# *Appeals Commission for Alberta Workers' Compensation*

**Docket No.: AC0209-24-46**
**Decision No.: 2025-0173**



## Introduction

[1] The worker appeals an April 23, 2024, Dispute Resolution and Decision Review Body (DRDRB) decision which found:

[1.1] The symptomatic aggravation to the worker's pre-existing low back degeneration resolved by October 13, 2023.

[2] The Appeals Commission can hear and decide this appeal because it is the final level of appeal for decisions made by the Workers' Compensation Board's (WCB's) DRDRB (*Workers' Compensation Act*, RSA 2000, c W-15 (*WCA*), section 13.1(1)). Excerpts of the legislation and policy referenced in this decision can be found in the appendices.

[3] The worker's *Notice of Appeal* form was filed on April 27, 2024, within the legislated time limit.

[4] All necessary parties were notified of the worker's appeal and provided with the opportunity to participate in the hearing. Neither the employer nor the WCB participated in the video conference hearing requested by the worker.

## Background

[5] The worker sustained a workplace injury on March 16, 2021, when he was putting fuel in his haul truck. He slipped on a muddy slope, fell about two feet, and landed on his back with his knee twisted under him.

[6] As a result of this accident, the worker's claim was accepted for the following injuries:

- non-specific low back pain;
- left knee sprain; and
- temporary symptomatic aggravation degenerative disc disease in the lumbar spine.

[7] The following conditions have not been accepted under this claim:

- degenerative disc disease;
- Osgood-Schlatter's Disease;
- foot drop; and
- left partial anterior cruciate ligament tear.

[8] On October 13, 2023, the WCB advised the worker he had made a full recovery from his compensable injuries and that wage replacement benefits would end as of that day.

[9] On October 17, 2023, the worker's representative (representative), submitted a request for review, disputing the WCB's decision to deny ongoing benefits for symptomatology triggered by the compensable mechanism of injury.

[10] On February 5, 2024, the DRDRB sent a letter to the representative confirming the issue as "Ongoing responsibility beyond October 13, 2023".

[11] In the DRDRB decision of April 23, 2024, the decision was phrased as "Did [the worker's name] aggravation of pre-existing low back degeneration resolve by October 13, 2023?". The DRDRB upheld the WCB decision, finding the worker's injuries were correctly accepted as temporary symptomatic aggravation injuries that would have resolved by October 13, 2023.

## Preliminary Matters

Confirmation of the Issues of Appeal

[12] At the outset of the hearing the phrasing of the issue was discussed. With the representative's agreement, the issue was re-phrased as stated below, which we find is in keeping with the issue determined at the DRDRB level. Our ability to reframe the issues is grounded in section 13.1(1) of the *WCA* and *Appeal Rules* 1.11(1)(e) and 4.1(2).

Written Submissions

[13] The Appeals Commission received the representative's eight-page written submission on March 12, 2025, which was shared with the panel.

Additional Documents

[14] On March 12, 2025, the representative submitted the following additional documents, which were also shared with the panel:

[14.1] A March 3, 2025, letter from the worker's treating specialist in physical medicine and rehabilitation.

[14.2] An April 17, 2019, referral form to a pain clinic.

[14.3] Physician chart notes dated April 17, 2019.

[14.4] A March 22, 2022, consultation letter from a physical medicine and rehabilitation specialist.

[14.5] The curriculum vitae of the worker's treating specialist in physical medicine and rehabilitation.

## Issue

[15] **Does the Workers' Compensation Board have ongoing responsibility for the worker's accepted symptomatic aggravation of a pre-existing degenerative disc disease in the lumbar spine beyond October 13, 2023?**

### Legislation and Policy

[16] As noted above, excerpts of the legislation and policy are provided in Appendices A and B. The applicable version of the *WCA* is current to the date of this decision and the applicable version of policy is current to the date of the case manager's decision of October 13, 2023, unless stated otherwise in the *WCA* or policy.

[17] The *WCA* provides compensation which is payable to a worker that suffers personal injury by an accident (section 24(1)(a)).

[18] In this case, the worker already has an accepted claim and the issue in question is whether the WCB has ongoing responsibility for an aggravation of his low back degeneration. This issue is governed by WCB Policy 03-02, Part I and 03-02, Part II, Application 1.

