

## Why Employers can't get Cost Relief

Recently, a large employer contacted SE-GA as they have found it almost impossible to obtain Cost Relief. They have multiple claims where the outcome of the injury far exceeds what they expected given the severity of the accident. They feel this is an indication of a pre-existing condition, but their requests for cost relief are consistently denied by the WSIB. They read a recent SE-GA newsletter about Cost Relief and asked how we could help them.

Many employers have had difficulty in generating Cost Relief (Second Injury and Enhancement Fund) at the operating level (also known as the Cost Relief team). We feel this is largely due to the fact that **most employers do not appeal to a higher level if they are denied their initial SIEF request**. Our success comes from appealing decisions to the Appeals Resolution Officer and then up to the Workplace Safety and Insurance Appeals Tribunal (WSIAT). We expect to have to appeal. With this in mind, we plan our applications for cost relief so that we are in the best possible position when we are presenting the case before to the Tribunal.

Many things need to be considered when preparing an appeal for SIEF:

- Is there a medical argument that the pre-existing condition was impacted by the new injury?
- What is the severity of the accident?
- What is the severity of the pre-existing condition?
- Can you counter act the WSIB's (usually negative) opinion regarding the medical information?

Companies can still obtain Cost Relief but you require both a legal and a medical argument to do so. Please call SE-GA to discuss how our approach can improve your experience rating performance (1-866-973-7342, ext. 4).

**Editor's Note:** Please be advised that the WSIB has made important changes to its appeal process. Since February 1, 2013, an employer who wishes to appeal a decision by the WSIB must now submit an **Intent to Object Form**, which is available on the WSIB website. The time limit for appealing a WSIB decision is now 30 days for decisions about return to work or labor market re-entry (now called work reintegration or work transition), and six months for all other decisions.

*Therefore, we strongly recommend that if you wish to dispute any decisions rendered by the Board on any particular file, please remember to submit the Intent to Object Form to ensure that the time limit for appealing a decision is met.*

*Please read the summary of past SE-GA decisions where SE-GA gained Cost Relief, but which was only granted after we presented our case to the Tribunal.*

# Jurisprudence: WSIAT Decisions

**2012 WSIAT Decision:** A 57 year-old mechanic fell while carrying several parts in the shop where he was employed and suffered a rotator cuff injury. The WSIB classified this accident as *moderate* (meaning a lost time accident was the expected outcome), and while there was evidence of multiple pre-existing conditions, all applications for cost relief were denied.

SE-GA argued at the Tribunal the accident should be *minor* (meaning that a worker should be expected to return to normal duties within a short absence from work due to their injuries) as the worker did not suffer a traumatic injury and no emergency personnel were required so that the injured worker could receive treatment.

With respect to the issue of a pre-existing condition, the Independent Medical Evaluation provided to the Tribunal by SE-GA showed that the worker had multiple conditions that showed the weakening of the tendons in the shoulder that would make it more vulnerable to trauma. The Vice-Chair concluded that if this accident occurred to a “normal” worker, the outcome should have been a contusion or a strain. As these injuries in fact proved to be traumatic, the worker’s pre-existing conditions should be considered *major*.

The Vice-Chair determined that the accident should be considered minor and that the pre-existing conditions were moderate and **awarded our client 75% cost relief**. Furthermore, the delays in getting this issue resolved were caused by the WSIB and the company was entitled to receive a **retroactive NEER adjustment**. *Our client moved from 0% SIEF to 75% with this decision.*

**2012 WSIAT Decision:** The WSIB’s medical advisor for the Cost Relief team acknowledged that the injured worker suffered from two pre-existing conditions but argued that neither affected the impact of the injury nor the duration of lost time associated with this claim. As a result, **no cost relief was awarded to this company**. This decision was partially based upon the WSIB’s opinion that the absence from work was (only) due to severity of the injury.

SE-GA’s submission to the Tribunal included independent medical information that refuted this argument. The Vice-Chair accepted our argument that a worker without these pre-existing conditions would likely missed no time to limited time as a result of this accident.

We also established that the worker’s recovery was delayed because he suffered from osteoarthritis. *These material changes in the classification of this claim allowed the Tribunal to grant 50% Cost Relief when the claim previously had 0%.*



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# WSIB: Experience Rating Case Studies

## The WSIB Changes the NEER Formula... Again

In our Winter 2011 newsletter, we discussed how the WSIB had reduced the Expected Cost Factor (ECF is multiplied by your NEER premiums to determine your expected costs) by an average of 26% for mid-sized employers. The bad news is the board has done it again, and it appears to be a reduction of another 20%! The financial impact to Ontario's NEER employers is substantial.

