Issue	# of Cases
WSIB decision contrary to all or all discussed medical evidence	175
WSIB decision does not respect medical advice of treating doctors about return to work	110
WSIB decision wrongly reversed entitlement to full loss of earnings/ finding worker was unemployable	28
WSIB decision denied benefits based on “pre-existing” issues without adequate evidence	75
WSIB decision presumed the worker had recovered contrary to the evidence	56
WSIB made decision without adequate factual information or investigation	31
WSIB wrongly reduced NEL because of “pre-existing” issues	38
WSIB decision contrary to obvious non-medical evidence or common sense	73
WSIB decision failed to comply with previous Tribunal or ARO decision in same case	13
WSIB failed to provide necessary support, treatment or accommodation to worker	29
WSIB decision used the wrong legal test or wrongly interpreted the law	28
WSIB decision misapplied policy	87
WSIB decision was made without any supporting evidence	81

List of issues coding

1st.	WSIB decision contrary to all or all discussed medical evidence
2nd.	WSIB decision contrary to almost all medical evidence or all persuasive medical evidence
3rd.	WSIB decision contrary to obvious non-medical evidence or common sense
4th.	WSIB decision denied benefits based on "pre-existing" issues without adequate evidence
5th.	WSIB decision did not respect medical advice of treating doctors about return to work
6th.	WSIB decision ignored medical evidence
7th.	WSIB decision ignored thin skull rule/ significant contributing factor test
8th.	WSIB decision misapplied policy
9th.	WSIB decision presumed the worker had recovered contrary to evidence
10th.	WSIB decision used the wrong legal test or wrongly interpreted the law
11th.	WSIB decision was made without any explanation or reasoning
12th.	WSIB decision was made without any supporting evidence
13th.	WSIB decision wrongly reversed entitlement
14th.	WSIB decision wrongly reversed entitlement to full loss of earnings/ finding worker was unemployable
15th.	WSIB failed to assess job suitability
16th.	WSIB failed to comply with previous Tribunal or ARO decision in same case
17th.	WSIB failed to consider new injuries or areas of entitlement
18th.	WSIB failed to provide necessary support, treatment or accommodation to worker

19th.	WSIB made decision without adequate factual information or investigation
20th.	WSIB provided low-quality retraining/return to work
21st.	WSIB wrongly applied law in denying treatment because it is for "maintenance" therapy
22nd.	WSIB wrongly assessed NEL rating contrary to law, policy or AMA guides
23rd.	WSIB wrongly reduced NEL because of "pre-existing" issues

Sub-issue coding

Covert surveillance
Cooperation
Deeming
Degenerative
Delay
Employability
Entitlement
ESL
ESRTW
Health care
Lock-in
Loss of earnings
Medical advice
Medical consultant
Mental health/ psychological
NEL rating
NEL redetermination
Older worker
Permanent impairment
REC
Recurrence
Rural/remote
RTW
Seriously injured worker
Unsafe
WT/LMR

CASE	DECISION NUMBER	DATE	QUOTES (DIRECT)	PANEL/VC	COMMENTS
1.	2730 15	05/Jan/2016	In any event, whether or not the worker complained of right shoulder problems in April or August 2011, the medical opinions in the case materials are unanimous in attributing a causal link between the worker's right shoulder condition and his employment as an electrician.	S Martel S Sahay M Ferrari	• 1st • (Unanimous) • (Entitlement)
2.	2725 15	05/Jan/2016	The ARO went on, however, to authorize treatment twice yearly without explanation for this frequency. In her reconsideration denial, the ARO further stated that this frequency was reasonable: … particularly noting this type of treatment would be considered as "maintenance treatment" at this stage which is not always regularly covered by the WSIB and therefore allowed as an exception in this case. The relevant questions, however, are whether the radiofrequency treatments are "necessary, appropriate and sufficient", and at what frequency.… Based upon the consistent medical evidence and opinions, I find that the existing program of treatment is necessary, appropriate and sufficient as a means of pain control and facilitating continued full-time employment. … I note that entitlement to health care does not automatically end at age 65 (as implied by the ARO's decision) or with a change in employment, though the need for maintenance treatment might change at that time.	S Netten	• 21st • 10th • (Health care)
3.	2385 15	05/Jan/2016	A number of Tribunal decisions have addressed the issue of the Board first determining a worker to be unemployable and then later reversing that decision as of the final lock in date, resulting in a consensus of case law on the matter (see, for example: Decision Nos. 2143/14, 2189/14, and 2350/14). … The Panel finds no evidence to support a conclusion that the worker's condition had improved in the intervening period between Board's decision in 2007 which found the worker was not suitable for LMR services, and its subsequent decision	K Iima B Young C Salama	• 14th • 12th • (Employability) • (Deeming) • (Loss of earnings) • (Lock-in)

			on October 18, 2011, referring the worker for WT services.		
4.	1869 13	08/Jan/2016	First, while the Case Manager did notify the worker in writing in early April of her obligation to cooperate, she did not subsequently apply the initial 14-day penalty prior to applying the full penalty, as required by Board policy. … the suspension of benefits has remained in place for four years and has likely become permanent due to the passage of time. … In the Panel's view the wording of the legislation either under subsection 34(2) or under subsection 43(7) indicates that the ability to reduce or suspend benefits for non-cooperation in health care measures is intended to motivate compliance with ongoing health care measures and is not meant to result in a permanent reduction of benefits bearing no relationship to any loss of post-injury earning capacity brought about by the non-cooperation.	S Netten E Tracey M Ferrari	• 8th • 10th • WSIB decision procedurally unfair • (Cooperation) • (Loss of earnings)
5.	2391 15	08/Jan/2016	While the ARO stated that there was no evidence of significant deterioration, I agree with Mr. La Civita that this is not the test to be applied when a reassessment of a PD is at issue. Pursuant to Board policy, OPM Document No. 18-07-01, a worker is entitled to a PD reassessment when there is a permanent worsening of the compensable permanent disability.	J Smith	• 10th • (Pension redetermination)
6.	67 16	11/Jan/2016	Therefore, although the May 28, 2012 MRI showed that the worker had multilevel degenerative disc disease, his condition was asymptomatic prior to the December 28, 2011 injury. …In the denial letter dated December 10, 2013, the Case Manager reviewed the MRI results and made the following comments: "It is unlikely that the accident history confirmed would have resulted in herniations at multiple levels and is [sic] probable that the protrusions are degenerative in nature … There is no evidence to support that the compensable low back strain with possible sciatica did not resolve within the expected prognosis provided by the Regional Evaluation Centre (REC).."	S Sutherland	• 19th • 9th • 4th • (REC) • (Degenerative changes)

			…The Case Manager did not take into account the worker's young age (then 42), the nature of the job duties he had been performing for more than 20 years, and she did not seek an opinion from a Board Medical Consultant with respect to whether the job duties might have caused a disablement.		
7.	2176 15	12/Jan/2016	As a review of the Board's adjudication on this issue suggests, the decision to deny the worker ongoing entitlement on an organic basis appears to have been based on a conclusion that any ongoing symptoms she was experiencing were related to pre-existing non-compensable cervical conditions. It is now well settled in Tribunal case law and in Board policy that a pre-existing condition, in and of itself, is not a bar to the receipt of benefits. … I find, on a balance of probabilities, that the compensable accident did make a significant contribution to the onset of the worker's psychotraumatic symptoms and as such, she is entitled to be compensated. In reaching that decision, I have taken particular note of the following: As Mr. Green noted in his submissions, the Board's decision to deny the worker psychotraumatic entitlement appears to have been made without the benefit of an internal medical opinion. In her report of June 12, 2012, Dr. M. Hill (the only psychiatrist to have offered an opinion on the issue under appeal) concluded: "There is no doubt that the incident of February 2011 has been instrumental in development of the symptomatology, painrelated, headaches, as well as symptoms of anxiety and depression."	R Nairn	• WSIB decision denied benefits based on "pre-existing" issues without adequate evidence • 12th • 1st • (Psychological/ mental health) • (Entitlement)
8.	1309 15	13/Jan/2016	The ARO denied the worker entitlement for psychotraumatic disability on the basis that there was an absence of a traumatic event. However, a traumatic event is not required under the policy.	W Sutton	• 8th • (Psychological/ mental health) • (Entitlement)
9.	2780 15	13/Jan/2016	In this case, we find that the medical evidence before us overwhelmingly supports that the worker's psychological condition was a result of his persistent and ongoing pain, and extended disablement, which resulted from his	J Smith J Blogg C Salama	• 1st (overwhelming) • (Psychological/ mental health)

			multiple areas of compensable permanent impairment. … We find the opinions of all health care assessors and providers in this case, including Dr. Thomas in 2009, and Drs. Santhakumar and Kakar in 2010 and 2015, consistently lead us to the same conclusion.		• (Entitlement)
10.	2528 15	14/Jan/2016	The reporting from the WT Specialist noted that no SEB was offered or recommended at the time of the initial decision finding the worker unemployable. With essentially the same information as in 2007, the WT Specialist five years later in 2012 determined that the worker was able to work full time hours as a Car Jockey. …the worker's vocational options are extremely limited. He would require significant upgrading for even entry level jobs with the success still in question. That is why the WSIB originally indicated "no SEB" was to be considered and that the worker was entitled to full loss of earnings. In my view, the original conclusion was sound and was in the best interest of the parties.	V Marafioti	• 14th • 12th • (Deeming) • (Employability) • (Loss of earnings)
11.	2461 15	15/Jan/2016	I have further noted that despite the CM's statement at the time of the reconsideration that the worker's ongoing symptoms and precautions were attributable to underlying degenerative changes, this is unsupported by any medical evidence. The decision of the Board's SIEF CM dated March 20, 2013 confirmed the Board's finding that the worker did not have a pre-existing bilateral shoulder condition at the time of his accident.	M McKenzie	• 12th • WSIB decsision contrary to previous Board decision • 4th • (Entitlement) • (Degenerative)
12.	35 16	18/Jan/2016	In January 2008, following the FAE evaluation, she was told that the identified SEB was not suitable and that she was considered unemployable and therefore entitled to full LOE benefits to age 65. She had no further contact with the Board until 2011, when she was once more referred to WT services for computer training. She was required to attend six hours a day. As a result of the severe pain she experienced, and her inability to sit for any length of time, she was provided with a futon on which to rest. The worker spent	J Goldman B Davis M Ferrari	• 14th • 1st • 12th • (Employability) • (Deeming) • (Loss of earnings)

			considerable time lying down. She was then referred to the job search program and was required to send out 10 resumes a week. She was only able to secure one interview which did not result in a job. … A review of the medical evidence does not persuade the Panel that the worker's condition has improved sufficiently since 2008 to allow her to be gainfully employed. Indeed, we have concluded that her condition has deteriorated, and find that she is not capable of gainful employment.		
13.	120 16	18/Jan/2016	In September 2009, the Board concluded that the worker's limited literacy skills, compensable functional limitations stemming from his workplace injury, remotely located home community, and inability to pursue an academic upgrade program, rendered him unemployable and entitled to full LOE benefits to age 65. I find that this was a supportable decision based on the evidence available at that time. … Significantly, over the following six months, until the Board advised the worker that it intended to reconsider the issue of WT services, there is no evidence of any change in circumstances. …While I agree with Mr. Meleras that the Board has jurisdiction to reconsider a LOE entitlement decision prior to the 72-month lock-in date, it seems reasonable to expect that taking action of this nature should be based on a rationale that is understandable and communicated to a worker. That was not the case here. … Why this conclusion [of March of Dimes assessment that worker still unemployable] was not sufficient to confirm the earlier decision regarding full LOE entitlement is not clear and is puzzling.	T Mitchinson	• 14th • 12th ("puzzling") • 3rd • (Deeming) • (Employability) • (Loss of earnings)
14.	2462 15	18/Jan/2016	I do not accept this to be a reasonable interpretation of the whole of the medical evidence. Although it would appear that new findings were reported in Dr. Chae's 2013 MRI study, they do not, in my view, support a conclusion that conditions unrelated to the worker's compensable low back pathology were solely responsible for causing the increase in his low back pain from 2011 onwards. I	M McKenzie	• 1st (unreasonable interpretation) • 12th • 4th • (NEL redetermination)

			found that there was no temporal relationship to support that view and no medical opinion directed to that question.… I am satisfied that the evidence establishes, on a balance of probabilities, that the worker's permanent low back impairment significantly deteriorated in 2011, as supported by all of the medical reporting from that timeframe.		
15.	2514 15	18/Jan/2016	The reduction and eventual termination of benefits was based on an assumption by the Case Manager that the graduated return to work stipulated by Dr. Waseem would be put into place by the accident employer. … Nonetheless, the Case Manager confirmed the denial of any ongoing entitlement to benefits after December 19, 2011, notwithstanding the employer's failure to initiate the graduated return to work program recommended by Dr. Waseem. Consequently, in my opinion, the legislative basis for terminating entitlement to LOE benefits did not exist in the present case as of December 19, 2011. … Instead, both the Case Manager and the ARO cited and relied on Dr. Waseem's earlier report of November 14, 2011, to support the conclusion that the worker had no residual impairment. In my opinion, Dr. Waseem's second report does not support a finding that the worker had no ongoing impairment and could return to the competitive workforce performing his pre-injury work. Later medical evidence appears to confirm the presence of an ongoing impairment.	J Moore	• 10th • 12th • 9th • 19th • (Entitlement) • (Loss of earnings) • (ESRTW)
16.	2009 15	19/Jan/2016	The fact that the worker is affected by non-compensable factors (i.e., his "longstanding personality traits") is not a bar to his entitlement to benefits for psychotraumatic disability, given that the worker's compensable work injury contributed significantly to the worker's psychological condition. These non-compensable factors were present and apparent when the Board initially allowed entitlement for psychotraumatic disability and full LOE benefits from 2009, and the worker's psychological status and ability to perform	M Crystal	• 14th • 13th • 12th • 4th • 7th • (Psychological/ mental health) • (Loss of earnings) • (Employability)

			employment have not changed significantly since that time. On the same basis that the worker's non-compensable factors are not a bar to his entitlement to benefits for psychotraumatic disability, they are not a bar to his entitlement to full LOE benefits.		
17.	63 16	20/Jan/2016	I concur with the remarks of the Vice-Chair in WSIAT Decision No. 1401/14 that the role of the treating health practitioner is to provide functional abilities information to the employer and the WSIB in order to facilitate a safe return to work. … As noted in the WSIAT decision quoted above, it is unreasonable to expect an injured worker to ignore the advice of her treating physician. In my view, it is further unreasonable for the Board to ignore the professional opinion provided by a worker's treating physician as noted on an FAF requested by the accident employer and the Board.	J Goldman	• 5th (unreasonable) • 1st • (ESRTW) • (Medical advice) • (Cooperation) • (Loss of earnings)
18.	43 16	21/Jan/2016	On this evidence, and the testimony of the worker at the hearing, the Panel is persuaded that the worker's psychotraumatic disability, which has been accepted by the Board as a compensable condition on a temporary basis, has become permanent. Indeed, all available medical evidence supports this finding.	T Mitchinson J Blogg K Hoskin	• 1st • (Psychological/ mental health) • (Entitlement)
19.	103 16	21/Jan/2016	I further note that the Board's decision to deny Zopiclone medication under the worker's claim was rendered by a Nurse Consultant on June 23, 2011. … I have considered that the ARO did not provide any reasons in the decision dated August 20, 2012 why Zopiclone was denied. … Given that the worker was experiencing both knee pain and low back pain, both of which interfered with his sleep in the past, I find that the prescription for Zopiclone to be "necessary, appropriate, sufficient" from a medical perspective. Dr. Rammohan was best-situated as the worker's family physician to determine how he was to be treated for his compensable injuries.	L Petrykowski	• 11th • 6th • (Health care)

20.	2530 15	21/Jan/2016	In the Panel's view, there is no objective medical evidence to suggest that the strain resolved back to the pre-March 14, 2010 accident level by September 25, 2010.	V Marafioti B Young A Signoroni	• 12th • 9th • (Entitlement)

CASE	DECISION NUMBER	DATE	QUOTES (DIRECT)	PANEL/VC	COMMENTS
21.	639 13	01/Feb/2016	In addition, I find that the worker was not fully supported in his LMR program which contributed to his inability to participate. Despite a recommendation by the worker's family doctor, the worker never received a compression belt. The worker was not approved for a compression belt until 2015. In addition, the Board did not follow through with one of the REC recommendations which was to have a FAE completed to determine the worker's tolerances. …I direct the Board to reinstate LMR services for this worker taking into account the recent FAE that was conducted.	S Hodis	• 18th • 19th • (LMR/WT) • (Health care)
22.	170 16	01/Feb/2016	The worker did not have a prior back injury, he did not have symptoms, he did not require treatment, and his employment was not disrupted, prior to the workplace injury. As such, his NEL award ought not to have been reduced, as either a measurable or non-measurable pre-existing impairment, pursuant to Board policy in effect in November 2013. The worker is entitled to the full 15% award.	S Netten	• 23rd • 8th • (NEL rating)
23.	73 16	02/Feb/2016	He was seen by Dr. Mailis-Gagnon, the Director of the Pain Program at Toronto Western Hospital. Her diagnosis was chronic pain disorder associated with medical (mechanical back pain) and psychological factors (severe anxiety and possibly personality factors). The assessment at CAMH ruled out a psychological condition. However, the September 26, 2008 report by Dr. Bender noted that the worker's prognosis for returning to work was guarded and likely poor based on the worker's age, his poor motivation, chronic pain and self-limited behavior. Cognitive impairment due to opioid use and limited education were listed as additional barriers. All of these reports existed prior to the start of LMR in 2009. … As the worker continued to complain of significant pain issues, and	E Kosmidis MP Trudeau G Carlino	• 3rd • 5th • 1st • 13th • (LMR/WT) • (Employability) • (Loss of earnings) • (Chronic pain)

			continued to fall behind in the program, the adjudicator requested that the worker obtain medical information to determine his fitness to continue with LMR. The note from the worker's family doctor dated August 31, 2009 states that the worker is unfit to attend class due to illness/pain. This was accepted by the Board who put the LMR on hold pending a review of additional medical. In reviewing the medical information and the worker's testimony, the Panel finds that the worker's condition did not change between the time that LMR was deactivated in September 2009 and the time that it was reactivated in May of 2011.		
24.	2807 15	02/Feb/2016	The Case Manager reviewed all the documentation received and concluded that the lumbar strain of March 21, 2008 had recovered as of July 2, 2008 and that permanent impairment did not in fact result from the March 2008 workplace accident as previously indicated. Any ongoing low back symptoms beyond July 2, 2008 were deemed to be unrelated to the accepted workplace injury and instead were found to be due to the natural progression of the pre-existing degenerative changes…. Entitlement to the NEL award was therefore revoked as well as ongoing LOE benefits beyond July 23, 2012. …The Panel is satisfied that the worker should have a reinstatement of the 17% NEL award previously granted by the WSIB for the worker's low back impairment. … The Panel is satisfied that prior to the compensable accident, the worker was able to continue working without interruption for his back in a physically heavy job missing little to no time from work.	V Marafioti B Davis JA Crocker	• 13th • 9th • 4th • (Permanent impairment) • (Degenerative) • (Loss of earnings)
25.	1503 15	02/Feb/2016	The NEL Clinical Specialist concluded that due to the inconsistent results of two NEL assessments as compared to the worker's medical reporting, her NEL award should be calculated based on the criteria of repetitive strain injury, rather than on the criterial in the AMA Guides. In my view, however, as I explain below, the ROM restrictions in the medical reporting should be used to evaluate the worker's NEL award for the worker's right	W Sutton	• 22nd • 5th • 13th (WT services) • 12th • 1st (psychological) • 2nd (return to work) • 4th • (NEL rating)

			shoulder according to the criteria in the AMA Guides. … There is no evidence of any significance in the medical reporting that the worker's developing and ongoing psychological condition was due to non-work-related factors. Rather, the medical evidence is essentially silent on the issue of non-work-related factors, and instead relates the worker's psychological condition to her compensable injury of February 2006. …Taking all of the above into account, I find the evidence compels the conclusion that the worker had entitlement for psychotraumatic disability. … In my view, given this ongoing medical advice, particularly that of Dr. Nam on June 8, 2010, the worker reasonably believed that she was medically authorized to avoid any exposure to work in a cold environment. Based on this belief, I also find it more than likely that her continued required presence in cold room work contributed to both the deterioration of her right shoulder condition and her developing psychological impairment. …As well, subsequently in January 2012, Dr. Preobrazenski opined: "The I/W may indeed have an unpleasant prior experience with the cold, but this reported intolerance does not appear to have an explanation related to the claim injury. The restrictions, if insisted upon, medically, are just that medical and not claim related issues." With respect I must strongly disagree with these conclusions. The medical evidence provided by the worker's treating doctors over a period of nearly five years since the date of the worker's compensable injury expresses, without condition, the worker's prohibition against working in the cold and identifies situations in which her shoulder pain both improved in a warmer environment and increased in a cold environment.. … The Board reversed the worker's entitlement to WT services on March 1, 2012. It did so on the basis of the basis of the OT's conclusion in the FCA that two of the positions of the modified duties offered by the accident employer in a warmer environment remained suitable, namely liver harvesting and lids. … It is significant in my view, that on March 19, 2012, just following the		• (Unsafe) • (Medical advice) • (RTW) • (Medical consultant)

			Board's reversal of WT services entitlement in favour of the finding that the worker could perform the modified duties offered by the accident employer, Dr. Kirwin opined: "Regardless of this issue whether there is a cold environment or not [is not] particularly relevant at this time as she has increasing pain of her right shoulder which would make use of her right arm at work or otherwise impossible". Dr. Kirwin's opinion supports the finding that the worker was incapable of performing of the modified duties offered by the accident employer at that time due to the condition of her right shoulder, and as such, the worker's entitlement to WT services should have continued.		
26.	2221 15	05/Feb/2016	Following this assessment, the Board selected the SEB of Retail Salesperson as the appropriate employment for the worker. The worker then commenced an LMR program, beginning with reduced hours and increasing on a graduated basis. He was never able to manage more than four hours per day. As we have indicated above, we accept that the worker did not make appreciable gains in the ESL training portion of the LMR program. After that portion was completed, the plan was amended to move the worker directly to training-on-the-job work placements. Two such placements failed when the worker could not sustain attendance at the jobs due to pain.	K Jepson M Christie A Grande	• 3rd • (Employability) • (Deeming) • (ESL) • (Loss of earnings
27.	2501 15	08/Feb/2016	Given the worker's level of education, her lack of proficiency in the English language, as well as the absence of any bookkeeping/accounting experience, one must question why the SO of bookkeeper/accounting clerk would be selected.	R Nairn	• 3rd • (Deeming) • (ESL) • (LMR/ WT)
28.	284 16	08/Feb/2016	Benefit entitlement was stopped as it was determined that the worker's continuing impairment involved his left shoulder but that his left shoulder was not part of his recognized entitlement in this claim. … The continuity of medical reporting of left shoulder pain is extensive and unbroken since the time of the	G Dee	• 2nd (contrary to "emphatic and authoritative" medical evidence) • (REC) • (Entitlement)

			accident. The medical opinion on causation that exists from Dr. Pugh is authoritative and emphatic. The REC report that was relied upon exclusively by the WSIB to deny that the worker had a shoulder impairment but instead had a neck impairment is inconsistent with the other available information in the claim file and does not warrant preference in weight to the other file information. Even the REC report confirmed the existence of ongoing pain in the left shoulder at the time of the assessment.		
29.	283 16	08/Feb/2016	Even leaving aside the very supportive opinions of the worker's family doctor and his psychologist, based on the results of the FAE alone I would find that the worker was not employable. The opinion provided as a result of the FAE is that under the best of circumstances with a very tolerant employer, the worker could perform a job that was very sedentary on a part-time basis so long as he was allowed frequent opportunities to change positions at two to 10 minute intervals. It may be possible that an understanding existing employer might provide such work with such accommodations. However, to expect a 50 year old man with no prior relevant experience to walk into a new employer and ask for and receive such an offer of such employment is entirely unrealistic. … I have no reason to ignore the opinion provided by Dr. Clayton that the worker has severe depression and severe anxiety as a result of his response to the pain and disability he experiences as a result of his accident. I do not follow or accept the logic adopted by the ARO in disregarding the opinions expressed by Dr. Clayton.	G Dee	• 3rd • 1st • 6th • (Employability) • (Deeming) • (Psychological/ mental health) • (RTW)
30.	61 16	08/Feb/2016	The Board determined, based on surveillance evidence, that the worker was capable of activities of daily living and thus he would be capable of work as a cashier or retail sales clerk . . . I also agree with the worker that the surveillance video is not sufficient to demonstrate that he would have been capable	S Darvish	• 14th • 12th • 1st • 5th • (Psychological/ mental health) • (Covert

			of finding and sustaining gainful suitable employment. Most notably, the surveillance confirms that the worker was unable to use his injured right hand. There was no persuasive medical evidence to challenge the conclusions reached in the above medical assessments, which was that the worker's compensable conditions, particularly his psychological condition, prevented him from working in any meaningful capacity. The Board also accepted the conclusions reached in these reports, but reversed its decision in 2012 based on surveillance video of the worker.		surveillance) • (Deeming)
31.	2513 15	08/Feb/2016	In this instance, the Panel in Decision No. 702/11 found that the worker's pre-existing condition was as a result of work, and that he had received no permanent impairment award for this. Thus, whether we look at the worker's 14% impairment as 7% accruing through disablement from 1990 to 2008, and another 7% as a result of his 2008 compensable accident; or as the 14% NEL being the result of a combination of a work-related disablement injury for which he received no permanent impairment award and a 2008 chance event, and therefore no reduction in his benefits being in order, the end result is the same. We find that there was no measurable pre-existing condition as it was a compensable condition. The worker is therefore entitled to a 14% NEL award for his compensable low back condition.	K Cooper J Blogg C Salama	• 23rd • 16th • 8th • (NEL rating)
32.	2449 15	09/Feb/2016	In an Appeals Resolution Officer (ARO) decision dated September 12, 2013, the Board confirmed its decision that the worker's left knee fully resolved and that the worker was not entitled to any further benefits for the injury. … Having explained that the meniscal tear is, in essence, a "red herring", Dr. Bushuk states clearly that the worker's ongoing symptoms are the result of the compensable twisting injury aggravating the worker's previously asymptomatic underlying degenerative arthritis. … For greater certainty, since we have found the worker's left knee was asymptomatic prior to the injury, the NEL benefit shall be calculated without any	K Jepson B Davis A Grande	• 4th • 9th • 1st (all discussed) • Advance directive not to apportion asymptomatic pre-existing condition • (Permanent impairment) • (Entitlement)

			deduction on the basis of a preexisting impairment or condition.		
33.	2473 15	09/Feb/2016	The ARO denied the worker additional academic upgrading on the basis that he had successfully completed the Wonderlic test and the training centre exam. The ARO did not comment on the worker's statement that he had been given the answers to the Wonderlic test and to the training centre exam before he wrote either of them.	B Alexander MP Trudeau C Salama	• 20th • 18th • (LMR/WT)
34.	2226 15	09/Feb/2016	The ARO concluded that the elbow reached its "preaccident state" by January 1, 2005. The evidence is that the worker's elbow never did recover from the 2002 injury. The Decision [prior WSIAT decision] found that prior to the 2002 injury, the worker's elbow was mildly symptomatic allowing him to work at his heavy duties. There is no evidence that pre-injury, the left elbow had any range of motion restrictions. The worker testified that after the 2006 surgery, he was in so much pain that he was prescribed the pain killer Percocet and did not feel there was a job that he could perform. In his 2008 report, Dr. McKee advised that the worker had the physical restrictions of "no repetitive- resisted flexion-extension of the elbow, no repetitive lifting, no single time lifting of more than 5 to 10 lbs," and concluded that he had "a significant permanent partial disability."	B Alexander	• 9th • 16th • 4th • (Permanent impairment) • (Entitlement)
35.	2183 15	09/Feb/2016	The Panel finds that based on the worker's academic level as noted above, the worker does not even meet the general academic requirements for employment under this SO. There is no evidence that the worker received significant academic training necessary to bring her to a level required to be competitive in the labour market. On the contrary, the worker received a very brief period of training on a part-time basis that cannot be interpreted as to be "significant" as recommended by Mr. Paradis and reiterated by the Case Manager.	N Perryman E Tracey A Grande	• 20th • 3rd • (Deeming) • (LMR/WT) • (Employability)

36.	259 16	09/Feb/2016	There is no persuasive medical evidence that the modified duties offered in April 2008 were suitable at the time the worker returned to modified duties [. . .] there does not appear to be any evaluation of the modified duties in October 2009, at the time the worker laid off work claiming that his symptoms had returned and that he was unable to perform the duties to which he had been assigned, even though such an evaluation was requested by Dr. Goldstein as noted below . . . In correspondence dated June 29, 2010, the Case Manager appears to have ignored the reports provided by Dr. Veidlinger, and based on CT Scan on May 13, 2010, concluded that the worker had recovered from the compensable injuries he sustained on April 21, 2008, without permanent impairment, and that, consequently, he was not entitled to any benefits.	J Goldman ST Sahay JA Crocker	• 15th • 6th • 9th • 1st • (RTW) • (Permanent impairment) • (Entitlement)
37.	2184 15	09/Feb/2016	I am not able to agree that this is a valid basis for denying the worker entitlement to benefits for psychotraumatic disability. The ARO appears to acknowledge that a factor which has contributed significantly to the worker's emotional distress is his lack of ability to earn an income to support his family . . . The Board's policy document provides however, that entitlement to benefits for psychotraumatic disability shall be allowed on the basis that "psychotraumatic disability is shown to be related to extended disablement and to non-medical, socioeconomic factors, the majority of which can be directly and clearly related to the work-related injury." . . .	M Crystal	• 8th • (Psychological/ mental health)
38.	87 16	09/Feb/2016	While the employer acted in good faith, and offered modified work consistent with standard restrictions for back injuries, which also met the restrictions set out by the worker's physiotherapist, I accept that medical restrictions need to be individualized, and in this case, the medical advice was to be completely off work until August 28, 2013. I accept and adopt the reasoning in Decision No. 93/07 at paragraph 39: Depending on the facts and the medical evidence, "early and safe" does	C Sand	• 5th • (ESRTW) • (Cooperation) • (Loss of earnings) • (Medical advice)

			not mean "immediate" under ESRTW policy. "Co-operation" includes a requirement for the worker to follow reasonable medical advice.		
39.	344 15	10/Feb/2016	The ARO was of the view that the worker had a non-compensable basis for his ongoing psychological condition. I have considered the ARO's suggestion that the worker's ongoing psychological difficulties were due to non-compensable issues that the worker had in his childhood. Dr. Cole's assessment of the worker in May of 2011 and Dr. Nashef's earlier psychological assessment had mentioned that the worker had a difficult childhood, but the conclusions reached in both assessments were that the worker's current psychological symptoms were directly connected to the sequelae of the 2004 compensable motor vehicle accident.	S Darvish	• 1st • 4th • (Psychological/ mental health) • (Entitlement)
40.	182 16	10/Feb/2016	The worker appeals the decision of the Appeals Resolution Officer ("ARO") R. J. Biega dated October 1, 2012. That decision concluded that the workplace duties were not a significant contributor to the worker's injury in this case and denied the worker's claim for a left wrist injury.. . . the Panel notes that there is no evidence of a pre-existing condition as reported by Dr. Naylor and that Dr. Naylor reported that without the work duties, there would have been no fracture.	V Marafioti BM Young A Signoroni	• 12th • 4th • 1st (all discussed) • (Entitlement)
41.	707 15	10/Feb/2016	The worker's case was due for a 72 month lock in decision effective February 23, 2010. The Case Manager (CM) has indicated that the 72 month lock in decision was deferred because the worker was participating in health care measures in the hopes of one day returning to work. The worker's representative has indicated that the 72 month lock-in was missed and the treatment the worker was receiving at the time of the 72 month lock-in was maintenance in nature.. … In my view, the worker's final LOE determination should not have been deferred, as the worker was unable to return to gainful employment from the original 72 month LOE lock-in date of February	AG Baker	• 14th • 10th • 8th • 1st (all discussed) • (Lock in) • (Loss of earnings) • (Employability)

			23, 2010. … The worker stated she was threatened with being uncooperative, but that she did her best. … I noted for example that the worker had been determined to be physically and psychologically unable to proceed with LMR services in January of 2009. That was largely based on the psychological reporting from Dr. Plotnick, and on the Board psychological review by Dr. Woods in November of 2008. I		
42.	1769 15	10/Feb/2016	Drs. Klodas and Chepesiuk were consistent in their findings that the worker's left hand/arm problems were the result of overuse due to her compensable right shoulder injury.	W Sutton	• 1st • (Entitlement)
43.	2558 15	10/Feb/2016	The Panel finds no reason to discount Dr. Baum's opinion, a surgical specialist, and the worker's attending health care practitioner. Accordingly, given the absence of any medical evidence before us which contradicts Dr. Baum's opinion, we give significant weight to the surgeon's reports. …It is noteworthy that Dr. Baum's opinion regarding the appropriateness of the modified duties related to the worker's condition on or about August 5, 2010. In view of the subsequent deterioration in the worker's condition, and the lack of evidence to establish that further modified duties consistent with the worker's functional abilities were available, we find it reasonable for the worker to follow her surgeon's advice. We also find that the worker cooperated in health care measures, as recommended by Dr. Baum, in accordance with the provisions set out in Board policy on "Payment of LOE Benefits." On October 7, 2010, Dr. Baum authorized a gradual return to work plan proposed by the employer in which the worker returned to modified duties (i.e., performing clerical duties in the inpatient area, a less busy area than the outpatient area) for two weeks starting on October 12, 2010.	K Iima ST Sahay C Salama	• 5th • 1st • (ESRTW) • (Medical advice) • (Cooperation) • (Loss of earnings)
44.	231 16	11/Feb/2016	I note that Decision No. 1934/13, by which I am bound, contains the following paragraphs which are relevant to the issue before me …	S Peckover	• 16th • (Permanent impairment)

			Thus, the Vice Chair in Decision No. 1934/13 accepted that the worker had a neck injury, and seems to have accepted the worker's testimony that his neck and back pain had continued to the date of the hearing (October 9, 2013), and that he continued to attend chiropractic treatment three times a week. It follows that the worker has a permanent impairment in the cervical spine.		
45.	275 16	12/Feb/2016	It is, in my view, unfortunate that the worker was not assessed by a roster psychiatrist in connection with the rating of her impairment associated with her psychotraumatic disability. The report of such an assessment would presumably have more directly addressed factors considered in a NEL rating than the reports prepared for other purposes.	B Doherty	• 19th • (NEL rating)
46.	148 16	12/Feb/2016	However, I am persuaded, on the medical evidence before me, that the worker's hernia and surgeries have more likely than not resulted in a permanent impairment. First, the worker has 24 square inches of mesh stapled in her peritoneal cavity and sutured through her abdominal wall, presumably to provide ongoing support. This is an alteration of a part of the worker's body which, in my view, constitutes a physical abnormality. Secondly, the worker reportedly has abdominal symptoms with lifting, "cannot" lift heavy objects, and has a permanent restriction on lifting over 20 kilograms. I recognize that Dr. Makinde previously anticipated complete recovery, and in 2011 he placed only temporary restrictions on lifting over seven kilograms and expected a return to full duties. Nevertheless, Dr. Makinde ultimately described a minor functional loss reflected in the inability to engage in heavy lifting, and this evidence is uncontradicted. There is no indication that the worker was ever able to resume heavy lifting, which appears not to be an essential duty of her ongoing employment. While the employer's representative submits that lifting precautions are not in and of themselves evidence of permanent impairment in the absence of ongoing physical or functional loss, I find that	S Netten	• 10th • 9th • 1st • (Permanent impairment)

			the worker did have a functional loss, being the inability to lift heavy objects (as well as the physical abnormality discussed above).		
47.	107 16	17/Feb/2016	The NEL assessment report did not include assessment for limitations to the worker's cervical range of motion. It is not clear why range of motion assessment was not included in the NEL assessment as this is one of the restrictions reported for the worker … Given the lack of evidence of any treatment or work interruption due to the worker's cervical condition prior to the accident of 2003, I conclude that there is no basis for reducing the worker's NEL rating.	Z Onen	• 23rd • 22nd • 8th • (NEL rating)
48.	388 16	17/Feb/2016	I note first that the functional assessment of the worker stated that the identified SO was appropriate for her, provided that certain accommodations be made. These accommodations are not insignificant given the limitations they place on the worker's ability to perform many necessary tasks associated with a retail environment, as set out in the report and confirmed by the accident employer. The report stated that the SO was suitable only if these accommodations were made. … Thus, the worker's transferable skills and medical restrictions limit her to a light duty retail environment, which even then would require significant accommodations. Her geographical location, as well as her age, are two other impediments to the worker's employability. If the worker's accident employer with whom she worked for 20 years was unable to accommodate her despite an obvious willingness and attempts to do so, it seems unlikely that a new employer would be willing to make these significant accommodations to employ her.	K Cooper	• 3rd • (Employability) • (Deeming) • (Loss of earnings) • (Older worker) • (Rural/remote)
49.	235 16	17/Feb/2016	In my view, the fact that the ergonomist did not attend the work site and observe the worker performing the putty application duties, made her determinations on the basis of a very brief video of an able worker performing the tasks, and did not take the worker's restrictions into	T Mitchinson	• 5th • 19th • 1st • (RTW) • (Medical advice)

			account nor the fact that he was not able to perform the putty tasks with his dominant arm, makes her assessment of limited value in determining whether the putty tasks were suitable. Dr. Remus clearly felt that they were not. … Dr. Remus also advised the Board at the same time that the putty duties were not suitable, and that because of this the worker would not need to make the trip to Timmins for a scheduled Functional Capacity Evaluation. However, based on the ergonomist's report, the Board determined that the worker could perform the assigned putty tasks. Given the flawed nature of the assessment as well as the worker's testimony concerning the frequency of the putty activities and the difficulties associated with the need to perform the tasks with his non-dominant arm, I find that this decision is not supportable, and that the putty job duties were not suitable.		
50.	2290 15	17/Feb/2016	Initial entitlement was granted on an accident basis. At first, the scope of the entitlement included not only muscle strain but also the cervical spine. The file was reviewed by a Case Manager in 2012, and entitlement was rescinded. The ARO re-instated initial entitlement but only for a muscle strain which was determined to have resolved. I find that the evidence supports a finding, on a balance of probabilities, that the worker's employment duties made a significant contribution to the development of the worker's significant cervical degeneration. Three medical opinions support a finding that the worker's cervical condition resulted from his three-decade long career as a heavy equipment operator. …Board Medical Consultant, Dr. Kashani, reviewed the medical file and indicated in a memorandum dated August 12, 2008: Due to the nature of his job for 29 years it seems that degenerative changes on his Cspine is [sic] at least partly due to his work activity.	AT Patterson	• 1st (all discussed) • 13th • (Entitlement) • (Degenerative)
51.	126 16	18/Feb/2016	In this case I have relied on the evidence showing that the chair is medically recommended for the worker. There is no indication in the evidence that the use of the	Z Onen	• 10th • 8th • 18th • 1st

			chair by the worker is not reasonable or appropriate or that it is somehow not related to his left hip injury. As such the chair meets the key Board policy criteria set out in OPM document #17-06-03 that would concern the worker's case. The chair supports the worker's mobility, helps to avoid further injury and deterioration in his condition, and is prescribed by his treating physician. Moreover, the treating physician has stated that the worker is at risk of becoming wheel chair dependent and that the recline and lift chair could help avoid this result. Under the policy, the chair is also a type of device listed as acceptable for compensation as health care. Under similar circumstances, the Board had authorized a mobility device for the worker earlier in 2006 on the recommendation of Dr. Dorcas. As noted earlier, the only substantial basis for refusing the worker this medical aid or health care benefit is that he is in receipt of a 15% permanent disability pension and therefore does not qualify as "severely impaired worker" as defined in OPM Documents #17-06-02 and #17-06-03. The ARO's conclusion was that the worker had to be in receipt of a 100% permanent disability benefit to qualify for any medical aid/health care under OPM Document #17-06-03. … Given the broad language of the Act under section 52(1), granting entitlement to all workers who are in receipt of benefits under Part 1 of the Act, it is reasonable to conclude that the intent of the Policy is to provide guidance respecting the availability of health care devices to severely impaired workers on an as of right basis, however it cannot have been intended to disentitle all other workers, from consideration for devices where appropriate on a case by case basis.		• (Health care)
52.	1999 15	18/Feb/2016	I note further, that while it was recommended in the WT Plan of September 2013 that the worker undergo a capacities evaluation prior his second work placement, this does not appear to have occurred. In my view, the jobs indicated in the category of Other Elemental Service Occupations would similarly involve the provision of services and by their nature, be a challenge to the worker's stated restrictions,	W Sutton	• 3rd • 18th • (LMR/WT) • (Employability) • (Loss of earnings) • (Deeming) • (Older worker)

			requiring at the least, repetitive walking, standing and/or sitting. As well, they suggest the need to handle transactions and likely the use of a computer, respectively, skills that the worker did not have, nor for which was he trained. The worker is currently 62 years of age and has a Grade 8 education. He lacks any transferable skills beyond those in manual labour and driving. He was not provided with any upgrading in either of his WT programs allowing him to present with the skills required in the SO in competition with younger and healthier workers. His physical capacity is limited by his back and left leg injuries, for which he has a significant NEL of 26% and significant restrictions involving no lifting, carrying, walking, pushing, crouching, bending, sitting, pulling or standing. He endeavoured to perform the duties in the SO of Other Elemental Services Occupations in the wood working operation, but was not hired, in part, due to his restrictions and his need to take frequent breaks. In the result, I conclude that the worker has entitlement to full LOE benefits from April 21, 2014 to the age of 65 years.		
53.	2387 15	19/Feb/2016	The Panel agrees with the submission of the worker's representative that the ARO in her decision of January 30, 2013 placed the entire responsibility for the failure to communicate on the worker. In her view, the worker's failure to meet his duty to co-operate meant that he was not entitled to LOE benefits. The Panel finds that in the circumstances of this appeal it would be unfair to place the entire responsibility for the failure to communicate on the worker. As the worker's representative submitted a breakdown in communications usually involves two parties. Had the employer met its obligations to maintain communication with the worker, suitable modified work may have been identified and, if not, the Board would have had an opportunity to provide mediation services with respect to a return to work or initiate Labour Market Re-entry services	JB Lang BM Young G Carlino	• 3rd • 8th • (ESRTW) • (Cooperation)
54.	245 16	19/Feb/2016	I note that all of the worker's treating health care providers, including Dr. Prutis, Dr. Stefou,	JE Smith	• 1st • (Entitlement)

			Orthopaedic Surgeon Dr. M.W. Roscoe, and Psychiatrist Dr. E. D'Alessandro, characterize the worker's pain as chronic and attribute it to the February 2008 accident. … Against those essentially normal findings, the worker continuously reported ongoing pain which her treating health care professionals unanimously found to be genuine and causally connected to her workplace injury of February 14, 2008, and which was unresponsive to all forms of treatment attempted.		• (Chronic pain)
55.	334 16	19/Feb/2016	Yet I am also of the view that the work was eminently unsuitable for the worker. I find that the tasks were contrary to the worker's clear restrictions. I further find that his attempt to do this work well explains why the worker's arm pain flared, causing him to sporadically miss time during the attempt to return to work. … The purportedly modified duties involved standing at a height, having to twist his left arm when putting mortar on to the trowel, then smoothing the mortar onto the level of bricks previously laid. … Again, I accept that the worker's pain flared up because of this manifestly unsuitable work. This was I find not suitable modified work for the worker who, after all, was precluded from repetitive activity as described in the medical report of the Shoulder and Elbow Specialty Clinic referenced above. Yet the activity as carried out was clearly both repetitive and heavy. …The Board's Ergonomist, in her September 22, 2009 assessment, makes no reference to the various medical reports discussed herein. It is thus not clear to me that the Ergonomist reviewed the report of Dr. Wright or of Dr. Latham, or of Dr. Yee. It is accordingly by no means clear to me that the Ergonomist had an appropriate appreciation for and understanding of the significance of the worker's injury. … As the February 18, 2014 decision of ARO Guse relied upon the finding of job suitability of ARO Bruno, which finding I have overturned, it follows that the denial of entitlement of LOE benefits confirmed by ARO Guse also must be re-visited. This issue could be referred to the Board, yet in the interest of preventing the worker from "ping-ponging" between the	J Josefo	• 5th • 3rd • 18th • 6th • 2nd • (ESRTW) • (Unsafe) • (Cooperation) • (Loss of earnings) • (Ping-pong) • (ESL)

			Board and Tribunal, as the issues are before me I will address them. … In my view, the worker has done all that he could do without assistance from the Board after he sustained a serious and significant, even life-changing, work accident. It is most unfortunate that, eight years earlier, when the worker would have been in his mid-thirties, he was not provided with English language training, and the proper assessments to determine if and how the worker could be trained to perform a likely sedentary job within his restrictions.		
56.	233 16	19/Feb/2016	However, I concur with Mr. Cianfarani's submissions in respect of the other concerns with the calculation of the worker's NEL quantum. In particular, I acknowledge that actual values for eversion and inversion do not appear in the case record.	JE Smith	• 22nd • (NEL rating)
57.	304 16	23/Feb/2016	When the Panel considers the nature of the worker's injury and the medical reports on file, we conclude that it was reasonable for the worker to follow the advice of his treating physicians. We are satisfied that the medical reports were based on objective findings, including swelling, tenderness and numbness. Dr. Golger, the hand specialist who followed the worker throughout the period, was aware of the worker's medical status and he recommended that the worker should not return to modified work until October 30, 2009. In these circumstances, OPM Document No. 18-03-02 applies on the basis that the worker was not medically capable of returning to work and thus not medically able to perform the modified work offered by the employer during the period in question. As a result, the Panel finds that the worker is entitled to full LOE benefits for the period from September 18, 2009 up to and including October 29, 2009.	L Bradbury M Christie K Hoskin	• 1st • 5th • 8th • (ESRTW) • (Cooperation) • (Loss of earnings)
58.	2587 15	23/Feb/2016	As noted in the decision on appeal, the ARO denied the worker entitlement to ongoing benefits after October 13, 2012 being of the view that by that date "the worker realized a full recovery [from] the work injury". …	R Nairn	• 2nd (all reliable) • (Entitlement)

			While Dr. Markus thought that the worker's weight was slowing his recovery from the surgery, he concluded "there was no report of pre-injury knee complaints that I have seen. As such, I would attribute his ongoing complaints to the compensable injury". … The ARO's decision to deny the worker's appeal appears to have been based primarily on a conversation that took place between a Board Nurse Consultant and the worker's physiotherapist as recorded in Memo #154 of October 5, 2012. The Nurse Consultant noted that the physiotherapist "confirmed that the work injury itself is such that [the worker] could perform his work duties, however, other issues are complicating the RTW plan such as the patellofemoral condition, obesity, motivation". I place little weight on these comments attributed to the physiotherapist. There is no medical reporting of substance before me in which the physiotherapist provides support for the conclusion that factors other than the compensable accident were contributing to the worker's ongoing problems.		
59.	190 16	23/Feb/2016	The weight of the medical evidence indicates that the worker was unable to return to work from October 30, 2013 until November 12, 2013, when he returned to modified office duties. Throughout this period, the worker was actively engaged in and co-operating with health care treatment for his injuries recommended by his attending health care practitioners. He attended at the office of his treating health practitioners as directed on October 29 and 30 and November 4, 5, 6 and 11. Medical reports from his treating physicians and chiropractor advised him to remain off work during this period. He followed that advice.	L Gehrke B Wheeler K Hoskin	• 5th • 1st • (ESRTW) • (Cooperation) • (Loss of earnings)
60.	434 16	23/Feb/2016	The Board's operating level granted the worker a Non-Economic Loss ("NEL") award of 24% for the permanent impairment in his low back as of February 2010. However, the Board operating level's decision letter dated November 24, 2011 later determined that the worker had recovered to his pre-accident level as of November 19, 2008 and therefore the	L Petrykowski	• 13th • 9th • 1st • (Entitlement) (Permanent entitlement) • (Psychological/ mental health)

