Noteworthy Decision Summary

Decision: WCAT-2005-05496 **Panel**: Sherryl Yeager **Decision Date:** October 18, 2005

Reopening – Recurrence – Tendonopathy – Section 96(2)) of the Workers Compensation Act – Policy Item #C14-102.01 of Rehabilitation Services and Claims Manual, Volume II – Resolution 2004/11/16-04

The worker requested reopening after recurrence of symptoms caused by an injury to her finger. There had been a complete resolution of the symptoms prior to recurrence. A plastic surgeon had indicated at the time of the original complaint that the symptoms may recur. The location and description of the physical findings at the time of reopening were nearly identical to those at the time of the original complaint. There was no evidence the worker's subsequent symptoms resulted from non-occupational activities or an intrinsic condition. The worker's claim was reopened for a recurrence of the original injury.

The Workers' Compensation Board (Board) accepted the worker's claim for a strain/sprain of her finger and provided temporary benefits for two months. A plastic surgeon reported complete resolution of pain three months after injury but noted there was a possibility the worker's "trigger digit" would recur. Six months after the original injury the worker reported a recurrence of symptoms in the same finger. A Board medical advisor then gave the opinion that the working diagnosis at the time of the original and the subsequent symptoms was "flexor tendonopathy". The medical advisor noted that the recurrence and its treatment may not be related to the compensable injury.

The worker requested a reopening of her claim. The Board found that, while there had been a significant change in the worker's condition, namely a recurrence of symptoms, it was unable to conclude the recurrence was a result of the compensable injury as the worker had made a full recovery. The Board also found there was no evidence of a new incident or trauma that caused the recurrence of symptoms. The Board declined to reopen the claim. The Workers' Compensation Review Division confirmed the Board's decision. The worker appealed to the Workers' Compensation Appeal Tribunal (WCAT).

At the time of the decision under appeal, neither the *Workers Compensation Act* (Act) nor Board policy defined "recurrence" for the purposes of reopening a matter under section 96(2) of the Act. Policy item #C-14-102.01 of *Rehabilitation Services and Claims Manual, Volume II* (RSCM II) was subsequently amended to include a definition of "recurrence". The WCAT panel held that, although not binding, it offered useful interpretive guidance in considering the meaning of a "recurrence of a worker's injury". The questions to be asked under the amended policy are:

- Have there been any intervening incidents, work-related or otherwise?
- Has there been a continuity of symptoms and/or continuity of medical treatment?
- Can the current symptoms be related to the original injury?

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Although the Board file indicated the claim was accepted for a sprain/strain, the treatment was for flexor tendonopathy, and the Board medical advisor advised that was the working diagnosis. Thus, the WCAT panel was satisfied the compensable injury was flexor tendonopathy.

Relying on the plastic surgeon's opinion, the panel was also satisfied that the worker's subsequent symptoms represented a recurrence of her initial compensable injury. The location and description of the physical findings were nearly identical to those at the time of the original complaint when the plastic surgeon had indicated there was a possibility the symptoms would recur. There was no evidence that the worker's subsequent symptoms resulted from non-occupational activities or an intrinsic condition.

The panel found that the claim should be reopened.

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Introduction

The worker was employed as a health care worker in December 2003. She sustained an injury to her left ring finger while performing a transfer. The Workers' Compensation Board (Board) accepted her claim for a strain/sprain and provided wage loss benefits until February 15, 2004. The worker sought further medical treatment in June 2004 and requested a reopening of her claim. The Board advised the worker by a decision letter dated July 27, 2004 that her claim would not be reopened. The case manager found that while there had been a significant change in the worker's condition, namely a recurrence of symptoms, she was unable to conclude the recurrence was a result of the compensable injury as the worker had made a full recovery. The case manager also found there was no evidence of a new incident or trauma that caused the recurrence of symptoms in June 2004.

The worker requested a review of this decision. A review officer confirmed the Board's decision in *Review Division Decision #22191*, dated February 21, 2005. The worker appealed from this decision.

Issue(s)

1) Should the worker's claim be reopened for symptoms she experienced in June 2004?

2) Did the worker sustain a compensable injury in June 2004 to her left ring finger?

