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# WSIB CASE AUDIT REPORT

Our purpose, is to bring clarity, focus and insight into your WSIB Case. To help you understand your rights and how to protect them, with an Action Plan for a better way forward for you and your family!

PREPARED BY :  
**Joe Machado**





# WSIB Case Audit Report & Action Plan

## Personal Information

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## Claim Information

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## Return to Work

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## Appeals

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## Action Plan

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## Personal Information

<b>Name</b>	James McDonald
<b>Address</b>	35 Crestview Road Thunder Bay ON M5S 3R7
<b>Phone Number</b>	(807) 315-8749
<b>Date of Birth</b>	March 15, 2018

# Claim Information

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<b>Date of Accident or Illness</b>	James McDonald
<b>Claim Number (primary claim)</b>	(807) 315-8749
<b>Area of Injury (body part) Allowed Under the Primary Claim</b>	Low Back Right Shoulder Right Knee
<b>Type of Claim</b>	Low Back & Psychotraumatic Disability
<b>Restrictions Accepted in the Claim</b>	<ul style="list-style-type: none"><li>• Lifting is restricted to 7 lbs on an occasional basis</li><li>• Avoid sitting for prolonged periods</li><li>• Walk short distances of 1 block</li><li>• Minimal turning and twisting</li><li>• Limited bending</li><li>• No climbing ladders</li><li>• No walking on uneven ground</li><li>• Lifting with the right shoulder as tolerated</li></ul>
<b>Claim Status</b>	Allowed Loss Time (periods of LOE paid)
<b>Injury/Disease Not Accepted in the Claim</b>	Right Hip & Neck
<b>Benefits Allowed in the Primary Claim</b>	<ul style="list-style-type: none"><li>• Health Care Benefits</li><li>• Full Loss of Earnings</li><li>• Non-Economic Loss</li><li>• Long-Term Earnings Recalculation</li></ul>
<b>Benefit Reviews/Date &amp; Results (Primary Claim)</b>	72-Month Lock-in Review was deferred to allow for completion of Return to Work Plan with Retraining
<b>Benefit We Recommend Pursuing (Primary Claim)</b>	<ul style="list-style-type: none"><li>• Health Care</li><li>• Full LOE</li><li>• NEL Redetermination</li><li>• Entitlement to the Right Hip, Neck with NEL for those areas</li></ul>

# Return to Work

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## Type of Return to Work Services Provided

- Psychovocational Assessment
- Functional Capacities Evaluation
- Suitable Occupation identified (SO)
- Return to Work Plan with retraining for Small Engine Repair

## Appeals

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### Primary Claim Currently at Appeals & Status

Entitlement to the right hip and neck as secondary conditions

### Appeal Level

Workplace Safety & Insurance Appeals Tribunal

### Status

Appeal filed recently

### Hearing Date

No date at the time of this audit

### Other Claim(s) Currently at Appeals & Status

**Claim Number:** 14397561

**Issue Being Appealed:** Entitlement to Section 147(4) Supplement

**Appeal Level:** WSIB Appeals Services Division

**Status:** Objection Form Submitted

## APPEAL READY REVIEW

Based on this audit, I have identified several steps that should be taken to strengthen your position concerning both the appeal under the primary claim, as well as your appeal for Section 147(4) Supplement being pursued in your prior claim.

Please see the recommended Action Plan for details.

# Action Plan

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## Recommended Action Plan (primary claim)

Based on this audit, I have identified several steps that should be taken to strengthen your position concerning both the appeal under the primary claim, as well as your appeal for Section 147(4) Supplement being pursued in your prior claim.

- **Appeal under your primary claim**
  - Concerning your appeal currently at the WSIAT dealing with entitlement to your right hip and neck as secondary conditions under this claim, although several medical reports make reference to these areas as being somewhat related or a consequence of this claim, there is no report that specifically addresses the issue and explains why these areas should be considered part of the claim. To address this issue and provide concrete medical support, I suggest obtaining a medical opinion from your specialist that specifically ties these conditions to your claim. I believe with such a report, your chances of getting a favourable decision from the Tribunal are significantly increased.
  
- **The Deferral of the 72-month Lock-in Decision**
  - The WSIB's Deferral of the 72-month Lock-in Review of your LOE Benefits and your concerns about not being able to find suitable employment in the SO, once the RTW Plan is completed are valid concerns. To address this, I recommend submitting an *Intent to Object Form*, objecting to the suitability of the SO and providing your reasons for doing so. Some of those reasons could be:
    - Although the WSIB is required to take all barriers to employment including compensable and non-compensable barriers, they are only considering the restrictions associated with your accepted areas of entitlement. However, they have not taken into consideration the restrictions associated with your right hip and neck which are currently under appeal at the WSIAT. That should be stated in the Intent to Object Form as it could have a significant impact on your employability.
    - You also have permanent restrictions for your Pre-1990 claim for your left elbow for which you receive a 12% Permanent Disability Award. Based on my review, it would appear that, although the assessor who performed your Functional

## Action Plan Cont'd

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- Capacity Evaluation under this claim referred to your left elbow condition in her report, they have not considered the impact of your left elbow compensable restrictions regarding the suitability of the SO under your primary claim. There was no mention of this anywhere else in your file.
- **Appeal of Section 147(4) Benefits in Your Pre-1990 Claim**
  - During my WSIB Case Audit of your Pre-1990 Claim 14397561, I note that you are pursuing a reinstatement of your Section 147(4) Supplement that was initially granted on August 13, 1989, and taken away by the WSIB at the 24-month review on August 13, 1991. The issue is now being pursued at the WSIB Appeals Services Division.
  - In my opinion, this matter does not require a hearing. The WSIB overstepped their authority, in terms of what they're authorized to do under the provisions of *Section 147(13) Subsections (9)(10), of the Workers' Compensation Act*. Under the law, they are only authorized to recalculate the supplement if there were any earnings from employment following the initial granting of the supplement that brought your earnings closer to, or exceeding your escalated pre-accident earnings when combined with your 12% monthly Permanent Partial Disability Pension, which based on my calculations is not the case.
- **The impact the Section 14(4) Supplement has on your employability in your primary claim.**
  - The WSIB already made a determination pertaining to your employability, when they denied Vocational Rehabilitation Services under your Pre-1990 claim, on the basis that they did not believe that you would have benefitted from Vocational Rehabilitation Services back then, to the extent that with said services they could help you approximate or fully mitigate your wage loss at that time. It is clear that those same circumstances exist now in your primary claim and there is no justification for them to believe that with a greater level of impairment, you are competitively employable.

All of these recommendations can be addressed with our **OnePlan Plus Legal Membership** with [wsibsettlements.com](https://wsibsettlements.com) where you can receive full support in addressing these matters, as described above.