WORKERS COMPENSATION
APPEAL TRIBUNAL

CASE ID [personal information]

BETWEEN:

EMPLOYER

APPELLANT

AND:

WORKERS COMPENSATION BOARD
OF PRINCE EDWARD ISLAND

RESPONDENT

DECISION #75

Employer	Represented by Keith Mullins B. Comm., RRP Employer's Advisor
Respondent	Represented by Stephen Carpenter Stewart McKelvey Stirling Scales
Place and Date of Hearing	May 31, 2007 - 10:00 a.m. Best Western Charlottetown 238 Grafton Street Charlottetown, P.E.I. Montague Room
Date of Decision	October 17, 2007

I BACKGROUND/FACTS

As there was no dispute as to the facts in this case, and as a review of the Appeal Record shows that the facts pertinent to this case are as set out in the written submissions of the Employer and in the Case Summary of the IRO, this Tribunal adopts the facts as therein stated.

The Employer's Position

The Employer, in its review of the file, stated in its written submissions as follows:

> The claim for right wrist tendonitis was dated [personal information], 2004, and accepted for compensation benefits on [personal information], 2004, effective [personal information], 2004. This injury was not reported to the Employer and in fact the Worker advised her supervisor she was going to see her family doctor on [personal information], 2003, for a sore foot. A claim for plantar fascitis was subsequently denied on April 26, 2004. The Employer only became aware of the tendonitis claim when a letter was received from the Entitlement Officer asking for the Employer's Form 7.
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> The decision to accept the claim was made following receipt of a written Manual Handling Progressive Injury Questionnaire (MHPIQ) completed by the Worker on February 11, 2004, and by a Pre-Adjudication Worksite Analysis for Progressive Injury Claims report conducted by the Occupational Therapist over the phone with the Worker on February 10 and filed on [personal information], 2004. The Employer was not consulted by the Entitlement Manager or the Occupational Therapist on either of these reports and therefore could not verify the accuracy of the information provided by the Worker.
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> The Worker started with the [personal information] in [personal information] 2003 and the Employer was subsequently advised by other staff that she was having some difficulties with her wrist within the first couple of weeks on the job. The Employer was aware that the Worker's previous position at another [personal information], so she then made changes to the [personal information] and no concerns were ever expressed to the Employer about wrist problems until the request for Form 7 was received in [personal information] 2004.
>
> On Page 2 of the Questionnaire completed by the Worker on [personal information], 2004, she answered No to Question #4 "Have you ever had similar problems in this same area of your body?" She also denied any history of right wrist problems in the past in a report completed by the Occupational Therapist dated [personal information], 2004. For the third time according to documents in the file, she denied any previous problems with her right wrist when questioned specifically about this by her Entitlement Officer on March 17, 2004. According to the Worker's medical history obtained by the Board from the family doctor on April 2, 2004, there were

reports of right hand problems and a diagnosis of carpal tunnel syndrome as early as [personal information], 2002. These three denials differ from the report where her doctor states she reported pain in her right hand both day and night during the previous three to six months. At that time the Worker had two jobs, the first being in another [personal information] and the other being a [personal information].

The family doctor also saw the Worker on [personal information], 2003, for a sore right shoulder when she complained of pain in the right shoulder blade down to the elbow which occurred the previous week. She told him she took a day off work and it started to improve so he prescribed Naprosyn and Flexeril and referred her to Charlottetown Physiotherapy for treatment. At this time the Worker also had a part-time job in the [personal information] but never disclosed it to the Entitlement Officer until she was questioned about it on March 8, 2004.

At a meeting with WCB management on March 11, 2004, the Employer was offered an opportunity to discuss and document information she had with the Entitlement Officer which could contribute to the entitlement or case management of this claim but it never really happened. The Entitlement Officer was to request medical history to validate or dispute the possibility of tendonitis of the wrist prior to her employment at the [personal information]. The report documented right wrist problems during the previous three to six month period, some 22 months prior to this claim being filed. When the Occupational Therapist met with the Worker and Employer at the worksite on [personal information], 2004, she was advised by the Employer that when she learned from other staff the Worker was having difficulties [personal information] were assigned to assist with this duty. The Occupational Therapist noted the Worker was unaccustomed to this particular activity but the Employer was already aware this duty was performed by the Worker in her previous job and had already modified her duties. This Addendum to the RSIOT Report filed by the Occupational Therapist was the third report not shared with the Employer, who was not in attendance during the actual work simulation.

An opinion was requested from the Board Medical Director but the only record on file was a medical comment dictated April 13, 2004, saying he would comment further when the x-ray results were on file. There was no bony abnormality seen and the articulations appeared within normal limits on the right wrist x-ray taken on [personal information], 2004, and received by the Board on April 14, 2004. The only other medical comment was dated May 7, 2004, when he indicated the surgery proposed was appropriate to the claim.

The IRO stated in her denial letter that the treating physician in [personal information] 2002 did not conduct EMG studies so there was no confirmation of right carpal tunnel syndrome. The same treating physician on [personal information], 2003, diagnosed right wrist tendonitis yet this was an acceptable diagnosis, even though no EMG studies were ever conducted to confirm it.

At this point the Employer argued that:

> There appears to be a double standard used here when the IRO accepts only one of the two different diagnosis by the same physician, neither of which were subjected to diagnostic testing. If the same yard stick were used in both, then there is conclusive evidence of a pre-existing condition and the Employer would be entitled to receive cost relief under the Board's policy on Apportionment.
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> On the decision related to the calculation of average earnings, the IRO upheld the Entitlement Officer's original decision not to conduct a wage review as the wage information supplied by the Worker and Employer were representative of the Worker's loss of earnings capacity.

At this point, the Employer argued:

> If this were so, then why was the Worker asked to supply wage earnings information for the previous two years? Why then was this wage information obtained from the Worker ignored in determining if the 12 weeks of pre-injury earnings were indeed representative of the actual loss of earnings capacity? The Income Tax Return information from Revenue Canada received on March 17, 2004, clearly showed the Worker had total earnings of $12, 292 in 2001 and $8,591 in 2002 with an additional $2,142 from employment insurance benefits that year also. No earnings information for 2003 was ever received in the file, but given the Worker had only been employed by the [personal information] for some 12 weeks in 2003, this information should have been used to establish a more accurate representation of the Worker's loss of earnings capacity during the previous three years, instead of over just 12 weeks.

