

# Workers' Compensation Appeal Tribunal

## Decision #178

**Claim No.: 3000-4631**

Date of Notice of Appeal: August 23, 2010

Date of Oral Hearing: November 10, 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:	E. Sumner
Member representative of employers:	N. Huston
Member representative of workers:	M. McCullough

**In attendance:** The Worker  
The worker's partner  
The worker's representative – Julie Docherty  
Mark Hill, Director, Corporate Services, YWCHSB - observer  
Tiffany Eckert-Maret - observer  
Vernna Johanson, Recorder

**Location:** Boardroom, Transportation Engineering Building  
461 Range Road  
Whitehorse, Yukon Territory

## Introduction

This 51-year old woman was employed as a school custodian. She filed a claim for compensation to the Yukon Workers' Compensation Health and Safety Board (the "board") for injuries she sustained while at work on July 6, 2009. The worker's claim was accepted by the board and she was provided with medical aid and compensation benefits to March 19, 2010.

On March 18, 2010 a board case manager (adjudicator) reviewed the worker's claim and found there was no objective medical evidence to link her ongoing symptoms to the 2009 workplace injury. The worker appealed this to the hearing officer. He rendered a decision on August 19, 2010 confirming the adjudicator's decision.

The worker asks the tribunal to reverse the hearing officer's decision. She requests that her claim be accepted by the board and is seeking ongoing compensation, including rehabilitation and medical aid to aid in recovery of her work-related injury.

- [1] The worker attended the hearing accompanied by her partner. They testified by affirmation. She was represented by the deputy workers' advocate. Another deputy workers' advocate attended as an observer. The Director, Corporate Services, Yukon Workers' Compensation Health & Safety Board (YWCHSB) attended as an observer. The accident employer was notified of the appeal but did not attend. The proceedings were recorded.

## Evidence

- [2] The appeal committee considered the worker's and her partner's testimony, the advocate's submissions, board policies as noted below, and the entire claim record as provided by the board. In addition to photographs contained on file, several more photographs were provided by the worker's partner at the hearing.

## Documents submitted outside the required timelines

The deputy advocate submitted, by e-mail attachment, an "Outpatient Clinic" report dated October 14, 2010 by Dr. Ashkan Shoamanesh and Dr. Javidan Manouchehr of the Epilepsy Clinic, Vancouver General Hospital on November 4, 2010. No request was made to enter the document as evidence during the hearing. The report was considered by the appeal committee and found not to be new evidence as required by the Policy AP-03, New Evidence at Reviews and Appeals.

## Jurisdiction

- [3] On August 23, 2010 the worker advanced an appeal of the hearing officer's August 19, 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. with the tribunal under s. 14 (1) of the *Workers' Compensation Act*, S.Y. 2008 (the "Act").

- [4] The worker filed a claim for an injury which occurred on July 6, 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-01, Arising Out of and In the Course of Employment, effective July 1, 2009.
  - Policy EN-02, Merits and Justice of the Case

### **Evidence from the Record**

- [6] The worker was employed as custodian in a school. On July 6, 2009 she filed a Worker's Report of Injury/Illness stating she injured her forehead, mouth (teeth) and right arm while cleaning a bathroom. The reports states:

Cleaning wall mirror, it came loose, fell on forehead, glass everywhere.  
Went to clean another bathroom. That's the last thing I remember until  
I came to an hour or hour & a half later. I woke up with blood everywhere.

She reported the injury as:

Forehead 2" x 2" red mark from mirror. Four upper teeth broken, three  
lower teeth loose. Six stitches on lower lip. Right arm just below elbow:  
3" x 3" bad bruise.

The worker's partner took her to Whitehorse General Hospital where she received sutures to close the laceration to her mouth.

- [7] Dr. Huang treated the worker on the evening of July 6, 2009. An operative report states the worker underwent "suture laceration". Post-operative diagnosis states: "Through and through lip laceration with a missing left front tooth and loose right front tooth and para-incisors as well on either side. Lacerated frenulum of the upper lip into the missing tooth.
- [8] Dr. Todd's July 7, 2009 report states the worker explained how the injury occurred and that "she feels she may have been unconscious in the bathroom for awhile. She had a bit of a headache but has not progressed." Dr. Todd notes an abrasion on the worker's right forehead and a laceration on her upper lip which has been sutured. The treatment plan indicates the worker is to be off work for 6 days "due to facial injuries and she's also injured her upper chest."
- [9] Dr. Stephen Jacob, dentist, reports on July 8, 2009: "Traumatic blow to anterior face causing fractures to teeth #12, 11, 21 (fractured out completely), 22." He notes other teeth, #23, 24, 31, 32, are "suffering severe blow".

[10] A Functional Abilities Form completed by Dr. Phillips on July 13, 2009 advises “no work until reassessed by Dr. Todd.”

