Noteworthy Decision Summary

Decision: WCAT-2013-02924 **Panel**: Caroline Berkey **Decision Date:** October 23, 2013
Beatrice K. Anderson
Teresa White

Whether Injury Arose out of Employment (section 5(1) of the Workers' Compensation Act) – Injuries Following Motions at Work – Policy Items #C3-14.00, C3-15.00, C3-18.00, C3-20.00, of the Rehabilitation Services and Claims Manual, Volume II

A three-member, non-precedent panel considered policy item #C3-15.00 of the *Rehabilitation Services and Claims Manual, Volume II* (RSCM II), "Injuries Following Natural Body Motions at Work". A temporal relationship between the natural body motion that caused the injury and the employment activity is not, by itself, enough for a finding of sufficient employment connection between the motion and the employment. A motion is required by the employment when performance of the motion is a compulsory or necessary part of the worker's employment. A motion is incidental to the employment when it is directly related to the performance of a primary employment task.

The worker was a nurse and experienced pinching in her lower back when she stood up from a chair at work after doing paperwork, and subsequently when she got up out of a hard chair in the lunchroom after a coffee break. She was diagnosed with an acute strain of her left sacroiliac ligament and thus the panel found that the worker sustained a personal injury.

The injury arose in the course of employment, because the incidents occurred at work and on work premises.

Policy item #C3-15.00 of the RSCM II defines natural body motions as motions that are commonly performed as part of daily living, and that may occur both at work and away from work. The motion of standing up from a sitting position in a chair falls within this definition and thus constitutes a natural body motion.

The panel accepted that the motion of standing up from a chair was of causative significance in producing the worker's strain injury, on the basis of the medical evidence before it.

However, policy item #C3-15.00 requires the natural body motion to be sufficiently connected to the worker's employment, in order for the injury caused by the motion to be compensable. Policy states that sufficient connection is established where the motion is required or incidental to the employment.

In this case, while the worker's employment required her to fill out paperwork, the injury did not occur while she was filling out the paperwork, but rather while she was standing up out of her chair after doing paperwork, and while she was standing up out of a chair after a coffee break. The motion of standing up from a chair, in both instances, was not a necessary or compulsory part of the worker's employment. The motion was thus not required by the employment.

While sitting to do paperwork may be convenient, incidental as used in policy item #C3-15.00 does not mean simply convenient. The worker's motion of going from a sitting to a standing

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position was not a function of, or part of, doing the paperwork; it was not directly related to the worker's employment.

Overall the relationship between the natural body motion and the employment did not go beyond the fact that the motion occurred at work. The motion was therefore not sufficiently connected to the employment. As the motion was not sufficiently connected to the employment, the personal injury caused by the motion did not arise out of the employment and was not compensable.

An amendment was issued for WCAT-2013-02924 and is attached to this document.

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Beatrice K. Anderson, Vice Chair
Teresa White, Vice Chair

Introduction

[1] On June 28, 2012 an entitlement officer at the Workers' Compensation Board, operating as WorkSafeBC (Board), denied the worker's claim for a left low back injury that occurred on June 16, 2012. The worker requested a review of that decision. In *Review Reference #R0148312,* dated November 19, 2012, a review officer confirmed the decision denying the worker's claim. The worker has appealed this decision to the Workers' Compensation Appeal Tribunal (WCAT). She seeks acceptance of her claim.

[2] The worker's employer was provided with notice of this appeal and is participating in this appeal.

[3] The worker requested that this appeal proceed by way of written submissions. Item #7.5 of the WCAT *Manual of Rules of Practice and Procedure* (MRPP) addresses the method by which appeals are heard. Having considered that criteria, we find that this matter can be fully and fairly considered without an oral hearing because it does not involve matters such as credibility, disputed facts, nor other compelling reasons for convening an oral hearing. This appeal has proceeded on the basis of a review of the claim file and the appeal documentation.

[4] We are adjudicating this appeal as a three-member, non-precedent panel of WCAT, pursuant to subsection 238(5) of the *Workers Compensation Act*, R.S.B.C. 1996, c. 492 (Act).

Issue(s)

[5] Did the worker's strain of her left sacroiliac ligament on June 16, 2012 constitute an injury arising out of and in the course of her employment?

Jurisdiction

[6] Section 239(1) of the Act provides that WCAT has the authority to hear an appeal from a final decision made by a review officer under section 96.2 of the Act, including a decision declining to conduct a review under that section. This appeal falls under

section 239(1) of the Act as it involves an appeal of a review officer's decision that was made under section 96.2 of the Act.

