



WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL

DECISION NO. 874/07

BEFORE: J. Noble: Vice-Chair

HEARING: April 12, 2007 at St. Catharines
Oral

DATE OF DECISION: April 30, 2006

NEUTRAL CITATION: 2007 ONWSIAT 1160

DECISION(S) UNDER APPEAL: WSIB ARO decision dated May 15, 2003

APPEARANCES:

For the worker: Ms. D. Smith, Union Representative

For the employer: Mr. D. Rode, Consultant

Interpreter: None

REASONS

(i) Issues

- [1] The issue to be decided in this appeal is whether the worker should have initial entitlement for her back problems, claimed to be caused by the workplace incident of October 15, 2001; and/or whether the worker should have entitlement for a claimed aggravation of a pre-existing low back condition.

(ii) Background

- [2] On October 15, 2001, the worker's foot slid off a stair as she was ascending the stairs at work. The worker grabbed onto the banister to stop herself from falling.

- [3] The worker called the chiropractor on October 23, 2001, and he told her to rest. The worker then sought medical attention on October 30, 2001 and was diagnosed with a back strain and sciatica.

- [4] A CT scan performed on November 23, 2001 showed a small central disc protrusion at L4-5 and a small right paracentral disc protrusion at L5-S1.

- [5] A MRI was performed on December 28, 2001. The MRI showed a small disc protrusion at L3-4, a small posterior disc herniation at L4-5 and a large posterior and right posterolateral disc herniation at the L5-S1 level.

- [6] The Board concluded that the accident of October 15, 2001 was not a significant contributing factor to the herniated discs, and initial entitlement was denied.

- [7] The worker appeals this decision.

(iii) Medical Evidence

- [8] In a Physician's First Report to the Board dated April 1, 2002, Dr. D. Rivers, family physician, stated that he saw the worker first on October 30, 2001 and the worker indicated that she slipped on steps at work on October 15, 2001 and strained her back area. Dr. Rivers stated that the worker's MRI results showed a lumbosacral disc herniation and the worker had surgery on February 21, 2002.

- [9] The worker was seen at hospital on October 31, 2001 for pain in right leg and right arm. The hospital report stated that the worker had pain since last Tuesday when she jarred herself at work on stairs. The worker complained of pain in the right buttocks with radiation to the leg and ankle.

- [10] The worker was admitted to hospital due to severe back pain on December 17, 2001. A hospital report from Dr. L. Hogg, family physician, stated that the worker had back pain for several months and that it was becoming more severe. Dr. Hogg stated that the worker reported that she had been unable to get out of bed on the day of her hospital admission. Dr. Hogg stated that the worker was completely immobilized as a result of her back pain and would be admitted to hospital for assessment.

[11] In a report dated January 23, 2002, Dr. N. Murty, neurosurgeon, stated that the worker's MRI was reviewed and showed evidence of a moderately large central and right-sided L5-S1 disc herniation. Dr. Murty stated that the worker would benefit from a bilateral L5-S1 microdiscectomy, and he stated he would arrange the surgery. The worker had surgery on February 21, 2002. Dr. Murty performed a "lumbar L5 laminectomy, bilateral L5-S1 microdiscectomy with posterolateral decompression, bilateral foraminotomies". The preoperative and postoperative diagnosis was "L5-S1 disc herniation".

[12] In a report to the Board dated March 4, 2002, Dr. S. Lawrence, family physician, stated:

To begin, I have been the family physician for the above-named patient since December 1994. As far as I am aware she has had no complaints with respect to her lower back for the period of time prior to her accident of October 15, 2001. I have always found [the worker] to be a conscientious individual who seeks medical attention only when absolutely necessary. As a result, she did not immediately present over her low back pain after the accident as she felt that she was capable of treating it with conservative management. She subsequently realized that she was unable to treat her injury on her own and she presented promptly for attention.

