

## Hot WSIB Topics

### Pre-Existing Psychological Condition = Cost Relief

A 20 year old construction worker was injured when, while working on scaffolding, a board broke beneath his feet and he fell between 6 and 8 feet. During the fall the worker suffered chest wall/lung contusions, a right rotator cuff tear and a brachial plexus injury (likely as a result of his shoulder trauma). As a result of his injuries the worker was placed into a labour market re-entry program (LMR) and received a 30% Non-Economic Loss (NEL) award for his chronic pain disorder (CPD).

Upon examination we discovered the worker had suffered from, and been treated for, a series of psychological traumas and conditions throughout his young life. His history included physical abuse as a young child, anxiety symptoms, substance abuse, learning and behaviour difficulties, anger control and panic symptoms. The worker had received counselling while in High School and was assessed throughout his treatment for his workplace injuries.

SE-GA applied for cost relief for this construction company. It was discovered there were no pre-existing conditions that could be associated to the injuries the worker incurred. Our appeal centred on his pre-existing psychological issues and this was the contributing factor to both his recovery and his inability to complete his LMR program. As a result SE-GA was able to achieve 25% cost relief from the Case Manager as they deemed the pre-existing conditions to be minor. We appealed this decision to the Workplace Safety and Insurance Appeals Tribunal (WSIAT) as we felt greater significance should be recognized.

The issue in question before the Tribunal was not whether the pre-existing condition existed, nor whether the policy to grant SIEF for psychological conditions was applied properly. Instead the issue was the medical significance of the pre-existing condition: minor, moderate or major.

Our argument focused on the unduly prolonged duration of the claim as a result of his pre-existing moderately severe psychological conditions and vulnerability factors that played a significant part in the worker's development, maintenance and deterioration of his disability. We surmised that another worker, without the psychological impediments, would likely not develop symptoms that would prevent them from returning to their pre-accident employment.

The Vice-Chair agreed that the worker's pre-existing condition was a risk factor in developing CPD-like symptoms. He determined the worker had suffered a moderate injury during the fall but also moderate pre-existing conditions that affected his recovery. Our client was awarded 50% cost relief against all of the costs of this claim.

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## 2013 CAD-7s are mailed out in Mid-September

### What you do you between now and December 31, 2013 will impact your 2014 rebate!

This issue of the SE-GA Advisor will slightly precede the release of the 2013 CAD-7 statements for Ontario construction companies with average annual WSIB premiums in excess of \$25,000.00 between 2010 in

2012. The 2013 CAD-7 will cover the 2007 – 2012 accident cost years and the 2011-2012 for lost time accidents frequencies.

This is construction season and it is important to remember that a claim with 4 weeks of lost time will cost an average construction company roughly \$42,000.00.

What your company does for the remainder of this construction season to prevent accidents and provide modified work to your injured workers will play a large role in determining whether your company will get a rebate or have to pay a surcharge.

These are the risk factors your company may have to manage:

- **Seasonal Layoff / Project Completion / Out of Town Work**

Injured workers receive 85% of their average take home pay for the duration of their absence from work due to their workplace injuries; whereas Employment Insurance provides 65% of their take home pay up to a maximum, and has time limits based upon employment history.

Many construction companies incur costly lost time claims simply because their season or project has come to an end. The workers that have been performing modified duties can have their claims activated by the WSIB. The workers who are laid off under the same circumstances receive E.I. benefits.

However, if the employer can demonstrate that the injured worker's modified work duties comprised a significant portion of the pre-accident job the WSIB will not activate the claim and the worker will be eligible for EI benefits instead.

- **The 8 Day Rule**

A lost time claim is charged against a company when an injured worker receives Loss of Earnings benefits from the WSIB for 8 days. The days do not have to be consecutive.

If a worker is able to work a partial day but their employer chooses to allow the WSIB to provide loss of earnings benefits for the remainder of the day, that counts as a lost time day.

Every company, regardless of their trade, if they focus on the workers abilities, can provide some form of modified work. The work has to be of value to the company and within the injured worker's restrictions but does not necessarily have to include work that is associated with revenue generation.

It is well worth the cost to have a physical demands analysis performed on for each of your regular modified work jobs. Remember that a worker with an average pay with benefits of \$50.00/hour earns \$8,000.00/month. A one month lost time claim would cost your company over \$42,000.00. For a 5:1 Return on Investment any company can become very creative.

- **Transfer of Costs**

If your worker is injured as result of the actions of a worker by another company the WSIB can transfer all, or a percentage, of the costs to that company. In these situations a complete accident investigation will be critical to your argument to transfer those costs.

