

Noteworthy Decision Summary

Decision: WCAT-2011-00268 **Panel:** D. Rice **Decision Date:** January 27, 2011

Occupational disease – Activity related soft tissue disorders (ASTD) – Carpal tunnel syndrome – Epidemiology – Section 6 of the Workers Compensation Act – Policy item #27.32 of the Rehabilitation Services and Claims Manual, Volume II

Before a worker's claim for compensation for carpal tunnel syndrome can be accepted, the Workers' Compensation Board (Board), operating as WorkSafeBC, must have evidence that the worker's work activities placed sufficient stress on the tissue affected by carpal tunnel syndrome. The mere fact that a worker uses his or her hands or wrists while working is insufficient to establish a causal connection between the worker's employment duties and his or her development of carpal tunnel syndrome. WCAT noted that policy item #27.32 of the *Rehabilitation Services and Claims Manual, Volume II*, identifies activities which, based on epidemiological studies, are most likely to cause carpal tunnel syndrome.

The worker claimed to have developed carpal tunnel syndrome because of her employment as a restaurant server. WCAT denied the worker's appeal from a review officer's decision upholding the Board's denial of the claim. The WCAT panel agreed with, and adopted, the review officer's reasons preferring the Board medical advisor's opinion over one provided by the worker's general practitioner. The medical advisor's opinion was that, based on the evidence of the worker's job demands, there were insufficient risk factors to cause or aggravate carpal tunnel syndrome. The worker's doctor opined that the worker's job did cause carpal tunnel syndrome. Both the review officer and the WCAT panel preferred the Board medical advisor's opinion because it was more thorough and consistent with the evidence.

On appeal, the worker argued that because she is a woman, she was susceptible to developing carpal tunnel syndrome. Notwithstanding general medical opinion that women are three times more likely to develop carpal tunnel syndrome than are men, the panel said that in the absence of any medical opinion that this worker had a relevant underlying susceptibility to developing carpal tunnel syndrome, a finding of susceptibility based only on the worker's sex would be speculative.

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Panel: Deirdre Rice, Vice Chair

Introduction

- [1] In June 2009, the worker was diagnosed with right-sided carpal tunnel syndrome (CTS), which she attributed to the tasks of serving and carrying dishes in her job at the employer's restaurant. She filed a claim for compensation with the Workers' Compensation Board (Board).¹
- [2] A Board case manager undertook investigation, including a worksite evaluation and, in a December 14, 2009 decision, determined that the worker's claim did not meet the criteria for acceptance under either section 5 or section 6 of the *Workers' Compensation Act* (Act). The claim was therefore denied.
- [3] The case manager's decision was confirmed by a review officer with the Board's Review Division on June 14, 2010 (*Review Decision #R0113797*).
- [4] The worker has appealed this decision to the Workers' Compensation Appeal Tribunal (WCAT). She participated in the oral hearing of the appeal with the assistance of her representative, a workers' adviser. The employer is not participating in the appeal, although provided with the opportunity to do so.

Issue(s)

- [5] The issue is whether the worker's right-sided CTS is due to the nature of her employment as a server.

Jurisdiction

- [6] This appeal was filed with WCAT under section 239(1) of the Act. WCAT must make its decision on the merits and justice of the case, but in so doing, must apply a policy of the board of directors of the Board that is applicable in the case. Policy relevant to this appeal is set out in the *Rehabilitation Services and Claims Manual, Volume II* (RSCM II).

Background and Evidence

- [7] The worker is currently 50 years old and is right-hand dominant. She has been working as a server in the employer's restaurant for 15 years.

¹ Operating as WorkSafeBC.

