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*Federal Public Sector
Labour Relations and
Employment Board Act and
Federal Public Sector
Labour Relations Act*



Before a panel of the
Federal Public Sector
Labour Relations and
Employment Board

BETWEEN

JEANETTE MCDONALD CORBIN

Grievor

and

**TREASURY BOARD
(Department of Employment and Social Development)**

Employer

Indexed as
*McDonald Corbin v. Treasury Board (Department of Employment and Social
Development)*

In the matter of an individual grievance referred to adjudication

Before: David Orfald, a panel of the Federal Public Sector Labour Relations and
Employment Board

For the Grievor: Nairra Tariq and Tony Micallef-Jones, Professional Institute of
the Public Service of Canada

For the Employer: Peter Doherty, counsel

Heard by videoconference,
May 17 and 18, 2022.

REASONS FOR DECISION

I. Individual grievance referred to adjudication

[1] Jeanette McDonald Corbin (“the grievor”) is a medical adjudicator working for Employment and Social Development Canada (ESDC). She is classified within the Nursing Group (NU). As such, she is part of the Health Sciences (SH) bargaining unit represented by the Professional Institute of the Public Service of Canada (PIPSC).

[2] This grievance concerns the grievor’s eligibility for an education allowance pertaining to the NU group. The grievance was presented to ESDC on May 7, 2015, and referred to adjudication on June 7, 2016. The SH collective agreement that was in effect when the grievance was filed is the one between PIPSC and the Treasury Board (“the employer”) with an expiry date of September 30, 2014 (“the collective agreement”).

[3] The relevant provision of the collective agreement is titled “Appendix ‘B’ Education Allowances - Nursing Group”. Appendix B provides for increased annual rates of pay to those NU group employees who have additional education beyond a nursing diploma. As will be detailed in the reasons that follow, the education allowance has seven graduated levels, starting at \$605 per year (for a recognized specialty training course), rising to \$3850 per year (for a master’s degree in nursing or equivalent). The allowances are payable when the nursing training or education is “... utilized in the performance of the duties of the position ...”.

[4] Before filing her grievance, Ms. McDonald Corbin had taken a nursing course at George Brown College entitled, “Operating Room Theory & Lab and Practicum”.

[5] The grievor argued that this course meets the criteria for the education allowance and that she should be receiving the education allowance at the first level (\$605 per year).

[6] The employer took the position that the grievor is not eligible to receive the education allowance because the course she took is not utilized in the performance of her duties as a medical adjudicator and did not add value beyond her basic nursing diploma.

[7] For the reasons that follow, the grievance is allowed. The grievor is entitled to receive the education allowance in the amount of \$605 per year.

II. Summary of the evidence

[8] The parties submitted an agreed statement of facts and a joint book of document comprising 16 tabs.

[9] The grievor testified for herself.

[10] The employer called two witnesses:

- At the time of the events in question, Kathryn Hitchcock was a regional director for the Canada Pension Plan (CPP) disability program and the manager who received the grievor's request for the education allowance and responded to the grievance at the first level. At the time of the hearing, she was retired from the public service.
- At the time of the events in question, Isabel MacNeil was a senior manager of operations at ESDC's national headquarters. At the time of the hearing, she was a senior manager for the division of ESDC that handles appeals related to CPP and Old Age Security (OAS) benefits.

A. Facts not in dispute

[11] Based on the agreed statement of facts and the testimonies of the witnesses, the following facts are not in dispute:

- From September 2 to December 10, 2003, the grievor completed a full-time course at George Brown College entitled, "Operating Room Theory & Lab and Practicum (NURS 4045)".
- The grievor started working as a medical adjudicator for ESDC in 2007.
- As a result of decisions by the Canadian Human Rights Tribunal (see, among others, *Walden v. Social Development Canada* 2009 CHRT 16), a new sub-group was created for the medical adjudicators within the NU group, effective 2011. The new sub-group was given the label NU-EMA. Medical adjudicators were then transferred out of the Program and Administrative Services (PA) group, represented by the Public Service Alliance of Canada, and into the NU group represented by PIPSC.
- In 2013, the grievor submitted an application for the education allowance pursuant to Appendix B of the collective agreement based on the course she had taken at George Brown College. On June 5, 2013, her request was denied.
- On January 22, 2015, the grievor submitted a second application for the education allowance, also citing the George Brown College course.
- On April 1, 2015, Ms. Hitchcock denied the second application for the education allowance.

