

# ONA WINS



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## **ONA Supports Member through WSIB Injustice, Employer Attacks**

ONA is continuing to support a member who has faced numerous attacks on her credibility and character after an elevator incident left her unable to work.

While the Workplace Safety and Insurance Board (WSIB) initially allowed the claim of this member – a 32-year RPN veteran – who suffered neck and upper back strain, concussion and post-concussion syndrome when an elevator she entered at work dropped and stopped abruptly, the employer successfully appealed that decision, arguing the accident could not have happened as the member described, and presenting “evidence” from an outside engineering company that ran elevator tests three months after the accident.

ONA argued the WSIB had not investigated the claim at all, instead taking the word of the employer at face value, and that the report from the engineering company showed only that the elevator was operating within Code requirements several weeks after the accident and should be discarded. WSIB agreed and reversed the denial in April 2018.

### **“Made up the Story”**

The employer filed another appeal and requested an oral hearing, which was denied. They offered additional “evidence,” consisting of two reports from the same engineering company to support their opinion that although it was possible the elevator descended in an uncontrolled manner, it was “highly unlikely” it would have fallen at the speed or distance the worker described. The employer went further in attacking her credibility, stating she made up the story to get benefits.

ONA laid out the case for entitlement based on the actual evidence: the immediate temporal relationship between the incident and medical attention, the compatibility of the incident with the diagnosis, the consistency of the member’s account, and statements the WSIB obtained from witnesses. We also provided medical literature on head injuries and analysis of the member’s condition as reported by the many specialists and treatment professionals she had seen and the opinion of the WSIB’s medical consultant.

### **“No Actual Evidence”**

ONA pointed out the equivocal nature of the engineer’s reports, as each of their opinions were prefaced by conditional phrases such as “possibly,” “highly unlikely,” and “relatively impossible,” and that additional reports provided no actual evidence other than what was previously submitted: that the elevator was operating within Code requirements three months after the accident. We argued that if the employer had conclusive evidence – such as the elevator

maintenance report or witness statements – they would produce it rather than rely on second- and third-hand reports and denigration of the member’s character.

The Appeals Resolution Officer (ARO) denied the employer appeal, pointing out the consistency of the member’s written statements and reports, and the medical findings and diagnoses. The ARO also addressed the fact that the witness statements did corroborate the member’s account, and none were provided to contradict it.

The employer has filed a Notice of Appeal to the Workplace Safety and Insurance Appeals Tribunal (WSIAT), and ONA will represent our member at that proceeding. We have also filed another appeal on the WSIB’s decision to deny ongoing entitlement and a permanent impairment for the post-concussion syndrome. While Loss of Earnings (LOE) benefits were paid by the WSIB, covering a period of under four months while the member was hospitalized, she was denied any further benefits because one report on discharge said there were no additional symptoms, even though she was prescribed months of rehabilitation and psychiatric treatment for posttraumatic stress disorder.

Because of the worker’s age (more than 65), she is legally only entitled to two years of LOE benefits, but has been in rehabilitation for nearly three years and unable to return to any work in the career she loves.

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