[12] An adjudicator’s July 10, 2009 note to file states:

I called worker and asked her to provide details of how her injury occurred. She told me she was cleaning a wall mounted mirror in a school washroom when it came loose and struck her on the forehead. The mirror was broken all over the floor. She went and told a co-worker that the mirror was smashed on the floor and then the co-worker was leaving the school for the day so [the worker] let her out to make sure the door was locked. She went to another washroom to check her injury and at that time she “passed out”. The next thing she remembers is waking to a noise. Her hair was stuck to the floor because of blood. She was covered in blood and her face was cut up. She tried to call her supervisor and her husband but there was no answer. She checked on the noise she heard and it was her husband coming to check on her as she had not called for her ride home. Her husband took her to the hospital. [The worker] believes she was passed out for at least an hour. She is in a lot of pain and on medication. Worker is very tearful. She goes to Dr. Todd on Monday for stitches to be taken out and the dental assessment is on July 15. Worker is concerned that she will not be ready to go back to work due to pain, meds and her emotional state. I explained to [the worker] that she needs to speak with her doctor about this and make sure that she takes a functional abilities form to her supervisor and between them, they can determine if there are duties available to her. I told [the worker] that I was accepting her claim and passing it for case management. [The worker] told me that for now her headaches have settled so she really doesn’t want to go to Vancouver for an MRI and doesn’t think the doctor is going to send her.

[13] Dr. Todd completes a Functional Abilities Form on July 13, 2009 noting limitations of no lifting, no overhead lifting, and lifting as tolerated. He advises the worker is only capable of very light work and “due to her job as janitor advised 10 days off janitorial work.” Dr. Todd’s progress report of the same day indicates the worker attended with complaints of “left sternal and parasternal chest pain since her accident” in addition to a very sore right elbow and some discomfort in her neck.

[14] The adjudicator notifies the worker by letter dated July 13, 2009 that she is accepting her claim for compensation for “laceration of the upper lip and fractured and broken teeth.” A letter also goes to the worker’s employer asking them to contact the worker in order to identify suitable work available for her to perform during her recovery.

[15] A July 17, 2009 progress report by Dr. Jacob describes the worker’s present condition as:

Due to a traumatic blow to the front of face, teeth #'s 12, 11, 21, 22 are very loose. #21 has been extruded completely and is not present. Maxillary bone seems to be fractured in these remaining teeth regions. Teeth 31/32 also suffered traumatic blows to a lesser extent.

- [16] A July 20, 2009 progress report by Dr. Phillips notes the worker attended with complaints of pain in her mouth and “she doesn’t feel she can cope with going back to work”. Dr. Phillips’ assessment is, “Laceration of the lip and contusion on elbow and chest wall, which I didn’t examine today, and head injury.” He suggests another week off work. Dr. Phillip notes the worker is still having minor headaches but no other neurological symptoms.
- [17] The adjudicator’s July 31, 2009 note to file states in part:
- Claimant came in this morning to see me after her dentist appt. She worked 2 days this week . . . however, she stated that she was very weak after that, and felt she couldn’t continue. She normally works for 5 hours per day, but felt that she could not work as fast and keep up the pace that she did before her injury, at this time.
- I called the custodial coordinator, . . . and discussed the possibility of a graduated return to work plan. I suggested that maybe she could start on Monday at 3 hours per day for 1 week and the following week 4 hours per day, and then reach 5 hours per day on the third week. He was in agreement with the plan.
- [18] A Doctor’s First Report dated July 31, 2009 by Dr. Tadepalli states the patient told him WCB wanted her to have CT scan, blood work as she was not feeling right. She is complaining of headaches and fainting spells. The worker was accompanied by her sister because she has memory problems. Dr. Tadepalli diagnoses “Head injury. Concussion.” Work restrictions are noted as “Unpredictable. ? 7-10 days.”
- [19] The file contains a Return to Work Plan – Guidelines dated July 31, 2009. The case management team is the worker; custodian co-ordinator; Dr. Todd, family doctor; and the case manager. The Return to Work Action Plan has the worker returning to work at 3 hours per day for the first week (August 3-7) and increasing to 5 hours per day by August 18, 2009.
- [20] An August 5, 2009 CT scan of the worker’s head indicates a “normal” CT scan examination.
- [21] Dr. Ahmed’s August 13, 2009 progress report notes a change in diagnosis/factors complicating recovery as, “Current headache, ongoing for about 5 days”. Dr. Ahmed suggests the worker should continue to work only 4 hours per day “given her current difficulties”; she is fit for “light duties”.

[22] A Functional Abilities Form and progress report by Dr. Todd, both dated August 21, 2009 states:

Objective: MSK (musculoskeletal), there is tenderness on palpation over the occipital area and on the crown of the head. Cervical spine non tender and she has full neck ROM (range of motion). There is also tenderness just lateral to the mid sternum on the left and a slight prominence. CNS (central nervous system), no focal signs and recent CT of the head was normal.

- (1) Headache likely secondary to soft tissue injury and possibly concussion.
- (2) Chest wall pain secondary to contusion.

Treatment Plan and Medication: . . . I have given her a functional limitation form today indicating that bending down, washing floors and overhead work aggravates her chest wall pain as well as her headache and she should avoid that for the next 2 weeks.

