

Decision Summary

2008

Week 25

Decision Search Results

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Summaries

Decision No. 2252 06 R 16-Apr-2008

V. Marafioti

- Reconsideration (consideration of evidence)

The worker's application to reconsider Decision No. 2252/06 was denied. The Vice-Chair considered the evidence and came to a reasonable conclusion.

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References:

Act Citation

- WSIA

Other Case Reference

- [w2508s]
- CROSS-REFERENCE: Decision No. 2252/06

Neutral Citation: 2008 ONWSIAT 1032

Decision No. 2867 07 16-Apr-2008

A. Baker

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

A mechanic suffered from hand-arm vibration syndrome in March 2002, for which he was granted a 9% NEL award, increased to 15%. The worker appealed a decision of the Appeals Resolution Officer denying LOE benefits after termination of the worker's employment in March 2003.

The employer offered suitable modified work. The termination of employment was due to misconduct unrelated to the compensable injury. The worker was not entitled to further LOE benefits. The appeal was dismissed.

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References: [Act Citation](#)
• WSIA

[Other Case Reference](#)
• [w2508s]

Neutral Citation: 2008 ONWSIAT 1034

Decision No. 629 08 16-Apr-2008

M. Cohen

- Carpal tunnel syndrome
- Disablement (repetitive work)
- Pregnancy
- Office worker (keyboarding)

An office worker did not have entitlement for carpal tunnel syndrome. The worker had been performing keyboarding, which was repetitive but did not require forceful exertion, for 14 years without complaint. The onset of symptoms occurred when the worker was pregnant. Medical literature supports a clear relationship between carpal tunnel syndrome and pregnancy.

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References: [Act Citation](#)
• WSIA

[Other Case Reference](#)
• [w2508s]

Neutral Citation: 2008 ONWSIAT 1040

Decision No. 2536 06 15-Apr-2008

S. Clement - M. Christie - J. Crocker

- Jurisdiction, Tribunal (costs)
- Loss of earnings {LOE} (employability)

The worker requested payment of costs for post-hearing medical information gathered by a lawyer representing the worker in other matters. The request was denied. The Tribunal did not have jurisdiction to award costs.

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References: [Act Citation](#)

- WSIA

Other Case Reference

- [w2508s]
- PRACTICE DIRECTIONS CONSIDERED: Fees and Expenses (2007), 81 W.S.I.A.T.R. (online); Post-hearing Procedure (2007), 81 W.S.I.A.T.R. (online)
- TRIBUNAL DECISIONS CONSIDERED: Decision No. 168/92 (1992), 22 W.C.A.T.R. 279 refd to; Decision No. 987/06 apld

Neutral Citation: 2008 ONWSIAT 1021

Decision No. 1896 05

15-Apr-2008

J. Noble - M. Meslin - J. Crocker

- Earnings basis (student)
- Psychotraumatic disability
- Labour market re-entry {LMR} (expenses) (tools or equipment) (computer)
- Labour market re-entry {LMR} (suitability of program) (student)
- Health care (appliances or apparatus) (artificial nails)

While working at a summer job in a meat shop in August 2002, the worker caught her hand in a meat tenderizing machine. The worker appealed a decision of the Appeals Resolution Officer regarding entitlement for psychotraumatic disability and artificial nails, the appropriate SEB and her earnings basis.

On the evidence, the worker had entitlement for psychotraumatic disability.

There were splits in two of the worker's fingernails. They were sensitive and fragile, and there was nail bed deformity. However, there was medical evidence that most nail polishes and artificial nails contain toxins that can be toxic to the tissue from which the fingernails grow, and that polish and artificial nails are not recommended for people with problem nails. The Panel denied entitlement to payment for artificial nails.

The worker had completed high school, and was working at a summer job at the time of the accident. She intended to do some academic upgrading in September 2002 and to start a post-secondary course of study in January 2003. The Panel concluded that the worker was a student within the meaning of the Act and was entitled to an LMR plan based on a SEB of a career in social services. This was within the worker's restrictions and was, in fact, that course of study that the

worker ultimately pursued.

