WCAT Decision Number: WCAT-2004-00075-RB
WCAT Decision Date: **January 09, 2004**
Panel: Mike Swetlikoff, Vice Chair

Introduction

By letter dated January 31, 2001 a Workers' Compensation Board (Board) entitlement officer informed the worker that her claim for a right shoulder injury, arising out of and in the course of her employment on January 3, 2001, was denied because her claim did not meet the requirements of section 5(1) of the *Workers Compensation Act* (Act).

In a March 8, 2001 letter the entitlement officer informed the worker, based on the opinion of a Board medical advisor, that the decision of January 31, 2001 would remain in effect as the worker had submitted no new objective medical evidence of disability.

The worker disagreed with the Board's decisions and appealed. She said there was evidence to support a causal relationship between her right shoulder symptoms and her employment tasks. She also said that she seeks acceptance of her claim, health care benefits, and wage loss benefits.

Issue(s)

Did the worker's right shoulder calcific tendonitis, diagnosed on January 7, 2001, arise out of and in the course of her work on January 3, 2001?

Did the worker's employment activities on January 3, 2001 aggravate to the point of disability a pre-existing condition in her right shoulder?

Jurisdiction

These appeals were 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.

Workers' Compensation Appeal Tribunal 150, 4600 Jacombs Road, Richmond, B.C. V6V 3B1
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Background and Evidence

Dr. Head, an emergency room physician, saw the worker on January 7, 2001. He said the worker advised that she went curling on Friday and had increasing right shoulder pain since Saturday morning. Following examination of the worker, Dr. Head diagnosed right shoulder calcific tendonitis. He prescribed some medication and discharged the worker.

On January 10, 2001 the attending physician reported that on January 3, 2001 the worker was "lifting to reach the top shelf and felt immediate pain in her right shoulder". The physician diagnosed right shoulder tendonitis and estimated disability from work of one to two weeks. Also on January 10, 2001 the worker filed a claim for compensation in which she informed the Board that on January 3, 2001 she lifted a file to place it into the upper drawer of a file cabinet and felt a "sharp jab" in her right shoulder. As the day progressed her arm started to throb. She also said she reported the incident to her supervisor on January 3, 2001. She advised that she last worked on Friday, January 5, 2001.

In a February 5, 2001 letter to the Board the worker said:

- She was off work on vacation from December 18, 2000 to January 2, 2001 (first time in years that she had taken two weeks off, she usually only takes one week).

- She returned to work on January 3, 2001 and spent the whole day on the computer doing e-mail, computer reports, payroll information and various other computer tasks.

- Her computer mouse sits to the right on the runoff part of her desk.

- To use the mouse she has to extend her right arm up and out about seven to eight inches.

- She discussed this with her physiotherapist and her physician; they both felt that this could have been a contributing factor to her injury.

On February 6, 2001 Dr. Burton, an orthopaedic specialist assessed the worker. He described the initiating incident and said the worker advised that her symptoms became gradually more severe. He also said in 1996 the worker had a minor right shoulder injury, and after about one year she improved to where her shoulder functioned quite well. Prior to her January 2001 injury she had some aching discomfort in the shoulder, due mainly to the positioning of her computer desk. He also said the worker advised that she was required to hold her right arm in an abducted position to use the mouse for several hours at a time. On examination Dr. Burton said that rotator cuff testing

revealed considerable weakness. She had markedly abnormal scapulohumeral rhythm, and assessment of translation revealed decreased translation in all planes on the right side compared to the left. He said x-rays showed a large calcific deposit in the supraspinatus region adjacent to the greater tuberosity. Dr. Burton felt that the worker's pain was likely due to a combination of acute/chronic calcific tendonopathy and subsequent adhesive capsulitis. He recommended an MRI scan to investigate the possibility of a full thickness rotator cuff tear.

In a follow up report of January 5, 2001 Dr. Burton said the MRI scan did not show any evidence of a full thickness tear. He also said that the worker's shoulder pain was beginning to settle.

In a February 16, 2001 memo Board medical advisor, Dr. Hemmerich, said the work activities described by the worker upon her return from holidays would not, in his opinion be capable of causing a significant new injury to her shoulder capable of causing adhesive capsulitis.

In an October 25, 2001 medical-legal report Dr. Burton said the incident on January 3, 2001 triggered the severe symptoms encountered by the worker shortly thereafter. He said the movement described by the worker at the time of onset of her symptoms was relatively atraumatic and not out of the ordinary for an office environment. He said he did not think it was reasonable to assume that this type of movement could cause a significant injury in a normal shoulder. He also said there must have been some predisposing abnormality in the shoulder and the x-rays bear this out given that there was calcific deposits in the rotator cuff region which must have been there prior to the onset of the worker's symptoms. Dr. Burton additionally said "The incident on January 3, 2001 therefore can be assumed to have been associated with significant aggravation of a calcific tendonopathy problem but was not the underlying cause".

In response to questions and of her own volition the worker described her employment tasks and said that as of 1994 she had been the office manager. She also said that between 50 and 100 percent of her daily employment tasks involved computer work. She described her 1996 right shoulder injury from playing water volleyball and said she required no treatment or medication as a result of that injury. She also said she experienced some discomfort in her right shoulder for about one year after the volleyball incident following which her right shoulder fully recovered and gave her no further problems. The worker also said that mousing causes her to experience right shoulder discomfort because she has to hold her right arm away from her body approximately six to eight inches in order to use her computer mouse. She said prolonged use of the computer increases her symptoms and when she is off the computer her symptoms are much better. She also said that she has no discomfort away from work. The worker also said that she has no discomfort with curling.

