

Workers' Compensation Appeal Tribunal

Decision #177

Claim No.: 3000-4449

Date of Notice of Appeal: June 8, 2010

Date Notice received at the Tribunal: June 16, 2010

Date of Oral Hearing: October 20, 2010

Date of Decision: December 22, 2010

Appeal Committee Members appointed under s. 64 (1) of the *Workers' Compensation Act*, S.Y. 2008, c. 12

Committee Chair:	H. Leenders
Member representative of employers:	H. Hermanson
Member representative of workers:	M. McCullough

In attendance: The Worker
The worker's representative – Derek Holmes
Recorder - Vernna Johanson

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

Introduction

The worker was employed as a heavy equipment operator. On June 3, 2009 he filed a claim at the Yukon Workers' Compensation Health & Safety Board (the "board") for an injury he suffered to his right eye and the right side of his nose while operating a water pump at a mining site. The claim was accepted by the board and he was paid wage loss and medical benefits.

A case manager (adjudicator) notified the worker by letter dated July 14, 2009 that he had recovered from the work-related incident and he was no longer entitled to compensation. The worker provided new medical reporting and a further decision letter was provided by the adjudicator on August 10, 2009. She found that the symptoms and conditions the worker was currently experiencing were a result of a non-compensable pre-existing condition and he was not entitled to further compensation benefits.

The worker appealed to a hearing officer. On March 31, 2010 the hearing officer confirmed the adjudicator's decision and denied further compensation. The worker asks the tribunal to reverse this decision and to find that he is still suffering from the effects of his work-related disability. He requests acceptance of the claim and payment of ongoing compensation benefits.

[1] The worker attended the hearing and testified by affirmation. He was represented by the Workers' Advocate. The employer was notified of the appeal but did not attend. The proceedings were recorded.

Evidence

[2] The appeal committee considered the worker's testimony, the advocate's submissions, board policies as noted below, and the entire claim record as provided by the board.

- Exhibit #1 – Photo of an industrial pump from the website <http://www.tsurumipumpsales.com>
- Exhibit #2 – 2 pages of Chart notes/case history dated June 2, 2009 from Whitehorse General Hospital
- Exhibit #3 – December 10, 2009 report from Dr. M. Aroichane to Dr. Hugh Parsons

Jurisdiction

[3] On June 16, 2010 the worker submitted an appeal of the hearing officer's March 31, 2010 decision to the tribunal under s. 53 of the *Workers' Compensation Act*, S.Y. 2008 (the "Act"). The review (appeal) should be determined according to the *Workers' Compensation Act*, S.Y. 2008, c. 12. Section 65(1) of the *Act* gives the appeal tribunal jurisdiction to hear and decide this appeal.

[4] The worker filed a claim for an injury which occurred on May 29, 2009. Compensation entitlement decisions are made pursuant to legislation in place at the time of injury. In this instance the *Workers' Compensation Act*, S.Y. 2008 should be used to determine the issues of entitlement.

- [5] The board provided the following policies to the tribunal as relevant to this appeal under the authority of section 64 (4) of the 2008 *Act*:
- Policy EN-02, Merits and Justice of the Case
 - Policy EN-07, Pre-existing Conditions
 - Policy EN-10, Subsequent Disorders or Conditions Resulting from a Work-related Injury
 - Policy EL-06, End of Loss of Earnings Benefits
 - Policy AP-03, New Evidence at Reviews & Appeals

Evidence from the Record

- [6] The Workers' Report of Injury/Illness dated June 3, 2009 states he injured his right eye and the right side of his nose on May 25, 2009 while operating a water pump. He reported that the pump lost prime because of muddy water clogging it. Pressure built up in the hose which caused the water to "blow across" from him, hit a chain and then blow back and hit him in the face.
- [7] The worker attended the community Health Centre on May 26, 2009 and was seen by a registered nurse and Dr. Lee. The worker complained of extreme right eye pain that started gradually during the afternoon the day before and had been worsening during the past 12 hours. A history of cataracts in both eyes was noted although the left had been repaired and the worker was scheduled to see an ophthalmologist in November. Dr. Lee reports "Right eye pain NYD [not yet diagnosed]? Acute closed angle glaucoma." There is no indication from the outset that the worker had suffered a work-related injury.
- [8] The worker was medevaced to Whitehorse and attended Dr. D. Rach, optometrist, on May 27, 2009. Dr. Rach prescribed lubricating eye drops. The worker returned on May 29; he reported a slight improvement in comfort. The eyelid was less swollen.
- [9] On June 1, 2009, Dr. Avery saw the worker. His Doctor's First Report diagnoses "corneal burn". He notes the worker was using ointment for his eye, which aggravated it. He is told to stop using the ointment and return to see Dr. Avery the next day.
- [10] During the next week the worker attends Dr. Rach several times as well as the Emergency Department of Whitehorse General Hospital. A June 5, 2009 report by Dr. Rach states the worker appeared to have an allergic reaction to the ointment he was prescribed. He reports that prior to the injury, the worker had some limited vision "through the advanced cataract". Further, "the cornea appeared to have recovered from the burn suffered the previous week with only mild SPK [superficial punctate keratitis] observed."
- [11] Dr. Rossman, ophthalmologist diagnoses "right phacomorphic glaucoma". The worker is medevaced to Vancouver and undergoes cataract surgery on June 8 and 9, 2009
- [12] A June 8, 2009 note to file by the adjudicator states the worker reported the following with regards to details of the injury:

He was wearing his safety glasses when the hot mud from the pump

sprayed out and got under his safety glasses. He rinsed the eye out with water and thought it was fine. He drove to . . . to see his employer, from the camp where he was staying on . . . He then drove back to the nursing station about 3 a.m. He said it took a long time to get there because he had to keep stopping to put his head down, he was in so much pain.

[13] A June 19, 2009 note to file by the adjudicator follows in part:

I spoke to [the worker's accident employer] about returning [the worker] to work in some capacity for him, he commenced saying that the camp that [the worker] worked on was now shut down. I relayed that under our Act it is the employer [responsibility?] providing suitable employment for the worker, keeping in mind his functional limitations, but working in some capacity. He relayed he could do that, and that he would be calling [the worker] that day and setting something up for when he returns to

[14] The adjudicator provides a letter to the worker dated June 19, 2009 stating that she is accepting his claim for a work-related injury of a right eye corneal burn and allergic reaction and infection to the prescribed medication. The adjudicator notes that objective medical evidence shows that he had a pre-existing non-work-related glaucoma and right cataract which required surgery. Once she has received his prior vision level information and has seen Dr. Rach in a month, it will be determined whether there is a vision loss due to the May 25, 2009 incident. A June 19, 2009 letter is also sent to the worker's employer stating the legislation requires that he contact the worker to identify suitable work, consistent with the worker's functional abilities that he can perform during his recovery.

[15] A June 29, 2009 note to file by the adjudicator states the worker left a voicemail message indicating that he could not contact his employer with respect to working light duties. The worker stated that the employer was not returning his calls and he could not locate him. The worker said he had waited as long as he could [to begin work for the employer] but now he is packing his belongings.

[16] Dr. Rach reports to the adjudicator on June 30, 2009 as follows, in part:

In June 2007 his uncorrected vision was noted at 20/50 right eye and 20/70 left eye. Best corrected vision was 20/20 right eye and 20/50 left eye. Moderate cataracts were noted at that time and they were worse in the left eye. It was also noted that he had narrow angles in each eye. At that time, he was referred to Dr. Bozdech for cataract surgery.

In March 2008 he underwent cataract surgery in his left eye. Between June 2007 and March 2008 his uncorrected vision deteriorated to 20/70 right eye and 20/4000 left eye. There were no notes made about best corrected vision.

That is the last record on file prior to his injury. When I initially saw [the worker], the cataract was extremely advanced and I believe that this would have put his vision in the 20/400 range or worse. Unfortunately I cannot prove this due to the presence of the corneal injury. Also, narrow angles were noted in June 2007. This anatomical configuration combined with an advanced cataract would certainly put him at significant risk for suffering angle closure glaucoma which is what happened when he developed high pressure. This could have happened without the corneal injury. In my opinion, the corneal burn likely precipitated the angle closure but was not the direct cause of the angle closure. The advanced cataract and the narrow angles, which existed prior to the injury were the major contributors to the event.

[17] The adjudicator notifies the worker by letter dated July 14, 2009 that, according to Dr. Rach, he had recovered from the corneal burn as of July 3, 2009. She notes that due to the worker's pre-existing condition of right eye cataract and angle narrowing, he developed acute angle closure glaucoma; the corneal burn was not a direct cause of the angle closure. Although he may still experience symptoms, they are not related to his workplace injury. The adjudicator informs the worker that his claim for compensation is closed.

[18] Dr. H. Parsons reports on July 16, 2009. He evaluated the worker who gave a history of being struck in the right eye with boiler mud which was very hot. The worker reported he had burns on his nose and eye and underwent emergency cataract removal at Vancouver General Hospital. Dr. Parsons reports:

Impression: [The worker] has chronic CME [cystoid macular edema] in the left [should be right] eye. This certainly would be associated with his history of the trauma. This is causing difficulty with decreased vision and difficulty with depth perception.

