



WORKERS'  
COMPENSATION  
BOARD OF BRITISH  
COLUMBIA

Appeal Division: 279-7510  
(Fax Number): 276-3349

November 25, 1993

Mr. George McCarney  
Box 75, R.R. #1  
Deroche, B.C.  
V0M 1G0

Dear Mr. McCarney:

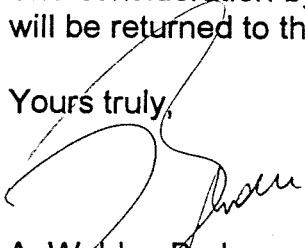
Re: **Claim Number XY90083279**

A panel of the Appeal Division has now reached a decision on your appeal from the Workers' Compensation Review Board finding of July 20, 1992. Enclosed is the decision to deny your appeal with reasons for that decision.

A **medical decision** of the Appeal Division may be appealed to a Medical Review Panel within 90 days of the date of the decision. The enclosed pamphlet explains how to apply for an appeal to a Medical Review Panel.

The consideration by the Appeal Division of this matter is now concluded and your file will be returned to the Compensation Services Division.

Yours truly,

  
A. Weldon Brake  
Assistant to the Registrar  
Appeal Division

AWB:lf

Enclosure

cc: Mr. Sandy Keddie, (worker's representative)  
Ministry of Attorney General  
- Corrections Branch, Mr. W.A.R. Dallamore, (employer)  
✓ Mr. Frank G. Potts, (employer's representative)  
Dr. Finch, (worker's physician)  
Workers' Compensation Review Board

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DECISION OF THE APPEAL DIVISION

#93-1644

November 25, 1993

RE: George MCCARNEY  
Claim No. XY90083279

Panel Appointed:  
Connie Munro  
Derrick Spooner  
Walter N. Peain

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This is an appeal by the worker from the Review Board findings dated July 20, 1992.

The Review Board denied the compensability of what the worker contended was a stress related disability arising out of and in the course of his employment. The evidence in this case is well documented in the Review Board findings and will not be repeated here. Suffice to say that the worker, a Corrections Officer employed at the Lower Mainland Regional Correctional Center (as it then was), was absent from work from February 13, 1990 to September 10, 1990. He alleges that in that period of time he was disabled by what the Review Board described in the following terms:

(The worker's) fundamental claim was that he suffered from stress occasioned by the unlawful actions of his organizational superiors at LMRCC, the activities of his peers as a consequence of these unlawful actions, and his own inability to engender an investigation to reveal these unlawful actions and thus have them dealt with in the justice system.

(The worker) told the panel that his stress thus arose to a significant degree from the injustice and cover up that he saw, and his frustrations at his failure to expose it.

The Review Board concluded that the worker's position was that his problems stem from an incident on March 20, 1986 when an inmate at the LMRCC was assaulted. The worker relies principally on extensive reports provided by a psychologist, Dr. Lesly Merrill, who has diagnosed the worker as suffering from post-traumatic stress disorder arising from various work incidents subsequent to that assault.

RE: George MCCARNEY  
Claim No. XY90083279

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Having reviewed all of the evidence on file and the submissions on behalf of both the worker and the employer on this appeal, we are satisfied that the Review Board findings ought to be confirmed.

Employment within the correctional system may be, by its very nature, stressful. The panel is satisfied on a review of the evidence, that the worker was embroiled in some controversy as a result of, among other things, speaking out regarding inappropriate behavior by other staff. We are not satisfied, however, that the inmate assault that occurred in March, 1986, and the subsequent events arising therefrom caused the worker any disability in February, 1990.

We accept the weighing of evidence and are in substantial agreement with the conclusions set out in the eleven points itemized in the Review Board findings, beginning on page 21. Moreover, we are of the view, after reviewing all of the evidence on file, that the worker's involvement in matrimonial litigation in and about the time of his layoff from work in January, 1990, was the most significant factor in his ceasing work at that time.

The history of the marital dispute is instructive. The worker's spouse commenced a petition for divorce in the Supreme Court of British Columbia on May 11, 1988. A Court hearing was held June 6 and 7, 1988, before His Honour Judge Steeves. Lengthy and contentious litigation ensued. The Order made by Judge Steeves was not entered in the Supreme Court until April 5, 1989. Some relevant terms of the Order were that the worker's wife obtained custody of the couple's four children, she and the children were given exclusive occupancy of the matrimonial home, and the worker was ordered to pay \$1,000 per month spousal and child maintenance commencing on the first day of June, 1988, and on the first day of each and every month thereafter until further Court order.

Another Court appearance occurred May 15, 1989, and an Order of the same date issued for the worker to provide financial and property

RE: George MCCARNEY  
Claim No. XY90083279

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information demanded on the wife's behalf. A further Court appearance occurred May 29, 1989, for the wife's counsel to obtain an order entitling her to obtain pension information, from the Province of British Columbia. That Order was entered June 15, 1989.

The worker, by this time acting on his own behalf, filed a Notice of Motion in the Supreme Court of British Columbia, June 2, 1989, seeking an order that:

...would change the interim maintenance order to allow the respondent reasonable funds.

On July 27, 1989, an order was made by the Honourable Mr. Justice McKinnon that the arrears of maintenance payable by the worker (the Respondent in the proceedings) be set at \$4,600.00, that there be an attachment of his wages in the amount of \$100.00 per month in respect of such arrears, and that there be an additional attachment of the Respondent's wages in the sum of \$1,000.00 per month for current maintenance. Although that Order was made July 27, 1989, it appears from the Court documents that there was a delay in filing of the Order until October 10, 1989. The worker obtained new counsel in September, 1989.

