WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL

DECISION NO. 1180/17

BEFORE:	V. Marafioti : Vice-Chair J. Blogg : Member Representative of Employers K. Hoskin : Member Representative of Workers
HEARING:	April 12, 2017 at Toronto Oral
DATE OF DECISION:	May 29, 2017
NEUTRAL CITATION:	2017 ONWSIAT 1621
DECISION(S) UNDER APPEAL:	WSIB Appeals Resolution Officer decision dated November 27, 2014

APPEARANCES:

For the worker:	Self-represented
For the employer:	L. S., Special Advisor Workplace Compensation
Interpreter:	N/A

REASONS

(i) Introduction

[1] The worker appeals the decision of the Appeals Resolution Officer D. M. Shepherd dated November 27, 2014. That decision denied the worker's claim for a January 2013 recurrence.

[2] The worker attended and provided testimony representing herself. The employer also provided submissions.

(ii) The issues

[3] The Panel must determine whether the worker is entitled to a January 1, 2013 recurrence claim to be related to the workplace injury of May 5, 2012.

(iii) Background

[4] The Panel reviewed the entirety of the documentary record and the following background information is briefly noted. The worker was employed as a Station Attendant in an airport and on May 5, 2012 she was maneuvering dollies of freight when she felt a strain in her left shoulder and low back. As part of her job the worker is required to connect containers and pallets of freight to a truck and then drive the transport truck back and forth, between the cargo facility and the terminal at the airport. According to the worker, a "stager" is supposed to set up the containers of freight used in her forklift so that the attendant can connect her containers and then transport them to their terminal via a truck. The worker claimed that the stagers were not doing their job and at times would not show up. The worker claimed that when she gets to the appropriate location and she is on a timeline, she must then get out of the truck and push and pull the containers into place so the truck can latch on. She stated that a stick was used to put under the containers to move them.

[5] The worker's injuries were diagnosed as shoulder and lumbar strains. The worker received chiropractic treatments from Dr. J. Thicke who discharged her on July 13, 2012 from treatment noting that she has recovered 75% lumbar range of motion. The worker was still experiencing low back pain radiating no further than the knee. The chiropractor indicated that the worker has physically returned to her pre-injury level overall functioning.

[6] The worker returned to her regular duties on July 8, 2012. On December 3, 2012 the worker's general practitioner, Dr. L. Philp, stated that the worker required chiropractic therapy for "chronic neck and back pain". The worker discontinued working on January 1, 2013 claiming a recurrence related to the workplace injury of May 5, 2012. The Workplace Safety and Insurance Board (WSIB or the "Board") Appeals Resolution Officer on November 27, 2014 denied the worker's claim for a January 2013 recurrence. The ARO concluded that the evidence supported that the worker recovered from the work-related strain and that the recurrence symptoms were attributable to underlying degenerative changes and therefore entitlement to the January 2013 recurrence was not in order. The worker now appeals to the Tribunal.

(iv) Law and Board policy

[7] On January 1, 1998, the *Workplace Safety and Insurance Act, 1997* (WSIA) took effect. Pursuant to sections 112 and 126 of WSIA, the Appeals Tribunal is required to apply any applicable Board policy when making decisions. Pursuant to WSIA section 126, the Board has

identified certain policies as applicable to this appeal. The Legal Services Division of the Board confirmed that the following policy packages, Revision #9, would apply to the subject matter of this appeal:

- Policy Package #38 – Recurrence
- Policy Package #300 – Decision Making/Benefit of Doubt/Merits and Justice

[8] The policies were considered by the Panel in the context of the legislation in arriving at its decision. The policies will not be duplicated here for practical reasons.

[9] As the accident occurred in 2012 the *Workplace Safety and Insurance Act* applies.

(v) Analysis and conclusions

(a) The decision

[10] The Panel arrived at its decision after considering the testimony, submissions, the documentary evidence and the Board policy and legislation. The Panel finds, on a balance of probabilities, that the evidence does not support the worker's objection. The following is a summary of our analysis, assessment and conclusions arrived at. The Panel notes that the ARO only considered entitlement for a January 1, 2013 recurrence claim to be related to the workplace injury of May 5, 2012. Therefore, the Panel only has jurisdiction to deal with the claim on the basis of a recurrence in January 2013 claim to be related to the workplace injury of May 5, 2012. The Appeals Resolution Officer, in fact, wrote to the worker on March 31, 2016 indicating that he dealt with the claim as a recurrence of the workplace injury of May 2012 only. If the worker wished to pursue the issue of entitlement other than a recurrence in January 2013 related to the workplace injury of May 5, 2012, this was left to her discretion. The Panel therefore makes no finding, as it does not have jurisdiction, to deal with initial entitlement as of January 2013.

(b) Conclusions

[11] *Operational Policy Manual* Document No. 15-03-01 on the subject of "Recurrences" states that workers are entitled to benefits for a recurrence of a work-related injury or disease. A recurrence may result from an insignificant new accident, or may arise when there is no new accident. To identify a recurrence, the WSIB must confirm that there is a clinical compatibility between the original injury and the current condition, or a combination of clinical compatibility and continuity.

