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NEW DECISIONS FROM WCAT AVAILABLE ONLINE

The Workers Compensation Appeal Tribunal has posted several new decisions online. A summary of Decision 235 is provided below, or you can view the full decision online at:

<http://www.gov.pe.ca/wcat/>

If you have any questions on this or any other WCAT decision, feel free to contact the Office of the Employer Advisor to discuss the matter.

Decision 235:

The worker sustained a workplace injury in which he strained his lower back. The worker was determined not to be a safe job match for his pre-injury employment. An alternate position was found to be “essentially a safe match” by the physiotherapist assessing the worker. The worker felt he would not be able to do the alternate position as it was physically demanding work. The Case Coordinator determined the worker’s claim would close for wage loss and medical aid benefits because the employer had an alternative position available for the worker that was determined to be within his capabilities.

The worker did attempt working in the alternative position but was unable to continue due to an increase in symptoms and the worker was put back off work by his doctor. However, the Case Coordinator determined that the new medical reports did not provide objective medical information and the Case Coordinator determined she would not change her decision to close the claim. The worker appealed first to the internal reconsideration officer, which was denied, and then to WCAT.

The question before WCAT was whether at the time the worker’s benefits were discontinued the alternative position offered by the employer was a suitable job match and therefore the worker’s loss of earning capacity had ended. WCAT found there were issues in the information relied upon by the physiotherapist in determining how the critical job demands were established. There were also no indications of what accommodations could have been made by the employer other than a brief note of a conversation between the Case Coordinator and the employer that mentioned accommodation could occur. Ultimately, WCAT

found that the evidence did not show the alternative position to be suitable work. The worker’s appeal was allowed and the matter was sent back to the Board to be dealt with.

What the Employer Can Take From This Decision:

In situations where a worker is unable to return to their pre-injury work, employers need to be mindful that the return to work process can sometimes require a lot of back and forth communication between the worker, the worker’s health care providers and the Board in order to identify meaningful work that the worker is capable of doing.

Under the *Workers Compensation Act* most employers are required to accommodate injured workers up to the point of undue hardship. The Board considers “undue hardship” to mean a situation that creates onerous conditions for an employer such as, intolerable financial costs, serious disruption to business, or health and safety risks. The employer has the onus of proving a claim of undue hardship.

Employers should be familiar with the Board’s policy on return to work, POL-93. The Workers Compensation Board also has a publication “**Return to Work: An Employer’s Guide,**” which provides a lot of great information for employers who are unsure of how the accommodation process works. The link for the Guide is provided below and **POL-93, “Return to Work”** can be found at:

<http://www.wcb.pe.ca/Information/Policies>

CORRECTION

In the March edition of newsletter it was indicated that the “**Return to Work: An Employer’s Guide**” from the Workers Compensation Board was not available online. This was incorrect. The Guidebook can be found online at:

<http://www.wcb.pe.ca/Employers/Publications>

Look for the Guide under the **Recovery** heading. If you have questions about the Guide, please contact Kelly Heydens, Return to Work Coordinator with the Workers Compensation Board at 902-368-6356 or kheydens@wcb.pe.ca