- [8] In 2007, the worker filed a claim for a right wrist tendonitis condition. Based on the results of a worksite evaluation, the Board denied that claim. That decision was upheld by the Board's Review Division and by WCAT.
- [9] A new claim was established in 2009 because the worker had no further entitlement under the 2007 claim and the diagnosis of right CTS was new.
- [10] The worker reported that, following 2007, she continued to have occasional symptoms in her right wrist. She did not seek medical attention for her condition until 2009, when she went to see her regular family physician, Dr. Wolovitz. Dr. Wolovitz referred her to a neurologist, Dr. Hostetler, who conducted nerve conduction and sensory conduction tests. In a June 15, 2009 consultation report, Dr. Hostetler said that, in an appropriate clinical setting, the test results were compatible with a diagnosis of right CTS. However, Dr. Hostetler noted that the electrographic grade was only borderline-to-mild and that clinical correlation would be important.
- [11] Following receipt of the worker's application for compensation, the case manager arranged to conduct a worksite visit for the purpose of assessing the extent of her exposure to risk factors relevant to CTS in her work. The worker questioned why a worksite visit was necessary, noting that her job and duties had stayed the same since the prior evaluation that was undertaken on the 2007 claim.
- [12] During an October 13, 2009 conversation with a Board officer, the worker said that her current symptoms were the same as on her prior claim and that she had been misdiagnosed. She also confirmed that her job duties had not changed and said that there had been there was no increase or decrease in the volume of business at the employer.
- [13] In an October 28, 2009 consultation report, Dr. Valezquez, an orthopaedic surgeon, advised that the worker had reported poorly localized symptoms in her right hand that involved a combination of pain and numbness. The worker experienced most of her pain while she was at work, but had some pain at night. She had treated her symptoms with splints at night and these were helpful, but they had not resolved the issue. Dr. Valezquez said that the worker's symptoms were not typical of carpal tunnel, but were suggestive of this condition. He said that, in his experience, there was quite often not a great correlation between the severity of nerve conduction studies and the severity of clinical symptoms. Dr. Valezquez wrote, "Clearly I think that the symptoms are being aggravated by work and it is also affecting her performance at work." Since conservative treatment appeared to have failed, he recommended that the worker consider decompression surgery.
- [14] Although the worker maintained that the worksite evaluation from 2007 could be relied on as accurate, the videotape evidence from the prior claim could not be located. In view of this, as well as the fact that there was a new diagnosis, the case manager

determined that a further worksite evaluation should be conducted. The case manager undertook this evaluation on December 9, 2009. Because the worker did not wish to disturb the restaurant's customers or her coworkers, the case manager carried out the evaluation before the restaurant opened for the day.

- [15] In the resulting activity-related soft tissue disorder (ASTD) evaluation report, the case manager noted that the worker reported having initially felt minor symptoms in her right wrist four to five years prior and then began to experience symptoms of pain, numbness, and swelling in late 2006 and early 2007. Her symptoms gradually worsened after this and were worse when she worked in the evening. From September 2008 through to July 2009, she only worked three days per week and there was slight improvement in her symptoms. However, they worsened when she returned to full-time work. She took two weeks off in September 2009 and her symptoms again improved, but then worsened again when she returned to work.
- [16] The worker informed the case manager that she worked nine-hour shifts on Tuesday, Wednesday, and Thursday, with a one-hour break, and seven hours on Friday, with no breaks. She also occasionally worked an extra shift. She described the work as fairly constant, with busy periods at lunch and supper, and said it was busier in the summer and around Christmas. She estimated that she averaged six tables per shift (22 customers), with two to three sittings per table at lunch and about two sittings per table at dinner. Typically, she would serve 90 to 100 customers on a shift. She estimated that she spent about 80% of her time serving and clearing tables
- [17] The worker confirmed that there had been no changes to the majority of her job duties since 1995. The employer had hired a dishwasher two months prior and this meant that she did not have to lift very many dish racks. She had also not been responsible for cleaning the dessert display case for some time.
- [18] Outside work, the worker gardened occasionally. Before she developed her symptoms, she did this once a week. Her gardening involved mowing lawns, weeding, and using a weed-eater. Prior to the worsening of her symptoms, she had chopped wood once a week for about an hour. However, she now did this only very occasionally.
- [19] The case manager noted that the worker's duties included serving, clearing tables, making drinks, setting tables, taking orders, cleaning up, taking payments, answering the telephone, greeting customers, filling condiment dispensers, writing on the menu board, and carrying ice buckets. When carrying food, the worker typically carried two to three plates with her left hand and arm and one with her right hand. She delivered the plate in her right hand first, and then used this hand to deliver the other plates. She used a pinch grip with her thumb on the top of the plate with the palm underneath. She very occasionally served cast iron skillets for breakfast meals. After she had already started to have symptoms, a larger, heavier rib plate was introduced. When serving

drinks, she either carried the tray with both hands, with her thumbs on top and palms underneath, or with her left palm centered underneath. She delivered the drinks with her right hand.

- [20] The case manager observed that, when the worker was serving food and drinks, there were very brief episodes of awkward postures of the right wrist, with slightly greater than 45 degrees of extension or flexion. Usually the worker's right hand remained in a static, neutral posture when carrying plates or delivering plates to a table. When lifting and carrying dish racks, there would be up to 45 degrees of right wrist flexion or extension and about 10 to 20 degrees of ulnar or radial deviation, but this was for brief periods and sporadically over the shift, about 10 to 12 times in total. Lifting and carrying ice buckets resulted in the worker's right wrist extending to between 45 and 50 degrees, but this also occurred sporadically over the shift, up to four times total. Wiping down the display case required the worker's right wrist to flex or extend to between 45 and 50 degrees, and there was 10 to 20 degrees of radial or ulnar deviation. This task was done for a few minutes, usually near the end of the worker's shift.
- [21] The case manager noted that, depending on the order, the plates of food that the worker carried weighed from 1 to 12 pounds. The exception to this was larger plates of ribs that were introduced after the onset of her symptoms, which weighed about 15 pounds. The cast iron skillets weighed about 10 or 11 pounds, and the case manager estimated that trays of drinks would not likely weigh any more than 10 to 12 pounds. The ice buckets weighed about 15 pounds.
- [22] At the end of the ASTD evaluation report, the case manager summarized her findings as follows:

Occupational:

- no repetition, as duties are widely varied (although she estimates 80% of her shift entails serving, this involves a variety of different tasks in itself, such as greeting customers, taking orders, serving various items, clearing tables, and occasionally assisting other staff with hostessing and cashier duties when they are busy).
- Force – light force for majority of job tasks, with occasional moderate force when carrying more than one ice bucket in one hand, but this may only be up to 4 times a shift, sporadically.
- Awkward postures – for the most part when serving her right wrist postures are in neutral positions, however, there are very brief periods of slight awkward posture, as noted above, again with these being intermittent with other duties.

Non-[occupational]:

- age/gender
- slightly elevated BMI

- hormonal difficulties (taking HRT [hormone replacement therapy] since age 39)
- chopping wood
- gardening
- history of right wrist tendonitis and associated inflammation in area, which has been determined as being non-compensable.

[all quotations reproduced as written unless otherwise indicated]

- [23] A Board medical advisor reviewed the information on the claim file, including the ASTD evaluation reports and the four videos and nine photographs the case manager had taken during the worksite evaluation. In a December 10, 2009 opinion, the medical advisor reviewed the risk factors for CTS which have been identified in the scientific literature. These factors are work activities that involve high repetition associated with high force, prolonged flexed or extended postures of the wrist (greater than 20 degrees), cold temperatures, and the use of vibrating tools. There was insufficient evidence to support an association between CTS and extreme postures. Also, the epidemiological studies confirmed that exposure to a combination of the job factors studied (repetition, force, posture, and so on) increased the risk of CTS. The highest rates of CTS occurred in occupations and job tasks with high work demands for intensive manual exertion, such as meatpackers, automobile assembly workers, and poultry processors. The medical advisor said that a work-related CTS would likely unilateral and that the condition is associated with tendinitis of the flexor tendons.
- [24] With regard to the worker's case, the medical advisor noted that the worker used her left arm, flexed to 90 degrees at the elbow, for most of the plate carrying and tray carrying she did. She took plates and trays "in single fashion" from the crook of her left arm with her right hand and passed them onto the table top in front of the patron. Her right-hand activities primarily involved handling a single plate and nominal to light force. Although there was some repetition, it would not approach Board ergonomic guidelines of greater than 10 awkward movements per minute for greater than 120 minutes continuously. Additionally most of her repetitive duties were undertaken with the wrist held in a neutral posture.
- [25] The medical advisor concluded that there were insufficient risk factors in the worker's employment to cause the diagnosis of right CTS. Moreover, given the light force, low repetition, and neutral wrist posture involved in most of her activities, there was no evidence that the worker's job duties would be an aggravating factor in the presence of a pre-existing CTS.
- [26] The case manager, the Board medical advisor, and two other Board officers met to discuss the worker's claim on December 11, 2009. Following this meeting, the case manager issued the December 14, 2009 decision.

[27] Dr. Wolovitz prepared a letter, dated March 16, 2010, in support of the worker's request for review. Dr. Wolovitz provided the opinion that the Board medical advisor had underestimated the extent of the risk factors in the worker's job and that the worker's employment aggravated or accelerated the worker's condition "by more than 50%." He also said that the worker had not done anything else to aggravate or initiate her condition, that she had a legitimate claim, and that he did not believe she would have developed CTS if she did not have her current job. In particular, he said the fact that she carried heavy trays repeatedly all day exposed her to risk factors relevant to her condition. Further, Dr. Wolovitz agreed with the statement, made by the worker's representative in the request for his opinion, that, if accepted, the Board medical advisor's opinion "would essentially mean that no server would ever be able to establish a valid claim for CTS."

