WCAT Decision Number: WCAT-2004-00167-RB
WCAT Decision Date: **January 14, 2004**
Panel: Inderjeet Hundal, Vice Chair

Introduction

The worker has appealed a decision of the Workers' Compensation Board (Board) conveyed in a letter dated February 6, 2002. In that letter, a case manager terminated the worker's wage loss benefits on January 31, 2002 on the basis that his compensable condition under this claim had resolved. The case manager informed the worker that his file would not be referred to the Vocational Rehabilitation Department or Disability Awards Department. The case manager concluded that the worker's bilateral osteoarthritis, combined with the obesity, diabetes and the possible heart disease problems were not related to the injuries accepted under this claim.

The worker has disagreed with this decision.

Issue(s)

1. Whether the worker is entitled to further wage loss benefits after January 31, 2002.
2. Whether the worker had recovered from the effects of his compensable injury of June 12, 2000.
3. Whether the worker is entitled to be referred to vocational rehabilitation or Disability Awards Department for pension consideration.
4. Whether the worker's osteoarthritis, obesity, diabetes and possible heart disease problems are related to his compensable injury of June 12, 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.)

Background and Evidence

The worker sustained a left knee injury in the course of his employment on June 12, 2000. His claim was accepted for strained left medial collateral ligament and medial meniscus tear.

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An x-ray report of the left knee dated June 15, 2000 showed moderately severe degenerative arthritis of the left knee joint.

His recovery was slow and the worker was seen by Dr. K on August 14, 2000. Dr. K noted that the worker had a Grade II medial collateral ligament injury to the knee as well as possibly a medial meniscal tear. In his follow-up report dated October 6, 2000 Dr. K recommended arthroscopic assessment and debridement of his knee.

The worker was seen at the Visiting Specialists Clinic by Dr. V on December 18, 2000. Dr. V recorded that the worker had a tear of his left medial meniscus superimposed upon degenerative osteoarthritis at the medial tibial femoral compartment of his left knee. Dr. V recommended proceeding with an arthroscopic partial and medial meniscectomy.

The worker underwent partial medial meniscectomy of the left knee performed by Dr. V on January 16, 2001. In his follow-up report Dr. V recorded that the worker had a lot of difficulty recovering from the arthroscopic debridement of his left knee because of his extreme obesity, and advanced degenerative changes in the medial tibial femoral compartment.

The worker was admitted to the physiotherapy clinic for a work conditioning program on May 30, 2001. The worker, on his first day of the work conditioning program assessment injured his right knee when he was trying to stand up from a lying position, his left leg had gone out and he fell onto his right knee. The Board accepted the worker's right knee symptoms as a consequence of his left knee claim. The worker's right knee claim had been accepted for a right patellar tendon.

The worker was discharged from the work conditioning program on July 11, 2001 as fit to return to work without limitations.

Subsequent medical reports from Dr. C documented ongoing problems with respect to the worker's bilateral knee symptoms.

Dr. W, an orthopaedic surgeon examined the worker on November 2, 2001. Dr. W recorded that the worker was suffering from left knee medial compartment osteoarthritis, morbid obesity, diabetes and possible heart disease. The doctor noted the worker was disabled permanently from physical labour which required lifting, climbing or standing on his feet all day.

A team meeting was held on November 21, 2001. The case manager and Board medical advisor attended the team meeting. The Board medical advisor confirmed that at the time of the injury, the worker already had moderate osteoarthritis at the medial tibial femoral compartment of the left knee. The Board medical advisor further noted that the worker had pre-existing conditions such as obesity, diabetes and possible ischemic heart disease. The Board medical advisor also confirmed that the worker's

right patellar tendonitis had resolved. The Board medical advisor said that objectively the left knee condition appeared to be resolved. The Board medical advisor concluded that the worker's problems were related to his pre-existing non-compensable conditions.

The Board medical advisor, Dr. W.VR reviewed the medical information on the claim file and stated:

> 1) the predominant left knee condition preventing the claimant from returning to full employment is related to the almost complete loss of articular cartilage throughout the articular surface of the patella and medial tibiofemoral compartments. Full recovery from the left medial collateral ligament strain and medial meniscus injury and surgery will have occurred long ago. In a normal healthy knee, full recovery would have been expected. A permanent functional impairment would have been unlikely.
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> 2) the severe advanced osteoarthritis of the left knee as documented above will result in disabling discomfort and pain involving the left knee. The probability of this occurring is very much greater than 50 percent. This would have occurred in the absence of the left medial collateral ligament and medial meniscus injury.
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> 3) the osteoarthritis in the right knee likewise would become disabling. The right patella tendonitis would have no significant impact on its progression.
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> 4) the incident accepted under this claim resulting in the medial meniscus injury has brought the severe underlying osteoarthritis to light. In general, following the removal of a significant portion of a medial meniscus there is a risk of accelerating the underlying osteoarthritis process. However, in this claimant this process had already reached the severe stage.
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> [reproduced as written]

On November 21, 2001 the claims officer requested medical chart notes from Dr. C with regard to the worker's left knee complaints from 1998. In a letter dated December 14, 2001 Dr. C noted that the worker had sought medical treatment in April 2000 regarding bilateral pain in the kneecap area of both knees.

In a log entry memo dated March 27, 2002 Dr. W.VR recorded that full recovery would probably take six to eight weeks to recover from the left medial collateral ligament strain.

The worker's attending physician in a letter dated May 9, 2002 recorded that the worker, over 20 years had never complained to any degree about pain and never has had

significant medical problems with his knees prior to the injury in June 2000. Dr. C recorded that but for the injury the worker would, in fact, likely still be working in the construction industry.