CAD-7 carries significant financial risk, but there are many things your company can do to minimize that risk. SE-GA will review your 2013 CAD-7 report at no charge and (as of January 2014) estimate your results for 2014. Send your CAD-7 questions to [info@segaconsulting.com](mailto:info@segaconsulting.com)

- **Certificate of Recognition**

A Certificate of Recognition (COR) is awarded to employers who develop health and safety programs that meet established standards. This program has been in place in Alberta and other provinces for many years and is coming to Ontario as the standard all Health and Safety programs will be measured against.

The Infrastructure Health & Safety Association is the only body in the province that can grant COR recognition to a company. By achieving COR, employers are able to demonstrate to buyers of construction that their health and safety management system has been developed, implemented, and evaluated on an annual basis through comprehensive internal and external audits.

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COR is aimed at driving positive workplace behaviour and practices that lead to improved performance, thereby reducing workplace accidents in the construction sector. COR will be pre-qualification for many public and private sector projects.

SE-GA recommends every Ontario construction company look into the direct benefits COR can bring: accident prevention, improved CAD-7 performance and pre-qualification for tenders.

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## 2013 NEER Reports

### Every NEER year is important – watch for your September rebate / surcharge

As we approach September 30th there are some very basic rules to the NEER formula to remember:

- The experience rating window is 4 years (the current NEER window is 2009 - 2012)
- The WSIB places money in reserve against claims costs
- Claim Duration is the driving force behind amount of money held in reserve
- While claims are **active** the total cost of the claim increases rapidly due to the reserved costs
- Once claims become **inactive** the total cost of the claim will begin to fall as the amount of money held in reserve decreases

As part of our services for a client (with more than 2000 employees) SE-GA prepared a 2013 NEER rebate projection and was happy to report this company can expect a rebate of approximately \$60,000.00 this fall. But that is only part of the story.

This company has incurred significant NEER surcharges for several years and hired SE-GA to be part of their solution to reduce both the frequency and costs of WSIB claims. As a result of their initiatives the company reduced their claims costs in the NEER years 2009 – 2011 by \$700,000.00. This savings was offset by their poor performance when the company incurred a surcharge of \$640,000.00 for the 2012 NEER year. The net result is the previously mentioned \$60,000.00 rebate.

If this company only looks at their rebate, especially in light of their past performance, they should be very happy with their 2013 results.

If this company looks at their NEER performance as a whole they will realize there is still a lot of room for improvement.

Like many companies this employer does not incur a high number of accidents nor do their accidents incur a significant amount of lost time. The problem for this company is the need to improve their **NEER management**.

This company incurred 6 lost time claims in 2012 that remained active into 2013. As of their March 2013 NEER statement these claims incurred a total cost of over \$750,000.00. If all 6 of these workers would have returned to work in 2012, and the claims would have become inactive effective January 1, 2013, the total cost of these claims would have been \$200,000.00 and the company would have received a rebate of a cumulative rebate of \$550,000.00 for the 2009-2012 NEER years.

Your NEER rebate should be the expected outcome of both your accident prevention and claims management programs and not the desired outcome of good fortune.

# Fall NEER & CAD-7 Seminars

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Most companies begin their relationship with SE-GA because they have incurred a recent large NEER or CAD-7 Surcharge. In many cases these companies were caught completely by surprise by their surcharge as their claims, while not long in duration, have had significant costs.

The secret world of NEER:

- The Mechanics of NEER
- How Future Projected Costs are related to claim duration and claim end dates
- Employer Obligations/Worker Obligations
- Return to Work =222
- The importance of appealing WSIB decisions
- Best Possible Rebate/Worst Possible Surcharge: Where are you between these two poles

The secret world of CAD-7:

- The CAD-7 formula
- How the 8 day rule affects your rebate
- How long term claims can lead to 5 years of Surcharges
- Employer Obligations/Worker Obligations
- Return to Work =222
- The importance of appealing WSIB decisions
- Best Possible Rebate/Worst Possible Surcharge: Where are you between these two poles

For Fall and Winter 2013, SE-GA will be hosting seminars in Kingston, Ottawa, Kitchener, St. Catharines and Windsor. Dates to be announced shortly, check our website [www.segaconsulting.com](http://www.segaconsulting.com) for details.

If you would like us to include other members of your team on our newsletter, please [CLICK HERE](#) and include their name and email address.

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As always, everyone's situation is different. The above is not intended to be legal advice for any particular situation and it is always prudent to seek professional legal advice before taking any decisions on one's own case.



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