[28] In the submission her representative prepared in support of the request for review, the worker submitted that:

- The Board had not accurately documented her work tasks or the risk factors involved.
- The evidence from the worksite evaluation demonstrated that her regular employment duties involved significant occupational risk factors such as awkward postures (including extensive ulnar deviation), pinch grip with a significant weight, static awkward postures, repetition of the awkward postures, and significant postures (including holding dishes with an outstretched hand).
- She was exposed to sufficient risk factors to warrant a conclusion that her CTS was either caused or aggravated by her employment.
- Contrary to the Board's view, her right wrist was not in neutral postures while she was carrying plates.
- The plates she carried on her left arm were each picked up and set down with the right hand.
- The fact that some people are more susceptible than others to an ASTD was not considered.
- The very nature of her job is that it involved repetitive tasks, and the vast majority of her time (80%) was spent carrying relatively heavy restaurant items in a static carrying posture. Lifting ten pounds or more for more than two minutes or greater than two hours duration was a significant factor.
- The worksite assessment was conducted using plates that were not loaded with food.

- A “lower adjudicative standard” should be applied in determining whether employment duties have aggravated or accelerated a pre-existing condition to the point of disability because the “thin-skull rule” indicates that workers with pre-existing conditions are at a greater risk of having those conditions worsened.
- If the worker’s condition was a purely degenerative condition, it could have been expected to continue to deteriorate after she stopped working; however, her condition improved when she was off work.

[29] Section 5(1) of the Act provides for compensation to be paid to a worker who has sustained a personal injury that arose out of and in the course of employment. The review officer found no evidence of a specific incident or trauma and also noted that the worker indicated a gradual onset of symptoms and attributed her condition to the general nature of her work activities rather than to a specific incident. The review officer therefore concluded that the worker did not sustain a personal injury that was compensable under section 5(1), and that the claim should be adjudicated under section 6 of the Act.

[30] Section 6(1) of the Act provides that, where a worker suffers from an occupational disease and the disease is due to the nature of any employment in which the worker was employed, compensation is payable. An aggravation of a pre-existing condition can also be accepted under a claim.

[31] With regard to the submission that there is a lower adjudicative standard applied in matters involving an aggravation, the review officer acknowledged that, in some cases, a lower level of exposure to risk factors may aggravate a pre-existing condition than would be necessary to cause that condition. However, the review officer noted that the adjudicative standard remains the same; that is, whether the evidence supports that the employment was of causative significance in causing or aggravating the condition. The outcome depends on the preponderance of the evidence, including the nature of the pre-existing condition and the extent of exposure to risk factors relevant to the condition.

[32] The review officer concluded that, since the evidence did not support that the worker had a pre-existing CTS condition, it was not open to conclude that this condition had been aggravated by her work activities. The review officer noted that the worker had worked for over 10 years without any right wrist or hand symptoms, and for almost 14 years without CTS being queried or diagnosed. He acknowledged that Dr. Wolovitz stated that the worker’s employment aggravated her condition, but observed that Dr. Wolovitz also said that the worker would not have developed CTS if she did not have her current job. In view of this, Dr. Wolovitz appeared to be of the opinion that the worker’s job caused her CTS. The review officer considered that, by stating that the worker’s symptoms were being aggravated at work, Dr. Valezquez had provided a contrary opinion and did not consider work to have been the cause of the worker’s condition. The review officer said that it was clear that, once CTS develops, any use of

the hands could lead to a flare up of symptoms (and any rest to a settling of symptoms), and that this was separate and apart from actually causing the underlying condition.

- [33] With regard to the argument that the “thin skull rule” applied, the review officer concluded that there was no evidence that the worker was pre-disposed or more susceptible to CTS. None of the medical professionals involved had mentioned a particular susceptibility to CTS. Moreover, the absence of a susceptibility was consistent with the lengthy period of time the worker performed her job duties prior to the onset of her CTS.
- [34] The review officer noted that, in any event, the worker did not need to have an underlying condition or a susceptibility to CTS in order for her diagnosed CTS to be compensable. In this regard, policy item #26.03 of the RSCM II confirms that the Board has designated or recognized CTS as an occupational disease by regulation. Policy item #27.40 of the RSCM II sets out that determining whether a worker’s ASTD was due to the nature of any employment in which the worker was employed requires an analysis of risk factors relevant to the causation of that ASTD. It provides a non-exhaustive list of risk factors, including repetition, force, task variability, awkward postures, and unaccustomed activity. Policy item #27.32 of the RSCM II deals specifically with CTS and provides that work activities utilizing the hand and wrist that involve high repetition associated with high force, prolonged flexed postures of the wrist, high repetition associated with cold temperatures, or the use of hand-held vibrating tools, are more likely to be associated with increased risk for CTS.
- [35] Although the suggestion was made in the worker’s submissions that the Board’s investigation was only cursory, the review officer did not find this to be the case. The review officer noted that the Board had evidence about the nature of the worker’s employment from both the initial worksite evaluation in 2007 and the one that the case manager undertook in conjunction with the current claim. The review officer recognized that the current evaluation was not ideal. Because the case manager was unable to undertake it during normal work hours, there were no actual customers and no food on the plates. However, the review officer noted that the case manager was able to review the worker performing her tasks, to assess the dimensions and weight of the items the worker used, and to obtain an understanding of the work tasks the worker performed during a regular work shift from the worker herself. The review officer accepted the ASTD evaluation report as an accurate summary of the worker’s work tasks.
- [36] The case manager and Board medical advisor had concluded that there was no repetition, as the worker’s duties were widely varied, and that there was light force for the majority of job tasks, with occasional moderate force when carrying more than one ice bucket in one hand. The case manager and the medical advisor had also determined that the worker’s right wrist postures were in neutral positions for the most part, with very brief periods of slight awkward posture, intermittent with other duties. Although the worker’s representative had raised some concerns about the Board’s

