

Purpose

Many of the decisions made at the Workplace Safety & Insurance Board (WSIB) are significantly influenced by the way medical information is interpreted.

Decisions relating to medical issues should be based on the information and opinions received from the treating health care practitioner(s). These practitioners include, but are not limited to; physicians and surgeons, physiotherapists, chiropractors and registered nurses (extended class).

While the objective physical findings are usually consistent, the interpretations may vary. This can lead to a difference of opinion on diagnosis, prognosis, treatment, causation and physical precautions. The challenge for the decision-maker is to take all of this information and weigh it appropriately. This document will serve as a refresher on weighing of medical evidence.

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Weighing of Medical Evidence

Roles of the Parties

Decision-Maker's Role (Adjudicator)

The decision-maker must gather all of the relevant medical information that is available. If information is missing, all reasonable attempts must be made to obtain it. The nature of the information and the urgency of the need for it will dictate the method of obtaining it.

When medical information is submitted to the WSIB, the decision-maker must review it for completeness and clarity, within the context of the claim file. If there is a conflict in opinions between the health practitioners, the decision-maker is expected to assess and weigh the relative merits of each report in order to reach a decision.

The adjudicator may case conference with the nurse case manager, or the nurse case manager and the medical consultant.

Nurse Case Manager's (NCM) Role

The Nurse Case Manager (NCM) is a key member of the Service Delivery Team and can assist adjudicators by explaining pathology and coordinating/facilitating necessary treatment and assessments for the workers. The NCM's may also secure and share medical information through contact with the workers and treating practitioners. The NCM can work collaboratively with the claims adjudicator, workers, employer and treating practitioner to promote a successful return to work (RTW) and recovery.

Medical Consultant's (MC) Role

The decision-maker may call on the medical consultant to help in several ways to assist with issues of causation; mechanism of injury; pathology; interpretation of medical information and act as a contact with other practitioners in the medical community. The MCs play an important role in the interaction with the treating

physician(s) to discuss diagnosis, treatment, including RTW and to share information.

An important role of the medical consultant is to identify situations where more medical information or assessments may be required and to make recommendations to that effect to the decision-maker. This may include identifying experts in the field to whom the worker may be referred, including WSIB sponsored Specialty Clinics. The Specialty Clinics are a network of experts at academic health sciences centres in the province who will assess, and in some clinics, provide treatment to workers with various types of injuries and illnesses.

Another key role of the MC is to provide advice to the decision-maker when there are conflicting medical opinions on file. For example, the family physician's treatment plan or list of precautions may be contrary to the discharge recommendation from a physiotherapy program or the Regional Evaluation Centre. Also, precautions may be provided with no supporting objective findings.

Referrals to external experts (including WSIB Specialty Clinics) should generally not be made in cases of conflicting opinion, without first attempting to reconcile the differences through conversation with the treating health care practitioners, where feasible.

Any opinion offered by the medical consultant should provide a full explanation and rationale to assist the decision-maker. When medical feedback is obtained, the decision-maker may, when necessary, request clarification regarding any of the comments made.

The medical consultant's role does not include providing opinions on adjudication issues. When a file is referred for a medical opinion it is because it is needed to assist in

making a decision. The MC does not need to know the lay opinion of the decision-maker. Questions to the MC should be framed in an objective and unbiased way. There should be no perception that the decision-maker is trying to lead the medical consultant one way or another.

Physician's Role

The document called Injury/Illness and Return to Work/Function available on the Workplace Safety and Insurance Board (WSIB) Website outlines the role of the physician including:

The role of the physician treating an injured/ill worker/patient is to promote, preserve and protect the health of the worker/patient, and to act as an advocate for policies to benefit his or her health. The physician is responsible to assess, diagnose, manage treatment and provide objective physical findings relating to the worker's progress including physical limitations.

Further clarification of the role of the physician in return to work is included in the same document.

The physician is also responsible to develop a return to work/function plan, including appropriate referrals, consultations and discussions with the patient if the patient needs to be off work or on modified duty.

