

Decision of the Appeal Division**Number: 2002-0520****Date: February 27, 2002****Panel: Jane MacFadgen****Subject: Introduction of Personal Hazard into the Workplace**

PERSONAL INJURY (ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT) (HAZARD, PERSONAL PROPERTY) – Worker, bus driver, opened umbrella and lacerated hand while walking from transit centre to bus – Whether injury arose out of employment – Injury falls within s. 5(4) definition of “accident” in Act – Worker injured through exposure to hazard that he introduced into the workplace – Defective personal property was intrinsically hazardous and hazard for worker’s personal use – s. 5(4) presumption rebutted.

Law: WCA (1996): s. 5(1), s. 5(4).**Policy:** RSCM: #14.10, #19.31.

*Introduction of Personal Hazard into the Workplace [employer appeal (rev. brd.)]
Appeal Division Decision 2002-0520*

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- (1) The Workers' Compensation Board (the Board) denied the worker's claim for an injury to his right hand which occurred when he opened his umbrella while walking from the transit centre to his bus. The Workers' Compensation Review Board (the Review Board) allowed the worker's appeal in findings dated November 7, 2001. The Review Board concluded that the worker was injured by an accident in the course of his employment and, as a result, the accident was presumed to have arisen out of his employment. The employer appeals the Review Board findings.
 - (2) The worker is not participating in the appeal. An oral hearing of this appeal was not requested, and I am satisfied that the issue in this appeal may be properly determined on the basis of the evidence and submissions on file. There is no dispute regarding the underlying facts.
 - (3) My jurisdiction in this appeal is found in sections 91 and 96(3) of the *Workers Compensation Act* (the Act), which give the Appeal Division the authority to rehear and redetermine any matter that has been dealt with by the Review Board. The Appeal Division also has the discretion to conduct a full inquiry into all of the issues arising out of an appeal that is before it.

Issue(s)

- (4) Whether the worker's right hand injury arose out of and in the course of his employment.

Background

- (5) The worker is a bus driver. On July 7, 1999 while walking from the transit centre to his bus on a rainy day, he opened his umbrella and lacerated his right hand on the broken umbrella strut(s). The worker immediately reported to first aid and went to his doctor for stitches to close the laceration. He was off work from July 7–17, 1999.
- (6) The employer protested the claim on the basis that the worker's actions related to the operation of his own personal effects, and were not for the purpose of his employment.
- (7) A Board officer denied the worker's claim in the July 21, 1999 decision which gave rise to this appeal. While accepting that the injury occurred during the course of his employment, she concluded that his work did not have causative significance in his injury because he cut his hand while opening up his own umbrella.
- (8) The worker appealed this decision to the Review Board. His representative submitted that it was raining very heavily, and the worker needed to walk about 200 feet from the depot to get to his bus. The representative noted that the employer's dress regulations required bus drivers to maintain a high standard of appearance while on duty and that, because it was raining heavily, the worker used an umbrella to protect his uniform and maintain this standard of appearance. The worker was therefore using the umbrella for the employer's benefit.
- (9) The employer supported the Board's decision to deny the claim as the injury did not arise out of the worker's employment, but was instead caused by the unrelated activity of using his own defective umbrella. The employer argued that the umbrella was a hazard that he introduced into the workplace.
- (10) The Review Board allowed the worker's appeal in findings dated November 7, 2001. The panel concluded that the worker was injured by accident and that the presumption in section 5(4) of the Act therefore applied. The panel found that this presumption was not rebutted on the facts of this case, and concluded that the worker's injuries resulted from his employment.
- (11) The employer has appealed the Review Board findings. It submits that the Review Board failed to consider and apply *Rehabilitation Services and Claims Manual* (the Manual) policy #19.31 which addressed injuries resulting from a worker's personal property. The employer argues that the worker's injury did not arise out of his employment.

Law and Policy

- (12) Section 5(1) of the Act provides that, for an injury to be compensable, it must arise out of and in the course of the worker's employment. A number of the Board's published policies in the Manual assist in determining whether an injury has arisen out of as well as in the course of a worker's employment.

(13) Section 5(4) of the Act provides that if an injury results from an accident in the course of employment, it is presumed that the accident arose out of the employment. That presumption is rebuttable (see Manual policy #14.10).

(14) Manual policy #19.31 states:

An injury which arises in the course of the employment will not be compensable if it arises out of exposure to a hazard or risk which is not related to the worker's employment. If a worker is injured through exposure to a hazard which the worker, as a personal matter, introduced into the workplace, that injury is not considered to have arisen out of the worker's employment. This principle was applied in a Board decision where the claimant fell backwards off a bench on which he was sitting eating his lunch. As a result of the fall, a paring knife which he had brought from home for the purpose of eating his lunch, stuck into his thigh. The claim was denied because the claimant had introduced an exceptional hazard onto the premises of the employer for his own personal use. The injury suffered would have been very minor or non-existent if the paring knife brought to work by the claimant had not been lying on his lap at the time of the injury.

It is not essential that the personal property that causes the injury be intrinsically hazardous. It is sufficient that it causes the injury in the particular case. In general, injuries are not compensable where they result entirely from personal property brought onto the employer's premises by claimants for their own purposes and have no connection with their employment.

Reasons and Findings

(15) There is no dispute that the worker was in the course of his employment, proceeding from the depot to his bus, at the time he sustained an injury to his right hand. The issue is whether his injury arose out of his employment.

(16) I agree with the Review Board that the mechanism of injury falls within the definition of an "accident" under the Act. Is the section 5(4) presumption that the accident arose out of the worker's employment rebutted in the facts of this case? I interpret policy #19.31 as setting out circumstances in which the presumption in section 5(4) may be rebutted.

(17) Although the worker has argued that he was using the umbrella in order to comply with the employer's dress regulations by protecting his uniform from the rain, I am not persuaded that there is a sufficient work-related nexus in this case. I have concluded that the worker was injured through his exposure to a hazard which he, as a personal matter, introduced into the workplace. I find that the defective personal property which caused the laceration injury in this case – an umbrella with broken struts – was intrinsically hazardous. I find that this hazard was predominately for the worker's own personal use and that in these circumstances the presumption in section 5(4) is rebutted.

(18) I find that the worker's injury did not arise out of his employment. I allow the employer's appeal.

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