WCAT Decision Number: WCAT-2004-00116-RB
WCAT Decision Date: **January 13, 2004**
Panel: Baljinder Chahal, Vice Chair

Introduction

The worker has appealed a decision of an officer of the Workers' Compensation Board (Board) dated January 17, 2002. The Board denied the worker's claim for her knee complaints of December 25, 2001.

Issue(s)

The issue is whether the worker suffered an injury to her knee arising out of and in the course of her employment on December 25, 2001.

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.)

WCAT may consider all questions of fact and law arising in an appeal, but is not bound by legal precedent (section 250(1)). WCAT must make its decision on the merits and justice of the case, but in so doing, must apply a policy of the board of directors of the Board that is applicable in the case. WCAT has exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact and law arising or required to be determined in an appeal before it (section 254).

This is an appeal by way of rehearing, rather than a hearing *de novo* or an appeal on the record. WCAT has jurisdiction to consider new evidence, and to substitute its own decision for the decision under appeal.

Background and Evidence

The worker had been a dietary aide worker since February 1, 1990. On her application for compensation (dated January 4, 2002) she reported an onset of pain in her left knee when she entered the employer's premises. Her pain became worse within the next few hours and she stopped working.

The employer's report of injury was dated January 8, 2002. The employer reported that the worker felt pain on her way to work and her condition got progressively worse when she arrived at work without any incident or accident.

The first aid attendant's report was dated December 27, 2001. The attendant noted slight redness, and increased pain on movements of the left knee and recommended ice and pain killers.

The attending physician's report of the first treatment was dated December 27, 2001. He noted that the worker felt an onset of left knee pain when she got out of the car, and her condition became worse as she walked to the door. The diagnosis was possible left knee sprain and cartilage injury.

The entitlement officer denied the worker's claim as she believed that the worker's claim did not meet the requirements of section 5(1) of the Act. She pointed out that the worker's employment activities were not of causative significance in producing the knee strain on December 25, 2001 and that the act of walking to work was a normal body motion. Therefore her claim was denied.

On August 30, 2002 the worker submitted notice of appeal - part 2 and a report from her attending physician dated August 26, 2002. In that report the attending physician provided the diagnosis of possible left knee sprain and knee cartilage injury. In his view the worker's employment activities had causative significance in producing the left knee pain. He had known the worker for many years, and noted that she was quite honest, hard working and a motivated person. In his view she sustained the left knee injury as she got out of the car at work on December 25, 2001. She was found to have torn meniscus of her left knee and underwent surgery on May 8, 2002.

On September 15, 2003 the worker's representative submitted that the worker felt pain in her knee as she walked from her car to her work on December 25, 2001. The representative pointed out that the worker's employment activities involved constant standing and walking as well as some twisting of hips and knees while performing kitchen duties. He also pointed out that these motions were performed often while carrying weight. The representative submitted that the worker's employment activities of December 25, 2001 had causative significance in producing her left knee symptoms. The representative relied on Dr. Gandham's report dated August 26, 2002.

On October 6, 2003 the employer's representative submitted that the worker's symptoms came on as she got out of the car and entered the work building. Therefore, her injury did not arise out of and in the course of her employment to be compensable, and her claim should be denied.

On October 30, 2003 the worker's representative submitted that the worker felt the pain as she got out of the car. However, her pain became severe as she worked to the point

where she could not continue. Therefore, her knee condition had work causation and her claim should be accepted.

Findings and Reasons

This decision was made following review of the documents in the claim file. I examined all the relevant documents including submissions made by both parties.

Section 5(1) of the Act provides that compensation is payable for personal injuries arising out of and in the course of employment. This means that evidence must show that the injury happened at work, and the work was the cause of the injury. Section 5(4) of the Act affords the worker a presumption of work relatedness where an injury results from an accident, but that does not apply in this case, as I find no evidence of an accident as defined by section 1 of the Act. There was no traumatic or fortuitous event that caused the worker to injure her left knee.

Most of the relevant published policy concerning this test for compensability is contained in item #14.00 and following of the *Rehabilitation Services and Claims Manual, Volume 1* (RSCM). The Board's policy in item #13.00 of the RSCM defines "personal injury" as any physiological change arising from some cause.

Policy item #15.00 requires the necessity to distinguish between injuries resulting from employment which are compensable and those resulting from purely natural causes, which are not compensable. It states that an injury is not compensable simply because it occurred at work, there must also be something in the employment that had causative significance in producing the injury.