Jurisdiction

This appeal was filed with the Workers' Compensation Appeal Tribunal (WCAT) under section 239(1) of the *Workers Compensation Act* (the Act).

This is an appeal by way of rehearing, rather than a hearing *de novo* or an appeal on the record. WCAT has jurisdiction to consider new evidence, and to substitute its own decision for the decision under appeal.

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Appeal Method

The worker initially requested an oral hearing to provide evidence regarding her condition. The registry staff at WCAT determined that an oral hearing was not necessary. I have reviewed the file and submissions provided, and I am satisfied there is no issue of credibility or additional evidence required that would necessitate an oral hearing. The appeal has therefore been determined on the basis of the information contained on the claim file and submissions from the worker's and employer's representatives.

Background and Evidence

The following is a summary of the evidence I have relied on in making my decision.

- A Board medical advisor opined on February 12, 2004 that a referral to a plastic surgeon would be reasonable, as if the worker's finger was bent backwards, a finger sprain and/or tendon rupture could be reasonably related.

- Plastic surgeon Dr. Brown assessed the worker on February 10, 2004. He noted the worker had significant pain, well localized to the A1 pulley region of the left ring finger, with palpable nodularity. There was no frank triggering. He believed the worker likely sustained a form of traumatic trigger digit of the left ring finger. He was unsure of the exact nature of the injury, but the worker appeared to have relatively typical symptoms of a tendonopathy of the flexor tendons with irritation at the A1 pulley. He advised the worker of the treatment options – nothing, injections, and surgery. Dr. Brown injected the worker's tendon and she reported immediate reduction in her pain, consistent with the diagnosis. He indicated the worker's symptoms would hopefully completely resolve with one or two steroid injections.

- Dr. Brown re-assessed the worker on March 6, 2004. He reported complete resolution of her pain and that she was working regular duties. He noted, "The patient is aware that there is a possibility that her trigger digit will recur, but I would recommend no further treatment at this time."

- On June 19, 2004, the worker returned to see Dr. Brown as she had a recurrence of her symptoms over the prior two weeks. The worker had pain in the A1 pulley with decreased flexion, and there was palpable nodularity on the flexor tendons. She was continuing to work full-time. Dr. Brown provided another cortisone injection.

- On June 28, 2004 the case manager spoke to the worker, who advised that Dr. Brown had told her that the pain could return. When it did, she booked another appointment and had a second injection. Dr. Brown advised her that if the pain returned, she would have to proceed with surgery.

- On July 7, 2004, a different Board medical advisor provided an opinion that the working diagnosis in March and June 2004 would be a flexor tendonopathy. The condition was more often idiopathic or caused by repetitive motion, but could be caused by trauma. The medical advisor opined that surgical treatment for a recurrence of the symptoms, after a second steroid injection, would be medically appropriate. The medical advisor noted that the recurrence and its treatment may not be related to the compensable injury.

- On July 27, 2004 Dr. Brown reassessed the worker and noted she had an excellent response to the injection. On examination there was no further tenderness although some nodularity remained. The worker had not missed any time from work. Dr. Brown advised her that there was a possibility the trigger finger would recur, and in that case she would likely require surgery.

- On November 19, 2004, the worker attended Dr. Brown and advised that her trigger finger had recurred. She had well localized tenderness over the A1 pulley of the left ring finger. There was no frank triggering. The worker requested surgical release.

Submissions

The worker's representative provided a submission dated May 12, 2005. He argued that Dr. Brown's reports indicated that the worker had a traumatic trigger finger, and that this condition could recur. He also argued that because the worker was treated on more than one occasion, there was a continuity of symptoms.

The employer's representative replied on May 30, 2005 that there was no medical evidence or opinion provided by the worker's representative that was contrary to the July 2004 opinion of the Board medical advisor. The worker was not entitled to a reopening of her claim.

The worker's representative provided a rebuttal on June 15, 2005. He noted the Board medical advisor opined in July 2004 that if a second steroid injection failed, surgery was appropriate. He also noted that in February 2004, a medical advisor indicated a tendon rupture was a reasonable result of the described mechanism of injury. He argued the cortisone injections had provided the worker with relief from her symptoms but did not cause her to recover from the injury.

