WCAT Decision Number: WCAT-2004-00166-RB
WCAT Decision Date: **January 14, 2004**
Panel: Dan Cahill, Vice Chair

Introduction

The worker appeals a decision of an officer of the Workers' Compensation Board (Board) set out in a letter dated May 12, 2000. In that letter a Board case manager informed the worker that her claim for an accepted low back injury was finalised on March 24, 2000 when she was discharged from the Board's work conditioning program (WCP) as fit to return to work.

The case manager determined, on the basis of a Board medical advisor's opinion, that the worker's current complaints respecting leg cramps were not related to the back injury.

Issue(s)

Whether the worker remained disabled as a result of her compensable injury subsequent to March 24, 2000.

Whether the worker's leg symptoms were related to the compensable back injury and if so, was she entitled to further compensation benefits.

Jurisdiction

The worker filed her appeal with the Workers' Compensation Review Board (Review Board). On March 3, 2003, the Workers' Compensation Appeal Tribunal (WCAT) replaced both the Review Board and the Appeal Division. As the worker's appeal had not been considered by a Review Board panel before date, I am deciding it 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) of the *Workers Compensation Act* (Act)). 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 governing body 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.

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Background and Evidence

The following is a summary from the claim file.

The worker, a casual care aide, had been employed in a long term care facility since January 28, 1993.

In the employer's report of injury dated December 23, 1999, the employer stated that the worker experienced sudden pain in her lower mid-back on December 16, 1999 while helping a resident up from a chair. The worker's application for compensation dated December 27, 1999 repeated the mechanism of injury which injured her low back.

In a December 18, 1999 report, Dr. Bojanowska-Moore diagnosed a strain of the lumbar muscles. Dr. Bojanowska-Moore described the mechanism of injury as stated earlier and noted the worker would be off work for seven to thirteen days.

An x-ray taken January 5, 2000 was normal.

The worker saw orthopaedic surgeon, Dr. H. MacNiel, on January 14, 2000. Dr. MacNiel noted that the worker gave no previous history of low back pain. Dr. MacNiel stated the pain remained at the base of the worker's spine and walking for any long distance would result in intermittent pain in the back of both thighs. Dr. MacNiel stated the worker sustained a musculoligamentous strain and should continue with physiotherapy. Dr. MacNiel thought the worker might return to work within two weeks.

In a report of January 18, 2000 Dr. Bojanowska-Moore stated the worker could benefit from modified part time work with restrictions. On February 1, 2000 Dr. Bojanowska-Moore stated the worker would benefit from a work conditioning program (WCP).

The worker saw Dr. MacNiel on February 2, 2000. Dr. MacNiel noted the worker had not yet returned to work and that pain had developed down the back of her left thigh to the mid-calf level and on occasion this was worse than the low back pain. Dr. MacNiel stated the worker was not fit to return to work.

On February 15, 2000 Dr. MacNiel stated the worker noted the worker's increased left calf pain. Dr. MacNiel recommended an active rehabilitation program. On February 16, 2000 Dr. Bojanowska-Moore recommended a work conditioning program which the worker commenced on February 22, 2000.

On March 22, 2000 Dr. MacNiel stated the worker's straight leg raising measured 80 degrees on the right and 70 degrees on the left which was the same as the two prior examinations. Straight leg raising caused the worker increased calf pain. Dr. MacNiel noted that knee flexion immediately relieved the pain. Dr. MacNiel stated the worker would continue with rehabilitation and work only four hours per day for the next two weeks.

The work conditioning discharge report stated the worker was discharged on May 24, 2000 as safe to return to work unrestricted. Subjectively, the worker had stated that her leg pain was unchanged. There were no objective findings with respect to neurological weakness or observable inflammation. The report confirmed and agreed with Dr. MacNiel's recommendation that the worker continue with four hours work for the next two more weeks.

On April 14, 2000 Dr. MacNiel reported the worker had increased left calf pain and cramps. Straight leg raising on the right was 85 degrees and on the left 50 degrees with pain in the worker's posterior thigh and calf. Dorsal flexion of the worker's foot caused pain. Lasegue's test was negative. Dr. MacNiel stated the worker was not ready for full time nor heavy duty work and recommended the worker remain at four hours per day on light duties for another three weeks.

