

Decision of the Workers' Compensation Appeal Tribunal

Number: 2003-04145-RB

Date: December 16, 2003

Panel: Anthony F. Stevens, Vice Chair

Subject: Referral of Undetermined Matter Back to the WCB

Introduction

This is a summary decision on whether it is necessary to refer a matter back to the Workers' Compensation Board (Board) pursuant to section 246(3) of the *Workers Compensation Act* (Act).

The worker appealed the June 28, 2001 decision of the Board that was undertaken in relation to his November 25, 2000 back injury. That decision terminated the worker's entitlement to compensation benefits effective June 27, 2001 on the basis of the Board's conclusion that there was no longer any objective evidence of disability. During the course of the worker's November 19, 2001 oral hearing the worker's legal representative provided evidence to establish that shortly after the appealed decision was made the worker was diagnosed as having Adjustment Disorder with depressed mood, in the context of Chronic Pain Disorder.

Issue(s)

A preliminary issue arises in the worker's appeal as to whether there is a matter that should have been determined by the Board, but was not, and should be referred back to the Board for determination.

Background and Summary Decision

Section 246(3) of the Act provides:

If in an appeal, the appeal tribunal considers there to be a matter that should have been determined but that was not determined by the Board, the appeal tribunal may refer that matter back to the Board for determination and suspend the appeal proceedings until the Board provides the appeal tribunal with that determination.

The June 28, 2001 decision terminated the worker's entitlement effective June 27, 2001 and had the effect of declaring that the worker had recovered from the effects of his compensable injury. Just prior to the termination of the worker's claim the Board referred him to an interdisciplinary pain program for evaluation and treatment of his ongoing complaints. As part of the initial treatment at that program the worker underwent a psychological assessment which indicated that he was experiencing emotional distress, depressed mood, discouragement, frustration, anxiety, irritability and anger. The April 3, 2001 report also indicated that the

worker's psychological condition included persistent pain with significant pain expression and fear of pain flare-up. That report also detailed that directed testing was not considered to be valid due to the fact that English was the worker's second language.

Also, when discharged from the program on June 27, 2001 the report indicated that no psychometric testing was completed at discharge, and it was not clear to what degree the worker's psychological condition changed over the course of the program.

The Board did not more formally assess the worker's psychological status, nor undertake any specific decision in relation to it. The June 28, 2001 decision that was issued and now appealed was specific to whether objective functional impairment remained.

The worker's legal representative submitted new medical evidence at the November 19, 2003 oral hearing that included the October 22, 2001 opinion of Dr. Satinder Narang, a psychiatrist. Dr. Narang evaluated the worker and concluded that he was suffering from Adjustment Disorder with depressed mood, in the context of Chronic Pain Disorder.

I find that the worker's entitlement beyond June 27, 2001 cannot be fully explored without consideration of both his physical and psychological status at that time. Dr. Narang's October 22, 2001 opinion was undertaken shortly after the June 28, 2001 decision was issued. Moreover, there is information in the interdisciplinary pain program reports to suggest that the worker was experiencing psychological distress at that time, although a formal assessment and decision did not occur. In the end, I am inclined to conclude that the matter of the nature of the worker's psychological status and potential entitlement in relation to the worker's psychological status should have been determined prior to the Board terminating the worker's claim.

As such, I find that a section 246(3) referral to the Board is indicated in this particular case. That referral is to address the following:

1. Whether the condition Dr. Narang diagnosed on October 22, 2001 was likely a condition that should be accepted under this claim.
2. Whether the worker has a DSM-IV diagnosed psychological condition.
3. Whether the worker has entitlements beyond June 27, 2001 that are due to a compensable psychological condition and, if so, the extent to those entitlements.

The worker's appeal before WCAT is suspended pending a determination by the Board on the above referred matters. I also note that pursuant to section 246(4) of the Act the further determinations of the Board become part of what is before this panel, and no review by the Review Division can be requested. I also note that the worker's legal representative was made aware that a section 246(3) referral could occur in this appeal, and he expressed no concern in that regard.

Conclusion

I undertake the above referral pursuant to section 246(3) of the Act, the consequence of which is that the worker's appeal remains in suspense pending the Board providing WCAT with their determinations.