Noteworthy Decision Summary

Decision: WCAT-2014-01750 **Panel**: Randy Lane **Decision Date:** June 9, 2014

Slip and fall – Policy items #C3-14.00, #C3-19.00 and #C3-20.00 of the Rehabilitation Services and Claims Manual, Volume II – Arising out of and in the course of employment – Work-related travel – Employer-provided facilities

This decision is noteworthy for its consideration of the new policies under Chapter 3 of the *Rehabilitation Services and Claims Manual, Volume II* (RSCM II). Specifically, the decision shows the interplay between policy items #C3-14.00 (Arising Out of and in the Course of the Employment), #C3-19.00 (Work-Related Travel), and #C3-20.00 (Employer-Provided Facilities), and the consideration given to the various policy factors in determining whether an injury arose out of and in the course of employment.

The worker suffered a slip-and-fall injury in an icy parking lot while walking from her workplace to her car. The parking lot was not owned, managed, or controlled by the employer, though the employer instructed workers where to park.

The worker filed a claim for compensation, and the Workers' Compensation Board, operating as WorkSafeBC, denied the claim on the basis that her injury did not arise in the course of employment. A review officer allowed the worker's appeal.

The employer appealed to WCAT, who considered the new Chapter 3 policies and allowed the employer's appeal. The panel reviewed and discussed policy item #C3-14.00 of the RSCM II and decided that only one of nine factors was met, that policy #C3-19.00 did not extend coverage to the parking lot, and that the critical element of control found in item #C3-20.00 was not fulfilled. A careful weighing of the various factors set in policy items #C3-14.00 and #C3-20.00 led the panel to conclude that there was not a sufficient connection between the worker's injury and her employment.

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WCAT Decision Number: WCAT-2014-01750
WCAT Decision Date: June 09, 2014
Panel: Randy Lane, Vice Chair

Introduction

[1] In December 2012 the worker, a cashier at a grocery store, slipped and fell on an access ramp located between parking lots at a shopping mall. Her claim was denied by an entitlement officer with the Workers' Compensation Board, operating as WorkSafeBC (Board). In *Review Decision #R0156490*, dated June 28, 2013, a review officer with the Review Division of the Board varied the Board's decision and found that the worker's knee injury arose out of and in the course of her employment.

[2] With the assistance of a consulting firm, the employer has appealed the June 28, 2013 decision to the Workers' Compensation Appeal Tribunal (WCAT). The letter of appeal indicated an oral hearing was not required. By letter of August 28, 2013 a WCAT assessment officer confirmed the appeal would proceed by written submissions.

[3] The employer provided an October 3, 2013 submission. The worker provided an October 21, 2013 submission. By letter of October 31, 2013 the employer indicated it relied on its earlier submission. By letter of October 28, 2013 the parties were advised that submissions were considered complete.

[4] In my February 26, 2014 memorandum, I found WCAT should invite participation in the appeal from the owner/operator of the parking lot, the property management company, and any relevant subcontractors.

[5] The property owner/property manager and the subcontractor indicated they wished to participate. They were provided with copies of relevant documents from the worker's claim file and offered an opportunity to provide submissions. As no submissions were received by the May 14, 2014 due date, by letter of May 26, 2014 the employer, the worker, the property owner/property manager, and the subcontractor were advised that submissions were considered complete.

Issue(s)

[6] Did the worker suffer a December 21, 2012 injury arising out of and in the course of her employment?

Jurisdiction

[7] WCAT has 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 (section 254 of the *Workers Compensation Act* (Act)). It is not bound by legal precedent (subsection 250(1) of the Act). WCAT must make its decision on the merits and justice of the case, but, in so doing, it must apply a policy of the board of directors of the Board that is applicable in the case (subsection 250(2) of the Act), save for specific circumstances set out in section 251 of the Act. Subsection 250(4) provides that in an appeal regarding the compensation of a worker WCAT must resolve the issue in a manner that favours the worker where evidence supporting different findings is evenly weighted.

[8] This is an appeal by way of rehearing. WCAT has jurisdiction to consider new evidence, and to substitute its own decision for the decision under appeal.

