



## **WSIB Trends identified by ONA's WSIB Appeals Team**

October, 2016

Recent wins by the ONA Workplace Safety and Insurance Board (WSIB) Appeals Team include reversing denials where the WSIB determines there is no proof of accident or the WSIB decides that symptoms are due to a pre-existing non-occupational condition rather than the workplace accident. Also, the Team has had success in overturning WSIB decisions which allow initial entitlement but deny payment of wage-loss benefits since the accident employer offered suitable modified work.

Nurses often delay in reporting, seeking medical attention and laying off work since they self-diagnose and self-treat. It is not until symptoms progress to the point of immobilization that a nurse files a report, seeks medical attention and lays off work. The ultimate diagnosis is usually more serious than the initial self-diagnosis. In these cases, the Team has been successful in overturning denials by providing corroborating evidence from witnesses of ongoing symptoms from the date of the workplace accident and medical opinion evidence of compatibility between the workplace accident and diagnosis. But the best way to prevent denials in the first place is for nurses to immediately report workplace accidents and seek medical attention.

The WSIB is vigilante in its investigation of possible non-occupational pre-existing conditions and either denies entitlement or limits the payment of benefits to a short period of time when symptoms are considered by the WSIB to be due to the workplace accident. The Team has been successful in these cases by carefully reviewing past medical history to show that the member was asymptomatic prior to the workplace accident and ensuring there is medical opinion evidence to support that the original and ongoing symptoms are due to workplace accident.

It is routine now for accident employers to offer members modified work shortly after the workplace accident - sometimes while the member is seeking emergency medical attention! There is no dispute that the member has a workplace injury and initial entitlement and health-care benefits are approved by the WSIB. But if the accident employer has made an offer of modified work, the WSIB is only obligated to pay wage-loss benefits if the member is unable to perform any work or the modified work is unsuitable.

A family doctor or other health-care practitioner might authorize a member off work during the acute phase of an injury, but the WSIB still has the authority to determine whether the member is totally disabled and unable to do any work or partially disabled and able to perform the modified work.

These appeals are very difficult, but the Team has had some success in securing wage-loss benefits when the member has chosen not to try the modified work. This has been by obtaining medical opinion evidence from the treating practitioner with detailed reasons explaining why a member was unable to do any work. Or by showing that the medical opinion evidence from the treating practitioner that the modified work was unsuitable was based on knowledge of the duties offered to the member. However, to avoid any wage loss, ONA members – before refusing an offer of modified work – should seek the assistance of the Local Union and should ensure that the treating practitioner is aware of the details of the modified work.