

Citation: *Workers' Compensation Act (Re)*, 2003 YKSC 29

Date:20030612
Registry: Whitehorse

IN THE SUPREME COURT OF THE YUKON TERRITORY

S.C. No. 02-A0156

RE: AN APPLICATION BY THE WORKERS' COMPENSATION HEALTH AND SAFETY BOARD WITH RESPECT TO A POLICY DETERMINATION BY THE WORKERS' COMPENSATION APPEAL COMMITTEE, PURSUANT TO SECTION 18.5(1) OF THE WORKERS' COMPENSATION ACT;

AND: FOR A DETERMINATION, ON BEHALF OF THE WORKERS' COMPENSATION HEALTH AND SAFETY BOARD, ON WHETHER THE WORKERS' COMPENSATION APPEAL COMMITTEE EXCEEDED THEIR JURISDICTION, PURSUANT TO SECTION 18.3(3) OF THE WORKERS' COMPENSATION ACT.

S.C. No. 02-A0197

IN THE MATTER OF THE WORKERS' COMPENSATION ACT
S.Y. 1992, c. 23, as amended

and

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW
IN RESPECT OF CERTAIN ACTIONS OF THE
WORKERS' COMPENSATION HEALTH & SAFETY BOARD

by

ROBERT KING and THE WORKERS' ADVOCATE
ON BEHALF OF ROBERT KING

Petitioners

S.C. No. 02-A0198

RE: AN APPLICATION BY THE WORKERS' COMPENSATION APPEAL TRIBUNAL UNDER THE WORKERS' COMPENSATION ACT, S.Y. 1999, c. 23, s. 11 ("*1999 ACT*") PURSUANT TO s. 18.5(1) OF THE *1999 ACT*

AND: FOR A DETERMINATION ON WHETHER POLICY 24, BEING A POLICY ADOPTED BY THE WORKERS' COMPENSATION BOARD ("WORKERS' COMPENSATION, HEALTH AND SAFETY BOARD") ON DECEMBER 16, 1982, IS CONSISTENT WITH THE WORKERS' COMPENSATION ACT RSY 1986, c. 180 ("1986 ACT")

Appearances:

Bruce L. Willis, Q.C.

For the Workers' Compensation
Health and Safety Board

Leigh Gower

For the Workers' Compensation
Appeal Tribunal

Richard Buchan

For the Workers' Advocate Office

Before: Mr. Justice R.S. Veale

REASONS FOR JUDGMENT

Background

[1] There are three petitions before the court, all relating to the same worker, Robert King. He has been found to have a permanent total disability from a head injury suffered on September 25, 1992. The petitions are consolidated for the purpose of this hearing.

[2] Mr. King filed his claim under the *Workers' Compensation Act*, RSY 1986, c. 180 (the 1986 Act), which provided for a lump sum award for permanent disability.

[3] The *Workers' Compensation Act* was amended substantially in 1992 (the 1992 Act).

The 1992 Act came into force on January 1, 1993. Amendments in 1999 created an appeal tribunal to be independent from the board to hear appeals of workers and employers. Prior to 1999, the board established the policies and heard appeals of workers and employers.

[4] Under the 1992 Act, an adjudicator employed by the board determines a claim for compensation in the first instance. This decision is reviewed at the request of the worker by a hearing officer or panel of hearing officers who were not involved in the original decision by the adjudicator.

[5] The 1992 Act, as amended, provides that an appeal committee, consisting of three members of the appeal tribunal, shall hear and review decisions of hearing officers. Where the disability occurred in 1992 or earlier, as in Mr. King's case, the 1986 Act applies to determine entitlement to compensation.

[6] The appeal committee is bound by the Act, the regulations and all policies of the board. Where the board considers an appeal committee to be in breach of the Act, the regulations or the policies of the board, the board may, in writing and with reasons, direct the appeal committee to rehear the appeal and give fair and reasonable consideration to such policies and provisions.

[7] The board may also stay a decision, ruling or order of the appeal committee pending a rehearing of the appeal directed by the board. The decision of the appeal committee, resulting from a rehearing of an appeal directed by the board, is final, unless this court determines that the policy in question is consistent with the 1992 Act. In that case, the board may direct the appeal committee to rehear the appeal again, in light of the court decision.

[8] In this case, both the appeal committee and the board have applied for a determination of whether a policy established by the board is consistent with the Act.

[9] It is important to state that the applications of the board and the appeal tribunal are not a review or appeal of the factual decisions of the appeal committee about Mr. King's

disability. The sole issue to be determined is whether the particular policy established by the Board is consistent with the 1986 Act.

