WCAT Decision Number: WCAT-2004-00079-RB
WCAT Decision Date: **January 09, 2004**
Panel: Kulwinder Sall, Vice Chair

Introduction

The worker, a care attendant, slipped on ice in the parking lot at work and injured her right knee on February 20, 1986. The Workers' Compensation Board (Board) accepted the worker's claim for a lateral meniscal tear of her right knee. The worker underwent two arthroscopic debridements on her right knee on September 19, 1986 and March 31, 1999 as well as an osteotomy on September 15, 2000. After the most recent surgery, the worker participated in a medical rehabilitation program and a modified interdisciplinary pain program. The worker was provided with homemaker services, pool exercises, reimbursement of costs for glucosamine and an orthotic for her left foot to assist with proper gait.

In a decision letter dated January 14, 2002, the Board officer found the worker's right knee condition had stabilized and was unlikely to change significantly in the next 12 months. The Board officer determined the worker was no longer temporarily totally or temporarily partially disabled, concluded her wage loss benefits effective December 30, 2001 and referred her to the Vocational Rehabilitation Services Department and the Disability Awards Department for further management of her claim. In addition, the Board officer did not accept the worker's claim for a left foot, knee or leg condition as there was no evidence of a left side injury on February 20, 1986 when she fell at work.

The worker does not take exception with the Board's decision with respect to her right knee but seeks only to have her left foot, knee and leg symptoms accepted as a compensable consequence of her right knee injury. As a result, I will only address the matter surrounding the left leg symptoms.

An oral hearing was held on December 16, 2003. The worker was present and represented by her union. The employer, although invited to participate, did not attend or provide written submissions.

Issue(s)

1. At issue is whether the worker's left foot, knee or leg symptoms were a compensable consequence of her February 20, 1986 injury or of related treatment?

2. If the left foot, knee and leg symptoms are compensable, at issue is whether the worker was temporarily totally or temporarily partially disabled beyond December 30, 2001.

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.)

Relevant Information

This 52-year-old female worker was employed as a permanent full time care attendant at a care facility. She had been working for the accident employer for approximately nine years prior to her injury.

The attending registered nurse noted, in the employer's report of injury dated February 28, 1986, that the worker scraped her right knee and experienced pain in the right knee and arm. The worker, in her application for benefits dated April 22, 1986, also reported injuries to her right knee and right arm.

Symptoms in the worker's left foot, knee and leg were first noted in the discharge report from the interdisciplinary pain program on December 10, 2001. The program's team indicated the worker complained of pain in the arch of her left foot as well as increased pain in her left knee and the team attributed these complaints to her chronic antalgic gait.

The worker's family physician noted, in a progress report dated January 2, 2002, that the worker was fitted for a left foot orthotic. In an entry to the file on January 3, 2002, the Board officer indicated, the left foot orthotic had been approved in error as the Board officer thought it was for the worker's right foot and it was intended to assist with the recovery of her right knee injury. Despite the error, the Board officer agreed to approve the cost of the left foot orthotic, as it might improve the worker's gait and pain symptoms. The Board officer clearly indicated, however, that the worker's left foot or knee condition was not accepted as compensable under this claim.

The physician recorded, in a progress report of January 24, 2002, that the worker reported increased pain in her left foot due to an increase in her limp. In progress reports dated April 11, 2002, April 29, 2002, May 2, 2002, and June 18, 2002, the worker's physician diagnosed a left knee strain and noted an increase in left ankle pain because the worker favoured her right knee.

In a report from the Visiting Specialists Clinic dated July 2, 2002, the orthopaedic surgeon indicated that clinically, the worker had excellent alignment in her right knee and a decrease in right knee pain. However, he noted that she still had patellofemoral discomfort. With respect to the worker's left leg, the orthopaedic surgeon noted:

> She has more complaints today with respect to her left foot and she is currently seeing a podiatrist about the same. She thinks that she has been placing excessive stress on the left side to compensate for her right-sided problem and this causes the discomfort in her foot.
>
> [reproduced as written]

Left leg symptoms were last mentioned in the physician's progress report of August 12, 2002 which noted the worker was experiencing severe left knee pain. There was no mention of left foot, ankle or knee symptoms in subsequent physician's progress reports from August 20, 2002 to January 8, 2003.