[19] A follow-up report by Dr. Parsons dated July 21, 2009 indicates the OCT examination did not show any macular edema (CME) but he did have disc edema and was having significant difficulty with visual function and depth perception in his right eye.

[20] The board medical consultant reports on July 28, 2009 that she spoke to Dr. Parsons on that date. Dr. Parsons was not clear on the mechanism of injury or that the worker had a "pre-existing RT mature cataract" which was present on the day of injury. The medical consultant clarified the worker had water splashed on him, not hot mud or chemicals. Dr. Parsons stated he had referred the worker to Dr. M. Aroichane.

[21] Dr. Aroichane, ophthalmic surgeon, reports on December 10, 2009. Following are excerpts from her report:

Diagnoses:

1. Optic neuropathy OD, post-traumatic

Although the patient had a cataract in his right eye prior to the trauma sustained at work, this severe trauma over the right eye caused him to lose the vision upon impact in the right eye. He may have recovered some vision but there was an additional and severely raised intraocular pressure in the ranges of 50mm Hg and above. The impact of hot mud over the right eye with a cataract present before the accident PLUS the thermal burn probably caused swelling of the lens particles. This caused a secondary angle closure and a phacomorphic glaucoma with severe intraocular pressure rise. The increased intraocular pressure caused an ischemic event in the optic nerve confirmed by the superior altitudinal defect, loss of color vision and optic atrophy OD. It is also confirmed by the presence of disc swelling and parapapillary hemorrhages seen clinically and on IV fluorescein angiogram, the latter showing faint disc swelling. If the IVFA would have been done earlier than July, we would have seen much more severe leakage of the optic disc.

Recommendations: I believe this patient sustained a very severe trauma to the right eye. He has lost his visual acuity in the right eye . . . Of course, with that amount of decreased vision, his depth perception is affected in a definitive way.

- [22] A January 7, 2010 note to file by the adjudicator states that she spoke to someone at the Nursing Station the worker attended on May 26/27, 2009 with respect to his admission and care. She was told Nursing Station medical professionals were not aware it was a workplace injury. That is why there was no reporting or notes to the board.
- [23] On January 8, 2010 the adjudicator writes to the worker explaining that her original decision stands. The new medical evidence/information does not change her decision. She states, "The symptoms and conditions you are dealing with now are related to your non-compensable pre-existing condition of advanced cataract and narrowed angles." The adjudicator notes she will be referring the worker's file to the hearing officer for review.
- [24] The board's chief medical consultant reports on January 20, 2010. Following are excerpts from the report:

The work injury did not occur as the worker has indicated to both Dr. Rach and particularly to Dr. Aroichane. [The worker] has clearly given Dr. Aroichane the wrong history. It is this history of severe blunt/thermal injury to the eye that led Dr. Aroichane to come to the conclusion that she came to, stating that with a pre-existing cataract plus thermal burn, there could be swelling of the lens particles which could cause secondary angle closure and glaucoma. You are right in stating that there was no thermal injury. I have previously clarified this with the employer's history and also the findings of the physicians who saw [the worker] in the

Emergency Room in Whitehorse. The fact that there was no burn to the nose, especially with the eyes covered with safety glasses clearly shows that there is some error in [the worker's] history to Dr. Aroichane.

I took the liberty to speak to Dr. Aroichane today (January 19, 2010). She stated that she made her diagnosis based on the history that the worker volunteered to her and the documents that she had at hand. She stated that she did not have the original history from the Dawson City Physician who saw [the worker] first. I read the history and clinical findings of Dr. Lee in Dawson City to Dr. Aroichane. She then stated that she could not but have believed the patient which she states is her responsibility to believe the patient. I confirmed with her that in my sixteen years of working in the Yukon, that if any patient had a severe injury to the eye, all physicians in the Yukon would promptly have sent the patient via medical evacuation by air immediately to Vancouver. I reassured her that if [the worker] had such severe injury the process of management would have taken the path I mentioned above, and certainly not the process that [the worker] related to her. Dr. Aroichane said that she spent a lot of time and went beyond the call of duty in her preparation and writing of the notes. She however agreed that the diagnosis she made of optic neuropathy could have resulted from [the worker's] pre-existing condition of extremely advanced cataract and medial and temporal angular closures which would have resulted in raised intraocular pressure and subsequent optic neuropathy.