Preliminary Issue:

Documents not filed within the time required by the **Appeal Regulations**.

The Notice of Appeal in this matter was dated February 16, 2005, and received by the Appeal Tribunal the following day - one day before the thirty (30) day filing requirement as set out in the Appeal Regulations which state:

> **Section 1:**
>
> 1. An appeal shall be commenced by filing with the Workers Compensation Appeal Tribunal, c/o Workers Compensation Board of Prince Edward Island, 14 Weymouth Street, P.O. Box 757, Charlottetown, P.E.I., C1A 7L7, within 30 days of the decision by the Workers Compensation Board, five copies of a written notice of appeal which includes the following information:
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> (a) the name, address, telephone number and claim or employment number of the appellant;
> (b) the date of the decision being appealed;

(c) the grounds of appeal and relief requested.

On March 7, 2005, the Appeal Tribunal, by letter to the Employer Advisor, acknowledged its Notice of Appeal and advised him of the 30 day filing requirement as per the Appeal Regulations, to file the Grounds of Appeal.

On April 8, 2005, the Appeal Tribunal received the Employer's letter of April 6, 2005, and the Grounds of Appeal dated April 6, 2005. At that point, the filing of the Grounds of Appeal was late by approximately seven (7) weeks.

The Board's Solicitor never raised any objection to this.

The Board's Appeal Record was filed with the Appeal Tribunal within the thirty (30) day filing time required by the Regulations. However, its Factum and Authorities was not.

The Board's Solicitor had taken upon himself the procedure of filing with the Appeal Tribunal only three copies of the Board's materials and Factum, while serving the Employer and the Worker with their respective copies.

The Appeal Tribunal never objected to that practice which was effective, practical and lessened, to some extent, a procedural task of the Tribunal.

However, the Board's Solicitor was not successful in locating the Worker when he attempted to serve and file the Factum. The Appeal Tribunal was made aware of this and, despite some efforts by the Tribunal to locate the Worker, she could not be found.

Ultimately the Board's Solicitor filed the Factum and Authorities on March 6, 2006.

Section 4 of the Appeal Regulations state:

> 4. Within 30 days after receiving the materials, submissions, arguments or reasons of the appellant, the Workers Compensation Board and all other parties who have a direct interest in the matter and who choose to be involved in the appeal, shall file with the Workers Compensation Appeal Tribunal five copies of the materials, submissions, arguments or reasons upon which they intend to rely.

The Employer's representative strenuously objected to the late filing of the Board's Factum and Authorities, citing non-compliance with the time requirements for filing same as set out in the Appeal Regulations.

The Employer requested that the Board be barred from participating at the hearing. He stated, in his November 3, 2005, letter to the Appeal Tribunal:

> **As I pointed out in Section 4 of the *Workers Compensation Act Appeal Regulations*, the Board was required to file its Factum and Authorities within 30 days after receiving my submission, which I**

> **filed with the Tribunal by letter dated April 6, 2005. My understanding of Section 4 is that if there was no filing within the prescribed time by parties who have a direct interest in the appeal, they have chosen not to be involved.**

The Employer relied upon what it called a precedent setting decision of the Appeal Tribunal **Decision Re Participation by Workers Compensation Board** dated June 4, 1997, where the Appeal Tribunal decided that it would not permit the Board to present its case to the Tribunal.

The Employer quoted, in part, from that decision, the following:

> I find that the Board did have the opportunity to make representations in this matter but failed to do so in a timely manner. I am of the opinion that the Tribunal has the right to refuse to hear representations of a party if a party goes beyond the time limits.

Section 56 (2) of the **Act** states:

> (2) The decisions of the Board shall always be given upon the real merits and justice of the case, and it is not bound to follow strict legal precedent.

While this Tribunal often follows its own decisions and rulings on specific issues relating to interpretations and/or applicability of the **Act**, Board Policy, and Case Law generally, it is not bound to follow earlier Tribunal Decisions when, as is the case here, they are clearly distinguishable from the case under review.

In fulfillment of its quasi-judicial mandate, the Appeal Tribunal has first and foremost, a duty to be fair to all parties that have a statutory right to have their case heard.

To that end, this Tribunal ruled, prior to this matter having been convened for a hearing, that, while the Board's materials, (Appeal Record), would be reviewed, its Factum and Authorities would not be considered by the Tribunal at or after the hearing.

That ruling, which was communicated to the Employer's representative in writing, appears to have met the standard of fairness, especially in these particular circumstances, where the Employer, who was out of time, in part, should not be heard to complain when the Board was out of time, (in part), as well.

This is especially so, when the Employer takes the position that the Board not even be permitted to attend and participate at the hearing.

Accordingly, at the hearing, the Employer was permitted to use its materials as filed with the Appeal Tribunal. The Board's Solicitor was limited to an oral presentation and references to the materials in the Appeal Record - but not permitted to refer to its Factum and Authorities which was not circulated to the panel members.

At the conclusion of the hearing, neither party offered to file post hearing briefs and/or written submissions of their respective positions. Had they or either of them chosen to do so, the Appeal Tribunal may well have had the benefit of more fully developed arguments on the **Act** , Regulations, Board Policy, earlier Appeal Tribunal Decisions and Case Law, as same applied to the facts of this case.

The Grounds of Appeal

I. Acceptance of the claim for right wrist tendonitis without obtaining previous medical history, conducting neurological testing, imaging studies or blood work to rule out pre-existing conditions or non work-related causes.

1. The IRO upheld the original decision maker's decision on March 4, 2004, to accept the claim based on a written report filed on March 3, 2004, by the Board's Occupational Therapist, [personal information]. She conducted a telephone interview with the client on February 10, 2004, but did not contact the Employer prior to or immediately after filing this report.

2. Following receipt of a copy of the letter of claim acceptance, the Employer met on March 11, 2004, with two of WCB's Managers to express concern over pre-existing conditions, the worksite assessment and the process of not being consulted by WCB staff in the acceptance of the claim. As a result of this meeting it was agreed to request the Worker's two-year medical history, have the Occupational Therapist conduct a worksite assessment of the job and maintain contact with the Employer.

