Appeals Commission for Alberta Workers' Compensation

Docket No.: AC0015-24-47
Decision No.: 2024-0330

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Decision Summary

[1] The worker did suffer a recurrence of disability related to the compensable injuries accepted under this claim.

Introduction

[2] 0n June 2, 2016, the WCB accepted responsibility for post-traumatic stress disorder (PTSD) caused by the worker's job duties as a paramedic. On March 7, 2019, the worker was cleared for work with permanent restrictions. The worker was restricted from working as a paramedic or in any capacity caring for babies.

[3] The worker disagrees with the Workers' Compensation Board (WCB) November 8, 2022, decision to deny responsibility for a recurrence of her psychological injury. She believes that her symptoms are directly tied to the traumatic experiences that caused her compensable PTSD. To decide the appeal, the panel must determine if the worker meets the criteria for the recurrence of a compensable injury.

[4] On May 2, 2023, the Dispute Resolution and Decision Review Body (DRDRB) confirmed the WCB decision.

[5] The worker filed the *Notice of Appeal* form within the statutory time limit. The respondent and the WCB were notified of the appeal and provided an opportunity to participate. Neither chose to participate.

Issue

[6] **Did the worker suffer a recurrence of disability related to the compensable injuries accepted under this claim?**

Analysis

Legislation and Policy

[7] The *Workers' Compensation Act*, RSA 2000, c W-15 (*WCA*) governs the workers' compensation system in Alberta. The purpose of the workers' compensation system is to provide appropriate compensation to workers who suffer workplace-related injuries and illnesses.

[8] Subsection 13.1(1) of the *WCA* provides the Appeals Commission with exclusive jurisdiction to hear appeals of decisions made by the DRDRB. Pursuant to subsection 13.2(6) of the *WCA*, the Appeals Commission is bound by the WCB policies related to the issue at appeal.

[9] Section 24(1) of the *WCA* provides compensation to a worker who suffers personal injury by an accident. According to section 1 of the *WCA*, an accident arises out of and occurs in the course of employment in an industry to which the *WCA* applies.

[10] According to Policy 04-03, Part I, the WCB will pay compensation when there is a recurrence of temporary disability due to a previous compensable disability, from which a worker had apparently recovered.

[11] A worker is considered recovered from a compensable disability when the medical recovery reaches a plateau at which no further significant change in condition is anticipated.

[12] If an intervening incident is considered significant and capable of causing the injury or aggravating a susceptibility to injury, WCB does not consider the incident a recurrence.

[13] Full excerpts of the legislation and policy referenced and applied in this decision can be found in the attached appendices. The panel has applied the WCB legislation in effect on the date of hearing and the applicable policy that was issued and in effect when WCB's adjudicative decision was made.

Questions to be Answered

[14] To establish the appeal, the worker must meet all the criteria for recurrence of temporary disability under Policy 04-03, Part II, Application 1. The panel must determine if the weight of evidence shows that:

[14.1] The worker experienced difficulties with the same, or a directly related, medical condition as the original compensable injury,

[14.2] The condition was considered resolved,

[14.3] It is medically reasonable that the difficulties are related to the compensable injury, and

[14.4] An intervening cause for the further problems cannot be shown.

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Key Submissions

[15] The representative's submissions are summarized as follows:

[15.1] The emotional and psychological strain of the worker's past experiences, particularly those involving pediatric calls, resurfaced with a vengeance. Both her treating psychologist and psychiatrist confirmed that these symptoms were directly tied to her traumatic experiences during her time as a paramedic.

[15.2] While pregnancy can induce stress and changes, it would not typically lead to a severe PTSD flare-up like the one the worker experienced. The acute reaction to her premature child is a direct manifestation of her pre-existing, compensable PTSD, not a new or unrelated condition. This connection underscores the need for continued support and recognition of her condition.

Evidentiary Findings

Does the weight of evidence show that the worker experienced difficulties with the same, or a directly related, medical condition as the original compensable injury?

[16] We find the weight of evidence shows, that the worker experienced difficulties with the same, or a directly related, medical condition as the original compensable injury. We rely on the following reports:

[16.1] An October 10, 2022, psychologist report provides a diagnosis of significant relapse of PTSD related to her work as a paramedic.

[16.2] In an October 16, 2022, report the worker's treating psychiatrist diagnosed re-activation of PTSD that the worker developed in the context of her employment as paramedic.

[17] The evidence shows that the worker suffers from symptoms of PTSD, the same disorder as her original compensable injury.

Does the weight of evidence show that the condition was considered resolved?

[18] For the reasons below, we find that the evidence establishes that the worker's condition had resolved. Our decision is informed by the definition of 'recovered' in Policy 04-03. According to policy, a worker recovers from a compensable disability when the medical recovery reaches a plateau at which no further significant change in condition is anticipated. The panel notes, that a worker can be considered recovered, even if they have a permanent disability from the compensable injury.

[18.1] In a March 27, 2021, report the psychiatrist wrote the worker, “was doing quite well from a mental health perspective leading up to her pregnancy after having been stabilized on high dose Sertraline and receiving long term trauma therapy.”

