

NOTEWORTHY DECISION SUMMARY

Decision: WCAT-2004-02435-RB **Panel:** Beatrice Anderson **Decision Date:** May 10, 2004

Referrals to Board of Issue for Determination - Completion of Appeals after Referral - Section 246(3) of the Workers Compensation Act - Suspension of Appeals

This case is noteworthy as an example of WCAT's use of the authority provided to it by section 246(3) of the *Workers Compensation Act* to suspend appeals in order to refer to the Workers' Compensation Board (Board) an issue that the Board should have adjudicated.

In this case, the Board accepted the worker's claim for bilateral carpal tunnel syndrome. He received surgery and other treatment. The Board determined that the worker was not entitled to vocational rehabilitation benefits because he would not damage his hands or wrists further by returning to his pre-injury employment as an autobody technician (Board decision). The worker did not return to his pre-injury employment and continued to complain of severe hand pain with even the lightest of activities. He also experienced cold sensitivity and weakness. After the Board's decision, the worker obtained a physiatrist's opinion that while his remaining sensory symptoms were related to the surgeries, his hand pain was attributable to a soft tissue disorder akin to a complex regional pain syndrome.

On appeal to WCAT, and after an oral hearing, the panel suspended the appeal pursuant to section 246(3) of the Act on the basis that the Board should have determined whether the soft tissue disorder described by the physiatrist was related to the worker's compensable carpal tunnel syndrome or his employment generally. The WCAT panel referred that matter to the Board for determination.

The Board subsequently determined that the worker's soft tissue disorder was complex regional pain syndrome. It was accepted by the Board both as a permanent condition and one that was related to the carpal tunnel syndrome. The file and that decision were referred back to WCAT for completion of the appeal.

The WCAT panel provided the worker with the opportunity to make submissions in respect of the Board's decision. In the result, the WCAT panel concluded that the pain in the worker's hands was sufficient to prevent him from returning to work as an autobody technician and returned the file to the Board to determine the worker's entitlement to further benefits as a result of the acceptance of the complex regional pain syndrome.

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Panel:Beatrice K. Anderson, Vice Chair

Introduction

The worker appeals two decisions of Workers' Compensation Board (Board) officers made with respect to his entitlement to benefits under two claims. The first of these decisions was dated March 21, 2000 and was issued under the 1998 carpal tunnel syndrome claim. A vocational rehabilitation consultant (VRC) communicated the Board's position that the worker was capable of returning to his pre-accident employment as a body man and was not at undue risk of developing or increasing a permanent functional impairment should he return to work at that occupation.

The second decision letter, May 25, 2000 was issued with respect to the 2000 claim for hand arm vibration syndrome. The worker was advised of the Board's conclusion that he was not suffering from an occupational disease that was due to the nature of his employment pursuant to section 6(1) of the *Workers Compensation Act* (Act).

At the hearing the worker sought and received permission to withdraw the appeal of the 2000 claim for hand arm vibration syndrome.

Issue(s)

The issues are:

- Whether the worker can return to his pre-injury employment
- Whether the worker has a permanent disability
- If not, whether the worker is at increased risk of developing one if he returns to his pre-injury employment.

Jurisdiction

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

Relevant Information

In 1998 this then 44-year-old body man saw his doctor to complain of bilateral hand and wrist pain of some years duration. Nerve conduction tests revealed mild bilateral carpal tunnel syndrome and the worker underwent bilateral releases in February and March 1999. An ergonomic assessment of the worker's place of employment revealed the presence of "significant" risk factors for the development of carpal tunnel syndrome and the Board accepted the worker's claim. At the time the worker had his surgeries, the surgeon (Dr. Fowler) commented that the worker was obese and observed that a bone scan also showed increased uptake of the wrists at the first distal interphalangeal and metacarpalphalangeal joints which he said "most likely represent degenerative changes of both wrists and both thumbs". Dr. Fowler also wrote that there was a 30% chance that some or all of the worker's symptoms might recur even after successful carpal tunnel syndrome releases, "if he returns to the same heavy job".

The worker did not "recover" after the surgeries. He went through a series of treatments including admission at the hand therapy clinic, admission and treatment at an occupational rehabilitation program, a partial return to work which never exceeded three hours, assessment by hand specialist at the Visiting Specialists Clinic, repeat EMG tests and finally, an assessment by a physiatrist at a medical rehabilitation program in January 2000.

Throughout all the treatment, the worker complained of severe hand pain with even the lightest of activities. EMG tests showed mild abnormalities but Dr. Sadowski concluded that these were not being caused by carpal tunnel syndrome but by some soft tissue disorder. Dr. Boyle, the hand specialist agreed that there was no reason for repeat carpal tunnel surgery. His report said that the worker's diffused hand pain coupled with the findings on the bone scan suggested "diffused arthropathy [and] early degenerative osteoarthritis in the small joints of his hand". Dr. Boyle said the worker had plateaued and suggested that he treat his complaints of ongoing weakness and pain with anti-inflammatories. It was Dr. Boyle who first suggested the worker had Raynaud's phenomenon because the worker said that his fingers went white with any cold exposure.

The worker was discharged from the occupational rehabilitation program unfit to return to his pre-injury employment on the basis of his complaints of pain with hand movement. The worker was assessed but not admitted into the medical rehabilitation program and the treating physiatrist Dr. Chu said that the worker's hand pain increased even over the course of his examination of the worker's hands. He concluded that given the longstanding nature of the problem, and the failure of treatment, that the medical rehabilitation program had nothing to offer the worker.

