

Full Record Display

Title	WCB experience painful for minority of workers
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Notes	<p>Illustration note: Color Photo: Dean Bicknell, Calgary Herald / After a car accident, Dale Brown could no longer do his job. The WCB covered his medical treatments and is now helping him retrain at Mount Royal College. Color Photo: Marianne Helm photo, Calgary Herald / "I'm just beside myself. I don't know what to do." ~ Rick Malone Photo: "This is a very unusual circumstance, saying there are problems with a doctor's files. I don't think this is the general case." ~ Mary Cameron, WCB President Photo: "I've seen a number of reports. If you line them up on a table, they read exactly the same. It's happening all too often to be coincidence." ~ MLA Denis Herard Color Photo: Shannon Oatway photo, Calgary Herald / The Calgary offices of WCB, at 300 6th Avenue S.E. Photo: Shannon Oatway photo, Calgary Herald / "I injured myself, but they make me feel like a criminal." ~ Christine Prosser Photo: Dean Bicknell, Calgary Herald / Tom Dick, a member of the City of Calgary outside workers' union, takes part in a wreath-laying ceremony in Calgary this week, commemorating workers who were injured on the job.; This story features factboxes entitled "Q&A" and "The WCB Board".</p>
Length of Fulltext	Long
Correction	<p>(From the Calgary Herald, May 4, 1999) On page D-3 of Saturday's Herald and page A-11 of Sunday's Herald, a medical opinion from Dr. Arjan Chopra was published. Dr. Chopra declined to be interviewed by the Herald. His remarks were quoted from a letter he wrote April 22, 1998, addressed "To whom it may concern." The letter was obtained by the Herald. *****</p>
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Fulltext:

It was a searing cold -30 degreesC dead-of-winter day when Al Sieb went to work as a Comfort-Aire refrigeration mechanic on a job at an RGO office location on Jan. 7, 1993.

Sieb, of Calgary, slipped while carrying a 32-kilogram electric motor up a ladder. He fell six metres to the frozen ground. The motor landed on his abdomen.

He fractured his pelvis, broke his back and sustained numerous internal injuries.

He has been in the Worker's Compensation Board medical treatment system since and, at times, has been close to suicidal.

Sieb, 44, says the WCB has worsened his problems by accepting mistaken diagnoses, sending him to an inappropriate rehabilitation program, labelling him a prescription drug addict and substance abuser, and finally, telling him to return to the work world when all his doctors say he can't.

Sieb is not alone in his complaints against the WCB.

In a month-long investigation, the Herald has reviewed the files of two dozen injured workers and talked to Calgary MLAs, doctors, groups representing hundreds of injured workers in Alberta, and worker advocates.

While they universally acknowledge the WCB's success in dealing with the majority of injured worker claims, they say two groups - those suffering serious, hard-to-diagnose injuries and those with chronic pain symptoms - are caught in a dehumanizing system that is stacked against the worker and provides no effective mechanism for appeals.

"Their record of dealing with seriously injured workers stinks. It's criminal," charges Calgary-Egmont MLA Denis Herard, who says he hears about four new complaints against the WCB every month in his southeast Calgary constituency office.

Herard says he has seen file after WCB file in which medical opinions were amassed against injured workers, finding them fit for work and unfairly denying or limiting their compensation claims. He doesn't know the exact number of workers who have fallen between the cracks, but he believes thousands have fallen back on to other government welfare programs or live off their friends and families.

WCB president Mary Cameron says critics only see a handful of disgruntled workers and not the big picture showing the WCB's overwhelming approval ratings.

Of more than 126,420 new claims filed in 1998, 87.8 per cent report they were treated in a courteous, caring and respectful way, she argues.

"The overwhelming support means we're doing more right than wrong," Cameron says.

MLA Herard says he believes the WCB when it claims 87.8 per cent of injured workers felt they were treated well. "Obviously they're doing something right for 87 per cent of the cases."

Dozens of Doctor Visits

But Herard says he sees a pattern emerging for the more seriously injured or those who experience chronic pain. These folks have had anywhere from three to 179 doctor visits over the course of many years.

In such cases, he says, doctors or specialists hired by the WCB compile large volumes of independent medical reports which overrule diagnoses by the patient's own doctors. The medical reports often find the workers are fit to work. Their real problems are the workers are liars, malingerers and drug addicts, the reports allege.

Another critic of the WCB is MLA Hung Pham of Calgary-Montrose, who believes the avenues of appeal open to workers are weighted against them. Under WCB legislation, an injured worker is entitled to compensation, regardless of who was responsible for the injury. In return, the worker surrenders the right to sue his or her employer. The worker may appeal a WCB ruling through the WCB's own boards and commissions. After a complaint has gone to the commission level, the worker can turn to the courts for redress.