The worker had entitlement to benefits with an earnings basis using the salary of a social service worker. The worker wanted earnings to be based on the salary of a registered nurse, which was an occupation that the worker was originally thinking of pursuing. However, the Panel found that program of study for registered nursing was not appropriate for the worker, for reasons unrelated to the compensable accident.

The worker was also entitled to payment for purchase of a computer with special voice-activated programs needed to assist the worker in recording of lectures for her courses.

The appeal was allowed in part.

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References: Act Citation

- WSIA

Other Case Reference

- [w2508s]
- BOARD DIRECTIVES AND GUIDELINES: Operational Policy Manual, Documents No. 17-01-02, 18-02-08, 19-03-03, 19-03-06
- CROSS-REFERENCE: Decision No. 1896/051
- TRIBUNAL DECISIONS CONSIDERED: Decision No. 187/07 (2007), 82 W.S.I.A.T.R. (online) consd

Neutral Citation: 2008 ONWSIAT 1013

Decision No. 1878 06 15-Apr-2008

L. Gehrke

- Aggravation (preexisting condition) (disc, degeneration)
- Disablement (nature of work)
- Permanent impairment {NEL}
- Casino employment (slot machine attendant)

A slot machine attendant had entitlement for low back injury. The condition was a disablement from the nature of her work opening machines and carrying bags of coins. However, the worker did not have a compensable permanent impairment. She had a pre-existing condition. The injury did not contribute significantly to permanent back restrictions or to permanent aggravation of the pre-existing condition.

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References: Act Citation

- WSIA

Other Case Reference

- [w2508s]

Neutral Citation: 2008 ONWSIAT 1009

Decision No. 869 08

15-Apr-2008

M. Butler

- Fibromyalgia
- Permanent impairment {NEL} (stacking)

The worker suffered multiple injuries in a fall in 2000. The Board granted the worker a 30% NEL award for chronic pain. The worker appealed a decision of the Appeals Resolution Officer denying entitlement for fibromyalgia and denying a separate NEL award for organic impairment.

On the evidence, the worker was suffering from fibromyalgia. The entitlement for chronic pain was replaced with entitlement for fibromyalgia. The 30% award for chronic pain was replaced with a 30% NEL award for fibromyalgia.

The worker had thoracic and lumbar spine disc herniations resulting from the compensable accident. Considering Decisions No. 1395/98, 817/99 and 2011/03, the Vice-Chair found that the worker was entitled to a NEL award for these organic impairments in addition to the NEL award for the fibromyalgia.

The appeal was allowed.

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References: Act Citation

- WSIA

Other Case Reference

- [w2508s]
- BOARD DIRECTIVES AND GUIDELINES: Operational Policy Manual, Documents No. 15-04-03, 15-04-04
- TRIBUNAL DECISIONS CONSIDERED: 1395/98 consd, 817/99 consd, 2011/03 consd

Neutral Citation: 2008 ONWSIAT 1019

Decision No. 1231 00 R

15-Apr-2008

J. Noble

- Reconsideration (new evidence)

The worker's application to reconsider Decision No. 1231/00 was denied. The hearing panel considered the evidence and came to a reasonable conclusion. New evidence submitted by the worker did not provide reason to reconsider. The new evidence showed possible deterioration of the worker's condition after the release of Decision No. 1231/00. The worker should provide this new evidence to the Board.

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References: [Act Citation](#)

- WCA

[Other Case Reference](#)

- [w2508s]
- CROSS-REFERENCE: Decisions No. 1387/971, 1387/97, 1231/00

Neutral Citation: 2008 ONWSIAT 1016

Decision No. 894 07

15-Apr-2008

B. Cook

- Suitable employment

In Decision No. 1053/99, the Tribunal found that the worker had entitlement for hearing problems resulting from exposure to hazardous impact noise.

In this decision, the Vice-Chair found that work as a two motor operator was not suitable for the worker and that he was entitled to temporary benefits and a FEL award.

