**WCAT Decision Number:** WCAT-2004-00070-RB
**WCAT Decision Date:** **January 09, 2004**
**Panel:** James Sheppard, Vice Chair

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## Introduction

In February of 2001 the worker, then a 38 year old employee of a guitar manufacturing company, filed an application for compensation for right arm complaints he related to his employment in the climate room of a guitar manufacturing plant. The worker lost time from work between January 31, 2001 and February 15, 2001 because of these complaints.

He appealed a June 21, 2001 Workers' Compensation Board (Board) decision which denied his right arm complaints to the Workers' Compensation Review Board (Review Board).

## Issue(s)

Did the worker suffer a personal injury arising out of and in the course of his employment or an occupational disease due to the nature of his employment.

## Jurisdiction

This appeal was filed with the 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 decided 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 inquire into, hear and determine all those matters and questions of fact and law arising or required to be determined in an appeal, but is not bound by legal precedent (see sections 250(1) and 254). 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 that is applicable in the case. Policy relevant to this appeal is primarily set out in the *Rehabilitation Services and Claims Manual, Volume 1* (RSCM), which is pre-Bill 49, *Workers Compensation Amendment Act, 2002*.

## Procedural Matters

An oral hearing was held on September 19, 2003 with the worker, the employer's representative and the employer's supervisor in attendance.

The worker was initially represented by his union. The union representative indicated in a November 22, 2001 letter that it was no longer representing the worker. Because the worker had not received disclosure of his electronic claim file a disclosure copy was obtained by WCAT from the Board and provided to him at the oral hearing. The employer was also provided with disclosure of this file. The employer's representative filed exhibit #1 which set out the job descriptions for the fretting, body assembly (climate room) and binding positions. She also provided first aid records for May 18, October 23, December 3, and December 7, 2001 marked as exhibit #2. The worker was provided with copies of both exhibits. These exhibits were reviewed at the oral hearing. Subsequent to the oral hearing the employer's representative provided further first aid records for December 20, 1999 and October 6, 2000. The worker was given an opportunity after the oral hearing to provide a written submission on his claim file, the exhibits and the subsequent information provided by the employer's representative. The appeal liaison officer had indicated to me that no further written submissions were received by WCAT from the worker.

**Background and Evidence**

The worker indicated on his February 13, 2001 application for compensation that he had reported to the employer his right arm symptoms on July 20, 1999. He related his symptoms to his employment in the climate room where guitars are assembled. He identified the relevant period of exposure to be from July 20, 1999 to January 31, 2001. He reported that he had had previous pain in the same area while he was working in the painting area and in the binding area. He indicated that his doctor had sent him to physiotherapy.

The worker's February 23, 2001 questionnaire recorded that he first noticed symptoms in October of 2000 and that he reported his symptoms to his supervisor sometime in October or November of 2000. He reported stiffness and pain in his right arm. He did not report a specific or traumatic incident but a gradual onset of symptoms which he related to his employment in the climate room. The worker confirmed that he had switched from binding to the climate room in July of 2000 and that between July of 2000 and January 31, 2001 he had only been working in the climate room (he was not fretting or binding).

The supervisor indicated that the first record of a reported problem with the worker's right arm was on December 20, 1999. There are no first aid records involving the right arm for 2000 (the October 6, 2000 first aid record involves the neck only). The December 20, 1999 first aid treatment record describes job stress related tendonitis with right forearm, pain, redness, and swelling. The first aid record for May 18, 2001 (the other first aid records for 2001 do not record right forearm complaints) recorded that the top of the right forearm was swollen and sore. The description of injury was that worker was putting in go-bars in the climate room and aggravated his right forearm with this action.



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A first aid report for January 31, 2001 documented complaints of pain in the right forearm. The employer reported that the worker first reported his complaints on January 31, 2001. The employer did not mention what area was injured or how. The employer's report indicated that the relevant period of exposure was October of 2000 to January of 2001.

Dr. Wong, in his February 15, 2001 first report (for treatment on January 31, 2001), recorded a diagnosis of strained right arm. He indicated that there was no prior medical problem affecting the worker's right arm. In a response to an inquiry by Dr. Franklin, a Board medical advisor, Dr. Wong indicated that the worker's injury involved his arm, lateral elbow and forearm muscles. His diagnosis was repetitive movement injury or sprain injury of the tendons.

Dr. Franklin in his June 14, 2001 claim log entry states: "Given the anatomical location, the type of injury described and the clinical description on file, I interpret this as a RIGHT ELBOW MUSCULOSKELETAL DISORDER. The lateral elbow muscles are the extensor group (rather than the flexor group as noted by the attending physician in his first report – the extensor group inserts on the lateral epicondyle of the elbow)."

Dr. Wong also provided his chart notes for entries beginning in August of 1999. His entry for January 6, 2000 indicated a right hand tendonitis and a sprain in the right forearm.