[7] Under section 250 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 based on the merits and justice of the case but in so doing must apply a policy of the Board that is applicable in the case. When hearing an appeal respecting compensation of a worker and the evidence supporting different findings on an issue is evenly weighted, WCAT must resolve the issue in a manner that favours the worker. Section 254 of the Act gives WCAT the exclusive jurisdiction to inquire into, hear, and determine all those matters and questions of fact, law, and discretion arising or required to be determined by WCAT under the Act.

[8] The policy relevant to this appeal is set out in the *Rehabilitation Services and Claims Manual, Volume II* (RSCM II). As the worker's injury occurred after July 1, 2010, the version of Chapter 3 of the RSCM II that became effective July 1, 2010 applies.

Preliminary Matter

[9] The entitlement officer's June 28, 2012 decision disallowed the worker's claim, finding that it did not meet the requirements of section 5(1) of the Act. Before the Review Division the worker submitted that her strain arose out of and in the course of her employment on June 16, 2012 either as a new injury or as a significant aggravation of a pre-existing condition. Neither the entitlement officer nor the review officer referred to any policy or statutory provision with respect to reopening or pre-existing conditions. The review officer did state that the medical evidence did not support a causal connection between the worker's April 2011 back complaints (another claim) and her employment related duties.

[10] We recognize that Dr. Bailey was specifically asked in the request for an opinion dated March 14, 2013 whether the worker suffered a new injury or an aggravation, activation, or acceleration of a pre-existing condition on June 16, 2012. However, we find that we do not have jurisdiction to address whether this is a reopening of the 2011 or an earlier injury or an injury resulting from aggravation of a pre-existing condition or disease. The Board officer did not address these issues. Nor were these issues articulated in the worker's appeal to WCAT. Consistent with item #3.3.1 of WCAT's MRPP we restrict our decision to the issue raised by the appellant in her notice of appeal and submissions to WCAT.

[11] If we are wrong on this jurisdictional question, we find that the evidence does not support the occurrence of an aggravation, activation or acceleration of a pre-existing condition, or a recurrence or a significant change in such a condition. Dr. Bailey clearly diagnosed a left sacroiliac strain with respect to the June 2012 injury, and not a

[1] This appears to be an inadvertent date error as the worker's earlier claim was for a January 2011 injury.

significant change or recurrence with respect to any prior compensable back claim. While Dr. Bailey recognizes that episodes of acute back pain are more likely to be seen when there has been a previous back injury, he does not state that there was an aggravation, activation, or acceleration of a pre-existing condition. Moreover, we also find that, for the reasons set out below, the worker's motion did not arise out of her employment and thus the worker's injury is not compensable in any event.

Background and Evidence

[12] The facts in this appeal are not in dispute. On June 16, 2012, one hour into her shift, this now 56-year-old nurse experienced pinching in her lower back when she got up out of an office chair at work after doing some paperwork. Approximately three hours later, the worker was on a coffee break and felt the same pinching when she got up out of a hard chair in the lunchroom. (We will refer to these as the first and second incidents respectively.)

[13] Dr. Bailey, the worker's physician, examined the worker two days later on June 18, 2012 and diagnosed an acute left sacroiliac strain. He noted that the worker was tender over the left sacroiliac joint, and flexion and extension were modestly limited. On June 25, 2012 Dr. Bailey saw the worker and made similar comments.

[14] On June 25, 2012 the entitlement officer spoke to the worker. In the telephone memo of that conversation the entitlement officer noted that the worker stated that she was likely setting up a room for a new patient and not doing anything strenuous, prior to the first incident. The worker had injured her back before[2], and said to the entitlement officer that she felt this was in keeping with her prior claim and that pushing and pulling heavy machinery and stretchers aggravates her condition. She missed five days of work as a result of the 2011 injury.

[15] In the entitlement officer's June 28, 2012 decision she disallowed the claim on the basis that she did not find that sitting in a chair at work had "causative significance to result in a strain injury," she found the motion was a trivial aspect of work duties and was an insignificant aspect of the worker's injury. She also found that the motion of getting out of a chair is one a person does inside and outside of work and is a normal body motion that does not require the force or physical placement to cause an injury.

[16] The worker requested a review of the June 28, 2012 decision. In the Review Division decision dated November 19, 2012, the review officer confirmed the Board's decision of June 28, 2012.

