WINNERS & LOSERS: When Does Workers' Compensation Cover Skin Cancer?



Workers' comp provides benefits for workers who are not only injured on the job but also who develop an occupational illness or become sick due to their employment. For example, miners who develop black lung disease and workers exposed to asbestos who develop mesothelioma would be eligible for workers' comp benefits. But when is a condition such as skin cancer considered to be work-related or to have arisen out of and in the course of the worker's employment' Here are two cases in which the issue was whether a worker's skin cancer or pre-cancerous condition was compensable under workers' comp.

CONDITION IS WORK-RELATED

FACTS

A bus driver was diagnosed with pre-cancerous skin lesions on the left side of his face. Believing that this condition was caused by prolonged exposure to the sun while driving a bus, he filed a workers' comp claim. The WCAT upheld his claim, finding that the driver's 'occupational exposure to sunlight' was a personal injury by accident arising out of and in the course of his employment. The municipality for which he worked appealed that decision.

DECISION

The Nova Scotia Court of Appeal upheld the bus driver's claim, ruling that his skin condition was work-related.

EXPLANATION

The court noted that the bus driver didn't use tanning beds, lie in the sun or regularly take vacations to the southern hemisphere. In addition, he developed the pre-cancerous lesions on the left side of his face, which was the side exposed to the sun as a bus driver. The doctor had testified that the driver's occupational exposure to sunlight was a risk factor. Based on the evidence, the appeals commissioner had concluded that it was 'as likely as not' that the bus driver's exposure to sunlight while at work made a material contribution to his development of the pre-cancerous lesions. And the court found that this conclusion was reasonable.

Halifax (Regional Municipality) v. Hoelke, [2011] NSCA 96 (CanLII), Oct. 21, 2011

CONDITION ISN'T WORK-RELATED

FACTS

A worker developed multiple lesions on his upper and lower back, left shoulder, left forearm, left breast, chest, neck, forehead, left and right cheek, in front of the left and behind the right ear and nose. His doctor diagnosed these lesions as basal and squamous cell carcinomas, which are types of skin cancer. Because the worker believed his skin cancer was caused by exposure to sunlight at work, he filed a workers' comp claim, which was denied. So he appealed.

DECISION

The New Brunswick Workers' Compensation Appeals Tribunal denied his appeal, ruling that his skin cancer didn't arise out of or in the course of his employment.

EXPLANATION

The Tribunal acknowledged that the worker did work outdoors and that exposure to the UV light in sunshine has been tied to skin cancer. But the worker's skin cancer appeared on multiple parts of his body, some of which had been exposed to the sun and others which hadn't been exposed. In addition, the worker had been exposed to the sun as a teenager and when he was in the sea cadets. The worker also had a strong family history of basal and squamous cell carcinomas'both his mother and sister had it. As a result, WorkSafeNB's medical advisor concluded that there wasn't 'a reasonable medical probability' that his work exposure to sunlight was a 'materially significant factor' in the development of his skin cancer. And the Tribunal agreed with that conclusion.

20167863 (Re), [2016] CanLII 20916 (NB WCAT), April 12, 2016