

# Decision Summary

## 2008

### Week 26

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**Decision No. 204 08**

**22-Apr-2008**

**R. Nairn**

- Class of employer (construction of buildings)

The employer appealed a decision of the Appeals Resolution Officer classifying the employer in Rate Group 764 for land developers.

The employer submitted that it should be classified in Rate Group 723 for apartment and condominium construction.

The ARO decision appears to have been based on a conclusion that the employer was involved only in the planning aspects of projects and not in the subsequent development and construction. However, in at least some projects, the employer maintained an interest in the proceedings during construction. In the circumstances, the best fit for the employer was Rate Group 723.

The appeal was allowed.

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References:

Act Citation

- WSIA

Other Case Reference

- [w2608s]
- TRIBUNAL DECISIONS CONSIDERED: Decision No. 499/001 (2001), 58 W.S.I.A.T.R. 54 consd

Neutral Citation: 2008 ONWSIAT 1119

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**Decision No. 189 08**

**22-Apr-2008**

**R. Nairn**

- Consequences of injury

The worker suffered a neck injury in 2001. The worker appealed a decision of the Appeals Resolution Officer denying entitlement for a shoulder injury which the worker claimed she also suffered as a result of the compensable accident.

The worker may be experiencing pain in her shoulders but that pain was radiating from her compensable neck condition. The shoulder pain was properly included as part of the current entitlement and did not warrant a separate award. The appeal was dismissed.

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References: [Act Citation](#)

- WSIA

[Other Case Reference](#)

- [w2608s]

Neutral Citation: 2008 ONWSIAT 1118

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**Decision No. 655 08**

**22-Apr-2008**

**N. Jugnundan**

- Loss of earnings {LOE} (termination of employment)

A welder suffered a hip injury in a fall in November 2000. The worker appealed a decision of the Appeals Resolution Officer denying LOE benefits after February 2002.

The employer provided suitable modified work. The worker brought about the termination of his employment by walking off the job, not because of his injury but because of personality conflicts with management and co-workers. The worker was not entitled to further LOE benefits. The appeal was dismissed.

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References: [Act Citation](#)

- WSIA

[Other Case Reference](#)

- [w2608s]

Neutral Citation: 2008 ONWSIAT 1110

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**Decision No. 2506 07 R** **22-Apr-2008**

**T. Mitchinson**

- Future economic loss {FEL} (duration of compensation)
- Reconsideration (error of law)
- Temporary partial disability (duration of benefits)

The Board applied for reconsideration of Decision No. 2506/07.

The Vice-Chair mistakenly granted temporary partial disability or FEL benefits beyond age 65. There was no authority to grant benefits beyond age 65 for pre-1998 injuries.

The application to reconsider was granted. The Vice-Chair went on to amend the original decision to grant benefits only until age 65.

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References: Act Citation

- WCA

Other Case Reference

- [w2608s]
- CROSS-REFERENCE: Decision No. 2506/07

Neutral Citation: 2008 ONWSIAT 1117

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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

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**Decision No. 138 01 R 21-Apr-2008**

**T. Mitchinson**

- Reconsideration (new evidence)

The worker's application to reconsider Decision No. 138/01 was denied. New medical reports submitted by the worker would not have changed the result of the original decision.

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References: [Act Citation](#)

- WCA

[Other Case Reference](#)

- [w2608s]
- CROSS-REFERENCE: Decision No. 138/01

Neutral Citation: 2008 ONWSIAT 1100

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**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

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**Decision No. 176 08**

**18-Apr-2008**

**R. McClellan**

- Health care (attendance allowance)

The worker suffered multiple injuries in 1972 for which he was granted a 100% pension. The Board granted a personal care allowance. In Decision No. 337/06, the Tribunal found that the worker was entitled to 40 hours of personal care per week retroactive to 1992.

In this decision, the Vice-Chair reviewed the Board's personal care allowance guidelines document entitled Activities of Daily Living Scale (ADLS), Administrative Guidelines, April 1990, and found that, as of 2006, the worker was entitled to 24-hour-a-day care, consisting of 30.7 hours per week of skilled care, 42.3 hours per week for personal care and 94.9 hours per week for general care.

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References: [Act Citation](#)

- WCA

Other Case Reference

- [w2608s]
- BOARD DIRECTIVES AND GUIDELINES: Operational Policy Manual, Document No. 17-06-05
- CROSS-REFERENCE: Decision No. 337/06

Neutral Citation: 2008 ONWSIAT 1072

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**Decision No. 663 08 I      18-Apr-2008      R. McClellan - E. Tracey - K. Hoskin**

- Adjournment (referral to Board)
- Permanent impairment {NEL}

The worker suffered wrist injuries in June and August 2002. The worker appealed a decision of the Appeals Resolution Officer denying ongoing benefits and a NEL award for permanent impairment.

