

Decision of the Appeal Division

Number: 2002-1613

Date: June 28, 2002

Panel: Jane MacFadgen

Subject: Whether Worker's Injuries were Sustained Out of and in the Course of Employment — Firefighter as Samaritan and Interpretation of Policy in Item #14.00

PERSONAL INJURY (ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT) (INTERPRETATION OF POLICY) — The worker firefighter was injured in the course of rendering emergency first aid to a critically injured person when he stopped at the scene of motor vehicle accident in the course of his commute to work — The Workers' Compensation Board denied the worker's claim for temporary disability caused by anti-retroviral treatment for potential H.I.V. exposure — At issue is whether the injury rose out of and in the course of employment — Worker does not dispute *Rehabilitation Services and Claims Manual* (R.S.C.M.) item #18.00, which denies compensation for injuries occurring during commute to work, but argued that rendering assistance at accident site took worker out of commute — R.S.C.M. item #14.00 was applied and multiple criteria were used to evaluate the status of the worker — Appeal Division panel found the worker's actions were not brought within the course of employment — Worker appeal denied.

Law: WCA (1996): s. 5(1)

Policy: RSCM: #14.00, #16.50, #18.00, #20.00

Decisions: *Betts v. New Brunswick (Workmen's Compensation Board)*, [1934] S.C.R. 107; Decision No. 747/91, [1992] O.W.C.A.T.D. No. 178

18 *Workers' Compensation Reporter* p. 853

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- (1) The worker is employed as a firefighter. While driving to work, he arrived at the scene of a serious motor vehicle accident (M.V.A.). In the course of rendering emergency first aid to a critically injured person at the accident site, the worker cut his hand and was exposed to the victim's blood through this cut. He became very ill as a result of anti-retroviral treatment for potential H.I.V. exposure, and was disabled from work for a number of weeks.
 - (2) The Workers' Compensation Board (the Board) denied the worker's claim on the basis that his injury did not occur in the course of his employment. In findings dated November 14, 2001, the Workers' Compensation Review Board (the Review Board) upheld the Board's decision disallowing the claim. The worker now appeals to the Appeal Division.
 - (3) An oral hearing has not been requested. The employer is not participating in the appeal. The underlying facts in this appeal are not in dispute, and I am satisfied that the issue raised in this appeal may be properly considered upon the basis of the written evidence and submissions on file.

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- (4) 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)

- (5) Whether the worker sustained an injury which arose out of and in the course of his employment, such that any adverse consequences arising from treatment for that injury would be compensable.

Background

- (6) The worker is employed as a firefighter with the employer city (X). His advanced rescue training included training in emergency first responder skills. About 75% of his emergency work for the employer involved rendering rescue and medical assistance to members of the public, often in M.V.A. situations. He had on occasion been dispatched to the scene of M.V.A.'s in municipalities outside X's geographic boundaries.
- (7) While driving to work on the morning of May 2, 1999, the worker was one of the first to arrive upon the scene of a serious M.V.A. He stopped and rendered paramedical assistance to the accident victims for about 15 minutes on his own, until fire department members from cities Y and Z arrived at the scene. The worker stayed at the scene in a supportive capacity for another 10 minutes, and then left after briefing the attending captain.
- (8) In the course of administering emergency first aid, the worker lacerated his hand on broken glass and the broken skin was exposed to the blood of an accident victim. He subsequently received A.Z.T. treatment as H.I.V. prophylaxis. He became ill as a result of this treatment and was disabled from work for about a month and a half.
- (9) In the June 1999 decision under appeal the Board denied the worker's claim because he was not in the course of his employment at the time of injury. The adjudicator relied on the Board's published policy that accidents occurring in the course of travel from a worker's home to his normal place of employment are not compensable.
- (10) The worker unsuccessfully appealed this decision to the Review Board. The Review Board concluded that his actions on his way to work were those of a good Samaritan, and that he was not a worker in the course of his employment. The panel noted that the worker was not properly attired (as he would have been if on duty) to assist the victims of the M.V.A.
- (11) The worker appeals the Review Board findings. His counsel has provided a detailed submission analyzing the facts in light of the relevant law and published policy. He does not dispute the general applicability of *Rehabilitation Services and Claims Manual* (the Manual) policy #18.00 that injuries occurring during the usual commute to and from the workplace are not compensable. Rather, he argues that the worker's action of rendering assistance at the accident took

him out of the usual morning commute to work, and placed him in the course of his employment within the scope of section 5(1) of the Act. This was so, even though the worker was not on paid time and would not otherwise have been on duty at that specific time and place.

