Workers' Compensation Appeal Tribunal

Decision #184 - Board Direction to Rehear Decision #182

Claim No.: 2002-0471

Date of Original Notice of Appeal: August 26, 2010

Date Notice of Appeal received at the Tribunal: September 21, 2010

Date of Board Direction to Rehear: June 3, 2011

Date of Decision: July 6, 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 Decision #182 originally decided by this appeal committee on May 6, 2011, which found that the worker suffered a work-related injury as a result of vehicle accident in April 2002 because alcohol was not the sole cause of that accident. Decision #182 reversed the hearing officer's decision of August 11, 2010. He found that the worker's knee condition was not the result of a work-related injury.

[2] On June 3, 2011 the chair of the Yukon Worker's Health and Safety Board (the "board") wrote to the appeal committee staying Decision #182 and directing a rehearing of the appeal according to section 64 (8) and 64 (10) of the *Workers' Compensation Act* S.Y. 2008 (the "Act"). The board gave the following reason for staying the decision and requesting a rehearing:

> The Workers Compensation Appeal Tribunal did not properly address a key issue, analyze the evidence, make a decision and provide adequate reasons in accordance with section 64 (7) of the Workers' Compensation Act, S.Y. 2008, on a fundamental issue in this case, on whether the injury of the worker was "work-related", as defined by the legislation, and arose out of and in the course of employment.

The grounds for returning Decision #182 follow:

1) The Appeal Tribunal failed to address and make a decision on a key issue in the case. They failed to address whether the worker was in the course of employment at the time of the accident. This is a necessary legal requirement for eligibility under the Act.

2) Section 3 of the Act requires that a disability be "work-related". Section 117 pf the Act states that "work-related" in reference to a disability of a worker means a disability arises out of and in the course of employment of a worker. This issue was not analyzed, the evidence on this issue was not analyzed or weighed, nor were any reasons given for the conclusion arrived at on this threshold issue.

3) The Appeal Tribunal made an "assumption" that the worker was in the course of employment at the time of the accident but this requires an analysis of the evidence as the basis for a decision.

[3] The appeal committee has reviewed the worker's entire file anew. We also considered the board's grounds for returning the decision, the relevant sections of the *Act*, and any policies pertaining to this appeal.

[4] The committee acknowledges that we erred in not considering the work-relatedness of the worker's disability to the extent we should have and misinterpreted the hearing officer's statement "under the normal frame of reference, the worker would have been "in the course of employment" on a work-related day travel".

[5] 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 #182.

Analysis/Issues

[6] Paragraph 32 of Decision #182 states: The worker was injured when his car went off the Alaska Highway just outside of Whitehorse. The board refused to accept the claim on the grounds that the worker was intoxicated at the time of the accident

It should be restated as follows:

The worker was injured when his car went off the Alaska Highway just outside of the Whitehorse City limits. The board refused to accept the claim on the grounds that the worker was not in the course of employment due to his consumption of a considerable amount of alcohol.

[7] Paragraphs 33 to 37 of the original decision point out a number of anomalies in this case which left us wondering whether the worker was engaged in work-related activities on that day. Following that we made our erroneous assumption as to the hearing officer's statement that the worker was in the course of employment when he resumed his travel home via the most direct route.

[8] The hearing officer actually said that under the **normal** frame of reference, the worker would have been "in the course of employment" on a work-related day travel. However, his action of consuming alcohol in a quantity enough to exceed the legal limit for operating a vehicle safely and legally brought into the claim the aspect of "removing oneself from the course of employment".

[9] The committee recognizes "under the normal frame of reference" that had the worker stopped at the bar and made his phone calls and then continued home, he would have been considered to be in the course of employment. However, the worker removed himself from employment or "out of the course of employment" when he remained at the bar for approximately three hours during which time he consumed a considerable amount of alcohol to the extent where he exceeded the legal limit for operating a vehicle safely.

[10] The committee views both the time frame and the alcohol consumption as positive indicators the worker removed himself from the course of his employment; he had no intention to return to it. By stopping at the bar he effectively saved himself a trip back into town from his home at Marsh Lake.

[11] We conclude the worker was not in the course of employment when the April 7, 2002 accident occurred. Since the accident happened outside the course of employment, any resulting injuries arising out of the accident would also be outside the course of employment. Policy CL-04, Claims Involving Alcohol or Drugs, therefore becomes irrelevant and need not be considered.

Conclusion

[12] The committee concludes the accident in which the worker was involved was not work-related as the worker had removed himself from being in the course of employment by both consuming an excess amount of alcohol and spending almost three hours at the bar.

Decision

The worker's appeal is denied. The hearing officer's August 11, 2010 decision is confirmed.

The worker's knee condition did not arise out of and in the course of his employment.

Dated this **6th day** of **July, 2011** in the City of Whitehorse, Yukon Territory.

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M. McCullough, Member

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H. Leenders, Committee Chair

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H. Hermanson, Member

Committee Members:

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