

DECISION OF THE WORKERS' COMPENSATION APPEAL TRIBUNAL

WCAT Decision Number:

A1703349

WCAT Decision Date:

August 21, 2018

Introduction

- [1] This appeal concerns the worker's claim with the Workers' Compensation Board (Board), operating as WorkSafeBC, for injuries he sustained when he fell in the course of his employment as a delivery driver on January 18, 2012.
- [2] Right-sided piriformis syndrome and chronic low back pain have been accepted as permanent conditions.
- [3] In a letter dated January 12, 2016, a disability awards officer advised the worker that his permanent functional impairment had been assessed at 22.245% of total disability, including an age adaptability factor of 1.795%. The worker was found not eligible to be assessed for a loss of earnings award as he was considered able to adapt to a modified job offered by the employer as a laundry worker without a significant loss of earnings.
- [4] On August 30, 2016, a review officer considered the worker's request for a review of the January 12, 2016 decision. The review officer agreed that the job of laundry worker was suitable for the worker, but he questioned the long-term wage rate established on the claim as it was based on annual earnings that included a substantial amount of overtime, which would not be available to the worker in the accommodated position. The review officer referred the matter back to the Board.
- [5] On November 28, 2016, a case manager wrote to the worker to advise him that he was now considered eligible for a loss of earnings assessment.
- [6] A Board disability awards officer advised the worker by letter dated February 20, 2017 that he had been granted a loss of earnings award of \$1,251.36. This award was based on projected post-injury earnings of \$4,015.00 per month working full time as a laundry worker for the accident employer.
- [7] A review officer in the Board's Review Division confirmed this decision on September 27, 2017 in *Review Reference #R0222340*.
- [8] The worker has appealed to the Workers' Compensation Appeal Tribunal (WCAT). He is represented by a lawyer.
- [9] The worker asked for his appeal to be considered by reviewing the documentary evidence and written submissions. As noted in the *WCAT Manual of Rules of Practice and Procedure (MRPP)* at item #7.5, WCAT will normally conduct an appeal by written submissions where the issues

are largely medical, legal, or policy based and credibility is not at issue. I agree that the worker's appeal raises issues of law and policy which do not require an oral hearing.

- [10] The employer did not respond to WCAT's December 8, 2017 invitation to participate in the worker's appeal when it was initially sent on following receipt of the worker's Notice of Appeal. A further invitation to participate was sent to the employer on July 31, 2018 explaining that I was considering whether to address the matter of the suitability of the laundry worker position in my decision, not only the post-injury wage rate to be used when calculating the worker's award. The employer did not respond to this invitation either. Therefore, the employer did not participate in the worker's appeal.

Issue(s)

- [11] I have considered whether the matter of the suitability of the laundry worker position was finally determined in the previous Review Division decision that was issued on August 30, 2016. The issue before the review officer at that time was whether the worker was eligible for a loss of earnings assessment and he referred that matter back to the Board for further investigation. Subsequently, the Board found that the worker was eligible for a loss of earnings assessment and this led to the decisions that are presently before me in this appeal.
- [12] In the August 30, 2016 decision, the review officer referred the entire matter back to the Board without specifying that only the post-injury earnings aspect of the matter before him was to be investigated. Although the review officer who authored the August 30, 2016 Review Division decision found that the laundry worker position was suitable, I consider that this was a finding of fact made in the context of considering the worker's entitlement to a loss of earnings assessment. The present appeal concerns the extent of the worker's loss of earnings resulting from his compensable permanent injuries and I consider that I have jurisdiction to make findings on the suitability of the laundry worker position as well as the wage rate aspect of this matter.
- [13] Therefore, the issue to be decided in this appeal is the worker's entitlement to a permanent disability award calculated on a loss of earnings basis.

