Appeals Commission for Alberta Workers' Compensation

Docket No.: AC0412-23-33
Decision No.: 2024-0442

Introduction

[1] The worker sought Workers' Compensation Board (WCB) coverage for left foot plantar fasciitis (PF) and additional entitlement for complex regional pain syndrome (CRPS) as a second injury. Specifically, the worker contends:

[1.1] Her PF developed over time and was caused directly by her job duties as a former cake decorator over the course of a 16-year career; and

[1.2] While treating her work-related injury of left foot PF, she received a cortisone injection that caused a second injury, namely CRPS.

[2] A WCB adjudicator denied the worker's claim, initially on November 8, 2021, and again on April 25, 2022. The adjudicator's denial was upheld by a supervisor. The worker, through a representative, appealed the adjudicator's decision to the WCB's Dispute Resolution and Decision Review Body (DRDRB).

[3] The DRDRB, in turn, upheld the adjudicator's decision and determined the worker did not have an acceptable claim for left foot PF and therefore did not have entitlement for a second injury of left foot CRPS.

[4] The worker disagreed with this decision and appealed the November 24, 2022, DRDRB decision to the Appeals Commission, through a different representative, within the legislative deadline.

[5] On July 17, 2023, the second representative filed a request for reconsideration of the DRDRB's decision based on new evidence. On July 20, 2023, the DRDRB re-examined its decision and determined that a May 2, 2023, medical report did not meet Policy 01-08 criteria for new evidence and dismissed the worker's reconsideration request. Although this issue was not appealed, the original decision was appealed in time and the Appeals Commission has jurisdiction to consider new evidence, including this report.

[6] By letters dated October 3, 2023, the Appeals Commission provided the employer and the WCB with notice of the worker's appeal and the opportunity to attend the hearing. Neither the employer nor the WCB elected to participate.

[7] The Appeals Commission set a hearing date which the worker's current representative adjourned.

[8] The worker then retained a new representative who provided the Appeals Commission with a *Notice of Representation* dated March 5, 2024.

[9] On March 27, 2024, the Appeals Commission confirmed the hearing details and the issues of appeal with the third representative.

[10] On June 24, 2024, the Appeals Commission provided the current representative with an electronic copy of Appeal Documents Package (ADP) and the WCB with an ADP Document Index.

[11] On September 12, 2024, the worker's representative (the representative) provided the Appeals Commission with additional documents that were numbered 228 to 282 and added to the ADP.

[12] The worker and her representative virtually attended the Video Conference hearing and provided the Appeals Commission with signed privacy agreements.

Preliminary Matters

[13] The representative provided the Appeals Commission with a 14-page written submission prior to the hearing which the representative confirmed reviewing with the worker.

[14] During the hearing and following questions from the panel, the representative withdrew his submissions regarding claim acceptance based on an aggravation of a pre-existing condition. In the absence of any evidence supporting a pre-existing condition in the worker's left foot, the panel accepted the representative's withdrawal of this issue.

[15] There were no other preliminary issues.

Decision

[16] We listened to the submissions from both the representative and the worker, considered their responses to our questions and reviewed the evidentiary package provided to us. Having done so, we reverse the DRDRB's decision on both issues. What follows below is our analysis of the evidence in the context of relevant policy and legislation and the reasons underlying our decision.

Issues

[17] There are two interrelated issues of appeal in that Issue 2 flows from Issue 1 only if we first determine there is a compensable injury:

[18] **Issue 1: Does the worker have an acceptable claim for left foot plantar fasciitis?**

[19] **Issue 2: Does the worker have additional entitlement for complex regional pain syndrome as a second injury?**

Key Submissions

[20] The representative provided both oral and written submissions that apply to both issues so they will only be summarized once to avoid unnecessary duplication in this decision. His oral submissions differed from his more extensive written submissions. Since both submissions form part of the record what follows below is a summary of our understanding of the key arguments, which we found succinctly highlighted during his oral submission.

[21] Notably absent are any comments from the panel on issues where the representative strayed from presenting arguments on behalf of the worker to presenting evidence, since he is not an expert witness; arguments relying on common law precedent where WCB policy provides an adequate framework for analysis, primarily because we are not bound by precedent, particularly where cases deviate from the Workers' Compensation Act, RSA 2000 c W-15 (*WCA*); and, any case studies that have not been reviewed by medical practitioners who have treated the worker and applied the principles of the study to the worker's circumstances.

[22] Finally, to the extent that we relied on the worker's evidence and/or accepted specific submissions made by the representative, we address these comments in our analysis which are only repeated once to avoid unnecessary duplication.

The Representative's Submissions

[23] The worker's prolonged and repeated job duties (standing, walking, "hustling" in the store on hard floors) over time contributed to her developing PF, which was further aggravated by her continued employment. Treatment of her PF directly contributed to the worker developing CRPS.

[24] The diagnosis of PF is clear and supported by expert opinion (podiatrist) and diagnostic findings (bone scan).

[25] Where there is medical conflict, policy says we must give the worker the benefit of the doubt.

[26] The balance of proof is not incontrovertible proof beyond any reasonable doubt, and the worker is not required to establish her diagnosis with scientific certainty.

[27] The WCB determined there was no clear workplace connection to the injury based on a lack of understanding of the true nature of the worker's job, which was much more physically strenuous than its title suggests. This was corroborated by two independent co-worker statements.

[28] The WCB dismissed the worker's claim for PF without considering that there is no alternative medical explanation for this injury aside from work.

[29] The worker spent 24 to 32 hours at work per week, which equates to 21,000 hours over the course of her employment, either walking/standing on concrete floors and she developed PF. She has met the "but for" test on causation. She had an onset of problems in her left foot in 2018 that progressively got worse until she was formally diagnosed with PF in 2019.

[30] The worker developed a second condition, CRPS, directly from the PF treatment and this meets the Policy 03-02 criteria.

[31] We should reverse the DRDRB's decision and accept both claims.

The Worker's Submissions

[32] The worker agreed with but added to her representative's submissions.

[33] The panel found the worker to be a credible, straightforward witness and an accurate historian. Her description of the store, her daily work environment, her attempts to address the problems both independently and with management and her medical history were particularly instructive for the panel.

[34] She worked primarily at the store in the mall since 2003 which was one of the largest stores in Alberta.

[35] She has been unable to work since 2019 and was unaware that WCB might cover this type of injury until her union representative approached her to discuss a corporate merger resulting in the store's closure. The union representative asked her why she had been off work so long and that precipitated a discussion, in 2021, about her injury and how it could be work related.

[36] She was told that to qualify for a severance package she had to return to work for a specified period which she was unable to do because at that point, she was unable to stand for longer than 20 minutes or to wear a shoe without experiencing considerable nerve pain. Both standing and the wearing of shoes were necessary components of her job.

