

STAN GRAY NEWS

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
INJURED WORKERS WIN

Stories of
Courage and
Persistence
by our

BRICKLAYER HOLDS

HIS HEAD HIGH

Michael DiFilippo has a severe neck injury but he now holds his head high after a remarkable appeal victory at the WSIB.

Michael worked for over 28 years at physically demanding jobs. From 1990 onward, he was a bricklayer relining the insulation in coke ovens, blast furnaces and steel plants. The work was in cramped spaces and awkward positions. Michael ripped apart old furnace linings with jackhammers and crowbars. He rebuilt them by spraying insulation from a heavy hose draped over his neck. At other times he lifted heavy bricks and blocks all day long. He drilled overhead to clean out the 

Marlene Chambers had to wait over 15 years before getting her justice from the compensation system. During that time she had to live with debilitating injuries, insulting treatment from the WSIB, repeated attempts to illegally confiscate her money from past payments, and a long list of adjudicators who treated her with contempt. Marlene finally got her justice after a hearing we did last year at the Workplace Safety and Insurance Tribunal (WSIAT). When it came, the justice was sweet and richly deserved.

Marlene worked Since 1969 as a packer at Plax, a local bottling plant. The work was repetitive, fast paced and physically difficult. She sustained a number of injuries to her left elbow, neck and shoulders from 1986 onwards. In 1990 the company put her on an especially difficult job that worsened her condition. She had to stop when it became too painful to continue. The company

SWEET JUSTICE

promptly fired her.

Marlene got a small pension for her injury because the WSIB only recognized the left elbow problem. She had to go to appeals to win her right to wage loss payments and vocational rehabilitation. The WSIB, however, put her on a job at an optical facility that severely re-injured her neck and shoulders. The Board then sent her to a work assessment in a retail job. Marlene was unable to make out because the work was too much for her limitations. The WSIB decided



otherwise and gave her a very low wage loss award.

During these years, Marlene suffered a lot on account of her ongoing pain; it was very hard to make financial

ends meet on the basis of the low WSIB payments.

Marlene came to us in 1996. We went to appeal and forced the WSIB to increase the award. The WSIB retaliated by suddenly claiming she owed them more than \$5,000 - supposedly due to a prior condition that should reduce what Marlene had already been paid. The WSIB's collection department repeatedly hounded and threatened her for years over this - although WSIB policy is very clear that collections had to be held off pending appeals, which we had filed.

We had a full hearing at WSIAT in March 2004. Marlene testified about her work, her injuries and her disability. The decision gave her a full total disability award along with over \$117,000 in arrears for past wage losses. It cancelled the so-called overpayment.

Bravo to Marlene and her persistence in the face of enormous obstacles

big pipes in the coke ovens.

All this work put incredible strains on Michael's neck and shoulders. On July 25, 2002 he went to the hospital emergency with unbearable pain in his neck. A later MRI showed herniated discs at 3 levels. On November 6, 2002 he underwent neck surgery (discectomy and fusion).

Michael stopped working July 2002 due to the incredible pain and stiffness in his neck. The surgery improved things a bit but his neck was still a severe disability. The WSIB stuck its head in the sand, refusing compensation on the basis that there was no relation between his

BRICKLAYER HOLDS HIS HEAD HIGH (Cont'd)

work and his injury. His specialist was unhelpful. Another specialist later supported the workplace relation to Michael's injury, but the WSIB just ignored that report and all the other evidence we presented.

We went to an appeal hearing in February 2005. Michael testified at length about his work and the development of his neck problem. He showed how the company had misrepresented his jobs to the WSIB. He was aided by a portfolio of colour photographs we brought illustrating how bricklayers rebuild furnaces. Another co-worker testified about the strain the job put on the neck and shoulders. We presented research studies on the relation between this kind of

work and neck disablements.

The WSIB's appeal officer issued a very long decision that completely vindicated Michael. The neck injury was due to his work, which she spent many pages detailing. The award is also significant because it ruled that the degenerative spinal findings were due to work - something the WSIB is normally extremely reluctant to acknowledge.

