

Decision of the Appeal Division**Number: 2001-0939****Date: May 11, 2001****Panel: Cassandra Kobayashi****Subject: Whether Worker's Onset of Pain Arose Out of and in the Course of Employment — Interpretation of Policy in Item #15.20**

PERSONAL INJURY (ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT) (INTERPRETATION OF POLICY) — Worker suffered onset of neck pain while driving his truck after unloading haul of gasoline — Whether injury arose out of and in the course of employment — Review Board affirmed the Board decision to deny the claim finding the pain resulted from a deteriorating condition which became symptomatic in the absence of any exceptional strain or circumstance — Appeal Division panel reviewed in detail the policy in item #15.20 of the *Rehabilitation Services and Claims Manual* — Motions which are incidental to the job will not result in compensation if the worker is injured while engaging in the incidental activity — Claim considered from worker's position that there was no deteriorating condition — Unlikely that the disc protrusions occurred by reason of the worker's employment activities that morning — Coincidental that the disabling pain occurred at work — Aside from timing, nothing to connect the onset of pain with the employment — Worker appeal denied.

Law: WCA (1996): s. 5(1)**Policy:** RSCM: #15.20; Decision No. 115, 2 *Workers' Compensation Reporter* 97, Decision No. 145, 2 *Workers' Compensation Reporter* 171, Decision No. 286, 4 *Workers' Compensation Reporter* 60

Arising Out of Employment — Motions Incidental to Employment [worker appeal (rev. brd.)]
Appeal Division Decision No. 2001-0939

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- (1) The worker appeals the Review Board findings dated September 8, 2000, which denied his appeal from the entitlement officer's July 28, 1998 decision. The officer determined the sudden, severe pain between the shoulder blades while driving his truck was not caused by his work as a truck driver. The Review Board agreed, finding the worker's pain resulted from a deteriorating condition which became symptomatic in the absence of any exceptional strain or other exceptional circumstance.
 - (2) The worker requested an oral hearing to describe the work performed at the time of injury. I find an oral hearing is not necessary. The Review Board findings describe in detail the motions involved. I consider that with the assistance of his union representative, the worker could explain if that description were inaccurate. In accordance with Appeal Division practice, the employer was invited to participate. It opposes the worker's appeal.

Issue(s)

- (3) The issue is whether the onset of severe pain between the worker's shoulder blades while driving his truck arose out of and in the course of employment.

Analysis and Reasons

- (4) The worker experienced the onset of neck pain into his arms just after offloading some of his load of gasoline at a customer's. The pain was so intense, he almost fainted. That was on July 6, 1998. He had been driving for this company for two years, and in the occupation for twenty years. He was age 39. On July 3 and 4, the worker had made two back-to-back trips hauling lime. Each trip was about 9½ hours long. He finished work at 2 a.m. on July 5. The Review Board findings say the worker was clear that he had no symptoms at that time.
- (5) At 6 a.m. on July 6, he began work hauling gasoline. He had to fill the tank, which involved climbing in and out of the cab, climbing stairs, and manipulating a hose to fill the various tank compartments in the super trailer, main trailer and pup trailer. His first stop was 1¾ hours later, where he unloaded half the gasoline. This involved lifting and dragging a 12-foot hose, hooking it up, and returning it to its tray at chest height. He then drove another half hour, where he unloaded the rest of the gasoline. To reach the tanks he had to take two hoses from the tray and join them. To drain the last of the gas from the hose, he had to lift the hose hand-over-hand which involved a moderate amount of lifting while walking bent forward. The worker replaced the hoses in the tray, climbed into the tractor, backed the rig 30 feet, and entered the highway, continuously checking his rearview mirrors on the left and right. Climbing into the cab required him to use a vertical grab bar, open the door, grasp the steering while in the left hand and step into the cab with the right hand. With his right hand, he pressed down on the air seat. As he swung himself into the seat, he ducked his head to avoid hitting the top of the doorframe. The Review Board findings state this required him to flex his neck to the left to a significant degree.
- (6) He had no symptoms at all until he pulled onto the highway. He pulled over approximately 300 yards down the road, got out and walked around the rig. He felt extreme pain when climbing back into the cab. After 20 more kilometers, he stopped again, and decided he should not continue. He drove a few more miles into a nearby town, and called for help.
- (7) The worker saw his chiropractor the next day. The injury on examination was described as "right low neck, trapezius and levator spasms, no apparent nerve root involvement." The chiropractor treated the worker with spinal adjustment of the cervical-thoracic region. The chiropractor apparently asked a medical doctor to see the worker. On July 15, this physician saw the worker for the first time. He reported the chiropractic adjustments had helped the lower back, but not the neck and upper arms. Walking was fine, but lying down or sitting caused severe pain down his neck. The physician noted the worker reported that he had no previous similar problems, and no injury to his neck at all before. He referred the worker to a neurologist.