Jurisdiction and Standard of Proof

- [14] This appeal was filed with WCAT under subsection 239(1) of the *Workers Compensation Act* (Act). Section 254 of the Act gives WCAT exclusive jurisdiction to inquire into, hear, and determine all matters and questions of fact, law, and discretion arising or required to be determined in an appeal before it.
- [15] Under subsection 250(1) of the Act, WCAT may consider all questions of fact and law arising in an appeal, but is not bound by legal precedent. WCAT must make its decision on the merits and justice of the case, but in so doing, must apply a policy of the Board's board of directors that is applicable in the case. All references to policy in this decision, unless otherwise specified, pertain to the Board's *Rehabilitation Services and Claims Manual, Volume II*.
- [16] The standard of proof that applies in this appeal is the balance of probabilities, subject to subsection 250(4) of the Act, which provides that if on an appeal respecting the compensation

of a worker the evidence supporting different findings on an issue is evenly weighted, the issue must be resolved in favour of the worker.

Evidence, Reasons and Findings

- [17] The primary method of calculating a worker's permanent disability award is described in subsection 23(1) of the Act, according to which the impairment of a worker's earning capacity must be estimated from the nature and degree of the injury and the Board must pay the worker compensation based on the estimate of the loss of average net earnings resulting from the impairment.
- [18] The Board calculated the worker's permanent functional impairment at 17.95% of total disability related to his accepted right-sided piriformis syndrome using the measurements obtained at a permanent functional impairment examination on December 11, 2015. The worker received an additional 2.5% for chronic pain. The worker was provided with a permanent disability award calculated on a functional loss basis on January 12, 2016.
- [19] The issue to be decided in this appeal is the worker's entitlement to a permanent disability award calculated on a loss of earnings basis as provided in section 23(3) of the Act according to which a worker's disability award to be calculated based on:
- ...the difference between
 - (c) the average net earnings of the worker before the injury, and
 - (d) whichever of the following amounts the Board considers better represents the worker's loss of earnings:
 - (i) the average net earnings that the worker is earning after the injury;
 - (ii) the average net earnings that the Board estimates the worker is capable of earning in a suitable occupation after the injury.
- [20] Policy item #40.10 sets out the formula for assessing a worker's disability award under section 23(3) of the Act after the Board makes a determination under subsection (3.1). According to policy item #40.12, in estimating what a worker is capable of earning in a suitable occupation after the injury, the Board considers the evidence, including the medical evidence of the limitations imposed by the compensable disability, and the ability of the worker to perform different occupations. Regard is also given to the suitability of the worker for occupations that could reasonably become available over the long run that will maximize the worker's long-term earnings potential.
- [21] The worker participated in a Pain and Medication Management Program (PMMP) from August 26, 2013 to September 13, 2013. The worker was assessed as being unable to meet the heavy strength demands of his pre-injury occupation as he was unable to tolerate frequent walking, constant driving, and frequent climbing (for example, climbing into and out of his truck). He was discharged as fit to return to work with limitations and modified duties. The PMMP recommended that the worker was suited to work within a medium-strength category with only occasional driving, occasional low level work including squatting and forward bending, and occasional stair climbing.

- [22] The worker reported experiencing a steady increase in pain during his daily commute to the program and as the week progressed. The treatment team concluded that it would be more appropriate to discontinue the worker's participation in the program after Module 1, rather than to have the worker attend a second Module given that he had not reported or demonstrated any significant improvement during his participation.
- [23] Board medical advisor, Dr. O'Brien, provided her opinion on July 24, 2015 in response to questions asked by the Board case manager. Dr. O'Brien noted that no structural abnormalities had been demonstrated to be present in the worker's right piriformis muscle and she stated her opinion that the worker did not have any permanent objective limitations, defined as an activity that a person is unable to do or lacks the capacity to do. Dr. O'Brien had not been asked to identify subjective limitations, which she defined as a limitation based on a person's intolerance to an activity because of pain.
- [24] The Board accepted that, as a result of his compensable permanent conditions, the worker was unable to continue in his pre-injury occupation as a delivery driver.
- [25] The employer offered to accommodate the worker in a modified position as a laundry worker.
- [26] An occupational therapist from the Board's Return-to-Work Support Services performed a Job Demands Analysis on November 25, 2015 to evaluate the laundry worker position of laundry that had been offered to the worker. The occupational therapist noted that the worker would be responsible for collecting laundry carts, unloading laundry from the carts and placing it in the washing machines, transferring laundry from the washing machine into the dryers, and removing the laundry from the dryers and hanging it on rails.
- [27] The occupational therapist noted the following limitations that had been identified as return-to-work barriers for the worker:
- Reduced sitting tolerance of less than 45 minutes;
 - Difficulties with prolonged standing and walking;
 - Difficulties with lifting, carrying, pushing and pulling loads greater than light strength levels; and
 - Difficulties with climbing stairs and ladders.
- [28] The occupational therapist also noted the worker's statement that he was unable to bend forward for long periods of time and that he experienced constant back pain, which he rated at 9 on a scale of 0 to 10.
- [29] The occupational therapist stated his conclusion that the position of laundry worker would be suitable for the worker if it was modified by raising the washing machines five inches off the ground and by providing the worker with a chair. He felt that raising the washing machines would enable the worker to avoid repetitive forward bending when loading and unloading the laundry. The worker could sit on the chair while loading and unloading the washing machines and he could also sit on the chair between loads, enabling him to take micro-breaks.