			NEL award was rescinded. Consequently, it was also concluded that LOE benefits should have ceased as of November 19, 2008. … I find it significant that both Dr. Sehmi and Dr. Gandhi suggested that the worker had permanent restrictions affecting his lower back. Such restrictions did not exist prior to the workplace accident of September 30, 2008. In fact, the worker was able to carry on with heavy machining work for a number of years prior to September 30, 2008 without any health care provider imposing medical restrictions upon him. Dr. Gandhi also explicitly opined that the work had not fully recovered and that a full recovery was not anticipated. All of this suggests that the workplace accident resulted in a permanent physical/functional abnormality. This is also aligned with the Board's Medical Consultant, Dr. Kashani, who opined the following on June 17, 2009 in Board Memorandum #22: …This [injured worker] was able to work with his pre-existing back condition. Assessment of REC shows that he is not able to [return to work] now. Based on this [medical consultant] suggests [injured worker] is not back to his pre-existing level…Therefore, I further find in the instant case that the worker was unable to earn any income in suitable or available employment as a result of his compensable impairments from the time of Dr. Zakzanis' above-noted opinion dated October 29, 2009. The worker was in a fragile physical and psychological state at that time and unable to participate in re-training activities.		• (Employability) • (Medical consultant)
61.	389 16	24/Feb/2016	However, it is significant in my view that when the worker had returned to work starting on October 24, 2011 he was doing so only a very short time following the WSIB's provision of a wheel chair and other assistive devices to him in order to allow him to cope with his inability to weight bear on his ankle. …Of even greater significance is the fact that although the worker's employer had been advised by the WSIB return to work specialist that "arranging for worker's safe transportation from work is a condition for job offer to be considered suitable based on current precautions", it	G Dee	• 3rd • 19th • (ESRTW) • (Unsafe)

			would appear that the employer did not do so.		
62.	1433 15	24/Feb/2016	I place significant weight on the findings and diagnosis of the Altum Health WSIB Specialty Program Function and Pain Program assessors … the program assessors were of the view that the work related injuries and their sequelae were the predominant causal factors in the worker's psychological condition, and I accept this opinion. Second, I find that it is significant that the worker attended for treatment with the psychiatrist Dr. Sooriabalan, from September of 2009, and Dr. Sooriabalan diagnosed a Major Depressive disorder and PTSD. I note in this regard that in his first report dated September 16, 2009, Dr. T. Sooriabalan, psychiatrist, stated that he had seen the worker on September 8, 2009, and he concluded that the worker was suffering from a psychological condition as a consequence of the work related injuries sustained on February 2008.	J Noble	• 1st • (Psychological/ mental health) • (Entitlement)
63.	2665 15	25/Feb/2016	I note that the Board attributed the increase in the worker's low back symptoms to increasing age-related DDD, with no stated medical support for that conclusion. … I find no evidence establishing a relationship between the worker's low back symptoms and any form of non-compensable DDD or age-related changes.	ME McKenzie	• 12th • (Degenerative) • (NEL redetermination)
64.	2170 15	25/Feb/2016	The worker was advised by the WSIB in May of 2011 that in their view she had attained maximum medical recovery (MMR) with no evidence of a permanent impairment. … The worker received a multi-specialty assessment in January of 2011 that diagnosed a traumatic right gluteal pain. At that assessment it was noted that the worker "may always have persistent discomfort in this area." The subsequent medical evidence has demonstrated that persistent discomfort. A physiotherapist report of May 27, 2011, noted that there was still "obvious gluteal maximus contusion" and that the worker's treatment had plateaued. The physiotherapist noted that it was expected that	IR Mackenzie BM Young RJ Lebert	• 9th • 1st • (Permanent impairment) • (Entitlement)

			the worker would not regain full strength through her gluteus maximus muscles. In August of 2011, the contusion remained palpable and she had continued limited abilities in sitting and heavy lifting. In April of 2013, both Dr. Payne and Dr. Loh noted a palpable lump in the gluteal region. Dr. Loh provided a report on January 22, 2014 that concluded that the majority of the worker's symptoms were soft tissue in origin. The worker still has physical restrictions as a result of her work accident. She also testified about the impact of the pain on her activities of daily living.		
65.	2627 15	25/Feb/2016	We see no evidence before us that the worker had a symptomatic pre-existing condition – in other words, a pre-existing impairment – and no such evidence is referred to in the NEL assessment documentation. Accordingly, applying the above-noted Tribunal jurisprudence, we find that there was no basis to reduce the worker's assessed NEL quantum by 25%. We find, therefore, that the deducted amount of 1.5% should be restored and the correct quantum of the worker's right knee NEL benefit is 6%.	K Jepson J Blogg K Hoskin	• 23rd • 8th • (NEL rating)
66.	435 16	26/Feb/2016	Notwithstanding the foregoing unanimous opinions expressed by the worker's treating psychologists and psychiatrists, and independent assessors that the worker's depression resulted form her workplace injury, persistent pain and extended disablement, the ARO denied entitlement for permanent psychotraumatic disability, finding that the worker's ongoing difficulties were related to co-existing problems such as "loss of accommodated work/work with the accident employer, difficulty in retraining; financial strain, difficulty in the pain program and strain with the WSIB." These are all difficulties which, in my view, flow directly from the worker's compensable injury, and thus, pursuant to OPM Document No. 15-040-02, support her ongoing entitlement for psychotraumatic disability … Based on the unanimous opinions of the worker's treating and assessing health care providers, I am satisfied that the worker was	JE Smith	• 5th • 1st (unanimous) • (Employability) • (Loss of earnings) • (Psychological/ mental health)

			unable to work at any employment, or participate in LMR services, on May 1, 2011, when her LOE benefit entitlement was reviewed.		
67.	2254 15	26/Feb/2016	Dr. Baxter, the worker's family physician, has been treating the worker for more than 30 years. In a report dated March 14, 2013, Dr. Baxter opined that the worker's current symptoms of back pain are a result of the compensable workplace accident. Dr. Baxter recognized that the worker does have underlying DDD but as a result of the accident now has a permanent impairment to his back. On January 30, 2012, the worker was assessed by Dr. B. Malcolm, an orthopaedic surgeon, and Ms. A. Kamino, a physical therapist, at the Back and Neck Specialty Clinic. … They concluded that the worker "presents having had a lumbar strain superimposed on pre-existing asymptomatic age-related degenerative change or lumbar spondylosis. That degenerative change is manifest as a degenerative spondylolistheses at L4-5." Dr. Malcolm and Ms. Kamino found that the worker has partially recovered and that a full recovery was not anticipated. …	N Perryman ST Sahay K Hoskin	• 1st (all discussed) • (Entitlement) • (Degenerative)
68.	2572 15	29/Feb/2016	There is no evidence that prior to his February 3, 2011 injury the worker's low back was impaired or restricted in any way, and the Board determined that there was no evidence of a preexisting condition for the purposes of a SIEF award. Subsequent to the injury, the worker was subject to significant physical restrictions and was unable to sustain a return to any type of modified or graduated return to work. His ongoing pain has been amply recorded by his treating medical professionals … The June 27, 2013 ARO decision denied the worker a NEL award on the basis that the medical evidence "outlined few findings other than pain" and there were no "updated objective findings provided." There were objective findings available that indicated functional loss. … As the employer advised that the worker's physical problems, which included spasms and falling down, made him a threat to	B Alexander ADG Purdy M Ferrari	• 1st • 9th • 19th • 3rd • (Entitlement) • (RTW) • (Loss of earnings)

			other workers and he himself would be at risk for re-injury, the work offered must be considered as not suitable. … At the time he laid off work, the RTW specialist advised that he should be referred for a REC assessment to determine his level of disability but this was never done.		
69.	433/16	29/Feb/2016	The WSIB's decision-making emphasized that there were several non-compensable factors that appeared to be contributing to the worker's ongoing psychological condition, despite extended treatment. Nevertheless, there is no medical evidence of any substance that undermines the unambiguous conclusions of Dr. Gouws, Dr. Aleem, Dr. Saunders, and Dr. Piccolo that the workplace accident played a major role in the development of the worker's condition. The non-compensable factors have not overwhelmed the causal role of the injury or broken the chain of causation. Therefore, the worker is granted ongoing entitlement for psychotraumatic disability.	R McCutcheon	• 12th • 1st • (Psychological/ mental health) • (Entitlement)

CASE	DECISION NUMBER	DATE	QUOTES (DIRECT)	PANEL/VC	COMMENTS
70.	1575 15	07/Mar/2016	The ARO, in denying entitlement for a psychological condition states that the worker experienced other non-work related factors which appeared to be more traumatic than the worker's work accident including being referred for medical attention in April 2010 due to a heart attack and surgeries for non-related problems in September 2010 and June 2011. I disagree with this analysis by the ARO. The worker has had a number of noncompensable medical conditions. However, these conditions have not resulted in long-term permanent impairments or in constant unrelenting pain in the same manner as the worker's workplace injuries have. Those conditions have also not threatened the worker's ability to continue to work in the occupation that she was employed at for a prolonged period of time. Furthermore, none of the medical reporting indicates that the worker's other medical concerns are even a significant factor in the worker's development of her psychological condition. Dr. Thakkar states that the worker's depression was due to her pain. A diagnosis of an Adjustment Disorder was made by Dr. Light and the FRP reports of January 29, 2010 and October 27, 2010. These reports clearly make this diagnosis in the context of the worker's experience of difficulties and particularly pain following her workplace injury.	G Dee	• 7th • 4th • 1st • (Psychological/ mental health) • (Entitlement)
71.	2658 15	08/Mar/16	Although the ARO ordered further pain management treatment, the worker did not attend any further comprehensive pain programs. … The March 2011 and June 2011 reports were responding to specific questions	K Jepson E Tracey	• 4th • 14th • 8th • 12th • 1st

			from a Board Case Manager regarding the worker's readiness to return to work, and Dr. Tewfik responded in both instances that due to the severity of the worker's physical pain and related depression, the worker was not ready to attempt any return to work. … The ARO in the decision under appeal found that the worker's inability to work was partly due to depression, and that the worker's depression was pre-existing and not related to the workplace injury. However, we find no evidence before us of any pre-existing depression or related psychological problems. In addition, the reports of Dr. Tewfik and Dr. Hanna clearly link the worker's depression to the injury and ensuing pain condition. As is common in cases of CPD, these medical reports demonstrate that the worker's pain symptoms and depression were two closely interrelated aspects of the worker's chronic pain disability. We find that the worker's depression is included in her global CPD condition. In so finding, throughout the history of the worker's claim, the Board, too, had accepted that the depression was part of the worker's compensable condition, as evidenced most clearly by the 2008 ARO decision which found that the worker was unemployable due to the combination of her pain and depression. … In summary, the Board determined that the worker was unemployable in December 2008 and we find that the medical evidence, coupled with the worker's testimony, demonstrates that the worker's CPD condition has not improved. As of the Final LOE Review date of March 6, 2012, we find, like the ARO in 2008, that the combination of the worker's pain symptoms and depression, both of which are encompassed by her compensable CPD, rendered the worker unlikely to be able to obtain work in any suitable and available employment or business.	G Carlino	• 16th • 18th • (Psychological/ mental health) • (Chronic pain) • (Deeming) • (Employability) • (Loss of earnings) • (Lock in)
72.	645 16	11/Mar/2016	I agree with that analysis, and apply it to the case before me. While the worker has evidence on an MRI as far back as 2000 of some degenerative changes in the cervical spine, there is no evidence before me that any of the degenerative changes in his neck were	S Peckover	• 23rd • 8th • (NEL rating) • (Degenerative)

			symptomatic prior to the workplace accident in 1998; that he lost any time from work as a result of those changes prior to the 1998 compensable accident; or that he ever received treatment for neck difficulties prior to that time. This therefore constitutes a pre-existing condition (which, by definition, is asymptomatic prior to the workplace accident, but becomes manifest thereafter). The worker's NEL award therefore should not be reduced under OPM Document No. 18-05-05.		
73.	483 16	14/Mar/2016	The Panel finds the Board's post-January 2008 characterization of the two job options to be significantly at odds with Dr. Goodfield's opinion. Dr. Goodfield had indicated the worker might be able to work in the two specified occupations "assuming she achieves significant improvement in her pain presentation and emotional functioning." There is no evidence that the Board offered psychological counselling or other services to affect significant improvement. There is no evidence that the worker's psychological condition has improved.	CM MacAdam E Tracey A Signoroni	• 18th • 5th • 12th • 1st • (Employability) • (Deeming) • (Psychological/ mental health)
74.	523 16	15/Mar/2016	I am of the view that the worker clearly had ongoing problems with his low back, [and] that he likely reached MMR as of the second REC report. The worker should not be penalized because the Board's REC assessor measured his low back range of movement using a measuring scheme which is foreign to the AMA Guides, and thus "unintelligible" to NEL assessors at the Board, or because they failed to follow through on Dr. North's suggestion that they have the worker go to his family doctor to obtain range of motion findings. It is now 14 years after the MMR date, and the worker's current low back condition may or may not be comparable to what it was at the time of the REC assessment. However, if the Board is unable to rate the worker using the reporting from the time period around the second REC assessment, then the worker is to be assessed by a roster NEL physician, and his current low back condition is to be rated.	S Peckover	• 22nd • 19th • (NEL rating) • (REC)

75.	629 16	17/Mar/2016	The ARO decision under appeal does not address the report of Dr. Woolford dated June 19, 2013. That report provided objective clinical findings in the form of measurements of range of motion supporting the conclusion that the worker has suffered a significant deterioration of his compensable permanent low back impairment since it was assessed by Dr. Malcolm in December 2007.	L Gehrke	• 6th • 1st • (NEL redetermination)
76.	2184 14	17/Mar/2016	As is stated in the Board's policy document, this benefit is meant to provide severely impaired workers with support for the activities of daily living. There is little question that the worker was a severely impaired by the consequences of his injury and required ongoing personal support. The personal care allowance he received from 1991 onward was primarily for bathing and for personal services under Part 3 for general care. In 2007 he lost compensation for his Part 3 services without any clear explanation or documentation to explain the change. His wife continued to deliver these services. I have concluded that there was no basis to cease the worker's personal care allowance for the Part 3 services he received.	Z Onen	• 11th • 12th • (Seriously injured worker) • (Health care)
77.	451 16	18/Mar/2016	The original SO of Customer Service Clerk was not considered suitable by the ARO due to the worker's limitations. In June 2013 the SO of Retail Sales was recommended after the worker declined to participate in the further assessment directed by the ARO. The workplace Transition Specialist (WTS) memo of June 18, 2013 suggested after further ESL training the worker could obtain an entry level position in a store which carried small items so as not to exceed her physical limitations. We agree with the representative's submission that the Retail Sales and Customer Service SOs are similar. They both require greater English language skills than demonstrated by this worker. Even as a customer greeter she would need fluency in English beyond what the record suggests is her level of competence to respond to questions. … The SO is also beyond her	G McCaffrey E Tracey A Signoroni	• 3rd • 16th • (ESL) • (Deeming) • (Employability)

			limitations/restrictions arising from her organic and inorganic compensable condition, quantified by a 45% NEL award.		
78.	647 16	18/Mar/2016	In addition to that recognized limitation, as indicated, the Board, following the decision of ARO Amorim, decided that the worker's case should be transferred to the Serious Injury Program. The worker was subsequently granted an ILA retroactive to October 2006 as well as, after a home assessment, found entitled to a personal care allowance. Taking all this into consideration, in my view it is contradictory that a worker who is found entitled to a personal care allowance, as well as an ILA, as well as a wheeled walker, would also be expected to work, even on a part-time basis … Based upon the totality of the evidence, it appears to me highly unlikely that the worker, with her significant level of disability as exemplified in the various assessments provided by the Board, ever could successfully return to work. Dr. Plotnick indeed makes that position clear in his two reports referenced above, as well as in his earlier reports.	J Josefo	• 5th • 3rd • 1st • (Seriously injured worker) • (Deeming) • (Employability)
79.	2264 15	18/Mar/2016	Based on the findings made by the ARO in that decision, there was no reason for the worker to expect that the genuine nature of his psychiatric complaints was in question, that he would continue to be viewed as uncooperative by the Board, or that he would be referred for further assessments to determine the nature of his psychiatric condition(s), as opposed to being offered psychological treatment. [...] The CM also continued to focus on returning the worker to the workforce rather than on offering him treatment for his psychological conditions. It was in this context that the CM posed questions to Dr. Notkin that had already been addressed by the ARO and decided in the worker's favour. The CM's conviction that there was a lack of genuineness in the worker's presentation and a failure to cooperate was reflected in the decision to commit very substantial Board resources to obtaining a new IPE and conducting covert surveillance of the	ME McKenzie MP Trudeau G Carlino	• 16th • WSIB decision procedurally unfair • 18th • 12th • 13th • (Covert surveillance) • (Psychological/ mental health) • (Medical consultant) • (Health care) • (Deeming) • (Employability) • (Cooperation)

			worker over a period of several days during his participation in the IPE. …In our view, the only reasonable interpretation of the August 11, 2011 ARO decision in these circumstances was that the worker would remain totally impaired by his compensable conditions until he was provided with an effective course of psychological treatments. Even then, he could only be expected to re-enter the workforce if he experienced improvement in his psychological functioning as a result of any such treatments. There is no evidence of any significant improvement in the worker's overall psychological, psychiatric or mental state after the date of August 11, 2011 ARO decision. … The ARO decision dated August 11, 2011 determined that the worker remained totally disabled by his compensable impairments as of that time. A decision respecting the permanence of that situation could not be made until further treatments were provided to him. Based on our findings that no psychological treatments were offered to the worker thereafter and that his psychiatric condition did not substantially improve, the Panel has concluded that he continued to be totally disabled by his compensable conditions as of the date of the final LOE review.		
80.	560 16	21/Mar/2016	The Panel notes that the prior decisions of the WSIB that have found that the worker would have been capable of full-time minimum wage employment as of July 2004 have not identified what the work might have been. Those decisions instead restricted their findings to a determination that the worker was only partially impaired. That is not however the legal test that must be applied.	G Dee M Christie F Jackson	• 10th • (Deeming) • (Employability)
81.	42 16	22/Mar/2016	In the absence of evidence that the pre-existing conditions had resulted in periods of impairment or illness requiring health care or caused a disruption in her employment, I find that these conditions were not pre-existing impairments within the meaning of Board policy. Consequently, there is no basis upon which the NEL awards may be reduced	K Iima	• 23rd • 8th • (NEL rating)

			pursuant to OPM Document No. 18-05-05.		
82.	2810 15	23/Mar/2016	On March 17, 2011, the worker's family physician, Dr. L. Alexov, filed a report with the Board stating that the worker had "severe depression/massive pain/getting worse" and was not capable of working. Nonetheless, the Board concluded that the worker was capable of participating in a WT program with the goal of returning him to employment on a full-time basis as a parking lot attendant. … In determining the worker's LOE entitlement as of those dates, the Board identified an SO based exclusively on the worker's organic disability. … In my view, the SO determined by the Board was not appropriate. I so conclude primarily because, in my opinion, given the worker's psychological condition, working as a parking lot attendant could not be considered safe or consistent with the worker's ability to function, psychologically.	JP Moore	• 5th • (Psychological/ mental health) • (Deeming) • (Unsafe) • (Loss of earnings)
83.	589 16	24/Mar/2016	The occupations suggested by the WSIB and the employer for the worker do not appear to meet the worker's psychological restrictions and the psychological supports that were identified as required by even the most optimistic of the psychological consultants involved in assessing or treating the worker have not been implemented.	G Dee M Christie JA Crocker	• 5th • 1st • 18th • (Psychological/ mental health) • (RTW) • (Cooperation) • (Health care)
84.	41 16	29/Mar/2016	In the absence of evidence that the pre-existing condition had resulted in periods of impairment or illness requiring health care or caused a disruption in her employment, I find that this condition was not a pre-existing impairment within the meaning of Board policy. Consequently, there is no basis upon which the NEL awards may be reduced pursuant to OPM Document No. 18-05-05.	K lima	• 23rd • 8th • (NEL rating)

85.	243 16	29/Mar/2016	There is no evidence in the case materials to support that the ARO's decision considered the worker's restrictions associated with the jobs listed or that the jobs listed were sufficiently available in the job market to support that NOC 6683 was suitable for this worker on a full-time basis. Given the absence of such evidence, the worker's restrictions and the reports that support she had barriers to employment even in direct entry jobs, I find that on a balance of probabilities, the worker is only likely to be employed on a part-time basis. Her current employment supports she is capable of working part-time.	J Dimovski	• 12th • (Deeming) • (Employability) • (Loss of earnings)
86.	654 16	30/Mar/2016	The worker also seeks recognition of a permanent impairment. … As outlined earlier, the medical evidence was unequivocal in showing that the worker has had continuous problems from his mild head injury in the form of headaches and dizziness. The worker has been given permanent restrictions to address his ongoing problems and as per his testimony, he continues to work in light duties within his precautions. Accordingly, I find that the worker has a permanent impairment for a mild head injury and he is entitled to a non-economic loss assessment to determine the extent and degree of the permanent impairment.	S Darvish	• 1st • (Permanent impairment) • (Entitlement)
87.	2778 15	30/Mar/2016	The worker was granted a NEL of 5% on April 9, 2013. In arriving at such determination, the WSIB Clinical Specialist utilized the RSI/Functional Rating Criteria, being unable to complete the NEL assessment based upon inconsistent left shoulder ranges of motion . … In this regard, the Panel finds itself in agreement with the worker representative's submission. Firstly, to the effect that the worker did not sustain a repetitive strain injury, and secondly, that the issue of "normal ROM' did not come up so as to justify the application of the above-noted excerpt from the Adjudicative Advice Guideline. … In this case, the Panel finds that the information on file at this time is insufficient to determine the worker's degree of permanent impairment in	RA Wood B Wheeler K Hoskin	• 22nd • (NEL rating) • Failure to gather necessary medical information to do NEL assessment

			accordance with the AMA Guides. Applying OPM Document No. 18-05-03, a medical assessment by a roster physician (in accordance with the procedures set out in section 47 of the WSIA) is required in this case, and the worker's NEL rating for his permanent impairment must be recalculated on the basis of that NEL medical assessment.		
88.	41 14	30/Mar/2016	The ARO noted the reporting and found that range of motion values were somewhat similar with the findings in 1992. Of course, the ARO also noted the variation in the worker's medication regimen, but did not appear to place any significant weight on that evidence. The ARO also failed to note comments from Dr. Ostrowski that the worker will require "significant workplace restrictions". There was also little weight placed on the multiple reports of the worker's family doctor, Dr. Krass. However, I found that reporting telling, noting that the worker had changed his medication, and was noted in 2014 to have prescriptions for daily narcotic pain medication, including Oxycocet four times per day. In my view, that is a significant change in the worker's overall pain treatment. The Clinical records from Dr. Krass since 2010 also paint a picture of a worker who is now in long-term chronic pain management.	AG Baker	• 1st • (NEL redetermination)
89.	1254 15	30/Mar/2016	In that regard, the ARO went on to note the degenerative changes noted in the MRI results, relating the worker's pain to those problems and not his claimed overuse of the left upper extremity. It was also noted that the file was reviewed in 2009 by a Board Medical Consultant, who opined that there was no permanent impairment and that overuse syndrome was not confirmed. Again, significant degenerative changes were noted in evaluating the worker's medical history. The ARO relied primarily on that medical review in denying the secondary conditions. … I have noted the findings of the ARO and the Board medical reporting. However, after considering the worker's testimony, the nature of his right hand injury and the repetitive duties he performed, I	AG Baker	• 2nd • 4th • (Medical consultant) • (Permanent impairment) • (Degenerative)

			found there was a significant contribution from his right hand injury to the development of his left upper extremity injuries. I found that the combined reporting from the worker's family doctors and specialists supported that conclusion, and also confirmed the worker's ongoing symptoms. The worker is therefore entitled to benefits for secondary injuries to the left upper extremity, including the left arm, shoulder and neck, and a permanent disability assessment in that regard.		

CASE	DECISION NUMBER	DATE	QUOTES (DIRECT)	PANEL/VC	COMMENTS
90.	2399 15	01/Apr/2016	Dr. Maehle opined that "[t]he ulnar neuritis of the right elbow cannot be attributed to the worker's shoulder problems; nor the regional pain syndrome"; the worker's right elbow neuritis " ... could not possibly be related to the claimant's shoulder problems," and "I.W. remains at pension level ... for the right shoulder, ... with other factors present in the picture having no entitlement under this claim ...". Dr. Maehle did not elaborate on the basis upon which he reached this conclusion. In particular, Dr. Maehle did not appear to take the opinion of Dr. McMurtry regarding the worker's right elbow neuritis and regional pain syndrome into account. For his part, Dr. McMurtry provided a detailed explanation as to why these conditions were related to the worker's compensable right shoulder injury. He did so in direct response to the Board's question as to the compatibility of the conditions with the worker's right shoulder injury.	W Sutton	• 2nd • WSIB relied on unreliable medical opinion • (Entitlement)
91.	2777 15	01/Apr/2016	The Panel also accepts the worker representative's submission that it makes little sense to allow LOE benefits after September 10, 2012 when the worker's condition would be less acute than the period between the end of August 2012 and September 10, 2012 when it would be reasonable to assume that the symptoms were more acute in that brief interval. In addition, there is a logical inconsistency in allowing the recurrence in "August 2012", yet not allowing LOE benefits until the date of the worker's appointment with her treating physician on September 10, 2012.	RA Wood ST Sahay C Salama	• 3rd • (Deeming) • (Loss of earnings)
92.	557 16	01/Apr/2016	The ARO conducted a hearing in writing and determined that the worker had been offered modified office duties on February 20, 2014 that complied with the restrictions set out in his physician's Functional Abilities Form ("FAF") of that date. It was on this basis that the ARO	ME McKenzie	• 3rd • 19th • (RTW)

			decided that the worker would be entitled to full LOE benefits only until February 20, 2014. There is no documentation on the Board's file establishing that the employer offered those duties. … It appears that the ARO came to that conclusion based on notes on the file of conversations between Board personnel and the employer. …The worker states in his letters to the Board and in an attachment to the NOA that he did not receive an offer of modified duties until March 18, 2014. I have determined that this submission is consistent with records on the Board's file of efforts that were being made by the Board's Return-to-Work ("RTW") Specialist to assist the workplace parties.		
93.	2705 15	04/Apr/2016	Based on the foregoing, while the ARO found that the worker's compensable soft tissue injury of June 10, 2012 had resolved and returned to its pre-injury state by September 27, 2012, we find the evidence establishes that there was an ongoing low back impairment due to the work accident. We note that the worker experienced acute symptomology, including low back pain and radiation to both legs, immediately following the accident. The evidence demonstrates that his symptoms did not resolve over time. On the contrary, they worsened until, ultimately, he was diagnosed with multiple disc protrusions a the L3 to S1 levels, and a fissure at L4-5 and L5-S1, all conditions which Dr. Nasser Cano specifically opined were the result of the slip and fall … there is no evidence before us suggesting that the worker had low back symptomology prior to June 10, 2012. … We note that he was able to perform physically demanding, agricultural work, 10 to 14 hours per day, six or seven days per week, for 12 years, without issue, prior to the accident.	JE Smith M Falcone C Salama	• 9th • 4th • (Entitlement)
94.	674 16	05/Apr/2016	From the foregoing we accept that the worker's initial diagnosis of bilateral CTS in 2002 was, to a significant degree, caused by her repetitive job duties, notwithstanding that she continued to work and did not file a claim with the Board until 2010, at which time her	JE Smith E Tracey C Salama	• 5th • 1st • 4th • (RTW) • (Medical advice) • (Unsafe)

			diagnosis was accepted as compensable. We therefore find the worker's pre-existing history supports her ongoing entitlement for a compensable bilateral wrist condition. We note that the opinions on diagnosis and causation were echoed in 2010, by each of the worker's treating and assessing health care providers. In particular, we note that after her entitlement was accepted by the Board, the worker was assessed at its Specialty Hand Program, by plastic surgeon, Dr. C. Levis. On August 9, 2010, Dr. Levis reported to the Board that the worker had "symptoms consistent with carpal tunnel syndrome, which has been worsening" and that her left wrist was worse than the right. … The worker attempted those duties in November 2010 to her detriment. Her pain and symptomology were exacerbated by performing them, and it was accepted by all, as a result, that the duties were outside of her medical restrictions. The worker's restrictions are permanent, as defined by Dr. Margaliot, and involve almost no use of her hands.		• (Cooperation)
95.	419 16	06/Apr/2015	The Board denied the worker entitlement to LOE benefits subsequent to December 19, 2008, on the basis that the worker had recovered from her workplace accident. The Board appears to have relied significantly on the multidisciplinary health care assessment in September 2008 which anticipated full recovery by the end of 2008. However, after that report, the worker experienced two recurrences of the neck injury at work. In my opinion, the Board failed to consider the impact of these injuries on the worker's ability to work.	JP Moore	• 9th • (Entitlement) • (Loss of earnings)
96.	311 16	14/Apr/2016	I find that in this case, the information available for the worker's ROM measurements was insufficient to perform a proper NEL assessment due to the lack of measurements provided in Dr. Oshidari's report. The report did not include specific measurements for flexion, and right and left lateral flexion. I find these measurements were required for the NCS to properly assign impairment percentages to them in the NEL evaluation. … I find that the medical information used for the	K lima	• 19th • 22nd • 8th • (NEL rating)

			NEL assessment was insufficient based on Board policy and the AMA Guides. Accordingly, the worker is entitled to an assessment by a NEL roster physician.		
97.	773 16	14/Apr/2016	We agree with the ARO that there does not appear to be any explicit restriction from any medical doctor prohibiting the worker from driving or travelling on public transit. There is no evidence that her driver's licence was suspended during the period in question. However, we find that there is persuasive medical evidence that the worker harboured a genuine fear of re-injury which manifested into a driving phobia. Her fear of re-injury and driving phobia were the result of the compensable accident and, in particular, her compensable psychotraumatic disability. We find that she has entitlement for escort services to all Board-approved meetings or appointments between the date of accident and April 28, 2012.	S Ryan J Blogg JA Crocker	• 1st (all discussed) • (Health care)
98.	822 16	15/Apr/2016	Following Dr. Grbac's opinion that his back condition was below his documented 29% NEL level, the worker was referred for a NEL redetermination in 2007. The NEL reassessment of June 24, 2007 resulted in a reduction of the worker's NEL award from 29% to 22%. Based on the June 2007 NEL redetermination, in correspondence dated September 19, 2011, the Case Manager concluded that the worker's low back condition had improved and that, as a result, in 2007 he had been capable of returning to his pre-injury employment as an Auto Parts Sorter. Therefore the decision to lock-in full LOE benefits from 2007 to age 65 had been made in error. Consequently, the worker's LOE benefits were terminated as of October 14, 2011. … Based on the evidence contained in the file, the Panel has concluded that the worker's condition has deteriorated since his 2005 workplace accident, despite the 2007 NEL reassessment. He continues to experience severe pain and requires a cane for ambulation. As noted by Mr. Mehra, there has been no new Psycho-Vocational assessment since 1996 to	J Goldman B Davis C Salama	• 14th • 12th • 3rd • (Lock in) • (NEL redetermination)

			determine the worker's functional abilities. …When his full LOE benefits were terminated, the worker was 63 years of age and had not worked since 2005. … In the Panel's view, the worker's inability to be gainfully employed had not changed since 2007.		
99.	831 16	15/Apr/2016	The vocational consultant … concluded that the worker was not a suitable candidate for any LMR services in light of his physical restrictions, age (58 at that time), limited education, very limited transferable skills, and lack of basic computer skills. She concluded that the best plan for the worker was to continue with his part-time work with the home improvement retailer, who was willing to provide work that was within the worker's functional restrictions. The consultant further opined that in the event that the accommodated work with the home improvement retailer should become unavailable, the worker should be paid full LOE. …The issue before us is precipitated by the very event that the vocational consultant contemplated: the accommodated position with the home improvement retailer became unavailable in July 2009. We find the 2007 LMR assessment to be a persuasive analysis of the worker's employability and we agree with the consultant's conclusion reached at that time.	K Jepson B Davis JA Crocker	• 3rd • (Employability) • (Deeming) • (Loss of earnings)
100.	2561 15	18/Apr/2016	In a decision dated July 9, 2010, the case manager reviewed the psychologist's report and noted that the worker's level of depressive and anxiety symptomatology remained in the significant range. On that basis, the case manager accepted that the worker was currently temporarily totally disabled for a four week period upon commencing further counselling. … LOE benefits were paid from April 16, 2010 to July 12, 2010. However, these benefits were "inactivated" as the case manager reconsidered her July 9, 2010 decision. In a decision dated July 21, 2010, the case manager found that the worker was now actually partially disabled and that there was no evidence to support that she was unable to perform the modified work offered by the employer. … It is the opinion of the Chronic	E Kosmidis J Blogg RW Briggs	• 13th • 5th • (Psychological/ mental health) • (Cooperation) (ESRTW)

			Pain Management Team that the worker was not capable of returning to work at the present time because of her depression and that any attempt to have her return to work at this time is likely to be unsuccessful. When considering the entire background circumstances, the Panel does not agree with the employer representative's submissions that the worker's failure to return to work indicates a failure to cooperate on the part of the worker.		
101.	901 16	18/Apr/2016	The worker was not warned that at final LOE review her benefit would be reduced due to non-cooperation. Rather, as noted above, in a conversation with the worker in October 2011, a Case Manager suggested to the worker that the LOE benefit change at final review would be minimal. Further, in the 2011 LOE decision, the worker was informed that deemed entry-level receptionist would be used to calculate her LOE benefit. She was not given written warning that she was not cooperating and that this would affect the final LOE review to be done the following year. Instead, the Case Manager simply informed the worker that the final LOE review would take place the following year, and that she would be required to provide updated information. Thus, in my view, when the Board decreased the worker's LOE at final LOE review by relying on a finding that the worker was not cooperating with her return-to-work obligations, this was done in contravention of the procedural requirements mandated by Policy No. 19-02-02.	B Kalvin	• WSIB decision contrary to procedural fairness • 8th • (Cooperation) • (Lock in)
102.	788 16	18/Apr/2016	Thus, the worker's three treating physicians, as well as a fourth, independent physician, namely, Dr. Kiraly, the NEL assessor, have all supported the worker's claim that her chronic pain condition renders her unable to return to gainful employment. I see no reason not to accept the essentially unanimous assessment of these physicians.	B Kalvin	• 1st • 5th • (Employability) • (Chronic pain)
103.	920 16	19/Apr/2016	I also note that the rationale behind the CM's decision to close the worker's LMR plan originally. This recommendation noted that the	K Cooper	• 14th • 3rd • (Employability)

			Psycho-Vocational Assessment provided no suitable SEB [SO] options. All SEB options proposed had limited employment prospects, were physically unsuitable to the worker or were not cost-effective or viable due to educational requirements. The CM recited the findings of the report as set out above, as well as noting that the worker suffered from non-compensable epilepsy which she feared may be triggered due to stress from a LMR plan. As submitted by Ms. Brissette, it appears unlikely that if the worker were unemployable in 2009 she would become so three years later.		• (Loss of earnings) • (Unsafe) • (Deeming)
104.	312 16	19/Apr/2016	In this case, the NCS deducted 10% from the worker's NEL award "for the measurable pre-existing surgery" and referenced Table 53 II E of the AMA Guides (described above) as the basis for the 10% reduction. However, as the medical evidence supports a finding that the worker's surgery in 2007 had resolved her prior disc problem, and that she did not appear to have back issues of any significance for over four years prior to her injury, such that the pre-existing condition had resulted in periods of impairment or illness requiring health care or caused a disruption in her employment, I find that this condition was not a pre-existing impairment within the meaning of Board policy. Consequently, there is no basis upon which the NEL award may be reduced pursuant to OPM Document No. 18-05-05.	K Iima	• 23rd • 8th • (NEL rating)
105.	946 16	19/Apr/2016	The Panel made no mention of a pre-existing impairment or disability in the worker's low back, as it did with respect to the headaches and the thoracic spine entitlements. This difference in wording substantiates my interpretation, above, that the low back was not symptomatic prior to the 1994 workplace accident. As OPM Document No. 18-05-05 contains no provision for reducing a pre-existing condition (as opposed to a pre-existing impairment or disability), it therefore is inappropriate to apply OPM Document No. 18-05-05 and deduct anything for a pre-accident disability or impairment. The worker's low back	S Peckover	• 23rd • 8th • (NEL rating)

			PI therefore is 17%.		
106.	327 16	19/Apr/2016	As previously noted, the Board did not obtain a medical opinion on causation. The only medical reports that provide an opinion on causation are from the worker's family doctor and from Dr. Pysklywec. Dr. Pysklywec interviewed the worker about his work history and duties and reviewed the medical literature on the effects of biomechanical loading and kneeling on the knees. Dr. Pysklywec also considered alternative risk factors that could account for the development of left knee osteoarthritis. He states that he could identify no extraneous risk factors for the development of osteoarthritis besides his occupation. He concludes that the worker's work duties were a significant contributing factor.	E Kosmidis BM Young A Grande	• 1st • (Entitlement)
107.	763 16	19/Apr/2016	Maintenance treatment is not restricted to support for workers who are returning to employment. This is confirmed by the Administrative Practice Document guidelines which state that maintenance treatment is available to enable a worker to return to work, but also to reduce pain, decrease the use of medication or improve the worker's level of function. In this case the stated purpose of the treatments is to reduce pain, improve function and if possible, reduce the use of medication. Dr. Campana, who is the worker's treating chiropractor, has opined that the chiropractic treatments led to a reduction in the use of medication, reduced his pain and helped to maintain his level of functioning	Z Onen	• 21st • (health care)
108.	907 16	21/Apr/2016	Given the unanimous opinion of the worker's treating and assessing health care providers, as cited above, including Drs. Walker, Thomas, and Panjwani, I am satisfied that her depression and anxiety, which was first noted in 2007 by the psychovocational assessors, is attributable to her persistent and ongoing bilateral shoulder pain and the associated extended disablement she endures … The issues with her weak English skills and limited aptitudes were reported to the CM, who in turn concluded	JE Smith	• 1st • 3rd • 5th • (Psychological/ mental health) • (Employability) • (Deeming) • (Loss of earnings) • (ESL)

			that the security guard SEB was no longer suitable, changed the goal back to elemental service occupations, notwithstanding that this had been found to be a category of jobs not available, denied entitlement to additional LMR services and denied entitlement to further LOE benefits beyond January 9, 2010.… Dr. Panjwani reported on the worker's condition on July 22, 2014, stating that the worker was "totally disabled to perform any gainful occupation", and that she had achieved MMR.		
109.	938 16	21/Apr/2016	We are not able to agree with the Board's assessment that the worker returned to his preaccident status in 1989. The pre-accident status of the worker's right knee was that it was not symptomatic. The medical information on file supports the conclusion that the worker's right knee never returned to its pre-accident asymptomatic status. … the worker underwent a physical examination on January 27, 2012, carried out by Dr. Manfred Harth, specialist in internal medicine. Dr. Harth prepared a detailed twelve page report on the worker's physical status and its relationship, if any, to his February 1988 accident status. … We note that, following the delivery of Dr. Harth's report, the Board's case manager referred the issue of the worker's entitlement to a Board medical consultant for a further opinion. The referring memo from the case manager to the medical consultant referred to Dr. Harth's report but recommended upholding the Board's previous decisions to deny the worker entitlement to a PD assessment in relation to the right knee, and asked for the medical consultant's opinion. The Board's medical consultant … did not address or refute Dr. Harth's conclusion that the worker's ongoing knee problems were either attributable to the 1988 accident or, alternatively, that the accident aggravated a previously asymptomatic condition.	M Crystal BM Young RW Briggs	• 4th • 2nd • WSIB referral to medical consultant presumed conclusion • (Entitlement) • (Medical consultant) • (Permanent impairment)
110.	888 16	22/Apr/2016	I find that the worker is entitled to LOE benefits from October 3, 2013 to April 21, 2014 minus any partial payments already made. I am persuaded that the worker was ordered	S Shime	• 5th • 1st • (ESRTW) • (Medical advice)

			to be off work by both her family doctor and her orthopedic surgeon. The worker was immobile and instructed not to weight bear. I also note that while the employer offered sedentary duties, the worker's doctors indicated that the worker's fracture had not healed and weight bearing was not appropriate.		• (Cooperation) • (Loss of earnings)
111.	1000 16	22/Apr/2016	It was therefore evident from the CAMH report that the worker did not fully recover from his compensable Psychotraumatic Disability, which was granted in Decision No. 1216/10. … As also noted from the Tribunal's decision in 2011, the worker also attended at least two psychiatrists, Dr. Asayesh, and Dr. Sirman. I noted the reporting from Dr. Sirman, which evidently began in 2007. The doctor has provided a raft of clinical notes from the regular sessions held with the worker over some 8 years, and into late 2015. From that reporting, it was evident that the worker remains with ongoing psychiatric difficulties that are work related. As the previous Vice-Chair found in Decision No. 1216/10, Dr. Sirman "…clearly regarded the workplace accident and resulting disability as relevant background factors".	AG Baker	• 16th • 1st • 9th • (Psychological/ mental health) • (Entitlement) • (Permanent impairment)
112.	1567 15	22/Apr/2016	It is also important to remember that the Board subsequently recognized that the worker's psychological impairment was severe enough that it provided him full LOE benefits from November 3, 2009 to February 24, 2011. In the absence of support and after participating in a rigid LMR plan, in our view, it is not surprising that the worker's psychological functioning had worsened by 2009. … In addition to his anxiety and depression and the barriers noted above, as set out in the 2007 LMR plan, the worker was noted as also suffering from a learning disorder, attention deficit disorder and dyslexia among other things … it does not appear that the Board considered these learning disabilities in finding the worker was capable of completing the intensive academic retraining required by his LMR plan. In our view, these pre-existing non-compensable conditions should have garnered	J Dimovski S T Sahay G Carlino	• WSIB failed to consider non-compensable learning disabilities • 18th • (Psychological/ mental health) • (Unsafe)

			more consideration from the Board during the preparation of the worker's original plan as part of the worker's vocational characteristics or disabilities that might require accommodation.		
113.	914 16	25/Apr/2016	Having considered the evidence, I find that the worker is entitled to benefits for a psychotraumatic disability. The reason for this conclusion is that there are several medical reports which indicate that the worker suffers from a psychiatric condition or symptoms which are directly attributable to the accident at work. Conversely, there is no medical report indicating that the worker's psychiatric condition is unrelated to the workplace accident.	B Kalvin	• 1st • (Psychological/ mental health)
114.	947 16	25/Apr/2016	The worker required level CLB 3/4 for the parking lot attendant SO. As noted by Mr. Lamont, however, there is no evidence that the worker attained CLB level 3/4 in his English and literacy skills … the worker only appears to have reached benchmarks 1 and 2 in reading, writing and speaking. … The employment placement services provider noted that the worker had difficulty understanding and replying to interview questions. … He was unable to answer traditional interview questions without assistance from the placement specialist. The employment placement services provider also indicated that through job development efforts, it was discovered that some lot attendant and car jockey positions require strong communication and customer service skills especially when picking up and dropping off customers and answering any questions they may have. As such, it was difficult to market the worker to potential employers.	S Martel ST Sahay M Ferrari	• 3rd • (Deeming) • (WT/LMR) • (ESL)
115.	942 16	25/Apr/2016	Therefore, the Panel finds that the evidence does not support that pre-existing degenerative changes in his spine have overwhelmed the causal role of the workplace injury in his ongoing back condition. The next factual matter to consider is whether the workplace injury	R McCutcheon M Christie K Hoskin	• 4th • 9th • 19th • 1st • (REC) • (Entitlement)

			caused an ongoing impairment. As noted above, the REC report offered a prognosis indicating that the worker had partially recovered, and a full recovery was expected in six weeks. Prognostications are not necessarily accurate predictions, however, and in this case, the worker was not referred back to the REC to re-assess his actual condition. Subsequent medical evidence shows that the worker had ongoing symptoms and treatment after August 27, 2012		• (Degenerative)
116.	823 16	26/Apr/2016	The reports from Dr. Head and from CAMH were produced almost two years following the date of accident. The report from Dr. Waxman was produced over three years from the date of accident. These reports from psychologists and psychiatrists indicate that a continuing injury related impairment continued to exist a long time after the initial accident. This information is confirmed in the reporting of the worker's family doctor. While it is possible that the reports of Mr. Ali might offer some evidence that the worker had achieved maximum medical recovery without significant psychological impairment, that conclusion would be out of keeping with the opinions that have been provided by the treating psychologist, by the CAMH psychologist and psychiatrist, by the worker's family doctor and by the social worker.	G Dee	• 1st • 9th • (Psychological/ mental health) • (Entitlement)
117.	70 16	27/Apr/2016	At the outset, I agree with the worker's representative that the job of janitor/caretaker is unrealistic and unsuitable. The worker was employed as a custodian at the time of the accident and the worker's own employer – a large institutional employer – was not able to accommodate his restrictions following the injury. It is both unrealistic and illogical to find that the worker had any prospect of securing suitable employment as a janitor/caretaker with a different employer that would accommodate his shoulder injury, particularly after it had deteriorated. I accept the worker's testimony that this work involved handling heavy machinery and other repetitive duties that are not suitable for his right shoulder condition. I	R McCutcheon	• 3rd • 19th • (Deeming) • (Employability) • (Return to work)

			will turn, then, to the physical suitability of the remaining assortment of jobs that the WSIB deemed to be suitable for this worker. It does not appear that the WSIB obtained updated information about these occupations, such as recent job postings, which would show the availability of these jobs and their associated qualifications and requirements.		
118.	754 16	27/Apr/2016	Mr. Hunter's main argument in this case is that the use of "75% of normal" to rate the worker's degree of impairment, in the absence of any ROM findings in Dr. Muller's reports after the accident, is not appropriate. I agree. OPM Document No. 18-05-03, quoted above, indicates that, where the existing health care information is insufficient to determine the degree of permanent impairment, the Board seeks additional information from the worker's health care providers; if the information is still insufficient, the Board requires the worker to attend a NEL medical assessment conducted by a roster physician…I therefore am of the view that, in the absence of complete and reliable ROM findings in the time period around February 3, 2011 or thereafter, the worker is entitled to a NEL assessment by a NEL roster physician.	S Peckover	• 22nd • 19th • 8th • (NEL rating)
119.	1007 16	27/Apr/2016	In my view, the totality of evidence points to the inescapable conclusion that the worker's workplace accident of April 25, 2011 to his left leg/knee triggered the later onset of a symptomatic low back impairment that had become "chronic" by 2012. … There is no evidence to suggest that this impairment of the worker's low back was caused by any event or factor other than as a sequela of the workplace accident. In that vein, the worker's degenerative disc disease was not a significant factor in the condition of his low back and this dovetails with the fact that his low back only became symptomatic after the workplace accident as a sequela flowing from a traumatic left leg/knee injury. … This means that the Board has already determined that the worker sustained a psychotraumatic disability from his workplace accident on April 25, 2011. The	L Petrykowski	• 12th • 4th • 9th • 1st • (Psychological/ mental health) • (Degenerative) • (Entitlement)

			Board has also determined, however, that the worker's compensable psychological condition was only temporary in nature. … There is no evidence of substance that the worker does not suffer from a compensable psychological condition on an ongoing basis.		
120.	1016 16	27/Apr/2016	His treating health care practitioner, a practical nurse, authorized him to be off work on May 7 and 8, 2013 to recover. His treating physician concurred with the nurse practitioner and provided an opinion that the flare-up resulted from working repetitively above his shoulder against his previous restrictions. … The reports of Dr. Goldfarb make clear that these duties were not suitable for the worker's compensable restrictions. As a result, the worker suffered a flare-up that resulted in his being off work to recover from the flare-up on May 7 and 8, 2013. No modified duties would have been suitable for the worker on these two days, while the worker recovered from the flare-up. … The worker met the requirements of section 43 of the WSIA and OPM Document No. 18-03-02 for entitlement to full LOE benefits on the two days he was off work, on May 7 and 8, 2013.	L Gehrke	• 5th • 8th • 1st • (Cooperation) • (ESRTW) • (Loss of earnings) • (Medical advice)
121.	1012 16	27/Apr/2016	As the employer so aptly indicated, the worker was very proactive in providing the Board with notice of the change in his medications. It would have been helpful if the worker had been told, up front, that this medication was not covered in the Board's formulary, and therefore, it would never be covered. However, it was not until after the worker had jumped through a number of hoops, and proactively followed up with the Board on a number of occasions, that he was told that the medication was not in the Board's formulary, and therefore would not be covered. I therefore find, given the unusual circumstances of this request, that the worker is entitled to reimbursement of the $242.30 which he paid for the medication Vimovo.	S Peckover	• WSIB decision procedurally unfair • (Health care)
122.	313 16	28/Apr/2016	In summary, the medical evidence supports a	K Iima	• 23rd

			finding that the early degenerative changes shown in the worker's x-ray(s) were an underlying, asymptomatic, pre-existing condition: the worker had been able to perform his regular job duties without medical precautions or restrictions, and there was no indication that he had lost time from work due to his pre-existing condition. In the absence of evidence that the pre-existing condition had resulted in periods of impairment or illness requiring health care or caused a disruption in the worker's employment, I find that this condition was not a pre-existing impairment within the meaning of Board policy. Consequently, there is no basis upon which the NEL award may be reduced pursuant to OPM Document No. 18-05-05.		• 8th • (NEL rating)
123.	1889 15	29/Apr/2016	The Adjudicative Advice Document, "Recognizing Time to Heal – Assessing Timely and Safe Return to Work", is not binding on me. However, it is persuasive as it sets out best practices or approaches to determining when a worker can or should return to work. …I find that the modified duties offered to the worker on July 22, 2011 were not suitable within the meaning of WSIB policy, in that those duties would have likely resulted in re-injury of the right foot. In addition, those duties were not consistent with the worker's functional limitations, as set out by her family doctor in his July 26, 2011 report.	IR Mackenzie	• 5th • (Unsafe) • (Medical advice) • (Loss of earnings)
124.	92 16	29/Apr/2016	The Panel has determined that the nature and seriousness of the injury completely prevents the worker from returning to any type of work. The majority of the medical evidence has been consistent in showing that the worker was not able to return to any type of work, given her medical and psychological conditions. The only contrary opinion is from Dr. Bail in September of 2010.We have not relied on this report for two reasons. Firstly, Dr. Bail concludes that the worker does not have a psychiatric disability, when the WSIB has accepted that the worker does have a psychotraumatic disability.	IR Mackenzie J Blogg G Carlino	• 2nd (all reliable) • WSIB relied on discredited medical consultant • (Employability) • (Psychological/ mental health) • (Medical consultant)

CASE	DECISION NUMBER	DATE	QUOTES (DIRECT)	PANEL/VC	COMMENTS
125.	663 16	04/May/2014	The Panel also notes that the WT plan focused on cashier training but that no specific job within the SO of Support Service Occupations was ever identified nor was the worker trained for any such vocation.	E Kosmidis M Christie A Grande	• 18th • (RTW/LMR)
126.	923 16	02/May/2016	The ARO referred to prior problems with the worker's left shoulder as a reason for not granting entitlement to a NEL award. We rely, however, on Dr. McGillivray's March 19, 2012 report that the worker had a tendinopathy diagnosis in 2006, but that it quickly settled down and the worker did not seek any further treatment for five years prior to her 2010 work injury. We are satisfied that the worker's condition in 2012 was not caused by her earlier problems.	L Bradbury J Blogg G Carlino	• 4th • (Permanent impairment)
127.	2728 15	02/May/2016	The NEL Clinical Specialist recorded that maximum inversion was 30° and maximum eversion was 20°. I was unable to find those figures in Dr. Levy's report. In these circumstances, the worker's NEL award should be redetermined following an examination by a physician. … Dr. Graham reported, on June 11, 2011, that the worker's right calf was partially recovered and no further recovery was expected. … Dr. Levy reported that there was "atrophy over the lateral head of the right gastrocnemius muscle." … the NEL Clinical Specialist did not rate the worker's right calf atrophy and did not consider the low grade partial tear of the distal fibers in the lateral gastrocnemius muscle which were revealed in the June 25, 2012 MRI. … With respect, I disagree. The worker clearly has a physical abnormality i.e., the atrophied gastrocnemius muscle. He also has a functional abnormality as is indicated by the permanent restriction of no running or climbing ladders.	S Sutherland	• 8th • 10th • 22nd • 19th • (NEL rating)

