

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)**

APPEAL DECISION

Representatives: D. William MacDonald for the Worker

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

WCB Claim No.(s): [*]

Date of Decision: August 26, 2008

Decision: The appeal of the January 25, 2008 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 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 November 15, 2007 decision, the Board refused to pay for travel expenses for the Worker to attend the Nova Scotia Environmental Health Centre. The Worker appealed this decision to a Hearing Officer, but her appeal was denied in a January 25, 2008 decision. The Worker appealed the Hearing Officer's decision to the Tribunal.

ISSUE AND OUTCOME:

Is the Worker entitled to medical aid assistance in the form of travel expenses to see Dr. Jonathan Fox at the Nova Scotia Environmental Health Centre?

Yes, the Worker is entitled to retroactive travel expenses for her accepted treatments at the Nova Scotia Environmental Health Centre.

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.

Section 102 of the *Act* gives the Board a wide discretion to provide medical aid assistance to injured workers, where it is either necessary or expedient as a result of the compensable injury.

Board Policy 2.31R also addresses the provision of medical aid. It essentially provides some overriding principles that medical aid must meet, in addition to being necessary or expedient. The Policy says that medical aid must also be: (1) appropriate for the type of personal injury; and (2) consistent with the standards of healthcare practices in Canada.

Lastly, Policy 2.1.1.R6 deals specifically with the provision of travel expenses, a form of medical aid. It says that “expenses related to transportation, meals and accommodation incurred by injured workers during case management, and as a result of the compensable injury, will be considered for coverage...”

The Board denied the Worker retroactive travel expenses to the Nova Scotia Environmental Health Centre because it was not an approved service provider. The Case Manager and the Hearing Officer both gave this as the rationale for denying coverage for travel expenses.

There are a couple of reasons why travel expenses to see a doctor, or have a particular treatment might not be covered by the Board.

If the treatment was not appropriate for the injury (as per Policy 2.3.1R), or it was neither necessary nor expedient (as per s. 102), then the Board would not provide medical aid assistance for the treatment, nor for the related travel expenses to obtain that treatment.

This is not the stated rationale in this instance. Aside from some I.V treatments the Worker was receiving at the clinic, which the Board did not approve, all the other treatments appear to have been accepted as appropriate with respect to the compensable injury, and either necessary or expedient.

Sometimes, the Board will refuse to provide travel expenses to see a doctor that is far away, when the same or a similar treatment might be received closer to the worker’s home community. In that case, the treatment is approved, but the travel costs are not accepted. In this case, there is a considerable distance between the clinic in Fall River and the Worker in Cape Breton. If it were conventional treatment that might be readily available in the Worker’s home community, then her travel costs to Fall River might justifiably be denied.

In this case, however, the Environmental Health Clinic is the only facility in the Province providing diagnosis and treatment of environmental illnesses. Thus, the same treatments would not be readily available in the Worker’s home community, and travel costs should not be denied on that basis.

With respect to the reason stated by the Board for refusal, that the clinic is not an approved service provider, it is difficult to discern the source of that determination.

The Worker's Adviser pointed me to the Board's website, which has links to service providers of various disciplines. Each of those has links to other sites or pages that delineate the approved service providers of that discipline. For physicians and surgeons, the link takes you directly to the College of Physicians and Surgeons of Nova Scotia website. Within that site, using the search function, I was able to determine that Dr. Jonathan Fox is licensed to practice medicine in Nova Scotia, and that he does so out of the Nova Scotia Environmental Health Centre.

From the Board's website, it would appear that the only criterion a doctor has to meet in Nova Scotia to become an approved service provider is that he or she be licensed to practice medicine in the Province. I can infer no other meaning or criteria from the website.

I see no principled reason why the Worker's retroactive travel expenses were not paid. If some related solely to the IV treatment, perhaps there is reason to not reimburse those visits, but there is no apparent reason to deny the others.

The Board's discretion should be exercised in this case, and the Worker's travel expenses to see Dr. Fox at the Nova Scotia Environmental Health Centre should be paid.

CONCLUSION:

The Worker's appeal is allowed. She is entitled to retroactive travel expenses for her accepted treatments at the Nova Scotia Environmental Health Centre.

DATED AT HALIFAX, NOVA SCOTIA, THIS 26TH DAY OF AUGUST, 2008.

David Pearson
Appeal Commissioner