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WCA LEGISLATIVE REVIEW COMMITTEE  
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Review Committee

I understand the submissions received are for review only and not for case intervention. That being said, I believe I must include this short synopsis of my ongoing personal experience, not for publication, but for clarification of what my submission is trying to say. As the major point of my submission for review by this panel deals with the appeal process and legalities afforded each participant, I would like to impress upon the panel that this is not just a sour grapes submission, but a submission for change. I did follow all the steps required to end up at the Appeal Board asking for reinstated into a vocational rehabilitation program with full wage loss benefits. The Appeal Board ruled in my favour stating: **"Given its finding that the initial rehabilitation plan was inappropriate coupled with its recognition of the claimant's economic circumstances and the objective of reducing the human and financial effects of work related accidents, the Panel finds that the claimant is entitled to further vocational rehabilitation assistance. The WCB is requested to explore or re-assess a new vocational rehabilitation plan for the claimant taking into account her current economic circumstances."** (Decision No. 141/03). The decision was distributed to all parties on Dec 8/03. I immediately called my case manager for details on when this process for exploration into a new course and full wage loss benefits would begin. She informed me that she had not received the decision yet and would get back to me when she did. On Jan 6/04 I finally received a phone call from my case manager and was advised that the decision had been up at the Review Office all this time and that their interpretation did not include a new VR and return to full wage loss benefits. It only meant that I was entitled to services such as resume writing and talking with a WCB employment specialist. On Jan 21/03 my case manager came to my house to explain that due to the WCB deeming me into a higher classification, my previous employer offering me an opportunity to compete for a job after the appeal decision was made, even though it was common knowledge both to MTS and the WCB, that I was moving out of the province in February, I was therefore not entitled to retraining or full wage loss benefits. After completion of my vocational rehab plan in August 1998, I was deemed to have an established earning capacity of \$396.16 per week based on NOC 1421 (Computer Operators). In June 2003 when I applied to the review board for reinstatement into VR and full wage loss benefits, the Review board stated I was incapable of earning what they originally estimated and would be redeemed but not

entitled to VR. On January 3' 2004, after the Review Board returned my file to my case manager, the WCB deemed me to have an established earning capacity of \$487.56 per week based on NOC 1453 (Call Center), reducing my benefits. In March, after indexing, my wage loss benefits were reduced even further. I believe this new deeming is punishment for winning an appeal the WCB refuses to

honour and a means of forcing a claimant to quit fighting for their entitlements provided by the WCB act or incur further retribution. I would appreciate it if when posted on the website my submission could be done without my personal information and this paragraph.

Thank you.  
Patricia Ripley

## **SUBMISSION AS FOLLOWS**

WORKERS COMPENSATION ACT REVIEW COMMITTEE 2004

April 12, 2004

Dear Committee members,

First of all I would like to thank the committee for allowing me the privilege of submitting my opinion for consideration and also the provincial government for allowing those most effected by the WCB a voice to be heard

My first point for review is Section 43.00 VOCATIONAL REHABILITATION which states:

### **“Goals and Objectives**

- 1. The goal of vocational rehabilitation is to help the worker to achieve a return to sustainable employment in an occupation which reasonably takes into consideration the worker's post-injury physical capacity, skills, aptitudes and, where possible, interests.**
- 2. The WCB will help the worker as much as possible to be as employable as she/he was before the accident. Once this is done and where necessary, the WCB will provide reasonable assistance to the worker so that she/he actually returns to work. However, services may not always continue until the worker actually returns to work.**

### 3. Vocational rehabilitation strives to return workers to the salary level they were earning before the accident.”

This section of the manual usually deals with claimants that were injured and are no longer able to function in the occupation in which they were injured. It is intended to “**help the worker achieve maximum physical, psychological, economic and social recovery from the effects of a work-related accident on a timely basis.**” It is a benefit that is not given lightly.