In the view of the Canadian Medical Association (CMA) and the Ontario Medical Association (OMA), it is not the treating physician's responsibility or role to determine the patient's status with respect to whether the condition meets the insurer's definition of disability, (i.e., the justification for the patient to be off work), especially when the physician is not aware of all jobs available in the workplace.

The role of other health care professionals, such as chiropractors and physiotherapists would not differ from this. It is the role of the decision-maker to use the functional information provided to make decisions about the worker's ability to work.

Weighing of Medical Opinions

As outlined earlier in this document, in complex cases, where there are conflicting opinions, the medical consultant may be called on to contact the treating health care practitioners and attempt to reconcile those differences. Despite everyone's best efforts, there will be times where no consensus is reached. In some cases, the WSIB will arrange for an external referral to give another specialized opinion.

When the opinion of the WSIB physician is in conflict with that expressed by external attending physicians, the decision-maker must decide how much weight should be given to each.

It should be noted that the WSIB can provide timely access to assessment, and in some cases, to treatment in Specialty Programs. These programs provide valuable information that can assist the WSIB decision-maker.

In complex medical causation situations there may be expert medical opinions judged to be equal in weight that are conflicting. The significance of the medical opinion is factored into the overall case assessment and should the evidence indicate

application of the section, the benefit of doubt ruling is rendered by the decision-maker (not the medical consultant).

The following is a list of some points the decision-maker should consider when weighing medical evidence and opinions:

- Have all the relevant medical records been reviewed to obtain a complete "picture" of the worker's condition to ensure there is a full understanding of the worker's relevant medical history, the injury process involved and the reliability of medical history?
- What is the timeliness of the medical examination in relation to the issue at hand?
- What is the degree of the doctor's knowledge of the worker including the extent of any direct medical examinations conducted on the worker? How do these impact the weight of the medical opinion at issue? The worker's attending physician is able to evaluate the worker's genuineness, sincerity and reliability regarding the description of complaints, symptoms, and ongoing impairment.
- What is the expertise of those offering an opinion, relative to the issue? Is reference made to relevant medical literature to support the opinion and recommendations, where appropriate?
- Is the opinion well explained and the conclusion logical?
- "Benefit of Doubt" is outlined in Section 119(2) of the Workplace Safety and Insurance Act. The benefit of doubt principle is an adjudicative principle employed only where the evidence for or against a particular result is approximately equal in weight. If both sets of facts are examined, and the evidence is equal, then benefit of doubt goes to the worker.

Medical Issues and Asking the Correct Medical Questions

Ultimately, the adjudicator is the decision-maker in the file. There are occasions when an expert opinion is required in order for the adjudicator to make that decision. While adjudicators acquire medical knowledge as part of claims training and through exposure to files, this does not equate to the expertise of physicians gained through years of training and practical experience. So, the adjudicator may reasonably assign significant importance to the opinions offered by treating physicians and WSIB medical consultants in certain situations.

When the opinion of the medical consultant is required, the decision-maker must document a detailed summary memo on the file outlining the following points:

- Issues
- Accident History
- Medical Information
- Pertinent Facts
- Medical Questions

It should be noted, that the decision-maker's summary of the medical information does not negate the medical consultant's responsibility to review the medical reports on file.

Types of Medical Issues:

- Clarification of the relationship between a diagnosis and the accident history, work environment or employment circumstances
- The effects of non-compensable conditions on the work related injury or the effects of a prior similar compensable injury on the current work related injury

Medical Questions: Suggested Wording for Requesting Medical Opinions

The decision-maker must outline to the medical consultant what is being accepted as the accident history or what mechanics of the work may be responsible for the injury/condition when requesting a medical opinion. In other words, the decision-maker must state the facts that he/she is prepared to accept as being accurate.

