



July 19, 2019

Att: Janet Patterson

Re: Worker's Compensation Review

Dear Ms. Patterson-

As a Union Business Agent for a small construction local I find myself acting regularly as a Worker Representative in WCB cases and have encountered many instances where WCB seems to be more concerned about their own finances or those of the employer than they are about the worker. For the sake of brevity and for the purposes of this review I will focus on the two that I feel have caused the most hardship for the injured workers I have advocated for.

The first issue I would like to address pertains to the concept of light duty or gradual return to work programs.

Construction is a very physically demanding occupation and employers in this sector are highly motivated to prevent lost time injuries. As a result, I see many injured workers pressured to return to work on light duties before they are physically ready to do so. Due to the nature of the industry, this practice often leads to the worker re-injuring or further injuring themselves at a time when they should be healing.

Depending on the size of the employer, it can be very costly for them to incur a lost time injury, so workers are often pressured into returning to work on "light duty" before they are medically ready. This is frequently done against the recommendation of the worker's physician and almost always without proper consultation with, or supervision by someone who fully understands the jobsite and how it interacts with the worker's injury. A good understanding of potential tasks involved, of what the limitations mean and how they relate to body mechanics and the tasks at hand is rarely achieved, and the frequent result of this is that the worker is injured further and/or subjected to ridicule by supervisors or co-workers who do not understand the nature of the injury and what it will take to heal. As it is the mandate, mission and goals of the WCB to assist the worker in their recovery, rehabilitation and safe and timely return to work, this process needs to be reviewed carefully to ensure the mandate is being met.

When a construction worker is injured, they are often at the end of their rope physically, mentally and emotionally. Construction workers regularly put in 50, 60 or even more hours per week at physically demanding tasks, usually waking up at 5:00 or 5:30 in the morning in order to be at work on time and sometimes working night shifts or a combination of nights and days



in extreme weather conditions. While workplace injuries are usually related to a specific incident, the reason for the occurrence can often be traced back to inattention due to fatigue or just to the worker's body reaching a breaking point and failing. Failure to take this into account when returning the worker to light duty can lead to longer recovery times, poor decisions around ergonomics and body mechanics and ultimately to the exacerbation of their current injury or even a new and separate one. **Whether the worker is fatigued and just needs to rest for a period of time should always be the first consideration in whether to return a worker to the jobsite after an injury.** Hours worked, duration of the job, nature of the injury and age of the worker should all be considered when making this decision.

Once the decision has been made to clear the worker for a return to light duties it is important that everyone involved has a clear understanding of the nature of the injury, the worker's limitations and how that relates to the available tasks. In the absence of clear and relevant instructions, workers and supervisors will almost always push the limits. It is not enough to tell a construction worker and their foreman that the individual is unable to stoop, bend, climb ladders or lift over 15 lbs. and stretch periodically. Return to work plans must be much more specific and need to be developed by a person with in-depth knowledge of the light duties provided and how they will interact with the worker's injury. A better example might be; "Can lift and carry a maximum of one 8'-2x4 at a time, limit walking to 5,000 steps per day on level ground and stretch hamstring on two-hour intervals". In this example it might also be beneficial to include specific instructions on proper lifting techniques, i.e. "bend to kneel on left knee, lift 2x4 to shoulder then stand up." This may seem like a lot of detail, but as workers often perform tasks dozens or even hundreds of times in a day, it is important to acknowledge that improperly performing a task that is related to the original injury over and over again in the course of days weeks or months can be very detrimental to proper healing. **Light duty or gradual return to work plans should always be developed by a licensed OT, Physio or Kinesiologist and should relate directly to the tasks the worker is being asked to do.** A professionally generated job specific light duty RTW plan will prevent workers from unknowingly performing tasks that are detrimental to their wellbeing as well as to provide supervisors with clear expectations of what the individual can reasonably be expected to do. This will also help to ensure a recovery free of bullying and harassment.

Finally, once a professionally developed plan has been implemented, it is important that the worker and supervisor are held accountable for its' proper execution. **Any supervisor, safety**



officer or co-worker who is tasked with overseeing an injured worker's RTW program should be trained in the proper execution of the individual's RTW plan and how to watch for workers who are exceeding their limitations or not following the developed plan. It also needs to be clearly articulated to the worker and the supervisor that the injured worker's primary task is to heal from their injury, not to ensure that production is maintained.

It is only through the proper and careful execution of these steps that WCB can be assured that their mandate of assisting the worker in their recovery, rehabilitation and safe and timely return to work is being met.

The second issue I would like to address is related to the Voc. Rehab and retraining process as it pertains to relocation.

Due to the heavy physical nature of the industry, many seriously injured construction workers are required to undergo retraining in order to maximize their post injury earnings. If the worker resides in a rural or low population area, there are often limited career opportunities locally and it is suggested that the worker train for a job they will be required to relocate for.

While relocation may be appropriate for some workers, in many cases it can result in a loss of financial, emotional and familial stability at a time when the injured worker is already significantly compromised in these aspects of their life. Small towns are more affordable to live in, and social and familial networks built up over years or even generations contribute significantly to an individual's physical, mental, emotional and financial wellbeing. Housing is more affordable in small towns and social support networks such as carpooling, co-parenting and intergenerational supports all contribute to an individual's wellbeing. In many cases there are two or even three incomes in the household, and many workers who have spent their entire lives in a rural area have built their social support systems around family, friends and community. Requiring an injured worker to move to a bigger centre can strip them of all these supports, increasing cost of living and impacting the psychological and physical health of an individual that is already compromised due to the toll that the work injury has taken on their lives.

While relocation can be a viable option for some workers, **all mitigating factors should be considered prior to the development of a Voc Rehab and training plan that requires the worker to relocate.** These factors need to account for the worker's desire to relocate, housing



costs in the current and future community, length of time living in the current community, family supports in the current community, marital status and related court orders, other incomes in the household that may be affected by relocation, dependents, etc. In short, it must be recognized that it is not enough to simply mitigate long-term earning capacity. The worker is not an island, and any attempts to relocate that individual against their will can have significant psychosocial and financial consequences to that worker, their family members and their community.

In the event that it is not deemed to be appropriate to relocate the worker, there must be some allowance to mitigate for this. This may require the board to allow the worker a more extensive retraining plan to focus on a career that pays more than their current occupation (but is reasonably available in their current area of residence) or it may mean that the board has to relax their restrictions on business startup support. The board may even have to consider training the worker for a career with lower wages than previously and then allow for a loss of earnings payment to make up the difference. While these scenarios may result in higher retraining costs for some individuals, the important principle is that the injured worker should not be required to incur a deterioration in their lifestyle or family in order to meet the board's mandate to mitigate the worker's long-term loss of earning capacity.

Thank you for the opportunity to share these thoughts with you.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Miller".

Mark Miller
Business Agent
CMAW Local 2300.

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