assessment of the risk factors in the worker's job, the review officer concluded that the Board's assessment of the risk factors was accurate.

[37] With regard to the argument that the worker was exposed to a significant risk due to awkward postures, the review officer concluded that:

- While the video and photographs supported that there were some awkward postures, they were not frequent and the overall evidence indicated that awkward postures generally occurred only occasionally when the worker was carrying dishes. For the most part, neutral postures were maintained and the worker did not maintain the prolonged flexed postures noted in the Board's policy. The five still photographs the worker's representative had included with her submission were only a small part of the total evidence.
- The fact that the worker estimated that 80% of her shift entailed serving did not support the position of the worker's representative that 80% of the worker's shift was spent carrying heavy items. While the 80% included time carrying dishes to and from tables, it also included other tasks such as taking orders, hostessing and cashiering. In addition, approximately half the shift encompassed the busy meal times, with the other half involving a wider variety of tasks. Further, many of the items the worker carried were not heavy. The plates weighed from 1 to 12 pounds, with the recently added rib plate weighing slightly more, such that most were relatively light, particularly when carrying them after the meal had been consumed.

[38] With regard to the submission that there was much more heavy force used than accepted by the Board, particularly with regard to pinch grip and static awkward posture, the review officer concluded that:

- Generally, when carrying plates, the worker's right hand carried only one plate that usually weighed between 1 and 12 pounds and the plates would have been somewhat lighter when cleared from the table. As a result, heavy force was not frequently required.
- There were a few other, infrequent tasks involving greater weight, but for the most part the worker's job did not involve more than light force.
- Although the worker's representative had submitted that the worker carried the weight with a pinch grip, as opposed to using her full hand, the description of the task in the ASTD evaluation report and the videotape and photographs showed that a "pinch" grip was not used. Instead, all of the worker's fingers were used under a plate to support its weight.
- The worker did use her thumb on top of the plate to grip and balance it, which would employ some of the soft tissues of the wrist and forearm. However, given that all of

the fingers (and the entire hand) was used to support the weight of the plate, a standard pinch grip was not employed.

- Overall, the force required in the majority of the worker's tasks was light. In addition, the plates were carried up to a maximum 35 feet (and less than that the majority of the time) and then set down. Plates were not statically held for more than a short period of time, with an opportunity to rest between tasks involving carrying dishes.

[39] Based on his review of the evidence, the review officer concluded that the worker's tasks did not involve repetitive movements of the wrist or forearm, generally involved light force, and involved only occasional awkward postures.

[40] The review officer also addressed the fact that the medical opinions from the Board medical advisor and from Dr. Wolovitz were in conflict. After considering the evidence, policy item #97.34 of the RSCM II, which provides guidance for resolving conflicts in medical evidence, and policy item #97.00 of the RSCM II, which deals more generally with the weighing of evidence, the review officer concluded that the Board medical advisor's opinion should be preferred to that of Dr. Wolovitz. The review officer noted that the medical advisor provided a thorough analysis of the causes of CTS and of the worker's work tasks and then provided a reasoned opinion based on that evidence. Further, the review officer was satisfied that the medical advisor's was consistent with the lack of high repetition with high force, the lack of prolonged flexed postures, and the lack of cold temperatures and vibrating tools confirmed in the evidence.

[41] The review officer also found the Board medical advisor's opinion more persuasive than Dr. Wolovitz's opinion because the medical advisor was able to take the video evidence into account, whereas Dr. Wolovitz did not have the benefit of that evidence (he was provided only with the "screen shots"). In addition, Dr. Wolovitz did not address the risk factors, or the lack of risk factors, with the exception of his reference to heavy trays. The review officer considered that Dr. Wolovitz may have misunderstood the evidence. He had noted that the worker carried heavy trays repeatedly all day. However, the worker did not carry trays frequently in her work and, when she did carry a tray, she either used her left hand to do so or carried the tray using both hands.