At the hearing, the worker indicated that the wanted to pursue entitlement for chronic pain. In the circumstances, the Panel proceeded with the hearing regarding permanent organic impairment. The hearing will reconvene, if necessary, to deal with the other issues after the worker obtains a final decision from the Board regarding entitlement for chronic pain.

On the evidence, the Panel found that the worker did not have a permanent organic wrist impairment arising from the compensable accidents.

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References: Act Citation

- WSIA

Other Case Reference

- [w2608s]

Neutral Citation: 2008 ONWSIAT 1076

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**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.

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

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

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**Decision No. 810 08**

**18-Apr-2008**

**J. Parmar**

- Medical treatment (special)
- Preexisting condition (obesity)
- Rehabilitation, medical (cooperation)
- Supplements, FEL

The worker was entitled to FEL supplementary benefits while participating in medical rehabilitation to lose weight, which was medically required in order for the worker to undergo compensable hernia surgery.

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

References: Act Citation

- WCA

Other Case Reference

- [w2608s]
- BOARD DIRECTIVES AND GUIDELINES: Operational Policy Manual, Documents No. 15-05-04, 17-03-04, 18-04-12
- TRIBUNAL DECISIONS CONSIDERED: TRIBUNAL DECISIONS CONSIDERED: Decision No. 1246/87 (1988), 9 W.C.A.T.R. 210 refd to; Decisions No. 902/89 consd, 1447/06 consd

Neutral Citation: 2008 ONWSIAT 1082

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**Decision No. 696 02      18-Apr-2008      C. MacAdam - B. Wheeler - J. Crocker**

- Aggravation (preexisting condition)
- Health care (appliances or apparatus) (wheelchair)
- Pensions (reassessment)

The worker suffered a low back injury in 1988.

The Panel found that the worker had entitlement for permanent aggravation of his pre-existing condition, including cauda equina syndrome, and bowel, bladder and sexual dysfunction. He was also entitled to reassessment of his pension for low back disability. In addition, the worker was entitled to reimbursement for the cost of a wheelchair. He did not meet the criteria in Board policy of a severely impaired worker but was entitled to the wheelchair considering the merits and justice of the case.

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References: Act Citation

- WCA

Other Case Reference

- [w2608s]
- CROSS-REFERENCE: Decisions No. 696/02E,

696/021

Neutral Citation: 2008 ONWSIAT 1086

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**Decision No. 834 08**

**18-Apr-2008**

**E. Smith**

- Notice of accident (by worker) (disablement)

The worker appealed a decision of the Appeals Resolution Officer denying an extension of the time to file a claim.

The worker experienced back symptoms in April 2005, and went to a chiropractor. Later, he went to his family doctor, who referred him to a specialist. The worker did not file the claim until May 2006, after he saw the specialist.

The Vice-Chair concluded that the worker was entitled to the extension. This was a disablement case, where it is not always immediately apparent that work is the cause of an injury. Further, there were exceptional circumstances in this case. Board policy refers to coercive atmosphere in the workplace. In this case, the worker worked for a family business. He was supported by the family while having back problems, and also did not file a claim immediately out of feeling for his family. In a sense, the workplace was too lenient rather than too harsh, but the situation was somewhat similar to the situation addressed by Board policy.

The appeal was allowed.

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References: Act Citation

- WSIA 22

Other Case Reference

- [w2608s]
- BOARD DIRECTIVES AND GUIDELINES: Operational Policy Manual, Document No. 15-01-03

Neutral Citation: 2008 ONWSIAT 1081

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**Decision No. 895 08**

**17-Apr-2008**

**R. Hartman**

- Hearing loss
- Accident (date)

The worker retired in 1991. In 2003, the worker requested entitlement for noise-induced hearing loss. The Board granted entitlement retroactive to 1993, based on an audiogram from 1993. The worker appealed, claiming that the accident date should be earlier than 1993.

The worker has already been given considerable benefit of the doubt. Any closer examination of the medical documentation would not support an accident date earlier than already accepted by the Board. The appeal was dismissed.

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References: Act Citation

- WCA

Other Case Reference

- [w2608s]
- BOARD DIRECTIVES AND GUIDELINES: Operational Policy Manual, Document No. 16-01-04

Neutral Citation: 2008 ONWSIAT 1056

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**Decision No. 3152 00 17-Apr-2008**  
**ER2**

**R. Nairn**

- Reconsideration
- Time limits (appeal) (diligence of representative)

In accordance with Decision No. 3152/00R, the Vice-Chair reheard the worker's application for an extension of the time to appeal.

