

REVIEW DECISION

Re: Review Reference #: R0329921
Board Decision under Review: September 12, 2024

Date: April 1, 2025

Review Officer: Sean Vanderfluit

Introduction

The employer operates in the construction industry. On February 8, 2024, one of its workers filed a claim with the Workers' Compensation Board ("Board"), operating as WorkSafeBC for a left index finger injury he sustained on February 6, 2024. According to the worker's application, his injury occurred when the employer assaulted him with a hammer.

During a February 9, 2024 telephone interview with a Board officer, the worker stated that the employer had discouraged the worker from reporting the cause of his injury and reporting the injury to the Board. The Board later accepted the worker's claim.

The Board subsequently conducted an investigation to determine whether the employer had attempted to prevent the worker from reporting an injury or making a claim with the Board.

On September 12, 2024, a Board officer issued an Inspection Report ("IR") with an order to the employer for a violation of section 73(1)(a) of the *Workers Compensation Act* ("Act") for seeking to discourage, impede, or dissuade a worker from reporting their injury to the Board.

The employer requested a review of the September 12, 2024 decision and provided a submission. At the Review Division's request, the Board officer provided comments on the employer's submission that were disclosed to the employer. The comments consisted of page references to the disclosure material that the Board officer said supported the order. The employer responded with a rebuttal.

The applicable law in this review is set out in the *Act*. Section 20(3) of the *Act* gives me, as a Review Officer, the authority to conduct this review. Section 339(2) of the *Act* requires me to make a decision on the merits and justice of the case and to apply the relevant policies of the Board's directors. These policies are found in the *Prevention Manual*. The standard of proof that applies to this review is the balance of probabilities.

Issue

The issue under review is whether an order should be issued to the employer under section 73(1)(a) of the *Act*.

Reasons and Decision

Section 73 of the *Act* is commonly referred to as the claim suppression provision of the *Act*. Section 73(1)(a) states that:

An employer or supervisor must not, by agreement, threat, promise, inducement, persuasion or any other means, seek to discourage, impede or dissuade a worker of the employer, or a dependent of the worker, from reporting any of the following to the Board:

- (a) an injury or allegation of injury, whether or not the injury occurred or is compensable under the compensation provisions.

According to the worker's application for compensation, filed on February 8, 2024, on February 6, 2024 the worker was on a ladder placing nails. The worker stated that the employer disapproved of the way he was working and began hitting the worker with a hammer. One blow struck the worker's finger, causing injury. The employer's report, filed February 9, 2024, only stated that the injury occurred when "the tool fell on his finger". Furthermore, the employer requested that the Board not contact it for any further information.

A Board Field Investigator interviewed the worker in person on March 15, 2024. The Field Investigator conducted the interview in English, with the assistance of a Board officer who spoke the worker's first language. The interview transcript indicates which language was being spoken during each statement.

The worker explained that he came to Canada in May 2023 and began working for the employer. The worker confirmed that he had a work visa. The worker said that the employer began to assign him skilled work, which he was not able to do, so he made many mistakes. Over time the employer became verbally abusive, first with swearing and later with threats that the employer would have the worker deported. The worker said that the owner withheld payment of his wages for several months, and when there was a lack of work, the employer made him work at his house without pay.

The worker said that the employer's mistreatment progressed to physical abuse, beginning with slapping, which the worker said eventually became normal. Later, the employer began to hit the worker on the back with a hammer, and sometimes on the legs. From the worker's description of how the employer held the hammer, it seems that the employer was striking the worker with the handle of the

hammer. Later in the interview the worker told the Field Investigator that the employer had broken his tooth on January 24, 2024.

The worker then described the February 6, 2024 incident. The worker said the employer was hitting him throughout the shift, waiting for times that the two of them were out of sight of others. The worker then began working on a ladder with a nail gun. The employer disapproved of how he was doing this work and hit the worker four times. On the fourth blow, the worker raised his left hand to block the hammer, which struck and injured his index finger. The worker asked to be taken to the hospital, but the employer refused and made him complete the shift.

After the shift was over, the employer took the worker home and instructed him to eat dinner, telling the worker that he would take him to the hospital later in the evening. The worker said that on the way to the hospital, the employer repeatedly instructed him not to say how he had been injured. Rather, the employer told him to say that he fell on the driveway at home. The employer said that if the worker told the truth, he would drop him off at the airport or have him deported. Later, the employer instructed the worker to say that he dropped a dumbbell on his hand while cleaning his house.

