# Obligation to Report Injuries Trumps Fear of Layoff And WHY Does the WSIB Ignore the Occupational Health & Safety Act

**By:** Gary Majesky, *WSIB Consultant & Executive Board Member*

In our March 2015 newsletter I discussed the law surrounding "An Injury is Not an Accident" because a number of claims were being rejected when members reported they were walking along at work when they fell without any provocation, slip or misstep. Or alternatively, they were descending stairs or ladder when their knee gave out. In these claims there was no accident, just an injury.

## Knee Injury Descending Slippery Scaffold Stairs

To my dismay two brothers recently contacted me after their claims were denied by WSIB. In the first claim the member was descending scaffold stairs when his knee gave out. English is not the members cradle tongue and he required the assistance of an interpreter when he spoke to WSIB. I seem to recall that he mentioned to me that the scaffold was wet, and his foot slipped which triggered the knee injury. However, the Eligibility Adjudicator used a form of Q & A that I believe was misleading, by getting the member to agree there was no traumatic accident. During my investigation, I drilled down a little deeper and the members' evidence confirmed there was a slight twisting injury after his foot slipped, but this was not traumatic. Even though the first link in the chain of causation was a very slight twist, it set things in motion.

## Ruptured Calf Tendon after Walking up Hill

In the other claim a member just completed his shift and upon leaving work he climbed a grassy hill with a 15 degree incline to get to the parking lot. While walking up the hill a calf tendon ruptured without any slip or fall. A claim was registered with WSIB, and once again the Eligibility Adjudicator adopted a point-in-time analysis focusing solely on the fact the member was engaged in a routine activity of daily living e.g., walking. Walking is not considered an accident, even though the member suffered an injury while leaving work. His claim was denied because there was no accident.

When I spoke to the member, I explained the point-in-time analysis was unduly restrictive, because the bomb may have been set at work, but blew upon leaving work. I asked him to describe what he did at work a couple days prior. He explained the work was close to the ground, and instead of repetitively kneeling and squatting, he used a mechanics seat, with coasters, to skitter about the floor. He would get up and down at least 40 times per day, and propel the mechanics seat, by extending his legs, and using his legs to pull himself to the next work area. It seemed obvious to me that his body was unaccustomed to this physical activity, and was likely a significant contributing factor giving rise to the tendon rupture.

The lesson members and stewards must take away is to look beyond a point in time when a disability/injury becomes complete or manifests, and consider what a worker was doing in the hours and days leading up to an injury. And don't discount minor tweaks such as a slight twist or slip when you plant your foot on the ground, or ladder rung, but didn't fall.

## Delayed Registration of WSIB Claims

There are several cases pending where members failed to report their injuries to the WSIB. While they initially reported and documented an incident to the employer, there was a failure to submit a claim to the WSIB. Further complicating matters was the failure to inform the employer they sought medical attention, saw specialists, and might require surgery. Once a worker seeks health care they are obligated to tell the employer and WSIB.

In each instance the member feared a layoff as the work situation was tightening up, and felt a WSIB claim would create unnecessary attention which fostered a claims avoidance behaviour. Unfortunately, layoffs were issued, and the members WSIB claims were contested or deemed untimely. My last month's article explained that injured workers may have re-employment rights which may temper an employer's decision to layoff, affording an injured worker some additional protection.

Section 22(1) and (3) of the *Workplace Safety & Insurance Act* stipulates the time limit to submit a claim:

> 22(1) A worker shall file a claim and soon as possible after the accident that gave rise to the claim, but in no case shall he or she file a claim more than six months after the accident, or in the case of an occupational disease, after the worker learns that he or she suffers from a disease.
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> (3) the Board may permit a claim to be filed after the six-month expires, if in the opinion of the Board, it is just to do so.

