

Workers' Compensation Appeal Tribunal

Decision #179 - Board Direction to Rehear Decision #177

Claim No.: 3000-4449

Date of Original Notice of Appeal: June 8, 2010

Date of Board Direction to Rehear: January 20, 2011

Date of Decision: March 4, 2011

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

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

Documentary Review

Introduction

- [1] This is a rehearing of a decision originally decided by this appeal committee (Decision #177) on December 22, 2010 which denied Issue #1 of the worker's appeal and found that the worker's present condition is not as a result of a work-related injury. With respect to Issue #2, the committee allowed the worker's appeal and found that he was entitled to wage loss from June 22 to June 27, 2009 inclusive as well as expenses in the form of accommodation and travel to Dawson from Whitehorse, return, a per diem for meals and incidentals from June 22 to June 29, 2009 inclusive.
- [2] On January 20, 2011, the alternate chair of Yukon Workers' Compensation Health and Safety Board (the "board") wrote to the appeal committee, staying Issue #2 and directing a rehearing of this appeal pursuant to section 64(8) and 64(10) of the *Workers' Compensation Act* S.Y. 2008 (the "Act"). The members of the board stated the following reasons for staying the decision and recommending a rehearing:

The appeal committee made errors in ordering the board to pay the worker wage loss from June 22 to June 27, 2009 inclusive plus expenses in the form of accommodation, travel to Dawson City from Whitehorse return and a per diem for meals and incidentals for the time period June 22, to June 27, 2009 inclusive.

The grounds for returning Decision #177 are as follows:

1. Violation of Section 63(a) of the Act, in that the appeal tribunal heard, reviewed, and determined a decision not made by a hearing officer.
 2. Violation with Board Policy EN-11 "Injured Worker and Witness Travel" and Board Policy BD-02, "Travel".
- [3] An appeal committee has reviewed the worker's entire record anew. We also considered the relevant policies, as well as the board's January 20, 2011 direction to rehear.
- [4] We will not set out the information contained on the file as this is a rehearing. Background details and evidence from the hearing have been provided in Decision #177.

Analysis/Issues

1. The appeal tribunal ordered payment of travel expenses from Whitehorse to Dawson and two days of per diem for that travel.

- [5] The January 20, 2011 stay states the board has previously paid the worker for travel expenses from Whitehorse to Dawson. The worker was residing in Dawson at the time of the work-related injury and was provided with travel and per diems to return to his residence in Dawson. The tribunal did not comply with Board Policy EN-11, "Injured Worker and Witness Travel." The board did not require that the worker return to Whitehorse from Dawson. He did this of his own choice and not by a request of the board. We erred in this regard.

The committee agrees with the board to the extent that the worker did not contact them before returning to Whitehorse. The worker found the work camp was closed down and his employer could not be found and therefore he returned to Whitehorse.

2. The appeal tribunal ordered that the worker be provided wage loss from June 22 to June 27, 2009 inclusive.

[6] This was not heard by previous decision-makers, i.e., adjudicator, hearing officer and no decision has been rendered on this issue. The worker did not raise this issue at either level at the board and therefore the appeal tribunal ruled on this issue in error.

Conclusion

The committee finds that it did not have jurisdiction to rule on issue #2 respecting reimbursement for time spent in Dawson City in regards to the worker's attempted return to work plan. Therefore, we rescind our decision on issue #2 of Decision #177.

Dated this **4th day of March, 2011** in the city of Whitehorse, in the Yukon Territory.

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

H. Leenders, Presiding Officer

Committee Members:

H. Leenders	Presiding Officer
H. Hermanson	Member
M. McCullough	Member