WCAT Decision Number: WCAT-2004-00128
WCAT Decision Date: **January 13, 2004**
Panel: Gail Starr, Vice Chair

Introduction

This is the worker's appeal from a June 16, 2003 decision of a review officer at the Workers' Compensation Board (Board). The subject matter of the appeal arose out of disallowance of the worker's claim for compensation related to her left-sided neck and upper extremity complaints, which had been diagnosed as cervical radiculopathy.

Appeals from Board review officers' decisions to the Workers' Compensation Appeal Tribunal are authorized and limited by sections 254 and 255 of the *Workers Compensation Amendment Act (No. 2), 2002*.

Issue(s)

Are the worker's left-sided neck and upper extremity complaints compensable either as an injury under section 5 of the *Workers Compensation Act* (Act) or as an occupational disease under section 6 of the Act?

Background and Evidence

In her application for compensation, the worker described left-sided neck, arm and finger pain which radiated from the left side of her neck to her fingertips, accompanied by tingling and numbness in the fingers. She attributed this to exposure, over the period July 2000 through October 2002, to a poor work station and repetitive movements in her job.

On reviewing the medical information then on file, Board medical advisor Dr. Newman provided the following advice on November 21, 2002:

> This worker's current diagnosis is cervical radiculopathy and her symptoms (numbness in the 2nd and 3rd fingers of the left hand with neck pain) are consistent with left C7 radiculopathy. This would not be an activity-related soft tissue disorder injury. In the absence of a specific traumatic injury to the neck at work I would also be unable to relate this condition to her work duties in general.

It was on this basis (having also reviewed an ergonomic report which showed some deficiencies in the worker's work station) that the case manager issued the decision letter which underlies the present appeal.

In her appeal to the Review Division, the worker was supported by a March 21, 2003 submission from her union representative in which it was argued that her diagnosed cervical radiculopathy was due to the nature of her employment. Following receipt of this submission, the review officer wrote to the worker requesting further information concerning her employment duties, the onset of her symptoms and any further reasons she might have for attributing her condition to her work. The employer was by now participating in the appeal and the employer's representative also made a submission to the review officer, that document being dated April 9, 2003. The employer's representative pointed to medical evidence of a pre-existing condition, to the longevity of her employment without developing such symptoms and to certain confusing elements of the worker's medical history. The implicit argument of the worker's representative that the condition should be adjudicated as an occupational disease was disputed on the basis that the diagnosis of cervical radiculopathy was not associated with a recognized Activity-related Soft Tissue Disorder, and particularly not an occupational one.

On April 25, 2003, the worker herself wrote to the review officer, describing her occupational history, the nature of her pre-injury duties and the development of the symptoms for which she sought compensation. She argued her work station was inadequate and that the described features of this inadequacy were the cause of her difficulties.

Additional information concerning ergonomic reviews by the employer and details of the worker's job description were also before the review officer.

Following consideration of this material, the review officer issued Review Reference #180 on June 16, 2003. This decision is available on the Board's website at www.worksafebc.com, and the interested reader may review it there. In brief, the review officer considered whether the worker's condition was compensable under section 5(1) of the Act, which required that a personal injury arise out of and in the course of the employment. Although there was no allegation of a traumatic incident (the absence of which is no bar to compensation, under *Rehabilitation Services and Claims Manual, Volume 2* (RSCM) item #14.20), he found no basis for concluding the worker's diagnosed condition would have been caused either by trauma (which no one argued) or by the worker's employment activities over a period of time.

The review officer also considered the worker's condition under the rubric of occupational disease, where section 6 of the Act would require that it be due to the nature of her employment. Reviewing RSCM items #26.50 and #26.55, he concluded that the worker's diagnosis (not recognized specifically as an occupational disease under the Act or regulations or policy) was a matter of natural degeneration of the body (item #26.50) and not an occupational aggravation of a pre-existing disease (item #26.55). He concluded the worker's employment duties (possibly including a poor

ergonomic set up) might have drawn the worker's attention to her symptoms of cervical radiculopathy, but they had not significantly accelerated, activated or advanced the condition.

Decision and Reasons

In her September 5, 2003 written submission, the worker's representative argues that the appeal should be allowed. She reviews evidence of the worker's overtime and increased workload generally between July 2000 and October 2002, which payroll records have been provided to partially support. Deficiencies of her office furniture and documentation of ergonomic changes that were made over time are also provided. It is asserted the worker developed symptoms suddenly on October 7, 2002 and that these increased gradually over the next three days, leading the worker to seek medical attention October 9, 2002, concededly not on the basis of a traumatic incident but on the basis of intermittent symptoms over the preceding two weeks.

It is argued on behalf of the worker that RSCM item #26.50 should be considered applicable. In support of this, a May 20, 2003 statement from Dr. Lee, the worker's family physician, is submitted. The medical opinion on which the review officer relied (Dr. Newman's) is said to be flawed by lack of sufficient direct attention to the worker's activities. It is urged that Dr. Lee's opinion be preferred.

Dr. Lee's opinion, set out in the May 20, 2003 statement attached to the worker's representative's submission, indicates Dr. Lee has known the worker since May 1993. She confirms the diagnosis of left-sided neck and left arm pain, describing it as possibly secondary to cervical radiculopathy. She indicates this could itself be secondary to disc degeneration or to trauma. Improper posture, she writes, could aggravate the symptoms. She records the opinion that the work activities likely aggravated the cervical disc condition and that an "improper ergonomic work station played some causative effect in her condition." She describes the worker as a compliant patient.

In response, the employer's representative provided an October 1, 2003 submission in the appeal. The submission briefly describes evidence of the worker's employment and of her medical investigation and treatment as documented on the claim file. Under the heading "Law and Policy," statutory provisions of sections 5 and 6 of the Act are reproduced, as are policy statements in RSCM items #14.20, #26.50 and #26.55. It is argued that the worker's symptoms are due to the degenerative disc disease of the cervical spine and that nothing in the employment activity significantly accelerated, activated or advanced her disease; rather, work activities called the worker's symptoms to her attention.

Although provided with an opportunity to do so, the worker's representative elected not to file a rebuttal submission.

Having considered all the evidence and the arguments submitted, I have concluded that the worker's appeal must be denied. I have come to the same conclusions, both with respect to the applicable law and policy and with respect to the facts of the appeal, as did the review officer. Further, I do so for essentially the same reasons, which need not be repeated at great length. Quite simply, there was no trauma and, although there is some evidence of poor ergonomics in the workplace over time (despite recent partial corrections), I do not take the evidence to show that these features of the work performed would have contributed significantly to the condition diagnosed, cervical radiculopathy. I do not take Dr. Lee's opinion to substantially undercut the medical advice provided by Dr. Newman. The condition in the worker's cervical spine is not, according to my understanding of the medical evidence and opinion available, a result of C7 radiculopathy.

As to the possibility of compensation for the condition as an occupational disease, I again find that the worker's condition is not due to the nature of her employment. There is no policy recognition of cervical radiculopathy as an occupational disease and nothing about the facts or medical opinion in this appeal is persuasive that it should be so recognized here.

Conclusion

For the reasons indicated, the worker's appeal is denied and the decision contained in the June 16, 2003 decision of the review officer is confirmed.

Gail Starr
Vice Chair

GS/gl

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