

Decision Summary

2008

Week 23

Decision Search Results

Displaying 1 to 27 of 27
Summaries

Decision No. 2035 07

02-Apr-2008

R. Nairn

- Commutation (debt liquidation)
- Pensions (assessment) (shoulder)
- Supplements, transitional provisions (permanent) (additional amount)

The worker suffered a shoulder injury in 1985, for which he was granted a 3% pension, later increased to 5% and then to 7%. In Decision No. 2338/99, the Tribunal found that the pension should be increased to 10%. Later, the Board further increased the pension to 12%. In Decision No. 1319/04, the Tribunal confirmed the 12% pension.

In this decision, the Vice-Chair found that the worker's condition had further deteriorated and that the worker was entitled to an increase in the pension to 15%.

The Vice-Chair also found that the worker was not entitled to commutation of the pension for debt liquidation. Requests made purely for financial reasons do not conform with the intent of Board policy. Further, the commutation could jeopardize the worker's ability to meet ongoing financial obligations.

Also, the Vice-Chair found that the worker was not entitled to the additional amount under s. 147(14) of the pre-1997 Act for years after 1997 because the worker's income, pension and supplementary benefits exceeded his pre-injury wages.

[View Full Decision Text](#) 14 Page(s)

References:

Act Citation

- WCA

Other Case Reference

- [w2308s]
- BOARD DIRECTIVES AND GUIDELINES: Operational Policy Manual, Documents No. 18-07-02, 18-07-06, 18-07-09
- CROSS-REFERENCE: Decisions No. 1485/99, 2338/99, 1319/04, 2035/07E

Neutral 2008 ONWSIAT 880
Citation:

Decision No. 477 08

02-Apr-2008

B. Alexander

- Health care (appliances or apparatus) (prosthesis)

The worker severed four fingers in a compensable accident in 2002. The Board paid for a hand prosthesis. The worker appealed a decision of the Appeals Resolution Officer denying payment for Nivea lotion which had to be applied to the prosthesis.

The prosthesis was an expensive, custom fitted device. Specific instructions from the manufacturer required use of Nivea lotion on the stump and the prosthesis when putting on or taking off the prosthesis. According to the manufacturer, the properties of Nivea lotion have been proven to extend the life of the prosthesis.

Board policy provides for assistive devices and prostheses. The policy does not specifically refer to the cost of maintenance of prostheses. However, it does provide that the Board will pay for maintenance of wheelchairs. The Vice-Chair was of the view that the policy does not refer to cost of maintenance of prostheses and orthopaedic devices because so few of them have a maintenance regime that would necessitate unusual costs. The prosthesis in this case was similar to a wheelchair in its need for ongoing maintenance.

In the circumstances, the worker was entitled to payment for the Nivea lotion. The appeal was allowed.

[View Full Decision Text](#) 7 Page(s)

References: [Act Citation](#)
• WSIA

[Other Case Reference](#)

- [w2308s]
- BOARD DIRECTIVES AND GUIDELINES: Operational Policy Manual, Document No. 17-07-05

Neutral 2008 ONWSIAT 887

Citation:

Decision No. 247 07

02-Apr-2008

**A. Patterson - M. Christie -
D. Broadbent**

- Negligence
- Transfer of costs

A delivery driver for the employer was injured when he slipped on the loading dock of a bakery to which he was making a delivery. The employer appealed a decision of the Appeals Resolution Officer denying a transfer of costs from the employer to the bakery.

There was insufficient evidence to find that the bakery had failed to do something a reasonable and prudent person would have done. The worker testified that he slipped on a greasy substance that was about two inches in diameter. Evidence indicated that the bakery discharged its duty to maintain its loading dock area in a reasonable and prudent manner. The greasy spot was very small in relation to the overall area involved.

The appeal was dismissed.