- [30] The occupational therapist assessed the position of laundry worker as requiring light strength capacity with loads weighing between 5 kg and 10 kg (approximately 11 to 22 pounds).
- [31] In the Appendix – Review of Job Demands, the occupational therapist noted that the worker would be required to frequently lift laundry weighing up to ten pounds from waist to shoulder level and to carry those loads up to five feet. He said that the worker would be required to perform unilateral carrying of detergent to the washing machines on a “rare” frequency. The worker would need to push and maneuver the laundry cart from the collection area located approximately 20 feet away from the laundry room. Although the occupational therapist did not indicate the actual weights involved in performing this task, he described it as involving light forces.
- [32] Reaching from waist to shoulder level was required on a frequent basis both within a forearm’s reach (inner-range reaching) and with the arm extending forward and away from the body (outer-range reaching).
- [33] Repetitive stooping was required within mild to moderate ranges when reaching to outer ranges such as when reaching for smocks at the bottom of the laundry cart or when loading and unloading the washing machine. Mild stooping was defined as involving flexion up to approximately 20 degrees at the hips/waist. Moderate stooping would involve flexion from approximately 20 to 45 degrees and severe stooping would involve flexion past 45 degrees. The occupational therapist suggested that the degree of stooping could be minimized by elevating the washing machines and by elevating the cart bottoms using flattened cardboard.
- [34] Crouching would be required rarely when picking up smocks that had fallen off the laundry cart. The position predominately required static standing. Sitting could only be employed during scheduled break times or during micro-breaks in between loads of laundry.
- [35] There are multiple floors in the warehouse with multiple stair cases leading up to each of them. The occupational therapist stated his opinion that stair climbing would only be required when entering and exiting the warehouse.
- [36] Walking would be required on a frequent (34% to 66%) to constant basis, but only for short distances up to 20 feet when collecting the laundry cart.
- [37] A graduated return-to-work (GRTW) plan was developed for the worker to return to work with the accident employer as a laundry worker in this modified position. The GRTW was to commence on December 7, 2015, with gradually increasing hours over a period of six weeks. However, the worker declined to participate in the GRTW as he did not feel that he could physically perform the duties of the job that had been offered.
- [38] The worker was examined by disability awards medical advisor, Dr. Dray, on December 11, 2015, for the purpose of evaluating the extent of permanent functional impairment resulting from his accepted right-sided piriformis syndrome and chronic back pain. Dr. Dray noted in a Permanent Functional Impairment Evaluation report that the worker complained of constant right buttock pain which extended into his right leg and low back when the severity increased. Bending at the waist was reportedly restricted and painful. Aggravating factors included bending/twisting, prolonged standing, sitting in an upright position, faster paced and longer

distance walking, heavier carrying/lifting, negotiating stairs, walking on uneven ground or inclined surfaces, squatting, driving, stooped posturing, increased activity, and exposure to cold temperatures. The worker had difficulty rising from lower levels and required upper extremity support to do so. He said that he avoided stairs and hills if at all possible.