3. The IRO determined the Family Physician's diagnosis of carpal tunnel syndrome in [personal information] 2002 could not be confirmed because there was no EMG testing completed. There was no EMG testing done in 2004 to confirm the diagnosis of right wrist tendonitis either. It would appear a double standard has been employed in accepting one diagnosis but not the other diagnosis by the same physician. In both cases there was no diagnostic testing undertaken.

4. The Worker denied having any previous problems with the right wrist area of her body when she completed and filed the Manual Handling Progressive Injury Questionnaire (MHPIQ) on February 11, 2004. She also denied any previous problems when interviewed over the telephone by the Occupational Therapist on the same day. She again denied any previous problems when questioned by the Entitlement Manager on March 17, 2004.

5. The medical evidence on file differs dramatically from this. In [personal information] 2002 she presented to her family physician with pain symptoms, both day and night, in her right hand and fingers for the previous 3 to 6 months. He diagnosed right carpal tunnel syndrome and prescribed medications and a wrist

splint. This occurred while she was employed at a [personal information]. An x-ray conducted on [personal information], 2004, was normal.

6. The Employer was made aware by fellow employees of some problems with the Worker's duties shortly after hiring her in [personal information] 2003 and made changes to better accommodate her. No concerns about the job duties were ever expressed by the Worker to the Employer and the request from WCB for a Form 7 in [personal information] 2004 took the Employer by surprise.

7. The Worker visited her family physician on [personal information], 2004, for pain in her right shoulder blade down into her elbow so he prescribed medication and referred her to physiotherapy. The Worker was also holding down a [personal information] when this occurred.

8. The IRO ruled there was no medical evidence on file to support a pre-existing condition. From the foregoing, there would appear to be ample medical evidence on file to support a pre-existing condition.

Relief Sought

9. Given the foregoing, I submit the Internal Reconsideration Officer erred in her decision that a pre-existing condition was not present in the Worker. This decision should therefore be overturned and cost relief should be afforded to the Employer by having all costs associated with this claim spread over the Employer's rate group.

II. The Entitlement Manager did not adhere to WCB Policy 04-61 on Repetitive Strain Injuries

10. Section 3 of the Policy requires the Board, where necessary, to conduct an ergonomic assessment of the work duties. In this case, a telephone interview by the Occupational Therapist was conducted with the Worker but no contact was made with the Employer. The claim was accepted on [personal information], 2004, the day after the Occupational Therapist filed her written report, some 3 weeks after conducting the telephone interview.

11. The Employer finally took the initiative to request a meeting with WCB Managers. Following this meeting, it was agreed to conduct a work site assessment which had been requested by the Occupational Health Nurse the day following the acceptance of the claim. It was also agreed to obtain a two year medical history of the Worker to address the concern over a pre-existing condition. Finally it was agreed that contact with the Employer would be maintained.

12. No effort was made by the Entitlement Manager to address the risk factors considered to have caused the repetitive strain injury, as identified by the assessment. The Employer was not present for the complete worksite assessment on

[personal information], 2005, and was not afforded an opportunity to review or verify the contents of the assessment report.

Relief Sought

13. Given the foregoing, I submit the Internal Reconsideration Officer erred in her decision that the Entitlement Manager adhered to the Repetitive Strain Policy. This decision should therefore be overturned and cost relief should be afforded to the Employer by having all costs associated with this claim spread over the Employer's rate group.

III. The Entitlement Manager did not comply with Procedure PRO 04-04 in calculating the average wages of the Worker.

14. Section 10 of the Procedure states "the average earning rate should be set up on the available information which best represents the worker's loss of earnings capacity. "Best" should not be interpreted to mean the highest rate possible, but rather the rate which most closely reflects the worker's loss of earnings capacity."

15. The Worker had worked for approximately 12 weeks with the Employer prior to filing the claim. The **Employment Standards Act** considers this period of employment to be probationary in nature. The Entitlement Manager, in the March 4, 2004, claim acceptance letter, requested the Worker's previous two years tax return information as provided by the Canada Customs and Revenue Agency. This information was required to properly compensate the Worker for any additional lost time from employment insurance.

16. The information was received by the Board on March 17, 2004. It showed the Worker received a total income of $12, 292 in 2001 from earnings and nothing in employment insurance benefits. In 2002 the Worker earned $10,733 from a combination of earnings and employment insurance benefits.

17. The Worker's benefits were calculated based on a 40-hour work week at $8.00 per hour which was equivalent to an annual earned income of $16, 640. This is considerably higher than the Worker's earnings history established over the previous two years.

18. The Internal Reconsideration Officer ruled this best represented the Worker's loss of earnings capacity, even though the length of employment was no more than 12 weeks, so a further wage review was not completed.

19. An average earnings review would quite clearly have shown the Worker's attachment to the work force over the previous two years. It would therefore have indicated that a recalculation would result in a more accurate representation of the Worker's loss of earnings capacity.

Relief Sought

20. Given the forgoing, I submit the Internal Reconsideration Officer erred in her decision that a wage review by the Entitlement Manager was not warranted. This decision should therefore be overturned and cost relief should be afforded to the Employer by having all costs associated with this claim spread over the Employer's rate group.

The IRO Decision

Reconsideration Issues (RI)

In her January 18, 2005, decision the IRO identified the two issues under reconsideration as follows:

RI-01: Acceptance of this claim for right wrist tendonitis without the proper investigation, ie. medical history and diagnostic assessment and applying the appropriate policies as it relates to this claim.

RI-02: The entitlement officer did not comply with Procedure PRO 04-04 in the calculation of average wages

Claim Summary

The Worker was employed in a [personal information] as a [personal information] when she was injured on [personal information], 2003. It was reported on the Worker's Report, Form 6, that she was filing a claim for plantar fascitis of the right heel and right wrist tendonitis. This claim was separated and the plantar fascitis is now under Case ID [personal information].

The Worker states that over the previous two week period her right wrist became sore. She was seen by Dr. J. Thompson on [personal information], 2003, and he advised the injury was due to repetitive motion. It was noted on the medical report that the Worker had begun full time employment with the [personal information] 2003.