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- (8) The worker was seen on July 21 by the neurologist. The consultation report indicated the worker has had chiropractic manipulation in the past for his low back, and for the right shoulder “last winter after chaining up.” When seen in July, the neurologist reported the worker felt pain associated with tingling, and a numb sensation radiating down the back of his arms to his elbows. While standing and walking, the pain almost entirely disappeared. The specialist said the worker’s symptoms were consistent with cervical disc disease. He arranged for myelography, and C.T. scan on an urgent basis.
- (9) The x-ray evidence showed minimal degenerative changes at C3, 4, and 5. A myelogram on August 7, produced less than ideal images because the worker felt severe intrascapular pain when the dye was injected. The C.T. scan showed a likely extruded disc fragment at C5–6 on the left, and a possible similar fragment at C6–7 also on the left.
- (10) Under section 5(1) of the *Workers Compensation Act*, compensation must be paid where personal injury arising out of and in the course of the employment is caused to a worker. There is a presumption in section 5(4) that applies where the injury results from accident, but that does not apply in this case.
- (11) Section 82 of the Act requires the governors of the Board to approve and superintend the policies and direction of the Board. They, and the Panel of Administrators which succeeded them, have discharged their responsibilities by approving published policy, including the *Rehabilitation Services and Claims Manual* (R.S.C.M.). Defining what will be compensable and what is considered personal helps provide consistent interpretation of the Act by a large staff faced with different fact situations.
- (12) The policy distinguishes between an onset of disability where the worker has a deteriorating condition (#15.10), and where there was no deteriorating condition (#15.20). The worker’s position is that he had no deteriorating condition, in which case the latter policy would apply. If a motion is required by the employment such as bending over to pick up something required by the job, and a muscle strain ensues, the claim will be accepted: Decision 115, *Workers’ Compensation Reporter*, Vol. 2, p. 97. Item #15.20, R.S.C.M., illustrates this point with another example:

An automobile mechanic working under a car *is bending himself in unusual ways* when he turns his head to look at something. Through some *unusual movement* of the neck muscles, he suffers a muscle strain. The employment activity may well have had causative significance and the injury is therefore compensable.

- (13) The reference to the mechanic’s neck motion as “unusual” could be interpreted as a factor supporting the acceptance of the claim. The policy then proceeds to discuss motions *not* required by the job:

On the other hand, there may be situations where an injury resulted from some motion of the human body that was *not required as part of the job*. This would be an indication that the injury would not be compensable. Suppose, for example, that on walking along a road on an industrial site in the course of employment, *a worker’s head turns sideways as a matter of curiosity* to see what someone is

doing. Because of some peculiar movement in the neck muscles, a muscle strain occurs. That would not be an injury “arising out of” the employment, and therefore not compensable. Again, suppose a worker is using the toilet at work and, in doing so, suffers an injury resulting only from the bowel movement. That would not be compensable.

