

**CLAIM HISTORY AND APPEAL PROCEEDINGS:**

The Firm is a limited company whose business is to operate two automobile dealerships, one in the town of Bridgewater, and one in Liverpool. The Firm is involved in the sale of new and used vehicles, and the repair of new and used vehicles, both mechanical and autobody.

In 2005, the Firm was advised by the Board in 2005 that it would be assessed a demerit to its experience rating. This would mean that the premiums the Firm pays to the Board for WCB coverage would rise. The Firm contested this assessment, as it related to the recognition of a worker's claim that the Firm had never been given an opportunity to challenge.

The Firm appealed to a Hearing Officer, but the appeal was denied in an October 31, 2005 decision. The Firm appealed to the Tribunal, who referred the appeal back to the Hearing Officer for reconsideration in light of the fact that an appeal was pending in respect of whether the worker's claim had been properly recognized as compensable. A Hearing Officer subsequently upheld the decision to recognize the worker's injury as compensable. In a reconsideration decision dated March 15, 2006, the Hearing Officer confirmed the October 31, 2005 decision, and finding that the Firm was properly assessed a demerit to its experience rating. The Firm appealed the Hearing Officer's decision back to the Tribunal.

The appeal before the Tribunal proceeded by way of an oral hearing. J.S. testified on behalf of the Firm. The Board did not actively participate in the hearing.

**ISSUE AND OUTCOME:**

Was the Firm properly assessed with a demerit to its experience rating?

Yes, the Board properly assessed the Firm with a demerit to its experience rating.

**ANALYSIS:**

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

The Firm seeks relief from the Board's application of a demerit to the Firm's experience rating. The Firm relies on two arguments that it says warrants the relief.

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First, the Firm says that the injury and claim costs which led to the application of the demerit should never have been accepted as compensable. The Firm says that there was no injury by accident at its workplace, and that any claim costs resulting from the Board's acceptance of the claim are not related to the worker's employment with the Firm. Thus, it says those costs should be removed and the demerit reversed.

The Firm appealed the acceptance of the claim in question, seeking to overturn the Board's finding that the worker had sustained an injury by accident which arose out of and in the course of his employment with the Firm. I held a hearing of that appeal on the same day as the instant appeal. In *Decision 2006-170-AD* (January 18, 2006, NSWCAT), I dismissed the Firm's appeal, and agreed with the Board that the worker's injury related to his work with the Firm. I rely on my finding in that *Decision* in rejecting the Firm's first argument in this appeal.

In the alternative, the Firm says that the manner in which the case was handled by the Board warrants the demerit relief it seeks.

The conduct to which the Firm refers is the acceptance of the worker's claim without issuing a formal decision in a timely fashion. If a written decision had been issued at the time the Board accepted the claim, the Firm says it would have appealed at that time.

The Firm was aware that a claim was filed, but only learned in December 2004 that it was ongoing. The Board wrote to the Firm at that time to request wage information so that a long-term rate for the worker's benefits could be set. The Firm called the Board on December 9, 2004, and asked why the claim had been approved. The Firm asked if it could appeal, and was told that an objection letter should have been submitted at the time the claim was approved, and noted that the claim had been ongoing for 22 weeks.

While the Board stopped short of advising the Firm that it could not appeal, that is certainly the flavour of the communication on December 9, 2004.

In August 2005, the Board provided the Firm with its experience rating statement. It assessed the Firm with a demerit to its experience rating, which applied to its 2006 assessment premiums. The Firm appealed the demerit, but the Hearing Officer who dealt with the matter found no jurisdiction to address the merits of the Board's decision to accept the worker's injury as compensable. What followed was a further appeal of the demerit issue to the Tribunal and a referral back to the Hearing Officer for reconsideration in light of the Board recently issuing a formal written decision on the issue of recognizing the worker's claim as compensable.

The Firm's first opportunity to appeal the acceptance of the worker's claim came on November 7, 2005, when the Board first put that decision in writing. This was almost 1 ½ years after the claim was accepted by the Board.

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Certainly, the Board's delay was unreasonable. The Firm has had the opportunity, however, to challenge the Board's decision through a full hearing on the merits at the Tribunal. The Firm's appeal has been denied as a result of that hearing. I have no jurisdiction under the *Act* to provide the Firm with any further relief.

**CONCLUSION:**

The Firm's appeal is denied. The Board properly assessed a demerit to the Firm's experience rating.