WCAT Decision Number: WCAT-2004-00073-RB
WCAT Decision Date: **January 09, 2004**
Panel: Mike Swetlikoff, Vice Chair

Introduction

In a January 9, 2002 letter a Workers' Compensation Board (Board) disability awards officer informed the worker she decided, based on an opinion of a Board medical advisor, that he had not been left with any significant impairment of function as a result of his left ankle injury on April 30, 1992, and consequently he would not be referred to the Board's disability awards department for assessment of residual disability under the claim.

The worker disagreed with the Board's decision and appealed. He said his left ankle is still sore, and "causes me more pain when I am at work". He also said that he seeks reopening of his claim and a disability pension.

Issue(s)

Is the worker entitled to assessment of residual disability resulting from his compensable injury on April 30, 1992?

Jurisdiction

This appeal was filed with the Workers' Compensation Review Board (Review Board). On March 3, 2003, the Appeal Division and the 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

On April 30, 1992, while working as a faller, the worker jumped over a windfall and landed sideways twisting his left ankle. He continued to work. On May 12, 1992, due to ongoing left ankle pain, he went to see his physician who, after examining the worker, diagnosed a sprained left ankle and prescribed physiotherapy treatment. He also advised the worker to rest the ankle for a minimum of five days.

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A May 12, 1992 left ankle x-ray revealed some swelling about the ankle joint but no bony abnormalities. A June 8, 1992 left ankle tomograph revealed no bony abnormality.

The Board accepted the worker's claim for a left ankle sprain.

On June 18, 1992 Dr. Bass, a physiatrist, assessed the worker. He said the worker advised that after his injury on April 30, 1992 he bandaged his ankle every morning and continued to work. However, on May 12, 1992, "he decided to go for a brisk walk or a run and when doing so, his left ankle everted again and since then he had been in acute pain and unable to work". Dr. Bass also said the worker advised that walking, running, jumping and moving over rough ground aggravated his left ankle and caused it to swell. He also advised that rest and elevation alleviated his symptoms. Dr. Bass recommended three weeks of treatment with anti-inflammatory drugs. He said that following this the worker might be ready to return to work.

In a follow-up report of August 21, 1992 Dr. Bass said it would be another six to eight weeks before the worker would be fit to return to work. Dr. Bass recommended ongoing physiotherapy treatment at an elevated level.

On August 25, 1992 Dr. Leete, an orthopedic surgeon, assessed the worker. He reported that the worker continued to work until May 12, 1992 when he sustained further injury to the left ankle while playing baseball. He said the worker had not returned to work since the baseball incident. Following examination of the worker, Dr. Leete said there was full range of motion in the ankle joint with no restriction of inversion or of subtalar movement, and no anterior drawing of the ankle. He also said the worker agreed to a trial return to work in mid-September 1992.

On August 31, 1992 the attending physician reported that the worker still had pain and swelling of the left ankle. He estimated disability of an additional one to two weeks. He also said that permanent impairment was unlikely to result.

On September 9, 1992 the worker returned to his pre-injury employment.

In a May 18, 1995 left ankle tomography report the radiologist said the tibiotalar joint was normal and several smaller corticated ossicles involving the top of the medial malleolus were most likely due to ancient trauma. An April 26, 1996 left ankle x-ray was reported to show no significant change from the May 18, 1995 investigation.

In a July 18, 2001 report physiotherapist, Koeleman, said the worker's left ankle complaints were provoked by his work habit of always putting his left foot down hill when working on a steep hill. He additionally said over time this caused irritation at the medial area of the worker's left ankle.

In an August 29, 2001 left ankle CT scan report the radiologist said well corticated ossific densities adjacent to both the medial and lateral malleolus could represent either

accessory ossification centres or possibly the result of trauma in the remote past. He also said the tibiotalar and subtalar joints both appeared to be normal.

In a September 18, 2001 memo the case manager said, following his return to work on September 9, 1992, the worker continued to experience symptoms in his left ankle. He also said the attending physician recommended assessment of the worker by an orthopedic specialist. The case manager requested a medical opinion with respect to:

- The likelihood that the worker's current left ankle symptoms were related to his April 30, 1992 injury at work.

- Was there any evidence of permanent functional impairment resulting from the April 30, 1992 injury?

