant levels are within appropriate occupational health and safety limits may be of limited relevance in determining whether a worker's underlying asthma condition is aggravated by workplace exposure. While other non-sensitized people may not experience adverse effects after exposure to low levels of an irritant, the individual worker may be an unusual and 'thin skulled' person who does not fall within normal guidelines.

The worker was a teacher with an underlying allergy and asthma condition. She developed allergy symptoms after moving to a different classroom, attributed the symptoms to work exposure to dust and mould, and applied for compensation with the Workers' Compensation Board, operating as WorkSafeBC (Board). The Board denied the worker's claim, and the Review Division confirmed the Board decision. The worker appealed to WCAT.

WCAT varied the Review Division decision, finding that the worker had suffered an aggravation of her allergy condition due to an occupational exposure to mould. The WCAT panel rejected the employer's argument that, because air quality reports showed an absence of significant amounts of mould in the classroom, the worker was not sufficiently exposed to mould at work to cause her symptoms. That the mould levels were within appropriate occupational health and safety standards was of limited relevance: the worker was an unusual and 'thin-skulled' person who experienced an immediate reaction to even those low levels of mould.

This decision was the subject of a reconsideration. See WCAT-2014-01048, dated April 4, 2014.

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Introduction

- [1] The worker developed allergy symptoms while employed as a teacher in the fall of 2011. The worker had moved to a different classroom in early September 2011 and noticed a mouldy smell. The worker therefore attributed her allergy symptoms to her employment and applied for compensation to the Workers' Compensation Board (Board)¹.
- [2] In a decision letter dated December 7, 2011, the Board denied the worker's claim for compensation. The worker disagreed and requested a review. In *Review Decision #R0140176*, dated July 5, 2012, a review officer confirmed the Board's decision.
- [3] The worker now appeals to the Workers' Compensation Appeal Tribunal (WCAT).

Issue(s)

- [4] Did the worker develop an occupational disease due to the nature of her employment?

Jurisdiction

- [5] This appeal is brought under subsection 239(1) of the *Workers Compensation Act* (Act) which permits appeals of Review Division findings to the WCAT.

Hearing Procedure

- [6] The worker requested an oral hearing. She indicated an oral hearing was needed because her credibility regarding her allergic reaction was at issue. She also intended to describe indoor air quality.
- [7] I have considered the WCAT's *Manual of Rules of Practice and Procedure* and I have reviewed the issues, evidence and submissions in this appeal. In my view, the worker's credibility is not at issue. I accept that the worker experienced worsening allergic symptoms in the fall of 2011. An oral hearing is therefore not required on this ground.

¹ Operating as WorkSafeBC.

- [8] With respect to the air quality issue, the worker has no expertise in this regard. I accept her observations as to her experience of the air quality in her classroom; however, air quality is largely an expert issue. An oral hearing is therefore not required on this ground either.
- [9] Overall, I am satisfied that the worker's appeal does not raise significant factual disputes, nor does the appeal involve real questions of credibility or other compelling reasons for an oral hearing.
- [10] Rather, the worker's appeal primarily involves the application of law and policy to evidence already on the record. The worker has received disclosure of her claim file and an opportunity to respond to any adverse evidence therein, as well as an opportunity to respond to the employer's submissions and evidence. The worker can respond as effectively in writing as in person and has done so. I therefore consider that an oral hearing is not necessary and that the worker's appeal may fairly proceed by way of written submissions.

Background and Evidence

- [11] In a November 23, 2011 report, Dr. Blackmore, the worker's family physician diagnosed the worker with "nasal sinal allergy and rhinitis, sinusitis, and asthma." Dr. Blackmore noted that the worker sought treatment on September 28 and November 17, 2011 with mould allergies possibly exacerbated by her classroom. The worker had experienced "some improvement" with Nasonex, a nasal steroid; however, Dr. Blackmore considered the worker was disabled from work for at least 20 days.
- [12] The worker filed a telephone claim for compensation with the Board on November 25, 2011. The teleclaim operator summarized the worker's description of her circumstances as follows:

The worker is a teacher who had to change classrooms. The date of changing classrooms was SEPT. 12, and right away she started developing allergy symptoms (runny nose, difficulty breathing, sore ears, sore nose, sneezing, coughing, headaches every day, dizziness, and she could even taste the mould in the back of her throat). Between SEP[T.] 12-20 she reported this to the staff at the school. She told them both verbally and via an email. There is mould along the window frames, and the classroom has carpeting, so she assumes there is also mould beneath the carpet; a company: "Pacific Environmental Consulting", came to the school to test for fungal presence, and said that there appears to be moisture and mould growth in the crawl space of the room she works in. The worker's classroom is the one with highest presence of fungal spores in the air.

