WCAT Decision Number: WCAT-2004-00068-RB
WCAT Decision Date: **January 09, 2004**
Panel: Mike Swetlikoff, Vice Chair

Introduction

In a December 14, 2001 letter a Workers' Compensation Board (Board) case manager informed the worker, on the basis of an ergonomist's report and the opinions of a Board medical advisor, that her claim for bilateral shoulder calcific tendonitis was denied under section 6(1) and section 6(3) of the *Workers Compensation Act* (Act). She also said the worker denied any specific incident or trauma occurring to cause her symptoms or that there was any change in her employment activities, and also decided that her condition did not arise out of and in the course of her employment.

The worker disagreed with the decision and appealed. She said her claim should be accepted. She also said she did not need an oral hearing.

Following review of the claim file and submissions from the worker and the employer I have determined that this appeal can be fairly decided by review of the evidence on file, submissions from the parties, and relevant compensation law and policy.

Issue(s)

- Did the worker's diagnosed bilateral shoulder calcific tendonitis arise out of and in the course of her employment as a postal worker?

- Was the worker's diagnosed bilateral shoulder calcific tendonitis due to the nature of her employment as a postal worker?

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.)

Section 250(2) of the *Workers Compensation Act* (Act), as amended, requires that I apply the policies of the board of directors of the Board in reaching my finding which, is required to be based on the merits and justice of the case.

Background and Evidence

The worker, a postmaster in a small community, had been a postal worker since 1985, and a postmaster for eleven years when on September 21, 2001, she reported to her physician of having experienced discomfort in her left shoulder for some time. She advised the physician that by early July 2001 her symptoms had increased and she began to notice stiffness and pain as well. The physician recommended physiotherapy treatment which the worker attended at the local hospital. Over the weekend of October 20 and 21, 2001, following performance of a new exercise introduced by the physiotherapist, involving abduction and external rotation, the worker's symptoms increased and she attended at the emergency department on October 22, 2001. She was seen by her physician in the emergency room. The physician requested an x-ray. An October 25, 2001 left shoulder x-ray revealed rotator cuff calcification but no bony or joint pathology.

The worker was off work from October 22, 2001 until November 19, 2001, when she returned to modified employment at four hours per day. While away from work the worker's left shoulder gradually improved with ongoing physiotherapy treatment.

Following her return to work on November 19, 2001, the worker reported to the Board that she used her right side more, favouring the left, and began to notice similar symptoms in her right shoulder. A right shoulder x-ray revealed rotator cuff calcification but no bony or joint pathology. The worker also reported improvement in her symptoms when not working and on weekends. She also reported that her symptoms increased quickly with activity.

On December 4, 2001 Ms. Smithson, a Board ergonomic analyst assessed the worker's employment tasks with respect to risk factors for developing bilateral calcific tendonitis. In her report, with respect to the site visit, Ms. Smithson said the worker was observed performing her employment tasks during the site visit. She also said the worker described her typical work activities and demonstrated some employment tasks. In response to a question about the performance of other tasks that may not have been discussed the worker stated there were none.

Ms. Smithson also said that other factors considered were:

1. [The worker] works Monday through Friday from 08:00 to 17:00 hours.

2. [The worker] says that she always takes her lunch break of 60 minutes. She said that she is entitled to two 15 minute coffee breaks but rarely takes them.

3. [The worker] denied working any overtime.

4. [The worker] said that there had been nothing unusual in her work and that there had been no changes to the equipment or procedures in the post office.

5. [The worker] said that when her assistants are on vacation the replacement works one hour less per shift. She said that this occurred for three weeks in July/August this year.

[reproduced as written]

With respect to risk factors for developing bilateral shoulder calcific tendonitis Ms. Smithson said:

> 1. Repetition – [The worker's] position would not be considered repetitious as an ASTD risk factor…task variability exists and the overall tissue loading in the shoulders would not likely be greater than 50% of the work time.
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> 2. Force – Bilateral light to moderate forces were described when dragging full bags of mail. Bilateral moderate forces with some jerking was described when emptying a full mail bag. Light to moderate forces to the right shoulder were observed when cancelling postage with a stamp. [The worker] would likely encounter some moderate forces when lifting and carrying some parcels.
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> 3. Non-neutral Postures – Bilateral shoulder flexions to approximately 85 [degrees] were observed when emptying a mail bag. Right shoulder flexions to approximately 90 [degrees] were observed when placing flyers in the top boxes. Left shoulder flexions to approximately 60 [degrees] were observed when setting the postage meter machine. Bilateral shoulder flexions to a maximum of approximately 65 [degrees] were observed when reaching over the customer service counter.
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> 4. Combination of Risk Factors – [The worker] would combine non-significant periods of repeated activity with occasional non-neutral postures of the right shoulder when sorting flyers and mail. Overall, [the worker] would combine non-significant repetition with occasional significant non-neutral postures and some moderate forces.
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> [reproduced as written]

In a December 12, 2001 progress report the attending physician said the worker was continuing to work four hours per day at modified duties. He also said the worker would have to continue to do so due to worsening of her right shoulder symptoms.