[19] When a work accident causes a pre-existing condition to deteriorate or become symptomatic to the point where workers are no longer able to perform all aspects of their job, the WCB shall allow entitlement on the basis of the aggravation factor (WCB Policy 03-02, Part I).

[20] The WCB will not impose a pre-determined limit on benefit payments, which will continue as long as the worker remains disabled due to the aggravation factor (WCB Policy 03-02, Part I).

[21] For temporary benefits, payments will continue until the aggravation ends and the weight of evidence indicates the remaining disability is solely due to the pre-existing condition or another unrelated non-compensable health problem (WCB Policy 03-02, Part II, Application 1, Question 3).

## Question to be Answered

[22] To determine this issue of appeal the panel will address the following question:

[22.1] Does the weight of evidence support that the compensable aggravation to the worker's pre-existing degenerative disc disease in his lumber spine resolved or ended as of October 13, 2023?

## Key Submissions

*Representative submission (summarized)*

[23] The representative's written and oral submissions are summarized as follows:

[23.1] Prior to the accident, the worker reported only generalized episodic back pain as opposed to the specific, constant, disabling back pain the worker has experienced since the work accident.

[23.2] Prior to his work accident, he was not receiving treatment or medication for back pain, nor did he require time off from work because of it.

[23.3] His post-accident pain is persistent, debilitating, and specifically localized in areas consistent with the MRI findings of severe spinal stenosis and multilevel disc bulging.

[23.4] Operating a haul truck exposes workers to prolonged vibration, jarring, and impacts – recognized risk factors for lumbar degeneration. Studies show higher rates of spinal degeneration among heavy equipment operators. This is a more plausible cause of the worker's lumbar condition than his Charcot-Marie-Tooth (CMT) disease, which primarily affects the peripheral nerves and muscle strength, but not spinal structure.

[23.5] The worker's treating specialist indicates that the worker's symptoms are consistent with a permanent change rather than a temporary aggravation.

[23.6] The mechanism of injury is known to cause structural change to the spine such as the severe stenosis and disc bulging observed in the worker's MRI.

[23.7] The evidence supporting a permanent aggravation to the worker's back is at least as strong as that suggesting the aggravation was temporary. Under Policy 01-03 (Benefit of Doubt), the appeal should be decided in the worker's favour.

[23.8] The DRDRB decision should be overturned, and the worker should be granted the following remedies:

- The worker should receive full reinstatement of wage-loss benefits; and
- The worker should receive wage loss benefits, retroactive to November 21, 2023, as well as interest.

*From the worker*

[24] On the day of the accident, he was preparing to fuel his truck.

[24.1] He described the size of the truck as comparable to a large two-story house. It was parked between two large embankments, one approximately 10 meters high and the other about two meters.

[24.2] As he grabbed the fuel hose and made his way up the hill, the ground was wet and muddy from the rain. He slipped and fell down the two meter embankment, landing on his back with his left knee underneath him.

[24.3] He laid in the mud for about five minutes before managing to get back on his feet. Unable to climb back up onto his truck, he stumbled over to the wash area where he radioed his supervisor for help. His supervisor arrived and had to climb onto his truck to get his personal belongings. He was then taken for medical attention.

[25] At the time of his work accident, he had worked as a heavy equipment operator for several years. His role required him to pass physical tests before taking on new jobs to ensure he was physically able to do the job. Before the accident, he had some back pain, but it did not interfere with his ability to work, nor did it prevent him from obtaining jobs.

[26] Respecting his CMT, in his case the pain mainly affected him from below his knees down.

[27] Prior to the accident, while he had some pain in his back, it was not debilitating and it never prevented him from working. Now, tasks he once performed without issue – such as vacuuming, showering, sweeping, and doing laundry – are difficult or impossible.

[28] The pain in his back is now specific to one area in his lower back on the left side. He describes it as extreme, debilitating pain.

## Evidentiary Findings

[29] The panel finds that the weight of evidence does not support that the compensable aggravation of the worker's pre-existing degenerative disc disease in his lumber spine resolved or ended as of October 13, 2023. The panel's finding is based on the reasons and evidence that follows.