(12) I have summarized below counsel's primary arguments in support of the proposition that the worker's injury and consequent disability arose out of and in the course of his employment as a firefighter.

- While the worker was not under a legal duty to provide emergency assistance, he felt obligated to stop and render emergency assistance because of his sense of public duty and extensive specialized training and experience, which were directly and inextricably related to his employment as a firefighter. As a result, his involvement at the accident clearly arose out of his employment.
- Unlike the ordinary public spirited good Samaritan, the worker was doing exactly what he was trained for and paid to do as a public servant, i.e. providing rescue and emergency paramedical assistance to members of the public, both within and occasionally outside the bounds of the employer city. He was thus in the course of his employment as an emergency first responder at the time he was injured.
- The worker was injured in the process of performing a public service in his role as a public servant, which was of benefit to the employer. His provision of emergency assistance to a member of the public was consistent with the public's expectations of a firefighter and the employer's mission statement and message to the public that its employees were "there to help, whatever the need." Although he was not specifically dispatched to this accident, the public would not expect a firefighter would need specific instruction to perform the emergency duties that are central to his job.
- The risk to which the worker was exposed in rendering emergency assistance at the scene of the accident was the same as the risk to which he was exposed during his usual employment. He injured his hand going through a broken window to assist the accident victim, and there was no evidence that any special clothing or equipment would normally have been used or would have prevented this injury.
- While the worker was not attired in emergency gear, he was dressed in employer issued T-shirt and shorts, which on occasion could be deemed the uniform of the day by the officer in charge of a shift.
- The type of emergency assistance which he provided in this case did not require any particular equipment/materials.

(13) The submission noted that the *Good Samaritan Act*¹, which removes liability for injury/death caused by a person who renders emergency medical services or assistance, exempts from its operation a person who is employed expressly for the purpose of rendering such medical services or aid.

¹ R.S.B.C. 1996, c. 172

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- (14) The submission asserted that two of the criteria in Manual policy #14.00 strongly supported an employment connection in this case: the worker was doing something for the benefit of the employer, and thereby became exposed to the same risks to which he was exposed in the normal course of his employment. As well, the presumption in section 5(4) of the Act assisted the worker's position.
- (15) The worker's counsel contended that the legislation should be given a liberal interpretation to support coverage of this claim. He referred to several cases which took an expansive approach to the scope of a worker's employment, particularly in the context of an emergency rescue situation, to include any injury which arose out of or in the course of anything the worker did which was reasonably incidental to his work (e.g. *Betts v. New Brunswick (Workmen's Compensation Board)*, [1934] S.C.R. 107, and Decision No. 747/91, [1992] O.W.C.A.T.D. No. 178).
- (16) The submission stated that the worker's situation was analogous to the off-duty Ontario firefighter's injury while assisting other firefighters to fight a fire in his neighbour's house, which was outside the municipality where he was employed. The Ontario tribunal in Decision No. 747/91 concluded that the activity of pulling the heavy fire hose was reasonably incidental to the worker's employment, and his injury was therefore compensable, because he was doing something which he had knowledge of specifically because of his employment, and because he was recognized as a fellow firefighter by the on-duty firefighters.
- (17) The submission argued that the worker was acting in his capacity as an employee, doing something referable to his employment, rather than in his capacity as a citizen doing something independent of his employment. As a result, his injury arose out of and in the course of his employment, and his claim should be accepted.

