WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL

DECISION NO. 1093/17

BEFORE:	J.E. Smith : Vice-Chair M. Christie : Member Representative of Employers M. Tzaferis : Member Representative of Workers
HEARING:	April 7, 2017 at Toronto Oral
DATE OF DECISION:	July 12, 2017
NEUTRAL CITATION:	2017 ONWSIAT 2094
DECISION(S) UNDER APPEAL:	WSIB decision of Appeals Resolution Officer (ARO) J. Cantwell, dated February 23, 2015

APPEARANCES:

For the worker:	R. Fink, Lawyer
For the employer:	Not participating
Interpreter:	S. Puacha, Croatian

REASONS

(i) Introduction

[1] The worker appeals a decision of the ARO, dated February 23, 2015, which concluded that the worker did not have ongoing entitlement for neck, back, shoulder, elbow, knee, and wrist injuries beyond July 5, 2012; did not have entitlement to loss of earnings (LOE) benefits from July 29, 2012; and was not entitled to benefits for chronic pain disability (CPD). The ARO rendered a decision following an oral hearing.

[2] At the outset of the hearing, Mr. Fink advised the Panel that the worker's primary focus was on entitlement for CPD and, in the alternative, sought entitlement for the neck only on an organic basis, beyond July 5, 2012, and thus wished to withdraw the appeal of his ongoing entitlement on an organic basis for all other areas. Accordingly, the issue agenda was amended as set out below.

(ii) Issues

[3] The issues under appeal are as follows:

1. Entitlement for chronic pain disability (CPD);

2. Ongoing entitlement for a neck injury beyond July 5, 2012; and,

3. Entitlement to LOE benefits from July 29, 2012.

(iii) Background

[4] The now 60-year old worker was injured, while working as a truck driver for the accident employer, on November 4, 2011. Specifically, while driving a truck he came upon an accident on the road in front of him and had to suddenly slow down. As a result, he was struck from behind by the truck behind him, which was driven by his wife, an employee of the same employer, who also was injured in the accident. The worker was granted entitlement for injuries to the neck, back, shoulders, elbows, wrists and knees. The Case Manager, and ultimately the ARO in the February 2015 decision, found that the worker's injuries had resolved by July 5, 2012. He was denied ongoing entitlement beyond that date, and on that basis his LOE benefits were discontinued from July 29, 2012.

[5] The worker claimed entitlement for CPD in February 2013. In the February 2015 decision, the ARO found that the worker's organic injuries had resolved and any ongoing issues with pain were not caused by the work accident.

[6] It is the foregoing decision which is now appealed to the Tribunal with the issue agenda modified as stated above.

(iv) Law and policy

[7] Since the worker was injured in 2012, the *Workplace Safety and Insurance Act, 1997* (the WSIA) is applicable to this appeal. All statutory references in this decision are to the WSIA, as amended, unless otherwise stated.

[8] Specifically, section 13(1) of the WSIA provides:

> **13 (1)** A worker who sustains a personal injury by accident arising out of and in the course of his or her employment is entitled to benefits under the insurance plan.

[9] Tribunal jurisprudence applies the test of significant contribution to questions of causation. A significant contributing factor is one of considerable effect or importance. It need not be the sole contributing factor. See, for example, *Decision No. 280*.

[10] The standard of proof in workers' compensation proceedings is the balance of probabilities. Pursuant to subsection 124(2) of the WSIA, the benefit of the doubt is resolved in favour of the claimant where it is impracticable to decide an issue because the evidence for and against the issue is approximately equal in weight.

