

### Noteworthy Decision Summary

**Decision:** WCAT-2007-02562    **Panel:** Warren Hoole    **Decision Date:** August 27, 2007

***Activity Related Soft Tissue Disorders of the Limbs – De Quervain’s Tenosynovitis – Schedule B of the Workers Compensation Act (Act) – Section 6(3) of the Act – Policy item #27.12 of the Rehabilitation Services and Claims Manual, Volume II***

This decision is noteworthy because it provides an analysis of the application of the law and policy related to the adjudication of a de Quervain’s tenosynovitis claim.

Relying on the opinion of a medical advisor, the Workers Compensation Board, operating as WorkSafeBC (Board), denied the worker’s claim for de Quervain’s tenosynovitis on the ground that it was not caused by her work activities as a seafood processor. This decision was confirmed by the Review Division. The worker appealed to WCAT.

The panel allowed the worker’s appeal. De Quervain’s tenosynovitis is listed in item #13(a) of Schedule B of the *Workers Compensation Act* (Act). Section 6(3) of the Act establishes a presumption that an occupational disease listed in Schedule B of the Act will be caused by work if at least two of the three criteria set out opposite to it in Schedule B are met. This presumption may be rebutted if there is evidence to the contrary. Policy item #27.12 “Tendinitis and Tenosynovitis” of the *Rehabilitation Services and Claims Manual, Volume II* provides the guiding principles to apply in adjudicating de Quervain’s tenosynovitis under Schedule B.

The panel found that the Board did not accurately assess the worker’s work duties as they were at the time she developed de Quervain’s tenosynovitis. The Board medical advisor had relied upon this inaccurate description to provide his medical opinion against a work related cause. The panel gave this opinion little weight because of the inaccurate work description. The panel placed more weight on the expert opinion in favour of work causation provided by an orthopaedic specialist who was familiar with the worker’s work activities. The panel found that the presumption of work causation in section 6(3) of the Act applied and had not been rebutted by the evidence.

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## Introduction

The worker developed right-sided de Quervain's tenosynovitis and applied to the Workers' Compensation Board, operating as WorkSafeBC (Board), for compensation on February 23, 2006.

By decision letter dated May 8, 2006, the Board declined to accept the worker's claim. The worker appealed the Board's May 8, 2006 decision to the Review Division of the Board. In *Review Decision #R0068926*, dated December 13, 2006, a review officer denied the worker's appeal.

The worker now appeals *Review Decision #R0068926* to the Workers' Compensation Appeal Tribunal (WCAT). The worker's appeal proceeded by way of an oral hearing.

## Issue(s)

Is the worker's right-sided de Quervain's tenosynovitis due to the nature of her employment?

## Jurisdiction

This appeal is brought under subsection 239(1) of the *Workers Compensation Act* (Act) which permits appeals of Review Division findings to the WCAT.

## Background and Evidence

The review officer has already provided a helpful summary of the evidence relevant to this appeal up until the time of the Review Division decision under appeal. I need not repeat this background in detail because decisions of the Review Division are publicly available on the Internet at [worksafebc.com](http://worksafebc.com). I therefore need only set out a brief overview of the worker's history. I will describe in more detail new evidence not before the review officer.

The worker is a right-hand dominant seafood processor. She had worked in this occupation for approximately 23 years at the time she first noticed right thumb problems.

On February 16, 2006, Dr. Lang, the worker's family physician, diagnosed the worker with right-sided de Quervain's tenosynovitis.

Dr. Yu, an orthopedic surgeon, examined the worker on March 6, 2006. Dr. Yu diagnosed the worker with de Quervain's tenosynovitis. Dr. Yu indicated that this condition was caused by the worker's job.

On April 5, 2006, a Board officer attended the worker's job site. In a claim log entry dated May 8, 2006, the Board officer described the occupational risk factors involved in the worker's processing job.

In a claim log entry dated April 11, 2006, a Board medical advisor reviewed the worker's claim file and concluded that the worker's de Quervain's tenosynovitis was not likely due to the nature of her employment.

