

August 14, 2018

Finding Clarity: ABQB Upholds Decision by Worker's Compensation Board's Appeals Commission

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Case Commented On: *In-Line Contracting Partnership v Alberta (Workers' Compensation Appeals Commission)*, [2018 ABQB 529](#).

In-Line Contracting Partnership v Alberta (Workers' Compensation Appeals Commission) (ILCP) is a decision regarding the proper interpretation of "suitable" permanent modified work in the context of the policies of the Worker's Compensation Board ("WCB"). On November 3, 2013, Tracy McKnight, who worked as a labourer on a road construction crew, suffered four broken ribs and a soft tissue injury when a co-worker fell on her (*ILCP* at para 1). Ms. McKnight took time off work, during which time she was compensated by the WCB. By March, the WCB found that Ms. McKnight was able to return to work, and her employer, In-Line Contracting Partnership ("In-Line"), offered her a job as a labourer, which Ms. McKnight rejected. A few months after, the WCB was alerted to the fact that Ms. McKnight had not fully recovered, and is now suffering from a permanent disability. This was communicated to In-Line, who offered Ms. McKnight modified work, which she once again rejected. The Appeals Commission for the WCB found that the job offer for permanent modified employment was not suitable according to the WCB's guidelines (*ILCP* at para 3). *ILCP* is an appeal from the WCB's Appeals Commission to the Court of Queen's Bench.

The issue before the Court was whether the job offer from In-Line was "suitable", and if it was, Ms. McKnight's compensation would be reduced and In-Line would benefit from lower WCB premiums (*ILCP* at para 8). The Court held that the Commission's interpretation of whether the offer was "suitable" should be reviewed on a standard of reasonableness (*ILCP* at para 3).

Of particular difficulty in this decision was the fact that what constitutes suitable employment in the context of permanent modified work is not discussed in the WCB's policies. While Policy 4-04 discusses "Permanent Disability", it specifically concerns identifying suitable employment solely for the purpose of calculating compensation and benefits for the worker while they are not working (*ILCP* at para 5). Policy 4-05, on the other hand, discusses temporary modified work, and sets out the test to determine what makes such work suitable (*ILCP* at para 6). The Commission thus had to determine which test to use in order to determine whether Ms. McKnight's job offer was suitable. In choosing a test to apply, the Commission interpreted Policy 4-04 as including permanent modified work. The job offer, according to the Commission, would need to be "based on reality", in order to be "suitable" (*ILCP* at para 12). In other words, the job offer would require a job title, a full description of the job, and a list of the duties that the job entailed. In other words, the job would have to be, quite simply, a real one (*ILCP* at para 12).

The Commission ruled that In-Line's job offer failed to meet the suitability test. The job offer did not describe to Ms. McKnight what would be required from her on the job, except to the extent that she would be performing "light duties" where needed, with a few specific duties mentioned (*ILCP* at para 16). Furthermore, the Commission found that job offered to Ms. McKnight was not a "real job". It had been custom made for Ms. McKnight and was not offered to anyone else upon her rejection (*ILCP* at para 15). As such, there was no precedent for the job being offered, and there was no method of understanding what the job entailed beyond In-Line's rather threadbare description. The decision by the Commission was upheld by Justice Dunlop as reasonable (*ILCP* at para 19).

There are two lessons to take away from this decision. The first is that the Commission does, indeed, have the power to interpret WCB policy. In-Line argued that the test for a suitable job offer that the Commission formulated was not written in the WCB policies and had thus been improperly applied (at para 13). Justice Dunlop disagreed, stating that the Commission's very job was WCB policy interpretation, and that the Commission has the power to read into the policy to formulate the test (at para 13). Furthermore, Justice Dunlop stated that any fears that In-Line had about the perception of the WCB's ability to conduct medical examinations being damaged were unfounded. It is the Commission's role to review WCB decisions and determine whether a job offer is suitable, despite the WCB's participation in the formulation of that job offer (at para 18). The Commission therefore has the expertise and power to review decisions of the WCB, interpret policy, and formulate tests appropriate for WCB policy. Courts should, therefore, defer to that expertise.

The second lesson is that employers must take care to be specific and detailed when offering a permanent modified job to an employee. As stated above, WCB policy does not explicitly state what constitutes a suitable job when it concerns permanent modified employment. If the modified employment is temporary in nature, employers may look to Policy 4-05, in which "suitable employment" merely requires that the work is safe, that the worker has the skills necessary for the work, and that location of the work is reasonable (at para 6). For permanent work, this decision suggests that the test is more stringent, despite it not being explicitly laid out in any WCB policy. Employers need to outline in detail what will be required of the worker from the job and what exactly the specific duties of the job will be. This is necessary so that the employee and the WCB can properly assess the proposed position and make an informed decision about whether to accept it (at para 12). In-Line had provided a vague list of some job duties with no job description, and, despite their consultation with the WCB Independent Medical Examinations, this was not sufficient enough information to allow Ms. McKnight to be properly aware of what she was accepting or rejecting, or for the WCB to properly assess the offer. The legal requirement of specific and detailed job offers from employers to workers living with permanent disabilities protects the workers' best interests.

This decision is consistent with both public policy and the very purpose of the WCB — to protect workers living with disability caused by workplace injuries. Employees who are injured and uncertain of whether a job will be waiting for them after they recover can be left feeling powerless. When an employer offers a vulnerable worker a vague job offer without a description of job duties, the employer may in fact be endangering an employee or pushing an employee past their comfort zone or capabilities after adapting to life with a new disability,

something an employee may not realize until it is too late because they were not given the information to fully assess the appropriateness of the job offer. At the very least, it puts employees in the position where they may have to accept a future of unknown variables. This decision confirms that employers' job offers must be specific, clear, and thoroughly planned out and communicated in order to fully inform workers living with disabilities and the WCB, thus giving employees the power and autonomy to make enlightened decisions about their future, and the WCB the knowledge to advise and protect the workers' best interests.

This post may be cited as: Kaye Booth, “Finding Clarity: ABQB Upholds Decision by Worker's Compensation Board's Appeals Commission” (August 14, 2018), online: ABlawg, http://ablawg.ca/wp-content/uploads/2018/08/Blog_KB_InLine_Contracting_August2018.pdf

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