- Were further investigations, including referral to an orthopedic specialist, required at this time?

In a memo dated October 4, 2001 Board medical advisor, Dr. Jarman, said it appeared that the April 1992 injury consisted of a severe sprain. He said subsequent medical examinations revealed no evidence of a ligamentous tear and x-ray, at that time, did not show any evidence of a bony injury. Dr. Jarman also said that an ankle sprain, which does not produce instability or bone injury, should resolve. He said the medical reports in August 1992 indicated that the sprain had almost resolved at that time. He also said the fact that the worker did not seek medical treatment for his left ankle until two and a half months after the initial incident, suggested "There was some cause other than the 1992 ankle sprain for the worker's ongoing ankle difficulties".

In a November 15, 2002 consultation report Dr. Graham, orthopedic specialist, said the worker advised that his left ankle sprain never recovered completely. He always had some residual problems with the ankle that have continued to date. Currently his symptoms included very mild swelling of the ankle with increased use, and at day's end, and sometimes with sports. Dr. Graham said the worker advised that he still occasionally participates in baseball and hockey. On examination, Dr. Graham found almost normal range of motion of the left ankle, lacking only the last few degrees of full plantar flexion and full dorsi flexion as compared to the right ankle. Inversion and eversion were full. There was slight laxity on drawer testing of the ankle in the AP direction, but no lateral laxity or talar tilt on clinical testing. The left ankle was ¼ inch greater in girth than the right ankle due to a little diffuse swelling. Dr. Graham felt that the worker's left ankle had likely maintained its status quo from years past. He recommended some coordination exercises.

In a consultation report of May 1, 2003 orthopedic specialist, Dr. Botsford, said he reviewed the previous investigations of the worker's left ankle and said that the bone scan demonstrated degenerative changes about the left ankle, but not the right ankle. It

was Dr. Botsford's opinion that the worker had post-traumatic osteoarthritis in his left ankle. Dr. Botsford also said:

> …the left ankle, which is the one that had the significant ligamentous injury previously, is the ankle that has arthritic changes and the right ankle, which was not previously injured, does not have the same changes. I think this is reasonable evidence that the arthritic changes now, which are certainly the source of his ankle pain, are likely as a result of the previous injury.
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> [reproduced as written]

The worker's appeal was heard on December 16, 2003. He was not represented. The respondent employer did not attend the appeal hearing nor did the company forward any evidence or submissions on appeal. Of his own volition and in response to questions the worker said that from April 30, 1992 to May 12, 1992 he continued to work as a faller by wrapping his left ankle in a tensor bandage each morning prior to going to work, and with use of over-the-counter Tylenol medication.

The worker also said that on May 12, 1992 he and a co-worker, another faller, Mr. B., at the end of their shift (about 2:00 or 2:30 p.m.) walked out of the bush to the pick-up truck. While they were walking he (the worker) jumped onto a log and jarred his left ankle. He said he told Mr. B. that his ankle was quite sore. The worker said he went home with a sore ankle. He had supper and then went to a ball game. He said while he was warming up for the ball game he went over on his left ankle again and did not return to work following that incident.

The worker said that he returned to work as a faller on September 9, 1992 for a different company. He also said he was able to do the job with the use of an ankle brace on his left ankle. He said he has used a brace while working ever since September 1992. He also said he continued to play ball for "a while" after September 1992. However, due to increasing left ankle symptoms he stopped playing ball and has not played since. He additionally said that between September 1992 and 1995 he had been falling timber in fairly flat terrain. However, in 1995 he started to fall timber in very steep terrain for a heli-logging operation, and his symptoms increased as a result.

The worker said that in July 2001 a physiotherapist recommended that he change his stance when falling timber on a steep slope by standing with his right foot on the downhill side. The worker advised that this did help to lessen his left ankle symptoms. He also said that the physiotherapist recommended that he use a "wobble board" and a "rubber bubble" to increase both ankle musculature and his balance.

The worker said that since mid-2001 his left ankle condition is not getting any better and it is not getting any worse. He said his symptoms significantly increase if he falls a tree downhill as opposed to across the hill. He said going up and downhill aggravates his symptoms significantly.

The worker additionally said that from September 1992 until mid-2001 he did left ankle rotational exercises to stretch the ankle muscles, and he also did stability exercises for his left ankle.

