

**Decision of the Appeal Division****Number: 2001-0756****Date: April 20, 2001****Panel: Herb Morton****Subject: Whether Worsening of Medical Condition  
Resulted from Employment**

**PERSONAL INJURY (AGGRAVATION) (DIABETES)** – Work activities adversely affected worker's control over diabetes treatment and regimen – Worsening in the worker's condition resulted from personal causes, not employment – Work activity had no causal significance – Aggravation of underlying diabetes not compensable in the circumstances – Worker appeal denied.

**Policy:** RSCM: #14.00, #14.20, #15.10, #15.30, #19.20, #19.31, #21.00, #21.10, #26.55**Decisions:** Appeal Division Decision No. 92-0100, 8 *Workers' Compensation Reporter* 95; Appeal Division Decision No. 93-0067, 9 *Workers' Compensation Reporter* 123; Appeal Division Decision No. 93-0707, 12 *Workers' Compensation Reporter* 3.**Worker:** grocery store assistant manager**Injury:** renal failure (diabetes)

*Aggravation of diabetes* [worker appeal (rev. brd.)]  
*Appeal Division Decision No. 2001-0756*

17 *Workers' Compensation Reporter* 373

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- (1) The worker appeals the September 25, 2000 Review Board finding.

**Issue(s)**

- (2) At issue is whether the worker's underlying diabetes condition was aggravated as a result of his work activities. The worker seeks acceptance of his diagnosed renal failure, on the basis that his work activities did not allow him to control his diabetes as required.

**Jurisdiction**

- (3) The worker's appeal is brought under section 91 of the *Workers Compensation Act*. Section 96(3) of the Act provides that on an appeal under section 91(1), the Appeal Division may reopen, rehear and redetermine any matter that has been dealt with by the Review Board. Governors' policy in Decision No. 75 (*Appeal Division Administration, Practice and Procedure*, 10 *Workers' Compensation Reporter* 753) further provides that the Appeal Division has the discretion to initiate and conduct a full inquiry into all of the issues arising out of an appeal once the matter is before it.

## Background

- (4) The worker was employed as an assistant manager in a grocery store. He commenced employment with the store on October 1, 1996.
- (5) On August 13, 1998, he submitted an application for compensation, noting that he last worked on April 11, 1998. He advised that he had had diabetes for the last 20 years and had never missed time from work because of it. He noted that he had been self-employed for the previous 13 years and could arrange his schedule to eat properly and take care of his diabetes. He noted, however, that after the last 1½ years his diabetes had taken a turn for the worse. He advised that due to irregular work hours and days off, and being unable to take proper breaks for coffee or lunch or supper, he was unable to keep his diabetes under control. He noted:

Some days I couldn't take my injection because I didn't know if I would be able to eat on time, or if I would have a hypoglycemic reaction if I took my injection but couldn't stop to eat. I worked long hours of which I didn't get paid for (I was on salary for 30 hrs/wk but worked in excess of 40 hrs/wk). Some days I was there from opening to closing and a relief person didn't come till half way through the day or later. I knew if I took my injection I would more than likely have a "reaction" (low blood sugar). Consequently I began to have stomach problems, renal problems, headaches, fatigue, neuropathy of my feet all due to high blood sugars.

- (6) The worker reported that in April, 1998, he saw a specialist who advised the worker he needed a kidney transplant. Over the course of the next few months, he followed a very strict schedule regarding his diabetes, mealtimes, injections (3-4 a day) and obtained more kidney function and did not currently require a kidney transplant. He noted in his application that he had been off work on employment insurance sick benefits for the previous four months, but this would be running out. He stated:

I have finally gotten my diabetes closer to being under control, and fear that upon returning to my irregular scheduled hours of work, I may not be as fortunate to escape a kidney transplant next time.

- (7) A medical report was submitted to the Board by Dr. C, the worker's attending physician. Dr. C diagnosed renal failure made significantly worse by poor diabetic control.
- (8) By decision dated August 24, 1998, the claims adjudicator denied the worker's claim. She explained:

Section 15.30 of the *Rehabilitation Services and Claims Manual* refers to recurring temporary disabilities. This section refers to cases where a worker is subject to recurring disabilities of a temporary nature whether at work or elsewhere. If the condition results from natural causes and there are no injuries occurring as a result of or during the course of your work activity, the condition is classed as non-compensable.

