

WORKERS COMPENSATION  
APPEAL TRIBUNAL

BETWEEN:

EMPLOYER  
CASE ID [personal information]

APPELLANT

AND:

WORKERS COMPENSATION BOARD OF  
PRINCE EDWARD ISLAND

RESPONDENT

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DECISION #71

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Appellant

Self-represented

Respondent

Stephen Carpenter, Solicitor representing  
the Workers Compensation Board

Place and Date of Hearing

March 21, 2007  
Best Western – MacLauchlans  
Charlottetown, Prince Edward Island

Date of Decision

September 28, 2007

1. This is an appeal of the Internal Reconsideration Decision 05-73 which dismissed the Appellant's request for reconsideration. The reconsideration issue was identified as follows:

Did the Worker's injury arise out of and in the course of his employment and was it appropriate for the Worker to elect compensation through WCB and not have the accident put through the Employer's car insurance?

2. By way of background, the Worker was employed with the Employer as a [personal information]. On [personal information], 2005, while traveling as a passenger in the Employer's vehicle from the worksite to the Employer's location, the vehicle was struck from behind causing the Worker to experience pain in the lower back and neck region. The Worker first received medical attention on [personal information], 2005, from Dr. B. R. Sethi who diagnosed a back and neck injury.
3. The Worker executed an Election to Claim on November 18, 2005, indicating that he would elect to claim compensation benefits from the Workers Compensation Board, as opposed to pursuing a third party claim.
4. The workers parked their personal vehicles at the Employer's shop and then traveled together in a company vehicle to the jobsite. The Employer arranged for transportation to and from this particular jobsite from its location in Northam as the workers were complaining about transportation costs. The workers were paid for travel time to the jobsite but not for the return trip back to Northam.
5. The Worker's claim was accepted by letter dated November 28, 2005, for his neck and back strain injury. The Worker saw Dr. Barry Ling on [personal information], 2005, who confirmed that the Worker sustained a whiplash type injury to his lumbosacral spine. The Worker was further referred to physiotherapy.

6. After the Worker's claim was accepted, the Employer filed a Notice of Request for Internal Reconsideration which was received by the Board on December 19, 2005. The Reconsideration Officer in coming to her conclusion found that although the accident occurred off the Employer's premises it was within the time and boundaries of the employment. Specifically she found:

*The expectations were for the workers to get to the site via an employer owned vehicle, but also to return to the employer's shop to get their personal vehicles. Although, not being paid by the employer during the return trip back to the shop, the travel would have been considered as part of the expectation and obligations of the employment. On the day in question, the workers arrived via an employer vehicle, therefore, would return to the shop the same way.*

7. The Appellant in this matter submits that this claim properly should be dealt with by motor vehicle insurance which would presumably avoid a direct cost to the Appellant.

### **Analysis and Decision**

8. The *Workers Compensation Act* provides that where a Worker suffers personal injury by "accident arising out of and in the course of employment", he is entitled to receive compensation (Section 6). The supporting Board Policy is Number 04-23- *Arising Out of and in the Course of Employment*.

9. The Policy provides:

*Compensation is payable to a worker who is injured as a direct result of a work related accident.*

10. The following policy definitions assist in making the determination of whether or not compensation applies:

1. *"Arising out of employment" means an injury that must be linked to, originated from, or be the result of, in whole or in part, an activity or action undertaken because of the worker's employment.*

2. *“In the course of employment” means the injury must be linked to a worker’s employment in terms of time, place and activity.*
  3. *“Work-related disability” means a disability arising out of and in the course of employment.*
11. The policy further provides that:
- The injury must be caused by an accident that happens at a time and place consistent with the obligations and expectations of employment, such as hours and place of work. Time and place are not strictly limited to the normal hours of work or the employer’s premises; but there must be a relationship between expectations of employment and the time and place the accident occurs.*
12. And further:
- The injury need only occur from employment; it does not have to be work related. The injury must be shown as to have arisen within the time and the space boundaries of the employment, and in the course of an activity whose purpose is related to the employment. For example, a person on coffee break within the employer’s premises is covered for an injury that occurs during the coffee break, even though the injury is not related to the work the person is doing. Coffee breaks are an accepted part of a person’s work day.*
13. Policy Number 6 states that commuting to and from work is not included, except when on the employer’s premises. However, Policy 8 provides where travel is part of a workers job function, and where a worker is being paid for traveling time, an injury resulting from travel is one that results from employment and may be compensable.
14. The Employer’s position is that it provided the transportation as a favour to the workers and the workers were not paid for their travel on the return trip back to Northam which is when this accident occurred. In addition, the Employer does not feel it should be responsible for the compensation when in fact there was a third party wrongdoer involved that would have insurance in place.

15. After consideration of the facts and submissions presented in this matter, the *Act* and supporting policies, it is this Appeal Tribunal's decision that the Internal Reconsideration Officer was correct in her finding that the Worker was in the course of his employment when the motor vehicle accident occurred. Although the Worker was not paid for his return travel time, the act of traveling in the Employer's vehicle was an activity undertaken because of the Worker's employment.
  
16. The *Act* provides the Worker with a right to elect workers compensation benefits when the Worker may have the right to commence an action against some other person other than the Employer or another worker. In exchange, the Board is entitled to pursue recovery of the compensation paid through subrogation. In other words, the Board in its discretion can commence an action against the alleged wrongdoer in an attempt to recover its outlay. There is no evidence before us to indicate that this has or will be occurring but suggest to the Employer that it could follow up in this regard.
  
17. Therefore this appeal is dismissed.

Dated this 28<sup>th</sup> day of September 2007.

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Pamela J. Williams  
Vice Chair of the Workers Compensation Appeal Tribunal

Concurred:

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Neil MacFadyen, Employee Representative

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Don Cudmore, Employer Representative