



WINNIPEG POLICE ASSOCIATION

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April 15, 2004

WCA Legislative Review Committee
P.O. Box 1770
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The Winnipeg Police Association appreciates the opportunity to put forth the following submission(s) for the consideration of the Review Committee.

The Winnipeg Police Association represents the members of the Winnipeg Police Service/City of Winnipeg in relation to Workers Compensation claims that are denied by the Workers Compensation Board.

It has come to the attention of the Winnipeg Police Association and the Winnipeg Police Service/City of Winnipeg that a number of claims have been denied by the Board in relation to repetitive activities (keyboarding, etc.)

In cooperation with the City of Winnipeg Occupational Health Branch these claims have been reviewed and discussed with the City of Winnipeg Occupational Health Physician and their Occupational Health Nurse who represents the Winnipeg Police Service/City of Winnipeg in these matters.

It was agreed that 20 claims, for various repetitive activities, were determined to be work related injuries by the employer's representative and the Winnipeg Police Association. The rationale for acceptance was based on the worksites involved and the demands of the various activities of the injured workers. Workplace evaluations were conducted and discussions were held with Occupational Health Branch and the members treating physician, chiropractor and/or physiotherapist. It was determined that the injuries were indeed caused by workplace demands.

A letter and memo was sent by the Winnipeg Police Service/City of Winnipeg to the "Board" and the individuals were named and the rationale for acceptance identified.

Meetings were held with the Board at the adjudication level and the claims continue to be denied.

The justification for the continued denials have been, not specific enough medical information, but in the majority of cases the sole opinion of the WCB medical advisor was the deciding factor.

It is difficult to understand the position of the Board when the City of Winnipeg is a self insured employer.

The Winnipeg Police Association and the Winnipeg Police Service/City of Winnipeg are in fact saying to the "Board" we know our workplace and we are satisfied the activities of our employees in the workplace have caused these injuries and we support acceptance.

It is our understanding that all costs incurred are borne by the City of Winnipeg as mentioned before a self insured employer.

This would seem at least to us as being the most effective and efficient way to manage claims and the least amount of negative impact on all concerned.

We note with interest the Mission and Corporate Values Statement of the WCB, particularly the following, "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." and under the Corporate Values section, "Manage resources effectively to achieve positive results."

It would seem that in these particular claims the City of Winnipeg Police Service and the Winnipeg Police Association have adopted the philosophy of the WCB while the Board has adopted a policy to the contrary.

In the 20 cases discussed the employee reports being injured in the workplace, the supervisor agrees, the treating physician agrees, the chiropractor and/or physiotherapist agrees, the City of Winnipeg Occupational Health Branch medical professional agree, the management of the Winnipeg Police Service/City of Winnipeg agree as does the Winnipeg Police Association. The individual who disagrees is the sole medical advisor of the "Board".

We also feel that the criteria for acceptance has also been met given Sec 4(1) - definition of accident and 4(5) the Presumption section

In these cases the employer and the union have agreed that the injury did indeed happen in their workplace and there is no evidence to the contrary.

We have some experience in relation to submission in front of the Appeal Commission.

The picture in all the claims indicated would be: The injured worker addressing the Commission as to how he or she was injured. The injured workers representative submitting various medical reports supporting acceptance. The Employer's representative would then explain to the Commission why in their view the claims should be accepted based on their medical knowledge as it relates to the demands of the occupation. The hearing would then conclude.

The only submission presented to the Appeal Commission support acceptance. It is our belief that their decision would indeed favour the injured worker as there is no evidence to the contrary.

We are prepared to go to these lengths to support our injured worker, but our question is “why should it be necessary given the aforementioned?”

In addition there are substantial monetary and physiological costs associated to all concerned, that is our view could almost be eliminated at the first level of adjudication.

One might ask what is the agenda of the Board? When the employer supports acceptance of claims that they have determined are indeed workplace injuries, as well as the various health professionals, whose interest does the Board represent.