[excerpts reproduced as written, except as noted]

- [13] The Pacific Environmental Consulting report is dated November 16, 2011², and includes the following:

Conclusions and Recommendations

Spore trap sampling results did not identify any elevated levels of fungal spores.

Within the crawlspace below [the classroom], there the ventilation system was operating properly and there was very little odour. Most of the crawlspace appeared clean and free of fungal staining; however, where the wood of the pony walls were directly on the concrete, there appeared to be some moisture travelling from the concrete to the wood. There was some minor staining at the end of one of the base plates that was found to be *Aspergillus* fungal growth....

- [14] A Board officer contacted the worker on December 2, 2011, to inquire further into the circumstances of her claim. The most relevant aspects of the Board officer's summary are set out below:

The worker returned for the new school year on September 06, 2011 to the same class room. She states that she was moved to a new classroom as her class room was going to be used as a music room. The worker states that there are some differences between her old and new classroom.

- Old Room = hard vinyl type flooring and white boards
- New Room = carpeting and 3 chalk boards

The worker states that she had one of the chalk boards removed and a white board was put into the new room. She states that she did not use the two remaining chalk boards, she uses the new white board.

Symptoms:

The worker states that she moved to the new room on September 12, 2011. The worker states that upon entering the room for the first time, she experienced immediate symptoms. The worker states that she had symptoms "as soon as I walked into the classroom". The worker stated that she could taste the mould in her mouth, had immediate tingling in her tongue, and a sensation described as swelling in the back of her throat.

The worker states that she has had further symptoms which she mentioned were consistent with allergy. She states that these worsened each day since September 12 to November 22. She stated that she had: headache, cough, difficulty breathing, stuffy nose, productive cough, itchy

² I note that a copy of the report is available online. Both parties are aware of the online report; however, privacy concerns preclude me from reproducing the website address.

eyes, itchy ears. The worker states that she has allergies to: cat, dust and mould. She states that she was allergy tested about 7-10 years ago by Dr[.] Mable Chow in Ontario.

The worker states that she has been off work since November 22..... She stated initially that she could probably go back to work now, however, there is no solution in place with the employer....

...

The worker states that one of her sons also has allergy to dust and cat. Her husband had reaction to seasonal allergies in Ontario, but not much in BC. The worker states that no one else in her home is suffering similar symptoms as hers.

Work Duties:

The worker is a ... teacher. As indicated above, she did not have any reaction to her former room. Upon entering her new room, she states that she had immediate reaction upon entering the room....

The worker indicates immediate symptoms on September 12, 2011 upon entering the classroom. She states that she has had the doors and windows open during class. This would allow fresh air in, however, it appears that the mould concentrations in the outside air are higher than the inside air. The worker has submitted the air quality test through her attending physician's office. She has printed it off from the employer web site.

- [15] A Board medical advisor reviewed the worker's claim file on December 2, 2011, and concluded that the worker's employment on September 12, 2011, was not of causative significance to her allergic symptoms. The medical advisor stated:

This claim involves a... teacher and the working diagnosis, based on the attending physician's Form 8 [physician's first report] is nasal/sinus allergy and rhinitis, sinusitis and asthma. The claim issue is the relationship of this diagnosis to her employment.

The attending physician relates allergies to dust and mold, but documents absolutely no objective findings supportive of the diagnosis. What the attending physician does document is the worker being allergic to aspergillus. An air quality assessment at the workplace specifically tested for aspergillus in 11 different rooms and the only positive findings were those recorded as being present in the outside ambient atmosphere.

The history from the worker documents allergies to cats, dust and mold, longstanding in nature.

Information from the employer documents an exemplary work environment with respect to air quality maintenance.

Addressing the issues raised above, the worker has a diagnosis of upper airway allergies, longstanding in nature. There is no evidence that these allergies have been aggravated by exposure to mold in the workplace.