- On May 7, 2015, the grievor filed this grievance, stating that the employer had unreasonably denied her request for the education allowance and that Ms. Hitchcock's decision was not transparent or consistent in its delivery.
- Between June of 2015 and May of 2016, the grievance was denied at the first, second, and final levels of the ESDC's grievance process.
- The grievance was referred to adjudication on June 7, 2016.

[12] Medical adjudicators are responsible for reviewing applications for CPP disability benefits. Those applications go through a two-stage process. There is an administrative review of CPP earnings and contributions, to determine whether the applicant meets the financial criteria required. The application is then reviewed by a medical adjudicator, who reviews the whole file, including medical reports, to determine whether the applicant meets the criteria to receive CPP disability benefits. Before rendering their decision, the adjudicator may request secondary medical reports, medical history, specialist reports, motor vehicle accident reports, and workers' compensation claims.

[13] When CPP disability benefits are denied, an applicant can request a reconsideration review. Medical adjudicators also conduct those reconsideration reviews. Applicants can also appeal a denied claim to a review tribunal (now the Social Security Tribunal). The medical adjudicators make submissions to that tribunal.

[14] The work description for the medical adjudicator (effective date October 1, 2011) lists the following as client service results:

...

Medical adjudication case management, including assessment of medical and non-medical information, to determine eligibility of clients for departmental programs such as the Canada Pension Plan (CPP), Old Age Security (OAS), and Canada Student Loans (CSL).*

For the purpose of this work description the term "clients" refers to applicants and beneficiaries.

...

[15] I will highlight two of the several key activities listed in the work description:

...

Case-manages, reviews and analyzes client benefit applications and related supporting medical and non-medical documentation to evaluate evidence and render consistent and sustainable decisions

on initial, reconsideration and ongoing eligibility of applicants related to departmental programs.

...

Assesses and reassesses client needs and capabilities related to their medical condition and life circumstances and assesses their potential for vocational rehabilitation based on factors such as age, education and training, financial circumstances, response to treatment, diagnosis and prognosis, and motivation; assesses clients' potential for future and/or anticipated return to work.

...

[16] The knowledge requirements of the position that are of particular relevance to this grievance read as follows:

...

*The work requires **specialised knowledge associated with the eligibility for registration as a registered nurse**, to assess medical and non-medical information to determine the eligibility of clients for a federal government program and to deliver programs and services.*

...

[Emphasis added]

B. Evidence of the grievor

[17] Ms. McDonald Corbin testified that she came to the job of medical adjudicator with a diploma in nursing. As of the hearing, she had 14 years of experience in the role. She testified that she needs to have a good understanding of CPP earnings and contributions. She then reviews the medical information in the file, to determine whether the client meets the eligibility criteria for CPP disability benefits, which is that the disability be severe and prolonged.

[18] The grievor confirmed the contents of the curriculum and objectives for the course she had taken in 2003 at George Brown College. The mission statement of the course is "... to prepare nurses to function competently in the perioperative setting at a beginning level."

[19] The grievor testified that having taken that course, she is better able to understand how surgeons work with different types of equipment. The course helped her understand the effect of cauterization to avoid blood loss. She understands the

adverse effects from electrosurgery and how it can cause burns. The course helps her understand the different types of surgery as well as potential complications.

[20] She stated that the hands-on nature of the course provided her with knowledge that she could not learn from a textbook. Reading from the course objectives, the grievor said that she learned about infection prevention, surgical classification, who does what during surgery, the transmission of infections, and routine activities to break the transmission of microbes.

[21] The grievor testified that a majority of the files she reviews involve surgery and reviewing operative reports. In preparation for the hearing, she looked through her last 20 files, and 13 of them had operative reports in them.

[22] The grievor also referenced a submission made at her second-level grievance hearing, listing more than 30 examples connecting course content to CPP disability files. She testified that the operating course provided her with a more detailed knowledge of the surgical procedures many clients must go through and the risks and implications of surgery for recovery. She said that the course provided her with useful information that helps her be a better medical adjudicator.

