**WCAT Decision Number:** WCAT-2004-00164-RB
**WCAT Decision Date:** **January 14, 2004**
**Panel:** Lorne Newton, Vice Chair

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## Introduction

The worker sustained injury to his left index finger while in the course of employment with a glass company on November 12, 1996. The Workers' Compensation Board (Board) accepted his claim for benefits. In April 2002 the Board considered whether the worker had likely been left with a permanent functional impairment in his left index finger that would warrant a referral to the Disability Awards Department. A case manager informed the worker in a letter dated April 30, 2002 that a Board medical advisor had reviewed the contents of the file and concluded there was not evidence of a significant permanent functional impairment of the left index finger. The case manager noted that while there did not appear to be evidence the worker had a permanent functional impairment, as the worker appeared to be having ongoing problems with the fingernail deformity caused by the initial compensable injury, if his attending physician felt that the worker should be assessed by a hand specialist, the Board would reasonably support that request.

The worker has appealed the April 30, 2002 decision of a Board officer and submits he has been left with a permanent functional impairment and he is entitled to a pension award.

## Issue(s)

At issue is whether the worker has likely been left with a permanent functional impairment of his left index finger that would warrant a referral to the Disability Awards Department in accordance with section 23 of the *Workers Compensation Act* (Act).

## 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 WCB's board of directors 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).

The worker requested an oral hearing. The Registrar's Department determined an oral hearing is not necessary and the worker's appeal can be handled by a read and review of the file evidence. I have reviewed the file documents and have determined that I can fairly decide the worker's appeal without an oral hearing.

**Background and Evidence**

As documented on the claim file, on November 12, 1996 the worker, a glazier was cutting a plastic track down a window with a razor knife and the razor slipped and cut the left index finger. He noted that the razor actually severed the top one and one-half inches of the left index finger.

The worker's physician diagnosed a laceration with amputated fingertip and the worker underwent minor surgical repair.

On November 27, 1996, the worker's physician noted the worker continued to have a moderate amount of tenderness at the incision site and indicated the worker may require further minor surgery to remove the nail bed completely. The worker's physician referred the worker to a plastic and reconstructive surgeon whom he saw on December 18, 1996. Upon examination, the surgeon noted the worker's nail was not yet growing back and he had a spike of nail bed sticking up. The surgeon noted that if the nail bed did not settle down, the worker would possibly require additional surgery to revise the nail bed.

On February 24, 1997, Dr. L, plastic and reconstructive surgeon, revised the nail bed under local anaesthetic. Following that procedure, the worker gained benefit from the operative procedure but continued to complain that if he banged the base of the nail, he experienced pain and the right tip of the finger was numb.

The Board did not receive any medical reports after October 1997 until a September 30, 2000 report from the worker's physician. The physician recorded that the worker's recovery was satisfactory and that he would benefit from an assessment by a Board physician. Following the medical reports received from the worker's physician dated September 30, 2000 a Board medical advisor provided an opinion as set out in a memo dated April 19, 2002 that there was not objective evidence of a permanent functional impairment indicated in the medical reports received to file. The Board medical advisor did note the worker was having ongoing problems with a fingernail deformity and suggested the worker be assessed by a hand specialist as recommended by the worker's doctor. This was done in July 2002. The Board eventually had the worker assessed by a plastic surgeon at the Visiting Specialists Clinic on July 10, 2002 which is shortly after the decision letter under appeal.

The visiting specialist found the worker had a nail deformity with a split nail. The visiting specialist found the split became progressively greater as it moves towards the end of the nail. The worker told the specialist he had some residual numbness at the tip of the finger and stiffness of the distal interphalangeal joint but his primary ongoing problem is nail irregularity; the nail deformity results in the worker catching the nail which is uncomfortable. The specialist recommended the worker simply use some super glue or contact glue compound to fill in the defect which could be filed smooth and which could be applied on an occasional basis as needed. The specialist noted that such a compound would remove the irregularity and seal the functional split in the nail.