The worker said that the employer continued to make threats to him if he told the truth. The worker indicated that the employer stood by while he registered with the nurse and reported his injury, so he felt compelled to say a dumbbell fell on his hand. The employer remained until it was time for x-rays and the worker indicated that he felt intimidated during that time. The worker said that the employer told him that if he reported the work incident, his premiums would increase. The worker told the Field Investigator that he did not know what that meant. The Field Investigator asked the worker what he thought it might mean. The worker's response was that maybe it meant a payment of money "or something."

The worker said that he attended the plastic surgeon on February 8, 2024 without the employer present. The worker indicated that without the employer present, and because he had been sustaining abuse for eight months, he felt that he could tell the surgeon the truth. The worker said the surgeon advised him to call the police. The worker said that after the appointment he contacted the police, who began an investigation. The employer has not disputed the fact there was a police investigation into the matter.

The worker later provided the Board with an audio recording of a call between him and the employer. The phone conversation, which occurred on February 12, 2024, was in the worker's first language, which the Board had translated and transcribed. The worker asked if the employer would take him to the hospital the next day for his surgery. The employer refused. The worker expressed concern that someone at the hospital might ask him how the injury occurred. The

employer responded with an insult. The worker's response indicated that he understood that he was to report that the injury was caused by the dumbbell.

The Field Investigator interviewed the employer in person on May 14, 2024, along with the Board officer who spoke the employer's first language. The interview occurred in both English and the other language; the transcript indicates which language was being used for each statement. The interview began with the interviewers providing the employer with an explanation of claim suppression and section 73 of the *Act*.

The employer is the sole director of his company and he was often the only worker. The interview began with the employer's safety and reporting procedures. During that discussion, the employer said that the company had never had any injury claims in the past.

The Field Investigator then asked the employer to describe what happened on February 6, 2024. The employer indicated that while he was on the jobsite, he was at different locations on the site away from the worker. The employer said that when he was on the other side of the building, he heard a sound like something falling. The employer said that he called out to ask what happened, but the worker walked towards his truck. The employer stated that after about 15 or 20 minutes he checked in on the worker, who said that he had been injured. The employer said that when he asked what had happened, the worker said that a battery had hit him when it slid out of a skill saw he had been using. The employer said that the worker suggested that the battery might not have been locked into position.

The employer said that he provided first aid and offered to take the worker to the hospital, but the worker said that he did not have his health card with him. The employer said that the worker made some calls to his housemates to ask if his card was there; meanwhile, the employer continued working. The employer said that after a concrete pour had been completed, he took the worker home so that he could find his health card. The employer said that he took the worker to the hospital that evening and was present until it was time for x-rays.

The Field Investigator expressly asked the employer if he had told the worker to say that the injury did not happen at work. The employer denied having done so. The Field Investigator then played the February 12, 2024 audio recording the worker had provided. The employer confirmed that it was a recording of him and the worker. The Field Investigator then asked the employer a series of questions about the employer having directed the worker to report that the injury was caused by a dumbbell. The employer said that he did not "correct" the worker when the suggestion of reporting the dumbbell was the cause of injury, because he suspected the worker was trying to blame him. When asked for clarification, the employer said that he did not correct the worker because he was busy and "his van was stuck".

After the Board issued the September 12, 2024 inspection report, the employer responded in an email dated October 23, 2024. The employer reiterated that the worker had been injured in the morning and that he provided the worker with first aid at the time. The employer said that, at that time, he told the worker to file a claim with the Board; the worker said he would do so after going to the hospital. The employer said that he then dropped the worker at the hospital.

The employer said that he contacted his accountant on February 8, 2024 and provided the worker's description of the injury incident, suggesting that was what was set out in the employer's report filed with the Board. The employer said that the worker was making a false statement in order to secure an open work permit and for his immigration status.

The employer's position on review is that there is no evidence it had violated section 73(1)(a) of the *Act*. The employer submits that the investigating officer was rude and put words in his mouth. The employer submits that the worker was conspiring to make a false statement for his own benefit. The employer also disputes that the audio recording indicates that he encouraged the worker to say that his injury was caused by a dumbbell. The employer also submits that the translation the Board relied upon was inaccurate. In support of this submission, the employer provided a copy of a translation of the audio recording he obtained from a certified translator. However, for the key passage regarding the dumbbell, the translator wrote "[I/A]". The translator did not indicate what this meant, although the lack of any text suggests it might mean "inaudible".

In response to the Board officer's comments, the employer contends that the transcript of his interview by the Board officer was vague, fabricated, unclear, and wrongly mentioned, contrary to the "correct version" provided by the certified translator. I note that the certified translator only translated the audio recording of the phone call and not the Field Investigator's interview.

