WCAT Decision Number: WCAT-2004-00077
WCAT Decision Date: **January 09, 2004**
Panel: Don Sturrock, Vice Chair

Introduction

The worker appeals an April 2, 2003 finding of the Workers' Compensation Review Board (Review Board). The Review Board finding denied the worker's appeal of two decisions issued by a case manager of the Workers' Compensation Board (Board). Both of these decision letters advised the worker that her claim for compensation for a condition diagnosed as right wrist tendonitis was not felt to be due to the nature of her employment and, as a result, her claim was denied.

The worker submits that her right wrist tendonitis is as a result of the nature of her work as a laboratory assistant and her claim, therefore, should be accepted. The employer is also participating in this appeal.

In the notice of appeal dated May 2, 2003, the worker requested an oral hearing. In a letter dated July 10, 2003, an appeal liaison officer advised both the worker and her representative, Ms. Fox, that the appeal would proceed by way of written submissions. Following my review of all of the evidence on file, and after listening to the recording done at the time of the worker's December 2, 2002 oral hearing at the Review Board, I find that the issues before me can be properly and fully considered and resolved without the need for an oral hearing. The credibility of the worker is not an issue.

Issue(s)

The issue flowing from both of the decision letters is whether the worker's diagnosed right wrist tendonitis is due to the nature of her employment as a laboratory assistant.

Jurisdiction

This appeal was filed on May 2, 2003 from an April 2, 2003 Review Board finding. On March 3, 2003, the Appeal Division and the Review Board were replaced by the WCAT. Section 41(3) of the *Workers Compensation Amendment Act (No. 2), 2002* (Amendment Act) authorizes WCAT to hear this appeal as it arises from a finding issued by a Review Board panel that was seized of the appeal on March 3, 2003. My jurisdiction in these appeal proceedings therefore arises under the provisions of section 41 of the Amendment Act.

Under section 250(1) of the Act (as amended on March 3, 2003), WCAT may consider all questions of fact and law arising in an appeal, but is not bound by legal precedent. WCAT must make its decision on the merits and justice of the case, but in doing so, it must apply the policy of the Board's board of directors that is applicable in the case.

Under section 254 of the Act (as amended on March 3, 2003), 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.

This is a rehearing by WCAT.

Background and Evidence

The background and evidence of this claim have been very thoroughly documented in the April 2, 2003 Review Board finding and will not be repeated in detail, at this time. I have read all the submissions from Ms. Fox, as well as those from the employer's representative, Ms. Kerstiens, both to this appeal as well as those made in the previous proceeding. In addition, I have listened to the recording done at the time of the December 2, 2002 oral hearing.

Very briefly, the worker submits that her diagnosed right wrist tendonitis is a consequence of her work activities as a laboratory assistant. Prior to rendering the first decision (October 2, 2000), the case manager arranged an ergonomic assessment of the worker's job duties to be completed by an independent registered kinesiologist. Following this assessment the case manager issued the October 2, 2000 decision in which she concluded that there were insufficient work-related risk factors in this worker's job duties to account for the diagnosed right wrist tendonitis. As a result, the worker's claim was denied.

As a result of concerns raised by the worker with regard to the initial ergonomic assessment, on November 10, 2000, a second assessment was completed. This one was completed by an occupational therapist. Following further review of the evidence then on file, the case manager then issued the second (February 23, 2001) decision. Once again, the case manager concluded that there were not sufficient work-related risk factors to account for the worker's diagnosed right wrist tendonitis.

At the time of the December 2002 oral hearing, another three ergonomic assessments, only one of which was done at this worker's job site, were provided. These assessments were commissioned by the worker's employer. As this information only became available to both of the parties at the time of the oral hearing, the Review Board panel provided an opportunity for both parties to make submissions on this evidence. Following receipt of those submissions and rebuttal, the panel denied the worker's appeal.

Reasons and Findings

There are currently five ergonomic assessments on this claim. Three of those assessments were commissioned by the accident employer and two of them at the request of the case manager. Ms. Fox submits that greater weight should be placed on the three assessments commissioned by the accident employer, whereas Ms. Kirstiens submits that the two requested by the case manager should be given greater weight. The Review Board panel basically agreed with the arguments put forward by Ms. Kirstiens and preferred the evidence contained in the two ergonomic assessments done specifically for this worker at her actual job location. I agree with the Review Board panel. Not only are the two ergonomic assessments done at the request of the case manager done specifically with regard to this particular worker at her particular location, they are also with regard to the specific diagnosis of wrist tendonitis. The three assessments done for the accident employer were done as part of a general assessment for risk factors with regard to all musculoskeletal repetitive-type work injuries for all worker's at the accident employer's three locations. Further, all of these assessments were done several months prior to the onset of the worker's symptoms. Those assessments also led to recommendations for change to various jobs (including the worker's). While at the time of the oral hearing the worker indicated that no major modifications were done to her job, she did acknowledge that some of the recommendations had been implemented. She categorised these changes as being minor. The two assessments done at the request of the Board, therefore, are the only ones that would have captured any of those changes.

The two assessments done for the Board specifically assessed the risk factors identified by the Board at item #27.12 of the *Rehabilitation Services and Claims Manual, Volume I* (RSCM) as being associated with the development of wrist tendonitis. Both of these assessments noted that, with regard to those risk factors, the worker's job activities were of low force, did not contain sustained repetitive tasks, and failed to demonstrate any significant awkward postures.

In the April 2, 2003 finding, the Review Board panel initially considered the worker's application under section 6(3) of the *Workers Compensation Act* (Act) as it read before the amendment to the Act, but found that that section did not apply. I agree with the analysis and reasoning expressed by the Review Board panel in this regard.

The panel also considered whether the worker's right wrist tendonitis could be considered due to the nature of her employment, as outlined in section 6(1) of the Act, and item #27.20 of the RSCM. Once again, I agree with the analysis and reasoning provided by the Review Board panel. No new evidence has been submitted by Ms. Fox that would cause me to come to a conclusion different from that of the Review Board panel.

Conclusions

The worker's appeal is denied and the April 2, 2003 Review Board finding is confirmed. I find that the evidence on file does not support the conclusion that the worker's right wrist tendonitis was due to the nature of her employment as a laboratory assistant with the accident employer.

Don Sturrock
Vice Chair

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