[37] The pain in her left foot started in 2018 and gradually got worse as she continued to work. She never had any prior problems with her feet. She tried everything she could to alleviate the pain because she loved her job and wanted to keep it. She asked for mats, bought specialized shoes, bought custom orthotics, went for therapy, asked for help at work to access supplies, rested after work, reduced her hours, and ultimately went on a medical leave when she could no longer stand.

[38] Eventually she sought medical treatment and that was when the doctor recommended a cortisone shot. She had several cortisone shots administered by two different doctors.

[39] She knew the day after she received the last cortisone shot that there was a problem because her heel was red, deflated, and painful to the touch. It took many appointments and several years for her to figure out the cause. She now understands that the second doctor hit a nerve when he administered the cortisone shot and that resulted in her developing CRPS.

[40] What began as a foot/heel problem at work has changed her life for the worse. She feels as though she has been fighting forever to be heard. She misses her old life including her old job. This injury has significantly affected her life and she is grateful to finally find a representative that understands her injury and a forum to explain the impact of the injury on her life. For the first time she feels she has been heard.

Analysis – Issue 1

Legislation and Policy

[41] Throughout the decision, we refer to legislation current as of the hearing date and to policies effective on the initial WCB decision date (October 30, 2020), unless directed otherwise. In this appeal, the April 1, 2024, version of the *WCA* applies to the appeal issue.

Jurisdiction to hear this appeal which applies to both appeal issues

[42] The Appeals Commission's authority to hear the worker's appeal flows from section 13.1(1) of the *WCA,* which provides it exclusive jurisdiction to examine, inquire into, hear and determine all matters and questions arising under the *WCA* and its regulations, including the November 24, 2022, DRDRB decision.

[43] The Appeals Commission is the final level of appeal for DRDRB decisions under the *WCA* and its decisions are conclusive and not open to review by any court.

[44] Section 13.2(6)(b) directs the Appeals Commission to follow the *WCA* and relevant WCB policy when hearing an appeal.

Issue 1: Does the worker have an acceptable claim for left foot plantar fasciitis?

Legislative and Relevant WCB policies

[45] In addition to the sections above, we also considered the following WCB policies:

[45.1] Policy 02-01, Part I, Policy and Interpretations 1.0, 2.0, 3.0 and 4.0 (Issue Date: April 3, 2018).

[45.2] Policy 02-01, Part II, Application 1: Employment Hazards, Questions 1, 3 and 9 (Issue Date: April 3, 2018); Application 7: Causation, Questions 1, 2, 3, 4, 5, 6 and 9) (Issue Date: April 3, 2018).

[45.3] Policy 03-01, Part I, Policy and Interpretation 1.0, 2.0, 3.0 and 4.0 (Issue Date: April 1, 2021); Policy 03-01, Part II, Application 1: Relationship to Compensable Accident, Questions 1, 2, possibly 3, and 8 (Issue Date: July 4, 2018).

[46] Excerpts of all legislation and policy cited in the decision are found in Appendices A and B.

[47] The *WCA* and WCB policies provide that the WCB will compensate a worker who suffers personal injury by an "accident" that occurs at a time and place consistent with work and results from exposure to circumstances that create a risk of injury. (*WCA*, sections 1(1)(a) and 24(1) and Policy 02-01, Part I, Interpretations 1, 2 and 3).

[48] Policy 03-01, Part I, provides that the WCB will determine whether an injury resulted in a compensable injury. When determining responsibility, the WCB will evaluate the relationship between the injury and the "accident". Where the relationship between the injury and the "accident" is not obvious, policy states that the WCB should examine other information, particularly medical information, to determine whether a relationship indeed exists.

[49] Policy 03-02, Part 1, directs that when an "accident" causes a pre-existing condition or disease to deteriorate or become symptomatic to the point where a worker is no longer able to perform all aspects of their job, the WCB shall allow entitlement based on an aggravation factor. The same policy indicates a "pre-existing condition" is any pathological condition which, based on a confirmed diagnosis or medical judgment, pre-dates a work-related injury. An "aggravation" is the clinical effect of an "accident" on a pre-existing condition, resulting in temporary or permanent clinical impairment and/or a loss of earning capacity (Policy 03-02, Part I, Interpretations 1.0 and 2.0).

[50] Adjudication under Policy 03-02, Part II, requires clear documentation of a pre-existing condition and evidence that the "accident" aggravated the condition. WCB determines if an "accident" has aggravated a pre-existing condition by considering the relationship between the pre-existing condition and the "accident",

including the mechanism of injury, the extent or severity of the underlying condition, and the degree to which the injury may have affected the condition. Policy indicates there must be clear documentation of a pre-existing condition and it must be apparent from objective medical information that the "accident" caused the condition to worsen, at least on a temporary basis (Policy 03-02, Part II, Application 1, Questions 1 and 2)

[51] The combined effect of these legislative and policy requirements is the following:

[51.1] There must be a cause-and-effect relationship between an injury and the worker's employment activities.

[51.2] In situations where there is a pre-existing condition, the medical evidence must show the pre-existing condition worsened because of an "accident" that arises out of and occurs in the course of employment.

[51.3] Coverage for personal injury caused by performance of employment activities occurring over time is permissible based on our interpretation and following precedent established by Appeals Commission Decisions 2009-990 and 2010-836, amongst many others.

Question to be Answered

[52] The following facts are not in dispute:

[52.1] The date of accident is August 18, 2018, which is consistent with the date on the Worker Report of Injury. This report indicates the worker reported a left foot injury to her bakery manager on August 18, 2018, and sought medical treatment for a left foot injury/disorder at a medical clinic on the same date. The injury progressively worsened over the following 8 months until the worker was diagnosed in 2019 with left heel PF.

[52.2] There is no evidence of a specific event that caused the worker personal injury to her left foot on August 18, 2018. The "accident" in this case is purportedly the worker's performance of work duties as a cake decorator over a 16-year period with her former employer.

[52.3] The claim was reported by the worker to the WCB on September 15, 2021.

[52.4] The store where the worker was employed in 2018 was permanently closed in 2022.

[52.5] The WCB did not investigate the store prior to its permanent closure.

[52.6] The worker is seeking claim acceptance for the progressive development of left foot PF on a direct causal basis.

[53] To decide Issue 1, we must determine whether the worker's left heel PF occurring on or about August 18, 2018, was causally related (direct responsibility) to the performance of her work duties with the employer over time.

Evidentiary Findings and Reasons

[54] We find the worker's left foot PF is causally related to the performance of her work duties over time on a direct causal basis, according to the medical evidence before us. Our reasons and the evidence we relied on in making this finding follows.

[55] Policy tells us that for the worker to succeed on a direct causal basis (including on a progression) she must, on balance, prove an exposure to an employment hazard, at a time and place consistent with employment obligations, and have an injury causally related to her employment duties.