The medical consultant does not need to know the lay opinion of the decision-maker. If the file is being referred for a medical opinion, it is because it is needed to assist in making a decision. Questions to the MC should be worded in such a way that there is no perception that the decision-maker is trying to lead the medical consultant one way or another.

Example of a poorly worded question:

- From a claims perspective, the diagnosis appears compatible with the bending at the waist activity as described by the worker. Medical opinion, please.

Examples of appropriate questions on compatibility:

- I am accepting the history of the accident as provided by the worker in memo # ... and summarized above. In your opinion, is the diagnosed condition compatible with or linked to the activities?
- I am satisfied that the worker following the event detailed above had no significant symptoms aside from an immediate twinge, until he was home approximately three hours after the shift ended. Noting he continued at the activity for one hour after the accident, and did not notice any significant problem until rising from a chair at home a few hours later, is it likely that the work incident caused the diagnosed disc herniation?
- The worker has a fairly significant pre-existing condition. He was not receiving any active treatment for the condition and I am satisfied there were no ongoing difficulties in performing his pre-accident work. Noting the presenting diagnosis of _____ and the history of onset as noted above, can you indicate whether the current condition is related to the recent work activity?

Conclusion

Decisions relating to medical issues should be based on information received from treating health care practitioners of the injured worker. As well, other sources of information such as the WSIB Specialty Programs offer valuable information for the WSIB decision-maker.

Decisions should not be made in the absence of pertinent information – such as medical reports, operative reports, and physiotherapy reports, unless all reasonable attempts to get the missing documents have failed. For example, if the adjudicator is unsuccessful in speaking to the attending physician, or in obtaining a report from him/her, has the medical consultant attempted to make contact? Personal contact between the internal and external medical community to clarify differences in medical opinions is a valuable method of resolving contentious medical issues. Medical Consultants can play an essential role in calling treating physicians and obtaining this information in a timely manner.

There is no set hierarchy for weighing medical evidence. Evidence should be assessed bearing in mind the points outlined earlier in this document (example -- what is the timeliness of the medical examination in relation to the issue at hand?), then weighed.

Evidence or opinions that are not accepted or are given less weight should always be identified and the reasons for the decision-maker's assessment of their relative weight should be explained

Putting It All Together

Scenario A

Review the scenario below, and answer the questions that follow.

The presumption is that today's date is March 18, 2005 and the worker's name is Mr. Lock.

History:

On January 24, 2005, this then 42-year-old parts person at a car dealership injured his low back when he slipped on some ice in the car lot. He reported the incident immediately and was driven to the hospital by his supervisor. He has been off work ever since.

Medical:

Initial medical: Jan. 24, 2005 – Bayswater General Hospital. Diagnosis – Acute lumbo-sacral strain Treatment – prescribed Naproxyn – follow up with family doctor

January 27, 2005 – Saw family doctor – Dr. Curtis, same diagnosis, referred for physiotherapy, remain off work, and continue on Naproxyn

February 4, 2005 – commenced twelve weeks of physiotherapy

March 1, 2005 – As per the Functional Abilities Form (FAF) physiotherapist provided standard back precautions to worker, recommended return to work – comments indicated that Mr. Lock's progress was slower than expected because of his fear of re-injury – provided supportive feedback, discussed "hurt versus harm"

March 2, 2005 – Mr. Lock went to see Dr. Curtis, who provided a note indicating that his patient should remain off work for the next two weeks. Thought perhaps his patient had a herniated disc, referred for MRI – discontinue physiotherapy treatment

March 16, 2005 – Dr. Curtis seen – advised Mr. Lock to remain off work until MRI – date May 4, 2005. Physical findings same as on physiotherapy report. *

Current Situation:

- Information from physiotherapist indicates Mr. Lock can work within his physical precautions (as per FAF), and has provided the precautions.
- Employer has work within the precautions, at no wage loss, and has made a written job offer to the worker (correspondence dated March 2, 2005) and offered to explain the work in person to the worker.
- Mr. Lock agrees that the work is within his precautions outlined by the physiotherapist, but plans to stay off work, as his doctor has authorized him to do.