We recently examined the NEER statement of a mid-sized transportation company that has averaged roughly \$325,000 in annual NEER premiums.

- In 2008 the company's Expected Cost Factor was 29%
  - This allowed the company \$92,000 in expected costs
  - Their maximum rebate was \$ 57,000.
- In 2013 the company's Expected Cost Factor is 13%
  - The company is now allowed \$39,000 in expected costs
  - Their maximum rebate is now only \$22,000.

In other words, this company and **every mid-sized Ontario NEER employer** must do a much better job in accident prevention and successfully manage their modified work assignments to earn a substantially smaller rebate.

## CAD-7: Avoid Frequencies

Recently, we were able to help a construction company with a very expensive claim. One of their employees developed an allergy to a substance encountered in their workplace. Unfortunately, the source of the allergy could not be identified and this employee was unable to return to work for this company.

The cost of this claim was expected to negatively impact this company for a 6 year period. Because of the circumstances of this claim, we were able to remove this claim from their CAD-7. Understandably, this claim was of great concern to this company.

What is interesting about this company is they also incurred two very small claims that incurred CAD-7 frequencies in the same year as the allergy claim. These workers both missed about 10 days of work due to their injuries. A frequency is charged against a company when the injured worker receives Loss of Earnings benefits (wage replacement) for 8 or more days due to their workplace injury. Also, each claim year counts on consecutive CAD-7 statements. The company was very concerned about the major claim but was unaware of the costs generated by the two minor claims.

- The cost of a CAD-7 frequency for this company is \$16,000 a year
- Each CAD-7 frequency affects two consecutive years
- The total cost of these two frequencies, over a two year period, was \$64,000

Avoiding these frequencies **by placing both of these workers into a light duty assignment before the 8th day would** have saved this company over \$64,000. In CAD-7, avoiding frequencies is the best method to achieving rebates. Every claim needs to be effectively managed in a CAD-7 environment.

## December 15th is the most important day in the NEER year

A SE-GA client in automotive parts manufacturing incurred almost \$120,000 in NEER claim costs for 2012. Almost all of their claims were very minor in nature and these claims incurred very few lost time days. They were very concerned about one lost time claim in particular.

In the spring of 2012 they had an unfortunate accident where the injured worker required surgery in order to achieve maximum medical recovery. The worker participated in modified work until the day of surgery and returned to modified work shortly after a normal recovery period. By the end of 2012, this worker was performing his normal duties for part of the day and remained at work doing light duties for the remainder of the day.

On the employer's December 31, 2012 NEER statement, this claim was considered "open" and had \$7,800 in Discounted Past Awards (loss of earnings, medical benefits, etc.) and a total claim cost of \$118,000. The remainder of claim costs came from the Future Projected Costs (the reserve factor) and the Overhead Cost Factor. As of this NEER statement, this company's 2013 surcharge was projected to be \$58,000.

The client was not aware that claims do not close until the end of the calendar year in which they occur. When this company gets their NEER statement for March 31, 2013, the claim will be "closed" and the costs will fall dramatically. It is our estimate that this claim will have a total cost of approximately \$28,000, and the company can anticipate a modest 2013 rebate of \$7,000.

This company did everything right to minimize the cost of this claim. They were able to close their claim before December 15th 2012. If this claim had remained open into 2013, it would not have closed until January 1, 2014. If companies work to prevent accidents and provide modified work properly, their NEER will take care of itself.

### Return to Work = 222

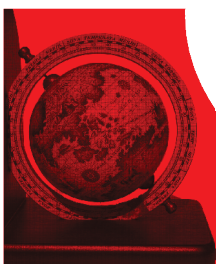
SE-GA uses a simple formula when we install a Return to Work Management program:

- Within 2 days of the accident, injured workers should begin their modified work assignment
- Within 2 weeks, injured workers should begin transitioning back to their pre-accident duties
- After 2 months, workers should be back to their pre-accident job

There will be claims, due to the nature of the worker's injuries and the impact of any pre-existing conditions that will fall outside of these guidelines. However, using these timelines help companies determine if their claims are progressing within an expected timeline.

If your claims are consistently falling outside of these expectations, contact SE-GA to discuss an audit of your Return to Work program.

**Editor's Note:** *all figures in this newsletter were rounded to the nearest thousand dollars. When preparing summaries for our clients we calculate the financial impact to the penny.*



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