Assessment and Comments:

I think it is clear to all involved that [the worker's] pre-existing condition of advanced right cataract, angle closures in the temporal and median regions, caused the increased intraocular pressure (glaucoma) which had flared-up enough to cause [the worker's] right eye that in fact brought him to the Hospital in Dawson on May 26, 2009.

[25] On March 31, 2010 the hearing officer rendered a decision denying the worker's appeal and confirming the adjudicator's August 10, 2009 decision. She found the "resulting condition of the worker's right eye after surgery, is on a balance of probabilities due to his pre-existing condition and failure to obtain treatment for his eye in a timely manner and not the work-related injury". She further found the worker had been returned to the condition he would have been prior to the work-related injury.

[26] Dr. Rach May 25, 2010 report, in part, follows:

Earlier today [the worker] completed visual field testing. This shows that he as roughly a 10-15 degree central visual filed OD.

[The worker] has reasonable corrected visual acuity at 20/50 in his right eye. However, he has a significant reduction in his field of view and is essentially looking through a small tunnel.

We can consider his right eye blind because of the limited field of view (under 20 degrees) in spite of relatively good corrected acuity of 20/50. However, I want to make it clear that [the worker] is not legally blind because his left eye has a normal corrected acuity and a full visual field.

The Worker's Testimony

- [27] The worker testified that when he arrived at camp, his employer gave him free run as the camp was not open yet; it was too early in the season. He did some work on the machinery that had been left sitting all winter. He said he worked long hours; 11 to 14 hours some days. When the employer saw what he had done, he told him that he was hired for the summer. His employer directed him to "drop the water table" down to bedrock before any mining could take place.
- [28] The worker said there was permafrost in the ground. There was a D-11 Cat at the site which he and a co-worker "corked" – put ice corks on it for better traction. The worker said the pump he used was "wore out". If he was pumping out of the river, it would have probably done but to lift and push uphill, the pump would not maintain it. It would quit pumping. He said that while pumping you have to keep digging the hole in order to lower everything down as you go. He said he dropped the water approximately 30 to 40 feet straight down. This causes the water to be stirred up, turning it into mud. The pump had failed two times the day before. His employer and another fellow had shown up at the time. They pulled the hose off and got the pressure off it so they could clean the pump out, reset and get it going again.
- [29] The next day the employer and a co-worker showed up again. The pump had quit. They managed to get the hose off. He said this is dicey in itself as there is 450 feet of hose uphill, full of water going backwards. The only way you can fix the pump is to either take the hose off or take the filler cap off or loosen it off so the pressure will dissipate. He said he had already started but the mud was hot and it had baked inside the hose. His employer and co-worker pulled the hose off and installed a brand new one and started the pump again.
- [30] The worker testified that he dug deeper with the backhoe in order to keep "stepping everything down". He could not see where the water was exiting because the hose was so long. When he went to check on the pump, it had stopped again. He shut everything off. He said there is a cap on the pump. If you loosen the bolts, you can slide the cap off to the side. He did this and inserted a wedge underneath, opening it up approximately 3/8". He said the mud was spraying away from him. He was going to let it "bleed down" and then take the hose off and clean everything up and reattach the hose.
- [31] He said because the mud was so hot it would bake on the metal, blocking it from coming out. In order to get it off, he would tap it and the mud would fall off and spray again. The mud started coming out at a different angle. He said that he must have tapped the hose a little too hard and a wedge [of mud] came out and the water pressure increased immediately causing

the water to splash directly onto his face. He believes the water pressure could have been anywhere from 250 to 400 lbs. due to the back pressure on the hose. The pressure knocked his hard hat off; he never found it. When he returned to camp a month later, his glasses had been found. One of the arms was broken off. The worker testified that he was wearing safety glasses at the time of the incident but when the mud hit, he turned his head and the side of his nose suffered a burn.

