

# **Workers' Compensation Appeal Tribunal**

## **Decision #141 - Board Direction to Rehear Decision#139**

**Claim No.: 2006-0489**

Date of Original Notice of Appeal: May 10, 2007

Date of Board Direction to Rehear: September 20, 2007  
Received September 24, 2007

Date of Documentary Review by Appeal Committee: October 15, 2007

Date of Decision: October 17, 2007

### **Appeal Committee Members appointed under s. 24(1) of the *Workers' Compensation Act*, R.S.Y. 2002, c. 231**

Presiding Officer:	H. Leenders
Member Representative of Employers:	H. Hermanson
Member Representative of Workers:	M. McCullough

### **Documentary Review**

**Location:** Room #201, 419 Range Road  
Whitehorse, Yukon Territory

## Introduction

- [1] This is a rehearing of a decision originally decided by this appeal committee (Decision #139) on September 25, 2007 which allowed the worker's appeal and found that the worker had suffered a work-related injury which continued to impact her after her compensation was discontinued.
- [2] On September 20, 2007, the chair of Yukon Workers' Compensation Health and Safety Board (the "board") wrote to the appeal committee directing a rehearing of this appeal and staying Decision #139 pursuant to section 24(8) and 24(10) of the *Workers' Compensation Act* R.S.Y. 2002 (the "Act"). The members of the board stated the following reason for staying the decision and recommending a rehearing:

The jurisdiction of the tribunal is set out at subsection 25(1) of the *Act*. It can confirm, reverse or vary a decision. Since the decision of the hearing officer was not to make an award, there can be no variation. It is within the jurisdiction of the appeal tribunal to reverse a decision of the hearing officer, but it is not within its jurisdiction to determine the period of entitlement, which in this case is August 23, 2006 to February 22, 2007. That is properly the jurisdiction of the adjudicator.

- [3] The board originally accepted the claim and the worker was provided with benefits and medical aid from May 2, 2006 to August 22, 2006. On August 22, 2006, the adjudicator notified the worker that her claim for a right wrist injury was being closed. The adjudicator determined that the worker's wrist symptoms had improved to a point where they could no longer be considered a work-related incapacity. This was appealed to the hearing officer and then to the tribunal. The appeal committee found that the worker suffered a workplace injury that continued to impact her after August 23, 2006.
- [4] A rehearing was convened by way of a documentary review on October 15, 2007. The appeal committee reviewed the worker's entire record anew. We also considered the relevant policies, as well as the board's September 20, 2007 direction to rehear and the October 11, 2007 deputy workers' advocate submission. The employer was notified about the stay and rehearing but did not provide a submission. The rehearing proceeded by way of documentary review rather than an oral hearing.

## The Workers' Advocate Submission

- [5] The deputy workers' advocate forwarded a further submission, dated October 11, 2007, in agreement with the Board's reasons for the stay and direction to rehear Decision #139. Included with the submission was a letter to the chair of the Workers' Compensation Appeal Tribunal (WCAT) dated August 6, 2007 and his response dated August 9, 2007 with respect to Decision #138. These letters also dealt with duration of disability.
- [6] Following are excerpts from the workers' advocate October 11, 2007 submission:

In your response [Chair's response dated August 9, 2007] you state section 25(2) provides exclusive jurisdiction to the tribunal to determine the duration and degree of disability, among other things. The error is

that exclusive jurisdiction is limited to the precise decision rendered by the hearing officer under section 20(1). The hearing officer's decision dated December 27, 2006 states there was no aggravation of a pre-existing condition. The committee's jurisdiction is to examine, inquire into, hear and determine whether or not there was a pre-existing condition, and as the hearing officer did not address duration of entitlement, nor can the committee. As Mr. Tuton [Chair of the Board] states, and as we stated in our August 6, 2007 letter, the jurisdiction to determine the period of entitlement properly rests with the adjudicator.

- [7] The worker's advocate submission sets out section 25 (2) and states, "section 25(2) further defines subsection (1) and is dependent to (1)". She provides the following interpretation of the legislation:

The jurisdiction outlined in section 2 is restricted to the decisions rendered pursuant to subsection (1), therefore the committee's jurisdiction is limited to:

**2. a hearing officer under section 20(1),**

**and the precise issues and decisions contained in the above decisions.**

If the hearing officer rules on duration of entitlement, the committee has the jurisdiction accordingly to rule on same, contrarily, if the hearing officer does not rule on duration, nor can the committee.