[56] The DRDRB resolution specialist reviewed the Worker Report of Injury, Worker's Progressive Injury Questionnaire, the Physical Demands Analysis (PDA), and heard submissions from both the worker and her previous representative. After considering this information, the resolution specialist did not dispute that the worker's job duties posed an employment hazard that presented a risk of injury. The resolution specialist also did not dispute that the injury happened at a time and place consistent with the worker's employment obligations. Based on our review of the ADP, including statements from the former manager and co-worker, coupled with the worker's oral evidence (which will be outlined when assessing the third criteria), we see no reason to disturb these findings regarding the first and second policy criteria to determine claim acceptance.

[57] That leaves the third criteria of causation for consideration which is the crux of the dispute underlying Issue 1. Specifically, whether the worker's left heel PF was causally related to her employment duties over time.

[58] While policy tells us this is largely a medical issue to resolve, it also requires a proper understanding of the worker's job duties. Consequently, we spent a considerable portion of the hearing listening to the worker explain the 2018 injury and her job duties over the course of her 16-year employment and asking for clarification or elaboration where necessary. The worker's uncontroverted evidence was accepted by this panel and what we learned was the following:

[58.1] The worker was a part-time cake decorator who worked with another full-time cake decorator in a grocery store in a mall. It was one of two grocery stores in a northern municipality and at the time, one of the largest stores in the province. There were two cake decorators in this store. While she was designated a part time employee, she often worked four to five days per week, full time hours, alone, through breaks, and past her assigned eight-hour shifts (which varied between: 6 a.m. to 2 p.m; 7 a.m. to 3:30 p.m.; and 8 a.m. to 4:30 or 5:00 p.m.). She explained the full-time

decorator had seniority in a unionized workplace which meant the other decorator had more vacation time than the worker and the worker was required to cover her colleague's shifts whenever she was absent. The only time that the two decorators worked together routinely was prior to major holidays.

[58.2] The bakery was busy, and her job entailed more than decorating cakes. She was also responsible for taking and preparing custom orders; refilling stock from the stockroom; lifting 30 to 40 pound bags of flour, dry goods and large plastic tubs of fillings and toppings; pulling items for product assembly from the freezer and supply room; "shopping" for items in store which were required for product assembly; refilling display cases with product; dealing with customer inquiries; on occasion, helping customers to their car; cleaning appliances and work station surfaces; and also decorating cake orders. She often worked with tight deadlines and had "to hustle" to complete all tasks, which often required working hours that exceeded her 8-hour shift, particularly when she worked alone, which was the majority of the time.

[58.3] The cake decorating station was within the bakery and she worked primarily standing behind two stainless steel tables/islands. The bakery had a small freezer within her immediate area where they stored smaller items and bigger stock items were housed in a separate room at the back of the bakery or in the general stock room. She loaded items onto a big rolling trolley with racks to move items through the store when she was required to refill display cases or obtain frozen product (e.g., boxes of half slab cakes) for product assembly. The shelving was primarily above her head, so she routinely was on her toes reaching for or replacing items and/or bent over the stainless-steel table when decorating products. She is, in her own words, short and the tables were not adjustable which required her to stand to decorate product. Her work tasks varied but completing custom orders was the priority and once done, all other tasks were undertaken during her shift.

[58.4] Her shift was often 8 to 10 hours long and although she was permitted 30 minutes for lunch and two,15-minute breaks, she usually worked through her breaks taking time to grab a coffee or step outside for a cigarette. The lunchroom was upstairs and as her condition worsened it became harder for her to navigate stairs, so she often remained on the ground level when on shift.

[58.5] We acknowledge a discrepancy between the employer's evidence and the worker's evidence in terms of the hours of a part-time employee. There is also no confirmation as to the frequency with which she worked alone, worked overtime and whether her workload was intended to be completed by one or two employees. This becomes more relevant if the worker routinely worked alone. These are issues that the WCB can investigate if

necessary but since the employer declined to participate in the appeal and in the absence of evidence to the contrary, we have no reason not to accept the worker's evidence on these points.

[58.6] The worker did not dispute the accuracy of the PDA, but we understand she feels it does not encompass accurately the physical challenges of the job, which were magnified by the pace of the work and the store layout. For instance, the PDA does not depict the store layout, the flooring material, the distance that the worker would have to cover to fulfil orders and restock items, how many times that would occur per shift, or the configuration of overhead and lower-level cabinets which, given her height, required her to strain upward on her toes or bend awkwardly to access items from below. We also noted that standing and walking were both listed as frequent activities comprising 34 to 66 percent of the worker's shift, that sitting was not required and that the photos showed no chairs or stools at the tables. We interpret this to mean that the worker's entire shift, (minus breaks, when she took them), was spent on her feet in some capacity - whether standing, walking, climbing, bending, squatting, reaching, lifting, carrying, pushing, pulling, balancing and/or gripping, which appears consistent with the worker's oral evidence. The hours worked per shift, shifts worked per week and number of decorators per shift could have been easily verified with further investigation but in the absence of this information, we had no reason to question the worker's evidence.

[58.7] As for the bakery and store configuration, we find the statements from the two co-workers corroborate the worker's evidence regarding the physicality of the position, including:

- the distance of the bakery to the primary freezer;
- the size of the store;
- the number of trips routinely required per shift to the freezer;
- the continuity of time spent on her feet per shift;
- the worker's reports of increasing pain in 2018/2019;
- the challenges she encountered meeting the work demands as her injury progressed; and
- the efforts undertaken by her manager to assist her as the condition deteriorated.

[58.8] The nuances of the job as described above by the worker are not something that a generic job description can fully capture. For this reason, we prefer

and attach more weight to the worker's evidence since she performed the work on a routine basis in the same location for 16 years. Moreover, we recognize the very nature of the job changed depending on the number of custom orders that the worker received, holidays/special occasions and whether there was one decorator on shift or two, which means that the functional and physical requirements were not as static as the PDA implies.

[59] With this factual background in mind, we next considered the medical evidence to assess the issue of causation. In doing so, we noted the following:

[59.1] The worker was examined and diagnosed with PF in her left heel by a podiatrist on March 16, 2019. The podiatrist was aware of the worker's job duties and linked her left foot injury to her work. Specifically, the podiatrist was of the view that the amount of time that the worker spent on her feet on concrete floors had stressed the plantar fascia in her left heel, resulting in irritation and inflammation.

[59.2] The worker started seeing her family physician with complaints of left foot pain in her heel on May 1, 2019. The chart notes document that the worker's left foot pain started in August 2018. The physician diagnosed the worker with PF and that diagnosis remained consistent at multiple visits through January 2021 when the diagnosis was changed from PF to CRPS.

[59.3] On May 5, 2019, the worker attended the emergency room (ER) of a hospital with complaints that she was unable to fully weight bear on her left foot and a history of worsening pain over the previous two months. The ER physician also diagnosed her with PF and referred her to an orthopedic surgeon located at the hospital.

