*WORKERS' COMPENSATION*

*REPORTER*

## Decision of the Appeal Division

**Number:** 92-0872
**Date:** April 27, 1992
**Panel:** Connie Munro, Chief Appeal Commissioner
**Subject:** Section 96(2) Application — M.R.P. Certificate (#2)

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This is a request for a review pursuant to Section 96(2) of the *Workers Compensation Act* (the *Act*) of two commissioners' decisions dated March 12, 1990 and July 10, 1990. The request is contained in several items of correspondence received from the worker's counsel, the last of which is dated January 15, 1992. A supportive letter dated April 8, 1992, was also received from the pre-injury employer and the counsel for the worker responded in a letter dated April 15, 1992.

The Appeal Division has the authority to hear this application as a consequence of the following resolution of the Board of Governors approved January 6, 1992:

> RESOLVED THAT the Appeal Division of the Workers' Compensation Board of British Columbia shall exercise the authority of the Workers' Compensation Board of British Columbia under Section 96(2) of the *Workers Compensation Act* to reopen, rehear and redetermine any decision made by the former Commissioners prior to June 3, 1991, where the Chief Appeal Commissioner finds that the decision was based upon error of law or involves an issue under the *Canadian Charter of Rights and Freedoms*; . . .

Section 96(2) of the *Act* provides:

> . . . the Board may at any time at its discretion reopen, rehear and redetermine any matter, except the decision of the Appeal Division, which has been dealt with by it or by an officer of the Board.

It is submitted by counsel that the commissioners' refusal to establish a new medical review panel of psychiatrists to determine the cause of the applicant's chronic pain syndrome constitutes a patently unreasonable refusal to exercise the Board's jurisdiction pursuant to Section 58(5) of the *Act*. Counsel argues that a patently unreasonable exercise of discretion constitutes an error of law. He also argues that the

commissioners' refusal to submit to a medical review panel the issue of causation of the worker's chronic pain syndrome contravenes Section 99 of the *Act* which directs the Board to makes its decision according to the merits and justice of the case.

In their March 12, 1990 decision the commissioners reviewed the psychiatric report prepared by Dr. M in concluding that a sufficient basis had not been provided for establishing a second medical review panel composed of psychiatrists. In 1987 the worker had been examined by a panel of orthopedic surgeons. The medical review panel certificate dated April 22, 1987 stated that the worker's disability was due to degenerative disease and chronic pain syndrome, both of which were unrelated to his 1981 or 1983 injuries.

The commissioners' July 10, 1990 decision denied the request for a reconsideration of the March 1990 decision. They reviewed the reports of Doctors H and G and advised that there was no significant new evidence which would warrant establishing a second medical review panel.

Counsel contends that there is an ambiguity in the medical review panel certificate in that the panel does not address the cause of the worker's chronic pain syndrome. He contends that Dr. M's opinion is the only evidence regarding the crucial issue of the claim, namely the cause of the worker's chronic pain syndrome.

I have reviewed all of the material contained in this worker's file and am not satisfied that the actions of the commissioners constitute an error of law. I disagree with counsel's characterization of the medical review panel certificate as ambiguous. The medical review panel was not asked nor was it incumbent upon them to specifically address the causation of the worker's chronic pain syndrome. The question which they deal with specifically is the causative significance of the worker's compensable injuries to his current disability. The medical review panel certificate is explicit that "the compensable injuries of 9th of March, 1981 or 16th of June, 1982 are not of causative significance with regard to his present disability."

Undoubtedly the Board has a wide power to decide when to appoint a medical review panel of its own motion under Section 58(5). However, this case bears some similarity to the circumstances in *Kooner* v. *Workers' Compensation Board* (1991) 54 B.C.L.R. (2d) 83. The significant difference is that the panel of medical specialists in the *Kooner* case (who were not psychiatrists) found in the worker's favour as opposed to the present case where the medical review panel found no causative relationship between the compensable work accident and the chronic pain syndrome. In the *Kooner* case, the court was critical of the attempts by the W.C.B. to establish a new medical review panel of psychiatrists. Mr. Justice Taylor, speaking for the B.C. Court of Appeal said:

> The panel's certificate must, in my view, be accepted as "conclusive" and "binding on the board" in the sense that the board is required to act on it unless and until some significant new circumstance comes to light.

No such new circumstance is apparent in the case before me. The report of Dr. M is simply another view on matters considered by the medical review panel. It is not surprising that unsuccessful appellants may wish to continue the debate, however, the purpose of the medical review panel procedure is to provide finality to medical disputes.

My role in assessing the decisions of the commissioners in this case is not to determine whether their actions were right or wrong on the basis of what my response may have been to a similar fact situation. To find the decision unlawful requires a finding that the commissioners' refusal to exercise their discretion was patently unreasonable. No "significant new circumstance" has come to light pointing up an error in the certificate. The commissioners' discretion was exercised within the bounds of their lawful authority.

I have concluded that the failure to convene a new medical review panel was not a patently unreasonable act on the part of the previous commissioners and the current application must be dismissed.

*Editors' note: This decision has been edited for publication.*