

Workers' Compensation Board of Nova Scotia

Issues Identification Paper

Chronic Pain: Causal Connection to Original Compensable Injury

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Introduction

In general, on an annual basis, the Workers' Compensation Board adjudicates approximately 32,000 claims and, of these, only 2% are appealed. Of these 32,000 claims approximately 23,500 result in no time-loss from work. The remaining 8,500 claims receive short-term benefits and, of these, approximately 1,300 go on to receive long-term benefits (including Permanent Impairment Benefits and/or Extended Earnings Replacement Benefits).

To adjudicate this large volume of claims, the Workers' Compensation Board relies on the framework provided by the *Workers' Compensation Act* (the *Act*) for determining coverage and entitlement to benefits. While the *Act* provides broad direction, the WCB Board of Directors may also approve policies to provide more detailed adjudicative criteria to guide decision-making. To access copies of the *Act* and Workers' Compensation Board policies, go to www.wcb.ns.ca under Policy & Legislation.

At various points in the policy development process, the Board of Directors consults with stakeholders to seek their input on a particular policy issue. The Board of Directors has determined that a "causal connection between chronic pain and an original compensable injury" is a major policy issue and as such the Workers' Compensation Board will use a two-staged policy consultation approach. The first stage will provide stakeholders with an opportunity to identify issues related to this policy. The second stage will provide stakeholders with an opportunity to comment on a draft policy. For details on the policy consultation strategy, go to www.wcb.ns.ca. A link is posted under News Room on the left hand side of the page.

This issues identification paper is the kick-off to the first stage of the policy consultation process. It is intended to help readers understand how the Workers' Compensation Board of Nova Scotia is satisfying the regulatory requirement for a causal connection between chronic pain and an original compensable injury, and the issues that have been raised with regards to this requirement.

We hope this paper encourages thought-provoking discussion and leads to practical suggestions for creating Workers' Compensation Board policy respecting a causal connection between chronic pain and an original compensable injury. We encourage all Nova Scotians to provide comments.

You are encouraged to consider the material in this paper and provide your comments in writing by June 4, 2007 to:

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The comments we hear from Nova Scotians will be considered as we work to draft a policy respecting the causal connection between chronic pain and an original compensable injury.

This paper also is available at www.wcb.ns.ca under News & Events.

Deadline for Comments: June 4, 2007

Background

In 2006, the Workers' Compensation Board adjudicated 365 new chronic pain claims.

What is chronic pain?

According to the American Medical Association, Guides to the Evaluation of Permanent Impairment, Fifth Edition (AMA Guides), chronic pain is recognized as a condition that is multi-causal in nature, and involves complex emotional, psychological, behavioural, social and cultural factors (p.566). To understand chronic pain, it is useful to consider the definition of acute pain. Acute pain is pain experienced immediately following an injury, it has a rapid on-set, severe symptoms and a short course. Acute pain is protective, and in most cases, caused by an easily recognizable source such as a fractured bone. When a fracture occurs, acute pain tells us to protect the injured body part. In contrast, chronic pain is not a protective response to an injury. According to the AMA Guides, chronic pain is difficult to assess because there is often no active disease or unhealed injury.

Section 10A of the *Act* defines chronic pain as pain:

- (a) continuing beyond the normal recovery time for the type of personal injury that precipitated, triggered or otherwise predated the pain; or
- (b) disproportionate to the type of personal injury that precipitated, triggered or otherwise predated the pain

and includes chronic pain syndrome, fibromyalgia, myofascial pain syndrome, and all other like or related conditions, but does not include pain supported by significant, objective, physical findings at the site of injury which indicate that the injury has not healed.

The *Chronic Pain Regulations* (the Regulations) establish the rules regarding eligibility, assessment and compensation for chronic pain. Specifically, section 4 of the regulations state that worker is entitled to an assessment to determine eligibility for benefits and services if the medical evidence establishes that the worker's chronic pain is causally connected to an original compensable injury.

Both the *Act* and the Regulations require a connection between chronic pain and an original compensable injury.

Specifically, the definition of chronic pain in the *Workers' Compensation Act* states that a personal injury must have precipitated (in other words, caused), triggered or otherwise predated the pain. Chronic pain is pain that extends beyond the usual healing time for a compensable injury, or it is pain that is

disproportionate to the usual pain associated with a compensable injury. This means that chronic pain is not a compensable condition in and of itself, it must be connected to an original compensable injury.