[13] In a report dated August 29, 2002, Dr. G. Polegato, chiropractor, stated as follows:

[The worker] had called me on October 23, 2001 with acute back pain resulting from a slip and fall accident that occurred while at work one week earlier. She had told me that she had slipped and fell forward onto her right side while walking up a set of stairs at work. When she called me on October 23, 2001 she had acute lower back pain on her right side with pain referral down her right leg into her calf muscle. I told her that she should start to ice her lower back, she was to rest and to eliminate sitting as much as possible. I just wanted her to try to contain the inflammatory reaction at that time.

[14] In a report dated September 23, 2002, Dr. Murty stated:

[The worker] was seen by myself on January 23, 2002. She presented with acute onset of back and right leg pain, which occurred on October 15, 2001, after she slipped going up a flight of stairs at work. She subsequently was investigated and found to have a large L5-S1 disc herniation. She underwent lumbar disc surgery on February 21, 2002. It is my opinion that the large lumbar disc herniation occurred due to her slippage while climbing stairs at work on October 15, 2001.

[15] The worker was seen by Dr. M. Pysklywec, family medicine, at the Occupational Health Clinic of Ontario Workers (OHCOW). In a report dated December 17, 2002, Dr. Pysklywec stated that in his view, the worker had a work related low back injury. Dr. Pysklywec stated that the worker described a slip at work in which she would have eccentric loading on her lumbar spine, and that her injury could be compatible with her lumbar disc herniation.

[16] In a memo to the file dated February 17, 2003, Dr. M. Bridge, Board Medical Consultant and family physician, stated:

Medical Opinion: The initially submitted medical information & history, noting that the incident on the stairs was very minor, without an actual fall, would not be expected to result in multilevel disc herniations & no medical for 2 weeks. There were a number of discrepancies in the initial reporting of the presenting history & a delay of 2 weeks in seeking medical assessment. The subsequent history as presented to the later physicians was by the I/W & was given as related to work.

[17] In a report dated October 7, 2003, Dr. Polegato stated:

[The worker] has been treated by this clinic off and on for the past 18 years for lumbar facet and sacro-iliac joint pain and stiffness (not since 1996 for lower back pain). Her lower back problems were more related to increased lumbo-sacral muscle hypertonicity, weakness and decreased muscle endurance caused by carrying around a heavy brief case and by sitting for long periods of time. [The worker] had never been treated for any hip pain or leg pain relating to her lower back problems up to 1996 when she was last treated by this clinic for lower back pain.

(iv) Testimony

[18] The worker testifies that she has worked since 1985 for a large government employer as a case manager dealing with clients who are receiving social assistance benefits.

[19] The worker states that she was injured on October 15, 2001 while at work. The worker testifies that at the time of the accident she was going from her office in the basement of the building in which she works up to the first floor of the building. The worker testifies that she was going upstairs carrying a number of files with her right arm. The worker states that the banister was on the left hand side. The worker states that as she reached the top of the stairs she let go of the banister and she was starting to turn to her right onto a small landing to go up the next flight of stairs when the ball of her right foot slipped off of the top stair. The worker states that her right foot missed the step and came down hard on the step below and as this happened she was losing her balance. The worker states that she threw herself forward to stop herself from falling as she was losing her balance. The worker states that she jolted down to the step under the step she was stepping on. The worker states that her whole body weight was jolted onto her right foot.

[20] The worker states that she continued to work after October 15, 2001.

[21] The worker states that she felt pain in her low back for the first time the next day which would have been October 16, 2001. The worker states that she continued to work and she went home at night and rested. The worker testifies that at that time she was in the process of changing jobs and she was trying to get one case load up to date before starting a new case load. The worker states that she also knew that she was going to be scheduled for heart surgery in either December of 2001 or January 2002 and she did not really want to take time off from work and she wanted to get caught up before she left. The worker testifies that in her job, if she were away for two days or a week, the emergency calls would be taken care of but the rest of the work would pile up.