Questions

1. What would you do next?

2. How would you weigh the evidence, given the following additional information?

- Dr. Curtis was contacted by the Adjudicator. He advised that it was possible Mr. Lock had something more than a strain given his relatively slow recovery and out of an “abundance of caution” wanted to rule out any “more serious pathology”
- File referred to Medical Consultant for review – reviewed Emergency report, physiotherapy report (FAF), and the reports from the family physician and the telephone call with the family physician
- Medical consultant responded that physical findings on physiotherapy report (FAF) dated March 2 and those on Dr. Curtis’ report dated March 16 were the same. Given those physical findings, the precautions outlined by the therapist were reasonable and work within those precautions would not pose a risk to re-injury.

Please assess the following sources in order of the weight you would place on their opinion. Consider the opinion to which you would give the most weight and your rationale. Place a ‘1’ beside that source. Next consider your next choice and rationale. Place a ‘2’ beside that source, and so on. If you find there are two opinions to which you would give equal weight, you may give them the same number.

_____ Family doctor, Dr. Curtis

_____ Medical Consultant

_____ Physiotherapist

_____ Emergency physician

Answers

1. What would you do next?

Contact the physician to discuss the reason that he feels Mr. Lock should be off work. Explain that his examination of the worker revealed the same findings as the physiotherapist, who felt he could work within his precautions.

Discretion should be used as to whether this call should be made by the decision-maker, the nurse case manager (NCM) or the medical consultant. For example, in cases of an uncomplicated low back injury, it is the practice for the MC to call the treating physician if the patient has not RTW 28 days after the injury. .

2. How would you weigh the evidence?

Please assess the following sources in order of the weight you would place on their opinion. Consider the opinion to which you would give the most weight and your rationale. Place a '1' beside that source. Next consider your next choice and rationale. Place a '2' beside that source, and so on. If you find there are two opinions to which you would give equal weight, you may give them the same number.

 2 Family doctor, Dr. Curtis

 1 Medical Consultant

 1 Physiotherapist

 3 Emergency physician

Certainly, a case can be made for weighing the physiotherapist alone as number one, because he/she examined the worker most recently. On the other hand, the medical consultant had access to all of the existing reports, and the physiotherapist might not have had the same access. The emergency physician did not examine the worker recently and was given the least weight. Dr. Curtis' evidence was given less weight than the physiotherapist's because he did not provide any persuasive explanation why Mr. Lock could not return to work within precautions based on the physical findings. (Note – he did provide findings that were the same as the physiotherapist [see * on page 6]). The reason for referring Mr. Lock for an MRI was that he might have something more serious wrong with him but there was no real support for this opinion based on the symptomology.

Memo to File

Issue:

Lost time entitlement from March 20, 2005 - Weighing of Medical Evidence

Background:

Please note memos.... and ... outlining file history and memo ... to medical consultant and his reply

Decision:

The physiotherapist and the external physician have examined Mr. Lock. Both provided the same physical findings, and Dr. Curtis did not provide significant rationale for his recommendation that Mr. Lock remain off work. The employer has work that, in my opinion, is within the precautions. The work was described to the worker in the employer's letter of March 2, 2005 and the employer has offered to meet with the worker to discuss the job in more detail.

I have weighed the evidence, and am accepting the opinion of the medical consultant that these precautions for Mr. Lock are accurate and there is no evidence the worker is likely to re-injure his condition performing the suitable work.

I will contact Mr. Lock to discuss this and explain how the decision may affect his benefits. Should he choose to remain off work, further loss of earnings will not be payable at this time.

