

# **GRADUAL ONSET INJURIES:**

**An overview of WSIB approaches and practices.**

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# BACKGROUND

- ✓ In 1963 definition of accident was amended and introduced 'disablement arising out of and in the course of employment';
- ✓ Since its inception causation determination has evolved.
- ✓ The initial approach was to look for something in the work that could be readily linked to the resulting condition such as strenuous work, awkward position and unaccustomed strain.

# BACKGROUND

- ✓ It is important to note that the presumption clause *does not* apply when assessing disablement claims.
- ✓ Worker's have the burden of showing that the disablement arose out of and in the course of employment.
- ✓ It remains the responsibilities of the decision-maker to conduct the investigations and obtain necessary evidence.
- ✓ This means that when determining entitlement, ***confirmation that the work activity 'contributed to the onset of the injury/disability' is required.***

# BACKGROUND

- ✓ In the late 1980s, arising from a Tribunal ruling (Decision 72), the WSIB revisited the approach to adjudicating 'disablement' to ensure decision-makers were not being unnecessarily restrictive in their rulings.
- ✓ At that point, a renewed understanding was communicated that conditions emerging gradually overtime after performing normal duties could be considered as long as the causation test was met.

# ADJUDICATIVE DIRECTION

## Work Duties

- ✓ In order to rule on whether the injury “arose out of the work activity” detail around the work performed including the mechanics of how it was performed and the nature of the injury the worker has incurred must be secured.
- ✓ The primary source for this information should be the worker and the treating physician(s).

# ADJUDICATIVE DIRECTION

- Written job descriptions do not always effectively capture the sequence of tasks and extent of the activities .
- Physical Demands Analyses (PDA's) can be of assistance, particularly if they are current.
- Information provided by other sources such as the employer and co-workers is valuable in clarifying and validating the worker's information.
- Board investigator/Ergonomists can also secure information.

# MEDICAL CONDITION

- External physicians are interested in a patient's treatment/recovery and are generally less interested in determining whether the problem has a work relationship.
- It is often left to the representative or decision maker to secure the relevant medical information and determine whether the work activity significantly contributed to the onset of the injury.
- Significant contribution does not mean the only contribution but rather the condition has an obvious work link.

# MEDICAL CONDITION

- ✓ On occasion the link is not clear. Guidance from outside Medical experts can assist in determining whether there is a likely association between the activity and the presenting diagnosis.

## Work Association

- ✓ When determining work association it is important that reps/ WSIB decision makers consider the evidence by looking at the **temporal relationship between the activity and the onset of the condition.**

# WORK ASSOCIATION

- ✓ The closer the timeline between the activity and the onset, the more likely the causal relationship.
- ✓ The fact that a worker cannot immediately associate the problem/pain with the work activity or that the activity is not different, does not weaken the claim.
- ✓ Some conditions that emerge over time as a result of normal work activity do not always reach a level of discomfort to require medical treatment or reporting until well after the work tasks were first commenced.

# WORK ASSOCIATION

- ✓ Alteration/change in activity can assist in identifying an association between the activity and onset.
- ✓ The fact there is no change but simply activities over time that can reasonably give rise to the problem is sufficient to consider entitlement.

# WORK ASSOCIATION

- ✓ In weighing the evidence and determining the potential contribution of the work the Board needs to consider any pre-existing or co-existing conditions be considered.
- ✓ Should a worker have a pre-existing condition that renders them more susceptible to injury, it is important to then consider if the work activity may be ***a significant factor in triggering the impairment.***

# PRE-EXISTING CONDITIONS

- ✓ If there are multiple causes of the disability it must be established that the “personal injury by accident” contributed in a ***significant or material*** way to the development of the disability, and it need not be the major contributing factor to the disability.
- ✓ The Board’s ***Operational Policy Manual Document No. 11-01-15***, defines

Pre-existing condition as an underlying or asymptomatic condition, which only becomes manifest post-accident.

# PRE-EXISTING CONDITIONS

- ✓ The Board has also established policies outlining entitlement for aggravations of pre-existing conditions. ***Operational Policy 11-01-15 (p.3)*** directs that compensation benefits be paid when an accident aggravates a pre-existing, condition that is unrelated to work.
- ✓ When the worker returns to the pre-accident impairment the compensation benefits end.
- ✓ In cases where the worker doesn't return to the pre-accident state the policy enunciates that ***if the accident permanently aggravates the pre-accident condition, long term benefits are payable.***

# PRE-EXISTING CONDITIONS

- ✓ Essentially, where a pre-existing condition is aggravated by an accident to the extent that it becomes disabling and the evidence confirms a causal relationship between the disability and the accident, entitlement to compensation is granted.
- ✓ Moreover, if the pre-existing condition is aggravated on a permanent basis the worker is entitled to a permanent impairment award.

# PRE-EXISTING CONDITIONS

- ✓ In adjudicating, whether the worker has returned to the pre accident level the Board must consider the following:
  - **Is there evidence of an actual pre-existing impairment?**
  - **Was the worker symptom free at the time of the accident?**

# PRE-EXISTING CONDITIONS

- ✓ In short, to recognize a causal link between a worker's compensable injury and any other personal injuries, the Board must be satisfied, on the balance of probabilities that the original compensable injury was a significant contributing factor in the occurrence of the personal injuries or permanent impairment.

## PRE-EXISTING CONDITIONS AND DISABLEMENTS

- ✓ If the evidence supports that the regular workplace duties of an individual have, more probably than not, caused wear and tear on a joint or a muscle, that condition is considered a disablement and is compensated.

# CONCLUSION

- ✓ Assessing whether the *causation test* has been met requires thoughtful analysis of all the available information.
- ✓ Critical to accomplishing a fair and complete review is a thorough understanding of the work duties onset of symptoms, diagnosis, and other potential causes for the problem.