[59.4] The worker saw the first orthopedic surgeon on October 23, 2019. He diagnosed her with symptomatic PF. The orthopedic surgeon also administered an injection into the most tender area of the plantar fascia which ultimately resulted in the worker developing a second injury. To investigate the worker's allegation that her symptoms had worsened following the injection, she was referred for a battery of diagnostic tests including a magnetic resonance imaging, a nerve conduction study and electromyogram, and a bone scan with single-photon emission computed tomography (SPECT-CT).

[59.5] The worker underwent a three-phase bone scan with SPECT-CT correlation on September 11, 2020. According to the physician who interpreted the results, the findings were most compatible with nonspecific inflammation related to the enthesophyte or local trauma. In conversation with the radiologist, the first orthopedic surgeon interpreted these results as consistent with PF, an opinion that we note has not been challenged by the WCB.

[59.6] In a September 17, 2020, report from the orthopedic surgeon to the worker's family physician he confirmed that the worker's bone scan showed increased uptake at the attachment of the plantar fascia to the calcaneum (we understand this refers to the large bone forming the heel). The orthopedic surgeon spoke to the testing physician who advised that it was most likely that the appearance on the scan was due to PF.

[60] We find that these reports confirm conclusively that the worker was diagnosed with PF by a podiatrist, family physician, an orthopedic surgeon, and two other physicians who administered and interpreted her bone scans.

[61] Having established that the worker had a confirmed diagnosis of PF in her left foot with symptoms that began in 2018, we next considered if this injury was causally linked to her work over time. We conclude that it was, and in making this finding we relied on the following medical reports:

[61.1] The podiatrist's January 11, 2022, report. We placed particular significance on this report given that a podiatrist is a physician that specializes in the foot and ankle which is the focal point of the worker's injury. Of all the physicians to treat the worker on this file, we find this physician's expertise most relevant to Issue 1. As noted above, the podiatrist was aware of the worker's work environment and the length of her employment and opined that the increased time that she spent on her feet on hard flooring was sufficient to stress the worker's plantar fascia resulting in irritation and inflammation and a diagnosis of PF.

[61.2] A November 30, 2021, report from the worker's family physician who treated the worker from the outset of her symptoms in 2018. Like the podiatrist, he too was aware of the worker's job, her work environment, and the amount of time that she spent on her feet on a hard surface. According to this physician, ". . . her work was a factor in the development and aggravation of her plantar fasciitis."

[61.3] A second report from the family physician dated April 11, 2023, which emphasizes that the worker's job had her "on her feet on a hard floor for the entirety of her work duties". The physician further opines:

> "It is completely reasonable to link the years of being on her feet at work to both the development and progression of her plantar fasciitis. . .
>
> . . .
>
> One does not need 'forceful stretching', running or jumping, or heavy lifting duties, in order to develop plantar fasciitis. Work related weight bearing on hard surfaces is enough.
>
> [The worker's] work had her on hard surfaces <u>for the entirety of her duties</u>. This would be sufficient to be a significant factor in her

> development and worsening of her plantar fasciitis. There does not need to be one inciting incident for this to be the case. I suggest that *but for* her employment duties, she likely would not have developed plantar fasciitis." [Emphasis added]

[62] We acknowledge that a WCB medical consultant (MC) provided a contrary medical opinion about causation of the PF diagnosis on November 3, 2021. We attributed less weight to her opinion not only because of the podiatrist's more specialized area of expertise but because the (MC) not only lacked the benefit of a physical examination of the worker and the worker's detailed explanation of the mechanism of injury, but because of her preoccupation with the lack of a specific inciting event.

[63] We were not persuaded by this opinion because:

[63.1] It was not clear to the panel that the MC fully understood the mechanism of injury (MOI), that the PF diagnosis was premised on a progressive development over time, or how the injury evolved into CRPS.

[63.2] We say this because in her memo the physician was first dismissive of the worker's job duties as a contributing factor because she did not feel the worker's job was as physically vigorous as a professional athlete. She next indicated that PF is a chronic/recurrent degenerative condition but then seemingly contradicted this opinion by indicating that the worker had been unable to work since October 2019 and if there were a relationship between the job duties and a diagnosis of PF, the worker's symptoms should have improved by her work absence.

[63.3] In this instance, both the podiatrist and the general practitioner attribute the progressive development of the worker's chronic PF to a job where she spent the entirety of her 16-year career on her feet working on a concrete surface (standing, on her toes reaching overhead cabinets, climbing stairs, rushing through the store, pushing carts, walking etc.). Put another way, the physicians who had the benefit of examining and speaking directly with the worker found her job duties sufficiently vigorous to trigger a heel injury. Moreover, the evidence supports this chronic condition was aggravated and continued to decline as the worker remained on the job between 2018 and 2019 which is evident in the reporting. Finally, the worker's PF may well have improved in 2019 but her PF was then overshadowed with a diagnosis of CRPS from treating the PF, a condition which subsequently proved debilitating.

[63.4] Overall, we find the MC was dismissive of a PF diagnosis based on generic and outdated studies without considering the worker's particular circumstances or having a clear understanding of the worker's job (which clearly did not entail a static foot posture) including the accepted hazards of the job, and the length of time that the worker was employed.

[63.5] There was also no plausible alternate explanation for the worker's PF diagnosis aside from the hazard posed by her work duties, including any pre-disposing personal history.

[63.6] Finally, there was no consideration of the fact that under policy a progressive injury does not require an inciting event, nor does the work have to be the only factor or even the primary factor for an injury to be compensable, provided the work is a necessary factor. Because the medical consultant did not fully understand the nature and pace of the worker's duties it undermined her comments.

[64] We acknowledge the WCB also sent the worker to a neurologist for an Independent Medical Examination (IME) on April 14, 2022, and then relied on this opinion to deny the worker's claim. We did not find this opinion persuasive in relation to appeal Issue 1 for two reasons:

[64.1] First, the neurologist suggests that there was no clear injury to explain the worker's symptoms because they began insidiously and gradually increased with no instigating incident. Again, we find this observation immaterial given that the *WCA* provides coverage for progressive injuries and recognizes that workplace hazards may cause an injury over time. Where causation has been established based on a progressive basis, coverage is not contingent on an instigating incident.

[64.2] Second, the neurologist was asked to "express an opinion as to the diagnosis related to the claimant's current symptoms". [Emphasis added] Therefore, we find the report and opinions contained therein are limited to the worker's then current condition on the date of the report, April 14, 2022, which the neurologist described as a "chronic pain syndrome affecting her left foot" which has neuropathic qualities, allodynia and hyperpathia. Put another way, the neurologist was asked to and rendered an opinion on the second injury which seemed reasonable to the panel given his expertise with neuropathic pain. Ultimately, the neurologist concluded the worker satisfied some of the criteria for CRPS, which he indicated was the most likely diagnosis; although he also noted the worker had a chronic pain syndrome, which will be discussed further in appeal Issue 2.

Conclusion

[65] The worker's duties as a cake decorator in her work environment with this bakery configuration and concrete flooring, posed an employment hazard that presented a risk of injury for her.