[23] Dr. Todd's September 17, 2009 progress report states the worker is complaining of ongoing headache on the top of her head and in the frontal area "off and on" since she was injured in the summer. He rules out ongoing symptoms from concussion.

[24] On September 21, 2009 Dr. Todd reports the worker has had some anxiety over ongoing pain on the top of her head with sharp pains radiating to her forehead and pain in her left anterior chest. Dr. Todd's assessment indicates: 1) Head trauma with ongoing tenderness on the scalp and possibly some ongoing headache from remote concussion. 2) Chest pain. The treatment plan is for the worker to continue working full time and to follow-up for further evaluation if she continues to have problems.

[25] The worker saw Dr. Tadepalli in the Emergency Department of Whitehorse General Hospital on September 28, 2009. An Ambulatory Care Form states: "Acute anxiety". The patient reported, "They keep telling me I am fine at WCB – but I am not. My whole body started shaking. My head went funny". Dr. Tadepalli notes "Clinically fine, cooperative".

[26] Dr. Todd's September 29, 2009 progress report states:

Had an episode where she lost consciousness and went in to the emergency department. She was told to follow up with her family doctor. She comes in with her roommate who states she was watching TV and then she started looking behind her as if there was something frightening on the wall. She then became stiff. While he was helping her to her bedroom he states she slumped down, and seemed to be unconscious with foaming at the mouth, twisting, stiff and shaking for about 10 minutes. There was no tongue biting or urinary or bowel incontinence and no gross jerking. She was taken to the emergency department by ambulance. . . .

States she seems to frequently be sweating and shaking but he feels she was unconscious during this episode.

Assessment: Episode of loss of consciousness, possibly seizure, possibly related to head trauma. Rule out some persisting intracranial pathology.

Treatment Plan and Medications: I have advised that she not work for the time being until this episode is evaluated as to whether it's a seizure or there is intracranial pathology related to recent head trauma, etc. I've therefore advised that she see a neurologist to be assessed and possibly have another follow-up CT if that's his recommendation. I've advised that we do this urgently.

[27] The worker attends Dr. Teal, neurologist, at the Specialist Referral Clinic on October 9, 2009. History taken from the worker, her sister (who attended with the worker) and the worker's partner (by telephone) indicates the worker denies prior seizures, no spells of olfactory or gustatory hallucination, no history of prior head trauma; she has not had meningitis or encephalitis and is unaware of any birth injury. Dr. Teal's opinion follows in part:

1. [The worker] had a minor head injury at work on July 6. . . . As far as I can determine, [the worker] did not sustain a concussion as a result of this injury. She was not knocked out. She had no scalp or facial lacerations at that time. She was able to go out and talk to someone in the hallway, let them out of the school door and lock up the school and return to her task cleaning bathrooms. She believes she finished the #1 bathroom and she believes she likely finished the #2 bathroom. While in the third bathroom, [the worker] had an un-witnessed event resulting in a lip laceration and multiple dental fractures, and an apparent lapse of consciousness or an amnesic state of approximately one hour.
2. [The worker] subsequently had a fairly well witnessed generalized convulsive seizure on September 28 from the description provided by her boyfriend, . . . , this likely had a focal onset, possibly with some frontal aversive movement in which she was noted to be turning around to "look at something behind her" which subsequently led into a generalized convulsive seizure. She may have had another spell on the same day.

I think it is likely, although unproven, that the first blackout that occurred in the school on July 6<sup>th</sup> was probably a seizure. She had a very minor head injury shortly before, but her behaviour was normal immediately after being hit on the head. Her injuries would seem to be severe for a vasovagal event and I think it is quite possible given the duration of her amnesic state and her apparent confused state when she came to, it is likely that she had a seizure in the school bathroom and this resulted in the lip laceration and dental injuries.

3. [The worker] is neurologically intact at the present time. I did not do a detailed mental status examination, but she was able to present her history in a rational fashion, at least the portion of the history that she is aware of. Her elemental neurologic examination was normal.

5. As far as I can tell, [the worker] has probably had two or possibly three seizures. I would recommend that she be treated with an anticonvulsant agent, particularly if there is going to be some delay in obtaining MRI and EEG testing.
7. From a neurological perspective, [the worker] would be capable of returning to work on October 13, 2009.

[28] Dr. Ahmed's October 15, 2009 progress report states the worker went back to work two days ago, working 5 hours per day. Dr. Ahmed's notes the worker has been advised to continue her work restrictions, including no overhead lifting, no bending, kneeling or twisting, and to avoid climbing stairs or ladders, effective for an additional two weeks. She is fit for modified duties.

[29] Dr. Ahmed's October 29, 2009 progress report notes:

[The worker] continues to experience headaches, nausea, decreased appetite, decreased memory, and insomnia. She feels poorly supported at work and states that her supervisors do not believe that she has a true illness. She is working full-time hours, but states that the previous recommendations about avoiding lifting above her head, avoiding bending, kneeling, or twisting, and climbing stairs or ladders, are not being observed. She has been criticized for missing many days of work.

A Functional Abilities Form completed by Dr. Ahmed on October 30, 2009 states, "Advised to rest from work activities pending results of investigations."

