WCAT Decision Number: WCAT-2004-00106-RB
WCAT Decision Date: **January 13, 2004**
Panel: Lois J. Williams, Vice Chair

Introduction

In 2000, the worker was working as a partner in a concrete and renovation business when he developed a bilateral upper limb condition diagnosed as bilateral carpal tunnel syndrome. According to the information on file, he had Personal Optional Protection of $2,500.00 per month ($30,000.00 per year). His claim for benefits was initially denied, but later accepted by the Workers' Compensation Board (Board).

The worker now appeals a case manager's December 19, 2001 decision that said that wage loss benefits were terminated on December 16, 2001, as he had recovered from his carpal tunnel syndrome and related surgeries. The case manager said that there was no medical evidence connecting the ongoing cramping in the right hand to the carpal tunnel syndrome. As there was no medical evidence that the worker could not return to work, there would be no referral to the Vocational Rehabilitation Department.

The worker contends that he suffered damage to a nerve or nerves in his right hand during carpal tunnel release surgery, and the resulting cramping of the right hand hinders his ability to work.

Issue(s)

Was the worker still temporarily disabled when his wage loss benefits were terminated on December 16, 2001? Was he fit to return to work, or was he entitled to a referral for vocational rehabilitation?

Has the worker recovered from his bilateral carpal tunnel syndrome? Is the cramping in the right hand related to the compensable condition?

Is there evidence of permanent functional impairment related to the compensable condition?

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.)

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Background and Evidence

After being diagnosed with carpal tunnel syndrome in November 2000, the worker only performed supervisory work on two jobs. His partnership dissolved in April 2001. After his first surgery, left carpal tunnel decompression, on May 7, 2001, the worker attended a hand therapy clinic. By June 8, 2001, the clinic reported that the left arm was progressing well, the scar was softening, there was increased range of motion and finger movement was good.

The worker underwent right carpal tunnel decompression surgery on July 9, 2001, following which the worker began reporting intermittent cramping in the right hand. In a September 24, 2001 report of a September 18, 2001 consultation, plastic surgeon Dr. Smith recorded the worker's complaints, including the report of one episode of the right long finger deviating 45 degrees, secondary to cramping. Dr. Smith could see no abnormality on examination, and said that he had "absolutely no explanation" for the deviation and cramping in the right hand. At that time the worker also had complaints of persistent numbness in the left hand, with occasional tingling and a feeling like the median nerve distribution was "on fire".

On October 1, 2001 the hand therapy clinic reported the right hand was doing quite well, but the worker would be seeing a neurologist regarding his continued complaints of tingling and burning in the left hand/arm.

On October 22, 2001, neurologist Dr. Kemble reported that he had seen the worker before, in 1995, for minimal bilateral carpal tunnel syndrome and for unusual electric shock-like sensations radiating from the axillae down the arms. In 1995 he had suggested the worker be kept under surveillance and wear a splint at work. Dr. Kemble recapped the recent history, stating that the worker went off work in 2000 after developing more symptoms while using a jackhammer a lot of the time. Dr. Kemble recorded that the worker developed numbness and tingling in all the fingers of the left hand, and diffuse aching pain enveloping the whole of both hands. Dr. Kemble said that in October 2001, the worker reported he only had minimal tingling and numbness in the right hand. The worker now described cramping in the right hand with the fingers going into flexion, something he had never had before surgery.

Dr. Kemble said the worker's clinical examination was neurologically normal, and his electrodiagnostic testing showed an "extremely minimal left sided carpal tunnel syndrome". Dr. Kemble said this was often present after successful median nerve decompression, with the nerve conduction never fully and completely returning to normal. Dr. Kemble suspected that the worker had come off work in 2000 due to the pain in his hands, which Dr. Kemble felt was due to an associated inflammatory problem in the soft tissues of his hands and not due to the carpal tunnel syndrome. He felt the current history of cramps in the right hand would not be due to an underlying

neurological reason, but might be due to a soft tissue inflammatory problem in the hand.

On October 31, 2001, Board medical advisor Dr. Angus reviewed Dr. Kemble's report and noted that a minority of carpal tunnel syndrome patients experience continued symptoms following even successful surgery and the only action that was appropriate was to adopt a wait and see approach. Dr. Angus felt that treatment of the carpal tunnel syndrome was then essentially complete, but he suggested the case manager get a thorough discharge report from the hand therapy clinic to determine if the worker required vocational rehabilitation referral.

On December 3, 2001 attending physician Dr. Rockerbie said the worker had persistent left first, second, and third digit paresthesia and recurrent cramping of the right third finger, likely permanent in nature. Dr. Rockerbie said the worker needed retraining in a field avoiding vibration and extensive repetitive hand movement.

On December 14, 2001, the hand therapy clinic's therapist reported that when the worker was discharged from treatment on October 2, 2001 the left hand had poor strength and intermittently decreased sensation. Mobility was within normal limits. The left hand wrist scar was still thick and hypersensitive. These abnormalities could be barriers to a successful return to work. The therapist said the right hand was functioning normally and endurance would have developed on the job.