[42] Finally, the review officer acknowledged the evidence that the worker's symptoms improved when she was not working and that Dr. Wolovitz had agreed that this was temporal evidence of an association between the work duties and the worker's symptoms. However, the review officer concluded that the fact that a worker experiences symptoms at work is not, by itself, sufficient to establish a claim. There must also be evidence that the worker's duties were of causative significance in producing the CTS. Given the lack of risk factors for CTS in the worker's work duties, the review officer concluded that the preponderance of evidence did not support a conclusion that the worker's CTS was due to the nature of her employment.

Testimony and Submissions

- [43] At the commencement of the hearing, the worker's representative advised that she intended to take an approach that was somewhat unusual and would be using the time allotted for the hearing as an opportunity for the worker to undertake a practical demonstration of the nature of her work. She said that she felt that the video evidence and photographic evidence on file really did not give a good enough picture of the strain that is caused on the worker's wrist by carrying plates and that an actual demonstration would allow a much better understanding of what the worker does on a daily basis when serving and would also give evidence filling in the gaps of what a day in the restaurant she works in is like. The representative felt that the Board and Review Division did not understand how busy the restaurant is in comparison to others.
- [44] Much of the testimony the worker provided at the hearing simply confirmed information that she had already provided to the Board and which has been summarized above. She began working at the employer's restaurant in 1995, she first noticed symptoms in her right wrist late in 2006 or early in 2007, and her symptoms progressed to the point where, owing to the loss of strength in her right hand, the numbness she was experiencing, and the night pain she was having, she went to see her doctor. The worker also discussed the circumstances surrounding the worksite visit, the set-up of the restaurant, which has 94 seats, the staffing levels in the restaurant, and the hours that other servers, the hostess, a bus person, and the dishwasher work. In addition, she discussed the popularity of the heavier meals she serves (rib plates and the breakfast skillet) and confirmed that she finds serving the skillet particularly awkward and can only carry two at one time, using both her right and left hands.
- [45] Throughout her evidence, the worker emphasized that the restaurant is very busy. It does not accept reservations and it can fill up. The wait time for a table can be up to one hour and 15 minutes. Although she does do some hostessing duties, the priority of the servers is to serve the customers and, in particular, to get their food to them. The orders come up very fast and the worker said that, when she is not delivering food or clearing plates, she is always doing some activity that keeps her hands busy. This includes refilling coffee, getting drinks, clearing and setting tables, and a host of other activities. She said that there was not a lot of rest time between the times she is serving food because her hands are never idle. At the time her symptoms developed, she typically worked in a section with 6 tables and seats for 22 customers. When working a shift that included both lunch and dinner, it was not uncommon for the seats in her section to fill twice at each meal, and she said that her total sales could reach \$1,700 (\$700 or \$800 at lunch and up to \$1,000 in the evening).
- [46] The worker brought an assortment of the plates that are used in the restaurant to the oral hearing. She also brought a series of 12 pages of photographs and a copy of the restaurant's 6-page menu. The series of photographs is exhibit #1 to the hearing and includes pictures of the worker carrying plates and the tray she uses when delivering beverages and clearing tables, as well as of the meals she serves. The restaurant

menu is exhibit #2 to the hearing. The worker described the portions of some of the items as “huge,” and confirmed that the portion size of most of the meals on the menu is generous. The worker demonstrated how she carries the various items she brought with her to the hearing and also provided additional information regarding how much they weigh, both with and without food. The worker made handwritten notes next to some of the photographs in exhibit #1 that identify the weight of the particular item depicted. In large part, the worker’s testimony replicated information that was already in the ASTD evaluation report, including the estimates of what various items weigh. It is therefore not necessary to summarize the details of the worker’s demonstration of her work activities, summarize her oral testimony regarding those activities and the items she uses in her work, or describe those items.

[47] The evidence the worker provided at the hearing also included new information about her current situation. She underwent a right carpal tunnel release in April 2010, following which she remained off work for about 8 weeks. After that, she went back to work part time and has since been working shorter shifts than she did prior to April 2010. Prior to her surgery, she worked from 11:30 a.m. to approximately 8:30 p.m., and sometimes until 9:30 p.m., on Tuesday, Wednesday, and Thursday, and from 9:00 a.m. to 3:00 p.m. on Friday. Her current shift is from 9:00 a.m. to 3:00 p.m. on the same days of the week. She said that she has not yet regained full strength in her right hand, and she cannot bend her wrist in a normal way. However, she does not have as much pain as she had before the surgery.

