



"If I'd known how awful this would be... I would never have filed a WCB claim."

Injured Worker Case Study

NEW ALBERTA WORKERS:
IMPROVING WORKPLACE HEALTH AND
SAFETY FOR TEMPORARY FOREIGN
WORKERS AND OTHER NEW
TO ALBERTA WORKERS



JUNE 2017

Throughout the New Alberta Workers project, we heard many stories from new Alberta workers who have struggled to exercise their rights and to access services that should be available to them to support their health and safety.

This case study represents the voice of one courageous new Alberta worker, injured in the workplace. Sadly, her story is not unique. We hope that her story and the recommendations for changes in policy and procedure will have a positive impact for all Alberta workers seeking to access supports from the Workers' Compensation Board - Alberta.

We thank "Betty" for sharing her story.

A final report on the New Alberta Workers project is **available at www.workershealthcentre.ca**

Acknowledgements and Thank You!

This case study is part of the New Alberta Workers project, which took place as a result of a fine issued in 2013 by the Provincial Court of Alberta under the Occupational Health and Safety Act. The fine was levied against SSEC Canada Ltd. for failing to ensure the safety of their workers on the worksite in Ft. McMurray, Alberta, Canada, in 2007. Their failure resulted in the deaths of Ge Genbao and Liu Hongliang and the serious injury of Li Ruiming and Wang Dequan. We dedicate our work to them and to their families.

Many people put their effort into making the New Alberta Workers Workshops and community based research happen. This project belongs to all of us, and is for all of us working to create safe and healthy workplaces in Alberta for all workers. In particular, we would like to thank our partners, the Multicultural Health Brokers Cooperative and the Ethno-Cultural Council of Calgary for their leadership, knowledge, commitment and passion for the project.

It is our hope that the work we have done has helped new Alberta workers to better understand their occupational health and safety rights. We also hope we provided a space for them to feel safe to voice their concerns, their hopes, and their recommendations for how together we can make our diverse workplaces and communities inclusive, fair, safe and healthy.

Without the generous time and support from the following people and organizations, this project would not have been possible. There are many more who contributed to make this project successful, including all of our Workshop participants, host organizations, and community members.

Thank you!

Lori Shortreed
New Alberta Workers Program Coordinator
Alberta Workers' Health Centre

Jared Matsunaga-Turnbull
Executive Director
Alberta Workers' Health Centre

Alberta Law Foundation

Alberta Workers' Health Centre
Kevin Flaherty, Jared Matsunaga-Turnbull, Violet Olinek,
Gina Puntil, Danica Connolly, Lori Shortreed

Ethno-Cultural Council of Calgary
Marichu Antonio, Daniel Atangana, Mario Ayudo, Tolu
Babalola, Tiffany Barbosa, Fobete Dingha, Martha Fanjoy,
Shafaq Noorani, Jay Zapata

Multicultural Health Brokers Cooperative
Yvonne Chiu, Rafael Cortes, Irene Dormitorio, Avryll Fuller,
Olha Matusevich, Lidia Macovei, Susana Runge, Patricia
Wong

Workers' Resource Centre
Leigh Golden, Candace Martens

BIM Larsson & Associates

Bob Barnetson

Bev Burke

Yessy Byl

Sara Dorow

Carole Massing

Faeze Nouri

Jillian Paragg

Flavio Rojas

Elaine Stefanick

Alberta Workers' Health Centre, 2017
www.workershealthcentre.ca

CUPE-SCFP

Executive Summary

Each Canadian province and territory has a workers' compensation system. These systems represent a historic compromise wherein workers traded away their right to sue their employers for workplace injury. In return, workers receive access to immediate, predictable and stable wage-loss, medical aid, and vocational rehabilitation benefits administered by a workers' compensation board (WCB).

This case study follows the experiences of a new Alberta worker ("Betty") who was injured in 2014. Over the past two-and-a-half years, Betty has tried (ultimately unsuccessfully) to secure workers' compensation benefits for an injury that clearly arose from her employment. At present, Betty is unemployed, has few job prospects due to her injury, and is without any source of income. The delays in her claim have contributed to her injury becoming a permanent condition.

This case identifies a number of barriers to securing compensation that are specific to new Alberta workers, such as a lack of awareness that the workers' compensation system exists and how it operates as well as discrimination based on language skills and country of origin. These barriers to accessing compensation for new Alberta workers compound barriers faced by many long-time Alberta workers.

These long-standing barriers include:

- doctors reluctant to engage with the WCB,
- employers that game the system to minimize cost,
- difficulty getting claims accepted,
- incorrect adjudication and case-management decisions,
- constant changes in benefits and repeated demands for additional information causing psychological distress,
- poor (or no) communication of decisions,
- violations of legislation and policy,
- the deeming of income based on jobs that workers don't have and, in fact, don't exist,
- a difficult-to-use appeal system, and
- a sense that the WCB is simply and constantly trying to get rid of workers' claims as fast as possible.