The follow-up details are now being worked out with the WSIB. Michael will receive a lump sum Noneconomic loss award and wage loss payments for the time he did not work. He will be assisted

in getting a lighter job that won't aggravate his neck along with any needed wage top-ups. Congratulations to Michael.



WSIB Bites the Dust

Kathy McIntyre-Jones recently received more than \$73,000 in back payments after an appeal victory we won at the tribunal (WSIAT). However, she should never have had to go that far. The WSIB has stubbornly refused to respect the law on wage loss supplements for people injured before 1990. The compensation acts says very clearly that when these supplements are periodically reviewed, the only question is how much the worker is earning at the time. Wage loss payments are based on the difference between actual earnings and pre-accident earnings. The WSIB, however, has wrongly insisted on basing the supplements on "deemed earnings", i.e. what it thinks the worker should be earning as opposed to what she is actually getting. This results in a lower award, or no award.

The WSIAT is a higher appeals body. For over ten years it has issued many decisions telling the WSIB it is wrong. WSIAT has awarded higher wage loss supplements to many workers based on their real earnings, not what the WSIB thinks they should earn. Unfortunately, the WSIB keeps on using the wrong standard, ignoring WSIAT.

Kathy was victimized by this practice. She was a data entry clerk at the Hamilton OHIP office who suffered a repetitive strain injury to her neck and right side in 1988. She was eventually unable to work at all. Kathy was denied a wage loss award but won that on appeal. However, when the award was later reviewed by an adjudicator, it was taken away. The adjudicator

"WAGE LOSS BENEFITS

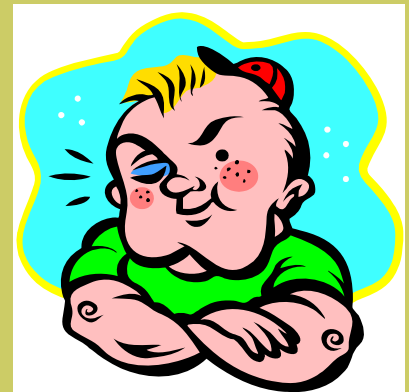
WERE

TERMINATED"

believed that Kathy could go back to work. Wage loss benefits were terminated.

We gave a written submission to WSIAT last year. Its decision supported our position 100%. It told the WSIB - for the umpteenth time - that it has no business changing pre-1990 wage loss awards on the basis of what it thinks the worker can earn, as opposed to what she is actually earning. Kathy got a richly deserved arrears payment of more than \$73,000 - plus ongoing monthly supplements.

**FIGHT
BACK**



DON'T LET

WSIB

BULLY YOU!

STRAIN INJURIES FINALLY COMPENSATED

Julie Shannon worked at a Hamilton packaging plant as a machine operator since 1979. From 1990 onward, she suffered a number of repetitive strain injuries - to her neck, shoulders, elbows, wrists and hands. The WSIB, however, was very slow to accept her injuries as work-related. It downplayed her pain and minimized her extensive disability.

The Board eventually paid Julie an inadequate wage loss award (FEL) on the theory that she could work as a cosmetician. This decision ignored the fact that Julie could not use her hands on a sustained basis. She also had poor grip strength. The Board ignored the evaluation by her specialist that such

work was beyond her limitations.

There were many issues in Julie's claim, which the WSIB bounced back and forth for years. We were finally successful in winning almost all of her claims. An appeals officer decision in January 2005 ruled that the cosmetician job was unsuitable. It also ruled that the WSIB had failed to properly recognize all her work-related injuries.

Julie has so far received over \$130,000 in back pay plus an ongoing 100% wage loss award. It's about time.



The harder they come... Cleaner Wins Big Time

Persistence pays off, as a client of ours recently learned. We won a long and difficult effort to get her properly compensated for a severely disabling back injury. Victory came after six frustrating years of fighting a mean-spirited employer and compensation board.

