

**SGEU Recommendations
to
Workers' Compensation Board
2006
Committee of Review**

The Saskatchewan Government and General Employees Union (SGEU) represents some 22,000 public sector workers in the province. We represent workers in many diverse workplaces, including firefighters, teachers, health care employees, corrections workers, social workers, highway workers, clerks and many others. We also represent members who work for the Workers' Compensation Board in Saskatoon and Regina, as well as employees at the Workers' Advocate office in Regina. These front line employees are in a strategic position to identify problems and recommend solutions.

Our submission provides a critique of a number of areas of concern. We would like to preface these specific comments with a general observation. We believe it is important to register a concern about the inconsistent application of the Act. We are aware of many cases in which injured workers were denied entitlements clearly stated in the Act.

Specific areas needing attention include: medical review panels; stress claims; repetitive strain injuries; employer 'blaming the worker' responses to high lost days; continued high workloads; and, the appeals backlog. The issue of medical review panels, one of our main concerns, is treated in a more lengthy discussion than the other items so will be covered at the end of the following items as item 20.

1. Review of Workloads and Appeals Backlog

A joint review of workloads and appeals backlog must be conducted by Board members and the Workers' Advocate with a plan of action developed to resolve these problems. Additional financial resources must be provided, if required, to implement the action plan.

2. Establishment of Independent Workers Advocate Office

An independent Workers' Advocate Office similar to the Ombudsman's Office should be established and allocated adequate on-going funding.

3. Eliminate Forced Early Intervention

Early intervention must be strictly voluntary and implemented only if recommended by the claimant's physician. Board policy should clearly state that early intervention will never be used to force claimants out of the system before they are healed.

4. Independent Public Review of Rehabilitation Services Delivery

The primary purpose of the WCB is to provide quality compensation and rehabilitative services to injured workers. Therefore it is essential that these services be subject to public review. The review must include a comparative analysis of the quality and duration of care, and the cost effectiveness of services provided by public facilities such as the community health centres, hospitals and the Wascana Rehabilitation Centre and by private sector suppliers such as Bourassa and Associates, the Canadian Back Institutes among others that provide important rehabilitative services not supplied publicly.

5. Evaluation of Retraining Programs

When evaluating a retraining program, the costs considered should only be those directly involved in the program. The costs considered for retraining should not include the payment of job search benefits, allowances, or compensation already being paid to the injured worker.

6. Stronger Return to Work Provisions

The WCB must be directly involved in the process of return to work programs to ensure that the employer has met the necessary accommodations. The Board must make stronger efforts to convince employers to make greater accommodation for safe return to the workplace. Heavy fines must be applied to employers who fail to implement the accommodation. This actually applies as well to people with disabilities seeking employment in the workplace in the first place – a principle that is now enshrined in Canadian case law (Meiorin). In addition, employers must not be allowed to discriminate between full time and part time employees in accommodation and return to work programs.

7. Referrals for Vocational Training

WCB needs to increase the number of referrals of injured workers for vocational training. A substantial addition of financial resources must be allocated for this purpose. Vocational training includes either professional or technical training. Such training courses shall be provided either through the technical institutes or the universities, as required by the individual vocational plan.

8. Workplace Stress

- a) Workplace stress claims not accepted within two weeks of being filed should automatically place the employee on claim to the date of injury.
- b) Claims should only require relevant evidence that work stress was the predominant cause of injury. The focus should be on work place stress and its impact on individual employees and should not be

used as a rationale for delving into unrelated medical information. Individuals' privacy must be respected.

- c) Information concerning unhealthy workplaces should be shared with both employer and employee co chairs of workplace OH&S Committee to allow for OH&S Committees to develop plans to enhance workplace wellness. Fines should be levied on workplaces failing to develop plans to address these wellness issues.
- d) There should be an immediate referral of claimants, who's Doctor recommends return to work but to another workplace, to WCB Vocational Rehabilitation for assistance in finding an appropriate and meaningful job placement that maintains both wages and benefits. This should have equal application to both full time and part time workers.
- e) WCB should develop a Specialized Unit for Workplace Stress Claims that automatically investigates all workplace stress claims. The specialized unit would consist of Client Service Representatives and Investigators with specialized training in this area and access to mental health specialists. The Unit would make recommendations to resolve the cause of injury, if cause is found, as well as recommendations on future prevention of injuries in this workplace.

9. Increase WCB Benefit Levels.

Increase WCB benefits to 100% of net wage. There should be no loss of income and/or benefits (health, dental, medical, and family) due to workplace injury.

10. Pre-Existing Conditions

SGEU is of the view that Section 50 of the Act (concerning pre-existing conditions) is not being applied consistently. The Board needs to ensure that no injured workers are being denied the application of Section 50.

11. Maximum Wage Rate

Section 38.1 of the Workers Compensation Act establishes the maximum rate applicable on or after Jan 1, 2005 as \$55,000.00 per year. SGEU would recommend adding the following to Section 38.1

“e) the maximum rate applicable on or after January 1, 2006 and every year thereafter shall be the rate increase in the Consumer Price Index from the preceding year to the following year, each January 1.”

12. Disfigurement and Scarring Awards

The policies regarding disfigurement and scarring awards should be broadened to include any part of the body and not limited only to hands, face and neck.

13. Remove Waiting Period

Remove the waiting period for Workers Compensation benefit payments.

14. Premium Paybacks to Employers

WCB should not automatically lower employer costs or distribute premium paybacks to employers with 'surplus' funds. These additional funds should be re-directed towards prevention and improvement of benefits for injured workers.

