Exploitation by Invitation, How Members are Surrendering Their Right to Workers Compensation by Blindly Signing End of Shift Hazard Assessment Forms That No Incident or Injury Happened at Work

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

This month's article is a wake-up call to prevent members from falling into an employer trap that will cause problems when filing a WSIB claim.

Several contractors have introduced a *hazard assessment form* for members to sign off when leaving work. One of these contractors fought the over-50 clause under the Principal Agreement and were successful at arbitration several years ago. Are you getting the picture?

Recently a member dismounted a ladder at work and missed the last rung, which caused his right leg to fall unnaturally. When his foot landed on the ground, he jarred his right knee. There was some initial discomfort which settled soon after. Upon leaving work, he and other workers were asked to sign a form whether they had an incident or accident that day. He reported "no" as he did not have acute symptoms and did not consider this a reportable accident.

When he left work, he did not have troubling knee symptoms, nor were immediate supervisors available to report anything as crews on different floors left work at the end of the work week. The member thought what happened was inconsequential. However, when he got home his knee symptoms increased in tempo, and through the evening, which prompted him to seek urgent care the next day, a Saturday. He told the ER doctor what happened at work the day before (Friday). A WSIB claim was registered, adjudicated, and denied by WSIB as there was no proof of accident, a decision bolstered because he signed a *hazard assessment form* that he did not suffer a work-related incident or injury.

The WSIB decision stated:

The employer has submitted a job hazard assessment form for the shift, where you signed off indicating that you were fit to work before your shift started. It then confirms that you signed off after your shift indicating no incidents or injuries occurred, and no hazards were encountered. There was no mention of your incident or injury, nor any pain associated with your right knee.

Noting that you signed off on the hazard assessment noting no injury occurred [that day] I am unable to establish proof of accident, and I am unable to establish that you suffered a personal injury while in the course of employment.

In my line of work, we call that an admission against your legal interests. Most members are familiar with how to report injuries, notwithstanding some claim avoidance behaviour, because when you attend Safety and Orientation sessions and job box talks, reporting injuries is one of the talking points.

There is no excuse for failing to submit a timely WSIB claim, even if you feel this will result in a layoff or cause workplace friction. The most common excuse "I thought it was minor and would go away."

It's no secret most electrical contractors have a health and safety department and well documented policies and expectations regarding the reporting of injuries. There is also a legal requirement under the *Workplace Safety and Insurance Act* to submit a claim within 6-months of an injury. While the law says 6-months, the expectation to formally report is the day of, or 1-week at most, at which point adverse inferences will be made regarding "proof of accident."

Obviously, some work injures are acute and others involve bumps, scrapes and niggly strains. In the above case, the member suffered some initial discomfort which settled soon after.

The union has argued WSIB claims must be adjudicated on the merits and justice, and evidence of an injury requires a fulsome review of all the evidence. Key issues to consider are whether an accident/injury exists, witnesses, date worker stopped working, delay in seeking medical care, was there a reasonably consistent accident history, was there an outside work intervening event that broke the chain of causation between the work incident and need for medical care the next day.

It's important to bear in mind that many work-related injuries do not become disabling at work, but afterwards, which does not diminish the work-related causal relationship. Using the ticking time bomb analogy, the bomb was set at work, but blows up at-home. In my experience, many injuries do not become complete until hours or days later. That does not mean the chain of causation between the work injury and disability has been broken because you did not have acute symptoms when you left work.

Since 50% of the work injuries members suffer are not the result of single episode trauma, but related to the physical demands of your job, workers often times fail to conceptualize a work injury with respect

to causation. That's one reason WHY these *hazard assessment forms* are a predatory tactic that preys on the good nature of hard-working members.

The union has argued the employer *hazard assessment form* is a mischievous tool that has nothing to do with worker health and safety, nor is it a requirement under the *Workplace Safety and Insurance Act* and policy. Its sole purpose is to get construction workers to make admissions against their legal interests when they suffer an innocuous work-related incident/injury. This is compounded because construction workers are stoic by nature and "ouches" related to bangs, scraps and strains are a regular part of a construction workers daily life. Nor should a *hazard assessment form* displace a robust inquiry that is a required when adjudicating claims.

The fact a member's knee symptoms didn't flare until he left work is not sinister, and to his credit, he sought health care the next day and reported to the attending ER physician what happened. This too is good evidence that must be given weight. However, the member's signature that he didn't suffer a work injury or incident at work does create a problem - Is first evidence, best evidence?

From a practical perspective, if members reported every bump, scrap or ouch at work that didn't cause them to stop work and seek health care, the job site would grind to a halt, and the only thing produced is nuisance paperwork. Perhaps the union should be more aggressive on these jobsites and force mandatory reporting of each innocuous incident or transient injury? I'm certain the employer and general contractors would take notice. Wouldn't this be another black mark that union labour is less efficient than non-union? I may ask Brother Les Carbonaro to add a section in the Stewards Manual "how to put toothpaste back in a tube."

Gary Majesky
WSIB Consultant
Direct Line (416) 510-5251
gary_wsib@ibew353.org

Thanksgiving

Is a Statutory Holiday to be observed on Monday October 11, 2021. If your employer asks you to work on this day, you must be paid double time for working!