

WORKERS COMPENSATION APPEAL TRIBUNAL

BETWEEN:

**[PERSONAL INFORMATION]**  
**CASE ID #[PERSONAL INFORMATION]**

**APPELLANT**

AND:

**WORKERS COMPENSATION BOARD OF  
PRINCE EDWARD ISLAND**

**RESPONDENT**

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DECISION # 236

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Appellant	Maureen Peters, Worker Advisor
Respondent	Stephen Carpenter, Solicitor representing the Workers Compensation Board
Place and Date of Hearing	November 10, 2016 Rodd Royalty Charlottetown 14 Capital Drive Charlottetown, Prince Edward Island
Date of Decision	April 5, 2017

**Appeal Proceedings**

1. This appeal was conducted on November 10, 2016 before the Workers Compensation Appeals Tribunal (“Tribunal”).
2. The worker brings this appeal from the decision of the Internal Reconsideration Officer (“IRO”) IR #[PERSONAL INFORMATION] dated March 31, 2016. The IRO denied the Appellant’s request that the decision of December 10, 2015 to close her claim for temporary wage loss benefits and medical aid benefits as of June 2, 2014 be overturned.

**Facts**

3. The Appellant was employed with [PERSONAL INFORMATION] as a [PERSONAL INFORMATION]. The Appellant stated she was [PERSONAL INFORMATION] when she felt a pulling on the left side of her neck and pain in the left shoulder. The accident occurred on June 29, 2012. The Appellant’s family physician, Dr. Frank Estey, first diagnosed the injury as acute neck/upper back strain and muscle strain. This diagnosis was later amended to C5-C6 facet strain.
4. The Appellant’s claim was accepted for compensation benefits for the above noted diagnosis on July 17, 2012. On August 3, 2012, the claim was accepted for acute C5-6 facet sprain, effective July 3, 2012.
5. Two years later, and after two MRIs, the claim was closed because the Appellant’s symptoms could no longer be reasonably related to a strain injury. In the IRO’s decision of March 31, 2016, the evidence on the file was weighed and it was concluded that the MRI findings provided by the Appellant since the accident (showing disc bulging at several levels and foraminal narrowing) were incidental and a further progression of degenerative disc disease. As such, the Appellant’s condition and inability to return to work at the time benefits were discontinued was not found to be reasonably related to the

workplace injury that initiated this claim. In particular, the IRO noted that there was no structural injury that would cause ongoing degenerative changes.

6. In terms of the medical evidence on file, the Appellant was assessed by a number of specialists. First, the Appellant was assessed by Dr. Charbel Fawaz, Neurosurgeon, on December 5, 2012 who noted the Appellant had, “[m]ulti-level degenerative changes with minimal disc bulges at C4-5 C5-6 and C6-7...she has some mild foraminal stenosis but certainly no compression of the nerve roots.” He continued by stating,

“I think her pain is multifactorial including to some point the degenerative changes in her C-spine but also potentially muscular and myofascial component.” [Appeal Record - Tab 18]

7. Following this assessment, the Board Advisor, Dr. Steve O’Brien, and Dr. Estey agreed to seek a second medical opinion regarding the Appellant’s condition. On April 25, 2013, the Appellant was assessed by Dr. Edwin Koshi, Physical Medicine and Rehabilitation and Pain Medicine Specialist, who stated in his consultation report,

[PERSONAL INFORMATION] had x-rays of the cervical spine on July 3, 2012. The x-rays were compared to the previous exam of April 19, 2005. There was minimal progress of C5-6 degenerative disc disease and early narrowing of C3, C4 disc space.

...

“The MRI of the cervical spine of November 8, 2012 showed a very subtle broad-based central left paracentral disc protrusion at C6-7 without any neural compromise. There was no evidence of myelopathy”.

...

