WCAT Decision Number: WCAT-2004-00165-RB
WCAT Decision Date: **January 14, 2004**
Panel: David A. Cox, Vice Chair

Introduction

The worker appeals from the September 26, 2001 decision of an officer of the Workers' Compensation Board (Board) which informed him that a January 26, 2001 back injury claim would not be reopened for any further medical investigation or treatment as of August 1, 2001.

The worker was informed that the reopening request had been reviewed by a Board medical advisor who advised that there was no medical evidence of any residual condition from the minor soft tissue injury strain which had initiated the claim after the worker had removed a binder from a shelf, eight months previously. The Board medical advisor stated that the worker's current pain complaints were completely out of proportion to any tissue injury that could possibly have ensued from such a mechanism of injury. In the Board medical advisor's opinion, massage therapy was not indicated nor was there further medical investigation or treatment indicated under the January 26, 2001 back injury claim.

Issue(s)

Was the worker entitled to a reopening his January 26, 2001 back injury claim for further medical investigation or treatment as of August 1, 2001?

Jurisdiction

This appeal was filed with the Workers' Compensation Review Board (Review Board). On March 3, 2003, the Appeal Division and 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 Board'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).

Workers' Compensation Appeal Tribunal 150, 4600 Jacombs Road, Richmond, B.C. V6V 3B1
Telephone: (604) 664-7800; 1-800-663-2782; Fax (604) 664-7898

Background and Evidence

The worker, a partsperson in a heavy equipment business, reported to her physician on February 2, 2001 that while she was lifting a heavy binder with her right hand, she had turned and felt pain in the upper right back area. The attending physician diagnosed a back strain to the worker's right mid-back.

The worker made application to the Board on February 16, 2001 for a sore right shoulder and right upper back. She had reported lifting a large binder weighing ten pounds, off a shelf six inches from the floor to a countertop 48 inches high on January 26, 2001.

A February 19, 2001 claim log memo set out that the worker's claim had been accepted for a right upper back strain which had occurred after the claimant had lifted a heavy book with her right arm and twisted to her left side in order to answer a telephone. It was documented that the worker felt immediate pain in her right upper back and had reported the incident to her employer and a first aid attendant. The entitlement officer's memo stated that a short term wage loss claim would be opened effective January 27, 2001.

A physician's progress report based on treatment of the worker August 1, 2001 recorded the worker's complaints of right lateral neck and shoulder spasm. The physician noted that the worker could no longer play tennis and was also having headaches.

The August 2, 2001 claim log memo of an entitlement officer reported that the worker had advised of continued right sided back problems extending into her right shoulder. The worker had reported pain, discomfort, tension, stiffness and headaches since a return to work. She had not attended her physician consistently since February 2 but had been seen by a chiropractor on a regular basis. She had been referred for massage therapy and requested that her claim be reopened for this treatment. The worker stated that her supervisor and co-workers were aware of her ongoing problems.

In an August 3, 2001 claim log memo, a nurse advisor noted the worker's request for a claims reopening for massage therapy. The nurse advisor noted there were no medical reports on file from February 2, 2001 until August 1, 2001 and that the mechanism of injury was considered minor. The nurse advisor stated the opinion that there was no medical evidence to connect the worker's present symptoms and her need for massage therapy.

In correspondence to the Board dated August 31, 2001, the attending chiropractor reported that the worker had received her first treatment on March 22, 2001 for right shoulder blade complaints as well as muscle pain at the top of the shoulder and medial border of the shoulder blade. The worker had received nine separate chiropractic treatments between March 22, and August 22, 2001. The chiropractor noted that as treatment progressed, other symptomatology such as intense headaches became apparent. The chiropractor noted that at present, the worker still experienced right shoulder blade and neck pain, headaches and right trapezius muscle spasm.

The September 11, 2001 claim log entry of a Board medical advisor set out the opinion that there was a lack of medical evidence to support any residual condition from the minor soft tissue strain which had occurred when the worker removed a binder from a shelf. In the Board medical advisor's opinion, the worker's current pain complaints were out of proportion to any injury that could have possibly have ensued from such a mechanism of injury and in the result, massage therapy would be contraindicated and in fact might simply encourage further illness behaviour. In the Board medical advisor's opinion, no further medical investigation or treatment was indicated for the January 26, 2001 injury claim.

The September 26, 2001 decision from which the worker has appealed was then issued.

Submissions

In a June 5, 2003 submission, the worker's union representative argued that the worker's claim should have been reopened for appropriate benefits.

