



**APPEALS
COMMISSION**
FOR ALBERTA WORKERS' COMPENSATION

HOT TOPICS & NOTEWORTHY CASES

WSIAT ACCESS TO JUSTICE SYMPOSIUM

Jay Williamson – General Counsel
October 23, 2023

Alberta 

COVID-19 EMPLOYER APPEALS

- No dispute that the workers contracted COVID-19
- Policy 03-01 (infectious diseases) requires that the nature of the employment:
 - Involves sufficient exposure to the source of infection, and
 - Is shown to be the cause of the condition; or
 - Creates an increased risk of exposure for the worker
- However, little to no investigation of the work-related circumstances surrounding the infection or medical or other expert opinion on work-relatedness/risk
- Panels concerned about drawing inferences from public knowledge, news articles, making decisions in the absence of evidence on causation or risk
 - Effectively unable to satisfy the Policy requirements due to insufficient investigation

DECISION 2022-0043, 2022 CANLII 10911 (AB WCAC)

- “...In particular, we note that there is no medical evidence or opinion on file...It does not appear that the worker or other employees provided any information directly to the WCB in this regard...”
 - Worker and co-workers not interviewed by WCB
- “...the file contains a news article about an outbreak at the facility[;] we do not find it to be reliable information, and it is not medical evidence about whether positive cases at the facility created sufficient exposure for the worker or increased the worker’s risk of exposure.”
 - No investigation resulting in evidence about workplace exposure or risk other than a news article
- “Without medical evidence and opinion about this particular worker’s covid-19 infection in the context of the nature of her employment, it is not appropriate for us to make a finding about whether or not there was sufficient exposure to the source of the worker’s covid-19 infection in this case.”
 - Nothing specific to the worker or workplace other than worker’s self-reporting reflected in medical reports

COVID-19 VACCINATION INJURY APPEALS

- Healthcare worker voluntarily received a COVID-19 vaccination at the encouragement of their employer
- Worker developed symptoms following the second dose
- Vaccination made mandatory by the employer afterwards
- Medical indicated her symptoms were caused by the vaccination
- WCB denied the claim on the basis it was a non-mandatory immunization at the time of the injury (Policy 03-01: Occ. Disease)
 - Coverage only extended to “required” or “compulsory” immunizations

DECISION 2022-0436, 2022 CANLII 78350 (AB WCAC)

- The panel rejected the application of the Occupational Disease policy as it only applies to required or compulsory immunizations
 - Panel instead applied the general “arose out of and occurred in the course of employment” Policy
 - Found that the vaccination-related injury arose out of and occurred in the course of employment
- “...the worker was given early access to the COVID-19 vaccine...[and] was eligible to be paid for the time that it took to obtain the vaccine pursuant to the [employer’s memo]...”
 - “The worker was in the process of doing something for the benefit of the employer;
 - The COVID-19 vaccination occurred during a time period for which the worker was being paid or eligible to be paid; and
 - The worker was at a time and place to receive the COVID-19 vaccination for employment reasons.
 - ...the equipment and materials [for the vaccine] were supplied by the employer...the vaccine itself and the syringes.”



**APPEALS
COMMISSION**

FOR ALBERTA WORKERS' COMPENSATION

THANKS!

Alberta 