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WHO IS HELPING INJURED WORKERS

It is amazing that an organization whose mandate is to assist the injured worker can cause so much injustice towards the very people they are there to protect – the worker injured on the job.

We have all heard a horror story of someone who has been dealt with unfairly by the Worker's Compensation Board. Well, I am telling my story in the hope that it will maybe help the plight of injured workers in Manitoba.

In November of 1999, my husband hurt his back while performing his duties at ZZ. Even though the extent of his injury was not diagnosed at that time, his claim was accepted by the Worker's Compensation Board. Being a faithful, dedicated, long term employee (24 years service) he continued to report to work daily despite the fact that he was in considerable pain. The daily intense pain continued but over the next 2 1/2 years he missed virtually no time from work. In hindsight he would have been better off staying off work as WCB and ZZ viewed his ability to go to work daily as not truly being injured. Because he went to work daily, he was viewed as not being injured.

Finally, in the spring of 2001, 16 months following the injury and after much pleading, JJ received a MRI. Much to the surprise of WCB it diagnosed a herniated disk in his lower back. Both JJ and I at this point felt relief. We believed that now that there was a diagnosis we would receive assistance from WCB and ZZ. Boy were we wrong. Up until this point JJ had been given no modified duties at work despite the fact that there were numerous letters from his doctor, outlining what JJ was and was not capable of doing. All documentation from his doctor was ignored by both ZZ and WCB and no modified duties were implemented. It should be mentioned that JJs' doctor specializes in back injuries, which includes testing for patient validity.

Looking back at this 16 months we had no way of knowing that the next 3 years would be even worse. JJ continued to suffer from daily chronic pain yet continued to go to work every day with still no modified duties provide – even though his doctor continued to provide documentation outlining specific restrictions that should be implemented. It is horrific to think that WCB and ZZ can ignore the recommendations of a Doctor. To this day, over four years after the injury JJ has still not been accommodated in a light duty position. Although JJ still suffers from his injury daily he is expected to perform at the level of an uninjured worker. ZZ has never honored any restrictions and WCB has never enforced them, despite the fact that JJ has completed 2 Functional Capacity Evaluations required by WCB and one required by ZZ. The Functional Capacity Evaluations required by WCB both had the same conclusions – that JJ is not capable of regular duties and very specific restrictions were put in place. But once again WCB ignored the recommendations of their own specialist and did nothing to implement light duties. The Functional Capacity Evaluation required by ZZ was considered inconclusive. The company occupational therapist considered his evaluation to be incomplete because JJ refused to lift an object that weighed more than JJ felt capable of lifting. Even though at the onset of the Evaluation JJ was told many times that he was not required to lift anything more than he felt he was able to. Interesting how when he exercised this right it was used against him. It should be noted that as a result of this refusal to lift this heavy object, JJ was suspended from work without pay for five working days. We have never been reimbursed for this time loss. It is the policy of the WCB that it is the workers responsibility to ensure they remain within their restrictions. But as the above shows once a worker refuses they suffer disciplinary action and in some cases dismissal. How is it that the WCB is supposed to help the injured worker, yet they turn their back on them?

The next part of my story is very difficult for me to discuss, but I feel it must be brought out in the open in an attempt to stop other families from having to experience the night mare our family has gone through and continues to go through.

As anyone who has lived with chronic pain knows – depression is not far behind. After living with chronic pain for about a year – having not experienced a pain free day in 12 months, JJ started to display the symptoms of depression. These included loss of interest in once enjoyable things, loss

of weight, trouble concentrating, trouble sleeping, weepy, anxiety etc. The list goes on. These symptoms have been well documented by his doctor and relayed to WCB in writing long before JJ admitted to them. Like most individuals dealing with depression, JJ denied the symptoms. He denied being depressed.

Being a medical professional, JJ's doctor was well aware of the implications of the symptoms JJ was experiencing and kept requesting that WCB implement modified duties. He even requested on numerous occasions that due to JJ's deteriorating physical and mental health, he should be removed from the work environment. These repeated requests were again ignored by WCB – in fact WCB never even responded to, nor acknowledged receipt of these letters. How is it that the WCB can ignore recommendations made by a medical professional over and over again.