[11] Board *Operational Policy Manual* (OPM) Document No. 15-04-03 "Chronic Pain Disability" sets out five criteria to assist adjudicators in determining entitlement for CPD. For a worker to qualify for compensation for CPD, all of the following conditions must exist, and must be supported by the evidence:

Condition	**Evidence**
A work-related injury occurred.	A claim for compensation for an injury has been submitted and accepted.
Chronic pain is caused by the injury.	Subjective or objective medical or non-medical evidence of the worker's continuous, consistent and genuine pain since the time of the injury, AND a medical opinion that the characteristics of the worker's pain (except for its persistence and/or its severity) are compatible with the worker's injury, and are such that the physician concludes that the pain resulted from the injury.
The pain persists 6 or more months beyond the usual healing time of the injury.	Medical opinion of the usual healing time of the injury, the worker's pre-accident health status, and the treatments received, AND subjective or objective medical or non-medical evidence of the worker's continuous, consistent and genuine pain for 6 or more months beyond the usual healing time for the injury.
The degree of pain is inconsistent with organic findings.	Medical opinion which indicates the inconsistency.
The chronic pain impairs earning capacity.	Subjective evidence supported by medical or other substantial objective evidence that shows the persistent effects of the chronic pain in terms of consistent and marked life disruption.

[12] The policy goes on to provide further guidance on the interpretation of terms used in the adjudication of CPD claims:

Definitions

Chronic pain disability (CPD) is the term used to describe the condition of a person whose chronic pain has resulted in marked life disruption.

Chronic pain is pain with characteristics compatible with a work-related injury, except that it persists for 6 or more months beyond the usual healing time for the injury.

Usual healing time is defined as the point in time, following an injury, at which the worker should have regained pre-accident functional ability, or reached a plateau in physical recovery.

Marked life disruption - Because pain is a subjective phenomenon, marked life disruption is the only useful measure of disability or impairment in chronic pain cases. Marked life disruption indicates the effect of pain experienced by the worker and the effect on the worker's activities of daily living, vocational activity, physical and psychological functioning, as well as family and social relationships.

There must be a clear and distinct disruption to a worker's life, but there is no particular requirement for this disruption to be either major or minor. The disruption in the worker's personal, occupational, social, **and** home life must be consistent, though the degree of disruption in each need not be identical.

The presence of "and" in the statement "social, occupational, **and** home life" suggests that all 3 must be present. However, there is no requirement that all 3 aspects of a person's life must be disrupted **to the same degree.**

Initially, the fact that the worker has not returned to employment may be an indication of marked life disruption, the assumption being that other components of the worker's life are disrupted as well. As the 6 month period progresses, the decision-maker is obliged to obtain evidence of disruption to each part of the worker's life - personal, occupational, social, and home.

A disruption to a worker's occupational life is also considered to exist if a worker has returned to employment that has been modified to accommodate the CPD.

The following list of typical expected disruptions of functional abilities due to chronic pain is to be used when assessing the extent to which a CPD is affecting a worker's life.

Marked life disruption - vocational aspects

The type and the duration of work may be restricted totally or to a limited degree, i.e., modified duties or part-time work only may be possible.

Marked life disruption - physical aspects

- constant, unremitting pain
- pain upon movement or use of the "painful body part"
- specific activities aggravate pain
- sitting, standing, and walking are limited to short periods of time
- walking is limited to short distances
- restricted bending and lifting
- difficulty getting out of bed in the morning due to stiffness and pain
- sleep regularly disturbed by pain: difficulty falling asleep, premature awakening, repetitive awakening
- sleeping medication is required to initiate sleep
- change in appetite or weight (increase or decrease)

- increased or constant tiredness
- feeling of unsteadiness when standing
- dizziness
- headaches….

[13] OPM Document No.15-04-04 "Chronic Pain Disability Rating Schedule," sets out the "no stacking" rule for awards for CPD and an organic condition where both arise from the same accident, causing an injury to the same body part. Where a worker has entitlement on an organic basis, and subsequently is granted entitlement for CPD arising from the same injury, the non-organic CPD award replaces the organic award. The reason for this is that for purposes of rating impairment for CPD, the worker's condition is assessed on a "whole person" basis. As this rating is holistic, any impairment related to the identified organic or psychiatric source will be accounted for in the global impairment rating. CPD entitlement is therefore intended to cover all aspects of the worker's CPD condition. See, for example, *Decision No. 379/05*.