[23] In cross-examination, Ms. McDonald Corbin was taken to the objectives in the course outline that address the practical skills associated with being a nurse. She confirmed that as a medical adjudicator, she does not have to scrub, gown or glove, clean surgical instruments, pass instruments to a surgeon, or set up an operating room. She confirmed that the emphasis of the course was to teach hands-on skills for nurses working in operating rooms and how to perform the role safely. She confirmed that the work description makes no reference to technical operating room skills.

C. Evidence of Ms. Hitchcock

[24] Ms. Hitchcock testified that medical adjudicators use their medical education to determine eligibility for CPP. She stated that many have practical experience in the field or have worked in clinical settings before joining ESDC. She said that when the medical adjudicators were moved under the SH collective agreement, the education allowance was brought in, to provide compensation necessary to the performance of the duties. It provides additional compensation to those employees who have a baccalaureate degree in nursing, a master's degree in nursing, or relevant courses or

combinations of courses, as opposed to medical adjudicators who do not have one of those degrees.

[25] Ms. Hitchcock testified that it was her role to receive and process applications for the education allowance from medical adjudicators in the part of the country where the grievor worked. She said that she received the grievor's January 2015 request. She testified that she did not have the delegated authority to approve the request, and so she submitted it to ESDC's operations branch at headquarters, which would have reviewed the request and the course outline. The operations branch did not approve the request. It was then Ms. Hitchcock's role to communicate the denial to Ms. McDonald Corbin. Her letter doing so stated, "The course request you submitted - Operating Room Theory & Labs, and Practicum, is not required in carrying out the functions of the position and as such does not meet the criteria."

[26] Ms. Hitchcock also responded to the grievance at the first level. She recalled receiving additional information from the grievor. She recalled discussing the grievance with national headquarters and that they did not want to change their mind. Therefore, she denied the grievance.

D. Evidence of Ms. MacNeil

[27] Ms. MacNeil testified that in 2015, she was responsible for the functional direction and operational oversight of the CPP disability program. As part of that role, she oversaw the implementation of the *Walden* decision. She was part of a team of four people responsible for implementing the back pay associated with the decision and the application of the education allowance to the medical adjudicators.

[28] Ms. MacNeil was involved in developing the medical adjudicator work description. She testified that adjudicators are required to be registered nurses in the province where they practice. This used to require a college diploma, but she said that starting in 2005, most provinces began converting their programs, requiring graduation with a bachelor of science in nursing to become a registered nurse.

[29] Ms. MacNeil emphasized that medical adjudicators require both medical and legislative knowledge, as their decisions on benefit applications must meet both medical and legislative requirements.

[30] Ms. MacNeil testified that she was also involved in designing the process for reviewing requests for the education allowance from medical adjudicators. She said that after 2013, ESDC had to deal with some 400 such applications. She said that when a medical adjudicator was claiming the allowance because the adjudicator held a bachelor's or master's degree in nursing, the authority to approve the allowance was delegated down to the level of the regional director (i.e., Ms. Hitchcock's level). Directors could also deny a request for a course of less than three months in duration. In all other cases, the regional director was to make a recommendation to national headquarters, where it would be reviewed by Ms. MacNeil and her executive director, to ensure a coherent application of the appendix.

[31] Ms. MacNeil testified about the content of a 2013 policy document that was shared with medical adjudicators and used by managers in the process of reviewing education allowance applications on a case-by-case basis. The document listed several fields of study that were "... deemed relevant to the duties of CPP Disability Medical Adjudicators ...". These included community health, mental health/psychiatry/psychology, public health/preventative medicine, disability management/medical rehabilitation, intensive care/coronary care, emergency nursing, gastroenterology, occupational health, and neurology. The policy document said that other requests would be considered on a case-by-case basis.

[32] Ms. MacNeil testified that she did not approve the grievor's application for an education allowance because the course curriculum described the George Brown College course as very procedural and hands-on and specific to operating-room functions. The course covered topics such as gowning, closed gloving, the setting up of a surgery, sterilization methods, aseptic techniques, and the naming and passing and counting of instruments. These skills are not utilized by a medical adjudicator, she said.

