

**NOVA SCOTIA WORKERS' COMPENSATION APPEALS TRIBUNAL**

Appellant:                    **[\*] (Worker)**

Participants entitled to  
respond to this appeal:    **Cape Breton District Health Authority (Employer) and  
The Workers' Compensation Board of Nova Scotia  
(Board)**

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**APPEAL DECISION**

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Representatives:            D. William MacDonald for the Worker

Form of Appeal:            Oral Hearing, August 13, 2008, Sydney

WCB Claim No.(s):        \*

Date of Decision:           August 27, 2008

Decision:                    The appeal of the November 28, 2007 Board Hearing Officer  
decision is allowed, according to the reasons of Appeal  
Commissioner David Pearson.

**CLAIM HISTORY AND APPEAL PROCEEDINGS:**

The Worker filed a claim with the Board in October, 2001, indicating that she had environmental illness, and that it was related to exposures in her workplace. The Board denied her claim for compensation, finding her symptoms unrelated to her work. On appeal, the Worker's claim was recognized as compensable by the Tribunal in a February 24, 2003 decision. The Tribunal determined that air quality problems at the Worker's job had caused her constellation of symptoms, including, fatigue, cognitive dysfunction, mood changes, headaches, sinusitis, worsened allergies and sensitivities.

As a result of the Tribunal decision, the Board provided the Worker with a temporary earnings-replacement benefit ("TERB") to February 26, 2003, but denied further TERB or a permanent medical impairment ("PMI"). On appeal, the Tribunal awarded additional TERB to January 19, 2004. The Worker had developed significant psychological symptoms, which were determined to be causally related to her injury, The Board continued the Worker's TERB beyond January 19, 2004 until the Worker's extended earnings-replacement benefit became effective on April 1, 2008. In an April 3, 2008 decision, the Board awarded the Worker a six percent pain-related impairment benefit [for chronic pain] and an EERB.

In a September 7, 2007 decision, the Board denied coverage for a continuous positive airway pressure ("CPAP") machine to treat a sleep apnea condition. The Worker appealed this decision to a Hearing Officer, but her appeal was denied in a November 28, 2007 decision. The Worker appealed the Hearing Officer's decision to the Tribunal.

The Tribunal hearing proceeded by way of an oral hearing on August 13, 2008 in Sydney. The Worker testified at the hearing, and her representative provided oral submissions. The Worker was the only statutory participant in attendance at the hearing. No written submissions were received from any participant.

**ISSUE AND OUTCOME:**

Is the Worker entitled to medical aid assistance to treat the sleep apnea condition?

Yes, the Worker is entitled to medical aid assistance for a CPAP machine to treat her sleep apnea condition.

**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 seeks medical aid assistance to cover the cost of a CPAP machine, used to treat her sleep apnea condition.

Section 102 of the *Act* provides the Board with a wide discretion to pay for medical aid that is necessary or expedient as a result of the compensable injury.

The Board's decisions to deny coverage were based on the premise that the sleep apnea condition was not causally related to the Worker's environmental illness, but to other non-compensable factors such as obesity and gastro esophageal reflux disease ("GERD").

The primary issue on appeal is one of causation of the sleep apnea condition.

Causation need not be established to scientific certainty. While medical opinion evidence is often helpful in establishing causation, it is not required. Causation may be inferred as a matter of common sense, provided that such inferences are reasonable in the circumstances.

In addition, the work injury does not have to be the sole cause of the condition, not even the most significant. The basis test is that but for the compensable injury, would the Worker have gone on to have the condition in question.

The Worker's Adviser cited the various risk factors for sleep apnea and said that the Worker did not have most of them. Those factors that were present, including obesity and nasal congestion, the Worker's Adviser attributed to the compensable injury. Lastly, the Worker's Adviser noted the positive attribution made by Dr. Fox, who said that there was a higher incidence of sleep apnea in the environmental illness population.

According to the Lung Association, the following factors increase the risk of developing sleep apnea:

- (1) smoking;
- (2) alcohol consumption;
- (3) being overweight;
- (4) having a large tongue;
- (5) having a narrow throat;

(6) having large adenoids and tonsils (in children).

Besides those risk factors, the Mayo Clinic article adds the following:

- (1) neck circumference more than 17 inches;
- (2) high blood pressure;
- (3) being male;
- (4) being older than age 65;
- (5) positive family history;
- (6) use of sedatives or tranquilizers.

The Worker does not smoke or drink more than the occasional amount of alcohol. She has not been told that she has a large tongue or narrow throat, and she has no family history of sleep apnea. The Worker said she had no sleep problems prior to her compensable injury. The Worker is not over the age of 65 years.