[14] OPM Document No. 15-04-03 also provides that workers who are diagnosed with fibromyalgia syndrome will be considered for compensation benefits under the CPD policy. Features of this condition include: chronic diffuse pain of unknown etiology attributable to either undetected organic condition or psychogenic sources; the presence of "tender points" in predictable, and usually symmetrical, locations; and fatigue and sleep disorders. As with CPD however, workers suffering from fibromyalgia must fulfill all the criteria in this policy in order to be entitled to benefits. See, for example, *Decisions No. 238/13, 2090/09, 881/11, 478/09, and 35/06.*

(v) Testimony

[15] The worker testified that he is now 60 years old. He worked as a truck driver and then a bus driver in his country of origin. He came to Canada in 1995 to get away from the civil war in his country of origin. He worked as a truck driver when he came to Canada as well.

[16] The worker testified that on the day of the accident, he was driving alone when he came upon an accident in front of him, meaning someone had struck and killed a moose. People were standing outside of their vehicles. He had to slow down to try to avoid them. His wife was driving approximately70 km per hour, according to the police investigation, and rear-ended him. When he went to her truck, she was hanging on the seatbelt with her eyes closed and he thought she was dead. They both went to hospital. He had pain in his lower and upper back to just below the head and had headaches. They were both in the hospital for a day or two. The worker testified that after the accident he had headaches and whole body pain in his arms, neck, and legs, and felt paralyzed. He testified that these complaints did not resolve at any point after the accident.

[17] The worker testified that on July 5, 2012 he went to Dr. Temple. He recalled telling Dr. Temple that he was "not good," that his whole body was painful, and that he could not do anything. He returned to work on July 30, 2012, back to driving a truck. He worked for 10 or 11 days working nine or 10 or 12 hours. He was in a lot of pain, and would cry at night. He testified that he stopped after 12 days as he could not tolerate the pain. He went home and slept. The next morning he was "paralyzed." He testified that he bent down to pick up a newspaper, fell down and could not move anything, not even a finger; only his brain was working, nothing else. The worker testified that he went to see Dr. Temple again, and continued to complain about neck pain

and "bubbling in the arms and legs" and told him that he was paralyzed. He went to Dr. Hanick a year later as his family doctor told him that he had to see a psychologist.

[18] The worker testified that he did not work in 2013 because of pain all over his body. He still had his driver's license in 2013 and drove his own car one or two kilometres, to buy food only.

[19] The worker described his typical day. He testified that he gets up around 11 a.m. or 12 p.m. He rents a room in a private house. He gets dressed and brushes his teeth, then goes out to get some food as he has no food in his home. He buys food that is already prepared at a store that is about one kilometre from his home. He drives slowly due to his pain which is worst in the back of his head where it meets his neck. Then he returns home and eats. After he eats, he prepares himself to go for a walk at the mall. He has to walk to keep moving. He drives to the mall, which is about one or two kilometres away. He stays there for about two hours. He testified that he walks and sits. His actual walking time totals approximately half an hour of the two that he is there. Then he returns home and sits at home. He may read the newspaper or just sit and do nothing until around five or six o'clock. Then he prepares himself for night time, he eats a snack, washes himself, and goes to bed at around nine o'clock. He sleeps maybe two or three hours per night, but tosses around and the pain stops him from sleeping. He has pain and numbness in his arms and legs. He lives on CPP-D and ODSP.

[20] The worker testified that he was married in 1984. He started having marital troubles in 1992 approximately. His wife had "big stress" but he did not know why. His wife worked in a factory and then began driving with him in 2001 or 2002. They drove as a team, so one would sleep while the other drove. He testified that his marital issues worsened after the accident. He and his wife separated on July 17, 2013.

