WCAT Decision Number: WCAT-2004-00087-RB
WCAT Decision Date: **January 12, 2004**
Panel: Nora Jackson, Vice Chair

Introduction

In a decision letter dated July 3, 2001, a Workers' Compensation Board (Board) case manager advised the employer that the worker's claim had been accepted for a temporary aggravation of her pre-existing degenerative condition involving the first metacarpal trapezium joint of the left thumb. The employer appeals that decision (Appeal A).

In a decision letter dated November 23, 2001, a Board case manager advised the worker that as she was still temporarily disabled as a result of her compensable injury, her entitlement to temporary wage loss benefits continued. The employer appeals that decision (Appeal B).

In a decision letter dated September 25, 2002, a Board case manager advised the worker that her temporary wage loss benefits would be concluded, as the Board was of the opinion that her condition had plateaued and was permanent. The worker's claim file would be forwarded to the Board's Vocational Rehabilitation Department to determine whether she was entitled to vocational rehabilitation assistance, and would be forwarded to the Board's Disability Awards Department to determine the nature and extent of her permanent impairment. The employer appeals that decision (Appeal C).

Issue(s)

Did the worker suffer an injury to her left thumb, specifically, an aggravation of her pre-existing degenerative condition involving the first metacarpal trapezium joint, arising out of and in the course of her employment (Appeal A)?

Was the worker still temporarily disabled as a result of her compensable injury after November 23, 2001 (Appeal B)?

Was the worker entitled to a referral to the Board's Disability Awards Department for assessment regarding permanent disability (Appeal C)?

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Jurisdiction

These appeals were filed with the Workers' Compensation Review Board (Review Board). Pursuant to Bill 63, the *Workers Compensation Amendment Act (No. 2), 2002*, the former Review Board and Appeal Division have been replaced by the Workers' Compensation Appeal Tribunal (WCAT) effective March 3, 2003. Section 38 of the legislation provides that all Review Board appeals are to be transferred to WCAT to be completed as WCAT appeals, unless a panel of the Review Board had completed an oral hearing, or unless written submissions were completed and a panel of the Review Board had commenced deliberations, before March 3, 2003.

As these appeals were not considered by a Review Board panel by March 3, 2003, they were transferred to WCAT and have been considered as WCAT appeals except that no statutory time frame applies to the making of this decision. One effect of this change is that WCAT must apply policies set by the board of directors and the former governors of the Board.

Evidence

I have reviewed the evidence in the claim file, any submissions made by the worker and the accident employer in support of their respective positions, the *Workers Compensation Act* (Act) in effect at the time of the events here in question, and applicable Board policy as set out in the *Rehabilitation Services and Claims Manual, Volume I* (RSCM). Interested parties have received full disclosure of the claim file, and the medical and claim history will not be repeated in detail here except as relevant to the current appeal.

The worker was employed by the employer as a dietary aide. In 2001, the worker was 59 years old; she began working for the employer in October 1987. Over the years, she had several thumb and hand injuries. On February 4, 2001, the worker was pushing a trolley loaded with dirty dishes from the dining room to the kitchen. As she exited the elevator, the wheels of the trolley became stuck, and her left thumb was bent backwards.

The worker notified the employer of the incident the following day, and the worker saw her attending physician on February 7, 2001. At that time, Dr. Methven noted obvious swelling and tenderness at the base of the worker's left thumb; her CMC joint movement was limited by pain and swelling. Dr. Methven diagnosed acute arthritic inflammation of the left CMC joint, and ordered an x-ray. An x-ray of the worker's left thumb on February 7, 2001 indicated moderately severe degenerative changes in the first metacarpal trapezium joint. The remainder of the worker's hand was normal.

The worker submitted an application for compensation to the Board on February 13, 2001, and her claim was accepted for a temporary aggravation of a pre-existing left thumb condition, specifically a degenerative condition involving the first metacarpal trapezium joint. Wage loss and health care benefits were paid, and the worker continued to visit Dr. Methven regularly. He noted swelling, tenderness and pain, and restricted range of motion

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of the worker's left thumb. By March, he was diagnosing a sprain of the left thumb with underlying osteoarthritis. The worker was slow to respond to medication, and Dr. Methven referred the worker to Dr. Fenton, a rheumatologist. The worker underwent physiotherapy and acupuncture, with little or no relief. A steroid injection also had no effect.