[18.2] A January 26, 2023, psychologist’s report shows despite ongoing impairments from the workplace injuries, the worker was stable in the context that she was receiving consistent ongoing psychological care and maintaining her working hours and expectations. The report explains that with consistent psychological supports, her own efforts with support organizations, and the support of her family, the worker was maintaining employment.

[19] We understand from the information on file that the worker’s PTSD had stabilized, and she was able to maintain employment within her permanent restrictions. the evidence shows that the worker’s compensable PTSD had plateaued with permanent restrictions. As such, the worker’s circumstances meet the definition of recovery under Policy 04-03, Part I, Interpretation 2.0. We interpret this to mean that the worker’s PTSD had resolved.

Does the weight of evidence show that it is medically reasonable that the difficulties are related to the compensable injury?

[20] We find that the worker’s difficulties are related to her compensable injuries. We rely on the following reporting:

[20.1] In an October 10, 2022, report, her treating psychologist noted that after the worker was 12 weeks pregnant, it was noted that she began to exhibit significant signs of relapse of her PTSD symptoms which included a return in suicidal ideations, night terrors related to the possibility of the loss of her unborn child, fear of going to malls while pregnant (directly related to a call that triggered her relapse of PTSD upon her first reintegration), and significant hyperarousal in physical symptoms. These symptoms worsened when the worker’s child was born prematurely and required significant NICU care. The psychologist concluded that the worker suffered a significant relapse of her PTSD related to her work as a paramedic.

[20.2] An October 16, 2022 report, shows that the psychiatrist concluded that the worker’s current symptoms are in keeping with a re-activation of PTSD, that she developed in the context of her employment as a paramedic in which she was repeatedly exposed to psychologically traumatizing situations.

[20.3] In a December 10, 2022 letter, the psychiatrist explained that the worker’s anxiety and depressive symptoms were predominantly related to an exacerbation of her underlying PTSD. She was spending a lot of time with

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her son in the neonatal intensive care unit (NICU) where there were many reminders of prior traumatic experiences from her work as a paramedic, particularly those involving neonatal death. As a consequence, she experienced flashbacks, hypervigilance, exaggerated startle, panic attacks, and suicidal thinking.

[21] The evidence shows that the worker began to experience flashbacks to the experiences that caused her compensable PTSD and relapsed into a similar pattern of behaviour. We understand from the psychologist and psychiatrist reporting, that the worker's PTSD symptoms are related to her work as a paramedic. We interpret the reporting to mean that the worker's PTSD symptoms are related to her compensable injury.

Does the weight of evidence show that an intervening cause for the further problems cannot be shown?

[22] We find that an intervening cause for the worker's symptoms cannot be shown. Our analysis follows.

[22.1] The psychologist's October 10, 2022, report concludes that the worker's PTSD events, which were the deaths of multiple premature babies and the death of a pregnant woman's husband, that directly caused the resurgence of symptoms detailed in this report. The worker's pregnancy and childbirth are not the cause of these symptoms.

[22.2] The October 10, 2022, psychologist's report also shows that the worker exhibited significant signs of relapse beginning after 12 weeks of pregnancy.

[22.3] In a January 26, 2023 report, the treating psychologist stated that the worker reexperienced the same flashbacks from her accepted injury claims and returned to the same behaviours related to her initial injury. She concludes that the worker's relapse was related to a re-activation of her PTSD, not a direct response of her son being born prematurely.

[23] We understand from the medical evidence, that the worker's flashbacks were of the work-related incidents that caused the compensable psychological injury. She was not fixated on the premature birth or NICU experience itself. This shows that the original work-related causes remained the significant factor in the worker's PTSD symptoms. The evidence also shows that the worker's PTSD began to deteriorate before the premature birth and her experience in NICU. We find the psychologist's opinion unequivocal; the worker's pregnancy and childbirth did not cause the worker's PTSD. We interpret the evidence to mean that an intervening cause for the worker's PTSD cannot be identified.

[24] We acknowledge that the WCB concluded that the worker's premature pregnancy and her time in the NICU was an intervening cause. We are not convinced.

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[25] According to policy, an intervening incident must be considered **significant and capable** of causing the injury or aggravating a susceptibility to injury. The panel interprets policy to mean that the intervening incident must be both significant and capable of causing or aggravating susceptibility to injury on its own. If a trigger cannot be considered significant and capable of causing the injury, in the absence of the compensable causes; it follows that it does not meet the definition of an intervening incident under policy. The intervening triggers must render the compensable causes to be insignificant.

[26] We find that the intervening circumstances were benign when examined in isolation. The evidence shows that while the intervening pregnancy, premature birth and NICU reminded the worker of previous experiences they were not significant and capable to cause the worker's PTSD on their own. The work experiences that caused the worker's compensable PTSD remained the significant and primary factors. We refer to the following information:

[26.1] As outlined above, both worker's treating professionals concluded that her symptoms were a recurrence of her compensable PTSD. Her treating psychologist stated; unequivocally, that the worker's pregnancy and child birth were not the cause of her symptoms. Neither the WCB nor the DRDRB supported their conclusions with a contrary medical opinion.