Overall, this case raises profound questions about how the process of workers' compensation not only fails to provide compensation to some injured workers, but also causes them additional injury.

Betty is Injured at Work

“Betty” immigrated to Canada from Eastern Europe several years ago. Unable to find work, either as a physician or using her degree in public health, the 42-year-old accepted a job in a kitchen in 2013 while her husband began the process of re-certifying as an engineer. “This was a survival job, I had to put food on the table for my family,” says Betty. The food-preparation work Betty did entailed repetitive motions and heavy lifting. Rarely did Betty get any breaks during the work day.

In the summer of 2014, Betty’s employer reduced the kitchen staff from 6 people to 4. Two staff had developed injuries due to the work they were doing. Neither injury was reported to the WCB. To compensate for fewer staff, Betty’s employer increased her hours and she began working eight- to ten-hour shifts, six days per week. At this point, Betty began to experience symptoms of nerve entrapment in her right arm (see Box 1).

Box 1. Nerve Entrapment

Nerve entrapment is a condition that develops when a nerve becomes compressed or irritated. The physical symptoms of nerve entrapment in the arm vary, depending upon the nerve affected and degree of entrapment.

These symptoms can include pain, tingling, loss of sensation, weakening of grip, loss of coordination, deformity of the hand, and, over a long period, irreversible muscle wasting and permanent loss of function.

The ulnar nerve travels down the inside of your arm and transmits nerve impulses affecting the ring and little finger. The ulnar nerve travels through a tunnel of tissue (the cubital canal) beneath the “funny” bone on the inside of your elbow.

The cubital canal is narrow and this means the ulnar nerve is vulnerable to compression and irritation by prolonged and/or repeated bending of the arm as well as by fluid build-up in the elbow (often a result of over use).

The radial nerve spirals down your upper arm and into your forearm. It controls muscles in your forearm and hand, including your thumb, index and middle finger. It passes through the elbow joint in the radial tunnel. It is vulnerable to entrapment caused by inflammation of the surrounding tissue (inflammation being a common consequence of over-use).

By November 2014, Betty's symptoms had become much worse, with severe pain radiating up and down her arm from the elbow and a reduction in hand functioning. Betty sought treatment from a doctor at a local clinic on November 4. During the appointment, she explained the injury was caused by her work. The doctor diagnosed enthesopathy of the elbow, including medial epicondylitis (inflammation of the bone and muscle attachments) and slight irritation of the ulnar nerve. Drawing on her medical expertise, Betty sought a specific course of treatment. The doctor declined the treatment as not standard in Canada. The doctor wrote in the case notes that the patient "States that in Russia they new [sic] how to treat it best...". Betty speaks with an eastern-European accent, but is not from Russia. This off-handed case note became relevant later on in Betty's story. The doctor did not report the injury to the WCB, despite being legally obligated to do so.

Betty sought and received three weeks of unpaid medical leave from her employer to allow her to recover from her injury over Christmas of 2014. Betty's employer failed to report this time off to the WCB, despite being legally obligated to do so (see Box 2). Betty's supervisor, while sympathetic, had no idea what to do when a worker was injured.

Upon returning to work, her employer also accommodated her request for fewer days and hours of work. "I thought I was young," said Betty. "I had never had any health problems in my life before I got my elbow injury. I assumed I was recovering." The rest and lighter duties resulted in a lessening of symptoms. Betty did not report the injury to the WCB because she did not know the WCB existed.

Box 2. Reporting Injuries

Alberta's *Workers' Compensation Act* requires workers, employers, and doctors to report work-related injuries when there is time lost from work or when medical treatment is required. Doctors are also required to report subsequent visits and when modified work is required.

In Betty's case, her employer failed to comply with this reporting requirement. It is hard to believe that Betty's employer did not know it was obligated to report the injury. It is important to note that reporting injuries can increase an employer's WCB premiums.

It is unclear why Betty's doctors also repeatedly failed to report her injury. It is difficult to believe that none of the four doctors whom Betty saw in 2014/15 did not know they were required to report the injury. Some doctors will privately express reservations about dealing with the WCB because WCB staff ignore their diagnoses and/or treatment decisions.

Betty also failed to report her injury because she didn't know anything about the WCB. "I am an immigrant," said Betty. "I did not know what the WCB was or that I have to report an injury. How would I know that?"

Among the consequences of Betty's employer and doctors failing to report the injury is that (1) it became hard for Betty to have her claim accepted later on, (2) Betty continued to work while injured in order to put food on the table (thereby exacerbating her injury), and (3) Betty was denied expeditious treatment for her injury (which contributed to the injury becoming permanent).

