



## WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL

### DECISION NO. 2396/17

**BEFORE:**

P. Allen : Vice-Chair  
R.G. Ouellette : Member Representative of Employers  
M. Tzaferis : Member Representative of Workers

**HEARING:**

August 3, 2017 at Toronto  
Oral

**DATE OF DECISION:**

September 6, 2017

**NEUTRAL CITATION:**

2017 ONWSIAT 2719

**DECISION(S) UNDER APPEAL:** WSIB Appeals Resolution Officer (ARO) decision dated August 16, 2016

**APPEARANCES:**

**For the worker:** R. Fink, Lawyer

**For the employer:** C. Landgren, Paralegal

**Interpreter:** Not applicable

Workplace Safety and Insurance  
Appeals Tribunal

505 University Avenue 7<sup>th</sup> 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 sustained a compensable low back injury on May 17, 2012. He now appeals the decision of the Appeals Resolution Officer (ARO) dated August 16, 2016. In this decision, the ARO concluded that the worker was not entitled to chronic pain disability (CPD) benefits and was not entitled to psychotraumatic disability (PTD) benefits. The employer appeals a decision of the ARO dated July 8, 2014. In this decision, the ARO determined that the worker's claim would not be allowed on an aggravation basis and that the employer was not entitled to cost relief through the Second Injury and Enhancement Fund (SIEF).

[2] As a preliminary matter, the employer's representative advised that the employer was withdrawing their appeal of the denial of cost relief through the SIEF. In addition, the employer's representative advised that the employer was no longer appealing the issue of allowance of the claim on an aggravation basis. Any attempt to renew the appeal of these issues will be subject to the time-limit provision of section 125(2) of the *Workplace Safety and Insurance Act, 1997* (the WSIA).

### (ii) Background

[3] The following are the basic facts.

[4] On May 17, 2012, this then 30-year-old truck driver injured his low back. The worker returned to modified duties. The Workplace Safety and Insurance Board (WSIB or the Board) accepted entitlement for a low back strain and did not pay loss of earnings (LOE) benefits.

[5] On September 10, 2012, the worker was assessed by Dr. Schutz (neurosurgeon) at a Regional Evaluation Centre (REC) where the worker was diagnosed with a sprain/strain injury. Dr. Schutz commented that the worker demonstrated "pain focused behavior and also commented that "we expect a complete resolution of all symptoms." The worker was referred for an MRI examination by Dr. Schutz which was performed on September 13, 2012. The MRI report was normal other than a "nerve sheath tumour." In a follow-up report dated September 17, 2012, Dr. Schutz commented that this tumour was an "incidental finding" and "completely unrelated to the work-related injury..."

[6] On November 23, 2012, the WSIB arranged a Return to Work (RTW) meeting wherein the worker was offered a graduated RTW plan. On week one, the worker was offered unrestricted regular duties for two hours per day and modified duties for seven hours per day. Over the next two weeks, the number of hours of unrestricted regular duties increased by two hours and the modified duties decreased by two hours. By week four, the worker was scheduled to return to unrestricted regular duties. The worker declined the offer of modified work and did not return to work with the accident employer. On March 13, 2013, the worker was terminated by the accident employer.

[7] On November 14, 2013, the worker was assessed by Dr. Cooper (psychiatrist), who diagnosed the worker with a generalized anxiety disorder and a stress reaction.

[8] On May 13, 2014, the worker was assessed by Dr. Langer (orthopaedic surgeon), who diagnosed the worker with mechanical low back pain as well as chronic pain disorder.

[9] On October 15 2014, the worker was assessed by Dr. Lee (psychologist), who diagnosed the worker with “chronic pain disability and that psychological factors play a significant role in the exacerbation and maintenance of his pain complaints.”

[10] On October 7, 2015, the Case Manager denied entitlement to CPD and PTD benefits. The ARO decision of August 16, 2016 upheld the Case Manager’s decision and denied entitlement to CPD and PTD. It is from this decision that the worker now appeals.

[11] On April 13, 2017, the worker was assessed by Dr. Jeffries (psychiatrist) and was diagnosed with an “adjustment disorder with angry mood secondary to his perception of being mistreated and harassed.”

### (iii) Law and policy

[12] Since the worker was injured in 2012, the WSIA is applicable to this appeal. All statutory references in this decision are to the WSIA, as amended, unless otherwise stated.

[13] 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.

[14] 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*.

[15] 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.

