DECISION OF THE WORKERS' COMPENSATION APPEAL TRIBUNAL

WCAT Decision Number: A1703496
WCAT Decision Date: October 10, 2018

Introduction

[1] On April 8, 2014, the worker was rinsing off a conveyor belt that previously had deboned meat on it. While rinsing the conveyor belt, some contaminated water splashed into her right eye. The Workers' Compensation Board (Board), operating as WorkSafeBC, accepted the worker's claim for a foreign body to the right eye which then developed into conjunctivitis/keratitis.

[2] By letter March 14, 2017, the Board denied the worker's claim for Irido-Corneal Endothelial Syndrome (ICE) and glaucoma in her right eye.

[3] The worker disagreed with the Board's decision and requested a review. On October 30, 2017 the Review Division (*Review Reference #R0222982)* confirmed the Board's decision.

[4] The worker disagreed with the Review Division's decision and has now appealed that decision to Workers' Compensation Appeal Tribunal (WCAT).

[5] An oral hearing was held in at the WCAT office location in Richmond, British Columbia, on September 26, 2018. The worker was represented by a lawyer. The employer participated in the appeal and was represented by an officer of the employer. It did not attend the WCAT oral hearing and is therefore deemed to have waived its right to participate further in the appeal.

Issue(s)

[6] Did the worker's ICE and glaucoma in her right eye arise out of and in the course of employment on April 8, 2014?

Jurisdiction

[7] The appeal was filed with WCAT under section 239(1) of the *Workers Compensation Act* (Act), which provides for appeals of final decisions by review officers regarding compensation matters, subject to the exceptions set out in section 239(2) of the Act.

[8] Section 254 of the Act gives WCAT exclusive jurisdiction to inquire into, hear, and determine all those matters and questions of fact, law, and discretion arising or required to be determined in an appeal before it. This is an appeal by way of rehearing, in which WCAT considers the record and also has jurisdiction to consider new evidence and to substitute its own decision for the decision under appeal. WCAT has inquiry power, including the discretion to seek further evidence, but is not obliged to do so. WCAT may confirm, vary, or cancel the appealed decision or order.

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[9] The standard of proof is the balance of probabilities, subject to section 250(4) of the Act. Section 250(4) states that if the appeal tribunal is hearing an appeal respecting the compensation of a worker and the evidence supporting different findings on an issue is evenly weighted in that case, the appeal tribunal must resolve that issue in a manner that favours the worker.

[10] I am bound to apply the published policies of the board of directors of the Board, subject to the provisions of section 251 of the Act. The *Rehabilitation Services and Claims Manual, Volume II* (RSCM II) contains the published policy applicable to this appeal.

Preliminary Postponement of WCAT Oral Hearing

[11] An oral hearing of this appeal was originally scheduled for May 23, 2018, at 1:00 p.m. The worker provided additional medical evidence to WCAT shortly before the oral hearing. On May 22, 2018, the worker's representative provided WCAT with an undated questionnaire which had been completed by Dr. Tadrous, an ophthalmologist. The worker also separately provided WCAT with a letter from Dr. Tadrous dated May 17, 2018. These documents were forwarded by WCAT to the employer on the morning of May 23, 2018. Further, on the morning of the scheduled oral hearing, the worker's representative contacted the WCAT appeal coordinator indicating the worker wished to present additional evidence, in the form of a flash drive, which she would bring to the oral hearing. The WCAT appeal coordinator advised the worker's representative that the panel would shortly hear from him at the oral hearing to address whether the hearing should be postponed.

[12] Just prior to when the May 23, 2018 oral hearing was to convene, the employer's representative wrote to WCAT, responding to the evidence of Dr. Tadrous and providing factual details which contrasted with some of the facts alleged by the worker. As well, the employer's representative wrote that, due to a workplace emergency, she could not attend the oral hearing. I interpreted the employer's letter to be a request for postponement of the oral hearing.