The regulations state that a worker is entitled to an assessment to determine eligibility for benefits and services if the medical evidence establishes that the worker's chronic pain is causally connected to an original compensable injury. In this case, a casual connection is stated explicitly in the regulations. In both the definition of chronic pain and in the Regulations, chronic pain must be connected to an original compensable injury. However, given the complex and multi-causal nature of chronic pain, establishing a causal link can be challenging.

Why is the Workers' Compensation Board considering a policy?

On November 29, 2006 the WCB Board of Directors, hosted a consultation session to provide stakeholders with an opportunity to share issues and concerns respecting policy priorities for 2007. During this session, employers indicated that a causal connection between chronic pain and an original compensable injury is a high priority policy issue. As a result, the Board of Directors agreed to review this issue as part of its 2007 policy agenda.

Throughout 2005-2006, the Workers' Compensation Board had a number of conversations with stakeholders regarding the approach to chronic pain and potential opportunities to enhance the adjudication process. Based on these discussions, it became evident that there is a need for formal adjudicative criteria that clearly articulate how the Workers' Compensation Board establishes the causal connection required by the Chronic Pain Regulations. Since causal connection to the original compensable injury is the sole eligibility criterion for determining entitlement to an assessment for chronic pain benefits and services, it is important that clear adjudicative guidelines are accessible to all involved in the Workplace Safety and Insurance System.

In 2002, a Workers' Compensation Review Committee conducted a comprehensive review of the workers' compensation system. The committee looked at a number of areas where service improvements could be made, and transparency could be enhanced. In the final report (Dorsey Report), the Committee states:

Claims adjudication is the board's most important responsibility. Fair decisions and fair and reasonable treatment of workers and their families requires fair rules, fair processes and fair-minded individuals making decisions...

Consistent decision making is a desired goal. An informed person should be able to confidently predict the decision of the board regardless of the case worker or manager assigned to the claim (p. 177).

In support of this statement in the Dorsey Report, the purpose of developing a causal connection policy is to:

- (a) Provide clear guidelines that promote consistency, accuracy and accountability in decision making;
- (b) Improve communication between case workers, injured workers and employers; and
- (c) Enhance transparency for the Workplace Safety and Insurance System stakeholders.

Adjudicating Chronic Pain

The Claim Process

To begin, it is important to highlight that chronic pain does not occur at the same moment in time as a workplace injury. Eligibility for an assessment for chronic pain benefits and services first requires a compensable workplace injury. For a claim to be accepted, section 10(1) of the *Workers' Compensation Act* states that an injury must have been the result of an accident that:

- (1) arose out of; and (2) in the course of employment.

Generally, “arose out of employment” means that the activity giving rise to the accident is connected to employment. In other words, the accident must be caused by a hazard which results from the conditions or obligations of employment. To have occurred “in the course of employment” an accident must have occurred within the time of employment, usually on the employer’s premises, and while performing work duties or some other activity connected to work.

Further, section 10(4) of the *Workers' Compensation Act* establishes a rebuttable presumption in relation to section 10(1). A rebuttable presumption means that an assumption is made, unless someone comes forward to contest it and prove otherwise. Section 10(4) states:

Where the accident arose out of employment, unless the contrary is shown, it shall be presumed that it occurred in the course of employment, and where the accident occurred in the course of employment, unless the contrary is shown, it shall be presumed that it arose out of the employment [emphasis added].

It is important to highlight that this legislated presumption applies to the accident, and not the injury or subsequent complications. Essentially, section 10(4) applies when there is an objection respecting the acceptance of a claim. For example, if a worker files a claim for an injury arising from a fist fight at work, the

employer may wish to object on the grounds that the accident was not work related. According to section 10(4), if the worker establishes that the accident happened during work hours (in the course of employment) then an assumption is made that it arose out of employment. Section 10(4) requires the employer, in this case, to prove that the worker took himself out of employment and that the accident did not arise out of employment.