The Employer completed an Employer's Report, Form 7, on [personal information], 2004. In this report, it stated, *"no incident, occurrence or accident was reported to management by the employee. First notification was a letter from WCB."*

A request for a Pre-Adjudication Assessment was made on February 4, 2004. This assessment was completed via a telephone conversation on February 10, 2004. The Worker's Compensation Board (WCB) Occupational Therapist (OT) notes the following in her report:

> *"Medical literature cites known risk factors such as high repetition, high forces and extreme postures as possible contributors to the development of repetitive strain injury to the wrist/thumb. The above job* [personal information] *was analyzed with respect to these factors and it was noted that extreme postures, high repetition and high forces are noted during the scooping of the cookies. She (Worker) also noted that at Christmas time the hours went up with respect to* [personal information] *as it was much busier. I would also note she began with the company in* [personal information] *and this activity is an unaccustomed activity that she had not been doing in the past." (Emphasis Added)*

A meeting was held with the Employer, Manager of Case Management Services and the Manager of Intake and Entitlement on March 11, 2004. The issue of pre-existing condition, work site assessment and involvement in claim process was discussed. As a result of this meeting, a medical history for a two-year period prior to claim initiation would be requested from the family physician, a work site assessment would be scheduled (this was scheduled for March 24, 2004) and contact with the Employer would be maintained by the Entitlement Officer.

An x-ray of the right wrist was taken on [personal information], 2004, and was normal.

On [personal information], 2004, a work site assessment was completed at the [personal information] with the Employer and Worker in attendance. An addendum to the OT's original report was made on March 24, 2004, noting the risk factors are present in the workplace for a repetitive strain injury of the thumb.

The Worker's medical history was received on April 2, 2004. It was noted in the medical history from Dr. J. Thompson that on [personal information], 2002, the Worker was seen for questionable carpal tunnel in her right hand. It was also noted pain was present for the past three to six months. There were no EMG studies completed at this time for confirmation of the carpal tunnel diagnosis. There was no further medical attention for the right wrist until [personal information], 2003.

The Worker saw Dr. A. Profitt on [personal information], 2004. He states, *"clinically she has typical symptoms and signs of a deQuervain's stenosing tenosynovitis of the right wrist. This is a surgical lesion and I have booked her on a semi-urgent basis at the* [personal information]*H for a decompression/tenosynovectomy."*

The Worker's claim was reviewed by the WCB Medical Director and he noted the surgery as proposed is appropriate to the claim. The surgery was completed on [personal information], 2004, by Dr. A. Profitt.

In lieu of an ease back program with the pre-injury Employer, the Worker was provided four additional weeks of temporary wage loss benefits to provide an opportunity to secure new employment.

> In a follow up medical consult from Dr. A. Profitt on [personal information], 2004, he states: *"She is not doing as well as I expected. We are going to try her on a short course of physiotherapy at Island Physiotherapy."*
>
> A physiotherapy report dated [personal information], 2004, states under objective findings, *"wrist range of motion within normal limits, grip strength equal bilaterally."* Dr. Profitt's report of [personal information], 2004, indicates *"she is doing better overall after having attended physiotherapy. She feels capable of returning to work but unfortunately she has been told her job no longer exists with the* [personal information]. *She is putting her name in a number of different places to attempt to obtain gainful employment."*
>
> A decision letter was sent to the Worker on September 9, 2004, stating her claim would be closed for temporary wage loss benefits effective August 12, 2004.

In her Rationale/Analysis for Decision the IRO stated:

> While the file has been reviewed in its entirety, only information relevant to my decision will be detailed below.
>
> Factors in favor of my decision include:
>
> The Worker filed a claim with WCB on [personal information], 2004, for a repetitive strain injury (right wrist tendonitis) while employed [personal information]. It was noted she began her employment in [personal information] 2003 and attributed her symptoms to [personal information] during the busy pre-Christmas time frame.
>
> During a telephone conversation with the Worker on February 10, 2004, and a work site assessment on [personal information], 2004, the WCB OT determined there were risk factors present which contributed to her condition. As well, due to the Worker's short period of employment, the activity described would have been an <u>unaccustomed activity</u> for this Worker. (Emphasis Added)
>
> The Entitlement Officer accepted the claim for right wrist tendonitis on March 4, 2004, based on information contained within the file.
>
> The first issue for appeal is the acceptance of this claim without obtaining previous medical history, supporting diagnostic testing and application of Policy 04-61 on Repetitive Strain Injuries.
>
> The claim was accepted based on the medical evidence and the review of work duties as described by the Worker. The supporting medical history was received on April 7, 2004, which noted questionable carpal tunnel of the right hand back in February 2002. As there were no EMG studies completed at that time, **there is no medical confirmation for this diagnosis. There is no evidence elsewhere in the medical history supporting the Worker had a pre-existing condition. The treating physician at the time of this**

[personal information] 2003 injury did not provide a diagnosis of carpal tunnel and he did not request diagnostic testing, specifically an EMG. In weighing the evidence on file, I note the Entitlement Officer was correct in her decision to accept this claim.

The final issue for review is the calculation of average earnings. Procedure 04-04 on calculating average wages states:

> *The Case Worker shall establish an average earnings rate for the worker based on the **available earnings information**. The information provided may come in the form of hourly, weekly, monthly, or yearly rates of pay. The average earning rate should be set up on the available information which **best represents** the worker's loss of earning capacity. "Best" should not be interpreted to mean the highest rate possible, but rather the rate which most closely reflects the worker's loss of earning capacity.*
>
> *Where, in the opinion of the Workers Compensation Board, it is impracticable to calculate the average earnings of a worker because of the length of time the worker has been employed or the casual nature of the employment, the Workers Compensation Board **may** determine the worker's average earnings in the way that, (in the opinion of the Workers Compensation Board) best represents the loss of earnings suffered by the worker by reason of the accident.*

In this particular case, the Worker had recently begun full time employment with the [personal information]. It was determined by the Entitlement Officer that the hourly rate of $8.00 for a 40 hour work week "best represented" this Worker's loss of earnings. The wage information is taken from the Worker's Report, Form 6, which is consistent with the wage information provided by the Employer.

The procedure further states:

> *"Average earnings review" means a review which is conducted whenever the Workers Compensation Board recalculates a worker's average earnings. The Workers Compensation Board **may review** and adjust the worker's average earnings **where documentation is received which indicates a recalculation would result in a more accurate representation of the worker's loss of earning capacity**. (Emphasis Added)*

As stated above, the WCB **may** review and adjust the worker's average earnings where recalculation would result in a more accurate representation of the worker's loss of earning capacity. It was determined by the Entitlement Officer that the earning information provided by the Worker, at the time of filing, and Employer for the 12 week period was representative of the Worker's loss of earning capacity, therefore a further wage review was not completed.