[30] The adjudicator's November 2, 2009 note to file states the worker called on October 30<sup>th</sup> stating she was not feeling well and was trying to call her supervisor to let him know she may not be able to finish her shift. Later that afternoon, the worker's partner called indicating she had another seizure and was now home sleeping.

[31] A November 6, 2009 progress report by Dr. Ahmed reports the worker is experiencing side effects from her medication. He advises the worker to rest and not return to work until her next assessment and she will be titrated to a new medication.

[32] On November 10, 2009 the adjudicator writes a note to file indicating that she spoke to someone with respect to fastening the mirrors properly at the school where the worker was injured. The worker's supervisor returned the adjudicator's call to inform her that he had contacted someone to take care of it. He also stated that he had gone to the school on the evening of the accident and "the mirror was totally shattered into pieces, from tiny slivers to bigger pieces. . . There was no blood at all in that bathroom or anywhere in the hall. All of the blood was in a far bathroom, and it looked like [the worker] may have fell and hit her face and mouth on the toilet."

[33] On November 19, 2009 Dr. Ahmed reports that the worker has been off work for the last week because the work restrictions could not be accommodated. Dr. Ahmed recommends that if her workplace cannot provide direct supervision while she is working, for safety reasons, she would benefit from not working until her medication (Tegretol) level is in the therapeutic range.

- [34] Dr. Ahmed's November 26, 2009 progress report states the worker's medical level is now at the therapeutic range and she has not suffered any seizures for about a month. The worker expressed frustration with her workplace as they told her they would not be responsible for her if she was to have another seizure.
- [35] E-mail correspondence dated December 8, 2009 from the adjudicator to the worker's human resources person and supervisor indicates the adjudicator spoke to Dr. Ahmed who stated that he once again completed a Functional Abilities Form that indicates "no bending, climbing ladders or lifting overhead." If these can be accommodated, the worker can return to work. The worker's supervisor responds that cleaning other areas of the school and all types of cleaning requires a full spectrum of bending, twisting, etc.
- [36] Dentist Dr. Jacob changes the treatment plan on December 9, 2009 as follows: "#11 extraction, then add to existing temporary upper partial denture."
- [37] The adjudicator's December 17, 2009 note to file states she spoke to the worker and confirmed she received information from Human Resources. As of December 17, 2009 the worker will be on leave without pay until after the investigative appointments in Vancouver scheduled for mid-January.
- [38] On January 6, 2010 the adjudicator writes a note to file indicating she spoke to the worker. The worker had an appointment with an ENT specialist (Ear, Nose & Throat) "yesterday". "He informed her that her nose had actually been broken when she was injured in July. She will need nasal septum reconstructive surgery in the future."
- [39] Contained on file is a January 12, 2010 EEG report; however the right side of the fax copy was cut off and not readable. Findings state in part:
- On 2 . . .suspicious sharp waves were noted over the left temporal region. They are most likely . . . (wicket spikes) although one of them was suspicious for epileptiform discharge. . . .
- EKG was regular.
- Impression: This record demonstrates mild intermittent dysrhythmia in the left temp . . . There are also rare suspicious sharp waves in the left temporal region. Most of them are . . . One is suspicious for epileptiform activity.
- [40] An MRI of the brain taken on January 13, 2010 indicates findings of "at least 10 small high T2 signal foci are present in the subcortical and deep white matter of the cerebral hemispheres." No masses are seen; the mesial aspects of the temporal lobes are normal; contents of the posterior fossa are normal.
- [41] Dr. Teal, neurologist, re-evaluates the worker on January 13, 2010. Following are excerpts from his report:

Investigations: An EEG performed at Vancouver General Hospital on January 12, 2010 is positive for sharp waves in the left temporal region. Most of them are highly suspicious of epileptiform activity.

An MRI brain scan was performed at Canada Diagnostics on January 13, 2010. There are approximately ten small areas of nonspecific signal abnormality. She has no tumour.

Assessment: [The worker] has epilepsy. She has what sounds like secondarily generalized epileptic seizures. She does get a warning or premonition and an aura of feeling strange and have some involuntary head movements, followed by what sounds like generalized convulsive seizures.

From a neurological perspective, she is able to work, providing her seizures are maintained under reasonable control.

She does have some persisting impairment of memory. It is quite likely that some of this represents post-concussional effects from her initial seizure and head injury.

[42] Dr. Ahmed reviews Dr. Teal's January 13, 2010 report. On January 19, 2010 he completes a Functional Abilities Form and progress report noting the worker experiences presyncope when bending forward; she is forgetful; she is lightheaded when climbing stairs and lifting overhead. Dr. Ahmed states she can return to work if accommodations can be made. Estimated duration of functional limitations is 30 days.

[43] On January 28, 2010 the board medical consultant reviewed the file and commented on the worker's condition. He concurred with Dr. Teal, "that in retrospect, the injuries suffered by [the worker] were related to the seizure disorder and not caused by the mirror". The medical consultant notes that many people with epilepsy are currently employed; he therefore recommends the worker avoid situations in which more damage could occur as a result of a seizure.