128.	694 16	02/May/2016	The Panel is aware that the Board concluded that the worker currently had non-compensable psychological/psychiatric conditions that included a history of onset dating back to when the worker was a young child. The Panel finds that this conclusion is not supported by the evidence on file, and we are aware of no medical reporting that indicates that the worker sought or required psychiatric treatment prior to July of 2004. The Panel concludes that the worker's current and ongoing psychological and psychiatric conditions developed as a result of the worker's injuries and as a reaction to the extended disability and the treatment processes, including the multiple surgeries.	J Noble BM Young JA Crocker	• 12th • 1st • 4th • (Psychological/ mental health)
129.	2475 15	05/May/2016	WT Service Provider and the WT Case Manager disregarded the worker's longstanding and ongoing symptoms of dizziness or headache because there were no associated restrictions. The worker was not provided with any such support during his work-hardening period and, not surprisingly, was unable to continue despite his efforts. We therefore conclude that the SO of light assembly is not suitable for the worker given his physical condition and the absence of an individualized treatment program as recommended by the FRP.	J Frenschkowski MP Trudeau M Ferrari	• 18th • (RTW) • (Health care)
130.	1164 16	06/May/2016	Rather, as will be further noted below, it was evident that he was not physically able to return to work until the end of August 2011. In coming to that finding, I noted that the decision of the Board in August 2011 to deny LOE benefits only considered the hip contusion and did not consider the worker's full compensable condition, which was subsequently ruled to include his low back. I also note that there were no other medical reports on file that opposed the recommendations of the worker's treating doctor and therapist.	AG Baker	• 1st • 5th • 17th • (RTW) • (Medical advice) • (Loss of earnings)
131.	71 16	06/May/2016	This worker, now aged 63 … suffered severe electrical burns which led to traumatic leg amputations below the knee on both legs and a left arm amputation below the elbow. … I find	R McCutcheon	• 8th • (Seriously injured worker)

			that it is likely that the workplace injury and the worker's prosthetic limbs contributed to his inability to control his balance and prevent himself from falling. …This gives rise to an interpretation issue regarding the example of a worker with an artificial leg who "slips while walking." The ARO relied upon this provision in denying the worker's appeal. In my view, this example in the policy ought to be interpreted in a manner that is consistent with the general principle that workers sustaining secondary conditions that are causally linked to the work-related injury are entitled to benefits to compensate for new injuries. … Otherwise, this provision would have a disproportionately negative impact on the workers with the most severe injuries, namely, amputations requiring prosthetic limbs.		• (Entitlement)
132.	236 16	09/May/2016	The issue in this appeal is whether the modified duties offered by the employer were safe and consistent with the worker's functional abilities. It is not in dispute that the worker required orthotics for safety boots, as these were prescribed and approved by the WSIB. It is also evident that the worker would have been required to wear safety boots at the worksite. …The WSIB did not approve the orthotics until August 10, 2011. … In the physiotherapist's report of July 11, 2011, it was noted that walking would increase the pain "very quickly." The Panel finds, on a balance of probabilities, that the modified duties and the working environment were not safe and in keeping with the worker's functional abilities.	IR Mackenzie MP Trudeau A Signoroni	• 5th • 1st • 18th • (RTW) • (Medical advice) • (Health care) • (Cooperation) • (Loss of earnings)
133.	1103 16	09/May/2016	In summary, it was not correct for the ARO and the employer to state that there was no evidence provided by the worker in this case. Quite the contrary, the worker had been providing evidence for many years and particularly over the years at issue. This is contemporary documentary evidence that is entitled to significant weight. I also found it to be persuasive evidence of significant damage to his clothing, which was never disputed by the Board, and for which he was always paid the maximum allowance under Board policy. Nor	AG Baker	• 12th • (Health care)

			was there any evidence questioning the worker's contemporaneous statements.		
134.	192 16	09/May/2016	In a letter to the worker dated March 13, 2013, a case manager acknowledged that as a result of his injury, the worker experienced a wage loss during this period…. In a letter dated January 28, 2013, a case manager advised the worker that "the total income noted on your notice of assessments from 2006 to 2011 may not reflect your actual earnings due to the nature of the industry where services can be paid in cash and for that reason, I am unable to consider partial LOE benefits since 2006." The worker testified that he did not receive cash for any work that he performed in this period and we found him to be credible in that he was direct, consistent, reasonable and forthright in his testimony. There is also no evidence that contradicts his testimony.	B Alexander E Tracey R Briggs	• 12th • (Loss of earnings)
135.	402 16	10/May/2016	The ARO interpreted this report as evidence that the worker had recovered with no impairment. We do not interpret the report as indicating such an opinion. Although Dr. Perrin indicates in the letter that his examination was normal, he also states that the worker was reporting severe ongoing pain, and notes that the MRI did show some bulging discs and a desiccated disc. The report is very brief and actually does not include a diagnosis. There is no statement that the worker has recovered or that he has no ongoing impairment. Dr. Perrin was asked to assess the worker from a neurological standpoint. In response, Dr. Perrin stated that there are no neurological findings and nothing that would warrant neurosurgical intervention. That is not, in our view, the same as stating that the worker has recovered. Moreover, we also interpret Dr. Perrin's April 10, 2012 letter in light of the medical reporting, both before and after that letter. That evidence does not suggest that the worker recovered.	K Jepson M Falcone JA Crocker	• 9th • (Entitlement)
136.	852 16	10/May/2016	The Panel finds that the SO of retail sales is suitable, but employment within this SO could	C Sand	• 18th • (RTW)

			only be obtained if the WT plan was properly completed. …The Panel concludes that if the worker had been provided with TOJ, her chances of securing employment would have been greater. The WT plan was not completed when it closed on September 28, 2012, and as such, the worker could not reasonably have been expected to find work without assistance at this juncture. As per Operational Policy Manual Document No. 18-03-06, the final 72 month review may be deferred if the worker is involved in a WT plan that is not completed. These services should not have been closed. The worker required further assistance to understand English and to be understood at the conclusion of her ESL training, and she needed the essential TOJ. Further, the worker was not reassessed at the completion of her upgrading efforts, as recommended.	M Christie F Ferrari	• (Deeming) • (ESL) • (WT/LMR)
137.	229 16	10/May/2016	Although the worker had a history of problems with his right shoulder, there is no evidence of significance of a right rotator cuff tear until the November 2011 ultrasound. The Board relied on the chronic tear diagnosis to deny the worker entitlement for a right rotator cuff tear which I find was a factual error. In light of Dr. Pysklywec's report as well as the Medical Discussion Paper on Shoulder Injury and Disability and the worker's description of the injuring process, I find that on a balance of probabilities, the worker sustained a right rotator cuff tear on October 21, 2011.	S Hodis	• 4th • 12th • (Entitlement)
138.	382 16	11/May/2016	Rather, the Board appears to have taken the position that any loss of earnings he experienced was the result of his decision not to accept work which the Board felt was suitable (i.e. the flagman job). …. the Case Manager accepted that "it would be reasonable that the worker would use a cane to safely ambulate" and further that "even without the cane, the ground being potentially rough and/or uneven could pose a safety issue given the worker's instability because of the radiculopathy". As the worker's representative indicated in her submissions, it is reasonable to suggest that if the flagman duties were	R Nairn	• 3rd • WSIB decision inconsistent with its own adjudication • (RTW) • (Unsafe) • (Loss of earnings) • (Cooperation)

			unsuitable in December 2009 they ought also to have been considered unsuitable in March 2009 given that the level of the worker's permanent impairment remained the same and he required the use of his cane on both occasions.		
139.	558 16	11/May/2016	I have determined that having already found in a previous final decision of the Board that was not appealed that the worker did not have a pre-accident right shoulder impairment, and having in fact granted the worker entitlement for the conditions that are set out in the January 16, 2011 MRI study, it is not open to the Board to subsequently characterize those findings as a pre-injury impairment and make a deduction from the worker's NEL award with respect to them.	ME McKenzie	• 23rd • 8th • WSIB decision inconsistent with its own adjudication • (NEL rating)
140.	555 16	12/May/2016	In my view, the position taken by the NCS and confirmed in the ARO decision cannot be upheld because it is inconsistent with the Act and Board policy. It holds the worker responsible for the delays occasioned by filing his objection and awaiting the ARO hearing and decision, the Board's implementation of the ARO's ruling and the NCS's rating of his permanent impairment. If upheld, it would result in a situation in which the worker is penalized for delays that are outside of his control with a reduced NEL award. Put another way, because the Board did not grant the worker's claim for NEL entitlement as of the date of MMR without the need for the matter to proceed to the Appeals Branch, there was no request made by the Board to ensure that right knee range of motion measurements were taken as of the MMR date. It cannot later be said that the worker is responsible for that failure.	ME McKenzie	• 8th • 10th • WSIB decision procedurally unfair • (NEL rating) • (Delay)
141.	930 16	16/May/2016	After reviewing the responses of the worker's treating physicians the Panel finds that there is considerable support for the worker's submission that his treating physicians agreed that the modified work he was performing exceeded his physical capabilities. … Dr.	JB Lang	• 5th • 18th • 2nd • (RTW) • (Cooperation)

			Alexander clearly stated on March 20, 2013 that lifting should be restricted to a light level. This is in contrast to the Board's position that there were no restrictions with respect to lifting when it determined suitable work. The Panel also notes that Dr. Alexander repeatedly recommended that the worker be provided with a Functional Abilities Evaluation to determine the level of work he could perform. Mr. Kedar, the occupational therapist also recommended that such an evaluation be performed. … The Panel also notes that the Board did not act upon the concerns raised by the Occupational Therapist in that it did not provide the Functional Abilities Evaluation that he recommended.		• (Loss of earnings)
142.	221 16	16/May/2016	The ARO denied the worker a review of his final LOE benefit on the basis that the worker did not request a review in the 24 month period following the NEL redetermination. Board OPM Document No. 18-03-06 clearly states that the Board "must" conduct a review of the locked in benefit before the review opportunity ceases. It does not require the worker to request a review. In other words, the policy requires the Board to conduct a review within 24 months following the increase in the NEL award. In this case, the Board failed to do so. The worker should not be penalized for the Board's failure to do so.	S Hodis	• 8th • WSIB penalized worker for its own error • (Loss of earnings)
143.	1036 16	16/May/2016	Notwithstanding the unanimous opinions above, stating that the worker was unable to work or participate in retraining, the Board referred the worker for an LMR assessment on November 16, 2012…The Panel finds no reason to question the unanimous opinions of the worker's treating and assessing health care providers including Dr. Ferguson, Dr. Aleem, Dr. Ismail, Dr. Ally, Dr. Lad, Dr. Bender, Dr. Shnek, and Dr. Bacchiochi, all of whom opined that the worker was unable to work, due to his compensable psychological factors alone, from 2007 onward.	JE Smith	• 1st (unanimous) • 5th • (Employability) • (Psychological/ mental health) • (Loss of earnings) • (Deeming)
144.	392 16	17/May/2016	Accordingly, we find that the worker is entitled	M Crystal	• 23rd

			to a 40% NEL award for psychotraumatic disability. The 40% award is not subject to reduction due to pre-existing or otherwise noncompensable factors which we find probably did not make a significant contribution to his postaccident psychological status. …When the effect of the accident upon the worker's psychological status is compared to any ongoing effect of the non-compensable factors, we find that the significance of the accident overwhelms any effect which might be attributed to the non-compensable factors, and renders them insignificant in the overall context of the worker's accident claim.		• 8th • (NEL rating) • (Psychological/ mental health)
145.	1222 16	17/May/2016	The ARO decision does not refer to or rely upon several very supportive medical reports that indicate that the worker has a chronic pain condition that is totally disabling. I have read those reports and find no reason not to rely upon them.	G Dee	• 6th • (Chronic pain) • (Employability)
146.	1035 16	18/May/2016	I agree with Ms. Villeda that in denying the worker full LOE benefits from February 6, 2014 to March 7, 2014, the period of absence authorized by the worker's treating physician, the ARO failed to take into consideration the worker's post-traumatic psychological condition, which was in part responsible for her absence during the period in question, as noted in Dr. Abbud's authorization for her absence.	J Goldman	• 5th • (Psychological/ mental health) • (Medical advice) • (Cooperation) • (Loss of earnings)
147.	1192 16	18/May/2016	A number of Tribunal decisions have addressed the issue of the Board first determining a worker to be unemployable and then later reversing that decision as of the final lock-in date, resulting in considerable case law on the matter (see, for example, Decision Nos. 750/06, 2143/14, 2350/14, and 2385/15) … While the instant case can be distinguished in that the employer was never involved in the matter, the same analysis would apply to LMR or WT services. It can be argued that it is not appropriate to keep a worker in limbo for over four years regarding LMR services, once there has been a decision, that such would not be appropriate and employment was not feasible.	K Cooper	• 14th • 12th • (Employability) • (Loss of earnings) • (Lock in)

			Similar to the analysis in Decision No. 2189/14, the worker's condition in the instant case did not improve in the intervening period between Board decisions, and the evidence suggests that his employment prospects actually worsened		
148.	306 16	19/May/2016	In my view, the WT reporting on the Board's file makes it clear that the Board's chosen SO of Cashier was unsuitable for the worker. Assessments necessary to obtain the information outlined in the above Board policy were not conducted. There was no inquiry as to why the employer, a large post-secondary institution, was unable to accommodate a left shoulder injury. The employer's duty to accommodate to the point of undue hardship does not appear to have been considered by either the employer or the Board. Rather, the worker was expected to independently locate a direct placement with an employer willing to sponsor her in on-the-job training. Her limited ability to speak English was given no weight in selecting the SO.	ME McKenzie	• 3rd • 19th • WSIB failed to consider Human Rights Code obligations • (ESL) • (RTW/WT) • (Employability)
149.	1303 16	20/May/2016	There is little support for the proposition that the worker can work full-time hours as submitted by the employer and determined previously by the WSIB. The May 22, 2009 report from the psychologist with the London Health Sciences Centre, indicated doubt that the worker would be able to participate in classroom activities or a part-time job. A further evaluation at the Traumatic Stress Service Workplace Program at the London Health Sciences Centre in January 2011, resulted in opinions from a psychiatrist and a psychologist that the worker was likely unable to return to work.	G Dee	• 5th • 1st • (RTW) • (Employability) • (Psychological/ mental health)
150.	1069 16	24/May/2016	As I noted earlier, the Board terminated the worker's LOE payments based on a conclusion that she did not cooperate in a return to work plan. In my view, the facts show that the worker was cooperative with her employer. … Her doctor stated from the start, that she should not return to any form of work until March 15, 2014. This date was later revised to	Z Onen	• 5th • 12th • 1st • (RTW) • (Medical advice) • (Cooperation) • (Loss of earnings)

			March 17, 2014. There is essentially no evidence to support the conclusion that the worker could return to work prior to that date.		
151.	1108 16	30/May/2016	[The WSIB] continued to deny her ongoing entitlement to LOE benefits, based on the conclusion that the worker was not totally disabled. I note that this is not the test for entitlement to full LOE benefits. As articulated above, to establish entitlement to full LOE benefits, the evidence must demonstrate that worker was unable to earn income in any employment when her compensable injury, personal characteristics, and vocational profile are considered. As I find that the evidence does not support the conclusion that the worker failed to cooperate in the LMR process, to the best of her ability, in my view, there was no basis to discontinue her LOE benefits on this ground.	JE Smith	• 10th • (Loss of earnings) • (Cooperation)
152.	2416 15	31/May/2016	From the perspective of the worker's psychological condition, I am persuaded that the worker was not capable of performing the SEB of Customer Service Representative. While the worker and Dr. Browne demonstrated some degree of optimism that the worker might succeed in the WT program, this was conditioned on ongoing and supportive treatment that was to be monitored. While the worker did not commence retraining, it was medically determined contemporaneously at that time by both Dr. Borgono and Dr. Browne that his psychological condition had regressed. Consistent with the worker's testimony at the hearing of this matter, the medical recommendation of the two physicians was that he withdraw from the program. Even with ongoing psychological treatment, there was no evidence of substance that the worker's condition had improved sufficiently to allow successful WT participation.	W Sutton	• 1st • 5th • 12th • (RTW) • (Psychological/ mental health) • (Loss of earnings) • (Deeming)

CASE	DECISION NUMBER	DATE	QUOTES (DIRECT)	PANEL/VC	COMMENTS
153.	353 16	01/June/2016	On the whole, the medical evidence unequivocally supports that the worker's right shoulder injury developed within the temporal context of a work-related overcompensation and over-use of her right upper extremity due to the diminished medical and functional state of her left hand following the initial August 22, 2011 workplace injury. There is not a scintilla of evidence to suggest that some underlying, remote, or intervening cause accounted for the development of the worker's right shoulder pathology.	L Petrykowski	• 4th • 12th • 1st (unequivocal) • (Entitlement)
154.	462 16	01/June/2016	In making this finding I note that numerous previous Tribunal decisions have held that a pre-existing condition alone, that may or may not have required treatment, but does not disrupt employment, is not a sufficient condition to permit a reduction in NEL benefits. These decisions include No. 588/14, No. 607/14 and No 10/15.	B Alexander	• 23rd • 8th • (NEL rating)
155.	1398 161	01/June/2016	There is no evidence to support a conclusion that the worker's left knee impairment resolved as of November 15, 2012. …There is no medical evidence stating that this condition was a pre-existing condition. It is not clear how the Case Manager and ARO came to the conclusions that they did about this matter. A bursitis is an inflammation of a bursa. Given that the inflammation existed so soon after the accident and there is no evidence that it existed prior to the accident, I draw the opposite conclusion from that reached by the ARO and conclude that it was caused by the accident.	G Dee	• 12th • 9th • 4th • (Entitlement)
156.	1369 16	02/June/2016	The ARO found that the death of the worker's mother and the marriage break up were the main causes of his depression and thus denied entitlement for psychotraumatic disability. … I find that in addition to the contribution made	JE Smith	• 1st • (Psychological/ mental health)

			by the worker's ongoing pain and extended disablement, the other contributors to the worker's depression, noted by both Dr. Ng and Dr. Gilbert, and to which the worker testified, represent socioeconomic factors which are directly attributable to the worker's compensable low back injury. … Dr. Slyfield, in correspondence dated April 10, 2016, stated explicitly that the worker's "considerable pain and discomfort and inability to work and his social isolation" caused his "severe adjustment disorder with depression", and that he did not expect that the worker would "recover". I find this reporting by Dr. Slyfield provides additional evidence of a causal connection between the compensable injury and the worker's depression, and thus further supports his entitlement for psychotraumatic disability, and also supports the conclusion that the worker's compensable depression is permanent.		
157.	1292 16	02/June/2016	The worker was 51 years old at the time of the compensable injury. The documents before me establish the pre-accident knee symptoms required health care. They do not however indicate the bilateral knee condition had caused a disruption in employment. As indicated above, I have adopted the Tribunal jurisprudence in this matter. The Tribunal jurisprudence indicates both criteria must be met for there to be a pre-accident impairment. … Referring again to OPM Document No. 18-05-05, I note a moderate or major pre-existing impairment must be present before there is a reduction in the NEL rating	G McCaffrey	• 23rd • 8th • (NEL rating)
158.	892 16	03/June/2016	I have reviewed the recommendations of the Work Transition Specialist concerning the potential for the worker to work as a telemarketer. Nowhere in the documentation provided is there any indication that the worker's lack of academic qualifications was taken into consideration when stating that the worker was capable of performing this work. Nor is there any indication that the worker's psychological condition was taken into account. In finding that the work was physically suitable it was not discussed how the worker would	G Dee	• 12th • 3rd • (Deeming) • (Psychological/ mental health)

			perform any type of work on a computer while making calls which is likely to be expected in a telemarketing position. I find that the worker is not capable of working as a telemarketer.		
159.	531 15	06/June/2016	In this case, within about a year of the compensable accident, the Board (with the assistance of the LMR case worker) determined that this worker was unemployable given the combination of his compensable injuries and other personal and vocational characteristics. The Board determined that the worker ought to be granted full LOE benefits. Five years later (at the time of the worker's 60 month review) the Board's operating level decided to review the issue of the worker's employability. Despite the opinion of the WT Specialist that the worker (as was the case in 2006) would not benefit from WT assistance, the operating level continued to pursue the matter and arranged for video surveillance to be conducted. The results of this surveillance were used to support a conclusion that the worker had no ongoing impairment after October 2011. As noted above, I had the opportunity to review this surveillance evidence and I find it does not support the conclusions reached by the Board. The surveillance evidence is not inconsistent with a worker who has a permanent low back impairment. In 2006 the Board accepted that this worker was unemployable and granted full LOE benefits. I find that the preponderance of evidence supports the conclusion that after October 2011, the worker continued to experience the effects of his permanent back injury and remained unemployable. As such, his NEL award and ongoing LOE benefits ought not to have been terminated.	M Crystal	• 14th • 12th • 3rd • (Covert surveillance) • (Employability) • (Deeming) • (Lock-in)
160.	2625 15	08/June/2016	There is little, if any, evidence to suggest the worker ever returned to his pre-accident state after the September 17, 2010 accident. It appears arbitrary to propose that all of the worker's symptoms are now the result of the pre-existing condition, when that very condition was not a factor before September 17, 2010. Furthermore, the degenerative disc disease is described in the latest MRI as a mild	C MacAdam M Trudeau R Briggs	• 12th • 9th • 4th • (Entitlement) • (Degenerative) • (Permanent impairment)

			condition. In our view, it is not realistic that a condition described as "mild" would lead to lingering pain and symptoms in excess of five and one half years.		
161.	1313 16	08/June/2016	In a decision of August 18, 2014, the Case Manager determined that based on the assessment at the Regional Evaluation Centre (REC) on August 12, 2014, the worker would be fully recovered and fit to return to his regular duties by October 7, 2014. … The REC report of August 19, 2014, noted ongoing neck and low back pain. The musculoskeletal examination noted range of motion (ROM) deficits in both the cervical and lumbar spine. The REC confirmed that full functional recovery had not been achieved but "anticipated" a full functional recovery after eight weeks of active rehabilitation. The Panel finds that although a full recovery may have been anticipated, evidence on file establishes that the worker had an ongoing impairment in his neck and low back after October 7, 2014.	C Huras B Wheeler JA Crocker	• 9th • 1st • (REC) • (Entitlement) • (Permanent impairment)
162.	1240 16	08/June/2016	Clearly the worker's low back condition is not the result of normal degenerative changes which in the present case are considered "unremarkable," or mild, as noted on the diagnostic tests, but the result of constant heavy lifting and bending while performing her work. None of the worker's treating physicians finds the worker's symptoms to be incompatible with the fast paced, heavy, repetitive work she had performed for many years. As indicated in the medical reports noted above, the worker is advised to avoid the activities which aggravate her conditions or, if possible, change jobs.	J Goldman ADG Purdy RW Briggs	• 12th • 1st • 4th • (Entitlement) • (Degenerative)
163.	114 16	08/June/2016	The Board's determination to reverse entitlement was based on a finding that the worker's ongoing neck problems were due to degenerative changes rather than the compensable neck strain. In addressing that point, we first note the worker testified that prior to the fall of 2006 she had had no problems with her neck. We accept this	K Jepson ADG Purdy K Hoskin	• 13th • 4th • 2nd • (Medical consultant) • (Entitlement) • (Degenerative)

			testimony, in particular in light of the fact that we have the clinical notes of Dr. Grewal prior to the accident date and they do not reflect any neck problems prior to October 2006. There is also no other evidence of any pre-accident disability in the documentary record. We therefore find that the worker's neck was asymptomatic prior to her compensable disablement. In our view, this CT scan showed relatively modest degenerative changes in the cervical spine. Although the Board consultant Dr. Herrick opined that the degenerative changes shown in this CT scan (which he mistakenly refers to as an MRI) were the likely cause of the worker's neck pain, he does not further provide a medical explanation as to why he would conclude that these particular findings, with no significant spinal stenosis and no neurological impingement, would be the source of the worker's pain.		
164.	1373 16	09/June/2016	As a result of the Board's "NO SEB" determination, the Board paid the worker full LOE benefits, commencing in 2007. In April 2012, the Board conducted a review of the status of the worker's LMR plan and concluded that he was, in fact, capable of the Other Elemental Services occupation. In July 2012, the Board contacted the worker to offer work transition (WT) services. The worker expressed the view that he was not capable of participating in these services, due to his compensable and non-compensable conditions. The Board then reduced the worker's LOE benefits to the deemed SO of Other Elemental Services. …OPM Document No. 18-03-02 provides that an LOE benefit may be adjusted at any time prior to the final review for any material change or failure to report a material change, effective from the date the material change occurred. There was no material change in the worker's compensable and non-compensable conditions, or in any other relevant circumstances between the LMR assessment in 2007, which determined that there was no SO for the worker, and the downward adjustment of his LOE benefits in April 2012. …The final LOE review was conducted based upon the 2012 WT re-	L Gehrke B Wheeler K Hoskin	• 14th • 12th • 8th • (Cooperation) • (Employability) • (RTW) • (Lock in)

			assessment, which we have concluded reached a faulty conclusion. In our view, the 2007 LMR assessment was thorough and appropriately concluded that the worker was entitled to full LOE benefits because there was no suitable occupation for him, given all the relevant circumstances. There was no material change between the 2007 LMR assessment and final LOE review in 2012.		
165.	1428 16	09/June/2016	The ARO concluded that the worker's degenerative condition and radiculopathy was not related to the lower back strain in November 2008. Put succinctly, the ARO denied the worker a redetermination on the basis that his symptoms were associated with non-compensable conditions. In that regard, it was also noted that the worker had developed additional health issues, including bilateral shoulder pain and impingement, and bicipital irritation, unrelated to the low back condition. The Panel noted the worker's pre-existing and non-compensable difficulties. We also noted that the question to be addressed in this case is whether the worker's compensable injury has significantly deteriorated. We also noted the submissions on behalf of the worker, which also acknowledged the worker's degenerative changes, but noted that they were described as mild or early in the 2010 MRI results on file. The representative also noted the Board Medical reporting from Dr. Kanalec that found that the evidence did not show a significant pre-existing lower back condition, and related the worker's injury to the workplace accident. As such, the Panel did not accept that the work injury was unrelated to his ongoing difficulties, noting again that the Board awarded the worker an 18% NEL award for the low back.	AG Baker B Wheeler A Signoroni	• 4th • (NEL redetermination)
166.	1430 16	10/June/2016	The medical evidence as a whole supports that the worker's workplace accident was a significant contributing factor in the development of his post-accident psychological problems in 2010 through 2013. I accept Dr. Gouws' repeated psychological opinion that the worker sustained a "drastic decline in his emotional and psychological functioning since	L Petrykowski	• 1st • 5th • (Psychological/ mental health) • (RTW) • (Loss of earnings) • (Entitlement)

			his accident" and that it was "likely his emotional difficulties are directly related to the compensable accident and resulting sequelae." The worker's psychopathology in 2010 was clearly attributable to work-related factors, namely the emotional reaction that he experienced when no longer being able to return to physically-demanding employment and the extended disablement that he experienced thereafter. While the worker had co-existing and pre-existing stressors, I find them to be of minor significance in the development of his post-accident psychological condition. …Given my earlier synopsis of the medical evidence, especially from a psychological perspective, I find on a balance of probabilities that the nature and seriousness of the worker's compensable injuries prevented him from safely engaging in any type of work between March 13, 2012 and April 10, 2013. The worker did not have medical clearance to re-integrate into any type of work over this period, especially since his compensable psychological/emotional state was unstable.		• (Unsafe)
167.	1087 16	10/June/2016	The Panel finds it significant that both before and after this WT planning period, the preponderance of medical evidence did not suggest that the worker's multi-faceted compensable impairments affecting his left eye, headaches, and psychological state had resolved. This is the reason the worker was awarded a combined 53% NEL award for those permanent impairments. The suggestion by the Board's operating level and WT specialist in 2011 that the worker's compensable condition had resolved is without foundation. It was based in part on the former's review of surveillance video evidence from 2007. In the Panel's view, the surveillance video evidence obtained by the Board in 2007 sheds no probative light on whether the worker was still impaired by his compensable injuries in 2011, when WT planning was being considered….The Board felt in 2011 that surveillance evidence from 2007, showing that the worker could walk and park a vehicle in the general vicinity of a construction work-site, supported the find that he could return to heavy equipment operation.	L Petrykowski M Falcone G Carlino	• 3rd • 2nd • 12th • 9th • (Covert surveillance) • (Entitlement)

			However, the Panel finds it significant that there is no evidence to suggest that the worker worked with heavy equipment since the time of his traumatic workplace accident.		
168.	1133 16	13/June/2016	I find it significant that the worker was not medically authorized to use his dominant right hand in the workplace as of June 5, 2012.The employer did have modified work available to the worker of a clerical nature involving "answering the phone, filing, faxing, photocopying, shredding, helping organize our paperwork". I find that this type of work was not suitable for the worker as it was not safe or within his functional abilities. It would not have been viable for the worker to answer phones, file documents, use a fax machine, photocopy documents, operate a shredding machine, and organize paperwork by only using his functioning non-dominant left hand. These types of activities require bilateral hand manipulation to some degree, thus posing a medical risk to the worker if he were attempting to perform such activities. Dr. Findlay also directed on June 5, 2012 that the worker's right hand be elevated in the workplace yet the employer did not specifically accommodate that restriction.	L Petrykowski	• 5th • 1st • (Unsafe) • (ESRTW) • (Medical advice) • (Cooperation) • (Loss of earnings)
169.	1166 16	13/June/2016	I have found the worker's condition shows deterioration due to loss of range of motion as well as the presence of progressively worsening leg symptoms. The ARO decision under appeal is somewhat unclear in certain respects, but there appears to be at least an implicit finding that although the worker does have leg symptoms these are due to non-compensable age-related degenerative changes. … there is no evidence that the worker's back was symptomatic prior to the compensable accident. He was relatively young (37 years of age) when the accident occurred. … there is no medical opinion in evidence concluding that the worker's leg problems are solely or substantially the result of age-related degenerative alone, nor is there any evidence of a separate injury that might be the cause of the worker's leg symptoms. … there is no medical	K Jepson	• 4th • 1st • 12th • (Entitlement) • (Degenerative)

			opinion concluding that the leg symptoms are due to some other cause unrelated to the worker's low back injury.		
170.	1198 16	14/June/2016	Clearly, the worker did her best to mitigate the loss of her earnings from the work-related injury. In short, the worker did everything that Board could have required her to have done. Pursuant to OPM document No. 18-03-02, the worker did not choose to work fewer hours or to earn less than what she could have earned in the SO. Rather, her compensable condition necessitated the various changes and interruptions to her earnings which occurred. Thus, the worker's loss of earnings were "resulting from the work-related injury", again using the wording in the policy. Accordingly the worker should receive LOE benefits for such loss of earnings. Accordingly, in my view, the only result consistent with OPM document No. 18-03-02, as well as with the merits and justice of this matter (if necessary to refer to that over-arching principle), is to provide the worker with LOE benefits for all periods of time from November 27, 2012 until June 23, 2015 when the worker began her new, satisfactory full-time employment.	J Josefo	• 3rd • 8th • (Cooperation) • (Loss of earnings)
171.	1291 16	14/June/2016	He also noted that the ARO and the Case Manager both had denied the physiotherapy request because there was no indication of deterioration below the worker's PD level. … [citing Decision No. 2226/00] I agree with the worker's representative that the appropriate approach both under the Act and the Board's policy is to allow entitlement for health care treatment where such treatment is made necessary as a result of the injury. Neither the Act nor the Board's policy make a distinction which would allow for the denial of entitlement for health care treatment that is necessary for maintenance as opposed to recovery	S Peckover	• 8th • 10th • 21st • (Health care)
172.	514 16	14/June/2016	These are the conditions and symptoms which were the basis for the Board's determination that the worker was entitled to full LOE benefits in January 2006. They are the	M Crystal B Davis	• 14th • 12th • 11th • (Employability)

			conditions that were the basis of the Board's statement in its correspondence, dated April 27, 2009 the worker "would not likely benefit from LMR services" and "will continue to experience a full wage loss." There is no persuasive evidence before us that indicates that the worker's condition improved significantly after January 2006. The Board file does not make clear why it was concluded that, based on her medical information, the worker was incapable of employment from 2006 to 2009, but that the worker became a suitable candidate for retraining in 2010. We conclude that the worker's status did not improve in 2010, and that she is entitled to full LOE benefits from January 2006, when the Board determined that she was entitled to full LOE benefits, until she reaches age 65. The worker's entitlement to full LOE benefits from 2010, and ongoing, is based on the same medical conditions, arising from her work injury, which were the basis of her entitlement to full LOE benefits from 2006 to 2010, as awarded by the Board.	M Ferrari	• (Loss of earnings) • (Deeming)
173.	753 16	15/June/2016	For the foregoing reasons, I find the evidence before me establishes that the worker cooperated to the best of her ability, in all aspects of LMR offered, to her detriment in 2008, and all health care measures recommended. I find the evidence before me, including the opinions of numerous health care professionals, as well as the Board's WT Specialist, overwhelmingly supports that the worker was unable to participate in LMR, or return to any employment, by December 2011, when her benefits were reduced. There was therefore no basis to reduce her LOE benefits, either from December 2, 2011, or at the final review on April 20, 2011.	JE Smith	• 1st (overwhelming) • 3rd • 5th • (LMR/WT) (Cooperation) • (LOE)
174.	2081 12	15/June/2016	While the worker was provided with a lengthy LMR plan to upgrade his English, he never made significant improvements. The vocational consultant indicated that his failure to improve was "not for the lack of the worker trying." In September 2009, the vocational consultant opined that the worker would have difficulty	S Martel M Lipton C Salama	• 14th • 3rd • 18th • (ESL) • (Deeming) • (LOE) • (Employability)

			securing an entry-level employment position due to his low functional English skills. The Board initially agreed with her opinion and found the worker to be unemployable and entitled to full LOE benefits to age 65. On further review in May 2010, however, the Board decided to refer the worker back to LMR for a direct-entry SEB. While the worker's English language skills had been found to be insufficient for employment in September 2009, the worker was not provided with any further language training in 2010. The recommended nine-week retail sales program was also not approved by the Board. The worker's LMR program was limited to job search and a placement where the worker testified that he did very little. The worker had no cashier or other customer service experience and was provided with no formal training as part of his new LMR plan. By December 2010, the worker was 55 years old, with limited English skills, limited transferable skills and no employment experience in retail sales. Since immigrating to Canada, the worker's employment experience was limited to manual labour, which he was no longer physically able to perform.		• (LMR/ WT)
175.	1359 16	15/June/2016	There was no evidence to suggest that the pre-existing osteophyte and mild degenerative change played any significant role in the rotator cuff tear that resulted from the compensable fall. I find that the worker's pre-existing impairment was a minor impairment and thus there should be no reduction to the worker's 23% NEL for her right shoulder	S Darvish	• 23rd • (NEL rating)
176.	1437/16	16/June/2016	In her note dated July 21, 2011, and in the Functional Abilities Form dated August 5, 2011, Dr. Tarasiewicz indicated that the worker was not able to return to work, and authorized him off work. …The Panel has concluded that the worker's left eye condition was precarious following the workplace accident on July 19, 2011. The worker was in danger of infection and possible permanent loss of vision in his left eye. Great care had to be taken to protect the eye from any foreign particles. Although the office to which the worker was assigned was	J Goldman J Blogg C Salama	• 5th • 1st • (Unsafe) • (LOE) • (Medical advice) • (Cooperation)

			cool and free of fumes and smoke, the journey to and from work was potentially dangerous during this vulnerable period in the worker's recovery.		
177.	1062 16	16/June/2016	While is it true that the worker injured his left forearm, that does not mean the worker whole person needs are irrelevant nor does it mean that modified duties that cause pain to a noncompensable body part are suitable. … It is not, in my view, reasonable to suggest that because the worker's right shoulder was not the subject of a WSIB claim then it is acceptable for pain to be caused to that right shoulder as a result of modified duties. In a Health Professional's Report dated October 4, 2012, Dr. Fiorini, the worker's family physician, states that the worker cannot perform modified duties in a freezer because the coldness caused "severe pain" in the worker's right shoulder. Dr. Fiorini confirmed that the worker was able to work modified duties provided they were not in a freezer. However, the most compelling evidence in support of the worker's claim and the evidence on which I base my decision is the Health Professional's Report dated October 16, 2012 and submitted by Dr. Schlosser. In this report, Dr. Schlosser states that the worker has "significant cold sensitivity from nerve injury – recommend avoid cold exposure."	CL Dempsey	• 5th • 1st • (Unsafe) • (ESRTW) • (Medical advice)
178.	1064 16	16/June/2016	The ARO concluded that the worker was fit for modified duties as of August 26, 2013, with the benefit of a "reasonable recovery period" between August 22 and August 26, 2013. The Panel found no evidence of substance that the worker was fit for modified duties on August 26, 2013, but instead finds that the worker's family physician supported that the worker was unable to perform any work until September 9, 2013.	P Allen B Wheeler M Ferrari	• 5th • 1st • 12th • (ESRTW) • (LOE) • (Medical advice) • (Medical advice)
179.	363 16	16/June/2016	In the context of having determined that the worker has entitlement for permanent low back and right lower leg impairments, I find that he is precluded from earning income from any	JE Smith	• 1st (unanimous) • 5th • (RTW)

			employment as a result of his compensable injuries alone. In arriving at this conclusion, I note that the worker's treating physicians were unanimously of the same view that he could not return to any employment beyond November 2012. Dr. Salyani stated so explicitly in the November 1, 2012 correspondence cited above.		• (LOE)
180.	810 14	16/June/2016	On December 21, 2010 the Case Manager determined that the work that the employer was offering was suitable. This was prior to the return to work specialist actually visiting the workplace to observe the worker's work duties. … In reviewing the evidence I have referred to above I conclude that the employer did not have an established return to work program. There was a delay in initiating any return to work initiatives and at no point in the return to work process was there ever a formal written job description. The documentation from the manager that is made to appear as though it was written contemporaneously prior to the worker's dismissal is written in the past tense and was almost certainly created at some point following the worker's dismissal and contains no explanation of why, if the worker's absence was of concern to the employer, that the manager did not call the worker. The scurrilous documentation that is allegedly from co-workers appears likely to be falsely dated. It also appears to be solicited by the employer's manager and clearly demonstrates hostility to the worker during the return to work process. Much if not most of the content of the letters is not directed to the worker's effort in post-accident employment but instead is dedicated to general character attacks on the worker. Nowhere in this documentation is it explained how a worker of such allegedly poor character was able to work for 10 years prior to her accident without being dismissed by the accident employer. The presentation of such anonymous, disparaging, irrelevant and quite possibly false information to the WSIB by the employer in support of its position speaks volumes about the workplace environment that	G Dee	• 3rd • 19th • WSIB preferred obviously unreliable employer evidence • (ESRTW) • (LOE)

			the worker was employed in.		
181.	569 16	16/June/2016	We accept the worker's testimony, supported by his treating physicians, that he was unable to continue in the LMR program due to his physical pain. When we add to that the opinions of Dr. Gembora and Dr. Radziuk that the worker was unemployable due to his severe depression alone, we conclude that the worker was and is totally impaired by the combination of his back disability (including accompanying neurological symptoms) and his depression. That conclusion is further bolstered by the opinion of Dr. Csordas, who assessed the worker's condition from both organic and non-organic impairments and concluded that the worker was not able to continue in the LMR program. It is further supported by the fact that the worker made genuine and reasonably extensive efforts in retraining (from September 2005 through to September 2009) but could not sustain these; the worker's inability to sustain a regular school program, even with accommodations, further underscores the barriers he would face in attempting to obtain employment. Finally, we note that there is no contrary medical opinion to those expressed by Dr. Csordas, Dr. Gembora, and Dr. Radziuk.	K Jepson BM Young M Ferrari	• 1st • 5th • (Psychological/ mental health) • (Employability) • (LMR/WT)
182.	584 16	16/June/2016	The practitioners treating the worker's psychological disability have all provided opinions that the worker's psychotraumatic disability is significant enough that his psychological condition alone would make the worker a poor candidate for employment: Dr. Rankine, Dr. Kiraly, and Dr. Gilani all provided opinions that the worker was not likely to be employable. These opinions emphasized the reciprocal relationship between the worker's pain and his psychological response to that pain. In addition, the same medical reporting, as well as the worker's testimony, confirm that impatience and frustration when dealing with people is a characteristic of the worker's psychotraumatic disability. This is a characteristic that in our view would be a significant barrier to many types of	K Jepson BM Young M Ferrari	• 1st • 5th • (Psychological/ mental health) • (Employability) • (LMR/WT) • (Deeming) • (LOE)

			employment, again including Retail Sales Clerk.		
183.	1511 13	17/June/2016	I also note that while the Board is entitled to review its prior decisions, Tribunal jurisprudence has addressed circumstances in which a worker is granted benefits, only to find some years later that these benefits have been rescinded. … I note the following excerpt from Decision No. 2350/142 , in which the Vice-Chair stated: "As stated in other Tribunal decisions, it seems counterintuitive to find that a worker would be incapable of securing employment in 2008, but with no improvement in the overall condition, be found capable in 2012. Prior decisions have questioned what length of time is reasonable to leave a worker in "limbo," and then reach a radically different conclusion as to employability at a later date. … It can be argued that it is not appropriate to keep a worker in limbo for over three years regarding LMR services once there has been a decision that such would not be appropriate and employment was not feasible…." I concur in, and adopt, the reasoning of the Vice-Chair in Decision No. 2350/14 and apply it to the instant case. In this appeal, I cannot identify any evidence of substance that the Board's 2006 decision was wrong in finding that the worker was incapable of participating in the LMR program and to grant her full LOE benefits.	W Sutton	• 14th • 12th • (Employability) • (Deeming) • (LOE)
184.	755 16	17/June/2016	As a review of the LMR/WT reporting on file suggests, during the initial years after the compensable accident, the Board was unable to even identify a SEB/SO for this worker given his various personal/vocational characteristics. It was not until approximately 2013 that the Board was able to identify a SO of light assembly. In the psycho-vocational assessment that was conducted by Dr. Zakzanis in January 2013 the following "potential obstacles to employment success" were noted: "Test results indicate a borderline learning ability (…) as such, learning new material may be challenging for him and he would likely not progress at an average rate. Additionally [the worker] struggles with pain and suffers from depression for which he relies on a significant amount of	R Nairn	• 3rd • 5th • 1st • (Employability) • (Deeming) • (LOE) • (WT/LMR)

			medication. When presenting himself to employers, [the worker] relies on a walker and a cane for mobility. [The worker's] driver's license is currently suspended reportedly for medical reasons. Finally, he does not have a varied range of employment skills or experience, having worked in a foundry and as a sewer only. …In a report dated February 3, 2012, Dr. M. Davidson (psychologist) from CAMH noted that "the prognosis is poor for return to any kind of work". In his report of March 28, 2013, Dr. Dhaliwal noted: I reviewed the chart. There is not a single note revealing any symptom which will help me to say he can work.		
185.	1442 16	17/June/2016	There is no medical opinion in evidence indicating that there is alternate, non-compensable cause for the worker's June 2012 back problems. A Board adjudicator stated that Dr. Bates, who saw the worker on June 12, 2012 in substitute for the worker's family doctor, diagnosed facet joint syndrome (in fact Dr. Bates' diagnosis was lumbar facet syndrome). The adjudicator stated that his was a "non-compensable diagnosis" but referred to no medical support for that conclusion. Dr. Bates was substituting for the worker's regular family doctor and saw the worker only once. No subsequent medical reporting repeats the diagnosis, including subsequent reporting from Dr. Bendheim. … Finally, to the extent that the adjudicator may have been implying that the worker's back pain is due to a degenerative condition of any kind, there is no medical opinion to that effect.	K Jepson BM Young JA Crocker	• 1st • 12th • 4th • (Degenerative) • (Entitlement)
186.	988 16	20/June/2016	In my view, the evidence available on the Board's file is inadequate … In my view, a plain reading of the RSI Adjudicative Advice Document indicates that it was intended for use when ROM testing provides normal findings. It was not intended to replace a NEL medical assessment if one is needed in order to acquire the necessary information (including ROM measurements) to apply the steps contained in the Guides. In this case, the materials available suggest that careful ROM	ME McKenzie	• 22nd • 19th • (NEL rating)

			measurements will provide the required information, since the Altum report states that "all of [the worker's hand] measurements are very poor"….where the worker's NEL award cannot be accurately rated in the absence of a full NEL medical assessment, such an assessment is required. In my view, the present appeal presents such a situation.		
187.	1532 16	21/June/2016	The worker's request for psychological entitlement was denied in the December 16, 2013 Appeals Resolution Officer decision … for the following reasons: "Further, approximately five months prior to the work incident under this claim that has been accepted, the worker experienced personal issues (marital discord), personal bankruptcy, the sale of his home, suspended driver's licence, incarceration, all of which predated the workplace injury under this claim of September 5, 2006. The record shows the worker had a history of depressive illness following the 1998 motor vehicle accident that required medication and various other events that predated the worker's injury. These issues, in my view, are more likely the cause of the emergence of the emotional issues." This conclusion that was reached by the ARO is however contradicted by the opinions of all the three health care professionals who have assessed or treated the worker and expressed an opinion on the cause of his post-accident psychological impairment. All three of these health care professionals were aware of the worker's prior difficulties of depression . …Dr. Y. Kwamie, has a detailed understanding of the worker's circumstances. The doctor's report of April 20, 2013 contains the following statement: "[The worker] has been diagnosed and is being treated for Major Depression and based upon my knowledge and understanding of [the worker's] case, it is my unequivocal professional opinion that [the worker's] major depression is a direct result of his compensable injury to his left shoulder which was sustained on September 5, 2006." There no mention of this opinion from Dr. Kwamie in the in the ARO's decision in this matter.	G Dee	• 1st • 4th • (Entitlement) • (Psychological/ mental health)