Eventually after almost 3 years of chronic, intense, daily pain, JJ could no longer conceal the depression. He was removed from the work environment by his doctor. You would think that WCB would connect the dots in his file and assume responsibility for his time loss. Not a chance. Instead they made us wait 16 weeks while they arrived at their decision as to whether or not they were going to pay him for his time loss. Throughout this 16 week period we were told regularly by his case manager that WCB was just waiting for an update from his doctor and they would then make their decision. It was always one more report, one more phone call, one more update. JJ continued to see the same physician through this whole ordeal. The medical updates arrived weekly and they never changed. In our opinion it was a stall tactic to enable WCB to achieve the outcome they wanted. They were manipulating his file to obtain the outcome they needed to deny him benefits. Because no decision had been made regarding his claim for lost time, we were unable to apply for other insurance benefits, therefore we were forced to go 16 weeks without an income.

Just prior to JJ being removed from the work environment he was placed on medication for the depression. Towards the end of his 16 week period away from work he started to regain some of his natural emotion. One of those emotions was anger – anger towards WCB for treating him unfairly and towards ZZ for refusing to accommodate him in a modified duty position. A pretty natural reaction considering all he had been through. WCB stalled their decision long enough for these emotions to surface and then used them against JJ in their decision. They denied him benefits, because in their

opinion, JJ's depression was as a result of his anger and frustration towards WCB and ZZ and was not as a result of the 3 years he had lived with daily, intense, chronic pain. Most medical professionals are fully aware of the connection between chronic pain and depression. There is plenty of medical evidence linking the two. In the end their decision was not based on the evidence submitted by his medical doctor at all, his input had nothing to do with the final decision. WCB required JJ to see one of their psychiatrists. Based on a 50 minute interview she determined that JJ was angry at ZZ and WCB and that was what caused his depression. The WCB would not even consider the private evaluation we had completed. Our evaluation, completed by a professional took 7 hours of interview time and numerous hours of psychological testing to complete. As you can imagine the two evaluations have very different results. But which one do you think would be more thorough? A 50 minute assessment or one that took over 7 hours to complete? As expected WCB took the recommendation of their professional and completely disregarded our private evaluation. Just one more way they stack the cards against the worker.

In order to have JJ's time loss for this approximately 4 month period covered our only option at this point is to submit an appeal to WCB and have the Appeal Panel review his case. In all honesty, at this point, we feel too beaten up to even consider another encounter with WCB. And in reality, seeing how they stack the deck against the injured worker you can't help but wonder if it is really worth it. The case managers know how to document information to obtain the outcome they want – and ultimately that is to deny benefits. So in the end – What chance does a truly injured worker ever have?

JJ returned to work after a number of months but never did have his modified duties, recommended by his physician, honored.

In January of 2003 JJ was suspended from work (without pay) for apparently being uncooperative during a Functional Capacity Evaluation being completed by ZZ. Towards the end of the 2 hour evaluation JJ informed the Occupational Therapist that his back was too sore to continue. WCB has documented in his file that a worker is never expected to work beyond their restriction and the ZZ Occupational Therapist has written into his report that he had explained clearly to JJ that he could stop if at any point things became too difficult for him. Yet when he exercises this right, he is suspended. The Occupational Therapist, who by the way is a ZZ

management employee, has instructed JJ that it will be his recommendations regarding modified duties that will be respected by the Company, not the recommendations of his medical doctors. It was my understanding that according to Human Rights a medical doctor always superseded any other recommendation. How is it then that ZZ can implement their own modified duties, and the work restrictions of a medical professional can be completely ignored? How is it that the WCB can stand by and allow this to happen?

As a result of the refusal by the company to implement light duties and the WCB's refusal to enforce the light duty recommendations of his doctor, in February 2003 JJ suffered a further injury at work. This injury resulted in an annular tear in the disk above the herniated one. This injury has been confirmed with a second MRI. Once again no modified duties were provided.