Following a team meeting held at the Board on December 5, 2001, the case manager recorded that Dr. Angus' medical review suggested that the carpal tunnel syndrome had resolved with surgery. Further, that the ongoing symptoms had not been explained by the neurologist or hand specialist, and those symptoms were not related to the carpal tunnel syndrome.

Following termination of his benefits, the worker called the Board on January 30, 2002, and said that he was still not working and that he had an appointment to see Dr. Gropper [hand specialist] on April 22, 2002. The case manager told the worker that he would review any new medical information received.

No new medical information was submitted to the Board. In a June 6, 2003 report submitted to WCAT on August 5, 2003, Dr. Rockerbie said that the worker developed episodic "cramping" of the right first, second, and third digits following surgery, and this tended to occur three to four times per day, lasting from 10 seconds to many minutes. The worker states that these digits contract and form a claw, which he relieves by manually stretching out his digits. He no longer has numbness in either hand. The worker has seen a number of specialists about the "cramping," but Dr. Rockerbie has no firm explanation for these symptoms. Dr. Rockerbie emphasized that the worker did not have these symptoms prior to surgery.

In July 2003, the worker's representative submitted to WCAT a copy of the worker's tax return filed with the Canada Customs and Revenue Agency for 2001. It shows low earnings from employment for that year, just income from RRSPs and workers' compensation benefits. Also submitted was an uncertified, partial T1 Special for 2002 for the worker's wife, which claimed she had taxable income of $35,052.90 for 2002 and the worker had net income of $5,000.00. No other details are given, and the worker's income tax return was not submitted.

The worker's representative also submitted letters from three employers who have used the worker's services since his return to work. One of the employers, A, in an undated letter received at WCAT on November 8, 2002, said that the worker does not work for him anymore because of the "unreliability in the use of his hand cramping up, at times constantly". This employer said that in renovation work, he needed a carpenter who could work a full 8 to 10 hour day, and the worker's hand problem prevented this.

Another employer, B, said the worker worked for him as a sub-contractor on a casual basis between February and December 2002, doing carpentry work. Often the worker would have to take extended breaks or leave early due to extreme cramping and pain in his wrists. On the occasions that a long drive to a jobsite or a lot of delivery of materials was required, the worker would often complain of cramping and stiffness, especially in his right wrist and fingers. Due to the physical work and long hours associated with carpentry work, this employer found it difficult to keep the worker on as a favored sub-contractor, despite his excellent work standards.

The third employer, C, a cement finisher, said in a letter dated August 5, 2003 that the worker had been employed with him on a part-time basis for one and one-half years. The employer said the worker's capability as a carpenter is very limited due to the cramping in his right hand, which the employer had witnessed on numerous occasions.

At the oral hearing held on August 26, 2003, the worker said that he was awake during his right carpal tunnel decompression surgery in August 2001 [July 9, 2001]. He said the surgeon cut a nerve in his right hand, which caused him to lift off the table. The worker said the surgeon said, "Oops, sorry". The worker said that two seconds later the surgeon did it again. The worker said that he has suffered from intermittent cramping of the right hand since. He said that it occurs three to four times per day and at night. He said the last three digits of his hand "go sideways" and "veer off" to the side of his hand. This lasts from a few seconds to a couple of minutes, and then his hand is sore for about an hour. Sometimes if his hand keeps cramping, it is sore all the time. He said the cramping affects his grip strength and he drops the skilsaw, hammers, and dishes. He does not know when the cramping will occur.

The worker said the cramping affects his employment and he has only worked part-time since December 2001. He said he has worked for the cement finisher, C, for one and one-half years. He also had worked for B while on loan from C, but could not perform

all his duties, so the employer had to let him go. He worked for the other employer, A, for three months in early 2002, framing a basement in a residential home and fire doors in an apartment building.

The worker said he only earned $5,000.00 in 2002 and had only earned $3,000.00 to $4,000.00 so far in 2003. He said he guessed work was busier in 2003, to account for his higher earnings. He said that he does not work full-time due to his hand. He said that he could work eight hours a day, but then would not be able to work for the next two days. He said that his employer, C, pays him $15.00 per hour and puts him on light duty for four to five hours every day.

The worker said that although he thinks the surgeon cut or at least touched his nerves, testing has not shown any nerve damage and Dr. Kemble told him that his nerves are fine. The worker said that his left hand is fine, and he no longer has numbness or tingling in either hand. His problem is the intermittent cramping and resulting soreness in his right hand. The worker said that he did see Dr. Gropper and Dr. Gropper told him that all his nerve endings were fine. The worker said that all the doctors say pretty much the same thing. He said he even told the surgeon who operated on him that he had cut his hand and the surgeon had nothing to say. The worker said that no treatment has been suggested for his hand cramps.

The worker's representative did not submit Dr. Gropper's consultation report, but said that Dr. Gropper "has no findings…not remarkable".

The worker's representative submits that the cramping in the right hand is a result of the surgery for the compensable carpal tunnel syndrome surgery, and that this cramping affects the worker's ability to work. The representative cited Board policy items #22.10 and #22.11 of the *Rehabilitation Services and Claims Manual* (RSCM), and said that benefits should be considered for the permanent cramping. The representative also cited policy item #97.00 of the RSCM, regarding evidence, and policy item #96.20 of the RSCM, submitting that the case manager must refer the matter to Disability Awards.