The first decision under appeal arises from the VRC's decision after a Board medical advisor stated that although the worker would have pain in his hands when he worked, he was not doing his hands any damage and consequently could return to his pre-injury

employment. In the VRC's assessment, this meant the worker was not entitled to rehabilitation services as there was no impairment or likelihood of an impairment as a result of a return to auto bodywork.

The Board medical advisor's assessment was echoed by Dr. Chu who saw the worker privately in September 2000 and April 2001. Dr. Chu said that the carpal tunnel releases had resulted in the worker's sensory symptoms, but his hand pain was attributable to a soft tissue disorder which he said was akin to a complex regional pain syndrome. At page one of his report of April 20, 2001 he wrote:

This diagnosis is supported by the physical examination which does not show any arthritic changes or arthropathies in his hands and the bone scan which showed diffuse periarticular uptake in the wrist and hands which is one of the signs of a complex regional pain syndrome.

Dr. Chu also said that the worker would not be doing "significant structural damage to his hands or wrists" if he returned to his previous employment in the autobody trade. However, he did say it would cause the worker "excruciating pain" and that would be the major limiting factor.

At the hearing the worker's evidence was consistent with all of the information already on the file. The worker has constant pain in his hands that escalates with repetitive activity. The worker did not return to his employment as an autobody man because he could not manage the hand intensive activities that were required in that job. Exhibit #1 is a letter dated March 5, 2001 from the worker's employer who said that the worker was "not able to perform his duties as an autobody technician due to the pain in his hands". The worker spent a year on Employment Insurance benefits with upgrading and looking for alternate employment. He worked for approximately a year as a construction safety escort – overseeing construction labourers working at a prison. Then the worker found the job he now has demonstrating recreational vehicles to buyers. The worker does this full time and although his hands are still in pain, he is able to manage it. The worker makes less money now than he did as an autobody man.

After the hearing, I suspended the appeal and pursuant to section 246(3) of the *Workers Compensation Act* (Act) referred the issue of the relationship of this soft tissue disorder Dr. Chu described to either the worker's carpal tunnel syndrome or his employment back to the Board for adjudication.

The Board's first step was to ascertain the diagnosis of this second disorder in the worker's hands. The worker was assessed on January 19, 2004 and Dr. Struthers, who did the assessment said the worker had chronic regional pain syndrome along with positive carpal tunnel syndrome findings bilaterally. Dr. Struthers said that the worker did not meet the "strict criteria" for active complex regional pain syndrome, although the worker's symptoms were most consistent with vibration white finger disease, the worker did not display some of the clinical criteria for that disorder.

Upon reviewing that report and the adjudicator's questions, the Board medical advisor said that the likelihood was "at least 50 percent" that the worker's chronic regional pain syndrome was related to the carpal tunnel syndrome. The Board medical advisor also said that the worker's symptoms were permanent and unlikely to improve over the next 12 months.

The Board issued a decision letter on March 24, 2004 in which they advised the worker that his chronic regional pain syndrome was accepted by the Board both as a permanent condition and one that was related to the carpal tunnel syndrome. The file and that decision have been referred back to WCAT for completion of the appeal. The worker was asked for his comments about the decision but had no further submissions to make.

Reasons and Findings

The original decision under appeal said that the worker was capable of returning to his pre-injury employment as a body man. He did not have a permanent disability nor would he acquire one if he return to that job.

I am satisfied that when the worker was sent this decision letter, he had painful hands. However, the medical evidence suggested that the worker had, for the most part, recovered from the physical effects of the carpal tunnel syndrome. In other words, even though there was some residual carpal tunnel syndrome findings left, the pain complaints were attributed by Dr. Chu to something else. That has now been diagnosed as chronic regional pain syndrome and the Board has accepted that it was spawned by the carpal tunnel syndrome.

I am satisfied that the pain in the worker's hands was sufficient to prevent him from returning to the hand intensive work of autobody repairman. I accept the worker's evidence about his symptom and none of the reports portray the worker as displaying pain behaviour or pain magnification. The worker's actions since the termination of his claim establish that he was motivated and anxious to return to the labour force. The worker's complaints are credible and consistent from report to report. Most of the treating staff who examined the worker, including Dr. Chu and Dr. Struthers commented on the increase in the worker's symptoms even with physical examination of his hands. The worker was unable to return to his employment as an autobody man and has had to take lesser paying employment in a physically suitable environment.

I now return the file to Disability Awards to determine the worker's entitlement to further benefits as a result of the acceptance of the chronic regional pain syndrome.

The second issue is whether the worker had a permanent disability at the time his benefits were terminated. This has been answered in part by the Board's decision issued on March 24, 2004. The worker has a chronic pain disorder in his hands and I

am satisfied that it was present and permanent at the time the decision letter before me was issued. The worker's evidence and the medical reports on file illustrate that there had been no change in his hand symptoms for many months before that decision and certainly nothing changed after it.

Conclusion

I allow the worker's appeal. The decision is varied. Pursuant to section 7 of the *Workers Compensation Act Appeal Regulation, B.C. Reg. 321/02* the worker is entitled to the costs of the appeal that he can establish.

Beatrice K. Anderson
Vice Chair

BJA/mli/jkw