Based on today’s history and physical examination, I cannot determine any anatomical diagnoses for [PERSONAL INFORMATION] neck pain, shoulder pain, left upper extremity pain, and thoracic pain. The findings are not consistent with any medical condition that I can identify.”  
[Appeal Record - Tab 22]

8. Following the visit with Dr. Koshi, the Appellant visited Dr. Estey on May 2,

2013, who reported that she had, “ongoing upper chest, shoulder and neck pain” “She is adamant about seeing a neurosurgeon and I have agreed to refer her to St. John for a second opinion now”.

9. Dr. O’Brien opined on August 1, 2013 that a new MRI was not medically necessary for the following reasons:

*“Dr. Edwin Koshi, Physiatrist in Halifax, in his consultation report of April 25, 2013, stated, “The MRI of the cervical spine of November 8, 2012 showed a very subtle broad-based central left paracentral disc protrusion at C6-7 without any neural compromise. There was no evidence of myelopathy”. Therefore, any different findings on a new MRI would not be related to the workplace activity that initiated this claim, as they would have occurred since leaving the workplace. Under Treatment Recommendations, Dr. Koshi stated, “I do not recommend any treatments or investigations for [PERSONAL INFORMATION]. In my opinion, further physical therapy or medications will not help. In my opinion, she is not a candidate for surgery. Education is the best treatment for [PERSONAL INFORMATION].” [Appeal Record – Tab 26]*

10. A second MRI was completed on October 11, 2013 at the Appellant’s expense. It revealed a tiny left paracentral disc bulge at C5-6 mildly narrowing the left lateral recess. [Appeal Record – Tab 28]

11. On November 4, 2013, Dr. O’Brien provided his medical opinion on the October 11<sup>th</sup> MRI stating that,

*“Therefore, the new MRI of October 11, 2013 would not cause me to change my opinion as expressed on August 1, 2013, as Dr. Edwin Koshi in his report of April 25, 2013 ... the findings in MRI report of October 11, 2013 would be considered degenerative changes unrelated to the workplace injury that initiated this claim.” [Appeal Record – Tab 29]*

12. Following a telephone conversation of May 7, 2014, the Appellant was advised in writing by her Case Coordinator on May 9, 2014 that she found the Appellant’s inability to return to work was not reasonably related to her workplace injury but rather was due to non-compensable causes including

degenerative changes as had been indicated in the CT and MRI scans provided. [Appeal Record – Tabs 35 and 36]

13. In a report dated May 8, 2014, Dr. Estey provided a Physician's Report stating, *"in my opinion she should be deemed as permanently disabled and not able to return to work as a result of this work induced injury."* [Appeal Record – Tab 37]
14. Three requests for internal reconsideration were filed by the Appellant following the Case Coordinator's decision. During that period additional evidence was provided by the Appellant including various reports and letters from Dr. Estey; a letter from Dr. Adams, Chiropractor; a letter from Ken Arsenault, Physiotherapist; and, a report from Dr. Al-Shayji, Neurosurgeon.

**Issue**

15. Was the IRO's March 31, 2016 decision to deny the Appellant's request to reopen her claim for temporary wage loss benefits and medical aid benefits effective June 2, 2014 correct?

**Appellant's Argument**

16. It was argued that the Appellant's continuing inability to work was reasonably related to the workplace injury of June 29, 2012. The Appellant submitted that the medical evidence supports the injury and referred the Tribunal to Dr. Koshi's report that the worker has had neck pain since 1989. [Appeal Record - Tab 22]
17. The Appellant also stated that her job duties are more physically onerous now than they once were and as such, it was increasingly difficult to return following this accident.
18. The Appellant referred the Tribunal to section 6(9) of the *Workers*

Compensation Act ("Act") which states as follows:

*"Where an accident caused personal injury to a worker and that injury is aggravated by some pre-existing physical condition inherent in the worker at the time of the accident, the worker shall be compensated for the full injurious result until such time as the worker, in the opinion of the Board, has reached a plateau in medical recovery."*