- [39] Active range of motion of the lumbar spine was limited to 26 degrees of forward flexion, 20 degrees of extension, 15 degrees lateral flexion on the right side, and 9 degrees lateral flexion on the left side. Right hip range of motion was reduced and pain limited. The worker demonstrated 55 degrees of flexion on the right side compared to 100 degrees on the left side. Extension, abduction, adduction, and external and internal rotation were also reduced.
- [40] Dr. Dray commented that the worker had presented in a straightforward manner and provided full cooperation during the permanent functional impairment examination. There was no evidence of exaggerated pain behaviours. She expressed her opinion that the documented measurements were valid. These measurements were utilized by the Board in calculating the worker's permanent disability award on a functional loss basis.
- [41] The Board assessed the worker for a loss of earnings award based on employment in the modified laundry worker position, which was deemed suitable for him, as advised in a decision letter dated February 20, 2017. The worker's loss of earnings was calculated using full-time earnings at this employment of \$4,015.00 per month.
- [42] The worker disagreed with this decision and it was confirmed on September 27, 2017 in the Review Division decision that is the subject of this appeal.
- [43] The worker's representative submitted that the worker is not capable of working in any capacity, including as a laundry worker.
- [44] It is important to note that the only permanent conditions accepted on the worker's claim are right-sided piriformis syndrome and chronic low back pain. I acknowledge that an L5-S1 posterior annular tear and a fractured sacrum were accepted as compensable. However, these were not accepted as permanent.
- [45] I accept Dr. O'Brien's opinion that the worker's limitations are not due to structural abnormalities in the worker's right piriformis muscle. I do not interpret the description of the worker's limitations as being "subjective" in nature to suggest that his limitations are not genuine. The worker has permanent chronic low back pain, which he rated at 9 out of 10 and this pain is recognized as limiting the worker's capacity or tolerance for various activities. He has identified the motion of bending forward as being particularly aggravating of his symptoms.
- [46] According to a November 10, 2016 vocational rehabilitation memorandum, the worker is limited to light-strength work and he has limited tolerance for sitting (up to 45 minutes), prolonged walking, prolonged standing, and climbing ladders/stairs. Based on the PMMP discharge report, I accept that the worker is also limited to occasional driving and occasional low level work including squatting and forward bending. According to the report, an activity/body motion is considered to be required on an occasional basis when it occupies 5% to 33% of the workday.

- [47] It is also apparent from the permanent functional impairment examination results that the worker's active lumbar range of forward motion is limited to 26 degrees. Right hip range of motion is also reduced and pain-limited.
- [48] Given the worker's limited active range of motion as measured at the permanent functional impairment examination and given the recommendation of the PMMP that the worker would be limited to only occasional low level work including squatting and forward bending, I conclude that an occupation that would require the worker to perform more than mild stooping (up to approximately 20 degrees) on more than an occasional basis (up to 33% of the workday) would not be suitable for him.
- [49] The occupational therapist stated in the "Recommendations" section of the Job Demands Analysis report that the accommodated position of laundry worker was suitable for the worker with modifications including raising the washing machines by five inches which he said would allow the worker to avoid repetitive forward bending. While I can understand how raising the washing machines and putting flattened cardboard in the bottom of the laundry carts could reduce the extent to which the worker would have to bend forward when loading and unloading the laundry, I have difficulty concluding that this modification would completely eliminate the need to bend forward. Indeed, the occupational therapist stated in the "Appendix – Review of Job Demands" section of his report that these modifications would "minimize the degree of stooping." I conclude that the need for the worker to bend forward or stoop when performing tasks of the laundry worker position would not be eliminated by the recommended modifications.
- [50] I note that the Job Demands Analysis report does not contain any details about the height of the washing machines and dryers or whether they are front-loading or top-loading machines, factors which would affect the extent to which the worker would have to bend forward when loading and unloading the laundry. Considering the worker's documented difficulties with forward flexion, this information is critical to deciding whether the occupation of laundry worker is suitable for him or not. The absence of this information and other details makes it difficult to evaluate the factual basis of the opinion provided by the occupational therapist and this diminishes its value when deciding whether the occupation of laundry worker as modified is suitable for the worker.
- [51] The occupational therapist identified stooping – forward bending in standing as a physical demand of the occupation that would have to be performed intermittently on a frequent basis. Without the recommended modifications, stooping would be required within mild (up to approximately 20 degrees) to moderate (from approximately 20 to 45 degrees) ranges. I accept that the suggested modifications would reduce the degree to which the worker would be required to bend forward when loading and unloading the laundry. However, the Job Demands Analysis Report does not contain sufficient information to enable me to ascertain the degree of repetitive stooping that would be required with the recommended modifications. In particular, the report does not contain information about whether the worker would be required to exceed his limited tolerance for only mild stooping.
- [52] Despite its limitations, the Job Demands Analysis report does contain some valuable information about the suitability of the laundry worker position for the worker. According to the report, forward bending would be required to be performed on a frequent basis, defined as occupying 34% to 66% of the workday. Since the worker is limited to only occasional forward bending, representing 5% to 33% of the workday, this shows that the occupation of laundry