[12] In this case, in order to consider the worker's request for entitlement on the basis of recurrence, the Panel must determine whether the worker's low back condition for which she sought medical attention in December 2012 was related to the workplace injury.

[13] Upon a review of the evidence, in particular the medical evidence, the Panel is not satisfied that there was a recurrence of the worker's May 5, 2012 injury. The diagnosis in the May 5, 2012 accident was that of a low back and left shoulder strain and the worker underwent treatment and was discharged from that treatment confirmed in a letter of August 13, 2012. The Panel notes Dr. S. McLean by July 16, 2012 in the Functional Abilities Form indicated the worker was capable of returning to work with no restrictions. The worker's progress report (Form 41) dated July 20, 2012 indicated that she had "recovered". The worker indicated that her pain tolerance and range of motion were improved and strength was regained. The worker stated that she felt "able to return to my full duties" on August 1, 2012. The Panel also notes that the

Acute Low Back Injuries Program of Care described the worker's functional limitations as "no limitations". The report indicated that the worker physically returned to her pre-injury level of function. The worker herself in the Intent to Object Form stated that it was inappropriate for the Board to consider her claim as a recurrence of the original claim. The worker indicated that the current claim was solely related to her low back and nothing to do with her left shoulder. With this consideration the worker stated that the application should, therefore, be considered as a new claim related only to her low back. In the same report the worker indicated that even after she recovered and returned to work in July 2012, it would be reasonable to conclude that the same work environment and duties could and would aggravate and/or cause a re-injury of the May 12, 2012 injury.

[14] In particular the Panel notes that a recurrence of a compensable injury is allowed if it is clinically compatible with the original injury. If a new injury process is significant in causing new symptoms, the claim is adjudicated as a new accident. The Panel confirms that "medical compatibility" is a primary criterion in determining whether an injury is as a result of re-occurrence or of a new accident. Tribunal decisions have interpreted Board policy to mean that "medical compatibility" is the primary consideration in the medical compatibility/continuity analysis. That is not to say that a disablement injury could not be construed as a significant new accident in certain circumstances.

[15] In this case the worker experienced low back and left shoulder pain after pulling and pushing containers to hook them up to be brought into the cargo building in the course of her duties as a Station Attendant. The diagnosis was low back strain and left shoulder strain and these were the diagnoses which had been allowed by the Board under this claim. The Panel notes that the worker did have a previous claim for the low back left shoulder on July 10, 2009 for which she reached maximum medical recovery on November 30, 2010.

[16] Upon review of the medical evidence noted above, the Panel notes that the physiotherapist on May 10, 2012 diagnosed joint sprains of the left shoulder. The worker was advised to seek chiropractic treatment and avoid pushing, pulling and lifting at work. A diagnosis of lumbosacral strain was provided by Dr. Thicke, the worker's chiropractor, on May 18, 2012. The worker was also seen by family physician, Dr. Philp, on May 23, 2012, again providing restrictions of no lifting, pushing or pulling anything greater than 5 kilograms. The worker attended physiotherapy and received chiropractic treatments. The Functional Abilities Form, noted above, completed by Dr. McLean on July 16, 2012 essentially cleared the worker to return to full duties. Dr. Thicke, on July 13, 2012, stated that the worker had returned to her pre-injury level of functioning and there were no outstanding issues. It was stated that the worker had no functional limitations. Her pain score was said to be 4 out of 10 on her discharge and the worker increased lumbar flexion to 75% normal bending capacity. By December 3, 2012, Dr. Philp however indicated the worker required the chiropractor treatment for her chronic neck and back pain. Dr. Robertson a chiropractor, on January 3, 2013 stated that the worker was seen December 4, 2012 for low back and leg pain. The worker had indicated that her pain, as a result of the May 2012 accident, was to the low back down to her buttock. By February 25, 2013 Dr. Robertson reported that on December 4, 2012, the worker was diagnosed with lumbar sprain, right upper SI dysfunction and "multi-level ISD". The Panel notes that the MRI of the lumbar spine dated April 25, 2013 indicated a severe back pain and L4 radiculopathy. The MRI showed that L4-L5 disc bulge with small superimposed disc protrusion in L5-S1 diffuse disc bulge with possible impingement of transversing left S1 nerve root.

[17] In summary, the Panel concludes that the injury of May 2012 was said to result in a left AC shoulder strain and low back strain. After treatment with physiotherapy and chiropractic care, the worker was able to return to pre-injury level of functioning and there were no "outstanding issues" according to Dr. Thicke's July 13, 2012 report. As noted above the worker herself stated on her Form 41 dated July 20, 2012 that she had recovered noting, "pain tolerance and range of motion improved and strength is regained. I feel able to return to my full duties". Given this evidence the Panel concludes that the worker made a complete recovery from her initial injury of May 5, 2012. The ARO only considered entitlement as a recurrence in the decision of November 27, 2014 and denied the worker's claim for January 2013 on a "recurrence" basis. The Panel therefore finds that entitlement as a "recurrence" is not established given the evidence as noted above.

DISPOSITION

[18] The worker's appeal is denied. The worker is not entitled for a January 2013 recurrence claim to be related to the workplace injury of May 5, 2012.

DATED: May 29, 2017

SIGNED: V. Marafioti, J. Blogg, K. Hoskin