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Executive Summary

The Saskatchewan Asbestos Disease Awareness Organization (SADAO) has examined the Workers Compensation Act and the current policies and procedures as they relate to individuals that are suffering from an asbestos related disease. Many of the recommendations that we are presenting would be applicable to all occupational disease claims.

Through our research, we have come to the conclusion that many claimants would benefit from a comprehensive review of the current policies and procedures as well as the related regulations that they are derived from.

We have highlighted three main areas for the Workers Compensation Review Committee to examine for future improvement.

SADAO believes that claimants and employees of WCB would benefit from the creation of an area within the WCB to handle occupational disease claims. This can simply be the allocation of current staff to be trained and to become experts in occupational disease claims. With diseases linked to asbestos exposure representing approximately 30% of worker deaths compensable by the WCB, it would behoove the WCB to allocate some of their current resources to deal specifically with these claims. It would make it easier on staff to be able to be trained on the extraordinary circumstances that often accompany a claim where the initial contact was 30 or 40 years previous. This presents a challenge for staff and claimants to determine where the initial point of contact actually occurred. This is where the current policy of the WCB is unclear. There may not be a written policy that states that the burden of proof be placed on the claimants, but this is the situation that many people are put in when they submit a claim due to asbestos exposure at work.

We are recommending that the WCB in Saskatchewan adopt a similar policy to that of WorkSafe BC. In British Columbia, they have adopted an inquiry approach as opposed to an adversarial approach. The adversarial approach appears to be the prevailing approach used by the WCB in Saskatchewan right now. We are advocating for a written policy by the WCB to ensure that onus is not put on the claimant to prove where they were exposed to asbestos.

Our final recommendation is to ensure that there are strict timelines regarding correspondence between the WCB and the claimants employer. We have assisted people in the past where letters were sent to an employer to verify work history and the reply has taken months. In some cases, this was after multiple requests from WCB. In a case where the remainder of your life is measured in months, this is simply not acceptable. The WCB must create a policy where individuals suffering from an occupational disease that severely limits their life expectancy are given a priority.

Introduction

The Saskatchewan Asbestos Disease Awareness Organization (SADAO) has reviewed the Saskatchewan Workers' Compensation Act, policies, and regulations, and SADAO has found a few areas that can be improved. From research conducted, SADAO has found British Columbia to be one of the leaders in Canada in regards to protecting people from asbestos-related diseases while on the job and also properly compensating those people who have contracted a disease as a result of exposure to asbestos.

In addition, the founder of SADAO, Howard Willems, was a food inspector that had been exposed to asbestos while on the job. He didn't work in an industry where he was likely to be exposed to asbestos, but came into contact when he was in a food processing plant that was undergoing renovations and inhaled asbestos fibres that had been disturbed.

He was initially denied compensation on his first application, but was able to eventually prove where he came into contact with asbestos on the job. But this was only after a long and drawn out process with the Saskatchewan WCB. Unfortunately, Howard is not the only person that has had a difficult time accessing compensation for asbestos-related diseases as a result of exposure on the job. From our advocacy work over the past 3 years, we have heard from various people about their challenges trying to access compensation for asbestos-related diseases contracted due to workplace exposure.

From our review of various workers' compensation legislation and policies, as well as our own experience, we have come up with a few areas in the Saskatchewan WCB legislation and policies that can be improved. We believe that there could be a beneficial situation achieved by allocating some of the current resources at the WCB to a group that specializes in occupational disease claims. A comprehensive review of the current occupational disease policies by this group would create a situation where both staff and claimants will benefit. Through this review, we believe that the WCB could address issues in the manner in which occupational disease claims are handled and the timeliness in which they can be concluded.

Definition of Occupational Disease

The Saskatchewan Workers' Compensation Act defines occupational disease as:

“a disease or disorder that arises out of and in the course of employment and that results from causes or conditions that are:

- (i) peculiar to or characteristic of a particular trade, occupation or industry; or
- (ii) peculiar to a particular employment.”

Furthermore, the Saskatchewan WCB Policy Manual, section 3.1.6 states:

“...4. When assessing the cause or origin of the disease or condition and whether it has occurred as the result of exposure or incident in employment, staff will determine if it is one that is peculiar to any trade, occupation, industry or employer.
5. Where the worker's exposure to a causative agent is peculiar to a trade, occupation, industry or employer, staff shall make inquiries to determine if any non-work causes exist and if none are present, the claim shall be accepted...”