[View Full Decision Text](#) 5 Page(s)

References:

Act Citation

- WSIA 84

Other Case Reference

- [w2308s]
- BOARD DIRECTIVES AND GUIDELINES: Operational Policy Manual, Document No. 14-05-01

Neutral 2008 ONWSIAT 885
Citation:

Decision No. 713 08

01-Apr-2008

E. Smith

- Hearing (de novo)
- Loss of earnings {LOE} (employability)

The worker appealed a decision of the Appeals Resolution Officer granting only partial LOE benefits from August 2005 to June 2006.

The ARO found that the worker did not engage in concerted job search efforts. The ARO therefore granted LOE benefits based on entry level earnings with no training in the identified job objective. The Vice-Chair

found that this approach was not unreasonable given the information available to the ARO. However, the ARO did not have available the results of the worker's LMR assessment. Those results are now available. A Tribunal hearing is a hearing de novo. New evidence is admissible about the vocational or medical facts related to the time period in issue.

The LMR assessment did not identify any SEBs that were within the worker's physical restrictions and that he could do without English language training. Based on the LMR assessment, the worker was competitively unemployable during the period in question, and entitled to full LOE benefits. The appeal was allowed.

[View Full Decision Text](#) 5 Page(s)

References: [Act Citation](#)

- WSIA

[Other Case Reference](#)

- [w2308s]

Neutral Citation: 2008 ONWSIAT 867

Decision No. 526 08

01-Apr-2008

E. Smith

- Second Injury and Enhancement Fund {SIEF} (severity of preexisting condition)
- Board Directives and Guidelines (SIEF) (one hundred per cent relief)

The worker aggravated a pre-existing knee condition when he stepped on an air hose at work. The Board granted the employer 90% SIEF relief. The employer appealed, claiming that it should be entitled to 100% relief or, alternatively, 98%.

Board policy provides a table for SIEF relief based on the severity of the accident and the medical significance of the pre-existing condition. It also contains a statement with respect to 100% relief, allowing for full relief when a prior non-work-related condition is the cause of the accident.

The Vice-Chair considered the meaning of the word "cause" in that portion of the policy. It cannot mean that the pre-existing condition is the sole cause of the injury. If so, there would be no compensable accident. It cannot mean only that the pre-existing condition is one of several causes in the chain of causation. If so, the provision would apply in every case.

The Vice-Chair understood the word "cause" to refer to the precipitating

or triggering cause of the injury. Where the pre-existing condition precipitates or triggers the injury (for example, for worker falls because he has an epileptic seizure), the employer would be entitled to 100% SIEF relief. Where the pre-existing condition does not precipitate or trigger the injury (for example, the worker slips on a wet floor at work, but underlying degenerative disc disease affects the severity of the injury), the employer is not entitled to 100% SIEF relief but is entitled to relief based on the Board's table for rating the importance of each of the factors.

In this case, the triggering factor was the worker stepping on the air hose at work. His knee did not give out until he stepped on the uneven surface caused by the air hose. The employer was therefore not entitled to 100% SIEF relief.

According to the table in Board policy, there is a range of possible awards in the upper category. It is not practical or reasonable to attempt to distinguish between very minor differences, such as between 93% and 94%. However, there may be cases in which it is appropriate to award SIEF relief in the middle of the range. This was such a case. The worker had two prior failed reconstructive surgeries to his knee and a more recent arthroscopy. The knee continued to be symptomatic. In the circumstances, the employer was entitled to 95% SIEF relief. The 5% cost impact to the employer was fully sufficient, if not more than sufficient, to reflect the contribution of the workplace triggering event to the worker's injury.

The appeal was allowed in part.

[View Full Decision Text](#) 8 Page(s)

References:

Act Citation

- WSIA

Other Case Reference

- [w2308s]
- BOARD DIRECTIVES AND GUIDELINES: Operational Policy Manual, Document No. 14-05-03

Reporter Citation

- 85 W.S.I.A.T.R. (online)

Neutral Citation: 2008 ONWSIAT 866

Decision No. 1 07 I

01-Apr-2008

E. Smith

- Estoppel

The worker suffered a back injury in June 1994. The employer appealed a decision of the Appeals Resolution Officer confirming initial entitlement for the back condition. The employer submitted that the worker had a pre-existing condition and that entitlement should only have been granted on an aggravation basis for three days.

