

Adjudicative Advice

Retrospective Return to Work (RTW) situations

The Claims Quality Loop identified some challenges decision-makers were encountering in ruling on entitlement to benefits involving a RTW that occurred prior to the file being adjudicated.

In many of these cases, the level of communication between the workplace parties was unclear. The employer felt they had a suitable position available, and that the worker did not return to work as soon as they were able. Generally, the worker did not have a clear understanding of the work available or their functional abilities (precautions/restrictions). In many instances, the worker indicated that their physician had authorized them to remain off work to recover.

The difficulty in addressing these cases, is that in most situations, the communication (or lack of) has already occurred. At the point of the WSIB review, the worker has either recovered and returned to work or started the modified work. The WSIB decision-maker must determine whether the worker is entitled to LOE benefits for the ‘gap’ period.

Policy 19-02-02

“The Goal of ESRTW and the Roles of the Parties” defines suitable work as work that

- is within the worker’s functional abilities
- the worker has, or is able to acquire, the necessary skills to perform
- does not pose a health or safety risk to the worker or co-workers, and
- if possible, restores the worker’s earnings

The same policy defines available work as work that exists with the accident employer at the pre-injury worksite, or at a comparable worksite arranged by the employer. To determine whether a worksite is comparable to the pre-injury worksite, the following should be considered:

- travel or assignment to different worksite is normal practice in the industry
- travel or assignment to a worksite other than the injury site forms part of the employment contract
- the worker normally accepts employment assignments in various geographic areas, and
- travelling to the proposed job is within the normal parameters of travel expected of a worker

A key element in weighing the ‘offer’ of employment is the duties of the work to be performed and whether they are within the functional abilities of the worker. This is best evaluated when the employer, in discussion with the worker and possibly their union representative, compares the information on the Functional Abilities Form (FAF) with the requirements of the job.

If the employer had a question about the medical precautions, an attempt should have been made to speak with the treating physician or involve the WSIB. Small Business employers may not be as knowledgeable or experienced with the process/forms and therefore it is expected they will have a greater reliance on WSIB staff for guidance.

Although preferable, it is not necessary

Notice: This document is intended to assist WSIB decision-makers in reaching consistent decisions in similar fact situations and to supplement applicable WSIB policies and guidelines as set out in the Operational Policy Manual (OPM). This document is **not a policy** and in the event of a conflict between this document and an OPM policy or guideline, the decision-maker will rely on the latter.

that the offered work, be presented in writing. It is necessary that the worker be advised of the particular job available. When clarifying the return to work circumstances with the employer, decision-makers should also ensure a detailed job description of the work offered is documented in the claim file.

Decision-makers are encouraged to fully investigate the circumstances of the work 'offer'. The fact an employer indicates a 'modified work' program exists, is not sufficient grounds to accept an appropriate 'offer' has been made and that entitlement does not exist to LOE benefits.

There must be evidence of a worker's non-cooperation in the ESRTW process in order to justify non-payment of benefits. This requires that the worker be questioned and the information documented on the file. It is important to clarify when and how the worker was made aware of the work offer and why they refused to accept the job. Their reasons may be valid and/or require further clarification from the employer.

If the WSIB medical opinion on fitness/precautions is contrary to the instructions the worker received from the treating physician, it may be appropriate and helpful to ask the Medical Consultant (MC) to contact the treating physician to discuss the case.

When deciding payment of LOE benefits in retrospective scenarios, if the details of the work are unclear and the employer has not attempted to secure information from the worker concerning the functional abilities, benefits should be continued to the date a suitable position is offered.

Unique case situations can be case-conferenced within the Service Delivery Team. The expertise of the Specialist & Advisory Services area (RTW Advisor, RTW Mediator and/or the Ergonomist) may also be helpful in determining the most appropriate decision.

Claims Quality Loop

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