

## **CLAIM HISTORY AND APPEAL PROCEEDINGS:**

The Worker injured his knee in a workplace accident on June 17, 2005. The Board recognized his claim and provided him with a variety of benefits. In May 2006, the Worker's orthopaedic specialist recommended that arthroscopic surgery be performed. Given the Worker's pre-existing, non-compensable medical conditions, it was necessary to obtain clearance from the Worker's cardiologist and dentist prior to the surgery.

Clearance was obtained in August 2006; however, the Worker wanted to obtain a second opinion from another cardiologist before undergoing surgery. The Board suspended the Worker's benefits until November 1, 2006 (the date surgery was performed), on the basis that it was unreasonable for the Worker to seek a second opinion prior to undergoing surgery.

In a decision dated November 30, 2006, a Board Hearing Officer confirmed the earlier decision to suspend the Worker's benefits. The Worker appealed to this Tribunal. This appeal was originally scheduled to be heard by way of oral hearing; however, at the Worker's representative's request, this matter was converted to written submissions.

The Worker's representative filed written submissions dated April 3, 2007, as well as the following additional medical evidence:

- 1) Report from Dr. D'Astous dated October 2, 2006;
- 2) MIBI Persantin test dated October 30, 2006 and
- 3) Report from Dr. D'Astous dated March 6, 2007.

Neither the Board nor the Employer actively participated in the appeal.

## **ISSUE AND OUTCOME:**

Were the Worker's benefits properly suspended under s. 84 of the *Workers' Compensation Act*, S.N.S. 1994-95, c.10, as amended [the "Act"]?

Yes, it was appropriate for the Board to suspend the Worker's benefits under s. 84 of the *Act*.

## **ANALYSIS:**

The legislation applicable to this appeal is the *Act*. In weighing the evidence, I have considered s. 187 of the *Act* which provides that where there is doubt on an issue and the possibilities are evenly balanced, the issue shall be resolved in favour of the worker. Section 84 of the *Act* provides that workers shall take all reasonable steps to reduce or

eliminate any permanent impairment and loss of earnings resulting from an injury. Workers are also required to seek out and cooperate in any medical aid or treatment that, in the Board's opinion, promotes the worker's recovery.

At issue in this case is whether or not it was reasonable for the Worker to seek a second opinion from a cardiologist. The Worker's decision to seek a second opinion caused a delay in his surgery. As a result, the Board suspended the Worker's benefits until the date that his surgery was performed.

The Worker injured his knee in a workplace accident on June 17, 2005. Despite aggressive physiotherapy, the Worker's symptoms did not resolve, and he was subsequently diagnosed with a torn meniscus. The Worker was referred to Dr. Daigle, an orthopaedic surgeon who, in May 2006, recommended that arthroscopic surgery be performed on the Worker's knee.

As the Worker suffered from a pre-existing heart condition, it was necessary for him to obtain medical clearance from his treating physicians prior to being approved for surgery.

A Contact Sheet on file dated June 14, 2006 indicates that the Worker had advised his Case Manager that he had last seen his cardiologist, Dr. Howlett, approximately one month earlier. There is no medical report on file from Dr. Howlett in relation to a May 2006 visit; however, that is not entirely surprising, given that the Worker's heart condition is non-compensable.

Doctor Howlett treated the Worker between 2004 and 2006. In a report dated February 19, 2006, Dr. Howlett noted that on two occasions the Worker had experienced acute myocardial infarctions which were treated with primary angioplasty. Doctor Howlett further indicated that the Worker had not experienced any symptoms of angina, but did experience occasional chest pain lasting a few seconds. Doctor Howlett noted that the Worker had a "fairly good function capacity", and he recommended that an exercise test be performed to clarify the Worker's functional capacity." Doctor Howlett expected that the Worker's functional capacity would be more limited by knee symptoms than anything else. Results of the exercise test dated February 10, 2006, indicate that the Worker experienced no chest pain.

On June 14, 2006, the Board wrote to Dr. Howlett seeking confirmation that the Worker had medical clearance to undergo surgery. Doctor Howlett responded with a handwritten note dated June 21, 2006. He stated that the Worker was "clinically stable" and could undergo the procedure with less than a one percent mortality risk, provided that he was not having any further chest pain.

