

# ONA WINS



SUMMARY OF ANOTHER SUCCESS AS YOUR UNION STRIVES TO IMPROVE YOUR WORKING CONDITIONS

## **WSIB insists on causal/scientific certainty when not required**

Hospital

(March 20, 2017)

A 61-year-old full-time operating room nurse sustained a scratch on her buttocks donning the scrubs preparatory to a surgery. While very painful, she continued working. Two hours later, she went to the emergency department (ED) because of increased pain and redness in the same area, was given antibiotics and went back to work.

The following day, she went to work and presented to the ED again, having developed a sudden onset of fever and overall malaise. She was admitted to the hospital where she spent three days under intravenous therapy, which continued after discharge with home care nursing. She was diagnosed with cellulitis and lost three weeks of work.

The WSIB denied the claim on the grounds that the “mechanism of injury” could not be identified – the object that caused the scratch and infecting agent. ONA appealed, arguing the case was a straightforward “chance event” accident that occurred in the course of employment, and therefore, must be presumed to have arisen out of employment pursuant to the Workplace Safety and Insurance Act section 2(1).

We argued that the failure to uncover the exact source of the scratch and infection was not a bar to entitlement. There was a close enough temporal relationship between the initial injury, the worsening of symptoms and the onset of the infection to find that the scratch from whatever was embedded in the scrubs taken from the hospital’s supply shelf was more likely than not the significant contributing factor.

The Appeals Resolution Officer (ARO) agreed, stating, “I am persuaded that there was a possibility of a foreign object being on the shelving unit directly above the OR scrubs, which could have fallen into the sterile clothing being used by the worker and causing a scratch...” and that the development of her symptoms were consistent with cellulitis.

The ARO awarded initial entitlement, and full Loss of Earnings benefits are being paid pending earnings information from the Accident Employer.

**Importance to ONA:** This is another example of WSIB insisting on causal/scientific certainty when it is not required under the established principles of causation – the significant contributing factor test and the “balance of probabilities” standard of proof.

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