

Workers' Compensation Board of Nova Scotia

**Chronic Pain: Causal Connection to Original Compensable Injury
Consultation Summary**

September 14, 2007

Introduction

In April 2007, the Board of Directors agreed to initiate a consultation with stakeholders with respect to establishing a causal connection between chronic pain and an original compensable injury.

On April 16, 2007, an Issues Identification Paper (titled “Chronic Pain: Causal Connection to Original Compensable Injury”) was posted to the WCB website, for a period of 45 days, and mailed out to key stakeholders.

On June 4, 2007, the issues identification consultation period closed. The WCB received 8 submissions from stakeholders with regard to establishing a causal connection between chronic pain and an original compensable injury.

The purpose of this paper is to provide a high-level summary of the stakeholder submissions received in response to the issues identification paper. The input is categorized under three major headings: (1) Injured Workers’ Associations, unions and the Nova Scotia Federation of Labour; (2) Employers; and (3) Health care providers.

The submissions have not been analyzed by the WCB with a view to reconciliation or validation. This step will occur in the next stage of the policy development process when the input is reviewed and analyzed by the policy working group.

It is anticipated that a draft policy and background paper will be shared with the Board of Directors for discussion in October 2007.

Consultation Summary of Issues

Outlined below is a high-level summary of the key issues raised by stakeholders during the issues identification stage of the policy consultation process. It should be noted that issues raised by stakeholders that are outside the scope of, or not directly related to, a causal connection between chronic pain and an original compensable injury are not included in this summary.

A review of the submissions demonstrates that the following issues need to be clarified in the next stage of the policy development process:

- the law respecting general eligibility, in particular, application of the presumption under section 10(4) of the *Workers’ Compensation Act* and how this relates to the chronic pain causation analysis
- the causation test, as articulated by the Nova Scotia Court of Appeal and the Supreme Court of Canada
- the difference between a pre-existing psychosocial condition or factor (“thin skull”) and a pre-existing cause
- the difference between factors that establish causation, and factors that meet the definition and/or diagnosis of chronic pain

Injured Workers’ Associations, Unions and the Nova Scotia Federation of Labour

Causation

- “It has long been established in matters of workers’ compensation, personal injury causing incapacity is to be compensated even if the accident from which the incapacity arises is not the sole cause as long as it is a contributing cause.”
- “If the accident is determined to be compensable then all injuries or subsequent conditions following that accident are compensable.”
- “The ... [stakeholder] agrees with the approach of the Workers’ Compensation Board ... as described in the issues identification paper ... In particular, the ... [stakeholder] endorses the ... [common sense or logic approach to a causal connection which appears at page 7].”
- “The difficulty of establishing a direct causal link between the diagnosis of chronic pain and a compensable injury which has been identified by some employers is based on an erroneous and narrow reading of the *Workers’ Compensation Act*. The type of inquiry proposed by these employers would be extremely complex and expensive and at the end of the day unnecessary because the inquiry is whether the accident is a contributing cause not the sole cause.”
- “We understand the difficulty in determining the linkage of pain to injuries that are otherwise healed. However, for the purposes of a compensation system that prevents an employee from suing an employer for ongoing pain and suffering, we must rule on the side of presuming the pain is related to the injury, if the injury predates the pain.”
- “Causation or causality is the relation between two events or states of affairs in which one brings about the other. Hume [the philosopher] took the concept to be complex, its components being the priority in time of cause to effect ... their contiguity in space and time and what he described as their necessary connection. Causal explanations are simply special examples of deductive reasoning because there is some law of physics, chemistry or other branch of science which provides a basis for inferring that if the first thing occurs or had occurred, the second will or would have (JL Mackie: *The Cement of the Universe: a Study of Causation*. Oxford University Press, 1974).”

Multi-causal nature of chronic pain

- “There is no basis for the Workers [sic] Compensation Board’s position that chronic pain is a condition that is multi causal in nature. The WCB has misinterpreted the American Medical Association, *Guides to the Evaluation of Permanent Impairment, Fifth Edition (AMA 5th)* in perpetuating this incorrect assumption. The *AMA 5th* do not define the causes of chronic pain; the *AMA 5th* at page 566 describe the perception of the pain, in general, after it has commenced:

“Pain is a plural concept with biological, psychological, and social components. Its perception is influenced by cognitive, behavioral, environmental, and cultural factors.”

- The AMA Guides and the medical community simply do not support the Worker's [sic] Compensation Board's position."

Legislated presumption (general eligibility)

- "... the Workers' Compensation Board's ... interpretation that the legislated presumption applies to the accident and not the injury or subsequent complications has no justification. Benefits are not paid to workers because of a workplace accident. Worker's [sic] entitlements to benefits are based upon the injuries and wage loss that is a result of the accident that arose out of and in the course of employment. The injuries that occur directly and indirectly are compensable.

Conditions such as repetitive strain, carpal tunnel, noise induced hearing loss, RSD, environmental illness, post traumatic stress, pneumoconiosis and degenerative disk disease would not be considered as compensable if the Workers [sic] Compensation Board's interpretation is correct."

Employers

- "Given the multi-causal nature of chronic pain ... [this stakeholder] advocates for a policy that looks at all facets of an employee's life to determine whether or not the original compensable injury caused the difficulties being experienced..."
- "The policy should identify some typical (but not exclusive) non-compensable events or personal conditions that might lead to chronic pain ..."
- "The Policy should work in conjunction with the new apportionment policy."
- "Potential methodology for new policy... Some evidence that could be considered include (this list should not be exhaustive):
 - Seriousness of the original compensable injury
 - Medical and non-medical evidence of a continuous, consistent, and genuine pain
 - Conduct and activities being performed by employee post injury
 - Treatments before and after injury
 - Treatments not taken by employee
 - Medical history before and after the injury
 - Personal conditions before and after the injury
 - Non work related accidents before and after the injury
 - Life stressors before and after the injury including family, employment, claims administration, etc."
- "If the original compensable injury is more than a minor factor or trigger leading to the employee's chronic pain, then the chronic pain is causally connected. However, since there may likely be other factors that contribute to the chronic pain, the claim should be assessed under the apportionment policy."

- “Where the original compensable injury is only a minor factor in the chronic pain or the employee’s limitations, then the chronic pain is not causally connected.”

Health care providers

- “If chronic pain syndrome, fibromyalgia, myofascial pain syndrome, and all other like or related conditions which appear to have little or no relationship to the original compensable injury are defined as chronic pain under Section 10A of the Act, how can it be determined that the causal factor is the workplace injury rather than emotional, psychological, behavioral, social or cultural factors?”
- “Establishing medical compatibility ... helps to explain the causal connection”