Based on currently available information, I am unable to appreciate any evidence of a causal significance in the workplace for any of her symptoms.

- [16] Dr. Blackmore provided the Board with a copy of the worker's chart notes from February 23, 2010 to December 15, 2011. In an August 16, 2011 chart note, Dr. Blackmore recorded the worker's seasonal allergies to grass.
- [17] In a December 7, 2011 report, Dr. Blackmore indicated that the worker remained off work "because of the environment." He referred the worker to an allergy specialist and noted that he felt the worker should not return to work until a mouldy carpet in the classroom was removed.
- [18] On December 16, 2011, the employer provided a copy of several prior air quality inspections carried out at the school between April 20, 2010 and December 12, 2011.³ Of particular note, the December 12, 2011 report described increased levels of fungal growth in the crawlspace under the classroom. The report noted that this growth was unexpected and had not been observed in prior inspections. The increased fungal growth was likely related to extensive recent rainfall.
- [19] In a December 19, 2011 memo, a Board occupational health and safety officer indicated that mould levels at the school were below recognized exposure limits; however, he noted that others had filed complaints similar to that of the worker.
- [20] In the course of the WCAT proceedings, the worker filed various documents. I note in particular two letters from Dr. Blackmore recording his opinion that the worker's increasing allergic symptoms after September 12, 2011 were "much more likely than not" causally related to her employment.
- [21] The worker also filed a November 21, 2012 consultation report from Dr. Luciuk, an immunologist. Dr. Luciuk reported that, on testing, the worker demonstrated high sensitivity to dust, cats, and mould. Dr. Luciuk described the worker as being highly sensitized in this regard. Of particular relevance, Dr. Luciuk stated:

4. How likely is it that the worker would have a reaction to mold spores, VOCs [volatile organic compounds], or mycotoxins, even though the indoor airborne fungal spore counts were lower than the levels found outside? Patients can certainly have irritation of the mucus membrane for volatile organic compounds. But it is hard to quantitate this specifically since it is hard to document exactly the levels of the VOCs or mycotoxins.

³ These reports are available on the school website.

In this patient's case, however, it doesn't even have to be the molds that can be the problem, it could be dust mite reactions and usually where we get high concentrations of molds we have high concentrations of dust mites. Quantitation of the dust mites could be done and you might find very, very high levels.

5. Is it more likely than not that the employment had caused a significant aggravation of the worker's dust and her mold allergies? By the clinical story that this patient gets, she seems to have a marked exacerbation when she started going to work and initially got significant resolution when she stopped. When she started going back, she started getting clearing up over the weekends and then exacerbations when she started working which progressed. This is very suggestive of what we see in patients with occupational exposed exacerbations.

- [22] In a November 27, 2012 opinion, Dr. Luciuk reiterated that if a classroom contains high loads of mites and moulds, a worker could reasonably experience an exacerbation of symptoms upon entering the classroom.
- [23] The worker also filed several reports describing mould and moss problems in other areas of the school, remediation efforts, copies of the air quality reports already noted above, and various resources about mould generally.
- [24] Finally, the worker filed an undated statement describing her circumstances. The worker described the new classroom as dirty and disgusting. Upon entering the classroom, she immediately noticed the "pungent and repulsive odour of mould."
- [25] The worker initially managed by keeping windows open, taking days off, and recovering over the weekend. However, her symptoms worsened to the point where she could not continue by mid-November 2011. The worker agreed that she suffers from allergies; however, she had never experienced such extensive allergic symptoms in the past. The worker described various unnamed staff at the school as voicing concerns about the air quality of the school. The worker believed many people left the school because of these concerns.
- [26] Upon returning to work in January 2012, the worker was "appalled" by the dirt, dust, and mould that she observed in the classroom. The worker's symptoms worsened again to the point where she needed three weeks off in mid-February 2012. The worker attributes her symptoms to the dirty environment at the school.

Submissions

- [27] The parties have provided lengthy submissions. In essence, the worker argues that she experienced allergic symptoms immediately following her exposure to mould and dust in the classroom on September 12, 2011. She notes that there is evidence of mould and dust in the school generally and in the classroom in particular. She agrees that she is

sensitive to mould and dust; however, she points out that she has not experienced such extensive reactions in the past. In any event, her sensitivity merely renders her “thin-skulled” and does not preclude her from establishing causation.

