



FIGHTING BACK

A Canadian Story

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CIRSx: Joining the Mission
April 30, 2022

Objectives

- Moving on from a workplace injury. “There has to be a way for ordinary people to get their life back”
- A brief review of the Canadian Workers’ Compensation Board and the Canadian Human Rights Act
- Lessons I learned from navigating a WCB claim
- What is accommodation in the workplace for environmentally sensitive individuals
- Lessons I learned from asking for workplace accommodation and filing a human rights complaint

Disclosures:

I have nothing to disclose

Disclaimer:

Nothing in this presentation should be taken as legal advice



My story of
a workplace injury
caused by
exposure to a
Water-damaged Building

Workers' Compensation

Legislation designed to provide benefits, medical care, and rehabilitation services to injured workers and anyone with an occupational disease

Canadian Workers' Compensation Boards are provincially and territorially regulated.
Most decisions about WCB claims and benefits are made by a case manager or adjudicator

Workers and employers can appeal decisions made by the WCB Adjudicator and Review Office to have decisions overturned

Three levels of appeal

- Internal
 - Adjudicator
 - Review office. In Alberta - Dispute Resolution and Decision Review Body (DRDRB)
- Independent
 - Workers' Compensation Appeal Tribunal (Appeals Commission for Alberta Workers' Compensation)
 - Final level of appeal for decisions made by the DRDRB

WCB Occupational Specialist reviewed various documents including:

- Visual inspection of the worksite and an indoor air quality report
- 40 pages from a different claim, with a different name and different injury which occurred in a kitchen at a different worksite
- Articles on file:
 - “McMahon S, Shoemaker R, Ryan J. Reduction in forebrain parenchymal and cortical grey matter swelling in treatment groups in patients with inflammatory illness acquired following exposure to water damaged buildings. J Neurosci Clin Res 2016 1:1”
 - “Shoemaker R, House D, Ryan J. Vasoactive intestinal polypeptide (VIP) corrects chronic inflammatory response syndrome (CIRS) acquired following exposure to water-damaged buildings. Health 2013 5: 396-401
- Workplace Incident Reports and Medical information including Visual Contrast Sensitivity tests
- Test results including MARCoNS, MRI head for NeuroQuant and lab results
- Literature search of “toxicology textbooks and databases”. Searched the medical databases and “16 of the most prestigious and relevant medical societies”

WCB Occupational Specialist's interpretation of data in claim:

- Visual inspection of the worksite and an indoor air quality report

Noted that in the previous 5 months 10 worker incidents attributed to poor indoor air quality had been filed. Indoor Air Quality assessment and visual inspection showed no mold growth and no physical factors that could contribute to poor indoor air quality

WCB Occupational Specialist's interpretation of data in claim:

- 48 pages from a different claim, with a different name and different injury which occurred in a kitchen at a different worksite

Reported that he reviewed this document but didn't notice it was from a different claim

WCB Occupational Specialist's interpretation of data in claim:

- Articles on file:

"McMahon S, Shoemaker R, Ryan J. Reduction in forebrain parenchymal and cortical grey matter swelling in treatment groups in patients with inflammatory illness acquired following exposure to water damaged buildings. J Neurosci Clin Res 2016 1:1"

"Shoemaker R, House D, Ryan J. Vasoactive intestinal polypeptide (VIP) corrects chronic inflammatory response syndrome (CIRS) acquired following exposure to water-damaged buildings. Health 2013 5: 396-401

Reviewed and dismissed

WCB Occupational Specialist's interpretation of data in claim:

- Workplace Incident Reports and Medical information including Visual Contrast Sensitivity tests

Noted the VCS test results for biotoxin was positive. Ignored

- Test results including MARCoNS, MRI head for NeuroQuant and lab results
 - Noted that MARCoNS was positive which was common in biotoxin illness – ignored
 - Noted MRI for NeuroQuant was reviewed. No comment on NeuroQuant – ignored
 - Noted some labs were for research use, not clinical use.
 - Noted that a test had not been cleared or approved by US FDA..
 - He concluded “the lab procedures are not approved by the governing medical authority as recognized tests”

* Ignored abnormal lab results and tests

WCB Occupational Specialist's interpretation of data in claim:

- Literature search of "toxicology textbooks and databases". Searched the medical databases and "16 of the most prestigious and relevant medical societies"
 - "The diagnosis proposed by Dr *****, a general practitioner, is not recognized by prestigious scientific bodies in immunology, toxicology, infection disease or Occupational and environmental medicine"
 - Multiple articles found in general literature search – dismissed

OPINION:

- The condition CIRS-WDB is not medically recognized
- It is very unlikely that any of my symptoms are associated with an exposure at work

* WCB Adjudicator Denied Claim

First Level of Review (with Adjudicator)

Adjudicator sought opinion from Specialist in Ophthalmology as to whether there is ophthalmologic literature on the topic of Visual Contrast Sensitivity and its use to identify exposure to biotoxins.