[30] The medical reporting after October 13, 2023, supports that the aggravation to the worker's pre-existing degenerative disc disease was ongoing. In particular, the panel notes the following:

[30.1] A Physician Progress report dated October 18, 2023, notes the worker still complained of tenderness and low back pain, as well as decreased range of motion. The physician recommended ongoing work restrictions which included being unable to bend or lift. Regarding sitting, the worker could sit on a chair for approximately 25 to 30 minutes and would then need to lie down for 20 minutes.

[30.2] A February 5, 2024, report from a specialist in internal and pain medicine notes that the worker reported ongoing focal lumbar paraspinal pain associated with relatively severe pain with functional limitations.

[30.3] In a letter dated March 3, 2025, the worker's treating physical medicine and rehabilitation specialist notes, according to the worker's previous treatment provider's records, the worker's previous diagnosis of mechanical back pain was due to the worker's abnormal gait, secondary to his CMT disease. The specialist notes that until the work accident aggravated his back pain, the worker had been fully employed and performed a physically demanding job. He opined that a complete recovery from the aggravation of the worker's back pain was improbable.

[30.4] The panel is satisfied the above reporting supports that the aggravation of the worker's pre-existing degenerative disc disease had not resolved as of October 13, 2023, and was continuing to impact the worker's ability to work at his pre-accident level.

[31] Medical reporting regarding the worker's pre-existing degenerative disc disease indicates the worker did experience low back pain prior to the March 16, 2021, compensable accident. However, the weight of evidence does not support that the worker's was experiencing the same difficulties and limitations prior to the compensable accident as he continued to experience after October 13, 2023. In particular:

[31.1] A March 28, 2018, physician's chart note lists the worker's medical history as significant for left tonsil cancer, chronic pain and neurological lower extremity disease. It does not specifically mention back pain.

[31.2] On April 17, 2019, the worker's physician documented that he experienced lower back pain due to an abnormal gait.

[31.3] October 21, 2019, January 23, 2020, April 27, 2020, and January 10, 2021, physician's chart notes, which appear to have been for a medication refills, do not reference the worker's back.

[31.4] July 30, 2020, November 24, 2020, and February 19, 2021, medical reports from the worker's treating physical medicine and rehabilitation specialist indicate the worker had "mechanical lower back pain". However, it is noted during this time, the specialist repeatedly indicated the worker was still able to work as a haul truck operator. The specialist noted the worker worked 12-hour shifts, seven days on followed by seven days off.

[31.5] In an August 26, 2020, report, an oncology clinician's evaluation notes indicate the worker is doing well and was continuing to work.

[31.6] A February 16, 2021, physician's chart note states the worker's medical history is significant for left tonsil cancer, chronic pain and neurological lower extremity disease, but does not mention back pain.

[31.7] Based on the above, the panel finds the weight of evidence prior to the compensable accident does not support that the worker experienced the same symptoms and limitations due to his pre-existing degenerative disc degeneration as he did after the compensable accident aggravated that condition.

[32] The panel acknowledges the worker underwent an orthopedic independent medical examination (IME) on December 7, 2022.

[32.1] In his report the specialist noted the worker still had ongoing discomfort in the low back region, centered around the L5-S1 level on the left side.

[32.2] The worker's forward flexion was fingertips to mid-tibia. Right and left lateral flexion were 50% normal. Right and left rotation were 50% normal with increased discomfort on left rotation.

[32.3] The IME specialist indicated the worker had "nonspecific low back pain" and that the work accident was compatible with this diagnosis.

[32.4] The specialist noted there was evidence of pre-existing degenerative disc disease in the lumbar spine and opined the work injury was "necessary to cause an ongoing or persistent increase in [these] symptoms". The specialist did not find the work injury caused a deterioration, progression, or acceleration of the pre-existing condition.

[32.5] The specialist noted the worker reported that if he sat for long periods, he got very restless with increasing discomfort. The worker felt it would be difficult for him to return to his pre-accident job which involved prolonged sitting.

[32.6] He felt the worker could work at a light level, avoiding bending, stooping, or lifting, except on an occasional basis, with the ability to change his position frequently. The specialist hoped there would be improvement after a facet joint injection and expected the restrictions to be temporary, lasting about four months.