[13] At the oral hearing on May 23, 2018, in addition to the flash drive evidence, the worker's representative indicated he wished to rely on a scientific article which had not yet been provided to the WCAT panel. I heard the worker's submissions as to why the hearing should proceed. I concluded the flash drive evidence could not be accepted into evidence without it first passing through WCAT's process to determine whether it contained a computer virus. It could not be made available for viewing during the oral hearing. In general, the new evidence provided by the worker had not been provided in a timely manner or in sufficient time to allow the employer an adequate opportunity to respond to the evidence. Procedural fairness required that the oral hearing be postponed.

[14] Re-scheduling of the oral hearing was further delayed because after the oral hearing on May 23, 2018 the worker's representative left the WCAT premises with the flash drive evidence and the scientific article. Therefore, he sent this evidence to WCAT by courier on June 7, 2018.

[15] The oral hearing was rescheduled and proceeded on September 26, 2018. This required that WCAT extend the statutory time limit for the issuing of its decision.

Background and Evidence

[16] On April 8, 2014, the worker was rinsing off a conveyor belt that previously had de-boned meat on it. While rinsing the conveyor belt, some contaminated water splashed into her right eye.

[17] On April 9, 2014, the worker noticed that her right eye was a little bloodshot. She reported that, on April 10, 2014, her right eye remained bloodshot but she had no pain or other symptoms. When she woke up on April 11, 2014, her right eye was sore. On April 12, 2014, her right eye was very painful and she went to the hospital emergency room.

[18] The April 12, 2014 hospital emergency care clinical report documented that pork juice splashed into the worker's right eye and the emergency room attending physician provided a provisional diagnosis of conjunctivitis. In due course, the Board concluded the worker's conjunctivitis/keratitis was compensable.

[19] Subsequent to her attendance at the hospital emergency room, the worker received ongoing treatment from Dr. Tadrous, commencing on April 13, 2014. In a June 17, 2014 consult report, Dr. Tadrous indicated that the worker's conjunctivitis had resolved, but he suspected that the worker might have ICE and glaucoma.

[20] Thereafter, the worker received medical attention with respect to "ICE" and glaucoma in her right eye.

[21] In a team meeting October 16, 2014, Dr. Bawa, a Board medical advisor, noted the worker had returned to full duties and hours but continued to complain of vision difficulties. He recommended a referral to the Disability Awards Department for consideration of the worker's ICE. At that time, the Board had not accepted ICE as a compensable condition. Considerable time passed without the worker's ICE or glaucoma being adjudicated and/or the referral to the Disability Awards Department being completed.

[22] In a February 2, 2017 clinical opinion, a Board ophthalmology consultant, Dr. Parkinson, reviewed the worker's medical records, including Dr. Tadrous' consult reports. Dr. Parkinson was of the opinion that the worker had pre-existing ICE in the right eye, which predisposed her right eye to glaucoma. Dr. Parkinson concluded that the April 8, 2014 work incident led to the worker sustaining conjunctivitis in the right eye. However, he concluded that the work incident and the worker's compensable conjunctivitis were not related, in any way, to her later diagnosed ICE or glaucoma condition.

[23] Based on Dr. Parkinson's February 2017 clinical opinion, a Board case manager issued the March 14, 2017 decision letter advising the worker that the Board had withdrawn its referral of her claim to the Board's Disability Awards Department as her ICE and glaucoma conditions in the right eye were related to a pre-existing condition and not to the April 8, 2014 work incident. The worker requested a review of this decision.

[24] The review officer noted that, following the work incident, the worker consistently reported that some contaminated water splashed back into her right eye, but she did not mention any trauma to her right eye due to the force of high pressure contact. The review officer concluded that the work incident was not of causative significance to the worker's ICE or glaucoma.

