# WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL

# DECISION NO. 900/06

**BEFORE:** J. Josefo: Vice-Chair

**HEARING:** May 5, 2006 at St. Catharines
Oral

**DATE OF DECISION:** July 13, 2006

**NEUTRAL CITATION:** 2006 ONWSIAT 1546

**DECISION(S) UNDER APPEAL:** WSIB decision of Appeals Resolution Officer Ms. F. Pansino, June 8, 2004

**APPEARANCES:**

**For the worker:** Mr. L. Hircsu, CAW, Local 275

**For the employer:** Not participating

**Interpreter:** Not applicable

**REASONS**

**(i) The appeal – issues and factual background**

[1] The worker appeals the decision of WSIB Appeals Resolution Officer Ms. F. Pansino dated June 8, 2004. That decision denied the worker initial entitlement to benefits for a left calf injury said to have occurred on December 19, 2002. The worker also sought loss of earnings benefits from December 19, 2002 through to January 5, 2003.

[2] At the hearing before me, we proceeded only on the issue of initial entitlement. If it was determined that initial entitlement existed, then Board could determine the appropriate level and duration of benefits.

[3] There is little dispute regarding the factual background that led to this claim. On December 19, 2002, the worker, a long-serving employee with the accident employer, was working the overnight shift. At the 1:00 a.m. coffee break time, the worker exited the 15-ton overhead crane that he was operating. He descended from the crane down a flight that he estimated being some 20-30 stairs. Halfway down the stairs the worker testified that he had forgotten his water bottle. He intended to go back up to the cab of the overhead crane and get it. When turning abruptly and lifting his left leg to take this sudden turn, the worker felt an immediate onset of pain in his left calf. He waited a few moments on the stairs and then slowly limped the rest of the way down the stairs.

[4] The worker stated that he reported his difficulties to a supervisor. A taxi was called right to the plant area, so that the worker would not have to walk to the main gate, and the worker was taken to hospital. The worker also described the treatment, such as it was, the he received from the several physicians whom he saw.

[5] The worker was, as he described, quite laid up for the first week following December 19, 2002. He only lost one day at work, however, because he was only scheduled to work one more day prior to the Christmas-New Year plant shut down. After the first week, the worker stated that he began to be able to put a little pressure on his left leg and his condition slowly improved.

[6] Upon his return to work on January 5, 2003, the worker met with the plant nurse. She had not been informed of the incident. The worker returned to his regular duties as a crane operator although, as he testified, he "babied" his left leg initially. There was no discussion about any ongoing effects from which the worker has suffered since January 2003.

**(ii) Analysis and conclusions**

[7] In his submissions, Mr. Hircsu quite correctly identified the issue as being whether a work "accident" occurred on December 19, 2002. Mr. Hircsu submitted that the sole basis for the claim was by way of a "chance event" accident. Accident by way of "disablement" was not being pursued.

[8] In my view, the worker testified in a very candid fashion as to what occurred on December 19, 2002. He gave essentially the same evidence as was summarized by the Appeals Resolution Officer in her decision, although with some differences. There is no doubt in my mind that the worker was a credible, indeed, completely honest, witness. I accept his testimony.

[9] In response to a question of mine, the worker confirmed that there was no slip, no fall, nor other incident beyond what he described. When half way down the stairs that led to and from the crane cab, the worker realized that he had forgotten his water bottle in the crane cab. Thus, he turned abruptly, putting all his weight on the left leg in order to ascend back to the crane cab. When so doing he felt immediate pain in his left leg.

[10] The question, as identified above, is whether this is an "accident" that occurred in the course of employment. The definition of a work "accident" in the *Workplace Safety and Insurance Act* is broad. This remedial legislation is intended to interpreted in an expansive fashion.

[11] Document No. 03-01-01, "Definition of an Accident", from the Board's *Operational Policy Manual* provides the following definition of an accident:

> **Definition of an Accident**
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> **Law** Accident includes:
>
> - a wilful and intentional act, but not an act of the worker
> - a chance event resulting from a physical or natural cause
> - a disablement arising out of and in the course of employment.
>
> **Guidelines**
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> Chance Event — A chance event is defined as an identifiable unintended event which causes an injury. An injury itself is not a chance event.
>
> Disablement — The definition of disablement includes a condition that emerges gradually over an unexpected result of working duties.
>
> **References**
>
> Legislative Authority — *Workers' Compensation Act* Section 1(1)(a)

[12] The definition of an accident includes something that is not accidental but wilful and intentional, and also includes a disablement that arises in the course of employment. The definition as well encompasses the more traditional definition of an accident as being a "chance event resulting from a physical or natural cause".

[13] The above policy document in defining a "chance event" indicates that an injury itself cannot be the chance event.

[14] Mr. Hircsu argued that the worker's awkward motion of placing his weight on his left leg leading to his immediate onset of pain constitutes a chance event, and thus the worker had an accident as defined in the *Act* and Board policy.

[15] At the hearing, the "presumption of entitlement" was also discussed. As has been discussed in a number of Tribunal decisions, the presumption of entitlement deems the question that a decision maker must ask is, "has it been shown that the resultant injury did not arise out of employment", instead of asking whether the injury arose out of employment. Essentially, if something occurs in the course of employment, at work, the incident is presumed to have arisen out of employment and is compensable, unless the presumption can be displaced. For detailed discussions of the presumption clause and how it applies, see Tribunal *Decision Nos. 2000/98R* and *65/01R*.

[16] In this matter it is clear that the incident happened at work. The worker was on the job, albeit about to take a coffee break, when he suffered his left calf pain. Yet, even when applying the presumption clause in this matter, it is my view that the worker's left calf pain did not arise out of his employment, although the incident happened in the course of employment.

[17] There was no precipitating event in this case that caused the injury. As the worker candidly acknowledged, there was no slip, no fall, or anything out of the ordinary that led to his onset of pain. While I accept that the worker did not "simply place his left foot down on a step" as was described by the Appeals Resolution Officer, turning on the staircase to go back up to get a forgotten item is not, in and of itself, a chance event. Turning on stairs, even abruptly, is a fairly normal occurrence. It is not, in my view, an "identifiable, unintended event" but is rather part of a normal, everyday activity. That the worker suffered an injury while performing this normal manoeuvre or activity is not disputed. The policy document provides, however, that the "injury itself is not a chance event."

[18] By way of analogy, in my view it would be difficult to establish for an office worker that reaching for a telephone or for a pencil on one's desk, that leads to neck or back pain, is a work accident. While the incident occurred at work, the simple act of reaching in that way could hardly be stated to be an "unintended event" that led to an injury. Similarly, what occurred to this worker is also, in my view, not something that can considered to be an "accident" for which the compensation system was intended to provide coverage.

[19] After all, the compensation scheme is intended to provide coverage to workers, even if they are at fault in most circumstances, for "accidents" (or chance events) that occur on the job. In this matter, if the worker had slipped or fallen on the stairs, even if so doing had been as the result of his own clumsiness, he would nevertheless have been correctly entitled to benefits. Because the worker (like many of us) is reaching his "middle aged years", with the attendant loss of flexibility that we all wistfully recall from our youth, does not an accident make.

[20] For all these reasons, therefore, the worker's appeal must be denied. The worker does not have entitlement for his left calf injury because no workplace accident occurred on December 19, 2002.

**DISPOSITION**

[21] The appeal is denied for reasons stated herein.

DATED: July 13, 2006

SIGNED: J. Josefo