But Pham says if a worker wins a court judgment in their favour, they are handed right back to the WCB for another look - there is no independent adjudicator to resolve complaints.

Recently, a Medicine Hat Court of Queen's Bench judge slammed the WCB, saying he found its machinery so unfairly structured against the worker that it offends the basic principles of natural justice.

In a judgment, Justice L.D. Maclean granted Medicine Hat transit workers the right to sue their employer for work-related illness. Maclean also wrote that the WCB has a probable primary duty to protect employers who fund it.

"In relation to the worker, the (compensation) board has an overwhelming wealth of knowledge and experience. It has the financial ability to fund sophisticated investigations involving highly qualified experts and have the material presented to them, guided and orchestrated and propounded by its in-house counsel responsible to the board and paid for by the board," Maclean said.

"The application of any standards under the rules of natural

justice would identify such circumstances as being unequal in negotiating ability and unfair. This is not a level playing field, it is not fair, and it offends the basic principles of natural justice."

He opened a Pandora's Box of unanswered legal questions by allowing workers to sue their employer once they exhausted their WCB options.

Responds the WCB's Cameron: "We think that's a bad judgment and we plan to appeal."

In documenting the experiences of injured workers, the Herald found that claims could be grouped into three main stages. Phase 1 examines what happens to most workers in the first 28 to 45 days after their accident. Phase 2 looks at the WCB's efforts to rehabilitate more seriously injured workers with a view to them going back to work. Phase 3 examines what happens after all medical options are exhausted.

Phase 1

Statistically, the vast majority of WCB claims fall into this category - relatively minor injuries such as cuts and broken arms and legs. The vast majority of claims - 88,800 of the 126,600 new claims filed in 1998 - did not involve time away from work beyond the day of the accident.

For those who miss work, the first 28 days of their file are handled by an adjudicator.

After that, their file is handed to a case manager. The average temporary absence from work is 45 days. During that time injured workers receive 90 per cent of their net income to a maximum of \$45,600.

Among the satisfied is 35-year-old Dale Brown, whose neck was injured in a downtown car accident while working almost a year ago. He was a parking lot maintenance worker who was rear-ended on 8th Avenue near 7th Street S.W. returning from a job site.

He saw several specialists and spent 19 weeks in physiotherapy, functional rehabilitation and pain management. He remains in a lot of pain, but he put together a career retraining proposal which the WCB approved. He receives \$824.15 every two weeks while he takes a business administration program at Mount Royal College.

At the end he expects to earn about \$27,500 a year, which is less than the \$30,000 he was making, so the WCB will top up his earnings until such time as he earns his potential.

"I'm still in a lot of pain but they gave me the opportunity to carry on with my life," Brown says.

Fiona Boyd, 22, of Calgary was in a car accident while working and suffered whiplash. She saw one doctor and was off work for a month. The WCB paid for a chiropractor for six weeks.

"It was excellent," says Boyd. "My worker called every other day for the first couple of weeks. They treated me like a real human being."

"We play a critical role in assisting these people," says WCB spokeswoman Kelly Eby. "We provide an excellent service, but that doesn't get out because it's not news."

Phase 2

These people may have lost an arm or leg, suffered a serious brain injury, or experienced a combination of conditions that limit their independence.

They can't return to work immediately. They see specialists, have surgery or physiotherapy, attend rehabilitation or pain management centres endorsed or owned by the WCB, and visit psychologists and psychiatrists.

They receive WCB benefits for a portion of their former earnings if they follow the prescribed course of treatment.

At this stage, the WCB begins to compile extensive medical reports on each individual. It's also where assessments are made about their ability to return to work. The documentation is assessed by WCB medical advisors and consultants who report their findings to individual case managers who make all future decisions. It's the case managers' role to find every possible means to return the injured workers back to their jobs.

Many seriously injured workers say their difficulties dealing with the WCB begin here. For example, if they don't work through their pain and continue rehab regimes, they are cut off benefits. Some workers learn the WCB appeals process inside-out or retain advocates to help fight for additional benefits or win a different diagnosis.

Thirty-three-year-old paramedic Cal Watrich of Medicine Hat suffered long-term back injuries five years ago from lifting patients onto stretchers.

Watrich was sent to a WCB-approved rehabilitation institute in Calgary where he said every patient received the same treatment.

"It's like having a ping in your car's engine and making you take it to a tire guy."

He said his back was made worse by the treatment, but a WCB medical advisor, who he never met in person, found from reports compiled on him there was nothing wrong. He found him to be an angry individual.