At the oral hearing, the worker said she first noticed symptoms in her left foot approximately 10 weeks after her right knee surgery in March 1999. She found that bearing weight on her left foot caused pain. Her physiotherapist advised the worker that her symptoms were a result of putting too much pressure on the left leg and foot. The worker saw a podiatrist who recommended an orthotic to support her left foot. The worker found the orthotic was helpful because it allowed her to walk for a longer time but the pain persisted despite the use of the orthotic. Now the worker finds the orthotic less helpful as there is swelling in the second toe.

The podiatrist told the worker the pain in her left foot was caused by increased pressure when she puts her left foot down and this, combined with her naturally flat arch contributed to the pain in her left ankle. In treating the worker's left foot symptoms, the podiatrist put additional padding in the worker's left insole. The worker noted that when she is sitting for prolonged period of time she feels spasms in her left foot. The worker stated there was pain in her left ankle only and no pain in any other part of her left leg. The podiatrist advised the worker to take anti-inflammatory medication for the pain as there was nothing further that could be done.

The worker stopped seeing the physiotherapist in August 2002 when the Board ceased health care benefits. The worker said she had x-rays of her left ankle taken last week and although she did not have the results with her, the podiatrist had advised her that the x-rays showed no change in her condition The worker said she continued to complain about her left leg symptoms to her doctor and is unsure why the medical reports stopped mentioning the problems with her left ankle, after August 2002. The worker denied any other cause for her left ankle strain mentioned in the medical reports from April 2002 to June 18, 2002.

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At the oral hearing, the worker presented recent reports from the podiatrist and the physiotherapist.

In a consultation report dated December 10, 2003, the podiatrist noted that the worker presented with pain in her left foot and was unable to walk due to pain and swelling. The podiatrist found the worker experienced pain on palpation at the second metatarsal. He diagnosed the worker with a pre-stress fracture in the second metatarsal in the left foot and specifically noted:

> Injured right knee places excessive stress on the left foot and has initiated these symptoms. Excessive stress is being placed on the left foot secondary to the right knee causing injury.
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> [reproduced as written]

The physiotherapist noted, in a letter dated December 15, 2003, that the worker's last series of treatments ended in May 31, 2002. She recalled that at the time the worker had complained of pain in her medial left foot especially with weight bearing. The physiotherapist was of the opinion the worker had severe over-pronation in both feet and due to the longstanding nature of her right knee condition, her altered weight bearing mechanics affected her lumbar spine, pelvis, hips, knees ankles and feet bilaterally.

Submissions

The worker's representative submitted the evidence clearly showed that the worker's left ankle and foot condition was a compensable consequence of her right knee injury. She noted the worker did not have any problems with her left leg, ankle or foot prior to March 1999. The worker first noticed pain in her left ankle during recovery from right knee surgery in March 1999. During the recovery from right knee surgery, the worker's representative stated the worker relied on her left side and placed increased pressure on her left leg which led to symptoms in her left ankle. The left foot symptoms have persisted and have now extended to swelling in the second metatarsal of the left foot.

Findings and Reasons

The worker made her application for compensation to the Board prior to June 30, 2002. Her entitlement is therefore adjudicated under the former provisions of the Act. The relevant policy is set out in the *Rehabilitation Services and Claims Manual, Volume 1* (RSCM). This policy must be used where applicable, and is binding on WCAT pursuant to section 42 of the *Workers Compensation Act (No. 2), 2002.*

Item #22.00 of the RSCM states:

> Once it is established that an injury arose out of and in the course of employment, the question arises as to what consequences of that injury are compensable. The minimum requirement before one event can be considered as the consequence of another is that it would not have happened but for the other.
>
> Not all consequences of work injuries are compensable. A claim will not be reopened merely because a later injury would not have occurred but for the original injury. Looking at the matter broadly and from a "common sense" point of view, it should be considered whether the previous injury was a significant cause of the later injury.

