WCAT Decision Number: WCAT-2004-00108-RB
WCAT Decision Date: **January 13, 2004**
Panel: Deirdre Rice, Vice Chair

Introduction

In a letter dated August 21, 2001, a case manager with the Workers' Compensation Board (Board) advised the worker, a technology consultant, that her claim for bilateral extensor tendonitis and neck strain had been accepted. The condition was attributed to extensive keyboarding with awkward posture that she had undertaken in June of 2001, and the worker received wage loss and other benefits commencing July 17, 2001.

The worker appeals two decisions of the Board. The first is the January 7, 2002 decision of a case manager to allow only part of a request she had made for reimbursement of medical expenses. The second is the May 13, 2002 decision in which the case manager advised the worker that her wage loss benefits would conclude on May 19, 2002 and that the Board would not approve any further health care costs related to her injuries. The worker seeks further wage loss benefits, as well as reimbursement for the health care expenses the Board would not pay.

Issue(s)

The issues raised in these appeals are: whether the worker was temporarily disabled from working by reason of her compensable condition between May 19, 2002 and August 13, 2002 and so is entitled to wage loss benefits for that period; and, whether the worker is entitled to reimbursement for any of the health care expenses she claims.

The worker's claim was reopened on August 13, 2002. Consequently, this decision is concerned only with the worker's entitlement to benefits prior to that date.

Jurisdiction

These appeals were 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 the appeals had not been considered by a Review Board panel before that date, they have been decided as WCAT appeals. (See the *Workers Compensation Amendment Act (No. 2), 2002*, section 38.)

Background and Evidence

An oral hearing of the appeals was held in Victoria on December 4, 2003. The worker was present without representation. The employer did not participate.

The worker is currently 40 years of age. She had been employed as a computer programmer for about five years when, in March of 2001, she developed forearm pain. In June of 2001 her workload increased and she spent up to 13 hours a day keyboarding on the computer in her office and also on a laptop computer at home and at client premises. She stopped working in July, 2001 as of a result of her condition. Her claim was accepted based on a review of her work duties by an ergonomic evaluation specialist and the opinion of a Board medical advisor, Dr. S. Martin.

The worker began physiotherapy treatment in July, 2001 and the Board referred her to an activity-related soft tissue disorder (ASTD) program in September. Some confusion arose. Board staff and the ASTD program providers had difficulty contacting the worker, and the worker mistakenly believed that her family physician, Dr. D. Fontaine, had advised the Board that she was not yet ready for the program. Ultimately this was clarified. The worker did not begin the program until October 11, 2001.

On September 25, 2001, the worker called the Board and spoke with a team assistant because she wanted to discuss her rights regarding referral to treatment. The team assistant told her that the Board manages claims according to objective medical evidence and that her doctor's recommendations would be weighted heavily in any decisions about her treatment. He also told her that her case manager was responsible for making all claim-related decisions and she should discuss any of her concerns with him.

On September 28, 2001, the team assistant received a message from the worker requesting an extension of her physiotherapy treatments. When she contacted him on October 1, 2001, he advised her that, because there was no improvement in her symptoms, the Board would not be funding further physiotherapy treatment.

In early October, 2001, Dr. Fontaine referred the worker to Dr. S. Gershman, a specialist in sport medicine. In a report dated October 10, 2001, Dr. Gershman said that the only diagnosis he could really make was bilateral wrist pain of unknown etiology, which was similar to saying repetitive strain injury. However, he did not think the worker's condition fell into any particular diagnostic category or that she had a rheumatological condition. Dr. Gershman said that he had spoken with the worker about the brain's involvement with chronic pain, and that she had been receptive to seeing a psychologist. He also said that he had reassured the worker that she was not causing any damage to her wrists by using them.

When the worker began the ASTD program on October 11, 2001, she was presenting with non-specific symptoms of a repetitive strain type injury. The program's

physiotherapist identified several barriers to her return to work, including depressed symptoms, diffuse symptoms throughout her arms, her unresponsiveness to previous treatment and an inflexibility regarding work tasks and ergonomic changes. She attended the program until her discharge on January 16, 2002.

Dr. M. Boissevain, a clinical psychologist, completed the discharge report on January 22, 2002. He said that the worker had failed to make any functional progress over the course of the program. In addition, her behavioural manifestations of disability were consistently extreme and reportedly bore little connection to any known physiological disorder. She complained of pain in both wrists and shoulders, her neck and her back, and also manifested medically-inexplicable disability behaviours. He thought the worker might have a somatoform disorder, or alternatively a conversion disorder or pain disorder associated with psychological factors. He did not consider that a factitious disorder or malingering were likely diagnoses, but thought these should be ruled out by *in vivo* observation. Dr. Boissevain recommended a comprehensive psychological evaluation.

