

**ALBERTA**

**OFFICE OF THE INFORMATION AND PRIVACY  
COMMISSIONER**

**ORDER P2017-04**

June 20, 2017

**VITALAIRE CANADA INC.**

Case File Number P2731

**Office URL:** [www.oipc.ab.ca](http://www.oipc.ab.ca)

**Summary:** An individual complained that his former employer, VitalAire Canada Inc. (the Organization) disclosed his personal information to the Workers' Compensation Board (WCB) without authority.

The Adjudicator determined that the information disclosed by the Organization to the WCB related to, and affected, the Complainant's benefits from the WCB. The Organization was required under the *Workers' Compensation Act* to disclose information that affected the Complainant's benefits; therefore, the disclosure was permitted under PIPA.

**Statutes Cited:** **AB:** *Personal Information Protection Act*, S.A. 2003, c. P-6.5, ss. 1, 19, 20, 52, *Workers' Compensation Act*, R.S.A. 2000, c. W-15, ss. 24, 56, 142, 151.1.

**Decisions Cited:** **AB:** Appeals Commission for Alberta Workers' Compensation Decision No. 2015-0253.

**I. BACKGROUND**

[para 1] On April 1, 2014, the Complainant's employer (the Organization) wrote to the Complainant advising him that it had mistakenly paid him while he was receiving WCB benefits, and requesting repayment. The Organization provided a copy of this letter to the WCB. The Complainant made a complaint to this Office that the Organization's

disclosure of the Complainant's personal information in the letter copied to the WCB contravened the *Personal Information Protection Act* (PIPA).

[para 2] The Commissioner authorized an investigation to attempt to settle the matter; however, this was not successful. The Complainant subsequently requested an inquiry.

## **II. ISSUES**

[para 3] The Notice of Inquiry dated October 17, 2016 states the issues for inquiry as the following:

1. Did the Organization disclose the personal information of the Complainant contrary to, or in compliance with, section 7(1) of PIPA (no collection, use or disclosure without either authorization or consent)? In particular,
  - a. Did the Organization have the authority to disclose the information without consent, as permitted by section 20 of PIPA?

If the Organization did not have the authority to disclose the information as permitted by section 20, the Adjudicator will consider whether the information is personal employee information of the Complainant as defined in the Act.

2. Did the Organization disclose the "personal employee information" in contravention of, or in compliance with, section 7(1) of PIPA (no collection, use or disclosure without either authorization or consent)? In particular,
  - a. Did the Organization have the authority to disclose the information without consent, as permitted by section 21 of PIPA?
  - b. If the Organization did not have the authority to disclose the information without consent, did the Organization obtain the Complainant's consent in accordance with section 8 of the Act before disclosing the information?

## **III. DISCUSSION OF ISSUES**

1. Did the Organization disclose the personal information of the Complainant contrary to, or in compliance with, section 7(1) of PIPA (no collection, use or disclosure without either authorization or consent)? In particular,
  - a. Did the Organization have the authority to disclose the information without consent, as permitted by section 20 of PIPA?

*Was the information personal information?*

[para 4] "Personal information" is defined in section 1(1)(k) of PIPA as "information about an identifiable individual." The information in the letter from the Organization to

the Complainant and copied to the WCB includes amounts paid by the Organization to the Complainant. This is the Complainant's personal information under PIPA.

*Was the disclosure of the Complainant's personal information authorized without consent?*

[para 5] Section 20 of PIPA sets out the circumstances in which an organization may disclose personal information about an individual without consent from the individual. In this case, the Organization has argued that the disclosure of the Complainant's personal information to the WCB was authorized by sections 20(b)(i) and 20(c) of PIPA.

*20 An organization may disclose personal information about an individual without the consent of the individual but only if one or more of the following are applicable:*

*(b) the disclosure of the information is authorized or required by*

*(i) a statute of Alberta or of Canada*

*[...]*

*(c) the disclosure of the information is to a public body and that public body is authorized or required by an enactment of Alberta or Canada to collect the information from the organization;*

*[...]*

[para 6] The Organization argues that the *Workers' Compensation Act* (WCA) authorized the disclosure of the Complainant's personal information.

*Relevant WCA provisions, policies and case law*

[para 7] The WCA sets out the scheme for providing benefits to workers injured on the job. Section 24(1)(a) of the WCA states that compensation is payable to a worker who suffers personal injury resulting from an accident. Section 56(2) of the WCA states that the Board will pay periodic compensation to the worker based on the worker's net earnings.