The next document on the matrimonial file is a letter from solicitors engaged to act for the worker. That letter, dated June 4, 1990, withdrew his Answer and Counter Petition. A separation agreement had been entered into between the worker and his wife on May 9, 1990. That agreement states that the "current" arrears of maintenance were in the approximate sum of \$9,000.00 relative to the Orders of Judge Steeves and Mr. Justice McKinnon. The separation agreement cancelled those maintenance arrears. The worker agreed to pay child support of \$125.00 per month, per child or a total of \$500.00 per month. The wife gave up any right to maintenance for herself and any share in her husband's pension entitlement.

RE: George MCCARNEY  
Claim No. XY90083279

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The wife received a conveyance of the worker's share of the equity in the matrimonial home. According to the figures in the separation agreement his one half of that equity was valued at approximately \$26,500. Each of the parties declared as assets 1981 motor vehicles. The husband assumed responsibility for a motor vehicle loan in the approximate sum of \$6,500.00. ...

On June 26, 1989, when he was seeking to have the amount of maintenance paid to his wife reduced, the worker filed a document in the Supreme Court which listed his monthly expenses at \$2,064.80 per month and his net salary at \$1,569.46 per month. The worker listed the various payments he was making to his spouse and stated:

The defendant has had a total residue of funds to live on for six months, being the sum total of \$1,441.37.

We appreciate that it is not uncommon for litigants in maintenance proceedings to exaggerate their economic plight. Nonetheless, it is apparent that the worker was under extreme financial pressure from sometime in 1988, at least until the separation agreement was settled.

This panel has come to the conclusion that the worker's laying off work in February, 1990, was directly related to his failure to obtain a reduction in the maintenance order and the pending attachment of his wages. It is not clear whether or not the attachment of wages actually occurred. Likely it did not as the arrears increased from \$4,600.00 to \$9,000.00 between July 29, 1989, and May, 1990. However, the Order remained a significant threat until the settlement was reached.

This panel is unconvinced by Dr. Lesly Merrill's assertion that the matrimonial dispute in which the worker was involved was of little relevance to the worker's psychological condition at the time he laid off work.

RE: George MCCARNEY  
Claim No. XY90083279

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We find Dr. Merrill's reports of very limited value. They exhibit an almost naive acceptance of the worker's version of events. A letter by Dr. Merrill dated February 8, 1993, responds to the findings of the Review Board panel which suggested that stress related to the marriage breakdown likely contributed to the worker's condition in early 1990. She refers to having seen the worker for 18 sessions from, April 2 to August 19, 1990. She says:

In looking over my notes, I estimate discussion of, or reference to, his marital problems involved less than 8 per cent of total consultation time. If the marital situation was contributing a significant part to his stress symptoms, it is highly unlikely, given the intensity of his distress, that he would spend 92 per cent of his consultation time talking about something else.

She went on to discuss the symptoms experienced by persons following a marital breakdown and said:

Also, the marital problems, although they had been severe at the time of the breakup were less prominent in March, 1990. [The worker] had been living with a new partner, [name omitted], for about a year prior to March, 1990, and appeared to have a stable, supportive, harmonious relationship with this person.

Those statements ignore significant events in the worker's life during this period. Affidavits filed July 24, 1989, in the maintenance proceedings by both the worker and the woman he was residing with, indicate that the relationship between them was a matter of contention in the legal proceedings. That, and the extensive affidavit material filed by the worker and on his behalf, indicates he was under considerable financial and emotional pressure as a result of the protracted legal battle surrounding the custody, maintenance and property issues. None of the affidavit material refers to the 1986 work incident and sequelae as a source of ongoing difficulty.

RE: George MCCARNEY  
Claim No. XY90083279

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If Dr. Merrill's discussions with the worker did not reveal to her the protracted acrimonious litigation in which he was actively involved during all of 1989, one would have to question whether she engaged in any searching inquiry of stressors in the worker's life other than those connected to the 1986 work incident.

For all of the foregoing reasons we agree with the conclusion of the Review Board that the factors which caused the worker to lay off work in February 1990, assuming they were disabling, did not arise out of and in the course of the worker's employment.


For the reasons stated the panel has rejected the worker's contention that he suffers from a stress-related disability arising out of and in the course of employment. As indicated in the Appendix to this decision, the Governors' policies are ambiguous on the question of whether and to what extent disabilities allegedly caused by work stresses are compensable in any event. In fact, there is some lack of clarity in the policies on the broad issue of compensability of psychological conditions - be they stress-related or not. Because of this lack of clarity and because there is some latitude in the way in which the Act may be interpreted as regards the compensability of psychological conditions including stress-related conditions, the Chief Appeal Commissioner has concluded that it is appropriate to refer this broad issue to the Governors' attention. The Appendix to this decision expands upon the reasons for such a referral and on the need for a comprehensive and coherent policy regarding the compensability of psychological conditions.

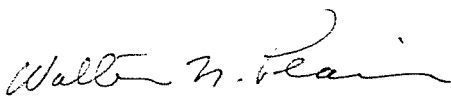
RE: George MCCARNEY  
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The panel decided not to postpone its consideration of this claim until the Governors have fully addressed the questions raised by the referral. In considering the worker's appeal, the panel has considered only the issue of causality as it arises out of the evidence. In view of the panel's conclusions on this issue, it was not necessary that the panel address the broader issues concerning the interpretation of the Governors' policy.

  
Connie Munro  
Chief Appeal Commissioner

  
~~Derrick Spooner~~  
Appeal Commissioner

  
Walter N. Peain  
Appeal Commissioner

CM:lf