[10] Mr. King has also raised the issue of whether the board has the power to stay a final decision of the appeal committee, pending the hearing of this court. He also seeks interest on the monies he claims are owing. These issues are in the nature of a judicial review application of the decisions of the board.

The Facts

[11] On September 25, 1992, Robert King sustained multiple injuries to his head and upper body when he was struck at work by a large post while it was being moved with a loader and chain.

[12] The board adjudicator assessed Mr. King as having a permanent partial impairment, which was a 40% impairment of his whole person. The hearing officer upheld the decision of the board adjudicator. These decisions were based upon Board Policy No. 24, entitled "Permanent Physical Impairment" and s. 42 of the 1986 Act.

[13] On May 1, 2000, Mr. King appealed to the Appeal Tribunal. In Decision #2, dated July 26, 2000, the appeal committee granted Mr. King a 70% impairment of the whole person. Up to this point, both the board adjudicator, the hearing officer and the appeal committee used the word "impairment" in their decisions.

[14] There was a re-opening of Decision #2 by the appeal committee to determine whether interest should be awarded under the 1992 Act. The appeal committee determined that interest should be paid to Mr. King pursuant to s. 19.4 of the 1992 Act on the compensation payable as a result of Decision #2.

[15] The board wrote to the appeal committee on January 30, 2001, seeking a clarification. Section 19.4 requires that interest be paid on compensation in accordance with a board policy on interest. At the time, there was no board policy on interest and the board stated that no interest could be paid until the policy was developed. On February 26, 2001, the appeal committee clarified that its order on interest was in accordance with s. 19.4 of the 1992 Act.

[16] Mr. King then applied to a board adjudicator, requesting that he be found 100% disabled, thereby bringing him within the definition of permanent total disability, which includes “any injury to the skull resulting in an incurable incapacitating mental disorder.” On January 7 and 28, 2002 respectively, the board adjudicator and hearing officer decided that Mr. King did not have a 100% disability and confirmed his previous impairment rating.

[17] Mr. King appealed to the appeal committee. On June 25, 2002, the appeal committee decided in Decision #35 that Mr. King was permanently totally disabled. The appeal committee stated that according to s. 42(1) of the 1986 Act, he should be fully compensated for this disability, as opposed to impairment. The appeal committee clearly distinguished disability from impairment and varied Decision #2, dated July 26, 2000, to read that Mr. King was permanently totally disabled, rather than having a permanent partial impairment.

[18] The board stayed the appeal committee Decision #35 and requested a rehearing. The grounds for rehearing were that the appeal committee ignored the rating schedule established by Board Order 1987/003, which designated the American Medical Association Evaluation of Permanent Impairment Guide (the AMA Guide) as the

physical impairment rating schedule for s. 42 of the 1986 Act. The board also wanted the appeal committee to apply Board Policy No. 24, which also stated that s. 42 provides for awards for permanent physical impairment.

[19] On October 10, 2002, in Decision #40, the appeal committee found that s. 42 of the 1986 Act created an award for permanent disability, not impairment. Hence, the appeal committee stated that neither Board Order 1987/003 nor Board Policy No. 24, which are both on the subject of impairment, can be interpreted as changing s. 42(1) of the 1986 Act, which provides compensation for permanent disability, not impairment. Once again, the appeal committee ruled that Mr. King was permanently totally disabled and should receive 100% compensation.

[20] On November 1, 2002, the board directed a stay of Decision #40, pending a determination pursuant to s. 18.5(1) of the 1992 Act on whether the policy established by the board is consistent with the 1986 Act.

Issues

[21] The precise issues to be determined are as follows:

[22] Are Board Order 1987/003 and Board Policy No. 24 consistent with s. 42 of the 1986 Act? More precisely, is there a difference in meaning between the words disability and impairment?

[23] Does the board have the authority to stay a final decision of the appeal committee following a rehearing of an appeal, pending an application to this court to determine if the board policy is consistent with the Act?

[24] Is the worker entitled to post-judgment interest pursuant to s. 35.1 of the *Judicature Act*, RSY 1986, c. 96?

ISSUE 1: ARE BOARD ORDER 1987/003 AND BOARD POLICY NO. 24 CONSISTENT WITH S. 42 OF THE 1986 ACT? MORE PRECISELY, IS THERE A DIFFERENCE IN MEANING BETWEEN THE WORDS DISABILITY AND IMPAIRMENT?

