



**Information and Privacy
Commissioner/Ontario**
**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER P-232

Appeal 900031

Ministry of Correctional Services



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O R D E R

BACKGROUND

This appeal was received pursuant to subsection 50(1) of the Freedom of Information and Protection of Privacy Act, 1987, as amended (the "Act") which gives a person who has made a request for correction of personal information under subsection 47(2) the right to appeal any decision of a head under the Act to the Information and Privacy Commissioner.

The facts of this case and the procedures employed in making this Order are as follows:

1. A request was made to the Ministry of Correctional Services (the "institution") for a correction of records in the custody and control of the institution as follows:

Attendance Record - 1983 & 1984

February 2,3,4,7,8,9/83 - marked as 'sick' days

Correction requested: February
2,3,4,7,8,9/83 corrected as WCB under
C1#14121145 (as per Hearings Officer
decision dated June 3/86) ["Correction 1"]

March 15 to April 5/83 (16 days) - recorded
as 'sick' days

Correction requested: March 15 to April
5/83 (16 days) corrected as WCB under
C1#14148224 (as per Hearings Officer June
3/86) ["Correction 2"]

June 14 to June 22/83 (8 days) - marked as 'sick' time

Correction requested: June 14 to June 22/83 (8 days) corrected as WCB under C1#16361372 (letter Apr/88) ["Correction 3"]

June 29 to July 5/83 (3 days) - marked as 'sick' days

Correction requested: June 29 to July 5/83 (3 days) corrected as WCB under C1#16535473 (letter Apr/88) ["Correction 4"]

January 11 to 20/84 (8 days) - marked as 'sick' time

Correction requested: January 11 to 20/84 (8 days) corrected as WCB under C1#12690178 (as per Hearing Officer June 3/86) ["Correction 5"]

January 30 to June 7/84 (91 days) - marked as 'sick' time

Correction requested: January 30 to June 7/84 (91 days) corrected as WCB under C1#12690188 (as per Hearing Officer June 3/86) ["Correction 6"]

2. The institution responded as follows:

The Act gives you the right to request that your personal information be corrected, if there is an error or an omission. In order for an inaccurate record to be corrected, you must demonstrate that an error in fact was made.

This office was advised by ...[the] Detention Centre, that your personnel file at that location does not contain correspondence from the Workers Compensation Board to officially direct the institution to make the corrections you request to your attendance record. As a result, it is our position that the information is correct

unless the institution is officially notified otherwise.

Since you have not demonstrated that factual errors have been made to the records, the requested correction will not be made.

3. By letter, the requester appealed the decision of the head to refuse to correct the record.
4. Notice of the appeal was given to the institution and the appellant.
5. The records for which corrections were requested were reviewed by the Appeals Officer. The Appeals Officer contacted the institution and the appellant in an effort to mediate a settlement. The Appeals Officer inquired whether the institution had received any decisions of the Workers' Compensation Board (the "WCB") which corresponded to those set out in the appellant's request for corrections, and if so, whether those decisions did in fact state that the dates referred to in the request should be referred to as time taken off under the Workers' Compensation Act R.S.O. 1980, c. 539, as amended. The institution initiated a search for any such records.
6. On February 2, 1990, the institution wrote to the Appeals Officer as follows:

...please be advised that our legal branch has completed its search for [the appellant's] records. It appears that [the appellant] booked off sick on a number of occasions in 1982, 1983, and 1984, alleging that he had been made ill because of

exposure to various fumes. More particularly, he alleges the following:

January 31, 1982 and February 1, 1983 - exposure to smoke from a welding site;

February 4, 1982 - exposure to liquid drain cleaning fumes;

January 30, 1983 - exposure to chlorine bleach fumes;

March 14, 1983 - exposure to dry cleaning fumes;

January 10, 1984 - exposure to sulphuric acid fumes from a drain cleaner; and

January 31, 1984 - exposure to sulphuric acid fumes from a battery being recharged.

[The appellant] alleges that he suffered the following symptoms as a result of the offensive exposures noted above: headaches, stomach cramps, dry throat and nose, itchy and burning eyes, burning sensation in the chest, wheezing and a red rash on his chin.

