Isles Katherine Occupational Medicine

Lamasan and Certas

Decision Date: **2017-01-23 Arbitration, Final Decision, FSCO 5127 https://www5.fsco.gov.on.ca/AD/5127**

In her report ("Isles Report"), Dr. Isles noted the Applicant's ongoing complaints of pain in his back. She noted that he had good range of motion in the hips and knees but full range of motion in the other joint areas. Under testing for range of motion for the thoracolumbar spine, she noted that he reported pain under testing in the right lower back. Her opinion set out in her report, dated July 21, 2014, was that the Applicant had reached maximal medical recovery and that there was no objective physical impairment. Her opinion was that he suffered uncomplicated soft tissue injuries of the spinal column and left wrist that are minor as defined in the *Schedule*. Her opinion was that he was not substantially unable to perform the essential tasks of his employment but when she was asked to specify the description of the employment and identify the essential tasks, she wrote "not applicable".[16]

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I prefer the evidence of the Applicant and the opinion of the Applicant's family doctor as to whether or not his impairments made him substantially unable to perform the essential tasks of his employment, over that of Dr. Isles. She failed to complete an essential part of her report in her answers to the questions concerning the Applicant's impairments and the impact on his resuming employment. Her finding that there was no objective evidence of impairment is conclusory only and I looked in vain for any analysis in her report as to the nature of the work at the retail store, the impact of his lower back pain on that work and why the Applicant would continue to experience pain in his lower back.

KI v LK, 2013 CanLII 332 (ON HPARB), <http://canlii.ca/t/fvkrt

Un-redacted decision: http://www.fairassociation.ca/wp-content/uploads/2016/02/KATHERINE-ISLES-MD-and-LARISA-KAZNACHEY-January-11_13.pdf

1. It is the decision of the Health Professions Appeal and Review Board to confirm the decision of the Inquiries, Complaints and Reports Committee of theCollege of Physicians and Surgeons of Ontario to issue a caution to Dr. K.I. regarding her inadequate and inaccurate report and to further recommend that the Applicant review the College policy, "Third Party Reports".

5. The Respondent complained that the Applicant failed to provide an accurate opinion of her claim for psychological services to the Respondent's insurer; for example, the Applicant provided an opinion that may be outside of her expertise, since she opined regarding psychological services but is an occupational medicine specialist.

8. The Committee, however, noted that the Applicant's report contained inaccuracies with respect to the details of what happened at the time of the collision. The report indicates that the Respondent was backing out of her driveway and was hit by an oncoming car, while the information before the Committee indicated that the Respondent was hit by a car backing out of a driveway. The report omitted the fact that the police were called, the car was damaged to the extent that it had to be towed away and was written off, which the Committee wrote, "speaks to the extent of the motor vehicle accident".

9. Further, the Committee found that the Applicant failed to address important information that supported a claim for psychological services. It wrote that the Applicant "commented that the physiotherapist did not mention psychological issues, but she failed to mention that [the Respondent's] family physician felt that a referral for psychological services was indicated" and that it appeared she had "completely disregarded this referral from the family physician." The Committee stated that the Applicant "completely disregarded the results of the Beck Depression Inventory and Beck Anxiety Inventory, which showed severe depression and anxiety, respectively. Without performing a psychological assessment of [the Respondent], it would be difficult to assess whether or not these conditions pre-existed the accident."

10. The Committee determined the appropriate disposition was to caution the Applicant regarding "her inadequate and inaccurate report" and to recommend that the Applicant review the College policy, *Third Party Reports*.
24. Counsel submitted that the Respondent should have raised her concerns with the report under the mediation and arbitration processes provided under the*Insurance Act* and that the College is the wrong forum for the determination of her concerns. He submitted that having determined the Applicant was properly qualified, the Committee should defer to her expertise: if the College engages in the review of third party assessment undertaken by qualified health professionals, it will deter physicians from conducting assessments.
34. The Board has reviewed the Policy and finds the Committee's assessment that the Applicant failed to comply with it is reasonable. The Committee concluded its analysis as follows:

Accordingly, it appears to the Committee that [the Respondent's] report was both inaccurate and inadequate. It seems that she failed to comply with the College policy, "Third Party Reports," which notes that when providing a third party report physicians must "take reasonable steps to ensure that they have obtained and reviewed all available clinical notes, records and opinions relating to the patient or examinee that could impact the findings of the report …" Moreover, the policy also states that physicians "should ensure to the best of their abilities that the information contained in the third party report is accurate."

35. In her May 5, 2011 report, the Applicant referred only to a physiotherapy report written shortly after the accident and did not discuss any of the other 37 documents in the file, including the opinions of the Respondent's physician and other health professionals that an assessment was required. She then wrote: "based on the documentation available for review, there was *no evidence* that [the Respondent] requires a psychological assessment …" (Board's emphasis). The Board concludes that in light of this, the Committee's conclusion that the Applicant failed to comply with the obligation "to take reasonable steps to ensure that they have obtained and reviewed all available clinical notes records and opinions" was reasonable.
36. Likewise, the Board finds that the Committee's view regarding accuracy is reasonable as the Applicant made no effort to clarify the inconsistency regarding how the accident occurred. The Board does not find that the Committee's reference to missing details regarding the apparent severity of the accident is misplaced as it is indicative of the absence of almost any factual content in the report.
37. The Board finds that that the Committee's decision to issue a caution is reasonable. The Board notes that a caution is not a sanction. It is remedial in nature.