[25] At appeal, the worker provided a new report from Dr. Tadrous, and additional evidence described above. Dr. Tadrous stated that the worker, during her April 12, 2017 visit, informed him that the initial trauma to her right eye was due to a high pressure hose, and not just a splash. Based on this new evidence, Dr. Tadrous stated that if the worker's injury was related to a high pressure hose then it might have caused the ICE and glaucoma

WCAT Oral Hearing

[26] The worker testified that she began working for the employer in September 2011. She was working as a sanitation associate at the time of her eye injury. She and all employees changed their clothing and had to pass through foot baths each time they entered a new production area. Her duties included cleaning the various areas of the facilities and also included maintaining the processes by which other workers were able follow the required sanitation processes.

[27] The worker provided very detailed testimony regarding the numerous tasks which her employment entailed. It is not necessary, for the purposes of this appeal, to describe the worker's job duties in each production area. This decision will focus on the duties she performed and the clothing she wore while in the garbage area where she sustained her injury.

[28] The worker said she was wearing the required jacket, a large waterproof apron, a hard hat with goggles and over-the-head ear protection, tall steel-toed rubber boots, and cotton gloves underneath water-proof gloves. Her goggles could be fitted tight to her eyes but constantly became foggy since her duties involve spraying larger quantities of hot water in cold areas. The garbage area is a cold temperature area. The primary cleaning tools are hoses. A hose on one side of the room offers a choice of spraying either cleaning foam or sanitizer. A hose on the other side of the room delivers hot water through a nozzle that reduces the size of the stream and this increases the pressure or force at which the water exits the hose. When the hose is turned off, it maintains a small trickle of water, to prevent freezing. When the water is turned on, any cooled water in the hose is quickly replaced by water which becomes so hot that it is not possible to hold the metal hose nozzle without wearing gloves.

[29] The worker referred to a series of photographs she submitted into evidence, which had been taken for other purposes but which assisted in describing her work premises and her duties. The photographs showed the bone bin, the meat waste that would be disposed of into the bone bin, the dumper used to lift the meat waste, the conveyor belt running from the dumper to the bone bin, the stainless steel side-walls to the conveyor belt, and the stairs used to access the conveyor belt. The worker explained that she was responsible for cleaning these devices and this area, after she had cleaned the other areas in the room. To do this cleaning, she sprayed foam over the whole of the bone bin area, including the walls, the floor, and the sides of the equipment. The worker explained that, during the disposal of meat waste, some product would splash or otherwise not reach the bone bin. The foam softened the meat waste and made it easier to remove with the hot water hose.

[30] Since she had just finished cleaning other areas in the room, the room was full of steam. She had been unable to see through her goggles and so she had repositioned them to hang on the forward rim of her hardhat. This created a partial barrier but left a large gap between her face and the goggles. It was common for her and other workers to reposition their goggles in this manner during the course of their work activities.

[31] The worker described the mechanism for turning off and turning on the hose. The worker explained that, on the date of injury, when she stood on the top step/platform for accessing the conveyor belt, the conveyor belt was at chest height. She was holding the hose in her right hand when she accidentally and unexpectedly turned on the water. The water came through the hose nozzle at full force and struck at the conveyor belt at its juncture with the stainless-steel side-wall opposite her, approximately two feet from her rib cage and an equal distance from her face. The water and debris immediately bounced back at her, striking her face. She felt a blow to her eye. It was a hard pressure blow, although it did not leave her with pain at the time. The incident happened so quickly that it was shocking. The water had cooled in the hose and was warm rather than an uncomfortable hot temperature. She was soaking wet.

[32] Her fear was that she may have accidentally ingested raw meat product or that she had bacteria-laden water on her face. She immediately wiped her face with her sleeve. She hung the hose on the stair banister and left the room. She washed her face in the washroom located in the receiving area. Her team leader saw her as she was exiting through the common area and asked her if she had gotten sprayed and if she was okay. At the time, she made light of it, joking that her mouth had been closed. She felt embarrassed and was self-critical for not having had her goggles on at the time of the incident. She did not anticipate any continuing symptoms nor did she think of looking for any. However, each day afterwards, she felt pressure in her right eye. The sense of pressure was not painful, but it did not go away. Her right eye began to look irritated and pink. It was common in her work for her to have watering eyes because of the steam and cleansing agents in the air. However, her right eye was watering to a degree which exceeded that of her left eye. By the Friday following the incident, exposure to light was very painful.

