The Hazards Of Acting Late

Introduction

The Commission des lésions professionnelles (CLP) (Quebec's employment injuries board), exceptionally sitting as a panel of three commissioners, recently ruled on the interpretation of ss. 327(1) of the *Act respecting industrial accidents and occupational diseases* (AIAOD).

It is important to remember that when an employment injury arises out of the care received by a worker for an employment injury or the lack of such care (s. 31 AIAOD), ss. 327(1) allows the Commission de la santé et de la sécurité du travail (CSST) (Quebec's occupational health and safety commission) to impute the cost of benefits due by reason of that employment injury to the employers of all the units. This provision is intended to ensure that the employer does not bear the financial burden of an injury or disease that it could not have possibly foreseen. To use a timely example, if a worker is infected with *C. Difficile* while in hospital for an employment injury, it is possible for the imputation of the cost of benefits to be transferred to the employers of all the units.

The interpretation of ss. 327(1) AIAOD had given rise to a difference of opinion in case law: does a CSST decision establishing a relationship between a new diagnosis and the initial employment injury or event bar an employer who wishes to obtain a transfer of imputation from doing so? The CLP answered "yes." In other words, employers who do not contest the admissibility of a new diagnosis in order to have it considered an employment injury within the meaning of s. 31 will be unable to obtain a transfer of imputation under ss. 327(1) AIAOD.

Factual context

The decision in this case concerns three files that were joined because of their similarity. In each one, the CSST had initially recognized the existence of an employment injury. A new diagnosis had then been made and the CSST had recognized a relationship between it and the initial employment injury or event. This decision was not challenged. It was only later that the employers applied to have the imputation of the costs of benefits related to the new diagnosis transferred to the employers of all the units pursuant to ss. 327(1) AIAOD. The CSST refused. The employers therefore sought to have the CLP determine that the CSST's final decision establishing a relationship between the new diagnosis and the initial employment injury or event did not bar them from applying for a transfer of imputation under ss. 327(1) AIAOD.

The decision

The CLP pointed out that there is a distinction to be made between an employment injury under s. 31 AIAOD and an employment injury under s. 2 AIAOD. The latter is an injury or disease arising out of or in the course of an industrial accident or an occupational disease, *including a recurrence, relapse or aggravation*, whereas an employment injury under s. 31 is an injury or disease *arising out of or in the course of care or the lack of care* received by the worker for an employment injury.

Insisting on this distinction, the CLP found that a new diagnosis appearing in the course of a file may be related to an employment injury within the meaning of s. 2 or to the care or lack of care contemplated in s. 31, *but not to both at the same time*.

Accordingly, when the CSST hands down a decision establishing a relationship between a new diagnosis and the initial employment injury or event, the new diagnosis constitutes an employment injury within the meaning of s. 2. In analyzing the power devolving to it under the AIAOD, the CLP determined that it could not authorize a transfer of imputation subsequent to such a decision, which is final and irrevocable.

As result of this finding, employers wishing to demonstrate that a new diagnosis stems from an injury or a disease *arisingout of or in the course of the care or lack of care* received must contest such decision *before it becomes final*. The CLP therefore dismissed the three employers' applications and determined that the aggregate of the costs of the benefits related to the injury had to be borne by them.

Conclusion

In view of this decision, it is now clear that an employer cannot request a transfer of imputation pursuant to ss. 327(1) AIAOD where there is an uncontested decision that there is a relationship between a new diagnosis and the initial employment injury or event. In fact, the CLP cannot, through an application for a transfer of imputation, question such a decision.

Employers therefore need to be especially vigilant in tracking the progress of employment injury files and to make sure they contest CSST decisions before they become final; otherwise, they may end up shouldering the financial burden of an injury or disease that a worker developed while receiving, or as a result of not receiving, care for an employment injury.

Last Updated: December 11 2014

Article by Jean-Sébastien Cloutier