

CLAIM HISTORY AND APPEAL PROCEEDINGS:

On December 6, 2002, the Worker suffered a left knee injury when he slipped and fell getting out of his truck, striking a piece of metal. The Board has accepted his claim and provided him with extensive compensation, including a temporary earnings-replacement benefit and medical aid. It has found him to have a 12% permanent medical impairment rating for his knee. The Worker is also experiencing low back pain, right knee pain, and left ankle pain which he attributes to his injury.

As it appeared that the Worker has “chronic pain” in addition to the pain explained by his permanent medical impairment, the Board has provided the Worker with treatment aimed at chronic pain. At issue, in this appeal is whether the Board was justified in suspending the Worker’s compensation for non-cooperation in part of this treatment.

On November 24, 2005, the Worker’s Case Manager wrote the Worker advising that his compensation was suspended effective November 18, 2005, due to his failure to attend for a six week chronic pain treatment program with Columbia Health. The Case Manager advised that the compensation would be reinstated once the Worker made arrangements to participate in the Columbia Health program.

On March 17, 2006, a Board Hearing Officer varied the decision of the Case Manager. The Hearing Officer found that the Case Manager had appropriately suspended the Worker’s benefits for non-cooperation. However, the Hearing Officer decision found that the compensation should be re-instated effective February 24, 2006 due to the Worker’s agreement to take part in a medical examination scheduled for March 22, 2006. Part of the purpose of that examination was to assess whether medical restrictions prevent the Worker from participating at Columbia Health.

My decision results from the Worker’s appeal of the March 17, 2006 Hearing Officer decision. It is the Worker’s position that his failure to attend the Columbia Health Centre was reasonable in the circumstances, and that he has not failed to cooperate in his healthcare.

At the hearing, the Worker and two past participants in the Columbia Health program testified and the Worker’s representative made oral arguments. Following the hearing, I wrote the Board’s legal counsel seeking generic information concerning outcomes from the Columbia Health program, and gave the Worker’s representative the opportunity to comment on that information.

ISSUES AND OUTCOMES:

Was the Board justified in suspending the Worker's compensation between November 18, 2005 and February 24, 2006?

Yes. The Worker was unreasonable in not attending Columbia Health as requested by the Board.

ANALYSIS:

The Worker is entitled to the benefit of the doubt on any issue involving compensation (s.187 of the *Workers' Compensation Act*). Where there is a doubt on an issue and the disputed possibilities are evenly balanced, the issue should be resolved in the Worker's favour.

Section 84(1) of the *Workers' Compensation Act* requires, among other things, that every worker shall take all reasonable steps to reduce or eliminate any permanent impairment and loss of earnings resulting from an injury. A worker must also seek out and co-operate in medical aid or treatment to promote his or her recovery. If the worker fails to do these things, the Board may suspend, reduce or terminate any compensation otherwise payable to the worker pursuant to s.84(2) of the *Workers' Compensation Act*.

The obligations in s.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. There is no dispute that the Worker failed to attend an interdisciplinary pain management program - Columbia Health.

The Worker's representative made several arguments. The representative notes that the Worker has a 12% permanent medical impairment - so it is not just a pain management problem.

She presented testimony from two past participants as to their negative experience at Columbia Health.

She points out that, other than with Columbia Health, the Worker has been compliant with medical treatment. She points out that the Worker lives in a remote rural community. She states that six weeks of treatment away from his community is a big deal for the Worker. People have other things going on in their lives. She questioned whether the psychological impact of separating a worker from their family was worth the possible benefits. She argues that the Worker's family responsibilities made it unreasonable to him to leave home for six weeks.

The representative argues that a February 9, 2005 medical opinion from Dr. Mahar

supports the Worker not attending Columbia Health. She argues that the Worker's family doctor supports the Worker not attending Columbia Health. She took issue with several aspects of the report which flowed from the March 22, 2006 medical examination.

The representative argues that similar healthcare could be provided in New Glasgow, including good communications between the healthcare providers given the small town setting.

I will deal with each of the representative's arguments in turn.

(1) Is the Worker's permanent medical impairment so disabling as to make it unreasonable for the Board to provide the Worker with treatment for his chronic pain?