[44] Dr. Tadepalli saw the worker in the Emergency Department on February 1, 2010. The worker was taken to the hospital by ambulance. Dr. Tadepalli reports:

Patient was noticed to have twitching at school and EMS was called. EMS felt patient was post ictal. Behaved strangely. As soon as patient came here [she] was on the phone to WCB complaining about being put back to work. Upset ++ about being back to work. Patient history well documented & well known.

Impression: Neurologic NOS, stress reaction, complex multifactorial, patient very unhappy about work.

[45] Dr. Todd's February 2, 2010 progress report speaks about the worker attending the Emergency Department due to a seizure. He states, "She apparently has had 7 seizures since head trauma while at work in July. Her partner states she seems to be irritable most of the time now." Dr. Todd increases the worker's medication (Carbamazepine) and puts her off work for one week.

[46] Dr. Teal responds on February 5, 2010 to questions from the adjudicator's February 2, 2010 query as follows:

1. I have been asked to clarify or confirm if it is reasonable for [the worker] to work. [The worker] has had a further seizure while on medication. I would recommend that her seizures be demonstrated to be under adequate control prior to once again returning to work. . . . If necessary, additional medications may have to be added such as clobazam 10 mg. hs.
2. [The worker] did not have any history of seizures prior to [the] workplace incident in July. Is it possible that the workplace injury of a mirror falling off a wall in the bathroom and hitting her head could have caused her initial seizure?

It is difficult to know with certainty, but I think that it is unlikely that a minor head injury would have triggered ongoing seizures. From what I could determine from the injury sustained from the mirror, this would appear to have been a minor event.

3. Is it possible that [the worker] would have developed a seizure disorder even if the workplace incident had not occurred?

I think it is quite possible that [the worker] was destined to develop a seizure disorder. Unfortunately, we don't have an eye witness account of the initial injury. It is my opinion that it sounded like the initial injury arising from the mirror was minor or trivial and I was not of the opinion that it was likely to have caused a brain injury that would result in ongoing seizures.

4. [The worker] is very anxious and fearful since the accident. Can anxiety and fear actually trigger a seizure?

Some environmental triggers can provoke seizures. These are most typically issues such as deprived sleep or missed sleep and sometimes flashing lights or strobe lights. Anxiety in and of itself does not typically trigger seizures.

[47] The worker attends Dr. Ahmed on February 16, 2010. Dr Ahmed's progress report states in part:

She has been off work since her last seizure. A note was received from [the adjudicator] at WCB. . . . She has set a return to work date for tomorrow, February 17<sup>th</sup>. She has requested that someone work with [the worker] for at least 4 to 6 weeks until there is more evidence that her

seizures are under adequate control. . . . [The worker] has had no further seizures. She mentioned that she was quite concerned that she had asked to be sent home as was not feeling well prior to her last seizure. Apparently this request was denied. The seizure was witnessed by several children who called an adult for help. She reiterated her concerns about her lack of support at work. . . .

Treatment Plan and Medication: . . . She was given a note for work indicating that the limitations are to be continued [for 30 days] including no overhead lifting, no bending, no twisting or kneeling, and no climbing stairs or ladders.

- [48] An Ambulatory Care Form from Whitehorse General Hospital, Emergency Department states the worker attended at 4:22 p.m. on March 4, 2010. Notes on the form state:

Patient had seizure last night and at 1500 for approximately 1 hour. No LOC (loss of consciousness), fine in the morning, felt sick in the stomach, felt dizzy, blurred vision.

Diagnosis: epilepsy ? anxiety  
Symptoms seem to be more related to anxiety than epilepsy.

- [49] Dr. Todd's March 8, 2010 progress report states the worker had a seizure and went to emergency. His assessment reads, "Recent of ? anxiety, rule out seizure but it does not seem typical for her seizures." Dr. Todd advises the worker to be off work until March 10, 2010 and if further episodes occur, she is to come in immediately. He notes that when she does return to work she should avoid areas that could be dangerous such as ladders or high elevations.

- [50] Dr. Todd reports on March 10, 2010 that the worker had another seizure this week. "She fell onto her partner's lap in the car with her head shaking and her hands as well. It lasted about 12 minutes. Bit the inside of her lip." Dr. Todd's assessment is "Seizure post head trauma."

- [51] The adjudicator notifies the worker by letter dated March 18, 2010 that she can find no objective medical evidence to link the worker's present ongoing symptoms to the workplace accident of the mirror falling off the wall in July 2009. The worker's claim is closed as of March 19, 2010.

- [52] The worker attends Dr. Charles Tai, neurologist, on May 11, 2010. His assessment follows in part:

[The worker] has unusual spells with altered level of awareness, falls and tonic tractions. Her spells could last up to 25 minutes. Her spells are very unusual for new onset seizures. These may be nonepileptic spells triggered by stress.

Her EEG findings were suspicious that nonspecific. I think a repeat EEG will be helpful if her pattern changes. . . . Although I'm not convinced she has seizures, it is advisable to continue with carbamazepine and continue with seizure precautions.