Dr. S. Lustig, a registered phsychologist, subsequently interviewed and evaluated the worker. In a report dated March 5, 2002, he said that, although she likely met the criteria for pain disorder associated with both psychological factors and a general medical condition in the fall and as recently as December 2001, she did not currently meet the criteria for mental disorder and there was no indication of a psychological diagnosis at that time. He said she had progressed well over the past months and was optimistic about a return to work. From a psychological perspective, Dr. Lustig had no reason to expect that she would not recover and return to work. At that time, he saw no apparent need for psychological treatment, but he noted that the worker would require a graduated return to work program and might also benefit from some workplace accommodations.

After seeing the worker on February 19, 2002, Dr. Fontaine told the Board that she could return to her pre-accident employment. She confirmed this after a March 19, 2002 appointment and again after seeing her on April 3, 2002, although she indicated that modifications would be required. Dr. Fontaine said that the worker's forearm pain was less intensive and less constant than it had been. In an April 18, 2002 report, Dr. Fontaine confirmed that the worker was fit to return to work as of April 16, 2002. She did not indicate that any restrictions were required, but did note that use of a mouse aggravated the worker's forearm pain after ten minutes.

The worker began her graduated return to work on April 8, 2002. This involved a gradual increase in her hours through to May 17, 2002, when she was to begin working a full day. The Board also paid for two additional physiotherapy treatments on April 25, 2002 and May 1, 2002 so that she could be advised of a home/gym program designed to strengthen her upper body.

In the May 13, 2002 decision, the case manager confirmed that the worker's wage loss benefits would be concluded on May 19, 2002 in accordance with the graduated return to work program. He also advised that the Board would not be approving further health care expenditures. Finally, he advised that he was returning receipts for massage therapy that the worker had submitted and would not be funding massage therapy beyond January 13, 2002, by which time she would have received his January 7, 2002 letter.

In the letter of January 7, 2002, the case manager had advised the worker that he had not approved reimbursement for a TENS unit, as these are loaned by the Board to injured workers and third party rentals are not paid. He also said that the Board does not pay any medical form fees or for adaptive devices for home computers, and he advised the worker that her physiotherapist should bill the Board directly and she should seek a refund. He also wrote as follows:

> In the future we would ask that you contact us for approval of any medical expenses relative to your claim so that we can make entitlement decisions in advance of any purchases.

After seeing the worker on May 15, 2002, Dr. Fontaine said she had experienced increased pain after working for four hours. Although she felt the worker could continue with modified full time work involving no heavy lifting, she did not consider recovery to be satisfactory. She recommended a referral to Dr. Rocheleau regarding her chronic pain.

Dr. Fontaine sent her next report to the Board after seeing the worker on August 14, 2002. She said that the worker, was working on the computer approximately four hours per day at that point, had been experiencing bilateral pain in her forearms and wrists for two weeks. She said that the worker could continue to work if she did not type. Since the worker could not do computer keyboarding, there was no work for her and her last day of work was August 12, 2002.

On September 13, 2002, Dr. Martin examined the worker. His examination did not reveal any significant objective physical results. However, his findings led him to believe that the worker might have intersection syndrome involving her forearms. He also said she tended to somatize some of her symptomology and her physical complaints were in excess of the physical findings to some degree. At that point, he did not believe that her magnified symptom behaviour was intentional or a result of malingering. Dr. Martin asked the worker to get rid of the braces she was wearing on her arms. They were counterproductive and could lead to disuse atrophy and local contact pressure. Dr. Martin also asked her to start using her arms and hands on a regular basis and to stop avoiding activity because of pain. He also made recommendations for further instruction from her physiotherapist and said that a gradual return to work should be organized in the future.

The Board reopened the worker's claim for the payment of further wage loss and medical benefits effective August 13, 2002.

After seeing the worker again on November 8, 2002, Dr. Martin said that she had really not progressed in over a year and a half. Although he had previously thought she had intersection syndrome, she did not have any of the hallmarks of that condition. He concluded that she had a pain problem rather than a specific pathophysiological process involving the muscle tendon apparatus.

