WCAT Decision Number: WCAT-2004-00109-RB
WCAT Decision Date: **January 13, 2004**
Panel: Lois Williams, Vice Chair

Introduction

The worker is a registered nurse who suffered an injury at work on April 6, 2000. The Workers' Compensation Board (Board) accepted her claim for health care benefits for a strain to her neck and/or aggravation of her underlying neck condition, but denied acceptance of her low back condition and subsequent surgery. In a letter dated October 30, 2000, a Board entitlement officer noted that the worker had been treated for low back and sciatic complaints prior to April 6, 2000, that she had only reported a neck injury on that date, and that it would be speculative to relate the worker's subsequently diagnosed disc protrusion to the April 6, 2000 incident. The entitlement officer rejected the opinion of specialist Dr. Cameron, that the worker suffered a low back injury on April 6, 2000, as his opinion was based on information from the worker rather than the information on the claim file.

The worker appeals the Board's decision. She seeks acceptance under her claim for an L5-S1 disc protrusion and its surgical treatment.

Issue(s)

Was the worker's diagnosed disc protrusion the result of a personal injury to her low back, arising out of and in the course of her employment on April 6, 2000?

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 claim file has been disclosed to the parties to the appeal, and the information will not be repeated in any detail here. The worker attended an oral hearing held on October 14, 2003 and provided further information to the panel, regarding the history of her back problems.

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The worker, now 49 years old, had prior back claims in 1985, 1991 and 1993. She has been a registered nurse since 1975, and has worked for her employer in a hospital setting since 1989. She works in a coronary care unit.

The worker states that she recovered from her previous back injuries. In November and December 1999, she gradually developed low back discomfort, which she attributed to an unusually busy workload of very heavy patients in the coronary care unit. These were unconscious post-cardiac arrest patients who required total care, including being pulled up in bed. The worker said that she experienced symptoms of sciatica into her left buttock that gradually went a bit more into her left leg. She said she also had discomfort in her neck.

The worker recalls seeing her doctor on February 18, 2000 for a referral to massage therapy and physiotherapy for her neck and low back. She was concerned that her symptoms were moving down her leg. She went to massage therapy. She was treated twice in late February and three times in March. She said that her neck responded nicely to the treatment, her low back was not as uncomfortable, and her sciatica was less acute.

The doctor's chart notes show that the worker's cervical spine was reviewed in May 1999 for decreased disc space and decreased neuroforamina. She complained of intermittent pains into her left arm. A later entry with an unclear date states that the worker had been lifting a heavy patient on December 27 [likely 1999] and later noted recurrent and worse neck and arm symptoms. Her legs and lower back were "OK". On February 18, 2000, the doctor recorded that the worker had neck and back pain, so severe that she was nauseated and required massage and physiotherapy. She had lifted a heavy patient on the previous Friday, and on Saturday noted nausea and neck pain.

The therapist's case history filled out by the worker on February 19, 2000 shows complaints of sciatica in the left buttock to the left calf, burning in the left iliac crest and left lower abdomen, pain (ache) in the lower back, neck discomfort going into both arms (pain and/or numbness), nausea and headache. The therapist's assessment recorded complaints of low back and neck pain, and a severe headache the day before, complaints that the worker attributed to lifting and transferring heavy patients at work. The therapist's notes between February 19 and March 24, 2000 report fluctuating low back complaints depending on the heaviness of the worker's workload.

The worker states that on April 6, 2000, she started work at 7:30 a.m. She believes that she still had some residual neck, low back, and sciatic discomfort at that time. Around lunchtime, she and another nurse had to rescue a patient, who weighed in excess of 300 pounds, from sliding off his bed. She grabbed the bottom end of the patient, and they pivoted him and shoved him back onto and up the bed. Her neck, shoulders, and arms really hurt at that time, and her low back felt tight. She completed her shift, but reported to her employer the next day that she had neck and shoulder pain, followed by headache, dizziness, nausea and vomiting. In a formal written report on April 14, 2000, the worker said she had previously reported to the employer that she had discomfort of her neck since January, but had not missed any time from work. She said that she had had very heavy patients since January and there was more heavy lifting than usual.

On April 10, 2000 the doctor noted that the worker had a headache, nausea, and vomiting with neck pain. He diagnosed a cervical strain with muscle spasm, and noted the worker was using Ibuprofen and Robaxacet.