[25] This matter is brought by application of the board and the appeal tribunal pursuant to s. 18.5(1) of the 1992 Act, which states:

18.5(1) Either the appeal tribunal or the board may apply to the Supreme Court for a determination of whether a policy established by the board is consistent with this Act.

(2) In an application under subsection (1), both the appeal tribunal and the board shall have standing, regardless of which party makes the application.

[26] The workers' advocate represented the interests of Mr. King at the appeal committee. The workers' advocate has been granted standing previously in this court by McIntyre J. in *Workers' Compensation Act and Murphy, et al.*, 2001 YKSC 26, so long as it is at the request of the worker with a specific complaint in respect of a claim for compensation. No party opposed the standing of the workers' advocate to represent Mr. King and standing is granted.

[27] The specific sections of the 1986 Act for consideration are s. 1(1) and ss. 42(1) and (2). Section 43(1) may also assist in the interpretation. These sections are as follows:

- s. 1(1) ... "permanent total disability" includes
- (a) total and permanent loss of the sight of both eyes,
 - (b) the loss of both feet at or above the ankle,
 - (c) the loss of both hands at or above the wrist,
 - (d) the loss of one hand at or above the wrist and one foot at or above the ankle,
 - (e) any injury to the spine resulting in permanent and complete paralysis

- of legs or arms or of one leg and one arm, and
(f) any injury to the skull resulting in an incurable incapacitating mental disorder.

...

42(1) Where a worker is entitled to compensation because of an accident occurring after 1982 that causes permanent disability he shall be paid, on account of the disability but not on account of any impairment of his earning capacity, a lump sum award in an amount calculated in accordance with subsection (2).

(2) The board shall by order establish a rating schedule for application in calculating the amounts of awards made under subsection (1).

43(1) When a worker who is entitled to compensation because of an accident which occurs after 1982 and which causes permanent or temporary disability suffers a loss of earnings as a result after the day of the accident, the board shall estimate the impairment of his earning capacity and the weekly loss of earnings resulting from that impairment, and he shall be paid for each week an amount equal to 75 percent of that weekly loss.

[28] Board Policy No. 24 is entitled "Permanent Physical Impairment" and was established on December 16, 1982. It is not necessary to set out the entire policy . The following are the relevant parts of the policy for the case:

No. 24 Permanent Physical Impairment

Section 42 provides for awards for permanent physical impairment.

The award under Section 42 is to be based on the American Medical Association Evaluation of Permanent Impairment Guide and will be paid by way of a lump sum. The schedule will give recognition of any measurable functional change requiring a worker to modify activity, but is not paid in cases of fatality.

The lump sum award is totally divorced from earnings, therefore, no age restrictions apply and no deductions are made from the earnings related compensation payable under Section 43 or from any medical or rehabilitation payments made on a claim. As well, the Canada Disability Plan payments are not taken into account when determining this award.

...

The lump sum award is to be expressed in terms of dollars rather than percentage terms. Workers are to be informed that the award they received is the same amount as every other worker who suffers the same

permanent physical impairment. In cases of the minimum award it should be explained to workers that other workers with apparently more, or less, physical impairment may have received the same amount.

. . .

[29] The purpose of setting out these specific paragraphs is to demonstrate that Board Policy No. 24 clearly used the word impairment, not disability.

[30] Board Order 1987/03 is the physical impairment rating schedule, a companion to Policy No. 24 that sets out the rating schedule for physical impairment as being “at least \$1,000 and not more than \$40,000 for total physical impairment.” It states that the rating schedule for determining the percentage of physical impairment shall be the AMA Guide. Board Order 1987/03 also refers to s. 38 of the 1986 Act, which I understand from counsel is now s. 42. This document makes no reference to disability.

[31] There is one further section of the 1992 Act previously noted. Section 18.3(3) states:

Subject to paragraph 18.2(b), the appeal committee is bound by the Act, regulations and all policies of the board.

[32] Counsel for the board submits that impairment, as used in Board Policy No. 24 and Board Order 1987/03, has the same meaning as disability in the 1986 Act. He submits, in effect, that impairment is the medical term and disability is the legal term. He agrees with the medical consultant to the board who deposed that Board Order 1987/003 requires him to use the Physical Impairment Rating Schedule to determine the percentage of physical impairment by use of the AMA Guides. However, counsel for the board submits that the medical consultant provides the link between impairment and disability. The medical consultant helpfully appended a chapter of the AMA Guide,

entitled "Impairment Evaluation." This chapter makes important statements on the difference and interaction between impairment and disability. I quote:

In the *Guides*, impairments are defined as conditions that interfere with an individual's "activities of daily living," some of which are listed in the Glossary (p. 315). Activities of daily living include, but are not limited to, self-care and personal hygiene; eating and preparing food; communication, speaking, and writing; maintaining one's posture, standing, and sitting; caring for the home and personal finances; walking, traveling, and moving about; recreational and social activities; and work activities.