[33] She went to first aid, where an eye bath was administered to her right eye. She was advised to go to a clinic. Eye pain and decreased vision made driving difficult for her. The clinic swabbed her right eye and gave her a prescription. The next day, she went to the hospital. Lights were really bothering her. Her right eye was painful. She could not open it sufficiently for examination. The hospital arranged for her to see Dr. Tadrous at his office at 7:00 a.m. on Sunday morning. He said she had an infection. After a week, she was better able to open her right eye and Dr. Tadrous did a more thorough examination. He said he could see something behind her iris which he had not been able to see at the time when her eye was very inflamed. The worker provided photographs of her face which demonstrated how the area around her eyes became swollen and her pupil became a misshapen oval.

[34] The worker said her light sensitivity made it difficult for her to work. She returned to working a few scattered hours but was working full time by November 2014. After Christmas, she began wearing tinted lenses. She was now working, in customer service, for a successor of the employer. In consideration of her eye condition, her current employment position is suitable. As well, it is a position which is more likely to be physically endurable over the long term than was her previous position.

[35] She has had the occasional flare-up of ICE. Each time she has a flare-up, her right eye becomes swollen. She has been prescribed various eye drops and prescription lenses for reading. One year ago, she had cataract surgery to her right eye. Her glaucoma has stabilized.

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[36] She agreed that she had not initially described the details of her injury to Dr. Tadrous. She had already explained the circumstances to his staff. When she met with him he was, by necessity, close to her face and intent on examining her eye. She remained still and did little talking.

[37] The worker said she felt she had conveyed the degree of forcefulness with which she was struck when she used the words "splash back"[1] in making her claim.

[38] The worker said that, prior to the workplace incident, she had always had very good vision. She did not have an eye doctor and had not undergone regular eye examinations. She has never had any symptoms nor any diagnosis with regard to her left eye.

Submissions

[39] In its March 23, 2018 written submission the employer indicated the water hose delivered the water at a force of 175 pound-force per square inch (psi). This is far less pressure than the 1600 psi which is delivered by a portable pressure washer.

[40] In her submissions at the oral hearing, the worker relied upon the employer's acknowledgement that the hose delivered water at a pressure of 175 psi and upon medical literature which discussed the potentially harmful effects of water streams to the eye. She also asked that the panel prefer the opinion of Dr. Tadrous over the opinion of Dr. Parkinson. The worker submitted that the force of water on her eye was more than an insignificant causative factor in the development of her ICE.

Reasons and Findings

Applicable Policy and Legislation

[41] Subsection 5(1) of the Act requires the Board to pay compensation to a worker who sustains an injury arising out of and in the course of the employment. Not everything that happens or is experienced at work is caused by work. For this reason, subsection 5(1) has a number of requirements that must be met before a claim for injury is successfully established. There must be a personal injury and it must arise both out of and in the course of the employment. "In the course of the employment" generally refers to the time and place, while "out of the employment" refers to the causal connection between the employment and the injury. So, not only must an injury occur at work but the work must be of causative significance to the injury.

[42] Policy item #C3-12.00 of the RSCM II states that, to be compensable as an injury, the evidence must warrant a conclusion that there was something in the employment that had causative significance in producing the injury. A speculative possibility that this might be so is not enough.

[43] Policy item #C3-14.00 of the RSCM II provides that employment factors need not be the sole cause in producing an injury. However, in order for an injury to be compensable, the employment has to be of causative significance, which means more than a trivial or insignificant aspect of the injury. The evidence must support a conclusion that the work activity was a cause of the injury. It cannot be speculative or a mere possibility.

[1] All quotations reproduced as written, except for changes indicated.

