

2017 ONWSIAT 1838
Ontario Workplace Safety and Insurance Appeals Tribunal

Decision No. 1037/17

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DECISION NO. 1037/17

M.E. McKenzie V-Chair

Heard: March 31, 2017

Judgment: June 16, 2017

Docket: 1037/17

Counsel: E. Simonetto, for Worker

No one for Employer

Subject: Employment; Occupational Health and Safety; Public

Headnote

Labour and employment law

DECISION(S) UNDER APPEAL: WSIB ARO decision dated October 31, 2014

M.E. McKenzie V-Chair:

(i) Introduction

1 This is an appeal by the worker of a decision of the Workplace Safety and Insurance Board (WSIB or Board) Appeals Resolution Officer (ARO) dated October 31, 2014. In this decision, the ARO:

- increased the quantum of the worker's non-economic loss (NEL) award for chronic pain disability (CPD) from 15% to 25% as of the accepted date of maximum medical recovery (MMR) on May 15, 2013,
- upheld the Board's decision to grant her partial, rather than full, loss of earnings (LOE) benefits from March 13, 2012 until June 10, 2013,
- confirmed the suitable occupation (SO) of "Greeter" and the work transition (WT) services that were offered from November 20, 2013 until February 5, 2014, and
- upheld the Board's decision to grant her partial, rather than full, LOE benefits from the closure of her WT program effective February 5, 2014 until the date of the final 72-month LOE review based on deemed full-time earnings in the accepted suitable occupation (SO) of Retail Greeter - National Occupational Code (NOC) 6421.

2 The ARO granted the worker's objection to the Board's LOE decisions in part, allowing her full LOE benefits from October 25, 2011 until March 13, 2012. As such, the worker's LOE entitlement in that timeframe is not in issue in the appeal.

3 The worker's Notice of Appeal (NOA) of the ARO decision to the Tribunal was filed on time on November 26, 2014.

4 In addition to the oral submissions that Ms. Simonetto provided during the hearing of the appeal, the worker also adopts the written submissions that were forwarded on her behalf to the ARO dated July 22, 2014.

(ii) Background

5 The worker was born in 1959 and is now 58 years old. She was employed as a customer assistant at an airport at the time of her accident in this claim.

6 On November 12, 2009, the worker injured her low back while she was pushing a customer in a wheelchair up a ramp. She obtained medical attention and reported her injury to the employer. The Board granted the worker entitlement for her accident. She attempted the modified duties that were offered to her by the employer; however, the Board's Case Manager (CM) later determined that the work was unsuitable and she was provided with LOE benefits.

7 The worker did not recover from her injury despite a wide range of medical investigations and treatments. She sought entitlement for CPD and for additional LOE benefits. The worker's claim for CPD entitlement was denied at the Board's operating level and the worker objected to a series of Board decisions that were made in that regard.

8 In a previous ARO decision dated February 28, 2013, the worker was granted entitlement for CPD. Her full LOE benefits were extended to include the periods of May 28, 2011 until June 6, 2011 and July 25, 2011 until October 26, 2011.

9 In that decision, the ARO conducted a comprehensive review of the medical evidence in the claim up to October 26, 2011. The ARO concluded that no determinations could be made thereafter in the absence of further updated medical reporting. Reference is made to that decision for the history of medical reporting in the claim in that timeframe.

10 The previous ARO remitted the worker's claim to the Board to: 1) obtain further medical evidence after October 26, 2011, 2) determine the MMR date for the worker's permanent CPD and NEL entitlement, 3) conduct the worker's NEL assessment for CPD, 4) adjudicate her entitlement to work reintegration (WR) services, and 5) determine the nature and extent of her LOE entitlement after October 26, 2011.

11 The Board's subsequent decisions respecting those issues were communicated to the worker in letters dated November 20, 2013, December 13, 2013, January 20, 2014, January 29, 2014 and February 5, 2014. The worker was granted a 15% NEL award for CPD. She was provided with a WT plan and partial LOE entitlement. Upon closure of her WT plan, the worker was awarded partial LOE entitlement based on deemed full-time earnings in the SO of "Greeter"; however, as the projected earnings in the SO were higher than her pre-injury earnings the result was a termination of her LOE benefits.

12 The worker objected to each of the above decisions and her objections were decided in the ARO decision dated October 31, 2014 that is now under appeal.