188.	1594 16	21/June/2016	The employer's representative submitted, and the ARO found, that as the worker's audiograms indicated an atypical NIHL pattern, the worker was not entitled to a NEL determination. First, it does not appear to me on a plain reading of the policy above that there is a decision that can be made to deny a worker a NEL determination when he has been found to have a NIHL that meets the threshold for permanent impairment. The policy plainly states that where a worker has a hearing loss that is sufficient to result in a PI, then that worker is referred for a NEL determination. The worker was found by the Board to have entitlement to a NIHL, and that entitlement was never appealed by the employer, or overturned by the Board. The worker's audiograms – regardless of whether or not the hearing loss was atypical – indicated that his hearing loss was sufficient to pass the threshold as set out in the AMA Guides. Therefore, the worker has entitlement to NIHL, and his audiograms show a loss sufficient to meet the thresholds set out in the AMA Guides and Board policy, so as set out in that Board policy he is to be referred for a NEL determination	K Cooper	• 8th • 22nd • (NEL)
189.	286 16	21/June/2016	The worker was injured in 2008 and has not returned to work since that time due to her injury. Her prognosis for recovery is poor as confirmed by the Board's Medical Consultant and Dr. Kakar. Her condition has not changed or improved over time. The worker's loss of earnings is as a result of the nature and seriousness of her injury as there are no pre-existing conditions or post-accident events which can be said to have significantly contributed to the worker's current condition. The medical reports indicate that the worker's CPD is completely preventing the worker from returning to any type of work and the worker continues to participate in health care measures. There is no medical evidence of significance that suggests that the worker's condition will improve and the worker will be able to return to work in some capacity in the future. As both the Board's Medical Consultant and Dr. Kakar concur that the worker is totally	S Hodis	• 1st • 5th • (Chroinc pain disability) • (Employability) • (LOE) • (Deeming) • (Medical consultant)

			disabled and her prognosis for further improvement is poor due to the duration of her disability and Dr. Kakar confirmed in 2015 that the worker was still unable to work, I find that the worker is entitled to full LOE benefits from August 28, 2012 to age 65 as the worker meets the criteria under Board OPM Document No. 18-03-02 for payment of full LOE benefits.		
190.	919 16	22/June/2016	Given the preponderance of the medical opinion, as well as the worker's testimony, it appears that the worker is incapable of earning any income from employment, regardless of which SEB was approved for the worker. Although there was the suggestion in 2012 that he may be able to perform some form of "minor employment," this does not appear to be supported in other medical opinion, and the most recent reports on file conclude that the worker is unemployable. Additionally, another four years have passed since Dr. Carryer's opinion and the worker's condition has not improved. In fact, the medical evidence on file suggests that the worker's condition has deteriorated since that time, noting his decreasing GAF score and increasing suicidal ideation.	K Cooper	• 1st • 5th • (LOE) • (Deeming) • (Employability) • (Psychological/ mental health)
191.	1436 16	23/June/2016	In May 2011, it became apparent as a result of the worker's MRI, that the worker had a disc protrusion that explained her symptoms and as a result of the comprehensive assessment carried out at the REC, Dr. Rampersaud confirmed that she had a condition which would never resolve fully. The nature of the worker's diagnosis was not fully apparent until at the earliest, May 9, 2011. Subsequently, the Board expended significant resources to support the worker in a return to permanent modified work with the employer. All of this shows that the worker had a serious injury which required attention and support. Under the circumstances, it is, the Panel concludes that the medical advice provided by Dr. Hussain on March 26, 2011, was well founded and the worker was taking reasonable steps in following it by not working for about six weeks	Z Onen ST Sahay F Jackson	• 1st • 5th • (Medical advice) • (Cooperation) • (RTW) • (LOE) • (REC)

			until May 30, 2011. She had a very painful condition which resolved gradually so that she could eventually return to modified part time work in May 2011. She was therefore fully cooperating in her rehabilitation within the meaning of section 41(7) and is therefore entitled to LOE benefits between March 24, 2011 and May 30, 2011.		
192.	1479 16	23/June/2016	After careful review of the evidence, I find that both the family doctor and the specialist did not support a return to work until April 26, 2010. Although the physiotherapist determined that the worker was capable of returning to modified work as of April 6, 2010, I note that this opinion was prior to the assessment by the specialist on April 9, 2010, and prior to the worker requiring a cortisone injection in the right shoulder. … I place more weight on the opinions of Dr. Stachula, the family physician, and Dr. Stein, a specialist, and find that in their professional opinions, the worker was not capable of returning to work until April 26, 2010. I find that the worker's statement, that she was following the advice of her treating physicians and declined modified duties as of March 18, 2010, to be reasonable and consistent with the medical documents on file. I concur with the remarks of the Vice-Chair in WSIAT Decision No. 1401/14 that the role of the treating health practitioner is to provide functional abilities information to the employer and the WSIB in order to facilitate a safe return to work. The Vice-Chair states that "this information should not be treated lightly and easily discarded."	C Huras	• 5th • 2nd • (Medical advice) • (LOE) • (ESRTW)
193.	1618 16	24/June/2016	In the decision dated October 1, 2013, the ARO found that the REC assessors erred in their recommendation of graduated hours because they were unaware that the worker had already been provided modified duties at full-time hours prior to their assessment. The ARO cited the note dated May 30, 2012, in which the physiotherapist at the REC advised that she and Dr. Tugalev were not aware that suitable work had already been available at full-time hours at the time of their assessment. In	S Ryan	• 6th • 5th • (ESRTW) • (LOE) • (Cooperation) • (Medical advice)

			any event, the ARO found that this note confirmed that the worker did not require reduced hours at work and could have resumed modified hours immediately at full-time hours. I note that the REC assessors commented on this matter once again in their final report dated July 12, 2012. This report was ignored by the ARO. The REC assessors wrote: "Return to work should have commenced on May 23, 2012 with 2 hours per day and increase by 2 hours weekly thereafter on modified duties…"		
194.	796 16	27/June/2016	I find that the medical evidence supported a causal link between use of the cane and development of the worker's right CTS. In this regard, I rely on the opinion of the Board medical consultant. Dr. A. Balinson, a Board medical consultant, reviewed the file and opined that the development of the worker's right CTS could reasonably be related to the use of a cane. However, the scapholunate ligament injury and SLAC deformity would not be caused by the use of a cane. Rather, these latter two conditions were secondary to a remote unspecified trauma. There was no medical evidence to challenge this opinion.	S Darvish	• 1st • (Entitlement) • (Medical consultant)
195.	989 16	27/June/2016	I further accept Mr. Kolar's submission that there is not a single word of medical or other reliable evidence anywhere on the Board's file to suggest that the worker was medically capable of returning to work in suitable modified duties prior to July 29, 2013. As such, I have determined that Dr. Noronha's reporting constitutes reliable, objective medical evidence that establishes the worker's total disability from work until July 29, 2013 flowing from his compensable right ankle injury. … In this case, I am of the view that the employer's proposal to transport the worker a return distance of 360 km once each week, and a further return distance of 80 km each work day (Monday-Thursday) in order to conduct the modified office duties, was unrealistic and did not take adequate notice of the limitations on the worker's ability to ambulate that continued until he was able to drive. The evidence is that	ME McKenzie	• 1st • 5th • 3rd • 12th • (ESRTW) • (LOE) • (Unsafe) • (Cooperation) • (Medical advice)

			he was able to use his right ankle to drive himself to work by July 29, 2013. It appears that the goal of returning the worker to an office environment was pursued by the employer, the RTWS and the CM without due consideration being given to the worker's inability to move about safely throughout the workday and when he would be on his own, away from home, during his non-work hours from Mondays-Thursdays.		
196.	1620 16	28/June/2016	Despite the number of medical reports that do not doubt the sincerity of the worker and the worker performing well when he underwent explicit testing for malingering behaviour the WSIB decisions in this matter point to a number of perceived inconsistencies in the worker's behaviour in denying entitlement for CPD. One of the inconsistencies noted was the worker's description of his accident which the WSIB decision makers had found was exaggerated. I have dealt with those concerns above. The worker's description of his accident has been consistent and reasonably accurate. It is the finding that the worker fell from less than six feet that is inaccurate. The fact that the worker complied with medical advice and undertook a program of moderate exercise at the YMCA is also raised as an indication that the worker was not being genuine and consistent. That analysis is problematic. What is a worker with a chronic pain condition to do in these circumstances? Should the worker not follow medical advice and be deemed to be non-cooperative? Or, should the worker follow the medical advice and attempt to get better and be deemed to not have an impairment?	G Dee	• 1st • 3rd • (Medical advice) • (Chronic pain)
197.	824 16	28/June/2016	We have indicated that we find the worker's duties after the change in December 2009 were repetitive and included some awkward neck positions. We find them compatible with a neck injury. Medical evidence, on balance, supports a finding that this is what occurred. The medical evidence confirms that the worker's neck was asymptomatic prior to May 9, 2010 and after that she was diagnosed with a cervical disc protrusion that has been identified as the	K Jepson B Davis JA Crocker	• 1st • (Entitlement)

			source of her symptoms. Dr. Duncan appears to have accepted that this was the cause of her problems, notwithstanding the absence of nerve root involvement warranting intervention, and Dr. Vu's diagnosis was the same. In addition, Dr. Vu also provided a specific opinion that the worker's repetitive duties were the cause of the disc herniation or protrusion. There is no contrary medical opinion. Considering both the nature of the worker's duties and these medical opinions, we find that the worker's duties likely caused the cervical disc protrusion.		
198.	896 16	28/June/2016	Furthermore, the Panel finds that the medical evidence as a whole indicates that the worker was experiencing severe depression and anxiety, had poor coping skills, and had significant persistent pain. Although the worker's pain was found to be consistent with a marked functional overlay, there was no suggestion that the worker did not genuinely experience severe pain. The consensus among the specialists who treated the worker appeared to be that the worker had major depressive disorder and a GAF score ranging from 40 to 50; prognosis ranged from guarded to extremely guarded. In our view, there was no evidence of significance before us which supported a conclusion that the worker was able to return to work.	K Lima J Blogg A Grande	• 12th • 1st • (Employability) • (Deeming) • (Loss of earnings) • (Psychological/ mental health)
199.	768 16	28/June/2016	I also find that the worker's depression is a permanent condition. The first medical information on file disclosing that the worker had developed depression is the report from Dr. Gemlych, dated September 2, 2009. The Comprehensive Assessment Report, dated February 10, 2011, provided a diagnosis of "Major Depressive Disorder, moderate to severe" and recommended that the worker undergo psychological treatment. … As noted above, the Board denied the worker entitlement to the psychological treatment that was recommended for him. This decision by the Board provides an explanation for why the case materials do not include much subsequent information about the worker's psychological	M Crystal	• 3rd • 5th • 18th • (Employability) • (Psychological/ mental health) • (Permanent impairment)

			condition or any ongoing psychological treatment.. … I interpret this memo to mean that the Board's case manager canceled the worker's LMR program because he believed that the worker was not capable of such a program, and that the worker's wife and the case manager agreed with one another that the worker would not succeed in an LMR program. According to the plain meaning of the memo, it follows that the case manager believed that the worker was not capable of an LMR program. It is unclear why the case manager continued to recommend an LMR program for the worker in these circumstances. The case manager prepared a memo, dated November 20, 2009, which stated that when the worker "expressed his concern that his LMR SEB of no SEB had been turned down" the case manager indicated that "the medical did not support total disability for the rest of his days and he was capable of doing something." I am not able to agree with this view. The medical information prepared by Dr. Gemlych states explicitly that the worker would be incapable of training, and implicitly that he was incapable of any employment for the three reasons set out in bullet points above. These three points provide the basis for the conclusion that the worker is not capable of any type of employment.		
200.	1657 16	28/June/2016	In denying the worker's objection regarding a permanent impairment, the ARO commented that simply having surgery is insufficient to establish entitlement to a NEL assessment, stating that there must be objective evidence of a work-related impairment which continues to exist after reaching MMR. The ARO also did not consider the worker's use of a brace to constitute evidence of a permanent impairment, stating that Dr. Korkola's recommendation of a brace was simply prudent advice for any patient in such circumstances. I respectfully disagree on both counts. The term "impairment" is defined in the WSIA to mean a physical or functional abnormality or loss which results from an injury, and any psychological damage arising from the abnormality or loss. The term "permanent impairment" is defined to mean impairment that continues to exist after the	B Doherty	• 10th • 8th • (Permanent impairment)

			worker reaches MMR. OPM Document No. 11-01-05, Determining Maximum Medical Recovery (MMR) (18 July 2008), states that workers reach maximum medical recovery (MMR) when they have reached a plateau in their recovery and it is not likely that there will be any further significant improvement in their medical impairment. Notwithstanding the positive results of the worker's surgery, he was left with permanent physical abnormalities, being the reconstructed ACL and the loss of (at least part of) the medial meniscus. … I also consider the worker's need for a knee brace in order to engage in his regular activities to constitute an impairment. His inability to participate in those activities without a brace is a functional loss.		
201.	747 16	29/June/2016	The policy on relocation sets out that the worker may be expected to undertake a reasonable commute to find work within his SO. As we have found above, and as noted by the Board, there were no opportunities within the worker's local labour market. The Board concluded that the worker could expand his search to the nearest city in order to find a job in his SO. Part of the Board's decision relied on the worker's pre-injury commute to the same city as evidence that relocation services were in order. We disagree. The worker's pre-injury job was a highly paid job for which he also received travel and meal allowances. This allowed the worker to maintain an apartment within the city, so his commute was once a week 200 km to the city, and then once a week 200 km home. The worker's SO is a direct entry occupation at which he was expected to earn minimum wage. It does not appear reasonable to the Panel that a worker would be expected to complete 400 km per day of commuting for a minimum wage job, nor would it be within his medical restrictions. We also note that the worker had not moved post-injury, but had lived in his remote location for 27 years. It does not appear reasonable to the Panel that the worker would be expected to move from his home of 27 years for a minimum wage job.	K Cooper MP Trudeau RW Briggs	• 3rd • 8th • (Employability) • (Rural) • (Deeming)

202.	1633 16	29/June/2016	I also note that her treating health care providers unanimously stated that the worker could not return to work as a cleaner. On October 2, 2011, Dr. Pound stated that the worker would likely have "long-term limitations in terms of being able to do heavy lifting, repeated bending, carrying, and standing or walking for prolonged periods" and he did not believe she could return to her job as a cleaner, stating that she should receive "retraining to a more sedentary profession." On May 23, 2012, Dr. Pound stated that "after reading the demands analysis of a "light duty cleaner" it appears she will be permanently unable to perform" this job, and that "she needs permanently modified duties." Dr. Young stated explicitly, as cited above, on August 6, 2013, that the worker could not return to employment as a cleaner	JE Smith	• 5th • 1st • (RTW) • (Loss of earnings)
203.	987 16	29/June/2016	I have found no basis for the Board's decision that there were no objective medical findings to support the worker's absence from work on his physician's recommendation during the period in issue in the appeal. In my view, Dr. Harper and Dr. Feret have carefully described their findings upon their examinations of the worker and there is no reason to question the objectivity of their findings and recommendations. Dr. Harper has provided an objective rationale for her opinion that the worker required a period of rest as part of the treatment plan for his low back injury.	ME McKenzie	• 5th • 12th • 1st • (ESRTW) • (Loss of earnings) • (Medical advice)
204.	1685 16	29/June/2016	While I appreciate that the employer wished for the worker to return to modified work as soon as possible, it was premature for the worker to return to any form of employment, including visual inspection duties associated with RTV and timing chain check, as of April 13, 2011. The worker was not medically authorized to do so at that time, suggested by both Dr. Sultan's documentation from April 13, 2011 and Dr. Rittenhouse's documentation from April 15, 2011. The worker had a left shoulder injury at that time, which was severe enough to warrant future orthopedic consultations and an	L Petrykowski	• 5th • 1st • (ESRTW) • (Loss of earnings) • (Unsafe)

			MRI diagnostic evaluation. In my view, the worker's health care providers had taken a precautionary view that returning to any form of employment would not be safe for the worker until such time that clinical or diagnostic information supported that it was safe to do so.		
205.	1653 16	30/June/2016	On July 5, 2012, Dr. Pajouhandeh stated that the worker's "ongoing accident-related nightmares, active avoidance of reminders of his injury, and significant phobia of machinery at his workplace would likely impact the return to work process". While the ARO concluded that the worker did not have psychological restrictions with respect to returning to work by February 2012, I find the opinions of Drs. Dhaliwal and Pajouhandeh establish otherwise …The worker will be 64 years of age this year. He has worked in manual labour his entire life. He is now precluded from doing so as he is essentially unable to use dominant right hand at all. He testified that he cannot manage to work at any job due to his pain, his emotional state, his grogginess from medication, along with his poor memory and concentration, and in fact, he appeared to fall asleep for a portion of the hearing. … I find his testimony consistent with the medical reporting before me, and in particular, the reporting of his treating health care providers including Drs. Dhaliwal and Uppal, both of whom are of the view that he is unable to work at all due to his compensable organic and psychological impairments. I find no reason to reject these opinions which I find in harmony with the preponderance of evidence before me.	JE Smith	• 5th • 1st • (Psychological/ mental health) • (Employability) • (LOE) • (Deeming)
206.	1683 16	30/June/2016	The above-described medical evidence makes clear that there is a strong nexus between the workplace accident and the worker's major psychopathology. Even the Board's own consulting psychologist, Dr. Smith, recommended "allowing Psychotraumatic Disability entitlement for Major Depressive Disorder secondary to the extended disablement" of the worker, which entirely fits within the parameters of OPM Document #15-	L Petrykowski	• 1st • 4th • 5th • (Psychological/ mental health) • (Entitlement) • (LOE) • (LMR/WT)

			04-02. … The fact that the worker experienced psychopathology of an intermittent and situational nature prior to the workplace accident does not preclude granting psychotraumatic disability benefits in the present case, so long as the workplace accident was a significant contributing factor in the worker's ensuing psychotraumatic disability/impairment. … In making my finding concerning the worker's unemployability, I am moved by the fact that the worker did not return to any gainful employment in the years following the cessation of her re-training activities in 2013. I cannot ignore that she struggled immensely with those retraining activities. This was also presciently predicted in the psychovocational report dated October 1, 2010 where Dr. Antidormi felt the worker was not stable enough to participate in such re-training activities. As Dr. Nagy made clear later, the worker was also not stable enough to participate in such activities in 2012 and 2013. … The preponderance of this evidence gravitates around the inescapable conclusion that the worker was in no position to sustain re-training activities or reintegrate into any form of employment due to the severity of her compensable impairments.		
207.	1712 16	30/June/2016	In my view, the worker's decision not to proceed with surgery does not somehow negate the medical assessment that surgery was the recommendation [sic] option, given the deterioration of the worker's shoulder condition. The worker's glenohumeral joint condition was recognized in 2006 as a component of his NEL entitlement, and Dr. Drosdowech determined that this condition had progressed from "moderate' in 2006 to "end-stage" by 2015. I find that this is sufficient to establish "a marked degree of deterioration in the work-related impairment that is demonstrated by a measureable change in the clinical findings", the standard required under OPM Document No. 18-05-09 to establish a significant deterioration, regardless of the fact that the worker did not proceed with the recommended surgery.	T Mitchinson	• 8th • 10th • (NEL redermination)

208.	1568 16	30/June/2016	The worker appeals the ARO's limitation of the duration of entitlement for the injections to one year, as well as the finding that she is only entitled to two days off and two days LOE benefits after each injection. … The worker's treating specialist has consistently stated that the worker needs seven days of rest after each cortisone injection … In her January 2016 letter, Dr. Montgomery explains the basis for her recommendation that the worker take seven days off after each treatment, providing several reasons. Given that Dr. Tepperman's opinion does not address this issue, Dr. Montgomery's opinion is the only medical opinion before me on the required recovery time. It is also the opinion of the worker's treating specialist. There is nothing before me to suggest that Dr. Montgomery is not a fully qualified specialist and medical expert; I see no evidentiary basis to discount that opinion …. The ARO's acceptance of the cortisone injections means that the Board has accepted that the injection are treatment that is "as a result of the injury," and further that, although the worker is at MMR, the treatments meet the criteria of "necessary, appropriate, and sufficient" in the Act – that is, the treatments meet the criteria for maintenance health care. However, the ARO limited entitlement to one year from the date of that decision, at which time the entitlement would be reviewed. … In this case I have found that there is no basis to place a prospective time limit on entitlement for the cortisone injections. In that sense, the entitlement is an "ongoing entitlement."	K Jepson	• 1st • 21st • 10th • (Health care)
209.	621 16	30/June/2016	There is only one medical report in the file that addresses the causal relationship between the worker's job duties and his left hip condition. This report is from the worker's orthopaedic surgeon who performed the left hip surgery. Dr. Harrington in a report dated January 20, 2014 indicated that he had reviewed the Physical Demands Analysis for the worker's position at the accident employer. … Based on Dr. Harrington's opinion, I am satisfied that the worker has shown the causal relationship between the work duties and his left hip	S Hodis	• 1st • 4th • (Entitlement)

			condition. Even though the worker may have an underlying non-compensable condition, namely osteoarthritis, the evidence clearly establishes that the work duties significantly contributed to making his underlying condition symptomatic and the development of bursitis. There is no evidence that the worker was symptomatic prior to 2006 in relation to the osteoarthritis. I also note that there is no evidence that the bursitis was a pre-existing condition.		

CASE	DECISION NUMBER	DATE	QUOTES (DIRECT)	PANEL/VC	COMMENTS
210.	1416 16	04/July/2016	The Summary of Vocational Goals and Recommendations noted: "Given the neck injury which also affects her left arm and hand in particular, [the worker] may require some assistive devices to be able to use a computer effectively without exacerbating her injury and her pain. Assessment of her physical abilities as related to computer use can be done by an Occupational Therapist or a Kinesiologist." As Mr. Collie submitted, this requirement of assistive devices effectively meant the SEBs were not within the worker's physical restrictions, as per OPM Document No. 19-03-03. In the real world analysis that we are required to undertake when determining a worker's employability, the worker's need for accommodation from the start is significant.	C Sand M Christie M Ferrari	• 3rd • (Deeming)
211.	1273 16	06/July/2016	In my view, it is open to an adjudicator to at times make common sense assessments about job requirements. However, in my view, the evidence in this case is insufficient to establish whether telemarketing jobs would generally be expected to allow a worker to change her position from sitting to standing, as the ARO posits. … The Board is investigative, and has a work transition staff to review these matters. In my view, it would have been preferable to return the issue of the proper SO to the work transition staff, so that the suitability of this SO, or possibly of other SOs, could be more thoroughly assessed. In my view, the worker does not have the onus of disproving the suitability of an SO that is raised for the first time at the ARO level, without any prior investigation or assessment…. [W]ith respect to the expansion of the labour market, the policy uses the word "may." I understand this language to mean that personal circumstances will be considered in determining whether the labour market will be expanded. In my view, the merits and justice of the case would require	EJ Smith	• 19th • 3rd • WSIB decision procedurally unfair • 8th • (Deeming) • (WT/LMR) • (Employability) • (Delay) • (LOE)

			some discretion in that respect. In this case, the worker was married with a family. She was working part time hours at minimum wage when she was injured. In my view it would not be reasonable to have required her to move her family to a new location in order to obtain part-time minimum wage work, as the only way in which she could recover a wage loss that resulted from a workplace injury. … I have considered whether I should refer the matter back to the Board so that the question of the suitability and availability of the SO could be addressed more fully by the Board's work transition staff. However, it is now seven years since the 2009 deterioration in the worker's condition. It is not clear to me that reliable information would still be available about job opportunities in the worker's local labour market in 2009, or about the job requirements for sitting in any posted positions. I am also concerned about the possibility of further delays, especially if it were necessary for there to be additional appeals.		
212.	414 16	07/July/2016	The CM advised the worker in a letter of March 27, 2013 that the allowed back strain was fully expected to resolve by June 18, 2012 and that any ongoing symptoms were related to the degenerative disc disease and the pre-existing disc herniation. … The worker was injured at work and was granted entitlement for the low back. The worker had reported a previous incident of back pain in 2010 that had resolved by the time of the accident. There is no evidence of a pre-existing disc herniation. Dr. Loganathan's opinion was that the worker's back condition arose out of the work accident. The Panel agrees, on a balance of probabilities, that the disc herniation was a result of the accident.	IR Mackenzie E Tracey M Ferrari	• 9th • 4th • 1st • (Entitlement) • (Degenerative)
213.	1460 16	07/July/2016	In my view the evidence is compelling that the worker was not employable. This conclusion is not startling considering the findings of the ARO that the worker could not perform other than highly accommodated work. The report of Dr. Luther makes it clear that the worker is unlikely to be vocationally rehabilitated given	J Josefo	• 3rd • 1st • (Employability) • (Loss of earnings)

			his very low scores academically, coupled with the worker's acknowledged illiteracy. The worker would not be able to perform anything other than a highly accommodated job which, as discussed above, for an elemental service condition likely does not exist, nor would be easily found.		
214.	1432 16	07/July/2016	In the absence of evidence that a pre-existing condition had resulted in periods of impairment or illness requiring health care or that it caused a disruption in the worker's employment, I find that his underlying condition was not a pre-existing impairment within the meaning of Board policy. Consequently, there is no basis upon which the NEL award for his cervical spine impairment may be reduced pursuant to OPM Document #18-05-05. He is therefore entitled to the full NEL award of 26% for his cervical spine impairment, without reduction for his underlying condition. Accordingly, the worker's appeal is allowed in this regard.	L Petrykowski	• 23rd • 8th • (NEL rating) • (Degenerative)
215.	1631 16	08/July/2016	The worker appeals a decision of the ARO, which concluded that the Workplace Safety and Insurance Board (WSIB or the Board) correctly offset the worker's Canada Pension Plan (CPP) disability benefits from his loss of earnings (LOE) benefits. The CPP benefits were granted after the 72-month lock-in date for LOE benefits. Section 44(2.1) of the Workplace Safety and Insurance Act, 1997 (the WSIA) provides that the Board may review LOE benefits after 72 months if a work transition (WT) plan has been provided and is not yet complete, or if the worker is co-operating in health care measures or has suffered a significant deterioration in his compensable condition at the 72-month final review date. … The file reactivation in September 2011, the WT assessment and the WT plan in which the worker participated all commenced well after the June 30, 2011 final LOE review date. Based on this fact and the Board history of its review of the worker's file, we conclude that the worker was not provided with a WT plan or assessment before the final review date. Therefore this exception does not apply, and	L Gehrke ST Sahay S Roth	• 10th • (Lock-in) • (LOE)

			the final review could not be deferred for this reason.		
216.	1735 16	18/July/2016	Ultimately, pursuant to correspondence to the worker dated May 24, 2012 from the case manager, the worker's right shoulder entitlement was deemed closed as of June 19, 2012. The case manager opined that "any further remaining right shoulder issues [are] the result of the non-compensable S/C joint arthritis." … In this report Dr. Slagel is not stating that the work duties were the sole or exclusive cause of the worker's problem. … In my view Dr. Slagel is correct when he indicates that there is a causal relationship between the worker's work duties and the injuring process in this case. Indeed, given the nature of the worker's physically demanding work including using his arms often in an extended position, reaching to perform various physically demanding duties, it is clear to me that the worker's shoulder problems arose at least in part because of the work-injuring process. … To avoid excessive "ping-ponging" of the worker between the Board and the Tribunal, based on the evidence it is plain and obvious to me that the worker sustained a permanent impairment to his right shoulder arising at least in part out of work-related activities. Accordingly, the worker is entitled to a non-economic loss ("NEL") assessment and award.	B Kalvin	• 9th • 4th • (Entitlement) • (Permanent impairment) • (Ping pong)
217.	1431 16	11/July/2016	I also find it significant that Dr. McGarry felt that the worker could no longer work and completed a CPP medical report dated November 12, 2010, which opined that he is "very disabled with severe pain in shoulders". … Dr. Torigian later noted on March 29, 2012 that the worker had chronic pain affecting his low back, shoulders, and right knee. He noted that the pain was so severe that the worker "cannot get out of bed on some days" and was using a cane for mobility. More recently, Dr. McCormick, a pain specialist (anesthesiologist), noted on April 24, 2013 that the worker tried to go back to work "but could not do it, not	L Petrykowski	• 5th • 1st • (Employability) • (Deeming) • (Loss of earnings)

			just because of his back but because of other associated injuries". Dr. McCormick also noted that the "if [the worker] walks, he is not too bad but if he stops and stands, it almost unbearable". This paints a clinical picture of an injured worker who has very limited abilities that would render him unable to re-integrate into any new employment objective. … In my view, the preponderance of evidence gravitates around the inescapable conclusion that the worker was in no position to re-integrate into any form of gainful employment by May 25, 2012 owing to the severity of his compensable impairments and his personal characteristics. As such, I conclude that gainful employment of any sort was not within the worker's reach on account of his multiple compensable impairments, limited employment history consisting of physically laborious activities, limited education, lack of transferable skills, poor academic aptitudes, and age.		
218.	1448 16	11/July/2016	In the Board's decision of May 5, 2011, it was determined that the worker had reached maximum medical recovery (MMR) for the left ankle injury with no permanent impairment. … In May of 2011, which was almost two years post-injury, the worker continued to report ongoing pain, tenderness, weakness and instability in her left ankle even though she had been provided with orthotics (in February 2010); an ankle brace (in March 2011); and received extensive physiotherapy (July 2009 to February 2011). Although the Board granted additional physiotherapy from October 2011 to February 2012 and provided a second pair of orthotics in October 2011, I find that there was no significant improvement in her condition. I give considerable weight to the fact that prior to the workplace injury, there is no evidence that the worker had any difficulties with weight bearing on her left ankle. Following her compensable accident, the worker was provided with orthotics and an ankle brace. Despite extensive physiotherapy, the physiotherapist stated as early as March 2010 that a full recovery was not expected. In June 2012, Dr. Alexander confirmed that the "ankle	C Huras	• 1st • 9th • (Entitlement) • (Older worker)

			pain will be permanent."		
219.	1588 16	11/July/2016	Having considered the evidence before me, I find that the addition of the bedroom and bathroom to the main floor of the house were necessary for the worker's safety and accessibility during the final months of his life. As noted above, all of the evidence before me indicated that the worker's condition deteriorated to the point that he could no longer climb stairs and he was bound to a wheelchair. The worker's house was such that the stairs leading to the second floor were too narrow to allow anyone to assist the worker up the stairs. Even if the worker somehow managed to get upstairs, the bathroom was not wheelchair accessible and it was too narrow for anyone to assist the worker with his personal hygiene needs. More importantly, however, the worker's treating physicians approved of the home renovations that were performed and determined they were necessary to allow the worker to live out the remaining months of his life at home.	S Darvish	• 1st • 3rd • (Home modifications) • (Seriously injured worker) • (Unsafe)
220.	1580 16	12/July/2016	… the ARO's conclusion that low back entitlement should end on July 11, 2011, was drawn from the REC report of March 21, 2011, which recommended that low back restrictions remain in place for 16 weeks. However, we note that the restrictions of 16 weeks were predicated on the worker receiving an "active rehabilitation program of 16 weeks duration with attendance three times per week" and on the worker being "taught an independent exercise program" to perform after the formal rehabilitation program. We note that the worker did not receive this rehabilitation and was not provided with an independent exercise program.	P Allen B Wheeler F Jackson	• 9th • 18th • (REC) (Entitlement) • (Health care)
221.	1586 16	15/July/2016	There is nothing to indicate that the training services provider was given the results of the psycho-vocational evaluation. . . . it was clear at	Z Onen G Carlino	• 3rd • 20th • (ESL)

			the conclusion of the worker's psycho-vocational evaluation, that she was not employable and should not have been offered a WT plan with an SO as greeter. …They determined that the worker had almost no English language literacy, and limited numeracy skills. Her oral English language skills were also limited. The worker needed an interpreter in order to participate in assessments. She was an older worker with limited past job experience. She had a bilateral hearing impairment that also caused dizziness and loss of balance . . . The psycho-vocational report also questioned whether, given her slow pace of learning, the worker could reasonably be expected to upgrade even to the grade 5/6 level she required for the job of greeter. Given this, the training offered by the Board was deficient. The trainers did not appear to know about the worker's hearing impairment. There were no measurable academic goals in the language portion of the program, nor were there any measures to show the academic improvement achieved by the worker at the conclusion of the program.	J Blogg	• (LMR/WT)
222.	1439 16	18/July/2016	The ARO agreed with the Case Manager that the worker was fit to work full-time as of February, 2014. . . there is no evidence that the worker was able to work full-time hours in the SO of cashier.	L Bradbury B Wheeler G Carlino	• 12th • (RTW) • (Deeming)
223.	1278 16	19/July/2016	The Panel also noted that the LMR Plan proposal and assessment carried out by Cascade Disability Management indicated that no further LMR activities should be considered for the worker due to his significant compensable and non-compensable medical and psychological issues. … The Panel notes that when the worker stopped taking medication he was prone to suicidal ideation which prompted the WSIB on one occasion to call the police to deal with the worker's suicidal language and reaction. Furthermore, the Panel notes that in addition to the above evidence, the Board has requested the opinions from its own medical consultants such as Dr. Smith, Dr. Piccolo and Dr. Radziuk, psychologists, all of whom	V Marafioti E Tracey RW Briggs	• 5th • 1st • (Medical consultants) • (Unsafe) • (Psychological/ mental health) • (Employability) • (LMR/WT)

			indicated that the worker was essentially unemployable.		
224.	1783 16	19/July/2016	[I]t is clear, in my view . . . these duties were not consistent with the functional restrictions associated with the worker's compensable impairment that had been prescribed by the assessors at the Hand & Wrist Specialty Program.	B Kalvin	• 5th • (RTW) • (Medical advice)
225.	1946 15	19/July/2016	The CM's December 9, 2015 letter set out the following: … "I have reviewed your case and although you have been awarded a permanent impairment for your psychological condition, there are no psychological restrictions identified in the medical reports. Therefore, the suitable occupation (SO) of Retail Sales Clerk or Cashier remains a suitable job and so I am unable to allow full LOE benefits in this case".. . . I note that the medical evidence on file suggests that the prognosis for the worker performing any type of job is poor. In particular I note: … A Psychological Examination Report dated September 11, 2009 from Drs. Janusiak and Dalton, noted that the worker's "psychological condition would interfere with a return to work. This pertains not only to her accident employer, but also if she were to retrain for another position. She experiences diminished concentration, emotional instability and insomnia." A Psychiatric Assessment report dated December 11, 2014 from Dr. Bender which noted that the worker's prognosis for a return to work "in any capacity appeared poor."	K Cooper	• 5th • 1st • (RTW) • (Employability) • (Psychological/ mental health)

226.	1637 16	20/July/2016	Clearly, the worker's treating physicians do not consider the worker capable of participating in the WT program because of his severe lower back pain, as well as his severe level of depression and . . . In deciding whether a worker is capable of participation in an identified WT program, it is necessary to consider the worker's overall condition, and not only his compensable conditions, in order for benefits to flow.	J Goldman ST Sahay JA Crocker	• 5th • 1st • (WT/LMR) • (Psychological/ mental health)
227.	893 16	21/July/2016	The ARO concluded that the FAF of October 18, 2011 supported a finding that the worker could work as of that date. I disagree with the ARO's determination that the FAF supports the conclusion that the worker could perform modified work as of October 18, 2011. Dr. G. Skupsky, who completed the FAF of October 18, 2011, ticked the box indicating "patient is physically unable to return to work at this time." Dr. Skupsky also noted: "In persistent pain. Neurosurgical consult is pending re cervical disc herniation + L brachialgia." Dr. Skupsky further ticked the "no" box in response to "Have you discussed return to work with your patient."	AT Patterson	• 5th • 1st • (ESRTW) • (Medical advice) • (Cooperation) • (Loss of earnings)
228.	2125 15	25/July/2016	The Panel accepts that Dr. Kerin had a clear understanding of the worker's duties when he concluded that the nature of the worker's duties had materially contributed to her bilateral CTS. We note that Dr. Kerin also took into account other potential non-compensable factors and determined there was no evidence of significance to support another possible cause of the worker's CTS. The Panel also notes that there was no medical evidence before us, including Board medical opinion, which contradicted Dr. Kerin's opinion that the worker's condition was work-related.	K Iima M Christie A Grande	• 1st • (Entitlement)
229.	1716 16	25/July/2016	The Board stopped payment on that date because it was of the view that his workplace injury had resolved itself, and that any problems the worker was having with his lower back were the result of certain pre-existing degenerative changes that were unrelated to	D Hale ST Sahay A Grande	• 9th • 4th • 1st • (Entitlement) (REC)

			his workplace injury. The ARO found that because the worker did not avail himself of the treatment that would have made him capable of returning to his regular job as recommended by the REC assessment that took place on August 18, 2010, he was not, therefore, entitled to LOE benefits. Based on the totality of the evidence before us, we are led to a different conclusion. None of the medical practitioners who examined and reported on the worker's condition took the position that because he did not complete the treatment recommended in the REC report, he was somehow responsible for not recovering sufficiently to return to work … We find that the ARO decision under appeal did not give sufficient weight to the medical evidence and work history of the worker in the file, which indicated that … the worker continued to suffer pain and discomfort in his lower back following the MRI on October 13, 2010, and that he was unable to return to his regular work duties at that time. … We find further support for this view in the fact that the worker was entirely asymptomatic prior to the March 31, 2010 accident.		• (Cooperation) • (Loss of earnings)
230.	1655 16	25/July/2016	The Board determined that this cataract was a result of natural processes, and not a result of the worker's accident, but in a report dated July 4, 2011 from Dr. Goldhar, an eye specialist and surgeon, it was indicated that the worker had developed a "traumatic cataract" in his right eye since the injury. … given the consensus medical opinion on trauma related cataracts and retinal tears, the worker's testimony that he had no pre-accident issues with his right eye, and the opinion of two eye specialists who examined and treated the worker, we find that on the balance of probabilities the worker's right eye cataract and retinal tear were caused, or significantly contributed to, by his workplace accident of February 19, 2011. …In this case the Board denied entitlement [for psychotraumatic disability] due to the absence of a traumatic event, and that the worker's condition was a reaction to the loss of vision in his right eye. We note first, however, that a traumatic event	K Cooper M Christie A Grande	• 1st (consensus medical opinion) • 4th • 8th • (Entitlement) • (Psychological/ mental health)

			is not required under the Policy.		
231.	952 16	26/July/2016	The Panel finds that the evidence clearly establishes that the worker suffered a series of workplace injuries which affected her neck, shoulder, and upper back with pain, at times, radiating down her arms. The Board has consistently recognized these injuries as being work related and the worker was assigned to modified duties which she performed for 15 years prior to the plant closure in October 2011. The Panel finds that the evidence does not support the Board's conclusion that the worker's ongoing symptoms are related to a degenerative condition and are not the result of the workplace accidents she has experienced. In our view, the Board's conclusion is rooted in a misunderstanding of the opinions provided by Dr. St. Amand, a medical consultant with the Board. …The Panel finds that the medical evidence does not support the conclusion reached by the Claims Adjudicator in his ruling dated January 14, 2005, that the worker's ongoing symptoms are related to a significant underlying condition in her cervical spine and that she is, therefore, not entitled to ongoing benefits for her workplace injuries.	JB Lang ADG Purdy C Salama	• 4th • 9th • 1st • (Entitlement) • (Degenerative)
232.	1159 16	27/July/2016	The June 30, 2014, decision dealt with issues of termination and re-employment. The decision did not involve return to work or LMR. As such, the time limit to appeal ought to have been six months (December 30, 2014) rather than 30 days (July 30, 2014). It has been accepted that the worker provided the Board with notice on October 2, 2014. This was prior to the six month deadline for filing an appeal. In light of the above, the worker did not require a time extension to appeal the June 30, 2014 decision and therefore the appeal ought to be granted.	R Nairn	• 10th • (Time limits)

233.	1153 16	28/July/2016	The ARO concluded that any neck injuries the worker may have sustained in the December 2007 incident had resolved and the worker's ongoing complaints of neck pain were related to a C5-6 disc herniation which was not compensable. Having had the opportunity to consider all the evidence before me however, I find that I am led to a different conclusion. It is now well accepted in Tribunal case law that in dealing with matters of causation, the Tribunal employs a "significant contributing factor" test. While the ARO commented on the fact that the worker had sustained two prior head injuries, she acknowledged in her decision that both of these were relatively minor. The ARO also makes reference to a motor vehicle accident of July 6, 2008, as a potential cause of the worker's ongoing problems. The evidence on file however, suggests that this was a very minor incident and did not involve any head injury..... the ARO did not conduct a substantive review of the worker's psychotraumatic entitlement but rather, concluded that the worker would not have any non-organic entitlement because there was no recognized ongoing organic entitlement.	R Nairn	• 9th • 4th • 7th • (Psychological/ mental health) • (Permanent impairment)
234.	1617 11	29/July/2016	I am aware that the Board determined that the worker had pre-existing conditions that were more likely the cause of the chronic pain condition. I do not accept this position. I note that prior to the October 1998 accident the worker was working steadily for the accident employer, and there is a lack of evidence before me to indicate that the worker was in active treatment for a pain condition prior to October 1998. I note in any event that the thin skull doctrine applies in Tribunal cases…	J Noble	• 4th • 7th • (Chronic pain)
235.	1703 16	29/July/2016	For reasons that are not clear to the Panel, the non-organic aspects of the worker's condition were not taken into account by the Board in the 2011 WT process. The occupational therapist flagged this for the Board in her report, which we repeated in part in our reasons. The occupational therapist cautioned	Z Onen M Christie S Roth	• 5th • Board failed to consider psychological condition in return to work • (Psychological/

			that the worker's depression, her problems with memory and concentration required further attention. This was not addressed. Instead, the worker and the employer were told that the service express agent position was suitable to the worker's restrictions, and she was asked to take it.		mental health) • (RTW)

CASE	DECISION NUMBER	DATE	QUOTES (DIRECT)	PANEL/VC	COMMENTS
236.	1870 16	02/Aug/2016	[T]he ARO stated the following: […] although the pre-existing pathologies may have been intensified temporarily by the incident, they were not caused by the compensable accident. The worker's symptoms related to the right shoulder strain appeared to have settled by April 9, 2013. Therefore, the evidence does not support that the subsequent problems and surgery are a consequence of the compensable injury. …In the Panel's view there is no persuasive medical evidence to conclude that the worker had ongoing right shoulder problems prior to the workplace accident in January 2013, or that his symptoms as a result of the January 2013 accident had resolved when he returned to his regular duties in April 2013.	J Goldman B Wheeler JA Crocker	• 12th • 4th • 9th • (Entitlement) • (Degenerative)
237.	1356 16	02/Aug/2016	As there is no evidence that the degenerative changes in the worker's low back required treatment or disrupted her employment prior to the accident date of March 6, 2005, the degenerative condition cannot be considered to be a pre-existing impairment under Board policy. As a result I find there is no basis for reducing the worker's NEL award pursuant to OPM Document No. 18-05-05.	B Alexander	• 23rd • 8th • 12th • (NEL rating) • (Degenerative)
238.	1033 16	02/Aug/2016	The Board accepted that the worker's compensable low back impairment was permanent, with a maximum medical recovery (MMR) date of February 19, 2010. He was assessed to determine his non-economic loss (NEL) benefit entitlement on November 18, 2011, prior to commencing the WT plan. His NEL rating was determined to be 5%. However, the worker had a compensable low back injury from an accident in 1982, for which he was granted a 15% permanent disability (PD) pension. The 15% PD rating was subtracted from the 5% NEL rating which translated to a NEL award of - 10%. Based on that assessment,	JE Smith	• 22nd • 8th • 13th • 1st • (NEL rating) • (Loss of earnings) • (LMR/WT) • (Employability)

			the Case Manager, and subsequently the ARO, found that the worker had not sustained a permanent impairment in the May 2009 accident, and thus he had no further entitlement to loss of earnings, health care or WT benefits, as of March 2, 2012. … Applying the procedure set out in OPM Document No. 18-05-05, I find that the total impairment to the worker's low back should have been factored into the NEL rating prior to deducting the PD pension rating, and was not. … Further, I note that the worker returned to work as a carpenter, without restrictions, following the 1982 injury, after having reached MMR. It is not disputed that, following the 2009 accident, he could not return to work as a carpenter, after having worked in this capacity his entire adult life, due to the permanent low back restrictions he sustained, which rendered his preaccident employment unsuitable. In an undated letter faxed to the Board on May 30, 2011, the worker's family doctor, Dr. J. Boekhoud, stated explicitly that the worker was unable to return to his employment as carpenter due to his low back impairment and the associated low back restrictions, which were permanent …. Finally, I note that ongoing entitlement to benefits, is assessed based not on whether the worker's low back impairment worsened, but rather on whether the compensable impairment continues to impact his ability to work, causes him to incur a loss of earnings, precludes him from returning to his pre-accident employment and requires treatment. In addition to finding that the worker's low back impairment has in fact worsened as a result of May 2009 accident, I am also satisfied that the evidence overwhelmingly establishes that he has ongoing entitlement to LOE benefits, WT services and health care benefits when each of the appropriate tests are applied		
239.	861 16	03/Aug/2016	Thus, it is evident that the CAMH psychological assessment specifically considered the issue of whether the worker was feigning or exaggerating his symptoms, and found that he was not. The diagnosis of Pain Disorder is consistent with a finding that his pain exceeds the physical findings, as required by the CPD	R McCutcheon B Wheeler A Dignoroni	• 13th • 2nd • 5th • 3rd • 8th • (Psychological/

			policy. In summary, the weight of the cogent and reliable evidence supports a conclusion that the worker has a pain disorder as a result of his injury. In the Panel's view, this satisfies the evidentiary requirement of Board policy that there is medical opinion that the pain is compatible with the injury. In reaching our conclusions, the Panel has given little weight to Dr. Bail's report dated May 24, 2011, in which Dr. Bail concluded that there was no valid or reliable evidence to support a psychiatric diagnosis and that the worker exhibited malingering behaviour. … The worker complained to the WSIB regarding the nature of his appointment with Dr. Bail, stating that Dr. Bail yelled at him and belittled him during the appointment. …The Panel notes that Dr. Bail's assessments have been challenged at the Tribunal and in the courts. In Decision No. 266/16, Dr. Bail had also concluded that the worker in that case was malingering. The worker's representative submitted that Dr. Bail's report ought to be rejected, citing Bruff-Murphy v. Gunawardena, 2016 ONSC 7 (CANLii), where Kane J. found Dr. Bail was not a credible expert witness. […] In this case, however, we have the benefit of thorough, professional, and independent reporting from CAMH, and we find that this provides reliable evidence in support of the diagnosis of chronic pain disorder and its causal connection to the workplace accident. We have also found Dr. Berger's conclusions to be reliable, as they were based upon long-term treatment of the worker. […] However, entitlement for CPD was denied on the basis of Dr. Preobrazenski's opinion in January 2012. Dr. Preobrazenski noted that the worker never demonstrated the need for significant pain medication, such as opiates, for his pain complaints. While Dr. Preobrazenski acknowledged it is "good to see the higher doses of opioid or other medications avoided," he concludes that the lack of such trials or attempts indicates that the pain "does not appear to be of such disproportion that it might warrant CPD consideration." The Panel is unable to give significant weight to this opinion for several reasons. Firstly, the comment would		mental health) • (Chronic pain) • (Loss of earnings) • (ESRTW) • (Medical advice) • (Dr. Bail) • (Medical consultant) • (Unsafe)

			appear to import a requirement into the CPD policy which is not present. The CPD policy does not require a trial of narcotic medication to establish entitlement. Secondly, such a requirement is arguably against public policy, in view of the well-known risks associated with narcotic medication. […] The WSIB had granted entitlement to LOE benefits after September 22, 2008, but entitlement to LOE benefits from September 22, 2008 to January 15, 2010 was rescinded by ARO Calvert in the decision dated June 20, 2012. ARO Calvert's decision was premised upon the finding that "no evidence was presented to suggest that the anxiety was a significant medical issue or even a concern for the worker prior to January 15, 2010." As the Panel discusses above, both Dr. Windsor's clinical notes and Dr. Cosmin's report indicate that the worker was prescribed Ativan for anxiety related to the injury, beginning in November 2008. The worker's testimony was also consistent with this evidence. In addition, as noted above, we find that the offer of modified work was not suitable. Therefore the worker is entitled to LOE benefits from September 22, 2008 to January 15, 2010. … The Panel finds that the worker continued to be entitled to LOE benefits after the offer of modified work, since he was not given medical authorization to return to work at that time. His condition was still under investigation and he was actively seeking medical treatment in accordance with subsection 43(3). As noted in Decision No. 2474/00, refusing suitable modified work is not an act of non-cooperation in ESRTW, although it might affect a worker's entitlement to LOE benefits under subsection 43(1). In this case, however, we find that the worker was not fit for modified work, including the approximate one-hour commute, in September 2008 … Despite the foregoing medical evidence, the ARO found that the worker could tolerate the one-hour drive to work "as long as he took a couple of stretch breaks along the way." In reaching this conclusion, the ARO relied upon the worker's testimony that his wife had driven to the ARO hearing and he managed the trip with breaks. The Panel finds that this approach would be impractical on a sustained basis. In		

			addition, the worker did not accomplish the drive to the ARO hearing himself, but rather, he was a passenger, which would allow for more opportunity to change positions. The ARO noted that the length of the worker's drive was variably described as being 45 minutes or an hour. However, the worker's drive to work was on the highway in rush hour traffic in the Greater Toronto Area, which could vary with traffic conditions. Both the physiotherapist and Dr. Windsor indicated that the worker was unable to tolerate more than fifteen minutes of driving. This would entail at least three stretch breaks on the drive to and from work, which would significantly lengthen his work day. There is nothing in the Act or Board policy which suggests that injured workers must meet this type of standard in order to qualify for LOE benefits,		
240.	1887 16	03/Aug/2016	On May 16, 2008, the worker experienced acute low back pain when lifting a box at work. The Board accepted that this was a recurrence of the 2003 injury…. I note that Dr. Bishop's opinion predated the compensable recurrence of May 2008. Thus, I find that the AROs conclusion, based on Dr. Bishop's opinion, that the worker's "back problems subsequent to January 2005 were not attributed to the accident" of 2003, is at odds with that entitlement.	JE Smith	• 13th (reliance on medical contrary to Board's own allowances) • (Entitlement)
241.	398 16	04/Aug/2016	The ARO concluded that the worker's low back condition had completely resolved. As set out above, the medical evidence supporting the worker's low back condition from the date of his injury in December 2007 to the period of the surveillance in June 2011 is extensive. For the reasons that follow, I find that notwithstanding the surveillance evidence, the medical reporting is also consistent in establishing that the worker had an ongoing low back condition.	W Sutton	• 1st • 9th • (Entitlement) • (Surveillance) • (Permanent impairment)
242.	1778 16	09/Aug/2016	The ARO denied entitlement for a permanent disability assessment for the disfigurement in the area, on the basis that the worker had not	JE Smith	• 10th • (Entitlement)

			sustained a functional loss as a result. However, I find this was not the correct test to establish entitlement. Rather, as noted above, a permanent functional or physical loss or abnormality establishes entitlement for a permanent disability award.		
243.	1365 16	10/Aug/2016	Some confusion is apparent in the Board's file materials respecting the issue of causation of the worker's dental decay and tooth loss. Several documents suggest that the primary cause of these conditions must be identified and must be found to be related to his compensable accident in order to support his claim […] As stated in the Tribunal case law excerpted above, this is not the case.	ME McKenzie	• 7th • (Entitlement)
244.	2055 16	12/Aug/2016	The ARO however found the nature of the accident was minor with only a sprain resulting. It was further and again noted that a full recovery was anticipated, and that the worker's Achilles tendon was not originally cited. The ARO also noted x-ray reports showing osteoarthritis of both ankles. The ARO concluded that there was no direct trauma that would establish compatibility between the worker's ongoing ankle and tendon problems, and the work accident. Again, it was found by the ARO that degenerative problems and prior injuries were causing the worker's ongoing condition, not the 2011 work accident. […] In summary, I note again the reporting from the worker's specialists, which I found supported entitlement to benefits for a permanent left ankle impairment. I also note again that there was no dispute, and the parties jointly submitted, that the worker ought to be entitled to benefits for her ongoing ankle impairment. As such, I find that the worker is entitled to a NEL assessment for the left ankle.	AG Baker	• 4th • 9th • (Permanent impairment)
245.	1990 16	15/Aug/2016	Thus, while the ARO correctly noted that the worker was accommodated in her duties when her employment ended with the accident employer, for reasons that are unclear, this translated to a finding that the worker was	JE Smith	• 3rd • 8th • (RTW)