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References: [Act Citation](#)

- WCA

[Other Case Reference](#)

- [w2508s]
- CROSS-REFERENCE: Decisions No. 1053/99, 894/071

Neutral Citation: 2008 ONWSIAT 1027

Decision No. 2352 06

15-Apr-2008

A. Patterson - J. Seguin - D.

- Dependency benefits (death results from an injury)
- Subsequent incidents (outside work)

In Decision No. 2352/061, the panel found that the worker's common law spouse could pursue entitlement for survivor benefits in her own name but did not have authority to appeal other issues on behalf of the worker's estate without a Certificate of Appointment of Estate Trustee. The common law spouse did not obtain the certificate. Accordingly, the hearing proceeded only on the issue of survivor benefits for the common law spouse.

The worker suffered neck and shoulder injuries for which he was granted a 35% NEL award. The worker died in 1997 when he was crushed under a tractor that he was driving near a lake adjoining his residential property.

The Panel concluded that the most likely circumstances leading to the worker's death were that the worker was backing up the tractor. He was unable to turn his head due to his compensable neck injury, therefore he raised himself up away from the steering wheel in order to turn his body so that he could look behind him. In doing so, he caught his sleeve on the bucket control, raising the bucket and destabilizing the tractor, resulting in the tractor toppling over and crushing him.

Thus the compensable neck injury was a significant contributing factor, indeed the initiating factor, in the most probable chain of events leading to the worker's death. Accordingly, the common law spouse was entitled to survivor benefits. The appeal was allowed.

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References: [Act Citation](#)

- WCA

[Other Case Reference](#)

- [w2508s]
- CROSS-REFERENCE: Decision No. 2352/061 (2007), 81 W.S.I.A.T.R. (online)
- NOTE: This decision was released in French with an English translation.

Neutral Citation: 2008 ONWSIAT 1024

- Pensions (arrears)

In Decision No. 863/08, the Tribunal found that the worker suffered a low back injury in an accident in 1989. The Board then granted the worker a pension for permanent disability.

In this decision, the Vice-Chair confirmed the arrears date for the pension as determined by the Board.

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References: [Act Citation](#)

- WCA

[Other Case Reference](#)

- [w2508s]
- CROSS-REFERENCE: Decision No. 342/06

Neutral Citation: 2008 ONWSIAT 1023

Decision No. 1728 07 R 15-Apr-2008

J. Goldman

- Reconsideration (clarification of decision)

The Vice-Chair clarified Decision No. 1728/07 by stating that employment insurance benefits received by the worker during the year prior to the accident should be included in the calculation of the worker's earnings basis.

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References: [Act Citation](#)

- WCA

[Other Case Reference](#)

- [w2508s]
- CROSS-REFERENCE: Decisions No. 1161/99I, 1161/99, 1728/07
- NOTE: This decision was released in French with an English translation.

Neutral Citation: 2008 ONWSIAT 1011

Decision No. 683 08 15-Apr-2008

B. Doherty

- Intervening causes

- Recurrences (compensable injury)

The worker suffered a back injury in November 2002.

The Vice-Chair found that the worker had further entitlement in February 2003 when he experienced further back pain after shovelling snow at home. The snow-clearing incident was not a new and significant injury but, rather, a reappearance of the prior work-related low back condition.

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References: [Act Citation](#)

- WSIA

[Other Case Reference](#)

- [w2508s]

Neutral Citation: 2008 ONWSIAT 1026

Decision No. 684 08

15-Apr-2008

J. Josefo

- Jurisdiction, Tribunal (final decision of Board)
- Time limits (appeal) (previous withdrawal)

The worker suffered a back injury in 1991. In Decision No. 68/01, the Tribunal found that the worker suffered a permanent impairment. The Board then granted the worker a 20% NEL award, but denied a full FEL award. The worker appealed denial of the full FEL award to the Tribunal but, in Decision No. 1828/03, withdrew the appeal because of downside risk.

Subsequently, a Board adjudicator reviewed and increased the worker's FEL award but the Appeals Resolution Officer found that the review was inappropriate because the final FEL review had already taken place.

The worker now wanted to appeal the decision of the ARO denying a full FEL award. However, the ARO did not deal with that issue. Rather, the ARO found only that the award could not be reviewed. Further, the worker could not reinstate the earlier appeal to the Tribunal that he withdrew without first obtaining an extension of the time limit, which had now expired.