Background and Evidence

[9] The evidence indicates that on December 21, 2012 the worker completed her shift and left her place of employment to go to her car parked in a lower parking lot at the shopping mall in which her employer's grocery store is located.

[10] While walking across an access ramp that joins the upper parking lot to two lower parking lots[1], she slipped and fell due to ice on the ramp. She got up and proceeded to one of the lower parking lots where she fell again.

[11] The worker advised the Board that employees had been instructed to park in the lower parking lots. She observed that the parking lots were not controlled by the employer; the employer was not responsible for salting the area. She commented that a property management company controlled the parking lots and was responsible for salting the area. She stated that the entire lower lot "was ice."[2] She stated that signs directed staff not to park in the upper lot.

[12] The employer stated that the parking lot area was controlled and maintained by a property management company.

[13] The manager of the store at which the worker worked confirmed that the lower parking lots were primarily used for "customer overflow," the employer's staff, and staff of other retail outlets at the mall.

[14] The manager stated that a property management company ("[A Ltd.]") had placed signs on both sides of the parking lot stating that staff were to park "on side of the lot." The signs refer to staff at the mall, not specifically the employer's employees.

[1] While various comments in file documents suggest there is an upper lot and a lower lot, a notice issued to employees refers to two lower lots. While nothing turns on the matter, I have written my decision on the basis that there are two lower lots and, in some cases, I have referred to two lower parking lots even when referring to a document that records an individual having referred to one lower parking lot.
[2] All quotations in this decision reproduced as written, save for changes noted.

[15] The manager stated that an agreement with the property management company provided that staff of the employer and other businesses at the mall were permitted to use the parking lot area. The employer did not provide or control the parking lot area.

[16] An entitlement officer denied the worker's claim for compensation benefits on the following basis

> In order for a claim to be allowed, the worker must be in the course of their employment at the time of the injury. This means that the worker must be at work when the injury occurs. In your case, you were injured while crossing a public thoroughfare walking to a parking lot not provided or managed by your employer. You were advised by your employer to use the lower parking lot if needed, but the parking lot is designed primarily for customer use and not controlled by the employer. Your injury occurred while you were on a public thoroughfare and there was no hazard from your employment that caused your injury. Although your injury occurred shortly after your shift and near your place of employment, after weighing all available evidence I do not accept that you were in the course of your employment at the time of your injury. Therefore, I must deny your request for compensation.

[17] The worker requested a review of the Board's decision. She provided several photographs which depicted the area in which she slipped. She also provided a copy of a notice issued by the employer to the effect that all staff were to ensure their vehicles were not parked in the upper parking lot during the busy holiday season. The notice referred to employees using either one of the two lower lots.

[18] In her June 28, 2013 decision (which may be viewed on the Board's website) a review officer stated there was no dispute the worker slipped, fell on an icy surface, and suffered a knee contusion as a result. She observed the primary issue was whether the injury occurred at a time and place that was sufficiently connected to her employment to be compensable.

[19] The review officer stated that, ordinarily speaking, a worker's coverage for workplace injuries begins when she enters her employer's premises to begin her shift and ends when she leaves the employer's premises upon completion of her shift.

[20] The review officer observed that, in some circumstances, an employer's premises extends beyond the front door and may include roadways and parking lots. She stated that policy item #C3-19.00 of the *Rehabilitation Services and Claims Manual, Volume II* (RSCM II) explains that employers have a responsibility to provide workers with safe access to and from work.

[21] The review officer observed that in the case before her the worker was in the process of leaving work when she was injured.

[22] The review officer stated that, from her review of the photographs provided by the worker, it appeared the access ramp on which the worker slipped and was injured was the primary way for workers to leave the employer's premises to return either to their vehicles or to the public road. She stated that the access ramp was not, in and of itself, a public roadway. She stated it was privately maintained and operated, and primarily led to the employer's premises. She stated that, on its face, it appeared the employer had a responsibility to ensure the worker could safely use this route.