- Ophthalmology opinion - Not specific but exposure to biotoxins does seem to consistently provide a decrease in visual contrast sensitivity. Test could be used to screen for possible biotoxin exposure but not diagnostic by itself

Adjudicator obtained a previously withheld report from the employer's building management company for mold remediation performed in my work area 8 months prior to my WCB claim

Adjudicator requested a review by the WCB Occupational Specialist who petitioned my CIRS Specialist for:

- peer reviewed medical articles or references from medical/toxicological textbooks re. CIRS-WDB being a recognized medical diagnosis or clinical entity
- Dose response relationship between exposure and development of CIRS-WDB
- Toxicological mechanisms that are involved
- Preventative strategies
- Standardized treatment plans

WCB Occupational Specialist Appeal Response:

“For due-diligence I researched Dr. Shoemaker to understand his background, experience and publications”

Source: Quackwatch

Opinion: Dr. Shoemaker has been known to be involved in fringe medicine

Many articles not in main stream peer reviewed reputable journals. “Such publications are considered predatory”

Source: Wallace. Firm action needed on predatory journals. BMJ 2015; 350

Source: The internet cautions against the use of predatory, open access journals

The College of Physicians and Surgeons of Alberta lists Dr. **** [my CIRS physician]

“Not recognized as a specialist”

“His reliance on a consensus statement put forward by Dr. Ritchie Shoemaker, his use of articles that are published in what is classified by evidence-based medicine physicians as predatory supports my opinion”

Opinion: “The current information indicate that non-biological factors likely play a significant role not related to the workplace”

Dispute Resolution and Decision Review Body (DRDRB) Appeal

- Discredit the WCB Occupational Specialist
- Establish Dr. Shoemaker as a “pioneer of biotoxin related illnesses”
- The diagnosis of CIRS is validated by its use in clinical practice
- Show my physicians and CIRS certified practitioners practice evidence-based medicine

1. Discredit the WCB Occupational Specialist

Refused to consider valid objective biomarkers

Claimed that “the lab procedures are not approved by the governing medical authority as recognized tests”

False – CLIA are US federal regulatory standards that apply to clinical laboratory testing

Claimed to have “researched” Dr. Shoemaker to understand his background, experience and publications

Unsubstantiated - used Quackwatch for his research

“Discovered” on Quackwatch that Shoemaker’s Website offers online testing and solicits donations

- True – VCS testing confirmed by WCB Specialist in Ophthalmology to be a valid screening tool
- False – Does not solicit online donations

1. Discredit the WCB Occupational Specialist

Claimed many publications cited by my physician are considered predatory

Confused open access with predatory

Touts journals with high impact factors as commendable

Surviving Mold Resources:

Surviving Mold publications guided by CRBAI – Guideline for Research Planning & Publication (2014)

https://www.survivingmold.com/CRBAI_RESEARCH_GUIDELINES_2014.pdf

Round table: How do I know a scientific paper isn't junk?

<https://www.survivingmold.com/legal-resources/community/round-table-how-do-i-know-a-scientific-paper-isnt-junk>

2. Establish Dr. Shoemaker as a “pioneer of biotoxin related illnesses”

Refute WCB Specialist’s claim that Dr. Shoemaker practices “fringe medicine”

Dr. Shoemaker’s CV can be found on the Surviving Mold website

<https://www.survivingmold.com/about/curriculum-vitae>

3. Diagnosis of CIRS is validated by its use in clinical practice

Documentation of physicians around the world who were using evidence-based medicine to treat CIRS-WDB in their clinical practice

Why did the WCB Occupational Specialist's opinion carry so much weight?

A person with long brown hair is resting their head on their hand at a desk. In front of them is a laptop, a mouse, and a white coffee cup. The background is softly blurred, showing a window with light coming through. The overall mood is one of exhaustion or stress.