The worker submitted in a letter dated August 4, 2003 that following his laceration injury of the left index finger, he has been left with a deformity in the form of a growing split in the nail which peaks at the cuticle and continues to do so under the skin. The worker submitted that on a regular basis the peak causes his finger to become infected resulting in bleeding. The worker submitted that while his doctor and specialist have advised him to file the nail itself and fill the split with super glue, this does help with preventing snagging and nail breakage. However, it does not alleviate the numbness, stiffness and pain caused underneath the skin where the nail is peaking.

The worker noted that while there is a deformity in appearance of the finger, he is not seeking a cosmetic award. He submitted that he currently works for an employer involving the glazing of marine windows which includes the use of numerous chemicals, caulking, the installation of fulcrum rubber and installation of glass and window screens and he finds the chemicals irritate his finger which becomes infected and bleeding. The worker submitted when installing the fulcrum rubber which is the last state of glazing of the window, he must use both hands to push the rubber into the window frame and this causes a great deal of pain and discomfort in the left index finger.

**Reasons and Findings**

Section 23(1) of the Act at the time of the worker's request for reopening and pension assessment states as follows:

> …Where permanent partial disability results from the injury, the impairment of earning capacity must be estimated from the nature and degree of the injury, and the compensation must be a periodic payment to the injured worker of a sum equal to 75% of the estimated loss of average earnings resulting from the impairment, and must be payable during the lifetime of the worker or in another manner the board determines.

Policy item #36.00 in the *Rehabilitation Services and Claims Manual, Volume 1* (RSCM) describes when permanent disability awards are made. The policy sets out that such awards are provided to a worker when the worker fails to completely recover from an industrial injury or disease, but is left with a permanent residual disability.

Policy item #38.00 in the RSCM sets out the Board's policy for the payment of permanent partial disability pensions. The policy notes the Board has two methods of assessing permanent partial disabilities which are both loss of function/physical impairment method and the projected loss of earnings method. The policy provides that these two methods are considered in every case where applicable, the amount of the pension being the higher of the two figures produced by the two calculated methods.

Policy item #38.10 in the RSCM sets out the Board's policy and procedure for decision-making in determining a worker's pension entitlement.

Policy item #39.00 in the RSCM sets out the Board's policy for the loss of function/physical impairment assessment.

Policy item #39.01 in the RSCM sets out the Board's policy for the determination of a pension award where a worker has subjective complaints and there are minimal objective physical findings.

The panel finds that the preponderance of medical evidence supports a conclusion that the worker has been left with some permanent functional impairment as a result of a slight amputation of the tip of the left index finger. The panel notes that while the worker's physician indicated in the report dated September 30, 2000 that the worker was still having problems with the fingernail deformity causing him pain, the Board medical advisor in the medical opinion dated April 19, 2002 noted the physician did not provide evidence of a significant permanent functional impairment present in the index finger. However, the worker has provided details of the ongoing problems he has with the fingernail deformity. When the worker was seen by a Board visiting specialist in July 2002 after the April 30, 2002 decision letter denied him access to disability awards, the specialist noted the worker was having problems with the split in the fingernail bed. The worker has since provided a submission that sets out the difficulties he has carrying out his job. Specifically, he gets significant pain in the finger when applying pressure when working as a glazier. Also, he continues to get infections caused by chemicals that impact on the nail bed site where there is a split. The worker also claims he has numbness in the finger that impacts on his ability to do his job. The worker's description of problems is supported by the visiting specialist's description of the deformity.

The panel finds that the worker should be referred to the Disability Awards Department to determine whether he has been left with a permanent functional impairment either based on the objective evidence or based on his subjective complaints of numbness and pain. The panel finds the evidence clearly shows the worker has not fully recovered from the effects of the initial injury as discussed in the Board policies for the calculation of functional awards and he is entitled to a referral to the Disability Awards Department for assessment.

The panel notes of importance that when the Board medical advisor provided an opinion on April 19, 2002 the opinion was based on interpretation of medical reports only and not on the history provided by the worker. Also, the Board doctor did not have the luxury of having the consultation report from the visiting specialist. The panel finds there is more information now provided by the visiting specialist that warrants the worker be assessed for pension purposes.

**Conclusion**

The panel allows the worker's appeal and varies the Board officer's decision.

Lorne Newton
Vice Chair

LN/rbe



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