The worker attempted a graduated return to work doing light duties in May 2001. However, when she saw Dr. Fenton on May 28, 2001, he noted that the worker had been having similar symptoms in her right thumb, although of a milder nature. The worker also had mid and low back complaints, and moderate osteoarthritis were noted. Dr. Fenton concluded:

> … This lady has symptomatic osteoarthritis of the left first carpometacarpal joint brought on by the trauma of February 4th. It is quite possible that she had some x-ray changes prior to the injury but these were not causing her any symptoms and the injury has rendered the osteoarthritic changes to become symptomatic. In terms of management it would appear that she has gone through the usual routine treatments …

The worker had asked whether she should continue working; Dr. Fenton recommended that she stop working as he thought that with the type of job the worker had and the amount of pain and swelling noted, her job would only aggravate her symptoms. He thought that she should be off for some time, and asked her to check back with him in one month's time. When Dr. Fenton saw the worker again on June 28, 2001, he found her with bony swelling of the left first carpometacarpal joint with moderate tenderness. He thought she was clinically unchanged, and suggested an injection. He thought that she should remain off work.

In a letter dated July 3, 2001, a Board case manager confirmed to the employer that the worker's claim had been accepted for a temporary aggravation of a pre-existing degenerating condition of the first metacarpal trapezium joint of the left thumb. The worker had not been examined by a Board medical advisor, but was being treated by a rheumatologist. The case manager advised that the Board was satisfied that the treatment recommendations made to date had been appropriate. If, at a later date, it was determined that the temporary aggravation accepted as compensable had become permanent, the worker would be entitled to be considered for a permanent functional impairment award.

The worker again saw Dr. Fenton on July 31, 2001. At that time, the worker advised Dr. Fenton that her thumb symptoms were disabling her from working. Dr. Fenton thought that the worker's decision not to continue working was subjective rather than objective, although he did not see any clinical changes in the worker's left first carpometacarpal joint. He was of the opinion that she should continue taking her medication and persevere in her attempts to work. In an October 15, 2001 review of the claim file, the case manager considered a functional capacity evaluation to determine

the worker's functional limitations, but was not sure that an accurate assessment could be made given the subjective nature of the worker's complaints.

On August 22, 2001, the worker was again seen by Dr. Fenton. Dr. Fenton had no new treatment to recommend, and discharged the worker from his care. By September 11, 2001, Dr. Methven thought that the worker's condition was plateaued and was permanent.

The worker's claim file was reviewed by a Board nurse advisor, who thought that the worker should be examined by an orthopaedic specialist. As a result, the worker was referred to the Board's Visiting Specialists Clinic. On November 19, 2001, the worker was assessed by Dr. Goetz, an orthopaedic specialist. He thought that the worker had CMC osteoarthritis, which had likely been progressing for some time and had become clinically significant through the February 4, 2001 injury. Dr. Goetz recommended a thumb splint. If it did not allow for a return to work, then surgery on the worker's left thumb was proposed. It would consist of a ligament reconstruction, which would allow for a mobile thumb that was pain free with reasonable strength.

In a decision letter dated November 23, 2001, a Board case manager advised the employer that the worker had last been seen by her attending rheumatologist on August 22, 2001; at that time, it was considered that medication and time would result in the worker reaching maximum recovery. The case manager confirmed that the worker was entitled to temporary wage loss benefits for the period of time that she was disabled as a result of the compensable injury to her left thumb. Once she had recovered or her condition had stabilized, temporary wage loss benefits would be terminated. The worker's claim file had been reviewed by a Board medical advisor, and the worker had been examined by an orthopaedic specialist on November 19, 2001. That report was not yet available to the case manager, and he therefore was not able to say whether any further treatment had been recommended.