[21] The worker testified that his sons are ages 27 and 31. Before the accident he spoke to them regularly, almost every day. He never speaks to the youngest, since 2013 when he moved out, and speaks to the older son only two or three times per month.

[22] When asked what he did for entertainment before the accident, the worker testified that he enjoyed his job and speaking with his sons. He did not socialize much as he was usually on the road. He had two or three friends and would go to church when he was home. He would see his friends once or twice per month. He testified that now he has essentially no friends. He has one friend who is busy, so he sees him maybe once per month.

[23] The worker testified that he had surgery on his neck in September 2016 after the MRI was done. He testified that since the surgery his arms are not really better, his legs are a little better, and his neck is still painful and gets worse over time as the nerve pain does not let him sleep. He testified that he has had headaches since 2009 as he was so worried about his wife's health. However, the headaches did not prevent him from driving or doing other things prior to the accident. He testified that he did not have other pain and does not recall having general body pain or pain in any other part of the body prior to the accident. He testified that now he has headaches two to three times per day. They last half an hour to an hour and he takes medicine for them. He testified that he is unable to do anything when he has headaches now, and it has been like this since the accident.

(vi) Analysis

[24] The appeal is allowed for the reasons set out below.

(a) Entitlement for CPD

[25] As stated above, in order to establish entitlement for CPD under OPM Document No. 15-04-03, the five criteria which must be met are; a work related injury, chronic pain which is caused by the injury, pain which persists at least six months beyond the usual healing time, a degree of pain which is inconsistent with the organic findings, and the chronic pain interferes with the worker's ability to earn income. We note that all of these criteria must be present in order to establish entitlement.

[26] Having reviewed the evidence before us in its entirety, we are satisfied that all five criteria are met in this case and thus the worker has entitlement for CPD. We arrive at this conclusion for the following reasons.

[27] Beginning with the first criterion, we note that there is no dispute about a work injury. The worker was granted entitlement for multiple soft tissue injuries to the neck, back, shoulders, elbows, wrists and knees following the accident on November 4, 2011.

[28] We are satisfied that the second criterion is also met, in we find that the evidence supports that the worker's chronic pain was caused by the work injury. We find that the medical evidence before us demonstrates continuous complaints of pain from the accident date onwards and in none of the medical reporting before us did the health care professionals question the genuineness of the worker's pain. We acknowledge that improvement appeared to have occurred by July 5, 2012 according to the report of that date from neurologist, Dr. B. Temple. However, while Dr. Temple noted that much of the worker's symptomology had resolved when examined on that date, he continued to experience "occasional mild lumbar discomfort." Further, Dr. Temple reported that the clinical findings suggested an early cervical myelopathy and referred the worker for an MRI of the cervical spine.

[29] We note as well that in a Form 26 dated July 14, 2012, the worker's family doctor, Dr. O. Klipitch, noted that there had been "possible slight improvement" in the worker's condition but noted that he continued to present with chest pain, fatigue, neck pain, lower back pain, headaches, and insomnia. He stated that the worker could return to work with limitations that included no lifting, stair or ladder climbing, or operating heavy equipment.

[30] We find the foregoing reporting establishes that the worker's injuries, while appearing to have improved, had not resolved by July 5, 2012.

[31] We also find it significant that the worker attempted to return to work subsequently, on July 30, 2012, and was unable to continue after 10 or 11 days, due to the increased pain he experienced. The worker testified to that effect and Dr. Temple reported on August 24, 2012, that the worker continued to complain of cervical pain and symptomology in his upper and lower extremities, as follows:

> He continues to complain of cervical pain at this time and is described as a feeling of bubbling in his arms and legs.

