



WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL

DECISION NO. 2323/17

BEFORE: L. Gehrke : Vice-Chair
M. Christie : Member Representative of Employers
F. Jackson : Member Representative of Workers

HEARING: July 26, 2017 at Toronto
Oral

DATE OF DECISION: August 3, 2017

NEUTRAL CITATION: 2017 ONWSIAT 2343

DECISION UNDER APPEAL: WSIB Appeals Resolution Officer (ARO) decision dated
February 18, 2014

APPEARANCES:

For the worker: R.A. Fink, Lawyer

For the employer: Not participating

Interpreter: Not applicable

Workplace Safety and Insurance
Appeals Tribunal

505 University Avenue 7th Floor
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Tribunal d'appel de la sécurité professionnelle
et de l'assurance contre les accidents du travail

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REASONS

(i) Introduction

[1] The worker appeals a decision of the Appeals Resolution Officer (ARO), which concluded that the worker was not entitled for aggravation of pre-existing asthma due to workplace exposure to dog dander. The decision of the ARO confirmed decisions of March 19, 2010 and July 5, 2013, which rescinded initial entitlement and the payment of LOE benefits.

(ii) Issues

[2] The sole issue under appeal is whether the worker has initial entitlement for an aggravation of her pre-existing asthma condition on December 31, 2008 as a result of exposure to dogs in the workplace.

(iii) Background

[3] On December 31, 2008, the worker, then 51 years old, took medical leave from her work as an office administrator in an agency for the sight-impaired because of an aggravation of her pre-existing non-compensable asthma condition. She claims that this aggravation resulted from her exposure to dogs in the workplace, in particular a German shepherd and other guide dogs brought to the office by co-workers and clients.

(iv) Law and policy

[4] Since the worker claimed to be injured in 2008, the *Workplace Safety and Insurance Act, 1997* (the WSIA) applies to this appeal. All statutory references in this decision are to the WSIA, as amended, unless otherwise stated.

[5] An “accident” is defined in section 2(1) to include:

- (a) a wilful and intentional act, not being the act of the worker,
- (b) a chance event occasioned by a physical or natural cause, and
- (c) disablement arising out of and in the course of employment;

[6] General entitlement to benefits is governed by section 13. Section 13(1) 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.

[7] 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*.

[8] The standard of proof in workers’ compensation proceedings is the balance of probabilities. Pursuant to section 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.

[9] Pursuant to section 126 of the WSIA, the Board stated that the following Policy Packages, Revision #9, would apply to the subject matter of this appeal: #1; #107; #300.

(v) Analysis

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

[11] The Panel finds the following facts, based on the record and the worker's testimony:

1. The worker has had symptomatic asthma since she was a child. She grew up in a household with dogs and cats. Both her parents were heavy smokers.
2. The worker also suffers from gastroesophageal reflux disease (GERD).
3. She is allergic to dogs.
4. The worker was exposed to dogs in the workplace of her employer, an agency that served sight-impaired clients. She started employment in this workplace in 1998. In particular, a co-worker had a German shepherd dog that was in the office on a daily basis in the years 2007 and 2008, and less frequently in prior years. Other guide dogs, brought in by co-workers and clients, were in the office one or two days per week.
5. The worker had a pet black Labrador retriever at home from September 2002 to October 2007. She brought her pet dog to the office in the years 2005 to 2007. Her dog died in October 2007 and she did not have another pet dog after that.
6. The worker suffered from exacerbations of her asthma before she started working for the accident employer in 1998. In particular, she was treated in hospital for exacerbations in 1977 and in 1995 or 1996.

[12] In 2003, the worker's family doctor, Dr. B. Malcolm, referred her to Dr. V. Hoffstein, respirologist, to assess a cough of two years' duration. Dr. Hoffstein reported on June 2, 2003 that there were three possible causes for her cough: allergies, asthma, and gastroesophageal reflux disease. Dr. Hoffstein noted that she was allergic to dust, molds, cats and dogs. She had occasional heartburn. Dr. Hoffstein arranged investigations and changed her asthma medication and prescribed medication for gastroesophageal reflux. At that time, the worker had a pet dog at home and was exposed, according to her testimony, to dogs at work one or two days per week (7 to 14 hours per day).

[13] Dr. Hoffstein reported again on June 19, 2007: "At that time, I thought her cough was due to combination of asthma and gastroesophageal reflux disease. Allergies were a consideration but I did not address that." Dr. Hoffstein noted:

[The worker] is now convinced that her cough is secondary to allergy to German shepherd. She works at an office dealing with issues related to blind people. There are at least 3 or 4 guide dogs, all black Labradors. She has one as well. She assures me that this is not what troubles her. Apparently, there is one German shepherd and every time she is near the dog, she begins to cough and sneeze. However, when I questioned her about it, she tells me that the same symptoms occur on weekends when she is not near the dog.

[14] On August 27, 2007, Dr. Hoffstein reported that the worker "finds that the cold weather exacerbates her cough. She also finds it worse in the office where ...there are dogs in the environment. She is unable to identify any other triggers. ...She does have a black Labrador

dog at home.” Dr. Hoffstein concluded that she had a definitive diagnosis of asthma, and referred her to Dr. Binkley for allergy testing.