A review of the most current medical reports that address both the chronic pain and permanent medical impairment aspects of the Worker's condition reveal that chronic pain, and not the Worker's permanent medical impairment, is his most disabling condition.

On March 22, 2006, Dr. Davey, family physician and certified independent medical examiner, noted that the original compensable injury had resolved except for some minor loss of range of motion and some sensitivity of the medial proximal tibia (the permanent medical impairment). He noted that the degree of the Worker's impairment had actually improved since he had been assessed in 2004. However, the Worker's chronic pain, with resulting deconditioning, altered gait, social factors, and psychological factors were the dominate ongoing problems.

On February 9, 2005, Dr. Mahar, specialist in physical medicine and rehabilitation, examined the Worker and reviewed his medical records. It was his view that the workplace injury had resulted in the Worker having a contusion to his left knee - pes anserine bursitis and mechanical lumbar pain. He noted that the Worker also had right knee pain and left ankle pain, but he could not determine that cause of that pain. He stated that the Worker's disability was far greater than he would expect to result from his conditions. He identified pain as the primary cause of the Worker's disability.

Given that chronic pain is the Worker's most disabling condition, it was reasonable for the Board to focus on chronic pain treatment.

(2) Does the negative experience of two Workers make it reasonable for the Worker to refuse treatment at Columbia Health?

Two workers who went through the Columbia Health program at the direction of the Board provided testimony before me that they were worse off due to participating in the program.

One testified that his symptoms are worse following the program. He is now using

Oxicotin. He does not want to be using that drug. He felt that the program did not provide much in the way of psychological counselling. He has not returned to work following the program.

The second testified that she was also worse off following the program. She testified that she suffered a sciatic nerve injury while in the program, and it has not resolved following the program.

At my request, the Board requested statistical information from Columbia Health Centre concerning outcomes of treatment. In a letter dated June 20, 2006, the Director of Operations provided the following information. They are an interdisciplinary rehabilitation centre with over 15 years experience in other provinces. Their staff includes psychologists, occupational physicians, physical therapists, vocational counsellors, occupational therapists, and rehabilitation co-ordinators.

The Director indicated that according to their statistics based on surveys:

- Time from injury did not impact return to work rates or employability.
- Outcomes in Nova Scotia are similar to outcomes in other provinces
- the majority of clients were satisfied with the process
- clients are sustaining employability or employment

The Director advised that in the first quarter of 2006, among TST clients (the Worker is a TST client):

- 90% were satisfied with their treatments when surveyed post-treatment.
- 26% returned to work
- For workers offered vocational services (the Worker was to be offered vocational services), 55% found employment, 18% are upgrading skills, 18% did not find employment, and 9% were discharged for non-cooperation. All who were contacted 45 days after securing employment were still at work.

Clearly, the two workers who went through the program and testified before me were not satisfied with the program. However, they appear to be very much in the minority. Most people feel they benefit from the program. The majority of workers who are offered vocational services return to gainful employment. The negative experience of the two workers does not convince me that was reasonable for the Worker to refuse to participate in the program.

(3) Did geographic distance and family responsibilities make it reasonable for the Worker to fail to attend at Columbia Health?

While the Worker's original refusal to attend Columbia Health was on the basis that he

would be willing to attend at a later date, it is clear that he does not want to attend at all.

The Worker lives in a small rural community about two hours from the Columbia Health Centre. He has three young children, and is expecting another in August of 2006. His wife is a substitute teacher with a term position. He testified that he did not want to attend Columbia Health in November of 2005 due to childcare issues, closeness to Christmas, a need to cut firewood, he kept the wood stove going during the day, his mother was not well and he did driving for her, and he had a guardianship application regarding his father.

According to a contact sheet, on November 1, 2005, a Case Manager advised that he would allow the Worker to begin the Columbia Health program on November 16, 2005, so that he would have time to get his family matters in order.

By letter dated November 4, 2005, the Case Manager wrote that the Board would cover all transportation, accommodations, and meals while at Columbia Health. He could travel daily if he wished, otherwise weekend travel home would be covered. She advised that she would discuss any particular childcare needs. She reminded him of his s. 84 obligations, and advised benefits would be suspended if he did not cooperate.

