

CLAIM HISTORY AND APPEAL PROCEEDINGS:

The Worker injured her back while lifting at work on July 22, 2002. The Worker stopped work and filed a claim for compensation. The Board allowed her claim, and provided her with temporary earnings-replacement benefits and medical aid assistance for a period of time. The Board initially terminated the Worker's benefits as of December 16, 2002, but later reinstated her benefits on the basis of new evidence.

In June 2005, the Worker went to Florida to stay with her brother. She did not inform the Board of this trip before she left. While the Worker was in Florida, the Board contacted her and told her that her benefits would be suspended until such time as she was able and willing to participate in a treatment plan. The Worker appealed the decision to suspend her benefits, but a Hearing Officer upheld the suspension in a December 13, 2005 decision. The Worker appealed the Hearing Officer's decision to the Tribunal.

The appeal before the Tribunal was by way of an oral hearing. The Worker testified, and the Worker's Adviser provided oral submissions. In advance of the hearing, the Worker's Adviser provided a medical-legal report from Dr. Roy Harding dated February 1, 2006. At the hearing, the Worker supplied a medical expense report from her local pharmacy. The Worker was the only active participant in the appeal. The Worker's Adviser provided post-hearing submissions on April 6, 2006. No submissions were received from the Employer or the Board, and neither attended the hearing.

ISSUE AND OUTCOME:

Did the Board properly suspend the Worker's benefits?

Yes, the suspension of benefits was warranted, but only for the period of time the Worker was in the United States and unable to participate in a treatment plan. Her benefits should resume as of November 8, 2005, when she contacted the Board after returning home.

ANALYSIS:

The *Workers' Compensation Act*, S.N.S. 1994-95, c.10, as amended (the "Act") applies to this appeal.

Section 187 of the *Act* requires me to give the Worker the benefit of the doubt, which means that if the disputed possibilities are evenly balanced on an issue of compensation,

then the issue will be resolved in the Worker's favour.

The Worker's Adviser says that the Board's use of s. 84 to suspend the Worker's benefits was wrong. He says that s. 84 is a coercive tool, which the Board can use to ensure compliance and participation by a worker who is non-cooperative. He says that its use in this case was not warranted.

The Worker's Adviser noted a number of personal circumstances in the Worker's life that led her to seek the support of family members in the United States. He said that the Worker's actions were reasonable in light of those circumstances, and that she was not demonstrating an intention to be un-cooperative when she went to Florida.

I find that it was appropriate for the Board to use s. 84 in this circumstance.

The language of s. 84 addresses the very issues that arose in this case. It requires that workers:

- (a) take all reasonable steps to reduce or eliminate any permanent impairment and loss of earnings...;
- (b) seek out and co-operate in any medical aid or treatment that, in the opinion of the Board, promotes the Worker's recovery;
- (c) take all reasonable steps to provide to the Board full and accurate information on any matter relevant to the claim for compensation...; and
- (d) notify the Board immediately of any change in circumstances that affects or may affect... entitlement to compensation.

The Worker left the Province without notifying the Board. This action could well have breached the obligations outlined in (c) and (d) above.

The Worker was unavailable for treatment during the period of her absence, at the very least. This could well have breached her obligations under (a) and (b) above.

The obligations in section 84 are worded in terms of "reasonable steps", which means that a worker's particular circumstances would factor into the decision as to whether the section was breached or not. Thus, the Worker's personal circumstances that led to her leaving the Province can be considered in the analysis of whether her benefits should be suspended or not.

While circumstances may be deemed a good and proper reason not to suspend benefits in a particular instance, no circumstances relieve a worker from the application of the section at first instance.

Suspension of Benefits

The event which caused the Board to suspend the Worker's benefits was her leaving the Province to see her brother in Florida. This trip had been taken without the knowledge of the Board.

The Worker had done this once before. In 2004, she went to Pennsylvania to see her sister, again without the knowledge of the Board. She was told on her return that she should have notified the Board before she went.

The Worker had previously told the Board that she did not like to travel outside of her home area with respect to treatment because travel made her anxiety and panic attack problem worse. The Board sought, wherever possible, to accommodate this problem, and provide consultations within her locale.

With the Worker going to the US, the Board reasoned that she was able to travel to Halifax for treatment or assessments. Perhaps the Board thought that the restrictions the Worker had placed on receiving treatment within her home area were not well-founded.

The Board concluded that the Worker had been putting barriers in place that prevented or delayed her recovery, and that these barriers were not borne out by the medical evidence on file.

The circumstances giving rise to the visit in 2004 was that the Worker's marriage was in trouble, and she had been thinking about getting a divorce. Her sister invited her to Pennsylvania to think matters through. The Worker was only gone a little more than a week, and the Board did not suspend her benefits for this period.