Law and Policy

- (18) Section 5(1) of the Act provides that compensation shall be paid where a worker sustains a personal injury arising out of and in the course of his employment.
- (19) Manual policy item #14.00 states that no single criterion is conclusive in deciding whether an injury should be classified as one arising out of and in the course of employment. While control by an employer may be an indicator that a situation is covered under the Act, the absence of control by the employer does not preclude the acceptance of a claim where other factors demonstrate an employment connection. The policy lists a number of indicators which are commonly used for guidance:
- a. whether the injury occurred on the premises of the employer;
 - b. whether it occurred in the process of doing something for the benefit of the employer;
 - c. whether it occurred in the course of action taken in response to instructions from the employer;
 - d. whether it occurred in the course of using equipment or materials supplied by the employer;

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- e. whether it occurred in the course of receiving payment or other consideration from the employer;
 - f. whether the risk to which the employee was exposed was the same as the risk to which the employee is exposed in the normal course of production;
 - g. whether the injury occurred during a time period for which the employee was being paid;
 - h. whether the injury was caused by some activity of the employer or of a fellow employee.

This list is by no means exhaustive. All of these factors can be considered in making a judgment, but no one of them can be used as an exclusive test.

- (20) Manual policy item #16.50 addresses a worker's role in emergency actions. It states that where an emergency occurs while the worker is in the course of employment, the worker will be covered if he is injured while acting to protect a fellow worker or the employer's property. If, however, the worker's action is that of a public spirited citizen, and he is doing no more than anyone would do, whether or not working for an employer at that time, his action is not considered to be related to the employment.
- (21) Manual policy item #18.00 sets out the Board's general position that accidents occurring in the course of commuting from the worker's home to his usual place of employment are not compensable.
- (22) A number of other policies relate to a worker's participation in extra-employment activities. Manual policy item #20.00 states that, generally speaking, activities which workers undertake outside of their employment are for their own benefit, and injuries occurring in the course of them are not compensable. The policy recognizes, however, that there are some activities which, because of their relevance to the worker's employment, may be accepted as being part of that employment.

Reasons and Findings

- (23) Did the worker's hand injury while rendering emergency first aid to an M.V.A. victim arise out of and in the course of his employment as a firefighter?
- (24) The worker was commuting to work and was not on duty at the time he responded to the emergency and sustained his injury. The essence of the worker's argument is that he was brought into the course of his employment when he performed emergency rescue and first aid services at the accident scene because:
 - his role as a public servant and his specialized training and experience as a firefighter with the employer impelled him to render emergency assistance to the accident victims;
 - the emergency first response services which he provided were the same as his usual duties as a firefighter, and therefore exposed him to the same risks attendant on his normal work activity; and

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- his timely and skilled emergency services, which likely saved the life of the accident victim, were of benefit to the employer.

- (25) I am not persuaded by the worker's arguments that his voluntary actions, however critical and laudable, fell within the scope of his employment. The worker was off duty at the time he was injured. The accident occurred outside the employer's boundaries. It was not the worker's conditions of employment which brought him to the location where he encountered the rescue opportunity. He was not acting in response to direction from the employer, and he was not using equipment or materials supplied by the employer.
- (26) I do not accept that the worker was in the process of doing something for the benefit of the employer as contemplated by Manual policy #14.00 item (b). He was not protecting the employer's property or a fellow employee, or responding to an emergency to which the employer was required to dispatch firefighters. The possible spin-off of some amorphous public goodwill toward the employer as a result of the worker's volunteer rescue efforts in another municipality is, in my view, too remote and intangible to be considered a material benefit to the employer.
- (27) I am not persuaded by the decision of the Ontario appeal tribunal which found that the off-duty firefighter's actions were reasonably incidental to his employment. The fact that the worker's professional training and expertise as a firefighter uniquely equipped him to provide emergency first response assistance to the M.V.A. victim(s), and motivated him to do so out of a sense of public service, is not sufficient to bring him into the course of his employment on the evidence before me. A worker may use his professional qualifications and experience while acting in a personal capacity, and thereby be exposed to the same risks as in the performance of his regular duties; that factor alone does not necessarily bring his acts within the course of his employment for workers' compensation purposes.
- (28) Considering the evidence as a whole, I find that the employment nexus in this case is insufficient to bring the worker's actions at the time of injury within the scope of his employment, as required by section 5(1) of the Act. Even if the section 5(4) accident presumption applied on the facts of this case, I consider that the presumption would be rebutted given the factors noted above which weigh strongly against an employment connection.
- (29) In conclusion, 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.