- (14) I interpret the point of this paragraph as saying that motions which are incidental to the job will not result in compensation being paid if the worker is injured while engaging in the *incidental* activity. Turning one’s head is described as due to “curiosity,” and using the toilet is an activity incidental to the employment. An injury because the washroom ceiling in the employer’s building collapsed would be considered differently than an injury resulting from the bowel movement itself because the employment would be of causative significance to the injury.
- (15) The next paragraph addresses the *repetition* of a particular motion which is part of life at home and at work:

The injury may result not from any particular motion at any particular time and place, but rather from *repetition* of the same kind of motion over time, perhaps several weeks, perhaps several years. If *the motion is one that the worker undertakes in the course of employment, or predominantly in the course of employment*, this would be an indication that the resulting injury would be compensable. But if the motion is of a kind that is undertaken *at home and in the worker’s social life as well as at work*, this would be an indication that the resulting injury was not compensable. This point is illustrated in another Board decision:

“If the injury is one that resulted from *the natural condition of the worker together with the general activities of life*, it would not be compensable simply because work was one of those activities. To be an injury arising out of the employment, there must be *something in the employment that had a particular significance* in producing the injury. For example, if a claimant has an injury to his knee and medical evidence indicates that this is caused by the use of stairs, it would not be compensable simply because the claimant uses stairs at work as well as at home and elsewhere.”

- (16) In other words, the question is not whether the motion is one which the worker could have done at home. This policy concerns a cumulative injury where the same implicated motion was done at home and at work, such as using the stairs. This point is made more clearly in the next paragraph:

It may often, in practice, be difficult to distinguish between work-required and non-work-required motions. Moreover, a work-required motion will often be a motion which the worker commonly engages in at home. This would suggest that the illustrations set out above are contradictory. However, *the point is that it*

is not enough to consider only whether the motion is one which is undertaken at home, or only whether the motion was required by the worker's job. Illustrations are not intended to be substitutes for the exercise of judgment.

- (17) It is well established that it is not enough that the worker first felt pain while at work:

On the one hand, it is said that it should be sufficient to show only that the injury came on while the claimant was at work. The difficulty with this argument is that it renders meaningless the first half of the test contained in Section 5(1). If causation is to be measured solely by the fact of employment, why did the Legislature include a requirement that the injury must also "arise out of" the employment? Clearly something more is required.

- (18) The policy returns to the question of distinguishing between simple motions done at work, which are also done in a worker's private life:

On the other hand, it has been suggested the Board should disallow any claim for compensation where the motion which caused, or apparently caused, the injury is one which occurs constantly in the course of daily living. This argument would inevitably lead to absurd conclusions. Very little physical activity or body movement in a worker's employment differs significantly from that at home. *The result is that virtually every body motion or activity could be said to be "normal" or "natural", capable of occurring off the job and therefore non-compensable. Clearly something less restrictive is required.*

- (19) The fact that workers also walk, squat, or bend at home does not preclude an injury arising from a similar motion at work being compensable. The next paragraph refers to motions which are performed daily at home and at work, such as walking up stairs, or speaking to a coworker. This is the situation which applies in the case before me:

Claims of the kind under discussion here must be adjudicated with great care. Nevertheless, the necessity for the exercise of judgment will result occasionally in what may appear to be inconsistency or the application of slightly different criteria. This is inevitable in any situation where it is virtually impossible to draw a line. It is not advisable nor just to state that claims for injuries without accident can only be accepted where there was some demonstrable act on the part of the claimant which was so directly connected with work that the relationship is indisputable. In particular, *the present inability of medical science to accurately pin-point the etiology of a great variety of spinal problems, many of which have been shown to arise from the most trivial of incidents, leads to a conclusion that, in appropriate circumstances, such incidents should be seen as causative and if they occur while at work, the resulting injury must be compensable. On the other hand, the simple act of walking up stairs or turning one's head to speak to a co-worker or of looking down at one's hands while performing a certain job, fall so clearly into the realm of "natural" or "normal" bodily functions that the only connection between them and the employment is the coincidental fact that the worker was on the job at the time.*