[66] Specifically, the worker sustained an injury to her left foot (heel), was diagnosed in 2019 with PF by a podiatrist (a foot and ankle specialist), who confirmed that the

length of time she worked in store, on concrete floors, over the course of a 16-year career, was sufficient to irritate and inflame the plantar fascia in her left heel.

[67] Policy indicates that the worker's employment must have contributed to the accident so that, but for the employment, the accident would not have occurred at that time. (Policy 02-01, Part II, Question 1)

[68] Policy carves out coverage exceptions for personal risks and conditions present regardless of employment and cites as an example, a degenerative or other pre-existing physical condition that could pose a risk to the worker whether in or outside of their employment. Claims where the cause of the injury is exclusively personal with no direct or indirect relationship to the worker's employment duties or operations are not covered by the *WCA*. (Policy 02-01, Part II, Question 3)

[69] The cited policy sections highlight a fundamental principle of the *WCA* which is a necessary link between a worker's injury and their employment. In this instance, the most persuasive medical evidence about the worker's injury was from the treatment providers who:

- specialize in conditions of the foot;
- were aware of the worker's job duties;
- knew that for the duration of her shift the worker arguably performed the tasks of two employees, entirely on her feet;
- were aware of the length of her exposure to the work hazards; and
- clearly opine that her PF injury was linked to her employment over time.

[70] Moreover, the medical evidence does not support her injury was caused by some pre-existing condition that posed a personal risk. In fact, aside from work, we found no other plausible explanation, medical or otherwise, that may have caused or contributed to the worker's injury beyond the hazards of her employment.

[71] These factors lead us to conclude that the work exposures were necessary for the worker's PF to develop progressively over time, which satisfies the WCB's "but for" test on causation and establishes a sufficient causal nexus between the worker's injury and her employment.

Decision – Issue 1

[72] The worker has an acceptable claim for left foot plantar fasciitis.

[73] We allow the appeal of Issue 1, and reverse the November 24, 2022 decision made by the Dispute Resolution and Decision Review Board.

Analysis – Issue 2

Does the worker have additional entitlement for complex regional pain syndrome as a second injury?

Legislation and Policy

[74] We rely on and adopt the same jurisdictional provisions outlined in Issue 1.

[75] In addressing Issue 2, we considered the following WCB policies in our deliberations:

[75.1] Policy 03-01, Part I, Interpretations 1.0, 3.0 and 4.0 (Issue Date: April 1, 2021)

[75.2] Policy 03-01, Part II, Application 2: Second Injury, Questions 1, 2 and 6 (Issue Date: April 3, 2018)

[76] Excerpts of all legislation and policy cited in the decision are found in Appendices A and B.

Key Submissions

[77] As noted, given the interrelated nature of the issues, we received one submission from the representative and the worker that addressed both matters. To avoid unnecessary duplication, we have not repeated their submissions in this section of the decision but rely on those portions that are directly relevant to Issue 2.

Questions to be Answered

[78] To answer appeal Issue 2, the panel must determine whether the weight of medical evidence establishes:

[78.1] The existence of a new and distinct impairment, disease, or injury in the worker's left heel.

[78.2] That any such impairment, disease or injury was a consequence or complication of the compensable injuries (that is, a direct result of WCB-approved medical or rehabilitation treatment for a compensable injury or, as a result of a weakened limb or failure of a prosthesis or appliance related to a compensable injury).

Evidentiary Findings and Reasons

[79] We find the weight of medical evidence establishes the existence of a new and distinct injury and/or impairment in the worker’s left heel, specifically, CRPS; and

this new injury/impairment is a consequence or complication of the compensable injury. The evidence that we relied on and our reasons for doing so follow.

[80] Policy tells us that the WCB considers a second injury compensable if it is the direct result of the original compensable injury. In second injury cases, the WCB should evaluate the relationship between the original compensable injury and the second injury.

[81] In this instance, there was a delay in reporting (that the WCB did not argue was prejudicial) and based on the information in the ADP, the focus of the WCB investigation was on the worker's PF diagnosis, not the second injury. That said, we find there was considerably more information regarding the development of the second injury. Based on our review of the medical evidence there was sufficient information available for us to reach a reasonable conclusion on appeal Issue 2.

[82] We find the following medical evidence clearly and unequivocally establishes that the worker sustained a new and distinct injury/impairment in her left heel following rehabilitation treatment (a second cortisone injection into her heel) for PF, an injury that we have determined is compensable:

[82.1] An October 14, 2020, report from an anesthesiologist who diagnosed the worker with "left foot mild complex regional pain syndrome". At that time, the worker's left foot was red when compared to the right foot and slightly swollen with no temperature change or allodynia.

[82.2] A November 10, 2020, report from an anesthesiologist and physiatrist who specializes in chronic pain disease and pain medicine. This report documented the worker's history and indicated his diagnosis, which we found helpful:

> "[The worker] was suffering from Plantar Fasciitis in 2019, which did not respond to conventional treatments so [her family physician] injected the area of the left heel which did not make any material difference.
>
> Prior to this she had been treated with a variety of therapy's [*sic*] including a topical solution consisting of Ketamine, Ketoprofar, Baclofen and Xylocaine. This did not make any difference to her heel pain whatsoever. Neither did the injection.
>
> She was sent to see [an orthopedic surgeon] and in October of 2019 he injected the heel with what I assume was a combination of Cortisone of some type and local anesthetic of some type.
>
> Unfortunately, following the injection the ankle puffed up dramatically and the pain escalated dramatically and went from pain in the heel that spread throughout the entire foot associated with color changes and swelling and pain far out of proportion to the Plantar Fasciitis.
>
> . . .

> So unfortunately, two very negative events have occurred to this young lady. First, she has developed chronic pain, the best diagnosis that fits for this would be chronic regional pain syndrome, likely CRPS type I but there is no solid evidence of nerve laceration or trauma. Secondly, she has developed ilio ankle instability with loss of her Plantar arch and significant valgus deviation due to loss of structural support on the medial side."

[82.3] A February 26, 2021, report from an orthopedic surgeon specializing in trauma and foot and ankle surgery. He definitively confirmed the worker suffered from CRPS but was unable to offer any surgical options.

[82.4] An April 7, 2021, report from a neurologist who noted that the worker had received a second cortisone injection from an orthopedic surgeon in October 2019 which was very painful and included a series of 30 sweeping injections into the ankle and below the heel. The following day the worker's foot was sore and ached and the muscle seemed strained. By March 2020 the pain had spread from the worker's heel to her arch, her arch had collapsed, and she had lost some of the normal foot architecture. On examination in 2021, this neurologist noted that she favoured her left heel when she walks and by comparison, the left arch had fallen. He confirmed she has features suggestive of complex pain syndrome and noted her symptoms may fit the diagnostic criteria for CRPS, given that it has spread from her heel to her foot and arch.