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In a December 14, 2001 memo, in response to questions from the case manager, Board medical advisor, Dr. Dale said, "This lady has almost certainly developed an age related rotator cuff tendonitis and this is not anything to do with job activities. It is more associated with age and degeneration". Dr. Dale also said, "The ergonomic analysis is on file and certainly does not indicate any degree of frequent, repetitive, or forceful movements which would have caused the diagnosis of right tendonitis or left calcific tendonitis".

In a written submission dated February 7, 2002 the worker's representative said the worker confirmed that there was no trauma to her left shoulder, just stiffness in the arm and forearm, the worker said that in July 2001 there was a noticeable pain in the top of her left shoulder. Swimming in a cool lake alleviated her symptoms while work aggravated and increased her symptoms.

The representative set out the medical history with respect to investigations and treatment of the worker's left and right shoulder symptoms. She said the ergonomic analyst and the case manager might not have been fully informed on the amount of work, weight and strain that could be involved in one day's sortation of incoming and outgoing mail. The representative also said that every day is different. The representative additionally said the worker feels that the Board and the employer were downplaying the effect that excessive flyers, heavy parcels and letter containers of mail and flat containers of magazines could have had on the worker, an employee in a rural post office. She requested that the Board's decision be varied and the worker's appeal allowed.

In written submissions dated September 8, 2003 and October 8, 2003 the employer's representative essentially said the ergonomic analyst had identified no significant work related risk factors for developing the worker's bilateral shoulder condition. Therefore, based both on the medical and non-medical evidence on file, the employer submits that non-occupational causes were more of a contribution to the worker's bilateral shoulder condition. The representative requested that the Board officer's decision be confirmed.

Reasons and Findings

Did the injury arise out of and in the course of employment?

Section 5(1) of the Act states that where personal injury or death arising out of and in the course of employment is caused to a worker, compensation must be paid by the Board.

Item #14.20 of the *Rehabilitation Services and Claims Manual*, *Volume 1* (RSCM) discusses the occurrence or non-occurrence of a specific incident. It states in part that it is not a bar to compensation when an injury occurs over a period of time rather than resulting from a specific incident. To be compensable, however, the evidence must warrant a conclusion that there was something in the employment that had causative

significance in producing the injury. A speculative possibility that this might be so is not enough.

In this case, I accept the worker's evidence, as reported to the case manager and to her representative, that there was no specific incident or injury to cause her initial left shoulder symptoms. I also accept the ergonomic analyst's and the medical advisor's expert opinions that the worker's employment tasks did not involve significant risk factors for developing the diagnosed bilateral shoulder condition. Accordingly I find that the worker's bilateral shoulder calcific tendonitis did not arise out of and in the course of her employment as a postal worker as required by section 5(1) of the Act.

Was the worker's diagnosed bilateral shoulder condition due to the nature of her employment?

Section 6(3) of the Act outlines a presumption in favour of acceptance of a claim if at or immediately before the date of disablement, the worker was employed in a process or industry mentioned in the second column of schedule B, and the disease contracted is the disease in the first column of the schedule set opposite to the description of that process.

Opposite shoulder tendonitis, the description of the process is as follows:

> Where there is frequent repeated or sustained abduction or flexion of the shoulder joint greater than 60 degrees and where such activity represents a significant component of the employment.

I have decided, based on the ergonomist's report, and the Board medical advisor's opinion, that the risk factors set out in schedule B were not present in the worker's employment, and that the presumption is not applicable. I next considered whether the tendonitis was likely due to the nature of the worker's employment.

Section 6(1) of the Act provides that compensation is payable if an occupational disease "is due to the nature of any employment in which the worker was employed".

Item #97.20 of the RSCM provides guidance concerning adjudication of tendonitis claims where the presumption does not apply. It states that one must weigh the evidence both for and against work causation and assess both occupational and non-occupational risk factors. It also states that when assessing the likelihood that the worker's employment activities have played a significant role in causing or aggravating the diagnosed activity related soft tissue disorder (ASTD), the principal risk factors to consider are the intensity, duration and frequency (time variation) of: repetition, force, posture, and vibration.

I accept the ergonomist's and Board medical advisor's expert opinions with respect to employment risk factors and, on that basis, I find that the worker's employment tasks did not play a significant role in causing her bilateral shoulder conditions. I also accept the medical advisor's expert opinion that the worker's diagnosed bilateral shoulder condition was "more associated with age and degeneration".

Expenses for mounting this appeal were not requested and I award none.

Conclusion

I confirm the Board officer's decisions and find that the worker's diagnosed bilateral shoulder condition did not arise out of and in the course of her employment nor was her diagnosed bilateral shoulder condition due to the nature of her employment. Consequently I deny the worker's appeal.

Mike Swetlikoff
Vice Chair

MS/cmm

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