WORKERS COMPENSATION
APPEAL TRIBUNAL

BETWEEN:

WORKER
CASE ID # [personal information]

APPELLANT

AND:

WORKERS COMPENSATION BOARD OF
PRINCE EDWARD ISLAND

RESPONDENT

DECISION #125

Appellant	Maureen Peters, Worker Advisor representing the Worker
Respondent	Brian Waddell, Solicitor representing the Workers Compensation Board
Place and Date of Hearing	October 22, 2009 Cox & Palmer, Charlottetown, Prince Edward Island
Date of Decision	December 7, 2009

Facts/Background

1. The Appellant is appealing the decision of Internal Reconsideration Officer IR-09-33 dated June 8, 2009, upholding the decision of the Workers Compensation Board ("Board") dated January 28, 2009, in which the Appellant's claim for benefits was denied.

2. The Appellant is a [personal information]. On December 1, 2008, the Appellant slipped [personal information] at his place of employment and wrenched his lower back. The Appellant also claimed that he lost his balance again [personal information] on December 15, 2008, resulting in pain in his lower back.

3. The Appellant did not seek medical treatment after either of those incidents. However, on December 1, 2008, after the incident, the Appellant left work and went home and missed work again on December 2, 2008. The Appellant also went home on December 15, 2008, after the second incident.

4. On January 3, 2009, the Appellant was [personal information] when he once again felt pain in his lower back. According to the decision of the Entitlement Officer dated January 28, 2009, the Appellant indicated to the Entitlement Officer that he fell to the ground in pain and felt a pop at that time. [Appeal Record – Tab 4]

5. On January 5, 2009, the Appellant sought medical attention with Dr. Hambly who diagnosed his injury as sciatica. On the same date, the Appellant completed a Worker's Report of Injury Form 6 which listed the date of injury as December 1, 2008. The Appellant stated that he advised the [personal information] of the injury. [Appeal Record – Tab 6] However, the Employer's Report indicates that while [personal information] was aware that the Appellant went home with a sore back, he was unaware of any injury occurring [personal information]. The report also indicated that the Appellant stated he had advised another employee about

the accident, but that employee had no recollection of the conversation. [Appeal Record – Tab 7]

6. By letter dated January 28, 2009, the Entitlement Officer of the Board denied the Appellant's claim. [Appeal Record – Tab 4]

7. The Appellant filed a Notice of Request for Internal Reconsideration dated April 24, 2009. [Appeal Record – Tab 3]

8. By decision dated June 8, 2009, (IR-09-33) the Internal Reconsideration Officer for the Board held that on the balance of probabilities the evidence did not show that the Appellant's injury arose out of and in the course of the Appellant's employment, and that it was more probable than not that the incident at his home on January 3, 2009, was responsible for the Appellant's low back injury. [Appeal Record – Tab 2]

9. On this appeal, the Appellant argues that the Internal Reconsideration Officer did not apply the principal of the benefit of doubt as set forth in Policy POL04-16 when making her decision and that the evidence on file, on the balance of probabilities, does support the Appellant's claim that the Appellant's lower back injury was a result of the fall that happened at work on December 1, 2008. In the alternative, the Appellant submits that the evidence for and against the acceptance of his claim was equal in weight, and therefore the benefit of the doubt must be granted to the Appellant, as per section 17 of the *Workers Compensation Act*, RSPEI 1988 Cap. W-7.1, as amended ("*Act*").

10. The Respondent argues that on the balance of probabilities the medical and other evidence on file weighs in favour of the finding that the Appellant's current medical condition is not related to his employment but rather to the January 3, 2009, incident.

Analysis

Issue: Whether the Appellant suffered a compensable injury arising out of and in the course of employment.

11. The *Act* states at section 6(1):

> *"6. (1) Where, in any industry within the scope of this Part, personal injury by accident arising out of and in the course of employment is caused to a worker, the Board shall pay compensation as provided by this Part out of the Accident Fund."*

12. Accident is defined in section 1(1) of the *Act* as:

> *"(a) "accident" means, subject to subsection (1.1) a chance event occasioned by a physical or natural cause, and includes*
> *(i) a wilful and intentional act that is not the act of the worker,*
> *(ii) any*
> *(A) event arising out of, and in the course of, employment, or*
> *(B) thing that is done and the doing of which arises out of, and in the course of, employment, and*
> *(iii) an occupational disease,*
> *and as a result of which a worker is injured."*

13. The Board Policy "POL04-23 – Arising Out of and in the Course of Employment" states at paragraphs 3 and 4 on page 2:

> *"3. The following variables must be examined to determine whether an injury arose out of and in the course of employment:*
> - *whether the injury occurred on the premises of the employer;*
> - *whether it occurred in the process of doing something for the employer;*

- *whether the injury occurred during a time period for which the worker was being paid; or*
- *whether the injury was caused by some activity of the employer or of a fellow worker.*

4. The injury must be shown to have arisen within the time and space boundaries of the employment, and in the course of an activity whose purpose is related to the employment."

