

## REVIEW DECISION

**Re:**                    **Review Reference #: R0070075**  
                              **Board Decision under Review: June 6, 2006**

**Date:**                **January 25, 2007**

**Review Officer:**    **Jefferson Rappell**

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The worker requests a review of the decision of WorkSafeBC (the "Board") dated June 6, 2006. In support of this request, the worker's representative ("WR") provided submissions. The employer was given notice of the review and is participating. The employer's representative ("ER") made submissions. Cross-disclosure of the submissions has taken place in accordance with the Review Division's *Practices and Procedures*.

Section 96(6) of the *Workers Compensation Act* (the "Act") gives a Review Officer authority to conduct this review.

### **Issue**

The issue I must decide is whether the Board has appropriately implemented the decision of the Workers' Compensation Appeal Tribunal ("WCAT") dated March 10, 2006.

### **Background**

The worker, a magnetic resonance imaging ("MRI") technologist, submitted a claim to the Board in June 1995 requesting compensation for multiple skin and airway irritations which developed in February 1995. The Board issued a number of decisions on the worker's claim that were subsequently appealed.

In a decision dated March 10, 2006 WCAT made a number of findings concerning the worker's condition as it was in September 1998. This decision determined the following:

- While the worker had chronic respiratory symptoms usually associated with asthma, the objective testing showed that the worker does not have asthma.
- The worker has developed "a chemical sensitivity resulting in chronic symptoms of chest tightness, wheezing, shortness of breath as a result of her occupational exposures".
- The worker's occupational exposure aggravated her pre-existing rhinitis to the extent "that she has developed a chronic rhinitis".
- The "worker's tinnitus, nystagmus, and mild balance problems are not due to her occupational exposures".
- The "worker had intermittent symptoms of dermatitis prior to September 1998 as a result of her occupational exposures".

- The worker's musculoskeletal symptoms did not arise as a result of her occupational exposure between August 1995 and September 1998, nor did this exposure aggravate her pre-existing condition.
- The "worker likely developed gastrointestinal symptoms as a result of her occupational exposures".
- The "worker has developed headaches as a result of occupational exposures".
- "As of September 11, 1998, the worker did not have the disorder of multiple chemical sensitivities due to her occupational exposures although she did have some sensitivities to film processing chemicals as a result of occupational exposures".

In a decision dated June 6, 2006, the Board implemented the March 10, 2006 WCAT decision. The Board decision states, in part,

...The Vice-Chair concluded that you have "developed a permanent sensitivity to film processing chemicals which results in recurring respiratory and skin irritations, rhinitis, headaches and gastrointestinal symptoms". That permanent sensitivity and resulting symptoms has been accepted as an occupational disease under Section 6(1) of the *Workers Compensation Act* (the "Act").

...

In keeping with the findings of the Vice-Chair your claim has not been accepted for asthma, tinnitus or any eustachian tube dysfunction, nystagmus or for any mild balance problems, nor has your claim being accepted on a causal or aggravation basis of any musculoskeletal symptoms which occurred prior to September 1998 including symptoms of fibromyalgia, arthritis, chronic fatigue syndrome, neck and back pain, spinal stenosis, osteoarthritis or various arthralgias. The WCAT Vice-Chair also concluded that there was insufficient evidence to conclude that you had developed "multiple chemical sensitivities" as of September 1998. Any impairment or disability on the basis of these non-compensable conditions is not a Board responsibility under this claim.

The Board decision of June 6, 2006 states that WCAT found that the worker was entitled to the payment of wage loss benefits for a period of disability which ran from February 7, 1997 to April 7, 1997, and set the worker's wage rate. The decision also referred the worker's claim to the Disability Awards Department ("DA") for an assessment of any entitlement the worker may have to a permanent partial disability award.