Item #15.20 of the RSCM describes the Board's policy concerning injuries following motions at work. It specifies that if an injury results from a certain motion, a series of motions, or the repetition of the same motion, then this is an indication that the injury arises out of the employment and is compensable. The policy recognizes the difficulty in distinguishing between work-required and non-work-required motions because a work-required motion is often a motion that the worker commonly engages in at home. The policy requires the adjudicator to exercise judgment of all the factors involved by carefully weighing the evidence to determine whether the motion or motions fall so clearly into the realm of "natural" or "normal" body functions that the only connection between them and the employment is coincidental. The policy provides the following guidelines:

> Claims of the kind under discussion here must be adjudicated with great care. Nevertheless, the necessity for the exercise of judgment will result occasionally in what may appear to be inconsistency or the application of slightly different criteria. This is inevitable in any situation where it is virtually impossible to draw a line. It is not advisable nor just to state that claims for injuries without accident can only be accepted where there was

> some demonstrable act on the part of the claimant which was so directly connected with work that the relationship is indisputable. In particular, the present inability of medical science to accurately pin-point the etiology of a great variety of spinal problems, many of which have been shown to arise from the most trivial of incidents, leads to a conclusion that, in appropriate circumstances, such incidents should be seen as causative and if they occur while at work, the resulting injury must be compensable. On the other hand, the simple act of walking up stairs or turning one's head to speak to a co-worker or of looking down at one's hands while performing a certain job, fall so clearly into the realm of "natural" or "normal" bodily functions that the only connection between them and the employment is the coincidental fact that the worker was on the job at the time.
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> Simply by adding a few more facts to these situations or others it might well be possible, in individual cases, to find that a work relationship existed. For example, (and these examples are not to be taken out of context without consideration of the discussion above), if the worker were forced into an awkward position in order to properly perform the job and either while in that position or when arising from it suffered a sudden and severe onset of pain and discomfort, and the evidence shows no previous difficulty, it might well be that the only reasonable conclusion is that the apparently minor incident was causative. Similarly, if a worker bends to pick up an object, and that motion is required by the job (e.g. a piece of debris while on clean-up, a piece of mail while working in the mail room, an item of equipment or machinery in a plant) and, unrelated to the lifting of the object, suffers an onset of disabling pain, that apparently insignificant motion might also establish some work relationship. In either of these cases, the motion although natural was performed as a matter of the worker's duties and may in that sense gain "work" status.

In the case at hand the worker is requesting compensation for an injury following a motion before entering her workplace. As noted above, claims of this kind must be considered with great care because it can be virtually impossible to draw a line between a work-required motion and a "normal" body motion performed at work where the employment connection is only incidental. To determine this issue, it is necessary to consider any prior problems in the area of the worker's injury, the nature of her employment activities, and any opinions that have been provided about the cause of her problems.

In the case before me, the medical diagnosis is left knee sprain. The worker's representative submitted the claim should be accepted as the worker's employment activities had causative significance in producing or aggravating her disability. He pointed out that there was some twisting of the hips and knees while performing kitchen duties and these motions were performed often while carrying weight.

I have no reason to doubt the worker's description of the December 25, 2001 incident of walking and entering the employer's premises when she felt an onset of symptoms in her left knee. I find that her account was both consistent and forthright. I have carefully considered the whole of the evidence and do not consider the weight of the evidence establishes a work relationship. I accept that the worker was entering the employer's premises when she felt the pain in her left knee. I have no evidence that her knee was under any undue stress from the activity of walking to the employer's premises.

I find that the worker's action of walking from her car to the employer's premises and injuring her left knee clearly falls in the realm of normal bodily functions. The worker was only walking and the only connection between this and the employment is the coincidental factor that the worker was on the employer's premises at the time. The worker did not provide any evidence that there was anything in her motion of walking that was out of the ordinary. She did not identify anything of causative significance in her employment that could have produced a strain injury. There is no evidence before me that the worker sustained an accident to afford her the presumption of work relatedness or that there was anything in her path that caused her injury. Furthermore the x-ray report of December 27, 2001 confirms that the worker had early degenerative osteoarthritis of the left knee and the onset of symptoms on December 25, 2001 was coincidental.

On the basis of my findings, I conclude that the worker's employment had no causative significance in producing her left knee injury.

Conclusion

In summary, for the reasons outlined I confirm the entitlement officer's decision dated January 17, 2002 and deny the worker's appeal. I find insufficient evidence to conclude that the worker suffered an injury to her knee on December 25, 2001 arising out of and in the course of her employment. No costs were identified in connection with the appeal and none are awarded.

Baljinder Chahal
Vice Chair

BC/hf/dcw

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