[44] Policy item #C3-14.00 also sets out the various factors to consider in determining whether an injury is compensable, including whether there is a physiological association between an injury and the employment activity, whether the employment activity was of sufficient degree and duration to be of causative significance to an injury, whether there is a temporal relationship between the employment activity and the injury, and whether any non-work-related medical conditions were a factor in the resulting injury.

[45] Policy item #C3-16.00 of the RSCM II states that it is necessary to distinguish between injuries resulting from employment and those resulting from pre-existing conditions. A pre-existing condition may be aggravated by an employment trauma. In those instances, the worker's resulting injury may be compensable. The policy states:

> In adjudicating these types of claims, the Board considers:
>
> - the nature and extent of the pre-existing condition or disease;
> - the nature and extent of the employment activity; and
> - the relationship between the pre-existing condition and the employment activity including the degree to which the employment activity may have affected the pre-existing condition or disease.
>
> Evidence that the pre-existing condition was accelerated, activated or advanced more quickly than would have occurred in the absence of the employment activity; may be confirmation that the aggravation resulted from the employment activity.

[46] Policy item #C3-22.00 of the RSCM II (Compensable Consequences) of the RSCM II provides guidance in applying section 5(1) of the Act including directions regarding what other factors could be compensable once the worker sustains a personal injury arising out of and in the course of employment.

[47] Policy item #C3-22.00 provides that:

> "[i]f the compensable injury, or the worker's condition resulting from the compensable injury, was of causative significance in the further injury, increased disablement, disease, or death, then the further injury, increased disablement, disease, or death is sufficiently connected to the compensable injury so that it forms an inseparable part of the compensable injury and is therefore also compensable."

[48] Policy item #C3-22.00 indicates the matter should be looked at broadly and from a "common sense" point of view to consider whether the compensable injury or the condition resulting from the compensable injury, was of causative significance in the further injury, increased disablement, disease, or death. The accepted work injury must be a significant cause (it does not have to be the only or most significant cause) of the subsequent injury/condition.

Analysis

[49] As indicated above, policy item #C3-12.00 of the RSCM II defines a personal injury as any physiological change resulting from some cause. In this worker's case, the Board and the Review Division accepted that the worker sustained a work-related injury on April 8, 2014 and sustained a physiological change to her right eye, in that she developed conjunctivitis.

[50] I must determine whether the work incident on April 8, 2014 also was more than an insignificant or trivial causative factor to the worker's ICE condition. If it was of causative significance, the medical evidence supports that the worker's glaucoma is also compensable.

[51] Policy item #97.32 of the RSCM II provides that a worker's statement about his or her own condition is evidence insofar as it relates to matters which are within the worker's knowledge. I am not persuaded that the worker's use of the word "splash" or "splash back" means only that water came to gently meet her eye. The worker described a traumatic incident that involved water making impact upon her right eye, leaving her with a sense of pressure on her eye. The worker agreed that she was not struck by water from a pressure washer. She accepted the employer's statement that the hose delivers water at a pressure force of 175 psi. Although her eye was struck by a ricochet of water, rather than by the full force of water directed from the hose nozzle, the water had travelled only a short distance before bouncing back into her eye. Therefore, I conclude the force may have been somewhat greater than had been envisioned by the Board case manager and the review officer.

[52] I accept the worker's testimony regarding the forceful impact of the water on her eye. I also accept that her initial primary and acute concern was the significant risk that she had been exposed to bacteria. This was the initial focus for the worker's treatment providers. At the hospital, the attending physician offered only a provisional diagnosis of "conjunctivitis?" The worker was referred to Dr. Tadrous for a more complete examination and assessment.

[53] On April 13, 2014, Dr. Tadrous indicated the worker was seen "for **significant pressure** painful eye(s) located in OD [the right eye] that has been occurring constantly for 3 days. This condition gets worse with bright light, and is associated with blurry vision and redness and foreign body sensation." [my emphasis added] Therefore, the worker's current recollection of a feeling of pressure coincides with Dr. Tadrous' contemporaneous report of April 13, 2014.