Findings and Reasons

Section 96(2) of the Act provides:

(2) Despite subsection (1), at any time, on its own initiative, or on application, the Board may reopen a matter that has been previously decided by the Board or an officer or employee of the Board under this Part if, since the decision was made in that matter,

a) there has been a significant change in a worker's medical condition that the Board has previously decided was compensable, or

b) there has been a recurrence of a worker's injury.

Board policy regarding reopening and reconsideration decisions is found in Chapter 14 of the *Rehabilitation Services and Claims Manual Volume ll* (RSCM ll).

Policy #C14-102.01 of the RSCM ll in effect at the time of the initial decision under appeal, provided that a "significant change" meant a change in the worker's physical condition (not a change in the Board's knowledge about the worker's medical condition) that would, on its face, warrant consideration of a change in compensation or rehabilitation benefits. Neither the Act nor the policy defined a "recurrence."

A recent resolution of the Board's board of directors (*Resolution 2004/11/16-04*) amended RSCM ll policy #C14-102.01 to clarify ambiguities in the Board's policies with respect to the reopening of a claim. The resolution was effective January 1, 2005, and applies to all decisions (not appellate decisions) made on or after that date. The amended language states that a recurrence of an injury for purposes of section 96(2) of the Act may result where the original injury, which had either resolved or stabilized, occurs again without any intervening new injury.

The amended policy states that the following questions may assist in determining whether there is a recurrence or a new injury:

- Have there been any intervening incidents, work-related or otherwise?
- Has there been a continuity of symptoms and/or continuity of medical treatment?
- Can the current symptoms be related to the original injury?

Although the amended policy is not applicable to this appeal, I find that it offers useful interpretive guidance in considering the meaning of a "recurrence of a worker's injury" in the context of section 96(2) of the Act.

Although the Board file indicated the claim was accepted for a sprain/strain, the treatment has been for a flexor tendonopathy, and the Board medical advisor indicated that the working diagnosis was flexor tendonopathy. I do not consider it necessary for the worker to request a separate adjudication to have flexor tendonopathy accepted on the claim, when this was clearly the condition for which the Board has already authorized wage loss and health care benefits. I am satisfied that the compensable injury was a flexor tendonopathy.

I am also satisfied that the worker's symptoms in June 2004 represented a recurrence of her initial compensable injury. Dr. Brown clearly indicated that the worker had some sort of traumatic trigger finger. The location and description of the physical findings in the worker's left ring finger in June 2004 were nearly identical to those in February 2004, when Dr. Brown had indicated the worker may require another injection in the future. Although these injections treated the worker's symptoms, they did not resolve her condition, as the medical evidence indicates that the worker went on to have a further recurrence of her symptoms and now requires surgery to the finger. This is entirely consistent with Dr. Brown's comments on February 10 and March 6, 2004 that further injections and treatments may be required if the condition recurred.

I prefer the opinions and comments of Dr. Brown as he is a specialist in this area. I also consider the medical advisor's opinion in July 2004 to be consistent, rather than disparate, with that of Dr. Brown. Although the review officer indicated that the medical advisor found the worker's symptoms in June 2004 were not related to her compensable injury, I do not draw the same inference from the medical advisor's comments.

The medical advisor concurred with the treatment options of surgery if a second cortisone injection failed to resolve the condition. Although the medical advisor observed that it was possible the worker's trigger finger was not related to the compensable injury, there was no opinion that this was the case.

There is no evidence that the worker's trigger finger in June 2004 resulted from non-occupational activities or an intrinsic condition. Even if there were such evidence, section 99 of the Act requires the Board, and section 250(4) of the Act requires WCAT, to make a finding in the worker's favour in situations where the evidence is evenly balanced.

I find that the medical evidence supports a conclusion the worker's compensable flexor tendonopathy recurred in June 2004 and her claim should be reopened.

As I have found the worker's symptoms in June 2004 were a recurrence of her injury, there is no need to consider the question of whether she sustained a new injury.

Conclusion

I vary the decision of the Board set out in *Review Division Decision #22191*, dated February 21, 2005. The worker's claim may be reopened for a recurrence of her flexor tendonopathy.

The worker did not request reimbursement of expenses for participation in the appeal, and none are identified.

Sherryl Yeager
Vice Chair

SY/aa