

# Decision of the Review Board

**Number:** 956599-B  
**Date:** March 27, 1997  
**Panel:** Erik Wood, Kathryn Wellington, Alex Korman  
**Subject:** Section 57(2) - Suspension of Benefits due to Absenteeism from the Rehabilitation Centre during Bereavement

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## Introduction

The worker appeals a September 15, 1995 decision of a Workers' Compensation Board (the Board) Compensation Services Manager concerning the suspension of her wage loss benefits during the period June 19 - 23, 1995. In this time frame the worker experienced a death in the family and was away from treatment from the Board Rehabilitation Centre to attend the funeral and interment. The Compensation Claims Manager acknowledged the death in the family and stated in part as follows:

Policy #75.11 of the Claims Adjudication Manual outlines Board policy in payment of benefits when a worker is absent from recommended treatment.

This policy specifically indicates that all absences, where known in advance, must have the prior approval of the Adjudicator before wage loss payment can be made. It also clearly indicates that Adjudicators will have the discretion to authorize payment of wage loss for an absence where no prior approval was obtained.

In your case, the Claims Adjudicator has exercised her discretion in reaching the determination that benefits would not be paid for the period June 19 - 23, 1995, and this in keeping with Board policy.

Following my review of your claim file and Board policy I do not see any reason to overturn the Claims Adjudicator's decision.

The worker disputes the Board's decision. She says that she did everything in her power to let the Board know that her father-in-law was terminally ill. She asks that her appeal be allowed.

## **Issue**

Were wage loss benefits properly suspended for the period June 19 to June 23, 1995, inclusive?

## **Evidence, Finding and Reasons**

The worker is a 34 year-old housekeeping aide. On June 5, 1994 she suffered a left shoulder injury. Her claim was accepted for a strain to the left shoulder and upper back and wage loss benefits and medical aid were paid from time to time.

For the purposes of this appeal it is not necessary that we recite the evidence from the claim file extensively. We will limit our comments to the events which took place in the spring of 1995 touching on the issue at appeal.

Suffice it to say that after undergoing various treatment modalities in the spring of 1995, the worker was referred for a work-conditioning program. She started the program on March 2, 1995. This treatment was considered reasonably essential to her recovery from her compensable condition. By letter dated March 28, 1995, the worker was advised in part as follows:

I received a phone call from you on March 16, 1995 advising that unfortunately you have been sick, and have been unable to attend for your work-conditioning program since March 14, 1995.

Therefore, as your illness is delaying your treatment and recovery in regards to your compensable condition, as I have advised you I have suspended payment of your wage loss benefits from March 14, 1995. Payment of your wage loss benefits can be reinstated when you advise me that you are again able to recommence the work-conditioning program.

This letter was sent by the Claims Adjudicator. While the claim file indicates that the worker took exception to this decision, and filed an appeal, because she did not do so

within time limits and because she provided no explanation for her delay in appealing the March decision, her appeal was suspended.

Following her illness the worker returned to her work-conditioning program and completed it. Unfortunately, at completion of the work-conditioning program the worker still had complaints involving the left shoulder. Shortly thereafter she was admitted to the Board's Rehabilitation Centre in Richmond. Her admission to the Richmond Rehabilitation Centre commenced May 18, 1995. Memos to file indicate that the worker was given leave to fly home each weekend from the Rehabilitation Centre.

During her time at the Rehabilitation Centre in Richmond, the worker called in to seek pre-approval for absences in a timely fashion. On June 1, 1995, the worker required leave of absence for June 12 and 13, 1995 as her husband had to travel and she needed to care for her two children aged ten and twelve.

Shortly thereafter a death occurred in the family and the worker was away from the treatment from June 19 - 23, 1995. According to a telephone memo on file, at 09:12, June 19, 1995 the worker advised the Board that her father-in-law had passed away on Friday, June 16, 1995. She indicated that she would be absent from treatment on June 19, 20, 21, 22 and 23rd. She acknowledged that she would return to treatment the following Monday, June 26, 1995. The worker inquired whether wage loss for this period would be paid and was advised by the Case Co-ordinator that the Adjudicator would decide.

In a telephone memo to file dated July 14, 1995 the Claims Adjudicator indicated that she had spoken with the worker and:

Advised that I wouldn't be paying wl for the period 6/19-23/95 incl., as clmt absent from trt. due to death in the family.  
Advised that I had suggested to clmt. that she consider if she has entitlement to Bereavement Leave.

This appears to be the only information on file concerning an explanation for the Claims Adjudicator's decision. The worker disputed the Board's decision and asked for a Manager's Review. By letter dated September 15, 1995 the worker was apprised of the Compensation Manager's decision to uphold the original decision to suspend benefits during the period in question.