...

Disability may be defined as an alteration of an individual's capacity to meet personal, social, or occupational demands, or statutory regulatory requirements, because of an impairment. Disability refers to an activity or task the individual cannot accomplish. A disability arises out of the interaction between impairment and external requirements, especially those of a person's occupation. Disability may be thought of as the gap between what a person *can* do and what the person *needs* or *wants* to do.

...

An "impaired" individual is not necessarily "disabled." For example, loss of the distal phalanx of the little finger of the right hand will impair the functioning of the digit and hand of both a concert pianist and a bank president. However, the bank president is less likely to be disabled than the pianist. A surgeon who loses a hand will be impaired and will be disabled in terms of the ability to operate; but the surgeon may be fully capable of being the chief of a hospital medical staff and may not be at all disabled with respect to that occupation.

...

[33] I should add that board counsel, appeal committee counsel and workers' advocate counsel all agree with and rely on the AMA Guide in their submissions. The AMA Guide further states in the same chapter at page 14:

Because schedules usually do not cover all conditions arising out of injuries, there is likely to be provision in the law that, in cases of permanent disability other than those that are specifically listed, the

Workers' Compensation Commission must determine the percentage by which "industrial use" of the employee's body was impaired.

...

The critical problem is that no formula is known by which knowledge about a medical condition can be combined with knowledge about other factors to calculate the percentage by which the employee's industrial use of the body is impaired. Accordingly, each commissioner or hearing official must come to a conclusion on the basis of assessment of the available medical and nonmedical information. The *Guides* may help resolve such a situation, but it cannot provide complete and definitive answers. Each administrative or legal system that uses permanent impairment as a basis for disability ratings should define its own means for translating knowledge about an impairment into an estimate of the degree to which the impairment limits the individual's capacity to meet personal, social, occupational, and other demands or to meet statutory requirements.

It must be emphasized and clearly understood that impairment percentages derived according to *Guides* criteria should not be used to make direct financial awards or direct estimates of disabilities.

[34] The underlining is mine, but the AMA Guide includes the paragraph in bold.

[35] It is important to note that the AMA Guide considers a 100% impairment to be a condition approaching death.

[36] The appeal committee counsel and workers' advocate counsel take similar positions in opposing the board counsel position. They submit that because s. 42(1) expressly deals with permanent disability, and not permanent impairment, the use of Board Policy No. 24 and Board Order 1987/003, which refer only to "permanent physical impairment," will necessarily lead to error. Further, they submit that the s. 1(1) definition of permanent total disability removed the assessment procedure for that injury from the AMA Guide. However, they acknowledge that cases of permanent partial disability do

involve an assessment of impairment and other factors. But they submit that it is an error to equate disability with impairment, especially where the disability is defined.

Analysis

[37] A plain reading of ss. 42 and 43 indicates that the words disability and impairment should not be equated. The 1986 Act expressly states that the compensation for permanent disability shall be paid “on account of disability but not on account of any impairment of his earning capacity.” The impairment of earning capacity is covered in s. 43(1) by a payment equal to 75% of his weekly loss of earnings resulting from that impairment.

[38] The legislators contemplated that a rating schedule would be required to deal with partial disabilities and permanent total disabilities not included in the statutory definition in s. 1(1).

[39] The AMA Guide also makes it very clear that while impairment may be part of a disability, there are other non-medical factors that must be considered to determine disability. This interpretation is supported by the legislation in s. 14(2), which states:

14(2) Where a permanent disability results from an accident, the evaluation of the worker’s disability shall be made on behalf of the board by one medical and one non-medical person selected by the board.

[40] Where the medical consultant, as in this case, limits himself to an assessment of impairment from the AMA Guide and Policy No. 24, which also focusses on impairment, it is clearly left to the non-medical person appointed by the board to assess the other

crucial factors, such as the nature of the injury and the employee's occupation, experience, training and age.

[41] Thus, a disability may begin with an AMA Guide-based evaluation of impairment, but the expectation is that the non-medical person will assess "the gap between what a person *can* do and what the person *needs* or *wants* to do" (see AMA Guide, *supra*).