[16] 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, #9, #10, #107, #181 and #300.

[17] We have considered these policies as necessary in deciding the issues in this appeal.

### (iv) Worker’s testimony

[18] A summary of the worker’s testimony is provided below:

- The worker was employed as a roll-off driver with the accident employer since 2003.
- A roll-off driver is responsible for driving a truck and picking up disposal bins at various sites. The job is physical in nature as it requires drivers to manually secure the bins for transport.
- The worker was assigned to a particular driving route prior to a work-related accident in 2011 in which he fell on his left shoulder. The WSIB accepted this as a claim. The worker returned to his regular route after the accident.
- In 2011, the worker advised that he was harassed by his supervisor (Mr. R.) when he changed the start time of the worker’s shift and reduced the amount of the worker’s pay by not paying for certain hours.

- The worker experienced a work-related accident on October 19, 2011, when a car hit his truck. This caused a low back injury. The worker returned to modified duties and then on February 24, 2012, the worker returned to regular duties. However, the worker advised that these regular duties were not his pre-accident route and that this was punishment by Mr. R. The worker also advised that the accident employer removed an air-ride seat from his truck and this was also a form of punishment from Mr. R.
- The worker experienced an accident in May of 2012 which resulted in a low back injury. The worker advised that he was offered and accepted modified duties which involved some clerical work and driving vehicles to get customer signatures. The worker continued to perform these modified duties until November 24, 2012. At this point, the employer advised that he was being offered a gradual return to regular duties over several weeks. The worker advised that he refused the offer of modified duties for three reasons:
  1. The worker advised that the offer of modified work was not written on company letterhead;
  2. The worker advised that he would have to report to Mr. P. and that he did not want to report to Mr. P.; and
  3. The worker advised that he was being asked to perform “unrestricted” regular duties which he believed meant he would be assigned to routes that involved heavier work. He advised that he felt that he could not perform the work involved on other routes and that he wanted his “regular” route back and that he believed that he could perform this work.
- The worker testified that, when he did not sign the modified work agreement, the employer stopped offering clerical work and the worker was not paid by the accident employer or the WSIB. The worker testified that he continued to come to work and punch-in. The worker advised that the employer would send him home each day advising that they did not have work for him. The worker advised that this situation made him very angry and that he filed grievances.
- The worker advised that he was terminated on March 13, 2013.
- The worker testified that his union was very unsupportive and “lost his grievances.”
- The worker advised that he grieved his termination and in 2014 a hearing was held. The worker testified that the employer was willing to offer the worker a driving job but that the worker wanted the same route that he drove in 2011 and prior. When the employer was unwilling to provide the same route that he drove in 2011, the worker declined the offer to return to work with the accident employer.
- The worker testified that, since his termination with the accident employer, he has worked in several jobs with automotive dealerships and now works as a dump truck driver. The worker advised that driving a dump truck does not involve physical work.
- The worker advised that his condition has improved since 2012. Although he cannot run or dance, he advised that he can perform his full-time job as a dump truck driver without missing time from work. The worker also advised that his relationship with his family has improved in recent years, that he is dating again and that he goes to the gym to stretch. In

terms of his mental health, the worker advised that he is still upset and angry with the “maliciousness” of his termination.

- The worker advised that he is not receiving treatment for chronic pain or anxiety.

**(v) Analysis**

[19] The worker’s representative submitted that the worker is seeking entitlement for PTD or, in the alternative, for CPD. Tribunal case law has held that it is necessary to determine the predominant nature of the disability. An injury is characterized as CPD if the nature of the disability is most closely associated with pain which cannot be attributed to organic causes. If, however, the nature of the disability is most closely associated with a psychiatric diagnosis that is distinct from the worker’s pain (e.g., depression or conversion disorder) then it is generally compensated as a PTD. See, for example, *Decision Nos. 881/98 and 1858/13*. In addition, different Board policies apply to CPD and PTD claims.

[20] The worker’s representative submitted that the worker’s primary disability was PTD and supported this submission with the comments of various physicians, including Dr. Cooper and Dr. Jeffries who, the worker’s representative submitted, diagnosed a psychological condition but did not diagnose CPD.