At the oral hearing, the worker further described his symptoms when the Board terminated his wage loss benefits on January 31, 2002. He stated he still had ongoing problems at that time.

In response to questioning, the worker said he has not been pain free since the day following his June 12, 2000 injury. He said he tried returning to work, however, he was not successful due to his symptoms.

The worker describes his job as being physically demanding which involved lifting and handling heavy objects as well, it requires a lot of bending which bothers his symptoms.

In response to further questioning the worker said he had a pre-existing condition, however, he was able to work prior to his compensable June 12, 2000 injury. He did not miss any time from work because of his left knee symptoms.

It is the worker's evidence that his symptoms basically are the same now, as they were when the Board terminated his benefits. The overall condition basically is the same. He continued to see his doctor for his symptoms. He takes pain medications such as anti-inflammatories and Tylenol #3 for his symptoms.

The worker said he is not presently working because he is not fit to return to his pre-injury employment because of his symptoms.

In support of his appeal, the worker's representative submitted that the worker was not fit to return to work when the Board terminated his wage loss benefits on January 31, 2002. The representative said Dr. W, an orthopaedic surgeon, said the worker was not fit to return to his pre-injury employment when he examined him in November 2001. On behalf of the worker, the representative said the worker should be referred to the vocational rehabilitation and the Disability Awards Department for pension consideration. The representative also requested income continuity benefits from January 31, 2002.

In support of the worker's appeal his representative submitted a letter dated May 9, 2002 from Dr. C. I note this report was already in the claim file.

Reasons and Findings

The first issue is whether the Board correctly terminated the wage loss benefits on January 31, 2002. In accordance with section 29(1) and 30(1) of the *Workers Compensation Act* (Act) wage loss benefits are paid for temporary disability, and will continue only so long as the disability lasts. That is, benefits payable under sections 29 and 30 will be terminated when the worker's physical impairment resulting from the injury resolves, or stabilizes.

I find that the medical evidence shows that the worker's condition had stabilized or plateaued by January 31, 2002. Even though he continued to have ongoing problems, there is insufficient evidence that his condition will improve with additional treatment. It is the worker's evidence that his symptoms basically remain the same, although they fluctuate from time-to-time; his overall condition had remained the same since the Board terminated his wage loss benefits on January 31, 2002. Dr. C in his progress report noted that the worker was not fit to return to work. I find that determination was solely based on the worker's subjective complaints. As a result, the worker does not meet the requirements of either section 29 or 30 of the Act for additional temporary disability benefits. There is insufficient evidence of ongoing temporary disability after January 31, 2002. I find the worker is not entitled to wage loss benefits after January 31, 2002.

With regard to the issue as to whether the worker had recovered from the effects of his compensable injury, I find he had not. Dr. W in his report dated November 2, 2001 recorded the worker was not able to return to his pre-injury employment due to his compensable problems. The Board medical advisor Dr. VR said the worker had severe documented osteoarthritis of the left knee. The worker's attending physician, Dr. C in his letter dated November 9, 2002 noted the worker had never complained to any degree about pain in his knees and never had significant medical problems with his knees prior to the compensable injury of June 2000. Dr. C said but for the injury of June 2000, the worker would, in fact, likely still be working in the construction industry. I find that it is only following the compensable injury the worker is not able to return to his pre-injury employment. The medical evidence supports but for the insult, the worker would have not been left with any residual impairment and could have carried on with his employment activities. I find the worker cannot return to his pre-injury employment because of the disability caused by the compensable injury. I find the worker's compensable injury caused a permanent aggravation of a pre-existing condition.

Having considered the medical on file, specifically Dr. C's report of May 9, 2002, who stated the worker never had problems with his knee prior to the injury of June 2000 and had he not sustained an injury of June 2000, he would still likely be working in the construction industry. Based on this evidence, I find the worker should be referred to the Disability Awards Department to determine the degree of permanent impairment and his entitlement to a pension award.

Given the fact I concluded that the worker's injury caused a permanent aggravation of his pre-existing condition, his file should be referred to the Vocational Rehabilitation Department. The worker's representative submitted the worker is entitled to a continuity

of income benefits. The authority of the WCAT is limited to dealing with issues raised in the decision letters which have been appealed and I have authority to make a finding of a referral to vocational rehabilitation not quantum of vocational rehabilitation benefits.

With regard to the worker's obesity, diabetes and possible heart disease problems, I find insufficient medical evidence to support a conclusion that these problems are casually related to the described June 12, 2000 injury. I note that the worker's claim was accepted for strained left medial collateral ligament and medial meniscus tear. In the absence of sufficient evidence to show a casual relationship to the June 12, 2000 work injury, the etiology of the worker's obesity, diabetes and possible heart disease problems remains a matter of speculation, and cannot be accepted as a responsibility of the Workers' Compensation Board.

Conclusion

The worker is not entitled to wage loss benefits after January 31, 2002.

The worker was not fit to return to his pre-injury employment and his file should be referred to the Vocational Rehabilitation Department.

The worker’s file should be referred to the Disability Awards Department to determine the pension entitlement.

The worker's obesity, diabetes and possible heart disease problems are not related to his compensable injury of June 12, 2000.

The worker's osteoarthritis was not caused by the injury, but permanently aggravated by the compensable injury of June 12, 2000.

The appealed decision is varied as outlined above. There are no appeal costs.

Inderjeet Hundal
Vice Chair

IH/rbe/cda

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