[22] The worker states that there was a witness to this injury. The worker states that the maintenance man Mr. E.K. was toward the bottom of the stairs although she could not see him. The worker states that she made some sort of a noise when she slipped on the stairs. The worker states that the maintenance man Mr. E.K. shouted up to ask her if she was okay and she said that she was fine. The worker testifies that she also complained to co-workers in the days following the injury about back pain. The worker states that at the time of injury she just felt a little uncomfortable but did not have pain.

[23] The worker states that she did not receive treatment from a chiropractor following the injury. The worker states that she did see a surgeon who diagnosed two herniated discs.

[24] The worker testified that prior to October of 2001 she had some problems with her low back in approximately 1992. The worker states that she had a couple of days off work because of low back pain. The worker testifies that this occurred when she had been sitting at a client's home for a long time twisted in a chair. The worker states that when she stood up she felt an aching in her low back and so she took the next two days off. The worker states that she did not seek medical attention but she took Tylenol and laid flat.

[25] The worker was referred to the Employer's Report of Accident to the WSIB with respect to the November 4, 1992 incident. This report stated that the worker experienced back pain five to six years ago and was unable to work for three months. The worker testified that the previous back pain referred to in this report was upper back, shoulder, and neck and headache pain. The worker testified that she has had headaches all of her life. The worker testified that this incident where she took maybe two to three months off, five to six years before 1992 was not a work-related matter. The worker also testifies that her low back was not involved at that time. The worker states that she worked for the same employer five or six years prior to 1992 and she probably received sick benefits through the employer for her absence from work. This was around 1986 or 1987.

[26] The worker testified that she did not participate in any other activities that would have caused her low back injury in 2001. The worker states that her back is pretty good now and that the surgery helped her.

[27] The worker states that she feels that her back injury was caused by the incident on the stairs at work in October of 2001 because she remembered jolting herself and her low back on the stairs and because nothing else had happened to her within the period of six weeks before the back problems came on.

[28] The worker states that the chiropractor Dr. Polegato is a relative of a close friend of the worker's. The worker states that prior to the accident Dr. Polegato would sometimes give her an adjustment mainly because of her headaches.

[29] The worker states that she called Dr. Polegato on October 23, 2001 which was eight days after the incident of October 15, 2001. The worker states that when she called Dr. Polegato she told him that her back was sore and the pain was getting worse. The worker states that she told Dr. Polegato how she had injured herself, and that it had happened while she was walking up stairs at work.

[30] The worker testifies that she believes that she first reported this injury to the employer on November 30, 2001. The worker acknowledges that this was six to seven weeks after the incident occurred on October 15, 2001. The worker acknowledges that in November of 1992, when she hurt her back she reported the incident to the employer the very next day. The worker states that in 1992 she was paid two days lost time by the WSIB for the injury.

[31] The worker states that she knows she should have reported her injury immediately. The worker states that her only explanation was that she wanted to get her work cleared up and get on to her next assignment. The worker states that she knew she was taking time off in December or January for the heart surgery.

[32] The worker states that Dr. Polegato treated her on an unofficial basis for problems that she had prior to October 2001. The worker states that Dr. Polegato did not charge her for treatment. The worker states that before 1996 she believes Dr. Polegato did treat her for low back pain because that is what he suggests in one of his reports, but she does not recall. The worker states that she asked Dr. Polegato if he kept records of his treatment with respect to the worker and she does not think he has treatment records pertaining to her. The worker states that she asked Dr. Polegato for a report for the WSIB and she told him that the WSIB thought that her back injury did not happen on October 15th and that it must have happened before or after. The worker told Dr. Polegato that she needed something to prove to the WSIB that she did not have this same injury before. The report dated October 7, 2003 was the report that he provided to her.

[33] The worker states that after the October 15, 2001 incident, she worked for the balance of week. She states that the pain started getting worse on the day after the incident. The worker states that the first medical attention that she sought was her call to Dr. Polegato.

