



International
**LONGSHORE & WAREHOUSE
UNION**

LOCAL 500 BULLETIN
DECEMBER 14, 2007

Grain Dust as an Occupational Disease Causing Asthma

Local 500's WCB Consultant, Donna Huls, was successful at the Workers' Compensation Appeal Tribunal (WCAT) on behalf of a longshoreman who has been off work since December 12, 2003 because he'd developed asthma from loading grain ships.

From the WCAT Decision letter dated November 30, 2007:

"The worker, a longshoreman, submitted an application for compensation for chronic asthma and sinusitis dated September 6, 2005. He reported that he had last worked on December 12, 2003. WorkSafeBC (the Board) denied the claim because the worker had not applied within one year of the date of disablement, as required by section 55 of the *Workers Compensation Act* (the Act), and there was no special circumstances that precluded him from applying within one year."

The worker appealed the Board's decision to the Review Division. The Review Officer confirmed the Board's decision on February 5, 2007. The worker appealed the Review Division decision to WCAT.

The issue identified by WCAT was, "Whether there were special circumstances that precluded the worker from applying within one year of the date of disablement, and if so, whether the claim should be considered on its merits."

WCAT Vice Chair, Guy Riecken, concluded that, "There are special circumstances which precluded him [the worker] from filing his application for compensation for occupational asthma within one year of December 13, 2003."

With that conclusion, WCAT returned the case to the Board to consider the claim on its merits. Some of the issues that were noted in this case are of interest to anyone who works in a dusty environment.

From the WCAT Decision:

"I find that the following aspects of the worker's situation amount to special circumstances:

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- although the worker sought medical attention for his respiratory problems, including asthma, starting from the 1990s, the evidence does not show he was disabled by those problems until December 2003 at the earliest;
- although he was advised by physicians in the early 1990s that dust, including grain dust, among other irritants, was a problem for his asthma and should be avoided, he was not advised that the grain dust at work was a possible cause of his asthma;
- in 1994, in the last specialist advice he appears to have received on the subject of causation until 2006, Dr. M told him that his asthma was not primarily caused by grain dust;
- when he went off work in December 2003 it was for a variety of health and other reasons, and the role of the asthma was unclear;
- the first clear advice he received that he has occupational asthma was not until Dr. Spooner's October 25, 2005 report, and the first specialist opinion supporting an occupational cause of the condition was Dr. Abboud's March 10, 2006 report.

I find that these circumstances hindered or delayed the worker from submitting his application within the one-year period following the date of his disablement. I conclude that the special circumstances precluded the worker from filing his application within one year of the date he went off work."

This bulletin is aimed specifically at longshore workers on grain but this is a wake-up call to all of us that work in dusty, industrial environments and develop respiratory diseases. Wear all the safety equipment provided. However, you are entitled to be compensated if you do develop breathing difficulties.

In solidarity

Peter Haines
Secretary Treasurer
ILWU Local 500