

# ONA WINS



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## **Member's Testimony Critical in Successful WSIB Appeal**

ONA's argument on behalf of a member denied benefits after being injured in a patient's home was enhanced by her own meaningful and credible testimony at the hearing.

On September 16, 2005, this member, a part-time RN for the Victorian Order of Nurses, hit her head on a 4 x 10-foot wooden beam when leaving a patient's home that was under construction. She reported the injury immediately to her supervisor and attempted to continue working.

After seeing her next patient, her symptoms of blurred vision, dizziness, a headache, and neck and back pain increased. She informed her supervisor and sought medical treatment, where she was diagnosed with a closed-head injury, scalp contusion and hematoma, along with cervical and upper back strains. The Workplace Safety and Insurance Board (WSIB) allowed the claim for loss of earnings and health care.

The member attempted a return-to-work plan 10 days later, but after three shifts, went off work, suffering from a migraine headache that lasted five days. She started physiotherapy and again attempted a return to modified work and hours that November, but her neck pain and headache symptoms increased, forcing her to stay off work. She sought medical from her family doctor.

Unfortunately, the member was involved in a minor motor vehicle accident (MVA) on her way to physiotherapy. She sought medical from the emergency department and it was documented that she had an increase in pain in her right neck radiating into her shoulder. She continued with her physiotherapy and remained off work.

In May 2006, the WSIB terminated loss of earnings and health-care benefits, stating the symptoms the member was experiencing were from her pre-existing health issues and the MVA, and that she had recovered from her workplace injury. ONA appealed with no success, and proceeded to the Workplace Safety and Insurance Appeals Tribunal (WSIAT) in 2014.

During the WSIAT hearing in April 2018, the member testified that she did have pre-existing conditions, but they were managed with medications and a swimming program. She also gave compelling testimony about the difference in symptoms she felt from the workplace injury and the MVA, from which she had recovered.

ONA referred to the medical that supported she had not recovered from her workplace injury at the time of the MVA and to several medical reports from her family doctor and her two physiotherapists. All three provided objective medical supporting that the workplace injury was the significant contributing factor to her ongoing symptoms.

In its decision, the WSIAT concluded that the member's compensable head and neck injuries did not come close to being resolved prior to the MVA, nor were they fully resolved when the WSIB terminated benefits. The appeal was allowed, and the member entitled to benefits for a permanent head and neck impairment and a non-economic loss award. The decision also stated that she is entitled to further benefits, including loss of earnings and health-care benefits beyond May 2006.

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