By accepting claims that are supported by the employer (who is self insured) in our view has no impact on any other employer or the funds of the Board.

We pose the question, when all involved other than the board support acceptance is the injured worker being victimized by the Board and for what purpose?

As a self insured employer that accepts that these injuries are in fact workplace accidents, why would the Board continue to deny claims, and at what cost to the worker, who in all likelihood, is suffering not only physically, but financially and possibly psychologically due to the position of the Board.

It is important to note that over the years the Winnipeg Police Association has appealed approximately 60 claims to the Appeal Commission. We are advised by legal council that in all but 4 the Commission found in favour of the injured worker. In these cases the employer supported denial. We are now in a position where the employer in the cases mentioned supports acceptance. We would therefore conclude that the odds would be even better in these matters.

The second issue we wish to discuss is the following:

When an adjudicator has reviewed a claim they will presently contact the injured worker and advise that the claim has been denied or accepted.

We wish to address the situation when a claim is denied. The adjudicator advises the claimant that the claim is denied and advise the claimant of the reason why and that they can appeal the claim if they wish and contact the Winnipeg Police Association for assistance and representation.

We are requesting that the following be considered:

When an adjudicator is considering denying a claim that the injured worker be advised that a denial is being considered and why and that they have an opportunity for representation.

In all the claims mentioned above the claimants were advised of the denial and we are now placed in the position off appealing all claims.

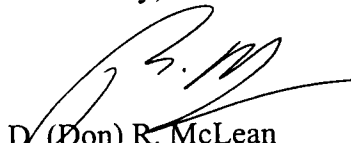
If the injured worker was advised in advance there may be some simple explanation or an additional medical report required to satisfy the adjudicator. I can say in all cases with a degree of confidence that the majority of injured workers that have their claim denied have little if any experience in the process and it would seem only fair that they obtain proper representation before a claim is denied.

I recall a conference 2 or 3 years ago where a representative of the WCB advised that when a workers claim was being reviewed the injured worker and their representative would be involved in the process so when a claim was in fact denied it would be abundantly clear why. This has not taken place.

Our thoughts are that if an injured worker was properly represented in the first instance everyone involved would understand the process to a successful conclusion or at least a conclusion that was understood by all concerned.

In all honesty we are not certain if this is the right forum to address these issues or our concerns, but we felt we needed to be heard and would ask respectfully for any advise that you may have to ultimately assist us.

Yours truly,



D. (Don) R. McLean
Benefit Coordinator

Section Title: Introduction - *Policy Summary*
Subject: Mission and Values of the WCB
Effective Date: March 24, 1994

MISSION

The following mission statement was developed from suggestions by both WCB staff and the Board of Directors, and was approved by the Board in early 1994.

"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

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"

CHAPTER W200

THE WORKERS COMPENSATION ACT

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

Definitions

1(1) In this Act,

"**accident**" means a chance event occasioned by a physical or natural cause; and includes

(a) a wilful and intentional act that is not the act of the worker,

(b) any

(i) event arising out of, and in the course of, employment, or

(ii) thing that is done and the doing of which arises out of, and in the course of, employment, and

(c) an occupational disease,

and as a result of which a worker is injured; («accident»)

"**accident fund**" means the fund provided for the payment of compensation, outlays, and expenses, under Part I of this Act; («Caisse des accidents»)

"**appeal commission**" means the Appeal Commission appointed under section 60.2; («Commission d'appel»)

"**appeal commissioner**" means a person appointed as an appeal commissioner under section 60.2; («commissaire aux appels»)

CHAPITRE W200

LOI SUR LES ACCIDENTS DU TRAVAIL

SA MAJESTÉ, sur l'avis et du consentement de l'Assemblée législative du Manitoba, édicte :

Définitions

1(1) Les définitions qui suivent s'appliquent à la présente loi.