In summary, the costs associated with this claim have been appropriately allocated and the request for cost relief by the Employer will not be granted.

THE LEGISLATION

Workers Compensation Act, Chapter W-7.1

Section 1(1):

*(a) "**Accident**" means, subject to subsection (1.1) a chance event occasioned by a physical or natural cause, and includes:*

(A) event rising out of, and in the course of, employment, or
(B) thing that is done and the doing of which arises out of, and in the course of employment and as a result of which a worker is injured.

*(n) "**impairment**" means a medically measurable permanent anatomical loss or disfigurement and includes, amputation, loss of vision, loss of hearing; impaired nerve function, scarring causing disfigurement, joint ankylosis, or joint fusion from surgery;*

Section 6:

(*1) Where, in any industry within the scope of this Part, personal injury by accident arising out of and in the course of employment is caused to a worker, the Board shall pay compensation as provided by this Part out of the Accident Fund.*

(4) Where the accident arose out of the employment, unless the contrary is shown, it shall be presumed that it occurred in the course of the employment, and where the accident occurred in the course of employment, unless the contrary is shown, it shall be presumed that it arose out of the employment.

Section 17:

Notwithstanding anything in the 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.

Section 44:

The Board shall calculate a worker's average earnings before the accident on such income from employment and employment insurance benefits, and over such period of time, as the Board considers fair and just, but the amount of average earnings shall not exceed the maximum annual earnings.

Board Policies

Benefit of Doubt **POL 04-16**

1. The decisions of the Workers Compensation Board shall always be given upon the real merits and justice of the case and the decisions are not bound to follow strict legal precedent.

   In determining merits and justice the Workers Compensation Board must give consideration to:

   - all facts and circumstances relating to the case;
   - relevant provisions of the Workers Compensation Act and Regulations; and
   - relevant Workers Compensation Board policies.

2. A worker is not required to provide proof beyond any reasonable doubt in support of a claim for compensation. Decisions are determined on the balance of probabilities based on all facts.

3. Where the evidence presented equally supports more than one decision, the benefit of doubt will always be given to the worker.

4. The principle of 'Benefit of Doubt' is not to be used:

   - as a substitute for lack of evidence;
   - in a purely speculative sense; or
   - when the issue can be decided on the balance of probabilities.

Repetitive Strain Injuries POL 04-61

1. Repetitive strain injuries that are determined to be caused by the performance of specific work tasks are treated primarily through education and the modification of specific workplace risk factors as recommended by an Occupational Therapist.

2. Thorough investigation to determine causation and to establish a well-defined medical diagnosis is essential as it forms the basis of appropriate treatment. Claims will be considered when there is a reasonable association between the medical condition and exposure to the task risk factors. Investigations may include the following:

   - a comprehensive medical assessment including: clinical history, physical examination with diagnostic testing (nerve conduction studies/x-rays);
   - investigation of non-occupational risk factors;
   - assessment of occupational risk factors by an Occupational Therapist including a worksite visit.

.....

4. The Workers Compensation Board Occupational Therapist will assess workplace activities and evaluate the extent of exposure of the following potential risk factors:

   - high repetition, high force, extreme postures;
   - vibration;
   - frequency, duration;
   - recovery time, length of employment;
   - individual work style, unaccustomed activity;
   - extreme cold temperatures.

5. Each claim for repetitive strain injury will be considered on its own merits and within the context of Workers Compensation Board policy, POL 04-16, "Benefit Of Doubt".

Pre-existing Conditions **POL 04-09**

DEFINITIONS

1. "Aggravation" means the worsening of a work-related injury due to a pre-existing condition.

2. "Pre-existing condition" means any condition which, based on a confirmed diagnosis or medical judgement, existed prior to the current work-related injury.

3. "Objective medical evidence" means evidence presented through a physical examination including diagnostic tests on a worker and reported by the treating or family physician.

4. "Loss of earning capacity" means the difference between the worker's net average earnings before the accident, and the net average amount the Workers Compensation Board determines the worker is capable of earning after the accident.

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

6. "Rate group" means a group to which an industry is assigned for assessment purposes.

POLICY

1. The Workers Compensation Board has exclusive jurisdiction to determine whether any injury is caused by a work-related accident.

2. Where the worker is injured as a result of a work-related accident, and the injury is aggravated by a pre-existing condition of the worker, compensation for the injury will be paid in full until the Board is satisfied the worker has reached a plateau in medical recovery for that injury.

3. **If a worker suffers a loss of earning capacity related in part to an accident and in part to a cause other than an accident, the Board will determine what portion of the worker's loss of earning capacity is a result of a cause other than an accident and charge that portion against the rate group to which the worker's employer belonged at the time of the accident.**

Apportionment **POL 04-44**

DEFINITION

1. "Apportionment" means the act or result of dividing and sharing total costs of work injury for the period of recovery according to a plan based on the needs of the worker and the responsibilities of the employer.

2. "Work injury" means an injury arising out of and in the course of employment.

3. "Rate group" means a group to which an industry is assigned for assessment purposes.

4. "Loss of earning capacity" means the difference between the worker's net average earnings before the accident, and the net average amount of wages the Workers Compensation Board determines the worker is capable of earning after the accident.

5. "Normal recovery time" means the time determined by medical guidelines approved by the Workers Compensation Board that indicates the normal amount of time required for workers with a particular type of personal injury to return to work after the injury.

POLICY

1. A worker who is injured as the result of an accident arising out of and in the course of employment is eligible for compensation, including periods where the healing is delayed due to a pre-existing condition until such time as the worker, in the opinion of the Workers Compensation Board, has recovered from the work injury.

2. Where a worker has a pre-existing condition and the normal period of recovery is extended due to the pre-existing condition the costs for compensation beyond the normal period of recovery for the work injury will be apportioned to the rate group of the employer rather than to the employer.

THE ISSUES

1. Was the decision of the IRO wrong in upholding the Entitlement Officer's Decision, to the effect that there was no pre-existing condition in this case which, if determined had been the case, would have resulted in an apportionment of the costs throughout the Employers rate group instead of assessing the Employer for the full costs?

