WCAT Decision Number: WCAT-2004-00058-RB
WCAT Decision Date: **January 09, 2004**
Panel: David A. Cox, Vice Chair

Introduction

The worker appeals from the September 21, 2001 decision of an officer of the Workers' Compensation Board (Board) which denied him a reopening of his March 15, 1999 back injury claim. The worker was informed that this claim had been accepted for a low back strain and no permanent condition had been recognized. Furthermore, the worker had returned to work as a charge hand on April 26, 1999 and wage loss benefits had been concluded the day prior to that but chiropractic treatment had been extended to May 8, 1999.

The case manager noted that a new claim had been established for a reported work incident on June 13, 2001 but had been denied as a Board responsibility. In light of this decision, a request had been made to consider a reopening of the March 15, 1999 injury claim.

The case manager stated the opinion of a Board medical advisor was that the worker's current symptoms of back pain were likely related to a pre-existing condition of non-specific low back pain rather than a strain injury which had occurred on March 15, 1999.

Issue(s)

Was the worker entitled to a reopening of his March 15, 1999 injury claim for his low back complaints in June 2001?

Jurisdiction

This appeal was filed with the Workers' Compensation Review Board (Review Board). On March 3, 2003, the Appeal Division and Review Board were replaced by the Workers' Compensation Appeal Tribunal (WCAT). As this appeal had not been considered by a Review Board panel before that date, it has been decided as a WCAT appeal. (See the *Workers Compensation Amendment Act (No.2), 2002*, section 38.)

WCAT may consider all questions of fact and law arising in an appeal, but is not bound by legal precedent (section 250(1)). WCAT must make its decision on the merits and justice of the case, but in so doing, must apply a policy of the Board's board of directors

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that is applicable in the case. WCAT has exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact and law arising or required to be determined in an appeal before it (section 254).

Background and Evidence

On March 15, 1999 the worker was employed as a mechanic for a British Columbia trailer manufacturer. That date he reported to first aid and documented that while assisting a fellow employee in the lift of an engine box he had felt a popping sensation in his low back.

The progress report of the attending physician, based on treatment of the worker March 15, 1999, diagnosed a low back strain which had occurred after the worker had lifted and twisted. The physician noted the worker had moderate spasm in his low back and that also there had been a previous injury in January 1999 for which the worker had sought chiropractic treatment.

The chiropractor's first report, based on treatment of the worker March 17, 1999, noted a relevant pre-existing condition from a previous injury in the form of a left SI irritation. The chiropractor diagnosed a left SI irritation and recommended chiropractic adjustments three times per week for two weeks.

The attending physician's progress report, based on treatment of the worker March 20, 1999, set out the worker's condition as much improved and reported that a return to work in one to two weeks would be attempted.

The May 23, 1999 claim log memo of a client services representative noted the worker's claim had been accepted for a lumbar spine strain and wage loss payments initiated on March 16, 1999.

The April 7, 1999 claim log memo of an entitlement officer noted a previous January 10, 1999 injury claim from which the worker had returned to work on February 8, 1999. The worker had reported that at the time of the new injury, his back was all right on some days but not good on others. He had continued to work through it until the new injury.

The chiropractor's chart note of April 20, 1999 noted that the Board was to attempt to return the worker to a low impact role at work.

A case manager, in a claim log memo dated April 20, 1999, said the worker had an opportunity for a permanent job change and return to work as a charge hand. The attending chiropractor had okayed a return to work April 26, 1999.

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The chiropractor's chart notes documented the worker's ongoing treatment from a return to work date through May and June 1999. The chart note information indicated that the worker had attended further chiropractic treatment under his medical services plan.

The worker made application to the Board for an L4-L5 disc misalignment he stated had occurred on June 13, 2001 while working underneath a flat deck.