[33] She testified that it is possible that some knowledge incidental to the main thrust of the course might be relevant to the work of a medical adjudicator, but that knowledge would have already been taught in the general nursing program or would have been learned as an emergency-room or a medical-floor nurse. For example, infection control and the different types of surgeries and their complications are all mandatory learning covered by a nursing course at the college level, she testified.

[34] In cross-examination, Ms. MacNeil testified that she is not aware of whether there are both technical and practical courses in some of the fields of study that have been approved for the education allowance, such as emergency nursing, gastroenterology, and intensive care.

[35] She also testified that when a medical adjudicator obtains a bachelor's degree in nursing, the specific courses that the adjudicator has taken do not factor into the approval of the allowance. She did not believe that courses in operating-room procedure are a standard part of a bachelor's degree in nursing.

III. The collective agreement provision in dispute

[36] Before setting out the parties' arguments and my reasons for decision, it is worth quoting the content of Appendix B in its entirety:

APPENDIX "B"

EDUCATION ALLOWANCES - NURSING GROUP

Effective on the date of signing of the collective agreement and for all purposes of pay, the annual rates of pay for the Nursing Levels stipulated in Appendix "A" shall be altered by the addition of the amounts specified hereunder in Column II in the circumstances specified in Column I.

Column I

Column II

Education Allowances

Where the following post-graduate nursing training or nursing education is utilized in the performance of the duties of the position:

(a) Recognized speciality training course including the Primary Care \$ 605

APPENDICE « B »

INDEMNITÉS DE FORMATION - GROUPE SCIENCES INFIRMIÈRES

Aux fins de la rémunération et en vigueur à compter de la date de signature de la présente convention collective, les taux annuels de rémunération des niveaux du groupe Sciences infirmières stipulés à l'appendice « A » sont modifiés par l'addition des montants précisés ci-dessous dans la colonne II compte tenu des circonstances exposées dans la colonne I.

Colonne I

Colonne II

Indemnités de formation

Lorsque les éléments suivants de formation en sciences infirmières ou d'instruction postsecondaire en sciences infirmières sont utilisés dans l'exercice de leurs fonctions :

a) Cours reconnu de formation spécialisée y compris le Programme d'habiletés en 605 \$

<i>Skills Program, 3-6 months</i>		<i>soins primaires, 3 à 6 mois.</i>	
<i>(b) Recognized speciality training course, 7-12 months</i>	<i>\$ 935</i>	<i>b) Cours reconnu de formation spécialisée, 7 à 12 mois.</i>	<i>935 \$</i>
<i>(c) (i) One academic year university leading to a certificate* in Administration, Administration and Education (« organisation des soins et éducation »), Clinical Fields (« milieu clinique »), Community Health (« santé communautaire »), Gerontology (« gérontologie »), Health Services Administration I and Health Services Administration II (« gestion des services de santé 1 et 2 »), Mental Health (« santé mentale »), Nursing, Psychiatry, Public Health, Teaching and Supervision, Substance Abuse Prevention and Intervention or in any other related field of study approved by the Employer.</i>	<i>\$ 1,650</i>	<i>c) (i) Cours universitaire d'une année menant à un certificat en administration, enseignement et surveillance, gérontologie, gestion des services de santé 1, gestion des services de santé 2, hygiène publique, milieu clinique, organisation des soins et éducation, psychiatrie, santé communautaire, santé mentale, sciences infirmières, toxicomanie ou dans n'importe quel autre domaine d'études connexe et approuvé par l'employeur.</i>	<i>1 650 \$</i>
<i>(ii) Two certificates* each</i>	<i>\$ 2,200</i>	<i>(ii) Deux cours universitaires</i>	<i>2 200 \$</i>