[Bolding added by the workers' advocate.]

- [8] This committee does not agree with the workers' advocate's interpretation of this section of the *Act*.

## Analysis/Issues

### The appeal committee did not comply with subsection 25 (1) of the *Act*.

- [9] Section 25 of the *Workers' Compensation Act*, R.S.Y. 2002, c. 231, provides the jurisdiction of the appeal tribunal as follows:

25(1) The appeal tribunal has **exclusive jurisdiction** to examine, inquire into, hear, and **determine all matters arising in respect of an appeal** from a decision of the board under subsection 8(1), **from a decision of a hearing officer under subsection 20(1)**, or from a decision of the president under subsection 27(4) and it may confirm, reverse or vary the decision.

25(2) **Without restricting the generality of subsection (1)**, the exclusive jurisdiction **includes the power to determine, on an appeal pursuant to subsection 8(2) or 21(1)**

- (a) whether a worker's disability was work-related;
- (b) **the duration and degree of a disability;**

- (c) the weekly loss of earnings of a worker resulting from a work-related disability;
- (d) the average weekly earnings of a worker;
- (e) whether a person is a member of the family of worker;
- (f) whether a worker is a dependent;
- (g) whether a person is a worker, and to deem a person to be a worker; and
- (h) whether a worker or a dependent of is entitled to compensation.

[10] Section 25(1) provides the tribunal with “general” jurisdiction to determine **all matters** arising from a hearing officer’s decision. Section 25(2), subsections (a) to (h) lists example areas of jurisdiction of the tribunal. This includes the power to determine the duration and degree of a disability. As noted, section 25(2) clarifies that the “generality” of subsection (1) is not restricted by subsection (2). [Bolding added by the appeal committee.]

[11] The Board of Directors stated that, “since the decision of the hearing officer was not to make an award, there can be no variation.” We find this statement confusing. There have been numerous decisions by the tribunal that have reversed and varied hearing officers’ decisions.

[12] The hearing officer concluded that there was no aggravation of a pre-existing condition. The appeal committee concluded that the worker suffered a workplace injury that continued to impact her after her compensation was discontinued and awarded compensation for a specific time period.

[13] The tribunal has the authority to confirm or reverse a hearing officer’s decision, but can also vary the decision to award compensation. Simply stated, section 25 (1) allows the tribunal to reverse a hearing officer’s decision, as the appeal committee did in this instance, although we did not determine whether or not the worker suffered an aggravation of a pre-existing condition. Section 25(2) provides appeal committees with the authority to determine the duration of disability, also done in this instance.

[14] Section 28 deals with implementation as follows:

Subject to an appeal under subsection 21(1) and subject to section 24(8), (10), and (13), the board shall

- (a) implement any decision of a hearing officer or appeal tribunal

We understand this to mean that the board ensures the tribunals’ orders or decisions are carried out or fulfilled.

[15] As stated above, section 25 (2) provides **exclusive** jurisdiction to the tribunal to determine **all matters** arising from a hearing officer’s decision. The *Act* clearly sets out the jurisdiction of the tribunal, thus allowing appeal committees “exclusive jurisdiction” to determine the duration and degree of a disability.

**Decision**

Decision #139 stands. The worker’s appeal is allowed. The hearing officer’s December 27, 2006 decision is reversed.

1. Pursuant to section 25(2), we find that the worker is entitled to compensation from August 23, 2006 to February 22, 2007.
2. The board shall pay interest on compensation in accordance with board policy and section 31 of the *Workers’ Compensation Act*, R.S.Y. 2002, ch. 231.

Dated this **17<sup>th</sup> day of October 2007** in the city of Whitehorse, in the Yukon Territory.

This decision is made with the full agreement of the appeal committee.

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H. Leenders, Presiding Officer

**Committee Members:**

Hank Leenders	Presiding Officer
Margaret McCullough	Member
Helmer Hermanson	Member