In the context of chronic pain, section 10(4) does not apply for two reasons: (1) the presumption applies to whether or not the accident is work-related, not to the subsequent injury caused to the worker; and (2) chronic pain must be connected to an injury that was caused by a work related accident. The sequence of events looks like this:

- (1) accident arising out of or in the course of employment
- (2) personal injury flowing from work-related accident
- (3) chronic pain caused by, triggered by, or following a personal injury

Causal Connection

The AMA Guides identify multiple causes of chronic pain including biological, psychological and social factors. Sometimes chronic pain occurs after a compensable injury. However, the apparent timing between the original compensable injury and chronic pain does not establish a causal connection. To conclude that chronic pain is causally connected to a compensable injury simply because the injury occurred before the onset of chronic pain, is not sufficient to establish a causal connection. This apparent association is based only on the timing of events. Establishing that chronic pain developed after a compensable injury is not the same thing as establishing that chronic pain developed because of a compensable injury. The timing of chronic pain is just one of many relevant factors to be considered.

So what is a causal connection? Is it defined anywhere? Causal connection is not explained in either the *Workers' Compensation Act* or the Chronic Pain Regulations. The concept of a casual connection has been considered by the Nova Scotia Court of Appeal and is often referenced in the decisions of the Workers' Compensation Appeals Tribunal. The Court expresses causal connection in terms of "common sense" or "logic". Logic means that a conclusion flows from the evidence presented, and common sense means applying sound judgment to the situation or facts.

In applying common sense or logic, the Workers' Compensation Board of Nova Scotia relies on the medical information provided by treating physicians to establish a causal connection between chronic pain and an original compensable injury. Establishing a causal connection requires gathering medical evidence and supporting clinical rationale that leads a decision maker to a "common sense" conclusion.

Currently, the Workers' Compensation Board adjudicates chronic pain claims using informal causal connection criteria. Adjudicators and Medical Advisors consider the following:

- the original compensable injury
- pain beyond normal recovery time
- diagnosis of chronic pain
- evidence that the pain is continuous
- evidence that the pain is consistent with a compensable injury
- evidence that the pain is inconsistent with organic findings
- non-compensable conditions or pre-existing conditions that explain the pain
- medical opinion that the pain resulted from a compensable injury & rationale to support that conclusion

It is important to note that the evidence need not establish anything to a scientific certainty. Chronic pain does not allow for that kind of precision, and causation is not a scientific concept. A policy, that outlines the evidence to be considered, would enhance consistency, accountability and transparency.

Stakeholder Issues

The Workers' Compensation Board of Nova Scotia is committed to providing workers, employers and other interested parties with opportunities for input into the development of new policies. In the past, stakeholders have had an opportunity to share issues and concerns respecting a causal connection between chronic pain and an original compensable injury. During that process we heard the following concerns:

Some employers indicate:

- It is difficult to establish a direct causal link between the diagnosis of chronic pain and a compensable injury
- The evaluation of chronic pain does not involve a thorough and objective analysis of the existence of pain or its root causes
- There must be medical linkage of chronic pain to the original accident(s)

The Workers' Compensation Board understands this to mean that due to the complex multi-causal nature of chronic pain it is difficult to determine whether it is due to the injury by workplace accident.

Injured worker associations indicate:

- The causal link is established in s.10(4) - the presumption is the injury occurred in the workplace, unless the contrary is shown

- Any attempt to deviate from 10(4) will the destroy foundation upon which workers' compensation is built

The Workers' Compensation Board understands injured workers to be saying that the presumption in section 10(4) flows from the accident to the injury to medical conditions following the injury. In other words, once a claim has been accepted, medical conditions, including chronic pain, arising after the date of the compensable injury are presumed to be causally connected, unless rebutted by evidence.

During this stage of the consultation process, stakeholders have an opportunity to provide clarification or identify additional issues to be considered by the WCB Board of Directors during the policy development process.

How do other provinces address causal connection?