While there are several occupations that are more likely to come into contact with asbestos, there has also been a rise in asbestos-related diseases among people working in industries that have not traditionally been associated with asbestos (e.g. administrative/office workers). Due to the age of buildings that contain asbestos, the asbestos is more likely to be friable and released into the air. In addition, when renovations take place in these buildings, the release of asbestos fibres is more likely, especially if workers do not even know asbestos is present. The end result is exposure to people working on the buildings, as well as secondary exposure for people who may not even know they are being exposed to asbestos.

British Columbia also has a list of occupational diseases that are likely to be associated to a particular industry. The list can be found in Schedule B of the BC Workers Compensation Act. However, where they differ is in a section dedicated specifically to asbestos-related diseases, and while some are industry specific, they also have some (e.g. asbestosis and mesothelioma) as simply being those “where there is exposure to asbestos airborne dust.”

Section 26.22 of the WorkSafe BC Rehabilitation Services and Claims Manual Volume II, Chapter 4 states:

“In some cases a worker may suffer an occupational disease not listed in Schedule B. In other cases a worker may suffer from an occupational disease listed in Schedule B but was not employed in the process or industry described opposite to it in the Schedule. In some cases a worker may suffer a disease not previously designated or recognized by the Board as an occupational disease. Here, the decision on whether the disease is due to the nature of any employment in which the worker was employed, is determined on the merits and justice of the claim without the benefit of any presumption.”

Section 29.46 and 29.48 of the same document continues:

“#29.46 Asbestosis

Schedule B lists “Asbestosis” as an occupational disease. The process or industry described opposite to it is “Where there is exposure to airborne asbestos dust”.

A worker need not necessarily have worked directly with asbestos for the presumption to apply. The exposure may be a secondary exposure, such as working in an area where asbestos was used as insulation which was for years in a friable or decayed condition...

#29.48 Mesothelioma

Schedule B lists “Mesothelioma (pleural or peritoneal)” as an occupational disease. The process or industry described opposite to it is “Where there is exposure to airborne asbestos dust.” Mesothelioma is a malignancy arising from the mesothelial tissue. As with Asbestosis, the exposure to airborne asbestos dust may be a secondary exposure.”

Therefore, WorkSafe BC recognizes that secondary exposure to asbestos in non-traditional industries can lead to asbestos-related diseases that should be covered by workers’ compensation. We suggest that the Saskatchewan Workers’s Compensation Board adopt a similar approach to claimants in this province. This is due to the airborne nature of asbestos in which anyone in the vicinity, regardless of occupation, may be exposed to asbestos.

Occupation Diseases Branch

Occupational diseases represent very different circumstances compared to physical injuries. With physical injuries it is easier to identify the time and location of the injury, as well as the circumstances that led to it. Whereas with occupational diseases, it is much more difficult to determine when exposure took place, how much exposure there was, and the location since many occupational diseases (e.g. mesothelioma) have a latency period of 20 to 30 years. It takes specific knowledge about various causative agents, in particular asbestos, to understand how and when someone may have come into contact with them. We have heard from people that have applied for compensation from WCB that some of their caseworkers are unfamiliar with the nature of occupational diseases, especially asbestos. SADAO suggests the establishment of a new branch within WCB specifically for occupational diseases. Or, at the very least, have people within the organization who are specialized in occupational disease claims. We believe this will improve the service received by claimants, which is important for those who are very ill. In addition, we think it will speed up the processing of WCB claims for terminally ill patients who do not have much time.

When an individual has received the diagnosis of having mesothelioma, they do not have the capacity or the time to enter into an investigation of where they may have been exposed to asbestos. Often, patients are given one year to live after their initial diagnosis. This means that they may enter into chemotherapy or other intensive treatments in an attempt to extend this timeline. They often do not have the energy to investigate their former workplace from 30 years prior. It is especially difficult for people without a spouse or partner to assist in this work.