<i>representing one academic year university as described in (i) above.</i>		<i>d'une année menant à un certificat tel que décrit en (i).</i>	
<i>(iii) Three certificates* each representing one academic year university as described in (i) above.</i>	\$ 2,750	<i>(iii) Trois cours universitaires d'une année menant à un certificat tel que décrit en (i).</i>	2 750 \$
<i>(d) Baccalaureate degree in nursing</i>	\$ 3,300	<i>d) Baccalauréat en sciences infirmières.</i>	3 300 \$
<i>(e) Master's degree in nursing or any other health related field of study approved by the Employer.</i>	\$ 3,850	<i>e) Maîtrise en sciences infirmières ou dans n'importe quel autre domaine d'études relié à la santé approuvé par l'employeur.</i>	3 850 \$
<i>One (1) allowance only will be paid for the highest relevant qualification under paragraph B.</i>		<i>Conformément au paragraphe B, une (1) seule indemnité est versée pour la plus haute qualification pertinente.</i>	
<i>In the present collective agreement "certificate" refers to a certificate in a first cycle program that results in 30 credits (or 10 courses) in a field of study in the province of Quebec or the equivalent in the other provinces.</i>		<i>Dans la présente convention le terme « certificat » fait référence à un certificat dans un programme de premier cycle qui totalise 30 crédits (ou 10 cours) dans un domaine d'études dans la province de Québec ou son équivalent dans les autres provinces.</i>	

[37] The only issue in dispute between the parties is whether the course that Ms. McDonald Corbin took at George Brown College in 2003 is one that "... is utilized in the performance of the duties of the position ...". The parties do not dispute that the

course taken was nursing-related and that it was between three and six months in duration. In other words, if I find that the George Brown College course is utilized by Ms. McDonald Corbin in the performance of the duties of the position, the grievor would be entitled to the compensation under clause (a) of Appendix B, or \$605 per year.

IV. Arguments of the parties

[38] The grievor argued that she has 14 years' experience as a medical adjudicator. She argued that she testified clearly as to how the operating course was utilized in her work as a medical adjudicator. She testified that the majority of her files involve reviewing medical conditions in which an operation has occurred. Her knowledge of operating-room procedures has improved her ability to adjudicate those files, she argued, and as such, she should be entitled to the education allowance.

[39] The grievor argued that Ms. Hitchcock did not actually assess the George Brown College course in detail. All Ms. Hitchcock did was act as a conduit, send the education allowance request to headquarters, and pass on headquarters' decision to the grievor. Her testimony is not relevant, the grievor argued.

[40] The grievor also argued that Ms. MacNeil's testimony was hypothetical in nature and that she did not demonstrate a clear understanding of how the George Brown College course has helped the grievor in her work. The grievor also argued that Ms. MacNeil did not demonstrate knowledge of the different types of nursing education available and what courses are useful to a medical adjudicator.

[41] The employer argued that the onus was on the grievor to demonstrate that she is entitled to the education allowance. The employer had an established procedure for approving the allowance. It followed that procedure in the grievor's case. In denying Ms. McDonald Corbin's claim, the employer was consistent and clear in its explanations.

[42] The employer did not dispute that the operating course is nursing-related but argued that it is not related to the duties of the medical adjudicator position. The main duties of the position are to review CPP disability benefits applications against legislation and policy and determine whether an applicant meets the eligibility requirements. As stated in the work description, medical adjudicators review

applications, review medical information, assess a client's ability to work, assess the client's needs, and obtain additional information as needed. Nowhere in the work description does it say that there are any technical operating skills required in the job, which the grievor admitted to in cross-examination.

[43] The employer argued that Ms. MacNeil has a thorough understanding of the work of medical adjudicators. She was trained as a registered nurse and worked as a medical adjudicator and oversaw the implementation of the education allowance following the creation of the NU-EMA sub-group. She confirmed that this course is not one that would be utilized in the duties of the position. The George Brown College course covered topics such as sterilization methods, aseptic techniques, scrubbing and gowning, names of instruments, and surgery room set-up. None of these skills is used in the position of medical adjudicator.

[44] Finally, the employer argued that even if some of the topics covered in the course might be relevant to the position (such as the process of electrosurgery, mechanisms for infection control, and the impact of surgical complications), Ms. MacNeil testified these those topics are covered in a basic nursing program. As such, the operating course is not one that would add value, and no allowance should be paid. The employer argued that the course should be assessed for its overall value to it. It argued that if the grievance is granted, just about any nursing course would qualify under the clause, which would render meaningless the words "... utilized in the performance of the duties of the position ..." in the collective agreement.