All Canadian jurisdictions adjudicate chronic pain claims. Most jurisdictions have a chronic pain policy and/or a chronic pain definition that requires a connection between chronic pain and an original compensable injury. Most jurisdictions explain the causal connection between chronic pain and an original compensable injury by stating criteria for “medical compatibility” and/or “continuity” in policy:

Jurisdiction	Summary of Compatibility Criteria
NB	<p>Chronic pain is pain that persists beyond the usual healing time. Pain may continue in the presence or absence of demonstrable pathology.</p> <p>A chronic pain <u>diagnosis</u> may appear as:</p> <p>(1) A complication of a compensable injury which occurs when recovery exceeds usual healing time for a compensable injury.</p> <p>(2) A recurrence of an injury</p> <ul style="list-style-type: none"> • If there is medical compatibility between original injury and current condition OR • When medical compatibility is questionable, a combination of medical compatibility and continuity is considered • <u>Establishing medical compatibility</u> means consideration of pre-existing conditions, the passing of time, epidemiological evidence, effects of natural physical deterioration or aggravating lifestyle factors • <u>Establishing continuity</u> means consideration of the workers work restrictions or job site modifications, known physical limitations as a result of the original injury, ongoing symptoms, ongoing medical attention, and complaints to coworkers or supervisors on an ongoing basis <p>(3) In the absence of a compensable injury the claim is adjudicated under the policy that applies to all new claims. The Commission gathers information to determine if, among other things, there was an injury caused by an accident. Medical information plays a key role in determining whether the etiology of the injury is compatible with the work-related cause of the injury.</p>

NL	Chronic pain is pain whose characteristics are compatible with a compensable injury except that it persists for 6+ months beyond the usual healing time.
PE	Chronic pain means pain that continues beyond the normal healing time for the type of personal injury that precipitated, triggered or otherwise predated the pain; and Does not apply to persistent lingering pain due to discernable organic causes. Policy elements are similar to NB
AB	Chronic pain syndrome may be compensable when, among other things, the following condition is met: pain and related symptoms develop as a consequence of injury or condition.
BC	Chronic pain is pain that persists 6+ months after an injury or occupational disease and beyond the usual recovery time for that injury or disease. Where chronic pain symptoms are identified an assessment must be undertaken. This evaluation will provide an opinion as to whether chronic pain is a consequence of a compensable injury. Practice Directive #61 To make a chronic pain entitlement decision, must consider the following: <ul style="list-style-type: none"> • Mechanism of injury/exposure to occupational disease • What the claim has been accepted for • Relevant medical history, including determination of non-compensable conditions that may be causing pain • Relevant information from past claims (past complaints, narcotic use, treatment/rehabilitation involvement, success or failure of treatment/rehab, duration of recovery, etc) • Non-compensable issues of relevance • Medications prescribed/used • Whether conduct and activities are consistent with pain complaints Note: BC is currently revising the chronic pain policy.
MB	Does not have a policy related to chronic pain. Practice is to adjudicate chronic pain by, among other things, assessing work-relatedness and whether there is a causal connection.
NT	To receive compensation for pain disorders, a worker must first have sustained a work-related injury. This initial injury or the accident must have materially contributed to the occurrence of the pain disorder. It must be one of the causal factors and it must be more than a trivial cause.
ON	Chronic pain is pain with characteristics compatible with a work-related injury, except that it persists for 6+ months beyond usual healing time. The following conditions, among others, must exist and must be supported by all of the indicated evidence: Condition: A work-related injury Evidence: Claim for an injury submitted and accepted Condition: Chronic pain is caused by the injury

	<p>Evidence: Subjective or objective medical or non-medical evidence of continuous, consistent and genuine pain since the time of injury <u>AND</u> A medical opinion that characteristics of pain (except persistence and/or severity) are compatible with injury, and are such that the physician concludes that pain resulted from injury</p> <p>Condition: Pain persists 6+ months beyond usual healing time Evidence: Medical opinion re usual healing time of injury, pre-accident health status, and treatments received <u>AND</u> Subjective or objective medical or non-medical evidence of continuous, consistent and genuine pain for 6+ months beyond usual healing time</p> <p>Condition: The degree of pain is inconsistent with organic findings Evidence: Medical opinion which indicates the inconsistency.</p>
QC	Does not have legislation or policy related to chronic pain.
SK	Does not have a chronic pain policy but recognizes that more intensive intervention is required where expected recovery may be delayed due to the complexity and severity of the injury.
YT	Recognizes chronic pain as a condition that may delay recovery and therefore requires treatment in order to facilitate return to work.

Providing your comments

We are interested to hear your comments on the information presented in this paper. In particular, we would like you to answer the following question:

- Are there any additional issues you would like to identify as it relates to a casual connection between chronic pain and the original compensable injury?

All comments will be considered as we draft the causal connection policy. We will circulate the draft policy for comments later this year.