[23] The review officer then considered policy item #C3-20.00 of the RSCM II. She stated she must consider whether the factors weighed in favour of coverage. She noted the worker's evidence that her employer had posted a notice instructing all workers to park in the lower parking lots. The review officer stated that workers were told that if they parked in the upper parking lot, which was "reserved for the employer's customers," they would risk having their vehicles towed.

[24] The review officer stated, "These instructions indicate to me that the lower parking lot was provided by the employer for the workers to use."

[25] The review officer considered the photographs submitted by the worker showed the lower parking lot in which she parked was adjacent to the employer's premises and the road which she crossed to get to that lower parking lot was an access ramp to the parking lot, not a public road.

[26] The review officer concluded the worker's injury arose immediately after the end of her shift and was caused by icy conditions in the parking lot.

[27] The review officer stated that, although she acknowledged the employer's submission that the lower parking lot was not controlled by it, such a factor was outweighed by the factors considered by her in her earlier decision.

[28] The review officer found the employer's lack of control of the lower parking lot did not preclude coverage if there was sufficient evidence to connect the worker's injury to her employment.

[29] The review officer stated, "In this case, the employer's instructions that workers use the lower lot, as well as the hazardous and icy conditions in the lot and on the access ramp way strongly in favor of granting coverage."

[30] The review officer concluded that the factors discussed in policy item #C3-20.00 and the employer responsibilities described in policy item #C3-19.00 weighed in favour of granting coverage for the worker's injury.

[31] The employer has appealed to WCAT. In its materials it attaches significance to *WCAT-2013-09172*, a decision that may be accessed on WCAT's website.

[32] In my February 26, 2014 memorandum, I stated that were the worker's claim for compensation to be denied on the basis her injury on December 21, 2012 did not arise out of and in the course of her employment, it would be open to her to consider pursuing a legal action against the owner or operator of the parking lot, the relevant property management company, and any subcontractors that performed parking lot maintenance. Thus, I considered that the owner and operator of the parking lot, the property management company, and any subcontractors may have an interest in the determination as to whether the worker's injury arose out of and in the course of her employment.

[33] Paragraph 246(2)(i) of the Act provides that WCAT may "…request any person or representative group to participate in an appeal if the tribunal considers that this participation will assist the tribunal to fully consider the merits of the appeal."

[34] Item #6.6 of WCAT's *Manual of Rules of Practice and Procedure* provides that WCAT may determine the extent to which such persons may be permitted to participate in a proceeding (whether they will receive disclosure of some or all of the file, whether they will participate by written submission only, or whether they will select one representative to speak on their behalf at an oral hearing).

[35] A WCAT decision with respect to whether the worker suffered an injury arising out of and in the course of her employment is final and conclusive pursuant to subsection 255(1) of the Act.

[36] *WCAT-2006-03916* (available on WCAT's website) found that a failure to invite a potential defendant to participate in an appeal regarding the acceptability of a worker's claim for compensation involved a breach of natural justice.

Reasons and Findings

[37] Policy item #C3-20.00 indicates that, for the purposes of determining whether an injury occurring in a parking lot arose out of and in the course of employment, the Board considers policy item #C3-14.00 of the RSCM II and five additional questions. Policy item #C3-20.00 declares, "No single criterion is determinative."

[38] Thus, a decision-maker starts with policy item #C3-14.00 and then considers policy item #C3-20.00. Notably, despite that method of analysis stated in policy item #C3-20.00, the review officer did not document any detailed analysis of the factors set out in policy item #C3-14.00.

[39] Policy item #C3-14.00 lists a number of non-medical factors that are considered in determining whether an injury has arisen out of and in the course of a worker's employment. That policy item provides the following guidance regarding that list of non-medical factors:

> In addition to medical evidence, the Board considers the factors described below. All of the factors listed may be considered in making a decision, but no one of them may be used as an exclusive test for deciding whether an injury or death arises out of and in the course of the employment. This list is by no means exhaustive, and relevant factors not listed in policy may also be considered.

[40] I have considered the nine factors and have listed them using the numbering system found in policy item #C3-14.00.