[2] The entry refers to a prior claim of January 9, 2009. It appears this is an inadvertent error as January 9, 2011 was the date of the prior claim.

Submissions

[17] The worker provided a written submission to WCAT dated May 13, 2013. The worker submitted that the claim ought to be accepted pursuant to section 5 of the Act as the worker's condition arose out of and in the course of her employment. The worker requests acceptance of her claim, along with wage loss and health care benefits. The worker included an April 8, 2013 report from Dr. Bailey with her submissions in support of her appeal.

[18] The employer provided a submission dated May 29, 2013. The employer submits that there is no reason not to affirm the Review Division decision as the worker described a motion that was trivial in respect to her work duties and that this was a natural body motion that does not require sufficient force to cause or significantly aggravate an injury.

[19] The employer states that it continues to rely on its Review Division submission dated October 23, 2012 which agrees with the Board officer's assessment, her application of policy, and her decision to disallow the worker's claim.

[20] In a reply dated June 13, 2012 the worker disagreed with the employer's submission in its entirety.

Reasons and Findings

[21] Appeals involving the determination of the compensability of injuries following natural body motions, such as this one, require panels to ascertain, among other matters, whether the motion in question has an employment connection. This appeal turns on that question, and the panel's analysis of that issue starts at paragraph 53 of this decision.

[22] Section 5(1) of the Act states that where a personal injury arising out of and in the course of the employment is caused to a worker compensation as provided by Part 1 of the Act must be paid by the Board out of the accident fund.

[23] Policy item #C3-14.00 of the RSCM II, "Arising Out of and in the Course of the Employment," sets out the decision-making principles for determining a worker's entitlement to compensation for personal injury under the Act. That policy states that the test for determining if a worker's personal injury is compensable is whether it arises out of and in the course of the employment. In applying the test of employment connection, it is important to note that employment is a broader concept than work and includes more than just productive work activity.

[24] To determine whether the worker is entitled to compensation for an injury following a natural body motion under section 5(1) of the Act, we must determine the following:

(1) Does the presumption in section 5(4) apply?

(2) Did the worker sustain a personal injury?

(3) Did the injury arise in the course of employment?

(4) Did the injury arise out of the employment?

a) Was the natural body motion of causative significance in producing the injury?

b) Did the natural body motion have an employment connection?

1. Does the presumption in section 5(4) apply?

[25] Section 5(4) of the Act provides that in cases where the injury is caused by accident, where the accident arose out of the employment, it must be presumed that it occurred in the course of the employment; and where the accident occurred in the course of the employment, it must be presumed that it arose out of the employment, unless the contrary is shown. Section 1 of the Act defines an "accident" as including a "wilful and intentional act, not being the act of the worker, and also includes a fortuitous event occasioned by a physical or natural cause."

[26] The panel in *WCAT-2005-04824* noted that a "fortuitous event" is defined in *Black's Law Dictionary*, 5th edition, as "an event happening by chance, or an accident," "that which happens by a cause which cannot be resisted," and "an unforeseen occurrence, not caused by either of the parties, nor such as they could prevent." While previous decisions, which are not precedent decisions, are not binding we find this review of the phrase helpful. The more recent 8th edition of *Black's Law Dictionary* similarly provides the following definition: "a happening that, because it occurs only by chance or accident, the parties could not reasonably have foreseen."

[27] Applying the definition of "accident" in section 1 of the Act, the motion of getting up from the chair was an act of the worker, and was not a fortuitous event because it was not an incident that occurred by chance as would be the case with a trip, slip, or fall. Accordingly, section 5(4) of the Act does not apply here as the injury was not caused by accident.

[28] While the presumption in section 5(4) of the Act does not apply, we must still determine whether the worker sustained a personal injury arising out of and in the course of the employment.

2. Did the worker sustain a personal injury?

[29] The worker's teleclaim report to the Board provides evidence that she sustained a personal injury. As well, the employer's reports refer to the worker having a severe pinching in her left sacroiliac region / lower back which buckled her left knee on June 16, 2012.

[30] There is also medical evidence that supports a finding that the worker did sustain a personal injury on June 16, 2012. Dr. Bailey's reports dated June 18 and 25, 2012 diagnose the worker as having an acute left sacroiliac strain. Dr. Bailey's report of April 8, 2013 diagnosed the worker as having suffered from an acute strain of the left sacroiliac ligament when she stood up from her chair after sitting at her desk on June 16, 2012.

[31] Based on the above evidence the panel finds that the worker did sustain a personal injury.