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References: [Act Citation](#)

- WCA

[Other Case Reference](#)

- [w2508s]
- CROSS-REFERENCE: Decisions No. 68/01, 1828/03

Neutral Citation: 2008 ONWSIAT 1006

Decision No. 2987 07 15-Apr-2008 J. Noble - V. Phillips - F. Jackson

- Earnings basis (recurrences)
- Accident (date) (occupational disease)

The worker suffered an acute attack of asthma on March 24, 2004. The Board granted entitlement with an accident date in 1997. The worker appealed.

The Board found that the worker had entitlement with an accident date in 1997. The Board then granted temporary benefits in 2004 based on the worker's higher recent earnings in 2004, but granted FEL and NEL benefits based on the worker's lower earnings with a previous employer in 1997.

There was evidence of functional abnormality associated with the worker's asthma in 1997. The Board correctly determined that the accident date should be in 1997. The onset in 2004 should be considered as a recurrence. The Board also correctly determined the worker's temporary benefits based higher earnings at the time of the recurrence in 2004 and FEL and NEL benefits based on earnings at the time of the original entitlement in 1997.

The appeal was dismissed.

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References: Act Citation

- WCA

Other Case Reference

- [w2508s]
- BOARD DIRECTIVES AND GUIDELINES: Operational Policy Manual, Documents No. 11-01-04, 11-01-15, 18-06-04

Neutral Citation: 2008 ONWSIAT 1007

Decision No. 459 08 15-Apr-2008 S. Martel

- Interest (pre-1990 accident)

The worker suffered a knee injury in 1989. In 2003, the Board granted the worker a pension retroactive to the date of the accident. The worker appealed a decision of the Appeals Resolution Officer denying payment of interest on the retroactive pension benefits.

The Vice-Chair agreed with Tribunal decisions finding that the claim in Board policy refers to the accident date. Since the claim was established in 1989, and the payment of the pension arose out of a decision of the Claims Adjudicator and not from an appellate decision, the worker would not be entitled to interest unless there were exceptional circumstances. There were no exceptional circumstances in this case.

The worker was not entitled to payment of interest on the pension. The appeal was dismissed.

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References: Act Citation

- WCA

Other Case Reference

- [w2508s]
- BOARD DIRECTIVES AND GUIDELINES: Operational Policy Manual, Document No. 18-01-08
- NOTE: This decision was released in French with an English translation.
- TRIBUNAL DECISIONS CONSIDERED: Decision No. 1094/94 (1996), 39 W.C.A.T.R. 98 consd; Decision No. 24/02 (2003), 65 W.S.I.A.T.R. 43 apld; Decisions No. 495/96 refd to, 810/99 refd to, 1371/01 refd to, 2197/01 refd to, 124/07 consd

Neutral Citation: 2008 ONWSIAT 1022

Decision No. 317 08

14-Apr-2008

A. Patterson

- Future economic loss {FEL} (review) (after sixty months)
- Permanent impairment {NEL} (degree of impairment) (back)

The worker suffered a back injury in 1992, for which he was granted a 33% NEL award. In 2000, a year after the final FEL review, the worker suffered a recurrence. The Board initially denied entitlement for the recurrence, but, in 2005, an Appeals Resolution Officer granted entitlement for the recurrence and for a NEL redetermination. The Board then increased the NEL award from 33% to 34%. The worker now

appeals a decision of the ARO confirming the 34% NEL award and denying redetermination of the worker's FEL award.

On the evidence, the Vice-Chair confirmed the 34% NEL award.

A worker is entitled to review of a FEL award if there has been a significant deterioration of the worker's condition that results in a redetermination of the degree of permanent impairment.

An increase of a worker's NEL rating by a mere percentage point is not necessarily indication of a significant deterioration of the worker's condition. However, in the circumstances, the Vice-Chair was satisfied that the recurrence in 2000 caused a significant deterioration of the worker's condition. Accordingly, he was entitled to review of his FEL award.

The appeal was allowed in part.

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References: Act Citation

- WCA

Other Case Reference

- [w2508s]
- BOARD DIRECTIVES AND GUIDELINES: Operational Policy Manual, Document No. 18-04-14
- TRIBUNAL DECISIONS CONSIDERED: 549/07 refd to

Neutral Citation: 2008 ONWSIAT 998

Decision No. 798 07

14-Apr-2008

M. Butler

- Aggravation (preexisting condition)
- Second Injury and Enhancement Fund {SIEF} (preexisting condition)

The worker suffered a low back injury in December 2004. The employer appealed a decision of the Appeals Resolution Officer finding that entitlement should not be limited to aggravation basis and denying SIEF relief.

