WCAT Decision Number: WCAT-2004-00126
WCAT Decision Date: **January 13, 2004**
Panel: Nora Jackson, Vice Chair

Introduction

In a decision letter dated June 6, 2003, a Workers' Compensation Board (Board) case manager advised the worker that the worker's February 2000 claim for right knee complaints would not be reopened for payment of further benefits. The worker appeals that decision (Appeal B).

Issue(s)

The issue in this appeal is whether the worker's February 2000 claim should be reopened for symptoms she was experiencing in May 2003.

Jurisdiction

Under section 96(2) of the *Workers Compensation Act* (Act), as amended by the *Workers Compensation Amendment Act (No. 2), 2002* (Amendment Act), the Board may, on application or at the Board's own initiative, reopen a matter that has previously been decided by the Board if certain circumstances exist. In cases where the decision has been made on an application, section 240(2) of the Act, as amended, provides that the decision may be appealed to the Workers' Compensation Appeal Tribunal (WCAT), the appeal tribunal established on March 3, 2003 by the Amendment Act.

The decision under appeal is a decision made on June 6, 2003 not to reopen the worker's February 2000 claim. The decision was made on application by the worker, and the appeal was filed with WCAT on August 29, 2003, well within the time limit permitted by section 243 of the Act, as amended. The procedural requirements of section 96(2) and 240(2) of the Act, as amended, have been met.

Section 250(2) of the Act, as amended, required that I apply the policies of the Board of directors of the Board, and make my decision based on the merits and justice of the case before me.

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Evidence

I have reviewed the evidence in the claim file, any submissions made by the worker and the accident employer in support of their respective positions, the *Workers Compensation Act* (Act) in effect at the time of the events here in question, and applicable Board policy as set out in the *Rehabilitation Services and Claims Manual, Volume II* (RSCM). Interested parties have received full disclosure of the claim file, and the medical and claim history will not be repeated in detail here except as relevant to the current appeal.

The worker was employed by the employer as a retail sales clerk. In 2000, the worker was 31 years old; she began working for the employer in January 1998. On March 8, 2000, the worker was injured when she tripped on a crate in the cooler at the place of her employment, landing on the lateromedial aspect of her right knee. She submitted an application for compensation to the Board on February 16, 2000, and her claim was accepted for a right leg strain; the worker took two days off, and then returned to work, although her knee was still symptomatic. While at work, her knee gave out, and she took a few more days off.

When the worker saw Dr. Outerbridge, a specialist, on March 13, 2000, he diagnosed a medial meniscal tear, and suggested an arthroscopy. The Board later accepted a medial meniscal tear of her right knee, and resulting surgery. The worker's pre-existing chondromalacia of the patellofemoral joint of the right knee, a degenerative condition revealed at the time of the arthroscopy, was not accepted as compensable.

Wage loss and health care benefits were paid, and the worker underwent arthroscopic surgery on March 20, 2000. By May 5, 2000, Dr. Outerbridge, the worker's attending physician, noted that the worker had no pain unless walking on uneven ground, and that pain was mild. She had some non-painful clicking but no swelling. She had full range of motion and good stability in her knee. Dr. Outerbridge thought that the worker had done very well after her meniscectomy, and was ready to return to her full activities.

On May 8, 2000, Dr. Sommerville, the worker's attending physician, noted that the worker continued to have pain in her right knee six weeks post surgery. However, no objective signs were noted. The doctor suggested that the worker “use caution when lifting heavy objects with knees”. A May 12, 2000 opinion from Dr. Byrne, a Board medical advisor, noted that the worker's pre-existing chondromalacia could prolong the claim beyond the usual six weeks after arthroscopic meniscectomy, but that did not appear to be happening in the worker's case. He did not think that the worker would have a permanent impairment. Wage loss benefits were terminated as of May 5, 2000. The worker returned to school, and continued working part-time.