1. On Employer's Premises

[41] While I find that the injury did not occur within the confines of the grocery store, this factor provides an expansive definition of an employer's premises:

> An employer's premises includes any land or buildings owned, leased, rented, or controlled (solely or shared) for the purpose of carrying out the employer's business. An employer's premises may also include:
>
> • captive roads (see Item C3-19.00, *Work-Related Travel*); and
> • employer-provided facilities (see Item C3-20.00, *Employer-Provided Facilities*).

[42] My analysis of this factor will be completed below in connection with my consideration of policy items #C3-19.00 and #C3-20.00.

2. For Employer's Benefit

[43] I appreciate that, generally speaking, an employer may benefit from workers leaving the premises of the business at the end of their shift and going home. Employers may want their employees to carry on with the rest of their lives and want to close their premises at the end of the workday.

[44] I consider this factor envisions something other than such a general benefit. I consider that, in the case of a grocery store, this factor envisions a worker doing something to advance the commercial interests of the employer. The worker's actions of walking across an access ramp did not benefit the employer's business.

[45] I find that the worker's injury did not occur while she was doing something for the benefit of the employer's business.

3. Instructions From the Employer

[46] Notably, signs placed by the property management company stated that employees of employers in the mall were to park in a particular location. Thus, one could argue that the employer did not instruct the worker. I am aware the worker states that her employer also instructed her to park in the lower parking lots.

[47] I question whether such instructions involve the type of instructions envisioned by this factor. The employer did not instruct the worker to drive to work and park her car in one of the lower parking lots. It did not instruct the worker to walk from the grocery store to the lower parking lots. Arguably, its instructions were to the effect that if the worker used a car, she was to park in a lower parking lot.

[48] However, for the purposes of this appeal, I find that the worker was acting pursuant to the instructions from the employer.

4. Equipment Supplied by the Employer

[49] This factor provides that if an injury occurred while the worker was using equipment or materials supplied by the employer, such a factor favours coverage.

[50] I find that the worker was not injured while using equipment supplied by the employer.

5. Receipt of Payment or Other Consideration from the Employer

[51] This factor deals with matters other than whether an injury occurred during a period of time during which a worker was being paid. This factor includes cases where a worker is required to report to an employer's premises or office in order to pick up a paycheque.

[52] I find that the worker's injury did not occur while she was in the process of receiving payment or other consideration from the employer.

6. During a Time Period for which the Worker was Being Paid or Receiving Other Consideration

[53] As the worker's injury occurred after the completion of her shift, her injury did not occur during a time period for which she was being paid or receiving other consideration.

7. Activity of the Employer, a Fellow Employee or the Worker

[54] The worker's injury was not caused by an activity of the employer or a fellow employee.

8. Part of Job

[55] Given that walking from the grocery store to the parking lot was not part of the worker's job, I find her injury did not occur while she was performing activities that were part of her job.

9. Supervision

[56] I find that the worker's injury did not occur while she was being supervised by the employer or a representative of the employer having supervisory authority.

[57] I find that, subject to my analysis of the "employer's premises factor," the circumstances of the worker's claim satisfy only one of the factors listed in policy item #C3-14.00.

[58] At this juncture, I return to the question of whether the worker was injured on the employer's premises. As established by the discussion in policy item #C3-14.00, an employer's premises may include areas well beyond the confines of a particular store. Policy item #C3-14.00 cites policy item #C3-19.00 that refers to captive roads.

[59] The review officer documented the following analysis regarding policy item #C3-19.00:

> …Policy item C3-19.00, *Work-Related Travel*, explains that employers have a responsibility to provide workers with safe access to and from work. In this case, I note that the worker was in the process of leaving work when she was injured. From my review of the photo evidence provided, it appears that the access ramp on which she slipped and was injured was the primary way for workers to leave the employer's premise to return either to their vehicles or to the public road. The access ramp was not, in and of itself, a public roadway. It was privately maintained and operated and primarily led to the employer's premise. Therefore, on its face, it appears that the employer had a responsibility to ensure that the worker could safely use this route.