Board Operational Policy Manual, Document No. 11-01-015, provides for allowance of entitlement on an aggravation basis when the worker has a pre-accident impairment and has suffered a minor work-related injury or illness to the same body part or system. A pre-accident impairment is one that has produced periods of impairment or illness requiring health

care and has caused a disruption in employment. In this case, the worker suffered a minor work-related injury. He had a pre-existing back condition but had not lost any time off work. Accordingly, the worker had entitlement for the accident without it being limited to an aggravation basis.

In addition, the employer did not have entitlement to SIEF relief. He did not have a pre-accident disability and did not have a condition which produced periods of disability in the past and disruption of employment as required by Document No. 14-05-03.

The appeal was dismissed.

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References: [Act Citation](#)

- WSIA

[Other Case Reference](#)

- [w2508s]
- BOARD DIRECTIVES AND GUIDELINES: Operational Policy Manual, Documents No. 11-01-15, 14-05-03
- CROSS-REFERENCE: Decision No. 798/071

Neutral Citation: 2008 ONWSIAT 995

Decision No. 847 08

14-Apr-2008

J. Goldman

- Availability for employment (job search)
- Temporary partial disability

The worker suffered a low back strain in 1985. In Decision No. 1044/94, the Tribunal found that the worker also had entitlement for a herniated disc. In 1999, the Board granted a 10% pension retroactive to the date of the accident. In Decision No. 187/03, the Tribunal found that the worker had entitlement to supplementary benefits under s. 147(4) of the pre-1997 Act from April 1990 to age 65.

In this decision, the Vice-Chair found that the worker was entitled to full temporary partial disability benefits from April 1990 to February 1992, during which time he participated in meaningful self-directed rehabilitation activity.

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References: [Act Citation](#)

- WCA

Other Case Reference

- [w2508s]
- CROSS-REFERENCE: Decisions No. 1044/94, 187/03

Neutral Citation: 2008 ONWSIAT 993

Decision No. 1173 06 14-Apr-2008 S. Sutherland - J. Robb - D. Beattie

- Procedure (absent parties)

The worker's appeal was deemed to be abandoned after the worker failed to appear for the hearing twice. The worker may not bring the appeal again.

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References: Act Citation

- WSIA

Other Case Reference

- [w2508s]
- CROSS-REFERENCE: Decision No. 1173/061
- PRACTICE DIRECTIONS CONSIDERED: Notice of Hearing and Failure to Attend (2007), 81 W.S.I.A.T.R. (online)

Neutral Citation: 2008 ONWSIAT 997

Decision No. 305 08 R 11-Apr-2008 M. Crystal

- Reconsideration (procedural error) (opportunity to make submissions)
- Reconsideration (standard of proof)

In Decision No. 305/08, the Vice-Chair found that the worker was entitled to an extension of the time to appeal. The employer applied for reconsideration of Decision No. 305/08.

The cover page of the case materials indicated, in error, that the employer was not participating. In fact, the employer had provided written submissions. Those submissions were not considered at the original hearing. The failure to consider those submissions was an error. However, the issue on an application for reconsideration is not whether there was a significant error but whether the error, if corrected, would

probably have changed the result of the original decision.

The Vice-Chair now considered the employer's submissions and found that they would not have changed the original result, which was based mainly on the need to consider the issues for which the time extension was requested in order to consider other related issues for which the appeal was in time.

The application to reconsider was denied.

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References: Act Citation

- WSIA

Other Case Reference

- [w2508s]
- CROSS-REFERENCE: Decision No. 305/08

Neutral Citation: 2008 ONWSIAT 984

Decision No. 607 08

11-Apr-2008

S. Martel - M. Christie - A. Grande

- Assessment of employers (retroactivity)
- Registration of employers

As a result of an information sharing program with the Canada Revenue Agency, the Board became aware that the employer was not reporting to the Board. In 2005, the Board advised the employer that it had to register. The Board assessed the employer retroactively to 2002. The employer appealed regarding the retroactivity date.