Scenario B

The following is a second possible scenario, resulting in an adverse decision letter to the employer:

- The adjudicator spoke to Dr. Curtis about Mr. Lock and the recommendation.
- Dr. Curtis explained that when he saw the worker on March 2nd, he noted the worker had made minimal progress since the physiotherapy treatment.
- In his opinion, Mr. Lock had more difficulty/pain performing some routine trunk movements even though the range of motion (ROM) was about the same.
- Dr. Curtis also indicated that Mr. Lock also had expressed pain referral to the legs over the past few weeks and some neurological deficit consistent with disc involvement. For that reason, Dr. Curtis had arranged an MRI (magnetic resonance imaging) scan.
- Dr. Curtis indicated he is reluctant to direct the worker back to work until an MRI is conducted. He is concerned that the worker is vulnerable to re-injury. He is not sure if an earlier MRI date can be arranged.
- Dr. Curtis is willing to speak with the employer regarding return to work, but would caution against anything but the most sedentary activity until the results of the scan are known.

In scenario B, the clarifying information provided by Dr. Curtis would be given the greatest weight, and as a result of that information, there would be no need to refer the issue to the medical consultant. The clarifying information revealed physical findings that added weight and credibility to Dr. Curtis' March 2nd report and his opinion that a return to work at the job offered was not advisable at this time.

Applying the considerations set out earlier for weighing medical evidence would lead to the following assessment of the weight to be given to Dr. Curtis' opinion:

- All relevant information was obtained.
- Dr. Curtis' opinion is based on timely medical examinations and a knowledge of the full history of Mr. Lock's progress.
- Dr. Curtis' opinion is well explained and reasonable.

In terms of arranging for an earlier MRI date, the NCM can facilitate earlier referral.

Sample Decision Letters

Decision Letter to Mr. Lock – Based on Scenario A



200 Front Street West
Toronto ON M5V 3J1

(416) 344-1000
1-800-387-0750
Fax: (416) 344-4684
TTY: 1-800-387-0050

200, rue Front Ouest
Toronto ON M5V 3J1

(416) 344-1000
1-800-387-0750
Télécopieur: (416) 344-4684
ATS: 1-800-387-0050

Date

MR (FIRST NAME) LOCK
123 MAIN STREET
SOMEWHERE, ONTARIO
1A2 B3C

LOCK, First Name
Claim 12345678

When writing the WSIB please
quote the above file number.

Indiquez le numéro de dossier
dans toute correspondance
avec la CSPAAAT.

Dear Mr. Lock:

This letter is to confirm our telephone conversation about payment of loss of earnings (LOE) benefits related to your accident of January 24, 2005.

Section 43 of the *Workplace Safety and Insurance Act (the Act)* states that a worker who has a loss of earnings as a result of an injury is entitled to payments beginning when the loss of earnings begins. The payments continue until the earliest of:

1. the day on which the worker's loss of earnings ceases,
2. there is no longer an impairment, or,
3. an age requirement (usually age 65) is met.

If your employer is able to provide you with suitable work at your regular pay, then any wage loss is unrelated to your injury, and I cannot pay you LOE benefits.

Your family doctor saw you on January 27, 2005, recommended you stay off work, and referred you for physiotherapy treatment. Your physiotherapy treatment started on February 4, and on March 1 your therapist recommended a return to work with physical precautions. The next day you went back to your doctor, who gave you a note saying that you should stay off work for the next two weeks and discontinue your physiotherapy. When you saw your doctor again on March 16, he still recommended that you stay off work until after an MRI could be conducted. The objective physical findings based on his examination were the same as those the physiotherapist listed on her earlier report.

Mr. Lock, I called your doctor to discuss the reason behind his recommendation that you stay off work. He said that he had made that recommendation out of an "abundance of caution" and to rule out any more serious problem.

Learning and Development Branch

LOCK, first name
Claim 12345678
Date
Page 2

I asked our medical consultant to take a look at the reports from your doctor and physiotherapist. I asked him to provide an opinion as to whether the precautions outlined by your physiotherapist were in keeping with your medical condition. It was his opinion that they were.

I have looked at all of the medical information. The results of the physical examination by both the doctor and therapist were similar. I have weighed the available evidence including the opinion of the medical consultant, and have accepted that the precautions, as outlined by the physiotherapist, accurately reflect your current situation.