On April 12, 2000 the therapist's chart notes state that the worker complained of low back pain and neck pain. She had been moving a heavy patient and hurt her low back again, with some referral of pain down the left leg. However, the worker was not disabled. On April 20, 2000 the therapist reported the worker was doing much better. She was doing no lifting at work. She was having someone else do the lifting for her and was finding this significantly helpful. However, on June 13, 2000 the worker was again complaining of left leg pain. She had been lifting at work that week. She continued to complain of left leg pain and pain into the left buttock on June 28, 2000.

On July 11, 2000 the doctor reported that while the worker had continued to have neck and shoulder pain since her April 6, 2000 injury, in the past three weeks, her low back pain and sciatica symptoms had become most prominent. She had been avoiding lifting patients but as a nurse her job was very active, and she now needed time off work for more intensive rehabilitation. On July 12, 2000 the patient was in extreme pain and could barely move. The following day she was admitted to hospital.

On July 16, 2000 neurosurgeon Dr. Cameron performed a microsurgical discectomy for a left L5-S1 disc extrusion. The worker made a full recovery and on November 9, 2000 her doctor said she was fit to return to work.

In a report dated October 6, 2000, Dr. Cameron said the worker had no back difficulties between 1985 and January 2000, at which time she had problems related to lifting

heavy patients at work. Dr. Cameron said that the worker then injured her back at work in April 2000, as well as her neck and shoulder. He said that the worker had escalating pain, which resulted in her admission to hospital and diagnosis and treatment of the disc protrusion. Dr. Cameron said that it appeared the work injury in April 2000 was the major factor precipitating the disc protrusion, "and had this not happened it is questionable that she would have sustained the disc extrusion requiring the discectomy".

The Board's entitlement officer asked a Board medical officer whether the low back discomfort the worker reported to her therapist on April 12 was a continuation of the pre-existing problem or whether there was any indication of a significantly worsened condition. The entitlement officer said that she did not accept that the worker had any significant low back symptoms from the April 2000 injury because none were reported to the doctor or to the employer.

Dr. Angus replied that it was clear the worker had pre-existing problems, but it was possible that the event or events at work served to cause the final bit of disc movement that resulted in her disability.

In denying the worker's claim for the herniated disc, the entitlement officer paraphrased Dr. Angus' opinion as being that work may have been the straw that broke the camel's back, and went on to state:

> …however, it is possible that anything could have brought it on and the Board does not accept claims for a possibility; the evidence must weight in favor of the probability. A speculative possibility that it is so is not enough to make a claim acceptable. As well, it is not the Board's policy to accept a claim for a lower herniated disc as [being] associated to someone's work in general…Many activities throughout life, at work as well as outside of work could have brought on this condition.

In a January 4, 2002 report, the worker's current physician, Dr. Matthews, stated her opinion that the April 6, 2000 incident at work exacerbated and exposed the underlying disc problem that manifested as a full blown disc protrusion several months later.

In a January 4, 2002 report supporting the worker's appeal, neurosurgeon Dr. Cameron said, in part:

> Lumbar disc protrusions are common and often brought on by injuries or incidence [sic] of all sorts. It is common to see repetitive incidents with exacerbations and remissions. Mild disc protrusions can be produced by an incident and then in time progress spontaneously, such as with the situation with [the worker]. The major factor causing the disc protrusion was the lifting incident of April 7 [sic], 2000. Possible minor factors are in 1985 when pregnant and in the winter and spring of 2000 related to lifting at work. After the precipitating incident of April 7th [sic] her symptoms spontaneously worsened severely. Had the incident of April 7th [sic] not occurred it is questionable that she would have experienced the major disc protrusion leading to the discectomy.

Submission

The worker's representative submitted that although the worker and her doctor initially focused on her neck symptoms resulting from the April 6, 2000 incident, the therapist's chart notes confirm that the worker also experienced back and leg pain as a result of that incident, and these symptoms gradually progressed. The representative submitted that it was not normal for a worker to fill out a second injury report regarding one incident just because some symptoms became worse than the originally reported ones. Also, she submitted, the worker had previously improved with physio/massage therapy and thought she would do so again. However, she did not, and her sciatica worsened and extended to her foot. She tried to carry on at work, but kept deteriorating over the coming months.

