

WORKERS COMPENSATION APPEAL TRIBUNAL

BETWEEN:

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

APPELLANT

AND:

**WORKERS COMPENSATION BOARD OF
PRINCE EDWARD ISLAND**

RESPONDENT

DECISION #333

Appellant

Maureen Peters, Worker Advisor

Respondent

Stephen Carpenter, Solicitor representing the
Workers Compensation Board

Place and Date of Hearing

March 20, 2018
Loyalist Lakeside Inn
195 Heather Moyse Drive
Summerside, Prince Edward Island

Date of Decision

April 12, 2018

Appeal Proceedings

1. The appeal was conducted on March 20, 2018 before the Workers Compensation Appeal Tribunal ("Tribunal").
2. The worker brings this appeal from the decision of the Internal Reconsideration Officer ("IRO") IR #[PERSONAL INFORMATION] dated November 28, 2016 which denied the Appellant's claim for continuing temporary wage loss benefits.

Facts

3. The accepted facts on this file have been detailed within the Appellant's Factum and have been reviewed by the Tribunal. They are summarized below.
4. The Appellant was employed as an auto painter at [PERSONAL INFORMATION] and was injured on January 3, 2013 when he slipped on ice and injured his arm. [Appeal Record Tab 5]
5. On April 16, 2013 his claim was approved by the Workers Compensation Board (the "Board") with an accepted diagnosis of right arm/right side of neck strain. [Appeal Record Tab 6]
6. The Appellant's claim was originally closed on May 14, 2013. [Appeal Record Tab 1]
7. On December 10, 2014 the Appellant was seen by orthopedic surgeon Dr. Stewart Campbell and was diagnosed with right thoracic outlet syndrome with neurogenic and vascular symptoms. The Appellant filed for a recurrence of his workplace injury on January 19, 2015 and on February 26, 2015, Board medical advisor, Dr. Steven O'Brien advised that the Appellant's symptoms would be appropriate under his claim. [Appeal Record Tabs 8, 11, 13]

8. The Board approved the Appellant's recurrence claim on March 3, 2015. [Appeal Record Tab 14]
9. On June 26, 2015 the Appellant's family doctor, Dr. Vickerson, cleared the Appellant for ease back, however on November 6, 2015 Dr. Vickerson put the Appellant off work due to worsening symptoms. [Appeal Record Tab 3]
10. On December 16, 2015, Dr. Campbell concluded that the Appellant had a permanent partial disability referred the Appellant for a Functional Capacity Evaluation. [Appeal Record Tab 31]
11. The Appellant completed the Functional Capacity Evaluation on January 11, 2016 and was found to be not suitable for his job at [PERSONAL INFORMATION]. [Appeal Record Tab 34]
12. Between March 7 and May 24, 2016, the Appellant participated in a multi-disciplinary program at CBI Linden. The discharge report rated him as having strengths and functional tolerances within the light category. [Appeal Record Tab 39]
13. On June 21 and 22, 2016, the Appellant underwent a Functional Capacity Evaluation administered by Occupational Therapist Michael LeBlanc with CBI. The discharge report this time rated him has having strengths and tolerances within the medium category and concluded he was a safe job match for his pre-injury position of auto painter. [Appeal Record Tab 47]
14. On July 11, 2016, the Board informed the Appellant that his claim for temporary wage loss earnings would close effective August 11, 2016. [Appeal Record Tab 49]
15. On October 13, 2016, the Appellant requested internal reconsideration which was subsequently denied on November 28, 2016. [Appeal Record Tabs 51, 1]

16. The Appellant filed a Notice of Appeal to the Workers Compensation Appeal Tribunal (the "Tribunal") on December 28, 2016

Issue

17. The issue to be decided by the Tribunal is whether or not the decision to close the Appellant's claim for temporary wage loss benefits effective August 11, 2016 was correct.