A claimant must undergo rigorous assessments in order to qualify for this benefit. Once accepted into the program the WCB forms an IWRP. It is the responsibility of the WCB to monitor all aspects of the plan to ensure the plan is viable. In some cases the LMI and employment opportunities are over inflated and offer no employment opportunities let alone sustainable employment even before the course is completed. In other cases they are inappropriate from the onset but due to the failure of the board to monitor all aspects, they choose to only monitor the claimant to ensure that they complete and pass the course. Section 13 under IWRP states: “**The WCB will be flexible in its management of the plan and reasonably respond to change. The WCB will monitor the plan to determine if the plan is progressing as anticipated. Where this is not the case, adjustments will be made in consultation with the worker and the employer (where involved). The WCB will evaluate plans at least at the end of identified steps in the plan.**”

Where is the flexibility in the plan when it affects the claimant? If employment opportunities don't exist why continue on with the course? It should be re-evaluated and changed. That is the WCB's responsibility. Failure to do so leaves the claimant in the same situation of employability that they were in before completing their vocational rehab. The WCB then expects you to find employment where none ever existed, allow you a certain amount of time for job search, cut off full wage loss benefits and moves on to Section 44.80.30.20 WAGE LOSS Post Accident Earnings - Deemed Earning Capacity. More care and investigation should be conducted regarding the local job market before putting an IWRP into place and monitored fully. Justifying a course on the premise of a headline stating 20,000 it jobs need filling doesn't mean any of those jobs are located in Manitoba or that a ten month certification course will replace the university degree requirement. The board relies too heavily on the LMI put out by HRDC. These reports are usually based on statistics from the previous year. What opportunities that existed then could be saturated by the time the IWRP is written up or completed. Also, justifying employment opportunities by Noc codes and ads in the newspapers, does not give a realistic view of the job market. Most NOC codes contain more than five occupational titles. If a claimant receives training for one specific occupation it doesn't mean they could qualify for any of the remaining occupations in that NOC category. The same can be said for the newspaper ads. They fall in the NOC category the board has deemed you, but the majority of the ads list qualifications, such as years of experience, knowledge of programs or equipment that a new grad does

not qualify for. Some companies might take a chance on a younger worker but older workers starting over in a new career statistically will not be considered. Even if the board admits that very few claimants received employment in the occupation you retrained for and the school admits the same, it would only be logical that the board would be flexible and revise the plan which Section 17 states:

**“If the plan requires revision due to unforeseen developments in the vocational rehabilitation process, amendment of the plan will be acknowledged by all involved parties. All the requirements for developing the initial plan apply to the amendment.”**

According to the WCB manual, the purpose of the plan is **“Vocational rehabilitation may be provided, at the discretion of the WCB, where it is needed to reduce the human and financial effects of a work-related accident. While discretionary, vocational rehabilitation should be consistently applied to all eligible workers.”** The unfortunate reality is that claimants do not achieve sustainable employment when the WCB fails to investigate occupations properly. Claimants remain financially strapped, emotionally stressed, near bankrupt, forced to supplement their existence using food banks and welfare.

My second point for review is **Section 44.80.30.20 WAGE LOSS Post Accident Earnings - Deemed Earning Capacity**. This section states:

**“DEEMED EARNING CAPACITY AND REHABILITATION:**

**1) Deemed earning capacity will typically be demonstrated in the context of vocational rehabilitation activity. Generally, vocational rehabilitation is designed to maximize the worker's post-accident earnings and keep the loss of earning capacity to a minimum. Detail on the goal and process for vocational rehabilitation within the WCB is provided in Policy 43.00, Vocational Rehabilitation.**

**2) The decision to use deemed earning capacity will be secondary to the more important consideration of developing and completing an effective vocational rehabilitation plan. Deemed earning capacity will generally be used as a last resort after all reasonable or available vocational rehabilitation/re-employment options have been exhausted.”**

If after a claimant goes through step one of this process, taken and passed the vocational retraining, spent a year pursuing employment in that field, existed on their miniscule partial wage loss benefits, spent their entire buyout, rrsp and

spouse's rrsp and were still unable to find employment in the field, WCB automatically moves on to step two. If the Review Board agrees that the original

IWRP had substantially changed during vocational rehab and employment opportunities did not exist, how can the board then invoke deemed earning capacity when all reasonable or available vocational rehabilitation/re-employment options have not been exhausted.

The claimant is basically abandoned by the WCB and left to find employment of any type if and wherever they can find it. These jobs are normally low pay (between one and two thirds less than pre-accident employment), part-time, offer no long term employment and no chance of ever making anywhere near the pre-accident wage and in no way associated with the vocation rehab course. Vocational rehabilitation is designed to maximize the worker's post-accident earnings and keep the loss of earning capacity to a minimum, but in most cases inappropriate vocational rehabilitation has maximized the loss of earning capacity and no change to employability. To add insult to injury the WCB then decides that they erred in your deeming and you were incapable of earning what they originally estimated. What that actually means is they will now choose a new NOC based on temporary jobs you were able to attain and so called transferable skills. It is questionable how a claimant can then be deemed at an even higher rating than the original deeming without the benefit of any retraining. The board justifies this decision using item a) listed below.