3. Did the injury arise in the course of employment?

[32] Policy item #C3-14.00 states that "in the course of the 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.

[33] The first incident occurred while the worker was getting up from a chair at work after having done some paperwork. This incident occurred at work and during work hours, and we find was in the course of employment.

[34] The second incident occurred when the worker got up out of a chair while on a coffee break in the lunch room. Policy item #C3-18.00, "Personal Acts," 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. That policy addresses injuries sustained while on lunch, coffee, and other breaks, and provides that a worker does not cease to be in the course of employment while having a coffee break on the employer's premises. The policy further explains that an injury that occurs in this situation may not, however, arise out of the employment. The causative significance of the employment must be more than trivial for the Board to find that the injury or death arose out of the employment.

[35] Policy item #C3-20.00, "Employer-Provided Facilities," provides that injuries 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.

[36] Policy does not preclude a finding that the injury in the second incident arose in the course of employment even though the injury occurred in the lunchroom at the end of a coffee break.

[37] The panel finds that the worker's acute strain of the left sacroiliac ligament did arise in the course of employment as both incidents occurred at work and on work premises.

[38] In *WCAT 2013-00694* the panel noted that the determination of whether the motion alleged to have caused the injury has sufficient employment connection is different than the 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. We agree with that statement. The question as to whether this injury arose out of employment is a separate inquiry.

4. Did the injury arise out of the employment?

[39] To be compensable the injury must also arise out of the employment. Policy item #C3-14.00 in the RSCM II states that "arising out of the employment" generally refers to the cause of the injury or death. In considering causation, the focus is on whether the worker's employment was of causative significance in the occurrence of the injury or death. While both employment and non-employment factors may contribute to the injury or death, employment factors need not be the sole cause. However, employment has to be of causative significance, which means more than a trivial or insignificant aspect of the injury or death.

[40] While policy item #C3-14.00 is the principal policy for determining whether a worker's injury arises out of and in the course of the employment, policy item #C3-15.00, "Injuries Following Natural Body Motions at Work," addresses further principles to consider when determining the compensability of an injury following a natural body motion at work. That policy defines a natural body motion as "one that is commonly performed as part of daily living," and notes that the motion may occur both at work and away from work. The policy gives "standing up from a chair" as an example of a motion that is considered a natural body motion.

[41] We find that the worker's injury in this case is one that involved a natural body motion. Standing up from a sitting position in a chair is a motion that is commonly performed as part of daily living at home, at work, and elsewhere.

[42] Where an injury follows a natural body motion at work, or a series of motions occurring over a period of time, policy item #C3-15.00 provides that the Board considers both whether the natural body motion was of causative significance in producing the injury and whether the natural body motion has an employment connection.

a. Was the natural body motion of causative significance in producing the injury?

[43] Policy item #C3-15.00 states, in part:

> 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.

The Board also considers any other relevant medical evidence to assist in determining whether a worker's injury arises out of and in the course of the employment.

[44] The worker submits that the natural body motion was of causative significance in producing her injury. The worker states that there was a likelihood that the motion was of causative significance, the symptoms are medically known to be more likely to occur in this situation given the worker's disposition, there was a clear temporal relationship between the motion and onset of symptoms, and there is no evidence of non-work-related medical conditions that contributed to the injury.

[45] The worker refers to *WCAT-2012-00328* and *WCAT-2012-02869* as examples of WCAT decisions which accepted a back injury from minor incidents. In *WCAT-2012-00328* the worker, a registered nurse, experienced severe symptoms in her low back when she bent over to pick up a pen at work. In *WCAT-2012-02869* the worker filed a claim for compensation for a low back condition she attributed to having bent over to pick up an empty cardboard box while at work.

[46] The employer's submission to WCAT states that the worker described a motion that was trivial and does not require sufficient force to cause or significantly aggravate an injury. Rather the worker's symptoms seem to be a "manifestation of an underlying condition that would be expected to cause joint pain when changing posture quickly due to age-related degenerative or inflammatory conditions, not related to the worker's employment." The employer's submission to the Review Division stated that the worker is at an age where her symptoms are likely to arise out of mechanical, degenerative, or inflammatory conditions. None of these conditions are related to the worker's employment.

[47] There are two reports, dated June 18 and 25, 2012, from Dr. Bailey diagnosing the worker with an acute left sacroiliac strain. He refers to the facts provided to him by the worker but does not provide an opinion in either report with respect to whether the natural body motion is of causative significance in producing the injury.

