

QC Commission Says Telecommuter's Injury Was Work-Related



May 2012 ' By Marie-Andr e Larouche of Norton Rose

Employment and labour

In *Desrochers et Agence du revenu du Canada*,¹ Quebec's Commission des l sions professionnelles (CLP) concluded that a teleworker had suffered an employment injury while retrieving a suitcase full of documents from the trunk of her car on arriving at home after her workday.

This recent decision affirms that a teleworker can be found to have suffered an employment injury where the activity engaged in at the time of injury is, first, directly related to the employee's work, and secondly, carried out for the employer's benefit, even if the injury occurs at a time when the employee is not being paid.

The facts

The employee in this case works for Canada Revenue Agency as a financial auditor. Her work requires her to analyse files that are given to her and to conduct audits at taxpayers' homes. She spends approximately one day a week making such visits. She also works approximately one day a week at her employer's offices, and the rest of the week, she works, with her employer's consent, from her home.

On this particular morning, the employee had gone to her employer's offices with the small rolling suitcase with telescopic handle that she uses as a document carrier. Already sensing some discomfort in the area of her sciatic nerve on the right side, she asked a colleague to lift the suitcase onto a worktable for her. She went about her usual activities and left her employer's offices at the end of the day, taking the suitcase, which was full of documents, with her. When she got home, she parked her car in the driveway and went to retrieve the suitcase which was in the trunk.

As she was trying to lift the suitcase out of the trunk, she made a flexing and rotating motion of her torso and her body 'seized up' before she could even get the suitcase out. Unable to move her back, she called her husband to come and

help her into the house, where she remained immobilized for a few days before going to the hospital by ambulance to see a doctor.

The decision

The CLP began by dismissing the employer's first argument that there was no unforeseeable and sudden event, affirming that a work-related accident can occur in the context of a worker's ordinary and habitual performance of his or her duties without it being necessary for any 'improper movement' to have been made.

The employer went on to argue that there was no causal relationship between the incident and the diagnosis, and submitted, with supporting expert evidence, that the employee had previously been treated for a degenerative condition which had manifested itself spontaneously and that no accident had occurred. After reviewing the medical evidence in the record, the CLP determined that the employee had indeed been suffering from significant degenerative disease of the lumbar spine for several years. It nevertheless found that an accident had occurred, and observed that a preexisting condition did not preclude recognition of an employment injury. In this case, the CLP concluded that the movements made by the employee had caused her to injure a disc that was already weakened as a result of a preexisting degenerative process, and hence that there was a causal connection between the injury suffered and the accident.

The employer further submitted that the incident was not one that had arisen out of or in the course of work since the worker, when it happened, had left her professional sphere and entered her personal sphere. The CLP nevertheless concluded that the employee had indeed been injured in her workplace since her home was also her workplace. The

CLP noted that it had already been acknowledged in the case law that a teleworker's home should be considered his or her workplace when a work-related accident occurred there.

In addition, the CLP was of the opinion that the act of manipulating a suitcase full of documents that she needed in order to perform her duties was an integral part of the employee's work. She had demonstrated that the actions she was carrying out when she injured herself related directly to the work she had already done that day and also to the work she would have to do starting on her next day of work. Thus, in the CLP's view, the employee's claim was not defeated just because she was no longer being paid at the specific moment when she suffered the injury. The activity engaged in at the time was directly connected with her work and was performed for the benefit of her employer and not for personal reasons.

Conclusion

In short, the CLP has confirmed that a teleworker who is injured at home in circumstances that relate to his or her duties may succeed in having a claim made to the Commission de la sant  et de la s curit  au travail accepted.

Whether or not the employee is being paid at the time the injury occurs is not relevant for purposes of the analysis.

Accordingly, companies that support teleworking need to be aware of the risk of work-related injury claims that they are exposing themselves to by allowing

their employees to work from locations where they have no control over the work environment or the work methods used.