



WORKING TO MAKE A DIFFERENCE

BOARD OF DIRECTORS
Dr. Roslyn Kunin, Chair

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Dr. Henry Harder
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William Roger

2009/12/09-07

THE WORKERS' COMPENSATION BOARD OF BRITISH COLUMBIA
RESOLUTION OF THE BOARD OF DIRECTORS

Re Retirement of *Workers' Compensation Reporter* Decision No. 99

WHEREAS:

Pursuant to section 82 of the *Workers Compensation Act*, RSBC 1996, Chapter 492 and amendments thereto ("*Act*"), the Board of Directors must set and revise as necessary the policies of the Board of Directors, including policies respecting compensation, assessment, rehabilitation, and occupational health and safety;

AND WHEREAS:

The *Workers' Compensation Reporter* Decisions No. 1 - 423 contained in Volumes 1 - 6 ("*WCR*"), consisting of Decisions of the former Commissioners made between 1973 and 1991, were adopted as "policy" by the former Governors in 1991;

AND WHEREAS:

By resolution 2000/03/16-03, the Panel of Administrators adopted a strategy of consolidating the *WCR* Decisions into policy manuals and retiring the *WCR* Decisions;

AND WHEREAS:

The Board of Directors has issued a by-law identifying the policies of the Board of Directors under the *Workers Compensation Act* (by resolution #2003/02/11-04), which includes those *WCR* Decisions that were not retired prior to February 11, 2003;

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THE BOARD OF DIRECTORS RESOLVES THAT:

1. Decision No. 99 of the *WCR*, attached as Appendix "A", is retired from the Board of Directors' policies as of the effective date of this Resolution ("retirement date").
2. As of the retirement date, Decision No. 99 of the *WCR* is no longer "policy" under the Board of Directors' by-law re: Policies of the Board of Directors (by resolution #2003/02/11-04). However, the status of Decision No. 99 as "policy" prior to the retirement date remains unaffected by this Resolution. Decision No. 99 remains applicable in decision-making on historical issues to the extent it was applicable prior to the retirement date.
3. Where a policy statement in Decision No. 99 also appears in a policy manual, the retirement of Decision No. 99 does not affect the applicability of the policy statement in the manual.
4. This resolution constitutes a policy decision of the Board of Directors.
5. This resolution is effective December 9, 2009.

DATED at Richmond, British Columbia, December 9, 2009.

By the Workers' Compensation Board

**DR. ROSLYN KUNIN, CM, ICD.D
CHAIR, BOARD OF DIRECTORS**

APPENDIX A

WORKERS' COMPENSATION REPORTER DECISION NO. 99

RE Degeneration of the Spine

Appeal to the Commissioners considered by:

T.G. Ison, Chairman

7th March, 1975

G. Kowbel, Commissioner

(Commissioner T.R. Watt participated in the discussion of this appeal, but was not present for the decision)

The claimant is a 57-year-old man who has worked for approximately 30 years in shingle mills, and for the last 10 years as a shingle sawyer for the same employer. During the last few years, he has experienced several problems with his back.

Early in 1974, the claimant made a claim for injury to his back arising out of a specific incident at work. The claim was allowed for temporary disability, but no permanent disability was recognized as resulting from that event.

The claimant appealed to a board of review. Having studied the medical and other evidence, the board of review concluded:

“...that you do suffer from a chronic lower backache which, in the opinion of this board of review, is due to advancing age which has made you more vulnerable to back strain.”

The claimant does not now dispute the conclusion that he is not disabled by any specific event occurring in 1974, and in appealing to the Commissioners, his union does not contend that he is suffering from any disability resulting from any specific incident. Rather the union submits that the spinal degeneration from which the claimant is now suffering results from 30 years of employment in the shingle industry, and should be compensable on that ground. It is argued that osteoarthritis or a similar degeneration of the spine, if due to industrial activity over a period of years, should be recognized by the Board as an industrial disease. The appeal is supported by the employer.

For a disability to be compensable, it is of course not necessary nowadays that it should result from “an accident”. Whether the disability was caused by a specific incident, or by an event on any particular date, is something that may be relevant in evidence in deciding how the disability was caused. But it is not a pre-requisite in every case to compensation.

The difficulty in this case lies in establishing the cause of the disability, not in what consequences should follow once the cause is established.

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The claimant's representative referred us to a California case* that considered the effect of cumulative work activity and work injuries over time producing an ultimate disability. But the propositions stated in that case were propositions of law relating to the application of the Statute of Limitations. They were not propositions of medical science relating to the causes of back disabilities.

The overwhelming weight of medical opinion that has come to our attention is that osteoarthritic degeneration in the spine is a natural part of the aging process. People do not age at a uniform rate, and other factors may well influence the pace of this kind of degeneration, as well as other kinds. The experience of the Board is that low back pain arising from osteoarthritic conditions of the spine arises in all occupational categories, skilled and unskilled, sedentary and manual. It is not a peculiarity of any occupation or industry.

The sex of the individual does not seem to be a significant variable. Build and other genetic factors may be relevant, there being some medical opinion that people of heavier build tend to suffer spinal degeneration earlier than those who are more slender.

Occupation may be a relevant variable, and there is some medical opinion that people engaged in heavy manual work may tend to suffer spinal degeneration earlier than those in more sedentary occupations. But there is no real evidence that the occupation of shingle sawyer is more conducive to spinal degeneration than other occupations. In a study of claims first paid by the Board during 1973, it was found that the ratio of back cases to other injuries in the shingle industry (13.7%) was actually lower than the average for all industries (17.9%).