[48] Dr. Bailey's report dated April 8, 2013 does address this question, stating that the worker suffered an acute strain of the left sacroiliac ligament when she stood up from her chair after sitting at her desk on the evening of June 16, 2012. The pain was very acute and severe and caused her left knee to buckle. He states that the injury was likely due to a sudden strain on the ligament, sometimes seen with a sudden postural change, and that pain on getting up from a chair is relatively common. He notes that although standing up from a sitting position would not normally be enough to independently cause a significant back injury, such acute episodes of back pain are seen under certain circumstances. In this respect he states:

> In the case of [the worker] she had at least two potential contributing risk factors to the acute onset of sacroiliac pain – her previous work-related back injury and her employment requirements of standing and/or bending for prolonged periods.
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> In my opinion, since either or both of these factors may have contributed to her acute onset of symptoms, and since the pain began well into her shift at work (rather than the beginning of her shift) that on the balance of probability her acute back pain was primarily the result of factors related to her employment – rather than factors unrelated to her employment.

[49] The employer submits that Dr. Bailey's April 2013 report suggests that the worker was performing a natural body motion that would not be expected to cause injury; and that the statement that it did the cause the injury in this case should not be relied on. We disagree. Dr. Bailey's report notes that generally standing up from a sitting position would not be enough to cause a significant back injury. However, he goes on to address this specific worker's case noting that this motion can cause such an injury in certain circumstances where, as here, there has been a previous work-related back injury and employment that requires standing and / or bending for prolonged periods. Dr. Bailey's report also states that the worker has been a patient since 1980, from which we infer that he would be aware of her previous back injury.

[50] With respect to the employer's submission that the worker's symptoms are due to age-related degenerative or inflammatory conditions not related to the worker's employment, there is no medical opinion or other evidence that the employer has pointed to that would support this submission.

[51] We accept Dr. Bailey's opinion that, while standing up from a sitting position would not generally be enough to cause a back injury, in this worker's case such a motion did cause the acute strain of the left sacroiliac ligament. While his report also says that the acute pain was 'primarily' the result of employment factors, that is a decision for this

panel and thus his opinion in this regard is not determinative. We also note that the worker's pain began one hour into her shift at about 4:00 p.m., not "well into her shift" and in the "evening" as stated in Dr. Bailey's report. In this respect Dr. Bailey may be referring to the second incident. We have determined it is not necessary to ask Dr. Bailey to clarify or reconsider his report in light of this fact because his report does note that, aside from this timing factor, either or both of the prior back injury and standing or bending for prolonged periods may have contributed to the onset of symptoms. In other words, Dr. Bailey did not rely exclusively on the timing of the worker's pain to arrive at his conclusion regarding the cause of the worker's injury.

[52] We accept Dr. Bailey's opinion that the natural body motion was of causative significance in producing the injury. This still leaves open the question of whether the motion is sufficiently connected to the worker's employment so as to have arisen out of the employment.

b. Did the natural body motion have an employment connection?

[53] Policy item #C3-15.00 provides in this respect:

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

[54] The worker's submission relies on the reasoning set out in *WCAT-2012-02869*. The panel in that appeal stated (at para 62):

> On my reading of the current policy item #C3-15.00 of the RSCM II, where a worker does not have a relevant pre-existing deteriorating condition, it is **no longer necessary to distinguish between the type of motions that one engages in as an aspect of everyday life and those which have a more substantial work connection**. Instead, under the current policy, it is now sufficient that the motion was required by the work, regardless of whether the particular motion was one which is engaged in as a matter of ordinary life; the focus is on whether the particular motion, **regardless of its character**, was of causal significance in producing the injury….
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> [our emphasis]

[55] With respect, we disagree with this interpretation of the policy. We find it is still necessary to determine if the motion in question is a natural body motion because it is that aspect which potentially engages policy item #C3-15.00. Under the policy, the focus is on both whether the motion is of causative significance in producing the injury, as well as whether it is sufficiently connected to the worker's employment. In making the latter determination, the decision-maker must still identify the motion that caused the injury in order to determine if there is a sufficient connection to the employment.

[56] The question of what constitutes sufficient employment connection was previously considered in *WCAT-2005-04824*, a noteworthy decision. The panel in that appeal was applying the policy on natural body motions contained in policy item #15.20, which was the policy in place before the changes that took effect on July 1, 2010. The panel considered the difficulties faced by adjudicators in determining if an injury that occurred at work and resulted from what would usually be an innocuous natural body motion, arose out of the employment.

