WCAT Decision Number: WCAT-2004-00094-RB
WCAT Decision Date: **January 12, 2004**
Panel: Larry J. Campbell, Vice Chair

Introduction

The worker appeals a decision of the Workers' Compensation Board (Board) dated March 27, 2002. A Board officer determined that the worker's right wrist and thumb tendonitis was not a personal injury or an occupational disease and denied the worker's claim.

Issue(s)

Did the worker sustain a personal injury arising out of and in the course of his employment or suffer from an occupational disease due to the nature of his employment?

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.)

Background and Evidence

The worker, a 42 year old heavy equipment operator, submitted an application for compensation dated February 25, 2002. The worker noted that while operating machine #39003, on February 10, 2002, he felt sharp pains in his right wrist and thumb from repetitive use of the joystick control. The worker noted that a minimum of ten functions were required to do one load and he did about 70 loads a shift. The worker indicated this was a new job, which he commenced on January 18, 2002. The worker noted he had a prior tendonitis claim in 2000 from operating equipment at work.

The employer protested the acceptance of the claim. In a letter dated February 20, 2002 they noted that the worker had been a heavy equipment operator for a number of years. The workload on February 10, 2002 was lighter than normal (30 containers in four and one-half hours versus a normal 80 to 90 in eight hours). The employer noted the prior three shifts (February 7, 8, and 9, 2000) involved 70, 60, and 40 containers respectively.
The employer noted the worker's prior history was to immediately report to his supervisor if he had any problems. On February 10, 2002 he did not report any problem

until he was unable to work and, further, while he had seen the supervisor earlier in the day, had mentioned nothing about wrist soreness.

On February 12, 2002 the worker saw his attending physician, Dr. C, who noted the date of injury as that of the prior 2000 claim. The doctor noted the worker had been able to work without problems up until two days prior (February 10) when he started a job which caused acute tendonitis of the wrist. The doctor noted visible swelling of the dorsum of the right wrist both of the flexor and extensor tendons and decreased range of motion in the right thumb. A diagram of the joystick was included with the doctor's report to the Board.

The worker had blood tests on February 28, 2002 which showed elevated uric acid. In a report of that same date Dr. C noted the worker had a history of gout which could be a factor. In a report of March 5, 2002 Dr. C now diagnosed acute tendonitis of the right wrist with gout superimposed.

An external provider completed a work site evaluation on March 20, 2002. The provider noted that prior to January 18, 2002 the worker was a truck driver for one and one-half years. The evaluator noted the operation of machine #39003 as well as the other three similar machines. The worker mainly worked in power grip position with flexion and extension of 10 to 20 degrees and ulnar deviation to 10 degrees. The right thumb flexed to depress buttons. The second, third and fourth fingers depressed buttons at the front of the joystick. It took the worker four to six minutes to move one container with an average of 10 to 12 containers an hour. There were breaks of from 30 seconds to one minute between containers. Movements of the wrist, thumb, and fingers were about once a minute in each plane on average. The force required in all movements was minimal.

At the oral hearing the worker said he had started with the employer about 10 years prior as a heavy duty mechanic. He then became a heavy equipment operator in about 1994 or 1995 and operated a selection of equipment. He started on the machines in question about six years ago. In August 2000, operating a different machine, he had a sore and inflamed wrist. After investigation, the Board accepted that claim.

Subsequent to that claim the worker drove a yard truck for about one and one-half years. The driver job was abolished (exhibit #2) and he started back at the machine on January 18, 2000. The worker said his wrist began bothering him within two to three weeks. He had swelling of the hand and wrist with cramps in the back of the hand and the inside of the arm. The worker said he was full-time, eight hours a day, five days a week. The worker said there are two breaks of one-half hour during the shift but the employer can extend operating time if needed. The worker said that on February 10, 2002 he had worked for about four to four and one-half hours without a break. He said that the problem came on suddenly in the course of an hour. He had sharp pains and throbbing in the wrist and it became swollen.

The employer's accident report, a memo about the repair history of machine #39003 (no repairs to joystick other than a couple of no function when emergency stop pressed and notation about fire extinguisher blocking forward movement of console) and pictures of machine #39003 were also entered as exhibits at the hearing.

The worker did not think the job site visit provided an accurate picture. The worker was not the person who demonstrated the operation for the assessor. Further, the assessment was done specifically for the assessor and was not in the normal course of work. The worker said picture #1 in the report was not how he operated the machine. He said he used a power grip with the fingers and thumb wrapped around.