In this decision, the Vice-Chair dealt with the preliminary issue of whether issue estoppel applied to preclude the consideration of the employer's appeal because the worker's entitlement to benefits was determined in Decision No. 184/04.

The Board granted the worker benefits until January 1997. The worker appealed that decision to the Tribunal. The employer had been pursuing the matter of initial entitlement in separate proceedings at the Board. When the worker appealed regarding to the Tribunal regarding ongoing benefits, the employer put in a cross-appeal regarding initial entitlement. However, the office of the Vice-Chair Registrar advised in its hearing-ready letter that the cross-appeal could not be considered because there was no final decision of the Board on that matter. In Decision No. 184/04, the Tribunal found that the worker was entitled to a full FEL award in January 1997.

The Board then confirmed its entitlement decision, which the employer now appealed to the Tribunal.

The Vice-Chair concluded that issue estoppel did not apply to the facts in this case. The entitlement issue of the aggravation of the pre-existing condition was not adjudicated at the Tribunal in Decision No. 184/04. Further, Decision No. 184/04 did not make adjudicative findings about the nature of the initial entitlement. Rather, it made finding about the level of the worker's disability and the suitability of modified work for that disability based on an assumption of the correctness of the Board's decision regarding compensability of the disability.

The Vice-Chair concluded that the employer's appeal can proceed.

[View Full Decision Text](#) 17 Page(s)

References:

Act Citation

- WCA

Other Case Reference

- [w2308s]
- CROSS-REFERENCE: Decision No. 184/04
- TRIBUNAL DECISIONS CONSIDERED: Decision No. 215/98R (2002), 62 W.S.I.A.T.R. 47 consd; Decision No. 1000/00I (2003), 64 W.S.I.A.T.R. 1 consd; Decision No. 462/88 consd

Reporter Citation

- 85 W.S.I.A.T.R. (online)

Neutral Citation: 2008 ONWSIAT 873

Decision No. 2883 07 01-Apr-2008

J. Bigras

- Earnings basis (apprentice)
- Earnings basis (nominal remuneration)
- Temporary disability (beyond pension level)

The worker suffered a back injury in 1988 for which he was granted a 20% pension in 1989, increased to 25% in 1990. In Decision No. 2108/01, the Tribunal found that the worker was entitled to supplementary benefits under s. 147(4) of the pre-1997 Act from 1992 to 1995.

In this decision, the Vice-Chair confirmed the earnings basis for benefits as granted by the Board of \$10 per hour. The worker claimed that he was an apprentice. Without deciding that issue, the Vice-Chair found that, in any event, the worker's remuneration of \$10 per hour was not of a nominal nature (the minimum wage at the time was \$5 per hour), and that his earnings reflected his training, experience and skills.

Further, the Vice-Chair found that the worker was not disabled beyond his pension level in 1996 and that, accordingly, he was not entitled to further temporary benefits.

[View Full Decision Text](#) 10 Page(s)

References:

Act Citation

- WCA 43(6) pre-1989

Other Case Reference

- [w2308s]
- CROSS-REFERENCE: Decision No. 2108/01
- TRIBUNAL DECISIONS CONSIDERED: 1451/06
consd

Neutral Citation: 2008 ONWSIAT 869

Decision No. 2720 07 01-Apr-2008

J. Parmar

- Disablement (change in work)

- Fasciitis (plantar)

An assembly worker did not have entitlement for plantar fasciitis. The worker transferred to a different area of the employer's plant, which required extensive walking and standing on concrete surfaces. However, the condition developed only shortly after the change in duties. Evidence did not establish that the plantar fasciitis resulted from the worker's job duties.

[View Full Decision Text](#) 7 Page(s)

References: [Act Citation](#)

- WSIA

[Other Case Reference](#)

- [w2308s]

Neutral Citation: 2008 ONWSIAT 871

Decision No. 2043 07 01-Apr-2008

R. McCutcheon

- Suitable employment
- Loss of earnings {LOE} (level of benefits)

The worker suffered a repetitive strain elbow injury in July 2003. The worker appealed a decision of the Appeals Resolution Officer denying partial LOE benefits from September 2005 to August 2006.