The worker's representative said that Dr. Cameron is an expert in his field. He supports the worker's appeal and his opinion is supported to some degree by the opinions of Dr. Angus and Dr. Matthews. The worker's representative submitted that even if Dr. Cameron's opinion is not accepted, the possibilities are at least evenly balanced that work caused the herniation and therefore the panel should find in favour of the worker.

Findings and Reasons

As noted in the Board's decision letter, section 5(1) of the *Workers Compensation Act* (Act) states that a personal injury is compensable if it arises out of and in the course of employment. There must be some evidence that the employment had causative significance in producing the injury, and a speculative possibility that this is so is not enough.

Section 99 of the Act states that where there is doubt on an issue and 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 *Rehabilitation Services and Claims Manual* (RSCM) states that this only applies where

there is evidence of roughly equal weight for and against the claim. It does not come into play where the evidence indicates that one possibility is more likely than the other.

Board policy item #15.10 of the RSCM applies to workers with pre-existing conditions. There are cases where the condition was deteriorating and had reached a critical point where it was about to become a disability, and it was only coincidence that the immediate activity triggering the final breakdown occurred at work. In these cases the Board considers the causative significance of the work activity is so slight that the disability is treated as having resulted from the deteriorating condition and the disability is not compensable. On the other hand, there are cases where the deteriorating condition was not likely to become a manifest disability about the time of the work injury, and the worker could have survived without disability for months or years, if something exceptional in the employment had not triggered the disability. Here the employment had substantial causative significance and the disability is compensable.

In this case, the worker was symptomatic with low back pain and sciatica prior to her April 6, 2000 incident at work. In February 2000, the therapist and the doctor both recorded that the worker had these complaints from lifting heavy patients. The worker also recorded this on the case history she gave the therapist. Between then and March 24, 2000, the therapist commented that the worker's discomfort fluctuated, depending on how much lifting she was doing at work. The worker had also been experiencing significant neck and shoulder complaints. When the worker was injured on April 6, 2000, the immediate and pressing increase in symptoms was in the worker's neck. However, the therapist's chart notes for April 12, 2000, which state that the worker had re-injured her back, support the worker's evidence that she also experienced a significant increase in her low back and sciatic symptoms.

There is no evidence that the worker had significant underlying degeneration in her back. She made a complete recovery from her disc protrusion and has had no ongoing complaints. There is no evidence that the worker's complaints between February and April 2000, while suggestive of a deteriorating disc, were due to anything other than what she attributed them to, an unusually heavy workload lifting heavy patients at work. After the April 6, 2000 work incident she did complain of a "re-injury". She got some relief by getting others to do her lifting at work, but her back continued to gradually deteriorate to the point she needed surgery.

I find that the "disputed possibilities" in this case are not evenly balanced. There is no evidence that the worker suffered from some underlying deteriorating degenerative spinal condition or that there was some off-work activity of causative significance in producing her disc injury. Section 99 of the Act does not apply to this case.

As there is evidence of pre-existing problems, and the worker did not file a claim for them, Board policy item #15.10 of the RSCM must be considered. I conclude, on the basis of the above evidence, that the worker had some back complaints, likely work-related, prior to April 6, 2000, but that the incident at work on that day caused a significant exacerbation of those symptoms, as reported to the therapist. I find that the deterioration in the worker's back condition over the subsequent months, despite her avoiding heavy lifting as much as possible, was directly due to the April 6, 2000 work-caused exacerbation. I accept neurosurgeon Dr. Cameron's expert opinion in this regard, and note that the Board medical advisor Dr. Angus also felt that events at work were what triggered the final disability. I find that the worker's heavy lifting duties as a coronary care unit nurse, and specifically the April 6, 2000 work incident did have causative significance in producing the disability and need for surgery, and therefore, the disability is compensable.

Conclusion

I vary the Board's October 30, 2000 decision. I allow the worker's appeal and find that her disc protrusion and need for surgery were due to a personal injury arising out of and in the course of employment.

I authorize reimbursement for the costs of Dr. Matthew's and Dr. Cameron's January 4, 2002 reports, to be paid in accordance with the Board's schedule of fees.

Lois Williams
Vice Chair

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