(iii) Issues

13 The issues in this appeal are:

- Whether the quantum of the worker's NEL award for CPD was properly rated at 25%,
- Whether the SO of "Greeter" and the WT plan developed by the Board were suitable and adequate to prepare the worker to return to the workforce,
- Conversely, whether the worker was rendered unemployable by her compensable CPD, and
- If so, whether her full loss of earnings during the periods that are in issue in the appeal flowed from her compensable CPD such that she has full LOE entitlement in those timeframes.

(iv) Law and policy

14 As the worker's accident occurred in 2009, this appeal is governed by the *Workplace Safety and Insurance Act, 1997* (the WSIA or the Act). Section 43 of the Act addresses LOE entitlement and sections 46 and 47 of the Act deal with NEL entitlement.

15 Section 126 of the Act requires the Appeals Tribunal to apply relevant Board policy in making its decisions. A policy package has been provided by the Board as an addendum to this file and all relevant Board policies have been considered and applied in making this decision.

16 Prior to addressing the worker's SO, WT and LOE entitlement, it is necessary to address the issue of the NEL quantum for CPD. This determination provides important context for these additional claims.

17 *Operational Policy Manual (OPM) Document No. 18-05-11 (Assessing Permanent Impairment Due to Mental and Behavioural Disorders)* establishes the rating scale for CPD for all accidents occurring on or after January 2, 1990. Detailed criteria are outlined in the policy for each class of impairment. This policy states that the degree of the worker's impairment will be determined by considering all relevant health care information in the claim file. Additional information may be sought by the Board from the worker's treating physician/specialist and where indicated, a roster physician.

18 In this policy, a Class 3 - Moderate Impairment (20-45%) is described as an "impairment [level] compatible with some but not all useful function". The policy states that at this level:

There is a degree of impairment to complex integrated cerebral functions such that daily activities need some supervision and/or direction. There is also a mild to moderate emotional disturbance under stress.

In the lower range of impairment the worker is still capable of looking after personal needs in the home environment, but with time, confidence diminishes and the worker becomes more dependent on family members in all activities. The worker demonstrates a mild, episodic anxiety state, agitation with excessive fear of re-injury, and nurturing of strong passive dependency tendencies.

The emotional state may be compounded by objective physical discomfort with persistent pain, signs of emotional withdrawal, depressive features, loss of appetite, insomnia, chronic fatigue, mild noise intolerance, mild psychomotor retardation, and definite limitations in social and personal adjustment within the family. At this stage, there is clear indication of psychological regression.

In the higher range of impairment, the worker displays a moderate anxiety state, definite deterioration in family adjustment, incipient breakdown of social integration, and longer episodes of depression. The worker tends to withdraw from the family, develops severe noise intolerance, and a significantly diminished stress tolerance. A phobic pattern or conversion reaction will surface with some bizarre behaviour, tendency to avoid anxiety-creating situations, with everyday activities restricted to such an extent that the worker may be homebound or even roombound at frequent intervals.

19 OPM Document No. 18-03-02 (Payment of LOE Benefits) provides that "a worker who has a loss of earnings as a result of a work-related injury is entitled to payment of loss of earnings (LOE) benefits beginning when the loss of earnings begins". Payments continue until the earliest of the date when the worker reaches the age of 65, ceases to suffer a loss of earnings due to the injury or ceases to be impaired as a result of the injury.

20 It is the Board's position that the worker was only partially disabled as a result of her compensable CPD and that she was capable of returning to the workforce as a "Greeter" both before she was provided with WR/WT services and thereafter.

21 OPM Document 19-02-01 (Work Reintegration Principles, Concepts, and Definitions) sets out the context in which the WR process is intended to proceed. It states that the "WSIB's role in WR is to provide the necessary WR services to support the efforts of the workplace parties in achieving successful WR outcomes".

22 This policy provides the following definition of suitable work:

Suitable Work

Suitable work means post-injury work (including the worker's pre-injury job) that is **safe, productive, consistent with the worker's functional abilities**, and that, to the extent possible, **restores the worker's pre-injury earnings**.

(emphasis in original)

23 The policy considers the meaning of each of those terms in detail. It states that an SO "represents a category of jobs suited to a worker's transferable skills". It states that the SO must be available with the injury employer or in the labour market. The policy clarifies that "available" means that "employment must exist and be in demand in the labour market to the extent that the worker has a reasonable prospect of obtaining employment" in the SO. Where the worker's permanent impairment has stabilized but she is unable to return to her pre-injury job, the Board considers whether there is a reasonable prospect of the work being available in the general labour market in the longer term.