In a letter dated December 13, 2001, the employer advised Dr. Methven, the worker's attending physician, that a return to work on modified duties was available to the worker. The employer asked Dr. Methven to provide information regarding the worker's abilities and restrictions, the number of hours she was able to work, and the expected date of a full return to work.

The worker used the thumb splint recommended by Dr. Goetz, but was not successful. On recommendation by a Board medical advisor, the case manager determined that the surgical procedure was medically reasonable and related to the injuries accepted under the claim. At a team meeting on January 24, 2002, Dr. Mittermaier, a Board medical advisor, gave the opinion that the worker would probably not be left with a permanent functional impairment; however, that opinion would be reviewed subsequent to the proposed surgery.

On February 5, 2002, the employer advised the Board that an early return to work program, supervised by a registered nurse, was available to the worker. The employer asked that the Board attempt to facilitate this. Letters from the employer's representative followed approximately every two weeks.

Surgery was undertaken by Dr. Goetz on February 20, 2002. Subsequent to her surgery, the worker attended the Board's hand clinic. The employer was concerned about the length of time that the worker had been receiving disability benefits, and suggested that the worker could return to work doing light duties. The case manager contacted the hand clinic on May 1, 2002. At that time, he was advised that the worker had developed reflex sympathetic dystrophy-like symptoms, and should be referred to Dr. Gropper, a hand specialist, for further assessment. The clinic thought that the long-term prognosis was good, and that the worker should be able to return to modified duties by the end of May.

The employer again wrote to Dr. Methven on May 27, 2002, requesting information regarding the worker's ability to return to work to modified duties.

The worker began a Board-sponsored occupational rehabilitation program on July 22, 2002 and was discharged from that program on August 19, 2002. The worker was considered fit to begin a graduated return to work at that time, but continued to report significant left thumb pain. She had been able to increase the number of hours she was able to work, but had difficulty completing some tasks. Her job demands required frequent left lateral pinching; that activity resulted in significant increase in swelling and pain in her left thumb.

In a decision letter dated September 25, 2002, a Board case manager advised the worker that the worker's left thumb condition was now considered permanent. The worker's condition was considered plateaued; no further temporary wage loss benefits would be paid. However, her claim file would be forwarded to the Board's Vocational Rehabilitation Department to determine whether she was entitled to vocational rehabilitation assistance. Her file would also be forwarded to the Board's Disability Awards Department to determine the nature and extent of her permanent disability.

The employer has made no submissions in support of its appeal of the July 3, 2001, November 23, 2001, and September 25, 2002 decisions. The worker has made no submission in support of her position, although given the opportunity to do so.

Subsequent to the decisions here being appealed, the worker was awarded a permanent partial disability pension in the amount of 3.15 percent of a totally disabled person. Several graduated return to work attempts were made without success. These attempts resulted in observable medical setbacks. No other employment was available with the accident employer. The worker then participated in an extensive, Board-sponsored job search program; as of October 9, 2003, she had secured part-time employment. She was working 20 – 30 hours per week, with the potential of becoming

a full-time permanent employee. The VRC recommended that a partial loss of earnings pension be implemented, as the worker was not able to recapture her pre-injury earnings. Meanwhile, top-up benefits were recommended.

In a September 25, 2002 decision, the employer was relieved of costs on this claim pursuant to section 39(1)(e) of the Act, as the worker's claim had been accepted as an aggravation of a pre-existing degenerative condition.

Reasons and Findings

Did the worker suffer an injury to her left thumb, specifically, an aggravation of her pre-existing degenerative condition involving the first metacarpal trapezium joint, arising out of and in the course of her employment (Appeal A)?

Section 5(1) of the Act provides that a claim will be accepted and benefits paid when the evidence shows that a worker sustained a personal injury "arising out of and in the course of employment". This requires that there be evidence that not only did the injury occur while at work, but that the work activity was the cause of the injury.