			performing her regular duties when laid off. I find the above evidence establishes that she was not. As the worker was performing modified work when her employment ended with the accident employer, OPM Document No. 15-06-03, cited above, is applicable in this appeal. In particular, I find that the worker was not able to return to her regular duties after the February 2004 accident and the job she was performing at the time she was permanently laid off, was a highly accommodated one and thus not available in the labour market. She is therefore entitled to a WT assessment, pursuant to legislation and Board policy.		
246.	1862 16	15/Aug/2016	The worker was not given a FCE to determine his tolerances, despite the recommendation of the FPP and Dr. Bacon. Therefore, with respect to the worker's tolerance for hours worked per week, I have the worker's testimony and the reports of Dr. Bacon that he cannot perform full time work, and no opinion on the hours of work from the FPP with the exception that he be referred for a FCE to determine same, which never occurred. Dr. Jhawar opined that the worker was best positioned to determine his pain tolerance. Thus, relying on the worker's testimony and the opinion of Dr. Bacon, together with the worker's significant restrictions, pain, medication, and 37% NEL awards, I find that on the balance of probabilities the worker is unable to work full time in his approved SEB of Customer Service. The worker is entitled to partial LOE benefits based on his ability to work 22 hours per week in his SO from September 21, 2012 to age 65.	K Cooper	• 19th • 5th • 1st • (Employability) • (Loss of earnings) • (Deeming)
247.	1980 16	15/Aug/2016	The Board denied entitlement for LOE benefits for the November 15, 2011 appointment, indicating the ongoing symptoms were not compatible with the original injury. The symptoms were attributed to a non-compensable condition. … There is no indication in the evidence before us that the worker had a symptomatic low back condition, previous back injuries, or a history of back symptoms before the January 29, 2011 workplace injury. … The Panel notes the	G McCaffrey E Tracey RW Briggs	• 4th • 12th • 1st • (Entitlement) • (Loss of earnings)

			opinion of the neurosurgeon with respect to causation reflects that of the worker's long time family doctor. We also find it is consistent with the evidence before us. There is no contrary medical opinion contained in the material before us. Therefore we accept the medical opinions and find the worker's symptoms arose from more than a simple back strain/sprain.		
248.	1723 16	16/Aug/2016	Further, I find that her entitlement was incorrectly rescinded in July 2012. In making this determination I note that the Case Manager initially allowed entitlement based on the following considerations, set out in Board Memorandum No. 26, dated February 10, 2012: "The worker was capable of getting up and going to work every day for 21 years. While she may have some persisting psychological issues, there is nothing on file to support that the worker was depressed, having chronic nightmares or suicidal prior to this injury. As her mental condition has arisen within 5 years of her injury appears to be temporary and appears to stem, in part, from non-medical socio-economic factors that are directly related to the work injury (being off work, pain, etc.), at this time, I am prepared to grant entitlement for psychotraumatic impairment." I find those conclusions are supported by the evidence before me. … I find no reason to reject the opinions of Drs. Waldenberg, Fitzgerald and Rootenberg who were unanimously of the view that the worker's depression was directly related to her compensable right shoulder injury and its sequelae. … I disagree with the manner with which the worker's NEL quantum was assessed. First, I note that it appears that the NEL Clinical Specialist interpreted Dr. Denkers' silence on range of motion measurements for extension, abduction and adduction of the right shoulder to indicate that these movements were within the normal range, and thus attracted a 0% impairment rating. However, I note that the evidence before me suggests otherwise. … Dr. Muniz-Rodriguez stated that while the worker's right shoulder extension and rotation were full	JE Smith	• 13th • 1st (unanimous) • 22nd • 23rd • 4th • 8th • 5th • (Psychological/ mental health) • (Permanent impairment) • (NEL rating) • (Employability) • (Loss of earnings)

			at that time, her flexion and abduction were both limited to 100° and "both motions were painful." … Accordingly, I find that the worker's NEL benefit should be reassessed to take into account all actual range of motion values relevant to her right shoulder. Further, I find that a 50% reduction was incorrectly applied to the worker's NEL rating for a pre-existing impairment… OPM Document No. 18-05-05 provides, he submitted, for no reduction in the NEL quantum in these circumstances. I agree with Mr. Rawana's submission, and thus find that this was an incorrect application of the policy in the manner he argued. … I find no basis to reject the opinions of Dr. Norohna, Dr. Waldenberg, Dr. Fitzgerald, and Dr. Rootenberg, all of whom were of the view the worker could not return to any employment in 2012, due the combination of her pain and depression.		
249.	1562 16	17/Aug/2016	The worker left WTS in December 2011 due to her psychological and organic conditions. The worker was subsequently awarded a permanent impairment award for her psychological disability by an ARO on November 5, 2012… The worker completed WTS in February 2015 and she is currently employed. … We find that all of the medical professionals, including the psychovocational assessors, CAMH specialists, and the worker's psychiatrist, concluded that the worker could not work in the period from 2011 to 2013. We see no evidence to the contrary and we grant the worker's appeal. We also find that the worker cooperated in all aspects of return to work and participated in all health care measures recommended for her. The delay in treatment was due to the Board's failure to recognize the permanent impairment which was identified in August 2011 by the CAMH psychiatrist.	S Shime M Christie A Grande	• 1st • 12th • 18th • 5th • (Health care delay) • (Psychological/ mental health) • (Employability) • (Loss of earnings) • (Cooperation) • (Permanent impairment)
250.	1056 16	17/Aug/2016	Dr. Achiume consistently supported the worker's inability to return to the workforce. Taking into account the worker's low aptitude test results, her lack of formal education, her	SJ Sutherland MP Trudeau	• 3rd • 5th • (Employability) • (Deeming)

			age, the severity of her chronic pain disability, the restrictions required as a result of her organic injuries, her lack of proficiency in English, the fact that her Canadian experience has been limited to manual labour, which the worker can no longer do because of her physical restrictions, and the length of time that she had been out of the workforce, the Panel members find that the worker had no reasonable expectation of finding employment.	M Ferrari	• (ESL) • (Loss of earnings) • (Older worker)
251.	1481 15	17/Aug/2016	The WSIB Case Manager (CM) determined on March 8, 2010 that the worker's back pain should be resolved by July 7, 2010 and ended LOE benefits as of that date. The CM also determined that since the back strain had likely resolved by July of 2010 and the worker was not entitled to a PI of the lower back or to labour market reentry (LMR) services (now called Work Transition (WT) services). …The worker consistently reported low back pain. In June of 2009, Dr. Sitaram stated that the worker would likely be left with residual back pain. Although the assessment by Dr. Sharma anticipated a full recovery in eight to 12 weeks, it was clear that four months later (in February of 2010) that there had not been a full recovery. Dr. Raynor, who conducted the assessment in February of 2010, did not explain the discrepancy. In that assessment, Dr. Raynor anticipated recovery in 20 weeks. The worker continued to have documented lower back pain after the 20 weeks and continues to have lower back pain. There is no medical evidence of a prior lower back condition. In any event, the worker did not lose time off work as a result of his lower back prior to his work injury. We find the objective medical evidence establishes that the worker's mechanical low back pain has persisted and continues to be symptomatic.	IR Mackenzie MP Trudeau D Besner	• 9th • (Entitlement) • (RTW)
252.	1832 16	17/Aug/2016	Following from that, accordingly, it is also in my view neither surprising nor unexpected that the worker's psychological recovery has not fully occurred given that he continues to suffer the effects of his physical injuries. …Yet what I find compelling is that Dr. Ross, notwithstanding the Board concluding that it would no longer pay	J Josefo	• 1st • 7th • 9th • (Psychological/ mental health) • (Permanent

			for psychological treatment, continued to treat the worker for a number of years, until late in 2015, on an ex gratia basis. …What is before me is the diagnosis of Dr. Shenava generally, which I note is consistent with the other psychiatric and psychological reports on record. …In my view, the medical evidence indicates that the worker's psychotraumatic disability can be likely related at least in part to his extended disablement as well as to non-medical, socioeconomic factors, the majority of which can be directly and clearly related to his 2007 work accident. Again that is not to say that there are no other contributing factors. The worker is concerned about his finances, understandably so given he had a high paying job which he is no longer able to perform because of his work injuries, and he has his underlying personality issues which are no doubt causing him difficulties in moving forward. Yet, regarding those pre-existing personality issues, this would be akin to a "thin skull", and one takes the worker as one finds him or her.		impairment)
253.	1113 16	18/Aug/2016	Tribunal jurisprudence has overwhelmingly held that in circumstances where a worker has an asymptomatic pre-existing condition that has not resulted in lost time or the necessity for health care there is no basis in the WSIA or Board policy for taking any deductions from a NEL benefit (see, e.g., Decision No. 204/14, Decision No. 607/14; Decision No. 1153/14; Decision No. 588/14; Decision No. 530/05; Decision No. 137/15). In so finding, those decisions have held that Board Operational Policy Manual (OPM) Document No. 18-05-05, properly interpreted, does not mandate a deduction in such circumstances. In this case the pre-existing condition the Board referred to in making the deduction was the appearance of "anatomic abnormalities" in the February 12, 2011 MRI scan. … Despite the MRI findings, however, we find no evidence before us that the worker had a symptomatic pre-existing condition – in other words, a pre-existing impairment.	K Jepson MP Trudeau JA Crocker	• 23rd • 8th • 10th • (NEL rating) • (Degenerative)

254.	1935 16	18/Aug/2016	From a medical perspective, the Panel has considered the worker's health care providers did not support the worker's re-integration into WT/LMR re-training efforts or the general labour market around 2012 or 2013. Dr. Sharma opined on September 20, 2012 that the worker "remains unable to return to work", was "continuing to experience extreme distress levels", and that his state was "not compatible with successful employment or educational setting…". … The PTP discharge report dated June 25, 2013 from Dr. Ferguson (psychologist) noted the worker could not work in any capacity "due to the severity of current symptoms". The worker's current family physician, Dr. Brown, noted on September 14, 2014 that the worker is "disabled and unable to work in any competitive employment setting". … The medical evidence as a whole, including that from recent years, paints a picture that the worker was in a fragile medical state and that he was unable to participate in employment-related or WT/LMR re-training activities.	L Petrykowski B Davis C Salama	• 5th • 1st • (Employability) • (Psychological/ mental health)
255.	1869 16	18/Aug/2016	In the Panel's view, it is not conceivable for the worker to work with her compensable pain-related issues in the retail sales field, given her limited personal and vocational characteristics. …This is entirely aligned with the opinion of the worker's health care providers since 2011 that she could not work and/or had a poor prognosis for ever returning to work. There is no evidence of substance to suggest that the worker could successfully pursue WT re-training, let alone any form of sustained employment as a retail sales clerk (NOC 6421). … The Panel finds it significant that the worker's health care providers did not anticipate that she would return to work in 2011 and 2012 or since that time. Nonetheless, the Board geared her toward a vocational re-training goal of retail sales clerk in 2012 within that context. The worker's aptitudes and English language abilities were so poor, however, that Dr. Luther felt on July 24, 2012 that the worker "may be able to achieve a Grade 6 level of overall academic functioning through much upgrading". …The worker's	L Petrykowski ST Sahay G Carlino	• 5th • 1st • 12th • 3rd • (Employability) • (Psychological/ mental health) • (ESL) • (Deeming)

			potential for Grade 6 level of functioning does not approximate the level of education or functioning that would be commensurate to working as a retail sales clerk.… The worker's health care providers have repeatedly felt that the worker was not able to pursue any form of gainful employment, including in recent years. Dr. Fitzgerald (psychologist) noted on June 28, 2011 that the worker could not return to work in any capacity due to pain-related difficulties and had "multiple employment barriers" preventing her return to work. Dr. Nagpal's (family physician) CPP medical report dated June 5, 2012 explained the worker's "poor prognosis". Dr. Kakar's (psychiatrist) report dated June 4, 2016 noted a GAF score of 50, which is defined as a "serious impairment in social, occupational, or school functioning (e.g., no friends, unable to keep a job, cannot work)" and further noted her condition was "having serious impact on her ability to work and potential for workplace productivity". Dr. Kakar also opined that her condition was "severe" and that it affected her "ability to work".		
256.	1748 16	19/Aug/2016	We conclude that there was no pre-existing impairment that could be attributed to the osteoarthritis shown on the MRI one year post-injury. As a result, the application of Board OPM Document No. 18-05-05 does not result in any deduction the worker's NEL award for pre-existing impairment. Therefore, the worker is entitled to the full value of the NEL award that is assessed. The NEL evaluation incorrectly deducted 25% from the worker's NEL award.…However, the NEL rating of 5% is not consistent with the ratings for moderate joint crepitation with motion set out in the AMA Guides of 20%, with a relative value for the shoulder of 60% under Table 17, which equals 12%, or 7% whole person impairment (36% of 20%). As a result, we conclude that the NEL assessment was inaccurate.	L Gehrke M Lipton K Hoskin	• 23rd • 8th • (NEL rating) • (Degenerative)
257.	1825 16	19/Aug/2016	In this case, we find that the worker did not have a symptomatic back condition prior to his accident. There is no evidence of substance	J Dimovski	• 4th • 2nd ("overwhelming

			indicating that he did. The Board medical evidence does not establish that the worker had complained about his back (other than occasionally), that he displayed symptoms, and/or that he'd received medical treatment. He had not lost time from work nor did he require any accommodation in his employment for his underlying back condition prior to the work accident. Only after the accident did he experience unrelenting symptoms and limitations. Accordingly, we find on a balance of probabilities that the worker's pre-existing and underlying non-compensable back condition and/or changes were asymptomatic. He was essentially symptom-free prior to his accident. Moreover, the overwhelming balance of medical opinion and evidence in the case materials support that the worker's accident significantly contributed to the worsening of his underlying conditions, including nerve root impingement and the associated symptoms, including the functional and physical loss he has experienced since his accident. In this regard, we rely on the reports by the Board's Medical Consultants dated February 10, 2012 (Dr. N. Levine), Dr. I Grosfield (March 21, 2012) and the Regional Evaluation Reports dated May 31, 2012 (Dr. N. Phan, neurosurgeon) and August 30, 2012 (Dr. Phan). These reports support that the worker's symptoms and permanent limitations were compatible with his accident in spite of his underlying non-compensable condition. In spite of its medical reviews noted above, the Board also obtained a third medical consultant's opinion dated October 29, 2012, which, did not support his entitlement to a NEL assessment. We placed little weight on this report because it appeared to accept that the worker's symptoms pre-dated the accident and we find they did not for the reasons stated above. Further, the Board's October 2012 consultant's opinion did not appear to assess, address and apply the medical evidence in the case materials to support its conclusion.	M Lipton A Grande	balance") • WSIB relied on unreliable/inaccurate medical evidence • (Medical consultant) • (Entitlement)
258.	1886 16	19/Aug/2016	The worker reasonably complied with the advice of her health care providers, Dr. Dhanoa and Dr. Bongers, not to work during the time periods in issue, as she was required to do by	L Gehrke M Christie	• 10th • 5th • 1st • (ESRTW)

			section 34 of the WSIA. … The worker complied with all of the advice given by Dr. Dhanoa and Dr. Bongers, and with the health care treatment that was recommended and provided to her. It was reasonable and in compliance with section 34 of the WSIA for her to stay off work when her doctor advised her to do so. … Her denial of the offered modified duties in these meetings was based on the advice of her health care providers, which she was required to follow. She returned to modified duties as soon as she was authorized to do so by Dr. Dhanoa.	JA Crocker	• (Medical advice) • (Cooperation) • (Loss of earnings)
259.	2037 16	19/Aug/2016	In this case, the worker's job loss was directly related to her inability to perform her pre-injury job related tasks. The worker was awarded entitlement to psychological counselling and her LMR program was closed in January 2010 due to the severity of her depressive symptoms. On May 21, 2013, Dr. Omoruyi concluded in a letter to the Board that the worker remained compliant with all medications and treatment, but that she was significantly impaired mentally and physically. He opined in his report that her mental state was directly related to the loss of her function and her job. While the ARO concluded that the worker had prior depression, I see no evidence that she was unable to work and maintain the normal activities of daily living. I am persuaded by the preponderance of the evidence that the worker fits within the third category for entitlement and that her ongoing psychological condition is directly and clearly related to the 2007 injury. The evidence shows that the worker's depression is directly related to the loss of her function and the loss of her pre-injury job and related financial and social consequences.	S Shime	• 12th • 4th • 8th • (Psychological/ mental health) • (RTW) • (Entitlement)
260.	1364 16	19/Aug/2016	I have found no basis for the Board's determination that there were no objective findings to support the worker's absence from work based on her physician's recommendation up to and including March 11, 2014. In my view, the reports provided by Dr. Madison indicate that she was seeing and examining the worker	ME McKenzie	• 12th • 1st • 5th • (ESRTW) • (Cooperation) • (Loss of earnings)

			regularly, that she was concerned about the extent of the bruising that developed on the worker's right leg after her accident, and that in her opinion she needed to rest her injured leg until March 11. I have found no reason to question the objectivity of this recommendation and have concluded that the worker's decision to accept her doctor's advice in this regard was reasonable and supported by Board policy		• (Medical advice)
261.	248 16	22/Aug/2016	When LMR services were re-opened in November 2012, the Board did not re-assess the suitability of the SEB/SO of CSR, despite an earlier determination by the previous claims adjudicator to change it. As there was no functional restriction placed on the worker's ability to interact with the public, the Work Transition ("WT") Specialist concluded that the job of CSR remained suitable. … Although none of the psychologists or psychiatrists articulated a functional restriction against work with the public, I find that the opinions that the worker suffers from ongoing issues with angry outbursts, social anxiety and aggressive impulses render the SEB/SO of customer service representative unsuitable for this worker. The alternate SEB of cashier us similarly not suitable, as this, too, requires extensive interaction with members of the public.	J Frenschkowski	• 3rd • 15th • (Psychological/ mental health) • (RTW) • (Deeming)
262.	1612 16	24/Aug/2016	As a review of the decision on appeal suggests, the ARO denied the worker psychotraumatic entitlement on the grounds that his depressive symptoms were not "solely" caused by the effects of his compensable injuries. The ARO appears to have been of the view that the worker's depressive symptoms were caused by factors other than the compensable injury such as the death of his mother and sister and the treatment he was receiving from his co-workers. Having had the opportunity to consider all of the evidence before me, including the worker's testimony, I find that I am led to a different conclusion. It is now well established in Tribunal case law that in dealing with matters of causation, the Tribunal employs	R Nairn	• 8th • 7th • (Psychological/ mental health) • (Entitlement)

			a "significant contributing factor" test.		
263.	2015 16	25/Aug/2016	In correspondence dated August 26, 2013, the Claims Manager denied the worker ongoing entitlement to benefits based on the Regional Evaluation Centre (REC) assessment dated May 14, 2013, which indicated that the pelvic fracture had healed and that full recovery of the lumbar and thoracic spine strains was anticipated. The REC assessors concluded that both areas of injury were superimposed on pre-existing, asymptomatic, age-related degenerative changes. Based on this assessment, the CM concluded that any ongoing issues were related to non-compensatory pre-existing conditions.… After a careful review of the medical evidence I have concluded that the worker's upper and lower back impairment is causally related to the workplace accident which the worker sustained, and that the condition is permanent. In coming to my decision, I have taken the following into consideration. As noted above, the diagnostic tests revealed mild degenerative changes, which until the workplace injury were asymptomatic. The worker has not been diagnosed with age-related changes such as disc problems and spinal stenosis which may cause symptoms. Despite an anticipated recovery the worker's symptoms have not resolved. Indeed as noted by his treating physicians his symptoms have increased and are considered by Dr. Hu to be severe and permanent. In coming to my finding that the worker's upper and lower back impairment is permanent, and that, consequently, the worker is entitled to a NEL assessment for that condition, I have taken into consideration the fact that the worker's upper and lower back condition has persisted for a number of years, and that despite physiotherapy and other treatments over a number of years, has failed to resolve.	J Goldman	• 9th • 4th • (Permanent impairment) • (REC) • (Degenerative)
264.	1614 16	25/Aug/2016	In a decision dated November 20, 2007, the Claims Adjudicator had confirmed that the worker's LOE benefits would be calculated on the basis she was capable of earning $12.94 working full-time as a law clerk. The Claims	R Nairn	• 10th • 8th • 13th • WSIB decision was procedurally

			Adjudicator advised that this level of benefits would be in effect "until you turn 65". In a decision dated June 3, 2011, Case Manager re-opened the issue of the final LOE review and decided that "at the time of the original lock-in [20Nov07] I would have locked the benefits in using the same wage [i.e. $15.88 per hour over 40 hours per week]". The ARO agreed with the Case Manager's decision. Having had the opportunity to review the relevant provisions of section 44 as well as the contents of OPM Document No. 18-03-06, I find myself in agreement with Mr. Mancini that the Board did not have the authority to re-open the issue of the worker's final LOE review in 2011. The legislation and the policy are clear that the Board shall not review a worker's LOE benefit more than 72 months after the date of the worker's injury unless certain exceptional circumstances exists. None of those circumstances existed in 2011. The Board appropriately extended the time limit for making the final LOE review from 2006 until 2007 when it determined that $12.94 was an appropriate hourly wage. I see nothing in the facts of this case which warranted reopening the matter again some three years later. As such, I find, at the time of the final LOE review which the Board deemed to be December 21, 2007, the worker ought to have been deemed capable of earning $12.94 per hour over a 40 hour week.		unfair • (Lock-in) • (Deeming) • (Employability)
265.	1124 16	30/Aug/2016	The goal was to return the worker to her pre-injury job as a cleaner. During the meeting the employer indicated that it was willing to accommodate the worker at the same pre-injury job location but modified duties as an extra staff person. …Based on these restrictions, the job offered by the accident employer would be contrary to the restrictions given for the worker's right wrist, low back and shoulder as the worker was not to use her upper extremities, had limited flexion, standing, sitting and walking tolerances and was not allowed to climb ladders. The unsuitability of the job offered was further confirmed in January 2013 by reports from the worker's treating physicians that indicated that the	S Hodis	• 5th • 1st • (ESRTW) (Unsafe) • (Cooperation) • (Loss of earnings)

			worker was not able to return to work.		
266.	307 16	30/Aug/2016	The AROs speculation with respect to possible causes for the worker's injury other than those related to the worker's duties, are not supported by the medical evidence. The worker's explanation for the delay in filing a WSIB claim is reasonable under the circumstances. Repetitive strain injuries may not reveal themselves immediately. … There is no persuasive evidence that the worker had a pre-existing left shoulder condition or that she engaged in non-work related activities which could have resulted in a shoulder injury. … In the present case, the worker sustained a left shoulder injury for which she sought immediate medical attention. Dr. VanderSpek in her reports dated August 17, 2012, March 2013 and January 13, 2014, has no doubt that the worker's duties contributed to her initial injury. As noted in her report, Dr. VanderSpek was provided with the employer's list of duties assigned to the worker. We can only conclude that her opinion is based on that description as well as the worker's account. Dr. Goldstein, chiropractor, has also provided the opinion that "the injury is likely due to the physical nature of her work (repetitive motions/heavy lifting/transferring)."	J Goldman MP Trudeau M Ferrari	• 1st • 4th • (Entitlement)
267.	1362 10	30/Aug/2016	Given the restrictions imposed by his permanent low back and neck injuries, a position as a Security Guard would appear to be particularly unsuitable given that the worker could find himself in a physical confrontation.	R Nairn ADG Purdy G Carlino	• 3rd • (Unsafe) • (RTW) • (Deeming)
268.	1699 16	30/Aug/2016	In light of the foregoing, I have determined that there are three distinct reasons why the worker's 29% NEL award for his mid and low back ought not to have been subjected to a deduction based on his pre-existing DDD.	ME McKenzie	• 23rd • 8th • (NEL rating) • (Degenerative)
269.	1906 16	31/Aug/2016	The medical evidence supports compatibility between the job duties and the CTS diagnosis. The Nurse Practitioner indicated in a brief report that the worker was seen on January 9, 2013, that the worker was unable use her right	CM MacAdam MP Trudeau	• 1st • (Entitlement)

			arm/hand, and authorized the worker off work. Several notes from the Nurse Practitioner are found in the case materials including one where she expresses amazement that the claim had been denied. We note in particular that the neurosurgeon, Dr. Adegbite, held out the possibility that the worker might have similar wrist problems if she returned to her job duties. This, in our view, is a clear indication of compatibility. We are persuaded as well by the opinion of Dr. Cisa.	RW Briggs	

CASE	DECISION NUMBER	DATE	QUOTES (DIRECT)	PANEL/VC	COMMENTS
270.	1441 16	02/Sept/2016	When we consider those factors in light of the information provided in the Discussion Paper, we find that there is no basis to conclude, as the Board did, that the degenerative changes alone are the cause of this worker's ongoing back pain.	K Jepsen B Young J Crocker	• 4th • 9th • (Entitlement) • (Degenerative)
271.	702 16	02/Sept/2016	The evidence links the worker's psychological condition to his work-related injury. This is demonstrated by the worker's numerous diagnoses of adjustment disorder, with mixed anxiety and depressed mood and pain disorder associated with psychological factors and a general medical condition, namely the worker's compensable low back injury. This was clearly stated by the PTP psychiatric assessor who reported the following: "The relationship between the accident and Adjustment Disorder is major and direct; the relationship between the Pain Disorder and the accident appears to be direct. ... I do not identify any other major psychological contributants to his current psychological state." This correlation was also reflected in the PTP's Final Discharge Report, which stated: "The work place accident is a major contributor to the pain and adjustment disorders." …	W Sutton	• 1st • 9th • 4th • (Degnerative) • (Entitlement) • (REC) • (Psychological/ mental health)

			Following the worker's injury of July 24, 2010, the Board accepted the worker's claim and allowed benefits on a diagnosis of low back strain. In October 2011, the CM concluded that the worker had reached MMR for his low back without any residual impairment. The CM concluded at that time that the worker's "symptoms at present are most likely due to degenerative spine problems."… In my view, the medical reporting outlined above, indicates that while there was evidence of a pre-existing degenerative condition in the worker's low back, the accident of July 2010 was a significant contributing factor to the worker's low back condition following his compensable low back injury of July 24, 2010. The preponderance of the evidence suggests that the worker suffered mechanical low back pain in association with his lifting injuries of low back strain. This condition continued from the July 24, 2010 accident through August 17, 2011, when the REC assessors concluded that the worker's full recovery was not anticipated. In further support of this conclusion, I note that the CT scan of September 2010 identified the worker's spondylosis, but stated that it was "inconclusive if the cause is injury related or congenital."		
272.	2012 16	02/Sept/2016	On September 30, 2011, the worker was granted entitlement to a permanent impairment for a psychotraumatic disability in a decision by an ARO. On March 8, 2012, the worker was granted a 15% NEL for post-traumatic stress and depression with an MMR date of October 30, 2004. As a result, the Panel finds that the Psycho-Vocational Assessment which concluded that the SO of accounting clerk was suitable did not consider the worker's permanent psychological impairment, in tandem with the worker's loss of vision in the right eye. The Panel finds that in order for an SO to be suitable, the Board's evaluation must consider all of the worker's impairments. In this case, the Psycho-Vocational Assessment understandably, but incorrectly, did not consider his permanent psychological impairment (post-traumatic stress and depression) and therefore, the suitability of the SO of accounting clerk has not been completely	P Allen B Wheeler JA Crocker	• 17th • (Psychological/ mental health/ PTSD) • (Employability)

			assessed.		
273.	2063 16	07/Sept/2016	The Board did not dispute the worker had an ongoing impairment, but found that after October 9, 2012 the worker's back problems were due to age-related degeneration in the worker's spine rather than the workplace injury […] The worker's MRI scans show relatively modest degenerative changes and there was no confirmation of any nerve root impingement. In conjunction with that, we have found that the worker had no back problems prior to the injury. Based on these factors, we find that there is no basis to conclude, as the Board did, that the degenerative changes alone are the cause of this worker's ongoing back pain. There is also little medical opinion in the file suggesting that progression of degenerative changes in the worker's spine were the cause of his post-injury back pain. We do acknowledge that a report from Dr. Patel, dated June 26, 2013, states that the worker "suffers from chronic low back pain secondary to L4-5, L5-S1 disk disease and sacroiliac joint arthropathy." However, it is also notable that Dr. Patel recounts the worker's history as pain beginning only after the workplace accident in May 2011. In our view, Dr. Patel's report can be read as implicitly supporting a finding that the worker's compensable injury aggravated the previously asymptomatic degenerative changes to which Dr. Patel refers. A number of other medical opinions more explicitly link the worker's ongoing back symptoms to the May 2011 workplace injury. Dr. Rajaraman wrote several notes indicating that the worker's ongoing back symptoms were work related … Dr. Yasalar, the worker's chiropractor, indicated in an opinion dated February 23, 2012 that annular tears can be the result of direct trauma from heavy lifting. Dr. Yasalar prefaced this opinion with the statement, "every human being has some degree of degeneration in their spine and joints." We interpret this statement to be equivalent to the statement that the degenerative changes in the worker's spine would not, by themselves, be suspected to be the cause of his back pain. Dr. Yasalar's opinion, as we interpret it, supports a finding	K Jepsen BM Young C Salama	• 4th • 12th • 2nd • (Degenerative) • (Entitlement)

			that the workplace injury aggravated asymptomatic pre-existing underlying degenerative changes. In a similar opinion, the worker's physiotherapist, P. Oommen, wrote a letter dated March 20, 2012, in which the physiotherapist noted the facet joint arthritis and annular tearing shown in the MRI and then went on to state, "Although the mild osteoarthritis and neural foraminal narrowing would have existed before the back injury, it's my opinion that the annular tearing would be as a result of the lifting incident."		
274.	1944 16	07/Sept/2016	Taking this into account, ARO Rossi concluded, while acknowledging that the worker "has work-related and non-work-related medical conditions that affect his employability", that the worker was employable. ARO Rossi also recognized that the NEL examination report and the Functional Restoration Program ("FRP") report noted that the worker had "difficulties with performing activities of daily living", including, as the ARO described, "difficulties with dressing, bathing and household chores". Yet the ARO concluded that the SEB selected remained physically suitable for the worker including for his work-related low back impairment … After all, if the worker is having difficulty with the tasks of daily living, including difficulties with dressing, bathing, and household chores as was found by ARO Rossi, then it is hard to imagine the worker being able to get up each and every weekday and report for a full eight hour workday.	J Josefo	• 3rd • (Employability) • (Deeming)
275.	2132 16	08/Sept/2016	On October 2, 2008 … the Claims Adjuster expressed the view that "the likelihood that this worker could get employment in the Human Resources field at 62 or 63 years of age is unlikely even though mandatory retirement age has been removed." In other earlier memoranda in the file, dated December 27, 2006 and February 21, 2007, Board staff expressed concerns about the worker's slow progress through the training program and the challenges he faces because of his pain and lack of mobility, as well as his hearing loss … Even	D Hale M Christie A Grande	• 3rd • (Older worker) • (LMR) • (Employability) • (Psychological/ mental health) • (Deeming) • (Loss of earnings)

			before he began his LMR training, in July 2006, the Vocational Evaluator and the psychologist who examined the worker were of the view that he faced significant challenges in finding employment, given that he was, at that time, 57 years of age, suffered from a hearing disability, had serious physical limitations and required intensive upgrades to his academic standing in order to re-enter the workforce in some capacity. The evaluators also recognized that the worker suffered from anxiety, had been prescribed medication for this condition and was under the care of a mental health professional at that time. … We conclude that there is ample evidence in the documents that comprise the Case Record and the worker's own testimony, to support a finding that the worker was competitively unemployable, given the conclusions of the medical caregivers responsible for his treatment and the sometimes candid remarks about the likelihood of obtaining work in the human resources field made by Board staff.		
276.	2122 16	08/Sept/2016	Noting that the worker was restricted to driving 15 minutes at a time based on Dr. Ngo's opinion, the Panel finds that the worker would have to, at least, stop and rest, once for one to two hours on the way to work and then would have required a rest break for one to two hours when he arrived at work. In addition, the worker would likely have required two, one-to-two-hour breaks on the way home. In other words, in order to drive to work and drive home on any given day, the worker would have required between four to eight hours of rest, in order to recover from the effects of the vibration incurred during the commute. … In other words, the Case Manager and the ARO determined that the worker's loss of earnings was due to his decision not to return to suitable employment, rather than his compensable injuries. Having considered all of the evidence, the Panel has determined, once again, that the position of night shift supervisor was unsuitable and that the worker's decision not to return to work was made because of the effects of his compensable injuries.	P Allen M Falcone A Grande	• 3rd • 5th • (ESRTW) • (Loss of earnings) • (Cooperation)

277.	1700 16	08/Sept/2016	The difficulty that the CM had with the worker's request for entitlement to a NEL assessment for his right knee arose because the CM took the view that unless there were ongoing functional restrictions related to his job, the worker's request must be denied. The CM concluded that extensive medical evidence establishing that the worker had been left with permanent physical abnormalities as a result of his accident, for which he would likely require surgery in the future, did not suffice. This point of view misconstrues the definition of permanent impairment that is set out in Board policy.	ME Mckenzie	• 8th • (Permanent impairment)
278.	2092 16	09/Sept/2016	There is no description of the work transition services the Board intended to provide when the Case Manager called the worker in March 2012. There is no record of a labour market re-entry plan or assessment. The worker had been discharged from the functional restoration program as psychologically unfit for this program in January 2009. The worker's response to the Case Manager in March 2012, that she was not sure and would speak to her doctor, was reasonable, in our view. One month later, Dr. Davine informed the Board, that the worker was unable to work. The worker's response to the Case Manager did not constitute a failure to co-operate. Rather, she was complying with the reasonable advice of her treating specialist, as she was required to do by section 34(1) of the WSIA, which provides: 34(1) A worker who claims or is receiving benefits under the insurance plan shall co-operate in such health care measures as the Board considers appropriate.	L Gherke J Blogg S Roth	• 5th • WSIB decision procedurally unfair • (Cooperation) • (Psychological/ mental health) • (RTW)
279.	1975 16	12/Sept/2016	There is no evidence before me that the letter from the NEL Clinical Specialist reflects the position of the Board on the interpretation of the phrase "pre-existing impairment" in OPM Document No. 18-05-05 (12 October 2004). If the Board takes the position that the Tribunal's interpretation of the phrase is incorrect, it has the right to request reconsideration of a Tribunal decision based on that interpretation.	B Doherty	• 23rd • 8th • (NEL rating)

			There is no evidence that the Board has done so.		
280.	2089 16	13/Sept/2016	Adopting Dr. Margaliot's analysis of the worker's symptoms in relation to this incident, and noting that the Board has provided no reference to AMA Guides or other authority to support the RSI percentages arrived at in the course of its NEL assessment, we find no basis for using RSI criteria in rating this worker's permanent impairment.	D McBey ST Sahay M Ferrari	• 22nd • (NEL rating)
281.	1798 16	13/Sept/2016	We note that the Board denied entitlement to benefits for psychotraumatic disability on the basis that it appeared that the worker's depression was related to financial difficulties as well as due to "marital discord". In denying entitlement on this basis, it is implicit that the Board considered the worker's financial and marital difficulties to be not significantly related to his compensable injury. Although we agree that these considerations played a role in the development of the worker's depression, we find that these considerations are significantly related to the injury. We consider these factors to be "socioeconomic factors, the majority of which can be directly and clearly related to the work-related injury" within in the meaning of the Board's policy. It follows that, rather than providing a basis for denying entitlement for psychotraumatic disability, these factors provide a further basis to award entitlement pursuant to the third bullet point included in the policy document.	M Crystal M Ferrari ADG Purdy	• 8th • (Psychological/ mental health)
282.	1923 16	15/Sept/2016	The ARO found that the modified work duties offered to the worker had been found by a return to work (RTW) specialist to be suitable. A closer reading of the RTW's report, dated February 11, 2011, however, shows that the RTW specialist did not recommend that the worker return immediately to the duties offered . . . The RTW specialist suggested that the worker's return to work was a medical call. Dr. Shulman, the worker's family physician, did not authorize the worker's return to work until May 2, 2011. The Board interpreted the	C Sand V Phillips D Broadbent	• 5th • (ESRTW) • (Medical advice) • (Loss of earnings) • (Cooperation)

			worker's ability to embark on a family trip as evidence that he was not totally disabled during the period in question, and this factored into the decision to deny him benefits commencing February 23, 2011. At the hearing, the worker explained that the family trip was part of a larger family reunion, and had been planned a year prior, before his workplace injury. He testified to how he managed the flight by upping his pain medications, and limited his activities while he was on vacation to floating in a shallow pool . . . Furthermore, he testified that his doctor encouraged him to go away. As per the suggestion of the RTWs, we rely on the medical opinions of the worker's treating doctor and specialist, who agreed that the worker should not report to work until May 2, 2011.		
283.	2274 16	16/Sept/2016	The ARO stated that the Board's "drug formulary decisions pertaining to the specific drugs in this appeal indicate they are not reimbursable in this claim." However, as indicated above, Tribunal case law has recognized there may be exceptional circumstances in which non-formulary prescriptions are necessary for a worker. In this appeal, I give considerable weight to the judgment made by the worker's treating physicians, who provided ongoing care to the worker and were therefore aware first hand of both the worker's pain symptoms and his sleep-related problems due to his compensable back injury. In light of that knowledge, and over many years, various physicians determined that Zopiclone was "necessary" as a reasonable part of their treatment plan for the pain and the sleep-related problems it caused. I find that the worker's need for this medication due to the pain-induced sleep problems due to his compensable back injury constitute exceptional circumstances in this case warranting continued coverage of a medication not included in the formulary.	L Lampert	• 8th • 1st • (Health care) • (Formulary)
284.	2228 16	20/Sept/2016	Both of these lines of reasoning arrive at the same result. The worker's pre-existing lumbar degenerative changes did not constitute a pre-	ME Mckenzie	• 23rd • 8th • (NEL rating)

			existing impairment pursuant to Board policy. In any event, had it been necessary to rate those changes pursuant to the AMA Guides, the worker's pre-accident degenerative changes would attract a NEL rating of 0%.		• (Degenerative)
285.	2171 16	20/Sept/2016	In January 2009, the Board stopped the LMR assessment because it was not possible to identify an SEB (Suitable Employment or Business), due to the worker's lack of education, English language skills and transferable skills. The worker had less than two years of education in her home country. She had never learned to speak, read or write in English. Her work experience was limited to agricultural labour and working in a yarn factory…The worker attended ESL classes from December 3, 2012 until December 11, 2012, when she slipped from her chair and fell on the floor of the classroom…. The worker testified she did not return to school after the injury. She testified that she remained at home due to pain and in compliance with her doctor's advice to rest and not to go to school. The Board closed the WT plan on February 4, 2013 and reduced the worker's LOE benefits by a potential wage identified as $10.25 per hour, based on a finding of non-cooperation with the WT Plan … The Case Manager wrote, that she "referred the worker" to WT services before the lockin date, and justified deferral of the final LOE review date on this basis. However, it is clear from other memos, including that of the Case Manager on August 4, 2011, that it was the file that was referred to WTS for review, not the worker. The referral of a file for review does not constitute the provision or arranging of a WT plan or assessment, in our view. We conclude that the Case Manager's call to the worker on July 5, 2011, did not constitute the provision or arrangement of WT services. No discussion of WT services was recorded. No interpreter was present to assist the worker during this call. . . . It was clear to us that she needed an interpreter to understand the questions asked of her and to respond	L Gehrke M Lipston C Salama	• 8th • 10th • 14th • WSIB decision was procedurally unfair • (Employability) • (Loss of earnings) (Deeming) • (Cooperation) • (Lock-in) • (ESL)

			appropriately. … For the above reasons, we conclude that when the final LOE review was conducted in February 2013, there was no exception under which the final LOE review could be deferred past October 27, 2011. No WT plan had been provided, nor had any WT assessment been arranged before this date. On October 27, 2011, the worker was in receipt of full LOE benefits, which had previously been awarded to the age of 65. There are no circumstances that would give rise to an exemption under section 44 to review this award after the 72-month date.		
286.	2228 16	20/Sept/2016	While is it uncontradicted that the MRI study of the worker's low back revealed underlying degenerative changes, there is no evidence to establish that these changes had ever been symptomatic, required treatment, or interfered with the worker's ability to work or his earning capacity in any way. This point is emphasized in a series of reports from the worker's physician, Dr. Huneault, contained on the Board's file. As noted above, the worker's submission that he had never experienced low back symptoms prior to his accident in this claim or experienced any low-back related interruptions to his employment has already been accepted by the Board. I have adopted the reasoning contained in the previous WSIAT decisions outlined above in concluding that as such, no deduction is to be made from the worker's NEL award.	ME McKenzie	• 23rd • 8th • (NEL rating)
287.	2363 16	21/Sept/2016	OPM Document 18-03-02, "Loss of Earnings (LOE) (Accidents from 1998)" contemplates the payment of full LOE benefits if "the nature and seriousness of the injury completely prevents a worker from returning to any type of work", provided s/he "cooperates in health care measures as recommended by the attending health care practitioner." In this appeal, there is no evidence before me to suggest a lack of cooperation on the part of the	L Lampert	• 5th • (ESRTW) • (Medical advice) • (Cooperation) • (LOE)

			worker during the time period in question. Dr. Khan believed she required this time off of work "due to the nature and severity of her symptoms." The ARO denied entitlement to LOE, in part, because she found that "the medical information does not support the worker was totally impaired" during this time. I have come to a different conclusion and in doing so, I place significant weight on Dr. Khan's clear recommendation of time off of work, specifically due to the nature and severity of her symptoms, as contemplated by OPM Document No. 18-03-02. On this basis, I find that the worker is entitled to full LOE benefits for the time period in question.		
288.	2353 16	21/Sept/2016	In our view, the worker is not able to return to such work or any gainful employment for either of the time periods in question.In that regard, we again note that both the worker's current treating psychiatrist and his family doctor have clearly stated that the worker is not employable. … In this case, the Panel has considered the worker's physical and psychological state during both the time periods in dispute. We have noted that much of his personal characteristics do not support a successful return to gainful employment when considered in conjunction with his work injuries. We also note again the reporting from his treating psychiatrist and family doctor, and particularly from Dr. Arbitman and Dr. Ilacqua, who assessed the worker at the direct request of the Board. The worker has a substantial 44% NEL award and has been assessed and treated by numerous specialists, including Dr. Ilacqua for many months. In our view, that reporting was particularly persuasive in our finding that this worker was unemployable during the first period in dispute, and that he remains unable to return to gainful employment.	AG Baker M Christie C Salama	• 5th • 1st • (Psychological/ mental health) • (LOE) • (Employability) • (Deeming)
289.	2047 16	21/Sept/2016	We find that the worker cooperated in health care measures. She brought functional abilities forms to her family physician on a regular basis and these were promptly completed and submitted. Until August 19, 2010, Dr. Mand indicated that the worker could not return to	S Martel B Wheeler F Jackson	• 5th • (ESRTW) • (Medical advice) • (Cooperation)

			work. The worker cooperated in returning to work once she had seen the specialist and her family physician opined that she could return to light duties at four hours per day. The worker further cooperated once the specialist authorized a return to regular full-time hours.		
290.	2344 16	22/Sept/2016	As cited above, OPM Document No. 18-02-03 states that long-term average earnings are generally the same as short-term average earnings for workers in permanent employment. The $85 per week difference between the worker's short-term and long-term earnings profile appears to be largely due to his wage increase of at least $2 an hour, $3 an hour for overtime (the worker's rate of pay from June to December 2006 is unknown; on December 22, 2006 it was $16.45 per hour, by February 2007 it was $17.20 per hour, and by May 2007 it was $18.45 per hour). As stipulated in OPM Document No. 18-02-03, "the decision-maker does not recalculate the worker's average earnings solely due to a pay increase or decrease prior to the injury." No other factor has been identified which could explain the variation between four weeks' and one year's average earnings; the worker was a full-time employee, and there has been no suggestion that he did not consistently work full-time hours or overtime hours as expected. … In these circumstances, it is not unfair to pay LOE benefits based upon the worker's short-term average earnings. Pursuant to Board policy, a long-term recalculation is not required.	S Netten	• 8th • (LOE)
291.	2322 16	22/Sept/2016	I find no basis to reject the opinions of the worker's treating health care providers who unanimously were of the same view, that the worker's low back injury of February 8, 2011, did not resolve, that his condition worsened by returning to his pre-accident duties at full hours, and the injury that occurred on July 4, 2011 represented a recurrence and worsening of the original injury. For these reasons, I find that the worker has ongoing entitlement for the low back, beyond May 4, 2011, and for the recurrence and worsening which took place on	JE Smith	• 1st • (Entitlement)

			July 4, 2011.		
292.	2384 16	23/Sept/2016	We disagree with the Case Manager's characterization of events as merely "upsetting and unwelcome." In our view, this approach perpetuates outdated notions and trivializes sexual assault. Based upon the foregoing authorities, the Panel finds that the sexual assault of the worker in this case was objectively traumatic and unexpected within the meaning of the Act and Board policy.	R McCutcheon M Christie A Signoroni	• WSIB decision trivializes sexual assault • (Entitlement) • (Psychological/ mental health)
293.	1558 16	23/Sept/2016	The Panel finds that the Case Manager initially made the correct decision. The worker was and remains unemployable. In arriving at this conclusion, we note that there is no evidence of significance to suggest that the worker's compensable condition had improved, such that while she had been previously unemployable she was around the 72 month mark, capable of working—even part time. The worker's attempts in LMR are consistent with this finding, and we note the worker was unable to complete a four hour shift without extreme difficulty and having breaks beyond the time allotted. The worker has a compensable bilateral shoulder condition rated at a 36% NEL, which rendered her unable to earn any income in suitable modified work. She also has limited transferable and vocation skills, including limited English language skills. For all these reasons, we find the worker is entitled to full LOE benefits.	C Sand M Falcone K Hoskin	• 14th • 12th • (Employability) • (LOE) • (ESL) • (Deeming) • (Lock in)
294.	2258 16	23/Sept/2016	Pharmaceutical information warns that drowsiness and dizziness are possible side effects from the medication prescribed for the worker by Dr. Bruckschwaiger. In his report dated December 5, 2012, Dr. Bruckschwaiger refers to the seriousness of the worker's low back condition. With regard to a return to work, Dr. Bruckschwaiger states the following: "The graduated return to work program worked very well and I believe served its purpose in getting this man back to work as soon as possible. In terms of the decision to	J Goldman BM Young S Roth	• 5th • 1st • (Medical advice) • (ESRTW) • (LOE) • (Cooperation) • (Unsafe)

			insist that this patient return to work immediately at eight hours per shift even at moderate, light duties I simply feel that was unreasonable and nonsensical under these circumstances." … In arriving at our decision that the worker is entitled to LOE benefits for the period in question we have been guided by the Board policy cited above. In our view the modified work offered to the worker in March 2012, on a full time basis, was neither suitable nor safe under the worker's circumstances. We recognize that the worker made every effort to return to his employment, to the extent of refraining from taking the medication he was prescribed for his severe pain, in order to guard against side effects which could have endangered his safety and the safety of his co-workers.		
295.	1834 16	28/Sept/2016	The Panel gives significant evidentiary weight to Dr. Rutka's opinion as he is widely recognized as a medical specialist in hearing loss, he is the only physician to provide a medical opinion in this case, and he was the only physician that actually examined and assessed the worker in-person. As such, his medical opinion is viewed as more reliable and preferred by the Panel over the opinion of the Board's audiologist (not a physician) who merely reviewed Dr. Rutka's earlier documentation for adjudicative purposes in 2015 (Board Memorandum #4). … The Panel accepts Dr. Rutka's objective findings based on testing conducted at his own clinic that the worker had occupational hearing loss of "27.5 dB in the left ear and 28.5 dB in the right ear" and that these "values would qualify… for NEL benefits".	L Petrykowski J Blogg JA Crocker	• 2nd • (Permanent impairment)
296.	1673 16	28/Sept/2016	In my view, the medical evidence supports a finding that the degenerative changes evident in the worker's MRI were an underlying, asymptomatic, pre-existing condition: the worker had been able to perform his regular job duties without medical precautions or restrictions, and there was no indication that he had lost time from work due to his pre-existing condition. In the absence of evidence that the pre-existing condition had resulted in	K Iima	• 23rd • 8th • (NEL rating)

			periods of impairment or illness requiring health care or caused a disruption in the worker's employment, I find that this condition was not a pre-existing impairment within the meaning of Board policy. Consequently, there is no basis upon which the NEL award may be reduced pursuant to OPM Document No. 18-05-05.		
297.	2158 16	30/Sept/2016	As acknowledged by the ARO in his decision, prior to his accident the worker was asymptomatic. He did not require any treatment for his left knee, nor had the condition disrupted his employment. Furthermore, the MRI performed on May 25, 2006 revealed only mild osteoarthritic changes. After a review of the medical evidence I have concluded that the worker's pre-existing mild osteoarthritis was not a significant contributing factor in the development of his left knee permanent impairment. As set out in OPM Document No. 18-05-05, where the pre-existing impairment is minor, there is no reduction in the rating of the permanent impairment. I find therefore that the worker is entitled to a 16% NEL award.	J Goldman	• 23rd • 8th • (NEL rating)
298.	1711 16	30/Sept/2016	In this case the Board denied entitlement in part due to the absence of a traumatic event; however, a traumatic event is not required under the Policy. … Therefore, four doctors – three of whom are specialists – opined that the worker was suffering from a mood disorder secondary to his ongoing compensable injuries and chronic pain.	K Cooper ST Sahay JA Crocker	• 8th • 1st • (Psychological/ mental health) • (Entitlement)