The worker made a graduated return to work but was unable to increase to full-time hours. In denying partial LOE benefits, the Board placed emphasis on the fact that the worker's NEL award was only 10%. However, the Vice-Chair stated that the level of the NEL award is not determinative in the context of determining the worker's functional abilities. The worker was receiving the maximum award permitted for an elbow injury. In view of the other medical evidence, the Vice-Chair found that the level of the NEL award was not the best evidence of the worker's functional abilities.

The Vice-Chair concluded that the worker was unable to work full-time because of her compensable disability. She was entitled to wage loss benefits. The appeal was allowed.

[View Full Decision Text](#) 8 Page(s)

References: [Act Citation](#)

- WSIA

[Other Case Reference](#)

- [w2308s]
- TRIBUNAL DECISIONS CONSIDERED: 1701/99
consd

Neutral Citation: 2008 ONWSIAT 874

Decision No. 1496 06 01-Apr-2008 J. Goldman - J. Seguin - D. Besner

- Chronic pain (consistency with organic findings)
- Future economic loss {FEL} (deemed earnings) (employability)

The worker suffered a neck injury in 1992. In Decision No. 553/01, the Tribunal found that the worker had entitlement to benefits after December 1997 for a recurrence. In Decision No. 1955/03, the Tribunal found that the worker was not entitled to temporary benefits from 1993 to 1997.

In this decision, the Panel found that the worker did not have entitlement for chronic pain. The worker's pain was consistent with organic findings. However, the worker was competitively unemployable and entitled to a full FEL award as of D1 in 2004.

[View Full Decision Text](#) 9 Page(s)

References: [Act Citation](#)

- WCA

[Other Case Reference](#)

- [w2308s]
- CROSS-REFERENCE: Decisions No. 553/01, 1955/03

Neutral Citation: 2008 ONWSIAT 870

Decision No. 19 08 31-Mar-2008 L. Gehrke

- Future economic loss {FEL} (review) (after sixty months)

At R2 in February 1998, the Board granted a FEL award offset by the amount of CPP disability benefits that the worker was receiving. In February 1999, payment of CPP disability benefits to the worker was suspended. In May 2003, the Board redetermined the worker's NEL award due to significant deterioration of his condition in November 2001. The Board the reviewed and adjusted the worker's FEL award effective

November 2001 to reflect the deterioration of his condition and the fact that the worker was no longer receiving CPP benefits. The worker appealed a decision of the Appeals Resolution Officer denying adjustment of the FEL award from February 1999 to November 2001.

The suspension of CPP benefits would have been considered to be a material change under Board policy. However, under the legislation in effect from 1998 to November 26, 2002, adjustment of the FEL award for material change in circumstances after R2 was not permitted. It was only after November 26, 2002, under s. 44(2.1) of the WSIA, that adjustment of the FEL award was permitted due to significant deterioration that results in a redetermination of the degree of permanent impairment. In May 2003, the Board correctly applied s. 44(2.1) to adjust the FEL award from the date that the worker's condition worsened in November 2001.

The appeal was dismissed.

[View Full Decision Text](#) 5 Page(s)

References:

Act Citation

- WCA 43
- WSIA 44(2.1), 107

Other Case Reference

- [w2308s]
- BOARD DIRECTIVES AND GUIDELINES: Operational Policy Manual, Document No. 22-01-02
- CROSS-REFERENCE: Decision No. 780/04

Neutral Citation: 2008 ONWSIAT 855

Decision No. 367 08

31-Mar-2008

A. Patterson

- Loss of earnings {LOE}
- Availability for employment (vacation)

The worker suffered a heel injury on October 29, 2005. The worker appealed a decision of the Appeals Resolution Officer denying LOE benefits from November 4, 2005 to November 15, 2005.