[42] The AMA Guide provided the useful example of both a bank president and a concert pianist losing the tip of the little finger of their right hand. Both may be impaired to the same level in their daily activities, but the bank president is less likely to be disabled than the concert pianist. Unfortunately, if the medical consultant does an assessment without the "external requirements" such as occupation, the assessment of disability may be lacking. In this sense, although simplistic, the non-medical person should not simply adopt the assessment of the medical consultant, which was an impairment assessment, but use it as a base from which to determine the worker's disability. I want to be clear that the practice of adopting the medical consultant's assessment of impairment according to the AMA Guides complied with Board Policy No. 24 and Board Order 1987/003. However, that procedure does not comply with the Act, which requires a disability assessment.

[43] I conclude that Policy No. 42 and Board Order 1987/003 are not consistent with s. 42 of the 1986 Act because they fail to distinguish between disability and impairment. Based upon the finding of the appeal committee that Mr. King is permanently totally disabled, he is entitled to receive the maximum compensation in the rating schedule. It is also my finding that once the appeal committee found Mr. King to fit within one of the categories of "permanent total disability" expressly defined in the 1986 Act, the fact that

an impairment assessment under the AMA Guide suggests the impairment is less than 100% is not relevant. Board Policy No. 24 cannot be worded or interpreted so as to override an express legislative intention.

ISSUE 2: DOES THE BOARD HAVE THE AUTHORITY TO STAY A FINAL DECISION OF THE APPEAL COMMITTEE FOLLOWING A REHEARING OF AN APPEAL, PENDING AN APPLICATION TO THIS COURT TO DETERMINE IF THE BOARD POLICY IS CONSISTENT WITH THE ACT?

[44] Pursuant to decisions of the appeal committee prior to Decisions #35 and #40, the board paid Mr. King a total of \$30,000, as required under s. 19.1(a) of the 1992 Act.

Section 19.1 reads as follows:

19.1 Subject to an appeal under subsection 18(1) and subject to subsections 18.3(8), (10) and (13), the board shall

(a) implement any decision of a hearing officer or appeal tribunal, or

(b) provide the hearing officer or the appeal tribunal, the worker, the dependants of a deceased worker, and the worker's employer with an implementation plan for the decision of the hearing officer or appeal committee

within 30 days after the date of the decision of the hearing officer or appeal tribunal.

[45] The practice of the board, at least in this case, has been to pay the sums owing to the worker immediately following the ruling, despite the fact that there is a 30-day period to make payment. This is a commendable practice, as injured workers are often in great financial need.

[46] This section has already been the subject of a ruling of this court in *Workers' Compensation Act and Murphy, et al.*, 2001 YKSC 26. In that case, the question was

whether the board could take more than 30 days to pay the worker, where the board took 39 days to decide if it wanted a rehearing by the appeal committee. The court ruled that the board was required to make its decision under s. 18.3(8) to direct a rehearing within the 30-day period. As I interpret that decision, if a stay of the appeal committee's decision is not ordered in 30 days from the decision of the appeal committee, the board must pay.

[47] The case before me raises a further wrinkle. After a rehearing by the appeal committee, as directed by the board under s. 18.3(8) and a stay of the appeal committee decision under s. 18.3(10), can the board stay the rehearing decision of the appeal committee pending the application to this court under s. 18.5(1) to determine whether board policy is consistent with the Act.

[48] In effect, the court is being asked whether the final payment to the worker must be made within 30 days of the rehearing decision of the appeal committee or whether the board has the power to stay the rehearing decision and await the court ruling. The board, in this case, preferred to wait for the court decision rather than risk a possible overpayment of the worker.

Analysis

[49] I must first determine the jurisdiction of the appeal tribunal and the board. They are set out as follows:

Jurisdiction of the appeal tribunal

18.4(1) The appeal tribunal has exclusive jurisdiction to examine, inquire into, hear and determine all matters arising in respect of an appeal from a decision of the board under subsection 7(1), from a decision of a hearing officer under subsection 17(1), or from a decision of the president under subsection 19(4) and it may confirm, reverse or vary the decision.

...

Jurisdiction of the board

96.(1) Subject to subsection 18.4(1); the board has the exclusive jurisdiction to examine, inquire into, hear, determine, and interpret all matters and questions under this Act.

...

(3) The acts or decisions of the board on any matter within its exclusive jurisdiction are final and conclusive and not open to question or review in any court.