CASE	DECISION NUMBER	DATE	QUOTES (DIRECT)	PANEL/VC	COMMENTS
299.	2405 16	04/Oct/2016	The worker, himself, indicates that his largest problem in terms of finding work upon the completion of his LMR program was his ability to communicate in English. While the LMR service provider that provided the worker with ESL instruction indicates that the worker was functioning at a Grade 10 level, there is no objective testing of the worker that confirms that assessment. The worker, for his part, expresses considerable uncertainty about his ability to communicate in English and used an interpreter for his hearing before me. Even at a Grade 10 level of functioning, the WSIB Claims Adjudicator questioned the worker's ability to perform work in customer service in a memo dated August 20, 2008. The worker's health care providers have offered opinions that the worker is disabled and not capable of employment. In a report dated May 11, 2010, the worker's psychiatrist Dr. S. Tewfik states his belief that the worker was not employable as a customer service representative due to his major depression and his poor communication skills and in fact, that the worker was not employable at all in any capacity, due to the severity of his symptoms of major depression. In a letter dated August 18, 2009 the worker's family doctor, Dr. H. Boyrazian indicates that the worker was "unfit for any type of employment."	G Dee	• 3rd • 5th • 19th • (Employability) • (LMR) • (ESL) • (Psychological/ mental health)
300.	2389 16	04/Oct/2016	The ARO determined that that the worker's failure to continue in the training program was due to her physical and psychological limitations and therefore she did not fail to cooperate in attempts to return to work. She was therefore not disqualified from full LOE benefits on the basis of cooperation. The ARO went on to conclude that the worker's impairment was partial, basing this on her 40% NEL rating. He also concluded by application of Operational Policy Manual (OPM) Document No. 15-06-08, that the worker's impairment was caused in part by factors not related to the workplace	Z Onen ST Sahay S Roth	• 10th • 1st (unequivocal) • 5th • 7th • (Psychological/ mental health) • (Loss of earnings) • (Deeming) • (ESL)

			accident. He decided as a result, that the worker was deemed to be able to find and maintain employment at $10.25 per hour in an entry level job for 20 hours per week. As we indicated earlier, we do not agree with this conclusion. We note first that the non-economic loss benefit or the NEL is not a benchmark for ability to work…. In this case, there was clear evidence that was reasonably contemporaneous that the worker was incapable of working due to her workplace injury. The psychiatric reports in 2011, and 2012, and the worker's consulting psychiatrist's report of July 2013 are unequivocal in concluding that the worker was not able to return to work and that the prognosis for a return to work was poor or guarded. The assessing psychiatrists provided long lists of potential barriers for a return to work including the worker's intractable pain condition, her major depression including lability, irritability, sleepiness and lack of motivation, her lack of any English language skills, her limited education and the repeated attempts at active treatment to improve her situation, which did not succeed. The psycho-vocational assessment of 2012 also indicated that the worker faced significant barriers to a return to employment. The Panel concludes therefore that a preponderance of the evidence leads to the conclusion that the worker was totally unable to work in April 2013 when her LOE benefits were closed and later reduced by the ARO. We turn next to the question of whether there were other causes for the worker's impairment that were not related to her workplace injury. There is no evidence to show that the worker experienced any problems with her employment or family function prior to the workplace injury of 2007. There is, however, ample and highly credible evidence to support the conclusion that the worker's workplace injury and its sequelae such as the pain and psychological conditions as well as the financial difficulties affected her spousal and family relationships. In other words, there is strong evidence to show that the sequelae of the accident including the worker's ability to cope		

			and her financial circumstances resulted in further impairment for the worker, limiting her ability to work. The psychiatric evidence in particular shows that these sequelae started with the workplace injury. There is no evidence to show a different cause than the workplace accident for these conditions. There are no other independent factors that contributed significantly to the worker's inability to return to work.		
301.	2340 16	05/Oct/2016	We find that the job of security guard/inspector, upon which the Board's determination of the level of LOE benefits was made, was not consistent with the worker's functional abilities. In particular, it did not meet the permanent restrictions identified by the Hand Clinic and accepted by the Board, to limit exposure to cold temperatures. As well, it did not accommodate the worker's psychological impairment of PTSD, which caused the worker to have flashbacks when he was in the vicinity of truck engines, which reminded him of the compensable accident. The Board initially determined that the job was not suitable because it required exposure to cold temperatures. It later reversed this determination. We find that the initial determination of unsuitability was the correct one.	L Gehrke B Wheeler F Jackson	• 5th • 15th • 13th • (ESRTW) • (Loss of earnings) • (Psychological/ mental health/ PTSD)
302.	2424 16	05/Oct/2016	There is no evidence before me that, prior to the compensable injury, the worker's employment was disrupted by his pre-existing diabetes. In the absence of evidence that the diabetes had disrupted his employment, this condition is not a pre-existing impairment within the meaning of Board policy. Consequently, the NEL award should not have been reduced pursuant to OPM Document No. 18-05-05.	R Woodrow	• 23rd • 8th • (NEL rating)
303.	1662 16	05/Oct/2016	The Panel finds that the law and Board policy does not disqualify a worker from benefits simply because an injury occurred while performing a routine or normal activity of daily living. The Panel recognizes that Board policy	J Lang B Young A Signoroni	• 13th • 10th • 8th • 4th • 1st

			states that an "injury itself is not a chance event." But, in the circumstances of this appeal, the Panel finds that an accident occurred while the worker bent over to tie the laces on his work boots on July 9, 2012. Wearing work boots was a requirement of his employment and having them tied is, in the view of the Panel, a common sense safety practice. The Panel notes that this rather ordinary activity resulted in a significant injury requiring that the worker be hospitalized for four days. Although the worker had two episodes of treatment for back pain in 1978 and 1994, he had been symptom free for many years prior to July 9, 2012. Furthermore, the Panel notes that the worker's family physician provided an opinion in which he vigorously disagreed with the Board's conclusion that the worker's injury was not compensable. He stated that the "axial, transaxial and rotational shear forces directed through [the worker's] lumbar spine while [tying his work boot] is certainly sufficient to cause a disc herniation just as he suffered." The Panel notes that the Board did not seek an opinion from a Medical Consultant before revoking its initial decision to allow entitlement.		• (Entitlement)
304.	1718 16	06/Oct/2016	I am aware that the Board apparently concluded that the worker had been involved in a motor vehicle accident in 2009, and that the worker sustained right sided injuries in that accident and therefore the worker's ongoing symptoms were related to the pre-existing motor vehicle accident injuries and not the compensable injuries from the accident in November of 2010. I do not agree with this conclusion. I find that the evidence indicates, rather, that the motor vehicle accident occurred in the year 2000, and that the worker had recovered from those injuries prior to the workplace accident in November 2010. I note in this regard that the clinical notes from the family physician for the time period from June 2006 to February 2013 are included in the materials for this appeal, and I am aware of no reference to back pain during the 5 year period prior to the November 2010 accident.	J Noble	• 4th • (Entitlement)

305.	2561 16	07/Oct/2016	The ARO addressed the CPD claim and stated primarily that there were pre-existing back problems, which have been addressed above. Again, it is evident there is a significant history of back problems. However, it was also evident that this worker was at work and performing his full range of duties, driving a front loader and manually maintaining the sifting screening. Post- accident, the worker was reduced to a functionally sedentary level, and has never returned to his pre-accident state. In that regard, I did not find that the impact of the work accident was rendered insignificant due to pre-existing conditions.	A Baker	• 4th • 7th • (Entitlement) • (Chronic pain)
306.	2425 16	07/Oct/2016	Several physicians have provided a diagnosis of chronic pain syndrome including Dr. Arbitman, a psychiatrist, and Dr. L. Sokol, a general practitioner. Dr. Sokol and Dr. Roscoe have both stated that the worker was inhibited by pain on an ongoing and consistent basis in their reports dating back to 1994. The worker has undergone physiotherapy, injections and, pain medication to treat her lower back pain. These treatments have not resulted in a significant change in the worker's pain condition. Moreover, no doctor has questioned the genuineness of the worker's pain. I also find that the worker has had extensive periods of unemployment and part-time employment as a result of her chronic pain. The evidence shows that the worker has suffered a disruption in her family and home life as a result of her persistent and ongoing chronic pain. There is no question that the worker has suffered marked life disruption related to her workplace injury.	S Shime	• 1st • (Chronic pain) • (Entitlement)
307.	2571 16	11/Oct/2016	In my view, the SEB of Cashier was a questionable choice in the first place, given the worker's significantly limited education level, academic potential, and dominant right hand injury. Although always co-operative, it is clear from the LMR reporting that the worker struggled to learn Cashier duties and, in my view, it is questionable whether she would have been able to work in this capacity or to find work in the competitive workforce. That being	T Michinson	• 3rd • 20th • (Employability) (Older worker) • (LMR) • (Deeming) • (Loss of earnings)

			said, she was never given the chance. The job placement arrangement for her did not involve work as a Cashier, and in fact required her to use both hands and arms to fold and re-hang garments, which had no connection to her chosen SEB role. And although work as a Greeter was identified in one LMR report, the worker was clear that this was never suggested as an option. On the evidence, I find that the worker was totally disabled in April 2007 from any type of work, given the functional limitations stemming from her compensable injury, as well as other factors. The file documentation clearly establishes that the worker had significantly limited academic potential, very little formal education, and limited work experience in a factory context with no transferrable skill potential. She was also a 57 year old woman with a serious non-compensable visual impairment and no experience either using a computer or interacting with the public. In my view, the "No SEB" option identified in the worker's LMR Plan would have been a more appropriate choice from the start, and certainly after the worker had demonstrated problems with the Cashier training program and difficulties with the job placement. Accordingly, I find that the worker is entitled to the reinstatement of LOE benefits, effective April 16, 2007, and ongoing to age 65.		
308.	2178 16	11/Oct/2016	In his report of February 9, 2015, the Medical Consultant confirmed that the worker has entitlement to a sprain/strain type injury which would typically resolve within eight to 12 weeks, however, the final summary report of the REC on September 9, 2012, approximately 20 weeks after the work-related accident, confirmed that the worker was partially recovered from her lumbar strain and "no further recovery was expected." The REC also provided return to work restrictions for the low back. I find the REC report to be persuasive evidence that MMR had been reached for the low back strain on September 5, 2012, at the time of the REC's final report; and that the restrictions were evidence of a PI and attributable to the work-related lumbar strain. I find that there is no evidence of	C Huras	• 4th • 9th • 1st • (Permanent impairment) • (Advance directive to WSIB not to apportion NEL) • (REC) • (Entitlement) • (Degenerative)

			significance in the Case Record that establishes that the spondylolytic spondylolisthesis was having any impact on the lumbar strain. I am persuaded by the REC Summary Report of September 5, 2012, which noted that during the assessment of May 30, 2012, "there were no signs of nerve root tension or nerve root compression in the lower extremity." I interpret this to mean that the pre-existing degenerative condition (spondylolytic spondylolisthesis) was not significantly impacting the lumbar strain or contributing to the range of motion deficits that were noted in the lumbar spine. This is consistent with Dr. Singh's report of October 11, 2012, which identified two separate conditions in the low back, namely; "inflammation of the facet joint at L5-S1" (the degenerative condition); "along with spraining of the surrounding ligaments" (the work-related lumbar strain). I also accept the evidence of the worker and the treating physicians who reported that the worker had no pre-existing impairment in the low back prior to her work-related accident. Accordingly, I find that the NEL award for the lumbar strain should not be reduced or apportioned as there is no evidence before me of a pre-existing disability/impairment, as defined in OPM Document No. 14-05-03, "Second Injury and Enhancement Fund (SIEF)."		
309.	2385 16	12/Oct/2016	With respect, the suggestion that the worker should quit his long term employer, a well-established trucking firm, and try to obtain a minimum waged job in a remote part of the province, as was suggested to the worker by the case manager, is not a position with which I agree. Even if the worker would have been able to stand up all day at a minimum-wage job, working behind a counter, or doing something of that elemental nature, in my view it would have been an example of very short-term thinking for the worker to give up on his long term employer and give up the only work that he has really known, as a truck driver, without any support from the Board, to move into a new venture. In any event, given the worker's radiating pain and inability to function, I am unable to conclude that, during the relevant	J Josefo	• 3rd • 18th • (Employability) • (Deeming) • (RTW)

			time, the worker would have been able to work at any kind of minimum wage or elemental job, as such would likely require the worker's ability at least stand up and assist customers or to perform some duties. While there might be some mythical-type of work available in an ideal state, in the real world I do not see that as likely or probable. That the private disability insurer concluded that the worker was totally disabled is also in my view relevant.		
310.	2294 16	12/Oct/2016	The case materials, specifically the CM's memo of April 7, 2010, indicate the only reason the initial decision not to provide an LMR plan and instead to pay full LOE to age 65 was reversed was because the worker was relatively young and had many years left in the workforce. The subsequent LMR/WT reporting then bears out the PVA findings. The worker barely progressed in her upgrading despite indications of her concerted effort over three years. She did not come close to obtaining even Grade 10. She failed in her three job placements that involved very light duties because each involved some degree of hand/arm use that exacerbated her symptoms. We find it reasonable that the worker did not present as a suitable greeter during her job placements, given her significant impairment and associated pain, her lack of experience in dealing with the public, and her very limited intellectual capacity. At the end of her LMR plan in May 2013, the worker was 51 years old; she had been out of the workforce since her injury 13 years earlier; she had significant restrictions in the use of her arms; she had very limited learning capacity; and very few transferable skills. In summary and for the above reasons, the Panel finds the SO of Customer Service/Sales Clerk was not suitable and that suitable, sustainable employment was not reasonably available to the worker because of her circumstances. Full LOE benefits are therefore in order from May 2013 onward.	C MacAdam M Lipton A Signoroni	• 14th • 3rd • (Employability) • (Deeming) • (Loss of earnings)
311.	1661 16	14/Oct/2016	The Board's decisions – both at the operating level and by the ARO – to terminate the worker's benefits for the April 20, 2012 injury	J Lang	• 9th • 4th • (Entitlement)

			to her low back were based on the assessment provided by the team of medical practitioners at its Back and Neck Specialty Clinic. … Their prognosis was that the worker had partially recovered from her injury at the time of their assessment and that full functional recovery was anticipated within eight weeks. They also noted that "a timetable for the resolution of [the worker's] subjective complaints is indeterminate." Although the Panel is inclined to give weight to the opinions of the independent medical specialists at the Board's Specialty Clinic, we find that the evidence before us in this appeal clearly establishes that the anticipated recovery that the assessors had predicted did not occur. Ms. Caroline Balcaen, the physiotherapist who provided the treatment recommended by the assessors reported, on completion of the treatment, that the worker reported high levels of pain, had spasms with palpitation of her spine and that her functional abilities were limited especially with respect to standing. The Panel finds that Ms. Balcaen's report is compelling evidence that the treatment which the assessors recommended did not result in the recovery that they anticipated. The Panel also finds that the subsequent medical reports on the worker's condition support a conclusion that she has not recovered from her injury. Dr. Retson, who assumed the role of the worker's family physician in September 2013, reported in January 2014 that the worker's symptoms "have gotten worse since her work related back injury" and that these symptoms have been ongoing and progressive. Dr. Retson referred the worker to Dr. Dhaliwal at a pain clinic in Winnipeg. Dr. Dhaliwal has treated the worker since November 2014 with medication and epidural injections. The Panel notes that in his report dated November 17, 2014, Dr. Dhaliwal stated that the worker's pain is likely related to S1 radiculopathy – a condition which the assessors at the Specialty Clinic did not identify.	B Young A Signoroni	• (Specialty Clinic) • (Degenerative)
312.	1745 16	14/Oct/2016	The Panel places significant weight on the opinion of Dr. Torrance-Perks, since as a psychologist, Dr. Torrance-Perks is qualified to	J Noble	• 1st • (Psychological/ mental health)

			provide an opinion on psychological diagnosis and causality… The Panel notes in this respect that in a Psychological File Assessment report dated October 12, 2010, Dr. Ian Smith, psychologist, stated that he had been asked by the WSIB to comment on the worker's entitlement to Psychotraumatic disability. Dr. Smith stated that there was fairly clear evidence of a psychiatric condition arising due to the worker's experience with the LMR process. Dr. Smith stated that the Board should consider allowing entitlement for Psychotraumatic disability for Major Depressive Disorder triggered by the LMR process with a pre-existing condition of unknown degree as a contributing risk. … Fifth, the Panel is aware of no medical opinion from a psychologist or psychiatrist on file that indicates that there was no likely causal connection between the worker's experiences in the LMR program, and the development of the worker's Psychotraumatic impairment. The Panel concludes that the weight of the evidence indicates that the worker has initial entitlement for a Psychotraumatic disability under this claim. We find that the worker's experiences in the LMR program are correctly described as the sequelae to the injury, since the worker was unable to return to the pre-accident employment as a result of the back injury and therefore required LMR services.	M Lipton K Hoskin	• (LMR)
313.	2069 16	14/Oct/2016	A number of Tribunal decisions have addressed the issue of the Board first determining the worker to be unemployable and then later reversing that decision as of the final lock-in date resulting in a consensus of case law on the matter (see for example Decision Nos. 2143/14, 2189/14 and 2350/14). The Panel notes that there is no documentation before the Board in 2011 to indicate that the worker's condition had improved and that she now had become able to return to work. In fact the Panel notes that her condition worsened as she was granted a 1% increase in her neck NEL award. Notwithstanding the lack of evidence of improvement in the worker's compensable condition, the Board determined that the worker was to "re-engage" and return to work	V Marafioti D Purdy M Ferrari	• 14th • 12th • (Employability) • (Lock-in) • (Deeming) • (Loss of earnings)

			as a self- serve gas bar attendant. [...] The Panel finds no evidence to support a conclusion that the worker's condition has improved in the intervening period between the Board's decision in 2008 which found the worker unemployable and in a subsequent decision in 2011 referring the worker for Work Transition Services.[...] it is not appropriate to keep a worker "in limbo" for close to four years regarding LMR services, once there has been a decision that the worker is unemployable. Similar to the analysis in Decision No. 2189/14, the worker's condition in that case did not improve in the intervening period between the Board's decision, and the re-engagement.		
314.	1953 16	14/Oct/2016	The ARO decision under appeal that was issued by V. Advent discusses chronic pain disability in four paragraphs. Two of these paragraphs are general in nature. The other two paragraphs do not mention any of the medical reports I have referred to above. These medical reports are also not referred to in the decision of the Case Manager K. Cavasin that is dated June 7, 2012 that also denied entitlement for a chronic pain disability. There are no medical reports that indicate that the worker does not have a chronic pain disorder in her left arm/elbow/shoulder. I have examined the criteria that must be met in order to qualify for a chronic pain disorder under WSIB policy. [...] Based upon the content of the multiple medical reports that I have referred to above, the worker meets all of these criteria and is entitled to recognition of a chronic pain disability involving her left elbow, arm and shoulder. The medical evidence in the claim file is clear and uncontradicted. The worker has a chronic pain disability affecting her left arm up to and including her shoulder as a result of the injury she sustained at work. [...] The worker did not have a minor organic impairment that would have allowed her to avoid taking her medications when they interfered with driving. The worker had a significant complex regional pain syndrome that in the opinion of her treating physician required that the worker take her prescribed medication on a regular basis. There is no medical opinion that	G Dee	• 1st • 6th • 5th • (RTW) • (Chronic pain) • (Entitlement) • (Cooperation) • (Loss of earnings)

			disagrees with the opinions that have been provided by the family doctor and I find no substantial reason exists to find that the opinion that was provided by the family doctor was an unreasonable one. I therefore accept that the modified work that was offered to the worker by the accident employer and that would have required the worker to drive significant distances to and from work and that also required the worker to drive while at work on a regular basis was not suitable.		
315.	2494 16	14/Oct/2016	The ARO's decision of October 16, 2012 denied entitlement for a NEL assessment primarily on the basis that the REC report of July 2011 determined that the worker would fully recover from his compensable cervical strain within six weeks. While this may have been a goal that the REC thought could have been achieved within six weeks, the Panel finds that the worker's compensable cervical strain did not recover within six weeks and that he has sustained a permanent functional abnormality or loss. This is supported by Dr. McGillivray's November 28, 2011 letter that commented: "Given that he has a 2 year history of chronic neck pain, once the acute pain episode settles, I anticipate he will be left with a degree of permanent neck discomfort and limitations. I recommend permanent precautions i.e., short hourly breaks of 5-10 minutes in addition to his normal breaks, spent away from the computer." The worker testified that from June 25, 2009 onwards, his neck pain did not resolve. This is supported by documents contained in the Case Record, in particular, the reports of Drs. McGillivray, Shultz and Kleinman. …The Panel finds that the worker continued to complain of cervical pain from 2009 onwards and the cause of this pain has been consistently diagnosed by three physicians as involving a cervical muscle strain. … Operational Policy Manual (OPM) Document No. 18-03-02 states that workers are entitled to full LOE benefits if a workplace injury completely prevents them from returning to any type of work "providing the worker co-operates in health care measures as recommended by the attending health care	P Allen B Wheeler K Hoskin	• 9th • 2nd (all mentioned medical except REC) • 5th • 8th • (ESRTW) • (Loss of earnings) • (Cooperation) • (REC) • (Permanent impairment) • (Entitlement) • (Medical advice)

			practitioner." In this case, the worker's family physician determined that the worker was unable to return to work as of December 16, 2009 as a result of the aggravation of the worker's cervical strain. The worker cooperated with his family physician's advice and remained off work until advised to return to work on January 8, 2010. Tribunal case law has held that workers will generally not be found to be uncooperative if they are reasonably relying on the recommendations of a treating physician.		
316.	2185 16	17/Oct/2016	After careful review, ARO Yjo concluded that the worker was not able to resume any sort of work on a fulltime and that the SOs of a non-working carpentry foreman or sub-foreman or school bus driver were not suitable, given the worker's recognized compensable injuries. However, in a brief one-sentence statement at the end of his decision, ARO Yjo found that the worker was capable of part-time work in minimum wage occupations such as customer service representative, telemarketer or ticket taker. This decision resulted in wage loss benefit calculations from February 25, 1994 and ongoing based on deemed part-time earnings in the new SO of elemental sales and services occupations. I find that ARO Yjo's decision regarding SO suitability is not supportable. No rationale has been provided by the ARO in support of his decision. Nor was any analysis made of the availability of this type of part-time job in the worker's community, or whether the worker had any interest or aptitude for this type of work. As the worker testified, his job experience prior to the workplace injury had always been in the carpentry trade, with no exposure to any customer service or retail sales work. ARO Yjo also did not appear to consider the fact that the worker was 61 years old at the time of his ruling, and that the only psycho- vocational assessment on file was conducted in 1993, before the worker's CPD entitlement had been recognized. I find that the Board did not comply with accepted processes before determining that the worker was a suitable candidate for direct entry work in a SO that had never been considered prior to ARO	T Michinson	• 11th • 12th • 15th • 17th • 5th • (Older worker) • (Employability) • (Deeming) • (Loss of earnings) • (Chronic pain disability)

			Yjo's decision. The ARO concluded that the worker was not able to work on a fulltime basis or in any profession identified up to that point. Absent further consideration, which was not done here, there is no basis for finding that the elemental services SO was somehow suitable. As far back as 1995 the worker's treating physicians concluded that he was not able to return to work.		
317.	2535 16	18/Oct/2016	When I review Dr. Jacqmin's report, the notes from the various health professionals on file including the chiropractor as well as from sport physician Dr. B. Shamess, I see no indication of illness behavior or any reference to inappropriate conduct. This is in stark contrast to the report from physiotherapist J. Salituri dated October 21, 2009, issued to the Claims Adjudicator. Mr. Salituri described in that report "symptoms of inappropriate illness behaviour," and found very little objective evidence to substantiate the worker's complaints of pain and disability. In my view, however, those observations by a non-physician fly in the face of the opinion offered by orthopedic surgeon Dr. Jacqmin. Dr. Jacqmin identified clear, objective reasons for the worker's difficulties. He also concluded his report by noting that if the worker "still has persistent intractable pain," then the worker might consider the drastic option of a spinal fusion. The opinion of the orthopedic surgeon provided a clear and compelling medical explanation for what that surgeon observed, along with clear and objective reasons for the worker's pain. I contrast this with the speculation of "inappropriate illness behaviour" offered by a physiotherapist without much explanation, and certainly with no discussion of why the surgeon's opinion was incorrect. If I must prefer one of these over the other, then in my view the informed opinion of the orthopedic surgeon is clearly to be preferred. Dr. Jacqmin indicates that the worker's pain is real, and he explains why there is an organic cause or explanation for it.	J Josefo	• 1st (except speculation by physiotherapist) • (Entitlement)

318.	1326 16	19/Oct/2016	I find that the preponderance of evidence supports the conclusion that, on a balance of probabilities, the worker was unemployable as a result of her compensable left shoulder and right thumb (hand) impairments as of June 8, 2013. In reaching this conclusion, I find that the evidence indicates that the worker's ability to use her bilateral upper extremities on any sustained basis such as would be required in any job, full-time or part-time, inside or outside of the SO, to be almost nil. The only evidence that suggests that she may be capable of the physical demands of the SO also indicates that significant accommodations would be required and, in my view, such accommodations would not likely be available to her with a new employer.	S Ryan	• 12th • (Employability) • (Deeming) • (Loss of earnings)
319.	2396 16	20/Oct/2016	There are no medical opinions suggesting an alternate cause for the worker's left shoulder supraspinatus tear other than work duties. In particular, there is no opinion that the injury likely occurred due to age-related degeneration alone. We find that the medical opinions support a finding that the worker's duties were a significant contributing factor to his left shoulder injury. [...] Finally, there is no other cause for the injury suggested by the evidence before us. We have already noted that there is nothing in the medical reporting suggesting any other injuring mechanism. The employer's letter provided to the Board suggested the worker was an "avid" baseball player and that this might be a cause of the shoulder injury. This fact was also mentioned in the ARO decision. The worker testified that he has played baseball since he was a child, and as an adult has played recreational slo-pitch. … We further find that the amount of softball the worker was playing was relatively modest; he was not playing so much as to make softball likely to be the major cause of the injury. We note that Dr. McMurray never suggested it was a factor. We find that even if the worker's recreational softball made some additional contribution to the development of the shoulder injury, it was likely at most a minor additional contributing factor. The worker's	K Jepson E Tracey D Besner	• 1st • 12th • 4th • (Entitlement)

			recreational involvement in softball does not alter our conclusions that the worker's duties were a significant contributing factor to the onset of his left shoulder impairment.		
320.	1866 16	20/Oct/2016	In this instance I first note that the worker was deemed to be able to perform as a Customer Service clerk, and that computer training would be required for the worker to accomplish this. As the memos above note, once the worker could not longer continue with her computer training her SO was changed to Elemental Service occupations, although at the conclusion of her WT services she was noted to have completed a program for Customer Service. It would appear to me that if the worker required computer training for the original SO of Customer Service, it would have been required for the ultimate SO of Customer Service. Therefore, on its face, it would appear that the worker does not possess the skills to perform the position. With respect to the Elemental Services SO, the documentary evidence on file suggests that it was awarded in a conversation between the worker's CM and her WTS, without any consultation or other consideration given. [...] Thus, the worker's family doctor who has been treating her since 2003, and her orthopaedic specialist opined that the worker was unable to work due to her compensable conditions. When you factor in the worker's non-compensable migraines, and her cervical degeneration, it would appear likely that the worker is unable to earn income from employment, due in large part to her compensable condition. Add to this the worker's lack of transferable skills, particularly with respect to computers, and her geographical location which is not serviced by a regional transit agency, and it appears the worker has been rendered unemployable.	K Cooper	• 1st • 12th • 5th • 18th • (Employability) • (Deeming) • (Rural)
321.	2606 16	26/Oct/2016	The reports of Drs. McGarry and Zufelt and the Canadian Back Institute, who treated the worker during the period from the original injury in August 2003 until August 2013, provide ample evidence of continuity of complaint and clinical findings regarding	L Gehrke M Lipton A Signoroni	• 1st • (Entitlement) • (Recurrence)

			mechanical low back pain radiating down the left leg and limitations in range of motion. The symptoms reported in August 2013 are consistent with these complaints and clinical findings. Thus there is compatibility between the original injury and the claimed recurrence.		
322.	2275 16	27/Oct/2016	In reaching this decision, the Panel also accepts the opinion of Dr. McCaffrey in his letter dated August 3, 2013. Dr. McCaffrey is an orthopaedic surgeon who examined the worker on the day after the accident and who recommended and performed the surgical repair of the worker's left knee. In his view, the worker's previous left knee dislocations were "in the remote past." He agreed that the worker's patella alta configuration predisposed him to a dislocation but he was also of the view that the dislocation which occurred on October 23, 2012 was due to the mechanics of the workplace accident and that in the accident, the worker aggravated a pre-existing and previously asymptomatic condition. The Panel prefers Dr. McCaffrey's opinion to that of Dr. Tepperman, who, on February 14, 2013 conducted a review of the worker's medical files which did not include the report of Dr. McCaffrey dated January 29, 2013, nor, of course, did it include Dr. McCaffrey's opinion letter dated August 3, 2013. Dr. Tepperman is not an orthopaedic surgeon but he does specialize in occupational and environment medicine. Dr. Tepperman bases his opinion, in part, on a finding that the worker had a history of patellar dislocations without specifying when these prior dislocations had occurred. Dr. Tepperman also concludes that the MPFL reconstruction surgery is to "fix a pre-existing condition" without referring to the length of time that the worker had not had symptoms for this condition.	J Lang E Tracey J Crocker	• 2nd • 4th • (Medical consultant) • (Entitlement)
323.	2632 16	27/Oct/2016	On September 27, 2011, the Board approved temporary psychotraumatic disability entitlement, and referred the worker for an assessment on October 3, 2011 with a Greek-speaking psychologist. File documents indicate that the worker was ill on that date, and that	T Mitchinson S Sahay K Hoskin	• 12th • (Cooperation) • (Psychological/ mental health) • (ESL)

			her daughter contacted the psychologist in advance of the meeting requesting that it be re-scheduled. There is also a note outlining a conversation between the Case Manager to Dr. Ziedenberg on the same date which confirms their common understanding that the worker would proceed with the psychological referral. Despite the worker's apparent agreement to attend this assessment, the Case Manager wrote to her on October 13, 2011, terminating LOE benefits on the basis of non-co-operation. In the Panel's view, this decision is not supportable. The Board decided in September 2011 that further investigation of the worker's psychological condition was warranted and appropriate. A referral was made and, although the worker was unable to attend on the agreed-upon date due to illness, file notations indicate that the psychologist was notified in advance and that the worker and her daughter were waiting for a new appointment date.		
324.	2538 16	28/Oct/2016	On that backdrop, I have further considered that the worker was assessed by doctors and a psychologist who all suggested that the worker's psychopathology was related to her workplace accident. The worker's treatment with Dr. Light, a psychologist, resulted in an initial assessment report dated January 8, 2009, which described that the worker's "psychological difficulties related to her... accident... She is suffering from anxiety, depression, and mood swings". … Dr. Light's letter to the Board dated February 22, 2010 noted that the worker's "psychological condition related to the consequence of her accident at work". Dr. Mastrogiacomo's undated letter to the Board (received November 29, 2010) explained that the worker was "suffering from anxiety secondary to her ongoing symptoms.... Because of the emotional distress she is feeling, [the worker] is also attending psychotherapy". Dr. Arulchelvam's letter to the Board dated December 10, 2012 noted the worker "is diagnosed to have depression and anxiety as a result of her work injury". Dr. Arulchelvam's letter to the Board dated March 4, 2014 noted the worker's "symptoms are severe enough, that it often	L Petrykowski	• 2nd (all mentioned) • 18th • 4th • (Psychological/ mental health) • (Permanent impairment) • (Entitlement)

			affects her mood and feels depressed that no permanent solution is available". Dr. Arulchelvam's letter to the Board dated October 15, 2015 noted the worker's "condition remains the same and has developed depression secondary to her disability". Hence, I find it significant that the preponderance of medical evidence supports that the worker's psychological problems were secondary to her workplace injury without evident contribution from other factors or events. [...] There is no evidence of substance that the worker was not functioning well inside or outside of the workplace prior to her June 2007 workplace injury. Following that injury, the worker developed significant depression-related psychopathology, alongside anxiety. The worker's psychopathology continued in subsequent years but the Board did not provide any further treatment sessions to her from Dr. Light. As a result of her constrained financial state, she could not afford further psychological treatment but her family physician arranged for social work support covered by OHIP where she did have a chance to discuss her ongoing emotional and psychological difficulties.		
325.	2611 16	28/Oct/2016	The Board denied entitlement, indicating the limited medical information available suggested the worker had a pre-accident history of issues and treatment of tooth #11. They indicated the described minor accident history would not have resulted in the damage reported on August 20, 2012. As a result, initial entitlement was denied as the Board found the diagnosis was not compatible with the accident history. The Panel finds that all of the on-site contemporaneous evidence, as noted above, supports the worker's claim that the jarring of the loci train caused his jaw to slam shut fracturing tooth #11. We further find the August 20, 2012 report of the dentist, as outlined below, supports that the injury to the tooth had just occurred. [...] In summary, we find the contemporaneous documentation contained in the record, as indicated above establishes proof of accident. We further find no evidence of previous significant dental work on tooth #11 which would suggest that the	G McCaffrey M Trudeau R Briggs	• 4th • 12th • 1st • (Entitlement)

			dental work proposed for tooth #11 by Dr. Racicot in the letter dated September 10, 2012 was not associated with the August 30, 2012 workplace injury to tooth #11. As a result, we find the dental work performed on an emergency basis on August 30, 2012, and the subsequent restorative work on tooth #11, was necessary, appropriate, and sufficient as a result of the injury.		
326.	2719 16	31/Oct/2016	The record shows that the Board determined, in October 2010, that the worker was unemployable and was entitled to full loss-of-earnings benefits until he was 65. In February 2012, the Case Manager decided that he could return to work for 20 hours per week at minimum wage. At the final review, some nine months later, she said that he could work full time. These decisions were made despite the fact that there was no clinical evidence of an improvement in the condition of the worker's low back between 2010 and 2012. […] The medical evidence summarized above shows that the worker has had ongoing back pain together with possible exacerbations of his MS. We note that Dr. Mandalfino and Dr. Sehl reported that the worker's MS was stable and in July 2011, Dr. Sehl attributed the worker's ongoing problems to his compensable low back injury. As we set out in section (v), Tribunal jurisprudence has found that a worker is entitled to benefits if the compensable injury is a significant contributing factor to his condition.	S Sutherland B Young M Ferrari	• 14th • 12th • 7th • (Loss of earnings) • (Employability) • (Deeming) • (Lock-in)
	2610 16	31/Oct/2016	As indicated above, we find the worker's low back strain had not resolved at the time of the December 12, 2012 REC assessment. After that assessment the worker continued with home exercise treatment as recommended in the REC report. In addition to medication she had ongoing assessments by her nurse practitioner. We find the clinical notes provided by the nurse practitioner, as summarized above, support the worker representative's submission that the worker remained unable to work as a result of her compensable low back injury until May 7, 2013. This is longer than the 6-12 week recovery projection made by the REC on	G McCaffrey M Trudeau R Briggs	• 9th • 5th • (Cooperation) • (REC) • (ESRTW)

			December12, 2012. However until May 7, 2013 the notes the nurse practitioner provided for the employer indicate the worker was unable to work in any capacity. Generally, WSIAT decisions support workers relying on the advice of their family practitioner, when that advice is reasonable given the circumstances. See Decision No. 1254/11.		
	2060 16	31/Oct/2016	The WSIB accepted entitlement in the worker's claim for a work injury in 2007. A PI of the right foot was not accepted by the WSIB because of a lack of objective medical information in the claim file. For the reasons set out in this section, I have determined that there is objective medical evidence to support a finding of a PI of the right foot. […] Two WSIB Medical Consultants (Dr. St. Amand and Dr. Steinnagal) concluded that the worker's Plantar Fasciitis and osteoarthritis could be related to the worker's injury in 2007. Their views are supported by the opinions of Dr. Kumbhare and Dr. Upadhye. By May 5, 2012, there was no convincing evidence of Plantar Fasciitis, but there was evidence of continued osteoarthritis and an old deltoid ligament strain. On May 16, 2012, Dr. Kumbhare noted continued functional limitations of an indefinite duration. He also recommended that the worker continue with physiotherapy treatment. The evidence therefore shows that further interventions (physiotherapy) were suggested after November 2, 2011 and that the worker had functional limitations at the time of MMR.	I Mackenzie	• 1st • (Permanent impairment) • (Medical consultants)

CASE	DECISION NUMBER	DATE	QUOTES (DIRECT)	PANEL/VC	COMMENTS
327.	2644 16	01/Nov/2016	I find no basis to reject the opinions of Dr. Birbrager, Dr. Cusimano and PT Kim, which are consistent with the preponderance of evidence before me, and support the same conclusion that the worker could not return to work at all before November 28, 2012.	JE Smith	• 1st • 5th • (RTW) • (Medical advice)
328.	2108 16	01/Nov/2016	In my view, entitlement for the worker's chiropractic treatment is more than supported under the Board health care policy. It is evident that the balance of the worker's treating doctors supported further therapy, as well as his chiropractor who had treated the worker from at least December of 2012. I also noted the Tribunal's approach to ongoing chiropractic care as claimed by the worker. Tribunal case law suggests that workers must establish that maintenance treatments are "going to have (or has had) some meaningful impact on the worker's condition." Board policy does not distinguish between entitlement to chiropractic treatment and entitlement to "maintenance" chiropractic treatment. Tribunal decisions have considered for example whether the treatment is necessary as a result of the accident; whether it is useful in reducing the pain; and, whether it may allow the worker to remain employed. (See for example Decision No. 904/15.) In my view, such circumstances exist in this case.	AG Baker	• 21st • 18th • (Health care)
329.	2207 16	02/Nov/2016	The REC determined that the worker was partially recovered and should receive therapy for six to eight weeks, after which he would be fully recovered. In a decision dated November 29, 2012, the Case Manager advised the worker that the compensable injuries had resolved and that the ongoing symptoms were due to non-compensable pre-existing degenerative conditions. The decision further advised that LOE benefits would end on December 13, 2012. … With regards to the low back and neck, the Panel finds that the worker is entitled to a NEL award, as he continued to suffer a	P Allen M Christie M Ferrari	• 9th • 4th • (Permanent impairment) • (REC) • (Degenerative)

			functional loss after the MMR date of June 15, 2012. This is supported by the worker's testimony, Dr. Prutis's letters of August 2, 2012, April 3, 2014 and January 6, 2015. In addition, the worker's family physician has submitted clinical notes demonstrating the worker's ongoing complaints of low back and neck pain. … Although the worker's MRI showed evidence of degenerative changes, the Panel notes that the worker's evidence was that before the compensable accident he had no complaints related to the neck and no functional impairments. The Panel notes that there is nothing in the Case Record to contradict the worker's evidence. The Panel therefore finds that any pre-existing degenerative changes were asymptomatic with no related functional impairment.		
330.	2475 16	02/Nov/2016	In his submissions dated April 14, 2016, Mr. Collie noted that the worker's NEL assessment was based on a CBI assessment, performed by a physiotherapist, while the Vice-Chair in Decision No. 1166/14 had specifically stated that the worker was to be assessed by a NEL roster physician. … While section 47 allows the Board to rate NEL awards internally if the medical information on file is sufficient, the Vice-Chair in Decision No. 1166/14 specifically ordered that a NEL assessment was to be conducted by a NEL roster physician. In those circumstances, the Board is bound, both by the Vice-Chair's decision and by section 47(4) through (7), to send the worker to a NEL roster physician. While a physiotherapist may provide the required range of motion measurements, the fact remains that a NEL roster physician is required. The worker therefore is entitled to an assessment by a NEL roster physician ,…Thus, the Panel in Decision No 229/12 found that the worker's pre-existing condition in the lumbar spine was asymptomatic at the time of the workplace accident. As noted above, a pre-accident impairment and a pre-existing disability both are defined as 'a condition which has produced periods of impairment/illness requiring health care and has caused a disruption in employment.' The worker's pre-accident low	S Peckover	• 16th • 22nd • 23rd • (NEL rating)

			back difficulties have been found to have been 'mainly asymptomatic', and there was no disruption to her employment between 2000, when she returned to work after she had her hip surgery, and 2008, when the workplace accident occurred. The worker's pre-existing condition therefore does not meet the definition of a pre-existing impairment. Her NEL award therefore is not subject to any reduction with respect to a pre-existing impairment.		
331.	2371 16	02/Nov/2016	The worker was entitled to benefits for the disc herniation and nerve root impingement shown on the MRI report of November 23, 2010, by way of Tribunal Decision No. 1894/12. … We see as well, that Dr. McLellan had the benefit of the MRI findings when he instructed a further three months off work. Ultimately, Dr. McLellan wrote that the worker was unable to return to work because of his injury, until August 2012. Given that the worker's job as a commercial painter was physical, and that he was not offered modified duties, it is understandable that his family physician instructed him to be off work. The worker did attempt to return to work, as per his physician's recommendations, on November 15, 2010. The worker testified that working made his back worse, such that he could not continue, after one week. Dr. McLellan prescribed physiotherapy which did not take place due to the worker's inability to afford it. … When the worker did find a way to receive the treatment he was prescribed, he testified that it helped him, and the two to three months of treatment precipitated the worker's return to work. We find the delay in treatment prolonged the worker's recovery time. The Case Manager determined on April 17, 2013, that commencing November 15, 2010, the worker had been capable of sedentary work, and listed a number of jobs that would have fit within the worker's restrictions. The Case Manager listed the types of jobs that would have been available to the worker: "jobs such as ticket taker, parking lot attendant, cashier, toll booth attendant, gas bar attendant, or other similar type work." The Case Manager	C Sand B Davis JA Crocker	• 5th • 18th • 19th • (RTW) • (Medical advice) • (Cooperation)

			suggested these types of jobs, we note, absent a formal assessment of the worker's physical restrictions. On May 27, 2013, Dr. McLellan wrote a detailed letter to the WSIB, in which he summarized his treatment of the worker from the time of his injury. In this letter, he commented on the Board's finding that the worker was capable of sedentary work: "…you suggest that he could have done a sedentary job such as a gas bar attendant. That job involves prolonged standing to serve customers, and bending to restock merchandise on the shelves as well as restocking merchandise beside the gas pumps." ….Without a formal assessment of the worker's physical limitations, we cannot agree that the worker was capable of sedentary work. Because the worker was denied entitlement to benefits during the period in question, he did not have the benefit of a referral for work transition services		
332.	2692 16	02/Nov/2016	Throughout the period in question, the worker was actively receiving treatment for her workplace injuries. I note that the worker initially attempted to remain at her regular job. She worked to the end of her shift on the date of the accident and for the two shifts that followed. Due to ongoing pain symptoms, both the ER doctor and the worker's physiotherapist recommended that the worker remain off work for a period of rest. Taken together with the worker's unsuccessful attempt to continue working through her injury and her age (which was noted by the physiotherapist as a factor delaying recovery), I find that the medical recommendation to remain off work was reasonable and the worker was entitled to rely on it. I find further support for this conclusion in the fact that the worker cooperated in the return to work plan and it was ultimately successful. In conclusion, the facts demonstrate that the nature and seriousness of the worker's injuries prevented her from returning to work until she was cleared to return to modified duties and hours on November 10, 2014.	RE Basa	• 5th • (ESRTW) • (Medical advice) • (Cooperation)

333.	2457 16	03/Nov/2016	I am aware that the Board concluded the worker had a pre-existing Psychotraumatic condition. I do not agree with this conclusion and I find that this conclusion is not supported by the preponderance of the evidence on file. I am satisfied based on my review of the medical evidence on file that there is a lack of medical evidence to indicate that the worker had a symptomatic pre-existing psychological condition. I note in this regard that the report dated March 3, 2012 from the psychiatrist Dr. Velamoor stated that the worker had not received psychiatric treatment in the past. I also note in this regard that the worker testified at the hearing that he had no history of psychiatric disability prior to the June 2010 accident, however he had received marriage counseling briefly prior to the 2010 accident in relation to family scheduling matters.	J Noble	• 4th • 1st • 12th • (Psychological/ mental health) • (Entitlement)
334.	1818 16	03/Nov/2016	In this case, the worker's medical prognosis for a successful return to work has been consistently poor. Dr. Lee identified the challenges in returning to work initially and later was of the view that the worker was not able to work. Dr. Mossman supported that view. In addition, the psycho-vocational assessment noted his low education level, his physical limitations and living in a remote community as barriers to finding employment. The ARO did not assess local labour market considerations for Other Elemental Services. OPM Document No. 19-03-03, "Determining Suitable Occupation", defines the local labour market as comprising any surrounding areas to which the worker might reasonably commute. In identifying a reasonable commuting distance, the decision maker is required to consider the expected travel requirements for the SO and any limitations on the worker being able to travel. The worker lives in a rural community. The jobs identified by the ARO in the Other Elemental Services occupation (parking lot attendant and theatre ticket taker) are not available in the local area or are not appropriate for the worker. There are no parking lot attendants in the local job market. Even if jobs were available in the nearest large	IR Mackenzie M Christie D Besner	• 5th • 8th • (Deeming) • (Employability) • (Loss of earnings) • (Rural)

			community, the commuting distance would be over one hour and not within the worker's limitations.		
335.	2115 16	03/Nov/2016	As noted earlier in this decision, the Board's Medical Consultant was initially of the view that the worker satisfied the medical criteria for entitlement to CPD. However, it appears that before entitlement for CPD could be processed the adjudicator reviewed surveillance evidence taken of the worker over eight days between February and May 2012. The Board Adjudicator and the ARO were of the view that what was revealed in this surveillance evidence was sufficiently significant to warrant not only denying him entitlement to benefits for CPD, but to deny him any further entitlement on an organic basis or for a psychotraumatic condition. The Panel has had an opportunity to review the surveillance evidence and, unlike the Board operating level, we do not find what is contained therein to be inconsistent with the worker's testimony about his condition namely that he has some good days and some bad days. … In our view, this surveillance evidence, which recorded activity on two days between February and May 2012 falls far short of establishing that the worker has not continued to experience the effects of his compensable CPD. The activity recorded in the surveillance evidence is consistent with the worker's testimony to the effect that he has good days and bad days and there are some days when his mobility is better than others. In our view, the Board's initial inclination to grant the worker entitlement for CPD in this case was correct. We, like Dr. Germansky of the Board, find that the worker's pain symptoms are most appropriately recognized by a diagnosis of CPD.	R Nairn M Lipton A Grande	• 13th • 1st • (Covert surveillance) • (Entitlement) • (Chronic pain) • (Permanent impairment) • (Medical consultant)
336.	2794 16	07/Nov/2016	The Tribunal decisions support the propositions that a NEL award ought not to be reduced unless there is evidence that the pre-existing condition was an impairment within the meaning of Board policy or impacted the worker's earning capacity. There was no evidence before the Panel that would allow us to conclude that the degenerative changes in	SJ Sutherland BM Young M Ferrari	• 23rd • 8th • (NEL rating)

			the worker's back were symptomatic, required treatment or disrupted the worker's employment prior to the January 6, 2010 compensable injury. Accordingly, the preexisting degenerative disc disease was not a pre-existing impairment within Board policy. Therefore, the NEL award should not have been reduced. The worker is entitled to the full 21% NEL award.		
337.	2140 16	07/Nov/2016	As Ms. Romano noted in her submissions, one of the grounds upon which the ARO denied the worker permanent psychotraumatic entitlement was because the accident "was not life-threatening". As Ms. Romano noted, and as a review of the policy suggests, the granting of psychotraumatic entitlement is not dependent upon the worker being involved in a life-threating or traumatic accident.	R Nairn	• 8th • (Mental health/ psychological)
338.	1868 16	08/Nov/2016	I note that there is no medical documentation in the file between June 18, 2008 and August 16, 2008 that clears the worker to work for more than four hours per day. The switch to full time hours is made solely at the request of the accident employer with no medical confirmation that the worker was capable of working full time hours as of June 18, 2008. In fact, a Health Professional's Report from Dr. Jagota (family doctor) dated July 31, 2008 confirmed that the worker's condition had remained unchanged. A Chiropractor's Treatment Extension Request dated July 17, 2008 indicated that the worker's continued working was aggravating his condition and was a factor delaying recovery. At this time the worker was still only working four hours per day. The fact that even reduced hours were delaying his recovery would support the worker's position that he could not work more than four hours per day. In addition, Dr. Jagota, in a report dated January 6, 2012, confirmed that from June 13, 2008 to August 15, 2008 the worker was required to restrict his work hours to four hours per day as the worker experienced progressive escalation of sciatica pain beyond four hours. Dr. Jagota confirmed that he advised the worker to limit his hours to	S Hodis	• 5th • 1st • 19th • (ESRTW) • (Loss of earnings) • (Medical advice) • (Cooperation)

			four hours per day during the time period in question. I find that there is objective evidence and clear direction from his treating health care providers that the worker not work for more than four hours per day during the time period in question.		
339.	2605 16	08/Nov/2016	In our view, the worker made a credible effort to perform the work offered to her on September 27, 28 and 29, 2011, but was unable to do so. The worker reported, and her complaints were corroborated in the reports of Dr. Paolone and the physiotherapists, that she was unable to perform the key room job provided to her because of pain and extreme discomfort in her low back. We find that the job as structured was simply beyond her very limited capabilities at that time. The limitations acknowledged and recommended by Dr. Paolone on September 22, 26 and 30, 2011, as well as the restrictions recognized by the physiotherapists in their reports dated October 4 and November 28, 2011, clearly set out the nature of her impairment. The REC report of January 9, 2012, also provides support for this conclusion as it recommends an additional four weeks of gradual return to work and home therapy, which is exactly how the worker's return to work actually transpired. For this reason, we find that the key room position offered to the worker during the period between September 27, 2011 and January 22, 2012, was not suitable and that she was not capable of performing this function at that time. Instead, she returned to work in accordance with the recommendations of her own medical advisors and the health professionals who performed the Multidisciplinary Health Care Assessment on January 9, 2012.	D Hale B Davis A Grande	• 5th • 1st • (ESRTW) • (Loss of earnings) • (REC) • (Medical advice) • (Cooperation)
340.	1189 16	08/Nov/2016	In February 2009, the Nurse Case Manager, the Case Manager (CM, formerly CA) and the CM's Manager all concurred in the conclusion that the worker was unemployable and allowed the worker full LOE benefits to the age of 65 years. In an August 16, 2010 response to a request from the CM for an opinion, Board Psychological Consultant, Dr. Smith, conducted	W Sutton	• 2nd • 14th • (Loss of earnings) • (Employability) • (Psychological/ mental health) • (Medical

			a file review. Dr. Smith concluded that consideration of allowing entitlement for psychotraumatic disability based on adjustment disorder was warranted. The date of maximum medical recovery (MMR) was established as February 9, 2010. Dr. Smith also concluded that there was "little evidence of a ratable permanent impairment" and that the worker level of impairment due to her psychiatric symptoms "alone appears to be partial with no specific restrictions"….The essence of the submissions of the worker's representative, as I understand them, was that the preponderance of the evidence supported the worker's inability to work. This was also the decision of the NCM, the CM and the CM's Manager in February 2009. Only Dr. Smith found to the contrary and it was to be noted that Dr. Smith reached his conclusion on a file review only and did not interview the worker, unlike Dr. Melnyk and the OT who attended the worker on numerous occasions. It was evident on the medical reporting that the worker attempted the LMR program and it was beyond her capacity due to both her psychological and physical impairments. As such, her appeal should be allowed.		consultant)
341.	2741 16	08/Nov/2016	When considering the medical evidence on file, we prefer the opinions of Drs. Athwal and Gray given they treated the worker and are specialists in the field, as opposed to Dr. Herrick who made a paper review and whose two opinions were not entirely consistent. Therefore, we have a worker who prior to his workplace accident had a known arthritic right elbow, albeit asymptomatic since 2005, and was able to perform his regular duties without losing time from work as a result of his elbow. Prior to the compensable accident he did not require medical treatment or pain medication to manage his right elbow condition. After the workplace accident, the worker was unable to perform his pre-accident duties, lost some time from work, required ongoing medical treatment as well as recommended surgery, and needed significant prescription pain medication (Naproxen) on a daily basis to be able to perform any work. Additionally, Dr.	K Cooper B Davis JA Crocker	• 2nd • 7th • 4th • (Entitlement) • medical consultant