VI. DECISION
38. Pursuant to section 35(1) of the *Health Professions Procedural Code*, Schedule 2 to the *Regulated Health Professions Act, 1991*, the Board confirms the Committee's decision to issue a caution to the Applicant regarding her inadequate and inaccurate report and to further recommend that the Applicant review the College policy, *Third Party Reports*.

Gill and Kingsway General

Decision Date: **2005-03-01 Arbitration, Final Decision, FSCO 1161**. https://www5.fsco.gov.on.ca/AD/1161

I find that Ms. Gill's work was physically demanding. She worked a 3:00 p.m. to 11:00 p.m. shift, with two breaks, specifically, a fifteen-minute break at 5:30 p.m. and a half-hour meal break at 8:00 p.m. I find, based on Ms. Gill's oral evidence, that her work required her to stand constantly. I do not accept the evidence of Dr. K. **Isle**s, who performed an insurer's medical examination ("IME") on August 30, 2002, that Ms. Gill was constantly seated while working and was only occasionally required to stand. I found Ms. Gill to be credible. She had, obviously, first hand experience as to what her job entailed. Furthermore, Dr. **Isle**s' assertion regarding sitting versus standing is consistent neither with common sense as to what Ms. Gill's employment duties entailed nor with Dr. **Isle**s' own general understanding of the nature of the position.

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Kingsway relied upon, in part, the reports of Dr. **Isle**s and Dr. E. Blackmore, D.C., the latter having conducted a Designated Assessment Centre (" DAC") assessment on November 6, 2002.

Dr. **Isle**s, in her August 30, 2002 assessment, found no evidence of objective physical impairment related to the motor vehicle accident. She concluded that as there was no physical impairment, there was no accident-related disability. Dr. **Isle**s also opined that the usual prognosis for soft tissue injuries is a gradual resolution over the course of two to three months with conservative management. Dr. **Isle**s was of the view that Ms. Gill's complaints were not consistent with soft tissue trauma.

However, as stated in *Quattrocchi* , "an insured may be found entitled to benefits because of disabling pain, despite there being no objectively confirmable impairment." A person may also be entitled to benefits under the *Schedul* e notwithstanding that their recovery may not take place within, or that one's symptoms may last longer than, the "usual" time frame.

Although Dr. **Isle**s accepted that Ms. Gill appeared to have sustained soft tissue injuries of her neck, left shoulder and lower back as a result of the accident, she opined that "there is no causal relationship between [Ms. Gill's] accident related injuries and current symptom complaints or complaints with respect to functional restrictions." Dr. **Isle**s was of the view that Ms. Gill's pregnancy at the time of the accident might be a complicating factor. Dr. Saeed testified that Ms. Gill's pregnancy affected her treatment in that x-rays were not conducted, pain and anti-inflammatory medications were restricted and physiotherapy could not be as vigorous, especially given her prior miscarriage.

I adhere to the decision of *Athey v. Leonati* , (1996), 140 DLR (4th) 235 (SCC), as followed by Arbitrator Evans in *Levey and Traders General Insurance Company* (OIC A96-001590, June 30, 1998), that the accident need not be the sole or even the principal cause of the Applicant's condition; rather, it is sufficient if the contribution by the accident was more than minimal and thereby made a material contribution to the development of the insured's condition. I am persuaded, based on the evidence of the Applicant and her treating doctors, the consistency of Ms. Gill's complaints since the accident and the absence of any evidence of any similar complaints pre-accident, that this accident materially contributed to Ms. Gill's post-accident condition, thereby establishing the requisite causal connection.

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$ I accept, as noted by Dr. **Isle**s, Ms. Gill's assertion that her low back, left shoulder and neck pain were aggravated by use;

$ I accept Dr. **Isle**s' finding that Ms. Gill's heart rate indicated that she " ;is in a poorer state of cardiorespiratory fitness." Although Dr. **Isle**s stated that Ms. Gill did not demonstrate her full abilities during functional testing, she nonetheless noted that Ms. Gill's "heart rate responses overall are consistent with a fair effort." On testing, Ms. Gill could lift from knuckle to chest, 12 lbs. Dr. **Isle**s notes this specific test as showing somewhat strong to more than very strong exertion, notwithstanding which, the performance could be considered to meet only occasional competitive employment standards. It was, however, a requirement of Ms. Gill's employment that for four hours of her shift she lift frames weighing up to 40 lbs;

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$ I found it significant that neither Dr. **Isle**s nor Dr. Blackmore addressed whether someone with considerable complaints of pain could perform up to 1,500 operations during each eight-hour shift, five days a week, fifty weeks a year, on a competitive basis. I found it also significant as to how complaints of pain were either ignored by these medical practitioners, or obliquely represented as indicative of something possibly untoward; and,

$ I was persuaded, on a balance of probabilities, that Ms. Gill's accident-related injuries and the resultant pain, specifically in the requisite repetitive lifting of heavier glass and frames approximately every 20 seconds (or

between 1,000 and 1,500 times per shift) caused her to continue to suffer a substantial inability to perform the essential lifting tasks of her immediate pre-accident factory employment at Baylite.