Item #22.20 of the RSCM sets out the Board's policy with regard to pre-existing deteriorating conditions affecting a worker. In order for the worker's disability to be compensable, the evidence must establish that the worker's employment activity brought about a disability that would probably not otherwise have occurred, or that the work activity significantly advanced the development of a disability that would otherwise probably not have occurred until later. This must be distinguished from the situation where the worker's employment has merely drawn the worker's attention to the pre-existing condition without significantly affecting the course of the disease.

In other words, an injury is not compensable simply because it happened at work. There must have been something in the employment relationship or situation that had causative significance in producing the injury in order for it to be compensable.

On this matter, I deny the employer's appeal. That an incident occurred on February 4, 2001 has never been questioned. The worker reported it on the next day to the employer, and shortly thereafter sought medical attention. When she did so, her attending physician found objective signs of injury, swelling and tenderness at the base of the worker's left thumb and reduced range of motion.

It has also never been questioned that the worker had pre-existing osteoarthritis of her left thumb, as well as osteoarthritis in other areas of her body. However, prior to the February 4, 2001 injury, the worker had been able to work in spite of her underlying, degenerating condition. There are medical opinions on the claim file from two specialists, Dr. Fenton, a rheumatologist, and Dr. Goetz, an orthopaedic specialist, that the February 4, 2001 injury was causative in the worker's underlying condition becoming symptomatic and disabling. There is no contrary medical opinion on the claim file. For the above-noted reasons, I find

that the Board correctly accepted the worker's claim for a temporary aggravation of the worker's underlying degenerating condition.

Was the worker still temporarily disabled as a result of her compensable injury after November 23, 2001 (Appeal B)?

Payment for temporary total disability is provided for in section 29 of the Act. The Board's policy regarding temporary total disability is set out in item #34.50 of the RSCM. Benefits payable under section 29(1) of the Act will be terminated when the worker's compensable impairment ceases to be a temporary total disability. That is, if the worker's impairment becomes partial, disappears entirely, or stabilizes, no further temporary wage loss benefits are payable under section 29(1).

On this matter, I deny the employer's appeal. The worker saw Dr. Goetz, a specialist, on November 19, 2001. At that time, he recommended a new treatment, the use of a splint, as well as ongoing medication. If the worker was unable to perform her household and work duties and remained symptomatic, surgery was planned. Clearly, the worker's condition was not yet plateaued, as new treatment was being tried, surgery was contemplated as an alternative, and recovery was possible.

I find that the worker was still temporarily disabled as a result of her compensable injury after November 23, 2001, and was entitled to further wage loss benefits until September 22, 2002. When her condition had stabilized after surgery, no further change was anticipated and no further treatment was indicated.

Was the worker entitled to a referral to the Board's Disability Awards Department for assessment regarding permanent disability (Appeal C)?

Board policy, as set out in item #96.20 of the RSCM, provides that a file must be sent to the Disability Awards Department for further evaluation if there is any indication that there might be a permanent disability or potential permanent disability.

On this matter, I deny the employer's appeal. The worker's condition was ongoing for a year prior to surgery. The Board medical advisor thought that it was likely permanent, but reserved judgment until after the worker had recovered from surgery. Surgery did not significantly alleviate the worker's condition. There was no medical evidence on file to indicate that there would be any change in the worker's left thumb condition in the foreseeable future. Under those circumstances, I find that the Board correctly referred the worker to the Board's Disability Awards Department for assessment as to the nature and extent of permanent disability resulting from the February 4, 2001 compensable injury.

Conclusion

With regard to the issue of whether the worker suffered an aggravation of her pre-existing degenerative left thumb condition arising out of and in the course of her employment, I deny the employer's appeal, for the reasons set out above. The Board's July 3, 2001 decision (Appeal A) is confirmed.

With regard to the issue of whether the worker was still temporarily disabled as a result of her compensable injury after November 23, 2001, I deny the employer's appeal. The Board's November 23, 2001 decision (Appeal B) is confirmed.

With regard to the issue of whether the worker is entitled to a referral to the Board's Disability Awards Department for assessment, I deny the employer's appeal. The Board's September 25, 2002 decision (Appeal C) is confirmed.

The panel awards no expenses in this matter.

Nora Jackson
Vice Chair

NJ/jkw

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