The employer had been in business since 1973 under a different name, and in its current existence since the mid-1980s. Section 75 of the WSIA requires an employer to register within 10 days of becoming a Schedule 1 or 2 employer. There is no set period of retroactivity in Board policy for failure to register. The Board could have assessed the employer retroactively for several years prior to 2002. Under the information sharing agreement with the CRA, the Board does not impose penalties and generally assesses premiums from 2002. That date was appropriate in this case.

The Board has a voluntary registration policy under which it essentially provides amnesty for employers who register voluntarily. That policy did not apply in this case because the employer was identified as a result of the information sharing program.

The appeal was dismissed.

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References: [Act Citation](#)
• WSIA 75, 81

[Other Case Reference](#)
• [w2508s]
• BOARD DIRECTIVES AND GUIDELINES: Operational Policy Manual, Document No. 14-02-06
• TRIBUNAL DECISIONS CONSIDERED: Decision No. 131/87 (1989), 10 W.C.A.T.R. 51 consd; Decision No. 1564/07 (2007), 83 W.S.I.A.T.R. (online) consd

Neutral Citation: 2008 ONWSIAT 971

Decision No. 172 06 R 11-Apr-2008

T. Carroll

- Reconsideration (new evidence)

The worker's application to reconsider Decision No. 172/06 was denied. New evidence submitted by the worker was similar to other evidence considered at the original hearing. The worker was essentially trying to re-argue the case.

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References: [Act Citation](#)
• WCA

[Other Case Reference](#)
• [w2508s]
• CROSS-REFERENCE: Decision No. 172/06

Neutral Citation: 2008 ONWSIAT 975

Decision No. 3015 07 11-Apr-2008

J. Parmar

- Chronic pain
- Psychotraumatic disability

The worker suffered a shoulder injury in 1999. In Decision No. 239/03, the Tribunal found that the worker also suffered a thoracic spine injury in the accident.

In this decision, the Vice-Chair found that the worker had entitlement for psychotraumatic disability but not for chronic pain.

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References: [Act Citation](#)

- WSIA

[Other Case Reference](#)

- [w2508s]
- CROSS-REFERENCE: Decision No. 239/03

Neutral Citation: 2008 ONWSIAT 985

Decision No. 270 08

11-Apr-2008

S. Martel

- Assessment of employers (assessable payroll)
- Assessment of employers (retroactivity)
- Class of employer (dual rates) (segregated payroll)

The employer appealed a number of issues regarding an audit in 2000.

The employer did not properly segregate its payroll between workers engaged in forest product trucking and those engaged in other activities, despite have been given every reasonable opportunity to produce accurate records.

The Board made the adjustment to the employer's classification retroactive five years. The period of retroactivity was appropriate in this case. The employer knew since at least 1988 that the Board did not agree with the way the employer was segregating payroll. The employer did not co-operate with the audit. The employer was charged and convicted with an offence under the WSIA for obstructing and hindering the audit process. In these circumstances, the Board could have adjusted the employer's account even beyond five years.

The employer made a payment of \$50,000 to his wife (now his ex-wife) but did not include that amount in assessable payroll. The amount was paid pursuant to a separation agreement. The amount was not earnings paid to a worker employed under a contract of service. Accordingly, the \$50,000 did not have to be included as insurable earnings.

The appeal was allowed in part.

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References: [Act Citation](#)

- WSIA

Other Case Reference

- [w2508s]
- BOARD DIRECTIVES AND GUIDELINES: Operational Policy Manual, Documents No. 08-04-03, 14-02-06

Neutral Citation: 2008 ONWSIAT 972

Decision No. 1420 06 R 11-Apr-2008

T. Carroll

- Reconsideration (new evidence)

The worker's application to reconsider Decision No. 1420/06 was denied. A new medical report submitted by the worker did not constitute substantial new evidence. The report was based on findings either not accepted by the Vice-Chair or to which the worker has no entitlement.