- [32] The worker said he immediately went to his truck and washed his face. At the time, he did not think he was injured or it was a problem. However, he said later on, the pain he experienced in his eye was similar to a welding flash. He drove to town and told his employer. He was told to leave it until the morning and then he would go out and give the worker a hand to clean out the hose. It was about 5:30 p.m. when the accident happened.
- [33] The worker returned to camp and pattered around with some other stuff. That evening at around 9:00 p.m. he said, "it started to burn". At 1:00 a.m. he could not go to sleep as he was in "total agony" because of his right eye and he decided he needed to get to town. It took him until 4:40 a.m., approximately 32 km, to get to town as he had to keep stopping to bend over. This was the only thing that would relieve the pressure in his eye.
- [34] Once in town, he called the emergency number and spoke to a nurse. She suggested that he wait until 8:30 a.m. but the worker said he was in too much pain. The nurse called the doctor. They both arrived within 45 minutes. He said there was an "eye inspection thing" that Dr. Lee did not know how to work. In addition, she could not understand English. He said by 8:30 in the morning, the pain killer they had given him started to work so he left and found his employer. His employer told him he better get on the plane (to go to Whitehorse) where he saw Dr. Rach, optometrist.
- [35] With respect to the return to work plan, the worker testified that an adjudicator contacted him and told him that his accident employer had agreed to a return to work plan which involved light duties for 10 days. His employer called him in Whitehorse the following morning and said he did not have any work for him but suggested he return to Dawson and he would find something for him to do. The worker said he had to go to Dawson anyway because of all his tools and belongings were still there. After 4 days of looking for his employer, trying to contact him by phone and not finding him, the worker found out the employer was in Whitehorse and was "dodging" him. He had to assume the cost for his hotel accommodation. The worker testified that he never did get paid for the work that he did for the employer.
- [36] The worker said he got another job on September 15 or 16 with a different employer. He said due to the injury, he could still run the same machinery (for pipe line) but he could not have people working underneath him on the right side. He said during this time, he had calls from potential employers because he is a "good pipeliner". He had to explain to them that his eye was not functioning properly. They would not hire him and he would not work if it would mean putting someone's life in jeopardy.
- [37] He said that several weeks after the accident, when employed by another company, he had a cold and blew his nose. He felt like there was something in his ear but he could not get it out.

He got a stick and dug around. A piece of dried mud came out; this was months after the incident.

- [38] The worker testified that he knew he had the cataract. As soon as he finished the job in Dawson, he had surgery booked in Grande Prairie. After the incident, he now has problems with depth perception and peripheral vision. Anything on his right side, he cannot see, he said it is “non-existent”. He can see a blur but cannot tell what it is. He says sometimes he still has problems if he turns too quickly; he has walked into door jambs because he has not checked first with his left eye. He has to be careful on steps as well. He can still run a ‘hoe [backhoe] although he has to be careful due to his lack of depth perception.
- [39] Presently, he cannot drive at night. He has glasses that alleviate some of the vision problems but bright headlights bother him. He says he is legally blind in his right eye.

The Workers’ Advocate’s Submission

- [40] The advocate submits the worker was injured on May 25, 2009 when he suffered a corneal burn to his right eye as a result of hot water/mud splashing his face. He says the worker has experienced an increased level of impairment as a result of the accident.
- [41] He says the board arranged a return to work, which the worker participated in. However, the employer was not to be found. The employer did not pay the worker for any of the time that he worked. They believe the employer never seriously considered providing light work in order to assist the worker with a return to work.
- [42] The advocate contends there was quite a trauma suffered by the worker. This is indicated by some of the medical specialists that the worker attended. The worker did have a pre-existing condition: cataracts. The advocate addresses Dr. Parsons July 16, 2009 reporting [ref. para. #18] which notes the worker is experiencing difficulty with decreased vision and depth perception.
- [43] The advocate addresses Dr. Aroichane’s December 10, 2009 report [ref. para. #21]. The advocate says what is salient about her report is that she is saying there was not merely an association between the accident and the worker’s permanent impairment, there was a causal link. In her report she notes the cataract was present in the worker’s right eye prior to the trauma sustained; however, the severe trauma caused him to lose the vision in his right eye upon impact. The advocate submits the board missed an important piece of medical information that would have helped them make a better decision. By not accepting any further medical reports, they missed information about the residual effects of the workplace accident on the worker’s vision.
- [44] He says the medical reporting indicates there was a pre-existing condition. The trauma experienced as a result of the workplace accident exaggerated or compounded the impact of the pre-existing condition. It is for this portion the board has an ongoing responsibility to this worker.

- [45] The advocate provided a photocopy of a pump (Exhibit #1) which he submits is an approximation of the pump which was involved in the accident. He says this is not a water pump used for a cabin. It is a high pressure industrial machine.
- [46] The advocate submits the worker suffered a “big hit”; it was a burn and it was trauma as indicated by the specialists on file. He says the medical management of this file got off the rails fairly early and he believes it was as a direct result of the visit with the general practitioner in Dawson because the attending doctor’s first language was not English.
- [47] He contends that Policy RE-07 should have applied in this worker’s case. This policy addresses an exacerbation/aggravation of a condition as a result of a workplace accident. The worker was upfront about his condition prior to the accident. The advocate says the board never considered this when making their determination.
- [48] He says several things went wrong with this claim:
- The original interaction with the locum/general practitioner did not go as well as it could have.
 - The case manager did not have a good appreciation of the forces involved in the trauma.
 - It is unfortunate the board did not accept the Aroichane report which is, in their opinion, key to establishing a causal link.
 - The return to work plan went astray. The worker was told by the case manager to return to the accident employer in Dawson. The worker, at his own expense, travelled to Dawson and searched for his accident employer for days. They ask that the worker be reimbursed for his out of pocket expenses for accommodation, travel and food while searching for the employer in order to participate in the return to work plan.