[34] The worker states that as a result of her conversation with Dr. Polegato, she took a couple of days off work the week after October 15, 2001. The worker states that she took a few more days off work prior to October 30, 2001, due to back pain.

[35] The worker states that on October 31, 2001, when she got to work she could not get out of her car because of the pain in her back and she had to be assisted out. The worker states that her supervisor and/or a co-worker drove her to the hospital on that day. The worker states that she did tell the doctor in the hospital how she had injured her back. The worker states that the doctor prescribed anti-inflammatories and advised her that she had sciatica. The worker states that the doctor in the hospital advised that if she was not better in a couple of days she should call her family doctor.

[36] The worker states that she did not return to work following October 31, 2001 and she called her family doctor on approximately November 5, 2001. The worker states that her family doctor is Dr. Lawrence. The worker states that she does not know if her family doctor filled out a WSIB report but she did tell Dr. Lawrence how the injury happened. The worker states that Dr. Lawrence referred her for a CT scan and advised her to continue with her pain medication.

[37] The worker states that she had a CT scan in November of 2001. She states she had not returned to work due to her back and her leg pain and because she was having difficulty walking. The worker states that she continued taking heavy-duty painkillers.

[38] The worker states that one day in December of 2001, she was in intense pain and she could not even reach the phone. She states that her neighbour came in and called an ambulance and the worker was admitted to the Port Colborne Hospital. The worker states that she was taken to St. Catharines by ambulance and had an MRI of her back on December 28 and was then taken back to the Port Colborne Hospital. The worker states that the date for her heart surgery, which

was to be an angioplasty procedure, was set for January 3, 2002. The worker states that she was still in the hospital and she went by ambulance to Hamilton for her angioplasty and then she was returned to the Port Colbourne Hospital. The worker states that she was in the Port Colborne Hospital for another three or four days and then she was able to go home. The worker states that she had a hospital bed at home and the nurse came in two to three times per week.

[39] The worker states that on February 22, 2002 she had back surgery. The worker states that she returned to work in March of 2003. The worker states that between February of 2002 and March of 2003, she participated in a rehabilitation program for six to eight weeks on an outpatient basis. Following this she had exercises at home to perform. The worker states that Dr. Lawrence followed her care during this period. The worker states that she was cleared to return to work in March of 2003 and that she did want to return to work at that time. The worker states that over the first month she worked reduced hours at her regular job and then after one month she had returned to regular hours at her regular job.

[40] The worker states that during the time period from February 2002 to March 2003, her treatment was not for her heart condition but rather it was for her back condition. The worker states that with respect to her heart condition she takes medication now and carries Nitro.

(v) Submissions

[41] The worker's representative submits that the worker's condition gradually worsened over time after the October 15, 2001 incident. The worker's representative submits that the worker did not report the incident immediately because she was attempting to deal with it herself and to push herself to prepare for a change in jobs.

[42] The worker's representative submits that the report from Dr. Murty dated September 2002 supports the worker's claim. The worker's representative submits that the report from the Occupational Health Clinic of Ontario Workers dated December 2002 also supports the worker's claim. The worker's representative requests that the Tribunal grant initial entitlement as well as LOE and health care benefits.

[43] The employer's representative submits that the worker experienced a minor incident on October 15, 2001. The employer's representative submits that the worker had a major underlying condition that became evident. The employer's representative submits that the evidence indicates there was a non-occupational injury.

[44] The employer's representative submits that it is significant that there were delays in reporting the accident in this case.

(vi) Law and Policy

[45] Section 13 of the *Workplace Safety and Insurance Act* (WSIA) is applicable to this appeal and provides in part as follows:

13(1) A worker who sustains a personal injury by accident arising out of and in the course of his or her employment is entitled to benefits under the insurance plan.