Appellant's Argument

18. The Appellant's arguments were canvassed in the Appellant Factum and oral presentation. The Tribunal considered everything presented.
19. The crux of the Appellant's argument is that there is more evidence on file indicating that he is only capable of light duties, and that the Board erred in applying more weight to the Functional Capacity Evaluation than other medical evidence and therefore should not have stopped the temporary wage loss benefits.
20. The Appellant specifically relies on Dr. Campbell's evaluation from December 16, 2015 where Dr. Campbell states "*it is apparent the patient has a permanent partial disability precluding anything but very light duties*". [Appeal Record Tab 31]
21. The Appellant notes that the Fitness for Work Assessment indicated that he was not a job match for his role at [PERSONAL INFORMATION]. [Appeal Record Tab 34]
22. As well Dr. Vickerson reported on January 15, 2016 that the Appellant had suffered increased symptoms after completing the Fitness for Work Assessment and was unable to perform any type of work at that time. [Appeal Record Tab 3]
23. The Appellant argues that the Board erred in placing so much weight on the Functional Capacity Evaluation in making their decision to end benefits.

Relying on Board Policy 68 – Weighing of Evidence, the Appellant argues that greater weight should have been giving to Dr. Campbell's opinion as the treating surgeon and that his opinion supports the notion that the Appellant's loss of earning capacity had not ended. [Appeal Factum Tab 4]

24. Finally the Appellant submits that the medical evidence on file is at a minimum of equal value for and against the ending of temporary wage loss benefits and therefore in accordance with Section 17 of the Workers Compensation Act the benefit of the doubt should rest with the Appellant.

Respondent's Argument

25. The Respondent's arguments were canvassed in the Respondent Factum and oral presentation. The Tribunal considered everything presented.
26. The crux of the Respondent's argument is that, while there may be competing medical evidence on file, the best evidence is the Functional Capacity Evaluation, and based on the results from that, the Board was correct in ending the benefits.
27. The Respondent notes that the expected healing time for this type of injury, based on the Disability Duration Guidelines, is six weeks. The Respondent makes the point that the temporary wage loss earnings were in effect in this file for approximately eighteen months [Appeal Record Tab 6]
28. With respect to Dr. Campbell's comments prior to the Functional Capacity Evaluation, the Respondent argues that Dr. Campbell is not specifically trained in measuring what a patient can or can not do with regards to employment and that is precisely why Dr. Campbell himself recommended the Functional Capacity Evaluation. [Appeal Record Tab 31]
29. The Respondent submits that the Functional Capacity Evaluation is the best medical evidence on file and should be given the most weight. They submit that Occupational Therapist Michael LeBlanc, who administered the FCE, is

a specifically trained and has the necessary expertise to opine on this type of file. They submit that Mr. Leblanc had the most appropriate list of job functions to compare the results to, that the testing is the most recent evidence, and that it is purely objective medical evidence compared with subjective commentary from Dr. Campbell. [Appeal Tab 47]

30. The Respondent has filed Board Policy 68 – Weighing of Evidence, and specifically notes that the Board is bound to give greater weight to objective medical evidence which is based in fact. They also note that it is appropriate under the Policy for the Board to give consideration to the disability guidelines.

Decision

31. For reasons which are set out in this decision, the worker's appeal is **denied**.
32. The Tribunal finds that the best medical evidence on file, with due regard to the Weighing of Evidence Policy, is the Functional Capacity Evaluation. This evidence is the most objective, based in fact, most recent, and comes from an occupational therapist that has the requisite expertise to opine on the Appellant's abilities and functions. The Board was correct in giving the Functional Capacity Evaluation the most weight.
33. The Tribunal notes that it was Dr. Campbell himself who recommended the Functional Capacity Evaluation.
34. The Tribunal has also taken into consideration the extended healing time on this file which has been far exceeded the Disability Duration Guidelines. To the extent that the Appellant feels he is unable to return to work, the Tribunal finds that it is more likely due to the impact of various non-compensable unrelated reasons.

35. The Appellant's complaints of pain could very well be a reality; however there is insufficient objective medical evidence on file to indicated that the Appellant could not return to his pre-injury work.
36. The Tribunal finds that the Board was correct in closing the Appellant's claim effective August 11, 2016 and thus the Appeal is **denied**.
37. The Tribunal would like to thank the parties for their submissions.

Dated this 12th day of April, 2018

Gordon MacFarlane – Vice Chairperson
Workers Compensation Appeal Tribunal

Concurred:

Donald Turner, Employer Representative

Cynthia McCardle, Worker Representative