SADAO believes that the creation of an Occupational Diseases Branch along with a comprehensive review of the current occupational disease policies would be beneficial to claimants as well as to the staff that are tasked with reviewing these cases. Individuals filing claims would feel as though their case workers have a thorough knowledge of these as well as the difficulty involved in tracing back through their work history. Case workers would feel like they are trained and capable of handling these cases that require a specialized knowledge.

Inquiry Versus Adversarial

Section 26.22 of the WorkSafe BC Rehabilitation Services and Claims Manual Volume II, Chapter 4 goes on to say:

“...Since workers’ compensation in British Columbia operates on an inquiry basis rather than on an adversarial basis, there is no onus on the worker to prove his or her case. All that is needed is for the worker to describe his or her personal experience of the disease and the reasons why they suspect the disease has an occupational basis. It is then the responsibility of the Board to research the available scientific literature and carry out any other investigations into the origin of the worker’s condition which may be necessary. There is nothing to prevent the worker, their representative, or physician from conducting their own research and investigations, and indeed, this may be helpful to the Board. However, the worker will not be prejudiced by his or her own failure or inability to find the evidence to support the claim. Information resulting from research and investigations conducted by the employer may also be helpful to the Board...”

While it may not officially be the written policy of WCB in Saskatchewan, in our experience and from stories shared from others who have gone through the process of applying for compensation under WCB after contracting an asbestos-related disease, SADAO believes that the current system in Saskatchewan is an adversarial approach. The burden of proof seems to be on the worker to prove when and where they were exposed to asbestos. This can be a very time consuming and labour intensive process for someone who is healthy. This process is made even more difficult for someone who is terminally ill and undergoing various treatments (i.e. radiation and chemotherapy), especially if they do not have family support that can help with the research.

SADAO would like to see an inquiry approach adopted similar to the one used in BC where it is the responsibility of the Board to research the available scientific literature and carry out any other investigations into the origin of the worker’s condition which may be necessary.

Quicker Resolution of Claims

Most people diagnosed with mesothelioma only live one year after they are diagnosed. That means that there isn't much time from when they are diagnosed until the time they are too ill to continue fighting for compensation from WCB. People usually either give up trying to receive compensation or die before they are awarded anything. If they are awarded compensation in a timely manner, this can give people access to higher quality prescriptions and health care that can either prolong their life or make the last months of their life more bearable. Some ways to speed up the process are to broaden how asbestos-related diseases are defined as mentioned above. Also shifting from an adversarial to inquiry based approach will also help speed up the process, as well as alleviate stress placed on ill people. Lastly, having people who are specialized in occupational diseases, or an occupational diseases branch within WCB, could help move the process along more quickly.

The review process must be expedited in order to ensure that qualified claims are receiving assistance as soon as possible. The cost of medical treatment for an individual diagnosed with Mesothelioma is often very high. To obtain the most beneficial medication for a patient diagnosed with mesothelioma is not financially possible in many cases, especially since many people are diagnosed in their retirement years where they are on a fixed income.

The key in achieving a more timely resolution is to ensure that stricter timeliness are adhered to when requesting work history from former employers. For employers that currently report to the WCB, it should be easier to hold them accountable regarding these timelines. We have had individuals report to our organization that the process of requesting and receiving information from former employers has taken months in some cases. Unfortunately, individuals that are in a situation with quickly deteriorating health do not have time to wait for this process to unfold. We realize that that correspondence of this nature is not instantaneous. However, when the WCB requests information from an employer, it would be beneficial to set specific timelines for a response. Ideally, fourteen days would be reasonable for the employer to pull together the information that they are required to submit. We have also noticed that a lot of the correspondence in this process is done through conventional mail. We understand that the initial contact is better through these means. However, it would speed up the process if employers are encouraged to use electronic mail in their response and any subsequent correspondence that may be necessary.

Conclusion

The intent of these recommendations is to emphasize the importance of the level of compassion and expediency that is required when dealing with an individual suffering from an occupational disease. They may not know exactly where they may have come into contact with the harmful substance and this creates a lot of stress for the individual, not to mention that they now have new outcome for their life expectancy. There must be a different standard applied to these cases. In order to verify the validity of the claim and have benefits allocated to the people that need it. We believe that the WCB can make a big difference in the approach that they take in their policies regarding occupational diseases. We encourage you to adopt our recommendations and to build on what we have laid out in this document. There is always more that can be done. These are just the first steps.