- [46] Pursuant to section 126 of WSIA, the Board advised that the following Policy Packages are applicable to this appeal: #1 (Revision #7) – Initial Entitlement; #107 – Aggravation Basis/SIEF; and #300 – Decision Making/Benefit of Doubt/Merits and Justice.
- [47] Included in these Policy Packages is Operational Policy Manual Document No. 11-01-15 – Aggravation Basis – which provides in part as follows:

Policy

In cases where the worker has a pre-accident impairment and suffers a minor work-related injury or illness to the same body part or system, the WSIB considers entitlement to benefits on an aggravation basis.

Generally, entitlement is considered for the acute episode only and benefits continue until the worker returns to the pre-accident state.

Guidelines

Decision-makers should first determine entitlement in the claim (see 15-02-02, Accident in the Course of Employment). Then this policy is used where a relatively minor accident aggravates a significant pre-accident impairment. The intent is to limit entitlement to the injury that is work-related. If a claim is allowed on an aggravation basis, the claim is paid for the acute episode only (temporary period of time) and entitlement ends when the worker's condition returns to the pre-accident state.

Entitlement is not limited in cases where there is no pre-accident impairment, or the severity of the accident/exposure on its own would have resulted in additional impairment. This is the case where the impairment is temporary or permanent despite the presence of the pre-accident impairment.

Definitions

An **aggravation** is the effect that a work-related injury/illness has on the pre-accident impairment requiring health care and/or leading to a loss of earning capacity.

A **loss of earning capacity** is the difference between the worker's net average earnings before the work-related injury/illness, and the net average earnings the WSIB determines the worker is capable of earning after the work-related injury.

A **minor accident** is one that, in the absence of a pre-accident impairment, would be expected to cause a non-disabling or minor disabling injury or illness.

A **pre-accident impairment** is a condition, which has produced periods of impairment/illness requiring health care and has caused a disruption in employment. (Although the period of time cannot be defined, a decision-maker may use a one to two year timeframe as a guide.)

NOTE

For the purpose of this policy, pre-accident disability refers to a pre-accident impairment plus a loss of earning capacity.

As defined in 14-05-03, Second Injury and Enhancement Fund (SIEF), a pre-accident disability is a condition which has produced periods of disability (impairment/illness/wage loss) in the past requiring treatment and disrupting employment.

A **pre-accident state** is the worker's level of impairment and work capacity prior to the work-related injury....

Example - No pre-accident impairment

Bob suffered a work-related back injury on March 1, 2002, when he fell 10 feet off a scaffold. He was unable to return to his pre-accident employment because of the fall. Bob has a history of back problems and required surgery in 1985. At the time of the accident, Bob was working as a carpenter with no medical restrictions or medical treatment and was only observing proper back care.

Bob sustained a moderately severe back injury on March 1, 2002. He did not have a pre-accident impairment and therefore is entitled to ongoing benefits and services. In this case, there is no limitation of entitlement.

(vii) Conclusions

- [48] On the issue of whether the worker should have initial entitlement for her back problems claimed to be caused by the workplace incident of October 15, 2001, I find for the worker.
- [49] I find that the evidence indicates that the worker injured her back on October 15, 2001 while ascending the stairs at work. I find that the worker had a history of back problems prior to 1996. I find that the evidence, including the medical evidence, establishes that at the time of October 15, 2001 accident, the worker did not have a symptomatic back impairment. I find that the weight of the evidence establishes that the workplace accident of October 15, 2001 was a significant contributing factor to the worker's back problems, including the herniated discs. I find that the worker's back surgery which was performed on February 21, 2002, was required as a result of the workplace accident of October 15, 2001.
- [50] I begin by noting that the worker testified that as she was ascending a staircase at work on October 15, 2001, her right foot slipped off of the stair and she came down hard on the step below as she was losing her balance. I note that the worker testified that she was uncomfortable that day following the accident, and that starting the next day she noticed a gradual onset of back pain. I accept the worker's testimony in this regard. I find that the worker appeared as a credible and forthright witness and I also note that the worker's testimony is not contradicted by other information contained in the Case Record, and is in many regards supported by other information contained in the Case Record.
- [51] I observe that the worker testified that her back pain continued to worsen until October 31, 2001 when she reported to work and could not get out of her car without assistance due to back pain. The worker testified that she was driven to the hospital that day by a supervisor and co-worker. I accept the worker's testimony in this regard as she was a credible witness, and I note that the worker's testimony is corroborated by a report by the emergency department of the Port Colborne General Hospital dated October 31, 2001. I further note that this hospital report indicates that the worker stated that she had pain in her right leg and right arm since the previous Tuesday when she jarred herself at work on the stairs and that she now had pain in her lower back and tingling in her right arm. In my view it is significant that when the worker attended at the hospital on October 31, 2001, she provided a report to the attending

