**MEMBER BULLETIN**

October 20, 2023

**A Concerning Decision OSWCA Members Need to be Aware of**

A recent decision of the Divisional Court upheld Workplace Safety and Insurance Appeals Tribunal decision, that gives a construction worker who was driving home after the end of the workday and impaired by alcohol to a criminal threshold, a lifetime of WSIB benefits after he caused a single vehicle accident (he drove off the road and rolled the vehicle) and was seriously injured and permanently disabled.

On September 15, 2015, Jeremy Vaughan, a road crew foreman employed by Interpaving Limited, crashed a company-owned vehicle while driving home from work with two members of the road crew. There were open and closed beer cans found at the scene of the accident, Mr. Vaughan was found to have a blood alcohol level above the legal limit, and the police concluded that that alcohol was a significant factor in the accident. Criminal charges were laid, and Mr. Vaughan eventually pleaded guilty to driving while impaired.

Mr. Vaughan sustained a spinal cord injury resulting in paraplegia in the accident. He applied for benefits Workers Compensations through the WSIB under the Workplace Safety and Insurance Act, 1997, S.O. 1997, c. 16, Sched. A (the "Act").

On October 16, 2015, a WSIB Eligibility Adjudicator determined Mr. Vaughan was entitled to WSIB benefits because he was required to drive the company vehicle, with his coworkers, to and from the worksite for purposes of his employment, and he was in the course of employment when the accident occurred. Interpaving sought reconsideration of this decision by a Case Manager, who affirmed the Adjudicator's decision in 2016. Interpaving then appealed unsuccessfully to an Appeals Resolution Officer. It then appealed to the Workplace Safety and Insurance Appeals Tribunal; the Tribunal upheld the earlier decision granting Mr. Vaughan benefits.

Interpaving argues that it was unreasonable to conclude that Mr. Vaughan was still in the course of his employment when the accident occurred, because (1) the Tribunal should have inferred, on the evidence, that he stopped to purchase beer after he left

work, and (2) because his decision to drink to excess severed the nexus between of employment.

The Superior court’s opinion is:

While the accident was solely attributable to the serious and willful misconduct of the worker, at the time of the accident he was performing his regular duties as a truck driver during regular work hours and at a location where he was expected to be. He was in the course of his employment. However, even if his intoxication was antithetical to the employment relationship constituting conduct that took him out of the course of employment, as noted by the Vice-Chair in Decision No. 1055/13, section 17 has the effect of deeming him to be in the course of employment if he suffered serious impairment or death.

Next Steps:

The OSWCA urges members to review their internal policies and document the policy of whether or not a worker is paid to drive to and from a construction project or staging area (like in the Interpaving case) to minimize similar WSIB, financial and legal risk.

* Review and update all employer’s safety policy, fit for duty policy, and driving a company vehicle policy, and ensure a strict “zero tolerance” policy and prohibition of all workers driving while under the “influence” of drugs or alcohol.
* Training and documentation of the training of all construction workers on items 1 and 2 above, including supervisors and management is critical.
* Object to and appeal all WSIB claims where a worker is injured when they are in violation of 1. or 2. Above, with competent legal counsel.

For more information on the decision click [here](https://www.canlii.org/en/on/onscdc/doc/2023/2023onsc5162/2023onsc5162.html)

If you have any questions about the decision, please send an email to: steven.crombie@oswca.org or 416-618-9839