In a subsequent Board log entry dated March 14, 2003, Dr. Martin confirmed that his examination of the worker did not result in any objective medical findings relative to a particular pathophysiological process. Essentially, she was presenting as having a chronic pain problem of unknown origin, but he could not even verify that she actually had a pain problem. In discussion with Dr. Fontaine, he had concluded that management of her condition, which was punctuated by significant psychosocial issues, should involve a challenge of the situation with a multidisciplinary team approach. However, from a medical perspective, he had a difficult time relating her current level of presented disability and subjective complaints to any form of repetitive strain disorder. Her complaints far exceeded any potential pathophysiological process. In his opinion, there were many non-medical factors contributing to her condition rather than purely a musculoskeletal repetitive injury.

On March 17, 2003, a case manager with the Board advised the worker that, because he did not accept that her ongoing disability was a result of the work injury accepted under her claim, her wage loss benefits had been brought to a close and the Board would not be accepting any further wage loss benefits or medical aid costs under her claim. The worker has asked the Review Division to review this decision.

Testimony and Submissions

At the hearing, the worker said that her whole life has changed since she developed the condition in her arms and wrists. She no longer rides a motorcycle, and there are severe limitations on what she can do.

It was obvious that the worker is deeply dissatisfied with the way that the Board handled her claim, and she characterized her treatment by Board officials as abusive. She said that, as of January, the case manager quit offering physiotherapy and medical treatment, and would not return her calls. He also started talking about her return to work. She thought the Board treated her like she was lying or wanted to be off work, and she found the fact that the Board had hired a private investigator particularly offensive. She thought the ASTD program was a bad idea. Every day that she went to the program it brought a huge amount of pain.

She said that when she returned to work in April, she was fine performing two hours of work, but could not meet the demands of the return to work schedule. Although she

was to work for eight hours, she said that she was not able to complete more than two hours of actual work. She was physically at work, but found that she could work for only 10 or 20 minutes and then had to take a five minute break. Because her pay is tied to productivity and she could not charge for this time, she incurred some wage loss. She also took vacation days during the return to work program as a result of her condition.

The worker pointed out that in a booklet she had received from the Board, the Board says that it will set up a program that is designed to meet the individual needs of the worker, and also that the Board will retrain injured workers so that they can lead productive lives. In the worker's view, the program she went through did not even come close to meeting these objectives. She said that she has lost a year's salary and medical expenses, and estimated that her wage loss to date had been $13,154.07. She did get some money from her employer and, when she could not continue on short term disability benefits, was paid out her accumulated vacation pay, including a portion that was earned prior to injury.

The worker noted that Dr. Fontaine had referred her to physiotherapy and told her that she needed that treatment as it would help her get back to work faster. Although she could not afford to do so, she has spent close to $2,000 on physiotherapy. She also said that Dr. Fontaine and her physiotherapist recommended the massage therapy as a way of controlling pain and promoting healing as the medications she was on were not working. She found that the massage therapy she received helped her out of extreme pain, and that hydrotherapy was very beneficial.

The worker said that, altogether, she has spent approximately $2,745.50 on treatments and adaptive equipment for her condition. This figure includes amounts for doctor's form fees, rental of a TENS unit, wrist braces, medication, a gel pad and a different mouse for her computer, gas, transportation (bus passes) and massage and physiotherapy treatment. She said that the TENS unit was recommended by her doctor and physiotherapist and so she rented one. She said she later made inquiries of the Board and was told that the Board did not have one in store at that time. She kept the unit and has continued to use it. She also said that, because of the condition of her wrists, transportation has cost her more than usual.

Reasons and Findings

A. Wage Loss

Sections 29 and 30 of the *Workers Compensation Act* (Act) provide that wage loss benefits are paid for a temporary total or temporary partial disability that results from a workplace injury. Item #95.31 of the *Rehabilitation Services and Claims Manual*, *Volume 1* (RSCM) provides that wage-loss compensation is normally paid on the basis of medical evidence supporting a disability. Although there are exceptions to this general rule and non-medical evidence may be sufficient to establish the continuation of the disability, the best evidence will almost always be medical evidence.

In this case, Dr. Fontaine advised the Board that the worker was fit to return to work as of April 16, 2002. In her May 15, 2002 report to the Board, she advised that the worker could continue with modified full time work involving no heavy lifting. Thereafter, she did not provide any reports to the Board until August 14, 2002, when she said that the worker had been experiencing bilateral pain in her forearms and wrists for two weeks. She did not indicate that the worker had been unfit to work prior to that date and, to the contrary, felt the worker could continue working if she was not required to type. The worker has not submitted any new medical evidence confirming that she was disabled from working between May 19, 2002 and August 13, 2002 because of the condition accepted under her claim.