physician that is consistent with the worker's testimony, which report indicates that she injured herself on the stairs at work.

[52] I further observe that in the Physician's First Report to the Board dated April 1, 2002, Dr. Rivers stated that he first treated the worker on October 30, 2001 for pain and stiffness in the lumbosacral area. Dr. Rivers stated that the worker's history of the injury was that she had slipped at steps at work and strained her low back area and had experienced pain the next day. I note that although Dr. Rivers did not submit this report to the Board until April of 2002, he does indicate that the worker's history of the injury is consistent with the testimony that the worker provided at the hearing. I further note that the history that the worker gave was provided on October 30, 2001 when the worker was seen by Dr. Rivers and that this was nine days following the incident.

[53] I observe that the worker had an MRI which was interpreted by Dr. Murty, the neurosurgeon, in his report dated January 23, 2002. Dr. Murty stated that the worker's MRI showed evidence of disc herniation. Dr. Murty performed back surgery on the worker on February 21, 2002 in the form of a lumbar L5 laminectomy. I note that Dr. Murty provided a report dated September 23, 2002 in which he stated that it was his medical opinion that the large lumbar disc herniation occurred due to the worker's slipping when climbing stairs at work on October 15, 2001. I place significant weight upon Dr. Murty's opinion since he is a specialist and is therefore qualified to provide an opinion about the causes of a lumbar disc herniation, and also since he was the surgeon who operated on the worker in February of 2002 and he is thus well acquainted with the worker's medical condition.

[54] I further note that the report dated December 17, 2002 from Dr. Pysklywec supports my finding that the worker's slip at work on October 15, 2001 was a significant contributing factor to the worker's lumbar disc herniations. I place significant weight upon this doctor's report since as a physician he is qualified to provide this opinion.

[55] I am aware that Dr. Bridge suggested in a note to the file dated February 7, 2002 that there was no compatibility between the workplace incident on the stairs and the disc herniations. Dr. Bridge stated that the incident on the stairs was very minor and would not be expected to result in disc herniations. I note that this opinion is in contrast to the opinions of Dr. Murty, Dr. Lawrence, and Dr. Pysklywec, who are all of the view that the workplace incident of October 15, 2001 was the likely cause of the worker's disc herniations and back condition. Having considered all of the medical evidence, I place more weight upon the opinions of Dr. Murty, Dr. Lawrence, and Dr. Pysklywec, than on the opinion of Dr. Bridge, for the following reasons. I note that Dr. Murty, Dr. Lawrence, and Dr. Pysklywec all examined the worker, whereas Dr. Bridge did not. I find that because they examined the worker, Dr. Murty, Dr. Lawrence, and Dr. Pysklywec likely had more information upon which to base their opinions than Dr. Bridge, who did not have the opportunity to examine and interview the worker and who, rather, based her opinion upon the information contained in the Case Record. I further note that Dr. Murty is a neurosurgeon whereas Dr. Bridge is qualified as a family physician. I find that as a neurosurgeon, Dr. Murty is better qualified to provide an opinion on the likely cause of the worker's disc herniation than Dr. Bridge.

[56] I turn now to the matter of the worker's pre-existing back symptoms.

[57] As I indicated above, I find that the worker had a history of back problems prior to 1996. I find that the evidence, including the medical evidence, establishes that at the time of October 15, 2001 accident, the worker did not have a symptomatic back impairment.