There was a delay in notifying the Tribunal of the appeal of almost six months. The delay appeared to be largely the result of the negligence of the worker's former representative. In the circumstances, the worker was entitled to the extension of the time to appeal.

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References: Act Citation

- WSIA

Other Case Reference

- [w2608s]
- CROSS-REFERENCE: Decisions No. 3152/00E, 3152/00ER

Neutral 2008 ONWSIAT 1068  
Citation:

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**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 2008 ONWSIAT 1051  
Citation:

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**Decision No. 1026 05 R 17-Apr-2008**

**R. Nairn**

- Reconsideration (clarification of decision)

The Vice-Chair clarified that Decision No. 1026/05 dealt only with the issue of the worker's R1 FEL award and not the D1 award.

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References: [Act Citation](#)

- WCA

Other Case Reference

- [w2608s]
- CROSS-REFERENCE: Decision No. 1026/05

Neutral 2008 ONWSIAT 1066  
Citation:

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**Decision No. 2928 07      17-Apr-2008**

**J. Bigras**

- Delay (onset of symptoms)
- Disablement (vibrations) (tools)
- Dupuytren's contracture
- Mining

A miner suffered a back injury in 1981. He also had entitlement for hand-arm vibration syndrome resulting from work with vibratory tools from 1970 to 1981. The worker appealed a decision of the Appeals Resolution Officer denying entitlement for Dupuytren's contracture.

The worker did not return to work as a miner after 1981 due to his back injury. The onset of symptoms of Dupuytren's contracture did not occur until 12 years later in 1993. Evidence did not establish a relationship between the worker's job as a miner and his Dupuytren's contracture. The appeal was dismissed.

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References:      Act Citation  
• WCA

Other Case Reference

- [w2608s]
- NOTE: This decision was released in French with an English translation.

Neutral 2008 ONWSIAT 1061  
Citation:

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**Decision No. 34 08      17-Apr-2008**

**A. Morris**

- Assembler
- Carpal tunnel syndrome
- Disablement (repetitive work)
- Notice of accident (just claim)

The worker appealed a decision of the Appeals Resolution Officer denying

entitlement for carpal tunnel syndrome in 1997, which the worker claimed resulted from repetitive work assembling window blinds.

There was a concern that the worker had not filed her claim within six months. The Vice-Chair agreed with Decision No. 1411/04 that the pre-1997 Act provides greater latitude for a worker who files a claim beyond the time limit than the WSIA. For claims payable out of the accident fund, s. 22(5) of the pre-1997 Act allows the claim to be filed beyond the time limit if the Board is of the opinion that the claim for compensation is a just one and ought to be allowed. The entails a consideration of the merits of the claim.

The Vice-Chair found that repetitive work contributed significantly to the carpal tunnel syndrome in the worker's dominant right. Accordingly, her claim was a just one. However, evidence did not establish a relationship between her work and the less pronounced, intermittent symptoms in her left hand.

The appeal was allowed in part.

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References:

Act Citation

- WCA 22(5)
- WSIA 22(3)

Other Case Reference

- [w2608s]
- TRIBUNAL DECISIONS CONSIDERED: 1411/04 apld

Neutral Citation: 2008 ONWSIAT 1055

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**Decision No. 359 08**

**17-Apr-2008**

**R. Hartman**

- In the course of employment (work relatedness test)

The worker appealed a decision of the Appeals Resolution Officer denying entitlement for an accident.

The employer had announced that it was closing. The worker bought some items that he purchased from the employer. The accident occurred as he was unloading the equipment at his home. The accident was not work-related. The appeal was dismissed.

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References:

Act Citation

- WSIA

Other Case Reference

- [w2608s]
- TRIBUNAL DECISIONS CONSIDERED: 1416/98 consd, 476/04 consd, 2173/06 consd

Neutral Citation: 2008 ONWSIAT 1067

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**Decision No. 1870 06 R 17-Apr-2008**

**J. Bigras**

- Reconsideration (consideration of evidence)

The worker's application to reconsider Decision No. 1870/06 was denied. The Vice-Chair considered the evidence and came to a reasonable conclusion. Correction of any minor misstatement of facts would not have changed the result of the decision.

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References: Act Citation

- WCA

Other Case Reference

- [w2608s]
- CROSS-REFERENCE: Decision No. 1870/06

Neutral Citation: 2008 ONWSIAT 1043