[The appellant] filed a number of Workers' Compensation Board (W.C.B.) claims, alleging that he had been "sick and disabled" as a result of the alleged allergic reactions to the chemical fumes. Copies of these claims are on his personnel file. These claims are currently the subject of a number of outstanding appeals by both [the appellant] and the Ministry of Correctional Services.

In summary, the Ministry of Correctional Services has some difficulty making the changes that [the appellant] is requesting for the following reasons:

- (1) the term "sick" would appear to accurately reflect what [the appellant] claims occurred to him

subsequent to his alleged exposure to the fumes;

- (2) the various W.C.B. decisions are in his file and available to any party who would have access to his file;
- (3) the W.C.B. decisions [the appellant] refers to in his request for corrections are currently the subject of appeals yet to be heard.

Notwithstanding the above, while our ministry does not see the need to change the appellant's record as requested, we are prepared to place on his file a letter from him, addressing the matter, if he feels it is appropriate.

- 7. On March 14, 1990, the institution forwarded to the Appeals Officer a copy of the decision of the WCB Hearings Officer dated June 9, 1986. This decision deals with three of the appellant's claims and is relevant to Correction 2, Correction 5 and Correction 6. The institution also sent a copy of a summary of the appellant's Workers' Compensation claims which is relevant to Correction 1, Correction 2, Correction 5 and Correction 6. In the covering letter, the institution indicated that the appellant was appealing three claims (Correction 2, Correction 5 and Correction 6). The institution noted that it was appealing one claim (Correction 1) and that its legal branch had no documentation concerning two claims (Correction 3 and Correction 4).

8. On March 16, 1990, the appellant wrote to the Appeals Officer as follows:

In the letter dated November 29, 1990, it is noted that [the Detention Centre] advised your office that my personnel file does not contain correspondence from the Workers' Compensation Board to officially direct the Institution to make the corrections that I request to my attendance record.

First, I would like to apologize since I made one error on my application for correction of personal information. On the form, the first entry reads: February 2,3,4,7,8,9/83 for which I requested correction. However, after a closer scrutiny of the copies of my Attendance Records earlier obtained from your Office, I note that the personnel clerk at the Institution had made the Correction which reads:

"Medical Received
Changed due to
WCB Claim" (Copy attached for your
perusal)

Now, as this Claim was one of the Claims allowed by the Hearing Officer decision of June 3, 1986, I cannot understand why the other claims pertaining to that hearing were not likewise corrected. Furthermore, since WCB reimbursed the Ministry for ALL of my claims for which entitlement was granted, I would believe that this, in itself, is sufficient official direction to amend my record. Likewise, any correspondence between the parties, be it the Employee or the Employer with the Board, the other party receives notice of said written communication... I am also aware by virtue of a copy of a letter dated January 20, 1989, that the Ministry plans to initiate an Appeal for all of my entitlements. However, until this occurs and a reverse

decision is rendered, I feel that my Attendance Record should reflect the corrections necessary to reflect the acknowledgement of entitlement by the WCB.

9. On March 22, 1990, the institution wrote to the Appeals Officer and stated:

I have researched the ministry's process of recording WCB on the attendance file. It appears that [the appellant] did not connect his illness with the alleged exposure to fumes until some time after the absences were recorded. His absences, therefore, were originally reported and recorded as "sick" days. The records on file at the work location are submitted to the Central Attendance Recording System (CARS) at the Ministry of Government Services. I have been advised by our CARS Coordinator that there is no method available to correct sick days to WCB days once the days have been entered on the CARS. As well, the CARS retention schedule is such that records from 1983 and 1984 have been purged from the system. The CARS system can adjust a persons' vacation credits if the ministry had used these to supplement the absences, but I do not think

this was the case with [the appellant]. The institution does keep a paper copy of the attendance on the individual's file. These paper copies may be corrected to better reflect the reasons for [the appellant's] absences should an error be discovered.