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I cannot support that you have injured yourself as a result of and during the course of your work activities. . . .

- (9) The worker appealed the August 24, 1998 decision to the Review Board.
- (10) A medical legal letter dated April 21, 1999 was provided by Dr. C, in which he advised:

[The worker] has been a patient of mine for close to 20 years. [He] has been an insulin dependent diabetic for as long as I have known him. His diabetes has, during this time, always been very difficult to control. He has been seen on numerous occasions by specialists in the field of diabetic care and different insulin regimens have been tried in order to regulate his diabetes. A patient like [him], in order to be successful in achieving good diabetic control, requires an incredibly regimented and strict daily routine involving accurately timed injections, regulated food intake and absolute scrupulous consistency in the timing of both of these things in order to insure that his sugar is not chronically high or that he is not having life-threatening insulin reactions as a result of not having adequate blood sugar.

Long term insulin dependent diabetics, such as [the worker], require absolute accurate and scrupulous control of their blood sugar or they suffer the ravages of medical complications as a result of their diabetes. These include, but are not limited to, damage to the nervous system both centrally and peripherally, involving numbness and loss of feeling; damage to the small blood vessels and the circulation eventually leading to gangrene; severe damage to the eyes potentially leading to blindness and damage to the kidneys which can require dialysis or kidney transplant.

During the time frame of 1997 to early 1998 [the worker's] health deteriorated quite significantly. He became much more fatigued, had significant troubles with hypertension and began to develop progressively worsening kidney failure. He was seen by diabetic and renal specialists in Calgary and was placed on a list for renal transplant due to his progressing renal failure. Due to his general poor health, fatigue and the increasing renal failure, all complicated by his inability to achieve good diabetic control, I eventually advised him to quit work in April 1998. Subsequent to that time, he has been able to maintain a very regular routine with regular meals and multiple daily insulin injections. During this time his diabetic control has been significantly improved and, in fact, his kidney function has begun to improve to the point where he is no longer a candidate for a kidney transplant at this time.

After witnessing this improvement in his control, which surprised both myself and a highly qualified specialist in kidney transplantation, I have little doubt that the improved diabetic control brought about by not being at work has greatly improved [the worker's] overall health and well being.

- (11) In a statement dated September 13, 1999, the worker advised his union representative as follows:

I didn't specifically tell my employer that I needed my meal breaks at specific times. . . .

I was never denied my regular breaks however majority of the time my breaks were interrupted to pack up front, run the till, or help customers. Also on numerous occasions I was the only employee (besides cashiers) in the store and had to take care of the above as well as fill shelves, dairy, produce, etc. so there wasn't time to take breaks properly.

- (12) In response to an inquiry as to whether his assistant manager position was threatened, the worker advised: "No, . . . (the manager) was very concerned when I was ill." In terms of discussions with his union representative, the worker noted: "I didn't discuss the situation until after I was off work due to illness."

- (13) In a submission to the Review Board dated July 14, 2000, the worker's union representative advised that the worker's employment was in a small grocery store operation where he was hired to work 30 hours per week on a salary basis. She notes:

The worker is required to work extended hours, irregular shifts and is not able to take regular breaks. His employer has never objected to him taking a break, nor had he made an issue of the fact that he was not getting regular breaks. It just was not possible for him to be guaranteed he could get a break at a specific time or that, when he got a break, he would be able to remain on it long enough to regulate his food intake and insulin, as required. This was due to a small store operation with limited employees; often he was the only one in the store with the exception of cashiers.

While this worker has a title of *Assistant Manager*, he performs all duties in the store from produce, grocery, general upkeep, stocking, unloading freight, bagging groceries, running the till, placing orders and store lock-up. He is, in fact, a one-man operation at times.

His scheduled hours may be as little as six; however, in reality he can wind up working 7:00 a.m. to 7:00 p.m. (12 hours) shifts.