[82.5] Another neurology consultation occurred July 3, 2021. It noted the same history of pain in her left foot which started following a steroid injection received for management of PF in October 2019. This neurologist confirmed a working diagnosis of CRPS of the left foot.

[82.6] On August 31, 2021, the worker returned to the same anesthesiologist/pain specialist that treated her in 2020. In this report he stated:

> "The last time I saw [the worker] was on October 14, 2020, diagnosed her with a left foot complex regional pain syndrome. She presented with plantar fasciitis, received an injection of steroids by one of our local orthopedic surgeons, and developed this complex regional pain syndrome. . ."

[82.7] A November 30, 2021, report from the worker's family physician who by that point had been treating the worker since 2018 for the same injury. He indicated:

> "I believe her work was a factor in getting plantar fasciitis. And the treatment for plantar fasciitis unfortunately led to complex regional pain syndrome. . ."

[82.8] An April 11, 2023, report from the family physician that reiterated:

> "It is completely reasonable to link the years of being on her feet at work to both the development and progression of her plantar fasciitis. She received numerous types of treatment, increasing in invasiveness, as her pain and function worsened. Sadly, she eventually developed complex regional pain syndrome in her left foot. This has put her in a position where it is impossible for her to do the work she did previously, [*sic*] and leaves her struggling with mobility in all she does in her life."

[82.9] Finally, even the WCB's neurologist linked the CRPS to the treatment that the worker received for the PF, with the following opinions expressed in an April 14, 2022, IME:

> "…the steroid and local anesthetic injection she had by [the orthopedic surgeon] in October 2019 clearly increased her symptoms and they have been persistently worse since. It was after that injection that she had the development of burning pain and more persistent numbness, tingling and pain that spread more proximally. I conclude that that injection caused injury, perhaps to nerves although a specific territory is undefined."
>
> . . .
>
> ". . . following the injection of October 2019, she has clearly had a chronic pain syndrome which has neuropathic qualities to it and she has allodynia [we understand this refers to pain due to stimulus that does not normally provoke pain] and hyperpathia [an abnormally painful reaction to stimulus]. . ."
>
> . . .
>
> "I conclude that [the worker] fulfills some of the criteria for CRPS and that may be the most likely diagnosis but she clearly has a chronic pain syndrome."

[83] We acknowledge that the WCB MC opined that because there was no specific work-related trauma there was insufficient evidence to establish a relationship between the accepted MOI and CRPS. We further note the WCB neurologist was asked if the work exposure was necessary to cause the worker's CRPS and he indicated there was no clear work injury but there was a "provocatory injury from the second steroid injection in October 2019. . ."

[84] Given that the worker is advancing CRPS as a second injury, we find the medical consultant's opinion on Issue 2 to be irrelevant since policy does not require a link to the MOI. Rather, it requires a new impairment (in this case, CRPS) which occurs consequently or as a complication of a compensable injury (incurred following the October 2019 cortisone treatment of the worker's PF). Similarly, we attach little weight to the neurologist's comment about there being no clear work injury, noting that the WCB failed to ask him a relevant policy question from Policy 03-01, Part II,

Application 2, which does not require that the work exposure cause the second injury.

[85] Finally, we note that for a second injury to be compensable, it must result from a WCB approved medical or rehabilitation treatment for a compensable injury. In this instance, the treatment was received in 2019 but the worker did not report the claim until 2021, so strictly speaking the cortisone treatment was not approved by the WCB in advance. We note the WCB had the opportunity to investigate and dispute this aspect of the claim but failed to do so. We find that, on balance, the treatment that the worker received for the PF more likely than not would have been approved by the WCB and therefore, choose not to deviate from the WCB's position on this point for two reasons. First, this worker has been seen by a multitude of specialists, none of whom have suggested that a cortisone treatment was an unreasonable or uncommon form of treatment for PF. Second, the uncontroverted medical evidence before us supports our position. According to the anaesthesiologist/pain specialist:

> ". . . I have been following her for complex regional pain syndrome in the foot. She was recently diagnosed after an injury during an injection with steroids. She does have a well-documented multilevel plantar fasciitis because of long working hours standing and walking, which I have no doubt was causing her plantar fasciitis . . . <u>The injection was offered, which is a reasonable treatment for plantar fasciitis, and I do not see any other physician disagreeing with that.</u> Unfortunately, she developed complex regional pain syndrome, which is a rare entity, but it is again a known documentation of any type of surgery or intervention or injection. In my opinion, her complex regional pain syndrome is directly related to her plantar fasciitis as if she did not have plantar fasciitis, she will [*sic*] not have gotten that injection, [*sic*] and she would not have gotten her complex regional pain syndrome. . . [Emphasis added.]

Conclusion

[86] Policy defines a second injury as a new and distinct impairment occurring as a consequence or complication of a compensable injury. To be compensable, a second injury must be the result of a WCB approved medical <u>or</u> rehabilitation treatment for a compensable injury.

[87] The medical evidence unequivocally supports the worker suffered a distinct and new impairment, CRPS in her left foot, as a direct result of a cortisone shot - treatment that she received in October 2019 from an orthopedic surgeon for PF which we have concluded is a compensable injury.

Decision – Issue 2

[88] The worker has additional entitlement for complex regional pain syndrome as a second injury.

[89] We allow the appeal of Issue 2, and reverse the November 24, 2022 decision made by the Dispute Resolution and Decision Review Board.

Decision Summary

Issue 1: Does the worker have an acceptable claim for left foot plantar fasciitis?

[90] The worker has an acceptable claim for left foot plantar fasciitis.

[91] We allow the appeal of Issue 1, and reverse the November 24, 2022 decision made by the Dispute Resolution and Decision Review Board.

Issue 2: Does the worker have additional entitlement for complex regional pain syndrome as a second injury?

[92] The worker has additional entitlement for complex regional pain syndrome as a second injury.

[93] We allow the appeal of Issue 2, and reverse the November 24, 2022 decision made by the Dispute Resolution and Decision Review Board.

This decision is made with the full agreement of the hearing panel.

Decision signed in Calgary, Alberta on November 6, 2024.

G. Wong
Hearing Chair
(on behalf of the panel)

Hearing Panel:	G. Wong	– Hearing Chair
	M. Amery	– Commissioner
	G. Bentivegna	– Commissioner

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Appendix A

Legislation – *Workers' Compensation Act*, RSA 2000, c W-15 (*WCA*)

Section 1(1)(a):

"**Interpretation**

1(1) In this Act,

(a) 'accident' means an accident that arises out of and occurs in the course of employment in an industry to which this Act applies and includes

(i) a wilful and intentional act, not being the act of the worker who suffers the accident,

(ii) a chance event occasioned by a physical or natural cause,

(iii) disablement, and

(iv) a disabling or potentially disabling condition caused by an occupational disease;

. . ."