[15] Dr. Binkley assessed the worker on September 11, 2007 and reported in part:

She has had a dog at home for 5 years and does admit that her asthma is worse for the past 4-5 years. She denies obvious reaction after handling her own dog but does get worse when she is around other dogs. She was ensured that she was better when she was away from her dog on vacation. She works in an office and is regularly exposed to guide dogs and brings her own dog [there]. She does think she gets worse around the other dogs.

[16] On testing, the worker showed “significant reactions to dust mite, trees, grass, ragweed, mixed molds, mixed aspergillus, dog, and a large reaction to cat and cockroach.” Dr. Binkley assessed rhinoconjunctivitis and asthma, and wrote in part:

Unfortunately, the dogs at work as well as her own dog at home are likely contributing and we have discussed removing herself from these environments. Her pet dog at home is nearly at the end of his natural lifespan and she is considering not replacing it. She has been considering switching her place of employment and will give further thought to this, so she can avoid the dogs at work.

[17] The Panel finds, based on her testimony and Dr. Binkley’s report, that the worker brought her own dog to work from 2005 until its death in October 2007. Thus, she was exposed to her own dog nearly 24 hours per day. During this period, she testified that her exposure to her co-worker’s German shepherd increased from three to four days per week in 2005 to every day in 2007. She testified that in 2007 she was getting sick more often.

[18] We accept Dr. Binkley’s assessment in 2007 that the dogs at work, as well as her own dog, were likely contributing to the increase in asthma symptoms. In these circumstances, exposure to dogs at work (other than her own) was a significant contributing factor to her increased asthma symptoms. We note that the workplace factor need not be the sole contributing factor, so long as it is a significant contributing factor to the aggravation. We find that this was the case, based upon Dr. Binkley’s report and opinion.

[19] We find that the worker stopped working in 2008 due to the aggravation of her asthma symptoms by exposure to dogs in the workplace. Throughout 2008, the worker was exposed to the co-worker’s dog during working hours, five days per week. She was also exposed to other guide dogs in the workplace on a less than daily basis during. She had no exposure to dogs other than at work. She no longer had a pet dog. Thus, during 2008, workplace exposures to dogs were the only known exposures to allergens that would aggravate her asthma symptoms.

[20] Both Dr. Binkley and Dr. Hoffstein were of the opinion that exposure to dogs was a significant contributing factor to the aggravation of her asthma. We accept these opinions. While Dr. Hoffstein opined on May 13, 2009 that her gastroesophageal reflux and obesity interfered with her asthma control, and while he posed it as a possible cause of her cough, he found on August 17, 2009 that “medications, her attempts to lose weight, and being absent from work are definitely improving her breathing.” An FEV graph showing the working’s lung function from 2003 to 2013 were provided by Dr. Hoffstein. The graph shows that the worker’s FEV dropped steeply in the year 2008 and improved in 2009, when the worker was away from work. On July 16, 2012, Dr. Hoffstein reported that the worker was “doing quite well” and “currently back to normal.” On January 16, 2013, Dr. Hoffstein reported that “[s]ince we last saw her in clinic, she feels much improved. She no longer endorses any history of cough, chest

tightness or wheezing.” On November 4, 2015, Dr. Hoffstein wrote to the worker’s representative in part:

The issue is whether exposure to dogs (German shepherd) during her work aggravated her asthma. In my opinion, it did. This opinion is based on two facts.

First, [the worker] is allergic to dogs as noted in the letter of Dr. Karen Binkley, an allergy specialist who saw this patient at St. Michael’s Hospital on September 11, 2007.

Second, it is a well-known fact that patients with asthma who are chronically exposed to a known allergen will have worsening of their asthma and poor response to medications.

[21] Dr. Hoffstein, a professor of medicine, respirology diseases, has investigated, treated and examined the worker regularly from 2003 to the time of the hearing. We find his reports and that of Dr. Binkley to be persuasive.

[22] On February 24, 2010, the Board’s chest consultant, Dr. D.C.F. Muir, provided an opinion based upon Dr. Hoffstein’s report of May 13, 2013 that “Dr. Hoffstein appears to favour oesophageal reflux as an important cause of her symptoms.” Dr. Muir did not refer to Dr. Hoffstein’s subsequent reports of August 17, 2009, July 16, 2012 and January 14, 2013; and did not have the benefit of Dr. Hoffstein’s report of November 4, 2015 or the FEV graph from 2003 to 2013. Dr. Muir’s opinion is based upon Dr. Hoffstein’s opinion. It is impossible to speculate what Dr. Muir’s opinion might have been, had Dr. Hoffstein’s further reports been made available to him for review.

[23] Moreover, the fact that oesophageal reflux may have been an important cause of her symptoms does not bar compensation for the aggravation of the worker’s previously diagnosed asthma condition by workplace exposures. We find based upon Dr. Hoffstein’s reports that oesophageal reflux was a co-contributor together with asthma to the worker’s ongoing symptoms; however, this does not bar the compensability of the aggravation of her asthma symptoms. As discussed above, a significant contributing factor need not be the sole contributing factor. We find that the aggravation of her asthma by dog exposure at work was a significant contributing factor to the symptoms that caused her to stop working in December 2008.

[24] For all of the foregoing reasons, we find that the worker’s exposure to dogs at work was a significant contributing factor to the aggravation of her asthma condition in December 2008.

DISPOSITION

[25] The appeal is allowed.

[26] 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: August 3, 2017

SIGNED: L. Gehrke, M. Christie, F. Jackson