worker would exceed the physical limitations resulting from the worker's compensable injuries. The modifications recommended by the occupational therapist would not reduce the frequency of forward bending that would be required by the worker when performing this job, even if they might reduce the degree of forward bending that was required.

- [53] It is also significant to me that standing is required as a constant physical demand of the position of laundry worker. It is difficult to understand how an occupation that predominantly requires static standing would be physically suitable for a worker with a limited tolerance for prolonged standing.
- [54] For these reasons, I find sufficient evidence in the Job Demands Analysis report to conclude that the occupation of laundry worker exceeds the worker's limitations, specifically his limited tolerance for only occasional forward bending and for prolonged standing. This tends to support a conclusion that the position is unsuitable for the worker, even with the recommended modifications. In any event, the focus is an occupation rather than a single job that is not reasonably representative of that occupation in light of the significant accommodations inherent in the single job.
- [55] The worker's representative provided written submissions to WCAT in which he argued that the worker is not capable or working in any capacity, including as a laundry worker.
- [56] The following new evidence was provided to WCAT in support of the worker's appeal:
1. Physical Demands Analysis report dated March 4, 2018
 2. Work Capacity Evaluation report dated March 5, 2018
- [57] These reports were prepared by Dr. Cooke whose qualifications in matters of work capacity evaluation, functional evaluation, and vocational assessment are set out as an appendix to the report. Dr. Cooke described the duties of the laundry worker position based on his observations at a work site visit. His description is similar to that contained in the Board's Job Demands Analysis report, except that it is more detailed.
- [58] Dr. Cooke noted that there are two washing machines in the laundry room; a small and a large machine, as well as a dryer. The machines are front loading and they are resting on a 6- to 8-inch high steel riser. The distance from the floor to the bottom of the small washing machine door is 27 inches. The distance from the floor to the bottom of the large washing machine door is 32 inches. The distance from the floor to the bottom of the dryer door is 40 inches.
- [59] Dr. Cooke observed that forward flexion of the spine was required when loading and unloading the laundry in and out of the washers and the dryer. Sustained stooping was also required when placing the cleaned smocks on hangers.
- [60] Dirty laundry is placed into a dolly located outside of the laundry room entryway. When full, the dolly is pushed a distance of approximately 35 feet to the washing machines where the dirty laundry is removed from the dolly and placed into the washing machine. The top of the small dolly is 28 inches from the floor and the top of the large dolly is 33 inches from the floor.