Section 13.1(1):

"**Power of Appeals Commission**

13.1(1) Subject to sections 13.2(11) and 13.4, the Appeals Commission has exclusive jurisdiction to examine, inquire into, hear and determine all matters and questions arising under this Act and the regulations in respect of

(a) appeals from decisions of a review body under section 9.4,

(b) repealed 2020 c32 s3(8),

(c) appeals from determinations of the Board under section 21(3), and

(d) any other matters assigned to it under this or any other Act or the regulations under this or any other Act,

and the decision of the Appeals Commission on the appeal or other matter is final and conclusive and is not open to question or review in any court."

Section 13.2(6)(b):

"**Appeals**

13.2(6) In the hearing of an appeal under this section, the Appeals Commission

. . .

(b) is bound by the board of directors' policy relating to the matter under appeal,

. . ."

Section 24(1):

"**Eligibility for compensation**

24(1) Subject to this Act, compensation under this Act is payable

(a) to a worker who suffers personal injury by an accident, unless the injury is attributable primarily to the serious and wilful misconduct of the worker, and

(b) to the dependants of a worker who dies as a result of an accident."

Appendix B

Workers' Compensation Board Policy

ISSUE 1

Policy 02-01, Part I, Policy and Interpretations 1.0, 2.0, 3.0 and 4.0 (Issue Date: April 3, 2018):

"**POLICY:**

To be considered compensable, an *accident* must meet two conditions: it must *arise out of* and *occur in the course of employment*. When WCB is notified of an accident, it initiates inquiries to obtain all relevant *evidence*, and adjudicates the eligibility of the claim based on the weight of that evidence.

If, after gathering all the available evidence, it is clear that one of the conditions is met but there is insufficient evidence on which to base a decision regarding the second condition, the *statutory presumptions* contained in s.24 of the *Workers' Compensation Act (WCA)* will apply.

Workers are not entitled to compensation if they have *removed themselves from the course of employment* by their actions, and may not be entitled if the accident was a result of *serious and wilful misconduct*.

This policy is effective February 15, 1997, except when noted otherwise in a specific policy section(s).

INTERPRETATION

1.0 Accident

'Accident' is used in the usual and ordinary sense, and means an unexpected mishap or event. For the purposes of workers' compensation, 'accident' also includes the circumstances defined in the four subclauses of s.1(1)(a) of the *WCA*.

2.0 Arises out of Employment

An accident arises out of employment when it is caused by some employment hazard. An employment hazard is defined as an employment circumstance which presents a risk of injury. The hazard may be directly related to the industry or occupation (for example, machinery, chemicals, worksite ergonomics), or may be incidental (for example, weather conditions, insect bites, third-party vehicles).

Personal Risks and Conditions

Risks or conditions which are personal to the worker (such as the worker's physical condition or personal relationships) are not hazards of employment unless employment factors contribute to the occurrence of injury (see Part II, Applications 1 and 4).

3.0 Occurs in the Course of Employment

An accident occurs in the course of employment when it happens at a time and place consistent with the obligations and expectations of employment. Time and place are not strictly limited to the normal hours of work or the employer's premises, however, there must be a relationship between employment expectations and the time and place the accident occurs (see Part II, Applications 2 and 3).

4.0 Evidence

Evidence includes accident reports, witness reports, medical information, and accepted medical opinion, as well as any other facts relevant to the accident.

If the information received on the required reports is not sufficient to adjudicate the claim, WCB is responsible for gathering additional evidence relevant to the claim."

Policy 02-01, Part II, Application 1: Employment Hazards, Questions 1, 3 and 9 (Issue Date: April 3, 2018):

"**1.** ***What factors are considered when determining if an injury resulted from an employment hazard?***

The employment must have contributed to the accident so that, if it were not for the employment, the accident would not have occurred at that time (see Application 7 – Causation). The hazard may arise directly from the occupation or industry itself, or it may arise from positional risk. The following conditions apply when determining whether an employment hazard caused or contributed to an accident:

- the hazard must be related to the worker's employment
- employer-provided residential, recreational, and food facilities are considered hazards of employment only when the hazard arises from the premises or equipment and the worker is making reasonable and permitted use of the facilities

For injuries incurred while the worker was engaging in athletic activities, see Policy 02-01, Part II, Application 4.

. . .

3. ***What are a worker's personal risks and conditions?***

These are characteristics and circumstances specific to the worker and present regardless of employment. For example, a degenerative or other pre-existing physical condition is a risk for the worker both in and out of employment.

Personal relationships (e.g., spouse, family, friends) may also constitute a personal risk. Injuries resulting from personal relationships may coincidentally occur at the workplace, but claims will not be accepted if the

cause is exclusively personal and has no direct or indirect relationship to the worker's employment duties or the employer's operations.

For example, if two co-workers who socialize outside of work fight during work hours because of some personal incident, the fight only coincidentally occurs during employment and does not arise out of employment. Any resulting injuries are not compensable (see Application 5, Removing Oneself from Employment).

However, if employment hazards increase the risk or aggravate a condition, the injury may be compensable (see also Policy 03-02, *Aggravation of a Pre-Existing Condition*).

. . .

9. *When is this policy application effective?*

This policy application (Application 1 – Employment Hazards) is effective February 15, 1997, except when noted otherwise in a specific policy section(s)."

Policy 02-01, Part II, Application 7: Causation Questions 1, 2, 3, 4, 5, 6 and 9) (Issue Date: April 3, 2018):

"**1. *Why is causation important?***

Workers' compensation compensates workers only for injuries and diseases that are work related (arise out of and occur in the course of employment). Therefore, it is a legislative requirement that the injury or disease be caused by work so, in every case, WCB must determine the cause of the injury or disease.

In many cases, causation is clear and easily understood; for example, if a construction worker falls off a ladder at work and breaks his arm.

In other cases, causation is more difficult to determine, particularly when there are multiple risk factors that *may* have caused or contributed to the injury or disease.

2. *What factors does WCB consider when determining causation?*

In determining causation, WCB considers a number of factors. These can be grouped into three categories:

- Medical diagnosis – what is the diagnosis? Is it a recognized medical diagnosis? Is the diagnosis clearly established in this particular case?
- Work factors – what are the conditions at the workplace? What are the worker's duties? What are the physical demands? What type and extent of exposures are there?

- Personal Factors – does the worker's medical condition predate the accident? Are there non work-related risk factors that may have caused the injury or disease?

WCB reviews all these factors to determine if the worker's injury or disease is work-related (meets the standard of causation).

3. *What is a standard of causation?*

A standard of causation is the legal standard or legal test that is applied to determine whether the injury or disease is caused by work (that is, to have arisen out of and occurred in the course of employment).

4. *What standard of causation does WCB apply?*

The standard of causation used by WCB is the '*but for*' test, except when specifically stated otherwise.

5. *What is the 'but for' test?*

The 'but for' test is a finding of fact – the work exposures were *necessary* for the accident and injury to occur. In other words, if not for the work exposures, the injury or disease would not have happened.