Having considered the evidence in its entirety, I do not accept that there is any vagueness or ambiguity in the interview transcripts. Both interviews were lengthy and the Field Investigator returned to key topics several times during both interviews, which provided the parties with ample opportunity to provide further information and greater clarity. I am satisfied that I can rely on the interview transcripts in deciding the issue under review.

As for the transcript of the audio recording of the February 12, 2024 telephone call, it omits a key part of the conversation. In any event, both translations confirm that there was a discussion between the parties as to what the worker should say happened on the date of injury.

The worker's evidence demonstrated that there was a history of verbal and physical abuse by the employer against the worker. The employer did not dispute

any of that history in his submission; he only disputes the events of February 6, 2024. The worker's account that the worker had assaulted him on February 6, 2024 is consistent with the pattern of abuse he described.

While the employer disputed the circumstances as to how the worker injured his finger, he has not cited or provided any evidence to refute the pattern of abuse reported by the worker. The history described by the worker is consistent with the fact the employer struck the worker's left hand with a hammer and, more significantly, with the conclusion that the employer threatened the worker if he reported the injury as a workplace injury.

I also note that the worker's left index finger injury was not the first claim while working for this employer. Contrary to the employer's statement that it had never been the subject of any prior claims, there is a prior claim by the worker for an injury on January 24, 2024 involving the employer. Moreover, there was an earlier claim in 2019, made by the employer himself in his role as a worker of the company.

The fact that an employer has not been involved in any prior claims for compensation is of no particular significance in determining whether the employer violated section 73(1)(a) of the *Act*. What is significant is that the employer is incorrect in stating it has no claims history, which indicates that the employer's evidence is not reliable.

I further note that the employer has been inconsistent and vague in the description of the February 6, 2024 work incident, in that he has provided various different accounts of the events of that day and discrepancies in some of the details. The merits of the worker's claim are not before me, but the employer's inconsistencies and vagueness indicates that his evidence is not reliable. I also consider the employer's direction to the Board in its February 8, 2024 report, telling the Board not to contact the employer for any further information, is consistent with the conclusion that the employer had tried to prevent the worker from reporting the injury and wished to make it difficult for the claim to be investigated.

The employer suggests that the fact it filed a report of injury that was based upon the worker's account indicates that there had not been any claim submission. However, the employer's report provided little, if any, detail and did not reflect what the worker had said in his application. Moreover, the employer only filed its report after the Board notified the employer that the worker had filed a claim and asked the employer to file a report.

I have considered the employer's submission that it was the worker who suggested the dumbbell story during the February 12, 2024 telephone call. This is inconsistent with the employer's earlier statement that the worker was making a false statement when he said the employer hit him with a hammer. In other

words, at one time the employer said the worker made a false statement that the employer had hit him; later the employer said that it was the worker's idea to say a dumbbell had fallen on his hand.

If the fabrication about the dumbbell was the worker's idea, I do not see how this fits in with the employer's suggestion that the worker was telling a falsehood for the benefit of his work and immigration status. I also do not accept the suggestion that the worker was telling a falsehood in order to secure his work and immigration status, it is inconsistent with the fact the worker was already legally in Canada and had a valid work visa. To me, it was the employer who was in the position of power regarding the worker's immigration status, which is in keeping with the worker's consistent and repeated statement that the employer frequently threatened him with his status in Canada. The worker was in a vulnerable position, both in terms of the employee-worker relationship and in terms of his work and immigration status.

The conflicts and inconsistencies in the employer's accounts of what happened, and his reasoning, lead me to place little weight on his evidence regarding the key points, including his denial of claim suppression.

I place more weight on the worker's evidence, which has largely been consistent, both internally and between retellings. The only time the worker changed his account of what happened was at times when the employer was with him and listening. This is consistent with the conclusion that the employer was acting to discourage, impede or dissuade the worker from reporting his injury to the Board and filing a claim.

Despite the employer's assertion that there is no evidence of a breach of section 73(1)(a), the evidence supports the conclusion that the employer has violated this provision. This includes, but is not limited to, the worker's application for compensation, his communications with the Board, and the evidence he provided during the Field Investigator's interview. I find that the employer attempted to discourage, impede or dissuade the worker from reporting his injury and filing a claim.

As a result, I find that the employer was in violation of section 73(1)(a) of the *Act*. The Board appropriately issued the order. I deny the employer's request.

Conclusion

As a result of this review, I confirm the Board's September 12, 2024 order.

Sean Vanderfluit (He, Him, His)
Review Officer
Review Division