[53] The worker appeals the adjudicator's March 18, 2010 decision to a hearing officer. On August 19, 2010 the hearing officer renders a decision, confirming the adjudicator's decision and denying the worker's appeal.

[54] An Outpatient Clinic report by Dr. Ashkan Shoamanesh and Dr. Manouchehr Javidan, Epilepsy Clinic, Vancouver General Health, dated October 14, 2010 and submitted to the committee on November 4, 2010 provides the following:

Investigations: We have the results of a CT head performed in October of 2009, which was unremarkable. We also have an EEG from January of this year, which shows mild intermittent dysrhythmia of the left temporal region and rare suspicious sharp waves in the left temporal region. One of these was suspicious for epileptiform activity. Repeat EEG was performed on today's visit, which showed a slowed background rhythm bilaterally with intermittent beta and delta rhythms seen predominantly more on the left side. There were no epileptiform discharges seen nor were there any clinical or subclinical seizures.

Impression/Plan: [The worker] is a pleasant right-handed 51-year-old woman who presents with post traumatic focal simple partial seizure with secondary generalization. There are features in her history that may suggest non-epileptic seizures, such as her shaking of head from side to side in a "no-no" fashion prior to her generalization as well as the fact that she apparently has had tonic posturing which can last up to 30 minutes. However, the gestalt of her presentation would strongly favour true epileptiform seizures. Characteristics such as her sustaining injuries with the loss of consciousness, the postictal confusion and agitation and fatigue as well as the dramatic response to the addition of Keppra of her medication regime would strongly support this. Furthermore, her seizures are clearly temporarily linked to this head injury having begun two days following it without any previous indication susceptibility to seizures. In addition to this, [the worker] is suffering from a post concussive syndrome characterized by migraine headaches, extreme fatigue, and cognitive and sleep disturbance. All these symptoms also have a clear temporal relation with the head injury of July 2009.

### **The Worker's Testimony**

[55] The worker testified that she has problems with her memory since the accident. She said on the day of the accident, she was at work by herself. She said school was still in session as the Grades 9 and 10 were doing exams. There was no other person in her section of the school;

however a co-worker had some people in his section. Also, there were 23 children at the school with two “girls” looking after them. Everyone had left and she went to clean the first bathroom. While washing the mirror, it came off the wall and hit her on the head.

- [56] She said she heard someone in her section and wondered who it was because she thought she was by herself. There was a young girl cleaning the classroom to get ready for the next day. The worker told her to be careful as there was glass all over the floor from the broken mirror. She said the girl went with her to look at it and then she let the girl out of the school and locked the door behind her. The worker returned to cleaning and that is the only thing she remembers. She does not remember going to the second bathroom.

### **The Worker’s Partner’s Testimony**

- [57] The worker’s partner said he has a very old “beater” (vehicle) that is not very dependable. The worker does not drive. He and the worker have an arrangement where the worker will call him an hour before she is finished work so he can ensure the vehicle starts. In the winter she calls him an hour before and then again a half hour later to make sure the vehicle is running. He testified that she was to call him at 6:00 on the day of the incident. He said she never misses; she always calls him on time. When he had not heard from her by 6:25, he went to her workplace.
- [58] The worker’s partner said he arrived at the school and banged on the doors trying to get someone’s attention. He felt something was wrong. He said it was little bit dark in the school. He continued around the outside of the building, knocking with his keys on every window. No one appeared to be inside. He said he saw a shadow in the last window so he returned to the front door and his partner was there, along with her cart and she was coming towards the door. It was difficult for him to see clearly because the entrance-way was dark.
- [59] The worker’s partner said when the worker did open the door he could not believe his eyes. Her lips were swollen. He first thought someone was in the school “who did that to her” so he looked around because the worker could not tell him what was wrong. There was glass all over the place from the broken mirror in the first bathroom. He noticed a light was on in the (second) bathroom and when he went to look, there was “blood all over the place”. He said there was an imprint of her hair stamped into the blood on the floor. He told the worker they needed to go to the hospital, however she was concerned about putting her buggy away and setting the alarm. The worker’s partner said she had no idea what she was doing and appeared not to realize that she was hurt. She kept pulling on her lip and thought it was “blood clots” or something. He took her to the hospital.
- [60] The worker’s partner testified that although the worker had difficulty remembering what happened, she did tell him that she went into the second bathroom to check as she felt a “pinch” or something from the mirror hitting her and this is where “the light went out”. She could only remember “stretching over and looking in the glass”.
- [61] He said the worker has “lost a lot in her mind”. When she is asked questions, she will forget 10 or 15 minutes later. Recently she has just started to play Bingo and do it without problems.

He said what most people do not understand is that it is a very stressful thing to not know if you are going to fall and hit your head. He said the worker loves children and she hates to have these things happen while at work. It puts her under a great deal of stress on its own.

[62] The worker's partner reiterated that she has no real recollection of what happened. She can only assume what took place because of what people told her. He said, "this is not the girl I know". She has changed a lot; she has no patience, no concentration, she cannot count. She feels as if she is being called a liar.

