Noteworthy Decision Summary

Decision: WCAT-2003-01952 **Panel**: D. Dukelow **Decision Date**: August 11, 2003

Re-opening Previous Decision – Sections 96(2) and 240(2) of the Workers Compensation Act – Item #102.01 Rehabilitation Services and Claims Manual, Volume II

The worker received compensation after she fell off a stool at work and injured her back and side in 2001. The worker returned to work in 2002. In 2003 the worker sought to have her claim reopened for symptoms she was experiencing. The case manager's decision not to reopen the worker's claim is being appealed to the appeal tribunal pursuant to section 240(2) of the *Workers Compensation Act* (Act).

Under section 96(2) of the Act the Board may reopen a matter that has been previously decided by the Board if, since the decision was made, there has been a significant change in the worker's medical condition that the Board previously decided was compensable or there has been a recurrence of a worker's injury. Item #102.01 of the *Rehabilitation Services and Claims Manual, Volume II,* clarifies that "significant change" means a change in the worker's physical or psychological condition, not a change in the Board's knowledge about the worker's medical condition, and "recurrence" refers to a recurrence of the original injury without a second compensable injury. The panel concluded that there had not been a significant change in the worker's physical condition or a recurrence of the injury since the worker's symptoms were in a different part of the body than the injuries accepted under the claim. The worker's appeal to reopen the claim was denied.

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This decision was the subject of a Reconsideration. See WCAT-2005-06126, dated November 16, 2005.

WCAT Decision Number: WCAT-2003-01952
WCAT Decision Date: **August 11, 2003**
Panel: Daphne Dukelow, Vice Chair

Introduction

The worker was employed as a cook when she fell off a step stool on November 7, 2001 and injured her back and side. The worker's claim for compensation was accepted by the Workers' Compensation Board (the Board). The worker attended a work-conditioning program in 2002 and returned to work in February 2002. In early 2003, the worker sought to have her claim reopened for symptoms she was experiencing. The case manager decided not to reopen her claim. The worker is now appealing the case manager's decision, dated March 10, 2003.

The worker requested that this appeal proceed by way of read and review. I agree that an oral hearing is not necessary to decide this appeal. The employer is not participating in this appeal although advised of its right to do so.

Jurisdiction

The decision under appeal is a decision not to reopen the worker's 2001 claim. The decision was made on March 10, 2003. The decision, itself, notes that it was made on application by the worker.

Under section 96(2) of the *Workers Compensation Act* (Act) as amended by the *Workers Compensation Amendment Act, (No. 2), 2002* (Amendment Act), the Board may reopen a matter that has been previously decided by the Board or an officer or employee of the Board if one of two conditions exist. The reopening may be on application or at the Board's own initiative.

In cases where a decision to reopen or not to reopen has been made under section 96(2) on an application, that decision may be appealed to the appeal tribunal (section 240(2) of the Act, as amended). The appeal tribunal is defined as the Workers' Compensation Appeal Tribunal (WCAT). WCAT was established on March 3, 2003 by the Amendment Act.

Section 241(5) of the Act, as amended, provides that a worker or an employer who is directly affected by a decision referred to in section 240(2) may appeal that decision. In this case the worker is appealing the decision.

The worker's appeal was filed with WCAT on March 27, 2003 well within the time limit permitted by section 243 of the Act, as amended.

Section 250(2) of the Act, as amended, requires that I apply the policies of the Board of Directors of the Board in coming to my decision which is required to be based on the merits and justice of the case.

Issue(s)

The issue in this appeal is whether the worker's claim should be reopened for symptoms she was experiencing in early 2003.

Background

The worker's November 2001 claim was accepted for contusions and abrasions to the thoracic region of her back and to her ribs. The claim was also accepted for sprain or strain to the thoracic, lumbar and SI joint area.

The worker attended a work-conditioning program in early 2002. She was discharged from that program as fit to return to work without limitations on February 15, 2002. The worker did return to her pre-injury work.

The worker requested that her 2001 compensation claim be reopened in early 2003.

The worker's attending physician's chart notes and the worker's MSP records for the relevant periods were obtained.

Approximately February 16, 2003, according to the case manager's log entry of February 18, 2003, the worker was involved in a motor vehicle accident. Her vehicle was rear-ended. The worker advised the case manager that she did not suffer any injury at that time.

The Board medical advisor reviewed the medical evidence on file. He provided an opinion in a memo to file, dated March 6, 2003, which is on file.

The case manager relied upon the Board medical advisor's opinion in coming to his decision of March 10, 2003. The worker is appealing the case manager's decision not to reopen her claim.

The worker has submitted to me a consultation report, dated June 30, 2003, from a neurologist whom she saw.

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Findings and Reasons

I find that this is an appeal permitted by section 240(2) of the Act. The appeal is by the worker. The worker applied to have her claim reopened by the Board in early 2003. She did not fill out a formal application. However, she asked that her claim be reopened and her physician provided new information to the Board directed at reopening the worker's claim. I find this is sufficient to constitute an application by the worker within the meaning of section 96(2) and section 240(2) of the Act.

In this case the worker was seeking to have her claim for compensation reopened to receive additional health care benefits and presumably wage loss benefits as well. These benefits had been ended under the claim effective February 15, 2002 when the worker was discharged from the work-conditioning program as fit to return to work.