[48] The worker relied on the submission that was submitted to the Review Division as well as a new written submission her representative provided to me at the oral hearing. In addition, her representative made an oral submission. In summary, it is the worker’s position that her work duties were quite a significant causative factor in her CTS. In particular, she submitted that:

- Carrying the big heavy plates requires her to assume awkward postures;
- Her job involves significant amounts of repetitive action. While her occupation may not be comparable to a true factory worker, she was always using her hands. If not serving food, she was pouring water or coffee, making and delivering drinks, and bringing customers soups and salads.
- There was a lot of force required in her activities.
- The fact that the worker is female must be taken into account. Medical journals document that women are three times more likely to develop CTS than are men. Thus, it may be that she had a susceptibility to developing CTS.

Reasons and Findings

- [49] The worker did not take issue with the conclusion of the case manager and review officer that she did not sustain a personal injury that arose out of and in the course of her employment and, as a result, is not entitled to acceptance of her claim pursuant to section 5(1) of the Act. In accordance with item #3.3.1 of WCAT's *Manual of Rules of Practice and Procedure* (MRPP), I have limited my consideration to whether the worker is entitled to acceptance of her claim pursuant to section 6 of the Act.
- [50] The review officer comprehensively and accurately reviewed the statutory and policy provisions that are relevant to considering whether the worker's right CTS is an occupational disease that was due to the nature of her employment as a server. I have been guided by these provisions in reaching my conclusions, but do not consider it necessary to summarize them again here.
- [51] Above, I have paraphrased a significant portion of the comprehensive reasons that the review officer provided for confirming the Board's decision that the worker's CTS is not compensable under section 6 of the Act. I am satisfied that those reasons were based on a correct understanding of the facts, and that the review officer properly applied the relevant statutory and policy provisions in reaching his conclusions. I accept and adopt those reasons. In my view, none of the additional evidence submitted in the appeal provides a basis for reaching a conclusion that the worker's right CTS is compensable.
- [52] Like the review officer, I am satisfied that the information available to the Board medical advisor and case manager was sufficient to enable them to understand the nature of the worker's job duties, and to make informed assessments of whether the worker's employment involved exposure to sufficient risk factors that were relevant to the development of her CTS.
- [53] Like the review officer, I am also satisfied that the Board medical advisor's opinion should be preferred to that which Dr. Wolovitz provided. In addition to the reasons the review officer provided for so doing, I note that the content and form of the request for that opinion provides an additional reason to prefer the opinion of the Board medical advisor. That request was made in a highly unusual form. For example, as indicated above, the request included a conclusory comment about the consequences of accepting the Board medical advisor's opinion. Specifically, the fifth of seven questions that Dr. Wolovitz was asked to respond to reads as follows:

[The worker] works in a busy restaurant. The [Board medical advisor's] opinion, if accepted, would essentially mean that no server would ever be able to establish a valid claim for CTS. Do you believe the Board Medical Advisor simply did not carefully enough consider the worker's actual work duties and the actual evidence of work-relatedness in this case?

- [54] I note that the suggestion that the Board medical advisor's opinion supports denial of every claim that any server ever filed is not supported by the content of the medical advisor's opinion. The medical advisor did not purport to speak to any circumstances other than the worker's and based his opinion on the specific evidence in the claim file, and did not offer any comments regarding the probable success of other claims that might be filed by other servers. More importantly, Dr. Wolovitz's response to this question reads, in full, "Yes, I do." As is the case in all of the other responses he provided (with the exception of his response to the third question that was put to him), Dr. Wolovitz did not provide any details to explain why he reached the conclusions he states in his letter. On reading his March 18, 2010 letter, it is impossible to discern whether Dr. Wolovitz has even reviewed the Board medical advisor's opinion. The fact that he did not correct the representative's representation that the Board medical advisor had purported to offer an opinion regarding all servers in all circumstances suggests that he may not have done so.
- [55] The third question that was put to Dr. Wolovitz reads as follows:
- Can you please comment on some of the specific risk factors contained in the worker's employment duties?
- [56] Dr. Wolovitz's response, in full, reads as follows:
- Carriyng [sic] heavy trays repeatedly all day.
- [57] The review officer considered Dr. Wolovitz's response both as if the term "trays" was intended to identify the trays the worker uses to carry drinks to her customers and as if the term "trays" referred to the larger plates that are used for meals such as ribs, large breakfasts, and so on. However, he concluded that Dr. Wolovitz's opinion was not persuasive, regardless of which interpretation was placed on the term. I agree. Dr. Wolovitz did not provide sufficient information in his letter to allow a conclusion that he was familiar with and understood the worker's work duties, knew what risk factors are relevant to the development of CTS, or had reviewed the materials that accompanied the request for his opinion. I find that Dr. Wolovitz's opinion does not provide a basis for discounting any aspect of the opinion that the Board medical advisor provided.
- [58] The Board medical advisor provided the opinion that, when carrying plates of food in her right hand, the worker maintained her wrist in a neutral position. The worker and her representative disagree, but have not provided any medical or other expert evidence to support a contrary interpretation of the videotape and photographic evidence.
- [59] At the hearing, after being advised of the worker's intention to demonstrate her work activities, I advised the worker's representative that I did not have medical training, was not an ergonomist, and was not otherwise qualified to undertake an independent assessment about the worker's exposure to risk factors relevant to CTS. The