One of the submissions to this Review that I read on the web stated that the individual would only communicate with the WCB by way of letter or fax. We are also refusing to communicate in any other way. We now have an unlisted phone number so WCB can not contact us. We were forced to do this as we discovered that information in his file documenting conversations was being documented incorrectly. His file was once again being manipulated in their favor. JJs' case manager had always told JJ to phone her when he was having difficulty at work. So he did, over and over again. Interesting how when we finally received a copy of his file none of his numerous phone calls to her were documented. Not one. In fact it was documented in his file that he was doing great. That was not farther from the truth. In fact the only telephone conversations that were documented are the ones where his case manager called him and documented that JJ was doing great, when in fact he was weeping on the phone to her. He broke down in tears many times on the phone, but as always this is not documented in his file. But yet telephone messages I left on her voice mail displaying my frustration and anger towards the WCB for its' treatment towards JJ are transcribed word for word in his file. Is it a coincidence that information that can be used to JJs benefit is omitted from the file, yet information that could be used against JJ remains in his file? Not likely. Once again his case manager was manipulating his file so they could obtain the outcome they wanted. To deny him benefits.

In April of 2003 ZZ notified JJ in writing that they are unable to accommodate the restrictions put in place by his doctor. He has yet to be

allowed to return to work. WCB took 4 months to make their decision as to whether they were going to pay him. Why would it take 4 month to make their decision when it was clear why he was being held out of service by ZZ? It took so long because the WCB was reviewing JJs whole medical history to see if he had had some previous injury that they could blame his difficulty on. That way, they could say that it was his not the herniated disk or the anular tear that was causing his trouble, but some unconnected injury from his past. In our case there were no earlier injuries so they have covered his wages. But I am aware of a lot of claims that have been denied benefits because of earlier injuries where no prior time loss from work was recorded. In my opinion, just another one of the tactics WCB uses to deny benefits.

The fact that JJ has been at home for the past 14 months has not come without a price. We have been plagued with hang up phone calls which are always followed with a private investigator following us. Our privacy has been invaded. We have been videotaped, watched with binoculars and followed in our vehicle. Our young children have suffered nightmares as a result of their actions. Our young daughter recently stated that she was afraid to play outside because the men watching daddy might carry guns and shoot her. A young child should not be afraid to play in her own yard, all because her dad hurt himself on the job. No family should feel like victims in their own home. Why do they do this? Once again in an attempt to find a way to deny benefits. JJ wants to be at work. It is the company that will not take him back. Yet the WCB is attempting to find a way to deny him benefits. Does this seem to be an organization helping the injured worker?

Does he feel that he has been treated unjustly – absolutely. WCB has done nothing to enforce his doctors recommendations regarding modified duties. They will tell you that they have done every thing they can to help JJ. WCB was to review all jobs JJ was placed into to determine suitability within his restrictions. In the last 4 1/2 years his case manager has been to his work place 3 times for the approximately 20 jobs he has been assigned. They have approved every job. This includes a position that required JJ to stand at a bench for 4 hours with the other 4 hours spent bent over a different bench building components. All in all that sounds fair, but keep in mind that at the time he had a ‘no static standing’ restriction in place. So how can a job that requires you to stand all day, when you have a ‘no static standing’ restriction in place be approved? Other positions WCB approved required him to lift well in excess of the amount listed on his restrictions. JJ also had a no

repetitive forward flexion restrictions implemented by his Physician yet WCB approved positions that required repetitive forward flexion. How can that be interpreted as assisting the injured worker? Approving positions that clearly are outside a worker's restrictions is not in my opinion helping the injured worker.

My story is not unique. There are lots of JJs' out there. Some recover better than others, some give up and some make a statement on the doorsteps of the WCB building. No human being should be subjected to the hell that JJ has been put through.

JJ wants to be at work. All he needs is to be put into a position that falls within his restrictions recommended by his physician. In our opinion that is not too much to ask from his employer and WCB considering he was injured on the job not once but twice.

Of the 25 years that JJ has worked for ZZ approximately 22 of them have been spent working the 4 to midnight shift as he did not have enough seniority to hold a day shift. About 1 year after suffering his first injury JJ finally had enough seniority to hold a day shift with partial weekends off. We know that when JJ does return to work he will be forced to go back on the 4 to midnight shift even though he can hold days. Why is WCB not insisting injured workers be provided with the same shift placement opportunities that would be available to them had they not been injured? And why is ZZ not obligated to provide JJ with the same shift placement opportunities as if he had not been injured on the job? Is this not discrimination? Here is a man who only because he injured himself at work will be required, for the rest of his working days to work a shift he would not be required to work had he not been injured. Somehow this seems to be working against the injured worker not for them!

Who is there to help the worker, if WCB and ZZ are able to implement their own recommendations? The injured worker truly stands alone.