The Board also contacted the Worker's dentist, Dr. Girouard, on June 14, 2006. Doctor Girouard advised the Board that the Worker needed one tooth extracted, and that dental clearance would be given within two weeks.

In a report dated August 23, 2006, Dr. Daigle noted that the Worker had been cleared for surgery by both his cardiologist and dentist; however, the Worker had requested a second opinion from a new cardiologist. Apparently the Worker felt that he had not been reviewed by a cardiologist recently, and he wanted to see Dr. D'Astous prior to undergoing surgery. Doctor Daigle further noted that the Worker did not have an appointment scheduled with Dr. D'Astous, and he advised the Board that he was no longer interested in operating on the Worker.

In correspondence dated August 30, 2006, the Worker's family physician, Dr. Frenette, noted that the reason for the delay in the Worker's referral to Dr. D'Astous was due to the Worker's inability to get an appointment with Dr. Frenette's office over the summer.

A Contact Sheet dated August 30, 2006, indicates that the Worker was advised that his benefits were being suspended. The Worker expressed concern over this, as he stated that it was his right to obtain a second opinion regarding surgery.

A Contact Sheet dated August 31, 2006, details a conversation between the Worker and his Case Manager. The Worker advised the Board that he had to cancel his August 21, 2006 appointment with Dr. D'Astous due to a death in the Worker's family. The Case Manager advised the Worker that, although it was his choice to obtain a second opinion, the Board would not continue to pay benefits where clearance had already been obtained from both the Worker's dentist and treating cardiologist.

Despite being advised this, the Worker was determined to obtain a second opinion from Dr. D'Astous. Consequently, the Board suspended the Worker's benefits.

Dr. D'Astous assessed the Worker on October 2, 2006. In his report of that date, he stated that there would be no contraindication for the Worker to undergo surgery. Doctor D'Astous advised that he would ask another orthopaedic surgeon, Dr. Cormier, to schedule the Worker for surgery. Doctor D'Astous also indicated that he would obtain the Worker's chart notes from his previous physician in Halifax and arrange some tests "...to make sure there is no really contraindication, although I doubt this sincerely."

The Worker underwent surgery on November 1, 2006, and the Board reinstated his benefits that day.

The most recent report on file is a March 6, 2007 report from Dr. D'Astous. In it, he noted that his delay in assessing the Worker was due to "uncontrollable circumstances". Doctor D'Astous also expressed the opinion that his preoperative assessment (which included the MIBI Persantin) was necessary, as he had no information since 2004 regarding the Worker's underlying cardiac status.

Having considered the evidence in its entirety, I find that it was appropriate for the Board

to suspend the Worker's benefits, as both the Worker's treating cardiologist and dentist had cleared him for surgery. Doctor Daigle, the surgeon who was initially going to perform the surgery, was satisfied with these clearances.

Although Dr. D'Astous indicated in his March 6, 2007 report that it was necessary for preoperative tests to be performed on the Worker prior to clearing him for surgery, it appears that the need for these preoperative tests existed only because Dr. D'Astous did not have access to the Worker's medical records from Dr. Howlett in Halifax. On the other hand, Dr. Howlett (who was the Worker's active treating cardiologist between 2004 and 2006) had access to all of the Worker's medical records. In fact, it was on the basis of these records that Dr. Howlett cleared the Worker for surgery in June 2006. His only qualifier was that the Worker not be experiencing any further chest pain. There is no medical evidence on file to suggest that the Worker was complaining of any cardiac symptoms.

Regardless of whether Dr. Howlett last saw the Worker in February or May, 2006, I find that his June 22, 2006 opinion which cleared the Worker for surgery was valid. As the Worker's treating cardiologist, he was familiar with the Worker's condition. The Worker's decision to obtain a second opinion was a personal decision which is not the responsibility of the Board. I therefore conclude that the Worker failed to fulfill his duties under s. 84 of the *Act*. Accordingly, it was appropriate to suspend the Worker's benefits until his surgery was performed on November 1, 2006.

## **CONCLUSION:**

The appeal is denied. The Worker is not entitled to a reinstatement of his benefits. It was appropriate for the Board to temporarily suspend his benefits under s. 84 of the *Act*.