The Worker decided to divorce her husband in 2005. She was left with nothing as a result of the divorce, including no spousal support and no place to live. She felt that she had no place to turn, and went to visit her brother in Florida.

The marriage was a troubled one even before the Worker's accident, but it became more difficult afterwards. The Worker was incapacitated by pain, and this was an ongoing source of stress in the marriage.

Earlier in 2005, the Worker's daughter lost her un-born child in the 8th month of pregnancy. This would have been her first grandchild, and the Worker found this event, and the ensuing funeral, hard to take.

At the time the Worker went to Florida, she had been seeing a psychologist, Janice Belliveau for assistance in coping with the pain and some family issues. At the end of the

4th session in May, 2005, Ms. Belliveau felt the Worker would not be returning to work for a long time. She saw the Worker last on June 1, 2006 when the Worker told her of her impending trip to the US because of her divorce. This was the last session with Belliveau before the Worker left, and none have taken place after she returned to the Province.

I find the suspension of benefits was well-founded. The Worker was unable to participate in any treatment regimen while she was in Florida. From the content of Janice Belliveau's correspondence in May, 2005, the Worker would have benefited from further counselling to deal with her pain-coping skills and family issues. She was not able to access those services because she was out-of-Province.

The Worker's Adviser says the Worker's condition was not prejudiced by her being in Florida, and thus, her benefits should not have been suspended. I do not accept this, and find the Worker would have benefited from further counselling that she did not receive because she was in Florida.

Duration of the Suspension

The Worker returned from the US in November 2005. She contacted the Board shortly after her return home. There is a contact sheet on November 8, 2005 confirming that she was back home.

The Worker was living with her mother when she returned until she could arrange an apartment of her own. She was surviving on social assistance benefits and CPP disability benefits. The Worker testified that when she returned from the US, her ex-husband was harassing her a lot, and following her around. She said that she called the police because of his behaviour.

The Worker contacted the Board in November to ask about her appeal of the suspension.

She contacted the Board again in December 2005 to express interest in the Columbia Health Program, and that she thought she could do it in January after she moved into her new apartment. It is not clear when this program was first discussed. It is obvious that it occurred before this contact because the Worker was aware of the program.

In January, the Board provided some information to Community Services after which her social assistance benefits were cut off. In early February, there appear to have been some urgent calls by the Worker to the Board looking to book times for the Columbia Health assessment. The March 1 and 2nd dates were chosen. Shortly thereafter, the Board informed Community Services about the Columbia dates, and the Worker's social assistance was reinstated.

The two-day assessment with Columbia Health took place in Halifax on March 1 and 2,

2006. She also went back to Halifax the next week for an appointment by a psychiatrist, at the behest of the Board. This consultation resulted from Columbia Health who thought a psychiatric referral was warranted to determine whether the Worker was able to participate in the program at that time.

The Worker's benefits have not been reinstated to date. In earlier conversation with the Worker, the Board told her that her benefits would resume after she was in the Columbia Health Program for two weeks. If for some reason, that program were deemed not suitable, it is unclear when her benefits would resume.

While I found the Board acted appropriately in suspending the Worker's benefits when she went to Florida, I find that it has not restored her benefits in a timely fashion.

The Worker communicated with the Board as soon as she returned to the Province. While she did not utter the words, "I am willing and able to participate", I find that meaning can be inferred from her timely contact with the Board, and with her concern over the appeal regarding the suspension of benefits.

The Board was aware of Janice Belliveau's recommendation that further counselling would be beneficial, yet a resumption of this treatment was not suggested when the Worker returned home. Neither is there any record of the Worker being told what exactly she had to do to have her benefits restored.

The Worker expressed a willingness in December to participate in the Columbia Health assessment, but benefits were not restored at that point.

The Worker had the Columbia Health assessment, and yet benefits are still not restored. It seems the Board wants to figure out what the best approach to treatment should be for the Worker, and while they ponder this issue, the Worker remains without benefits. That is not appropriate.

I find the Worker's benefits should have been restored when she first contacted the Board on her return to the Province. That was November 8, 2006. It was incumbent on the Board to be clear with the Worker about what was expected of her, and the Board did not fulfill that duty.

This Worker has a limited education, significant pain issues, limited social supports, a poor financial situation, and long-standing problems with panic attacks. She needs the assistance of the Board through the workers' compensation maze. Certainly, while the Board decides what approach to take with her, she should be on benefits.

CONCLUSION:

The Worker's appeal is allowed in part. The Board properly suspended the Worker's benefits when she went to Florida without prior notification. She was not available for treatment, and should not be entitled to benefits during that period of time. The Board should have restored the Worker's benefits when she contacted them on November 8, 2005 to tell them that she had returned to the Province. The Worker's benefits should be restored effective that date.