WCAT Decision Number: WCAT-2004-00134
WCAT Decision Date: **January 13, 2004**
Panel: Sarwan Boal, Vice Chair

Introduction

The worker appeals the Workers' Compensation Review Board (Review Board) findings of April 24, 2003, which denied her appeal and upheld a decision letter dated July 2, 2002 of an entitlement officer of the Workers' Compensation Board (the Board). In the July 2, 2002 decision letter, the entitlement officer advised the worker that although she experienced low back complaints at work, the activity of making a bed had no causative significance in producing her low back, as there were no twist, turn or awkward movements involved.

The worker's representative has provided a bulletin on prevention of musculoskeletal injuries (MSI), and an October 10, 2003 submission. An employers' adviser has provided some excerpts from an article on spontaneous onset of back pain, and a November 4, 2003 submission.

The worker did not request an oral hearing, and I agree that an oral hearing is not necessary to fully and fairly adjudicate this matter.

Issue(s)

Whether the worker's low back complaints on March 17, 2002 arose out of and in the course of her employment.

Jurisdiction

This appeal was filed on May 28, 2003 from an April 24, 2003 Workers' Compensation Review Board (Review Board) finding. On March 3, 2003, the Appeal Division and the Review Board were replaced by the Workers' Compensation Appeal Tribunal (WCAT). Section 41(3) of the *Workers Compensation Amendment Act (No. 2), 2002* authorizes WCAT to hear this appeal, as it arises from a finding issued by a Review Board panel that was seized of the appeal on March 3, 2003.

Background and Evidence

The worker was employed as a hotel room attendant. On March 17, 2002, she was making a bed, when she felt sharp pain in the right side of her low back.

On March 17, 2002, the worker saw Dr. W. In a physician's first report of the same date, Dr. W noted: "making bed leaned over lift mattress one arm felt pull in side of low back". His clinical findings were "slightly tender paraspinal. Not bone tender" and no radiation to legs and no neurological symptoms. He diagnosed low back strain. He indicated the worker was disabled from work from one to six days.

In a log entry of May 27, 2002, the entitlement officer documented a telephone conversation with the employer. The employer advised the worker was on maternity leave for one year prior to returning to work on March 14, 2002, and was injured on March 17, 2002. The employer also advised the worker had returned to work full-time on light duties on May 22, 2002.

On May 31, 2002, the entitlement officer spoke with the worker and documented, in part, as follows:

> On March 17/02, she was standing at the side of the queen sized bed, near the back corner, bending at the waist, tucking in a sheet at the back side corner and lifting the corner to tuck it in. As she straightened, she felt pain on right hand side, low back. The bed is on rollers, the floor carpeted. Sometimes the bed needs to be moved a bit to make the corner. This time, she did not need to move the bed.
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> She called down to Housekeeping, spoke to the Head Housekeeper, [E], and advised her she had hurt herself. [E] told her she could come down to the office, and take it easy if she'd like. She left work without completing her shift, and sought medical attention at Whistler Medical Clinic. The treating physician diagnosed a pulled muscle in the low back, and told her to take time off work.

In a handwritten letter of September 20, 2002, Dr. W wrote, in part:

> [The worker] was seen in ER at Whistler on March 17, 2002. The history as given to me at the time was that she does have some chronic back ache but this day while making a bed as a housekeeper, felt a pull at side of her low back. She was leaning over and lifted the mattress to tuck in sheet etc and felt this pull and pain. She describes the pain as different than her chronic pain. On exam she was slightly tender paraspinal with no bone tenderness and no leg or neurological signs. Therefore going by the story as given to me she had an acute injury (a strain) on top of chronic low back pain.
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> [reproduced as written]

The Review Board panel held an oral hearing, and noted:

> I am satisfied that the worker's injury occurred while she was at work, and that she felt a sharp pain in her lower back as she was straightening from a bent-over position. The worker described the details about when she felt her back pain to the Board officer, as recorded in the claim log entry of May 31, 2002. The worker's testimony at the oral hearing was consistent with her earlier report to the Board officer. I find the worker felt a sharp pain in her back as she was straightening up after she had finished making the bed.
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> [reproduced as written]

However, the Review Board referred to policy item #15.20 of the *Rehabilitation Services & Claims Manual, Volume 1,* (RSCM), and concluded the act of bending and straightening is a natural body motion which the human body is designed to perform, and denied the worker's appeal.

Submissions

The worker's representative referred to policy item #15.20 of the RSCM, and basically argued that the worker was performing the work-required motions while she injured herself.

The employers' adviser argued, in essence, that there was no awkward or unnatural motion and, in the absence of evidence of force or awkward posture, it would be speculative to suggest that there was a work-relatedness.

Law and Policy

Subsection 5(1) of the *Workers Compensation Act* (Act) provides that compensation is payable to a worker where a personal injury arises out of and in the course of employment.

Policy item #15.20 of the RSCM deals with injuries following motions at work. It provides that if a job requires a particular motion, and that motion results in injury, that is an indication that the injury arises out of the employment and is compensable. The policy provides some examples of bodily motions which, if performed at work, may gain "work" status. The policy cautions that cases of this kind require the exercise of judgement and must be adjudicated with great care. The policy states, in part:

> …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.

Reasons and Decision

There is no dispute the worker was in the course of her employment, when she experienced sharp pain in the right side of her low back. The Review Board concluded the worker's testimony, regarding the mechanism of injury, was consistent and she felt sharp pain as she was straightening up after making the bed. The employer has not directly challenged the worker's testimony. I therefore accept the worker's testimony, as given at the Review Board oral hearing.

Now, the question is whether the worker's low back pain arose out of her employment. In other words, whether the act of bending down to lift a corner of the mattress with one hand, tucking in the bed sheet with the other, and straightening up afterwards could have caused the worker's diagnosed low back strain.

I acknowledge that bending down and straightening up is also a natural body motion performed anywhere and everywhere. However, according to the Board's policy, a natural body motion gains "work" status when performed as a matter of work duties. In the present case, the worker was required, as part of her work duties, to bend down and straighten up to make beds. Therefore, she was performing a work-required motion when she experienced sharp pain in her low back on March 17, 2002.

Now, the next question is whether the act of bending down and straightening up could have caused the worker's diagnosed back strain. The sole medical opinion, of Dr. W, on file indicates that it did. There is no contradictory medical evidence on file.

Based on the overall evidence on file, I find it is more likely, than not, that the worker's low back injury on March 17, 2002 arose out of and in the course of her employment.

Conclusion

I allow the worker's appeal, and vary the Review Board findings of April 24, 2003.

Sarwan Boal
Vice Chair

SB/mli/jkw

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