"They screwed up my back. Of course I'm angry, but how can a doctor who has never seen you make a diagnosis?" he asks.

Rather than risk further injury, Watrich stopped treatment and gave up his benefits. He now is doing other work in Ontario.

Phase 3

At this stage, which can be years into the process, all that can be done medically for the worker, has been done. What remains is determining what long-term benefits they qualify for.

Prior to 1995, someone who qualified for permanent disability would get a lifetime monthly pension: 90 per cent of their previous earnings, multiplied by the percentage of their impairment.

Those injured after Jan. 1, 1995, may qualify for a Non-Economic Loss Payment. This system is for workers who have a measurable impairment such as lost use of a body part, but they're deemed fit to work. For example, if their physical restriction is assessed at 10 per cent, based on a maximum worth of \$63,685 if fully functional, they would receive a lump sum payment of \$6,368.50.

Or an injured worker may qualify for an Economic Loss Payment, if they can return to work in a restricted capacity. For example, an auto mechanic whose gross salary was \$35,000 could go back to work as a parts distributor earning \$22,815, resulting in a monthly WCB top-up of \$261.83.

Workers' Health Centre advocate Lori Walls says the WCB is almost always able to deem injured workers employable in some form or another. The non-profit health centre receives about \$100,000 in funding from the Alberta Federation of Labour and a fee from workers of \$500 for a file review and \$600 for representation before the WCB at all levels.

In the deeming process, Walls says professionals and skilled tradespeople may be deemed fit to be parking lot attendants or Wal-Mart greeters, even if there are no openings in those roles.

"It goes in cycles, but right now, we've got 200 people who have been deemed capable of being Wal-Mart greeters," Walls says.

"We don't work at placing people in a job," says WCB spokeswoman Nancy Saul-Demers.

"It's support and whatever rehabilitation services they need to be employable."

The Problem With Pain

Some workers who spend years in the WCB system say the debilitating pain caused by their injuries has ruined their lives. But WCB officials say pain is not a measurable commodity.

"We are trying to provide the best services to help them manage their pain," says Doug Sackney, WCB manager of claimant services.

"At the end of the day, a person may be left with varying degrees of pain, but there is nothing we can do. We don't have magic pills in our back pocket," Sackney says.

MLA Herard says regardless of how the system is supposed to work, too often he sees a clear pattern in the medical consultants chosen and the reports they write for the WCB.

The reports, he charges, are used to dismiss the claims of injured workers, find them fit for work, and show that their pain is out of proportion to their injuries.

Debate Over Diagnosis

Medical reports are at the centre of the fight that Al Sieb has been waging for years with the WCB.

He's had a number of surgeries to try and undo the damage caused by his fall off a ladder on a winter day in early 1993.

He remains in constant pain and daily takes morphine - prescribed by his family doctor of 27 years, Dr. Arjan Chopra - to cope with it.

He says his former employer won't take him back as long as he is using drugs to control his pain. His wife, Susan, works two jobs to support their family.

"I would have committed suicide a long time ago if it weren't for my wife and kids," Sieb said.

Sieb said after surgery the WCB sent him for rehabilitation that involved lifting weights, which made his back worse.

His problems worsened, he said, after he was sent by the WCB to see

Calgary psychiatrist Dr. Paul **Darlington** on Sept. 20, 1997.

Darlington found that Sieb's main problem involved multiple substance dependence issues. In other words, he was smoking pot and mixing alcohol with prescription drugs that contained codeine, an addictive narcotic.

That abuse, **Darlington** said, causes "rebound pain" that necessitates the continued use of painkillers.

The WCB's medical advisors subsequently determined Sieb had a psychiatric problem and his pain had nothing to do with the original accident.

The WCB's medical advisor, Dr. Priscilla Barnes, is clear on that point in a June 30, 1998, memo in which she wrote: "The development of a psychiatric problem cannot, in my opinion, be ever directly work-related. The most that could be said would be that the stress of dealing with a workplace injury might unmask or accelerate a latent, pre-existing problem."

Sieb said the problems with **Darlington**'s assessment are numerous, including that he exaggerated how much he drinks and how much Tylenol 4 with Codeine he took.

Sieb believes seven pages of a **Darlington** report on another patient who used pot and drank excessively were accidentally "imaged" into Sieb's report, repeating several passages word for word, conveying a mistaken impression.

Further, Sieb says **Darlington**'s reports that he throws things and punches holes in walls are simply untrue, as are the passages that he dreams of one day owning and operating a motel.