[21] The Panel finds that the predominant nature of the worker’s compensable disability subsequent to the May 2012 accident was chronic pain. The Panel is supported in this finding by the clinical findings of the following physicians:

- **Dr. Shutz:** On September 10, 2012, the worker was assessed by Dr. Shutz who performed a physical examination and commented that “there is no neurological deficit. Power, tone, bulk, coordination are all intact. No evidence of myelopathy or radiculopathy.” As a result, the worker was diagnosed with “temporary soft tissue injuries.” However, as noted by the worker’s representative, Dr. Shutz commented that the worker exhibited pain focused behaviours during the examination. As a result, the Panel notes that pain focused behaviours were present as early as 2012.
- **Dr. Langer:** On May 21, 2014, the worker was assessed by Dr. Langer who commented that the worker suffered moderately severe low back pain caused by mechanical low back pain. Dr. Langer also provided the following comments:

This disability has been defined by [the worker’s] assertions of pain and disability and not by the objective elucidation of any specific or appropriate, post-traumatic physical pathology.

It is my view that the evidence supports the evidence of pain amplification behavior which he exhibited today and on the assessment of Dr. Shutz is a manifestation of amplified pain perception that is a chronic pain disorder.

Chronic pain is a recognized complication of trauma which is characterized by intensification of painful impairments, recalcitrance to therapies, entrenchment and chronicity.”

The Panel finds that Dr. Langer diagnosed the worker with CPD.

- **Dr. Lee:** The worker was assessed by Dr. Lee on three days (July 23, October 1 and October 3, 2014). Dr. Lee provided the following relevant comments in his report of October 15, 2014:

[The worker] reported that pain is his primary presenting problem relating to his injury. He endorsed ongoing pain along his neck and low back, travelling into the buttocks and down into the feet. He reported that pain levels are at about 8 to 9/10. Pain levels were made on a standard numerical scale with 10 representing the “worst pain imaginable.” He reported that changes in weather, excessive movement and generally strenuous activities aggravate his pain. He reported that anxiety and stress aggravate his pain. He reported that nothing is helping with the pain at the moment, other than trying not to think about it. He reported that stressors involving his case magnify his symptoms. [The worker] was asked to articulate his understanding of his physical condition and ongoing pain. He reported that he has been advised that he suffers from chronic pain and his spinal tumor has nothing to do with his pain condition. He reported that the tumor is not cancerous, but rather, a tiny cyst that was a minor issue and could be removed easily”

...

[The worker] is a 32 year old man who was involved in workplace injuries on August 16, 2011, October 12, 2011 and May 17, 2012 including a motor vehicle accident on October 19, 2011 all of which cumulatively caused his to suffer from chronic pain disability.

...

The Orthopedic assessment by Dr. Fred Langer, physician, dated May 28, 2014 that “chronic pain developed in [the worker] as a consequence of the accident...” Thus [the worker] does exhibit features classical for the condition of chronic pain.

...

It is evident that [the worker] suffers from chronic pain disability and that psychological features play an important role in the exacerbation and maintenance of his pain complaints.

Dr. Lee diagnosed the worker with somatic symptom disorder and recommended an interdisciplinary pain rehabilitation program.

The Panel finds that the primary diagnosis of the worker’s condition is chronic pain and that “psychological features” play a secondary role “in the exacerbation and maintenance of his pain complaints.”

[22] As a result of the foregoing comments of Dr. Shutz, Dr. Langer and Dr. Lee, the Panel finds that the predominant nature of the worker’s compensable disability is related to chronic pain. In particular, the Panel places significant weight on the opinion of Dr. Lee who also diagnosed the worker with severe adjustment disorder but who commented that the worker’s psychological condition “plays an important role in the exacerbation and maintenance of his pain complaints.” The Panel infers from this comment that the worker’s pain complaints are the primary source of his disability and that his psychological condition is a secondary contributing factor.

[23] The Panel considered the worker’s representative’s submission that the primary source of the worker’s ongoing compensable disability was related to PTSD. Ultimately, the Panel determined that PTSD was not the worker’s predominant compensable disability for the following reasons:

- **Dr. Cooper:** The Panel reviewed the November 14, 2013 report of Dr. Cooper and notes that the worker was diagnosed with a “Generalized Anxiety Disorder.” Dr. Cooper commented that the worker complained of ongoing low back pain that radiated down his legs. Dr. Cooper also described that the worker “had problems with his employer and told

me that his employer controls the union and because he would speak up he got into difficulties with his employer and had about 15 grievances against his employer.” Dr. Cooper’s report also notes that the worker “broke up with his fiancée...” The Panel finds that, although Dr. Cooper diagnosed the worker with an anxiety disorder, Dr. Cooper’s November 14, 2013 report does not clearly state that the diagnosis of anxiety disorder is due to the compensable low back injury. As the worker’s anxiety disorder could just as easily be related to multiple non-compensable factors (e.g., breakup with his fiancée, anger with his supervisor, anger at not being provided his pre-accident route, perceived harassment at work and job termination) the Panel is unable to determine, based on Dr. Cooper’s comments, if the low back impairment is a significant contributing factor to the development of the worker’s psychological impairment.