The worker's appeal was considered by way of a review of the file evidence and of submissions provided by the worker. No additional information or submission was provided by her employer. Along with the Notice of Appeal - Part 1 received at the Review Board October 30, 1993, the worker provided additional explanation regarding her attempt to apprise the Board of the failing health and impending death of her father-in-

law. From this information the worker appears to have advised the Board at the time of her admission to the Board's Rehabilitation Centre that she expected an impending death in the family. She also indicated that she called the Adjudicator in Courtenay also, figuring that he was her new Case Worker and told him that her father-in-law had passed away. She also telephoned Mr. A at the Board Rehabilitation Centre and was told that she was excused for the week of June 19 - 23rd. The funeral was held on June 21, 1995 and the interment on the following Friday, June 23, 1995. She further indicated that she saw her attending physician on June the 19th and that her attending physician said she was needed at home. In a subsequent February 6, 1996 letter to the Review Board, the worker outlined her July conversation with her Claims Adjudicator. No rationale for the decision is listed in the worker's submission to the Review Board. In later speaking to the Claims Manager, the worker noted that:

Her reason (for supporting the decision to suspend benefits) however, was ridiculous[sic]... This absence was not pre-approved!...

Having considered the evidence on file and submissions, we allow the worker's appeal. The *Workers Compensation Act* at Section 57(2) allows for decrease or reduction or suspension of compensation benefits where a worker persists in unsanitary or injurious practices which impair or retard recovery, or refuses to submit to treatment which the Board considers, based on expert medical or surgical advice is reasonably essential to promote recovery. There is no indication that the worker either persisted in unsanitary or injurious practices or refused medical or surgical treatment. Furthermore, there is no evidence to support a conclusion that a Board Medical Advisor was asked for a opinion as to the necessity of the worker's attendance at Rehabilitation Clinic during the period from June 19 - 23 before her benefits were suspended. In our view the earlier decision to suspend wage loss benefits during a period of a worker's illness was clearly in accordance with the *Act* and Board policy and a reason for suspending benefits was clearly elucidated to the worker. The later absence from the Rehabilitation Centre, however, was handled quite differently. File evidence clearly supports a conclusion that the worker continued to be seen and to receive medical attention during this week. In fact, she saw her attending physician at home on June 19 at the commencement of the week of her bereavement.

The Board's policy concerning treatment at the Board's Rehabilitation Centre is outlined at Policy #75.11 of the *Rehabilitation Services and Claims Manual*. This policy has already been summarized for the worker but several salient points are worthy of note. All absences *where known in advance* must have prior approval of the adjudicator before wage loss payment will be made. Similarly all absence resulting from sickness must be supported by doctor's certificate before wage loss payment may be made. Item 5 is of particular interest to this case and states in part that:

Adjudicators *will have the discretion to authorize* the payment of wage loss for an absence where no prior approval has been obtained or no doctor's certificate has been produced, but where, however, the special circumstances of the case support the maintenance of wage loss payments. (emphasis added)

Clearly, in this case the worker could not possibly have known in advance when her father-in-law would die, thus she could not obtain prior consent.

In our view Board policy as outlined at Policy #75.11 anticipates periodic absences for causes other than sickness. Board policy also gives adjudicators discretion to authorize payment of wage loss benefits where there are special circumstances. In our view the file evidence supports the conclusion that special circumstances exist in this case and that the Board was well aware of them in advance. The initial medical assessment dated May 18, 1995 on the worker's admission to the Rehabilitation Centre includes comments from the Rehabilitation Centre Physician, Dr. M, to the effect that:

She was born in Cumberland on the Island and is married to a healthy ICBC estimator. *She is under some stress now, as her father-in-law appears to be dying of congestive cardiac failure in the hospital.*

She has a son of 12 and a daughter of 10 ... (emphasis added)

Furthermore, in the client information provided and dated June 8, 1995, the worker told the Board that:

...I have faith that this is a good Rehab Centre. The draw back being so far away from the family. Father-in-law still in very bad shape. It's very hard on my kids & spouse. However with the things I've mentioned I am very committed to get fixed up....

The Rehabilitation Centre's clinic reports confirm that the worker attempted to give such notice as was possible of the impending death of her father-in-law. Since the death had not yet occurred, she could not do more than advise that the death was anticipated. In the telephone memos on file we note that she advised the Board on June 19 at the beginning of her bereavement that she would be absent. The death occurred immediately prior to the weekend. We further note that the worker sought medical attention immediately the same day from her attending physician. She spoke to two Board Officers and says that she was somewhat confused about reporting, since she was at the Rehabilitation Centre and

not at home. We accept this explanation. We find that the worker made a reasonable effort to apprise the Board of her need to miss treatment.

The Adjudicator has the discretion under Board policy to authorize payment for wage loss for an absence where no prior approval has been obtained, and while normally we would defer to the Claims Adjudicator (as has the Compensation Manager), the discretion to authorize or not to authorize may not be arbitrarily imposed. Wage loss benefits are not necessarily suspended under this policy. Because there is no explanation as to why wage loss in this case was suspended, we find the decision to be arbitrary. The fact that a suspension was imposed without reference to a Medical Advisor to assure that the absence from treatment might have an adverse effect on recovery confirms this view. The worker's attending physician suggested that she stay at home. This Board policy has the stated purpose of attempting to control absenteeism. In this case, we do not think that the worker's absence to be with her family during a bereavement indicates an attendance problem to be addressed by using this policy. Accordingly, we allow the worker's appeal.