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May 21, 2024

Via email: lori.guiton@worksafebc.com; policy@worksafebc.com

Lori Guiton
Workers' Compensation Board of BC

Dear Lori,

Re: Overview of worker advocates on workers compensation policy Activity-Related Soft Tissue Disorders (ASTDs) consultation

This is an overview of the BCFED Workers Compensation Advocates Group (WCAG) regarding the compensation policy consultation on the January 2024 Discussion Paper, Activity-Related Soft Tissue Disorders of the Limbs. Several of the worker representatives/organizations have made detailed submissions in response to the Discussion Paper. Please refer to those submissions for detailed analysis and submission. This overview is meant to provide a summary consensus of the WCAG in a succinct format.

WCAG members are committed to working constructively towards the improvement of workers' compensation policy, ensuring it is fair and based in science and fact.

Overview of ASTD Policy and Practice

The Workers' Compensation Board (WCB, Board) created the term Activity-Related Soft Tissue Disorders (ASTDs), classifying these conditions as occupational diseases under Chapter 4 of the RS&CM where the condition generally developed over more than one shift. The policy lists risk factors as well as a handful of conditions such as tendinopathies and bursitis that may be subject to presumptions under Schedule 1 of the *Workers Compensation Act*.

Initially, the Board used external service providers to perform ASTD assessments. In addition to the ASTD risk factors listed in policy, there was an ASTD Reference Guide that contained prescriptive levels for risk factors such as force, repetition, and awkward postures. The Reference Guide was considered outdated and retired in April 2015. Some of the prescriptive numbers were put into Practice Directive C4-2.

The numbers in the Reference Guide and Practice Directive were derived in large measure from a 1997 NIOSH study on MSIs of the upper extremities. There was anticipation that NIOSH would publish an updated study. That has not happened and is now not expected to. As per the ASTD Discussion Paper, the PRRD commissioned two systematic literature reviews (SLRs) to assist in updating ASTD policy. These SLRs have been unhelpful in providing useful guidance to update policy and practice.

The WCB has used Case Managers or Adjudicators (WCB Officers) to assess ASTD risk factors and to adjudicate the claims. The WCB Officers typically receive two to five days of ergonomic training on assessing risk factors¹. The assessments are often inadequate. There may not be a thorough assessment of the work performed at the time of injury. Judicial review decisions have found the reliance on WCB Officers' assessments rather than on assessments by ergonomic professionals was patently unreasonable.²

Instead of ensuring there are high quality assessments of the actual work in ASTD MSI claims, the WCB has moved away from worksite visits to assess ergonomic risk factors. The common practice now is for the WCB Officer to conduct a phone interview with the worker and to ask the worker to send in some photos or videos of the work. WCB Officers are not equipped to identify and assess ergonomic risk factors. This practice results in MSI hazards not being properly identified and assessed.

A recent example is outlined in the December 11, 2023, WCAT Decision A230090. A recent example is outlined in the December 11, 2023, WCAT Decision A230090. In their decision to accept the ASTD claim, the Vice-Chair considers both the assessment by the case manager who did not conduct a job site visit to the worker's place of employment but relied on past claims for workers doing the same, and the assessment by the ergonomist who met in-person with the worker, submitting a lengthy report listing the risk factors.³

According to the Discussion Paper for the current ASTD policy consultation, the allow rates for all claims and ASTD claims are:

¹ As per WCAT internal session ASTDs – A Survey of Recent Trends, Debra Ling and Terry Yu November 1, 2014 page 20

² *McHugh v. Insurance Corporation of British Columbia*, 2023 BCSC 56; *Bird v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2023 BCSC 543; *Rear v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2023 BCSC 1513

³ <https://www.wcat.bc.ca//decisions/pdf/2023/12/A2300390.pdf>

All claims	92%
ASTD claims (all genders)	54.8%
ASTD claims (male)	61.7%
ASTD claims (female)	49.1%
Difference male female accept rate	12.6%

There is a huge difference in the acceptance rate of ASTD claims as opposed to all claims. There is also a very substantial gender inequity in ASTD claims that is many times the gender difference in other types of claims.