If a particular occupation involves some unusual activity, perhaps an unusual movement of an arm or a foot, and it appears that this activity continued over time has produced a disability from which the worker would probably not otherwise have suffered, that disability would be compensable. But there is no evidence to bring this case in that category – no evidence that the disability in this case is peculiarly due to the nature of the work on which the claimant was employed.

The essence of the matter is that the disability results from the natural aging process. To wither and die is an inevitable destiny of mankind. No doubt the pace of the process and each aspect of it can be influenced by environmental circumstances and activity. Work, leisure activities, genetic factors, air purity,

* *Beveridge v Industrial Accident Commission et al* (1959) 24 California Compensation Cases, 274.

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diet, medical care, personal hygiene, personal relations and psychological makeup are all factors that may influence the pace of many kinds of natural degeneration. Where the degeneration is of a kind that affects the population at large, it would be impossible for the Board to attempt a measurement of the significance of each occupation on each kind of degeneration to determine whether a particular occupation had any effect in advancing the pace of degeneration compared with other occupations, or compared with a life of leisure. It is probably for this reason that not every disablement from disease is compensable. That result depends on the disease being listed in Schedule B of the Act, or otherwise being recognized or designated by the Board as an "industrial disease". Where a disease is of a kind that affects the population at large, it will not be designated by the Board as an industrial disease unless employment causation can be established, and osteoarthritis in the spine has not been so designated.

Any occupation may involve some element of wear on the body, so may inactivity, and almost any occupation may have some significance on health and physical development. The question is not limited to back cases, and it would be impossible for any agency to make a comprehensive survey of the significance of every occupation on every aspect of the physical development of workers. For example, sedentary workers may be more prone to heart failure than manual workers. Would it be suggested therefore, that heart attacks should be treated as compensable when they occur among executives and office workers, but not when they occur among manual workers?

Disablement through the aging process is something which, as a society, we have sought to deal with by the establishment of retirement pensions. A difficulty, of course, is that the age of eligibility for retirement pensions tends to be uniform, or limited to a narrow range, whereas the aging process varies enormously among different people. Some are fit for work well beyond a normal retirement age. Others age more quickly. Where this occurs, however, the Board has no authority to remedy the problem under the Workers' Compensation Act. To be compensable under the Act, the disability must result from an injury, or be recognizable as resulting from an industrial disease. If a worker is suffering from a kind of bodily deterioration that affects the population at large, it is not compensable simply because of a possibility that his work may be one of the range of variables influencing the pace of that degeneration. For the disability to be compensable, it must appear that the work activity brought about a disability that would probably not otherwise have occurred, or that the work activity significantly advanced the development of a disability that would otherwise probably not have occurred until later.

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Most claims involving the spinal column can be classified roughly in 3 categories:

1. Cases where the residual disability is attributable to a work injury; for example, a disc protrusion caused by trauma, or by a strain at work. In these cases, the claimant is obviously entitled to compensation, and such claims are allowed.
2. Cases where the residual disability is attributable to a degenerating condition and in which a work injury had no more than transitory effect. In these cases, a claim is allowed, but compensation is terminated when the effects of the work injury are judged to have terminated. In many of these cases, where the degeneration creates a vulnerability to injury, the risk of injury to the spine may be substantially greater in some occupations than in others, and a claimant may be advised to take lighter kinds of work where the risk is reduced. But this does not mean that the occupation was the cause of the degeneration.
3. Cases in which the work injury has a permanent disabling effect, but in which the claimant was already suffering from disc degeneration or other problems of sufficient magnitude to be classified as a disability. In these cases, there is an apportionment under Section 6(5), and the claimant receives a pension based on that portion of the residual disability that is attributable to the work injury.

The present case is in the second category.

The claimant's representative is not happy with the conclusions reached by the Board in back cases. Neither are we. But the problems we see are not ones that can be solved by the Board under present legislation. A major difficulty is the situation of a worker whose experience has been in manual work, who is no longer physically fit for that, and yet too young to retire. Sometimes re-training is possible, but in many cases no solution can be found through re-training. This is a problem that affects large numbers of people, and we agree with the claimant's representative that the present case is typical of many.

One approach to the problem might be a broader compensation system in which eligibility for benefits does not depend on the cause of the disability. Another possibility might be more flexibility in the age of eligibility for retirement pensions. A third approach might be the development of some new program of light work opportunities, particularly for people in the ages 45 – 65 years. But none of these possible solutions is within the authority of the Board to adopt.

We are, of course, conscious of the responsibility of the Board in the area of occupational health to take measures for the prevention of industrial diseases. In this connection, we must establish priorities. We are apprehensive that there

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may be substances and processes in use in industry having disabling effects on workers, some of which are yet unknown, and some of which though known, are not yet sufficiently controlled. To prevent known hazards and to ascertain risks that are yet unknown are the matters to which we are attaching priority in the allocation of our resources. The Board does not have resources available for first-line research to measure the significance of every occupation on degenerative conditions that are suffered by the population at large regardless of occupation.

We are continuing our review of medical literature relating to the causes of spinal degeneration. If any further evidence comes to light that osteoarthritic degeneration of the spine is significantly advanced by any particular occupation, that would be ground for the Board to review its position. Meanwhile, we feel bound to conclude we have no sound medical evidence to support the contention that the disability in this case was due to the nature of the work at which the claimant was employed.

For these reasons, we do not find any ground for disturbing the decision of the board of review.

RESOLVED that this appeal must be denied.