

WORKERS COMPENSATION APPEAL TRIBUNAL

BETWEEN:

[PERSONAL INFORMATION]
CASE ID #[PERSONAL INFORMATION]

APPELLANT

AND:

WORKERS COMPENSATION BOARD OF
PRINCE EDWARD ISLAND

RESPONDENT

DECISION #230

Appellant	Worker, as represented by Maureen Peters, Worker Advisor
Respondent	Stephen Carpenter, Solicitor representing the Workers Compensation Board
Place and Date of Hearing	May 30, 2016 Loyalist Lakeview Resort 195 Heather Moyse Drive, Summerside, Prince Edward Island
Date of Decision	October 27, 2016

1. This is an appeal arising from a decision of the Internal Reconsideration Officer (the "IRO") of the Workers Compensation Board (the "Board"), IR# [PERSONAL INFORMATION], dated September 23, 2014, which denied the Worker's reconsideration request for a continuation of wage loss benefits and a permanent medical impairment. The Worker has indicated that she is only appealing the decision of the IRO to deny a permanent medical impairment award.

EVIDENCE

2. The Worker was injured on or about April 29, 1999 when she struck her head on [PERSONAL INFORMATION] while [PERSONAL INFORMATION], subsequently reporting neck pain and symptoms of whiplash. The Worker was subsequently diagnosed with chronic myofascial pain syndrome.
3. The Worker initially was approved for temporary wage loss benefits and was in receipt of same until the Fall of 2010, after which the Worker received extended wage loss benefits.
4. On May 23, 2001, the Worker submitted to the Board a letter, proposing that she start a [PERSONAL INFORMATION] business. The Worker indicated in part:

***"As for my disability I have weighed my options and realize that I will be unable to lift and set up the equipment myself, so I have made arrangements to have help in doing so. I have put much thought into this and feel that this would be a great opportunity for me. [PERSONAL INFORMATION] has been a big part of my life and I have met many people in the [PERSONAL INFORMATION] business. I know that my disability has and will hinder me from working in many different fields and with this opportunity I am sure that I will have a brighter outlook on my future and look forward to a prosperous life."** [Emphasis added]*

5. On July 19, 2001, the Board and the Worker entered into a Commutation and Settlement Agreement (hereinafter referred to as the "Agreement"), which provided in part the following provisions:

- “1. The Board agrees to pay to the Worker the total sum of \$17,100.00 (the “Settlement Sum”) as and by way of a **commuting of the whole of the Workers’ Compensation due to the Worker in respect of or arising out of compensation claims, which for greater certainty and without restricting the generality of the foregoing, shall include a commutation of any permanent partial disability award**, rehabilitation benefits, and any and all other benefits associated with any wage loss, actual or otherwise, with respect to the compensation claim made by the Worker, the particulars of which are as follows:

 - a. Case I.D. #[PERSONAL INFORMATION]
2. Notwithstanding the provisions of paragraph 1, it is expressly agreed that notwithstanding the fact that the Worker has **settled all matters in respect to any compensation from the claim(s) enumerated in paragraph 1 above**, the Worker shall still be entitled to medical aid benefits.
3. Subject to paragraph 2 above, it is hereby declared that the terms of this Agreement are fully understood, that the amount stated herein is the sole consideration of this release and that the said sum equals or exceeds the present value of the Worker’s claim and future entitlement under the claim set out in paragraph 1 above. The Settlement Sum is accepted voluntarily for the purpose of making a full and final compromise, adjustment and settlement of the compensation claim(s) set out in paragraph 1.
4. The Worker, for the Worker and the Worker’s dependents, does hereby, subject to paragraph 2 above, release and forever discharge the Board from **any claim arising in either law or equity out of or related to the claim referred to in paragraph 1 above.** [Emphasis added]
6. The Agreement is accompanied by a letter from a lawyer, indicating that the Worker had consulted the lawyer with respect to the Agreement, and that the Worker was relying upon a representation from the Board that the settlement sum was equal to or greater than the present value of the Worker’s Compensation Claim.
7. The Worker’s file was subsequently closed during the summer of 2001 and it appears from the Appeal Record to have remained closed without activity until January 10, 2014 at which time the Worker contacted the Board and indicated

in part that she was still suffering neck problems. The Worker contacted the Board again on January 23, 2014, and asked in part whether she should have an impairment award.

8. By letter dated May 1, 2014, the Board wrote to the Worker, advising her that since the Worker had entered into the Agreement and no new work injury was filed, the Worker had no entitlement to further wage loss or impairment benefits.
9. The Worker subsequently requested internal reconsideration of the Board's decision, indicating in her request that while the Agreement was to allow the Worker to start a [PERSONAL INFORMATION] business, the business proved to be beyond her physical capabilities as it involved lifting heavy equipment, the Worker believed she was disabled from all types of employment as a direct result of her workplace injury, and that she believed she was entitled to further wage loss benefits. The Worker also indicated that she only had a Grade 7 education, that she did not fully understand the implications of what she was signing, and that she was unaware that by signing the Agreement, she was signing away her right to future wage loss benefits. The Worker also requested a permanent medical impairment assessment.
10. By IRO decision #[PERSONAL INFORMATION], the IRO denied the Worker's request for reconsideration, indicating that the Agreement was a full and final settlement of the Worker's claim, which meant that the Worker was not entitled to any further money from the Board, and noting that the Worker had legal representation at the time she signed the Agreement. Regarding the request for a permanent medical impairment, the IRO noted that at the time the Agreement was signed, the Agreement referenced a "*permanent partial disability award*" and notwithstanding that the *Workers' Compensation Act* now uses the phrase "*permanent medical impairment*", the IRO believed these two phrases related to the same thing and that the Worker had given up any claim to same pursuant to the Agreement.