Betty's Injury Worsens

Despite the reduced work hours, Betty's symptoms returned in February of 2015. On March 24, 2015, Betty returned to the medical clinic and saw a second doctor. Betty informed this doctor that the injury was caused and aggravated by her work as a cook. This doctor diagnosed an injury of the ulnar nerve. The doctor sent Betty for X-rays and an ultra-sound. The doctor also made a referral to an orthopedic specialist (entailing a six-month wait). The doctor declined to provide Betty with a medical note giving her time off from work and suggested she find another job. This doctor, despite knowing the injury was work-related, also failed to report the injury to the WCB.

On April 8, Betty returned to the clinic and saw a third doctor. This doctor noted Betty's X-rays showed no broken bones (which was never Betty's complaint). The ultrasound showed no tears in the tissue (not unusual given Betty's actual condition) but "cubital syndrome" was hand written on the ultrasound result. This doctor diagnosed "sprains and sprains of the elbow". It is unclear whether the doctor read Betty's case history. Again, despite the clearly work-related nature of the injury, this third doctor did not report the injury to the WCB.

On May 15, Betty returned to the clinic and saw the second physician again. The physician referred her to physiotherapy, correctly diagnosing her as having cubital tunnel syndrome as well as tennis elbow. The doctor declined to provide Betty with a note relieving her from work and suggested she find another job (something Betty was trying to do, albeit unsuccessfully). The doctor still did not report the injury to WCB.

While Betty's doctors were getting closer to a correct diagnosis, the delays in seeking a specialist meant the effects of nerve entrapment were becoming permanent. Betty's employer had accommodated her increasing disability by, at her request, pairing her with a coworker who could perform the heavy lifting and reducing her hours to less than 20 per week. Betty was also wearing elbow and wrist braces. Her employer still did not report the injury to the WCB.

Despite these accommodations, Betty's symptoms were becoming incapacitating. She was unable to flex her elbow, which interfered with eating and personal grooming. Her discomfort was worse at night, so she was often unable to sleep. The over-the-counter pain medications she was using to manage pain and reduce inflammation were upsetting her stomach (a common side effect of prolonged use). Unable to eat much, Betty lost 8-10kg.

Concerned that her injury was getting worse, Betty began doing research about how she could get help. She contacted or met with 13 different government and not-for-profit agencies (often in person) seeking advice and assistance. These efforts identified that she might be eligible for benefits through Employment Insurance (EI) or workers' compensation. She also canvassed friends and acquaintances. Their advice was to seek EI benefits because "you'll never get anything from the WCB."

On May 20, Betty saw the second physician again. Betty specifically asked about her eligibility for EI and workers' compensation benefits. The doctor offered her a note excusing her from work for two weeks, writing in Betty's case file that she was "in way not able to work". As there was a two-week waiting period for EI benefits, such a note did Betty no good. Betty arrived and left the appointment frustrated with her ongoing medical condition. The doctor still did not report the injury to the WCB.

Betty participated in physiotherapy 4 or 5 times despite the physiotherapy aggravating her symptoms. On June 8, Betty had exhausted the physiotherapy covered by Alberta Health Services. Betty's physiotherapist finally reported the injury to WCB in order for Betty to access additional physiotherapy funding.

Betty Enters the WCB System

On June 12, 2015, Betty received confirmation from the WCB that a workers' compensation claim had been established (but not yet accepted). Betty returned to the medical clinic and saw the second physician on June 17 because she could no longer work due to the pain of her injury. At that point, she informed the doctor about her WCB claim and asked how to see a specialist (orthopedic surgeon) earlier than in six months. The doctor indicated there was nothing he could do and repeated that she should find another job.

Since there was apparently nothing more the doctor could do for her, Betty left abruptly. She explained her departure this way: "I am a doctor. I can see I'm getting worse. I know that, over time, conditions like mine can become permanent, especially if I have to keep working and performing the damaging movements. But I can't get any timely treatment or paid time off of work. In retrospect, I should have quit the job earlier but my kids have to eat." The doctor wrote in Betty's case notes that Betty "seem very frustrated" and "left room without me finishing." This comment becomes important later on in Betty's story. The doctor still did not forward any information to the WCB.

On June 18, Betty contacted her employer. Her pain had spread to her back and she was unable to move. She told her employer she could not come into work because of her injury. On June 19, Betty went to a fourth physician, seeking an injection for pain management but the doctor declined this request (again, no information was filed with the WCB). On her way home, she received a phone call from a WCB employee instructing her to find other work (specifically to seek work in a shoe store) if she was unable to work as a cook. How Betty would be able to lift boxes of shoes if she could not move her arm or walk was unclear.