10. The institution forwarded to the Appeals Officer a copy of a letter dated January 20, 1989, from the Claims Adjudication Services Branch of the WCB addressed to the Legal Services Branch of the institution. The letter

provided a brief summary of the issues existing in the appellant's claims, including those which are relevant to this appeal. The letter sets out the status of all of the claims as of the date of the letter:

- [the appellant's] representative will be appealing the September 29, 1988 decision regarding chronic pain disorder and continued entitlement in Claim 12690188 [Correction 6], 14148224 [Correction 2], 12690178 [Correction 5] [and] 14121145 [Correction 1]...
- Claims ... 16361372 [Correction 3] and 16535473 [Correction 4] have been allowed for lost time and health care benefits by Claims Adjudication Services... In our October 20, 1988 telephone conversation, you gave me a verbal appeal on these claims.
- The Ministry of Correctional Services would like to appeal the initial allowances in the eight aforementioned claims. (12690188 [Correction 6], 14148224 [Correction 2], 12690178 [Correction 5], 14121145 [Correction 1]... 16361372 [Correction 3] and 16535473 [Correction 4]).

11. The institution wrote to the Appeals Officer on April 17, 1990 as follows:

It appears that the Ministry of Correctional Services has appealed the initial entitlement of all six claims that [the appellant] is concerned with in his request for correction. As a final decision has not

been reached by the WCB regarding [the appellant's] entitlement under these claims, the Ministry of Correctional Services is unable to make any corrections to [the appellant's] attendance record at this time.

12. The Appeals Officer communicated this information to the appellant. The appellant wrote to the Appeals Officer on May 3, 1990, and enclosed a copy of a letter he had sent to Ms Paulette Desjardins of the Workers' Compensation Appeals Tribunal (the "WCAT"), dated December 27, 1988, and a copy of Ms Desjardins' reply. Ms Desjardins' letter is undated. The appellant's letter was as follows:

This is to request the transcript of my Hearing Branch hearing as held before Mr. L. Carr, June 3, 1986 at 2 Bloor St. Toronto.

My employer appealed this decision to W.CAT 1986 under File [file number]. They have not proceeded with their appeal to date.

Ms Desjardins responded:

Further to our telephone conversation today, please be advised that I have forwarded your request fro [sic] the Hearings Officer transcript to Mr. Chris Goodwin at the Workers' Compensation Board.

This was done as our file, [file number], was withdrawn and the file has been closed.

13. As both parties in this appeal maintained their respective positions, settlement was not achieved, and the matter proceeded to inquiry.
14. Notice was sent to the appellant and the institution that an inquiry was being conducted to review the

decision of the head. Enclosed with the notice was a report prepared by the Appeals Officer. This report was prepared in order to assist the parties in making their representations concerning the subject matter of the appeal. The Appeals Officer's Report outlines the facts of the appeal and sets out questions which paraphrase those sections of the Act which appear to the Appeals Officer, or any of the parties, to be relevant to the appeal. The Appeals Officer's Report indicates that the parties, in making their representations, need not limit themselves to the questions set out in the report. Written representations were received from the institution and the appellant, and I have considered the representations in making my Order.

ISSUES

The issues arising in this appeal are as follows:

- A. Whether the information contained in the attendance records qualifies as "personal information" as defined in subsection 2(1) of the Act.
- B. If the answer to Issue A is in the affirmative, whether there is an error or omission in the personal information which should be corrected pursuant to subsection 47(2) of the Act.

DISCUSSION

Issue A: Whether the information contained in the attendance records qualifies as "personal information" as defined in subsection 2(1) of the Act.

Subsection 2(1) of the Act contains a definition of "personal information". Specifically, subparagraph (b) of the definition of personal information states:

"personal information" means recorded information about an identifiable individual, including,

- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,

In my view, the information at issue in this appeal, relating as it does to the employment history of the appellant, qualifies as personal information. Accordingly, having been given access to this personal information, the appellant was entitled to request correction of the information under subsection 47(2) of the Act.

Issue B: If the answer to Issue A is in the affirmative, whether there is an error or omission in the personal information which should be corrected pursuant to subsection 47(2) of the Act.

Subsection 47(2) of the Act reads as follows:

Every individual who is given access under subsection (1) to personal information is entitled to,

- (a) request correction of the personal information where the individual believes there is an error or omission therein;
- (b) require that a statement of disagreement be attached to the information reflecting any correction that was requested but not made; and
- (c) require that any person or body to whom the personal information has been disclosed within the year before the time a correction is requested or a statement of disagreement is required be notified of the correction or statement of disagreement.

