WCAT Decision Number: WCAT-2004-00102-AD
WCAT Decision Date: **January 12, 2004**
Panel: Sarwan Boal, Vice Chair

Introduction

The worker was employed as a miner. On February 23, 1963, he suffered compensable injuries. On October 19, 2000, he had a laminectomy/discectomy and foraminotomy at L2-3. He applied to the Workers' Compensation Board (Board) to reopen his February 23, 1963 claim to cover the surgery.

In a January 24, 2001 decision letter, a case manager advised the worker that it was extremely unlikely that his surgery on October 19, 2000 was related to his 1963 compensable injury. Therefore, he denied the reopening of his 1963 claim.

The worker appealed to the Workers' Compensation Review Board (Review Board). In the September 11, 2002 findings, the Review Board concluded that it was most likely the worker did not suffer any significant low back injury in the 1963 incident that could have led to the current low back problems. The Review Board denied the worker's appeal. However, the Review Board directed the Board to investigate the relationship between the worker's prior back claims and his current low back problems which resulted in surgery.

A workers' adviser filed a notice of appeal, on behalf of the worker, dated March 4, 2003. However, the workers' adviser indicated that they would not be representing the worker. The employer's representative provided a submission dated October 1, 2003.

The worker requested an oral hearing. However, after a review of the evidence on file, I find an oral hearing is not necessary to fully and fairly adjudicate this matter.

Issue(s)

Whether the worker's October 19, 2000 surgery is related to his February 1963 claim, and therefore he is entitled to have his claim reopened.

Jurisdiction

This appeal was filed with the Appeal Division. 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 an Appeal Division panel before that date, it has been decided as a WCAT appeal. (See the *Workers Compensation Amendment Act (No. 2), 2002,* section 39.)

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Background and Evidence

The worker's claim history has been fairly detailed on file and in the Review Board findings. Therefore, only the evidence relevant to the issue will be repeated here. Suffice it to say that, on February 23, 1963, while barring down a draw hole, the draw hole sloughed and the muck hit a cable which was tied to an eye-bolt in the back of the sub. The cable struck the worker across the shoulder blades, and threw him across the sub. The worker was knocked unconscious.

The first aid report described pain over the shoulder blades, abrasion of the left knee, soreness of the index, middle and ring fingers of the right hand.

The worker, on his application for compensation, indicated that his whole body was in pain.

The evidence on file indicates the worker was taken to hospital, and was discharged on February 28, 1963. The diagnosis was "injured back muscles".

The Review Board, in its findings, noted in part:

> At the hearing the worker said he had some difficulty remembering that far back, but believed that in lieu of staying in the hospital for an extended period he was put on light duty, comprised of resting on a cot at work, for about a year and a half after the accident. However, the employer's records and hospital records indicate the worker had a severe right hand injury in August of 1963 when the drill steel on the worker's jack-leg drill broke at the chuck, causing the drill to jump ahead and catch the worker's right hand. The worker was off on account of that injury for three months. And hospital records that in March of 1994 a rock fell on the worker's head at work, causing concussion and bruises.
>
> [reproduced as written]

On September 13, 2000, the worker saw Dr. B, who noted the worker presented with some left leg pain and numbness starting in July 2000. Dr. B indicated the worker's X-rays showed some spondylosis and spondylolisthesis at L2-L3 and L3-L4 arthritic changes in the lower lumbar spine.

An October 18, 2000 CT scan indicated diffuse degenerative disease, with a disc herniation at L2-3 on the left, with a large sequestered fragment occupying half of the thecal canal, compressing the L3 nerve root.

On October 19, 2000, Dr. B performed a laminectomy at L2-3, discectomy and foraminotemy.

An MRI of the lumbar spine, dated March 2, 2001, showed:

> There is significant multilevel spondylitic degenerative disc disease throughout the lumbar spine as described.
>
> Residual/recurrent left posterolateral fairly prominently inferiorly directed impinging L2/L3 disc herniation invested in left anterolateral epidural perineural scar.
>
> Impingement of the recurrent/residual disc herniation upon the proximal left L3 nerve/perineurial scar complex from its thecal sac origin to within the proximal left lateral L3 recess.
>
> [reproduced as written]

Submission

The employer's representative argued, in essence, that in February 1963 the worker injured his upper back in the area of his shoulder blades, not the low back. She further argued that the worker's current low back symptoms are unrelated to any previous back injury. She finally argued the worker's claim was never reopened during the subsequent 37 years.

Law and Policy

Item #106.20 of the *Rehabilitation Services and Claims Manual, Volume 1* (RSCM) provides that an application for a reopening is one that does not question the validity of any previous decision and does not request that a change be made in that decision, but requests that further compensation be paid on the basis that the claimant's circumstances have changed since the decision was made.

Policy items #107.00 and #107.10 of the RSCM describe the procedure for requesting a reopening of a claim. For the reopening of a claim, there must be evidence that the initial injury had causative significance in relation to the worker's subsequent ongoing problems.

Reasons and Findings

The worker has not provided any submission or new evidence. After a review of the evidence on file, I concur with the Review Board that other than the worker's statement on his application for compensation, that he hurt his whole body, there is no indication on file that he hurt his low back in the February 1963 accident. The evidence on file indicates the worker likely suffered injuries to his upper back in 1963. Moreover, the recent medical evidence on file from Dr. B, who also performed the

October 2000 surgery, does not support the worker's claim. In his opinion, the worker's low back pain is probably arthritic in nature. Furthermore, the recent medical evidence on file indicates the worker has widespread degeneration throughout his entire spine, suggesting a natural aging process. I also note the worker's claim has never been reopened since February 1963.

The Board's published policy provides for a reopening of a claim where there has been a recurrence of the original compensable injury. I find insufficient evidence on file to relate the worker's surgery in October 2000 to his compensable injury of February 1963. I further find he is not entitled to have his February 1963 claim reopened.

Conclusion

I deny the worker's appeal, and confirm the Review Board findings of September 11, 2002.

Sarwan Boal
Vice Chair

SB/jyo

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