**Accommodating
Environmental
Sensitivities
in
the
Workplace**

"In Canada, you have the right to live free from discrimination. Human rights laws protect people in Canada from discrimination based on grounds such as race, sex, religion or disability."

Canadian Human Rights Commission



Nearly half of all discrimination complaints in Canada are related to disability

Canadians with disabilities face disproportionately high levels of discrimination in employment and when receiving services

A person with a disability has a right to reasonable accommodation

"Physical disability means any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness"

"Mental disability is any mental disorder, developmental disorder or learning disorder, regardless of the cause or duration of the disorder"



Accommodation

"Accommodation means making changes to certain rules, standards, policies, workplace cultures, and physical environments to eliminate or reduce the negative impact that a person or group faces because of a characteristic that falls within a protected ground or grounds"

In all situations where there is a duty to accommodate, the employer, service provider, or landlord must provide accommodation to the point of undue hardship.

Accommodation . . . may cause a degree of inconvenience, disruption, and expense to the employer, union, or service provider. However, accommodation to the point of undue hardship is required by law.



Environmental sensitivity

“People who have allergies or sensitivity to certain products may have a bad reaction to a much lower level of chemicals, perfumes or environmental triggers than the average person”

Their reaction is a medical condition. It is a recognized disability. People with allergies or environmental sensitivity are entitled to protection from its cause

Employees or clients with environmental sensitivities can ask employers or service providers for accommodation

Environmental sensitivity and scent-free policies - CHRC – December 2019

<https://www.chrc-ccdp.gc.ca/eng/content/policy-environmental-sensitivities>



Accommodation is about more than having a Scent-free Policy

Accommodation for Environmental Sensitivities: Legal Perspective – Wilkie & Baker (2007)
https://www.chrc-ccdp.gc.ca/sites/default/files/legal_sensitivity_en_1.pdf

The Medical Perspective on Environmental Sensitivities – Sears (2007)
https://www.chrc-ccdp.gc.ca/sites/default/files/envsensitivity_en.pdf

Canadian Human Rights Commission – Policy on Environmental Sensitivities. 2007 & 2014

Individuals with environmental sensitivities experience a variety of adverse reactions to environmental agents at concentrations well below those that might affect the “average person”. This medical condition is a disability and those living with environmental sensitivities are entitled to the protection of the *Canadian Human Rights Act*, which prohibits discrimination on the basis of disability.

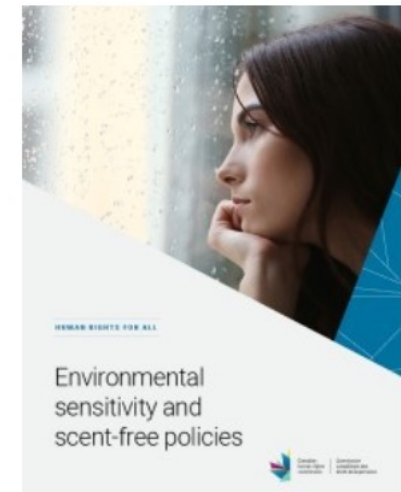
"Successful accommodation for persons with environmental sensitivities requires innovative strategies to minimize or eliminate triggers in the environment . . . "



Canadian Human Rights Commission January 2014
(Same wording as original 2007 policy)
Policy on Environmental Sensitivities

https://www.chrc-ccdp.gc.ca/sites/default/files/policy_sensitivity_0.pdf

This is the latest version:
Environmental sensitivity and scent-free policies
Canadian Human Rights Commission December 2019



https://www.chrc-ccdp.gc.ca/sites/default/files/publication-pdfs/policy_sensitivity_2019.pdf

Obtaining and responding to
**MEDICAL INFORMATION
IN THE WORKPLACE**



Alberta
Human Rights Commission

ADR2013

INTERPRETIVE BULLETIN

https://albertahumanrights.ab.ca/Documents/Bull_Obtaining_med_info_in_workplace_PW.pdf

Bay, Odelia R., "Malingerer or Maligned: A Comparative Study of Multiple Chemical Sensitivity Case Law" (2015). Osgood Legal Studies Research Paper Series. 130

<http://digitalcommons.osgoode.yorke.ca/olsrps/130>

Thank you to Dr. Shoemaker and the Surviving Mold community