Relief Requested

- [49] The worker is seeking compensation for the period of time that he participated in the return to work plan that ultimately did not exist. Also he asks that the tribunal seek medical clarification with respect to the difference between the impact that the accident had on his physical capabilities as they stand today and his capabilities before the accident.
- [50] The advocate asks that the medical issue be resolved. If there is permanent impact on the worker’s vision as a result of the trauma, the worker should be provided a permanent partial impairment award (PPI).

Issue 1: Is the worker’s present condition due to his work-related injury?

Answer: No

Issue 2: Is the board responsible for the failed Return to Work (RTW) plan?

Answer: Yes

Analysis

- [51] When the injury occurred the worker was alone on site operating a large pump and backhoe. With no known witnesses we relied on the testimony from the worker.
- [52] The committee was confronted with some anomalies in this case and we will briefly list them. First, the worker testified that hot muddy water hit his face after deflecting off a chain. He says that it knocked his hard hat and his safety glasses off. The hot water burned the side of his face and nose as well as his eyelid. He washed his face and eye with water and then drove to town and told his employer. He was told to leave it until the morning and then the employer would go out and give the worker a hand to clean out the hose. It was about 5:30 p.m. when the accident happened.

Further, the worker completed the Worker's Report of Injury/Illness indicating the water deflected off a chain and blew back in his face. During his testimony he stated that once the wedge of mud came loose from the pipe, the water immediately came out and hit him directly in the face.

- [53] The committee notes that there is no mention of extreme pain in the right eye or any pain from a burn to the face and eye at this point in time. If there was blunt force trauma to the eye to the point that the worker was unable to see out of it, then he would have mentioned it in his testimony and to his employer. Dr. Aroichane in her report of December 10, 2009 states the worker told her about the incident and "immediately he had severe eye pain and had no vision in his right eye."
- [54] The worker returned to camp and pattered around with some other stuff. That evening at around 9:00 p.m. he said, "it started to burn". At 1:00 a.m. he could not go to sleep as he was in "total agony" because of his right eye and he decided he needed to get to town. It took him until 4:40 a.m. to drive the approximately 32 km. to town as he had to keep stopping to bend over. This was the only thing that would relieve the pressure in his eye.
- [55] The worker attended at the Dawson Health Centre and was seen by a nurse and Dr. Lee. The worker complained of extreme right eye pain that started gradually during the afternoon the day before and had been worsening during the past 12 hours. Dr. Lee diagnoses possible acute closed angle glaucoma.
- [56] Secondly the doctor's report from the Dawson Health Centre differs substantially from that of subsequent medical professionals. We have carefully scrutinized the report and the differences cannot be explained by the worker's and advocate's submission that English was not the doctor's first language as her writing skills appear to be as good or better than any of the other medical practitioners that saw the worker.
- A) There is no mention that the worker's condition was work-related on Dr. Lee's report whereas all subsequent doctors' reports make mention of it. The omission is strange in that doctors are instructed to query their patients if the injury happened at work and judging by her report this doctor is fairly thorough. Certainly if there was a visible burn on the

worker's face the doctor or nurse would have asked, "What happened to you? or what caused this?"

B) Dr. Lee also mentions on the "The Inpatient/Outpatient Services Form": *States similar episode 6 weeks ago though went away in 1 hour and not as extreme.* Evidently she must have asked him if he had anything like this before. This information does not appear on any of the other doctors' reports.