As noted above there are two conditions set out in section 96(2) of the Act, as amended, under which a matter may be reopened. Item 102.01 of the *Rehabilitation Services and Claims Manual, Volume II* (RSCM) provides some clarification of what is meant by "significant change" and by "recurrence" in section 96(2) of the Act. "Significant change" refers to a change in the worker's physical condition and not to knowledge by the Board of medical information concerning the worker. A "recurrence" of a compensable injury occurs without a second compensable injury.

I find that there has not been a significant change in the worker's medical condition that the Board had previously determined was compensable. I find it is unlikely that the worker's symptoms in early 2003 represent a change to the worker's medical condition that had been determined to be compensable. It appears that her contusions and abrasions were healed. It is the accepted sprain/strain to which the worker's request for reopening relates. I accept the Board medical advisor's opinion that the symptoms in early 2003 are not likely related to the compensable sprain/strain the worker suffered in November 2001.

The physician's first report on the day of the fall in November 2001 describes injuries to her left flank and left lower ribs. It does note sore neck with full range of motion. The chiropractor's first report a few days later notes that the worker fell onto her left side. He noted injury at the lower thoracic, lumbar, left SI joint area. He diagnosed the injury as musculoligamentous strain. It was for this injury and the contusions and abrasions that the worker's claim was accepted. During the work-conditioning program the worker did experience some pain in her neck and reduced cervical range of motion. However, on discharge in mid-February 2002 she was said to have recovered fully pain-free cervical range of motion.

The worker had recovered from the compensable sprain/strain. She returned to work in February 2002. The next available medical evidence is an x-ray report from October 2002. That report showed the worker's cervical spine to be normal and indicated the

worker had been experiencing neck pain for about one week. The worker sought medical attention at a hospital emergency department on October 17, 2002 and on January 29, 2003. On the October 17 occasion the worker was diagnosed with torticollis involving her neck and right shoulder. On the January 29 occasion the worker was diagnosed with costochondritis temporally associated with a respiratory infection. The attending physician's report of February 5, 2003 notes the diagnosis of torticollis made October 17, 2002 and indicates that the worker had been seen in the office on October 24, 2002, and on February 3 and 5, 2003. In his report to the Board dated February 5, 2003, the worker's physician stated that the worker's symptoms were consistent with her work-related injury of November, 2001. He provided the diagnosis neck and right shoulder strain. I prefer the medical advisor's considered opinion to the statement by the worker's attending physician concerning the relation of the early 2003 symptoms to the work-related injury.

The Board medical advisor considered the emergency department reports and the worker's attending physician's chart notes from October 2002 to February 20, 2003 as well as the medical reports on file in coming to his opinion. The medical advisor's opinion is that the worker's symptoms, to which he applies the diagnosis torticollis, are not likely related to her November 2001 injury which had a different diagnosis and a different location on the worker's body. The Board medical advisor offered the opinion that the worker's symptoms in early 2003 began in October 2002 when she had a neck x-ray and saw two different general practitioners. It is therefore difficult to relate the worker's symptoms to her November 2001 injury almost one year earlier, an injury from which the worker was found to have recovered by mid-February 2002. According to the MSP records the worker did not receive any medical attention between January 28, 2002 and October 2002. When she did receive attention in October 2002, and in January and February, 2003, the worker's symptoms were not in her left side and in the thoracic or lumbar area but in her right shoulder and neck.

I prefer the Board medical advisor's opinion because, as he notes, the worker's symptoms in October 2002 to February 2003 were in a different area of her body than the injury accepted under the claim. He explains that torticollis can arise spontaneously. The worker's attending physician does not address the fact that the symptoms are in a different part of the worker's body than the injuries accepted under the claim.

There has been no second compensable injury reported by the worker. The worker attributes her symptoms in early 2003 to her 2001 compensable injury. I find that it is unlikely that the worker's symptoms amounted to a recurrence of her 2001 compensable injury for the same reasons as set out above.

I am permitted by section 246(2)(b) of the Act, as amended, to receive new evidence. The neurologist's consultation report of June 30, 2003 is new evidence which was not before the case manager. Also, it was not before the Board medical advisor when he provided the opinion upon which the case manger relied. The neurologist was

investigating right shoulder and neck symptoms, symptoms in the same general area as the Board medical advisor noted were considered in the recent medical reports on file. The neurologist's report states that the symptoms the worker was experiencing may have originated due to a muscle strain. He noted that there was no evidence of nerve injury to back or neck to account for the symptoms.

I note that the neurologist does not relate the worker's symptoms to her November 2001 injury although he states that the worker made this association. He stated that the worker's symptoms in January 2003 and later were more intense than occasional symptoms she had prior to that time. I do not consider that this evidence supports a finding that the worker's claim should be reopened. Aside from the neurologist's record of the worker's conversation with him, his consultation report, especially his impression, does not relate the worker's symptoms to her November 2001 work injury. I acknowledge that the November 2001 injury involved muscle strain. However, as noted by the Board medical advisor, the strain was not in the same area of the body as the area where the worker had experienced her injury in November 2001.

Section 253(1) of the Act provides that WCAT may confirm, vary or cancel the appealed decision. Section 253(2) provides that, despite section 253(1), WCAT, on an appeal under section 240(2), which this is, may make one of two decisions: that the matter must be reopened, or that the matter may not be reopened.

Conclusion

I deny the worker's appeal. I find that her claim may not be reopened.

Daphne Dukelow
Vice Chair

DD/hf