We discussed the work being offered by your employer. As I explained, I am satisfied the duties are within the functional abilities outlined by your physiotherapist. The work is available at your regular pay. As a result, if you do not return to work, I will have to discontinue your loss of earnings (LOE) benefits effective March 20, 2005.

If you have further information that you would like me to consider, please call me. If you do not understand the reasons for the decision, or if you do not agree with the conclusions reached, I would be pleased to discuss your concerns.

I also wish to inform you that the *Workplace Safety and Insurance Act (the Act)* imposes time limits on appeals. If you plan to appeal the decision, the *Act* requires that you notify me in writing by (insert six-month deadline).

Yours sincerely,

Adjudicator's Name
Adjudicator
Service Delivery Division

Phone Number

Copy: Employer
 Representative, if applicable

Decision Letter to Employer – Based on Scenario B



200 Front Street West
Toronto ON M5V 3J1

200, rue Front Ouest
Toronto ON M5V 3J1

(416) 344-1000
1-800-387-0750
Fax: (416) 344-4684
TTY: 1-800-387-0050

(416) 344-1000
1-800-387-0750
Télécopieur: (416) 344-4684
ATS: 1-800-387-0050

Date

MR (FIRST NAME) REID
REID'S CAR SALES
2345 ANYWHERE STREET
SOMEWHERE, ONTARIO
M5W 3J9

LOCK, First Name
Claim 12345678

When writing the WSIB please
quote the above file number.

Indiquez le numéro de dossier
dans toute correspondance
avec la CSPAAAT.

Dear Mr. Reid:

As we discussed today on the telephone, you have concerns about the payment of loss of earnings (LOE) benefits in Mr. Lock's claim, particularly since March 1st, the date of the Functional Abilities Form (FAF) that you received from his physiotherapist, indicating a return to work.

Section 43 of the *Workplace Safety and Insurance Act (the Act)* states that a worker who has a loss of earnings as a result of an injury is entitled to payments beginning when the loss of earnings begins. The payments continue until the earliest of:

1. the day on which the worker's loss of earnings ceases,
2. there is no longer an impairment, or,
3. an age requirement (usually age 65) is met.

It is your contention that Mr. Lock is not entitled to LOE benefits, because any loss of earnings he has is not related to his injury, but to his unwillingness to return to work.

Mr. Lock saw his doctor twice after the visit to the physiotherapist on which she completed the FAF, and recommended a return to work with some precautions. I contacted Mr. Lock's doctor to find out why he did not agree with those precautions. It appears that Mr. Lock has had a worsening of his condition, and some symptoms that may be indicative of a more serious back injury than originally thought. Mr. Lock's doctor has arranged for further testing to be done to help confirm the diagnosis.

In the meantime, he is reluctant to direct Mr. Lock to return to the work activities you had arranged for him. He is willing to discuss a return to work with you, and see if there is something sedentary enough to meet Mr. Lock's requirements at this time.

I have also spoken to our nurse case manager, and she will be attempting to arrange the earliest possible date for Mr. Lock's test.

Learning and Development Branch

LOCK, first name
Claim 12345678
Date
Page 2

I have carefully considered the opinions of the physiotherapist as well as Mr. Lock's doctor. With the additional information and explanation provided by his doctor, the balance of evidence supports the finding that Mr. Lock is unable to carry out the duties you currently have available for him, and I will continue to pay his LOE benefits.

If you have further information that you would like me to consider, please call me. If you do not understand the reasons for the decision, or if you do not agree with the conclusions reached, I would be pleased to discuss your concerns.

I also wish to inform you that the *Workplace Safety and Insurance Act (the Act)* imposes time limits on appeals. If you plan to appeal the decision, the *Act* requires that you notify me in writing by (insert six-month deadline).

Yours sincerely,

Adjudicator's Name
Adjudicator
Service Delivery Division

Phone Number

Copy: Worker
 Representative, if applicable