- **Dr. Lee:** The Panel also reviewed the October 15, 2014 report of Dr. Lee and noted that Dr. Lee diagnosed the worker with a “Severe Adjustment Disorder.” Dr. Lee commented on the cause of this condition as follows:

It is quite evident that [the worker’s] response to his injuries and his subsequent interactions involving his claim have been marked and significant. [The worker’s] clinical presentation was that of a highly angered and frustrated individual. His psychological testing was indicative of an extreme response style. A review of [the worker’s] email correspondences is also indicative of difficulties in regulating affect in this claim, and a perception of marked victimization and injustice. The lack of resolution in his case and perceptions of his attempts at justice has been thwarted continue to feed into his sense of anger. His emotional condition appears to be deteriorating with time, and in my view, it would be beneficial if [the worker] was more regularly involved in treatment to address his emotional disruption.

The Panel finds that Dr. Lee has attributed the worker’s “emotional disruption” in large part to the worker’s difficulties with his employer and his union and the inability to achieve “justice” which has left him as a “highly angered and frustrated individual.” The Panel finds that the worker’s feeling of “victimization and injustice” as a result of conflict with his employer and the worker’s ultimate termination are non-compensable issues. As a result, any psychological issues resulting from these non-compensable issues cannot be considered by the Panel in determining the predominant nature of the worker’s compensable disability.

- **Dr. Jeffries:** On April 13, 2017, the worker was assessed by Dr. Jeffries at the request of the worker’s representative. Dr. Jeffries provided the following comments in his letter:

There were no more spontaneous complaints so I went to his file to ask about previous issues. When I raised the question about anxiety he said “I always have anxiety” and he blamed the "system" the "union" and [Mr. R] who was his supervisor.

He went on to give a somewhat disjointed account of his difficulties at work beginning with June 25, 2011, when he said that he was harassed by [Mr. P] which he says occurred because [the worker] had broken up with [Mr. P’s] friend's daughter. The harassment claim was that his job was changed and that the seat back was taken out of his truck on the orders of [Mr. R]. Subsequently on February 25, 2012 his route was taken away.

I asked if he were depressed and he said not now but he said he was "pissed off." He denies any neck pain at the present time.

He outlined for me his complaints of harassment.

On March 7, 2013 he says he was assaulted by [Mr. R.].

He spoke of many injustices from [Mr. R.] such as he said he was a mixed martial arts fighter whereas he only attended a martial arts class and never fought. He said he took two weeks off work following the breakup with his fiancée but he actually only took three days; he changed his start time from 5:00 a.m. to 6:00 a.m. which was illegal because of his collective agreement. And this was compounded by the union who were unhelpful. He claims he ripped up a letter from Dr. Schacter.

A particular issue was that he refused to sign a form that he showed me labeled Accommodations. He said it was not official because it did not have the company's name on it. This was a course of contention between him and [Mr. R.].

He says that he was accused of refusing to work but that was not the case. What he did do was show up for work but the job he wanted was not available and was therefore described as "insubordinate" which he very much resents.

[Mr. R.] told him he was being laid off because he had cancer whereas all he had was a tumor.

His reaction to all of this harassment was to go to a lot of lawyers but none of them were helpful.

He is hopeful about a Hearing in August where the company will be responding to the WSIB and he hopes to give testimony. He says he sees it as a form of conspiracy because the company fired somebody who is meant to be his witness. He says he has other witnesses to how he was mistreated but they are afraid to come forward but "they will eventually."

Dr. Jeffries provided the following diagnosis of the worker's psychological problems from 2012 to 2016:

He had a problem starting in 2011 where he felt mistreated and was resentful. This was of course exacerbated by the accident of May 7, 2012 and had become rather overwhelming. Essentially, what he has is an adjustment disorder with angry mood secondary to his perception of being mistreated and harassed. There does appear to be a paranoid flavor to this which is worthy of note but does not merit a diagnosis.

