

Noteworthy Decisions 2008 Week 26

Decision Search Results

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Decision No. 915 08

21-Apr-2008

M. Keil

- In the course of employment (takes self out of employment)
- In the course of employment (work relatedness test)

The worker was a superintendent at an apartment building. He suffered a heart attack following a confrontation with a tenant. The employer appealed a decision of the Appeals Resolution Officer granting entitlement for the accident.

The worker had rented out an apartment to a friend's son, but no lease was signed and no rent was collected. The employer was not aware that this person was living in the building. Following complaints about the tenant's behaviour, the worker went to the apartment, entered the apartment without invitation, and was involved in an altercation with the tenant.

The employer submitted that the worker was not acting in the course of employment because he illegally entered the apartment. Furthermore, the employer submitted that all contact between the worker and the tenant emanated from a personal relationship and not from the worker's job duties.

The worker exhibited poor judgment in allowing the person to become a tenant and in entering the premises on the night in question. However, he went to the apartment for a work-related reason, responding to complaints from other tenants. The worker was in the course of employment. The appeal was dismissed.

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References:

Act Citation

- WSIA

Other Case Reference

- [w2608s]

- BOARD DIRECTIVES AND GUIDELINES: Operational Policy Manual, Documents No. 15-03-08, 15-03-10

Neutral Citation: 2008 ONWSIAT 1106

Decision No. 14 08

21-Apr-2008

C. Dempsey

- Consequences of injury (residual weakness)
- Second Injury and Enhancement Fund {SIEF} (preexisting condition)

The Board granted the worker entitlement for right elbow disablement in October 2004. In June 2006, the Board granted entitlement for left elbow disablement as a secondary condition resulting from overuse of the left arm after the right elbow disablement. The employer appealed a decision of the Appeals Resolution Officer denying the employer SIEF relief.

The employer submitted that the left elbow injury resulting from a prior disability, namely the right elbow injury, and thus attracted SIEF relief. The Vice-Chair noted that Board policy provides for SIEF relief in situations where a prior disability causes contributes to the compensable accident. In this case, the compensable accident was the right elbow injury in October 2004. The onset of left elbow symptoms in June 2006 was not a new or separate accident but rather a sequela of the original accident and, therefore, a continuation of the original claim. There was no prior disability in this case.

The appeal was dismissed.

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References: Act Citation
• WSIA

Other Case Reference
• [w2608s]
• BOARD DIRECTIVES AND GUIDELINES: Operational Policy Manual, Documents No. 14-05-03, 15-05-01

Neutral Citation: 2008 ONWSIAT 1101

Decision No. 930 05

18-Apr-2008

A. Patterson

- Drug abuse

The worker suffered an ankle injury in 1993. The worker appealed a

decision of the Appeals Resolution Officer denying a FEL supplement, a full FEL award from 1996 to 2005, and entitlement for drug dependency.

The worker had used drugs occasionally prior to the accident but was not addicted to drugs. It was after the accident that the worker was first introduced to painkillers. However, the Vice-Chair found that the accident was not a significant contributing factor to her drug dependency. There were three significant contributing factors to the development of the worker's drug dependency: consumption of prescription drugs more frequently and in excess of the amounts prescribed; purchase of street drugs to supplement prescription medication; failure to inform her medical practitioners of her perception that prescribed medication was insufficient, her increased frequency of medication consumption and her purchase of street drugs.

These two types of non-conformance with doctors' prescriptions and the failure to inform her doctors are the significant contributing factors to the development of the worker's addiction. The compensable accident was not a significant contributing factor. The worker did not have entitlement for drug dependency.

The worker did not have entitlement to a full FEL award. Her total disability resulted from her non-compensable drug dependency.

The worker was entitled to FEL supplementary benefits for periods in 2001 and 2002 while participating in medical rehabilitation.

The appeal was allowed in part.

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References:

Act Citation

- WCA

Other Case Reference

- [w2608s]
- CROSS-REFERENCE: Decision No. 930/051
- TRIBUNAL DECISIONS CONSIDERED: 966/97 refd to, 2590/00 refd to, 977/02 refd to, 1009/02 consid

Neutral Citation: 2008 ONWSIAT 1093

Decision No. 1971 07 17-Apr-2008

M. Keil

- Board Directives and Guidelines (fibromyalgia)
- Disablement (nature of work)
- Fibromyalgia

- Osteoarthritis (ankle)

The worker appealed a decision of the Appeals Resolution Officer denying entitlement for osteoarthritis of her ankle and for fibromyalgia.

The osteoarthritis was an underlying condition. The worker's work duties did not contribute significantly to the development of her osteoarthritis. The worker did not have entitlement for osteoarthritis.

With respect to fibromyalgia, Board policy is clear that there has to be an accepted work injury, whether by chance event or disablement. In this case, however, the osteoarthritis was not compensable. Since there was no work injury, there could be no entitlement for fibromyalgia.

The appeal was dismissed.

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References:

Act Citation

- WSIA

Other Case Reference

- [w2608s]
- BOARD DIRECTIVES AND GUIDELINES: Operational Policy Manual, Document No. 03-03-05

Neutral Citation: 2008 ONWSIAT 1051