The worker was away on a pre-scheduled vacation from November 4 to November 15. An FAF prepared by the worker's doctor was not provided to the employer until the worker returned to work on November 15. It was the worker's responsibility to provide the FAF to the employer. Without the FAF, the employer was unable to determine if it had suitable modified work for the worker.

The worker's loss of earnings during the period in question resulted from his being on vacation. He was not entitled to LOE benefits. The appeal was dismissed.

[View Full Decision Text](#) 6 Page(s)

References: [Act Citation](#)

- WSIA

[Other Case Reference](#)

- [w2308s]
- TRIBUNAL DECISIONS CONSIDERED: 305/87 distd, 1811/07 consd

Neutral Citation: 2008 ONWSIAT 860

Decision No. 605 04 R4 31-Mar-2008

L. Gehrke

- Future economic loss {FEL} (deemed earnings) (employability)
- Reconsideration

In accordance with Decision No. 605/04R3, the Vice-Chair reheard the worker's appeal regarding his FEL benefits at R2.

The Vice-Chair found that the worker was competitively unemployable and entitled to a full FEL award at R2.

[View Full Decision Text](#) 6 Page(s)

References: [Act Citation](#)

- WCA

[Other Case Reference](#)

- [w2308s]
- CROSS-REFERENCE: Decisions No. 574/99I, 574/99, 605/04; Decision No. 605/04R (2005), 73 W.S.I.A.T.R. 94; Decisions No. 605/04R2, 605/04R3

Neutral Citation: 2008 ONWSIAT 857

Decision No. 761 08 28-Mar-2008

M. Crystal

- Asbestosis
- Benefit of the doubt
- Accident (date) (occupational disease)

The Board granted the worker entitlement for asbestosis with an accident date of June 20, 2002. The employer appealed regarding the date of the accident.

There was no clear diagnosis of asbestosis on June 20, 2002. It was the date of a medical report referring to a CT scan demonstrating pleural thickening. The Vice-Chair noted that pleural thickening may be evidence of asbestos exposure but that it is not necessarily evidence supporting a diagnosis of asbestosis. In this case, there were a number of factors other than asbestos exposure, which might have been responsible for the worker's respiratory impairment, including systemic lupus and treatment with Methotrexate which can cause interstitial lung disease, as well as emphysema associated with smoking.

The Board allowed entitlement for asbestosis on the benefit of doubt. The Vice-Chair found that pulmonary impairment attributable to asbestosis was not established on the balance of probabilities. However, the issue of initial entitlement for asbestosis was not before the Vice-Chair.

Under ss. 119(2) and 124(2) of the WSIA, the benefit of doubt is resolved in favour of the person claiming benefits. The worker was not participating in this appeal and, accordingly, is not a person claiming benefits in this appeal. Appeals at the Tribunal are de novo, so the fact that an individual was a person claiming benefits in an earlier proceeding does not imply that such person is a person claiming benefits in the proceeding at the Tribunal if the person has elected not to participate in the appeal. Referring to Decision No. 2275/00, the Vice-Chair stated that the employer cannot be considered to be a person claiming benefits. Accordingly, the evidentiary standard of the balance of probabilities had to be applied in this appeal.

The Vice-Chair found that the evidence did not establish on the balance of probabilities that the worker had a respiratory impairment attributable to asbestosis at any time. It follows that it could not be established on the balance of probabilities that the respiratory impairment was attributable to asbestosis on a different date than June 20, 2002.

The appeal was dismissed.

[View Full Decision Text](#) 8 Page(s)

References:

Act Citation

- WSIA 119(2), 124(2)

Other Case Reference

- [w2308s]
- BOARD DIRECTIVES AND GUIDELINES: Operational Policy Manual, Documents No. 11-01-04, 11-01-13
- TRIBUNAL DECISIONS CONSIDERED: Decision No.