2. Did the Board fail to apply its policies including the policy on Repetitive Strain Injuries?

3. Did the Board err in not conducting a proper wage review when in the circumstances one was warranted, and if conducted, would have resulted in a different wage loss suffered by the Worker?

THE STANDARD OF REVIEW

The Appeals Court of this Province rendered a Decision in **Workers' Comp. Bd.(PEI) v. MacDonald 2007 PESCAD 04**. The central issue before the Court involved the **scope of reviewing power** of this Tribunal under the **Act.** In that case, this Tribunal held that in a review of the Decision of the Board (IRO), the review was to be conducted on the standard of "correctness," as opposed to either of two other standards namely: reasonableness ***simpliciter*** or the higher standard often referred to as "patent" unreasonableness.

At paragraph 50, the court held:

> The **Act** provides for an appeal from a decision of the WCAT on a question of law or jurisdiction to this division of the Supreme Court of Prince Edward Island. As stated in **Dr. Q**, the choice of the standard of review by a reviewing court is a question of law and the reviewing court must be correct. Similarly, the choice of the standard of review by a reviewing tribunal, like WCAT, is a question of law and the reviewing tribunal must be correct. In my opinion the WCAT panel was correct in the choice of its standard of review or, perhaps more appropriately, it was correct in setting the parameters of its jurisdiction to review decisions of the Board.

Accordingly, the standard of review to be applied in this case is "correctness".

ANALYSIS

The Board, at the hearing, identified the two issues before the IRO as follows:

(I.) Was the assessment of right wrist tendonitis in this case appropriate?
(II.) Was the calculation of wage loss in this case appropriate?

At the outset, the Board confirmed that the standard of proof in WCB claims is "the balance of probabilities" in a case where an injured worker is making a claim for compensation. That said, the Board next pointed out that the presumptions set out in Section (6) of the Act, and the application of the Section 17 provision and the Board's Policy on Benefit of Doubt, weigh heavily in favour of upholding the Decision of the IRO on both issues.

The Board's Solicitor took the position, that the Entitlement Officer used the correct approach in applying Board Policy in calculating the average earnings.

Section 6 of the **Act** states:

> **6(1) Where, in any industry within the scope of this Part, personal injury by accident arising out of and in the course of employment is caused to a worker, the Board shall pay compensation as provided by this Part out of the Accident Fund.**

6(4) Where the accident arose out of the employment, unless the contrary is shown, it shall be presumed that it occurred in the course of the employment, and where the accident occurred in the course of employment, unless the contrary is shown, it shall be presumed that it arose out of the employment.

6(9) 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.

6(11) Where a worker's impairment or loss of earnings capacity is, in the opinion of the Board, due in part to an accident and in part to a cause other than an accident, the Board may determine what portion is the result of an accident and what portion is the result of a cause other than an accident.

It's this last mentioned section of the Act that, the Employer argues, was not properly applied in this case.

The Board's policy on Apportionment states:

> 1. A worker who is injured as the result of an accident arising out of and in the course of employment is eligible for compensation, including periods where the healing is delayed due to a pre-existing condition until such time as the worker, in the opinion of the Workers Compensation Board, has recovered from the work injury.
>
> 2. Where a worker has a pre-existing condition and the normal period of recovery is extended due to the pre-existing condition the costs for compensation beyond the normal period of recovery for the work injury will be apportioned to the rate group of the Employer rather than to the Employer.(Emphasis added)

Section 17 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.

At the hearing in this matter, the Board took the position that its Medical Consultant was entitled to assume that the Worker was suffering from right wrist tendonitis and that it was caused in whole or

in part by her work with the Employer in this case. Apparently there was significant reliance upon the result of a site assessment indicating the presence of risk factors in the performance of the Worker's particular duties.

The Board pointed out that the Occupational Therapist's report indicates that the Worker's job duties including her wrist movement intensified risk factors involving tendonitis.

In addition, the Board noted that in Dr. Thompson's report, there was in fact, no confirmed diagnosis of right wrist tendonitis, work related or otherwise and, in fact, that there is no diagnosis here of a pre-existing condition of right wrist tendonitis. Wrist and/or hand pain only was observed.

The Employer's representative argued that "any" condition can be a pre-existing condition. He also maintained that the Employer should not bear the costs of the Worker's claim if it could have known about the Worker's pre-existing condition.

The Employer argued that the IRO simply missed the fact the Case Entitlement Manager missed the medical diagnosis of the pre-existing condition in the Worker by the same treating physician.

In addition, the Employer argued that contrary to the views of the IRO an EMG is not required in order to determine a pre-existing condition exists. A medical opinion will suffice.

A review of the policy on pre-existing condition confirms that to be the case, although an EMG may form part of the basis of the medical opinion.

Dr. Carruthers, the Board's Medical Director, however, in his April 14, 2004, report noted the early onset of right wrist tendonitis in 2003.

The Board's Solicitor pointed out that applying the "balance of probability" test and a measure of common sense, the IRO's decision to uphold the Case Entitlement Manager's Decision was, in all of the circumstances, appropriate. In other words, on the balance of probabilities, there was sufficient evidence of exposure of risk factors at the job site, to lead to the conclusion that a work-related injury, right wrist tendonitis, either developed at work or was aggravated by the work duties in this case.

A review of the Appeal Record at this stage is necessary.

In a February 2, 2004, memo to the file the Entitlement Manager noted:

> ... She claims her problems started on [personal information],2003, and that she reported this to the owner of the [personal information] on [personal information], 2004.

In her March 3, 2004, report, she concluded:

> I feel with factors associated with the activity of [personal information] and being unaccustomed to this activity, that the diagnosis on file is consistent with the workplace factors.

On March 4, 2004, the Entitlement Officer advised the Worker by letter to the effect that her claim for right wrist tendonitis had been accepted.

In a March 8, 2004, memo to the file the Entitlement Officer stated:

> I spoke with the Employer. She states she was not aware of a claim for right wrist only for a foot or leg.
>
> I told her an OT assessment was done with regards to the right wrist but she states no one from WCB has contacted her about the wrist. I told her I had taken over the claim and made an **assumption** that the Employer had been contacted about the wrist. Employer states she will appeal my decision.

On the same date, the Entitlement Officer in a second memo to the file wrote:

> I spoke with the Worker today. I had previously been speaking with the Employer. The Employer stated the Worker was employed with another job in the [personal information]. I was not aware of this and the Worker had not mentioned it.
>
> ..... [personal information].