(4) No proceedings by or before the board shall be restrained by injunction, declaration, prohibition, or other process or proceedings in any court or be removed by certiorari, judicial review, or otherwise into any court, in respect of any act or decision of the board within its jurisdiction nor shall any action be maintained or brought against the board, board members, employees or agents of the board in respect of any act or decision done or made in the honest belief that it was done within its jurisdiction.

[50] The specific section of the 1992 Act to be interpreted is the following:

18.3(12) The decision of the appeal committee resulting from a rehearing of an appeal pursuant to a direction under subsection (8) is final, unless a court determines under subsection 18.5(1) that the policy in question is consistent with the Act.

[51] I must consider the four factors set out in *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, [1998] 1 SCR 982:

[52] Privative clauses

[53] Expertise

[54] Purpose of the Act as a whole and the provisions in particular

[55] The nature of the problem — a question of law or fact.

[56] Despite the privative clause in s. 96(3), the fact that the appeal tribunal is set up for the purpose of being an independent tribunal from both the worker and the board, it is appropriate to have the court interpret an issue that sits on the boundary between the appeal tribunal and the board. It is clearly a question of law, and correctness is the standard (see *Workers' Compensation Act and Murphy, supra*).

[57] Because the board's exclusive jurisdiction to interpret the Act does not extend to the jurisdiction of the appeal tribunal, I am of the view that ss. 96(1) and (3) do not come into play. In other words, s. 18.3(12) is a statutory provision dealing with a decision of the appeal committee and therefore beyond the board's jurisdiction, except to the extent the board can invoke s. 18.5(1) and have a court review whether a policy is consistent with the Act.

[58] In my view, s. 18.3(12) is clear that a decision of the appeal committee on a rehearing is final, subject to a court decision under s. 18.5(1). There is no express power granted to the board to stay a decision when the rehearing is completed. I conclude that the board has no power to stay a decision of the appeal committee after a rehearing. In other words, the decision of the appeal committee on a s. 18.3(8) rehearing is final and the board should comply with it and pay the balance owing.

[59] I also note that s. 89 of the 1992 Act contemplated situations where overpayment of compensation to workers may occur. The board has the power to set off such payments against future compensation or to recover it by way of a debt due to it. Given the object of s. 1(h) of the 1992 Act to ensure that workers are treated with compassion, respect and fairness, I think it quite appropriate that the board bears the risk of overpayment.

[60] Therefore, the board should make immediate payment of the balance of \$10,000 owing to Mr. King.

ISSUE 3: IS THE WORKER ENTITLED TO POST-JUDGMENT INTEREST PURSUANT TO S. 35.1 OF THE *JUDICATURE ACT*, RSY 1986, C. 96?

[61] As I understand this issue, Mr. King is seeking interest on the \$10,000 to be paid, commencing 30 days after the appeal committee decision of June 25, 2002, or at least after their final decision of October 10, 2002.

[62] Counsel for the workers' advocate submits that, assuming the board had no power to order a stay, post-judgment interest should be ordered under s. 35.1 of the *Judicature Act*, RSY 1986, c. 96, s. 35.1.

[63] However, s. 35.1 of the *Judicature Act* is intended to provide for interest to be paid on judgments of courts. I cannot find any support for the proposition that the decisions of the appeal committee were intended to be judgments, incurring post-judgment interest pursuant to s. 35.1 of the *Judicature Act*.

[64] The intention of the 1992 Act is found in s. 19.4 as follows:

19.4 Where compensation is payable, the adjudicator, hearing officer or appeal tribunal shall order that interest be paid on such compensation in accordance with board policy and the board shall pay such interest.

[65] I do note that Policy Statement CL-52 states:

Interest shall be paid on compensation benefits where the adjudication of a claim for a worker was delayed due to circumstances that are under the control of the board.

...

Interest will be paid in compensation benefits for a worker where the worker's disability was incurred after March 31, 2000.

[66] I also point out that the appeal committee, at the request of the board, reconsidered Decision #2, on February 26, 2001, and stated:

The tribunal orders that interest be paid to the worker on the compensation payable as a result of Decision No. 2, in accordance with section 19.4 of the *Workers' Compensation Act*.

[67] In Decision #40, on October 10, 2002, the appeal committee reopened and varied Decision #2 to reflect their decision that Mr. King was permanently totally disabled.

[68] I do not find any error in the board's decision not to pay interest on Mr. King's compensation. He was injured under the 1986 Act, which had no provision for interest. The Policy Statement CL-52 under the 1992 Act only applies when the worker's disability was incurred after March 31, 2000.

[69] Counsel may speak to costs, if necessary.

VEALE J.