On June 19, Betty completed and returned two forms to the WCB that she had already submitted by mail (it is possible the WCB had not yet received the mailed forms). On June 22, the WCB asked her employer for information about her injury. The employer did not respond to this request and, on July 20, the WCB informed Betty her claim had not been accepted due

to lack of employer response. The employer's refusal to provide information is contrary to the Workers' Compensation Act. The employer did eventually provide information that indicated (incorrectly) that Betty had quit her job. Betty would not know the profound impact of this mis-statement by her employer for several months.

On June 30, the WCB asked the medical clinic Betty had been attending for its records related to her injury. The clinic refused to release the records without written permission from Betty because (they claimed) that the records were not for a work-related injury. This claim sits uneasily with the case notes that clearly identify the injury as caused by work. Under the *Workers' Compensation Act*, a physician is obligated to release information caused by a workplace injury and the patient's permission is not required.

Betty was unable to arrange written permission because, frustrated with the Canadian medical system, she had travelled back to her home country for diagnosis and treatment (which was provided immediately). Being unable to sign the permission forms required by her doctors delayed the processing of Betty's WCB claim until her return to Canada on September 3.

On September 8, Betty was examined by a neurologist with referral for carpal tunnel syndrome (which occurs in the wrist) rather than cubital tunnel syndrome (which occurs in the elbow and which Betty's second doctor had diagnosed). On the date of the examination, Betty's pain was less due to steroidal injections she received in her home country. The neurologist noted this in Betty's case notes. This too becomes important later on in Betty's story. The WCB took no action on Betty's claim following this consultation.

On October 23—nearly a year after first seeking medical aid—Betty was finally seen by an orthopedic surgeon. Her four-fold diagnosis included cubital tunnel syndrome, common extensor and flexor tendinitis, and radial tunnel syndrome. The orthopedic surgeon recommended physiotherapy followed by surgery.

On November 3, Betty went back to the second doctor to get X-rays for a developing problem in her back. The doctor promised to do the WCB paperwork in the next few days. On November 5, the WCB approved physiotherapy based on the surgeon's report. On November 12, Betty returned to the second doctor to learn she had developed scoliosis (curvature of the spine), likely as a consequence of Betty's arm injury.

Betty's Claim is Denied

On November 17, 2015, Betty received a phone call from a WCB claims adjudicator. Betty expected a discussion to take place. "I was in extreme pain and she told me not to talk—just listen. At that a moment, I knew that this was going to be an argument of power rather than a discussion swayed by the power of argument." The adjudicator then informed her that her WCB claim had been "denied".

During the phone call, the adjudicator noted (incorrectly) that Betty had quit her job in the summer. The adjudicator also cherry-picked statements from Betty's doctors' case notes to indicate she had been uncooperative, such as "States that in Russia they new how to treat it best" and "left room without me finishing". The WCB case manager also noted the neurologist's September 7 comment that Betty's symptoms had improved over the summer.

When Betty asked what she should do, the adjudicator said her WCB case was done, laughed, and then said Betty could sue her employer in court. Betty responded the next day by email. She noted she did not quit her job, but rather that she was unable to work and her doctor could provide medical evidence of that.

Two days later, the WCB sent a letter that provided a different explanation of the decisions regarding Betty's claim. The letter includes factual errors around the date of the injury and does not contain any of the case-note comments that were made on the phone by the adjudicator.

The letter indicated the WCB had accepted her claim of an injury based upon the November 4, 2014 diagnosis of right elbow epicondylitis. The WCB did not, however, accept the October 23, 2015 four-fold diagnosis by the orthopedic surgeon that she suffered from cubital tunnel syndrome, common extensor and flexor tendinitis, and radial tunnel syndrome.

The WCB (rather confusingly) explained its decision to not accept the specialist's diagnosis as:

These are Dr. <redacted> impressions during your first consultation and have yet to be confirmed medically. This is based on our policy that states an injury must be work related.

There was no dispute that Betty's injury was caused by her employment. Further, it is difficult to fathom how any medically knowledgeable person would accept a dated GP diagnosis (twice contradicted by other GPs) while refusing a more recent specialist diagnosis as "impressions". This decision is especially troubling given that the orthopedic surgeon's so-called impressions led him to recommend surgery. This decision may reflect that WCB claims adjudicators are not medical professionals. Oddly, the WCB had previously agreed to provide the physiotherapy recommended by the surgeon.

The WCB also noted that Betty "quit work on June 21, 2015" and was therefore not entitled to wage-loss benefits after this date. In fact, Betty did not quit her job; she simply indicated that she was unable to attend for medical reasons.