## Injuries Must Be Reported ASAP, But Law Says Within 6-months

Under the law once a worker becomes aware of a work related injury the reporting clock starts ticking which obligates a worker to file a claim within 6 months, pursuant to section 22 of the *WSIA*. However, as I explained to one member, that does not mean you have a 6-month grace period to sit on yours hands, <u>because there is an expectation that injuries must be reported immediately.</u>

Board policy also echoes the statutory requirement to file claim within 6 months of an accident. In contrast, the criteria contained in Board policy regarding the time limits to file a claim in disablement

cases (i.e., gradual onsets) provides that the 6 month deadline begins from the date the worker reports the disablement as work-related. This protects workers from the time limits when there is no firm diagnosis, or medical opinion on work causation.

In all claims the onus is on the injured worker to submit and register a WSIB claim and you cannot contract out of this legal obligation because you reported the work injury to the employer or doctor.

## WSIB Ignores Occupational Health & Safety Act

Local 353 has a dispute with WSIB whether their decision makers possess core competencies regarding the *Occupational Health & Safety Act*, typically in connection to whether a work site or suitable work is covered by and in compliance with the OHSA industrial or construction regulations. I find this ironic because WSIB is the organization that certifies joint health and safety representatives in Ontario.

It is illogical for WSIB to feign lack of jurisdiction regarding health and safety issues that arise in a claim, when the Board is mandated to promote health and safety in workplaces. Furthermore, section 3 of the *Workplace Safety & Insurance Act* deals with injury and disease prevention and applies to workplaces governed by the *Occupational Health & Safety Act,* and the employers and workers to whom that Act applies.

The Board is further mandated by section 4 to promote health and safety in workplaces and to promote public awareness of occupational health and safety. The Board educates employers and workers about occupational health and safety to foster commitment to occupational health and safety among workplace parties.

Finally, section 4 also mandates the Board to develop standards for the certification of persons who are required to be certified for the purposes of the *Occupational Health and Safety Act,* and to certify persons who meet the standards, as well as develop standards for the accreditation of employers who adopt health and safety policies and operate successful health and safety programs, and accrediting employers who meet the standard.

Simply, the IBEW disagrees with the Board's explanation that they have no jurisdiction, lack authority or competencies to consider occupational health and safety issues that arise in a workers claim.

In my opinion, reminding callers to "have a safe day" is a hollow gesture if WSIB decision makers lack basic health and safety competencies to inform their decision making, or refuse to exercise their jurisdiction and consider evidence regarding regulatory compliance issues under the *Occupational Health & Safety Act* when deeming a workplace or suitable work safe. Otherwise, call yourself the Workplace Insurance Board.

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# Sweetheart's Dance

## *Saturday, February 13, 2016*

The Sweetheart's Dance will be on Saturday, February 13, 2016 at the Hilton Toronto/Markham Suites located at 8500 Warden Ave.

Included in the ticket price is a buffet dinner with wine, dessert and one complimentary cocktail drink. The cost is $80.00 per couple and $40.00 per single, Apprentices Only cost is $20.00 per single $40.00 per couple. Parking is included and parking passes will be issued with the tickets. Tickets will be on sale after Monday, December 14, 2015 at all 4 union halls.

- Registration at 5:30 pm• Cocktails at 6:00 pm
- Opening Doors at 6:45 pm• Dinner at 7:00 pm
- Raffle draw at 8:30 pm • Dancing: 9:00 pm to 1:00 am

Coffee and sandwiches will be available at midnight.

Please call the hall at 416 510-3530 and register with Jennifer or submit on-line through the LU 353 web page: http://www.ibew353.org. Click on Committees then click on Social Events. Limited seating available!

Ticket sales deadline is January 22, 2016 after which the ticket price increases to $100.00 per couple and $50.00 per single. No Ticket sales at the event.

The hotel group rate will be $139.00 + applicable taxes for this event. Book your room before January 8, 2016 to guarantee this rate. For room reservations please call the Hilton Toronto/Markham Suites directly at 905-415-7608.

Keep an eye on the Social Events page for the latest updates.

**Terry Fischer,**
*Social Committee Chairman*

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### Sweetheart's Dance

*Saturday, February 13, 2016*

Member's Name: _____

Card #:_____

Phone #: _____

# of Adults:_____

Email: _____