The August 10, 2001 claim log memo of a Board medical advisor, under the June 13, 2001 injury claim, noted the worker's longstanding history of recurrent low back strain. The Board medical advisor had reviewed chiropractic treatment reports with numerous references to low back pain. Also noticed was the fact that the worker, on a number of occasions upon visiting the chiropractor, had reported that he felt good and had no pain. The Board medical advisor then stated that the worker had displayed a general history of relapsing and remitting low back symptoms. The advisor pointed out that chiropractic notes of June 12, 2001 referred to back spasm and that the worker's back had been sore for five days. This, according to the Board medical advisor, indicated the worker had been symptomatic prior to the incident at work June 13, 2001. The Board medical advisor stated that with the worker's history, heavy workloads with lifting and twisting might exacerbate an underlying problem but an exacerbation might also could occur with normal everyday activities. The Board medical advisor's opinion, directed towards the June 13, 2001 incident, was that the worker's ongoing low back symptoms at that time were related to a pre-existing condition of regional non-specific low back pain. Given the medical history of the worker, it was more than 50 percent likely that the worker would have developed a problem of low back spasm regardless of work activity and therefore, the Board medical advisor was unable to conclude that the June 13, 2001 work incident had causative significance in the worker's ongoing disability.

The case manager's September 21, 2001 claim log entry set out that the worker had claimed for a reopening more than two years after an injury claim and that medical literature supported that strains normally recovered within six to eight weeks. It was noted that the worker had returned to work April 26, 1999 and that a medical opinion was that he had a pre-existing condition of regional non-specific low back pain for a number of years, this would be the most likely diagnosis of current symptoms.

The September 21, 2001 decision from which the worker has appealed was then issued.

The worker submitted a submission specifically for the purpose of appealing another decision letter under a different injury claim. Points raised in this submission were germane to this appeal.

The submission documented that in 1999 the worker had sustained a low back injury. He stated that upon his return to work after chiropractic treatment his condition was approximately 90 percent improved. Upon further injury, approximately six weeks later (March 15, 1999), the worker stated that the chiropractic treatment was based on an accurate diagnosis. The worker had returned to work in just over four weeks.

The worker disagreed with the Board medical advisor's opinion that he suffered from regional non-specific low back pain. He stated that in all of his other injury claims, or at least most of them, his back injuries had been in different locations. He stated that the fact remained that he had been injured at work, while on the job. All of his other back injuries had occurred on the job and had been accepted by the Board. The worker characterized the medical advisor's opinion as selective and stated that his injury of June 13, 2001 had caused instability in his low back area.

The worker also furnished the November 13, 2001 report of a chiropractor which stated the worker had been fit to return to work as of November 19, 2001.

Reasons and Findings

Paragraph #106.20 of the *Rehabilitation Services and Claims Manual*, *Volume 1* (RSCM) provides that an application for reopening is one that does not question the validity of a prior decision but requests further compensable benefits be paid on the premise that a worker's circumstances have changed. Policy items #107.00 and #107.10 of the RSCM set out that in order to reopen a claim for benefits, there must be evidence that the original injury had causative significance in relation to ongoing symptoms.

The worker did not specifically request a reopening of his March 15, 1999 injury claim. The consideration of his benefits under this claim arose from an adjudicative process, undertaken under a separate application for compensation the worker had made for a low back injury of June 13, 2001. This claim was originally accepted for a low back strain but then overturned upon readjudication.

With regard to the March 15, 1999 low back strain accepted by the Board, the worker had returned to work in late April 1999. In accordance with the history provided under the June 13, 2001 injury claim, the worker's ability to remain at work was aided by a return to a supervisory/sales position. However, he returned to work of a more physical nature in mid-April 2001. In the interim time frame, the chart notes of the chiropractor corroborate that the worker underwent regular chiropractic maintenance for symptoms consistent with what the Board medical advisor has described as a relapsing and remitting condition.

The worker's own evidence does not indicate that his March 15, 1999 injury symptoms had recurred with no intervening event. The claim file evidence indicates that upon his

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return to work in 1999 the worker was able to remain at his employment, specifically until the June 13, 2001 incident. The preponderance of the medical evidence indicates that although he was not symptom free from his low back complaints, there had been a recovery from the March 15, 1999 injury. The worker's own submission does not contradict this view. It is notable that this specific issue was never placed before a Board medical advisor for opinion. However, the worker's own evidence and submission is in keeping with the fact that there had been no significant change in his low back condition until the reported June 13, 2001 workplace incident. There is no indication that the change in the worker's low back condition at that time was related to the March 1999 injury claim. Approximately two years had passed between the two events with no documentary evidence to suggest there had been a recurrence of the original compensable injury symptoms without an intervening cause.

Conclusion

For the foregoing reasons the Board's September 21, 2001 decision is confirmed. No costs are allowed.

David A. Cox
Vice Chair

DAC/cmm/hba