ISSUE

11. The issue in this appeal is whether the IRO was correct in deciding that the Worker was not eligible for an impairment award.

LAW, ANALYSIS AND DECISION

12. WCAT reviews the IRO's decision on a standard of correctness, and in doing so, is bound by the provisions of both the *Workers' Compensation Act* (hereinafter referred to as the "Act") and Board Policy.
13. The Worker submitted during the appeal as follows:
 - (a) Section 49 of the *Act* provides that where it is determined that a Worker has suffered an impairment as a result of an accident, the Board "shall" pay the Worker a lump sum impairment award calculated in accordance with the Board's regulations. Similarly, the Board has a Policy (POL-89) which provides that a worker is entitled to a lump sum impairment for the measurable loss of a body function, and provides that a worker "will be" referred for an impairment assessment when there is medical evidence of an impairment and the worker has reached a plateau in medical recovery;
 - (b) In the Worker's view, the Appeal Record establishes that by January 2000, the Worker had both suffered an impairment and had reached a plateau in her medical impairment, and accordingly, should have been referred for an impairment assessment at that time;
 - (c) The Agreement which the Worker signed does not affect the Worker's entitlement to a permanent impairment award. Board Policy (POL-11) states that workers who enter into self-employment agreements are not eligible for wage loss benefits, but this Board Policy does not expressly eliminate eligibility for an impairment award; and
 - (d) The Agreement does refer to a permanent partial disability award, but in the Worker's view, the Agreement was meant entirely to eliminate wage loss benefits and not compensation in the form of an impairment award. The Worker submits that the reference in clause 1 of the Agreement to "*permanent partial disability award*" was in error, and that the Agreement was only meant to eliminate wage loss benefits.
14. The Board has submitted in the appeal that the Agreement constitutes a full and final release by the Worker of all claims under the *Act*, and there is no evidence that the Agreement was intended to be limited just to wage loss claims. The Board notes in particular, that clause 2 of the Agreement expressly provides that the Worker would be entitled to medical aid benefits notwithstanding the Agreement, and accordingly, if the parties had wished to

entitle the Worker to a permanent medical impairment award, the Agreement would have contained a similar exclusion for same.

15. After considering the submissions of both parties, WCAT has found that it is clear that the Worker legally released any claim to a medical impairment award pursuant to the Settlement and Commutation Agreement of July 19, 2001.
16. Clause 1 of the Agreement provides a release of all of the "*Workers' Compensation*" due to the Worker, and then provides a non-exhaustive list of the types of claims which are released. While the phrase "*Workers' Compensation*" is not defined in the Agreement, WCAT believes that a reasonable person would understand that the term constituted a release of all claims which could be made under the *Act* relating to the particular accident. In any event, the inclusion of the phrase "*permanent partial disability award*" in clause 1, is in WCAT's view, a clear indication that the Agreement constitute a release of entitlement to an award for medical impairment.
17. Clause 2 of the Agreement constitutes a limited exclusion to the generality of Clause 1, such that it makes clear that medical aid benefits are not released. WCAT agrees with the Board's submission that had it been intended that medical impairment claims would not be released, same could and should have been excluded by clause 2 of the Agreement.
18. The all-encompassing nature of the release provided in Clause 1 of the Agreement, is reinforced by clause 4 of the Agreement and specifically the words "*any claim arising in either law ...*". Entitlement to a medical impairment award arises under the *Act*, and accordingly, a claim for a medical impairment award arises under law.
19. The fact that the Appeal Record indicates that there was no correspondence between the Board and the Worker between the summer of 2001 and January of 2014, reinforces the Board's view that all parties were of the understanding that the Worker's claims for compensation from the Board, were, except for medical aid benefits, fully and finally dealt with in the Agreement.
19. The Worker had legal advice at the time that she entered into the Agreement, and the Record indicates that it was the Worker herself who requested the commutation of her claim so that she could use the funds to start a business.

20. The fact that Board Policy POL-11 (dealing with Self-Employment Programs), does not expressly exclude medical impairment awards for individuals undergoing a self-employment program, is of no consequence given what WCAT believes to be clear language in the Agreement that claims for medical impairment awards were thereby released.
21. Accordingly, for the foregoing reasons, the Board finds that the IRO correctly found that the Worker was not eligible for a medical impairment award for the injury suffered as a result of the April 29, 1999 accident, as same has been released by the Settlement and Commutation Agreement.
22. Therefore, the Worker's appeal is dismissed.

Dated this day of October, 2016

John L. Ramsay, Q.C., Vice-Chair
Workers Compensation Appeal Tribunal

Concurred:

Scott Dawson, Employer Representative

Gordon Huestis, Worker Representative