- (14) By finding dated September 25, 2000, the Review Board denied the worker's appeal. The Review Board panel reasoned, in part (at page 5):

It is clear that the work activities did not produce [the worker's] diabetes, and it is equally clear to this panel that his work activities did not aggravate his pre-existing disease. [The worker's] work activities did not aggravate his diabetes, it was his failure to take his medication which caused the aggravation. His

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employment activities did not prevent him from taking his medication, nor did his employer. In fact he noted he consistently worked only with the cashiers and was, therefore, at those times, in fact his own boss. As such, [the worker] was able to set his own priorities during working hours, and surely his #1 priority would be his own personal health. Except for being an inconvenience, the job activities themselves did not aggravate [the worker's] diabetes.

- (15) The Review Board concluded that the worker's worsening medical condition was not an injury which arose out of and in the course of his employment, nor was it a disease which was due to his employment. The Review Board panel further noted:

We find the content of [Dr. C's] letter of April 21, 1999 did not add any new evidence which was helpful to this panel reaching its conclusion. We do not recommend payment for this letter.

- (16) By submission of October 24, 2000, the worker's union representative requests acceptance of the worker's diagnosed renal failure as a result of his work activities. She further requests reimbursement of costs for Dr. C's medical legal opinion. She cites the policies at #13.00, 14.00, 14.20, 15.10, and 15.30 of the *Rehabilitation Services and Claims Manual*, and submits:

This case is very simply described as a worker who has an underlying diabetes condition and is unable to take his insulin due to his work responsibilities and activities. As a result he is disabled. The question is whether the resulting disability is compensable. We submit that [it] is. . . .

- (17) In a further submission dated January 26, 2001, the worker's union representative enclosed a statement dated December 19, 2000 written by the worker's wife, and co-signed by the worker. This states, in part:

I didn't say I needed to eat at 7:00, 12:00, 5:00 & 8:00 everyday, however, over coffee breaks or lunch breaks that we did take the question of my eating schedule arose almost every occasion. So the manager [name] was aware that I had to eat at specific times. . . .

[The worker] worked many shifts from opening to closing (12-16 hrs/day) where he was the only male employee there. He had *no guarantee* that he could sit and eat after he took his shot (injection). He couldn't prioritize his day regarding his health because he couldn't predict how busy the store would be. If he took his shot because the store seemed slow, before he could eat, the cashiers would call him for help because there was a sudden rush. It was incidences [sic] like this that caused many low blood sugars. One time he came in from a pack-out and had to grab a chocolate bar off the shelf because he had the typical symptoms of low blood-sugar-sweats, shakes, light headed all because he took his shot (injection) because the store seemed slow. So I don't know how the panel can say to prioritize. As for the job being an inconvenience – [the worker]

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was a hard-working employee who loved the grocery business and dealing with the public. Being his own boss as the panel said, didn't give [the worker] the right to ignore his cashiers calls for help and assistance. Whether he had taken his injection or not he still had to respond.

Bottom line as I see it, is, you have a very hard working, dependable, capable and loyal employee who after dedicating his life to the grocery business, who has a pre-existing condition of health that is satisfactorily controlled prior to employment is being penalized for trying to give his employer and its customers the service he was hired to provide. Even though that dedication cost him his health in working extra for hours everyday and not being paid for them, the inability to eat properly and take his medication and the financial burden that has been put upon us throughout this whole ordeal, because we are no longer a two income family.

- (18) The worker's union representative argues that the Review Board panel was wrong about the worker "surely" putting his own personal health as a number one priority over that of his work. She submits that health and safety is not the number one issue on a worker's mind when he is trying to keep his job and maintain a level of financial security for his family. She asks the panel to realize the worker had obtained a job in a small rural area, and that such jobs are difficult to find. She submits that were it not for the nature of his work, the employment requirements and the required regulation of his medication and eating habits, the worker would not have suffered an aggravation of his condition. She notes that workers' compensation is a no-fault insurance system, and it is not relevant as to who was responsible for the worsening of the worker's condition. The only relevant issue is whether or not the work was of causative significance. She submits that the evidence supports that it was.
- (19) The employer is not participating in this appeal.