- [28] The worker relies in particular on the opinions of Dr. Blackmore and Dr. Luciuk in support of her view that the classroom environment was of causative significance in the development of her allergic symptoms on September 12, 2011.
- [29] The employer says that air quality reports show an absence of significant amounts of mould in the classroom. The classroom building had been remediated earlier in 2011 and, in particular, the crawlspace was sealed from the above classrooms. The employer therefore says that the worker was not sufficiently exposed to mould at work to cause her allergic symptoms.
- [30] With respect to dust, the employer says that the classroom carpet was replaced with linoleum in early 2012. Despite this, the worker continued to experience allergic symptoms. The employer therefore disagrees that occupational dust was a relevant causal factor in the worker’s allergic symptoms. In the absence of evidence to support exposure to mould or dust capable of causing an aggravation of the worker’s allergy condition, the employer requests that I deny the worker’s appeal.
- [31] In rebuttal, the worker refers me to prior decisions of the Review Division and the WCAT that the worker says were favourable to workers in cases similar to hers. The worker says that I should follow the same line of reasoning, allow her appeal, and find that she developed an aggravation of her allergy condition due to the nature of her employment.

Reasons and Findings

- [32] I note at the outset that the issue of mould in the school appears to be a longstanding and contentious area of dispute involving the school, parents, students, and staff.
- [33] My decision is not directed at whether or not the school is generally suffering from mould problems. Nor is it for me to validate or criticize the school’s efforts to remediate and monitor any mould issues in its buildings.
- [34] Rather, my decision is simply concerned with whether the worker experienced an occupational exposure commencing on September 12, 2012, that was of causative significance to the aggravation of her allergic condition in the following weeks. In my view, it was.
- [35] In this regard, although the worker described first noticing the smell of mould on September 12, 2011, it appears to me that this case involves repeated exposures over a lengthy period rather than a single or traumatic incident. Therefore, section 6 of the Act applies to the worker’s circumstances. An aggravation of a pre-existing allergic

condition is not listed in Schedule B to the Act, which means it is only subsection 6(1) of the Act that is relevant to the worker's appeal. This subsection provides:

6(1) Where

(a) a worker suffers from an occupational disease and is thereby disabled from earning full wages at the work at which the worker was employed or the death of a worker is caused by an occupational disease; and

(b) the disease is due to the nature of any employment in which the worker was employed, whether under one or more employments, compensation is payable under this Part as if the disease were a personal injury arising out of and in the course of that employment. A health care benefit may be paid although the worker is not disabled from earning full wages at the work at which he or she was employed.

- [36] Subsection 250(2) of the Act is also relevant and provides that the WCAT is required to follow applicable policies set out in the Board's the *Rehabilitation Services and Claims Manual, Volume II*.
- [37] I note in particular policy item #26.04, "Recognition by Order Dealing with a Specific Case," which applies to cases where, as here, the occupational disease is not listed in Schedule B or in a regulation of general application. Such claims are decided by the Board on their own merits under section 6(1) of the Act after consultation with a Board medical advisor. I also note policy items #26.55 "Aggravation of a Disease," #29.20 "Asthma," and #97.00 "Evidence."
- [38] In essence, the result of these policies is that the worker's employment must be of "causative significance" to the aggravation of her allergic condition. "Causative significance" means that employment need not be the only or even the predominant cause, as long as it is more than "*de minimis*" or trivial. In deciding this question, the evidence is weighed on the balance of probabilities. If the evidence on a particular issue is equal, subsection 250(4) of the Act directs me to resolve that issue in favour of the worker.
- [39] Here, there is no dispute that the worker suffered from a pre-existing allergic condition. This condition included nasal and sinus allergy with rhinitis, sinusitis, asthma, and headaches.
- [40] In such circumstances, the applicable policies require that the underlying condition be "activated" or "triggered" by exposure to an occupational cause. The worker and her physicians are of the opinion that this activation occurred because of the worker's occupational exposure to both mould and dust.