On May 12, 2000 Board medical advisor, Dr. Ragheb, stated the worker's current leg complaints were unlikely related to her claim. Cramps might take place if there were some nerve root irritation or entrapment but the neurological examination was normal throughout. Cramps were unlikely due to a back injury but may be related to varicose veins or Ekbom leg syndrome. Dr. Ragheb stated that neither of these conditions were related to the worker's injury.

In a September 30, 2002 report, Dr. Bojanowska-Moore provided a brief medical history of the worker's claim. Dr. Bojanowska-Moore had referred the worker to Dr. MacNiel who reported the worker's complaint of low back pain and pain in her thighs and later pain in the left leg down to the mid-calf level. Dr. Bojanowska-Moore stated the worker had been a patient with her since 1997 and prior to the accident of December 16, 1999 never complained of pain in her legs. Dr. Bojanowska-Moore agreed with Dr. MacNiel that the worker's left leg symptoms were related to the worker's low back pain caused by the accident at work on December 16, 1999. Dr. Bojanowska-Moore opined that the work restrictions until May 2, 2000 were reasonable given the effects of the worker's low back injury.

At the hearing, the worker provided a brief history of her employment, her duties as a care aide and a description of the mechanism of her low back injury on December 16, 1999.

The worker stated that her leg symptoms came on approximately one to one and a half weeks after she had hurt her back. Initially she felt pain in the back of her thigh which gradually went to the back of her calf. She said this was her first back injury and she had never had symptoms in her back and leg prior to the injury at work.

The worker stated that when she was referred to Dr. MacNiel she had explained, at the first visit, that she had pain in her leg for about two weeks by then. The worker said physiotherapy was helpful but she felt pain when she commenced treatment. She said that during the WCP her back was somewhat better as she was taking physiotherapy and Celebrex as prescribed by Dr. MacNiel.

The worker stated that by the end of March 2000 she had returned to work at four hours per day but could not perform her regular duties. Rather, she performed simple tasks and was helping co-workers on that floor. She said, pursuant to the WCP instructions, she exercised while at work. She said she had pain in her back and legs from walking and bending when she made the beds. She explained the pain in her calf was like someone squeezing her calf. The exercise she performed at work was to sit down and elevate her legs. She would do this four to five times in a four hour shift.

She said even if she did not have the leg pain, she likely would not have been able to work due to her back pain. She said that she was still on a graduated return to work and unable to perform all her duties when the Board ceased wage loss benefits. She said she continued to work on a graduated basis from four to six hours per day. By May of 2000, she moved to another floor where there was less patient transferring and lifting requirements.

The worker stated that once she returned to work she would work her regular seven and a half hour shift and an equal number of “extra” four and a half hour “float” shifts.

The worker felt that her symptoms had not improved more than 70 percent since the injury. She stated she still missed work from time to time. When she felt uncomfortable she would call in as “sick”. She said she might do this a few times per month.

Submission

The worker’s representative stated that the worker’s leg symptoms should be accepted under the claim. She stated these emergent symptoms were noted in Dr. MacNiel’s first report to have been present for approximately two weeks. The worker had stated the symptoms came on one to one and half weeks post-injury and she related the leg symptoms to her back injury. The worker had stated the symptoms had radiated into her thighs and then to her calf. The worker’s representative submitted there was a close temporal connection to the original injury. Further, that Dr. Bojanowska-Moore related the worker’s leg symptoms to her compensable back injury. The worker’s representative submitted that Dr. MacNiel’s reports related the back and leg symptoms

as well. Dr. MacNiel stated on March 22, 2000 that the worker should continue with physiotherapy for another two weeks, which was what the worker had done.

The worker's representative submitted that, the worker was entitled to further wage loss benefits until she completed the full graduated return to work. The back pain alone made it impossible for her to return to work at the time wage loss benefits ceased. At that time, the worker was unable to resume her full regular duties, rather she was capable of basic/lighter duties.

The worker's representative argued that the worker had followed the instructions of the specialist and returned to work full time on a lighter floor and the appeal should therefore be allowed. The worker's leg symptoms should have been accepted but, in any event, the worker was entitled to wage loss benefits until she returned to work at full duties.