2275/00 (2002), 63 W.S.I.A.T.R. 73 refd to

Neutral 2008 ONWSIAT 842
Citation:

Decision No. 753 07 28-Mar-2008 M. Faubert

- Disablement (change in work)
- Bursitis (elbow)

The worker had entitlement for right elbow infected olecranon bursitis. The condition was a disablement from a change in work during an overtime shift. The worker's work duties on that shift led to increased and prolonged pressure on his right elbow. That increased pressure was sufficient to have caused an abrasion, particularly considering his clothing which included coveralls and Kevlar over the elbow area. The abrasion provided entry for the infection.

[View Full Decision Text](#) 6 Page(s)

References: Act Citation
• WSIA

Other Case Reference
• [w2308s]

Neutral 2008 ONWSIAT 837
Citation:

Decision No. 2274 07 28-Mar-2008 S. Sutherland

- Disablement (working conditions) (cold)
- Food industry (meat processing)

Working in a cold environment in a meat processing plant aggravated the worker's pre-existing condition so that she could not work more than eight hours per day, and resulted in the worker suffering a wage loss.

[View Full Decision Text](#) 13 Page(s)

References: Act Citation
• WSIA

Other Case Reference
• [w2308s]
• CROSS-REFERENCE: Decision No. 1989/03

Neutral 2008 ONWSIAT 841

Citation:

Decision No. 2408 03 R2 27-Mar-2008

J. Dimovski - D. Jago - D. Broadbent

- Experience rating (NEER) (three year window)
- Reconsideration (jurisdiction)

In Decision No. 2408/03, the Tribunal dealt with the worker's appeal regarding ongoing benefits.

In this decision, the Panel found that the Tribunal had jurisdiction to consider the issue of retroactive adjustment of the employer's account to reflect SIEF relief granted by the Board. However, there were no exceptional circumstances warranting a retroactive adjustment in this case.

[View Full Decision Text](#) 8 Page(s)

References: Act Citation

- WCA

Other Case Reference

- [w2308s]
- CROSS-REFERENCE: Decisions No. 2408/03, 2408/03R

Neutral Citation: 2008 ONWSIAT 833

Decision No. 723 06

27-Mar-2008

V. Robeson - D. Jago - M. Ferrari

- Class of employer (book and stationery stores)
- Board Directives and Guidelines (class of employer) (process breakdown)
- Class of employer (office supplies)

The employer had been classified in Rate Group 636 for book and stationery stores and Rate Group 668 for office and store equipment sales. After an audit in 2002, the Board deleted Rate Group 668 from the employer's classification. The employer appealed.

One of the guiding principles of the classification scheme is integrated operations which recognizes that business activities listed in the Employer Classification Manual frequently include other business activities which, if carried on as a business in their own right, might be

considered distinct business activities, but places limits on the extent to which certain business activities that may include other activities can be broken down into more than one business activity for classification purposes. The Panel was satisfied that the business activity and products sold by the employer at its retail office supply stores put the employer in Rate Group 636 of books and stationery stores. The employer submitted that the retail integration should not apply to wholesale activity of the office supply. However, the Panel noted that Rate Group 636 states that all operations (not just all retail operations) carried out on the premises of a book and stationery store form an integrated unit.

The appeal was dismissed.

[View Full Decision Text](#) 14 Page(s)

References: [Act Citation](#)

- WSIA

[Other Case Reference](#)

- [w2308s]
- BOARD DIRECTIVES AND GUIDELINES: Operational Policy Manual, Document No. 08-03-03

Neutral Citation: 2008 ONWSIAT 827

Decision No. 695 08

27-Mar-2008

S. Ryan

- Future economic loss {FEL} (deemed earnings) (employability)
- Temporary total disability

The worker slipped and fell in July 1996, injuring her hip, knee and ankle. In Decision No. 2326/00, the Tribunal found that the worker permanently aggravated pre-existing vascular necrosis of her left hip.

In this decision, the Vice-Chair found that the worker was entitled to temporary total disability benefits from May 1997 to November 2000, and a full FEL award effective May 2001.