[45] In their arguments, the parties referenced a handful of decisions by predecessor to the Federal Public Sector Labour Relations and Employment Board (referred to collectively in this decision as "the Board") involving the nursing education allowance.

[46] In *Bainbridge v. Treasury Board (Health and Welfare Canada)*, PSSRB File No. 166-02-16132 (19861229), [1986] C.P.S.S.R.B. No. 336 (QL), the grievor was a community health nurse working in an isolated community. She taught health and nutrition and sought an education allowance recognizing a Bachelor of Education degree. The Board denied the grievance because it found that the education allowance was specifically expressed as for nursing education, not a general skills allowance.

[47] In this matter, the grievor argued that *Bainbridge* supports her view that nursing education used in the performance of the duties of the position should attract

the allowance. The employer argued that *Bainbridge* established only that such courses must be nursing-related and that the Board did not assess in that case whether the course was utilized in the performance of the duties of the position.

[48] In *Gervais v. Canada (Treasury Board)*, PSSRB File No. 166-02-28207 (19980909), [1998] C.P.S.S.R.B. No. 84 (QL), the grievor worked as a nurse in a correctional facility. She sought a nursing education allowance for a diploma in psychiatric nursing. Her employer had determined that the diploma in question was not postgraduate in nature but a different form of basic training, and therefore, the education allowance did not apply. The Board found that as the training involved a year of additional training, the allowance should be paid.

[49] In this matter, the grievor argued that *Gervais* stands for the proposition that when a grievor can provide specific and concrete examples of how the course is relevant to the duties of a position, the grievance should be allowed. The employer argued that in *Gervais*, the employer had not denied that the psychiatric education was used in the position at issue; the dispute was about whether the education allowance request met the requirement of being postgraduate.

[50] In *Sumaling v. Treasury Board (Correctional Service of Canada)*, 2005 PSLRB 32, the grievor was a psychiatric nurse in a correctional facility and had obtained a bachelor's degree in psychology. His application for the education allowance (under a previous version of Appendix B) had been denied by his employer because clause (c)(i) did not explicitly list psychology as a field of study. The Board set out three questions relevant to a request for an education allowance at paragraph 23, as follows:

[23] From this language I conclude that three questions are relevant to a request for an educational allowance under section B of Appendix "B":

- a. Has the employee taken "post-graduate nursing training or nursing education"?
- b. Is the education or training "utilized in the performance of the duties of the [employee's] position"?
- c. Does the employee meet the circumstances of one of the five allowances? [...]

[51] After answering the first two questions "Yes", in *Sumaling*, the Board went on to determine that the third question should be interpreted broadly, keeping in mind the

purpose of the allowance. The Board determined that a degree in psychology (not listed in Appendix B) was sufficiently similar to one in mental health (which was listed in Appendix B). The grievance was granted.

[52] In this matter, the grievor argued that *Sumaling* stands for the proposition that the broader knowledge obtained in a course can attract the allowance and that not every aspect of the course has to be utilized. While the employer is trying to present the George Brown College course as one about what kind of sponge to use in a surgery, the grievor has demonstrated that she obtained broader knowledge from the course and that she uses that knowledge in her position.

[53] The employer argued that *Sumaling* still stands for the proposition that the course must be utilized in the duties of the position and must bring added value to the employer. One can receive specialized training, but unless it is actually used in the performance of the duties of the position, the allowance should not be awarded. The nurse in *Sumaling* performed in a very different kind of position, the employer argued, and what the Board must do is assess the course content against the work description of the position.

[54] In *Billett v. Treasury Board (Department of Veterans Affairs)*, 2006 PSLRB 28, the issue in dispute was the calculation of acting pay associated with the education allowance, not eligibility for the allowance itself. Nevertheless, the employer argued, *Billett* reinforces the principle that the additional education must bring value to it and that the nurse must use the additional education in the performance of the duties of the position.

V. Reasons

[55] The issue in this grievance is whether Ms. McDonald Corbin is eligible to be paid an education allowance of \$605 per year, in accordance with Appendix B of the collective agreement.