[33] Although the IME specialist hoped that there would be improvement after a facet joint injection and expected the restrictions to last about four months, the panel is satisfied the weight of evidence supports that the compensable aggravation of the worker's pre-existing degenerative disc disease continued beyond the anticipated four months and did not resolve as of October 13, 2023, because:

[33.1] Following the IME, Physician Progress Reports dated December 22, 2022, February 1, 2023, March 3, 2023, March 15, 2023, June 30, 2023, September 8, 2023, and October 18, 2023, all noted there was no change in diagnosis, and the worker continued to complain of low back pain. Under objective findings the physician noted increased tenderness to his paraspinal muscles. These reports from March 15, 2023, onwards recommended an assessment by a spine surgeon.

[33.2] In an April 18, 2023, Medical Status Examination the examiner noted decreased trunk range of motion and opined the worker appeared fit for sedentary or limited level work. She recommended he avoid prolonged standing, walking, squatting, kneeling, climbing and repetitive low-level activities, with further work abilities as per the comprehensive functional capacity evaluation (CFCE). The duration of these restrictions was unknown, possibly 12 weeks or so, depending on how he progressed.

[33.3] A June 21, 2023, Occupational Therapy Assessment reported the worker presented with reports of pain and had to take numerous breaks throughout the assessment. The worker reported pain with gross lumbar flexion and gross lumbar extension and consistently switched from sitting to standing positions.

[33.4] On July 10, 2023, the worker participated in an intake assessment at a multidisciplinary clinic with respect to his back pain. The pain was noted to be constant, greater on the left side of the lumbar spine, and that it radiated down the posterior thigh but did not extend past the knee. The worker had reduced range of motion to the lumbar spine respecting

flexion, extension, lateral flexion and rotation. This report notes no therapeutic injections had been done to that point but that the worker had been referred to a pain specialist and that bilateral L5-S1 facet injections would be trialed.

[33.5] As noted in paragraph 30 above, the October 18, 2023 Physician Progress Report, the February 5, 2024 report from a specialist in internal and pain medicine, and the March 3, 2025 letter from the worker's treating physical medicine and rehabilitation specialist support the finding that the aggravation of the worker's pre-existing degenerative disc disease had not resolved as of October 13, 2023, and was continuing to impact his ability to work at his pre-accident level beyond that date.

[33.6] As a result, the panel finds that the weight of evidence does not support that the compensable aggravation to the worker's pre-existing degenerative disc disease in his lumber spine had resolved or ended as of October 13, 2023, or that any ongoing disability is solely due to the pre-existing degenerative disc disease or some other unrelated, non-compensable health problem

[34] In making these findings, the panel places less weight on the December 2022 reporting from the IME specialist than on the reporting from the worker's treating physicians and specialists because:

[34.1] The IME specialist saw the worker on only one occasion.

[34.2] In addition, the IME specialist expected the restrictions to be temporary and hopefully would improve following a facet joint injection. The panel finds an expectation of resolution at a future date is not the same as objective medical evidence confirming that the condition resolved by that date. Further, it does not appear the recommended facet joint injection was done.

[34.3] Overall, the evidence following the IME does not support a change to the objective findings noted in the IME report. For example, the IME specialist noted reduced range of motion, as did the October 18, 2023, physician's progress report.

[34.4] The evidence also does not support a change to the subjective findings noted in the IME report. For example, the worker reported ongoing discomfort in the low back region, centered around the L5-S1 level on the left side to the IME specialist. Subsequent medical reports, including the October 18, 2023, physician's progress report, continued to report tenderness and low back pain.

[35] In making these findings, the panel also acknowledges on September 7, 2023, the medical consultant provided an opinion regarding the worker's work restrictions. However, the panel does not find her opinion supports the worker did not continue to have work restrictions related to the aggravation of his pre-existing lumbar degenerative disc disease beyond October 13, 2023, because:

[35.1] The medical consultant considered an April 25, 2023, CFCE wherein the assessor stated the worker's performance was self-limited due to pain and maximal effort was not observed. Therefore, while it provided a list of the worker's "demonstrated" abilities, the assessor stated that a comment on work restrictions could not be provided.

[35.2] The medical consultant stated that pain is more of an issue of tolerance rather than of functional capacity, and that tolerance is not a basis for imposing work restrictions with respect to risk or capacity.