24 The policy states that the term "employable" refers to the worker "having the necessary skill and training to be capable of obtaining and performing full-time or part-time employment on a regular basis in the labour market". The factors to be considered in determining a worker's employability include, but are not limited to:

- level of education/training (including special certificates/licenses),
- transferable skills/aptitudes and work experience,
- work-related impairments, and
- other non-work-related impairments, including non-physical disabilities such as a learning disability.

25 Central to the analysis of the worker's LOE claims in the appeal is the question of whether her full loss of earnings in the periods claimed flowed from her compensable injury. In the Board's view, her losses flowed not from her compensable injury but from her failure/refusal to engage in WT services and/or to find work in the selected SO of "Greeter".

26 Ms. Simonetto submits that the worker was unemployable throughout the periods in issue in the appeal due to her compensable CPD.

27 *Decision No. 1632/11* reviews the history of the Tribunal's approach to claims of this nature in some detail. At paragraph 33 of *Decision No. 1632/11*, the Tribunal states:

The common thread in the Tribunal's decisions cited above, all of which address an issue of a partially disabled worker's employability following a compensable accident, is that the analysis in each case must establish whether the worker's loss of income flows from the compensable injury. This is a question of causation.

28 The applicable legal standard for determining issues of causation in workers' compensation appeals is set out in paragraph 18 of *Decision No. 2062/01R*, where the Vice-Chair states:

...In order to establish entitlement, it is not necessary to show that the workplace injury was the sole contributing factor, or even the predominant contributor. The workplace injury need only be a cause of the disability, providing that it makes more than a *de minimus* contribution. Even though the Tribunal uses the language of a "significant" contribution, Tribunal decisions illustrate that the test embodies the "material" contribution test developed in tort

law. See for example, [*Decision Nos. 832/91, 228/02R and 1645/99R*]. The use of the word "significant" is not intended to connote a higher standard for establishing causation in workplace injury cases.

(Emphasis in original)

29 Issues of causation are determined based on a balance of probabilities, although the Act and Board policy provide that if the evidence is evenly balanced with respect to this or any other issue, it is to be resolved in the worker's favour.

(v) Discussion and analysis

30 I have carefully reviewed the contents of the Board's file, the worker's sworn testimony, the medical, psychiatric and psychological evidence, Ms. Simonetto's submissions, the Act and Board policy, and have allowed the appeal. The reasons for this decision follow:

(a) *The relevant medical/psychological/psychiatric reporting*

31 As stated above, the previous ARO directed the Board to obtain updated reporting after October 26, 2011 in order to inform further decision-making in the worker's claim. The reports that were obtained by the Board following that direction are summarized as follows:

- On December 28, 2011, the worker's psychiatrist, Dr. Hussain, reported that he had seen the worker and identified no changes in her psychiatric condition since his October 2011 report. She continued to suffer from Major Depressive Disorder due to her chronic low back pain. Her prescriptions for Cymbalta 90 mg, Wellbutrin XL 300 mg and Seroquel 50 mg were renewed. The worker was booked for a follow up in 3 months. Dr. Hussain stated that the worker's psychiatric condition was not yet stable and that once it had stabilized she would be referred back to her family physician for ongoing care.
- Dr. Hussain saw the worker next on March 13, 2012. At that time, the worker reported that her back pain was "gradually progressing" and that it was radiating to her right leg. She reported difficulty walking or sitting for more than 10-15 minutes at a time. She was attending physiotherapy and taking Oxycodone for her back pain. She reported that she was regularly taking the medications that Dr. Hussain prescribed to her. Dr. Hussain did not make any changes to the worker's medications and stated that her "main problem [seemed] to be from her back pain". The psychiatrist then returned the worker to the care of her family doctor.
- On August 10, 2012, the worker's family physician, Dr. Hanna, reported that the worker's low back pain had become chronic, that she was taking analgesics and that she was seeing a psychiatrist for ongoing counselling.
- On May 15, 2013, Dr. Hussain provided a more-detailed report in which he stated that he had seen the worker on "almost a monthly basis" since August 2010. The worker continued to "struggle with her depression, complicated by her back pain". She was experiencing trouble getting to sleep and staying asleep. Her pain levels continued to progress. She reported difficulties with concentration and focus. She was forgetful. Her walking tolerance was limited to 10-15 minutes. She was feeling increased depression, helplessness and hopelessness. She was no longer attending physiotherapy, as her WSIB coverage for that care had ended. She had become socially withdrawn and relied on her husband and daughters to complete household chores. She felt that she was being supported by them with respect to her condition. She denied suicidal intent but reported having thoughts of dying.
- A social history was also provided by Dr. Hussain in the above report. He stated that the worker had been raised in a large family in her country of origin and that she moved to Canada with her husband and two young children in 1995. She had one more child after her arrival in Canada. She remained at home with her children and then returned to the workforce when they went to school.
- Dr. Hussain reiterated his previous diagnosis and pharmacological advice and assigned the worker a Global Assessment of Functioning (GAF) score of 51-60. He increased her dosage of Cymbalta to 120 mg per day.