[56] I agree with the employer that in resolving this issue, I must give ordinary meaning to the words used in the collective agreement, in harmony with the scheme of the collective agreement and the object of the provision being interpreted (see *Gagnon v. Treasury Board (Correctional Service of Canada)*, 2017 FPSLRB 48 para. 34, and *Cruceru v. Treasury Board (Department of Justice)*, 2021 FPSLRB 30 at para. 84).

[57] Appendix B provides for the payment of an education allowance to employees in the NU group when they take "... post-graduate nursing training or nursing education ...", which "... is utilized in the performance of the duties of the position ...".

[58] Relevant to this grievance, clause (a) of Appendix B provides for an allowance of \$605 per year when the course is a recognized speciality training course of three to six months in duration.

[59] There is no dispute between the parties that the George Brown College course taken by the grievor is postgraduate nursing training or nursing education and that it is a recognized specialty training course of three to six months in duration.

[60] Therefore, the sole dispute is whether the George Brown College course taken by the grievor is one that she utilizes in the performance of the duties of the position she occupies. This necessarily requires a factual analysis, considering the content of the course, the duties of the medical adjudicator position, and the relevant testimony of the witnesses. This factual analysis needs to be rooted within the object and purpose of the appendix as a whole.

[61] None of the Board's prior decisions on the application of the nursing education allowance provide much useful guidance on the factual analysis required. In each of them, a different type of nursing education and a different type of position was at issue.

[62] However, I do agree with the Board in *Gervais* that the grievor must be able to provide specific and concrete examples of how the course content is utilized in the performance of the duties of the position.

[63] Also, the cases cited by the parties do offer useful guidance as to the object and purpose of the appendix. In *Bainbridge*, the key conclusion of the Board was that "[t]he allowance has been made available for those who have acquired a nursing-specific, job-related education which is then put to use in the fulfillment of those particular duties attached to specified positions" (at page 7). This principle was reinforced by the Board in *Gervais* (at page 9) and *Sumaling* (at para. 19).

[64] *Sumaling* goes on to reinforce that not all nursing education will attract the allowance at paragraph 21, as follows:

[21] Further, Section B narrows the entitlement to an education allowance by requiring that the training or education be “utilized in the performance of the duties of the position”. It is possible that an employee could have the necessary education or training but it is not utilized in the work of the employee. No allowance is payable in that event

[65] Although *Billett* dealt not with eligibility for the allowance but its application in an acting-pay situation, the Board did base its decision on an analysis of the purpose of Appendix B at paragraph 30, as follows:

[30] *It simply does not seem reasonable, as Mr. Harden points out, that a nurse with a degree would be initially placed at a lower increment than, earn less than and take two more years to reach the maximum pay rate for the position than a nurse without a degree. If that was what the parties intended, why negotiate an Education Allowance at all? Why agree to pay \$3,000 more per year to nurses who have made the effort to obtain their degree? Surely providing an Education Allowance on a sliding scale, that is to say, the more education one has, the greater the allowance the employer is prepared to pay, is recognition of the worth of an education to the employer, and the fact that it enhances the performance of nursing duties. Yet the employer’s pay calculations seem to suggest that somehow a nurse with a degree is not only not worth as much as one who does not have a degree, but is worth even less. I seriously doubt this employer wants to send that message.*

[Emphasis added]

[66] I understand why the employer’s review of the George Brown College course curriculum led it to conclude that it is not a course utilized in the role of a medical adjudicator. The course curriculum lists many objectives and lecture topics that are very hands-on and technical in nature, such as gowning, closed-glove procedures, handling instruments and sponges, etc. Furthermore, the theory portion of the course is followed by a practicum in which the student applies those skills in an operating-room environment.

[67] Medical adjudicators work in a very different environment. They do not use the technical skills of an operating-room nurse. They do not gown, glove, manage instruments and sponges, or engage in infection control measures in an operating room.

[68] However, I find that the employer has not given sufficient consideration to Ms. McDonald Corbin's evidence about how the course has helped her in her role as a medical adjudicator. Ms. Hitchcock did not make a recommendation as suggested in the policy documents; she simply passed the request onto headquarters, which reviewed it based on the course description provided. Ms. MacNeil testified that she made her decision based on her review of the George Brown College course outline.