representative assured me that she did not wish me to do this. Had the worker's demonstration of her work activities showed that the Board medical advisor's opinion likely contained a glaring error about the degree of extension, flexion, radial deviation, or ulnar deviation of the right wrist required in her employment duties, it would have been open to me to reject that opinion and seek an alternative assessment of the worker's exposure to the relevant risk factors identified in policy item #27.32 of the RSCM II. However, the worker's demonstration did not do that, and my review of the photographic and videotape evidence available also does not support rejection of the Board medical advisor's opinion.

[60] The standard of proof that applies in this appeal is the balance of probabilities, but this is modified by section 250(4) of the Act. Like section 99(3) of the Act, which applies to the Board, section 250(4) provides that, where the evidence supporting different findings on an issue is evenly weighted, WCAT must resolve that issue in a manner that favours the worker. I find that the evidence is not evenly weighted in this case. Instead, it supports a conclusion that the worker's right CTS was not due to the nature of her employment as a server.

[61] I accept the worker's evidence that she works in a very busy restaurant and that it was very busy when she developed her symptoms. I also accept her evidence that, at the time she developed her symptoms (as now), when she was not actually serving meals or carrying plates, she was constantly engaged in activity that required her to use her hands. I also note that the worker did provide additional information at the hearing that was not specifically discussed in the ASTD evaluation report. For example, she noted that she carries a standard restaurant coffee pot in her right hand for much of her shift and that this item weighs between four and six pounds when full. She also provided evidence about the weights she bears with her left hand and arm, including that a full tray of drinks weighs about 12 pounds and the weight of three plates that she would typically carry in her left hand and arm is about 14 pounds, not including the weight of the food that would be on them. None of this additional information added substantially to the information that was available to the Board medical advisor and that was considered in the ASTD evaluation report and initial decision on the claim.

[62] In order to accept a claim for CTS, there must be evidence that the worker's work activities were a significant cause of the CTS. This in turn requires evidence that those work activities placed stress on the tissue affected by her CTS to a sufficient extent to justify finding a causal connection between the CTS and the worker's employment duties. The mere fact that a worker uses his or her hands or wrists while working is not sufficient to establish such a causal connection. Instead, only certain types of activity will place the requisite stress on the relevant tissue. Policy item #27.32 of the RSCM II identifies those which, based on the epidemiological studies, are most likely to do this.

[63] Having reviewed all of the evidence, as well as the extensive and detailed submissions the worker's representative filed in support of the request for review and at the oral hearing, I am unable to conclude that the worker's hand and wrist were engaged in

activities involving high repetition associated with high force, prolonged flexed postures of the wrist, high repetition associated with cold temperatures, or the use of hand-held vibrating tools. There may be other exposures that also give rise to a risk of developing CTS. However, based on his review of the evidence, which I accept as reliable, the Board medical advisor was unable to identify any such exposure. There is no contrary opinion.

- [64] In this regard, I acknowledge that the worker's representative also argued that the worker may have a vulnerability or susceptibility to CTS because she is female. The review officer explained why this argument could not be sustained on the available evidence. I agree. In the absence of any medical opinion supporting that the worker had a relevant underlying susceptibility to developing CTS, acceptance of this argument could only be based on speculation. A speculative possibility that the worker's CTS might have been caused by her work is insufficient to meet the standard of proof set out above.
- [65] As noted in policy item #27.32 of the RSCM II, there are many causes of CTS, both occupational and non-occupational, and CTS occurs in the general population and often without any obvious cause. In this case, there is insufficient evidence to warrant a conclusion that the worker's right CTS was due to the nature of her employment. She is not entitled to acceptance of her claim.

Conclusion

- [66] The worker's appeal is denied. I conclude that the worker's right CTS was not due to the nature of her employment as a server. The Review Division's June 14, 2010 decision is confirmed.
- [67] Item #16.1.2 of WCAT's MRPP provides that WCAT will generally order reimbursement of expenses for a worker's own attendance at an oral hearing, if the worker was successful on appeal. The worker was not successful on this appeal. I see no compelling reason to depart from the general rule in this instance and so conclude that she is not entitled to reimbursement for any expenses associated with her attendance.
- [68] There were no other reimbursable expenses associated with the appeal, and I therefore make no order for reimbursement of expenses.

Deirdre Rice
Vice Chair

DR/tv