The worker also said since 1992 he has worked approximately ten months of each year. He works about nine months of the year falling timber, and about one month each year as a first aid attendant. He said he misses about two months of work each year due to snow or wet conditions, and time off for vacation.

Reasons and Findings

Because of the factual history of this claim I find that the following items of the *Rehabilitation Services and Claims Manual, Volume 1* (RSCM) are applicable: #22.20, #97.31 and #97.32.

Item #22.20 of the RSCM discusses injuries that occur other than in the course of treatment. Item #22.20 provides in part that where a worker has a compensable condition that is rendered disabling by an aggravating incident occurring outside of work, the worker's claim for the compensable condition is not reopened just because the incident would not have been significant if that condition had not existed. The Board recognizes rather, that it was the non-work incident that produced the disability for which compensation is claimed. It also states that the only exception is where the compensable condition actually causes the fall or other incident which brought about the aggravation.

Item #97.31 of the RSCM states that where a matter requires medical expertise, the decision must be preceded by consideration of medical evidence which includes medical advice and medical opinion.

Item #97.32 of the RSCM pertains to statements of workers about their own condition. It provides that a statement of a worker about his or her own condition is evidence insofar as it relates to matters that would be within the worker's knowledge, and it should not be rejected simply by reference to an assumption that it must be biased.

In this case the evidence is that the worker sustained a left ankle sprain or strain injury at work. There is no evidence of any bony injury. The worker did not attend a caregiver. He self treated with over-the-counter medication and use of tensor bandaging. The worker continued to work as a faller with no time loss. On May 12, 1992 during a recreational activity, baseball, away from work, the worker again injured his left ankle by inversion. Following the recreational injury the worker was unable to return to work until September 9, 1992, some four months after the baseball injury.

The worker said after returning to work in September 1992 he had ongoing left ankle symptoms that fluctuated in intensity depending on his level of activity. He also said that he continued to be employed as a faller, working approximately nine months a year and, additionally, one month per year in the position of first aid attendant.

During the appeal hearing the worker described a new work-related incident. He said that on May 12, 1992, at the end of the work shift, he and a co-worker were "walking out of the bush" when he jumped onto a log. He said that jumping onto the log aggravated his left ankle. He also said that he told his co-worker that his left ankle was sore. There is nothing on file to corroborate the worker's "new evidence" nor did the worker provide the panel with a corroborating statement from the co-worker, nor did the co-worker attend the appeal hearing as a witness.

Based on the evidence on file and the worker's testimony during the appeal hearing, I find that the initial incident on April 30, 1992 was fairly minor. I reach this conclusion on the basis that the worker, without seeking medical attention and through the use of over-the-counter medication and bandaging, continued to carry out the work activities of a faller which is heavy and highly dangerous work which requires an individual to move quickly and with agility. The worker continued to do his job until May 12, 1992. He attended his physician on that date following an injury incident when he was playing baseball.

With respect to the worker's new evidence "incident of jumping onto a log on May 12, 1992" I find that this incident was very minor. It was the worker's evidence that while his ankle was somewhat sore after jumping-on-the-log he went home, had dinner and after dinner went to play baseball. I find that had the worker significantly aggravated his left ankle during the jumping-on-the-log incident he would not have gone to play baseball after dinner.

I find that the worker's need for time off from employment more likely resulted from the worker sustaining an inversion injury to his left ankle while playing baseball during the late afternoon or evening of May 12, 1992, rather than from the relatively minor incident at work on April 30, 1992 which resulted in an ankle sprain.

I accept Dr. Jarman's opinion (memo October 4, 2001) that there was some cause other than the April 30, 1992 ankle sprain for the worker's ongoing ankle difficulties.

In accordance with section 7 of the *Workers Compensation Act Appeal Regulation* I direct the Board to reimburse the worker eight hours of wage loss benefits for his attendance at the appeal hearing. I award no additional expenses for the mounting of this appeal.

Conclusion

I find that the worker's ongoing left ankle problems and symptoms are not related to his April 30, 1992 work injury. Accordingly, I confirm the Board officer's decision that the worker has no entitlement to assessment of residual disability under this claim and deny the worker's appeal.

Mike Swetlikoff
Vice Chair

MS/hf/cmm

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