- [61] The specific duties of the laundry worker position were communicated to Dr. Cooke by the individual who is currently employed as the senior laundry attendant. Dr. Cooke noted that one of the laundry attendants operates the laundry while the others either assist with the laundry or perform other janitorial and cleaning activities related to the position.
- [62] It is unclear to me whether the particular job that Dr. Cooke evaluated was identical to the one that was offered to the worker by the employer and evaluated by the occupational therapist as reported in the November 25, 2015 Job Demands Analysis report. Dr. Cooke described some tasks in his report that were not included in the Job Demands Analysis report such as cleaning the lunch/coffee break room and floors, cleaning the washrooms and staff change rooms, disposing of garbage, and driving to the local hardware store to purchase supplies. It appears that these tasks were not required in the modified position that was offered to the worker given that they were not included in the specific tasks listed in the Job Demands Analysis report upon which the return-to-work plan was based. Therefore, Dr. Cooke's observations about these tasks are not relevant to the question of whether or not the modified position is suitable for the worker and I will focus on Dr. Cooke's observations about the specific work tasks listed in the Job Demands Analysis report.
- [63] Dr. Cooke stated that these tasks were primarily performed in a standing position. He said that stooping was required when loading and unloading the washers and dryer, when reaching into the plastic dollies to retrieve the clean laundry and place it on the hanging racks, and when pushing the plastic dolly full of dirty and clean laundry to and from the laundry room. The degree of stooping ranged from mild to moderate, although severe forward flexion was required when reaching items at the bottom of the dolly. Stooping was performed on an occasional to frequent basis.
- [64] Dr. Cooke noted in the Work Capacity Evaluation report that the worker was unable to bend his upper body forward in a severe stooping posture to reach forward beyond his knee level. The worker was slow and guarded during this activity and was observed to support his upper body with his hands on his thighs. The worker reported symptom aggravation in his low back when performing this movement.
- [65] Dr. Cooke stated his opinion that the worker did not demonstrate sufficient tolerance for stooping to enable him to safely and competitively perform the frequent stooping requirements of loading and unloading the washing machines, loading and unloading the dryer, and retrieving clean laundry from the plastic bins to hang on the racks. In addition, Dr. Cooke stated that the worker did not demonstrate sufficient static and dynamic standing tolerances to competitively and safely perform the constant standing requirements of the job. He felt that the worker's symptom response during the assessment, combined with his reports of lingering discomfort for days following the assessment, did not support the worker's ability to safely and durably sustain this employment.
- [66] Dr. Cook's observations about the physical demands required to load and unload the washing machines and dryer and to hang up the smocks and coveralls are consistent with those contained in the Job Demands Analysis prepared by the Board occupational therapist. His report provides further support for my conclusion that the laundry worker position that was offered by the employer is unsuitable for the worker even with the modifications that were recommended as the physical demands exceed the worker's limitations related to his work

injury. The accommodated laundry worker position exceeds the worker's limited tolerance for forward bending, both the frequency of forward bending and the degree of forward bending that is required. The laundry worker position also exceeds the worker's limited tolerance for prolonged standing.

- [67] For these reasons, I find that the worker's post-injury earning capacity cannot be estimated based on the laundry worker position that was offered to him in the GRTW plan.
- [68] It is important to note that subsection 23(3.2) of the Act and policy item #40.00 are concerned with the worker's ability to continue in his "occupation" at the time of injury or to adapt to another suitable "occupation." In this case, the Board estimated the worker's post-injury earning capacity based on the occupation of laundry attendant. However, the particular job that was proposed for the worker had been significantly modified to take account of the worker's limitations resulting from his compensable injuries. The particular job represents a small sub-category of jobs that would be included in the broader occupation of laundry worker. Given my finding that the particular job is not suitable for the worker even with the modifications that reduced the physical demands, it follows that the occupation of laundry worker would also be unsuitable. For these reasons, I conclude from the evidence that the occupation of laundry worker is not suitable for the worker given his post-injury functional abilities and limitations.
- [69] The worker's representative submits that the worker is not capable of working in any capacity.
- [70] The Board assessed the worker's loss of earnings award based on the job that the accident employer had offered to the worker without considering whether there are other suitable occupations to which the worker could adapt.
- [71] The Board did not undertake an employability assessment in this case. The worker had been employed by the accident employer as a delivery driver for over 22 years at the time of the incident that resulted in his injuries. Dr. Cooke described the worker's previous work history as primarily involving driving/delivery jobs as well various labourer jobs. Dr. Cooke noted that the worker had not graduated from high school, having dropped out of school partway through Grade 12.
- [72] The worker has a permanent functional impairment that has been assessed at more than 22% of total disability. He is currently over 60 years of age. In these circumstances, I agree with the worker's representative that the worker's permanent disability award should be calculated on a 100% loss of earnings basis. With the worker's retirement date less than five years away and considering the extent of his permanent functional impairment, as well as the physical limitations as already described, it would be impractical to invest significant resources for vocational rehabilitation services that would be unlikely to yield positive results.