In a letter dated September 14, 2006, Dr. Yu confirmed his opinion that the worker's de Quervain's tenosynovitis was caused by her employment. Dr. Yu noted in particular the worker's crab-shelling duties as involving a lot of right thumb and wrist movements.

In the course of the appeal proceedings, Dr. Yu filed a medical opinion letter February 13, 2007. Dr. Yu again stated that the worker's de Quervain's tenosynovitis was likely caused by her employment as a seafood processor.

I conducted an oral hearing of this appeal on July 13, 2007, at Richmond, British Columbia. The worker provided sworn testimony and a demonstration of her crab-shelling duties.

The worker's employer attended the appeal in support of the worker. The employer stated that the season for crab processing is June to November or December.

Up until 2005, the crab season was processed by a dedicated night shift. The worker was not part of this shift. In 2005, the crab night shift was eliminated, with the result that the worker experienced a substantial increase in crab-processing duties starting in June 2005. The employer stated that the worker would perform crab shelling four or five hours to eight hours per day. On average, the worker would shell approximately four crabs per minute.

## **Submissions**

The worker's representative says that the worker's de Quervain's tenosynovitis was due to the nature of her employment, particularly the crab-shelling duties. The representative requests that I allow the worker's appeal and accept the worker's claim for compensation.

The employer supports the worker's appeal.

## Reasons and Findings

I allow the worker's appeal. I find that the worker's right-sided de Quervain's tenosynovitis was due to the nature of her employment. My reasoning for this conclusion is set out below.

Subsection 6(1) of the Act provides that where a worker develops an occupational disease that is due to the nature of worker's employment and is thereby disabled from earning full wages, compensation is payable to the worker as if the occupational disease were a "personal injury."

In addition, subsection 6(3) of the Act states that, where a worker is employed in an industry or process described in Schedule B to the Act, it will be presumed that the worker's condition was due to the nature of the worker's employment. De Quervain's tenosynovitis is included in Schedule B to the Act as item 13(a).

WCAT panels are bound by published policies of the Board pursuant to subsection 250(2) of the Act. The policies relating to this appeal are primarily set out in chapter 4 of the *Rehabilitation Services and Claims Manual, Volume II* (RSCM II). A number of policies are applicable to the issue under appeal. For convenience, I set these policies out in summary form below:

- Policy item #26.01, "Recognition by Inclusion in Schedule B," discusses occupational diseases included in Schedule B.
- Policy item #26.21, "Schedule B Presumption," discusses how the presumption in Schedule B is applied.
- Policy item #27.00, "Activity-Related Soft Tissue Disorders of the Limbs," discusses activity-related soft tissue disorders.
- Policy item #27.12, "Tendinitis and Tenosynovitis," provides the guiding principles to apply in adjudicating de Quervain's tenosynovitis under Schedule B of the Act. The policy item defines "frequently repeated," "significant flexion, extension, ulnar deviation or radial deviation," and "forceful exertion."

The worker's claim for her right-sided de Quervain's tenosynovitis may be adjudicated under subsection 6(3) of the Act, in which case work causation will be presumed. Alternatively, the worker's claim may be acceptable under subsection 6(1) of the Act on a case-by-case analysis of the risk factors in the worker's employment. I need only consider subsection 6(3) in the circumstances of this appeal.

Subsection 6(3) of the Act presumes that an occupational disease listed in Schedule B to the Act will be caused by work if the criteria in Schedule B are met. Schedule B lists “hand-wrist tendinitis, including de Quervain’s tenosynovitis” as an occupational disease if the affected tendon(s) perform tasks involving two or more of the following:

1. frequently repeated motions or muscle contractions that place a strain on the affected tendon(s);
2. significant flexion, extension, ulnar deviation or radial deviation of the affected hand or wrist; or
3. forceful exertion of the muscles utilized in handling or moving tools or other objects with the affected hand or wrist.