No medical reports were received on the file until May 28, 2003. In that report, Dr. Sommerville noted that the worker had re-injured her knee on May 25, 2003, and was suffering from medial jointline pain. Dr. Sommerville expressed the opinion that the

then-current injury was related to the worker's injury three years ago, but gives no reason for his opinion. No objective findings were noted.

The case manager spoke with the worker, who advised that her knee had “given out” a few times since her surgery, but she quickly recovered. As she was walking on an even concrete surface at home on May 25, 2003, she felt a crack in her knee. She neither slipped nor fell, but her knee became swollen and she had pain at the front of her kneecap. She attended at the emergency ward of the hospital, and was given a brace and anti-inflammatory medication. Neither x-rays nor physiotherapy were recommended.

The case manager contacted Dr. Sommerville, who confirmed that the worker had not sought medical attention for her knee since she returned to work in the spring of 2000.

In a decision letter dated June 6, 2003, a Board case manager advised the worker that it was her opinion that the worker had recovered from the medial meniscal tear and resulting surgery accepted as compensable under her claim. She did not think that there had been a significant change in the worker's compensable condition, nor had there been a recurrence of that condition. The worker's claim would not be reopened for payment of further benefits.

The case manager also considered whether a new claim should be reopened for the worker's then-current knee condition. She noted that the worker’s symptoms recurred when she was at home walking up her driveway. She could therefore not conclude that the worker had suffered a new injury arising out of and in the course of her employment.

The case manager advised the worker of her right to appeal, in the case of the reopening of her February 2000 claim, directly to WCAT, and in the case of the decision regarding the opening of a new claim, to the Review Division. At the time of this decision, more than 90 days had elapsed from the date of the letter in question. The worker had not appealed to the Review Division with regard to the issue of opening a new claim. As noted, that issue cannot be appealed directly to WCAT, and I will make no finding in that regard.

The worker has made no submissions in support of her appeal of the June 6, 2003 decision.

The employer has provided a submission dated September 18, 2003. The employer noted that the worker had been working and going to school for over two years since recovering from her work-related injury, and that she had reinjured her knee while walking on an even, concrete surface (the worker had denied slipping, twisting or falling). The employer expressed agreement with the Board's decision denying reopening of the worker's claim, and asked the panel to uphold that decision.

Reasons and Findings

Board policy with regard to reopenings is set out in item #C14-102.01 of the RSCM. It notes that the Board may reopen a matter that has previously been decided if there has been a significant change in a worker's compensable medical condition, or if there has been a recurrence of a worker's injury. If the Board determines that either of the above-noted circumstance has been met, it may make a new decision that varies its previous decision or order.

Board policy provides that "significant change" is a physical or psychological change that would, on its face, warrant consideration of a change in benefits. A claim may be reopened for temporary disability, or for permanent changes in the nature or degree of a worker's permanent disability. "Recurrence" refers to a recurrence of the original injury without an intervening second compensable injury.

In this case, the worker did not seek medical attention for some three years after her compensable injury. She continued to work and to attend school during that time, and although she reported several instances of her knee giving way, these instances did not cause ongoing disability, nor did she see her attending physician. There is nothing linking the worker's knee complaints in May 2003, where she heard a crack in her knee when walking on level ground and her knee subsequently became swollen, to the medial meniscectomy in March 2000.

Dr. Sommerville's comment regarding causation amounts to the following: because there is no other known cause, the worker's symptoms must result from her workplace incident. While there is a certain superficial appeal to that logic, it really only describes a sequence of events. It does not explain causation. We are left with the fact of no continuity of symptoms to link the worker's condition in May 2003 to her compensable injury in March 2000. The worker's appeal on this matter is denied.

Conclusion

Section 253(2) of the Act provides that WCAT, on an appeal regarding the reopening of a claim, may decide that the matter must be reopened or that the matter may not be reopened. In this case, I deny the worker's appeal. I find that the worker's claim may not be reopened. No expenses are awarded.

Nora Jackson
Vice Chair

NJ/jkw

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