Conclusion

- [73] I allow the worker's appeal and vary *Review Reference #R0222340* by finding that the occupation of laundry worker is not a suitable occupation upon which to estimate the worker's post-injury earning capacity. The worker's permanent disability award is to be calculated on a 100% loss of earnings basis.

Expenses

- [74] Subsection 7(1)(b) of the *Workers Compensation Act Appeal Regulation* authorizes WCAT to order the Board to reimburse a party to an appeal for certain expenses including expenses associated with obtaining or producing evidence submitted to WCAT.
- [75] Item #16.1.3 of the MRPP provides guidance for the exercise of a panel's discretion to award expenses. It explains that WCAT will generally order reimbursement of expenses incurred in producing evidence if 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.
- [76] I found Dr. Cooke's reports to be useful in determining the matter under appeal and I consider it was reasonable for the worker's representative to have requested them on the worker's behalf. Therefore, I consider that this is a proper circumstance to exercise my discretion to order reimbursement for the expense of obtaining this evidence.
- [77] The worker's representative provided copies of Dr. Cooke's invoices for the reports he produced. As the amount of the invoices exceeds the amount provided in the Board's fee schedules, I must decide the amount of reimbursement. The worker's representative asked for reimbursement of the total amount of the invoices.
- [78] In accordance with the WCAT MRPP item #16.1.3.1, WCAT will usually order reimbursement of expert opinions at the rates or fee schedule established by the Board for similar expenses. The party who obtained the report is responsible for the balance. When seeking reimbursement of an expert opinion, the requesting party must also provide a copy of their request. Where practicable, the expert's bill or account must itemize the time and expenses incurred in rendering the opinion.
- [79] The worker's representative did not provide a copy of his request to Dr. Cooke.
- [80] The Board's fee schedule for a one-day functional capacity evaluation is \$1,135.00. Dr. Cooke's invoice for was for \$3,600.00 plus GST of \$180.00. The services included "documentation review, intake interview, test administration and scoring, data analysis, telephone consultation and written report." Dr. Cooke did not indicate the amount of time involved to provide these services and he did not include his hourly rate
- [81] MRPP item #16.1.3.1 provides that WCAT panels have the discretion to award reimbursement in an amount greater than that provided in the fee schedule, but will do so only in limited circumstances. The party seeking reimbursement of the full amount must explain the reasons the account exceeds the fee schedule and why the panel should order reimbursement of the full amount. In the absence of a request and a satisfactory explanation of the circumstances, WCAT will limit reimbursement to the fee schedule amount.
- [82] The worker's representative did not provide any submissions or argument to explain why the fee schedules should be exceeded in this case. In the absence of such an explanation, I decline to exercise my discretion to order reimbursement for an amount greater than that provided in the fee schedule. I direct the Board to reimburse the worker \$1,135.00 plus GST for the Work Capacity Evaluation report.

- [83] Dr. Cooke provided an invoice in the amount of \$1,544.40 plus GST of \$77.20 for services related to a “Job Site Analysis,” which I assume is related to the Job Site Visit report submitted by the worker’s representative as Appendix C to his written submissions to WCAT. Dr. Cooke billed 1.34 hours at \$195.00 per hour to complete the Job Site Analysis (\$261.30), 2 hours travel at 50% of \$195 per hour (\$195.00), and 5.58 hours at \$195.00 per hour (\$1,088.10) to write the report.
- [84] The Board’s fee schedule for Return to Work Support Services provides for a fee of \$300.00 for a Job Site Visit, and \$400.00 for a Job Demands Analysis report. The fee schedule provides that neither of these reports is payable for the same service date as the other. I direct the Board to reimburse the worker \$400.00 plus GST for the Job Site Visit report. I decline to exercise my discretion to order reimbursement of the full amount invoiced by Dr. Cooke, given the absence of any submissions on why I should do so.
- [85] No other appeal expenses were requested and none are apparent. Therefore, there is no further order for reimbursement of expenses.

Cathy Agnew
Vice Chair