### **The Worker's Advocate's Submission**

[63] The advocate submits that the ongoing pain and symptoms the worker is suffering are as a result of her work-related injuries. She further submits that the return to work program set up by the board did not work, it was not safe and subjected the worker to further injury.

[64] The advocate provided several colour photographs of the worker which her partner testified, were taken 4 hours after the worker's hospital visit after the incident. The advocate says that throughout the file the incident is described as a minor head injury, when in fact this was not minor. In addition to the injury to head, the worker suffered multiple serious injuries to her arm, chest and back. She contends that due to the severity of the injuries, the worker's recovery has been prolonged. [We note that although some photographs were provided with file disclosure, the committee was presented with additional photographs at the hearing.]

[65] In addition to having injuries to her head, chest and lower back, the advocate points out the worker suffered serious damage to her teeth and mouth, with potential loss of 5 teeth. It was later determined the worker's nose was broken as a result of the incident.

[66] The advocate says there are conflicting facts on this file with respect to how long the worker was unconscious. She submits the discrepancies arose because, after the injury, the worker's memory has never been the same. It has been impacted quite severely. Every time the story was retold, it was difficult for the worker to do so. She has been totally traumatized by this incident. She submits the medical continuity on the file indicates the worsening of the worker's symptoms. After the accident, the worker suffered daily headaches, insomnia and memory loss.

[67] The advocate submits the trauma the worker suffered happened while she was in the second bathroom, after she looked in the mirror to look at her head, she lost consciousness. It was at this time, she contends, all the injuries took place. The advocate says the worker must have "impacted" a sink, a toilet or both and then fell face first onto the floor. She says this is why they disagree with Dr. Teal's statement that the worker had a minor head injury. She says the board used Dr. Teal's statements, two months after the fact, which relied on inaccurate facts, to deny the worker's claim.

[68] She says throughout the file, the worker's doctors noted functional limitations on bending, stooping, lifting, and overhead work. She asks the committee to note that the worker's occupation is a janitor. It is a heavy job and encompasses all of the limitations placed on the

worker. The advocate submits the Return to Work policies of the board, emphasize a “safe” return to work. She says the worker had multiple head injuries, she was weak, dizzy and taking medication, and the board put her back to work in a job that is heavy in nature and has the very restrictions the doctor had placed on her. Despite the worker’s ongoing complaints, she was returned to a job that she was unfit to do.

[69] The advocate maintains the worker should not have been returned to work. She was put back into an unsafe environment that not only imperiled her own safety but also imperiled the safety of the school children and her co-workers. She was put back into a situation where she had another seizure, in addition to further seizures suffered at the school, where an ambulance needed to be called.

[70] The advocate says the questions they would like answered are:

Is it possible that the seizures were caused either by 1) the initial hit on the head by the mirror? or 2) the trauma sustained in the second injury?

She submits these are important questions because the worker is 53 years old [the worker is 51 years old] and has never had a seizure or seizure disorder in her life, never suffered from headaches or dizziness and none of what is going on right now existed before the bathrooms. [We assume she means before the incidents in the bathrooms.]

[71] The advocate addresses Dr. Teal’s February 5, 2010 reporting [ref. para. 46] and contends that Dr. Teal was not aware of the injury sustained in the second bathroom. She takes exception with Dr. Teal’s comment that the worker was “destined” to have a seizure. She says that although he is a specialist in his area, an expert and a well-educated person he does not know the worker’s history. He saw her twice. The advocate contends it is abundantly obvious he does not know the mechanism of injury. To take a quote by Dr. Teal that the worker was “destined to have a seizure disorder” is akin to saying the worker could have a seizure when she was downtown shopping. It is unscientific, it is speculative and it is guesswork and it detracts from what happened. She says Dr. Teal’s reporting/evidence is absolutely irrelevant to the issue that needs to be decided.

[72] The advocate maintains the worker went into work on the day of the incident in good condition and came out with multiple severe injuries. The confusion on file and the “great debate” went back and forth but did not focus on the second bathroom or injuries sustained there. The advocate says everyone focused on the mirror and the minor head injury. No one ever addressed what happened in the second bathroom. She says it is logical to say that if the mirror did not do it, this did.

[73] The advocate says sections 4, 17, 18, 19, and 39 of the 2008 *Act* apply in this case. She provided excerpts from Terence G. Ison’s, *Workers’ Compensation in Canada*, 2<sup>nd</sup> ed.

- [74] She requests that the appeal committee ask themselves the question, “Is there affirmative evidence of an alternative cause for this seizure disorder or whatever it is? Is there ample, sufficient, contrary evidence on the file to show that something outside of all this is causing the worker’s ongoing symptoms?” She submits there is not.
- [75] The advocate contends the board has neglected the presumption clause in this instance.
- [76] She asked that the committee order an independent medical evaluation if they feel it is necessary to look into the second incident.

### **Relief Requested**

- [77] The worker asks the appeal committee to reverse the hearing officer’s August 19, 2010 decision. She requests that her compensation benefits be reinstated retroactively to March 19, 2010 and ongoing medical investigation and rehabilitation to help her recover from the effects of the work-related disability.