The worker said that she was on two weeks vacation prior to January 3, 2001. She stayed at home, did some cooking, sewing and yard work. She could not recall doing anything to cause right shoulder pain. She said on January 3, 2001 she started work with no problems or symptoms in her right shoulder. She described and demonstrated the incident of placing a file in a five drawer lateral file. She said when she was placing the file in the drawer she heard a crunch and it hurt in the top and the back of her shoulder. She said within a few minutes the sharp pain subsided. The worker also said that she continued to work and completed her shift. She also said that she worked on Thursday and Friday.

The worker said on Friday night she went curling "to see if I could play". She described and demonstrated how she cleans her rocks and described and demonstrated how she curled that evening. She said she curled a couple of ends, but as she could not make a shot the way she was curling she stopped. She said she had a couple of drinks at the curling club and went home. She also said that her shoulder was the same as it had been for the previous few days. She also said that she had no problems sleeping. The worker said on Saturday, as the day progressed, her shoulder started pounding and throbbing and on Saturday night she could not sleep. She sat in a chair and watched television. Between 2:00 and 2:30 a.m. she could not move her arm and on Sunday at 6:00 a.m. her husband took her to the hospital.

In summarizing the worker's appeal her representative said the work activity of lifting a two to five pound file to shoulder height caused the worker's injury. With respect to curling, the representative said the few rocks pushed on the Friday evening, as described by the worker, did not cause her need to seek medical attention at the emergency ward on Sunday. The representative also said that the panel should prefer Dr. Burton's opinion to that from the Board medical advisor.

In a December 15, 2003 written submission the employer's representative said the emergency room report of Sunday, January 7, 2001 noted that the worker went curling that week and had been sore. On Saturday night she had been awake all night due to pain. He also said the report said that the worker had an increase of right shoulder pain since Saturday morning after curling on Friday. The representative additionally said, given the worker's pre-existing right shoulder problems, and the fact that she was able to go curling three days after the work incident would lead to a conclusion that the work injury was not of causative significance. The representative said that item #15.20 of the Board's policy manual would be applicable in this case.

Reasons and Findings

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

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Item #14.20 of the *Rehabilitation Services and Claims Manual*, *Volume 1* (RSCM) discusses the occurrence or non-occurrence of specific incidents. It states that where there was no "accident", there is no presumption under section 5(4) of the Act and the evidence must support a conclusion that the injury arose out of the employment as well as a conclusion that it arose in the course of the employment. It further states 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.

Item #22.20 of the RSCM states that where a worker has a pre-existing non-compensable condition that is aggravated and rendered disabling by a work injury, the Board does not deny a claim for compensation just because the injury would have caused no significant problems if there had been no pre-existing condition. The Board accepts that it was the injury that rendered that condition disabling and pays compensation accordingly. The corollary of this is that, where a worker has a compensable condition which 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 recognises rather that it was the non-work incident that produced the disability for which compensation is claimed.

In this case the evidence is clear. On January 3, 2001, at work, the worker experienced some symptoms in her right shoulder after performing a work task. She continued to work and completed her shift. She also worked the following two shifts without any complaints and without any medical attention. Based on this evidence I find that the incident on January 3, 2001, which did not require the worker to seek any medical attention or treatment, was very minor. On Friday evening the worker, a curling skip who plays in a league, went curling. She and her representative would like me to believe that her curling activities on Friday, January 5, 2001 were insignificant. However, the information provided by the emergency room nurse and emergency room physician was that following curling on Friday evening the worker started to experience significant symptoms in her right shoulder which progressed throughout Saturday and Saturday evening and required her attendance at emergency on Sunday morning. On the basis of the emergency report I find that the worker's curling activity was very significant.

On the basis of the evidence and medical opinions before me, and in accordance with item #22.20 of the RSCM I find that the most likely cause of the worker's need for emergency medical attention on January 7, 2001 was her non-employment activity of curling which aggravated the pre-existing condition in her right shoulder.

I find that while the worker did experience some symptoms at work on January 3, 2001, while performing a normal work task, her symptoms due to that incident were very minor as she did not require any medical attention nor did she require time loss from employment.

On behalf of the worker, the representative requested one night's accommodation as the worker travelled to the hearing location by ferry, during the evening prior to the appeal hearing due to high winds. He also requested ferry fares to the hearing location and return and meal allowance.

In accordance with the *Workers Compensation Act Appeal Regulation* section 7 I order the Board to reimburse the worker for one night's accommodation and dinner on December 15, 2003. I also order the Board to reimburse the worker for ferry fares for her attendance at the appeal hearing and 40 kilometres of transportation to the ferries and return. I also order the Board to provide meal allowances to the worker for three meals on the day of the appeal hearing.

Conclusion

I confirm the Board officer's decisions as set out in the decision letters of January 31, 2001 and March 8, 2001. I find that the worker's right shoulder tendonitis, diagnosed on January 7, 2001 did not arise out of and in the course of her employment on January 3, 2001. Further, I find that the worker's employment activities on January 3, 2001 did not aggravate to the point of disability the worker's pre-existing right shoulder condition. Accordingly I deny the worker's appeal.

Mike Swetlikoff
Vice Chair

MS/cmm

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