Betty did receive a Record of Employment (ROE) issued by her employer in July indicating she "quit" (she received this in September, upon her return to Canada). Betty suspects that this ROE was issued following the WCB's attempt to get information from her former employer about her injury. The employer indicating that Betty quit disentitled her to most wage-loss payments (she received \$357.45 for lost wages from June 2015) and, thereby, dramatically reduced the claims cost charged against the employer's WCB account (see Box 3).

Box 3. Premiums and Employer Incentives

Employers with WCB coverage pay premiums to offset the cost of compensation. Premiums vary by industry and are set as \$X per \$100 of payroll. Individual employers can reduce their premiums by reducing the number and/or cost of injuries reported by their workers.

Small employers, like Betty's employer, can receive a 5% reduction in their WCB premiums if they have no lost-time claims (i.e., claims where a worker could not go to work the next day). If they have greater than 5 lost-time claims (over 5 years), the employer's WCB premiums go up by 5%. Larger employers have a slightly different system with greater rewards and penalties.

One of the effects of this system of "experience rating" employer premiums is that it incentivizes employers to reduce injuries. Some employers reduce lost-time claims by making workplaces safer or offering injured workers modified work (to reduce the time they receive wage-loss benefits from the WCB). Other employers may engage in illegitimate claims management practices such as failing to report injuries, encouraging workers to not report injuries, and terminating injured workers.

Betty Enters Vocational Rehabilitation

In its letter, the WCB did indicate that Betty was eligible for return-to-work services. In fact, Betty was scheduled for (and attended) a medical status exam and functional capacity evaluation on November 18 and 19 at the WCB's Millard Centre in Edmonton. The medical status exam found her to have cubital tunnel syndrome and medial and lateral epicondylitis of the right elbow—the same conditions that the WCB did not accept in its letter of November 19.

The medical report notes that Betty's neck was examined and found to be normal. The doctor did not examine Betty's spine despite her shoulders being of uneven height and her right shoulder being positioned further forward than her left. The functional capacity evaluation found her to be unable to perform her full range of duties.

On November 23, Betty commenced vocational rehabilitation at the Millard Centre. Her recommended course of treatment included physiotherapy. While physiotherapy is often appropriate treatment for cubital tunnel syndrome, the complexity of Betty's injury (including epicondylitis) meant that physiotherapy was

not appropriate. The WCB also declined to provide acupuncture treatment (which had previously provided pain relief) at the same time as physiotherapy.

Betty was assigned four hours per day of "general exercises" un-related to her injury. The physiotherapist was unable to explain how these exercises would assist her in recovering from the effects of the injury. Travelling across the city everyday by bus in the winter was a significant burden on Betty, given her injury. Betty declined to continue this treatment plan because it served no purpose.

On November 25, Betty received another letter from the WCB indicating it had accepted the diagnosis of cubital tunnel syndrome and directed Betty to continue with the physiotherapy. Given her work restrictions and that her employer terminated her, she was also referred to various job search services.

On December 3, 2015, Betty received yet another letter, indicating the WCB accepted her claim for cubital tunnel syndrome and medial and lateral epicondylitis of the right elbow. The WCB also awarded her ongoing

wage-loss benefits commencing October 21, 2015 and continuing until the end of treatment. A second letter dated that same day threatens to take those benefits away unless Betty contacts the WCB to discuss her treatment plan.

At that point, Betty had decided to simply give up on the WCB. “I was too tired and unwell to even coherently tell my story at that point. My husband’s view was that it was pointless to play cards with a card shark. It was clear to him that the WCB already had a plan to get rid of my claim as fast and as cheaply as possible. In fact he said ‘All their guarantees will disappear in a moment—a moment convenient to them.’ It turns out, he was right.”

Betty had a face-to-face meeting with her case manager and her case manager’s supervisor on December 17. She was offered physiotherapy and acupuncture treatment from a service provider of her choosing, help in the home (which was never provided), and training courses. According to Betty, the supervisor blamed poor medical reporting for her difficulties.

A letter dated December 18 revealed that a career counseling session about Betty had been held in her absence because the WCB failed to inform her of the appointment. Betty was directed into job-search services. As part of these services, the WCB identified the job of hospital admitting clerk as appropriate for Betty given her job restrictions (which precluded typing). Betty was told the WCB had close ties with Alberta Health Services and this would assist her in securing such a job.

Betty’s case manager also told her that, if she could only work half days, the WCB would cover the wages for the other half of the day. Betty was excited and offered to do a job shadow to see if she could do the job. The job shadowing was never arranged and, later, a WCB job developer told Betty that the WCB had no ties to AHS.

Betty searched for a hospital admitting clerk job throughout early 2016 while the WCB provided her with job-search assistance. Betty was unable to secure a job as a hospital admitting clerk. One explanation for her lack of success was that this job does not appear to exist: Betty’s job alert for hospital admitting clerk did not

yield any results until March of 2017. And this single job posting required applicants to type at least 40 words per minute (which Betty cannot do due to her injury).