#### **CHANGE IN CIRCUMSTANCES UPON COMPLETION OF A PLAN:**

- a. If the information on which the plan was based has changed, the deemed earning capacity will be based on the worker's new (changed) earning capacity and not the earning capacity originally anticipated by the plan.**
- b. If this change results in an earning capacity which is lower than first expected, the WCB may continue (i.e., where vocationally appropriate for the worker and cost-effective for the WCB) full or partial wage loss benefits together with more vocational rehabilitation efforts. “**

What this basically does is reclassify you into a higher NOC rating and reduce your partial wage loss benefits even further. Therefore even though section b) is included for the claimant's protection, the review board will deny you section b) based solely on the fact that they change the NOC rating higher which benefits the board, not the claimant thereby precluding claimants of their entitlements under section b). In order to change a claimant's reclassification the board uses presumed earning capacity. They are to follow guidelines listed below:

**2. REQUIREMENTS FOR WCB TO DEMONSTRATE DEEMED EARNING CAPACITY:**

- a. The WCB must demonstrate (through adequate vocational assessment, plan development, and documentation) that the worker is capable of competitively finding, competing for, obtaining, and keeping employment in the occupation or group of occupations on which the earning capacity is based.**
- b. The WCB must demonstrate that the worker has the physical capacity, education, skills, aptitudes, interests, and personal qualities needed to obtain and keep employment in the occupation or group of occupations in the labour market.**
- c. The WCB must demonstrate that work exists for the occupation or group of occupations on which the earning capacity is to be based.**
- d. The WCB will use the Individualized Written Rehabilitation Plan (or similar format) as described in Policy 43.00, Vocational Rehabilitation as the basis for collecting and weighing information about the worker's earning capacity. At a minimum, the rationale presented in the initial plan must:**
  - i. State and describe the occupation or group of occupations the worker is qualified to work in. The description of the occupation will be based on nationally-recognized methods of occupational classification. Where applicable, the description will include any community-specific features of the occupation as determined through job analysis;**
  - ii. Clearly show how the identified occupation matches the worker's vocational profile (i.e., physical capacity, education, skills, work history, aptitudes, training, interests, personal and important occupational traits). Analysis of the worker's transferable skills will be based on methods clearly recognized in the field of vocational rehabilitation. This analysis and its results will be documented; and,**
  - iii. Describe the methods used to establish that there is a labour market in which the worker can compete for the chosen occupation. As well, the results of this labour market analysis must be described.**

If these steps were followed when a claimant is reclassified then why isn't any of this information in their file? There is no new vocational assessment, plan development, and documentation. There is no justification on file for items a, b, c whatsoever. Item d is a moot point as the IWRP was totally inappropriate and no employment was ever gained in the related occupations. It is illogical to assume a claimant can exist on permanent wage loss benefits that amount to less than a quarter of their pre injury wage. The majority of injured workers just want to become employable and earn their own way. The WCB feels it is more cost effective to redeem a claimant than to supply them with the vocational rehab a claimant is entitled to. The claimant can be deemed any time the board sees fit and once a year re-indexed, which further cuts the wage loss benefits they have to pay out. The claimant is left in a permanent wage loss situation that does not reduce the human and financial effects of the work related accident. Nor is a claimant entitled to receive full wage loss benefits together with more vocational rehabilitation efforts. The WCB is only concerned with the WCB not the claimant.

My third point for review is the appeal process.

If you disagree with a board ruling you are entitled, according to the WCB mandate, to appeal a decision. First appeal is to your case manager. Second is to the WCB Review Board. Third and final is to the Appeal Board. There is an inappropriate amount of time involved in this process. What should only take months could and does end up taking years. Even though a specific amount of time is allowed for replying to these appeals there is apparently no time specifics given for reviews and implementation at the WCB level. Also once a claimant has followed proper procedure, appeared before the Appeal board and presented evidence to substantiate their case for specific services, won their appeal for these specific services, it can be all for not. The WCB can deny you what you won on appeal by saying that "**their interpretation**" of the ruling is all that matters.