[69] When the grievor presented her grievance at the second level of the ESDC's grievance process, she provided the employer with a three-page submission outlining no fewer than 30 examples in which she had to review operative reports relevant to adjudicating CPP disability claims. She testified before me that having more than textbook knowledge of operating-room procedures has helped make her a better medical adjudicator. She was able to link knowledge of those procedures to topics covered in the course and gave several concrete examples, including better knowledge of electrosurgery, laparoscopic vs. open surgery, and post-operative recovery.

[70] She also testified that 13 out of 20 of her most recent medical adjudication files involved the review of post-operative reports, and that the George Brown College course was relevant to her assessment of those files. This testimony was not contested by the employer.

[71] Practical experience may not be **necessary** for the performance of the job, but it can be utilized, as confirmed by Ms. Hitchcock, who testified that many registered nurses come to the medical adjudicator role with practical experience in the field of nursing.

[72] I think that it is also important to keep in mind the overall structure of Appendix B, as reinforced by the Board in *Billett*. The appendix provides a graduated system of education allowances, ranging from a low of \$605 per year for the kind of course taken by the grievor to a high of \$3850 for a master's degree in nursing or any other health-related field of study approved by the employer. The more eligible education an employee takes, the higher the allowance she or he receives. The Board in *Sumaling* also interpreted the purpose of Appendix B broadly, concluding (at paragraph 41) that "... [t]he structure of section B of Appendix "B" demonstrates that increasing levels of education will result in increasing levels of allowances."

[73] As confirmed by Ms. MacNeil, when an employee achieves a bachelor's or master's degree in nursing, the approval of the allowance is delegated down to the level of a regional director. The specific courses taken to achieve the bachelor's or master's degree are not part of the consideration; if an employee achieves the degree in question, the employee earns the associated education allowance. Although a course in operating-room procedure may not be a required course for a bachelor's or master's degree, I find it reasonable to believe that such a course might count toward such a degree.

[74] Furthermore, the employer's policy document recognized that courses in certain areas, such as intensive care, emergency nursing, and gastroenterology, qualify for compensation under Appendix B. I accept the grievor's argument that such courses may also have a practical element to them, as well as a more theoretical one.

[75] I accept that Appendix B does not mandate the payment of an education allowance for any and all nursing related courses: it requires the course to be utilized in the duties of the position. It is not disputed that the practical aspects of the George Brown College course are not utilized in the performance of the duties of a medical adjudicator. However, the grievor testified clearly about how she utilized knowledge covered in that course during her work as a medical adjudicator, referencing both her second level grievance submissions from 2015, and the work she did on 13 of her 20 most recent files. This testimony was not contested by the employer, and as such I find that the grievor has met her burden of proof in demonstrating that she has utilized the George Brown College course in the performance of her duties.

[76] The employer argued that any knowledge the grievor does utilize from the George Brown College course is knowledge that would have been covered in her basic nursing diploma and as such I should not award her an education allowance because the course does not bring added value to the employer. I do not agree with this argument. The language of Appendix B makes no reference to an assessment of added value: it clearly states that the education allowance is to be paid if the course "... is utilized in the performance of the duties of the position...". Neither *Sumaling* nor *Billett* stand for the proposition that the employer should assess the level of added value a particular course brings. Instead, they stand for the proposition that the education allowance increases in relation to the number of relevant courses taken by an employee.

[77] In short, having weighed the evidence before me, and having considered the wording of the collective agreement and the purpose and structure of Appendix B, I conclude that the George Brown College course taken by the grievor in 2003 qualifies her to receive compensation under clause (a) of the appendix.

[78] I agree with the remedy put forward by the grievor, which is that her education allowance should commence 25 days before the filing of her grievance (see *Canada (National Film Board) v. Coallier*, [1983] F.C.J. No. 813 (C.A.)(QL)).

[79] For all of the above reasons, the Board makes the following order:

(The Order appears on the next page)

VI. Order

[80] The grievance is allowed.

[81] The employer is to pay the grievor the education allowance provided for in clause (a) of Appendix B of the collective agreement, in the amount of \$605 per annum, retroactive to 25 days before the filing of her grievance.

October 12, 2022.

**David Orfald,
a panel of the Federal Public Sector
Labour Relations and Employment Board**