In some cases there may be several causes that meet the 'but for' test that work in combination to cause an injury. Work does not have to be the only factor, or even the primary one, for the injury to be compensable. It must, however, be a necessary factor; if the injury or disability would have happened anyway, regardless of the work factor, it is not compensable.

The finding of fact is based on the evidence and accepted medical knowledge, not on a speculative connection.

6. *How does the balance of probabilities apply when determining causation?*

The balance of probabilities is the standard of proof used by WCB-Alberta.

For example, when adjudicating a claim where the standard of causation is the 'but for' test, WCB weighs all the evidence and determines if it is *more likely than not* that, but for the worker's employment, the injury would not have occurred (see also Policy 01-03, *Benefit of Doubt*).

. . .

9. *When is this policy application effective?*

This policy application (Application 7 – Causation) is effective April 1, 2014, and applies to all decisions made on or after that date, except when noted otherwise in a specific policy section(s)."

Policy 03-01, Part I, Policy and Interpretations 1.0, 2.0, 3.0 and 4.0 (Issue Date: April 1, 2021):

"**POLICY:**

WCB will determine whether an *injury* has occurred as the result of a compensable accident, and will adjudicate appropriate compensation and services from the *date of accident*. WCB may also consider a *second injury* compensable if it is the direct result of the original compensable injury.

When determining its responsibility, WCB will evaluate the *relationship between the injury and the compensable accident*. In second injury cases, WCB will evaluate the relationship between the original compensable injury and the second injury.

This policy is effective February 1, 2012, except when noted otherwise in a specific policy section(s)

INTERPRETATION

1.0 Injury

Under s.24 of the *Workers' Compensation Act (WCA)*, compensation is payable to a worker who suffers personal injury by an accident. Injuries may be either physical or psychological. They may be the immediate result of an accident or develop over time.

2.0 Date of Accident

When there is a specific incident which results in injury, the date of accident is the date on which the incident occurred.

When the compensable condition or disease is progressive (i.e., there is no specific incident), the date of accident is normally the first date on which medical treatment is provided. If, however, the worker experienced earlier layoffs or loss of earnings which medical evidence indicates were caused by the compensable condition, the date of accident will be the first day of that earnings loss.

The date of accident for cases of potential disablement due to occupational disease is the date the potential disablement comes to WCB's attention.

3.0 Second Injury

A second injury is a new and distinct impairment or disease occurring as a consequence or complication of a compensable injury. To be compensable, a second injury must be the result of WCB-approved medical or rehabilitation treatment for a compensable injury or the result of a weakened limb or failure of a prosthesis or appliance related to a compensable injury (see Part II, Application 2, Second Injury).

4.0 Relationship Between the Injury and the Compensable Accident

Many injuries (e.g., strains, sprains, burns, cuts, etc.) have an obvious relationship to the compensable accident; consequently, determining WCB's level of responsibility is relatively simple. However, there are other injuries which, because of their progressive nature or less obvious relationship to employment, require consideration of relevant factors both in and outside employment which may have contributed to or caused the injury (see Part II, Application 1, Relationship to Compensable Accident)."

Policy 03-01, Part II, Application 1: Relationship to Compensable Accident, Questions 1, 2, and 8 (Issue Date: July 4, 2018):

"**1.** ***Why is the relationship of injury to compensable accident important?***

To be compensable, an injury must be the result of an accident as defined under Policy 02-01, *Arises Out of and Occurs in the Course of Employment*. Therefore, when adjudicating the eligibility of a claim, WCB looks at the nature of the injury and its relationship to the compensable accident.

Often there is an obvious relationship between the nature of the injury and the compensable accident (e.g., a firefighter is burned when fighting a fire). However, the relationship is not always obvious. In these cases, there is a need for additional information, especially medical information, to establish the relationship to the compensable accident. For example, many occupational diseases have a long latency period. WCB's inquiries must establish whether the work-related exposure was sufficient to cause the condition (see Application 3, Occupational Disease).

2. How does WCB adjudicate injuries?

In general, every claim is subject to a similar adjudicative process. The relationship between the injury and the compensable accident is examined to determine entitlement. Additional medical advice is sought on an as needed basis. Complex claims may require additional investigation to determine work-relatedness.

Special requirements for some types of injuries (e.g., cardiac, occupational disease) are given in Applications 2 to 8 and in the following questions.

. . .

8. ***When is this policy application effective?***

This policy application (Application 1 – Relationship to Compensable Accident) is effective February 1, 2007, except when noted otherwise in a specific policy section(s)."

ISSUE 2

Policy 03-01, Part I, Interpretations 1.0, 3.0 and 4.0 (Issue Date: April 1, 2021)

"**POLICY:**

WCB will determine whether an *injury* has occurred as the result of a compensable accident, and will adjudicate appropriate compensation and services from the *date of accident*. WCB may also consider a *second injury* compensable if it is the direct result of the original compensable injury.

When determining its responsibility, WCB will evaluate the *relationship between the injury and the compensable accident*. In second injury cases, WCB will evaluate the relationship between the original compensable injury and the second injury.

This policy is effective February 1, 2012, except when noted otherwise in a specific policy section(s).

INTERPRETATION

1.0 Injury

Under s.24 of the *Workers' Compensation Act (WCA)*, compensation is payable to a worker who suffers personal injury by an accident. Injuries may be either physical or psychological. They may be the immediate result of an accident or develop over time.

. . .

3.0 Second Injury

A second injury is a new and distinct impairment or disease occurring as a consequence or complication of a compensable injury. To be compensable, a second injury must be the result of WCB-approved medical or rehabilitation treatment for a compensable injury or the result of a weakened limb or failure of a prosthesis or appliance related to a compensable injury (see Part II, Application 2, Second Injury).

4.0 Relationship Between the Injury and the Compensable Accident

Many injuries (e.g., strains, sprains, burns, cuts, etc.) have an obvious relationship to the compensable accident; consequently, determining WCB's level of responsibility is relatively simple. However, there are other injuries which, because of their progressive nature or less obvious relationship to employment, require consideration of relevant factors both in and outside employment which may have contributed to or caused the injury (see Part II, Application 1, Relationship to Compensable Accident)."

Policy 03-01, Part II, Application 2: Second Injury, Questions 1, 2 and 6 (Issue Date: April 3, 2018):

"**1.** ***What does the term 'second injury' mean?***

A second injury is a new and distinct impairment or disease occurring as a consequence or complication of a compensable injury.

2. ***Under what circumstances are second injuries compensable?***

Second injuries may be compensable if they occur as a direct result of WCB-approved medical or rehabilitation treatment for a compensable injury, or as a result of a weakened limb or failure of a prosthesis or appliance related to a compensable injury. For example, if a worker's compensable injury is being treated with physiotherapy and the manipulation causes an injury to a different part of the body, WCB assumes responsibility for any medical and compensation benefits resulting from the new injury.

. . .

6. ***When is this policy application effective?***

This policy application (Application 2 – Second Injury) is effective February 15, 1997, except when noted otherwise in a specific policy section(s)."