WCAT Decision Number: WCAT-2004-00097-RB
WCAT Decision Date: **January 12, 2004**
Panel: Eric S. Sykes, Vice Chair

Introduction

The worker appeals decisions made by an officer of the Workers' Compensation Board (Board) contained in a letter dated June 4, 2001. In that letter a case manager, following a review of the information available and following consultation with a Board medical advisor, declined to accept the worker's recent complaints of low back pain as part of his November 1998 claim. The case manager noted that 27 months had passed since the worker had returned to work, and his back had been trouble free up to the report of the current symptoms. Further, the case manager decided, after consultation with a Board medical advisor, that there was nothing in the current work activities of causative significance to the worker's current symptoms. As a result, the case manager declined to accept the worker's current diagnosed condition as a new claim arising out of and in the course of employment.

The worker argues on his notice of appeal - part 1 that an injury happened at work.

My finding is made by way of a review of the Board file, the submissions received and application of Board law and policy.

Issue(s)

1. Is the worker entitled to a reopening of his November 1998 claim for the symptoms/diagnosed conditions reported in May 2001?

2. Did the worker experience a new injury arising out of and in the course of his employment (new claim)?

Jurisdiction

This appeal was filed with the Workers' Compensation Review Board (Review Board). On March 3, 2003, the Appeal Division and 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).

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Background and Evidence

The worker, then a 49-year-old millwright, completed an application for compensation on December 4, 1998, and recorded that, on November 25, 1998 while pulling on a piece of lumber, he felt a sharp pain in his lower back and right side.

In an attending physician's first report dated November 25, 1998, Dr. M diagnosed mechanical back pain.

In a claim log entry dated December 7, 1998 a client services representative (CSR) recorded that the claim had been accepted for a low back strain.

In a work conditioning program discharge summary report dated February 12, 1999, a physiotherapist recorded that the worker had made good progress in the program. He was discharged from the program as fit to return to work with no limitations.

In a physician's progress report dated May 11, 2001 Dr. B recorded the worker's comments that he had reactivated his November 1998 injury at work. The doctor diagnosed a paravertebral and flank strain with referred pain.

In an administrative claim log entry dated May 31, 2001 a case manager recorded a conversation with the worker who said that his back had been feeling good in the time since his February 1999 discharge from a work conditioning program up to the last two weeks. The worker confirmed that he had not sought medical attention for his back between the discharge from the work conditioning program in February 1999 and May 11, 2001. The worker stated that there had been no major breakdowns requiring significant physical effort at work and nothing out of the ordinary in the two weeks following his return from vacation. There had been very little in the way of physical activity during the recent time at work.

In a claim log entry dated June 1, 2001 Board medical advisor Dr. L opined that, since the worker had been able to return to his regular job with no limitations following the work conditioning program in February 1999, his present symptoms reported on May 11, 2001 could not be related to the 1998 work incident, and there was no new incident mentioned that would be causative of a new claim.

In a letter dated June 4, 2001 to the worker, which is the subject of this appeal, a case manager informed him that the Board would not reopen his 1998 claim, nor would they accept the conditions of May 2001 as a new claim.

This appeal was scheduled as an oral hearing. I was notified a few hours in advance of the scheduled hearing by the worker's representative that the worker would not attend the hearing because he had a job interview that day. I allowed the appeal to proceed by means of a read and review. I invited submissions from the worker and the employer and time was provided to comment on the submissions.

In an August 26, 2003 submission the worker provided chart notes from the attending physician for the period January 13, 1999 to February 12, 1999. On February 8, 1999 the attending physician recorded the worker's comments that his low back felt "okay." Also included were a January 4th and February 10, 1999 physiotherapy assessment. The February 10, 1999 assessment report contained the comments "okay to return to work" followed by the therapist's signature.

In a September 4, 2003 submission, the employer's representative noted that no new evidence had been submitted that linked the May 2001 symptoms to the November 1998 injury. The representative also noted that no new evidence had been submitted by the worker with respect to acceptance of a new claim.

Reasons and Findings

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

Policy item #170.10 of the *Rehabilitation Services and Claims Manual, Volume 1* (RSCM) guides in adjudication of reopening and consideration of a new claim. It sets out in part that where a worker claims compensation in circumstances that could reasonably be alleged either as a recurrence of a previous injury or as a new claim, the matter should be treated as if the worker is claiming both in the alternative. Thus, whether the worker treats the claim as a recurrence of a previous injury or as a new injury, the matter should be processed as if the worker is asking for it to be treated as both in the alternative.

The submission provided by the worker showed that he had recovered from his November 1998 low back strain by mid February 1999. Because the worker had recovered by February 1999 and because of the 27 months until the next medical report of low back pain and because of the opinion of the Board medical advisor, I find the symptoms reported in May 2001 are not linked to the worker's claim of November 1998.

Because of the lack of evidence of a new incident I find the worker did not sustain an injury arising out of and in the course of his employment in May 2001.

Conclusion

I confirm the Board's decision in this matter. I deny the worker's appeal.

No costs are permitted.

Eric S. Sykes
Vice Chair

ESS/jtr/cd

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