

**AWCBC ALL COMMITTEE CONFERENCE  
INTERJURISDICTIONAL COMMITTEE MEETING**

**May 27 and May 28, 2015**

**Item #3 c) on Business Agenda**

**AAP Case Scenario #1**

**Facts:**

- Employer travels through jurisdictions A and B and has confirmed participation in AAP
- At the time of injury, the Employer hired residents in jurisdiction A and B, therefore, jurisdiction A and B are both Assessing Boards (for their residents)
- New accident occurs in USA.
- The worker resides in jurisdiction B
- The worker chooses to elect benefits in jurisdiction A as he meets the legislative requirements for out of province injuries.
- Jurisdiction A subsequently requests reimbursement under AAP from jurisdiction B (as jurisdiction A was not the Assessing Board for this worker and therefore, collected no premiums for this worker)
- Jurisdiction B denies the request for reimbursement indicating that although the employer participates in AAP, the AAP does not extend to injuries occurring outside of Canada.

**Issue:**

- Does the actual AAP apply to injuries outside of Canada?
- Does the AAP “transfer of assessment” apply to injuries outside of Canada? In other words, is cost reimbursement appropriate to Jurisdiction A (from Jurisdiction B) under the AAP even though the accident occurred in the USA?

**Relevant Past Discussions:**

This exact scenario was never discussed at past IJA meetings, however, right of election for out of country injuries was in fact discussed in the May 28 & 29, 2013 IJA meeting. The discussion referenced Section 1.41 of the IJA which is pertinent in the above case scenario.

I have copied the excerpt from the meeting minutes below for review.

**“6. m) IJA Purpose Beyond Claim Cost Reimbursement?”**

Mark Powers (BC) raised the questions as to whether the purpose of the IJA was limited to dealing with reimbursement of claims costs? If not, what else does it cover? Mark provided a 2 page summary of the issue to committee members at the meeting. The facts of the case are outlined below.

- The worker was injured in Ohio.
- The worker did not have a regular route but usually picked up his load in a jurisdiction outside of BC and returned to the same jurisdiction (outside of BC).
- The worker was a BC resident
- The employer registered and participated in the AAP and paid assessments to the BC Board for this BC resident worker.
- The claim did not meet the condition of Section 8.1 which indicated that the worker must demonstrate his usual place of employment was BC and the employer must demonstrated that he had a place of business in BC.

Initially, the BC Board noted that there were issues regarding the acceptance of the claim in BC and a chance that the worker would not be entitled to elect in BC. As such, the BC Board wrote to 2 different jurisdictions (Alberta and Manitoba) to determine if the worker would be able to claim under either of their respective Boards. Both jurisdictions indicated that there was no possibility of election in either of their jurisdictions. Mark Powers (BC) voiced concern with one of the jurisdiction's responses which state that

*“Determining out of province coverage is separate from administration of the IJA. The IJA only assists boards in determining (amongst themselves) the reimbursement of claim costs pursuant to the AAP for injuries that occur within Canada. The contractual obligations pursuant to the IJA are only of the boards with each other and has no application to whether a respective board will provide benefits to an injured worker under its respective legislation.”*

Ultimately, what both jurisdictions (AB and MB) replied that the worker had no right of election in either AB or MB as he was not injured in Canada and the AAP/IJA would not have a role in ensuring that coverage is extended as the injury did not occur in Canada.

Mark raised concern with this approach indicating that while part of the IJA does relate to allocating claim costs, Section 4 puts an onus on the participating Board to require a worker to make an election when the worker has entitlement in more than one jurisdiction. It does not require that the injury occur in Canada.” Mark indicated that if the worker was entitled to claim in BC and another Canadian jurisdiction, he would be required to elect between those 2 jurisdictions and Ohio if he had rights to compensation there. He also referenced Section 1.2 (b) which states that the intent of the Agreement is “to facilitate the acceptance of all compensable claims so that no injured worker will be denied compensation benefits except in accordance with the applicable Statutory Authority and Board Policy.” Mark also indicates that Section 1.41 notes that “Each Board undertakes to ensure that through the provision of this Agreement and mutual cooperation no worker as a result of injury or disease causally related to employment in Canada, is denied fair and equitable compensation.” Mark argues that this does NOT require the injury to occur in Canada, only that the injury be causally connected to employment in Canada and noted that the worker is employed in Canada and the employer pays assessment for his work so the connection exists for the purposes of Section 1.41.

Unfortunately, committee members did not have an opportunity to review this material ahead of time as it was only presented at the meeting. As a result, there was minimal discussion regarding this issue and no general agreement or resolution reached.”

## **AAP Case Scenario #2**

-Employer travelling through jurisdictions A and B and C participates in AAP

-At the time of participation, the Employer only hired residents of jurisdiction A, therefore, jurisdiction A was the Assessing Board

-Jurisdiction A confirmed participation and sent notice to jurisdiction B and C (at the time, jurisdiction B was a Registering Board)

-The Employer continues to participate in the AAP for approximately 15 years and at some point hires residents of jurisdiction B

-New accident occurs in jurisdiction C for a worker who resided in jurisdiction B

-The worker chooses to elect benefits in jurisdiction A as he meets legislative requirements for out of province injuries

-Jurisdiction A subsequently requests reimbursement under AAP from jurisdiction B

-Jurisdiction B denies the request for reimbursement indicating that although the Employer was accepted into AAP in jurisdiction A, they did not apply to jurisdiction B and therefore, was not accepted by their jurisdiction (part of rationale provided is that right of election would not have been provided to the injured worker in this case as they did not meet jurisdiction B's legislative requirements for out of province workers)