This subsection provides an individual with a right to request that personal information be corrected if there is an error or omission in the personal information.

The appellant believes that there is an error in the information as recorded on his attendance reports. He believes that the reason given on his attendance record for his non-attendance at work is erroneous as it does not reflect the findings of the WCB.

Copies of the decisions of the WCB regarding the appellant's claims for entitlement on the days specified in his request for correction have been provided to this office. As well, inquiries were made of the WCB and the WCAT as to the current status of the six claims.

Correction 1

The appellant requested correction of his attendance records for the following dates: February 2, 3, 4, 7, 8, and 9, 1983. The appellant made a claim for workers' compensation for the above - noted dates. He received a decision from the WCB in a letter dated May 11, 1984. The letter was written by Dr. D.H. Brydson, Review Specialist, Claims Review Branch, and states as follows:

Having regard for all of the information in relation to this incident, and noting the opinion of the Medical Advisor, the Claims Review Branch accepts that there was a work exposure causing disability on January 31 /February 1, 1983 and accepts entitlement for disability up until February 9, 1983 under claim 14121145.

Correction 2

The appellant requests correction of his attendance records for March 15 to April 5, 1983 (16 days). He made a claim for workers' compensation for this period. He received a decision from the WCB dated June 9, 1986. The decision is signed by Hearings Officer L. Carr and states as follows:

The Hearings Officer is satisfied that the medical evidence, and in particular the findings from Dr. Bell do support that the worker's symptoms were related to fumes exposure. The Hearings Officer further accepts that given the worker's unique sensitivity to various fumes and toxic agents, he did have sufficient exposure to laundry fumes on March 14, 1983 under Claim C14148224... The Hearings Officer finds that the worker does have entitlement for acceptance of these claims, and for payment of compensation benefits and associated health care benefits.

Correction 3

The appellant requests correction of his attendance records from June 14 to June 22, 1983 (8 days). The appellant made a claim for workers' compensation for this period. He received a decision regarding this claim in a letter from Mrs. A. M. Zwolak, Claims Adjudicator at the WCB. The letter is dated April 22, 1988, and states as follows:

Eight days lost time from June 13 to 22, 1983 has been allowed and a new claim has been set up, C16361372.

Correction 4

The appellant requests correction of his attendance records from June 29 to July 5, 1983 (3 days). The appellant made a claim for workers' compensation for this period. The decision of the WCB was sent to the employer in a letter dated April 28, 1988. The letter was from the Claims Adjudication Services and stated:

Claim No: 16535473-H [the appellant]
This worker's claim has been approved and payment of compensation is being processed.

Correction 5

The appellant requested correction of his attendance records for January 11 to January 20, 1984 (8 days). The appellant made a claim for workers' compensation for this period. He received a decision of the WCB dated June 9, 1986, and signed by Hearings Officer L. Carr. The decision is as follows:

The Hearings Officer is satisfied that the medical evidence, and in particular the findings from Dr. Bell do support that the worker's symptoms were related to fumes exposure. The Hearings Officer further accepts that given the worker's unique sensitivity to various fumes and toxic agents....[he] did have sufficient

exposure to sulphuric acid fumes on January 10, 1984 under claim C12690178...The Hearings Officer finds that the worker does have entitlement for acceptance of these claims, and for payment of compensation benefits and associated health care benefits.

Correction 6

The appellant requests correction of his attendance records for January 30 to June 7, 1984 (91 days). He made a claim for workers' compensation for this period. He received the decision of the WCB dated June 9, 1986. The decision is signed by Hearings Officer L. Carr, and states as follows:

The Hearings Officer is satisfied that the medical evidence, and in particular the findings from Dr. Bell do support that the worker's symptoms were related to fumes exposure. The Hearings Officer further accepts that given the worker's unique sensitivity to various fumes and toxic agents....[he did have] sufficient exposure to sulphuric acid fumes from a battery being recharged in January, 1984 under Claim C12690188. The Hearings Officer finds that the worker does have entitlement for acceptance of these claims, and for payment of compensation benefits and associated health care benefits.

Current Status of Claims

It would appear, at least from the point of view of the WCB, that the appellant's non-attendance at work on the specified days was for reasons entitling him to compensation under the Workers' Compensation Act. A letter to this office from the WCB, dated April 15, 1991, confirms that this initial entitlement was granted.