[60] In considering this matter, I note that policy item #C3-19.00 documents general statements as to an employer's responsibility regarding safe access to and egress from the place of work and the possible commencement of an employment connection at a point much earlier than the point of entry to an employer's premises:

> It is the responsibility of an employer to provide a safe means of access to and egress from the place of work. Thus, where a worker is traveling by public roadway to a place of work that is not adjacent to the public roadway, and must travel along a captive road or through a special hazard before reaching the employer's premises, the employment connection may begin at the point of departure from the public roadway rather than at the point of entry to the employer's premises.

[61] Policy item #C3-19.00 documents specific instances in which coverage may be extended: captive roads, special hazards of access routes, and extensions of the employer's premises owing to a hazard resulting from a spill-over from the employer's premises.

[62] I find that the parking lots and the access ramp were not a captive road. In particular, the evidence does not establish the parking lots and access ramp were controlled by and led only to the premises of the employer. I appreciate the worker may have submitted to the Review Division that the access ramp leads directly to the upper parking lot of the employer.

[63] Yet, while the upper parking lot may be directly next to entrances to the employer's store, it is not the employer's parking lot. The employer does not own the lot, have any title in it or lease the lot, such that one would regard it as the employer's parking lot. More importantly, the employer does not control the access ramp.

[64] Significantly, that policy item provides that an employer's control may be demonstrated by the fact that the employer makes decisions on maintenance or repair of the public road. I find there is no persuasive suggestion in the evidence that the employer made decisions regarding maintenance or repairs of the parking lots or the access ramp.

[65] As for the second instance of extended coverage, I find the evidence does not support a conclusion that the worker's place of work was so located that for access and egress she was required to pass through special hazards beyond the ordinary risks of travel. Policy states that a special hazard is one that goes beyond those hazards normally encountered by the travelling public and which the worker would not normally encounter, but for the location of the employer's premises. The presence of icy and/or slippery surfaces in a parking lot or access ramp in winter time would not be a hazard beyond the hazards normally encountered by the travelling public. Thus, the ice encountered by the worker was not a special hazard.

[66] As for the final instance of extended coverage, there is no argument or persuasive suggestion in the evidence that the worker's slip and fall resulted from material having spilled over from the employer's premises.

[67] I find the evidence does not support the statement of the review officer, made in the context of consideration of policy item #C3-19.00, that the employer had a responsibility to ensure the worker could safely use the route that she used from the grocery store to her vehicle. The review officer's assertion that the access ramp was "privately maintained and operated" fails to acknowledge that the parking lot was owned and operated by an entity other than the employer. Thus, the review officer's observation omits some very critical information.

[68] I do not doubt that policy item #C3-19.00 provides that, as stated by the review officer, employers have a responsibility to provide workers with safe access to and from work.

Certainly, that policy item would oblige the employer to ensure that the doorways to its store involved safe points of entry and exit.

[69] However, I am not persuaded that policy item justifies a conclusion in the case before me that the employer had a responsibility to ensure the worker could safely use the route from the store to her car located in a lower parking lot, such that it could be said such a route formed part of the employer's premises. I stress that the employer did not maintain and operate the access ramp or the parking lots.

[70] Thus, a consideration of policy item #C3-19.00 does not support a conclusion the worker was injured on the employer's premises.

[71] I now turn to policy item #C3-20.00.

1. Was the parking lot provided by the employer?

[72] If the employer provides a parking lot for the use of a worker, this weighs in favour of coverage.

[73] The lower parking lot in which the worker had parked her vehicle was apparently one of a pair of lower parking lots at the shopping mall. Had the worker been a customer of the employer or a customer of any one of the other businesses in the shopping mall, she could have parked in the upper parking lot or one of the lower parking lots.

[74] In that regard, her usage of one of the lower parking lots would have been no different from that of any other customer of any business at the shopping mall. I appreciate that her need to park in one of the lower parking lots on December 21, 2012 was occasioned by the fact she worked a shift at her employer's grocery store that day.