«**accident**» Événement fortuit dû à une cause physique ou naturelle. La présente définition s'entend également :

a) de l'acte volontaire et intentionnel autre que celui de l'ouvrier;

b) de

(i) tout événement survenant du fait et au cours d'un emploi,

(ii) toute chose qui est effectuée ou qui s'effectue du fait ou au cours d'un emploi;

c) des maladies professionnelles,

lorsque l'acte, l'événement, la chose ou les conditions causent une lésion à un ouvrier. ("accident")

«**aide médicale**» Sont assimilés à l'aide médicale les soins chirurgicaux et dentaires, les services hospitaliers et de soins infirmiers, les traitements, notamment la chiropraxie et la radiographie, les médicaments, les pansements, les appareils, les dispositifs, le transport ainsi que les biens et services que la Commission approuve. ("medical aid");

Misconduct of worker

4(3) Notwithstanding subsection (2), where the injury is attributable solely to the serious and wilful misconduct of the worker, as determined by the board,

(a) wage loss benefits are not payable for three weeks following his or her loss of earning capacity; and

(b) medical aid is not payable for three weeks from the day the worker requires medical aid.

Cause of occupational disease

4(4) Where an injury consists of an occupational disease that is, in the opinion of the board, due in part to the employment of the worker and in part to a cause or causes other than the employment, the board may determine that the injury is the result of an accident arising out of and in the course of employment only where, in its opinion, the employment is the dominant cause of the occupational disease.

Presumption

4(5) Where the accident arises out of the employment, unless the contrary is proven, it shall be presumed that it occurred in the course of the employment; and, where the accident occurs in the course of the employment, unless the contrary is proven, it shall be presumed that it arose out of the employment.

4(6) Repealed, S.M. 1989-90, c. 47, s. 4.

Extra provincial employment

4(7) Subject to any agreement made under subsection (8), and to section 5, no compensation is payable under this Part where the accident to the worker happens elsewhere than within the province.

Agreements with other jurisdictions

4(8) The board may enter into agreements with the Government of Canada or The Workers Compensation Board or similar body in another province or territory of Canada, providing for

(a) co-operation in matters relating to compensation for or rehabilitation of workers injured by accidents arising out of and in the course of employment;

Faute de l'ouvrier

4(3) Par dérogation au paragraphe (2), si la Commission considère qu'une faute grave et volontaire de l'ouvrier est la seule cause de la lésion corporelle, l'ouvrier n'a pas droit :

a) aux prestations d'assurance-salaire pendant une période de trois semaines suivant la perte de la capacité de gain;

b) à l'aide médicale pendant une période de trois semaines à partir du jour où il a besoin de cette aide.

Cause de la maladie

4(4) La Commission peut établir qu'une lésion résulte d'un accident survenu du fait et au cours de l'emploi si, selon elle, la lésion consiste en une maladie professionnelle causée en partie par l'emploi de l'ouvrier et en partie par des causes étrangères à l'emploi et que l'emploi est la cause principale de la maladie.

Présomption

4(5) Lorsque l'accident survient du fait de l'emploi, il est présumé, sauf preuve contraire, s'être produit au cours de l'emploi et lorsque l'accident s'est produit au cours de l'emploi, il est présumé, sauf preuve contraire, être survenu du fait de l'emploi.

4(6) Abrogé, L.M. 1989-90, c. 47, art. 4.

Emploi exercé à l'extérieur de la province

4(7) Sous réserve de toute entente conclue en application du paragraphe (8) et sous réserve des dispositions de l'article 5, aucune indemnité n'est payable sous le régime de la présente partie lorsque l'accident survient à l'extérieur de la province.

Ententes avec d'autres compétences territoriales

4(8) La Commission peut conclure des ententes avec le gouvernement du Canada ou avec l'organisme homologue d'une autre province ou d'un territoire du Canada portant sur :

a) la coopération en matière d'indemnisation ou de réadaptation professionnelle des ouvriers ayant subi des lésions résultant d'un accident survenu du fait et au cours de leur emploi;