Policy

Board policy item #33.00 of the RSCM states that wage-loss benefits are payable where an injury or disease resulting from employment causes a period of temporary disability from work, but the benefits cease when the worker recovers from the injury or the condition becomes a permanent one. In the latter case, a pension is assessed.

Board policy item #22.00 of the RSCM states that once it is established that an injury arose out and in the course of employment, the question arises as to what consequences of that injury are compensable. The minimum requirement before one event can be considered as the consequence of another is that it would not have happened but for the other. Policy item #22.11 of the RSCM deals with disablement

caused by surgery. The policy states that where a further injury arises as a direct consequence of treatment for a compensable injury, the further injury is also compensable. Ordinarily, when a worker undertakes surgery for the injuries sustained, the consequences of the surgery are accepted as consequences of the accident, and any disablement resulting from the surgery is treated as compensable.

Board policy item #97.00 of the RSCM states that the adjudicator must determine what evidence is needed to determine a matter, and then weigh the evidence. If there is a preponderance in favour of one view over the other, that is the conclusion that must be reached. However, if it appears that the disputed possibilities are evenly balanced, the issue must be resolved in accordance with that possibility which is favourable to the worker. Board policy item #97.10 of the RSCM states that this applies only where there is evidence of roughly equal weight for and against the claim. While an absence of positive data does not necessarily mean that a condition is not related to a person's employment, it may mean that there is a lack of evidence that any such relationship exists. The Board must make its decisions according to the evidence or lack of evidence received, not in accordance with speculations unsupported by evidence.

Board policy item #96.20 of the RSCM states that to ensure consistency, referrals to the Disability Awards Department are made where a medical report indicates that a permanent disability exists or possibly exists; where a worker indicates there is a permanent disability or inability to return to employment; or where there is any other indication or doubt about the existence of a permanent disability or potential permanent disability. The case manager must clearly state the status of the claim and confirm what conditions have been accepted.

Findings and Reasons

The worker was discharged from the hand therapy program in early October 2001. At that time, the therapist said that the worker still had some residual symptoms in his left hand, but his right hand was good. Neurologist Dr. Kemble said the worker's clinical examination was normal on October 19, 2001, although the worker complained of some left hand symptoms and also right hand cramping. Dr. Kemble did not state that the worker was disabled by either arm/hand. Although not submitted to this panel, the worker and his representative state that Dr. Gropper, who is an eminent hand specialist, found nothing remarkable on examination. The worker and his attending physician, Dr. Rockerbie state that he does not have any residual numbness or tingling in either hand.

I find the weight of the evidence supports a finding that the worker no longer was suffering from a temporary disability at the time his benefits were terminated on December 16, 2001. His last surgery had been in the summer of 2001, and he had been treated and discharged from therapy. His neurological consultation had not resulted in any more investigations or treatment. His subsequent hand specialist

consultation also did not result in any more treatment. I find that the worker was no longer temporarily disabled and, pursuant to policy item #33.00 of the RSCM, he was no longer entitled to temporary disability benefits.

The worker does have intermittent cramping that started at some point after his right hand surgery. He thinks that a nerve or nerves were compromised in some way during that surgery. However, this has been thoroughly investigated by a neurologist who states there is no nerve damage. Apparently the hand specialist also reports no pathology and has no explanation for the cramping. The neurologist feels that the cramping may be somehow related to some longstanding soft tissue inflammation or irritation. This claim was only accepted for bilateral carpal tunnel syndrome, and the cramping was not part of the symptoms for which the claim was accepted. The possibility that the cramping is due to surgical misadventure and/or the carpal tunnel syndrome has been medically investigated and no explanation has been found. There is a lack of a diagnosis for the cramping, and no medically based rationale to support a relationship between the cramping and the surgery or the carpal tunnel syndrome. In accordance with policy items #22.00, #22.11, #97.00, and #97.10, on this evidence I cannot conclude that the cramping is related to either the condition accepted under the claim or to a compensable consequence of that condition and its treatment. To do so would not only be speculative, it would be contrary to the available evidence.

I find that the worker has recovered from the bilateral carpal tunnel syndrome accepted under the claim. He was treated with decompression surgeries and he no longer has symptoms of numbness or tingling in either hand. The worker attributes his difficulty at work only to the intermittent cramping, and resulting soreness, in his right hand. I have found that problem is not compensable under the claim. There is no evidence that the worker has any continued signs, symptoms, or disability that is related to carpal tunnel syndrome and I find that condition has resolved. Pursuant to policy item #96.20, there is no remaining condition accepted under the claim that warrants a referral to the Disability Awards Department.

Conclusion

I confirm the Board's December 19, 2001 decision and deny the worker's appeal.

I authorize reimbursement for the cost, if any, of Dr. Rockerbie's June 6, 2003 report, to be reimbursed in accordance with the Board's schedule of fees.

Lois J. Williams
Vice Chair

LJW/mli