

Worker Advocates Raise Concerns Over "Deeming"

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Severely injured workers in Saskatchewan receiving heavy doses of pain medication are being rushed back to work by the province's workers' compensation board before they're ready, injured worker advocates argue.

Two such advocates in the province, Tom Brown and Jim Taphorn, say they are taking up the issue with the provincial government and the Saskatchewan Workers' Compensation Board (WCB) and have achieved mixed results. Certain appeals to the three-member WCB Board have been successful, but the WCB has not revised its policy overall, Taphorn says.

At issue is the WCB's practices related to the "deeming" of claim recipients who are taking pain medication — opioids such as morphine and oxycodone — for work-related injuries.

Deeming is a common element in many compensation boards' return-to-work programs. For instance, an injured worker may not be able to return to his former position, but he may be declared physically capable of doing other work. If such work is available and the injured worker refuses to take it, his wage-loss benefits could be reduced.

Prematurely deeming a heavily medicated worker fit for duty has financial and workplace safety implications, argues Brown, who has represented claimants in appeals before the WCB Board.

Someone who is heavily medicated may experience impairment sufficient enough to endanger his own safety or that of others, Brown argues. “Aside from the fact that they’re heavily medicated, they’re severely injured,” he adds.

Such a worker could take an unjustified financial hit, through a reduction in benefits, if he refuses to work, Brown charges.

Five workers win appeals, benefits restored


In the last year, at least five separate heavily medicated workers who had been deemed ready to work have won WCB appeals, resulting in full restoration of their benefits, Brown states. In three similar cases, he adds, appeals are now being prepared, which may ultimately result in costly back payment of benefits.

The WCB disagrees with the argument that it is incorrectly deeming heavily medicated workers as fit for duty, says Mitchell Scott, executive assistant to WCB chief executive officer Peter Federko. “Any worker who is not satisfied with [a] WCB decision, about his or her functional impairment and earning capacity, can appeal to have the decision reviewed,” Scott adds.

Should a claimant experience impairment caused by medication prescribed for a work-related injury, this is accounted for in WCB decisions about earning capacity and functional impairment, Scott reports.

Brown says he’s frustrated that even when medicated workers have won their WCB appeals, the decisions don’t directly acknowledge that impairment could be a safety concern.

In one such case, a former insulator who had been deemed capable of performing light to moderate work had that finding overturned. In the decision last March, the WCB Board reversed the deeming and noted the worker had not achieved “reasonable control” over his back pain. The worker had stated the effects of his pain medication rendered him totally disabled, an argument that the board did not weigh in on.

In a July 10 letter to Saskatchewan Advanced Education, Employment and Labour Minister Rob Norris (the minister also responsible for the WCB), Brown suggests the WCB is showing a “wanton and reckless disregard for the lives and safety of workers.” He has not yet received an official response.

Lisa Danyluk, a communications consultant with the ministry, says a formal reply to Brown is forthcoming. The ministry, she adds, is deferring comment on the subject of heavily medicated workers to the WCB.