[View Full Decision Text](#) 12 Page(s)

References: [Act Citation](#)

- WCA

[Other Case Reference](#)

- [w2308s]
- CROSS-REFERENCE: Decision No. 2326/00

Neutral 2008 ONWSIAT 829
Citation:

Decision No. 732 08

27-Mar-2008

R. McClellan

- Earnings basis (long-term)
- Board Directives and Guidelines (earnings basis) (non-permanent or irregular employment) (break in employment pattern)

The worker suffered a compensable injury in August 2003. The worker appealed a decision of the Appeals Resolution Officer regarding the worker's long-term earnings basis.

In 2001, the worker had been working in permanent employment as a foreman in a window factory, until he was laid off. He then received employment insurance benefits for 10 months. In 2002, he found permanent work as a waiter in a coffee shop for \$400 per week. In March 2003, he took the job with the accident employer as a plasterer's helper, at \$10 per hour. This was a seasonal job. He intended to return to work in the coffee shop when the seasonal job ended.

The Board based long-term benefits on earnings during the two years prior to the accident, including employment insurance benefits. The worker submitted that there was a break in his employment pattern in March 2003 when he switched from permanent employment to part-time employment.

The work in the window factory and in the coffee shop were both permanent employment. The non-permanent seasonal job was a break in the employment pattern. Accordingly, the long-term benefits should be calculated using earnings from the time the worker changed to the seasonal employment in March 2003. The appeal was allowed.

[View Full Decision Text](#) 7 Page(s)

References: Act Citation

- WSIA

Other Case Reference

- [w2308s]
- BOARD DIRECTIVES AND GUIDELINES: Operational Policy Manual, Documents No. 18-02-03, 18-02-04

Neutral 2008 ONWSIAT 831
Citation:

Decision No. 758 08 I

27-Mar-2008

M. Crystal

- Time limits (appeal) (length of delay)
- Time limits (appeal) (related issues)

The Appeals Resolution Officer allowed the worker an extension of time to appeal a decision of the Claims Adjudicator regarding his D1 FEL award, and granted the worker a FEL sustainability award at D1. The ARO also determined the worker's FEL entitlement at R1 and R2. The employer appealed.

In this decision, the Vice-Chair considered the employer's appeal of the decision to grant the worker a time extension.

The Vice-Chair disagreed with the employer's submission that the Act and Board guidelines should be applied strictly in relation to time limits. The Act actually provides for the alternative of such longer period of time as permitted by the decision-maker.

In this case, the issue of the D1 FEL award was closely related to the issue of the R1 and R2 FEL awards. It was appropriate to consider the appeal regarding all the FEL awards together.

The employer's appeal regarding the time extension was dismissed.

[View Full Decision Text](#) 7 Page(s)

- References:
- Act Citation
 - WSIA
 - Other Case Reference
 - [w2308s]
 - Reporter Citation
 - 85 W.S.I.A.T.R. (online)

Neutral Citation: 2008 ONWSIAT 838

Decision No. 719 08

26-Mar-2008

J. Noble

- Time limits (appeal) (diligence of applicant)

The worker appealed a decision of the Appeals Resolution Officer denying an extension of the time limit to appeal a decision of the Claims Adjudicator.

The decision of the Claims Adjudicator was dated June 10, 2003. The worker's objection was filed on May 31, 2004, almost one year after the decision.

The Board does not have a policy on time limit extensions but it does have practice guidelines. These guidelines are not binding on the Tribunal but they are reasonable criteria and they are helpful.

The Board guidelines provide broad discretion to extend the time limit when the appeal is brought within one year of the decision. In this case, the worker's objection was filed within 10 days of being more than one year after the date of the decision of the Claims Adjudicator. This is a significant delay. The worker provided no reason for the delay.

The worker was not entitled to the extension. The appeal was dismissed.