- [57] On May 27, the afternoon after the incident, the worker flew to Whitehorse to be assessed by Dr. Rach, Optometrist. Dr. Rach saw the worker over the next two days and during that time reported marked improvement of the eye. Again this doctor does not state that there were any burns to the nose and eyelid of the worker. There is no mention of any increased pressure in the eye until June 4, after the worker attended the Whitehorse General Hospital Emergency room for an allergic reaction to an ointment. The pressure spiked that evening and was significantly down by the next morning. No mention of any burns in the hospital reports.
- [58] The emergency doctor, Dr. K. Brown, in consultation with Dr. Rach diagnoses "acute closed angled glaucoma" with necessity for immediate surgery. Dr. Brown reports that the increase in pressure in the worker's right eye is "presumed to be at least in part due to the pre-existing cataract in that eye". Dr. Rach states the worker will likely need to have the cataract removed to deal with the angle closure.
- [59] The worker had cataract surgery at the Vancouver General Hospital on June 9, 2009 after a postponed attempt on the previous day due to sudden increase in pressure within the eye. The cataract extraction was successful
- [60] The committee notes that there were at least four occasions that the right eye was very painful. The first - six weeks before the incident; the second - the day of the incident; the third - after the ointment allergy; and the fourth - the day of surgery. We also note the relationship of the cataract to the worker's angle closure.
- [61] From medical reporting it appears the worker's right eye cornea cleared up from the incident within eight to ten days. Dr. Rach refers to marked improvement after two or three days, Dr. Brown says, because of the allergic swelling, that portion of the cornea she could see, was clear. Dr. Rossman, UBC Department of Ophthalmology, the consultant before the surgery, reports that the cornea was clear and that no relative afferent papillary defect was detected.
- [62] This committee is charged with determining if the worker has recovered from his work-related injury or not. The worker's vision in his right eye was extremely poor prior to the accident due to advanced cataracts. The board accepted the injury as a corneal burn based on the testimony of the worker that hot mud splashed into his eye. It is evident from subsequent assessments from qualified medical professionals that the right eye cornea has healed from that burn.
- [63] The worker's advocate stated that the worker had a pre-existing condition that was exacerbated by the work-place incident. We do not deny that could have occurred except for

the worker's own admission he experienced a similar painful episode some six weeks prior to the incident. In this case when the pre-existing condition was made known medical professionals stated that advanced cataracts and narrow angles could have caused the subsequent angle closure and glaucoma.

- [64] Documentation on file reveals he experienced similar painful episodes; one six weeks prior to the incident.
- [65] The worker saw Dr. Aroichane, Ophthalmic surgeon, in Burnaby, B.C. on December 10, 2009. She states: "I believe this patient sustained a *very severe trauma to the right eye.*" She further states that the trauma from the incident led to further complications and caused secondary angle closure and a phacomorphic glaucoma with severe intraocular pressure rise. However, the board's medical consultant spoke to her and informed her that if the worker's condition was as severe as indicated, he would have been airlifted to Vancouver at once. Dr. Aroichane did not see the initial doctor's report from the Dawson Health Centre so it is evident she based her statements on the testimony of the worker. When the medical consultant asked her if the worker's pre-existing condition could have caused the increased intraocular pressure and subsequent complications of optic neuropathy, the ophthalmologist responded "yes". [Italics added by the committee.]
- [66] Dr. Rach agrees with the above in his July 3, 2009 letter to the board in which he commented, "narrow angles were noted in a report from June 2007 and this anatomical configuration with the advanced cataract put you significantly at risk for suffering angle closure glaucoma". We agree that the findings of medical professionals who saw the worker shortly after the incident carry more weight than that of Dr. Aroichane who based her findings only on the testimony of the worker who reported immediate severe eye pain after the hot mud blasted his face.
- [67] The worker states that since the cataract surgery the peripheral vision in his right eye has been impacted so that he has to turn his head in order not to run into obstacles. He is able to run a back-hoe, but cannot have anyone working around him as he may not be able to see them.
- [68] It is also noted that the worker's right eye prior to surgery was listed as 20/400; however, he was still able to operate equipment which he must have done with his left eye only as the right eye had a very advanced cataract.

Issue 2 – Responsibility for the failed Return to Work (RTW) plan

- [69] The worker, after a period of recovery, went back to Dawson City at the board's behest to try a RTW plan. The employer said he closed down the project the worker was working on, but would find some light work for the worker to do while his eye was recovering. The worker went to Dawson and claims that for four days he tried to track down his employer, but could not find him. He then heard the employer was in Whitehorse "dodging him" in his words.
- [70] He claims for the expenses he incurred going to and staying in Dawson for the non-existent Return to Work plan.

- [71] The board's position is that the worker has now recovered from his work-place injury and is able to assume his pre-accident job, therefore their responsibility has ended and his compensation was terminated.
- [72] The worker is seeking compensation for the period of time that he participated in the return to work plan that ultimately did not exist. Also, he asks that the tribunal seek medical clarification with respect to the difference between the impact that the accident had on his physical capabilities as they stand today and his capabilities before the accident.

