

Adjudicative Advice

Initial Entitlement (Disablement)

The Claims Quality Loop identified challenges decision-makers were encountering in ruling on entitlement involving ‘disablement’ injuries that arise out of work duties.

Background

Since the definition of accident was amended in 1963 to introduce ‘disablement arising out of and in the course of employment’, determining the level of work contribution needed to assist in a causation determination has evolved. The initial approach was to look for something in the work that could be readily linked to the resulting condition such as strenuous work, awkward position and unaccustomed strain. The background information supports that intent of the change was also “to capture conditions developing over time, so long as they were caused by the work”

(1963 explanatory Notes for the Minister).

Disablement is defined to include injuries that occur due to:

- an unexpected result of work duties
- a condition that gradually emerges over time as a result of the work duties

It is important to note that the presumption clause does not apply when assessing disablement claims. The worker has the burden of showing that the disablement arose out of and in the course of employment. It remains the responsibility of the decision-maker to conduct the investigations and obtain necessary evidence. This means that when determining entitlement, confir-

mation that the work activity ‘contributed to the onset of the injury/disability’ is required.

In the late 1980s, arising from a Tribunal ruling (Decision 72), the WSIB revisited the approach to adjudicating ‘disablement’ to ensure decision-makers were not being unnecessarily restrictive in their rulings. At that point, a renewed understanding was communicated that condition’s emerging gradually over time after performing normal duties could be considered as long as the causation test was met.

Adjudicative Direction

Work duties

In order to rule on whether the injury ‘arose out of the work activity’ significant detail around the work performed including the mechanics of how it was performed and the nature of the injury the worker has incurred must be secured. The primary source for this information should be the worker and the treating physician(s).

Written job descriptions do not always effectively capture the sequence of tasks and extent of the activities. Physical Demands Analyses (PDA’s) can be of assistance, particularly if they are current. The information provided by other sources such as the employer and co-workers is valuable in clarifying and validating the worker’s information. When it is apparent that significant detail involving multiple contacts is likely required, it is suggested that a Board investigator/ergonomist become involved.

Notice: This document is intended to assist WSIB decision-makers in reaching consistent decisions in similar fact situations and to supplement applicable WSIB policies and guidelines as set out in the Operational Policy Manual (OPM). This document is **not a policy** and in the event of a conflict between this document and an OPM policy or guideline, the decision-maker will rely on the latter.

Medical condition

External physicians are interested in a patient's treatment/recovery and are generally less interested in determining whether the problem has a work relationship. It is often left to the decision-maker to secure the relevant medical information and determine whether the work activity significantly contributed to the onset of the injury. Significant contribution does not mean the only contribution but rather the condition has an obvious work link.

On occasion this link is not clear. Guidance from WSIB Medical consultant can assist in determining whether there is a likely association between the activity and the presenting diagnosis.

Work Association

The requirement to define the nature and level of the 'work activity' needed to establish causation, has challenged decision-makers over the years and resulted in some divergence in outcomes at the various decision levels.

It may be helpful for decision-makers to consider the evidence by closely looking at the temporal relationship between the activity and the onset of the condition. The closer the timeline between the activity and the onset, the more likely the causal relationship.

This acknowledges that (in these scenarios) other non-work related events have not interrupted the chain of causation.

The fact that a worker cannot immediately associate the problem/pain with the work activity or that the activity is not different, is not in itself a reason to doubt the validity of the claim. Some conditions that emerge over time as a result of normal work activity do not always reach a level of discomfort to require medical treatment or reporting until well after the work tasks were first commenced. While some alteration/change in activity can assist in identifying an association between the activity and onset, the fact there is no change but simply activities over time that can reasonably

give rise to the problem is sufficient to consider entitlement.

Workers' have a varied level of understanding with respect to causation matters and often rely, quite understandably, on their treating physicians and sometimes their employers to guide them in this regard. Therefore delays in reporting and seeking medical attention must be carefully weighed before reaching any conclusions. This does not negate the significance of the temporal element, as it is possible to have discomfort close to the activity but not immediately associate it with the activity.

In weighing the evidence and determining the potential contribution of the work, it is important to ensure the details concerning any pre-existing or co-existing conditions be considered. Should a worker have a pre-existing condition that renders them more susceptible to injury, it is important to then consider if the work activity may be a significant factor in triggering the impairment. In these cases entitlement must also be considered on the basis that the activity 'aggravated' the underlying condition to the point it now presents a disabling feature.

Conclusion

Assessing whether the causation test has been met requires thoughtful analysis of all the available information. Critical to accomplishing a fair and complete review is a thorough understanding of the work duties, onset of symptoms, diagnosis and other potential causes for the problem.

The fact that there is not a strong link to the work activity in each area does not mean there is no relationship, simply that the relationship is less likely. When these situations are encountered it is suggested that additional resources including Medical Consultants, Ergonomists, Nurse Case Managers may be utilized to secure a better understanding of any likely association.

*Claims Quality Loop
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