The WR does not take issue with the worker's wage rate or referral to DA. The WR submits that the Board officer's implementation is broader than the WCAT Vice-Chair intended, particularly on the issues of fibromyalgia and chronic fatigue syndrome. Also, the WR submits that the Board officer's findings relate to the

worker's post 1998 impairments. The WR seeks:

- An original adjudication on the worker's fibromyalgia and chronic fatigue syndrome as conditions arising out of and in the course of the worker's employment, and as compensable consequences of the worker's compensable conditions.
- A decision about any post-September 1998 fibromyalgia, arthritis, chronic fatigue syndrome, neck and back pain, spinal stenosis, osteoarthritis, or various arthralgia conditions and multiple chemical sensitivities conditions.

## **Law and Policy**

### The Act

Section 255 states that any decision or action of the chair or appeal tribunal is final and conclusive and is not open to question or review in any court. The Board must comply with a final decision of the appeal tribunal made in an appeal.

### Policy

The policy relating to this review is found in the *Rehabilitation Services & Claims Manual*, Vol. I:

Policy item #100.83, *Implementation of Review Division Decisions*, provides in part that the decision of WCAT will be implemented upon its receipt by the Board Officer.

## **Decision and Reasons**

The worker disagrees with the Board officer's interpretation of the WCAT decision dated March 10, 2006, and the WR has made submissions on the areas of disagreement. As stipulated by section 255 of the *Act*, WCAT is an independent tribunal and its decisions are final and legally binding on the Board, including the Workers' Compensation Review Division.

The WR does not take issue with the worker's wage rate or referral to DA. Rather, the WR submits that the Board officer's implementation is broader than the WCAT Vice-Chair intended, particularly on the issues of fibromyalgia and chronic fatigue syndrome. As such, the issue I must decide is whether the Board has appropriately implemented the WCAT decision dated March 10, 2006. I find that it has.

I have reviewed the submissions of the WR, and it appears that the WR submits that the Board's decision states,

*In keeping with the findings of the Vice-Chair your claim has not been accepted for asthma, tinnitus or any eustachian tube dysfunction, ..., nor has your claim being accepted on a causal or aggravation basis of*

any musculoskeletal symptoms which occurred prior to September 1998 including symptoms of fibromyalgia, arthritis, chronic fatigue syndrome, neck and back pain, spinal stenosis, osteoarthritis or various arthralgias. The WCAT Vice-Chair also concluded that there was insufficient evidence to conclude that you had developed "multiple chemical sensitivities" as of September 1998. *Any [post September 1998] impairment or disability on the basis of these non-compensable conditions are not a Board responsibility under this claim.* (Italics and square brackets added by the WR)

After reviewing the March 10, 2006 WCAT decision and the Board's June 6, 2006 decision under review, I do not agree with the WR's interpretation of the Board's decision. In the quotation above, the WR added in the square bracketed phrase "[post September 1998]". It is clear to me from the WCAT decision that WCAT only looked at the worker's condition as of September 1998 in making its findings. I read the Board's June 6, 2006 decision as contemplating the worker's condition in and before September 1998 only.

The Board's decision under review states that the worker's claim has not been accepted on a causal or aggravation basis of any musculoskeletal symptoms which occurred *prior* to September 1998. [Emphasis mine] The Board noted that this included symptoms of fibromyalgia, arthritis, chronic fatigue syndrome, neck and back pain, spinal stenosis, osteoarthritis or various arthralgias. As a result, I agree with the Board's determination that any impairment or disability on the basis of these non-compensable conditions is not a Board responsibility under this claim. I note that the Board has yet to adjudicate whether the worker's claim should be accepted for any musculoskeletal symptoms which occurred *after* to September 1998. [Emphasis mine] The Board still needs to make an original adjudication on the worker's post-September 1998 conditions.

I am satisfied that the Board officer's implementation decision contained in the letter of June 6, 2006 is an appropriate and complete interpretation of the findings from the WCAT decision dated March 10, 2006.

Accordingly, I deny the worker's request.

## **Conclusion**

As a result of this review, I confirm the Board's decision of June 6, 2006.

Jefferson Rappell  
Review Officer  
Review Division