- In a report dated January 23, 2014, Dr. Hussain clarified that he did not see the worker between March 13, 2012 and May 15, 2013. The worker had been returned to the care of her physician at that time. However, by date of this consultation, the worker was suffering from "excruciating pain" which Dr. Hussain stated that "she developed due to work-related injury". By that time, her pain radiated to both of her legs. She continued to suffer from severe depression, poor sleep and difficulties with her memory and concentration. She had become "easily irritable and agitated". She continued to require assistance from her husband and children at home. Dr. Hussain expanded the worker's DSM-IV diagnosis to include chronic back pain and an anxiety disorder. Her GAF score had fallen to 51-55. Dr. Hussain provided the following opinion:

Due to the above-mentioned symptoms, I have doubts that [the worker] would be able to work as a store greeter. Her chronic pain symptoms limit her from being socially active. She will not be able to socially interact with customers. She has a tendency to become easily irritable and agitated, mostly due to her pain symptoms and lack of sleep due to her chronic pain. I would have concerns if she is forced to return back to work even under the capacity of store greeter...I do not believe that her emotional and physical condition [have] changed. She, for her pain symptoms, is going to [Rothbart] Pain Clinic and has been receiving injections every second week and continues to take Percocet tablets on a daily basis.

- On June 3, 2014, Dr. Hanna reported that the worker's pain was causing major limitations in her activities of daily living (ADL's) and that as a result she was unable to participate in any gainful employment.
- In addition to the above reports from her treating physician and psychiatrist, the worker attended a full psycho-vocational assessment with Dr. Luther, a psychologist, in the context of her WT assessment. The worker attended on three occasions in July 2013 for the purposes of conducting the full assessment and receiving the results.
- In the final report dated July 12, 2013, Dr. Luther stated that the worker "seemed motivated to complete the testing to the best of her ability". She "was cooperative and seemed to put forth a good effort". She reported feeling unable to work but also stated that if she felt well enough she would like to work. Based on the Beck Depression and Anxiety scales, Dr. Luther stated that the worker was suffering from severe levels of depression and anxiety. She appeared tired while completing the tests and had to change her position frequently. The worker reported that she had begun to withdraw from her family because she was easily irritated by them and felt that they did not "know" her feelings. She reported uncertainty about the future of her health.
- Dr. Luther stated that the worker's first language was English; however, she had only attended school in her country of origin until grade 6. On testing, she was found to have only basic literacy and numeracy to approximately the grade 3-4 levels. For that reason, her only work history was in manual labour. Prior to her employment with the employer, she worked as a packager and factory worker through various temporary agencies. Her verbal, performance and full scale IQ levels were in the "well below average" range. Her memory and attention tested in the well below average and below average ranges. She scored at the "extremely low" performance range in a test of visual attention and task-switching.
- In his final summary, Dr. Luther provided the following information and opinion:

[The worker] was challenged on all tests administered...She [showed] low functioning in both cognitive and intellectual areas...She...may be able to achieve a Grade 5/6 level of overall academic functioning after completing extensive training...[Her] emotional well-being is a significant concern as she displays severe symptoms of anxiety and depression. Therefore, she should see a psychiatrist to help her in this respect... [Her] performance on vocational testing suggests elementary levels of literacy and numeracy. She exhibited and reported significant pain and fatigue during testing and was unable to meet the minimum standards on two of the three work samples administered. **Given her transferable skills, limited formal education level, her**

pain presentation and demonstrated work pace and tolerance, she is not well suited for the demands of competitive employment at this time.