According to a November 10, 2005 Contact Sheet, the Worker advised that he was not refusing to attend Columbia Health, only that he did not want to attend before Christmas.

According to a November 17, 2005 Contact Sheet, the Worker advised that he had a Guardianship application for his father on December 15, 2005. The Case Manager advised the Worker that the Board could pay someone to pile the firewood, and that they could arrange for him to attend the guardianship application. The Worker stated he would be willing to attend Columbia Health on January 4, 2006, but would refuse to do so if the Board suspended his benefits.

At the time his compensation was suspended, the Worker had indicated that the timing of the program was the biggest barrier. He indicated a willingness to participate if the timing were after Christmas. I have sympathy for the Worker not wanting to be away from his family right before the Christmas holidays. However, it is not a compensable reason. Also, it appears that the Worker was trying to delay the suspension of his benefits until after Christmas - it does not appear that he has even accepted that he will participate at Columbia Health.

The other barriers raised by the Worker still existed after Christmas, but would not have prevented his attendance at the program, according to his pre-Christmas conversations with Board employees. The Worker continues to raise barriers to attending the program consistent with his threat to not attend were his benefits to be suspended as they were.

The Worker's family responsibilities were not extraordinary, and the Board appeared willing

to take reasonable steps to accommodate them. Two hours distance is not extraordinary. The Board was willing to pay for all travel and living expenses, including allowing the Worker to travel home.

The two other injured workers who testified before me both attended the program even though they had family responsibilities and lived about two hours from Dartmouth. I find that the Worker's geographic location and family responsibilities did not give him a reasonable excuse for not attending the program.

(3) Did the Worker have a reasonable medical excuse for not attending at Columbia Health?

On February 9, 2005, Dr. Mahar wrote that the Worker probably did not need further pain management counselling. He recommended retraining.

In October of 2005, the Worker took part in a two day assessment at Columbia Health. This included testing his functional capacity. The testing aggravated his symptoms. On January 31, 2006, Dr. Murphy, the Worker's family doctor, wrote the Board indicating that she felt that the Worker should not further take part in the Columbia Health program given this aggravation of symptoms.

On March 3, 2006, Dr. Acres, Board physician, wrote that some aggravation of the Worker's symptoms would be expected with an assessment. It was not an indication that he could not take part in the program.

Following his March 22, 2006 examination of the Worker, Dr. Davey expressed the view that there was no medical reason for the Worker not to attend Columbia Health, and that it would be beneficial for him.

On May 18, 2006, Dr. Murphy wrote that she had "grave concerns" about Columbia Health. She expressed the view that the Worker's condition was unlikely to improve, and that it would be better to concentrate on vocational rehabilitation, than to put him through the pain and stress involved with the program.

Dr. Mahar was not aware of the Columbia Health program when he expressed his opinion. So, it did not address whether or not the program would be beneficial in his view. It is plain common sense that almost any chronic pain sufferer would have an aggravation of symptoms following a functional capacity assessment. That is not a reason not to take part in the program. While Dr. Murphy does not see how the Worker would benefit from the program, the statistics suggest that most chronic pain sufferers who go through the program (with a vocational rehabilitation aspect) will be employed following the program. Ninety percent of those who attend are satisfied with their treatments.

The Worker does not have a reasonable medical excuse for not attending the program.

(4) Does the availability of healthcare services in the New Glasgow region make it reasonable for the Worker to have refused to attend at Columbia Health?

The Worker has already undergone treatments in the New Glasgow region, in a non-integrated manner. According to Dr. Mahar's February 9, 2005 report, the Worker has already received the maximum recovery he can expect through that approach.

The medical services that are available in the New Glasgow region do not provide a reasonable excuse for the Worker's failure to attend at Columbia Health.

I find that the Worker did not take all reasonable steps to cooperate in the medical treatment of his condition. He was given a reasonable amount of warning by the Board before his benefits were suspended. The Worker chose for non-compensable reasons not to participate in Columbia Health in November of 2005. The Board acted reasonably when it continued the suspension of benefits until the Worker agreed to be examined by Dr. Davey.

The extent of the Worker's compensation after February 24, 2006 is to be determined by the Board.

CONCLUSION:

The appeal is denied. The Worker was non-cooperative between November 18, 2005 and February 24, 2006.