The Worker is on a significant medication regime, all required for psychological conditions that have resulted from her compensable injury. The Worker said that she takes most of these at night, and they knock her right out.

The reason why sedatives, tranquilizers and alcohol are risk factors is because they relax the throat muscles and may allow for it to collapse, causing the sleep apnea.

In addition, the Worker is overweight, but she attributes a substantial weight gain to the medications she has required over time, and to the profound fatigue that has been one of the symptoms of her environmental illness.

Another of the symptoms resulting from the Worker's environmental illness has been chronic nasal congestion. The Worker's Adviser suggested that this might affect the Worker's breathing, and could have contributed to the development of the sleep apnea.

Dr. Jonathan Fox provided a November 16, 2007 report, outlining the Worker's history, and his treatment of her over time. In particular relevance to this appeal, I note that Dr. Fox attributed the Worker's profound weight gain to a side effect of the medications used to treat the Worker's psychological issues resulting from the injury. In addition, Dr. Fox stated that the Worker has chronic pain syndrome, a symptom of which was post-exertional malaise. He said this was not mere tiredness, but pathological fatigue, both physical and mental.

Dr. Fox also noted that he had prescribed an inhaled steroid to deal with significant nasal congestion. He also described the sequence of events leading to the Worker's diagnosis for sleep apnea. With respect to that condition, which he suspected before it was confirmed by testing, Dr. Fox said,

We see a high rate of sleep apnea in individuals with environmental sensitivities and chronic fatigue . The cause of the sleep apnea is likely multifactorial. She has chronic nasal congestion and is dealing with significant pain. The nasal congestion and congestion in the upper airway would contribute to obstruction. The chronic pain has been shown to affect respiratory drive. The number of medications she is taking for her condition may well interact and cause sleep apnea.

Dr. Ley, the Worker's family doctor, supported the relationship between the Worker's weight gain and her Depression in a November 16, 2007 report. He had asked in that letter that the Board sponsor a medication to assist with weight loss. He noted that at the time of her injury, the Worker's weight was 180 pounds, and that at the time of writing, she was at 257 pounds.

Dr. Janet Marche, Board doctor, also provided an opinion on the cause of the Worker's sleep apnea. In an April 4, 2007 opinion, she said the most common factor in causing sleep apnea is obesity, especially around the neck. She noted the significant weight gain since the Worker's injury. Dr. Marche also cited the Worker's GERD condition as a contributing factor to the development of sleep apnea. She said these factors instead of the multiple chemical sensitivity syndrome were the cause of her obstructed airway.

The Worker testified that she had an operation for her GERD condition in 2000 and that since that time, it has not been a problem.

From the evidence, it is evident that the Worker has three significant risk factors that may well have caused or contributed to the development of sleep apnea. Those are obesity, medication use, and chronic nasal congestion. Certainly, the latter two, nasal congestion and medication use were both directly related to the compensable injury. The nasal congestion has obvious effects in obstructing breathing passages. The medications used to treat the psychiatric or psychological conditions include those with sedative properties, as nightmares continue to be a frequent complaint. Those medications may relax the throat muscles and contribute to the throat collapsing and causing the sleep apnea.

As to the weight gain, the evidence shows that the Worker gained a significant amount of weight after she became sick with environmental illness and resulting Depression. Thus, there is certainly a temporal connection between the two events. Generally however, weight gain typically has multiple causes, as noted by the Board. It said that the weight gain could not be directly linked to the Depression, given its multi-factorial nature.

What takes this case out of the ordinary weight gain scenario is that there is evidence from both Dr. Fox and Dr. Ley attributing the weight gain to medication usage for the psychological and/or psychiatric conditions. The Worker also has Depression and profound fatigue, both of which could lead to weight gain.

Given the identified risk factors for the development of sleep apnea, I find that the sleep apnea condition was caused, at least in part, by the weight gain, sedative medication usage, and chronic nasal congestion, all of which are causally related to the compensable injury.

With respect to the CPAP machine, the evidence on file confirms that this is appropriate treatment for sleep apnea. Dr. Fox recommended it, as did Anthony Atkinson from Vital Aire, the testing facility that confirmed the diagnosis of severe obstructive sleep apnea.

I find that the Worker's sleep apnea is causally related to her compensable injury, and that she is entitled to medical aid assistance for the CPAP machine to treat that condition.

**CONCLUSION:**

The Worker's appeal is allowed. She is entitled to medical aid assistance for a CPAP machine to treat her sleep apnea condition.

DATED AT HALIFAX, NOVA SCOTIA, THIS 27<sup>TH</sup> DAY OF AUGUST, 2008.

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David Pearson  
Appeal Commissioner