*Work Activities*

As previously mentioned, the worker indicated that he had worked in the climate room from July 2000 to January 31, 2001. He worked five days a week, eight hours a day (8 am to 4:30 pm), with a 30 minute break and two fifteen minute breaks spaced approximately 2 hours apart (it may have been a little longer between breaks). The worker reported to me that there was no overtime and no significant change in the nature of the work activities in the climate room during this period.

An April 19, 2001 ergonomic work site analysis was completed to assess the risk factors for right lateral epicondylitis. The claim task analysis contained in the April 24, 2001 ergonomic intervention report centred on the binding position and not the work in the climate room.

At the oral hearing the worker and the supervisor reviewed with me the description of the climate room tasks (body assembly). The job description provided by the employer for this process states:

1. The back and top of the guitar are prepared by using a chisel to lightly scrape the excess glue off of the edge of the braces. This takes roughly 3-4 minutes. The braces on the back and top are then sanded using puppet sanders and palm or orbital sanders.

The Palm and Orbital sanders weigh between 2.4 and 3.5 pounds depending on the model. The sanding takes about 3-4 minutes. [The worker indicated that the sanding took ± 10 minutes].

2. A kerfing saw is used to mark the frame of the guitar where the braces of the top and back will go.

3. The assembler uses a small hand router to route out the space for the braces on the frame. Each side of guitar takes roughly a minute to route, the [R]outers weigh approximately 3.6 pounds[.]

4. Guitar frame is placed in mold; turnbuckles are put in to ensure the frame is tight against the mold. Body assembler tightens turnbuckles by hand to hold the frame to the mold[.]

5. Glue is applied to the top of the frame and the top is placed onto the frame.

6. Two strips of masking tape are placed at each end of the top to hold it [i]n place on the frame.

7. The guitar and mold are flipped over and glue is applied to the back of the frame. The back is then placed on the frame using the same process as the top.

8. The guitar body is then taken over to the go-bar presses where the guitar is placed top down and approximately 20-24 go-bars are put in place around the circumference of the back. The go bars are stressed between the top of the go-bar rack and the guitar body to apply downward pressure while the glue dries. The go-bar application takes 3-4 minutes. [The worker indicated this sometimes took 2 minutes.]

The worker confirmed that he is right hand dominant and that he used his right hand to sand, use the saw, and squeeze the glue bottle. He also confirmed that he made between 12 and 16 guitars a day (sometimes up to 18 a day) if sanding was not required. The worker indicated that less expensive guitars did not require the sanding outlined above. If sanding was required he would only make 6 to 8 guitars a day. His main emphasis was on the requirement to place go-bars and the effort involved in pushing for 2 or 3 minutes at a time. The worker indicated that he would assembly one guitar at a time and after placing the go-bars, he would assembly another 4 guitars (or more if he did not have to sand the guitar) before going back to the first guitar to remove the go-bars.

*Body Building*

The worker confirmed at the oral hearing that he engaged in body building on a 3/4/5 times a week cycle between August of 1997 (when he started with the employer) and January of 2001. One of these workout days would involve arms and shoulders. His workouts were for approximately one hour. He stopped working out his biceps and triceps because of the right forearm symptoms. When he was not working out he swam 3 days each week for approximately one half an hour. He was taking a life guard course. He also ran approximately once a week. He also indicated that he played the guitar.

In a May 15, 2001 claim log entry, the case manager recorded that the worker was extensively involved in body building (last 15 years). The worker denied any incident or accident as a result of these activities. The case manager states: "With reference to biceps exercises, at the beginning of each cycle he starts with dumbbells weighing approximately five pounds, and builds up to a maximum of 35 pounds of dumbbells. He reports lifting different weights for the bars on the machines. The worker did not specify the maximum weight lifted."

**Reasons and Decision**

The law and policy relevant in this case is that which existed at the time the June 21, 2001 Board decision was made.

Section 5(1) of the Act provides compensation to a worker who has suffered a personal injury arising out of and in the course of employment. The standard of proof (not burden) for this test is based upon a balance of probabilities. However, section 99 of the Act provided for compensation if there were disputed possibilities which were roughly equal.

Section 6 of the Act deals with the provision of compensation for occupational diseases that are due to the nature of the worker's employment. Compensation is payable under section 6(1), where the worker is disabled from earning their full wages by an occupational disease, and the disease is due to the nature of their work. Section 1 of the Act defines occupational disease to mean any disease mentioned in Schedule B, and any other disease which the Board, by regulation or by order dealing with a specific case may be designated or recognized as an occupational disease. Section 6(3) of the Act states that if 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 process, the disease is deemed to have been due to the nature of that employment, unless the contrary is proved.

Items #27.31 (Epicondylitis) and 27.40 (Risk Factors) of the RSCM are relevant in this case. These items deal with the risk factors relevant to determining the likelihood that a worker's employment activities had caused or aggravated a diagnosed activity related soft tissue disorder of the limb (ASTD) (such as epicondylitis). The risk factors noted in item #27.40 of the RSCM include repetition, force, static load, task variability, awkward postures, local mechanical stresses, shock (impact loading), grip type, vibration, extremes of temperature and unaccustomed activity.