[57] The panel concluded that the motion that caused the injury had to be sufficiently connected to the employment to meet the second half of the test in section 5 of the Act, which is whether the injury arose out of the employment. The panel's analysis characterized the question as whether the 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. The panel further noted that there is not sufficient work connection if the only connection to employment is the coincidence that the worker happened to be in the course of employment at the time. The panel stated in this regard (at pages 17, 19):

> Policy item #15.20 gives some examples of motions that do not have sufficient work connection. … Activities such as getting up from a chair are so much a part of normal human life that unless there is some related hazard particular to the employment, we do not consider that sufficient work connection exists.
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> …
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> Although, as has been noted by many previous decision-makers, policy item #15.20 is somewhat confusing, the direction provided by policy item #15.20 can be simply stated. The motion must be one that is sufficiently connected to the employment, in the sense that it was required by the employment, and exposed the worker to a hazard of the employment itself. This is contrasted with the physical, commonplace, everyday activities of life, that continue throughout the day, even while we are working, and cannot be said to directly expose us to a hazard born of the employment itself.

[58] *Larson's Workers' Compensation Law* addresses workers' compensation law issues in the United States and, while not binding on us, it is helpful to see how other jurisdictions address similar issues. Larson's refers to the case of *Crites v. Illinois Workers' Comp. Comm'n*, 2011 Ill. App. Unpub. LEXIS 618 (Apr. 21, 2011). The case involved a 57-year-old overhead crane operator, who claimed he had sustained a compensable injury to his back when he twisted his body while exiting the crane. The Commission concluded that the claimant's injury was the result of his turning while stepping down to get out of his seat and that the mere act of turning and stepping down presented a risk of injury that was no greater than that to which the general public was exposed when getting up from a seat or chair. The appellate court upheld the Commission's determination.

[59] Similar *to WCAT*-2005-04824 the court in the *Crites* case recognized that in workers' compensation law, entitlement to compensation in natural body motion cases may be affected by whether a motion exposes a worker to a risk that is different than the risk that a member of the general public might be subject to.

[60] The policy on natural body motions in effect prior to 2010 did not explicitly refer to a hazard or risk of the employment; however, as noted above the policy was interpreted as including such a reference. The policy changed in July 2010 and we note that there is still no reference in the new policy to a hazard, just as this was not explicitly set out in the former policy.

[61] The policy changes in 2010 were preceded by a discussion paper by the Board entitled, "Proposed amendments to the policies in Chapter 3 of the Rehabilitation Services & Claims Manual, Volume II — Compensation for Personal Injury," dated March 28, 2007. Attached as Appendix A to the Discussion Paper was the proposed wording for the policy on injuries following natural body motions at work. Under "sufficient employment connection," the proposed policy read:

> A natural body motion is sufficiently connected to the worker's employment where:
>
> - the motion is required or incidental to the employment; and
> - the motion exposes the worker to a hazard of the employment itself.

[62] The second bullet referencing a hazard of the employment was not included in the policy approved by the board of directors which came into effect in 2010. There is no discussion in the approved policy with respect to why the second bullet was not included. One possibility is that the board of directors disagreed with this statement. However, another possibility which is more consistent with the long held interpretation of the policy was that it was recognized that the "hazard of the employment" criterion was implicit in the term "employment connection."

[63] Even without any express reference to "hazard of the employment," the policy still requires that there be sufficient employment connection. Sufficient employment connection means that, in the case of natural body motions, there has to be a link between the motion and the performance of required or incidental employment functions that gives the motion an employment dimension that goes beyond simply being at the workplace when injured.

[64] If every motion that occurred in the course of employment was considered to have sufficient employment connection, that would ignore the "arising out of employment" component in section 5 of the Act. A temporal relationship between the motion that caused the injury and the employment activity is not, by itself, enough to find that a normal body motion is sufficiently connected to the worker's employment.

[65] *WCAT-2012-02319* is a recent noteworthy WCAT decision that looked at the question of employment connection. That appeal involved a worker who injured her left shoulder 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 panel denied the claim on the basis that this 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.

[66] The panel reviewed a number of WCAT decisions[3] and offered this helpful comment (at para 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.

[67] Policy item #C3-15.00 states that the motion in question is sufficiently connected to the worker's employment where the motion is "required by" or "incidental to the employment."

