

WSIB Benefits Policy Review

**Thunder Bay and District
Injured Workers Support Group**

November 14, 2012,

Thunder Bay, Ontario

The Thunder Bay and District Injured Workers Support Group has been in existence for almost thirty years. Its members are made up of injured Workers, their family members and supporters. We are one of the most active IW support Groups in Canada.

My name is Greg Snider. I am a Board member with the TBDIWSG. I am not an injured worker but became involved with this organization through my work on Disability and Human Rights Issues. These communities (Injured Workers and Disability) share many of the same challenges, whether they are at home, work or in the community.

I am no lawyer nor can the TBDIWSG afford one. But I and the other members of the TBDIWSG have firsthand knowledge of what it is to live with a workplace injury and to obtain WSIB assistance.

As I was preparing to present here today I found that there were two distinct views on how to respond to this request. The first held mostly by the activists concerned for Injured Workers or Trade Unionist who are not in receipt of WSIB benefits. This group can be seen in the Ontario Federation of Labours Positions which takes the review at face value and takes the opportunity to make recommendations to improve WSIB. The second group is representative of most Injured Workers with Open WSIB files. They clearly see this as another attempt to justify the more punitive implementation of the WSIB directives which they see as already being played out. Their position is made clear by the Ontario Network of Injured Worker Groups, leave the program alone. Better the devil program you know then the predetermined (by WSIB) nastier devil program we don't know.

ONIWG and the Injured Workers they represent have every reason to be skeptical about the purpose of these consultation processes. All of these areas of discussion have established guidelines to assist Caseworkers in making their decisions. Though these guidelines do not always make decisions easy there are other options available to WSIB that could assist workers in their decision making. The Thunder Bay ODSP office has regular meetings of their Caseworker so they can share their most difficult cases forward for group consideration and review. In the short term several minds working on a resolve are always better than one. This process will also promote greater consistency and promote the sharing of knowledge.

The TBDIWSG is hearing from an ever increasing number of injured workers that their WSIB caseworker has advised them that he/she is not bound by the medical recommendation of the Injured Workers physicians. Surely you can understand the amount of anxiety that a human being has when told that he is required to act against the recommendation of his physician in order to maintain his WSIB benefits. Then WSIB comes along and says “our caseworkers are seeking help to make decision so we are going to do public consultations” This is problem solving that should be/must be within their required training. The Injured Worker can’t help but wonder how come Caseworkers are finding it increasingly easy to make medical decisions that they have no training for.

Prior to joining the TBIWSG Board I had been working for over 15 years with the Ontario Disability Support Program. I have some knowledge about the process required in determining a person’s eligibility for benefits. I was amazed at the number of people from across Ontario

that I have spoken with whose WSIB cases were closed without their knowledge and solely because of a conversation between a WSIB Caseworker and the workers employer. The employer clearly has a vested interest in limiting an injured workers time away from work. When ODSP office would receive a complaint and we received more than our share we were instructed not to assume guilt but to investigate. This meant you gave the recipient an opportunity to present their version of the complaint. ODSP training on every directive include a section on how to make a decision starting with the information the worker was required to obtain before a decision could be made. It doesn't appear that this is a practice implemented by WSIB.

I have reviewed the Fictional Case Scenarios that you have been provided by WSIB and then presented to the Community as a centre for discussion. As a person with a disability my first reaction to these scenarios is anger.

Angry because Workers Compensation Board was developed to help workers, but it has developed into the Workplace Safety and Insurance Board and apparently they are quite willing to re-enforce stigmas that cause real harm to injured workers. I have worked hard to break down stigmas towards People with Disabilities. The TBDIWSG has held public meetings to talk about stigma towards injured workers and how Injured Workers could deal with the emotional damage they suffer because of it.

Many employers may believe that Injured Workers are receiving benefits they are not entitled to but this is often based on incorrect info. For example an injured worker in the Ottawa area not happy with

his treatment from WSIB requested a copy of his file. Within he found a letter from his employer's HR rep advising that he was the son of the Local Union President and had hurt himself playing hockey. In reality he shared only a last name with the gentlemen in question and hadn't played any kind of hockey since his childhood more than 20 years earlier. Then there is the call I received while at ODSP where a neighbor was lying because they were on ODSP for their back and there was nothing wrong with their back. In that reality the person wasn't qualified because of his back but for another reason that carries a great deal of stigma. That did not soothe the person complaining about how I was protecting a cheater and allowing her tax dollars to be wasted. I know the first story had an impact on the person involved because he told me about the change that occurred in his treatment when he cleared up the issue. I can only wonder about how the second person was treated by his neighbour. WSIB should be working to discourage these kinds of incidents, not encouraging it.