[32] The medical reporting of complaints of pain continues, in the case materials before us, from that date onward. In particular, we note that on August 28, 2012, Dr. Klipitch reported that the worker was unable to return to work. On August 29, 2012 Dr. Temple referred the worker for an MRI of the brain. The worker went to Emergency with back pain on September 7, 2012. The treating physician in Emergency, Dr. T. Novak, stated that there was "no evidence of neurological deficit" and advised the worker to follow up with his family doctor. Dr. Novak

completed a Form 8 dated September 7, 2012 reporting a recurrence of upper and lower back pain, noting the history of injury as "truck accident." On September 11, 2012, Dr. Klipitch continued to report that the worker was unable to return to work due to his medical condition. In a Functional Abilities Form (FAF) dated September 27, 2012, Dr. A. Lau, in Emergency, stated that the worker was unable to return to work at that time. On October 22, 2012, Dr. Klipitch again noted that the worker was unable to return to work and that he would be reassessed by neurosurgeon, Dr. E. Marmor, and Dr. Temple in February 2013.

[33] The worker was assessed by psychiatrist, Dr. A. Hanick, in October 2013. On October 16, 2013, Dr. Hanick reported to Dr. Klipitch as follows:

> As you know, [the worker] now aged 56 years, had suffered a motor vehicle accident on November 4, 2011, and when he had been working as a truck driver. Apparently, his wife, with whom he had earlier worked, had struck his truck and, as a consequence, [the worker] had injured his back, at the level of T1.
>
> Subsequently, he has continued to suffer quite troublesome pain between his shoulder-blades, at this same level, especially given his various postures and movements and activities. As well, he then might suffer a headache over the back and top of his head and such headaches especially reoccur should he feel stressed and such headaches reoccurred several times each week. Given such pain, he had attended for physiotherapy for some eight months.

[34] The worker was assessed at the Board's Psychological Trauma Program (PTP) on March 19, 2014, by psychologist, Dr. M. Barloshuk-Boerbridge, who diagnosed the worker with major depressive disorder, mild, and gave a provisional diagnosis pending further assessment by a pain specialist of "pain disorder associated with both psychological factors and a general medical condition."

[35] In a report dated May 6, 2014, PTP psychiatrist, Dr. J. Farewell, also deferred to the doctors who examined the worker physically in respect of the pain diagnosis, but stated that "a pain disorder associated with both psychological factors and a general medical condition could not be ruled out."

[36] The worker was assessed by neurologist, Dr. M. Zaitlen, on June 5, 2014 for a complaint of chronic pain in the low back. On examination, Dr. Zaitlen concurred with the opinion that the worker had sustained a chronic pain syndrome from the November 4, 2011 accident, stating as follows:

> The important first point is that the patient confirms he was fine and never had problems until the accident, which was on November 4, 2011. Since then, he has been having severe pain, which is constant and pain all over which is in the neck, headaches, back, upper and lower extremities. He also confirms he was seen by the neurologist. Anyway, the impression was chronic pain syndrome from his accident (of course, I would agree too). He said that he had some sort of paralysis for a while and was for seven months in physical therapy. He has never yet attended a so called pain clinic apparently.
>
> …
>
> Diagnosis Obviously, I agree this patient has a long-term pain condition and also that this probably will be indefinitely. For the purposes of my assessment, we identify two diagnoses – one of these is the chronic pain syndrome and the other is his social situation – and both have to be addressed and would be our targets to care for these two goals…

[37] The worker was assessed by Dr. W. Soliman, at the Chronic Pain Management Clinic, on June 16, 2014. Dr. Soliman reported the history of injury and diagnosis as follows:

> This pleasant 58-year-old man presented to us today with a main complaint of neck pain. His pain today is 7/10 on a numerical pain rating scale. However his pain ranges between 5 and 8. As you know, the pain condition of [the worker] started on November 4, 2011, after a motor vehicle accident, when he was hit from behind by a truck. He is a truck driver and he was hit by another truck from behind. It looks like he has a whiplash injury. Since then he has had increased pain below 5. He had tried physiotherapy with marginal benefit. He was seen before by a neurologist, and he suggested only pain medication.
>
> He was also seen by a neurosurgeon, Dr. Eric Marmor, in 2013 which he did not advise any surgery because of the greater risk of the procedure. The patient describes his pain as a dull aching constant pain exacerbated sometimes with a sharp shooting pain. The pain is concentrated mainly on the back of the neck and the left shoulder, but it spread into the head, arms and legs. Actually the patient said the pain is covering all his body and sometimes he is unable to move.
>
> …
>
> Based on history, physical examination and investigation this patient has myofascial pain, and maybe also fibromyalgia.

[38] On October 15, 2014, anesthesiologist, Dt. T. Ghumman noted that the worker had since the November 2011 accident, "developed chronic pains which are present all over the body mainly affecting, neck, shoulder, upper back, bilateral arms, lower back ache, bilateral legs and headaches." Dr. Ghumman diagnosed the worker with widespread fibromyalgia with multiple trigger points, chronic mechanical neck and lower and upper back pain.

[39] We find the foregoing reporting medical reporting establishes that the worker's complaints of pain from the accident date onward were continuous and believed to be genuine by all treating and assessing health care providers. Further, we note the unanimous opinions of Drs. Ghumman, Soliman, and Zaitlen, that the worker's chronic pain condition/fibromyalgia, resulted from the work accident.

[40] We note that this opinion was echoed by Dr. Hanick in a report dated November 18, 2016 who also explained the brief period of apparent improvement prior to attempting to return to work:

> Summary and Diagnostic Formulation
>
> As a result of his motor vehicle accident of November 4, 2011 [the worker] had suddenly been thrown upwards, then striking the top of his head against the roof of the cab of his truck and, in the course of this blow, he had suffered a quite forceful axial compression of his neck and spine that had left him momentarily unawares, although his mind had then been in a "fog" for perhaps up to an hour. The collision had been a surprise and shock, but he had been overwhelmed with emotion on then seeing his wife, also involved in the accident, seemingly dead, with her eyes closed and blood running from her nose and mouth. Despite subsequent physiotherapy and the passage of time, [the worker] has continued to suffer disabling pain and muscular weakness and significant physical frailty and, given this situation, that has been further compounded by past- accident events, he has also continued to suffer on a significant emotional/psychiatric plane. Just recently, in September of 2016, [the worker] underwent corrective surgery, perhaps at his T1level, but, even so, he remains enmeshed in his physical suffering and physical disability and consequent.
>
> …
>
> Nevertheless, given these injuries, superimposed on underlying degenerative changes, [the worker] has come to suffer with a chronic pain disorder, especially experienced through the spine of his upper back and across his posterior shoulders, although such

> pain, even now, can intermittently involve much of his back and, perhaps, his limbs, although he suffers a constant numbness through the thumb and index and long fingers of his left hand. Nevertheless, it is evident that post- accident emotional factors have progressively grown more dominant and have become intermingled with his pain, to produce a far more distressed and compromised and even disabled individual who remains long-suffering and given to despair. Given the interaction of such post-accident emotional and physical problems, it is evident that, given his original injuries and their consequences, [the worker] has come to suffer with a somatic symptom disorder, of predominant pain and of a disabling intensity.
>
> [The worker] also suffers with "burning" headaches over the back and top of his head, often in conjunction with his greater posterior neck pain, although emotional arousal and the efforts of concentration can further add to his headache distress. This pattern of headache complaint indicates cervicogenic headaches and, likely, an occipital neuralgia, a form of neuronal involvement. It would appear that his pre-existing headaches have been severely amplified by the consequences of his neck and upper back injuries, as suffered in is motor vehicle accident. Nevertheless, his headaches remain persistent and compromising.
>
> Given the documentation, there would seem to be concern, into July of 2012, that [the worker] had been feeling comparatively better and able to return to work, perhaps especially given that his family physician 's notes do not specifically document pain . However, the note dated July 16, 2012 specifically says that [the worker] simply "feels slightly better," although a subsequent line says that he "feels well." Nevertheless, the physician had not advised a return to work until he had seen a neurologist and his physician had advised that [the worker] return should he feel worse….
>
> …
>
> Nevertheless, such a pattern of seeming improvement is not unusual, at all, even in individuals who go on to develop chronic pain.
>
> …
>
> In the matter of [the worker], he had undertaken a ten-day drive into the United States and, as expected in chronic pain patients, his pain then dramatically and significantly flared, to obviously disabling intensities. ...Even so, the pattern of seeming improvement before a significant flare in the intensity of the pain is often reported by those who go on to suffer such chronic and disabling pain.