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- (20) The first two examples in the last sentence are also motions mentioned earlier in the policy. Walking up stairs was introduced as an example where a repeated motion caused the disability, and the motion was part of work, and personal life. Here, walking up stairs is described as clearly natural or normal, but how does one reconcile that with the preceding sentence saying spinal injuries can arise from “the most trivial of incidents”?
- (21) The example of turning ones head to speak to a co-worker was mentioned in the paragraph on activities incidental to the employment. Would it make a difference if speaking to the co-worker was required by the employment?
- (22) Although these two examples are mentioned earlier in the policy, their origin is in commissioners’ Decision 286, *Workers’ Compensation Reporter*, Vol. 4, p. 60. That decision is also part of the published policy. The commissioners considered two cases. One involved a worker who felt severe back pain while walking up stairs at work. The problem was later identified as a protruded disc. The worker had had a similar incident when he went to turn to arise from his chair at breakfast at home one day. The commissioners found the worker’s injury did not arise from his employment. They referred to Decision No. 145, *Workers’ Compensation Reporter*, Vol. 2, p. 171, which they said stood for the proposition in the last sentence above – that is, this is a natural or normal bodily function, and it was only coincidence that the worker was on the job at the time. Possibly it was significant that the worker had had prior severe back pain from a seemingly trivial action, which had occurred at home.
- (23) The other case involved a neck injury diagnosed as paracervical strain which the worker first felt when he was just looking down, presumably at his hands while pulling and piling lumber on the green chain. The commissioners said that looking down at his hands was clearly a natural or normal bodily function, and denied the claim.
- (24) The last example cited above in #15.20, turning one’s head to speak to a coworker, is less clear in its origin. Decision 286 also refers to it, but there is no discussion of that particular motion. Decision 121, *Workers’ Compensation Reporter*, Vol. 2, p. 110, gives an example of a worker turning his head “to look at something,” and suffers a muscle strain. Such an injury is considered to have arisen from purely natural causes and is not compensable. Decision 145 elaborates on this in an example where the worker turns his head sideways “as a matter of curiosity” and suffers a muscle strain. As noted above, that injury is not compensable because it was not required by the employment.
- (25) Returning to the policy in #15.20, the reference to previous problems is mentioned again in the next paragraph:

Simply by adding a few more facts to these situations or others it might well be possible, in individual cases, to find that a work relationship existed. For example, (and these examples are not to be taken out of context without consideration of the discussion above), if the worker were forced into an awkward position in order to properly perform the job and either while in that position or when arising from it suffered a sudden and severe onset of pain and discomfort, and the evidence *shows no previous difficulty*, it might well be that the only

reasonable conclusion is that the apparently minor incident was causative. Similarly, if a worker *bends to pick up an object, and that motion is required by the job* (e.g. a piece of debris while on clean-up, a piece of mail while working in the mail room, an item of equipment or machinery in a plant) and, unrelated to the lifting of the object, suffers an onset of disabling pain, that apparently insignificant motion might also establish some work relationship. In either of these cases, *the motion although natural was performed as a matter of the worker's duties and may in that sense gain "work" status.*

- (26) Factors include the relationship of the activity to the nature of the injury, the nature and degree of any pre-existing deteriorating condition, and whether the motion was required by the work, or was incidental.
- (27) In the case before me, the diagnosis appears to have been pressure of the disc fragments on the nerve root. The worker's representative advances that there was no pre-existing condition, otherwise, he argues, the worker would not have recovered. As well, the worker has had no recurrence of symptoms in the nearly 2½ years since the claim incident. On that basis, I will consider the claim from the standpoint of an injury where there was no deteriorating condition.
- (28) The worker's onset of severe, disabling pain arose after his ordinary job activities which involved only moderately strenuous activity for a relatively brief period of time. I consider it unlikely that the disc protrusion(s) occurred by reason of the employment activities that morning. There was no significant exertion or trauma or force applied to the cervical region. The worker himself said there was no prior discomfort or problem in the neck until the onset of the severe pain. Like the case of the worker who walked up the stairs, and was disabled by pain due to a disc herniation, it appears that it was likely coincidental that the disabling pain occurred at work. Aside from the timing, there appears to be little else to connect the onset of pain with the employment. The worker had no recollection of discomfort or unusual sensation prior to driving onto the highway and feeling sudden sharp pain between the shoulder blades. The personal injury did not arise out of and in the course of employment.
- (29) I deny the worker's appeal.

Editors' Note: The names of the parties have been removed for privacy considerations. The text of the decision is otherwise unchanged.