[35.3] The panel finds, while the medical consultant opined pain was not a basis of imposing work restrictions, neither she, nor the CFCE assessor, stated that the worker did not have work restrictions.

[36] In determining ongoing work restrictions beyond October 13, 2023, the panel finds many of the work restrictions recommended in the IME report continued to be reflected in the October 18, 2023, physician's report.

[36.1] For example, the IME report indicated the worker needed to change positions frequently. The physician's report indicated the worker would need to be able to alternate between sitting and lying down.

[36.2] Additionally, both the IME report and physician's report indicated the worker needed to avoid bending and lifting.

[36.3] The panel finds this evidence supports that, although the IME specialist expected the work restrictions to resolve, the evidence does not support that they did.

Response to the Representative's Requested Remedies

[37] Regarding the requested remedies as outlined under the representative's submissions, the panel sought clarification during the hearing. The panel confirmed that the only issue before us was the ongoing responsibility for an aggravation to the worker's lumbar spine beyond October 13, 2023. While ongoing benefits could flow from our decision, entitlement to these benefits were not issues before us.

[38] The representative agreed with the panel's understanding.

Conclusion

[39] The panel finds the weight of evidence does not support that the compensable aggravation to the worker's pre-existing degenerative disc disease in his lumber spine resolved or ended as of October 13, 2023.

## Decision

[40] **Does the Workers' Compensation Board have ongoing responsibility for the worker's accepted symptomatic aggravation of a pre-existing low back degenerative disc beyond October 13, 2023?**

[41] The Workers' Compensation Board had ongoing responsibility for the worker's accepted symptomatic aggravation of a pre-existing low back degenerative disc beyond October 13, 2023.

[42] The worker's appeal is granted and the April 23, 2024, decision of the Dispute Resolution and Decision Review Body is reversed.

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

Decision signed in Edmonton, Alberta on April 9, 2025.

A. Edmunds
Hearing Chair
(on behalf of the panel)

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| **Hearing Panel:** | A. Edmunds | – Hearing Chair |
| | M. McAvoy | – Commissioner |
| | G. Bogstie | – Commissioner |

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# Appendix A

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

Section 13.1:

"**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):

"**(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."

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

Policy 03-01, Part I, Interpretation 4.0 (Issue date July 5, 2023):

> "**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, Questions 1 and 2 (Issue date September 6, 2013):

> "**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."

Policy 03-02, Part I (Issue date September 5, 2018):

"**POLICY:**

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 the job, WCB shall allow *entitlement* on the basis of an *aggravation* factor.

If surgery is required solely for the pre-existing condition a *rehabilitation surgery allowance* may be considered.

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

**INTERPRETATION**

**1.0 Pre-existing Condition**

A pre-existing condition is any pathological condition which, based on a confirmed diagnosis or medical judgment, pre-dated a work-related injury.

**2.0 Aggravation**

An aggravation is the clinical effect of a compensable accident on a pre-existing condition, resulting in temporary or permanent clinical impairment and/or loss of earning capacity.

**3.0 Entitlement**

*Temporary Disability*

WCB will not impose any pre-determined limitation on the payment of benefits, and payment will continue while the worker is disabled because of the aggravation factor.

*Permanent Disability*

When a permanent disability results from a claim allowed under this policy, WCB will establish the portion of the permanent disability directly attributable to the aggravation.

**4.0 Rehabilitation Surgery Allowance**

If, following a claim for aggravation, surgical treatment is indicated solely as a consequence of the non-compensable condition, WCB may consider paying a rehabilitation surgery allowance. This allowance will be considered only when it is probable the surgery will assist the worker in attaining employability and reduce subsequent aggravations during employment."

Policy 03-02, Part II, Application 1, Question 3 (Issue date April 3, 2018):

> "**3. *How long are temporary benefits payable?***
>
> Temporary benefits will be paid until:
>
> - the aggravation has ended and the weight of evidence shows that ongoing temporary disability is solely due to the pre-existing condition or some other unrelated, non- compensable health problem, or
> - the compensable aggravation reaches a medical plateau, at which time WCB will evaluate whether there is any permanent impairment caused by the compensable accident."