14. Board Policy POL04-30 states that standard of proof for decisions made under the *Act* is the balance of probabilities – i.e. the evidence is to be weighed to determine whether it weighs towards one possibility more than the other. If the Board concludes that the evidence for and against entitlement is approximately equal in weight, then the issue will be decided in favour of the worker. This presumption is also found in section 17 of the *Act*:

> *"17. Notwithstanding anything in this Act, on any application for compensation the decision shall be made in accordance with the real merits and justice of the case and where it is not practicable to determine an issue because the evidence for or against the issue is approximately equal in weight, the issue shall be resolved in favour of the claimant."*

15. Therefore, the Board must decide on the balance of probabilities whether the Appellant's injury to his lower back arose out of and in the course of employment. In this case, the evidence shows that there were two incidents which occurred at the Appellant's place of employment, for which he did take time off work but did not seek medical treatment. The Appellant's argument was that he did not have a family doctor, but the Board counters that if the injury had been severe enough, he could have sought treatment in the emergency department of the local hospital. The evidence also shows that, notwithstanding the injury to his lower back which occurred in December 2008, the Appellant assisted [personal information] on January 3, 2009. It was this incident where he fell to the ground in pain after feeling a pop and severe pain in his back. It was also

after this incident that he sought medical attention with Dr. Hambly and filed the Form 6 with the Board.

16. There is no medical evidence to support the Appellant's claim of injury on December 1 and re-injury on December 15, 2008, other than Dr. Hambly's medical report wherein he states the Appellant advised him of slipping [personal information] at his place of employment.

17. As stated above, section 17 of the *Act* does create a presumption that where the evidence for and against the claimant is approximately equal in weight, the issue is to be resolved in favour of the claimant. The Prince Edward Island Court of Appeal in *Blanchard* v. *Prince Edward Island (Workers Compensation Board)*, (1998) 159 N&PEIR 242 considered the effect of section 17 of the *Act*. The Court of Appeal held at paragraph 6:

> *"Section 17 does not mean that every claim must succeed if there is some evidence to support it. It only means that despite an applicant's failure to adduce conclusive proof of a right to benefits, he or she should nevertheless be awarded them if their entitlement can reasonably be inferred by the respondent [i.e. the Board]. The respondent must make its decision on whether such an inference* ***is reasonable on the basis of the evidence as a whole****. Section 17 only authorizes and directs the respondent to draw all of the inferences in favour of the applicant that are reasonable from its assessment of* ***all*** *the circumstances, evidence, and medical opinions."* (emphasis added)

18. Therefore, the Board must assess all the evidence and medical opinions in the drawing of an inference. It is difficult to prove causation in this case linking the Appellant's injury to the workplace incidents, where there are no medical reports resulting from the December 1 or December 15, 2008, incidents. In addition, there was no Form 6 report filed by the Appellant until after the January 3, 2009, incident, nor was there an attempt to seek medical treatment until after the January 3, 2009, incident. Therefore, there does not appear to be any evidence

before this Tribunal to link the Appellant's injury with the December 1, 2008, and/or December 15, 2008, incident. On the other hand, there does appear to be evidence that the January 3, 2009, incident caused pain of such severity that required the Appellant to receive medical treatment.

19. Therefore, on the balance of probabilities, this Tribunal rules that it is more probable than not that the lower back injury that the Appellant incurred was the result of the January 3, 2009, incident at home as opposed to the December 1, 2008 (or December 15, 2008), incident at work. As such, the injury did not arise out of or in the course of employment, and thus is not compensable under the *Act*.

20. Therefore, the Appellant's appeal is denied.

21. The Tribunal wishes to thank counsel for both parties for their excellent presentations.

Dated this 7th day of December, 2009.

Wendy E. Reid, Q.C.
Chair of the Workers Compensation Appeal Tribunal

Concurred:

Gary Paynter, Worker Representative

Don Cudmore, Employer Representative