WCAT Decision Number: WCAT-2004-00158-RB
WCAT Decision Date: **January 14, 2004**
Panel: Lois Williams, Vice Chair

Introduction

The worker, a steel fabricator at a shipyard, injured his left thumb and wrist when a wire wheel grinder kicked back on March 29, 1999. The Workers' Compensation Board (Board) accepted his claim for benefits for diagnosed traumatic tendonitis of the left thumb and a capsular injury of a carpometacarpal (CMC) joint.

The worker was treated at a hand therapy clinic and an occupational rehabilitation program. He had further therapy, injections, and investigations. He started a graduated return to work in August 2000, but had to stop due to complaints of increasing difficulties using tools. His attending physician prescribed further cortisone injections and said the worker would be off work indefinitely.

In a letter dated October 24, 2000, a Board case manager told the worker that the benefits on his claim had been terminated effective October 15, 2000. His claim had been reviewed by the case manager, a vocational rehabilitation consultant, and a Board medical advisor. Their conclusion was that the worker had plateaued in his recovery and there was no objective evidence of permanent functional impairment. Also, they did not consider the worker to be at undue risk of permanent functional impairment if he returned to his pre-injury work. The case manager said the worker's presentation of disability was not supported by the medical findings, but any significant new medical evidence would be considered.

The worker appealed the October 24, 2000 decision. The Board subsequently reopened his claim, effective June 20, 2001, for surgeries and the worker has been assessed as having a permanent disability related to his March 29, 1999 injury. The Board refused to reconsider the October 24, 2000 decision, on the basis that the worker's condition had been plateaued up to the time his claim was reopened in June 2001. His 3.44 percent pension entitlement was divided, with 2.67 percent of the award effective October 16, 2000, and 0.77 percent effective March 18, 2002.

Issue(s)

Had the worker's temporary disability as a result of his injury resolved or plateaued when his benefits were terminated on October 15, 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.)

Findings and Reasons

Section 29 of the *Workers Compensation Act (*Act) states that compensation is payable for temporary disability, as long as the disability lasts.

Board policy item #34.50 of the *Rehabilitation Services and Claims Manual* (RSCM) states that temporary disability benefits will terminate when the worker's physical impairment disappears or stabilizes. If the disability stabilizes, there may be entitlement to a permanent disability award.

Board policy item #34.54 of the RSCM states that if the worker's condition has definitely stabilized, the condition is considered permanent and a pension is immediately assessed. A condition will be deemed to have plateaued or stabilized where there is little potential for improvement or where any potential changes are in keeping with the normal fluctuations in the condition which can be expected with that kind of disability. Where the examining doctor considers there is only the potential for minimal change, the condition will usually be considered permanent and a pension will be established immediately. Where the examining doctor feels there is the potential for significant change, and the potential change is likely to resolve relatively quickly (generally within 12 months), the condition will be considered temporary and the worker maintained on temporary wage-loss benefits, and a further examination will be scheduled. If the potential change is likely to be protracted (generally over 12 months), the condition will be considered permanent and the pension will be paid, with the claim scheduled for further review.

The worker failed in his attempt to return to employment in August and September 2000, due to increasing difficulty trying to use hand tools. His examining doctor certified that he was disabled and prescribed further treatment. There was no medical examination of the worker at that time that resulted in findings contradictory to that of the attending physician. On this evidence, I find that the worker had continued disability as a result of the March 29, 1999 work injury. He had not recovered.

Although a bone scan and MRI's had not shown abnormal findings, in June 2000 hand specialist Dr. Perey had given his opinion that the worker had suffered a CMC joint injury, but that no gross instability was demonstrated. Dr. Perey said that no

reconstructive surgery was warranted at that time but if the worker's condition deteriorated, a CMC arthroscopy should be carried out. When the worker could not continue with his attempt to return to work in September 2000, Dr. Shoichet, his attending physician noted that in addition to pain and tenderness, the worker had decreased grip and strength. He referred the worker for reassessment by Dr. Perey. On October 25, 2000, Dr. Perey recommended that cortisone and Marcaine be injected under fluoroscopy, and if there was significant immediate relief from pain, this would confirm pathology within the CMC joint. This would warrant a left thumb CMC joint arthroscopy for joint assessment and possible debridement and synovectomy. Dr. Perey performed the fluoroscopy on November 13, 2000 and the worker claimed to have 80 percent pain relief. Dr. Perey said the worker might require arthroscopy and debridement if CMC joint arthroscopes became available.

On January 12, 2001, Dr. Perey again noted that the worker "felt completely normal for approximately eight hours" after the fluoroscopy, and this confirmed pathology in the thumb CMC joint. Unfortunately, a mini joint arthroscope was not yet available.

Both the attending physician and specialist recommended a job change for the worker. On May 30, 2001 the worker's left thumb popped out while he was working at landscaping. On May 31, Dr. Shoichet said the worker's grip was very weak, and the worker was waiting for surgery and further assessment. On June 30, 2001, Dr. Perey performed a left thumb CMC joint arthroscopy and debridement. A full thickness chondral injury was found, as well as another lesion, with approximately 30 – 40 percent of the articular surface involved with the injury. The worker underwent further arthroscopic resection of the trapezium and interposition of a tendon graft on August 18, 2001. The Board recognized that the worker could not return to his pre-injury work. He has had vocational rehabilitation assistance and has been granted a pension. The worker's claim has since been reopened again for further treatment.

Despite the case manager's conclusion that the worker had no permanent functional impairment when benefits were terminated in October 2000, the worker was examined by a disability awards medical advisor in April 2001 and found to have a disability. No pension was implemented then as the claim was reopened for the June 30, 2001 surgery.

At the time the October 24, 2000 plateau decision was make, the worker had been extensively investigated by medical imaging and by a specialist, and there did not appear to anything more that could be done for him. Therefore, although I find it was incorrect to state that the worker had recovered, the decision that he had plateaued was not unreasonable. However, hindsight has since proven the decision to be incorrect.

I find that the evidence supports a conclusion that the worker had not plateaued in his recovery by October 15, 2000. His attempt to return to work in August and September 2000 had failed, and both his doctor and the specialist proposed further treatment. This was carried out, with the worker undergoing fluoroscopic injection in November 2000,

arthroscopic debridement in June 2001, and reconstructive surgery in August 2001, all well within 12 months of the date he was considered to have plateaued in his recovery. I find, in accordance with Board policy regarding when a worker's condition has plateaued, that the worker continued to suffer a temporary disability from his injury. He was entitled to ongoing temporary disability benefits from October 16, 2000 until his claim was reopened by the Board on June 30, 2001. The worker stated he earned some money from attempts to do landscaping during this period and that he was issued a T4 for those earnings. They are to be deducted from his compensation entitlement.

Conclusion

I vary the Board's October 24, 2000 decision. The worker's appeal is allowed for payment of temporary disability benefits between October 16, 2000 and June 29, 2001 inclusive, less any money he earned in that period.

The worker did not incur any direct appeal costs.

Lois Williams
Vice Chair

LW/mli

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