[68] The word "required" is defined in the *Oxford English Dictionary* as "need or depend on"; "regard an action or quality as due from"; "specify as compulsory." Applying this definition a natural body motion is sufficiently connected to the worker's employment where the motion is required by the employment in that the performance of the motion is a compulsory or necessary part of the worker's employment. For example, a nurse, bending down to reach the bottom level of a medication cart could be engaged in a motion required by the employment.

[3] See Appendix A

[69] The word “incidental” was considered in *Assessor of Area No. 10 - Burnaby/New Westminster) v. S.C.I. Canada Ltd*., 2000 BCCA 217. The Court found that the word “incidental” requires sufficient integration between two activities. In this respect the Court stated (at para 11):

> Assuming a consistent use of the word "incidental", then the usage in s. 35 illustrates that it does not mean simply "connected with" or "convenient for". It must be more than a simple unrelated connection and more than simple convenience. There must be a relationship of primary function with the subordinate function and the subordinate function must relate to the carrying out of the primary function.

[70] In *Bank of Nova Scotia v. Canada (Superintendent of Financial Institutions)*, 2003 BCCA 29, para 58, the Court reviewed the dictionary definitions and judicial considerations of the word “incidental” and found that the plain meaning of the word is “connected with in a meaningful way” and “includes an activity that is subordinate to a principal activity.”

[71] Determining if a natural body motion is incidental to employment involves a consideration of the nature of the motion and the nature of the work. For example, if a police officer is injured while getting out of a chair at work there might not be a sufficient employment connection. However, if a police officer is injured while standing up quickly and the officer was in heavy emergency response gear there may be a sufficient employment connection because getting up quickly while wearing extra weight relates to carrying out a primary employment function (the ability to respond in a timely way to an emergency call) in a meaningful and direct way.

[72] In light of the Act, the policy, and the definitions of incidental above, we find that in order for a natural body motion to be sufficiently connected to the worker’s employment the motion must relate to carrying out a primary employment function in a meaningful or direct way. In other words, the motion need not be required by the employment but the motion need be directly related to the performance of a primary employment task.

[73] The direct relationship between the motion and employment must go beyond the fact that the motion occurred at work. To give effect to the “arising out of employment” component in section 5 of the Act and the requirement for employment connection in the policy it cannot be that every natural body motion that occurs at work is connected to employment and is therefore compensable. This would result in universal coverage for a worker who suffers an injury at work involving a natural body motion even though the injury is not related to work. There must be some employment overlay to give the motion an employment connection. A contrary interpretation of the “incidental to employment” test would render the “arising out of employment” component of section 5 meaningless.

[74] In this appeal, the worker submits that she was doing a specific required employment activity when she quickly rose from the office chair after sitting and doing some paperwork at the time of her injury. She states that the fact that she was at her desk and in a seated position in order to perform her employment activities means that having to stand up from this position had an employment connection. She contends that she was not performing a personal action. As well, she states that the first incident had already caused her injury; the second time that she felt this pain while arising from her chair was simply because she had now already suffered an injury at work, arising out of and in the course of her employment.

[75] Dr. Bailey's April 2013 report, submitted by the worker, notes that this injury is relatively common stating:

> In fact the complaint of severe pain upon rising from a chair or getting up from a recumbent position is relatively common, and is often associated with tenderness over the sacroiliac joint.

[76] The worker refers to *WCAT-2012-00328*, *WCAT-2012-02869*, and *WCAT-2012-00494* in support of her claim. In *WCAT-2012-00328* the worker, a registered nurse, experienced severe symptoms in her low back when she bent over to pick up a pen at work that was used to record dialysis procedures. In *WCAT-2012-02869* the worker was beside the bailer which held and compacted cardboard boxes. She stood up after picking up an empty box, a required work task, and felt a sharp pain in her lower back. In *WCAT-2012-00494* the worker, a bus driver, experienced a sudden onset of low back pain when he bent forward to pick up a pencil which fell from his pocket onto the bus floor. The worker used the pencil to complete forms for the employer, and to leave the pencil on the floor of the bus created a hazard to bus passengers.

[77] The employer submits that to suggest that the action of standing up from a chair would always invoke a workplace connection would imply that every motion performed at work is automatically required or incidental to the employment. The employer distinguishes the decisions cited by the worker in support of her appeal on the basis that the motions referred to in those decisions were more clearly related to work.

[78] On reviewing the three appeals referred to by the worker we note that the employment connection was direct and meaningful in those cases.