Darlington has refused to comment to the Herald, but WCB records show the problems were brought to **Darlington**'s attention. He subsequently revised Sieb's report March 28, 1998, removing the accidentally copied portions, but stuck to his conclusion Sieb had a substance problem and that his problems were psychological, not physical.

Meanwhile, Sieb has gathered opposing medical opinions stating that he is not a substance abuser and that his problems are medical:

n Psychologist Dr. Stuart Donaldson, Feb. 3, 1998: "Based on the assessment results, Mr. Sieb is unfit at the present time to perform jobs that put him into a sitting, lifting, standing, twisting or walking position."

n Calgary Regional Health Authority psychiatrists Drs. Donald Angus

and Joe Tham, March 11, 1998: The results of our initial assessment indicated an intelligent and creditable individual in terms of the history he presented . . . There is no evidence of mental illness at this time."

n Sieb's family physician Dr. Chopra, April 22, 1998: "There is no evidence in my charts over a 25-year-span, that this patient has or has had any dependencies of any kind."

n Orthopaedic specialist Dr. Richard Buckley, Dec. 30, 1998: "This man is a back cripple and needs continued rehabilitation. Unfortunately, his life has been wrecked since this accident and he has been unable to work."

Still, **Darlington's** assessment prevails, despite a Jan. 5, 1999, review of Sieb's file by the WCB's own medical advisor Dr. Floyd Rowat, who initially overturned **Darlington's** findings when considering whether Sieb met the guidelines for chronic pain syndrome.

But Rowat later back-tracked in his assessment and said he erred, after Sieb's case was reviewed by the WCB's complex case manager, Leanne Lozinsky.

Sieb has watched his monthly WCB compensation income drop from \$805 following the accident to \$230 a month now. Without any medical reason for his pain, the WCB in August 1996 deemed Sieb fit to work.

Conflicting Opinions

In an Edmonton interview, WCB president Mary Cameron wouldn't discuss the details of the Sieb file. She said with thousands of cases, it was inappropriate to hold the Sieb case out as an example.

"This is a very unusual circumstance, saying there are problems with a doctor's files. I don't think this is the general case," she said.

Herard, however, said the Sieb file is all too typical of what he has found.

"I'm not going to give you any names, but I've seen a number of reports. If you line them up on a table they read exactly the same," he said.

"There are changes - the dates and names are different - but they are all malingerers, drunks and liars," Herard said.

"It's happening all too often to be coincidence," he said.

Q&A

What Is the WCB?

- It is a no-fault insurance system established in Alberta in 1918, based on the principles of Ontario Chief Justice Sir William Meredith, compensating workers for their work-related injuries at no cost.
- The principle held that injured workers should not become burdens on their friends, families or society at large. In return, employers receive protection from lawsuits arising from the injuries.
- Negligence and fault are not considerations. Employers bear the cost of compensation, through premiums.
- Alberta employers pay premiums amounting to \$1.05 per \$100 of their payroll which is the lowest average premium rate in Canada.
- The WCB has about 1,400 employees at its headquarters in Edmonton and at offices in Calgary, Lethbridge, Red Deer and Grand Prairie.
- Number of workers covered: 1,158,508
- Number of new claims reported in 1998: 126,420.

Who Is the WCB Accountable To?

- In June 1995, amendments to the Worker's Compensation Act gave responsibility for the corporation to a board of directors and made it independent of government.
- The board of directors is appointed by cabinet and reports to the Alberta Minister of Labour, Murray Smith.

Source: WCB

The WCB Board:

n Rick LeLacheur, board chairman: Former president and CEO of Economic Development Edmonton.

n Mary Cameron, president and chief executive officer: former vice-president, Capital City Savings; former president, Alberta Mortgage and Housing Corporation; deputy minister, Manitoba Housing; vice-president, Alberta's Nu-West Group.

Representing Workers:

n George Chatschaturian: assistant business manager for the

International Brotherhood of Electrical Workers, Local Union 424.

n Tony Gordon: fire lieutenant, Fort McMurray Fire Department.

n Bill Spring: business manager of the International Association of Heat and Frost Insulators and Asbestos Workers, Local 110.

Representing Employers:

n Herman Bruin: family businessman - Bruin's Plumbing and Heating

n Bob Drinnan: retired general manager for the Alberta Trucking Industrial Safety Association.

n D.M. (Bud) McDonald: president of McDonald Oil and Gas and Murdoc Investments.

Representing General Public:

n Sandy Beagle, former Mayor of Beiseker.

n Gary Cerantola: member of the board of directors, First Calgary Savings and Credit Union.

n Barry Munro: petroleum, mining and public sector consultant.
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