			Athwal opined that the worker's arthritis had been rendered symptomatic secondary to his workplace accident and that he required surgery, and Dr. Gray opined that it was "commonplace" for a worker to have their OA chronically aggravated by an injury. Further, there is no evidence of significance that the loose osteophytes in the worker's elbow were not created by the relatively severe accident that fractured the radial head. The fact that the force was significant enough to cause a fracture suggests to us that it was also significant enough to break loose osteophytes.		
342.	2689 16	09/Nov/2016	In denying the worker's request for a further eight sessions of psychotherapeutic sessions, the ARO noted that the June 8, 2012 ARO decision and the October 7, 2013 Tribunal decision both denied psychotraumatic entitlement. The ARO therefore wrote that "it has been determined that the worker's ongoing psychological problems are not considered related to the compensable injury…In keeping with this determination", the ARO wrote, "I am unable to accept entitlement to psychotherapeutic sessions." In other words, the ARO concluded that since the worker is compensated for CPD rather than psychotraumatic disability, there is no psychological component to her compensable condition and therefore further entitlement for psychotherapeutic sessions is not warranted. With respect, I disagree with the ARO. … just because a worker is compensated for CPD, rather than psychotraumatic disability, entitlement is not limited to purely physical (as opposed to psychological) symptoms and findings.	L Lampert	• 8th • (Health care) • (mental health/ psychological/ chronic pain)
343.	2824 16	09/Nov/2016	The WSIB relied upon reports from Dr. Oosterhoff to conclude that the worker made a full recovery from her psychological symptoms, but his reports continued to note that the worker's prognosis was guarded. … Thus, the psychovocational report provides objective evidence that the worker had a continuing psychological impairment after Dr. Oosterhoff's discharge report. In addition, I	R McCutcheon	• 12th • 4th • WSIB decision procedurally unfair • 7th • 1st • 9th • (Psychological/

			note that the WSIB obtained clinical notes and records for five years prior to the injury, which revealed no evidence that the worker had a prior psychological condition requiring treatment. For the following reasons, I disagree with the WSIB's suggestion that the worker's continuing condition was attributable to non-compensable factors: … Dr. Oosterhoff did not suggest that any component of the worker's psychological condition was due to experiences in her country of origin, her past divorce, or preexisting health conditions. Accordingly, there is no substantial basis for concluding that these factors, which caused no psychological condition prior to the injury, somehow overwhelmed the causal contribution of her traumatic workplace injury in perpetuating her ongoing psychological condition. … The ARO also suggested that the worker's presentation was not genuine because she was tearful during the ARO hearing but was observed leaving the building "walking, holding, and swinging her large purse in her right hand." This analysis is flawed …The ARO relied upon evidence that was not on the record in the hearing and the affected party was not given notice of the evidence or an opportunity to respond. The worker has a restriction against carrying over five pounds, but the ARO did not refer to any evidence of the weight of the worker's purse. …The worker does not have any restrictions on walking, nor is she expected to cry constantly, even if she was tearful during a hearing. …The suggestion that the worker lacked genuineness is contrary to the weight of evidence on file. Despite her traumatic injury, the worker demonstrated cooperation and motivation throughout the return-to-work process and during the WT program. The employer expressed admiration for the worker's courage in returning to the workplace after her serious injury (Memorandum #40, December 17, 2010). The worker was consistently described as motivated and cooperative, despite some attendance issues during the WT program. The Psychovocational Assessment included the Test of Memory Malingering (TOMM), and the assessors offered the impression that the test results obtained		mental health) • (Permanent impairment) • (Employability)

			provided sufficient information to provide a reasonable estimate of the worker's retraining potential and did not suggest that the worker was not genuine.		
344.	2742 16	10/Nov/2016	Turning first to the SO of Cashier, we note that the worker's first LMR [WT] plan was designed to prepare her for entry into a customer service type role. This plan ended with the decision that the worker was unable to work at all and she was granted ongoing full LOE benefits to age 65, subject to statutory review. In a report dated November 20, 2008 Dr. Donworth, a pain management specialist, noted that the worker had been "valiantly attempting the training to adult education placement…however, she is finding it extremely difficult. It is difficult for her to sit for more than one half to one hour at a time and her pain is very much exacerbated. It seems this is the point where she has extreme difficulty in concentrating in any of the lessons and has experienced a lot of problems with short term memory." …In the LMR Completion report dated June 12, 2009, the authors noted that the worker would be unable to secure a placement as "she would not be able to understand safety signs, procedures and precautions." …. As noted by the CM there were not many options for this worker, and as noted by the LMR provider, despite her best efforts the worker had been unable to upgrade her skills to the level required for employment. The worker's doctor opined that she was unable to work or to attend school, and therefore the worker's CM closed the LMR plan and granted the worker full LOE benefits to age 65 subject to statutory review. Therefore, as of June 2009 the worker was found unable to earn income from employment as a result of her compensable condition. Two years later the worker's CM determined that the worker could be referred to further WT services to become a Cashier. There is no evidence on file suggesting that anything had changed with the worker or her situation since 2009, excepting that there was a suspected deterioration in her compensable condition, which upon review was accepted and her NEL	K Cooper B Davis JA Crocker	• 14th • 3rd • 5th • 12th • (Deeming) • (Employability) • (ESL) • (Loss of earnings)

			increased to 25%. This would suggest that, if anything, the worker had become less likely of being able to return to work. Indeed, the WT memo identified the challenges facing the worker's attempt to return to work. The WT Amendment report dated May 4, 2011 noted that the worker's file had been reactivated on the basis that her CM had determined that she should be able to perform work as a Cashier or other such sedentary job requiring minimal language skills. …Thus, with no evidence of significance indicating that the worker's physical or intellectual situation had changed for the better in the previous two years, and despite cautions from the WT assessment that the provider would have to be "creative" to find the worker a placement in a business that spoke her native language, would need a special ergonomic chair to allow her to change body position, and would be required to learn English through her interactions with the public, the Board determined that the job of Cashier was suitable for the worker.		
345.	1714 16	10/Nov/2016	Further, the overwhelming balance of the medical reporting in the case materials links the worker's accident and her inability to perform activities of daily living and work with the development of her depression. For example, Dr. Pilowsky wrote that the worker's "inability to work and re-assume" the role of an attentive mother "engendered profound feelings of uselessness and worthlessness". Given there is no contradictory medical opinion in the case materials, we find on a balance of probabilities that the worker's compensable injury significantly contributed the worker's psychotraumatic disability …The main problem with the determination as to whether the SO of Cashier was suitable involved the lack of consideration as to whether the functional requirements of the SO of Cashier could be met within the worker's particular circumstances. As noted, the worker displayed low back restrictions with significant left leg radiculopathy which was assessed in its NEL assessment. In the absence of any evidence to the contrary provided by the Board in the case materials, in our view, cashier jobs by their	J Dimovski M Lipton A Grande	• 1st • 3rd • 15th • 5th • (Deeming) • (Loss of earnings) • (Psychological/ mental health) • (Entitlement)

			nature would require some prolonged, sitting or standing. The worker's impairment does entail a restriction against prolonged sitting and standing. Given the Board did not address the worker's functional limitations with the job demands required by a typical cashier job, we find the functional and physical demands associated with the SO of cashier were not within the worker's functional and physical abilities. Accordingly, we find that the SO of cashier is not suitable. …We find that the balance of medical evidence supports that the worker's compensable psychotraumatic condition was significantly disabling. Dr. Pilowsky, like Dr. Getu, opined that that her psychotraumatic condition prevented her from working. As there is no medical opinion to the contrary, and given our determination that the SO identified by the Board was not suitable, we find that the worker's compensable depression and low back injury prevented the worker from working.		
346.	2801 16	10/Nov/2016	In summary, we again acknowledge that the worker has suffered some arguably noncompensable difficulties that included illicit drug dependency and degenerative problems. However, there was no persuasive evidence that he had a prior organic or non-organic condition of significance. He also suffered a significant organic injury and was granted a substantial 30% NEL award. He also has long-standing pain flowing from his organic injuries. His family doctor and numerous subsequent specialists have also indicated a relationship between the worker's ongoing psychiatric problems and his work injuries. That included Board psychological reporting, pain specialists, and numerous psychiatric experts at CAMH, who have treated the worker for years, and continue to do so, on a weekly basis. In our view, that evidence supports the worker's claim for ongoing psychiatric benefits.	AG Baker J Blogg S Roth	• 1st • 4th • (Psychological/ mental health) • (Entitlement)
347.	1695 16	15/Nov/2016	Having reviewed the medical evidence in the materials, I find that it is more likely than not that the worker's left shoulder injury is causally connected to the worker's original right	S Hodis	• 1st • (Entitlement)

			arm/shoulder compensable injury and as such the worker has entitlement for the left shoulder as a secondary condition. The worker's right shoulder/arm injury was significant as is evidenced by the NEL award and continued to deteriorate over time as documented in the medical reporting. The worker had to use her non-dominant left arm as a result of right upper extremity compensable condition which resulted in a left shoulder injury. I also find that there is no evidence of any other accidents, problems or activities that would account for the worker's left shoulder condition. There was no evidence of left shoulder problems prior the compensable right arm/shoulder accident in this claim. The medical evidence clearly documents that the worker was overstressing her left shoulder as a result of her compensable right upper extremity.		
348.	2688 16	15/Nov/2016	The appeal raises a straight-forward issue of the worker's LOE entitlement in an interim period between two timeframes in which he was granted full LOE benefits. This issue appears to have arisen as a result of the retrospective nature of the Board's adjudication. When the worker's claim file is reviewed in its entirety, it is clear that there was no reasonable basis upon which to deem him capable of any earnings in the SO of light delivery driver between September 8, 2011 and May 13, 2013. His restrictions and personal characteristics during that timeframe remained unchanged from the immediately preceding period in which he received full LOE benefits. They also mirrored the situation that remained in effect when the Board granted him entitlement to WT and reinstated his full LOE benefits. The question is: why did the CM adjudicate this period differently, granting only partial LOE benefits, when the worker had received full LOE entitlement prior to this timeframe and was again granted full LOE entitlement as of May 13, 2013. In my view, the difficulty arose because the CM misconstrued the intent of the prior ARO decision, which remitted the issue of the worker's LOE entitlement in the timeframe after he had achieved MMR on	ME McKenzie	• 16th • 11th • 8th • 3rd • 7th • 12th • WSIB decision procedurally unfair • (Employability) • (Loss of earnings) • (Older worker) • (Delay)

			September 8, 2011 to the operating area for adjudication. I find that the previous ARO intended for that adjudication to be informed by the results of the worker's NEL assessment and by the Board's assessments and decisions about whether the worker required and was entitled to receive WT services prior to his re-entry into the job market. … The delays in the worker's NEL assessment and in the Board's allowance of WT services flowed from the extended time that it took for the Board to hear and determine the worker's objection to the closure of his LOE benefits effective March 14, 2011. The worker was not responsible for those delays. … The worker's LOE entitlement should not have been limited or reduced as a result of the Board's decision to reduce his 22% NEL award to 15% due to a "measurable pre-existing impairment". Board policy requires that all pre-existing conditions are to be considered in determining the SO and as a result there would be no impact in this case of the NEL reduction on the worker's LOE entitlement. … The worker had not yet been offered or received any WT services or assessments during the period that is in issue in the appeal. The worker was 58 years old and had no experience in any other field when his WT services began. He had a grade 3 education, was illiterate, had no knowledge of computers, and could not work in his sole lifelong occupation (i.e. truck-driving) as a result of his compensable impairment. … The WT assessments that were conducted after May 13, 2013 shed considerable light on the worker's substantial intellectual and educational limitations during the period in issue.		
349.	2777 16	16/Nov/2016	The ARO also awarded the worker entitlement to PsychotraumaticDisability benefits. In a decision, dated February 17, 2015, the worker was denied a permanent impairment award for his Psychotraumatic Disability. …I conclude that the medical reporting supports the worker's entitlement to psychotraumatic disability as a result of extended disablement and to non-medical, socioeconomic factors, the majority of which can be directly and clearly related to the work related injury. In arriving at	S Shime	• 1st • 8th • 9th • (Psychological/ mental health) • (Permanent impairment)

			this conclusion, I rely on the absence of any psychiatric problems prior to the work-related accident and on the reporting by multiple physicians, including the worker's family physician, psychiatrists and psychologists in the period from the accident in July 2005 and ongoing. While the ARO focused on the severity of the worker's impairment in denying ongoing entitlement and a NEL assessment, this is not the proper criteria utilized to determine entitlement to a permanent impairment award for Psychotraumatic Disability. …I conclude that the medical reporting is consistent in providing a psychiatric diagnosis that is related to the work injury.		
350.	2233 16	16/Nov/2016	After conducting a hearing in writing, the ARO stated that the worker had been granted entitlement for orthotics and orthopedic shoes under a Board policy that was in effect in 2002, which the ARO interpreted as applying solely to situations in which the worker remained at work. The ARO also attributed the worker's need for the requested footwear to a non-compensable condition. ….Tribunal case law has dealt extensively with issues of entitlement to various forms of health care. … The over-riding principle is that a worker is entitled to such health care as may be necessary, appropriate, and sufficient as a result of the injury.…In my view, it is clear based on the medical evidence on the Board's file that the worker requires and is entitled to the claimed orthopedic shoes and custom orthotics as health care benefits flowing from his compensable conditions in this claim …I have reviewed the portions of the worker's claim file that deal with his psychotraumatic disability and I am aware of the wide-ranging, detrimental impacts that the worker's compensable conditions have had on every aspect of his life since 1998. The evidence with respect to the inorganic component of the worker's entitlement in this claim illustrates how very important it is for him to continue to get out of the house on a regular basis, so as to keep active and avoid isolating himself from his family, friends, community and church.	ME McKenzie	• 2nd • 21st • 8th • (Health care) • Psychological/ mental health)

351.	2232 16	16/Nov/2016	The Board's NC denied this claim based on her view that these injections are only used to treat osteoarthritis (OA). In a letter to the worker dated August 21, 2013, the NC relied on "medical research" as authority for denying this request. No reasons were given by the NC for the Board's decision to reject the opinion of the worker's surgeon, Dr. Luba, who reported that the worker required the injections as a direct result of his compensable knee injury and surgery. I note that the objective opinion of the worker's surgeon, Dr. Luba, is that in the worker's case the Durolane injections are required as a direct result of his compensable meniscal injury. …I have determined that the evidence discloses no support for the Board's decision to deny the worker's claim for entitlement for Durolane injections every 6 months. There is no conflicting medical opinion on this issue.	ME McKenzie	• 1st • 6th • (Health care)
352.	2978 16	17/Nov/2016	In arriving at my conclusion, I relied on significant medical evidence on file from several psychiatrists and psychologists that assessed and treated the worker over the years, since 2004, all of whom unequivocally opined that the worker had treatment resistant PTSD with symptoms of severe depression, which rendered him unemployable. There was no medical opinion of significance to challenge this conclusion. The medical reports were from Dr. Kelly, Dr. Kussin, Dr. A. Araujo de Sorkin, a clinical psychologist, Dr. D. Cowman, a clinical psychologist, Dr. L. Kiraly, a psychiatrist, Dr. A. Joglekar, a psychiatrist, Dr. J. Pilowsky, a clinical psychologist, and Dr. B. Sehmi, an orthopaedic surgeon. The assessment from these physicians was that the worker was severely disabled from a psychological perspective. His condition was chronic and treatment resistant, he was actively suicidal, having even made a suicide attempt in 2009. In addition, the physicians expressed the opinion that the worker's compensable condition rendered him incapable of retraining or working in any gainful capacity, totally psychologically disabled, unable to pay attention to even his basic self-care needs, and in need of in-patient treatment. ….Thus, on the basis of	S Darvish	• 1st • 5th • 17th • (Psychological/ mental health) • (Employability)

			the foregoing, I find that the evidence before me overwhelmingly indicates that, on a balance of probabilities, the worker's compensable condition rendered him completely incapable of finding and maintaining any form of gainful employment. The worker is entitled to full LOE benefits as of April 2, 2007.		
353.	2702 16	18/Nov/2016	The measurements used to rate this worker's right shoulder were incomplete for the purposes of using the AMA Guides. Range of motion values of 80° flexion, 60° abduction and 30° external rotation from a May 24, 2012 physiotherapy report were used to rate abnormal motion at 14%. Extension, adduction and internal rotation were all assumed to be unimpaired. I find no evidence in the file upon which this assumption could be made. The AMA Guides rate shoulder range of motion impairment pairing flexion with extension, abduction with adduction and internal with external rotation. A complete set of measurements is needed to produce a rating as envisioned by the charts in the AMA Guides. … As I find no evidence of significance that the worker received treatment for his right shoulder or that there was a disruption of his employment due to his right shoulder prior to the work injury, I find that there was no pre-existing impairment as defined by Tribunal Decision No. 204/14. The worker is therefore entitled to an 18% NEL rating in respect of his compensable right shoulder injury, without reduction for a pre-existing impairment. … There is no evidence that the worker's left shoulder required treatment or caused a disruption of his employment prior to his injuring it at work. Therefore, again adopting the reasoning of Decision No. 204/14, I find that there was no significant pre-existing impairment in this worker's left shoulder joint and therefore a reduction of the left shoulder NEL on this basis is unwarranted.	D McBey	• 23rd • 8th • 22nd • (NEL rating)
354.	319 14	18/Nov/2016	The sole remaining criteria that the Board took issue with was the consistency of the degree of	AG Baker	• 1st • (Chronic pain)

			pain with the organic findings. In that regard, the balance of the medical reporting identified a long-standing severe pain condition that arose from the worker's hand injuries, and the multiple surgical procedures that followed. I also note that it was not only the worker's family doctor that supported that finding, but a lengthy history of post-surgical reports and treatment for chronic pain by pain specialists. I note again the reporting for example from Dr. Bain and Dr. Blain, that recorded years of regular pain treatment, medication, and tracking the worker for recurrent severe pain, infection, and functional problems. I also finally note the specialist assessment from Dr. Gembora that I found of particular assistance in reviewing the worker's medical history and identifying her ongoing chronic pain condition, related directly to the work injury and its sequelae.		• (Entitlement)
355.	2743 16	18/Nov/2016	A report dated May 31, 2011 from the Regional Evaluation Centre (REC) diagnosed the worker with a cervical sprain/strain and left shoulder sprain/strain. … The attending physician opined that following a treatment program the worker should expect a full recovery. It appears that the Board based its decision to deny the worker ongoing impairment based largely on the REC report. Memo #28, dated August 9, 2011 referenced this decision. In it, the Claims Adjudicator (CA) noted that the REC report had called for a six to eight week recovery period culminating with an anticipated full recovery, and as the allotted time had passed, the worker's diagnosed strain injury should have healed. As noted above, the medical evidence at the time indicated that the worker had a cervical disc protrusion, although the left shoulder tear had not yet been ascertained through diagnostic imaging. As set out above, the worker's family doctor provided notes indicating that she was unable to work due to her compensable injuries commencing in August 2011 and continuing. The physiotherapist's report noted the reduced ROM in the worker's left shoulder and cervical spine a week after the CA made the	K Cooper B Wheeler A Grande	• 9th • 1st • 19th • 8th • 17th • (Mental health/ psychological) • (REC) • (Entitlement)

			determination that the worker had fully recovered. The medical evidence indicated that the worker continued to suffer from chronic pain of the cervical spine and left shoulder. In a report dated November 28, 2011 Dr. Katz diagnosed the worker with a "severe major depressive episode associated with chronic pain and secondary to work-related injury. She is currently not able to work from even the vantage point of her depression, as well as her ongoing pain." Thus, well past the MMR date set by the Board in Memo #28 – that is August 9, 2011 –the worker has continued to suffer from chronic pain as a result of a disc protrusion of the cervical spine, and a tear of the left shoulder, as evidenced from the medical reports above, and the worker's testimony. …In this case, the Board denied entitlement in part due to the absence of a traumatic event; however, a traumatic event is not required under the Policy. ….Thus the medical evidence of multiple doctors is that the worker's ongoing depression and anxiety is secondary to her work related injuries. This is the opinion of four treating psychiatric specialists, and the worker's family doctor, as well as being noted by her physiotherapist in August 2011. ….In this instance the preponderance of medical evidence as set out above indicates that the worker is unable to work at all due to her psychological condition alone, without taking into consideration her physical restrictions.		
356.	1920 16	18/Nov/2016	The worker's family doctor, Dr. A. Sandhu, consistently advised that the worker was unable to return to any type of work and it should be noted that Tribunal decisions have generally concluded that a worker will not be found to be uncooperative when they have reasonably relied upon the recommendations of their treating physician. (see Decision No. 780/13)	B Alexander M Falcone F Jackson	• 5th • (RTW) • (Cooperation) • (Medical advice)
357.	2882 16	18/Nov/2016	I accept that the worker had a pre-existing	C Huras	• 4th

			condition in her hands/wrists, however, there is no evidence before me that this condition was similar to the condition diagnosed in December 2012 or that it was symptomatic prior to the onset of bilateral wrist pain in December 2012. …I accept the opinion of Dr. Dyck in his report of December 10, 2012, that "the use of the barcode scanner has resulted in a repetitive strain injury, as a result of the capitate bone being sprained." I find that there is no evidence of significance to establish that there were any other factors which significantly contributed to the onset of the bilateral wrist repetitive strain injury diagnosed in December 2012.		• 12th • (Entitlement)
358.	2932 16	21/Nov/2016	The worker's LOE benefits were limited to July 21, 2014 on the basis that he failed to return to modified duties of deburring parts, which the Board considered within his functional restrictions as assessed on July 11, 2014 by a physiotherapist. However, a different assessment was made by the worker's treating physician, Dr. Sulaiman, who consistently indicated that the worker was physically unable to return to work in reports of July 19, July 23 and July 30, 2014, the latter note authorizing the worker off work to August 13, 2014. …There is no medical documentation to counter the physician's opinion and I find it reasonable for the worker to have relied on it. The ARO found that this worker's work-related injuries had resolved with no continuing or permanent impairment, based on the opinion of Dr. Castiglione who attributed continuing upper and lower back symptoms to degenerative changes. However, the reports of physicians who examined the worker indicate that the worker experienced continuing symptoms and restrictions consistent with the original upper and lower back injuries. There is no evidence that these symptoms ever diminished or ceased. … Dr. Castiglione's opinion was obtained to determine whether degenerative thoracic and lumbar spinal MRI findings were compatible with the compensable accident. However, he was also asked "Are the ongoing issues due to the worker's pre-existing condition?" His reply to this question reads, "Sprain/ strain type injuries typically resolve 8-	D McBey	• 5th • 2nd • 9th • 1st (RTW) • (Medical consultant) • (Entitlement) • (Degenerative)

			12 weeks and it has been almost 1 year since the DOI. Any ongoing impairment can reasonably be attributed to the worker's pre-existing lumbar and thoracic spine degenerative changes and the sprain/strain injury can be considered resolved. In my opinion the worker's ongoing issues are related to his pre-existing condition." … Adopting these opinions, I find that Dr. Castiglione's interpretation of the MRI findings should not be given the same weight as the evidence of examining physicians, in determining the etiology of this worker's continuing symptoms.		
359.	2629 16	21/Nov/2016	Thus, all the worker's treating specialists have accepted that the worker's shoulder problems resulted from her 2007 work injury.	L Bradbury M Lipton M Ferrari	• 1st • (Entitlement)
360.	2356 16	21/Nov/2016	The Panel finds it significant that following the workplace accident of January 31, 2012, symptomology affecting both the worker's neck and right shoulder continued into subsequent years. There is no medical evidence of substance that these injuries resolved or that some event or factor, other than the workplace accident, caused this ongoing symptomology. In that light, the Panel has considered that the worker was assessed by an orthopedic specialist, Dr. Halman, at the WSIB clinic on February 16, 2012 who diagnosed a right shoulder and cervical spine (neck) sprain. The worker was later assessed at the Regional Evaluation Centre ("REC") by Dr. Syed, orthopedic surgeon, on April 3, 2012 where a partially recovered "rotator cuff strain/partial tear" and "cervical strain" were diagnosed. The worker received additional treatment for these areas and another orthopedic surgeon, Dr. Gandi, at the REC noted that these areas of injury were still only partially recovered as of July 3, 2012. The worker was then assessed at the Function and Pain Specialty Program on September 19, 2012 where range of motion was reduced in both his right shoulder and cervical spine. The worker still had functional limitations affecting both areas as of the	L. Petrykowski M Falcone A Grande	• 9th • 1st • (Entitlement) • (REC)

			completion of that FRP program on November 9, 2012.		
361.	2044 16	22/Nov/2016	There is no evidence of substance that the worker's left arm/hand problems arose from an underlying or non-occupational source, or some remote factor or event. The only contemporaneous medical evidence concerning causation came from Dr. Schumilas on November 3, 2009 who clinically documented a relationship between a significant increase in work activities involving the left hand and a diagnosis of a repetitive strain injury which he described as "secondary… [due to] accommodating right arm". The Panel accepts this mechanism of injury as being compatible with the worker's left hand diagnosis. It is not only the most probable explanation for the worker's left hand problems, it is the only explanation when viewing the totality of evidence. The Panel also finds it significant that once the worker ceased working November 30, 2009, the condition of her left hand improved from a clinical perspective, which further suggests that work-related factors were implicated in the development of left hand symptomology. The Panel finds it significant that Dr. Schumilas continued to opine from November 30, 2009 onwards that the worker should not return to work pending various medical investigations. The Panel has carefully considered that the Board's Case Manager decided that full LOE benefits would be restored to the worker as of February 14, 2011 "based on the onset of nonorganic complaint" associated with CPD. However, this was an arbitrary date retroactively selected by the Board's operating level. … In this light, the Panel finds it significant that Dr. Schumilas' medical note dated December 28, 2009 stated that the worker had right shoulder problems and a "secondary complex regional pain syndrome". …The Board's operating level determined that the worker was non-cooperative and reduced/suspended LOE benefits entitlement on that account around that time. However, the Panel finds that the worker's earlier loss of earnings associated with her CPD-based impairment continued	L Petrykowski ADG Purdy M Ferrari	• 1st • 3rd • 6th • 11th (arbitrary) • 17th • (Entitlement) • (chronic pain) • (Loss of earnings) • (Cooperation)

			from February 13, 2011 onwards. The Board's operating level felt that the worker was so compromised and faced "tremendous barriers" that LOE benefits were afforded to her up to May 3, 2012. In the Panel's view, however, nothing changed around that time that made the worker available to participate in modified work. The preponderance of evidence, both before and after that date, suggested that the worker was prevented from re-integrating into any employment on account of the severity of her compensable impairment, inclusive of a clinically-verified non-organic condition.		
362.	2803 16	23/Nov/2016	Tribunal Decision 616/14 granted the worker initial entitlement for a cervical disc herniation and for an aggravation of underlying degenerative changes in her lumbar spine. In March 2015, the worker was awarded a 10% NEL benefit for a cervical disc herniation and aggravation of underlying degenerative changes in her low back. A 7% whole person pre-existing impairment was deducted from the initial award to reflect the worker's pre-existing condition. … Thus, although imagining reports revealed moderate degenerative changes, there is no evidence of low back pain requiring treatment in the past, or a disruption of employment as a result of the worker's back condition. I can only conclude that the pre-existing condition was minor, and that there is no evidence of a pre-existing "impairment" requiring a reduction in the NEL award, as envisaged in OPM Document No. 18-05-05. Consequently, there should be no reduction of the worker's NEL award due to a pre-existing condition.	J Goldman	• 23rd • 8th • (NEL rating) • (Degenerative) • (Ping pong)
363.	2857 16	23/Nov/2016	Thus, there is significant consensus in the medical reports that the worker suffers from a chronic pain condition that was caused by her workplace accident and associated surgeries. …In short, I find on an overwhelming preponderance of the evidence, that the worker's compensable injury which led to two surgical procedures on her low back and eventually to the onset of a CPD which left her, according to her treating specialist, "markedly	B Kalvin	• 1st • (Employability) • (Chronic pain)

			disabled." I find that the worker's compensable disability has left her in a state of persistent debilitating pain which significantly affects her activities of daily living and which precludes a return to gainful employment. She is therefore entitled to full LOE benefits.		
364.	2814 16	24/Nov/2016	Again, I find no basis to question the opinion of the worker's treating health care professionals. In particular, I accept the opinion of Drs. Clark and Nadolny, that the worker remained unable to return to work at all by January 25, 2010, due to her fragile psychological condition resulting from the work accident of May 28, 2009, and the severe pain she continued to endure in respect of her compensable injuries. Further, I accept that the worker was not able to attempt a graduated return to work, until cleared to do so by Dr. Clark in October 2010. She is therefore entitled to full LOE benefits from January 25, 2010 to October 5, 2010.	JE Smith	• 5th • 1st • (ESRTW) • (Medical advice) • (Cooperation)
365.	2067 16	24/Nov/2016	It is notable that there was no suggestion by the employer that the worker was feigning an exaggerated level of disability during his approximately two years of work following the injury. Nor was there any such suggestion by the employer when the worker's further return to work failed in April/May of 2009. The Board also had no apparent concerns about the genuineness of the worker's condition at any time from the accident date in 2006 through to May 2011. In our view, the evidence shows that both the employer's and the Board's concerns about the genuineness of the worker's presentation stem almost exclusively from the surveillance video footage which was obtained in April/May 2011. …Closely associated with the worker's credibility in the hearing is an absence of evidence in the medical reporting that any of the worker's treating practitioners questioned the genuineness of the worker's symptoms. … Variability of symptoms aside, the worker also testified that he was likely in pain while engaged in some of the specific actions at issue in the video. We accept this evidence in part because we find that even in the relatively limited snapshot provided by the	K Jepson BM Young C Salama	• 3rd • 2nd • 19th • (Covert surveillance) • (Loss of earnings) • (Entitlement) • (Unreliable evidence)

			video footage the worker's pain is visually apparent on several occasions. … The Board's decision-making relied in part on an alleged tip from a neighbour to the employer that the worker was "bragging" about being on WSIB benefits. The tip was anonymous, and in this appeal that evidence is triple hearsay: a Board memo notates that the employer reported to the Board that, in turn, an anonymous individual reported this information to the employer. Not only is the alleged tipper anonymous, but there is no other information about the individual, nor any other detail about the information such as that individual's contact with the worker or opportunity to view or observe the worker, what the worker allegedly actually said, or what, if anything, the worker had supposedly been observed to be able to do. While the Tribunal accepts hearsay evidence, this evidence includes none of the reliability factors that would offset the inherent unreliability of this triple hearsay. We give this evidence very little weight.		
366.	1816 16	25/Nov/2016	We find that the preponderance of evidence before us supports the conclusion that, on a balance of probabilities, the worker was unemployable as of January 30, 2012. In reaching this conclusion, we are persuaded by the medical evidence of treating specialists. It follows that we also find that the SO was not suitable. We acknowledge that the worker participated, reluctantly, in LMR services and later WT services, expressed an interest in pursuing employment as a policy analyst and economist and performed supply teaching sporadically in the spring of 2011. In our view, this evidence does not establish that she was employable.	S Ryan M Christie MD Besner	• 5th • (Employability) • (Deeming) • (WT/LMR)
367.	2920 16	25/Nov/2016	Although the ARO, whose decision, dated April 9, 2014, is the subject of this appeal, concluded that "the worker has not demonstrated nor does the clinical evidence show that a significant deterioration in the work related injury has occurred", I find that this conclusion is inconsistent both with the psychiatric clinical evidence on file and with the other ARO's	M Crystal	• 1st • 16th • (Mental health/ psychological) • (RTW) • (NEL redetermination)

			decision, dated April 5, 2011, which concluded that "the evidence supports some deterioration." The deterioration in the worker's condition is reflected in the increase in the worker's NEL award from a rating in the mild range of impairment to a rating in the moderate range of impairment. Further, the medical report from Dr. Kakar, dated July 4, 2009, stated that the worker's psychological condition had deteriorated and that "the worker would like to be able to work fulltime but can only manage part-time hours." His report, dated July 11, 2010, stated that the worker's psychological condition was being "managed with high dosages of medication which has limited her productive capacity and her ability to continue in the competitive workforce" and concluded that the worker was able to work only 15- 20 hours per week depending on her level of depression. I also note that the report from Dr. Ticoll indicated that the worker suffers from depression and anxiety which were "at times, quite limiting to her." He also noted that the worker experiences insomnia, chronic fatigue and was "psychological regressed". I interpret the worker's testimony and the medical psychiatric information provided by Dr. Ticoll and Dr. Kakar to mean that the worker has a restriction due to her psychological impairment, which limits the number of hours that she is able to work, even in light work.		
368.	2949 16	25/Nov/2016	The worker had express authorization to be off work for a period of recovery following surgery to her right knee. The authorization was given by the surgeon who performed the surgery and who followed the worker for at least six months post-surgery. In my view, deference ought to be given to the surgeon's observation regarding the worker's functional ability, even though an explanation for the degree of impairment was not immediately apparent. Further, I am not persuaded that the worker failed to cooperate as required by the legislation. Section 40(2) of the WSIA provides that cooperation includes reasonable participation in health care measures and reasonable communication with the employer.	RE Basa	• 5th • 10th • (ESRTW) • (Cooperation) • (Medical advice)

			It does not oblige a worker to accept a suitable offer of modified work, nor does it oblige a worker to accept modified work that is unsuitable to the worker's restrictions. This worker complied with her surgeon's advice to remain off work and she kept the employer fully apprised of her progress, thereby complying with her obligation to cooperate in her ESRTW as is required by section 40(2) of the WSIA. I find further support for this conclusion in the fact that the worker cooperated in the second return to work plan, and it was ultimately successful.		
369.	2828 16	28/Nov/2016	The Panel finds that there is no evidence of significance before us to establish a non-compensable cause for the onset of the wrist and hand pain in October 2012 …In summary, the Panel finds that the worker suffered a work-related disablement to the right wrist and hand (De Quervain's tenosynovitis) with an accident date of November 12, 2012. The Panel finds that the diagnosis of De Quervain's tenosynovitis is compatible with the job activities. The Panel finds, on the balance of probabilities, that the job activities were a significant contributing factor to the onset of De Quervain's tenosynovitis. Accordingly, the Panel finds that the worker is entitled to the reinstatement of benefits, including health care and LOE benefits up to July 16, 2013, when initial entitlement was rescinded.	C Huras J Blogg D Besner	• 13th • 12th • (Entitlement)
370.	1871 16	28/Nov/2016	The Board determined that the worker reached maximum medical recovery ("MMR") by April 25, 2012, without evidence of a permanent impairment. However, I find that the medical documents on file indicated that the worker had permanent functional restrictions and permanent range of motion deficiencies associated with his right shoulder beyond the MMR date of April 25, 2012.In this regard, I rely on the assessment of Dr. T. Axelrod, an orthopaedic surgeon, who assessed the worker at a shoulder specialty clinic. In the assessment report of April 25, 2012, Dr. Axelrod unequivocally stated that the worker had permanent functional restrictions	S Darvish	• 1st • 12th • 9th • (Psychological/ mental health) • (NEL)

			associated with his right shoulder, identified as no heavy lifting, no carrying, no pushing, no pulling, and no above chest level work with the right arm…There was no objective evidence of significance to challenge all of these medical opinions regarding the worker's diagnosed psychological impairment and the contribution of the workplace injury and its sequelae. Thus, based on the worker's testimony and consistent objective medical evidence before me, I find that the workplace accident of September 2011 contributed significantly to the worker's development of an adjustment disorder. The worker is entitled to benefits for psychotraumatic disability.		
371.	2935 16	28/Nov/2016	The operating area of the Board adjusted the worker's LOE benefit level on December 26, 2012. The worker objected, leading to an ARO decision dated May 29, 2013 which granted the worker full LOE benefits from March 26, 2012 and continuing on the basis that her work related impairment left her unemployable, subject to any future material changes in the worker's condition. The operating area then requested clarification of the ARO decision as to the meaning of "material change" cited in the decision. The clarification indicated that "material change" included possible improvement in the worker's level of impairment. In a letter dated November 22, 2013 the worker's Case Manager (CM) noted that the worker had not attended a meeting she had requested and, as such, found the worker had failed to meet her obligations with respect to reporting material change, and restricted the worker's LOE benefits as of November 22, 2013. …Thus, the medical evidence appears unanimous in the opinion that the worker is incapable of performing any type of work, and has been since at least 2010 and continuing. This is what the original ARO decision found before the clarification, investigation, and subsequent denial of LOE benefits for non-cooperation (specifically, the worker's lack of communication with the Board). We note that, as submitted by Mr. Cirillo, there does not appear to be any evidence of significance on file to support a	K Cooper J Blogg JA Crocker	• 16th • 14th • 1st • 5th • WSIB decision was procedurally unfair • (Employability) • (Loss of earnings) • (Psychological/ mental health) • (Covert surveillance) • (Cooperation)

			change in the worker's circumstance between the time of the ARO's clarification (July 29) and the first contact from the worker's new CM on August 9, 2013. In correspondence dated February 26, 2014 the Board's Director, Industrial Sector, responded to concerns from Mr. Cirillo that the ARO clarification was minor, and made to determine whether the worker was unemployable to age 65. … The Director, with respect to reason for commencing surveillance, stated: "It was requested because there were incongruities between [the worker's] position that she was fully impaired and information she provided to both her mental health practitioners and to WSIB staff. For instance, since August 2013, the case manager placed several telephone calls to [the worker] and was rarely able to reach her without leaving a message. This lack of availability conflicts with information [the worker] had provided to her psychologists and to the case manager in which she notes that she rarely leaves the house." Putting aside the purpose of the clarification and the noted procedural error as not integral to the case before us, we do note that the Director's letter suggests that surveillance was ordered due to incongruities between the worker's claim she was totally impaired and the information she provided to her doctors and the WSIB staff. As an example, the Director pointed to the worker's lack of availability since August 2013. We note that surveillance was ordered on August 9, 2013 less than two weeks after the ARO issued his clarification, and before the CM began her attempts to contact the worker. Thus, it seems improbable that this was the basis for the surveillance. We also note that not answering her phone was not evidence that the worker was not at home, particularly given the psychological opinions on file regarding the worker's anxiety and withdrawal. Further, we note that the surveillance only noted the worker leaving her home on two of seven occasions, and only then to grocery shop. This, if anything, would appear to support the worker's assertion that she stays home most of the time and only goes out for necessities. We are not making a finding with respect to the propriety of the actions taken or the		

			procedural error, but we do not find that there were incongruities between the worker's evidence to her CM and doctors, and the evidence on file.		
372.	2831 16	29/Nov/2016	ARO Luck went on to conclude that the knee condition did not preclude the worker from obtaining employment in the SEB identified 9 years earlier in 2005 under a separate claim. I find that this conclusion was premature. Without the benefits of the NEL assessment, it was not reasonable for the ARO to draw definitive conclusions regarding employability. The more appropriate approach would have been to extend LOE benefits pending the outcome of the NEL assessment. The 22% NEL award for the right knee is not insignificant, and the worker has a reasonable expectation that the results of the NEL assessment be taken into account in considering employability issues.	T Mitchinson	• 17th • 19th • WSIB decision was procedurally unfair • (Employability) • (Loss of earnings)
373.	2839 16	29/Nov/2016	The information before us contains reports from the worker's family physician, Dr. Zucker, and his surgeon, Dr. Sattarian. Both physicians attribute the meniscus tear to the worker's employment involving heavy lifting, twisting and turning, mounting and dismounting his lift truck numerous times each day. Those opinions therefore support a gradual onset of the right knee condition, arising from the employment. There is no contrary opinion in the evidence before us. There is no indication of a degenerative process in the knee in the evidence before us.	G McCaffrey M Lipton C Salama	• 1st • (Entitlement)

CASE	DECISION NUMBER	DATE	QUOTES (DIRECT)	PANEL/VC	COMMENTS
374.	2927 16	01/Dec/2016	On April 12, 2006 this then 52 year old police officer is involved in an altercation with a suspect when he injured his right shoulder. …The LMR provider now known as the Work Transition Specialist (WTS) did not recommend any intervention for the worker. The Adjudicator determined the worker is unemployable and full LOE benefit payments are allowed to age 65. As the 72 month mark in this case approached the Case Manager reviewed the decision to allow full LOE benefit payments to age 65. The worker is referred for WT services and a WT plan is developed that includes job search training and employment placement services. The suitable occupation (SO) of Retail Sales Clerk is identified for the worker. At the completion of the WT plan the worker is not employed and the Case Manager determined the worker is able to work 40 hours per week earning $10.25 per hour. …The Panel also noted the comments in the 2011 WT service reporting and from the LMR assessment in 2007. We noted that both reports commented on the lack of suitable job opportunities, and that the worker would not relocate. We found this particularly persuasive, given that the Board's later reporting confirmed that there were limited potential positions due to the size of the community. … While the worker's physical abilities did not largely change from 2007 to 2011, neither did the details regarding his geographic location or job availability. It was therefore evident that there were no better opportunities for this worker in 2011 than during the assessments conducted in 2007. The Panel has considered the full range of factors noted above in regard to the worker's employability. He was in his late 50s when the Board reconsidered his claim. He remained with significant limitations for the shoulder that limited his job opportunities. More importantly, while he had some transferrable skills, his geographic location remained a substantial barrier to gainful employment in 2011, as it did	AG Baker MP Trudeau RW Briggs	• 14th • 3rd • (Employability) • (Deeming) • (Loss of earnings)

			in 2007.		
375.	2657 16	01/Dec/2016	There is no evidence that the worker had sought medical treatment either for his left shoulder or his cervical spine, or that his pre-existing degenerative condition had disrupted his employment prior to the workplace injury. Moreover, it appears the worker had been able to perform his regular job duties without medical precautions or restrictions, and there was no indication that he had lost time from work due to either pre-existing condition. … In the absence of evidence that the pre-existing condition had resulted in periods of impairment or illness requiring health care or caused a disruption in her employment, the Panel finds that this condition was not a pre-existing impairment. Consequently, there is no basis upon which the NEL award may be reduced pursuant to OPM Document No. 18-05-05.	BA Cappell ST Sahay F Jackson	• 23rd • 8th • (NEL rating)
376.	1725 16	01/Dec/2016	In denying entitlement, the Board concluded that the worker was capable of performing her pre-injury duties. I note that on the February 21, 2011, the date the worker stopped work, she was only performing her duties for five hours per day. As well, at that time, the Board had not recognized the worker's fibromyalgia. I do not overlook the Board's indication that the worker ceased work for noncompensable reasons. However, there is no medical evidence of substance to suggest that this was in any way a major concern at the time. There is no provision of a diagnosis or record of treatment for a noncompensable condition. Moreover, as I outline below, there is, in my view, compelling evidence that the worker was also prevented from working due to her compensable condition.	W Sutton	• 12th • (ESRTW)
377.	3068 16	02/Dec/2016	More problematic, however, is the worker's reaction to the opiates prescribed by his family physician, Dr. S. G. Cohen. … On April 8, 2009, Dr. Cohen wrote indicating "not fit to return to any work (under my active care)." … I note that Dr. Cohen did not indicate, following his note of April 8, 2009, that the	AT Patterson	• 5th • (ESRTW) • (Unsafe) • (Medical advice)

			worker was able to drive with the new pain medications prescribed. I accept C. S.'s testimony that the worker had no other option than to drive to the worksite and that he was unable to do so because of the prescription drugs….. I find that the evidence supports a finding that the worker could not safely operate a motor vehicle to attend work as a result of the painkillers prescribed for his compensable low back condition.		
378.	2957 16	02/Dec/2016	On August 8, 2014, the Case Manager wrote to the worker advising that the employer had offered suitable work which would restore the worker's earnings but that the worker had elected to limit the hours she would work. … During the hearing, the worker testified that after May 19, 2014, the employer did not assign her enough Level 1 patients that enabled her to resume her regular 40 hours of work per week. The worker testified that the employer assigned her Level 1 patients in areas where she previously did not work (e.g., Caledon and Mississauga) and that she took these assignments in order to resume working 40 hours per week. The Case Record contains a memorandum documented by the Case Manager summarizing conversations with J.B. [employer witness] wherein he advised that the worker was self-limiting the hours in which she would accept patients which made it impossible for her to resume working 40 hours per week. However, the memorandum does not describe how J.B. came to this conclusion and J.B. was not able to provide evidence of significance supporting this conclusion during the hearing. I find no evidence of significance that the worker was uncooperative and limited the hours in which she was available to work thereby reducing the number of hours she could be assigned patients.	P Allen	• 19th • 12th • (ESRTW) • (Cooperation)
379.	2164 16	02/Dec/2016	The problem in this appeal is that contrary to the Board's position I am of the view that the worker had treatment related to his compensable injury which prevented him from returning to work. In particular, I find that the worker's medication intake impaired him	J Dimovski	• 3rd • 6th • (ESRTW) • (Cooperation)

			significantly during the discrete period for this appeal that it likely impaired his return to work. Although the impact of the worker's medication regime on his functioning has been addressed tangentially through the case materials, in his report dated December 17, 2009, Dr. McBroom noted the worker had been prescribed "high dose of Hydromorph Contin". The dosage was so high that Dr. McBroom noted the worker was trying to "get off some of this" medication. Although the Board noted that the worker's medication might not have been compatible with an organic condition, in a letter dated March 18, 2009, it authorized payment for Hydromorph Contin for an additional year. … Although the Board recognized the worker's medication intake was a concern, it did not address the impact such medication had on his function.		
380.	2596 16	02/Dec/2016	With respect to the end date under OPM Document No. 19-05-02, I note that the ARO found that the employer's re-employment obligation ended when it offered modified work which the worker declined. I arrive at a different conclusion. I find that the employer not only made its only offer of work prior to the worker being medically cleared to return at all, on May 2, 2012, but also, in my view, offered work which was not suitable, as defined in Board policy. As cited above, OPM Document No. 19-05-02 states that suitable work must be within the worker's functional abilities, safe, productive and restore his pre-injury earnings. … The work offered by the accident employer involved having an acquaintance of the worker attend at the worker's house and read to him for two hours per day from the employer's health and safety manuals to him. I find this work was essentially "make work" in nature, and thus not productive, as defined above. Further, as the work offered was contemplated for two hours per day, it did not restore the worker's pre-accident earnings. As it was offered prior to his medical clearance to return to work, was not productive, and did not restore the worker's pre-accident earnings, I find the work offered by the accident employer was not suitable. As	JE Smith	• 5th • 8th • 9th • 3rd • (ESRTW) • (Entitlement) • (Re-employment)

			the work offered was not suitable, I find that the accident employer's obligation did not end when the worker declined it.…Turning next to the worker's entitlement for his low back, I note that the ARO found that his compensable injury had resolved by June 22, 2012 when he began his pre-accident duties with the new employer. I find the evidence indicates otherwise, specifically that it had not resolved by the time he had the accident with the new employer, and thus contributed to the degree of injury sustained as of that date. I arrive at this conclusion based on the following evidence in particular….I find from the foregoing medical reporting that the worker's condition had not resolved when he began work with the second employer and accept Dr. Malcolm's view, that the worker's condition when assessed in September 2012, was the result of both the April 25, 2012 accident and the worsening that occurred in the fall on August 15, 2012. The worker therefore has ongoing entitlement for the low back beyond June 22, 2012. Further, while Dr. Malcolm reported that a recovery was anticipated in eight weeks' time, I find the medical reporting before me establishes that the worker's compensable low back strain did not resolve.		
381.	1968 16	05/Dec/2016	We note that although the worker reported that he previously had back pain, it has been accepted by the Board, and was not an issue on appeal, that the worker suffered an accident on February 4, 2013. We note there is no diagnosis of disc herniation prior to the "popping" injury of February 4, 2013. We also note that whatever back pain the worker may have felt prior to February 4, 2013, there is no evidence that it manifested in the kind of debilitating pain and referred pain to the right buttock and leg he experienced subsequent to that date. There may have been some degenerative changes in the worker's back, but there is no evidence they were sufficiently severe to cause significant symptoms. There is no medical evidence of substance opining that the worker's low back condition after February 4, 2013 was due to a pre-existing condition. In Decision No. 246/16 our colleagues noted the	MT McGarvey M Christie G Carlino	• 4th • 7th • 12th • (Entitlement) • (Degenerative)