Joanne - who does not want her real name used - was a cleaner at a local area Board of Education. She had a severe back injury in September 1994, followed by six different recurrences in the next 3.5 years. Each time she returned to work, the same physically demanding cleaning tasks aggravated and worsened her condition. Testing showed disc bulges in her lower back, which was continually in pain and spasm. In February 1998, she had another recurrence while bending and reaching up and down to clean doors. Her back was so bad after that she was unable to return to any work at all. This led to other problems including depression.

The employer put in a major

effort to deny compensation to Joanne. It wrote demeaning letters to the WSIB, accusing her of exaggerating her injuries; it distorted the events surrounding her final recurrence. Its hired consultants

“IT RULED THAT JOANNE HAD BECOME UNEMPLOYABLE BECAUSE OF HER INJURY AND GAVE HER 100% WAGE LOSS BENEFITS RETROACTIVE TO 1998.”

spared no effort in negatively portraying Joanne, painting the picture of an undeserving malingerer. The WSIB agreed, forcing her to go through two different appeal processes - both of which denied her claims.

We presented Joanne's case at the appeals tribunal (WSIAT) in December 2004. The employer was there with an aggressive effort against her. She testified at length and was able to handle any and all questions put to her. The March 2005 tribunal decision vindicated Joanne - her injury was recognized as a permanent impairment under the category of chronic pain syndrome. The WSIB was ordered to assess her for a wage loss award (FEL).

When the WSIB later evaluated Joanne's earnings capacity, we presented evidence from her specialist and family doctor that she had become totally disabled. The employer seems to have learned nothing from the WSIAT decision, as it continued its aggressive opposition to Joanne's benefits. Fortunately, the WSIB paid no attention this time. It ruled that Joanne had become unemployable because of her injury and gave her 100% wage loss benefits retroactive to 1998.

The employer howled and whined about that decision, to no avail. Joanne received over \$160,000 from the award, covering lost earnings and a Noneconomic Loss award. She is receiving 100% wage loss replacement on an ongoing basis.

With this employer, the only thing we can say is: The harder they come, the harder they fall.



Stan Gray Consulting Inc.

845 Upper James St.
Unit 236A
Hamilton, ON L9C 3A3

Phone: 905-528-9937
Fax: 905-528-9142

Email: stan@stangrayconsulting.ca

We're on the Web

www.stangrayconsulting.ca



**HAPPY HOLIDAYS
MERRY CHRISTMAS
AND A
HAPPY NEW YEAR**

From all of us

Stan, Bonita and Carm

Nurse Wins Retraining

Margaret Crawford is a Hamilton nurse who sustained a serious injury to her neck and shoulders that disabled her from returning to bedside nursing. She had to fight a nasty battle with her employer and the WSIB, however, to get the permanent impairment recognized. She won that battle and then won the right to retraining for nursing work consistent with her limitations.

Margaret was injured in July 2000 when a patient grabbed her arm while she was working in the Emergency Room at the Henderson site of Hamilton Health Sciences. She returned to work but the injury was aggravated by the physically demanding nature of bedside nursing. Her neck and shoulders became painful and numb. She was unable to work with her arms extended or raised. The employer arranged for modified work, which lasted only a short time.

Margaret was laid off in November 2002.

She ought to have then received WSIB benefits but both the employer and the WSIB worked overtime to deny her the entitlement. They claimed her impairment was not work-related - despite the fact that three specialists wrote reports linking her condition to the injury!

The Board and the employer also claimed - wrongly - that Margaret never needed accommodation and was never accommodated at the hospital. The employer's consultant was extremely persistent with the Board and with the appeals officer in attacking Margaret's claim. In the meantime,



Margaret was without an income.

The matter went to appeals in 2003. Margaret's case was bolstered by the documentation and support from Pat MacDonald, President of Local 70 of the Ontario Nurses Association. I wrote a number of detailed submissions. The November 27, 2003 decision by the appeals officer ruled that Margaret had a permanent impairment from the work injury, that the pre-injury job was unsuitable for her and that she was entitled to a Labour Market Re-assessment to explore alternative employment.

Margaret received a large monetary award from this. She then got the WSIB to sponsor her in a lengthy retraining program at Brock University in nursing administration and research. This is lighter work and at a higher skill level. Congratulations to Margaret.