The Panel finds that Dr. Jeffries has attributed a significant component of the worker's psychological impairment to the worker's anger in response to his perception that he was mistreated and harassed by the accident employer. As a result, any psychological issues resulting from these non-compensable issues cannot be considered by the Panel in determining the predominant nature of the worker's compensable disability.

[24] As a result of the foregoing, the Panel finds that the predominant nature of the worker's ongoing disability is related to chronic pain and not to psychotraumatic disability.

[25] The Panel will next consider the worker's entitlement to CPD.

[26] 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.

[27] 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.

[28]

In accordance with OPM Document No. 15-04-02, the Panel finds that the worker has entitlement to CPD for the following reasons:

- **A work-related injury occurred:** The worker suffered a low back injury on May 17, 2012 and the WSIB accepted a claim for a low back strain. The Panel finds that this criterion is met.

- **Chronic pain is caused by the injury:** The worker has continuously experienced low back pain since 2012 as evidenced by ongoing medical assessments with Dr. Shutz (2012), Dr. Schacter (2013), Dr. Langer (2014), Dr. Lee (2014) and Dr. Jeffries (2017). Each of these physicians has concluded that the worker's low back pain has resulted from the injury. The Panel finds that this criterion is met.
- **Pain persists 6 or more months beyond the usual healing time:** The worker began to experience low back pain in May 2012 and the WSIB determined that he should have recovered from this pain in December of 2012 when he was expected to have graduated back to his regular duties. The worker's pain focused behavior was first noticed by Dr. Schutz in September 2012 and was also noted by Dr. Cooper in November 2013, by Dr. Langer in May 2014 and by Dr. Lee in October 2014. As a result, the Panel finds that the worker's pain persisted six or months beyond the usual healing time for a low back strain.
- **Pain is inconsistent with organic findings:** In his letter of May 2014, Dr. Langer commented that he was unable to point to "objective elucidation of any specific or appropriate, post-traumatic physical pathology." He also noted that "the evidence of pain amplification behavior which he exhibited today and on the assessment of Dr. Shutz is a manifestation of amplified pain perception that is a chronic pain disorder." As a result, the Panel finds that the degree of the worker's pain was inconsistent with organic findings.
- **Marked Life Disruption:** The worker testified that prior to the May 2012 accident he was socially active, exercised regularly and had good relationships with his family and saw them on a weekly basis. The worker also testified that he had a fiancée prior to the accident. However, the worker advised that after the May 2012 accident, his social life deteriorated (he rarely went out), his family relationships deteriorated (saw them rarely) and his fiancée left him. The worker also advised that he became anxious and angry subsequent to the May 2012 accident, whereas prior to the accident, he was happy. The worker also advised that his sleep became non-restorative. Dr. Lee's October 2014 report noted that the worker was completely independent prior to the May 2012 accident but that after the May 2012 accident, he could no longer shovel snow or rake leaves. The worker advised Dr. Lee that he is still independent with regards to self-care, cooking and indoor cleaning. During the hearing, the worker advised that his situation has improved over the years. He testified that his family relationships have improved, he is dating again and that he has begun to exercise again. The Panel finds that, subsequent to the May 2012 accident, the worker experienced a marked life disruption in his social and home life.

[29] The worker has met all five of the criteria described in OPM Document No. 15-04-03 and he has entitlement to CPD benefits.

[30] The Panel finds that the worker is entitled to a NEL assessment for CPD. The Panel notes that OPM Document No. 15-04-03 states:

It is expected that workers who have reached the 6 month point beyond the usual healing time have been thoroughly investigated and conventional medical modalities have been attempted. Therefore, workers who meet the entitlement criteria of this policy are considered to have reached maximum medical recovery (MMR) and, as such, are eligible for either a PD assessment or a non-economic loss (NEL) determination, see 15-04-04, Chronic Pain Disability Rating Schedule and 18-05-11, Assessing Permanent Impairment Due to Mental and Behavior Disorders.

[31] As the worker's CPD extended past the six-month point beyond the usual hearing time, the worker has a permanent impairment and is entitled to a NEL determination.

**DISPOSITION**

[32] 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 occurring on May 17, 2012.
2. The worker is entitled to a NEL determination for CPD.
3. The worker is not entitled to benefits under the Board's PTD policy.

[33] 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: September 6, 2017

SIGNED: P. Allen, R.G. Ouellette, M. Tzaferis