[58] I observe that Board *Operational Policy Manual* (OPM) Document No. 11-01-15 – Aggravation Basis – states that a claim is allowed on an aggravation basis where a relatively minor accident aggravates a significant pre-accident impairment. OPM Document No. 11-01-15 states that an aggravation is the effect that a work-related injury has on the pre-accident impairment requiring health care and/or leading to a loss of earning capacity. OPM Document No. 11-01-15 also states that a pre-accident impairment is defined as a condition which has produced periods of impairment/illness requiring health care and has caused a disruption in employment, and although the period of time cannot be defined, a decision-maker may use a one to two year timeframe as a guide. Finally, I note that OPM Document No. 11-01-15 also states that a worker who is working for several years with no medical restrictions or medical treatment following an injury is not a worker with a pre-accident impairment, and is therefore entitled to benefits and services with no limitation of entitlement.

[59] I find that whereas the worker had back symptoms prior to the October 15, 2001 injury, the worker did not have a pre-accident impairment as defined by Board policy. I find that it would not, therefore, be appropriate to award entitlement on an aggravation basis, in the circumstances of this case. I find, rather, that the worker is entitled to benefits and services with no limitation of entitlement.

[60] I note that the evidence indicates that the worker made a claim for a previous work-related accident which occurred on November 4, 1992. The evidence indicates that the worker was off work for two days as a result of lower back pain that came on after a period of extending sitting. I find that the evidence indicates that the worker returned to her regular duties following this November 1992 low back incident.

[61] I further find that the evidence indicates that the worker has not received treatment for low back pain since 1996. In this regard I note that the report dated October 7, 2003 from Dr. Polegato, the chiropractor, stated that he had treated the worker off and on for the past 18 years for lumbar facet and sacroiliac joint pain and stiffness, but that she had not been treated since 1996 for lower back pain. There was, therefore, no treatment for low back pain for approximately 5 years prior to the October 2001 accident. There was, in addition, no lost time for low back pain since the worker took 2 days off in 1992.

[62] I note that OPM Document No. 11-01-15 indicates that a pre-accident impairment is one that requires health care and causes a disruption in employment, within a suggested time period of a one to two year timeframe. I find that the worker did not require health care attention for the pre-existing low back condition for approximately 5 years prior to the October 2001 accident. I further find that the worker did not lose time for low back pain since the worker took 2 days off in 1992, approximately 9 years prior to the October 2001 accident. I find, therefore, that the worker did not have a pre-accident impairment as defined by Board policy.

[63] I find that the weight of the medical evidence indicates that the worker's back surgery which was performed on February 21, 2002, was required as a result of the workplace accident

of October 15, 2001. In this regard I note that the orthopaedic surgeon Dr. Murty, stated in his report dated September 23, 2002, that the worker was investigated and found to have a large L5-S1 disc herniation, for which she underwent lumbar disc surgery on February 21, 2002. Dr. Murty stated that in his opinion the large lumbar disc herniation occurred due to the worker's October 15, 2001 accident when she slipped while climbing stairs at work. I find that the medical evidence of Dr. Murty establishes that the worker's disc herniation was caused by the October 15, 2001 accident, and the surgery was required because of the disc herniation. I find, accordingly, that the medical evidence indicates that the surgery was required as a result of the accident. As I have indicated above, I place significant weight upon the opinion of Dr. Murty, since as a neurosurgeon, and as the surgeon who performed the operation upon the worker, Dr. Murty is qualified to provide this opinion.

[64]

Based on all of the foregoing, the appeal is allowed.

DISPOSITION

[65] The appeal is allowed.

[66] The worker has initial entitlement for a back injury and disc herniation condition, as caused by the workplace incident of October 15, 2001.

[67] The worker has entitlement for the back surgery that was performed on February 21, 2002, which was required as a result of the workplace accident of October 15, 2001.

DATED: April 30, 2007.

SIGNED: J. Noble.