In a memo to the file, the Manager of Intake and Entitlement, after a meeting with the Employer, wrote:

> ... The Employer has concerns that there are outstanding issues which have not been addressed. She was also feeling left out of the process as there had been no verbal contact throughout the entitlement period of the claim.
>
> As a result of this meeting it was decided that:
>
> 1. The Entitlement Officer assigned to this claim will contact the Employer and arrange a time to discuss and document the information she has which could contribute to the entitlement or case management of this claim.
>
> 2. There is a possibility the Worker had tendonitis of the wrist prior to her employment at the [personal information]. The Entitlement

> Officer will request a medical history to validate or dispute this possibility.
>
> 3. The Occupational Therapist based her assessment on a telephone interview as she felt that there was enough information available verbally to make a determination. The Manager of Case Management Services suggested the OT would do a site visit and reevaluate the work relatedness based on actually viewing the Worker perform the duties.

In a further memo to the file on March 16, 2004, the Entitlement Officer wrote:

> The Employer stated that she knew the Worker had a wrist injury prior to her employment. I asked how she knew about the wrist problem and she stated she heard it from other staff. I told her I had requested a medical history from the Worker's family doctor for the past 2 years in regards to the Worker's right wrist.

In a March 17, 2004, memo to the file the Entitlement Officer wrote:

> I asked if the Worker had ever told the Employer that she was experiencing pain in her right wrist. Worker states yes..... I also asked if she had had any previous problems with her right wrist. Worker states no. I have requested the Worker's medical history on March 16, 2004.

On March 24, 2004, in an addendum to the RSIOT report, after a site assessment of the workplace was completed, with the Employer present, the OT wrote:

> Overall during the assessment today, some risk factors surrounding the thumb during the [personal information] processing could be appreciated.....Overall, I feel risk factors are present in the workplace for a repetitive strain injury of the thumb; however, this Worker has not noted a lot of progress to date. It may be beneficial for the Board Medical Director to review this case or to provide any treatment suggestions that may be beneficial to this Worker.

The medical history apparently prepared by the physician's assistant revealed in [personal information] 2002 pain in the Worker's right wrist; but, the physician did not make a specific diagnosis at that time of right wrist tendonitis. Mention was made of carpal tunnel in the right hand.

In commenting on the file after reviewing the Worker's medical history from 2002 to 2004, the Board's Medical Director appeared satisfied that the treating physician did some testing of the

Worker prior to the [personal information] 2003 workplace injury for which she was given wage loss benefits. He wrote:

> ... The working diagnosis is tendonitis. The approximate date of onset of symptoms appears to be early [personal information] 2003.....When you see the description by Dr. Thompson of his examination documenting pain with flexion and ulnar deviation, it sounds very similar to a Finkelstein's test, which would make this compatible with a diagnosis of DeQuervain's tenosynovitis.....I also note the Worker is due to see Dr. Profitt in less than two weeks, so I feel more comfortable making comment only after I have had an opportunity to review his consultation.

On [personal information], 2004, Dr. Profitt's assessment stated:

> ... Last fall the Worker developed a progressively painful right wrist at work.....Clinically she has typical symptoms and signs of a deQuervain's stenosing tenosynovitis of the right wrist. She has a positive Finkelstein's test.

The Employer pointed out that, in determining if there was a pre-existing injury in the Worker, and in approving the claim for wage loss, the Board allowed the claim, based on a Manual Handling Questionnaire completed by the Worker and a telephone interview without notice to or input from the Employer.

The Employer also pointed out that its first knowledge of the Worker's difficulties came from co-workers.

In addition, it pointed out that the Worker's Reports contain several inaccuracies and/or untrue statements denying other previous wrist and other health problems (i.e. - carpal tunnel syndrome in 2002).

The Employer also noted that notwithstanding the offer from the Board in early March of 2004 to give the Employer an opportunity to discuss and document information that it had, very little of anything was done by the Board to facilitate this. In addition, the Employer pointed out that the medical history of the Worker showed a history of right wrist problems that pre-dated the injury, which gave rise to benefits in this case, by nearly two years. A review of the Appeal Record is supportive of that assertion.

An addendum, to the RSIOT report filed by the Occupational Therapist, which referred to the Worker's unfamiliarity with the particular job duties, was not provided to the Employer or shared with the Employer. Had it been, the Employer argued, the Employer could have confirmed that it was aware of the Worker's pre-employment right wrist problems, and in fact modified the Worker's duties to accommodate the Worker.

The Employer took the position that the failure on the part of the Board to keep it abreast of the investigations in this case, amounted to a denial of its opportunity to provide relevant and valuable information to the Board in the assessment of this claim for benefits.

The Employer noted the absence of any detailed medical report from the Board's Medical Director who concluded that the right-wrist surgery was appropriate.

In addition, the Employer took issue with the rationale of the IRO who noted that while there was some significance to be attributed to the fact that the treating physician in 2002 did not conduct diagnostic testing (EMG) and therefore no confirmation of carpal tunnel syndrome, no significance was attributed to the fact that the same treating physician, in the following year, diagnosed right wrist tendonitis without any diagnostic testing (EMG) to confirm it.

Consequently, the Employer argued, that if the same standard of medical testing had been applied in this case; then the evidence strongly leads to the conclusion that there was a pre-existing condition in this case, entitling the Employer to cost relief pursuant to the Board's policy on Apportionment.

CONCLUSION

We are of the view that there was some evidence upon which the Board could have concluded that the injury in this case was work-related. However, we are not satisfied that, in all of the circumstances, and on the balance of probabilities, it can be established with a reasonable degree of confidence that the Worker's injuries were caused solely by performance of her work duties with the Employer. At best there was evidence that she had a pre-existing injury or condition that:

(a) was not voluntarily disclosed by the Worker to her Employer or to the Board; and,

(b) this pre-existing condition was not investigated as fully as it could have been by the Board, which fell below the standard of fairness and efficiency, in keeping the Employer informed on all aspects of the processing of the claim and in providing the Employer with an opportunity to participate fully in the investigation and/or to provide relevant and significant information that might well have resulted in a different conclusion by the Board in this case.

The record does not indicate that any attempt was made by the Board to deliberately exclude the Employer from having an opportunity to provide input into the decision-making process in this case.