The Board has developed a technical policy with specific reference to risk factors. The Board then does not examine the actual work with any degree of rigour that would be expected for a technical process of assessing risk factors. The Board uses unqualified WCB Officers to identify and assess risk factors rather than qualified professionals. The resulting ASTD/MSI policy and practices are a resulting failure that results in the inordinately low allow rate and gender inequity.

Summary of recommendations

The BCFED WCAG strongly urges the WCB to seriously consider the following recommendations to the ASTD policy for soft-tissue injuries and disorders and further amend the policy.

1. Replace term “ASTD” with “Work-related Musculoskeletal Disorders” (WMSD)

WMSD is used by CCOHS, WHO and included in BC ergonomic regulation. Policy used to set out the reason for using the term “ASTD” (RSCM I #27.00), saying that WMSD implied “work-relatedness.” But that imports an adjudicative consideration into the term and the injury itself needs a medical term. MSD is a well-understood medical term. Naming the injury harmonizes it with other occupational diseases and injuries of all kinds, in that it is a medical term and ASTD is not.

2. Move ASTD/WMSD policy into RSCM II, Chapter 3 (Personal Injury)

WMSDs are gradual onset injuries, already within the scope of Policy C3-12.00 “Non-Occurrence of a Specific Incident” and the same test applies, “the evidence must warrant a conclusion that there was something in the employment that had causative significance in producing the injury.”

This move is consistent with most other Canadian jurisdictions, which treat WMSDs as personal injuries. This aligns with the nature of WMSDs, which are injuries or disorders – not diseases.

3. Integrate ASTD/WMSD policy with Ergonomic Regulation

Compensation policy should be harmonized with the ergonomic regulation so the same risk

factors and standards in the OHS Regulation are applicable to compensation claims. This would include allowing the Board to import relevant ergonomic evidence from prevention files into compensation claims.

4. Require that all risk assessments be done by certified ergonomists or by well-Qualified individuals, with access to certified ergonomists

Protocols and standards for risk factor identification and assessment should be developed in consultation with ergonomic professionals and their professional bodies. The criteria and protocols for assessments must look at the actual work performed, or if that is not possible, credible simulations of the work that also account for the worker's individual characteristics. Timely, accurate and reliable ergonomic assessments must also be done to ensure that injured workers return to "safe" work after an injury.

The WCB must ensure WCB Officers adjudicating ASTD claims are properly educated and trained to conduct risk assessments.

5. Clarify the application of the "Causative Significance" test and a "Risk Factor Analysis"

The Policy must address the proper method for identifying and weighing risk factors and assessing the identified risk factors within the established legal test of "causative significance" and "as likely as not" burden of proof.

No occupational risk factor should be dismissed on the basis that it is "insufficient" in itself or that it does not meet an external numerical standard. Rather, all identified occupational risk factors must be considered and weighed as a whole to determine if it is as likely as not that work activities were causatively significant for the worker's particular condition.

No non-occupational risk factors need to be considered in this assessment for occupational "causative significance." While non-occupational risk factors may be important in assessing the impact of occupational risk factors, it is critical they do not become a barrier to a work-related injury.

This change is important for implementing a GBA+ lens into the risk factor assessment and preventing the systemic discrimination now evident in the assessment of ASTD Claims.

6. Require the Board make appropriate health care professionals available throughout the province, to provide medical diagnosis and treatment of these injuries.

It is difficult to access medical practitioners in many communities in BC. It is even more difficult to access professionals with skills relevant to occupational medicine. The Doctors of BC have recently announced they will discontinue providing sick notes. This is simply illustrative of the

challenges in obtaining relevant medical opinions and expert treatment. The WCB's requirement for medical input for the diagnosis of ASTDs/WMSDs and for the approval of safe work is a systemic disadvantage if this medical assistance is not available to injured workers. There should be an obligation on the Board to provide this medical assistance where none is available to the worker, through publicly funded means.

7. Require the Board to implement a GBA+ and equity lens into the risk factor assessment to prevent the systemic discrimination now evident in the assessment of ASTD claims.

Sincerely,



Sheila Moir

Director

Occupational Health & Safety