Since step three is the final step of appeal, and according to the Appeal Board, "**The Appeal Commission, according to its legislation, has no ability to amend, clarify or change its decision once a decision on a case has been rendered. This means that once a decision has been rendered, the Panel is unable to provide any further reasons, clarification of or explanations for its decision. As well, the Panel has no ability to consider further arguments or submissions by the parties to the appeal once a decision on a case has been rendered.**", a claimant is under the false impression that they can actually change a WCB ruling. There should be an avenue for clarification. Without this avenue the WCB will continue to abuse their authority, morally and legally, until such a step is implemented. The Appeal Commission functions separately from the Workers Compensation Board of Manitoba, but must adhere to the Workers Compensation Act of Manitoba when making their decisions. When the Appeal

Board rules in favour of the claimant, reversing the Review Boards decision, abiding by the Workers Compensation Act of Manitoba, nowhere does it state that the Appeal Board ruling is open to a WCB interpretation. In essence the WCB Review board has overturned the Appeal Boards decision replacing it with their original decision to deny the claimant specific vocational rehabilitation services.

I find it incomprehensible that the WCB is allowed to misinterpret the intent and specifics of what was appealed and granted by the Appeal board when they receive the written and taped transcript of what transpired at the hearing. When a claimant abides by all aspects of the act, appeals to first their case manager, then the Review Board and finally to the Appeal Board, citing specific sections of the act, asking for specific services, proves their case and has a ruling in their favour, the WCB does not have the legal right to dismiss the Appeal Boards ruling citing "their interpretation." If the Review Board disagrees with the Appeal Boards ruling they have the right under section:

### **60.9 - Powers of Board of Directors**

**" Where the Board of Directors considers that the appeal commission has not properly applied the Act, regulations or a policy of the Board of Directors, it may stay the decision of the appeal commission pending rehearing of the matter under this section and (a) in writing, direct a panel of three different commissioners of the appeal commission to rehear the matter; or**

**(b) on written notice to all persons who have a direct interest in the matter, direct that the matter be reheard by the Board of Directors, or by a committee of the Board of Directors, in which case the Board of Directors or the committee has all the powers and authority of the appeal commission, and sections [60.4](#), [60.7](#) and [60.8](#) apply with such modifications as the circumstances require."**

If under this section no notification is given to the claimant or the Appeal Board, and the WCB Review board has overturned an Appeal Boards ruling, the WCB and Review Board have acted outside the legal boundaries of **The Workers Compensation Act and Regulations**.

In conclusion, I can only attest to my personal experience with the WCB. Listed below is the mission and corporate values statement from the WCB website.

#### **The WCB mission statement:**

**"To provide superior compensation services to Manitoba workers and employers in a manner that is sensitive, responsive and effective in order to minimize the impact of workplace injuries."**

#### **Corporate Values statement:**

**The following set of guiding principles was also developed from staff and Board suggestions and will form the basis for WCB internal and external relationships on an ongoing basis.**

**"We are committed to being a service-oriented organization that:**

- **Treats people with respect**
- **Is responsive and sensitive to client needs**
- **Listens carefully**
- **Communicates clearly and openly**
- **Acts honestly and fairly**
- **Strives for excellence through innovation, personal initiative, teamwork and staff development**
- **Manages resources effectively to achieve positive results"**

The WCB is a governmental organization created as a safety net for injured workers, to help minimize the impact of workplace injuries that physically, emotionally and financially drain an injured worker. The injured worker is supposed to be the prime responsibility of the board with an over all goal of returning the injured worker to sustainable employment and again a contributing member of society. Unfortunately, most dealings with the WCB seem to come down to what is only cost effective for the board. In other words the very people the board was created to help are the most expendable. The priority is no longer the injured worker but the WCB itself. The confrontational and unresponsive manner in which the WCB prefers to use does not reduce any emotional or financial stress whatsoever. The more roadblocks, delays, denial of services and the continual reduction of financial aid, all without reasons for justification on record, has become the norm not the exception. I believe it is time not only for this review committee to hear from claimants but to audit the appeal process. It would at least give some idea of what claimants deem to be the major cause for concern. The roadblock and delay tactics the board uses will reduce the realistic number of actual appeals as frustration and a feeling of worthlessness will cause many people to give up, no matter who is right or wrong.

Thank you for your time and consideration.

A very concerned claimant