19. Board Policy 61 "Pre-Existing Conditions" – defines "plateau in medical recovery" as:

*"'Plateau in medical recovery' means there is little potential for improvement or any potential changes in the condition in keeping with the normal fluctuations which can be expected with that kind of injury."*

20. Policy POL-61 goes on further to state at paragraph 2:

*"Where the worker is injured as a result of a work-related accident, and the injury is aggravated by a pre-existing physical condition inherent in the worker at the time of the accident, the worker shall be compensated for the full injurious result until such time as the worker, in the opinion of the Workers Compensation Board, has reached a plateau in medical recovery."*

21. The Appellant further argued that the pre-existing condition, namely her neck injury, was permanently aggravated by the workplace injury. The Appellant also claimed that she could not have reached a plateau of medical recovery as defined in the Board Policy, as she has not been cleared to return to work by her family physician, Dr. Estey.

22. The Tribunal was referred to the commentary of Terence Ison, in Worker's Compensation in Canada who states as follows, at paragraph 5.4.1:

*"Pre-existing causal factors. Where a worker is disabled from work following an injury that arose out of and in the course of employment, compensation is payable whether the employment was the sole cause of the disablement, or whether other factors, such as weaknesses of the body, were contributory. If the worker was employed with his other limitations or disabilities prior to the injury, the subsequent disability is attributable to the injury and compensable as such. Similarly, where an*

employment event aggravates a pre-existing non-compensable disability, the aggravation is a compensable injury, and the worker is entitled to compensation for as long as the aggravation causes an absence from work."

23. The Appellant argued that her case falls under the provision of Section 6(9) of the *Act* in that her pre-existing neck symptoms were worsened by the June 29, 2012 workplace injury and thus she should be compensated for the full injurious result until such time as she has reached a plateau of medical recovery.
24. The Appellant took issue with the considerable weight the Board placed on the medical assessment of Dr. Edvin Koshi, Physiatrist, and Dr. Charbel Fawaz, Neurosurgeon. The Appellant submits that more weight should be given to the opinion of Dr. Estey rather than to Dr. Koshi or Dr. Fawaz. He was her physician for over 20 years and therefore, was in a better position to determine whether or not her ongoing symptoms are related to the workplace injury.

### **Respondent's Argument**

25. The Respondent argues that the great majority of the "objective" medical evidence supports a finding that the Appellant's condition and inability to return to work at the time benefits were discontinued could not reasonably be related to the June 29, 2012 accident.
26. The Respondent suggests that the following evidence of Dr. Koshi, Dr. Fawaz and Dr. O'Brien should be given more weight than that provided by Dr. Estey.
27. Dr. O'Brien was asked to provide an opinion on new medical evidence on file, specifically, the MRI of the spine on November 19, 2014. He notes that the MRI report states,

*"There is disc bulging at several levels along with some foramina/narrowing and the bulging is more pronounced at the C6-7level....There are small bulges involving the T7-T8 and T8-T9 discs on the left side but there is no significant compression of the thecal sac or nerve roots."*  
[Appeal Record – Tab 49]

28. The Respondent also points to the evidence of Dr. Fawaz who assessed the Appellant on December 5, 2015 and stated that,

*"Palpation of her C-spine does not elicit any pain. Her neck range of motion is not limited in all directions. Her motor strength is evaluated at 5/5 throughout and her reflexes are normal at 2+ throughout. She has no Hoffmann and no Babinski sign. Her sensory examination is unremarkable. Romberg sign is negative and her gait including tandem gait is normal."*

*"I reviewed her C-Spine, MRI from November, 2012 showing indeed multi-level degenerative changes with minimal disc bulges at C4-C5, C5-C6 and C6-C7. There is no significant spinal canal stenosis. She has some mild foramina/ stenosis but certainly no compression of the nerve roots."*

29. The Respondent also refers to Dr. Koshi's report of April 25, 2013 which states:

*"... from the subjective complaints of pain, the un-witnessed injury of June 2012 permanently aggravated the pre-existing condition."*