(Emphasis added)

32 It can be seen from the information provided above that the worker's family physician, psychiatrist and consulting vocational psychologist all opined that she was unable to return to work in the timeframes that are in issue in the appeal. There is no dissenting medical or psychiatric opinion anywhere on the Board's file in this regard. The CM did not seek an opinion from a Board Medical Consultant or roster physician prior to making these decisions.

(b) The worker's testimony

33 The following is a summary of the worker's sworn testimony:

- She lives with her husband and their three adult children who are now 27, 25 and 22 years old.
- Prior to her accident in this claim, she enjoyed her job and intended to continue working until age 65. Her duties involved taking disabled passengers to and from aircraft in wheelchairs. She also assisted with transferring customers into wheelchairs and from the wheelchairs to aircraft. She worked an evening shift so that her husband would be home to care for their children.
- She attempted modified duties with the employer until January 2010; however, she was still required to push wheelchairs and climb stairways. She almost fell one day and soon afterwards she went off work. She worked in modified duties again for a brief period in 2011. She could not sustain those duties. She also conducted 2-3 days of a work placement during her WT plan; however, she was required to stand in a cold doorway and she could not continue. She has not worked since that time.
- She regularly attends visits with her family doctor. Dr. Hanna referred her to see Dr. Hussain in 2010. She continues to see him up to the present time and she takes all her prescribed medications. Neither of her doctors has ever advised her to return to work following her injury in this claim.
- The worker was asked to describe her pain. She states that it goes down her back, across her backside and down her right leg. Her sleep is disrupted. She wakes after 1-2 hours. Sometimes she takes more sleeping pills than have been prescribed. She is awake for most of the night and stated that she "sits like a moongazer" while everyone else is sleeping.
- The worker was asked to describe a typical day. She wakes up and her daughter helps her to get to the washroom and to dress. She brushes her own teeth. When her daughter goes out, she leaves prepared foods for the worker. She can also make a light meal for herself such as soup, a sandwich or an egg. If the worker attempts any household chores at all, she hurts her back again. She watches very little TV because she is not interested in it and the noise bothers her. She takes Tramadol to sleep in the daytime. She finds that it relieves the pain and helps her to get to sleep.
- Her daughter does the grocery shopping and cooking. Sometimes she goes to the grocery store with her daughter for up to $\frac{1}{2}$ hour.
- Sometimes she goes for a short walk, but never by herself. She can only walk a total of two blocks. She takes walks only in the summer-time and not every day. She may take a walk in the summer only once per week.
- She has very regular contact with her family members who do not reside with her. She has two sisters and one brother who live in a nearby community. They all have children and grandchildren. She is close to all of her extended family members. Sometimes her sister, nephew and niece visit her, but usually they talk on the phone. She has 6

great-nieces and nephews who visit her in the daytime. She enjoys their visits and she is happy to see them. If they stay too long, she tells them that she needs to rest. She does not like to hear the younger children playing because she does not like to hear noise. Sometimes she tells them not to visit. She attends birthdays at other family members' homes about 5 times per year.

- She has an adult nephew who resides in her country of origin but who comes and stays with her for visits. He comes with his wife. She enjoys these visits and looks forward to them. Last year he came twice and he has been here once this year. He sees her as his mom. Her family members love him and also enjoy his visits. She stated, "When he's here, he cooks for the family. He's funny. He makes everyone lively and then he goes". After he leaves, his wife stays on and helps out in the household. They get along well. She stated, "When they come over, I am happy".
- She attends medical appointments once every 1-2 weeks.
- She used to go to church, but she does not go now.
- She does not have friends. She stated, "I lost all of that. We don't keep in touch any more".
- Her husband has recently become disabled and their children take care of him.
- She travelled with her husband to their country of origin in 2014. The flight each way was 5-6 hours in length and they stayed for two weeks. They stayed with family members. They have gone more than once, probably three times since 2013. They do not plan to go again.

(c) The worker's NEL quantum for CPD

34 The 25% NEL rating that the ARO assigned to the worker's permanent CPD placed its severity in the lower range of the Class 3-Moderate impairment pursuant to Board policy.

35 In my view, the evidence from the timeframe that is relevant to this determination, being the MMR date of May 15, 2013, supports a slightly higher figure of 30%. In arriving at this conclusion, I have taken into account the severity of the worker's depression and anxiety and the extent to which it arose from her persistent, significant back pain. I have also accepted her testimony that she is limited in her capacity to operate independently outside of her home, and in many respects while at home.