The institution indicates that it has appealed the determination of the appellant's initial entitlement on all of the relevant claims. The letter received from the WCB dated April 15, 1991, indicates that all of the claims are under appeal. The letter

indicates that with respect to Correction 1, Correction 3 and Correction 4: "a verbal appeal to this decision was taken on October 20, 1988 from the accident employer". With respect to Correction 2, Correction 5, and Correction 6, the letter from the WCB indicates that the institution appealed this decision to the WCAT. None of these appeals have been heard to date.

The institution indicates that on February 8, 1988, it requested that the WCAT place its appeal with respect to Correction 2, Correction 5 and Correction 6 in abeyance. This information was verified by the WCAT in a letter to this office dated April 12, 1991, which states, in part, that:

In a letter to the Tribunal dated February 8, 1988, the employer representative requested that the appeal be kept "in abeyance" as the worker had outstanding issues before the Workers' Compensation Board on related matters. As there is no "abeyance" status at the Tribunal, for administrative purposes, this file was treated as withdrawn without prejudice to the employer's right to return at a later date. To date, no new appeal has been received.

The reason for this request for abeyance was the institution was awaiting a WCB ruling on the appellant's entitlement to Chronic Pain Disorder. Although a ruling on the appellant's entitlement to Chronic Pain Disorder was made on September 29, 1988, the institution has not yet acted on its intention to appeal the initial entitlement under the three claims related to Correction 2, Correction 5 and Correction 6. The appellant has indicated that he will appeal the decision concerning Chronic Pain Disorder, but has not pursued this appeal. Thus, the matter has not yet reached a conclusion.

The Workers' Compensation Act does not provide a time limitation within which an appeal of a decision of the WCB must be filed, nor a limitation period within which an appeal must be heard and a decision given. Therefore, a decision may be appealed years after the decision has been implemented.

In view of the foregoing, I am of the opinion that for the purposes of this appeal, the relevant information to consider in deciding whether there is an error or omission in the attendance records is contained in the decisions of the WCB. These decisions have not been set aside and in my view it is unreasonable that this appellant should wait indefinitely for a decision on an appeal before a correction to his personal information may be made.

ORDER

1. The attendance records are at variance with the reasons for absence found by the WCB. In view of the WCB's decisions, I order the institution to make corrections to the record to reflect the findings of the WCB.
2. Although the appellant made a compensation claim for three days in claim 16535473 [Correction 4], the actual entitlement allowed was for one day only. The appellant has attempted to have the WCB change this finding to three days, but has not been successful to date. Accordingly, I order the institution to correct the attendance record for Correction 4 to reflect entitlement to compensation for one day.
3. In my view, the circumstances associated with this appeal are such that it would be inappropriate for the institution

to actually change the appellant's records. Therefore, I order the institution to attach to each record a memorandum containing the following information:

- (i) The reasons for non-attendance on each day according to the decision of the WCB;
 - (ii) A statement to the effect that the memorandum forms an integral part of the attendance record and should not be removed;
 - (iii) A statement to the effect that the memorandum reflects a correction of the attendance record ordered by the Information and Privacy Commissioner/Ontario.
 - (iv) A statement to the effect that the correction is subject to any future decisions rendered by the WCB or the WCAT.
4. I order the institution to make the correction in the specified manner within twenty (20) days of the date of this Order, and to notify the appellant and this office of the correction within five (5) days of the date the correction is made.
5. I order the institution to give written notice to any person or body to whom the attendance record has been disclosed since the correction was first requested, of the

correction that has been ordered, within five (5) days of the date the correction is made.

6. I order the institution to give written notice to any person or body to whom the attendance record has been disclosed within the year before the date the correction was first requested, of the correction that has been ordered, within five (5) days of the date the correction is made.

7. I order the institution to give written notice to the Co-ordinator, Special Services IPPEBS/CARS at the Ministry of Government Services, of the correction that has been ordered, within five (5) days of the date the correction is made.

8. I order the institution to send copies of all notices to my attention c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.

Original signed by: _____
Tom A. Wright
Commissioner

_____ May 8, 1991
Date