*The term "aggravation" refers to a factor that adversely alters the course of progression of the medical impairment ... it represents an increase in symptoms, signs, and/or impairment that never return to baseline or what it would have been except by the natural history of the injury of illness.*

*However, from the objective findings perspective, today's physical examination was normal. The only abnormality was tenderness over the spinous processes of lower cervical and upper thoracic vertebra. However, tenderness with palpation in this area is a very common finding in individuals who do not complain of pain.*

Therefore, from the physical findings/objective findings perspective, the un-witnessed injury of June 2012 temporarily exacerbated the pre-existing condition. [Appeal Record - Tab 22]

30. Dr. Koshi finishes his report by concluding,

*"The prognosis for return to pre-injury occupation will not likely depend on physical barriers. [PERSONAL INFORMATION] has had this pain since her initial injury in 1989 and she was able to remain at work. I see no medical reason why she should not continue to do so. Today's physical examination was normal... However she presents with significant social and psychological barriers, as described above. Ample literature shows that these barrier affect the prognosis for work more than physical barriers."*

31. The Respondent also points to three MRIs and one CT scan to suggest there is objective evidence that the Appellant's condition at the time benefits were discontinued could not be reasonably related to the workplace accident but rather were caused by outside factors including:

- November 8, 2012 MRI (Tab 18) —

*"Multi-level degenerative changes with minimal disc bulges at C4-5, C5-6 and C6-7. There is no significant spinal canal stenosis. She has some mild foraminal stenosis but certainly no compression of nerve roots — (as expressed by Dr. Fawaz in his December 5, 2012 report).*

- October 11, 2013 MRI (Tab 28) - It is noted by Dr. O'Brien that:

*"Therefore, the new MRI of October 11, 2013 would not cause me to change my opinion as expressed on August 1, 2013, as Dr. Edwin Koshi in his report of April 25, 2013, stated I spent a long time with her today trying to explain that the MRI findings are incidental. I told her that all individuals of her age have degenerative changes in these two discs in the cervical spine. Therefore, the findings in MRI report of October 11, 2013 would be considered degenerative changes unrelated to the workplace injury that initiated this claim."*

- November 19, 2014 MRI (Tab 49) — It is noted by Dr. O'Brien that:

*"As you note since that time, [PERSONAL INFORMATION] had an MRI of her cervical and thoracic spine on November 19, 2014, and under Impression, the report states, "There is disc bulging at several levels along with some foraminal narrowing and the bulging is more pronounced at C6-7 level . . . There are small bulges involving the T7-T8 and T8-T9 discs on the left side but there is no significant compression of the thoracic or nerve roots.*

- *July 3, 2012 CT Scan — On second look, there is some early narrowing of the C3-4 disc space as well indicating mild degenerative disc change.*
32. The Respondent also notes that the report of Dr. Al-Shayji from October 5, 2015 does not show any connection to the 2012 injury, the C5-C6 strain, but instead shows further progression of the Appellant's degenerative disc disease.
33. Finally, the Respondent referred the Tribunal to the Disability Duration Guidelines which state that generally, there is an expected healing time of three months for a strain injury. In this case, benefits continued for two years after the strain.

### **Decision**

34. For reasons which are set out in this decision, the worker's appeal is denied. The following is the rationale for this decision:
35. There is no question that on June 29, 2012, while working in the province of Prince Edward Island, the worker had an accident which caused C5-C6 facet strain.
36. The question is whether at the time benefits were discontinued on June 2, 2014 (almost two years after the accident) the continued inability to return to the workplace was reasonably related to the workplace accident?
37. The Tribunal finds that the IRO's reasons for the March 31, 2016 decision properly weighed the medical evidence on file to find that any further progression of the worker's degenerative disc disease would not be related to the workplace injury.
38. The accident occurred on June 29, 2012 and the claim was closed on June 2,

2014. The objective evidence before the Tribunal during this time is from Dr. Fawaz, Neurosurgeon (December 5, 2012 report); Dr. Koshi, Physical Medicine, Rehabilitation and Pain Medicine Specialist (April 25, 2013 report). Both specialists suggest that the Appellant's ongoing symptoms were related to degenerative changes or a muscular and myofascial component. [Appeal Record – Tabs 18 and 22].