## **Law and Policy**

- (20) Policies in the *Rehabilitation Services and Claims Manual* include the following [extracts omitted]:

- 14.00 Arising Out of and in the Course of Employment**
- 14.20 Occurrence or Non-Occurrence of a Specific Incident**
- 15.10 Worker Has Pre-Existing Deteriorating Conditions**
- 15.30 Recurring Temporary Disabilities**
- 19.20 Parking Lots**
- 19.31 Injury Results From Claimant's Personal Property**
- 26.55 Aggravation of a Disease**

## Findings and Reasons

- (21) Prior published Appeal Division decisions have dealt with diabetes in other contexts. For example, #92-0100, *Carpal Tunnel Syndrome (#2)*, 8 *Workers' Compensation Reporter* 95, cited diabetes as a risk factor for carpal tunnel syndrome. #93-0067, *Section 96(2) – Red Cedar Asthma*, 9 *Workers' Compensation Reporter* 123, involved a Medical Review Panel certificate which found that a worker's use of prednisone therapy for bronchial asthma (due to occupational exposure to red cedar) together with his latent diabetes acted together to produce manifest diabetes. #93-0707, *A Claim For Diabetes*, 12 *Workers' Compensation Reporter* 3, found that the worker's diabetes mellitus was compensable as a work injury triggered or precipitated the onset of the disease.
- (22) The worker's appeal in the present case raises different issues. Two competing analyses may be seen to arise in relation to the worker's situation. The policy at #26.55 may be viewed as one basis of support for the worker's appeal. This policy provides that where a worker has a pre-existing disease which is aggravated by work activities to the point where the worker is thereby disabled, and where such pre-existing disease would not have been disabling in the absence of that work activity, the Board will accept that it was the work activity that rendered the disease disabling and pay compensation. Evidence that the pre-existing disease has been significantly accelerated, activated, or advanced more quickly than would have occurred in the absence of the work activity, is confirmation that a compensable aggravation has resulted from the work.
- (23) An alternative analysis relates, somewhat incongruously, to the policy at #19.20 concerning injuries in parking lots. That policy explains that the term "hazard of the premises" is not an absolute requirement for compensation coverage. Rather it illustrates the distinction between injuries resulting from personal causes and those resulting from the employment.
- (24) This is, in my view, the central issue in this appeal. Did the worsening in the worker's condition result from personal causes, or did it result from the employment?
- (25) In considering this matter, I found Dr. C's medical legal report useful to providing a full medical explanation of the worker's circumstances. This report was reasonably obtained in connection with the worker's appeal. There was only one other medical report on file, apart from forms submitted to the insurance company. I consider it appropriate to grant reimbursement of the costs of this report. I accept the explanations and advice provided by Dr. C. It seems to me, however, that the decision with respect to the worker's appeal must be made on the grounds of law and policy, having regard to this medical background. The medical opinion does not, in this case, provide the basis for resolving the worker's appeal although it provides useful medical background and context.
- (26) This is not a situation where the work activities are claimed to have been, in and of themselves, directly significant. Rather, the worker's situation is that he required ongoing treatment and maintenance of a strict regimen for his diabetes. His work activities adversely affected his control over this treatment or regimen for his diabetes.

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- (27) To make an extreme analogy, this might be compared to the situation of a worker requiring kidney dialysis on a frequent time-consuming basis. If the worker took regular full time employment and was thereby prevented from undertaking the required dialysis, he or she would face dire medical consequences. Would these be a result of the employment? It might be argued that but for the employment, the worker would have been able to attend the dialysis. However, in that situation, it is readily apparent that the employment is not of causative significance. The “but for” test does not determine compensability. Rather, the need for the dialysis is a personal requirement. Medical problems stemming from a failure to undertake treatment would reasonably be classified as stemming from personal causes rather than from any hazard of the employment.
- (28) I consider that a similar analysis applies to the worker’s situation. The key question is whether the aggravation of his diabetes resulted from personal causes or from his employment. The necessity to maintain his daily treatment regimen for his diabetes resulted from personal causes.
- (29) I appreciate that the worker was dedicated to the performance of his job duties, and may not have wished to be limited in any way by his diabetes. To the extent this resulted in his giving precedence to performing work tasks over ensuring that his personal requirements for a strict regimen were met, I do not consider that the employment was the cause of the ensuing medical problems. Rather, the worker had a continuing personal need to maintain a strict regimen. Any activity which he pursued which interfered with this personal regimen would have the same effect. The responsibility to ensure that this regimen was met rested with the worker. Responsibility for the consequences of a failure to maintain this personal regimen are not, in my view, properly attributed to the employment in these circumstances. I am not satisfied that the work requirements were such that they may be characterized as having been of causal significance in this case.
- (30) A distinguishing feature in this case is that there is no suggestion that any particular work activity had causative significance to an aggravation of the worker’s diabetes. The work activity, in and of itself, was not detrimental to the worker’s health. The only significance of the work activities is the role they played in the worker not maintaining his personal medical and dietary regimen. This is not comparable to the situation of a worker with a degenerative back condition doing heavy lifting or suffering an accident, where the work activity or incident itself has causative significance to an aggravation of a pre-existing condition or disease. I do not consider that the worker’s situation falls within the terms of the policy at #26.55 of the Manual.
- (31) It must be noted, in this regard, that not every accident or injury which is connected in some way to the employment is necessarily compensable. For example, where a worker is injured in a car accident while commuting to work, the injury is not compensable. But for the need to go to work, the accident would not have occurred. That does not, however, provide a sufficient degree of work-connectedness to make such an accident compensable. The general policy at #18.00 of the Manual is that accidents occurring in the course of travel from the worker’s home to the general place of employment are not compensable. However, where a worker is employed to travel, accidents occurring in the course of travel are covered. It is necessary to examine the circumstances involved, to assess the degree of connection to the employment.