15. Quicker Expedited Claims Process

The onus should be on WCB to immediately accept initial claims with the burden of proof on its part for adjudication later, without recourse to the recovery of monies unless there is outright fraud involved.

16. Repetitive Strain Injuries

WCB should consistently recognize repetitive strain injuries as a valid occupational hazard and award claims as such.

17. Online Appeal Process to be User Friendly

We have heard many complaints that the appeal process is not user friendly, resulting in many people losing hundreds of words typed and having to repeatedly redo the appeal until finally having it properly completed with the proper number of words.

18. WCB Confront Employer 'Blaming the Worker Programs'

WCB needs to take the initiative to confront these programs and to look to any WCB policies or programs that may be unintentionally encouraging such ill advised practices. Employers who accuse workers of being responsible for injuries should not be allowed to benefit from such actions, and should, in fact, be subject to penalties.

19. Provincial Occupational Health and Safety Centre

SGEU fully supports the SFL's call for a fully funded Provincial Occupational Health and Safety Centre. Such a Centre would investigate and identify threats to workers health and lead in the prevention of workplace injuries. The Centre should also be mandated to take on a public education role with respect to occupational health issues.

20. Medical Review Panels

SGEU contends that the Board's practices regarding medical review panels are not supported by the Compensation Act, 1979. These practises, outlined below, not only weaken legislated rights, but also make it nearly impossible for the Board to meet response time requirements set out in the Act.

Background

The Compensation Act, 1979 contains provision for a medical review panel to be convened at a worker's request, subject to the supporting opinion of a doctor or chiropractor that there is a medical question that requires review. In a January 30, 1990 letter to the WCB, the provincial Ombudsman addressed the issue of such requests. The fundamental point made in that letter was that access to a medical review panel should be reasonably easy as opposed to being reasonably difficult. After reviewing the legislation, the Ombudsman concluded that as long as the worker's doctor or chiropractor has submitted a certificate stating there is a bona fide medical question to be determined, then a panel should be convened. In a subsequent case, *Lyne v. Workers Compensation Board* (1997), the Court of Queen's Bench ruled that: "Once a bona fide medical question was raised, the applicant was entitled to have a medical review panel test the Board's findings."

While the legislation calls for convening of medical review panels according to the conditions described above, actual practise presents a different reality. It is the practise of the WCB to undertake a comprehensive review of a worker's claim file when a request for a medical review panel is received. The Board then rules whether or not the physician or chiropractor's question specified on the certificate is, in the Board's opinion, valid. The Board also demands that the certificate contains specific reference to a specific medical position being contested, and identify why this position is medically in error. The Board does not convene a panel until this process has been completed, and then only if the Board agrees with and accepts the certificate accompanying the request. It should be noted that none of these conditions and requirements can be found in the Compensation Act, 1979.

In particular, workers suffering from repetitive strain injury and industrial diseases have difficulty accessing the medical review process. Rather than convening a panel upon request, as set out in the Act, the Board's practice is to use its authority under subsection 22(1) of the Act, to determine whether or not the medical condition was caused by an injury, whether the injury arises from employment, and the existence and degree of impairment to the worker. On this basis, the Board may decide not to convene a panel. Neither the legislation nor the practice acknowledge that issues concerning RSI, industrial disease and other like conditions referred to in subsection 22(1) may also be considered medical questions under sections 60 and 62, deserving independent, objective, expert medical review.

Problems

The flaws in this practice are three fold. First, a Board, comprised of lay people who may have no medical training, is given the onus of deciding if a medical issue specified by a doctor or chiropractor is bona fide, and whether or not the particulars contained in the certificate are sufficient. The Committee of Review should consider whether or not this situation is fair for claimants and Board members alike.

Second, the current practise makes it impossible for the Board to comply with subsection 62(1) of the Act, which specifies:

“On receipt of a request pursuant to section 60, the board shall immediately mail or deliver to the worker or person requesting the review: a) one or two lists setting out the names of all physicians who practise in the city named in the request and who are specialists in the classes of injuries for which compensation has been claimed.”

The very nature of the Board’s process, however, does not allow for the immediate mail or delivery of a list of specialists. It is significant that section 65 of the Act specifies the Board shall respond to the findings of a medical review panel within ten days. Because the terms “immediately” and “ten days” appear in related sections of the legislation dealing with medical review panels, it is not unreasonable to conclude that the Legislature intended “immediately” to be less than “ten days”. In many cases, however, it takes months after receiving a certificate for the Board to determine whether or not a panel will be convened. Only at that point would a list ordinarily be delivered. Therefore the Board’s practice of comprehensively reviewing and pre-adjudicating requests for medical review panels is not consistent with the legislative requirement to immediately send a list of specialists to the worker.

Third, and most importantly, the current practise denies workers their legal entitlement to a swift, fair, accessible process. According to the law, convening a panel is not something to be done at the discretion of the Board. Under the Act, the Board is obliged to convene a panel upon receipt of a certificate. Therefore, the process of convening a panel should begin forthwith when a qualified medical expert raises a question. Every effort should be made to ensure medical questions raised by physicians receive objective, expert review.

Remedies

The Committee of Review must decide whether to make the practise fit the Act, or the Act fit the practise. If the latter approach is taken, it must be spelled out in the Act that the Board has the authority to reject a medical certificate. Furthermore, the word “immediately” in subsection 62(1) should be replaced by a realistic time frame.

It is our recommendation that the preferred path is to ensure the Board’s practices uphold the spirit of the law as it is written. As the Ombudsman recommended sixteen years ago, workers should have reasonably easy access to a review process, and their requests and information needs should be met in a timely and fair manner.