The case manager relied upon Dr. Franklin's medical opinion that it was unlikely that the worker's right arm complaints were related to his employment in the climate room. Although the ergonomic intervention report centred on the binding process, Dr. Franklin recognized that the start of the work in the climate room (in July of 2000) was the potentially significant occupational exposure period to consider given the time line of events. He did not consider (and I agree) that the prior work of binding (which the worker was performing in January of 2000) was a likely significant occupational exposure to consider. This was because Dr. Franklin found the worker's likely right elbow musculoskeletal disorder was separate and distinct from Dr. Wong's earlier diagnosis on January 6, 2000 of a right hand tendonitis (and the first aid record of job stress related tendonitis recorded on December 20, 1999). I do note that Dr. Wong in January of 2000 also recorded a strained right forearm but there is insufficient evidence of a continuity of similar symptoms between January of 2000 and January of 2001 (albeit the worker reported at the oral hearing he had continued right arm symptoms during this time) recorded by Dr. Wong in his clinical chart notes. Dr. Wong's clinical entry for January 31, 2001 was a repetitive movement injury.

The ergonomic intervention report stated:

> He [worker] dates the onset of his symptoms to approximately 1.5 years ago, when he was working in the binding department. He reported his symptoms as pain over the common extensor origin at the right lateral epicondyle. He initiated physiotherapy and was seeing his therapist once per week for 6 weeks, over which time his symptoms subsided. Three months later, he started working in the climate room, where he was glueing guitar bodies together placing sides of the guitars in a mould. Initially, he noted no problems, however, later his symptoms re-appeared and continued to bother him. When he moved to fretting 9 months later, he noted significant increase in his symptoms particularly when applying "go-bars" to the units to clamp them together (forceful gripping and wrist movement is required)…

The worker at the oral hearing indicated that his symptoms between January of 2000 and July of 2000 (when he switched to the climate room) did not subside. However, the evidence recorded in the ergonomic intervention report and the worker's own questionnaire support a finding that he first noticed his more recent right arm symptoms

in October of 2000. As I have indicated above, there is a lack of medical evidence to show a continuity of similar symptoms between January of 2000 and January of 2001.

Dr. Franklin in his June 14, 2001 claim log entry reviewed the tasks in the climate room as described to him by the case manager in her April 23, 2001 claim log entry (she had attended the worksite visit). The case manager described the go-bars process as follows:

> However, the more difficult aspect of the job involved placing approximately 23, go-bars", which were metal strips placed between the top of the guitars (in the mold) and the top of the shelf in order to press together all of the components. According to the worker, each guitar would have 23,, go bars" on the guitars. The worker was required to extend his right arm in a forwards and backward motion at a relatively rapid pace.
>
> Again, there are no expectations of completing a quota, with considerable flexibility in how the work is completed. An employee has the opportunity for numerous rest breaks and how they complete a task. There is great variability in the work.
>
> [Reproduced as written]

Dr. Franklin found that the worker's climate room work did not involve a significant proportion of activities which conveyed significant loading of the epicondyles, a significant amount of highly repetitive work involving the target muscle-tendon complex, or a significant amount of extreme posture involving the elbow or wrist. Although Dr. Franklin recognized the repetitive work involved in placing the go-bars, he did not consider this task highly repetitive or that it involved a significant amount of force when considered over the worker's entire day of work. He did not find that the work activities demonstrated a significant combination of forceful work, repetition, and extremes of posture sufficient to likely produce an epicondylitis.

Although Dr. Franklin states that the body building activity described by the case manager in the May 15, 2001 claim log entry would be very relevant to the etiology of an elbow musculoskeletal disorder, he did not elaborate on this issue nor provide a more specific opinion on this point.

Item #27.40 of the RSCM stated that the absence of significant force was not a reason in itself to automatically conclude the work activities were unlikely to have caused or aggravated the ASTD. The intensity, duration and frequency of the repetition, perhaps combined with the posture, may be sufficient to cause one to conclude the work played a significant causative role.

I find that there is insufficient evidence that the worker's right forearm complaints (clarified by Dr. Franklin to likely be a right elbow musculoskeletal disorder) were likely caused or aggravated by the worker's employment in the climate room. I have taken into account the description of the work in the climate room, in particular the placing of the go-bars, given by both the worker and the employer. I am satisfied that Dr. Franklin had a good understanding of the worker's employment and I agree with his analysis of the risk factors involved in this employment. I do not find sufficient evidence to establish that the worker's employment, in particular the placing of the go-bars, gave rise to sufficient risk factors (such as repetition, force, and posture) so as to likely cause or aggravate the worker's right arm complaints. I do not find there are disputed possibilities which are roughly equal for or against the acceptance of this claim. In particular, Dr. Franklin's opinion supports this conclusion.

**Conclusion**

I confirm the June 21, 2001 Board decision. The worker's appeal is denied for the reasons outlined above. There is insufficient evidence that the worker suffered a personal injury arising out of and in the course of his employment or an occupational disease due to the nature of his employment.

James Sheppard
Vice Chair

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