Angry because WSIB provides Case Scenarios that change the discussion from "how can we make WSIB easier for Caseworkers to implement and perhaps workers to understand" to "How can we stop Injured Workers from getting benefits and save employers money" We can't help but wonder why WSIB couldn't have provided an actual scenario (it could be done well maintaining confidentiality). Maybe it's because a real scenario wouldn't give them the results they want. It is interesting to note that the Injured Workers Consultant Community Centres first action upon receiving the scenarios was to ask for the Tribunal Decision. Why? because every case is unique as is every human and the details do matter.

Angry because through these scenarios the WSIB has made it clear how it wants your report to read and it will go to a great deal of effort to get what it wants. These stories were not quick drafts but elaborate

pieces of work drafted to steer rather than assist the policy review. However, I have no concerns that you will be making up your own decisions on these important issues.

As an activist for people with Disabilities I know only too well that a injured body frequently doesn't return to 100% after an injury. A recurrence of a past injury can hang like an anvil over an injured workers head. Unlike the WSIB the worker remembers well the pain, helplessness, fear, and the thousands of other feeling you go through when you have a serious injury. At least under the current rules no matter how long it takes his body to breakdown again because of the injury he may still have protection under WSIB and rightly so since the recurrence only happened because of the original injury. The alternative is to punish workers whose condition stabilizes and who able to seek employment. WSIB seems to want to impose time lines on recurrences. This may save some decision making for caseworkers but it would mean workers don't receive compensation for injuries they received while at work. The WSIB in my view is requesting not to do their job.

The WSIB also seems to dismiss the extremely likely possibility that an injured worker who has a flare up and already knows his physicians advice would simply follow that advice and not make a perceived needless medical appointment or complain to this co-workers. I know of nobody who takes every pain to their physician, in fact our society discourages people from frequent visits to the doctor or the ERs as it is costly to the taxpayer.

There are several references by WSIB where they claim to lack verification of the injured workers word, which seems to imply that a worker maybe lying to obtain benefits. I would suggest that a worker maybe telling the truth in order to receive benefits he and his family are justly entitled. I recall the Mike Harris Conservatives setting up a

hot line to catch all those OW and ODSP cheats. When all was said and done those of us who said Welfare Fraud was a red hearing were proved correct. The government spent far more money on the hotline than they ever saved because of it. Now WSIB is hoping to make the same mistake only this time it will be workers with real injuries and their families who will suffer.

I find it also disturbing that there seems to be no understanding by WSIB that a person with a disability is much less likely to obtain employment than an able bodied person or that the gap is even greater when you consider under employed. Today's employers are looking for maximum flexibility in their workforce. This is a barrier to anyone not able to do every aspect of a job and more. A case in point is the Ontario Government's System Officer Position which requires employees to have a driver's licence, even after they were forced to make an exception of a system's officer who had been working in the position for over ten years without a driver's license. The actions of the WSIB must reflect the reality that a disabled person faces when entering the workforce.

If the WSIB is seriously looking for a way to take some decision making easier on their caseworkers it may want to consider treating all work disruptions the same, since the added challenge workers with disabilities face when seeking employment is true regardless of the reason for employment disruption.

WSIB also implies in its scenarios that a pre-existing condition exist when there were no signs or symptoms prior to the injury and that this should be a reason to restrict or deny benefits. This seems to be a rather scary starting point for future claims. I'm not sure I understand

the rational they are trying to propose, but I am certain that there isn't a single injured worker sitting across from the caseworker who will understand. I have a hard time believing this concern came from caseworkers or that it will make decisions easier for them. Regardless of where this concern came from, it approved one wonders how minor or how old a pre-condition could be to become a benefit cutter.

WSIB seems to be pushing a theory of injury independence. That is that a workplace injury is a single event with a single effect. That only what happens at that moment matters and only the body parts effected at that moment. We know however from an early age that the hip bones connected to the back bone, etc. We are a body of complicated parts and that does make it difficult at times to decide what caused an injury or what caused a condition to worsen but WSIB has a responsibility to Injured Workers to do the best they can to ensure they are fairly compensated for their losses due to a workplace injury. They can use the significant contribution test to assist in making these decisions. Re-drawing the significant contribution line for injuries doesn't make the decision easier it just moves it.

I have attempted to address what I believe to be the major concerns of the WSIB. I do not believe given the scenarios provided that WSIB's major concern was to relieve caseworkers of difficult decision, but rather and attempt to obtain support for further erosion of benefits to workers who suffer an injury at work. WSIB is becoming increasingly more responsive to employers and their concerns then they are to the workers. This loss of balance can only result in a poorer WSIB. The TBDIWSG asks that you advise no change to the implementation of WSIBs rules.

I would like to finish by expressing the strong support the Thunder Bay and District Injured Workers Support Group have for the presentations of both the Ontario Network of Injured Workers and the Injured Worker Consultants Community Legal Clinic. I choose not to review each Scenario separately largely because of the fine review provided by the Legal Clinic.