[41] We find no reason to reject the opinions of Dr. Ghumman, Dr. Soliman, Dr. Zaitlen, and Dr. Hanick, all of whom held the view that the worker developed a chronic pain condition/ fibromyalgia, as a result of the November 4, 2011 work accident. Accordingly, we find the second criterion is met.

[42] With regard to the third criterion, we note that the worker's entitlement initially was for soft tissue injuries to the upper and lower extremities and to the neck and back. Given that it is now more than five years since the accident and the worker's pain is still ongoing and persistent, we are satisfied that his condition has persisted more than six months beyond the usual healing time and thus the third criterion is also met.

[43] We accept that the worker's pain is inconsistent with the clinical findings and thus the fourth criterion is also met. We note that the PTP assessors opined that the worker's pain condition was likely related to general physical and psychological factors, and deferred to the pain specialists as to whether the worker's pain levels were inconsistent with the organic findings. The pain specialists to whom the assessors deferred, as noted above, diagnosed the worker with chronic pain syndrome and/or fibromyalgia. In this regard we note that Dr. Temple

noted in the July 5, 2012 report that "nerve conduction studies of the upper extremities were normal" and there was no evidence of a carpal tunnel syndrome and no evidence of ulnar neuropathy." On August 23, 2012, physiatrist, Dr. T. Cohodarevic, noted the cervical spine MRI findings were longstanding and not related to the injury at work. As well Dr. Cohodarevic stated that the finding at the T1 level specifically, was not related to the work injury and was "of unknown clinical significance." In the report of June 5, 2014, Dr. Zaitlen noted that there appeared to be "changes including degenerative in the spine but no significant pathology and nothing surgical," and diagnosed him with chronic pain syndrome. In the report of June 16, 2014, Dr. Soliman noted the "mild disk protrusion at C3,4 and mild disk bulging at C5-C6 and C6-C7" with " no central canal stenosis or cord compression" and "multi-level degenerative disk disease." In the context of those findings, Dr. Soliman diagnosed the worker with myofascial pain and possibly fibromyalgia. Finally, Dr. Ghumman also noted the relatively mild changes found in the cervical spine MRI and diagnosed the worker with widespread fibromyalgia. We interpret the foregoing reporting to indicate that in the opinion of Drs. Zaitlen, Soliman and Ghumman, the worker's level of pain was not consistent with his relatively mild clinical findings. We therefore find that the fourth criterion is met.

[44] Lastly, we note that according to the worker's testimony, and the reporting of Drs. Klipitch and Hanick cited above, the worker has been unable to work as a result of his chronic pain. He is limited to short periods of driving. Further, we accept that his condition contributed to the end of his marriage and the limited contact with his sons. His days are spent attempting to manage his pain and in relative isolation. For these reasons we find that the worker's chronic pain has resulted in marked life disruption and thus the fifth criterion is also met.

[45] As we are satisfied that all five criteria set out in the Board's policy are met in this case, we find the worker has entitlement for CPD flowing from the November 4, 2011 accident.