[26.2] The worker's PTSD began before the premature birth and experience in NICU. Her symptoms deteriorated beginning after the 12 week mark of her pregnancy.

[26.3] We also note, that the worker's flashbacks were of the work experiences that caused her compensable PTSD, and not of her pregnancy or NICU observations.

Conclusion

[27] The evidence shows that the worker experienced difficulties with PTSD, the same condition as her original compensable injury. The condition had plateaued with ongoing treatment, and she was able to return to employment within permanent restrictions. Her recent PTSD symptoms involved flashbacks to the compensable incidents and a relapse of similar behaviour patterns. Although the worker's pregnancy and NICU experience reminded her of compensable incidents, they were not significant and capable of causing or aggravating susceptibility to PTSD on their own. The medical evidence shows that the worker's recent symptoms were caused by her compensable PTSD. Therefore, the worker meets the criteria for the recurrence of a compensable injury under Policy 04-03.

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Decision

[28] The worker did suffer a recurrence of disability related to the compensable injuries accepted under this claim.

[29] The appeal is allowed.

[30] The Dispute Resolution and Decision Review Body decision is reversed.

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

Decision signed in Calgary, Alberta on July 23, 2024.

R. Moore
Hearing Chair
(on behalf of the panel)

Hearing Panel:	R. Moore	– Hearing Chair
	M. McAvoy	– Commissioner
	J. Fernando	– Commissioner

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Appendix A

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

[A1] Section 13.1 states:

"**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.

. . ."

[A2] Section 13.2:

"**Appeals**

13.2(1) A person who has a direct interest in and is dissatisfied with

(a) a decision of a review body under section 9.4, or

(b) repealed 2020 c32 s3(9),

(c) a determination of the Board under section 21(3)

may, in accordance with this section, the regulations and the Appeals Commission's rules, appeal the decision or determination to the Appeals Commission.

(2) The Appeals Commission shall consider the following in an appeal:

(a) if the appeal is from a decision under section 9.4 with respect to a claim for compensation, the records of the claims adjudicator and the review body relating to the claim;

(b) if the appeal is from a decision under section 9.4 with respect to an assessment, the records and information available to the review body relating to the matter under consideration;

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(c) if the appeal is from a determination of the Board under section 21(3), the records and information available to the Board relating to the matter under consideration.

. . .

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

(a) shall give all persons with a direct interest in the matter under appeal an opportunity to be heard and to present any new or additional evidence,

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

(c) shall, subject to subsection (6.1), permit the Board to make representations, in the form and manner that the Appeals Commission directs, as to the proper application of policy determined by the board of directors or of the provisions of this Act or the regulations that are applicable to the matter under appeal,

(d) may confirm, reverse or vary the decision or determination appealed,

(e) may direct that its decision be implemented within a specified time period, and

(f) may refer any matter back to the review body or the Board, as the case may be, for further action or decision, with or without directions."

[A3] Section 24:

"**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."

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Appendix B

Workers' Compensation Board Policy

[B1] Policy 04-03, Part I:

"**POLICY:**

WCB will pay compensation when there is a *recurrence of temporary disability* due to a previous compensable disability from which a worker had apparently *recovered*. Provided all the conditions set out in s.61 of the *WCA* are met, the rate of compensation may be based on the worker's earnings at the time of the recurrence.

As the provisions of s.61 of the *WCA* are intended to recognize the impact of recurrence of temporary disability on current earning capacity, the rate of compensation established under s.61 applies only to wage replacement benefits (e.g., temporary disability benefits, earnings loss supplements, economic loss payments).

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

INTERPRETATION

1.0 Recurrence of Temporary Disability

A recurrence is a clinically demonstrated increase in physical impairment or disability, resulting in temporary disability, which can be directly related to a previously stabilized compensable condition.

For the purposes of WCB, it is important to differentiate between a recurrence of temporary disability and a continuation. This is because the provisions of s.61 apply only to recurrences. Compensation for a continuation is calculated using date of accident earnings.

If an intervening incident is considered significant and capable of causing the injury or aggravating a susceptibility to injury, WCB does not consider the incident a recurrence, but rather a new and separate incident subject to the provisions of Policy 02-01 (*Arises Out of and Occurs in the Course of Employment*).

2.0 Recovered

A worker is considered to have recovered from a compensable disability when the medical recovery reaches a plateau at which no further significant change in condition is anticipated. Consequently, temporary compensation benefits are no longer being paid. The presence of a permanent impairment or periodic medical follow-up because of the compensable injury is not a bar to considering application of the provisions of s.61."

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[B2] Policy 04-03, Part II, Application 1: General

"**1.** ***How does WCB determine if a disability is a recurrence?***

WCB considers a disability to be a recurrence when:

- a worker experiences difficulties with the same (or directly related) medical condition as the original compensable injury (or injuries),
- the condition was considered resolved,
- an intervening cause for the further problems cannot be shown, and
- it is medically reasonable that the difficulties are related to the compensable injury."

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