- [41] I am doubtful about the significance of the worker's dust exposure. There is no quantification in this regard in the evidence. In addition, the carpet in the worker's classroom was removed in early 2012 yet she again developed an aggravation of her allergy condition over the following weeks when she returned to work for several weeks. Finally, dust is ubiquitous. It is made of a variety of compounds. In the absence of more detailed evidence demonstrating that the worker experienced occupational exposure to dust capable of aggravating her allergic condition, I am therefore unable to conclude that it is at least as likely as not that the worker's exposure to dust in the workplace was of causative significance to the aggravation of her allergic condition.
- [42] However, I reach a different conclusion in relation to mould. In my view, the employer's argument conflates whether there is an objective obligation on it to further remediate any mould problems in the classroom with the simple presence of mould in the classroom. In this regard, the air quality testing demonstrates that the classroom had mild levels of mould present. The levels in the worker's classroom, although low, were higher than in other classrooms. It may well be that other, non-sensitized people would not have experienced any particular adverse effect to the classroom. It may well be that the school has made all reasonable efforts to remediate any mould problems in the classroom and need take no further steps in this regard.
- [43] However, the fact remains that mould spores were clearly present in the classroom. As pointed out by the worker, it is not enough to simply say such spores were also present in the outside environment and in higher concentrations. Such an argument fails to deal with the greater complexity of a closed system such as a classroom. I also note that the evidence reveals problems with the ventilating system in the classroom up until early December 2011. Finally, the consultant reports document other workers complaining of a mouldy smell in the region of the classroom, particularly in the morning.
- [44] In these circumstances, the most significant evidence is that of the worker. She described smelling mould and noticing an immediate onset of allergic symptoms. As Dr. Luciuk opined, the worker is sensitized to mould and responds to much lower levels than might normally be expected. For this reason, it is of limited relevance that the Board occupational health and safety officer considered mould levels to be within appropriate standards. The worker is an unusual and "thin-skulled" person who does not fall within the "normal" mould guidelines.
- [45] I emphasize the immediate reactions of the worker to mould. She complained of the smell and reported immediate symptoms. She has done so consistently in the medical reports. She has improved while away from the classroom and worsened when she returns.

- [46] Further, the medical opinion evidence is weighted in favour of the worker. The Board medical advisor opinion appears to have been provided in a premature manner when all the facts were not yet known. Dr. Luciuk is a specialist in his field and has had the advantage of assessing the worker in person. Dr. Blackmore is not a specialist; however, he too had the advantage of assessing the worker in person as well as being familiar with her prior history of allergy problems. In these circumstances, I give greater weight to the medical opinions of Dr. Blackmore and Dr. Luciuk than to the Board medical advisor.
- [47] In light of the above, I am satisfied that the worker is sensitive to the presence of mould in the workplace. Mould was present in her new classroom. The worker observed and immediately reacted to the presence of mould and I see no reason to doubt her evidence in this regard, nor has the employer seriously questioned the worker's statements about the contemporaneous nature of her observations and her symptoms.
- [48] It follows that I find the worker's allergic condition was aggravated by her workplace exposure to mould, commencing on September 12, 2011. I note for the employer's benefit that, given the worker's "thin-skull" in this regard, the employer may well be relieved of all or substantially all of the costs of this claim; however, I leave that for the Board to decide.
- [49] As a result, I allow the worker's appeal.

Conclusion

- [50] I vary *Review Decision #R0140176*. I find that worker suffered an aggravation of her allergy condition due to the nature of her occupational exposure to mould, commencing on September 12, 2011. It is for the Board to determine the nature and extent of the worker's resulting benefit entitlement, if any.
- [51] The worker's union requested reimbursement for the expense of providing the opinions of Dr. Luciuk and Dr. Blackmore. Section 7 of the *Workers Compensation Act Appeal Regulation* provides that the WCAT may order the Board to reimburse expenses associated with an appeal. Item #16.1.3 of the WCAT's *Manual of Rules of Practice and Procedure* states that the expense of producing evidence will usually be reimbursed if the evidence was helpful or if it was reasonable for the party to have provided the evidence in question.
- [52] Here, I found the opinions of both Dr. Luciuk and Dr. Blackmore to be helpful. It was in any event reasonable for the worker to have secured these opinions. I accordingly direct the Board to reimburse the worker, or her union as the case may be, for the cost of these opinions, up to the usual tariff amount.

- [53] No other expenses were requested and I make no additional orders for reimbursement of expenses other than the ones already set out above.

Warren Hoole
Vice Chair

WH/gw