Relief Requested

The worker requests compensation for the period of time that he participated in the return to work plan. The record indicates that the adjudicator spoke to the worker's employer to see if there was any light work available for the worker while he was recuperating from surgery. The employer said that the project the worker was working on was closed down, but that he would try to find something to keep the worker occupied.

- [73] A note to file dated July 3, 2009 states the employer phoned the worker on June 20th to say that he has no light duty available for him. It also mentions that the worker went back to Dawson and apparently could not contact the employer, so he packed his belongings and went back to Whitehorse.
- [74] The case manager phoned the employer on July 3 to explain the RTW process. The employer replied that since things were slow at the present time, he would need the weekend to figure out if he can find something for the worker to do. That afternoon the worker went to the WCB building and the case manager explained to him that he must contact the employer as duties are available. The worker then told her that he saw Dr. Rach on Wednesday and he was not able to return to work. He also said he was scheduled for a follow up in Vancouver on July 10.
- [75] On July 2, 2009, Dr. Rach wrote to Dr. Parsons, Retinal Surgeon, explaining the worker's ocular history and his recent eye surgery. He pointed out that since the surgery the worker's vision has not improved much and *he is having major difficulty with depth perception and as a result he cannot work*. We assume the doctor meant that worker cannot operate heavy duty equipment, the type of work he was doing at the time of the incident, but not that the worker was unable to do any work. He was able to drive to Dawson and return, a distance close to 700 miles, without incident. [Italics added by the committee.]
- [76] Section 40 (2) (b) provides that the worker shall co-operate in his or her early and safe return to work by assisting the employer, as may be required or requested, to identify suitable employment that is available and consistent with the worker's functional abilities. It is the employer's duty to provide suitable employment that is available and consistent with the worker's functional abilities.

- [77] The worker and employer did not get together and each more or less blames the other for not trying. The case manager also did not pursue the matter any further. The committee understands the worker went to Dawson and attempted to find his employer. He spent several days there at his own expense.
- [78] The worker received benefits from the board up to and including June 18, at which time he was to commence the Return to Work plan. He spent four days in Dawson without work or compensation. The committee recognizes that if the board initiated the RTW plan then they should bear some responsibility for it failing.
- [79] The worker requested that the tribunal seek medical clarification with respect to the difference between the impact the accident had on his physical capabilities as they stand today and his capabilities prior to the accident. When asked if he would attend another medical practitioner, the worker said he had an appointment with Dr. Rach in a few days. The committee could get the report from him, if required. We agreed that would suffice.
- [80] On October 29, 2010 an e-mail from the worker's advocate advised the committee that Dr. Rach had told the worker nothing was going to change. A report from Dr. Rach dated May 25, 2010 was submitted. The committee agreed to accept the report as an accurate portrayal of the worker's present condition.
- [81] Finally, the worker is seeking a permanent partial impairment (PPI) award due to the permanent deterioration of his right eye. We cannot address this issue because the payment of PPI awards falls outside the scope of our jurisdiction. They can only be awarded by the board after due consultation with their medical consultant.

Conclusions

- [82] We conclude the worker recovered from his work-related injury: a corneal burn to his right eye. Conditions and symptoms that are manifesting themselves now are due to the non-compensable pre-existing condition of advanced cataracts and narrowed angles; i.e., the acute angle closure glaucoma the worker suffered from was not due to the work place incident.
- [83] The committee also concludes there never was a return to work plan in place that was agreed upon by all the parties concerned and therefore the worker is entitled to receive compensation for his travel to and from Dawson and for the time he spent trying to find his employer while there.

Decisions

Issue 1: Is the worker's present condition due to his work-related injury?

The worker's appeal is denied. The hearing officer's March 31, 2010 decision is confirmed. The worker's present condition is not as a result of a work-related injury.

Issue 2: Responsibility for the failed Return to Work (RTW) plan

In the matter of compensation for the loss of wages and expenses incurred by the worker relating to the failed RTW plan, the committee finds the appellant is entitled to compensation.

1. The worker is entitled to wage loss from June 22 to June 27, 2009 inclusive.
2. The worker is entitled to expenses in the form of accommodation, travel to Dawson from Whitehorse return, and a per diem for meals and incidentals for the time period June 22 to June 27, 2009 inclusive. If the worker cannot provide receipts, the board shall use YTG rates to compensate the worker.

Dated this **22nd** day of **December 2010** in the City of Whitehorse, Yukon Territory.

The decision has been made with the full agreement of the appeal committee.

H. Leenders, Committee Chair

Committee:

H. Leenders	Chair
M. McCullough	Member
H. Hermanson	Member