The combination of two or more of these activities must represent a significant component of the employment.

Policy item #27.12 provides guidance in determining whether Schedule B applies to the circumstances of this case and confirms that repetition must be combined with awkward postures or with force.

In this appeal, it is apparent that the Board misunderstood the extent of the worker’s crab-processing duties. The Board instead appears to have focused on the worker’s shrimp-processing duties.

This confusion is not surprising because the Board officer attended the worker’s job site in April 2006, well after the crab season had ended. Surprising or not, the result is that the Board did not accurately assess the worker’s work duties as they were at the time she developed de Quervain’s tenosynovitis.

In light of the employer’s evidence at the hearing, it is now apparent that the worker’s job duties at the time of her right thumb problems involved four or five to eight hours of crab-processing duties per day.

I also note that this volume of work was new to the worker and that her right thumb symptoms came on during the same period that she was exposed to this substantial increase in crab-processing duties.

I further note that the worker’s duties in this regard involved repetitive and awkward thumb movements well in excess of the acceptable ranges set out in policy item #27.12. The worker demonstrated these movements both to me, and more importantly, to Dr. Yu. Dr. Yu considered these movements to involve highly repetitive and awkward ranges of motion. I reached a similar conclusion.

The risk factor analysis does not indicate that the worker's job duties involved anything more than sedentary force. I agree; however, only two of the three criteria set out in Schedule B to the Act need be satisfied in order for the presumption of work causation to apply. That is the case here. I am therefore required to presume that the worker's de Quervain's tenosynovitis was due to the nature of her employment.

That is not the end of the analysis, because the presumption of work causation may be rebutted by evidence that the worker's right thumb tenosynovitis was not due to the nature of her employment.

In my view, the Board medical advisor's opinion is the only significant evidence with the potential to rebut the presumption of causation to which the worker is entitled. However, the Board medical advisor based his opinion on a risk factor analysis that substantially underestimated the extent of the worker's crab-processing duties.

It follows that, despite the Board medical advisor's expertise, his opinion merits little weight because it is based on an incorrect understanding of the worker's job duties at the time she developed de Quervain's tenosynovitis.

In addition, Dr. Yu provided several opinions directly disagreeing with the Board medical advisor. Dr. Yu indicated he is familiar with the worker's job duties. Dr. Yu also had the advantage of assessing the worker in person on several occasions. Dr. Yu is an orthopedic surgeon and therefore has considerable expertise in the area of de Quervain's tenosynovitis. For these reasons, I consider that Dr. Yu's opinion is of greater weight than that of the medical advisor.

Consequently, I find that the Board medical advisor's opinion is of insufficient weight to rebut the presumption of work causation in the circumstances of this appeal.

I therefore find the worker's right-sided de Quervain's tenosynovitis satisfies the requirements of subsection 6(3) of the Act.

It is for the Board to determine the worker's entitlement to benefits, if any, in relation to her compensable right-sided de Quervain's tenosynovitis.

As a result, I allow the worker's appeal on this issue.

## Conclusion

I vary *Review Decision #R0068926*. I find that the worker's right-sided de Quervain's tenosynovitis is due to the nature of her employment.

The worker requested reimbursement for the expense of missing one-half day of work in order to attend the hearing. Subsection 7(1) of the *Workers Compensation Act Appeal Regulation* provides that the WCAT may order the Board to reimburse a successful party to an appeal for the expenses associated with attending an oral hearing.

Items #13.21 and #13.22 of the WCAT's *Manual of Rules of Practice and Procedure* (MRPP) further outline the WCAT's discretionary authority to order reimbursement of certain appeal expenses to a party.

The MRPP states that, in general, expenses for missed wages will only be reimbursed to a party if that party is successful on the appeal. In this case, the worker was successful in her appeal.

I therefore order the Board to reimburse the worker for the expense of missing one-half day of work, in accordance with policy item #100.14, "Amount of Expenses," of the RSCM II.

No other expenses were apparent or requested.

Warren Hoole  
Vice Chair

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