[para 8] Section 142 states that the WCB may recover payments that were made in excess of what the worker was eligible for:

*142 When compensation payments have been made by the Board to a worker beyond the period of the worker's disability or to a worker or dependant in an amount in excess of that to which the worker or dependant is entitled, the amount of the overpayment may be recovered by the Board as a debt due to the Board.*

[para 9] The Organization also referred to its obligation to inform the WCB of changes affecting the Complainant (the worker) in section 151.1(1), which states:

*151.1(1) No person shall, in connection with a claim for compensation,*  
*(a) knowingly provide false or misleading information to the Board,*

- (b) *fail to report to the Board, without lawful excuse, the person's return to work, or*
- (c) *fail to inform the Board of a material change in the person's circumstances that may affect the person's entitlement to compensation or other benefits under this Act or the amount of that compensation or those benefits.*

[para 10] The WCB Policies and Information Manual is also relevant. It is approved by the WCB Board of Directors and is binding on the decision-makers of the WCB. In other words, the Manual is authoritative in terms of interpreting the WCA.

[para 11] Policy 05-01, Part II, Application 1, Question 2(b) of the Manual states that the WCB will recover overpayments when there is a duplication of earnings and benefits. Question 7 states:

Duplication occurs when a worker has earnings from work and also receives benefits (usually temporary total or partial disability) to replace the same earnings.

...

If the overpayment resulted from a duplication of earnings and WCB benefits, WCB will recover the overpayment amount, with the possible exception of amounts under \$100.

[para 12] Policy 04-09, Part II, Application 1, Question 5 addresses a situation in which the employer continues to pay the worker when the worker is eligible to receive benefits from the WCB. In that case, the WCB can pay the employer the amount it would have paid the worker:

***When does WCB allocate benefits to the worker's employer?***

If the employer maintains a worker on **full** pay during the period of disablement or time loss from work to attend a WCB-directed appointment, WCB may pay compensation on assignment to the employer. The amount paid to the employer cannot exceed the compensation amount to which the worker is entitled under the [WCA].

...

[para 13] The Organization also provided me with a copy of an Appeals Commission for Alberta Workers' Compensation Decision No. 2015-0253 (Decision). Neither the Complainant nor the Organization is named in this Appeals Board decision; however, the circumstances are the same as those outlined in the submissions to this inquiry. This indicates that this decision was regarding the effects of the Organization's payment to the Complainant (the subject of the letter). In any case, as the Appeals Board decision addresses the same type of overpayment that led to the Organization's letter to the Complainant, the decision is informative in explaining the WCB's role regarding that overpayment.

[para 14] In the Decision, the Appeals Board states:

It was also evident to the panel, based on the worker's testimony, that he misunderstood the process pursuant to which the WCB will reimburse an employer that maintains a worker on full salary during a period of disablement an amount equal to the compensation benefits to which the worker is entitled.

In simple terms, the worker was paid twice during the period of disablement. Firstly by his employer, and secondly by the WCB that paid benefits related to his compensable disability in parallel with the salary he received from his employer. Regrettably, it seems no one was aware of this situation until after the worker had received several thousand dollars in compensation. When the WCB became aware of the facts, it assigned the compensation due to the worker to the employer, and proceeded to collect the overpayment received by the worker. (At paras. 26-27)

*Arguments of the parties and analysis*

[para 15] The Organization states that the mistaken payments made by it to the Complainant amounted to a “material change” in the Complainant’s circumstances, affecting his entitlement to benefits. Therefore, the Organization was required to report the mistaken payments under section 151.1 of the WCA (cited above). The Complainant argues that the mistaken payments were relevant only to him and the Organization; the WCB needn’t have been informed.

[para 16] I agree with the Organization that the language of section 151.1 of the WCA, “no person shall... fail to inform the Board” required the Organization to report any circumstance affecting the Complainant’s benefits. I also agree that paying the Complainant his full salary for several months while he was collecting WCB benefits affected the benefits he was entitled to.

[para 17] Further, it is clear from the Policy Manual and the Appeals Board Decision that the WCB considered that mistaken payment to be a “duplication”; such a situation is dealt with by “assigning” (i.e. paying) the worker’s benefits to the employer. The WCB then collects the overpayment of the benefits back from the worker. Therefore, the mistaken payments were not a matter merely between the Complainant and the Organization.

[para 18] I therefore find that the disclosure of the Complainant’s personal information without his consent was authorized under section 20(b)(i) of PIPA, which permits disclosure without consent where it is authorized or required by a statute of Alberta.

[para 19] Even where the disclosure of personal information is authorized, PIPA requires the extent of the disclosure to be reasonable (section 19(2)). In this case, the information in the letter from the Organization to the Complainant, which was copied to the WCB, contained only information about the mistaken payments, including the pay periods, hours, gross and net pay (basic pay stub information). In my view, it was reasonable to disclose these details to the WCB.

[para 20] As I have found that the Organization was authorized to disclose the Complainant's personal information in the letter to the WCB, I do not need to consider the remaining issues set out in the Notice of Inquiry.

**V. ORDER**

[para 21] I make this Order under section 52 of the Act.

[para 22] I find that the Organization had authority to disclose the Complainant's personal information without his consent.

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Amanda Swanek  
Adjudicator