39. Also of note during this period was that the Board Advisor, Dr. O'Brien, concurred with the opinions of Drs. Fawaz and Koshi. He reviewed the complete file and the CT scan of July 3, 2012 which confirmed that degenerative disc changes were present around the time of the accident.
40. In terms of the Appellant's argument that a pre-existing condition was aggravated and, therefore, under section 6(9) should be compensated for the full injurious result, the most relevant objective evidence before the Tribunal is that of Dr. Koshi who disagrees that the condition was "aggravated" (as medically defined), but concludes that "*...from the physical findings/objective findings perspective, the un-witnessed injury of June 2012 temporarily exacerbated the pre-existing condition.*" [Appeal Record - Tab 22].
41. The discharge report of Dr. Adams dated September 17, 2012, also seems to suggest a temporary exacerbation. He stated that the Appellant "*was improving with the incorporation of a gym exercise program*" and that "*she showed signs of increase range of motion*". Dr. Adams recommended a return to work after a work conditioning program. The Appellant did not participate in the work conditioning or an ease back program as Dr. Estey indicated she was unable to return to work due to pain and he recommended a referral a neurosurgeon. [Appeal Record – Tabs 14 and 16]
42. Further, although the Appellant argued that the report of Dr. Al Shayji included certain workplace restrictions; however, he does not state the cause

of those restrictions. In any event, the Tribunal gives greater weight to the assessment of Dr. Koshi which was completed on April 2013 closer to the time that the benefits were terminated indicating that the reasons for the Appellant's inability to return to work were more likely the result of significant social and psychological barriers.

43. When weighing evidence the Tribunal must do so in accordance with POL 68 "Weighing of Evidence" and in particular paragraphs 8 and 9. Objective medical information is more persuasive than subjective medical information. Following the Case Coordinator's decision to terminate benefits, the information provided was mostly subjective in nature.

44. Dr. Estey's medical reports rely on subjective information from the Appellant for the most part and do not include objective medical evidence or testing. For example, Dr. Estey stated in a letter to the Board dated June 4, 2014:

*I note with distress that the Compensation Board has put more weight on the opinion of consultants who do not know [PERSONAL INFORMATION] [sic] at all and have only seen her for a very brief period of evaluation and put much less weight on the opinions of two practitioners who have been working with [PERSONAL INFORMATION] for years and who both feel that she is disabled." [Appeal Record – Tab 38]*

45. Dr. Estey also refers to another practitioner supporting the Appellant, which appears to be Chiropractor, Dr. Adams. On July 11, 2014, a letter was received by the Board from Dr. Adams following the Case Coordinator's decision to end benefits. He indicated that the Appellant "*continues to have ongoing pain and is restricted in daily functioning activities such as reaching above shoulder level, reading, scrubbing, driving, etc.*" Yet, there was no evidence of any visit to Dr. Adams since approximately two years ago. [Appeal Record - Tab 40]

46. Upon review of the medical evidence, the Tribunal finds that the Appellant's inability to work at the time benefits were terminated was not reasonably related to the June 29, 2012 C5-C6 strain injury. The objective evidence of Drs. Koshi and Fawaz outweighs the subjective information provided by Drs. Estey and Adams, in accordance with the criteria set out at paragraph 9 of Board Policy POL-68.

**Decision**

47. The Tribunal finds that the decision to deny the Appellant's claim was appropriate and, therefore, the appeal is denied.
48. This Tribunal would like to thank the parties for their submissions.

Dated this 5th day of April, 2017

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Meaghan S. Hughes, Vice-Chair  
Workers Compensation Appeal Tribunal

Concurred:

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Eugene (Stu) Lavers  
Employer Representative

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Elizabeth (Libba) Mobbs  
Worker Representative