(b) Entitlement for an organic neck impairment beyond July 5, 2012

[46] As noted above, OPM Document No. 15-04-04 sets out the no stacking rule for injuries to the same body part arising from the same work accident. Accordingly, the worker's entitlement for CPD replaces his entitlement for his organic injuries, including to the neck, beyond July 5, 2012. He therefore does not have entitlement for an organic neck impairment beyond July 5, 2012.

(c) LOE benefit entitlement from July 29, 2012

[47] To reiterate that which is stated above, when a worker suffers a loss of earnings as a result of a compensable impairment, LOE benefits are payable. We are satisfied that the worker was rendered unable to earn income in any employment by his compensable CPD condition and thus he has entitlement to full LOE benefits from July 29, 2012.

[48] In arriving at this conclusion, we note that Dr. Klipitch provided multiple notes stating that the worker could not work at all in 2012 and 2013. We note that Dr. Lau, in a FAF dated September 27, 2012, also indicated that the worker could not work at all.

[49] Dr. Hanick, in the report of October 16, 2013 recommended pain management assistance and, if improvement flowed from that treatment, "then [the worker] may benefit from employment and vocational assessment and counselling and likely retraining."

[50] On April 22, 2014, Dr. Barloshuk-Boerbridge stated that the worker's mood disorder did "not prevent work transition engagement;" however, the worker's "perceived pain-related difficulty make it unlikely he will initiate and/or maintain employment."

[51] We note that Dr. Farewell, in May 2014, stated that it was unlikely that the worker would be able to return to any employment without assistance in the form of a multidisciplinary pain management program:

> His ongoing issues with pain would also make it highly unlikely that he would be able to initiate and maintain employment with other employers and the current assessor would recommend his involvement with a multidisciplinary chronic pain management program before he starts any return to work.

[52] Finally, in November 2016, Dr. Hanick stated that the worker was disabled from work and his household obligations:

> Given his physical presentation alone, [the worker] is clearly disabled for any type of work, whatsoever. It is not seen that he could work as a driver of any type of commercial vehicle, although he can drive his own car slowly and carefully. Nevertheless, he can hardly handle the six steps to his bedroom. He is seen to be harshly and fully disabled in terms of any workplace opportunities and quite severely limited and curtailed in terms of his household obligations and it is seen that he has fully lost his ability to socialize, given his advanced paranoid stance. Indeed, it is evident that [the worker] has suffered a substantial, but partial inability to carry on with a normal life

[53] We find no basis to reject the foregoing medical opinions and thus find the worker is unable to earn income in any employment as a result of his compensable CPD. He is therefore entitled to full LOE benefits from July 29, 2012, less his actual earnings during his brief attempt to return to work in 2012, and subject to any further statutory review.

(d) Cost of Dr. Hanick's November 18, 2016 report

[54] Mr. Fink requested coverage of the cost of Dr. Hanick's November 18, 2016 report, pursuant to the Tribunal's Practice Direction, "Expert Evidence." As Dr. Hanick's report was significant in the Panel's adjudication of this appeal, we find that the cost of the report is payable in this instance, at the Tribunal's approved schedule of rates.

DISPOSITION

[55] The appeal is allowed as follows:

1. The worker is entitled to benefits under the Board's CPD policy as arising from the workplace accident occuring on November 4, 2011.

2. The worker's entitlement for CPD replaces his entitlement for the organic injuries sustained in the November 4, 2011 accident. Therefore, the worker does not have ongoing entitlement for an organic neck injury beyond July 5, 2012.

3. The worker is entitled to full LOE benefits from July 29, 2012, less his actual earnings during the period in 2012 when he returned to work, subject to any further statutory review.

4. The cost of Dr. Hanick's November 18, 2016 report is to be paid at the approved schedule of rates.

[56] The nature and duration of benefits flowing from this decision will be returned to the WSIB for further adjudication, subject to the usual rights of appeal.

DATED: July 12, 2017

SIGNED: J.E. Smith, M. Christie, M. Tzaferis