[79] In this appeal, the worker was employed as a nurse, which required her to fill out paperwork. However, the injury did not occur while the worker was filling out the paperwork. The first injury occurred while the worker was standing up out of a chair after doing paperwork, the second while standing up out of a chair after a coffee break. We find that standing up from a chair, in both instances at issue here, was not a work-required motion as there is no evidence before us that performance of this motion was a necessary or a compulsory part of the employment.

[80] We further find that while sitting to do paperwork may be convenient, incidental as used in policy item #C3-15.00 does not mean simply convenient. The worker's motion of going from a sitting to standing position was not a function of, or part of, doing the paperwork, it was not directly related to the worker's employment. While the worker described standing up from the two chairs "quickly," there is no suggestion that the worker needed to get up quickly because of the demands of her work. The worker described her activities before sitting down as likely setting up the room for a new patient. She said there was nothing strenuous involved. The worker was not required by her employment, nor was it incidental to the employment, for her to sit in the chair, nor to get up quickly.

[81] The relationship between the motion and employment does not go beyond the fact that the motion occurred at work. Therefore, an employment dimension to an everyday activity is not established. This is not a situation where a pen or pencil used to fill in work forms was dropped and an injury occurred upon picking it up. In that case there is a more direct relationship between the motion and the employment. This was a natural body motion that happened at work but it is not sufficiently connected to the employment to be compensable. We find that the personal injury on June 16, 2013 did not arise out of the employment.

[82] In respect of the worker's motion of getting up from a chair in the break room, we find that this natural body motion was a personal action and had nothing in it to sufficiently connect it to the demands of the worker's employment.

[83] Overall, we find that in both instances the worker's motion of getting up from the chair was not sufficiently connected to the employment in the sense that it was neither required by the employment nor incidental to the employment. As the natural body motion was not sufficiently connected to the employment, we find that the personal injury did not arise out of the employment and is therefore not compensable.

Conclusion

[84] The worker's appeal is denied, and the Review Division decision *Review Reference #R0148312* dated November 19, 2012 is confirmed for the reasons set out above. The worker is not entitled to compensation for the strain of her left sacroiliac ligament as her injury did not arise out of her employment.

[85] The worker requested reimbursement of Dr. Bailey's April 8, 2013 report in her submission to WCAT. Item #16.1.3 of WCAT's MRPP provides that WCAT will generally order reimbursement of expenses for obtaining evidence, regardless of the result in the appeal, where the evidence was useful or helpful to the consideration of the appeal, or it was reasonable for the party to have sought such evidence in connection with the appeal.

[86] We find that it was reasonable for the worker to have obtained Dr. Bailey's report because it provides evidence with respect to whether the natural body motion was of causative significance in producing the injury. The March 14, 2013 request from the worker's union to Dr. Bailey indicates that the union would pay for the report. Accordingly, pursuant to section 7(1)(b) of the *Workers Compensation Act Appeal Regulation*, B.C.Reg. 321/2002, we order the Board to reimburse the worker's union for the expense of Dr. Bailey's April 8, 2013 report.

[87] There has been no further request for reimbursement of appeal expenses and, therefore, we make no further order in that regard.

Caroline Berkey
Chair

Beatrice K. Anderson
Vice Chair

Teresa White
Vice Chair

CB/gw

Appendix A
Excerpt from *WCAT-2012-02319*

[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;[4]
- 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;

[4] This appeal was denied based on a finding that the natural body motion was no more than a trivial or insignificant aspect of the injury. The panel found that there was some employment connection, but concluded that there was "insufficient evidence to establish that those motions arose out of the worker's employment."

- *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.

WCAT Amended Decision Number: WCAT-2013-02924a
WCAT Amended Decision Date: December 5, 2013
Panel: Caroline Berkey, Chair
Beatrice K. Anderson, Vice Chair
Teresa White, Vice Chair

Amended Decision

[1] In *WCAT Decision #2013-02924*, issued on October 23, 2013, we denied the worker's appeal. It has come to our attention that in paragraph 9 of the decision the footnote reference to correspond to footnote 1 at the bottom of the page has been inadvertently left out. After reviewing the original decision, and based on the statutory authority set out in section 253.1(1) of the *Workers Compensation Act* regarding correction of decisions, we are amending paragraph 9 of the original decision as follows (addition in bold):

> [9] …The review officer did state that the medical evidence did not support a causal connection between the worker's April 2015**[1]** back complaints (another claim) and her employment related duties.

Caroline Berkey
Chair

Beatrice K. Anderson
Vice Chair

Teresa White
Vice Chair

CB/hb

[5] This appears to be an inadvertent date error as the worker's earlier claim was for a January 2011 injury.

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