**Issue: Is the worker’s ongoing seizure condition work-related from the July 6, 2009 incident?**

**Answer: Yes**

### **Analysis**

- [78] Section 4(1) of the 2008 Act states:

(1) A worker who suffers a work-related injury is entitled to compensation unless the work-related injury is attributable to conduct deliberately undertaken for the purpose of receiving compensation.

- [79] Section 17 states:

Unless there is evidence to the contrary, an injury is presumed to be work-related if it arises out of and in the course of the worker’s employment.

- [80] Section 19 of the Act states:

Despite anything contained in this Act, when the disputed possibilities are evenly balanced on an issue, the issue shall be resolved in favour of the worker or the dependent of a deceased worker.

- [81] The board originally accepted the worker’s claim for compensation for fractured and missing teeth and a lacerated lip. These injuries resulted not from being hit on the head with a falling mirror, but from the worker falling in the second bathroom and hitting her head and face. The adjudicator and case manager found no causal link to the mirror falling on the worker’s head and her ongoing symptoms of seizure.

[82] Medical reporting indicates no history of seizures or a seizure disorder prior to the July 6, 2009 workplace incident; there is no evidence that she suffered a prior head injury. We find there is no contrary evidence to support a finding that the worker's seizure disorder was caused by anything but the fall in the bathroom. Section 17 applies. We find there is no evidence to the contrary.

[83] Decision-makers concentrated on the mirror hitting the worker causing a "minor head injury"; however they accepted the claim for injuries the worker sustained from falling after she lost consciousness in the second bathroom. Medical documentation indicates the worker sustained severe injuries to her face. The trauma was severe enough to knock out and loosen teeth, break her nose and fracture her maxillary bone.

[84] We find the worker suffered a traumatic injury to her head/face which occurred at work. Dentist Dr. Jacob and other medical professionals reporting bear this out:

- Dr. Huang, July 6, 2009 operative report – "through and through lip laceration" in addition to loose and missing teeth;
- Dr. Jacob reports on July 8, 2009 – "traumatic blow to anterior face"
- Dr. Tadepalli, July 31, 2009 first report – "Head injury. Concussion"
- Dr. Todd, August 21, 2009 progress report – "Headached likely secondary to soft tissue injury and possible concussion."

[85] The board medical consultant provided information from [www.uptodate.com](http://www.uptodate.com) website with respect to seizures. The following is from "Evaluation of the first seizure in adults"

Epilepsy: Less than one-half of epilepsy cases have identifiable cause. It is presumed that epilepsy in most of these other patients is genetically determined. In the remainder of patients in whom an etiology can be determined, the causes of epilepsy seizures include: Head trauma. . .

[86] Although Dr. Teal opines that it is "unlikely that a minor head injury would have triggered ongoing seizures" and "the initial injury arising from the mirror was minor or trivial", and therefore would not result in brain injury and ongoing seizures, he is not referring to the worker's fall which induced the more serious, traumatic injuries. We are confused by Dr. Teal's statement that the worker was "destined" to have seizures. He does not qualify this statement with any medical facts. Again, the worker had no history of seizures before the workplace incident, we can find no other reason why she would begin and continue to have seizures immediately after the work-related incident on July 6, 2009.

[87] Policy EN-01, Arising Out of and In the Course of Employment states as follows:

Definitions:

1. Arising out of Employment: means that there is a causal connection between the conditions of the work required to be performed and the resulting injury.

2. In the course of Employment: means that an injury is linked to a worker's employment in terms of time, place and activity consistent with the obligations and expectations of that employment.

#### Policy Statement

##### 1. Arising Out of Employment

In making this determination the YWCHSB will consider, on a case by case basis, criteria including, but not limited to:

- a) whether the injury occurred when the worker was in the process of doing something for the benefit of the employer;
- b) whether the injury occurred while the worker was doing something at the instruction of the employer.
- c) whether the injury occurred while the worker was using equipment or materials supplied by the employer;
- d) whether the injury was caused by some activity of the employer or another worker and
- e) whether the activity was an accepted or condoned part of the work environment.

- [88] We find that this worker's injury meets the criteria in Policy EN-01, section a), b), c) and e) above. It is linked to her employment in terms of time, place and activity. There is a causal connection between the conditions of the work and the resulting injury. The board accepted that the worker's teeth and face were injured by the second workplace incident yet would not accept the resulting seizure disorder although there is no evidence the worker had the condition before the incident at work on July 6, 2009.
- [89] Based on the balance of probabilities as contained in section 19, we conclude the evidence indicates that it was more likely than not the seizure disorder arose from the workplace incident and the issue should be resolved in favour of the worker.

## Decision

The worker's appeal is allowed. The hearing officer's August 19, 2010 decision is reversed.

1. The worker's compensation benefits shall be reinstated retroactively to March 19, 2010, the date they were terminated.
2. The worker shall be provided with rehabilitation assistance pursuant to section 39 of the *Workers' Compensation Act*, S.Y. 2008.

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

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M. McCullough, Member

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E. Sumner, Committee Chair

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N. Huston, Member