[54] I accept the worker's testimony that it was difficult for Dr. Tadrous to perform a full examination of her eye that day in view of her light sensitivity and inflammation. I also note Dr. Tadrous, at that time, diagnosed a corneal abrasion and chemical burn, which might suggest the possibility of a trauma beyond mere contact with bacterial matter. I do not interpret the initial assessments of the worker as eliminating the possibility of the worker having had an injury beyond conjunctivitis.

[55] The present case does not turn solely on the accuracy of the worker's recollections of her symptoms; rather, medical opinion evidence is required to determine whether there is a physiological relationship between a work event and a condition. I note that when Dr. Tadrous next met with the worker on April 29, 2014 and was able to fully examine her eye, her interocular eye pressure was elevated. As well, the worker's pain symptoms occurred within the

expected time-frame after the work incident, whether those symptoms stemmed from conjunctivitis or ICE, according to the questionnaire completed by Dr. Tadrous. I find there is a temporal relationship between the work incident and the onset of some of the worker's symptoms which can be associated with ICE.

[56] Dr. Parkinson acknowledged that ICE predisposed the worker to developing glaucoma. As early as June 17, 2014 Dr. Tadrous diagnosed ICE and indicated he suspected the worker had glaucoma. The Board adjudicated both conditions together.

[57] I have considered the February 2, 2017 clinical opinion of Dr. Parkinson, but conclude I must give it less weight than the opinion of Dr. Tadrous so far as it addresses the issue of causation of the worker's ICE and glaucoma. Both opinions are brief. Dr. Parkinson asserted that Dr. Tadrous had noted the worker had pre-existing congenital abnormalities of the right eye, including ICE. Dr. Parkinson therefore concluded that the worker's ICE and glaucoma were pre-existing. However, Dr. Parkinson offered no further rationale for this conclusion. I have been unable to find within Dr. Tadrous' reports or letters (as would have been available to Dr. Parkinson) the conclusion which Dr. Parkinson has attributed to Dr. Tadrous. I conclude that Dr. Parkinson has based his opinion on a misunderstanding of Dr. Tadrous' reports.

[58] Dr. Tadrous' said in the questionnaire which he more recently completed that injury by a high pressure hose might cause ICE and glaucoma. With regard to the possibility of the worker having a pre-existing condition, Dr Tadrous said that he did not have past records of ICE predating April 13, 2014. He also said that if the worker's injury related to a high pressure hose, it could have activated or accelerated a pre-existing ICE.

[59] I accept and rely upon the April 28, 2017 letter from Dr. Pomeroy, the worker's family physician, which indicated that the worker had been a patient of Dr. Pomeroy' since 2011 and had never before complained of any eye problems. Dr. Pomeroy indicated it was unusual for a patient as young as the worker to need cataract surgery.[2] I also accept the worker's testimony indicating she had no prior eye health issues. I am not persuaded that the worker had a pre-existing condition. Alternatively, if she had a pre-existing condition, it had not yet been activated prior to the work incident.

[60] The worker submitted that Dr. Tadrous had not limited his opinion to only accepting that the worker's condition could have been caused by forces such as those delivered by a pressure washer. I agree with the worker on this point. Dr. Tadrous did not specify the particular velocity of water required to be of causative significance. The scientific research study provided by the worker did not specifically address ICE but generally addressed eye injuries caused by forceful water streams. The study included testing of instruments such as a child's toy squirt gun.

[61] I find the worker's right eye was exposed to high pressure water, though it was not delivered by a pressure washer. I rely upon the opinion of Dr. Tadrous linking the worker's right eye ICE and glaucoma to exposure to a high pressure hose injury. I conclude that it is at least 50% as likely

[2] The worker had right eye cataract surgery in April 2017 at age 47.

as not that the worker's ICE and glaucoma arose out of and in the course of her employment on April 8, 2014.[3]

[62] In October 16, 2014, Dr. Bawa noted the worker had returned to full duties and hours but continued to complain of vision difficulties. Since that time the worker has undergone cataract surgery and has returned again to full employment. The worker testified that her conditions are currently stable. The Board decision underlying this appeal withdrew the Board's referral of the worker to the Disability Awards Department on the basis that the worker's ICE and glaucoma were pre-existing non-compensable conditions. Since I have accepted that the worker's ICE and glaucoma are compensable, the Board will have to again address the issue of whether the worker is entitled to an assessment for a potential permanent partial disability award for her right eye ICE and glaucoma.