Item #22.10 of the RSCM further states:

> Where a further injury arises as a direct consequence of treatment for a compensable injury, the further injury is also compensable.

The worker claimed that symptoms in her left foot are a compensable consequence of her right knee injury. The pain program noted the pain in the worker's left foot was due to a chronic antalgic gait. The worker's family physician found an increase in pain to the worker's left foot due to her limp and because she favoured her right leg. The worker was also diagnosed with a left knee strain in April 2002. The worker's oral evidence is that she first noticed symptoms in her left foot approximately 10 weeks after her last surgery in March 1999 and that she continues to feel pain and spasms in the left ankle and not in any other part of her left leg.

The orthopaedic surgeon at the Visiting Specialists Clinic noted only the worker's subjective complaints of pain and her opinion regarding causation but did not make any determination about the cause of the pain in the worker's left foot or ankle. The podiatrist in his report of December 10, 2003, diagnosed the worker with a pre-stress fracture in the second metatarsal and was of the opinion the worker's injured right knee placed excessive stress on her left foot which caused the pain symptoms. I accept the medical evidence from the worker's podiatrist, family physician and the interdisciplinary pain program and find that the worker's chronic antalgic gait increased stress in her left foot and caused symptoms to her left foot and ankle. However, I do not find sufficient medical evidence that the worker's compensable right knee injury was a significant cause of her left knee strain diagnosed in April 2002 and, therefore, do not accept it was a compensable consequence of her right knee injury.

I find the tests outlined in items #22.00 and #22.10 of the RSCM have been met in this case. The medical evidence shows the worker initially felt symptoms in her left foot after her surgery in March 1999 and she continued to experience symptoms in her left foot and ankle. There is no evidence to indicate that the worker experienced any problems with her left foot or ankle prior to her surgery in March 1999. Considering all of the medical evidence, it is reasonable to conclude that the symptoms in the worker's left foot were a compensable consequence of her right knee injury and subsequent treatment.

Section 29 of the Act provides for the payment of temporary total disability benefits while a worker remains disabled as a result of the compensable injury. If, after being off work because of a temporary total disability, the worker's disability has resolved to a point where it is deemed to be only partial, temporary partial disability payments may be available under section 30(1) of the Act.

The issue in this case is whether the worker was temporarily totally or temporarily partially disabled after December 30, 2001 due to her left foot symptoms. The best evidence of continued disability is a continuity of medical reports certifying ongoing temporary total disability related to the condition accepted under the claim.

The medical information from the worker's family physician indicated subjective complaints of disabling pain in the left foot and ankle. By December 2003, the podiatrist noted the worker was unable to walk due to pain and swelling in her left foot and diagnosed her with a pre-stress fracture. I find the evidence shows the worker's left foot and ankle condition continued to worsen. The worker gave evidence that she felt pain in her left foot upon weight bearing and that she felt spasms in her left foot when sitting for prolonged periods of time. I accept the worker experienced severe discomfort as a result of her left foot and ankle symptoms and find that the worker was disabled due to her left foot and ankle symptoms.

I find the worker continued to be temporarily, totally disabled as a result of her left foot and ankle symptoms only. I find the worker is entitled to additional wage loss and health care benefits from December 31, 2001. I direct the Board to determine the question of wage loss benefits.

Conclusion

In accordance with the above reasons and findings, I allow the worker's appeal and vary the decision of the Board. No costs were identified in connection with this appeal, and none are allowed.

Kulwinder Sall
Vice Chair

KS/rbe

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