The representative argued that the worker had been under the direction and supervision of her physician since the date of injury and between February 6, 2001 and March 5, 2001 she had received eight physiotherapy treatments. Furthermore, she had been treated nine times by a chiropractor between March 22, 2001 and August 22, 2001. After both of these treatment modalities, the representative stated, the worker had no relief of her symptoms and was advised to try massage therapy. The representative summarised that six months from the date of injury the worker still had no relief from pain and swelling and to date was unable to lift more than 15 pounds without assistance. The representative submitted that appropriate benefits should have been provided for her ongoing treatment by way of her compensable injury.

The union also furnished the worker's May 13, 2003 statement providing a chronology of the events since her compensable injury. The worker explained that chiropractic treatment had relieved her headaches and tension on the right side of her neck and scapula area but had provided her little relief in the lower shoulder area. The worker stated that, despite the fact that the chiropractor had provided her with stretching exercises, continued repetition of these exercises over the course of two years had little effect upon her ongoing complaints. She stated she had returned to her family

physician in August 2001 because of consistent pain which had kept her from her regular activities. She stated that she still suffered from pain and tightness in her right lower shoulder and upper back area and felt a stabbing pain if she reached forward with her arms outstretched. She reported she had been referred to a specialist in May 2003.

The accident employer participated in the appeal process by way of an August 29, 2003 submission prepared by a legal advisor. The employer's representative submitted that the case manager had made a correct decision based on the available medical evidence. The employer's position was that the Board's decision had correctly considered the advice of a Board medical advisor and that while the worker may have subjectively felt that her condition was related to the January 26, 2001 incident, she had provided no medical evidence in support of that position.

The representative summarised and stated that there was no available medical evidence that the worker's condition, eight months after the compensable incident, was related to that incident. There was also no medical evidence to suggest that the worker's condition in August of 2001 had been caused by the compensable incident. The employer's representative suggested that the preponderance of evidence supported that the worker's current pain complaints were not caused by the compensable incident at work and were completely out of proportion to any tissue injury that could have ensued from that incident.

In a rebuttal submission dated September 11, 2003, the worker's union submitted that the employer was incorrect. The representative stated that the worker's testimony was that she had a continuity of symptoms from the date of her injury until her request for a claim's reopening on August 2, 2001. The representative reiterated that the worker continued to be under the direction and supervision of her general practitioner and because of a continuity of her symptoms, received physiotherapy treatment. It was because the worker continued to have symptoms without any significant relief, that she requested further assistance from the Board.

The representative then submitted that the Board medical advisor's opinion had little substance and was speculative. The representative submitted that this opinion was based on generalities rather than the merits of the specific case as required by the *Workers Compensation Act* (Act). The representative argued that relevant evidence had not been properly weighed and that there was a continuity of symptoms and treatment related to the injury.

Reasons and Findings

Policy items #107.00 and #107.10 of the *Rehabilitation Services and Claims Manual*, *Volume 1* (RSCM) provides that in order to consider a claim's reopening there must be evidence that an initial injury had causative significance in relation to the symptoms reported at the time of the reopening request. Where there has been no reoccurrence

of the original compensable injury symptoms with no intervening cause, a reopening may be considered.

The case manager's September 26, 2001 decision considered whether the worker's symptoms in August 2001 were related to the worker's January 26, 2001 injury claim which had been accepted by the Board for a right upper back strain. The worker's evidence was that she had last missed work in early February 2001 but had attended eight physiotherapy treatments; the final one on March 5, 2001. She had then received nine chiropractic treatments between March and late August 2001.

The case manager relied upon a Board medical advisor's opinion (claim log September 11, 2001) that the worker's current pain complaints were "out of proportion" to her injury and denied a reopening request for massage therapy. The attending chiropractor characterised the worker's ongoing symptomatology as right shoulder blade and neck pain, headaches and right trapezius muscle spasm. The lone medical opinion regarding the presence of any residual symptoms in relation to the compensable injury is that of the Board medical advisor. While the worker's representative is correct in the indication that the worker had a continuity of treatment, the chiropractic treatment went beyond the range of the attending physician's first diagnosis of a back strain. While there was a continuity of symptoms, they appear outside the range of conditions accepted by the Board under the injury claim. The Board medical advisor's opinion was that these symptoms were out of proportion with an injury which had not resulted in any time loss since February 2001. Although the worker has provided evidence that she had not recovered from that back sprain, there is no supportive medical evidence to contradict the Board medical advisor's opinion. Although the worker indicated she had been referred to a specialist in May 2003, the union's final submission on her behalf, dated September 11, 2003, did not produce a report based on this consultation. I find insufficient evidence to support a relationship between the compensable injury and the worker's subsequent symptoms in August 2001. I am therefore not able to conclude that the diverse symptoms for which massage therapy was recommended, were related to accepted back strain injury claim.

Conclusion

For the foregoing reasons, the Board's September 26, 2001 decision is confirmed. No costs are allowed.

David A. Cox
Vice Chair

DAC/cmm