The worker testified that throughout that period she suffered lost wages because her income is tied to productivity. If such a loss of earnings arose because of the worker's compensable injury, then she would be entitled to additional wage-loss benefits on the basis that she was disabled from earning full wages at work. However, I am unable to conclude on the basis of the available evidence that any such losses were causally related to the injury accepted under her claim.

As noted in the May 13, 2002 decision, the case manager said that the Board normally expects that, with elimination of the risk factors that were considered the cause of an ASTD, the condition will resolve. This was not the case for the worker. The medical evidence suggests that she had ongoing pain, however, that evidence does not indicate that the pain was causally related to the tendonitis and neck strain originally accepted under her claim.

By March 5, 2001, the worker did not meet the diagnostic criteria for chronic pain syndrome or any other psychological condition that would entitle her to a continuation of benefits. She continued to complain of physical symptoms, but there are no clinical findings linking her pain to the compensable condition, including no evidence of a temporary or permanent pathology in her wrists or forearms. On April 25, 2002, the worker's physiotherapist confirmed that she had full range of motion in both wrists. Dr. Fontaine approved her return to work that same month, subject only to the limitation that she not engage in heavy lifting.

The medical evidence that has become available since the May 13, 2002 decision also does not support a conclusion that there is a causal connection between the worker's symptoms after April, 2002 and the injuries accepted under her claim. In September, 2002, Dr. Martin thought that the worker might have intersection syndrome. Had this possible diagnosis been confirmed, or had a connection been drawn between the worker's pain and her compensable injury, there would be evidence that the ongoing limitations the worker complains of are causally related to her workplace injury. However, Dr. Martin later determined that the worker in fact did not have this condition. He also said that problem was of unknown origin and he could not even verify that she actually had a pain problem. There is no contrary medical evidence before me.

Throughout the hearing, the worker held her arms in the same guarded manner that was observed by the various medical professionals who treated her. Her arm and hand movements were extremely slow and awkward, she demonstrated considerable difficulty when sorting papers and taking materials out of her bag, and she had a wrist splint in her left pocket. I have no reason to doubt that the worker is in constant pain because of the symptoms in her wrists and forearms. However, I am unable to conclude on the basis of the medical evidence available at this time that there is a causal relationship between the symptoms she continued to experience after her return to work in April, 2002 and the neck strain and bilateral extensor tendonitis accepted under her claim.

Consequently, I am unable to conclude that the worker is entitled to wage loss benefits for the period May 19, 2002 and August 12, 2002.

Health Care

Section 21(1) of the *Workers Compensation Act* (Act) sets out that the Board may provide for an injured worker any medical, surgical, hospital, nursing and other care or treatment that it considers reasonably necessary at the time of injury and thereafter during the disability to cure and relieve or alleviate the effects of the injury. As I understand the worker's position, based on the booklet she received from the Board, she believes that she should be reimbursed for the equipment that she and her doctor and physiotherapist thought was needed. However, while workers have some latitude under the Act to choose their treating professionals and treatment, the ultimate decision about whether a particular health care expense will be reimbursed as reasonably necessary rests with the case manager who has responsibility for the claim. This was explained to the worker in her September 25, 2001 conversation with the team assistant.

Item #73.20 of the RSCM provides that coverage for necessary health care continues only for as long as the worker continues to experience the effects of a compensable injury or occupational disease. Because I am unable to conclude on the basis of the available medical evidence that there is a causal relationship between the symptoms the worker continued to experience after her return to work in April, 2002 and the neck strain and bilateral extensor tendonitis that were accepted under her claim, I find that the Board is not responsible for reimbursing the worker for any medical expenses incurred after May 13, 2002.

Private physiotherapy treatments are dealt with in item #75.12 of the RSCM, which states that physiotherapy prescribed by an attending physician may be continued up to eight weeks. After that point, Board approval is required for further treatment. In this case, the worker received 13 weeks of physiotherapy, from July 19 to October 17, 2001. In a report that was received by the Board on October 10, 2001, the physiotherapist said that the worker was slowly getting some improvement. However, due to the length

of time for her recovery, he was under the impression that she did not have tendonitis. A Board nurse advisor reviewed this report and concluded that further physiotherapy treatments were not warranted. Although Dr. Fontaine recommended further physiotherapy in a report regarding an October 3, 2001 consultation, she did not repeat that recommendation in her next or subsequent reports. By that time, the worker had begun the ASTD program, which had a physiotherapy component. In light of this evidence, I am unable to conclude that further private physiotherapy treatments were reasonably necessary to alleviate or cure the effects of the worker's compensable condition. Therefore, the worker is not entitled to be reimbursed for any further treatments she received prior to April 25, 2002, if she did receive such treatments.