As to the cause of the Worker's injuries in this case, we would prefer to conclude that a lack of attention to detail with respect to the seriousness of the injury complained of, and relaxed case management by the Board were likely contributing factors in the Board's decision to award wage loss benefits, provide medical aid, and assess the Employer for all costs associated with this claim.

We are satisfied that the Worker's impairment and/or loss of earning capacity, was in part the result of a cause other than an accident at her worksite.

In these circumstances, the Board must properly apportion the financial burden associated with the impairment and/or loss of earning capacity, in accordance with its policy on Apportionment and apply the appropriate portion to the Employer's rate group.

Given the facts of this case, it would seem both fair and appropriate that all or substantially all of these costs should be applied to the rate group especially because of the uncertainty/doubt that is raised by the medical information, the non-disclosure by the Worker of her previous health issues, the scope of the investigation undertaken by the Board and the less than adequate effort by the Board in keeping the Employer fully appraised of all aspects of the case that could have, and in the end did, affect it financially.

Wage Loss Calculation

The Employer's position on this is that while the Board, in an apparent initiation of a wage loss review, required the Worker to supply employment earnings information for the two years prior to her claim date, an actual wage review was not conducted by the Board.

The Employer also took issue with the fact that this previous employment history (Income Tax Returns), indicating approximately $12,292 earnings in 2001 and $10, 733 in 2002 (no return filed for the year 2003) should have been, but were not, considered by the Board in calculating the Worker's wage loss.

Using only the twelve (12) week period of employment in 2003 in which the Worker was employed with the Employer in this case, is not reflective of the Worker's average earnings - so argues the Employer. The Employer argues that the 2001 and 2002 earnings give a more accurate representation of the Worker's "average" earnings.

The Employer cites Section 10 of **Procedure PRO 04-04** which states:

PRO 04-04
Calculation of Average Earnings

3. "Average earnings" means the daily, weekly, monthly, or regular remuneration the worker was receiving at the time of the accident or any consecutive twelve month period during the two years preceding the date of accident, whichever, in the opinion of the Workers Compensation Board best represents the worker's loss of earning capacity. This includes any remuneration which the worker received as a result of the employment and Employment Insurance.

4. "Average earnings review" means a review which is conducted whenever the Workers Compensation Board recalculates a worker's average earnings.

In support of its argument the Employer pointed out that pursuant to the **Employment Standards Act**, the twelve (12) weeks of employment in this case are considered probationary in nature and consequently the Board simply ignored the evidence that best reflects the "average" earnings.

The Employer took exception therefore to the Board's method of averaging the Worker's earnings, which resulted, using a forty (40) hour work week, in an Annual Gross Income of $16, 640, a substantially higher projected income, when the average of real income of 2001 and 2002 was approximately $11,500 per year.

The case being made for using the previous two years earnings, so argues the Employer, is even stronger because it shows a greater/real attachment to the workforce as opposed to the probationary twelve (12) week work period used by the Board in its calculations.

Consequently, with respect to the calculation of average earnings, the Employer took the position that the IRO should have reversed the Decision of the Entitlement Officer who did not conduct a wage review in this case, notwithstanding that the Worker was requested to supply proof of her earnings for the two years prior to her injury.

The Employer argued that the IRO should have given significant weight to the fact that the Worker's Income Tax returns for the years 2001 and 2002, on average, showed a lower average hourly rate than the rate arrived at in the twelve week period that the Worker was employed in 2003.

The Employer argued that, a proper application of the Board's Policy on calculation of average earnings, dictates that all relevant wage information is necessary to arrive at a conclusion as to what amount best represents the actual loss of earning capacity suffered by the Worker.

The Employer concluded that Section 17 (the Benefit of Doubt provision) did not apply in this case because the evidence, on the whole, was not approximately equal in weight, in which case the issues in question should not have been resolved in favour of the worker.

The Board's position is that the worker should not be penalized for having earned a higher hourly rate at the time of injury; and, that the projected yearly income of approximately $16, 640 was appropriate in the circumstances.

In addition the Board noted at the hearing, that in calculating Average Earnings, it's the opinion of the Board that counts when reviewing the worker's work history at the time of the accident or over any consecutive twelve month period preceding the date of the accident.

The Board argued that in determining what amount "best reflects" the loss of income, the Board should look at the current rather than the earlier employment history. The Board posed the question: How can it be better to look back some two (2) years?

In addition the Board pointed out that the **Act** (sections 6 and 40) takes precedence over Board policy especially because the **Act** states:

> 6.(1) Where, in any industry within the scope of this Part, personal injury by accident arising out of and in the course of employment is caused to a worker, the Board shall pay compensation as provided by this Part out of the Accident Fund.
>
> 6.(9) 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.

CONCLUSION

While this Tribunal is bound by Board Policy, it is of the view that the Board also is bound by and has a duty to properly apply Board Policy and/or **Procedure PRO 04-04.**

In particular we are of the view, and so hold that the Board was wrong in ignoring the previous work history of the Worker, in its attempt to arrive at a wage/income that "best represents" the average wage/income in this case, especially when doing so would establish a more significant attachment to the workforce than the twelve (12) week period that the Worker spent with the Employer.

In this case, we accept the position taken by the Employer as to the proper method to be used in this case to calculate average earnings. The Board did not properly apply its policy. Its calculation was incorrect.

We are of the view and so hold that the IRO was wrong in her Decision in confirming the Decision of the Entitlement Manager to the effect that there was no pre-existing condition present in the Worker at the time of her injury in this case.

In addition, we find and so hold that the IRO was wrong in upholding the Decision of the Entitlement Manager with respect to the manner in which she applied or attempted to apply Procedure PRO 04-04 in incorrectly calculating the Worker's average wage loss.

The appeal is allowed and the Employer shall have its costs associated with this claim spread over the Employer's rate group pursuant to the Board's Policy on Apportionment.

Dated this 17th day of October, 2007

_____	_____
ALLEN J. MacPHEE, Q.C.	MIKE DesROCHES
Chair of the Appeal Tribunal	Panel Member

_____
HARVEY MacKINNON
Panel Member

WORKERS COMPENSATION BOARD
APPEAL TRIBUNAL

BETWEEN:

EMPLOYER

APPELLANT

AND:

WORKERS COMPENSATION BOARD
OF PRINCE EDWARD ISLAND

RESPONDENT

DECISION #75