[75] I note the review officer attached significance to the fact employees of the employer were told that if they parked in the upper lot, which was "reserved" for the employer's customers, they would risk having their cars towed. The review officer found that such instructions indicated the lower parking lot in which the worker parked was provided by the employer for its workers to use.

[76] The notice submitted to the Review Division refers to "customers." The evidence does not establish that only customers of the employer (as opposed to customers of any other business at the shopping mall) were permitted to use the upper parking lot.

[77] The parking lots were available for customers of any of the businesses in the shopping mall. I am not persuaded that the upper parking lot was reserved for the employer's customers.

[78] I find that the employer's instructions amounted to directing the worker to only use the lower parking lots. I question whether, in the circumstances, it can be said the employer provided the parking lot. However, I appreciate that arrangements between employers at the shopping mall and the owner ensured that employees of employers could park in the lower lots. Thus, one could argue the employer could be seen to have provided parking.

[79] For the purposes of this appeal, I will assume that the employer provided the parking lot used by the worker.

2. Was the parking lot controlled by the employer?

[80] This factor implies that control is very significant:

> If the parking lot is controlled by the employer, this weighs in favour of coverage. **If control does not exist, there may be other factors that demonstrate an employment connection.**
>
> [emphasis added]

[81] Control is defined in the following fashion:

> Control of a parking lot is not determined only by whether the parking lot is owned or leased by an employer. In assessing if an employer controls a parking lot used by a worker, the Board may also consider whether the employer was responsible for the operation, maintenance, or repair of the parking lot, or had the ability to control access to the parking lot.

[82] I find the evidence fails to establish the employer controlled any of the parking lots. The evidence does not establish that it owned or leased the parking lots. Further, the evidence does not establish the employer was responsible for the operation, maintenance or repair of the parking lots. While it may have asked the worker to use the lower parking lots as opposed to the upper parking lot, I am not persuaded the employer had the ability to control access to the parking lots generally.

[83] In considering this factor, I find that the parking lots were at a shopping centre or shopping mall. Further, I find the lots were designed primarily for customer use and not controlled by the worker's employer.

[84] As established by the following excerpt from this factor, in the absence of other factors demonstrating an employment connection, such circumstances mean that an injury suffered in such a parking lot would not normally be considered to have arisen out of and in the course of the worker's employment:

> In the absence of other factors demonstrating an employment connection, an injury or death that occurs on a shopping centre or shopping mall parking lot designed primarily for customer use and not controlled by the individual employer of a worker would not normally be considered to arise out of and in the course of the employment.

[85] Notably, the review officer did not document any awareness of this passage in policy.

[86] I will revisit this matter later when I review whether there are other factors demonstrating an employment connection.

3. Was the injury or death caused by a hazard of the parking lot?

[87] I find that the injury was caused by a hazard of the parking lot. This factor weighs in favour of coverage.

4. Did the injury or death occur on a parking lot that was contiguous to the place of employment?

[88] I find that the parking lot was contiguous to the worker's place of employment. This factor weighs in favour of coverage.

5. Did the injury or death occur proximal to the start or stop of a worker's shift?

[89] The worker's injury occurred proximal to the stop of her shift. Significantly, this factor does not provide that such circumstances favour coverage. Rather, the factor provides as follows as to the concerns posed by a significant time gap between the start and stop of the shift and a time of the injury:

> In the absence of other factors demonstrating an employment connection, a significant time gap between the time of the worker's injury or death and the start or stop of the worker's shift, does not weigh in favour of coverage.

[90] I find that the circumstances of the worker's injury satisfy several of the factors set out in policy item #C3-20.00.

[91] Yet, while the fact the worker may have been injured close to the end of her shift, at a location adjacent to the employer's store, and by a hazard of a parking lot provided by her employer are factors for consideration, they are not especially strong factors favouring an employment connection. This is so because such factors concern what might be considered to be tangential matters rather than fundamental considerations (discussed below) involved in determining whether an injury arose out of and in the course of employment.

[92] The circumstances of the worker's claim do not satisfy the critical factor of control referred to in the discussion in policy item #C3-20.00 of shopping mall/shopping centre parking lots designed primarily for customer use.