Information on the worker's claim file confirms that the Board reimbursed the physiotherapist for the April 25, 2002 and May 1, 2002 treatments. The evidence provided by the worker shows that the expense of these two treatments was offset by two subsequent treatments for which the physiotherapist did not charge, both of which were provided after May 13, 2002. Consequently, the worker is not entitled to reimbursement for these treatments.

The Board funded massage therapy for the worker up until January 13, 2002, by which time she would have received the January 7, 2002 decision letter. On April 3, 2002, the Board's nurse advisor reviewed the bills the worker had submitted and determined that the massage therapy treated the worker's upper back and neck. She said that the medical literature does not support that concurrent passive treatment modalities necessarily improve the functional or clinical outcome for soft tissue injuries like tendonitis and strain. Rather, physiotherapy to address initial inflammation as well as rest for the offending activity (in this case work activities) followed by a graduated return to work schedule was the appropriate clinical approach. None of Dr. Fontaine's reports to the Board identify any symptoms in the worker's neck or back. In the circumstances, I am unable to conclude that the treatments were reasonably necessary for alleviating or curing the effects of the worker's compensable condition. Therefore, she is not entitled to reimbursement for any further massage therapy treatments she received after January 13, 2002.

In accordance with item #82.10 of the RSCM, the worker has received reimbursement for the cost of parking when she attended medical treatments required by the Board. She is entitled to seek reimbursement for any further parking expenses that relate to her attendance at a Board required medical appointment by submitting her receipts to the Board. The worker was off work until May 13, 2002 on the basis that she was temporarily disabled from working. Board policy does not make provision for the reimbursement of bus passes or increased transportation costs a worker may incur for the purpose of general, personal travel while in receipt of temporary disability benefits. She is not entitled to reimbursement for any additional transportation costs, including bus passes. Additionally, she is not entitled to reimbursement for the cost of the computer equipment she purchased. While the Board does have the discretion to pay for such equipment, there is no indication in the material available to me that the

worker's doctor or any other treating professional advised her that this equipment was reasonably necessary to treat her condition while she was off work. Further, she did not seek prior approval from the Board. Board policy does not provide for reimbursement of the costs associated with the completion of medical forms and the worker is not entitled to reimbursement for these amounts.

Item #77.10 of the RSCM provides that, as a general rule, accounts for medicine, bandages, and other supplies are payable only when they are prescribed by the attending physician and where medical reports to the Board verify their necessity. Under cover of a note dated December 10, 2001, the worker provided the Board with an undated prescription note from her physiotherapist confirming that she required a TENS unit for pain control. There is no indication that Dr. Fontaine also considered this unit necessary. Although the worker testified that she inquired about the availability of a TENS unit after being advised that the Board would not reimburse her for this expense, she did not make that inquiry before obtaining one on her own, and did not have prior approval for so doing. I find that she is not entitled to reimbursement for rental of that unit.

The role of this panel is to deal with the worker's entitlement under the Act and does not extend to making general findings regarding the conduct of Board officers. Nevertheless, I note that the Board log confirms that, through the fall of 2001, the worker did not return the Board's calls in a timely way. Further, although a team assistant advised her on September 25, 2001 of the process that was involved in determining eligibility for medical expenses and the January 7, 2002 letter was clear, she incurred a number of the expenses that are the subject of her request for reimbursement without first seeking approval from the case manager. In my view, at least some of the responsibility for what the worker perceives as abusive treatment by the Board, including the surveillance undertaken in October and November of 2001, rests with the worker herself.

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Conclusion

The appeals from the January 7, 2002 and May 13, 2002 decisions are denied. I find that the worker is not entitled to wage loss or health care benefits for the period May 19, 2002 to August 13, 2002. I also find that the worker is not entitled to reimbursement for the medical expenses that the Board declined to accept or for the additional expenses considered above. The Board's decisions are confirmed.

The worker did not seek reimbursement for any expenses in relation to her appeals and no order for such reimbursement is made.

Deirdre Rice
Vice Chair

DR/dcw

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