Reasons and Findings

The worker sustained an injury to her low back from a lifting incident at work on December 16, 1999. Essentially she was required to bear the full weight of a comatose patient while transferring her to a wheelchair. The worker went off work and was diagnosed by her attending physician with a strain of her lumbar muscles. The attending physician referred the worker to an orthopaedic surgeon who diagnosed a musculoligamentous strain that was responding to physiotherapy. There was no finding of nerve root or sciatic nerve irritation, although throughout this period the worker complained of problems with her leg. Both the physician and specialist recommended ongoing physiotherapy and a Board rehabilitation program. Despite the Board program recommendations on March 24, 2000 that the worker was safe to return to work unrestricted, the orthopaedic surgeon stated on March 22, 2000 the worker required further rehabilitation and was limited to four hours per day for another two weeks. The Board agreed to that extension. On April 14, 2000 the orthopaedic surgeon stated the worker was not yet ready for full time or heavy work and would continue at four hours per day on light duties for the next three weeks. The worker followed this recommendation and returned to work full time on another floor performing less physically demanding tasks. Her attending physician opined this work restriction as followed by the worker until May 2, 2000, was reasonable given the effects of her back injury.

The Board determined, based on the opinion of the medical advisor, that the worker's leg symptoms were not related to her compensable low back injury. Further, the Board determined that, based on the recommendations from the WCP, the worker was fit to return to work without limitation and finalled her wage loss benefits on April 7, 2000, at the end of the second extension of the graduated return to work.

The worker provided her evidence in a straight forward and forthright manner. The worker's credibility was not an issue in making this finding. I accept her description of symptoms involving her leg (calf and thigh). However, I must determine whether those symptoms were causally related to her compensable back injury.

In the matter of whether the worker's leg symptoms were causally related to her compensable low back injury, I deny the appeal. I do so because although Dr. Bojanowska-Moore's stated that Dr. MacNiel had related the worker's leg symptoms to her low back pain, I did not find that Dr. MacNiel did so. Dr. MacNiel examined the worker and noted her complaints were of back and leg pain. Dr. MacNiel conducted investigations to determine whether there were signs of nerve root irritation or sciatic nerve irritation. He concluded the worker's problems were musculoligamentous in origin. He recommended active rehabilitation. In subsequent visits he continued to investigate nerve root impingement but ultimately did not change his diagnosis nor the treatment regimen.

Dr. Ragheb's opinion was that Dr. MacNiel's examination confirmed musculoligamentous injury with no mechanical or nerve root entrapment. Dr. Ragheb concluded that the worker's leg complaints were unlikely related to the injury under this claim. I accept Dr. Ragheb's opinion as it is consistent with Dr. MacNiel's investigation that the worker's neurological examinations were normal.

With respect to whether the worker remained disabled as a consequence of the compensable injury beyond the period for which wage loss benefits were paid, I allow the appeal. I do so because the worker's evidence, which I accept, related her problems in returning to work to her back as well as to her leg. Dr. MacNiel's request on March 22, 2000 to extend the graduated return to work was accepted by the Board. His recommendations in April was for a further three week extension (four hours per day at light duties) on the basis that the worker was not yet ready for full time work. The worker's evidence was that even if her leg problem had ceased, her back condition was such that she could not return to work full time at her regular duties. This is consistent with the medical evidence on file.

The worker complied with Dr. MacNiel's recommendations and did return to work full time in a position that afforded less physically demanding tasks. Dr. Bojanowska-Moore stated the worker was not fit to resume full duties without limitation by March 2000 and opined the work restrictions set out by Dr. MacNiel were reasonable until May 2, 2002.

I find therefore the worker was not capable of a return to work as contemplated by the Board until May 2, 2002 and she is entitled to temporary wage loss benefits accordingly.

I allow the appeal to the extent set out above.

Conclusion

In view of the above I vary the Board's May 12, 2000 decision by finding the worker was not capable of a return to work at full duties until May 2, 2002. She is therefore entitled to temporary wage loss benefits until May 2, 2000.

The worker incurred the cost of Dr. Bojanowska-Moore's report of September 30, 2002. That report assisted in making this finding. I therefore order the Board pursuant to section 7 of the *Workers Compensation Act Appeal Regulation* to reimburse the worker for the expense incurred for that report to the extent provided by the Board's policies and tariffs.

Dan Cahill
Vice Chair

DC/cmm

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