[93] I find that the parking lots and access ramp did not form part of the employer's premises. I do not consider that the shopping mall parking lots and an access ramp that it did not own, operate, maintain or control access to would form part of its premises for the purposes of determining matters of workers' compensation.

[94] While I have found the parking lots and access ramp did not form part of the employer's premises, it is necessary for me to consider whether there are "other factors demonstrating an employment connection" such that the worker's injury in a shopping mall/shopping centre parking lot designed primarily for customer use can be said to have arisen out of and in the course of her employment.

[95] In analyzing that issue, I attach significance to the fact that only one of the nine factors set out in policy item #C3-14.00 is satisfied. The factors that have not been satisfied include what might be regarded as fundamental considerations in determining whether an injury arose out of and in the course of employment. Significantly, the worker was not injured performing activities that were part of her job. She was not injured during a period of time for which she was being paid. Her injury was not occasioned by the act of her employer or a fellow employee. She was not injured using equipment or materials supplied by her employer.

[96] While adjudication under policy item #C3-14.00 is not simply a function of adding up the total number of factors that favour a finding that an injury arose out of and in the course of employment and comparing that total to the number of factors that do not favour a finding that an injury arose out of and in the course of employment, the fact that only one of the non-medical factors is satisfied weighs strongly against accepting the worker's claim. I am aware the list in that policy item is not exhaustive.

[97] In *WCAT-2013-01972* (as noted above, a decision cited by the employer) the panel considered a case in which a worker was employed at the hospital as a registered nurse. She parked in a parking lot located across the street from the hospital. The parking lot was owned by a private company. The worker paid for her parking through payroll deductions, and received a parking pass from her employer. This showed that she was a hospital employee and had paid for her parking on a monthly basis. The worker suffered a slip and fall while leaving the parking lot.

[98] The panel in *WCAT-2013-01972* observed that "workers' compensation coverage generally does not extend to injuries occurring in parking lots which are not owned and maintained by the employer." The panel cited numerous decisions to that effect and noted the analysis contained in some of those decisions.

[99] The panel summed up its analysis as part of concluding that the worker's injury did not arise out of and in the course of her employment:

> [34] I am unable to draw a meaningful distinction between the worker's circumstances, and those of a store employee parking in a mall parking lot. In both circumstances, the employer may participate in making the arrangements for staff parking, and advise the employees where they may park. The employer may also communicate with the parking lot owner/operator (mall management) regarding any concerns as to the condition of the parking lot. However, such factors are generally insufficient to support the provision of workers' compensation coverage. I consider, as well, that the worker's circumstances are similar to those addressed in *WCAT-2009-02944*, cited above. While I appreciate the basis for the worker's belief that she was parking in her employer's parking lot, I find that the weight of the evidence establishes that the worker's injury in her fall on January 19, 2012 did not rise out of and in the course of her employment. I consider that **the lack of ownership or control by the employer over the parking lot** in which the worker fell outweighs the employer's participation in providing parking hangers based on payroll deductions.
>
> [emphasis added]

[100] *WCAT-2013-01972* is not binding on me. It does provide a useful summary of cases dealing with parking lots.

[101] After having reviewed the matter, I find that the worker's injury did not arise out of and in the course of her employment. In light of my conclusions documented above with respect to the factors set out in policy items #C3-14.00 and #C3-20.00 of the RSCM II, I conclude there was not a sufficient employment connection.

[102] While her circumstances may have satisfied four of the factors found in policy item #C3-20.00, her circumstances did not satisfy factors listed in policy item #C3-14.00 associated with fundamental considerations associated with adjudicating whether the worker's injury arose out of and in the course of her employment. Her circumstances satisfied only one of the factors in policy item #C3-14.00.

Conclusion

[103] I allow the employer's appeal. I vary the review officer's decision. I find that the worker's December 21, 2012 injury did not arise out of and in the course of her employment.

[104] There has been no request for reimbursement of appeal expenses. Therefore, I make no order in that regard.

Randy Lane
Vice Chair

RL/cv

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