- (32) Similarly, an injury to a worker's hand due to catching it in a car door after parking at work is not compensable (#19.20). An injury involving a personal object brought from home by a worker may not be compensable (#19.31). An injury while changing into or out of work clothing or equipment at work, is not compensable (#20.40). Injuries occurring in the course of taking a first aid course off the employer's premises and outside of work hours, are not compensable even though the employer pays for the course and provides additional pay to the worker for holding a first aid ticket. A worker's fall in the employer's parking lot while going to their car to get a package of cigarettes during a break is not compensable (#21.10). Policy at #21.00 concerning personal acts explains:

There is a dilemma that is always inherent in workers' compensation. The difficulty, of course, is that the activities of workers are not neatly divisible into two clear categories, their employment functions and their personal lives. There is a broad area of intersection and overlap between work and personal affairs, and somewhere in that broad area the perimeter of workers' compensation must be mapped. An incidental intrusion of personal activity into the process of work will not require a claim, otherwise valid, to be denied. For example, it has long been accepted that compensation is not limited to injuries occurring in course of production. Where persons are injured while at work in the broader sense of that term, claims will not be denied on the ground that at the precise moment of injury they were blowing their noses, using the toilets or having their coffee break. Similarly it has long been accepted that when a truck driver stops for a meal in the course of a long journey and is injured while crossing the road the driver is just as much entitled to compensation as a factory worker injured on the way to the works canteen. Conversely, the intrusion of some aspect of work into the personal life of an employee at the moment an injury is suffered will not entitle the employee to compensation. For example, if someone slips in the living room at home and is injured, that person is not entitled to compensation simply on the ground that at the crucial moment the person was reading a book related to work. In the marginal cases, it is impossible to do better than weigh the employment features of the situation in balance with the personal features and reach a conclusion (which can never be devoid of intuitive judgment) about which should be treated as predominant.

- (33) While appreciating the arguments presented on behalf of the worker, I find that the aggravation of the worker's underlying diabetes condition did not arise out of and in the course of his employment.
- (34) I further note Dr. C's advice that the worker's diabetes, of over 20 years' duration, has always been very difficult to control. As a long-term insulin-dependent diabetic, the worker's medical problems might also be viewed as part of a pre-existing deteriorating condition as addressed in the policy at #15.10 of the Manual. As to whether the worker's employment had substantial causative significance, I am unable to find that this is the case for the reasons set out above.

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- (35) While not necessary to my decision, I am inclined to the view that some particular exigencies of a work situation might support a different conclusion. For example, it would appear reasonable to accept as compensable medical complications arising in the case of a prison guard who was taken hostage and could not access his or her medication. I do not consider that the worker's general employment activities in this case involved such exigencies.

### **Conclusion**

- (36) The worker's appeal is denied, on the central issue as to whether his diabetes condition was aggravated as a result of his employment. His request for reimbursement of the cost of Dr. C's medical legal report is allowed. The receipt for this should be submitted to the claims adjudicator, for consideration on the basis of the Board's tariff for such reports.

*Editors' Note: The names of the parties have been removed for privacy considerations. This decision has been edited for publication.*