

**WORKERS' COMPENSATION BOARD  
APPEAL TRIBUNAL**

**CASE I.D. #[personal information]  
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**BETWEEN:**

**[Personal Information]**

**PLAINTIFF**

**AND:**

**WORKERS' COMPENSATION BOARD  
OF PRINCE EDWARD ISLAND**

**DEFENDANT**

**DECISION #42**

**[Personal Information]**

**Plaintiff's Representative**

**John K. Mitchell, Q.C.**

**Solicitor representing the  
Workers' Compensation Board**

**Place and Date of Hearing**

**Best Western - MacLauchlans  
Charlottetown, Prince Edward Island  
October 17, 2005**

**Date of Decision**

**February 7, 2006**

## FACTS

1. This is an appeal of Internal Reconsideration Decision IR-04-13 which denied the Appellant's request for additional compensation benefits with regards to two separate claims, specifically:
  - a. The Appellant's low back condition, Case ID [personal information];
  - b. The Appellant's chronic ear condition, Case ID [personal information].
2. At the beginning of the Hearing, the Appellant presented new evidence with respect to his low back condition and, as a result, pursuant to Section 56(22), the Appeal Tribunal refers Case ID [personal information] back to the Board for further reconsideration.
3. Case ID [personal information] deals with the Appellant's chronic ear infection condition.
4. The Appellant was employed with CN Marine Atlantic over the period of 1973 to 1989/1990. During that time, he worked in the engine rooms. The Appellant had a bilateral ear condition which pre-existed his employment with Marine Atlantic. He had a tynpanoplasty performed in each ear in 1967. In a report dated November 5, 1970, Dr. MacKenzie's history of the Appellant indicates that the Appellant had an undisclosed surgery performed for some defect of his right ear in 1965. In a report dated June 3, 2003, Dr. Bantz noted that the Appellant "has had a problem for many years with his left ear."
5. The Appellant did not make a hearing loss claim request until his inquiry of February 2003. In March 2003, the Appellant was notified that the Board had no record of hearing loss claim filed by him. At this time, the Appellant was told he should submit any and all information regarding his hearing loss claim consideration.
6. The Appellant submitted information on his hearing loss claim by October 2003 and the claim was approved for benefits associated with his bilateral, noise induced, hearing loss resulting from the noise exposure while working in the engine rooms of boats from 1973 to 1987. However, the Board determined that his pre-existing bilateral ear problems and ear infections were not compensable and that these conditions, and related treatments regimes were not related to his compensable noise induced hearing loss. The Board

indicated that future requests for additional benefits would be reviewed in light of his pre-existing conditions.

7. The Appellant's position is that the exposure to loud noise from working for Marine Atlantic over the years resulted in hearing impairment and that he continues to have chronic ear infections. His position is that the infections result from the hearing loss and as such the costs associated for medical care for the infections should be covered by the Board.
8. The Board has compensated the Appellant for noise induced hearing loss but it is the Board's position that the pre-existing chronic otitis causes the chronic infections and the infections were not caused by his employment with Marine Atlantic.

#### ISSUE

9. With respect to Case ID [personal information], the issue is whether or not the worker's chronic ear infection condition is causally related to his compensable hearing loss injury thereby entitling him to additional benefits.

#### THE LAW

10. Section 56 of the *Workers Compensation Act* ("Act") provides for the process of appeal and sets out the powers of the Appeal Tribunal. The process of appeal is the same regardless of whether the Old Act (i.e. pre-1995) is involved or the Act.
11. Section 32(2) of the Act, sets out the ground work for the standard of review in this appeal.

*32(2). Without limiting the generality of subsection (1) the decisions and findings of the Board upon all questions of law and fact are final and conclusive, and in particular, the following shall be deemed to be questions of fact:*

- a Whether any injury or death in respect of which compensation is claim was caused by an accident within the meaning of this Part;*
- b The question whether any injury has arisen out of or in the course of an employment within the scope of this Part;*

12. The Board has made a finding of fact in its decision by determining that the chronic ear infections are not caused by an accident and did not arise

out of or in the course of employment. In order for the Appeal Tribunal to overturn the Board's decision, the Appeal Tribunal must find a palpable, overriding error with respect to the Board's decision. In [personal information] Decision #6 P.E.I.W.C.A.T. August 23, 2000, at page 13, this Tribunal stated:

*The panel therefore should not and cannot interfere with the decision of the Board on matters of fact unless there is evidence of palpable or overriding error on the part of the Board in its decision with respect to the issue(s) before it. In the absence of evidence that the Board made a manifest error, ignored conclusive or relevant evidence, misunderstood the evidence or has drawn erroneous conclusions from it, this panel can not either overturn the decision of the Board or substitute its view for that of the Board.*

13. The Appeal Tribunal also has reviewed section 17 which is commonly referred to as the benefit of the doubt section. It states:

*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.*

## ANALYSIS AND DECISION

14. After listening to the arguments presented before the Appeal Tribunal and reviewing the volumes of evidence presented and the Act, with respect to the Appellant's claim for additional compensation in relation to the chronic ear condition, the Appeal Tribunal finds that the Board did not commit a palpable and overriding error in identifying the Appellant's chronic ear infection condition as a pre-existing condition. This is supported by the record as filed by the Board. There is not enough evidence before the Appeal Tribunal which would justify using s. 17 of the Act to resolve this matter. The Appellant's hearing loss as a result of his employment has been compensated. However, this does not mean he is entitled to compensation for injuries or conditions not related to the workplace. The evidence before the Appeal Tribunal indicates that the Appellant had a pre-existing conditions with respect to both of his ears and that his present state of dealing with the chronic infections would more likely have occurred than not regardless of his employment with Marine Atlantic and working in the engine rooms.
  
15. The Appeal Tribunal also confirms the Board's decision that with respect to Case ID [personal information], that the Appellant's rights crystallized upon the Appellant's filing of the claim in 2003. In other words, this claim is a "new Act" claim.

Dated this 7th day of February, 2006.

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Pamela J. Williams  
Vice Chair of Workers Compensation Appeal Tribunal

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Don Cudmore, Employer Representative

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Nancy Fitzgerald, Employee Representative

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