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References: Act Citation

- WSIA

Other Case Reference

- [w2508s]
- CROSS-REFERENCE: Decision No. 1420/06

Neutral Citation: 2008 ONWSIAT 979

Decision No. 397 08 11-Apr-2008

S. Ryan - B. Young - R. Briggs

- Asthma

The worker did not have entitlement for occupational asthma. The worker submitted that the case was similar to Decision No. 146/04, but the Panel distinguished that case on the basis that it involved a worker who did not smoke and did not have a family history of respiratory problems.

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References: Act Citation

- WCA

Other Case Reference

- [w2508s]
- TRIBUNAL DECISIONS CONSIDERED: 146/94 distd

Neutral Citation: 2008 ONWSIAT 980

Decision No. 531 08 11-Apr-2008 S. Martel - E. Tracey - D. Broadbent

- Assessment of employers (retroactivity)
- Detrimental reliance
- Assessment of employers (assessable percentage) (labour percentage)

As a result of an audit in 2002, the Board decided that the employer had to report the full amount of payments made to drywall installers, tapers and insulators as insurable earnings. The Board made the reassessment retroactive to January 1, 2000. The employer appealed.

The employer had only be reporting two-thirds of the amounts paid to the subcontractors, relying on Board Operational Policy Manual, Document No. 08-04-04, regarding percentages for payments to subcontractors who purchase their own materials but do not keep a record of expenses for materials. Under new Board policy in 2004, only materials that qualified as major building materials could be deducted. However, Document No. 08-04-04, which was applicable during the period in question, did not define "materials." The Panel was satisfied that the term "materials" in Document No. 08-04-04 could be interpreted as including more than just major building materials.

However, even when records of expenses are not kept for materials supplied by the subcontractors, the percentage deduction for the materials component of a contract should bear some resemblance to reality before an employer can apply the percentage table in the policy. A blanket one-third deduction did not accurately reflect the non-labour portion of the contracts in this case. Not every trade worker provided material and others provided very little in the way of materials.

The Panel concluded that the employer was not entitled to report only two-thirds of the payments to the subcontractors. However, there was a great deal of ambiguity surrounding this issue and the employer reasonably, though incorrectly, relied on the percentage tables found in the Board policy. In the circumstances, the reassessment should be effective only from January 1, 2002.

The appeal was allowed in part.

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References: Act Citation

- WSIA

Other Case Reference

- [w2508s]
- BOARD DIRECTIVES AND GUIDELINES: Operational Policy Manual, Documents No. 08-04-04, 14-02-10
- TRIBUNAL DECISIONS CONSIDERED: 1425/06 consd

Neutral Citation: 2008 ONWSIAT 974

Decision No. 1368 06 R 10-Apr-2008

V. Robeson

- Reconsideration (clarification of decision)

The Vice-Chair clarified Decision No. 1368/06 by stating that the conclusion in the original decision that a specific job was suitable for the worker was reached on the basis of the worker's permanent impairment of her neck, elbows, wrists and left shoulder.

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References: Act Citation

- WCA

Other Case Reference

- [w2508s]
- CROSS-REFERENCE: Decision No. 1368/06

Neutral Citation: 2008 ONWSIAT 962

Decision No. 815 08 10-Apr-2008

L. Gehrke

- Permanent impairment {NEL} (redetermination) (significant deterioration)
- Loss of earnings {LOE} (review) (after seventy-two months)

The worker suffered a back injury in January 2001, for which he was granted a 15% NEL award.

The Vice-Chair found that the worker was entitled to redetermination of his NEL award based on significant deterioration of his condition. The worker was also entitled to a review of his LOE benefits more than 72 months after the date of the injury under s. 44(2.1)(e) of the WSIA

because of a significant deterioration of his condition that is likely to result in a redetermination of the degree of permanent impairment.

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References: [Act Citation](#)
• WSIA 44(2.1)(e)

[Other Case Reference](#)
• [w2508s]

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Decision No. 2721 07 10-Apr-2008

J. Parmar

- Cleaner
- Disablement (nature of work)

A custodian did not have entitlement for cervical disc degeneration. The condition was not a disablement from cleaning work. A causal relationship between a job and an injury goes beyond the simple manifestation of symptoms.

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References: [Act Citation](#)
• WSIA

[Other Case Reference](#)
• [w2508s]
• TRIBUNAL DECISIONS CONSIDERED: 2456/05
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