			Tribunal's jurisprudence has long adopted the "thin-skull" doctrine from tort law… It may be that this worker was vulnerable to low back injury despite the accident employer's efforts, through ergonomic planning and design, to prevent such injuries. However, we find there is both continuity and compatibility between the February 4, 2013 disablement injury and the August 14, 2013 injury. In short, the disablement never fully resolved, got worse when the worker returned to regular duties in April 2013 and manifested in a recurrence of the disablement by the time he stopped working on August 14, 2013.		
382.	3020 16	05/Dec/2016	In my view, the worker's testimony that her compensable headaches and depression render her incapable of returning to gainful employment are supported by the reports from her treating health care providers, that is, her family physician, Dr. Pannozzo and her psychologist, Dr. Tang. Further, the assessments of her treating health care providers are consistent, in my opinion, with the reports prepared by the independent assessors at the PTP at the Centre for Addiction and Mental Health. Accordingly, I find that the worker's compensable impairments, for which she was granted a 22% NEL award rendered her unable to return to gainful employment as of May 30, 2012. She is therefore entitled to full LOE benefits as of that date.	B Kalvin	• 1st • 5th • (Psychological/ mental health) • (Employability)
383.	2840 16	05/Dec/2016	I first note that there is no evidence of substance that the worker was experiencing psychopathology of any sort prior to her workplace accident in March 1991. Similarly, the medical evidence consistently suggested in the documentary record that the worker had no psychological/psychiatric conditions affecting her prior to her workplace accident. The Board's operating level took the position in Board Memorandum #143 (October 21, 2013) that the worker's other health factors contributed to her psychological impairment. However, those factors do not preclude entitlement for psychotraumatic disability under	L Petrykowski	• 1st • 4th • 7th • (Psychological/ mental health) • (Entitlement)

			her claim so long as the workplace accident is shown to be a significant contributing factor in the development of her psychopathology. …On that backdrop, I have considered that the worker was assessed by doctors and psychiatrists who all suggested that the worker's psychopathology was related to her workplace accident in 1991. …I find that it is evident that the worker's psychotraumatic disability is attributable to her work-related injury in 1991. It is the only factor that has been repeatedly documented and suggested as the root cause for the worker's psychopathology.		
384.	2925 16	06/Dec/2016	By letter dated January 9, 2015, the Case Manager advised the worker that following her review of his file, she had determined "that a permanent impairment is evident for [the worker's] back, neck and right shoulder injuries" and that he had reached maximum medical recovery ("MMR") in connection with these injuries. … In a subsequent letter (dated January 15, 2015, six days after the above-referenced letter), the Case Manager advised the worker that she had "reviewed [her] decision further, specifically entitlement to a permanent impairment for [the worker's] neck and back strains" and that following "further scrutiny, there is a lack of objective medical evidence provided to support an ongoing physical abnormality or loss to [the worker's] neck or back (strain)." Accordingly, the Case Manager determined that while there was a PI for the worker's right shoulder, he had no entitlement to a PI for his low back and neck and therefore he had no entitlement to a NEL assessment for his low back and neck…On April 11, 2014, the worker was assessed at a Regional Evaluation Centre ("REC") by Dr. Levy, a general practitioner, and J. Van Es, a physiotherapist. Prognosis was listed as partial functional recovery as of that date, with full recovery anticipated in six to eight weeks. On May 15, 2014, Dr. Schachter, a neurosurgeon, assessed the worker. In addition to pain (which, in itself, is insufficient to constitute a permanent impairment), he reported limited ROM in the worker's neck. … On May 21, 2014, Dr. Chen, a radiologist, assessed the worker. He reported	L Lampert	• 9th • 1st • 13th • (REC) • (Permanent impairment)

			that the ROM in the worker's neck was limited to ¾ normal. He also reported limited ROM in the worker's low back. … On June 26, 2014, the worker was assessed at the Back & Neck Specialty Clinic by Dr. Phan, a neurosurgeon, and C. McKenzie, a physiotherapist. In their report, the assessors noted that the worker had "difficulty with movement in all directions of his lower back." …Taken together, this medical evidence suggests that the worker has an ongoing and permanent impairment relating to his neck and lower back in that he has limited ROM which deprives him of full functionality. Accordingly, he has permanent work restrictions which have been recommended to him and confirmed by at least two medical specialists and a physiotherapist. I therefore find that he is entitled to recognition of a PI in connection with his neck and lower back, and is entitled to a NEL assessment for his neck and low back conditions.		
385.	2062 16	06/Dec/2016	In my view, the worker is not competitively employable given her compensable medical condition, her age, her limited English language skills, her permanent restrictions which prohibit her from using both her upper extremities for any repetitive moving or gripping activity, the very limited SO (greeter position) identified by the Board as suitable which was not readily available in the general market place and the lack of success in the worker's own attempts to maintain employment as a school bus monitor … this position was not readily available in the general labour market as indicated in the January 27, 2012 report. The report indicated that the job development team had contacted all employers, checked internal employer database, made cold calls, searched for employment that would been the worker's hand restrictions and contacted all employers that would host a greeter type position and there were no successful results despite their efforts. … Given the lack of availability of the greeter position in the general labour market, this position would not be considered suitable as per the definition of suitability as outlined in Board Policy. … In addition, the worker did not have the basic	S Hodis	• 3rd • 2nd • 18th • 5th • (Older worker) • (Employability) • (LMR/WT) • (Deeming) • (ESL)

			qualifications for the SO of Customer Service Clerk. … The worker testified that she did not complete high school and was unable to read English without the assistance of a dictionary to translate so she can understand the meaning of words. … It would be unrealistic to assume that the worker would be able to secure and maintain employment in this SO based on the required qualifications and the fact that the worker would be competing for the same positions with uninjured workers who did not have physical restrictions. Since coming to Canada, the worker has worked in a kitchen, sewing jobs that did not involve her dealing with customers, and her own sewing company she operated from her home from 1987-1989. …Dr. McKibbon (Internal Medicine, Arthritis and Rheumatism) in a report dated October 10, 2012 opined that despite the worker's motivation and sincere efforts, it was unlikely that the worker would succeed at the kind of retraining that would be necessary to allow her to be gainfully employed given her musculoskeletal difficulties, her hands being the most dominant issue. … A medical note from the worker's family doctor dated November 24, 2012 indicated that the worker was unable to work due to her injury. The medical reporting also supports my finding that the worker is competitively unemployable. At the time of WT, the worker was 62 years old. The worker did not have a vocational assessment done and did not have any training to help her develop skills for a customer representative position and specifically a greeter position.		
386.	3029 16	06/Dec/2016	In my view, the evidence makes clear that the job of a retail sales clerk was not within the worker's functional abilities. The worker was 60 years old when the WTS program began. He had never worked in retail sales. His entire career was spent doing construction or other forms of heavy manual labour. The Case Record is littered with reports from a variety of sources documenting the difficulties the worker had coping with a job in retail sales. … A memorandum prepared by the Work Transition Specialist following a Case Conference involving several persons involved	B Kalvin	• 3rd • (Deeming) • (Older worker) • (WT/LMR)

			in the worker's WTS program, notes that the worker's chronic pain was a factor that was affecting his executive functioning and was a barrier to his progress in the program. The memorandum states further: "Despite intense job coaching, exposure to the cash register and behind counter duties in retail as well as ongoing strategizing, [the worker] continued to struggle with learning the essential job duties of a Retail Sales Clerk … The host employer stated … that they were not in a position to hire [the worker] and could not continue with the placement as it required more intense support then [sic] they had anticipated." This report clearly documents that the worker was not competent in "the essential job duties of a Retail Sales Clerk." In light of that, it is difficult to conclude that the worker had the "transferable skills" to find work as a retail sales clerk, or that such a job is "consistent with the worker's functional abilities."		
387.	3018 16	07/Dec/2016	The Board ruled that the psychotraumatic disability was a temporary condition and did not constitute a permanent impairment. … The worker testified that he still suffers from depression and that he continues to take medication to treat that condition. The worker's testimony is supported by the medical records in the Case Record. … What these reports of Drs. Shapiro and Ross reveal is that in early 2010, that is, three-and-a-half years after the accident, the worker was still suffering from significant depression. Medical reports from subsequent years show that the condition persisted. … As noted above, in my view, the medical reports confirm the worker's testimony that he has suffered from depression since the accident and continues to do so. He continues to receive treatment for his depression. Given that it is now over 10 years since the accident occurred, I agree with Dr. Gilani's opinion that the worker is unlikely to improve significantly from his current state. Accordingly, I find that the worker has reached maximum medical recovery and continues to suffer from depression that was caused by his compensable accident and the associated pain and disability. The worker's depression	B Kalvin	• 1st • 9th • (Psychological/ mental health) • (Permanent impairment)

			therefore constitutes a "permanent impairment" as defined in the WSIA.		
388.	127 16	07/Dec/2016	In a decision dated April 3, 2012, the case manager noted that the worker's claim had been allowed for a low back strain and that the worker had been awarded loss of earnings (LOE) benefits. The case manager determined that the worker would be fully recovered and fit for her regular duties as of April 10, 2012. The worker's LOE benefits would cease as of that date. The worker appealed this decision. In a decision dated May 31, 2013, the ARO dismissed the worker's appeal noting that initial entitlement was accepted for a low back strain and that, based on medical guidelines, the accepted recovery period for a severe strain was for a full recovery within six to eight weeks. … I note that the 2012 MRI report showed bilateral mild to moderate foraminal stenosis at L5-S1 along with annular tearing at L4-5. The report notes that annular tearing can be symptomatic. However, based on the worker's testimony, I find that there is no evidence to support that these conditions were symptomatic before the December 21, 2011 workplace incident. I also note that the worker was able to perform her regular duties up until the December 21, 2011 workplace incident. … Based on the April 3, 2012 FAF from Dr. Thompson, I find that the worker had not fully recovered from her low back strain by April 10, 2012. I accept the restrictions listed by Dr. Thompson as accurately reflecting the worker's abilities at that time as Dr. Thompson had been assessing the worker continuously from the initial stages of the worker's injury. Accordingly, I find that the worker was not capable of returning to her regular pre-injury duties effective April 10, 2012. …I also find that the worker has suffered a permanent impairment of her low back and is entitled to a permanent impairment assessment.	E Kosmidis	• 4th • 9th • 12th • (Older worker) • (Degenerative) • (Entitlement) • (Permanent impairment) • (Loss of earnings)
389.	2805 16	07/Dec/2016	As noted above, the OPM Document No. 18-05-05 states that a worker's NEL rating is reduced where there is a pre-existing impairment. …The interpretation that a pre-	V Marafioti	• 23rd • 8th • (NEL rating)

			existing impairment does not include a prior condition that was asymptomatic is in keeping with long standing common law definitions of injury and compensation as well as other definitions in Board policy. See OPM Document No. 11-01-15 as set out in Decision No. 204/14. In this case, there is no dispute that in the MRI that was conducted shortly after the worker's accident, there was evidence of degenerative existing problems. It was noted that there was severe fatty atrophy of the subscapularis and osteoarthritis. The MRI also noted the AC joint had moderate degenerative changes. Moderate degenerative changes were also noted at the glenohumeral joint which also had erosive cysts in the greater tuberosity. Having reviewed the information available, I can find no evidence that the worker had symptoms attributable to his compensable condition prior to the workplace accident of 2008.		• (Degenerative)
390.	2979 16	07/Dec/2016	In addition to Decision No. 204/14 referred to by the worker's representative, I note that a number of Tribunal decisions have interpreted OPM Document No. 18-05-05 to signify that a NEL award may be reduced only where a pre-existing impairment or disability is present. … There is no evidence that his pre-existing degenerative condition had disrupted his employment (or other activities) prior to the workplace injury. … His family physician confirmed in a letter dated November 26, 2008 that the worker had been a patient in his office since May 2005 and there is no record of any pre-existing conditions related to his back injury. … Of note, in a memo dated April 13, 2012 (Case Record, p. 38) regarding the request for SIEF relief, the Board's case manager stated "I am satisfied that there is no evidence of a pre-existing condition that has contributed to the injury or delayed recovery…" In the absence of evidence that the pre-existing condition had resulted in periods of impairment or illness requiring health care or caused a disruption in his employment, I find that the worker's disc degeneration was not a pre-existing impairment within the meaning of Board policy.	BA Cappell	• 23rd • 8th • 1st • (NEL rating) • (Degenerative)

			Accordingly, there is no basis upon which the NEL award may be reduced pursuant to OPM Document No. 18-05-05.		
391.	2788 16	08/Dec/2016	The review of the adjudication in this claim suggests that the Board has denied the worker ongoing entitlement for his low back being satisfied that any problems he may currently be experiencing are the result of non-compensable conditions. Having had the opportunity to consider all the evidence before me however, I find that I am led to a different conclusion. …There is no evidence of significance before me to contradict the worker's testimony to the effect that prior to November 27, 2012 he had never experienced any problems with his low back. …The mechanics of the accident were such one would expect a significant impact on the worker's low back. …On March 12, 2013, the worker was assessed by Dr. A. Kachooie (Physiatry). Dr. Kachooie … initially related the pain to the compensable accident. … In a memo dated June 19, 2015, Dr. Seward of the Board … concluded that "given the lack of prior findings of such symptoms, it would appear that the jarring motion of falling has led to discogenic pathology and sciatica. As such I would support that the discogenic pathology and sciatica is compatible with the mechanism of injury given the onset of symptoms, lack of pre-existing history and objective findings." With respect to the pre-existing conditions, Dr. Seward noted that "there are several findings of mild bulges and mild degenerative changes, all of which would have pre-dated the claim. The symptoms however appear to have caused exacerbation of these underlying pathologies". Dr. Seward concluded that "there was no suggestion that the ongoing issues are due to pre-existing factors given the lack of evidence of pre-existing symptoms and the relatively mild degenerative changes at the time of the accident." In a report dated October 30, 2014, the worker's family physician, Dr. R. Kirubaharan noted that while he had started seeing the worker on November 28, 2012 "it should be noted that no history of low back, right knee and neck and/or right hand problems was mentioned by [the worker] to me at any of	R Nairn	• 4th • 2nd • (Entitlement) • (Degenerative)

			his visits since the outset". ... In his report of August 10, 2015, Dr. Malcolm noted that "his constellation of mechanical symptoms occurs in a background of diffuse lumbar spondylosis at all levels primarily involving the facet joints." The Board's Operating Level appears to have relied on Dr. Malcolm's opinion to deny the worker ongoing entitlement for his low back, taking the position that his ongoing symptoms were related to this non-compensable spondylosis and an annular tear at L3-4. While I am prepared to accept that the worker's lumbar spondylosis and annular tear likely pre-existed the compensable accident, I note the balance of evidence establishes that the these conditions were asymptomatic prior to the compensable accident and is now symptomatic particularly with a pattern from a right posterior thigh referral.		
392.	2976 16	09/Dec/2016	On September 22, 2011, the worker was interviewed by psychiatrist Dr. M. Bail, Dr. Bail concluded that the worker was malingering. As a result of Dr. Bail's opinion, the worker's entitlement to benefits for psychotraumatic disability was rescinded and a return to work plan was developed in November 2011. The worker did not participate in the return to work process and his LOE benefit was reduced effective November 14, 2011. The worker was referred to the PTP a second time and was re-assessed on June 4, 2012. The professionals at the PTP diagnosed the worker with Major Depressive Disorder, Moderate to Severe, Rule Out Psychotic Features and Post-Traumatic Stress Disorder, Chronic. A comprehensive review of the information on file was performed on May 13, 2013, and the worker's entitlement to benefits for psychotraumatic disability was reinstated. … As noted above, the worker's LOE benefits were reduced as a result of Dr. Bail's conclusion that the worker was malingering. That conclusion formed the basis of the Board's decision to offer the worker Work Transition services in November 2011. The ARO subsequently concluded that the worker could have worked in the direct-entry Suitable Occupation of Ticket Taker during the period between the closure of	AT Patterson M Falcone F Jackson	• 2nd • 13th • 18th • (Employability) • (Psychological/ mental health) • (WT/LMR) • (ESL) • (Medical consultant – Dr. Bail) • (Deeming)

			benefits on November 14, 2011 and the start of Work Transition services on October 6, 2013. The Hearing Panel is of the view that, without the WSIB's assistance in the form of WT services, the worker was competitively unemployable. In making this finding, the Panel notes that the worker's English language skills were limited and required upgrading. The Panel further notes that although the worker had had retail experience, this resulted from operating a car business in India over twenty years before. More significantly, the Panel observes that during the period in question the worker was still in active psychiatric treatment and had not yet reached Maximum Medical Recovery. In this regard the Panel notes that Dr. A. Chan, psychologist and Dr. L. N. Ravindran, psychiatrist, wrote in the PTP Discharge Summary, dated July 27, 2012, that the worker was not able to work in any capacity "due to the severity of current depressive and posttraumatic stress symptoms." Dr. R. Kakar, the worker's treating psychiatrist, similarly noted in a report dated October 20, 2012: "He is incapable of regularly pursuing any substantially gainful occupation for which he is qualified."		
393.	2916 16	09/Dec/2016	In reviewing the psycho-vocational assessment reports, we find as a fact that the worker had barriers that needed to be addressed prior to her ability to successfully obtain employment. While the assessor opined that the worker could potentially be considered employable as a store greeter and sales clerk, she would have difficulties without further training. No other direct entry occupations were identified. The assessor suggested additional ESL training, but no further training was provided to the worker by the Board. The worker testified that her English abilities were very limited. We accept that the worker has limited abilities speaking English. The Panel notes the worker required the use of an interpreter frequently, including at medical appointments, the psycho-vocational assessment, and in conversations with the Board. The worker attended ESL training in March 2012; however, the worker testified that this was for a short time period after which she	R Woodrow ST Sahay K Hoskin	• 3rd • 20th • 18th • (WT/LMR) • (Deeming) • (Employability) • (ESL) • (Older worker)

			returned to work. This preceded the assessment at which ESL training was identified as a barrier to employment. The Panel notes that a store clerk or greeter would be required to interact with customers to greet, serve, and provide information. The Panel finds that the worker's limited ability to communicate, read, and write in English were a significant barrier to her ability to find employment in the suitable occupation. At the relevant time the worker was an older worker, aged 64, who had permanent restrictions relating to her left hand and climbing; these would adversely affect her ability to secure employment.		
394.	2760 16	12/Dec/2016	Under section 44(1) of the WSIA, LOE benefits may be reviewed if there is a material change in the worker's circumstances. Where the Board has found a worker to be unemployable and in the absence of a material change of circumstances, there is no basis to review the LOE award. See Decision Nos. 2143/14 and 1661/14. In the case before us, the Board determined, based on the Labour Market Re-Entry Report that the worker would not benefit from an LMR plan. This determination was based on both a psycho-vocational assessment and an LMR assessment. In Board Memorandum #83, dated November 9, 2010, the CM reported that annual reviews had been conducted following the decision that the worker was not an LMR candidate, and that no material changes were noted. The memorandum set out that the final LOE review was scheduled for November 9, 2012, and that annual reviews would be conducted until then. The medical record shows the worker's medical condition did not change following the decision of May 15, 2008. … The Panel finds that the worker's continued need for strong medication to manage his pain is evidence there was no improvement in the worker's symptoms. … In the absence of a material change, the Case Record does not provide an explanation as to how the Board came to decide that the worker should be re-referred for work reintegration services. …When the CM determined that the worker would not benefit from an LMR plan on May 15, 2008,	C Sand B Davis RW Briggs	• 14th • 11th • 3rd • 10th • (Employability) • (Deeming) • (WT/LMR)

			both his physical restrictions and non-compensable issues were taken into account. These issues included the worker's limited education level, previous experience, personality issues, criminal record (for which he had never applied for a pardon) and age. The barrier of most jobs in the SO requiring at least some secondary school education remained. … The degree to which the worker was accommodated at his on the job placement, where he took regular breaks to lie on the floor, would not have been realistic at a regular job.		
395.	2376 16	12/Dec/2016	The worker received a NEL assessment from the Workplace Safety and Insurance Board (the "Board" or WSIB) of 10% for his cervical impairment on May 22, 2014. This assessment was offset by 6% on the basis that multi-level degenerative changes to the cervical spine constituted a pre-existing impairment under Board policy. …I therefore find that the NEL award may be reduced pursuant to OPM Document No. 18- 05-05 only where a pre-existing impairment or disability is present. This is consistent with Tribunal jurisprudence: see, for example, Decision No. 530/05, Decision No. 204/14 and Decision No. 588/14)…. A pre-existing condition alone, that being an underlying or asymptomatic condition made manifest only after a work injury, is not sufficient to permit a reduction of NEL benefits pursuant to Board policy …In the absence of any evidence that the degenerative changes in the worker's neck required treatment in the past or disrupted his employment, this degenerative condition is not a pre-existing impairment within the meaning of Board policy.	IR Mackenzie	• 23rd • 8th • (NEL rating)
396.	2773 16	12/Dec/2016	The worker was rated at 37% for her Non-economic Loss (NEL) award which was reduced by 50% to 18.5% based on her pre-existing condition. …Finally, I agree with the submission by Mr. McGill that there should be no deduction for a pre-existing impairment. While the worker had a pre-existing condition, she did not have a pre-existing impairment, which for the purposes of Board policy exists	S Shime	• 23rd • 8th • (NEL rating)

			where there have been periods of disability, impairment or illness in the past that required treatment and disrupted employment.		
397.	3244 16	13/Dec/2016	However, I noted that this worker had been granted partial and then full LOE benefits for a substantial time period, in part by order of the Tribunal in Decision No. 164/14. That decision considered the worker's then psychiatric condition, as well as his significant 25% organic NEL award for the back. I noted in particular the findings of the Panel that led to an award of full LOE benefits from May 2006 to February 2011 … Similar to the findings in the above noted Tribunal decision, I also noted the worker's significant ongoing impairments, as well as the various assessments, reports, and years of daily medication for both his physical and psychiatric conditions. I also noted the reporting, such as that from Dr. Knutt and Dr. Nathanson that identified a barrier to the worker's return to gainful employment. It was also notable that the worker continued to have significant impairments, and was awarded a further significant period of full benefits by the Board from 2011 to 2013. … I did not find any reporting of significant improvement in his conditions. In brief, the worker's overall physical and psychiatric condition has not significantly changed since 2013 and over the preceding time periods when he was receiving full benefits. It is my view he continues to be impaired to the degree he is unable to return to gainful employment. Therefore, I find that this worker is unable to earn any income in suitable employment and he is entitled to full LOE benefits beyond August 5, 2013.	AG Baker	• 16th • 3rd • (Employability) • (Loss of earnings) • (Psychological/ mental health)
398.	2793 16	14/Dec/2016	The Board reviewed entitlement for the total left knee replacement surgery of August 8, 2011. The Board subsequently denied the worker's claim indicating that the worker experienced a previous injury in 1997 and was diagnosed with a cartilage problem and a ligament tear in the left knee. The denial came in December 2011. The Board considered this condition non-compensable and not related to his work accident under this claim and	V Marafioti M Lipton RW Briggs	• 1st • 4th • (Entitlement)

			concluded that it was determined as being the result of the need for surgery in June 1997. …The Panel sees no disagreement regarding the diagnosis and the causal relationship reported by Dr. Young, from the other specialists who assessed the worker including Dr. Reed and Dr. Holtby, as well as the WSIB's Medical Consultant, Dr. Maehle. Although, the Panel acknowledges the worker's previous 1987 injury to the left knee, the Panel accepts that the evidence indicates no further problems with the left knee for many years prior to the April 1995 compensable injury. There is no basis medically to attribute the worker's ongoing left knee problems to the 1987 injury.		
399.	2524 16	14/Dec/2016	I have found no basis upon which to doubt either the objectivity or the appropriateness of Dr. Hendrick's opinion that the worker required several days off work to rest prior to returning to modified duties. While it would have been helpful if the physician had expanded on his rationale for making that recommendation in the Form 8 Report, his failure to do so was not the worker's doing. I note again that no effort was made by Board personnel to obtain additional information from Dr. Hendrick or to request that he expand upon the reasons for his opinion. The Board has all of the necessary resources to obtain any required medical information in relation to the claim. If the Board had reason to question the worker's decision to accept the clear recommendation of his attending physician to remain off work during the period in question in the appeal, the CM could have requested further information from Dr. Hendrick or sought a second opinion from a Board Medical Consultant (MC). In my view, such steps are anticipated by the provisions of OPM Document No. 11-02-02. …I have adopted the reasoning set out in the Tribunal decisions outlined above that address a worker's entitlement to full LOE benefits after remaining off work for a short period based on medical advice and authorization. I note in particular the statement in Decision No. 7/08 that the "ESRTW process [now known as WR] established under the WSIA is not just about	ME McKenzie	• 1st • 5th • 19th • 8th • (ESRTW) • (Cooperation)

			early return to work, it is equally about safe return to work". …I also note and accept the submission advanced on the worker's behalf that these principles are reflected in the Board's Best Approaches Guide entitled "Recognizing Time to Heal – Assessing Timely and Safe Return to Work". In my view, that Guide provides a common sense approach to issues of this nature in situations where the facts warrant a brief period of rest.		
400.	2177 16	14/Dec/2016	The Workplace Safety and Insurance Board (the "Board" or WSIB) Case Manager (CM) reviewed the worker's entitlement following the ARO's decision and concluded that given the limited entitlement to mechanical low back pain only, this was deemed to have fully recovered as of January 12, 2007 and therefore the worker was not entitled to any additional benefits or recognition of a PI. … The medical reporting confirms ongoing treatment and complaints following the accident. There is no indication that the worker ever fully recovered from her work injury.	IR Mackenzie	• 9th • 12th • (Permanent impairment)
401.	2860 16	15/Dec/2016	The worker was first granted initial entitlement on April 28, 2011, for a cervical strain that the Eligibility Adjudicator (EA) found occurred as a result of the worker's duties. Initial entitlement was then rescinded on June 2, 2011, based on a Workplace Safety and Insurance Board (WSIB or the Board) Medical Consultant's opinion, of May 31, 2011, that the diagnosis of a cervical disc herniation was not compatible with the worker's job duties. The Panel is persuaded on a balance of probabilities that the worker sustained a small cervical disc herniation leading to her C6 radiculopathy, as the result of her work duties. We have relied on the medical opinions of Dr. Meikle, Dr. Pysklywec, Dr. Windfield and Mr. Fernando, all of whom attributed the injury sustained as one that was brought on by the repetitive physical nature of the worker's duties. Both Dr. Meikle and Dr. Pysklywec weighed the effect of the worker's pre-existing	C Sand B Davis M Ferrari	• 2nd • 4th • 13th • (Entitlement) • (Medical consultant)

			condition when coming to their conclusions.		
402.	488 16	16/Dec/2016	The worker was also awarded a permanent impairment award for Psychotraumatic Disability and she received a 35% NEL award for this impairment in September 2010. The Board subsequently reduced the worker's 35% Psychotraumatic Disability award in October 2012. The ARO confirmed in the decision, dated August 19, 2013, that the 25% reduction was appropriate under Operational Policy Manual (OPM) Document No. 18-05-05 "Effect of a Pre-existing Impairment." The combined award was reduced from 61% to 53.5%. The worker now appeals the reduction of the award under OPM Document No. 18-05-05…I find that although the worker may have had vulnerability due to her past history, she did not have a pre-existing impairment, as defined by Board policy. I also note that the Board cited co-existing stressors as one reason for the reduction in the NEL award under OPM Document No. 18-05-05. However, the policy accounts solely for reductions related to a pre-existing impairment. There is no suggestion in this policy that a co-existing stressor allows for a reduction. In this case, there is no evidence of a prior psychological condition requiring treatment in the past or having disrupted employment before 2005. Accordingly, there should be no reduction of the worker's award due to a pre-existing condition.	S Shime	• 23rd • 12th • 8th • (NEL rating) • (Psychological/ mental health)
403.	3248 16	16/Dec/2016	However, by March 2010, the Board concluded that the worker was unemployable as a result of his compensable impairments. He was awarded full LOE benefits to age 65, on March 3, 2010. The Case Manager recommended that the worker's entitlement continue at this level at the final LOE review in September 2011 (see Board Memorandum No. 69, dated September 28, 2012). However, for reasons that are unclear from the Case Record, it appears that he was again referred to Work Transition Services (WTS) later in 2011 …the Board reduced the worker's LOE benefit by 50% from September 25, 2012 for a period of two weeks, for non- cooperation, and thereafter based on	JE Smith	• 14th • 12th • 3rd • 1st • 11th • (Loss of earnings) • (Deeming) • (Cooperation) • (Lock-in)

			an ability to earn $10.25 per hour, working 20 hours per week in customer service. … To begin, I note that the medical reporting leading up to March 2010 was derived largely from an independent physiotherapist assessor, physiotherapist, D. Blenkhorn, the worker's treating physiotherapist, M. Payne; the worker's family doctor, Dr. R. Senior, and his treating psychologist, Dr. J. Phillips. … I find no reason to reject the opinion of Dr. Senior which consistently indicated, from 2007 onward, that the worker was so highly limited by his permanent compensable neck and back pain and restricted motion, along with the associated headaches, intermittent dizziness and fatigue, and concentration, memory and attention issues, that he was rendered unemployable by March 2010, and remained so thereafter … As stated in other Tribunal decisions, it seems counterintuitive to find that a worker would be incapable of securing employment in 2008, but with no improvement in the overall condition, be found capable in 2012.		
404.	3126 16	16/Dec/2016	In this appeal, the CPP-D date of notification was September 10, 2013, which was after the final review date of March 5, 2011. Although the NEL redetermination was not granted until November 2013, on appeal, I have found as a matter of fact that the worker suffered the significant deterioration in her condition before, and not after, the final review date. As such, the exception found in section 44(2.1)(c), "after the 72-month period expires, the worker suffers a significant deterioration…", does not apply. … The Board decisions in July 2014 and April 2015 emphasized the worker's failure to report a material change, being the receipt of CPP-D benefits, within 10 days of notification. … However, whether or not the worker failed to meet this obligation in September 2013, this has no bearing on the CPP-D offset determination. … Pursuant to section 43 and 44 of the WSIA, together with the interpretation of those provisions found in Board policy, I conclude that the worker's LOE benefits were not subject to review in 2013 or 2014, and that CPP-D benefits ought not to have been offset	S Netten	• 10th • (Lock-in) • (Loss of earnings)

			as was decided in July 2014.		
405.	2762 16	16/Dec/2016	There is no evidence of significance that this SO is attainable for this worker when one applies the worker's psychovocational results to the requirements for this NOC listed in the NOC handbook. The Psychovocational Assessment noted that the worker would have difficulty mastering basic reference and training materials due to limited literacy skills.	S Shime	• 12th • 3rd • (Deeming) • (Employability)
406.	2217 16	16/Dec/2016	The preponderance of the medical reports on file, namely opinions of Dr. Lightle, Dr. MacCallum, Dr. Psyklywec, and Dr. Armstrong, all indicated that the worker's job duties likely aggravated his right knee OA and low back DDD. There was no medical report on file to challenge these opinions. I also rely on an opinion from Dr. Meenan, a Board medical consultant, dated November 22, 2005. Dr. Meenan opined that the worker's job duties, which included a history of increased squatting up to four times the normal level, caused the bilateral knee problems of the worker and the knee OA diagnosis was compatible with the worker's job duties as a bushing operator. I find that the worker has entitlement for a recurrence of his bilateral CTS. … Dr. Singh indicated that the worker had been having ongoing symptoms of nocturnal paresthesia and that he was wearing wrist braces, which seemed to help him. In my view, this is consistent with the worker's testimony and suggests that he did indeed have ongoing symptoms prior to 2010. Second, when the worker's claim for bilateral CTS was first accepted, Dr. Meenan, a Board Medical Consultant, opined that the worker was liable to a recurrence of CTS. Dr. Meenan stated, "the CTS is never healed but only hidden". I find this opinion significant because it accepts that the worker's condition would recur at some point in the future. There was no evidence of significance to challenge these medical opinions.	S Darvish	• 1st • 12th • (Entitlement) • (Degenerative) • (Medical consultant)

407.	2525 16	16/Dec/2016	I have found no basis upon which to doubt either the objectivity or the appropriateness of Dr. Chu's opinion, as supported by that of the worker's chiropractor, that the worker was not able to conduct the modified duties that were offered to her until Monday, May 26, 2014. … The Board has all of the necessary resources to obtain medical information with respect to the claim. If the Board had reason to question Dr. Chu's opinion or the worker's decision to accept the clear recommendations of her attending physician and chiropractor not to accept the offer of modified duties until May 26, 2014, the CM could have sought an opinion from a Board Medical Consultant (MC). In my view, there was no reasonable basis for the CM to decide, in the absence of any conflicting medical opinion, that Dr. Chu's opinion was unreliable. … I note in this regard that no effort was made by personnel at the Board to request further reasons or clarification from Dr. Chu with respect to her opinion or to provide her with additional information about the modified duties so that she could provide a more detailed response and rationale. … There does not seem to have been any consideration given by the Board to the actual suitability of the duties that were offered to the worker in light of her limitations at that time. … In my view, that description of the proposed modified duties required at least a modest physical demands analysis by a qualified person in order to determine their suitability in relation to the worker's restrictions … I have also concluded that in the worker's circumstances as of that time, the proposed duties did not meet the productivity requirement set out in Board policy outlined above.	ME McKenzie	• 5th • 12th • 19th • 15th • 8th • (ESRTW) • (Medical advice) • (Cooperation)
408.	2448 16	19/Dec/2016	It is not significantly contentious that the worker has ongoing symptoms and restrictions for her right knee. However, the Board found that the worker's ongoing impairment was due to non-compensable degenerative osteoarthritis. … It is not contentious in this case that the worker suffered a distinct injuring event to her right knee on March 28, 2010. The Board has accepted that the injury occurred,	K Jepson	• 4th • (Degenerative) • (Entitlement)

			and I find as well that the event occurred as the worker has claimed. This led to the need for surgery and physiotherapy, and the worker continues to experience ongoing symptoms of the right knee. While this injury was clearly superimposed upon pre-existing degenerative changes in the worker's knee, I have found that the worker's knee was asymptomatic prior to the accident. There is no medical opinion suggesting that the worker's right knee would have had the symptoms and limitations it did as of January 2012 solely due to degenerative arthritis in the absence of the March 28, 2010 injury.		
409.	1625 15R	19/Dec/2016	In his submissions excerpted above, Mr. McGill is quite correct. I confirm my intention, as stated in Decision No. 1625/11 to provide the worker with full LOE, retroactive to December 15, 2011 and ongoing. Indeed, I am at a loss to understand why there would be a need to clarify what I thought was actually quite clear: the worker, in receipt of full LOE benefits prior to the November 17, 2011 decision of the Case Manager which rescinded such entitlement, had such entitlement reinstated by Tribunal Decision No. 1625/15. As was stated in paragraph 43, there was "restoration of the status quo of her benefits as these were in place prior to the Case Manager's decision of November 17, 2011 [underlining added]." I do not know how I could have been more clear. From correspondence submitted by Mr. McGill, in the November 6, 2015 letter of the Case Manager for appeals implementation the Board ultimately provided the worker full LOE benefits from December 16, 2011 through to August 13, 2013, when the Board deemed the worker to be "partially impaired." Tribunal Decision No. 1625/15 dated September 15, 2015 provided, as if not clear then I certainly clarify, that the worker is to receive full LOE benefits. Paragraph 43 indicated that such benefits were to be "continuing." To avoid any uncertainty, I confirm that LOE benefits are to be full LOE benefits when such are continuing.	J Josefo	• 16th • (Loss of earnings)

410.	3037 16	19/Dec/2016	The worker did not suffer from any form of psychiatric condition before this injury. He has suffered continuously from this condition since it was first diagnosed in 2008, at which time it was clearly related to the injury. In 2011, Dr. Magder clearly related the diagnosis of major depression to the September 2007 injury. It is also related to the significant back and leg pain that resulted from the injury, for which he receives a 31% NEL award. The worker's psychiatric condition has shown itself to be continuous and permanent since its onset after the compensable injury. It has not improved over the years. The worker continues to be treated for depression by his family doctor with antidepressants.	L Gehrke MP Trudeau RW Briggs	• 1st • (Psychological/ mental health) • (Entitlement)
411.	2527 16	20/Dec/2016	I have found no basis upon which to doubt the veracity of the worker's reports to the Board in this regard or the objectivity and appropriateness of Dr. Cianfrone's opinion that the worker required a two-week period of total rest during the period in issue as a result of his compensable injury. … The Board has all of the necessary resources to obtain medical information with respect to the claim. If the Board had reason to question Dr. Cianfrone's opinion or the worker's decision to accept his recommendation to remain at home to rest his knee during the period in issue in the appeal it could have sought further information from the attending physician or requested a second opinion from a Board Medical Consultant (MC). These steps were not taken. • In my view, there was no reasonable basis for the EA to decide, in the absence of any conflicting medical opinion, that Dr. Cianfrone's opinion was unreliable. • There does not seem to have been any consideration given by the EA to the aspect of Board policy that requires that the modified duties provided to the worker after his accident be suitable within the definition of that term that is set out above.	ME McKenzie	• 5th • 12th • 1st • 19th • (Medical advice) • (RTW) • (Loss of earnings) • (Cooperation)
412.	2438 16	20/Dec/2016	In the absence of evidence that a pre-existing condition had resulted in periods of impairment or illness requiring health care or that it caused	L Petrykowski	• 23rd • 8th

			a disruption in the worker's employment, the Panel finds that his underlying condition was not a pre-existing impairment within the meaning of Board policy. Consequently, there is no basis upon which the NEL award for his right knee impairment may be reduced pursuant to OPM Document #18-05-05. He is therefore entitled to the full NEL award in recognition of a 9% "whole person impairment" for his right knee, without reduction for his underlying condition.	B Davis M Ferrari	• (NEL rating)
413.	811 14	20/Dec/2016	The Board found that the worker's back problems after October 7, 2011 were due to age-related degeneration in the worker's spine rather than the workplace injury. …As we interpret Dr. Crabtree's opinion, it can be summed up as follows: the worker suffered a soft tissue superimposed upon pre-existing degenerative changes in his spine, leading to a chronic low back pain condition. … We find Dr. Crabtree's opinion persuasive, particularly when considered against the backdrop of the information in the Discussion Paper, the absence of significant degenerative findings, and the absence of a persuasive medical opinion indicating that the relatively modest findings are likely the cause of the worker's ongoing symptoms. Dr. Wolff's opinion was similar to that of Dr. Crabtree.	K Jepson E Tracey D Besner	• 4th • 1st • (Entitlement) • (Degenerative)
414.	3201 16	20/Dec/2016	The issue before me arises as a result of the worker's February 2013 request for a reduction in his course load to four courses per semester. He was experiencing depression as a result of a personal matter at that time. The worker had sought medical attention for his depression. A note from the family physician dated January 31, 2013, confirms the exacerbation of depression and anxiety due to the personal situation, and recommends a reduction in the worker's course load. … I find the worker is entitled to the WT plan and associated benefits that the Board committed to prior to the worker's personal difficulties in February 2013. I have found the availability	G McCaffrey	• 18th • 8th • (WT/LMR)

			within the SO is limited. Not completing one of the agreed upon certificates would have reduced his employability within the SO. In 2012 the Board had committed to an extension until approximately the end of November 2013. The worker actually completed what became a self directed WT plan shortly thereafter, as of December 13, 2013. Entitlement until December 13, 2013 is consistent with the 2012 commitment made by the Board to the worker. Accordingly, entitlement is extended from May 27, 2013 until the December 13, 2013.		
415.	2289 16	21/Dec/2016	It is significant in my view that what the memo does not do is examine the temporal connection between the accident and the onset of the worker's left knee and hip problems. It is not clear to me how a reliable opinion regarding causation may be derived without such consideration. The worker was working and asymptomatic prior to his accident. Within two months of his accident he is seen by a physiotherapist who notes decreased range of motion of the left hip and knee due to pain and stiffness as well as hypomobility of the left hip and knee due to pain and muscle spasm. … It would in my view be a pretty significant coincidence if the worker's underlying knee and hip difficulties went from asymptomatic to this level of impairment in two months without being affected by the accident that took place that was significant enough to break the worker's femur. However, none of these circumstances are referred to by the consultant physician. … I find that the opinion of the consultant physician should be provided with no weight. There is no information that would allow me to evaluate the doctor's qualifications. The firm that the doctor works for has provided no information that would allow for there to be an evaluation of its neutrality in providing medical opinions. The medical opinion on causality contains is very significantly deficient given that it contains no analysis of the close temporal connection between the accident and the onset of impairment in the absence of any reliable evidence of a pre-existing condition. The best available medical evidence in my view is the evidence of the	G Dee	• 9th • 4th • 3rd • 2nd • (Medical consultant) • (Entitlement)

			worker's treating orthopaedic surgeon.		
416.	817 13	21/Dec/2016	I find that it is evident that the worker's psychotraumatic disability is attributable to her work-related injury in 2009. It is the only factor that has been repeatedly documented and suggested as the root cause for the worker's psychopathology. … In my view, the worker had a loss of earnings resulting from her compensable injuries from October 6, 2009 due to the nature and seriousness of her organic and non-organic injuries. There had been no significant change in the worker's medical state immediately before or after that time, however, the Board discontinued LOE benefits as of that date. The worker had a number or organic impairments by October 6, 2009 and shortly thereafter her non-organic impairment was also identified. All of these compensable factors severely affected her earning capacity from October 6, 2009 onward. There was no possibility that the worker could re-integrate into her pre-accident employment from that time onwards. The preponderance of medical evidence also underlines that the worker was not in a position to earn income as a result of her compensable injuries from October 6, 2009 onward, mirroring her diminished state prior to that particular date.	L Petrykowski	• 1st • 5th • 9th • (Psychological/ mental health) • (Entitlement)
417.	3143 16	21/Dec/2016	In my view, the worker had a loss of earnings resulting from her compensable injuries beyond August 24, 2013, particularly due to the nature and seriousness of her compensable non-organic CPD condition. There had been no significant change in the worker's medical state immediately before or after that time, however, the Board's Appeals Branch discontinued LOE benefits as of that date, which coincided with Dr. Mamalias' final REC report. However, in my view, the REC report dated August 24, 2013 cannot be looked at in isolation and apart from the totality of medical evidence, especially when subsequent medical specialists verified that the worker had a significant non-organic chronic pain syndrome/condition.	L Petrykowski	• 2nd • 9th • (Loss of earnings) • (Entitlement) • (REC)

418.	2408 16	21/Dec/2016	The Board's policy document indicates that entitlement to benefits for psychotraumatic disability is in order whether the worker's psychological condition arises from his or her emotional reaction to the subject "accident or injury". The analysis provided by the Board suggests that where an accident occurs during an everyday, ordinary activity, such as moving laundry machines, entitlement to benefits for psychotraumatic disability will not be in order because the accident "was not psychotraumatic in nature" or because the worker experienced "a relatively minor accident". Given that the Board's policy allows for entitlement arising from an emotional reaction to either the worker's accident or the injury, however, the fact that the accident was not catastrophic in nature, or the fact that it arose from a mundane activity, does not rule out entitlement, where the worker's psychological injury arose from a reaction to the physical injury, rather than from the accident itself. In this case, the ARO acknowledged that "the worker's psychological difficulties have been largely caused by his experience and reaction to his subjective physical pain." Of course, all pain is subjective in nature. Where a worker sustains a psychological condition that arises from his emotional reaction to genuine pain associated with the injury, entitlement to benefits for psychotraumatic disability will be in order, regardless of whether the accident was catastrophic or minor in nature.	M Crystal	• 8th • (Psychological/ mental health) • (Entitlement)
419.	1786 16	22/Dec/2016	The Panel finds that the SEB of Retail Sales Manager was inappropriate because it was her pre-accident job; it was demonstrated that she was no longer capable of that work. If her accident employer was unable to accommodate her restrictions, the Panel finds it unlikely that another retail employer would be able or willing to accommodate her right arm restrictions. … In the decision under appeal which denied a NEL redetermination, the ARO acknowledged that the evidence showed that there was a deterioration in the worker's range of motion	R McCutcheon MP Trudeau JA Crocker	• 4th • 10th • (Loss of earnings) • (Deeming) • (NEL redetermination)

			of the right shoulder, but the ARO concluded that this was likely due to a non-occupational neck condition. The Panel notes, however, that the Interdisciplinary Pain Program Discharge Report stated that no neck pain was reported. The worker also testified that she has no neck pain. The medical reports show that the cervical spine was investigated as a potential cause of the worker's symptoms, but it was eventually ruled out.		
420.	3172 16	22/Dec/2016	To begin, I note that initial entitlement for psychotraumatic disability was granted by the Claims Adjudicator, in July 2008, based on the opinion of the Board's Medical Consultant, psychologist, Dr. I. Smith. … Given that the worker continued to be treated for depression, anxiety and symptoms of posttraumatic disorder, 11 years post-accident, with onset of depression one year after the accident, according to the PTP assessors, and continues to be treated with antidepressant medication and sleep medication by his family doctor after his sessions ended with Dr. Light, I am satisfied that the worker's ongoing compensable psychological difficulties are permanent. … On September 24, 2008, Dr. Light stated that the worker was "unable to work because he is suffering from Post Traumatic Stress Disorder (PTSD) and Pain Syndrome related to his [2001]-04-06 accident at work." The PTP assessors, on May 14, 2009, reported that the worker was unable to return to work at that time due the severity of his posttraumatic stress and depressive symptoms… On May 26, 2009, Dr. Farewell stated that the worker was unable to participate in LMR due to his mood and anxiety difficulties and that his prognosis for return to work was guarded to poor. He reported the following: …. On June 23, 2015, Dr. Mitchell-Gill stated that the worker's condition had not improved and that he "remains totally disabled as a result of the WSIB injury." Given the opinions in 2008 and 2009 and thereafter, that the worker could not participate in LMR or work at any employment, I am satisfied that at his LOE final review, he was unable to earn income from any	JE Smith	• 1st • 5th • (Psychological / mental health) • (Permanent impairment) • (Employability) • (LOE)

			employment.		
421.	3268 16	22/Dec/2016	I am cognizant of the fact that the worker was provided with a short LMR/WT program, with a limited job placement, but that still did not raise him to the level of being able to compete for work in the identified SO, especially in view of the fact that his experience of pain interfered with all manner of activities, even basic activities of daily living in his home. Coupled with the fact that the worker was functionally illiterate, had no computer skills, had low intellectual aptitudes, had permanent physical precautions, had no transferrable skills, and was situated in a geographic area where no such employment was available to him, I find that the SO of Cashier was neither suitable nor appropriate for the worker. The worker's appeal is allowed in this regard. When coupled with the fact that medical evidence in 2011 suggested that the worker was not capable of being gainfully employed, this leads me to conclude that there was no viable SO, at all, for the worker to be re-integrated into during the material time at issue in the present case. Conversely, this has a consequence with respect to the worker's LOE benefits entitlement, which is discussed below.	L Petrykowski	• 3rd • (Employability) • (Deeming) • (LOE)
422.	2659 16	23/Dec/2016	Dr. Kopyto's report shows that there have been decreases in the worker's range of motion, particularly in flexion and extension. Furthermore, as noted above, the WSIB has accepted additional diagnoses of spinal stenosis and L5-S1 disc herniation requiring surgery, and the worker continued to have weakness in both legs and some active demyelination demonstrated on nerve conduction tests. These are additional findings that warrant a pension re-assessment. In denying the worker a pension re-assessment, the WSIB's adjudicators often referred to the fact that the worker had a stroke in 2008, without identifying how it is relevant. I find that the fact that the worker had a stroke does not undermine his entitlement to a pension re-assessment.	R McCutcheon	• 22nd • 3rd • (NEL redetermination)

423.	3307 16	29/Dec/2016	In March 2007, following a psycho-vocational assessment of the worker, a Labour Market Re-entry (LMR) plan indicated as its primary recommendation that no LMR services be provided and that she be granted full LOE benefits to age 65 on the basis that she was unemployable. The Board's Operating Branch accepted that recommendation and granted her full LOE benefits … There was essentially no communication between the Board and the worker until the spring of 2010. At that time, the Board made arrangements for the worker to participate in a Functional Restoration Program (FRP). … Given the preponderance of medical evidence that indicates that the worker was not employable, I find that she has entitlement to full LOE benefits from October 10, 2013 to age 65, subject to any statutory reviews.	S Ryan	• 14th • (Employability) • (Deeming) • (Loss of earnings)
424.	3078 16	30/Dec/2016	In my view, the evidence is very clear that the treating surgeon, Dr. Tumi, had advised the worker and the Board that she had suffered a very serious injury to her right hand, which quickly became complicated by infection. The worker was advised to keep her hand elevated and not to return to work. … The Board denied the worker's claims based on the opinion of its non-medical personnel that Dr. Tumi's reports lacked objective findings to support the worker's need for a period of total disability following her accident and surgery. … The Board has all of the necessary resources to obtain medical information with respect to the claim. If the Board had reason to question Dr. Tumi's opinion, or the worker's decision to accept his recommendation to remain at home after her consultation with him on December 10, 2013, it could have sought further information directly from Dr. Tumi and/or requested a second opinion from a Board Medical Consultant (MC). These steps were not taken. In my view, there was no reasonable basis for the CM to decide, in the absence of any conflicting medical opinion, that Dr. Tumi's opinion was unreliable.	ME McKenzie	• 5th • 1st • 19th • (ESRTW) (Medical advice) • (Unsafe) • (LOE)

425.	3304 16	30/Dec/2016	While the worker did improve her English skills through the WT program between November 2012 and April 2013, there is no objective measure in the documentary record about what her English-language proficiency was in mid-2013. The documentary record is clear, however, that the worker had extreme language/communication difficulty in the two job interviews that were arranged with the Board's assistance in 2013 and that the worker still required her husband to attend at medical appointments for English interpretation/translation in subsequent years. Her résumé dated April 2013 noted she only had "simple communication in English", and I find this to be entirely aligned with her credible testimony at the Tribunal hearing, which also required the presence of a Punjabi-speaking interpreter. … In my view, Dr. Dhaliwal was best-situated as the worker's psychiatrist to comment on her non-organic condition and its effect on her daily life and ability to work. On May 2, 2013, he noted that the worker had "psychological trauma of [being] unable to work at this young age" and noted a Global Assessment of Functioning ("GAF") score of 45 to 50		• 18th • 19th • 5th • 3rd • (ESL) • (Deeming) • (Employability)