The worker noted the cab in machine #39003 did not slide like that of the other three similar machines. Further, the worker was not aware, until the assessor's visit, that the control panel could be adjusted. The worker said the controls on that machine also differ in their functions from those on the other machines. The diagram on the Board file was that of machine #39003. The worker thought that the controls were stiffer on that machine than on the others.

The worker said his problem was similar to the one in 2000. Since that time he has used a spring grip at home to strengthen the hand as recommended by the Board. He would also stretch his hand and wrist on breaks. He said that after his problem on February 10, 2002 the garage noted that the fire extinguisher had been preventing forward movement of the console.

The worker received physiotherapy and returned to work at modified light duty. After the job site assessment the employer stopped the light duty and told him to stay home. The worker ultimately returned to work on the same machines. The worker said that just before the hearing he had further soreness in his wrist and had applied for a new claim.

The worker confirmed that he did suffer from gout which flared up on occasion. His gout flare-ups are not related to work and occur about three times a year. His hobbies include bicycling, walking, jet-skiing, and riding a dirt bike.

The worker's representative submitted that the worker met the criteria for acceptance of his tendonitis as an occupational disease. The worker was not accustomed to working on the equipment, specifically machine #39003 which was more difficult to operate. While the gout might be a factor, it was work that caused the disability.

The employer's representative submitted that the worker's problems were more likely related to flare-up of gout and that the work was not significant.

Findings and Reasons

Section 5(1) of the *Workers Compensation Act* (Act) provides that compensation is payable where a worker sustains a personal injury arising out of and in the course of their employment.

Item #13.10 of the *Rehabilitation Services and Claims Manual, Volume 1* (RSCM) sets out the distinction between injury and disease. Some conditions may be considered either an injury or a disease depending on the cause of the condition. For example, any disorder caused by trauma – including tendonitis, would be an injury and adjudicated under section 5 of the Act. In the absence of trauma, the condition, in this case tendonitis, would be a disease.

I find no evidence that the worker sustained a trauma to his wrist or thumb on February 10, 2002. Accordingly I find that his condition was a disease which must be adjudicated under section 6 of the Act.

Section 6(1) of the Act provides that benefits are payable where a worker suffers from an occupational disease which is due to the nature of the work at which they were employed.

Section 6(3) of the Act provides a presumption for occupational diseases which are set out in schedule B of the Act. Tendonitis of the hand-wrist is an occupational disease set out in schedule B.

Item #27.12 of the RSCM sets out in greater detail Board policy with respect to the Description of Process or Industry set out in schedule B for tendonitis.

The first test, frequent repetition, is related to the frequency of the work cycle for the tasks and whether the affected muscle/tendon groups have adequate time to return to a resting state. In essence a worker who performs the same task without interruption or rest is likely to perform frequently repeated motions. In this case, I find the number repetitions within a cycle are not high, although the cycles are repeated many times during a shift. As the worker spends more than 50 percent of the work cycle repeating the same motions, I find the work activity met this test.

The second test is whether there is significant flexion (greater than 25 degrees), extension (greater than 25 degrees), ulnar deviation (greater than 10 degrees), or radial deviation (greater than 10 degrees). In this case I find the work site evaluation provides the best information and this establishes that the ranges of motion were less than those set out in policy. I find the work activity did not meet this test.

The third test is forceful exertion. This relates to factors such as weight, manner of movement, friction, sustained forces, and type of grip. In this case I find the evidence supports the conclusion of the work site evaluation that the forces involved in all movements were low. I find the work activity did not meet this test.

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Therefore, as the work activity did not meet at least two of the three tests required by schedule B of the Act, I find that the presumption in section 6(3) of the Act does not apply.

In the absence of the presumption, consideration then turns to whether the worker's problems were an occupational disease pursuant to section 6(1) of the Act. Applicable Board policy is contained in item #27.20 of the RSCM. General risk factors as set out in item #27.40 of the RSCM are also applicable.

In this case, the worker had only recently returned to the machine operation position. I find the job was, therefore, unaccustomed. The problem, however, lies in the relatively minimal nature of the risk factors to which the worker was exposed as well as the existence of a pre-existing systemic condition. Repetition and unaccustomed activities in and of themselves are not sufficient to allow a conclusion the tendonitis was work related. I find that given the minimal nature of the risk factors in this case, it is less than 50 percent likely that the worker's diagnosed tendonitis was due to the nature of his employment and I deny the appeal.

Conclusion

I confirm the decision of the Board dated March 27, 2002. No costs were requested and none are awarded.

Larry J. Campbell
Vice Chair

LJC/cmm/gl