Expenses

[63] Item #16.1.3 of the WCAT *Manual of Rules of Practice and Procedure* provides that WCAT will generally order reimbursement of expenses for obtaining or producing written evidence, regardless of the results of the appeal, where the evidence was useful or it was reasonable for the party to have sought such evidence. Reimbursement is usually at the rate established by the Board for similar expert evidence.

[64] The worker's representative requested reimbursement of the $40.00 expense associated with obtaining Dr. Pomeroy's letter and $474.00 in total incurred to obtain the handwritten questionnaire completed by Dr. Tadrous as well as Dr. Tadrous' letter of May 17, 2018. It was reasonable in the circumstances of this appeal for the worker to have obtained these reports from Dr. Pomeroy and Dr. Tadrous. Both doctors charged fees which were below the fee guidelines set out in the British Columbia Medical Association[4] schedule of fees in effect as of April 1, 2018, under fee code 19932, for a medical-legal report. The fees were commensurate with the brevity of the reports. Therefore, under section 7 of the *Workers Compensation Act Appeal Regulation*, I direct the Board to reimburse the worker for expenses in the amount of $40.00 related to Dr. Pomeroy's report, and $474.00 related to Dr. Tadrous' reports.

[65] WCAT will generally order reimbursement of certain expenses for a worker's own attendance at an oral hearing if the worker was successful on the appeal. The worker's evidence was that she lost one day's wages and incurred transportation expenses to attend the WCAT oral hearing on September 26, 2018. Travel expenses are generally not paid for that portion of the journey which takes place within a distance of 20 kilometres of the oral hearing location nearest to the worker's place of residence.

[66] The worker was successful in the appeal, and I have exercised my discretion to order reimbursement for her travel (mileage) on September 26, 2018 for that portion of the trip in excess of 20 kilometres (one way) or 40 kilometres (return trip) from the nearest oral hearing

[3] One interpretation of the medical evidence is that glaucoma would be a compensable consequence of ICE rather than directly caused by the factors which caused ICE. In either case, the issue is causation. I accept the opinion of Dr. Tadrous therefore I would reach the same result even if glaucoma is a compensable consequence of ICE.

[4] now operating as Doctors of BC

location to the worker's place of residence. I also order reimbursement for the worker's one day of wage loss on September 26, 2018.

[67] The worker also asked that her transportation and wage loss expenses be reimbursed for her attendance at the oral hearing on May 23, 2018. However, the most significant reason why the oral hearing could not proceed on May 23, 2018 was the worker's failure to provide her evidence to WCAT in a timely fashion. The worker did not provide adequate reason for the late delivery of her evidence. The worker's representative placed blame upon himself and said the worker should not be punished for his lack of diligence. This is not an argument which I find to be persuasive as, for the most part, the actions of the worker's representative are considered to be the actions of the worker. I will not determine which obligations the worker has delegated to her representative or, otherwise, delve into considering the minutiae of any legal or financial relationship between the worker and her representative. I exercise my discretion to determine that the worker's wage loss and travel expenses for May 23, 2018 will not be reimbursed.

Conclusion

[68] I allow the worker's appeal and vary *Review Reference #R0222982*.

[69] I have determined that the worker's ICE and glaucoma arose out of and in the course of her employment.

[70] The Board will have to again address the issue of whether the worker is entitled to an assessment for a potential permanent partial disability award for her right eye ICE and glaucoma.

[71] The Board will reimburse appeal expenses as directed above.

Ellen Riley
Vice Chair

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