WCAT Decision Number: WCAT-2004-00092-RB
WCAT Decision Date: **January 12, 2004**
Panel: Cecil S. Memory, Vice Chair

Introduction

1. The worker sustained a compensable left knee injury on March 8, 2001. The Workers' Compensation Board (Board) accepted his claim for a fracture of the left patella and a left medial meniscectomy in November 2001. In the appealed March 22, 2002 decision letter the Board finalled wage loss benefits as of March 24, 2002 on the basis that the worker had recovered from the compensable effects of the left knee injury and that any ongoing disability related to non-compensable conditions.

Issue(s)

2. The issue is whether the worker's left knee condition was disabling after March 24, 2002.

Jurisdiction

3. 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.)

Evidence

4. In March 2001 the worker was 59 years old. Up to the date of injury he was able to do manual labour work without difficulty. At the hearing he stated that he was able to work full shifts every day and that no health problems he may have had kept him from doing that work. He acknowledged that he had a blood pressure problem which was treated with medication and this had never kept him from working. He acknowledged some weight gain after the injury. He denied doing any exercises prior to the injury, stating that he got plenty of exercise on the job. He stated that he did every kind of work, including shovelling, jack-hammering, use of crowbars … 'everything'.

5. At the hearing the worker denied any problem with excessive alcohol consumption. He stated that he usually had wine with his evening meal with his wife and children, as was the practice in his culture, but he did not otherwise

consume wine or any other alcoholic beverages, and he did not have a group of friends with which he met regularly. He did not make wine nor did his brother make wine any longer, and the purchase of wine was too expensive. He estimated that he consumed approximately a one-litre bottle of wine per week. The worker's representative pointed out that there is no evidence of intoxication in the claim file or otherwise.

6. At the hearing the worker acknowledged having surgery for an umbilical hernia, but that had healed and was of no ongoing significance.

7. An MRI in October 2001 identified a medial meniscus tear and this resulted in the surgery on November 1, 2001 for the purpose of excising the tear.

8. The Board referred the worker to a work-conditioning program commencing January 23, 2002. He was discharged on March 1, 2002 for the purpose of transferring to another clinic. The therapist's opinion was that the worker was still very restricted in function due to his left knee injury and physical deconditioning. He had made some progress during treatment but was not safe to return to work.

9. The worker was assessed for an occupational rehabilitation program on March 4, 2002. The team concluded that the worker required additional services beyond the scope of an occupational rehabilitation program, and would benefit from a program which would address outstanding medical issues and improve functional levels specifically with regard to weight bearing tolerances and progression to unassisted ambulation.

10. The worker was then referred to a medical rehabilitation program. He was assessed by the program on March 11, 2002. The stated impression of the medical consultant was that he had recovered well from his surgical procedure and clinical findings respecting the knee were unremarkable for any objective evidence of internal derangement. Apart from tenderness, no other specific findings could be identified. The medical consultant referred to excessive alcohol intake and that the worker was generally markedly deconditioned with abdominal protuberance, shortness of breath on minimal exertion and persistent elevated blood pressure. He thought those medical conditions were a barrier to any further treatment.

11. The worker saw his family physician, Dr. Carvalho, on March 16, 2002. In his progress report to the Board Dr. Carvalho reported complaints of moderate pain, stiffness and discomfort in the left knee joint, and a feeling of insecurity and unsteadiness on the left foot. The worker complained of weakness and clicking in the joint. He felt incapable and insecure about physical activity. On examination there was mild swelling, mild tenderness, mild callor and the range of motion was painful. There was weakness of the left knee, distal thigh and

proximal leg. Dr. Carvalho indicated total disability for more than 20 days and suggested reassessment by the Board. He stated that the residual complaints problem was unresolved and there was little progress despite the surgery.

12. Successive progress reports by Dr. Carvalho in May, June, July, August, September and October 2002 report ongoing total disability. In the last progress report on the claim file for an office visit on January 6, 2003 Dr. Carvalho reported complaints of clicking, condition worse with cold weather, feeling of instability with inability to walk and weight bear for long periods, swelling, tenderness, left knee wasting, weakness of the left distal thigh and leg. He again indicated ongoing total disability for more than 20 days.

Reasons and Findings

13. The worker's representative submitted that the overwhelming weight of evidence indicated ongoing disability by reason of the left knee after March 24, 2002. He submitted that the worker was not disabled by high blood pressure or by excessive alcohol intake, or by a protuberant abdomen. He pointed to the medical evidence of ongoing total disability as documented by Dr. Carvalho.

14. I agree with the worker's representative. There is no evidence that the 'other medical conditions' referred to in the discharge reports were disabling. The evidence is that the worker was able to function at his manual job without difficulty despite his physique and despite his less-than-excessive wine consumption and despite the alleged high blood pressure. It is reasonably straight forward that his disability on and after March 24, 2002 related to the ongoing unresolved condition in the left knee.

15. I find that the worker continued to be disabled by reason of the compensable left knee condition after March 24, 2002 and is therefore entitled to ongoing compensation.

Conclusion

16. For the foregoing reasons and findings the appeal is allowed; the decision of the Board is varied.

17. I was advised by the representative that there were no reimbursable expenses related to the appeal.

Cecil S. Memory
Vice Chair

CSM/hf

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