



Scheduling Health Care Treatment for Work Injuries

By: Gary Majesky, *WSIB Consultant*



This month I want to address a number of important issues that affect your rights. A common inquiry I receive is when are injured workers to schedule treatment for work injuries? Typically, the member will tell me, ***"I was hurt on the job, so I'm taking treatment during work hours."*** If only it was that simple.

Generally speaking, the expectation is that during the acute phase of injury, your primary focus is on health care and rehabilitation. When an injured worker returns to work on modified duties and participates in an Early and Safe Return to Work (ESRTW), the expectation is that the worker will take treatment after work hours. A frequent complication members experience is they may have child or elder care issues, continuing education, family/work scheduling conflicts, or the treatment facility does not have those hours. In my experience, a good compromise is taking treatment early in the morning, or late in the day, so the amount of lost time isn't that great. That's the pragmatic approach; however, many employers and the WSIB can be inflexible.

Recently I was preparing for an appeal and read a Tribunal decision in which a Vice-Chair addressed the issue of time off from work to attend physiotherapy, and agreed with the reasoning in *Decision No. 622/04* that a worker requiring health care is entitled to benefits to compensate for the loss of earnings from attending to receive such health care. The decision cited was a Local 353 case, where the Vice-Chair ruled:

[14] Section 33 of the Workplace Safety and Insurance Act ("WSIA") stipulates that an injured worker is entitled to "such health care as may be necessary, appropriate and sufficient as a result of the injury."

[15] Section 43 of the WSIA stipulates that a worker is entitled to LOE benefits, less any earnings the worker earns, provided that the worker is cooperating in health care measures and in his early and safe return to work.

[16] Board Policy reflects this stipulation. Document No. 18-03-02 of the Board's Operational Policy Manual states that a worker who has a loss of earnings as a result of a work-related injury is entitled to LOE benefits, as long as the worker cooperates in the early and safe return to work.

[20] In the present case, the worker has testified that, at the outset of his physiotherapy treatment, he asked for and received the latest treatment times available to him on short notice. The treatment times offered to the worker necessitated leaving work early.

[22] My reading of the legislation and the applicable policy is that the worker was misinformed when he was told that he "must" take physiotherapy on his own time. In my opinion, if the manner in which the worker scheduled his physiotherapy treatments amounted to a lack of cooperation in the early and safe return to work process, he may well cease to be eligible to receive LOE benefits for time lost for that treatment.

[23] However, in the present case, I am persuaded that the worker was fully cooperative with the ESRTW process, and that he made a reasonable effort to schedule his physiotherapy treatment so to minimize the amount of lost time, gradually succeeding in that attempt.

En Masse End of Shift Declarations – Member Did Not Have an Accident/Injury

A recent controversy erupted involving a large contractor who floated a new practice by requesting each worker sign a declaration at the end of the shift confirming whether or not they had a work accident or injury. My immediate reaction was this kind of positive reporting will cause problems and harm the interests of members. Leaving aside the fact that there is no legal requirement under the *Workplace Safety and Insurance Act* or its related Policies for this kind of practice, this workplace tactic needs to be challenged head-on.

From my perspective, en masse end-of-shift reporting seems contradictory, because employers and the WSIB expect that workers will report accident/injuries, and have a process in place for doing so. So WHY the need for redundant end-of-shift reporting? Good question, so let's have a conversation.

Under the law, there are two types of injuries (1) Chance events, and (2) Disablements. Chance events are typically single episode trauma with an immediate onset of symptoms (e.g., tripped, stumbled, fell, banged, bumped, lifted, etc.). Disablements are gradually emerging injuries. I have published extensively on this subject in which 50% of the injuries our members experience are of the gradual onset or cumulative trauma variety in which the mechanism of injury is the physical demands of your job. These ticking time bomb cases where the bomb is set at work and blows up later are challenging. Not always does a work injury or disability become complete while at work.

Our recent *Buddies in Bad Times Research Study* also exposed a double standard in our



industry contrary to the employer mantra to report, report, report, because in reality the practice of reporting was discouraged. The social scientists at the Institute for Work and Health discovered in the data that there was a pre-occupation with documenting the training of workers, such as hazard information, safety meetings, working live, reporting injuries, but a disjuncture between the message at safety meetings, and on the job expectations where time and cost pressures exist, and reporting to WSIB was discouraged. Now that's a conundrum.

While I don't condone end-of-shift accident/injury reporting, except when there is an accident/injury, let me also state my position in very clear terms. If you had an accident or injury at work, you should report it immediately, because I find it frustrating having to defend members in proof of accident disputes. I know it's a hassle, but members need to tell a foreman, steward, and/or co-worker(s) that something happened, even something minor. And remember documentation trumps conversation.

The common excuse I hear for not reporting an injury is a fear of layoff. But that is a weak excuse for failing to discharge your legal reporting obligation, because if you don't properly report, your claim will be denied on the basis there is no proof of accident. Take the case of a hard working brother who recently contacted me advising that he was injured in early December 2012, and 3 months later reported his injury to his employer, and belatedly filed a WSIB claim. His rationale for the delay was he feared a layoff. In the end, he got the layoff he feared, and now doesn't have a WSIB claim for his work injury. The member did such a good job hiding his injury; he was not able to prove he had a work related injury.

Signing Employer Forms to Release Medical Information to Your Employer

Recently, a number of members have been pestered by accident employers demanding

they sign legal papers authorizing their treating health care professional(s) to release medical information directly to an accident employer. Let's stop right there. These requests, wrapped in legal obfuscation, are absurd, because every injured worker who elects to claim benefits under the *Workplace Safety and Insurance Act*, for a work-related injury or disease, must consent to disclose functional abilities information. Your consent allows your health professional to release information about your functional abilities directly to your employer in addition to the WSIB. If you employer wants any information regarding your medical status, they can get that from the WSIB. More importantly, your doctor does not report to your employer. There is a well-established system in place for obtaining medical information. First and foremost, the WSIB is the administrative gate-keeper and has the legal authority and tools to manage a workers injury claim, not an accident employer. Too often accident employers blur the line and engage in curbside adjudication and think they are the decisions makers. Even though the WSIB and employers function symbiotically, their roles are very different.

There is however, one exception. Under the law an accident employer has the right to request one Independent Medical Examination (IME) with a physician of their choosing, at their own cost. A worker must cooperate if directed to attend an employer IME. However, heed my caution. I highly recommend that you do not continue seeing an employer health care professional who provided first treatment, because you have a right under the Law to select and choose your own health care provider(s), so don't surrender that right under any circumstance. See you next month, and thanks for the words of encouragement.

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New Members

APPRENTICES

Kristian Bicomong, Robert Buffone, Markian Chabursky, Shawn Chadwick, Randy Dufour, Christopher Genier, Patrick Guglietti, Andres Heitmann, Lucas Helmer, Marcus Jamin, Aleksandrs Jansons, Jeffrey Kailas, Von Khounkham, Dmitry Kosachev, Dillon Lewis, Anthony Manvati, Sean Maule, Robert McMillan, Matthew Murray, Tyler Nattrass, Alexander Peden, Joshua Schiralli, Adam Singh, Jory Thompson

GROUNDMAN

Lloyd Lynch

APPRENTICE HOUSEWIREMEN

Michael Da Silva, Adrian Segreti, Shawn Singh

JOURNEYMAN LINEMAN

Paul Wood

RESIDENTIAL JOURNEYMEN

Tomislav Friscic, Ali Khadem-Sameni

JOURNEYPERSONS UPGRADE

Paul Brizzi, Anthony Carogioiello, Davide Di Nardo, Ryan Potter, Frank Tangheri