The Alberta government’s ALIS website does not list this specific job (as this job title may be employer specific) but there are three similar occupations on the website: receptionist, unit clerk, and medical office assistant. These occupations all require typing at least 40 words per minute. The medical office assistant and unit clerk jobs would also require training.

On May 6, 2016, Betty informed the WCB that her doctor had changed her painkiller prescriptions and recommended additional steroidal injections in her elbow. The WCB never responded to this information and Betty was forced to pay for her own medical treatment. Soon after, on May 9, the WCB terminated Betty’s wage-loss benefits because she had reached the end of a 16-week job search program. Betty was unaware that her wage-loss benefits would be cut off at the end of the job-search program. A letter Betty received in April 2016 does not specify this potential outcome.

The ending of Betty’s wage-loss benefits was not communicated to her at this time. In the meantime, Betty was referred to not-for-profit placement agency by her case manager. This agency specialized in placing workers with disabilities in jobs. Despite attending four appointments with the agency, Betty was never given a job lead or sent to an interview or a job.

On June 20, Betty sent a letter from a fifth doctor outlining her medical condition (including significant job restrictions) to the WCB and the not-for-profit agency. The agency stopped returning her phone calls and emails. On June 22, the WCB sent Betty a letter indicating her wage-loss benefits had been terminated in May. At this point, the WCB deemed Betty to be earning a wage greater than her pre-accident wage even though she was not employed in any capacity (see Box 4). Betty’s last cheque was dated June 7, 2016 and covered the period up to May 9.

Box 4. Deeming of Wages

Alberta WCB Policy 04-02 allows the WCB to deem workers to be earning a wage when a worker is capable of obtaining modified work but has been unable to do so. The deemed wages are then used to reduce (or, in Betty's case, eliminate) wage-loss benefits for injured workers. The rationale for deeming wages is most clearly articulated in WCB Policy 04-05:

WCB has no control over several factors that affect a worker's return to employment. These factors include:

- economic conditions,
- the availability of employment opportunities,
- the worker's effort and commitment to find employment,
- an employer's decision about whom to hire.

Because these factors are beyond WCB control, WCB is responsible for helping the worker achieve employability, not employment. WCB will help the worker identify and develop the skills and capabilities to competitively pursue employment.

WCB considers a worker employable when suitable work has been identified which the worker is capable of performing.

The effect of this policy is to deny wage-loss benefits to injured workers who are unable to find employment. The rationale for deeming draws upon the notion that injured workers are likely to malingering (i.e., exaggerate the extent or duration of their injury).

Deeming wages ignores that workers with disabilities face systemic barriers (including discrimination) to finding employment. The primary beneficiaries of deeming are employers, who see their individual and collective premium costs reduced by cutting workers off of compensation.

Betty's deeming order was made contrary to WCB Policy 04-05, which indicates that deeming can only occur if all of the following conditions are met:

- a) the work can be performed without endangering the worker's recovery or safety and the safety of others,
- b) the worker has the skills the work requires, and
- c) the work is reasonably available in a location to which the worker may reasonably commute or relocate.

The job that Betty was deemed to hold essentially does not exist. This means the deeming order violates condition c. Other similar jobs that are available require training Betty did not have and was not provided (violating condition b). And Betty cannot perform the typing required by all of these jobs without the risk of

further injury (violating condition a). The WCB does not appear to have considered any of these factors in its deeming order. "They were just trying to get rid of me and hope that I would go away," says Betty.

Betty was also informed that her file would be reviewed approximately 24 months after her date of injury to determine if she has experienced a permanent disability as a result of her injury (which may entitle her to additional compensation). Betty did not receive this June 22, 2016 letter until late summer because she had returned to her home country in July for additional treatment.

Betty currently receives no wage-loss benefits from the WCB and remains unemployed due to her injury. In November 2016, Betty applied for benefits under Alberta's Assured Income for Severely Handicapped (AISH) program. "I didn't want to apply for AISH," says Betty. "I don't think of myself as disabled. I just can't find any work due to my injury." She was turned down in 2017 for these benefits and presently has no source of income. Betty continues to look for work that she can perform, including through internet job searches and networking.

Betty Appeals Her Claim

After returning to Canada in September 2016, Betty's symptoms returned (as the effect of the summer's therapy diminished over time). Unable to work at all, Betty decided to appeal the WCB's decision and she booked an appointment with the WCB's appeal advisor. In support of her appeal, she got another letter from the fifth doctor, noting she had been unable to work since March 2016.