[View Full Decision Text](#) 8 Page(s)

References: [Act Citation](#)

- WSIA

[Other Case Reference](#)

- [w2308s]
- BOARD DIRECTIVES AND GUIDELINES: Appeal System - Practice and Procedures, Appendix A, Guidelines for Dealing with Appeal Time Limits

Neutral Citation: 2008 ONWSIAT 814

Decision No. 731 08

26-Mar-2008

R. McClellan

- Construction
- Earnings basis (long-term)
- Board Directives and Guidelines (earnings basis) (non-permanent or irregular employment)

The worker was a labourer for a residential construction company. She was injured in August 2006. The worker appealed a decision of the Appeals Resolution Officer basing long-term benefits on a calculation of the earnings basis for a worker in non-permanent or irregular employment.

The fact that the worker was hired through a union hiring hall was not relevant to the issue of whether the employment was permanent or non-permanent. The worker's employment was not designated as seasonal. The worker worked inside homes that were under construction, cleaning and removing debris. Residential construction in the Greater Toronto Area is no longer subject to seasonal shutdowns. It has become a year-round operation, subject only to temporary stoppages for severe storms.

The worker was entitled to long-term benefits using the earnings basis calculation for a permanent employee. The appeal was allowed.

[View Full Decision Text](#) 8 Page(s)

References: [Act Citation](#)

- WSIA

[Other Case Reference](#)

- [w2308s]
- BOARD DIRECTIVES AND GUIDELINES: Operational Policy Manual, Document No. 18-02-03

Neutral Citation: 2008 ONWSIAT 819

Decision No. 1305 06 R 26-Mar-2008

J. Parmar

- Reconsideration (clarification of decision)

The Vice-Chair clarified Decision No. 1305/06 by stating that the payment of the worker's independent living allowance should be retroactive to 1993, which was the effective date of the worker's pension for pulmonary impairment. The Vice-Chair also stated that the worker's claim for interest on the retroactive payment of the allowance should be determined at the Board, with the usual right of appeal.

[View Full Decision Text](#) 6 Page(s)

References: [Act Citation](#)

- WCA

[Other Case Reference](#)

- [w2308s]
- CROSS-REFERENCE: Decision No. 1305/06

Neutral Citation: 2008 ONWSIAT 821

Decision No. 1318 06 R2 26-Mar-2008

R. Nairn

- Reconsideration (clarification of decision)

The Vice-Chair further clarified Decision No. 1318/06 by stating that the worker was entitled to a 50% pension with full arrears.

[View Full Decision Text](#) 9 Page(s)

References: [Act Citation](#)

- WCA

Other Case Reference

- [w2308s]
- CROSS-REFERENCE: Decisions No. 1318/06, 1318/06R

Neutral Citation: 2008 ONWSIAT 820

Decision No. 2722 07 26-Mar-2008 R. Nairn

- Accident (occurrence)
- Procedure (absent parties)

The employer appealed a decision of the Appeals Resolution Officer granting the worker entitlement for symptoms caused by exposure to fumes.

The worker was not present at the hearing of the appeal as she had just been released from hospital. It was agreed that the hearing would proceed in her absence and that, in lieu of oral testimony from the worker, the Vice-Chair on the recitation of the worker's testimony as related in the decision of the ARO.

On the evidence, the Vice-Chair concluded that the worker did suffer a reaction to some kind of odour in the workplace.

The appeal was dismissed.

[View Full Decision Text](#) 9 Page(s)

References: Act Citation
• WSIA

Other Case Reference
• [w2308s]

Neutral Citation: 2008 ONWSIAT 808

Decision No. 2365 07 26-Mar-2008 J. Parmar

- Continuing entitlement
- Permanent impairment {NEL}
- Second accident

The worker suffered a low back injury in March 1995, for which she was granted a 17% NEL award. She suffered a second low back injury in May 2003.

The 2003 resulted in a permanent worsening of the worker's low back condition. She was entitled to a NEL assessment related to the 2003 accident.

The worker was not entitled to LOE benefits after January 2004. Although the worker had a permanent deterioration of her back condition as a result of the 2003 accident, the deterioration would not have prevented her return to work by January 2004.

[View Full Decision Text](#) 7 Page(s)

References: Act Citation

- WSIA

Other Case Reference

- [w2308s]

Neutral Citation: 2008 ONWSIAT 823