36 There is no question that the worker is significantly impacted in her overall level of function and in conducting her ADL's by the effects of her compensable CPD condition. At the same time, however, I have noted the considerable extent to which the worker remains highly integrated into her extended network of family members who clearly provide extensive support and companionship and whose visits she continues to enjoy. I also note that as of the MMR date, she remained able to travel with her husband out of the country, visit and stay with family members there. She clearly enjoyed those visits.

37 In my view, these circumstances place the worker in the lower middle range of the moderate rating category pursuant to Board policy, and do not suggest a rating higher than 30%. I also note that this figure falls within the range that was proposed by Ms. Simonetto in her oral submissions.

38 I have determined that the evidence does not support a conclusion that as of the MMR date the worker's CPD fell in the higher ranges of the Class 3 impairment. There was no indication that she had suffered a definite deterioration in family adjustment. I did not find evidence to support a breakdown of social integration, withdrawal from her family, severe noise intolerance, phobic pattern or conversion reaction, bizarre behaviour, or everyday activities restricted to such an extent that she was homebound or even roombound at frequent intervals. Rather, I note that as of the MMR date, the worker continued to be able to attend a number of medical assessments and WT activities on her own. She also remained able to participate in the family activities and travels described above.

39 I emphasize that the relevant evidence relates to the worker's condition in 2013. I make no findings as to whether the worker's compensable CPD deteriorated thereafter.

40 For the reasons outlined, I have granted the worker an increase in the quantum of her NEL award for CPD to from 25% to 30% as of the MMR date.

(d) The worker's employability and the LOE claims

41 In my view, the medical, psychiatric and psychological reporting establishes that the worker was unemployable throughout the timeframes that are in issue in the appeal. I have found no reason or basis upon which to question or doubt the information and opinions provided by the treating physician, Dr. Hanna, and psychiatrist, Dr. Hussain, with respect to the significant depression that the worker suffered flowing from her CPD. I accept their observations and opinions that her pain levels, depression and overall presentation would have rendered her unable to obtain or sustain any employment. As noted in Dr. Luther's report, these issues were compounded by the worker's very minimal levels of literacy and numeracy, her lack of education or any work experience outside of manual labour, her age, and her inability to attend work or perform reliably on a regular basis due to her compensable permanent impairment.

42 I find that having treated her over the course of many years, the treating health care professionals were well-positioned to assess the genuineness of the worker's presentation, the severity of her chronic pain symptoms and depression, and the extent of her workplace impairment as it related in particular to any potential for her to return to work. In my view, Dr. Hanna and Dr. Hussain have provided reliable reports that in all material respects support a conclusion that the worker was rendered unemployable by her compensable CPD.

43 I have accepted Dr. Luther's opinion that based on her poor test results and "[g]iven her transferable skills, limited formal education level, her pain presentation and demonstrated work pace and tolerance, she [was] not well suited for the demands of competitive employment".

44 I reiterate the absence of any dissenting opinion in this regard.

45 Having concluded that the worker was rendered unemployable by her compensable CPD condition during the periods that are in issue in the appeal, it follows that the SO of "Greeter" was unsuitable, as was the WT plan that the Board offered to her.

46 I have therefore determined that the worker's full loss of earnings flowed from her compensable CPD. She is granted full LOE entitlement from March 13, 2012 until June 10, 2013 and from February 5, 2014 until the date of the final 72-month LOE review.

47 Materials on the Board's file indicate that the worker may have received modest earnings in modified duties in 2012. As such, the full LOE benefits awarded to her in this decision are subject to any actual earnings that she received for work done during the relevant period(s).

48 The final LOE review in this claim was due to be conducted in November 2015, six years after the worker's accident. As this date fell after the date of the ARO decision that is before me in the appeal, I do not have jurisdiction to address the worker's LOE entitlement following that review. The worker's claim is therefore remitted to the Board to conduct the final LOE review.

(vi) Conclusion

49 In light of the foregoing, the worker's appeal has been granted as set out in the disposition below.

DISPOSITION

50 The appeal is allowed.

51 The worker is granted a NEL award of 30% for her compensable CPD as of the Board's accepted MMR date of May 15, 2013.

52 The worker is granted full LOE entitlement from March 13, 2012 until June 10, 2013 and from February 5, 2014 until the effective date of the final 72-month LOE review.

53 The worker's LOE entitlement is subject to any actual earnings that she received for work done in those timeframes.

54 The worker's claim is remitted to the Board to conduct the final LOE review.

55 The worker retains her right to appeal any final decision of the Board.

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