Betty's first appointment with the appeals advisor was November 24, 2016. The appeals advisor did not send her a promised follow-up letter until December 19. It informed her that the WCB had (without notice) adjusted her compensate rate downward in February of 2016.

The errors in Betty's compensation are complex and centre on the number of hours per week she was deemed to have been employed in 2014. At first, her compensation was based upon 32 hour per week. It was then adjusted downward to 26.95 hours per week, then downward again to 20 hours. After Betty provided her pay stubs, her weekly hours were increased to 41.88.

This triggered a \$4800 cheque for retroactively owed wage-loss benefits that arrived in late March, 2017. But this recalculation mysteriously excludes two months when she should have been paid. When this was brought to the WCB's attention, Betty's case manager promised

to look into it. So far, the WCB have provided no explanation or further correction.

In the meantime, Betty was scheduled for another Functional Capacity Evaluation (FCE) at the WCB-run Millard Health Centre. In preparation, Betty asked about how the WCB assesses pain, repetitive strain injuries, and permanent impairments. Phone calls and emails to the appeals advisor, her case manager, and the case manager's supervisor were never returned.

A March 9, 2017 meeting with the appeals advisor was unhelpful. Betty was told she cannot appeal the deeming order. Betty was told to attend the FCE exam (which she intended to do), and that she could not appeal the change in her weekly hours to 41.88, and that she should find a job as a unit admitting clerk, like the WCB suggested. When Betty asked for more information about how WCB physicians make decisions about an injured worker's ability to work taking into account job conditions (limited duties and modified hours, not to aggravate existing health problem), she was told the WCB did not release this information.

Betty noted that the Section 34(1)(c) of the Workers' Compensation Act requires physicians attending to an injured worker to provide "all reasonable and necessary information, advice and assistance". The appeals advisor indicated this section did not apply to WCB-employed doctors. This assertion sits uneasily with the definition of physicians in the Act, which centres upon being a licensed medical practitioner (not a physician's employer). Whether the WCB is (or is not) required to provide this information, what possible reason could there be to hide it?

This meeting ended with the appeals advisor indicating that it didn't matter what Betty did or what the outcome of the FCE was: Betty would not be getting anything further from the WCB. This was Betty's last meeting with the appeals advisor. Betty attended a meeting with her case manager and case manager's supervisor on April 11. Her husband accompanied her, noting that the last time he had seen so many guards was in the Faberge Museum in Sankt-Petersburg.

In this meeting, the WCB promised to recalculate her wage-loss benefits (again), provide household help, pain management assistance, psychological assistance, and occupational therapy. A letter would be provided with an explanation for the payment and a plan going forward. This letter never arrived. Betty sent a letter to her case manager asking for approval of acupuncture treatment based upon promises made in this meeting but has not received approval, so is paying for the treatment out of pocket. As the case manager explained, “only one treatment modality can be approved at a time”.

Betty attended Millard on April 20 for a Medical Status Exam. The exam lasted approximately 10 minutes and the physician was not interested in hearing Betty describe her injury or symptoms. The MSE confirms the presence of her arm injury, although the doctor found no evidence of muscle wasting in her right hand. The evidence of muscle wasting is plainly visible for anyone to see and has been noted by other medical practitioners. “Basically he did the wrong test,” says Betty. “He tested my overall hand strength but did not test my strength in ring and little finger. He ignored me and turned his head away when I showed him the physical evidence of muscle wasting.”

The WCB doctor recommended surgery. “I said I would think about it, but surgery is unlikely to be helpful, says Betty, pointing to ultrasound results from February. “I do not have a compressive lesion that surgery would correct. There is no therapeutic value in his recommendation—my arm is not going to get better with surgery. The neurologist noted in his letter on December 5, 2016 that I am ‘not a candidate for surgical decompression.’ I have booked an appointment with the orthopedic surgeon to further discuss this option. If I wasn’t a doctor, I would likely go along with this treatment despite the risks. This is a terrible system.”

On May 2-3, Betty also attended a Functional Capacity Evaluation at Millard. This assessment lasted one hour. At present, the outcome of this evaluation is unknown but Betty was directed to attend a “complex” injury program at Millard on May 8. Upon arrival, she was informed she was not enrolled in the program

because her case manager did not approve it (no one communicated this to Betty). Upon inquiry, Betty’s case manager explained that she denied the physiotherapy because Betty “was open to surgery now.” Betty is presently awaiting a June 19, 2017 appointment with the orthopedic surgeon to confirm that surgery will have little therapeutic value. She suspects the reason why the WCB sent her back to a surgeon is to further delay the payment of any additional compensation.

Betty is also considering filing an appeal with the Appeals Commission for WCB. “But it is so complicated and exhausting to appeal decisions. I don’t want to make an appeal when I’m not prepared and I don’t know where to get any information about it. This whole set of issues could be resolved if the WCB would just sit down, recognize the errors made on my claim, and negotiate a reasonable path forward.”

Analysis

This case identifies a variety of issues with workers' compensation in Alberta:

1. **Reporting:** Employers, doctors and workers are all required to report injuries within 72 hours. Prompt reporting results in faster diagnosis and treatment and prevents the exacerbation of the injury.
 - a) **Employers:** Employers have a financial incentive not to report injuries. The WCB appears not to penalize employers that fail to report injuries. This lack of action assists employers to suppress injury claims. In this case, the result was an exacerbation of the injury and delay in treatment (that ultimately led to a permanent impairment).
 - b) **Doctors:** In this case, four different doctors failed to report a work-related injury to the WCB despite being made aware that the injury was work-related. This suggests there may be systemic reluctance by medical practitioners to engage with the WCB. In this case, the doctors also failed to provide a timely response to the WCB because they sought the written consent of the patient, which is not required under the Act.
2. **Poor Adjudication and Claims Management:** The WCB adjudicator and case manager made numerous errors in processing this claim. Some of these errors reflect that adjudicators are not qualified to interpret medical information. Other errors appear to reflect inattention to or ignorance of the Workers' Compensation Act and WCB policies, poor record keeping, or (less charitably) a deliberate effort to push the worker out of the system. The number of unkept promises and errors in this case are striking. As far as Betty knows, no one is being held responsible for the errors on her claim.
3. **Discrimination by Employers:** The employer discriminated against Betty when the employer terminated her for being unable to report for work due to illness. Betty could file a human rights complaint about the termination but the two-year

wait for remedy renders this process pointless from a practical perspective. The absence of a requirement for the injury employer to re-employ Betty has profound consequences for her ability to continue receiving wage-loss benefits.

4. **Deeming of Wages:** The WCB deemed Betty to be earning wages comparable to her pre-injury employment even though (1) the job they deemed her to hold does not exist, and (2) Betty is incapable of holding the job due to her work restrictions. Indeed, Betty's injury precludes her from doing most jobs yet the WCB has washed its hands of her, leaving her in poverty. Deeming of wages is a fundamental betrayal of the basic compromise inherent in workers' compensation.
5. **Psychological Impact Upon Injured Workers:** The lengthy and demanding process of securing and maintaining WCB benefits takes a significant toll on injured workers (whose capacity to withstand the process may be reduced due to their injuries). In this way, the workers' compensation system becomes an additional source of (psychological) injury to workers.
6. **Appeals Process:** The appeal process is slow and complicated and few injured workers are able to afford effective representation. This allows errors in adjudication and case management to stand.

According to Betty, the net effect of these issues in this case is that "the injured worker must be her own doctor and lawyer. She must be in excellent physical and psychological health to fight for the benefits to which she is entitled. She must also have an encyclopedic knowledge of WCB law and policies to request WCB services and speak perfect English in order to be taken seriously and receive the benefits she is owed. How many injured workers who are recent immigrants are in this position? None."

Conclusion

Case studies are, by their nature, idiosyncratic and their value is illustrative. This case illustrates some of the difficulties faced by new Alberta workers with accessing workers' compensation benefits when injured on the job. These include a lack of awareness of the system and its operation as well as discrimination based on verbal proficiency in English and country of origin.

These issues specific to being a new Alberta worker compound the issues that all workers report with workers' compensation, including doctors reluctant to engage with the WCB, employers that game the system to minimize their premiums, difficulty getting claims accepted, constant changes in benefits and repeated demands for additional information causing psychological distress, poor (or no) communication of decisions, violations of legislation and policy, the deeming of income for jobs workers don't have (and don't exist), a difficult-to-use appeal system, and a sense that the WCB is simply and constantly trying to get rid of workers' claims as fast as possible.

In Betty's experience:

The WCB demolishes workers' abilities to protect themselves. All directions are one-sided: you must do what the Board says—even if it is nonsensical, contrary to their policies, or harmful to you—or they will cut off your benefits. They might do that even if you comply!

There is no real opportunity to ask questions, present evidence or arguments, or receive answers. Together, these factors paralyze injured workers and harm them psychologically. These outcomes can't possibly be consistent with the purpose of workers' compensation.

New workers in Alberta have no one to turn to for information or help.

In reviewing Betty's case, it is important to recall that her academic preparation in medicine and public health meant she had the experience and knowledge to recognize her mistreatment, advocate for herself, and keep exceptionally careful records (all while dealing with an almost incapacitating injury). Most workers would not be able to mount the defense of her interests that Betty did. Despite these almost super-human efforts, Betty remains shut out of the system. "If I'd known how awful this would be—all these barriers—I would never have filed a WCB claim".

