Noteworthy Decision Summary

Decision: WCAT-2012-00875 **Panel**: Patricia Broad **Decision Date:** March 30, 2012

Section 6(3) of the Workers Compensation Act – Occupational Diseases – Causation – Causative significance – Policy item #27.20 of the Rehabilitation Services and Claims Manual, Volume II – More than trivial or de minimis cause

This decision is noteworthy for its discussion of the test used to determine whether work is a factor in a worker's disablement. The test is not whether work activities "likely caused" the worker's condition, but whether work activities and their risk factors were of causative significance to the condition. Work activities are of causative significance when they are a more than trivial or *de minimis* cause of the condition. Work activities need not be the sole or predominant cause.

The worker, a mechanic, made a claim with the Workers' Compensation Board, operating as WorkSafeBC (Board), that her right shoulder tendonitis was caused by her work duties. The Board denied the worker's claim, agreeing with the opinion of a Board medical advisor which stated that it was less than 50% likely that the condition was caused or aggravated by work. The worker appealed, and the Review Division allowed the worker's appeal. The employer appealed the decision to WCAT.

WCAT denied the employer's appeal and confirmed the Review Division decision. The WCAT panel considered whether the Board medical advisor's opinion was sufficient to rebut the presumption of work causation established in section 6(3) of the *Workers Compensation Act*, and noted that the advisor had used the wrong test in determining causation of the worker's tendonitis. WCAT noted that the advisor had erred by considering whether there was a 50% likelihood that work caused the worker's tendonitis, instead of whether work activities were of causative significance. The WCAT panel noted that work activities need not be the predominant or only cause of the worker's injury; the test for causative significance is whether the work activities were a more than trivial or *de minimis* cause of the condition.

Workers' Compensation Appeal Tribunal
150, 4600 Jacombs Road, Richmond, B.C. V6V 3B1
Telephone: (604) 664-7800; 1-800-663-2782; Fax (604) 664-7898

WCAT Decision Number: WCAT-2012-00875
WCAT Decision Date: March 30, 2012
Panel: Patricia Broad, Vice Chair

Introduction

[1] The worker is an automotive mechanic. In August 2010, she developed right shoulder tendonitis. She made a claim with the Workers' Compensation Board, now operating as WorkSafeBC (Board) that her work had caused the shoulder tendonitis. In a decision dated December 8, 2010, the Board denied her claim as either an injury that arose out of and in the course of employment or as an occupational disease. The worker appealed this decision with the Review Division of the Board. In a decision dated July 18, 2011, the Review Division found that the worker's right shoulder tendonitis was an injury that arose out of and in the course of her employment.

[2] The employer has appealed this decision to the Workers' Compensation Appeal Tribunal (WCAT) under section 239(1) of the *Workers Compensation Act* (Act). The worker is participating in the appeal.

[3] The employer has requested that this matter proceed by way of a review of the file through written submissions. In this case, there are no significant issues of credibility or significant factual issues in dispute or other compelling reasons for convening an oral hearing. The employer has communicated its case clearly. Given that the issue is largely a medical one and the relevant evidence is before me, an oral hearing is not necessary for full and fair adjudication of this appeal.

Issue(s)

[4] Is the worker's right shoulder tendonitis an injury that arose out of and in the course of employment or an occupational disease that is due to the nature of her employment?

Jurisdiction

[5] This is a rehearing by WCAT. WCAT reviews the record from previous proceedings and can hear new evidence. WCAT has inquiry power and the discretion to seek further evidence, although it is not obliged to do so. WCAT exercises an independent adjudicative function and has full substitutional authority. WCAT may reweigh the evidence and substitute its decision for the appealed decision or order. WCAT may confirm, vary, or cancel the appealed decision or order.

Workers' Compensation Appeal Tribunal
150, 4600 Jacombs Road, Richmond, B.C. V6V 3B1
Telephone: (604) 664-7800; 1-800-663-2782; Fax (604) 664-7898

[6] The evidentiary standard in this appeal is the balance of probabilities, as modified by section 250(4) of the Act. Section 250(4) provides that if the evidence supporting different findings on an issue is evenly weighted, WCAT must resolve the issue in a manner that favours the worker.

[7] I am required to apply the published policies of the board of directors of the Board, subject to the provisions of section 251 of the Act. The *Rehabilitation Services and Claims Manual, Volume II* (RSCM II), contains the published policy applicable to this appeal.

[8] As the worker's claimed injury is purported to have occurred after July 1, 2010, the version of Chapter 3 of the RSCM II that became effective July 1, 2010 applies.

Background and Evidence

[9] The parties have had disclosure and access to all documentation relating to this appeal. I have reviewed all documentation relating to this appeal, including all submissions. I will not provide a complete background to all of the worker's claim documentation in my decision, but will set out sufficient evidence to explain the issue and my findings on this issue.

[10] The employer's report of injury acknowledged that contributing factors to the worker's condition included lifting weights of 25 to 50 pounds, that her work involved overexertion, and that it was repetitive.

[11] The worker's attending physician, Dr. Jager, wrote on August 18, 2010 that the worker had progressively worsening shoulder pain when she worked with her arms above her shoulders as well as carrying automotive parts over the previous ten days. He noted that the worker's right shoulder was tender and she had decreased elevation and impingement. He diagnosed significant supraspinatus tendonitis. He stated that the worker was unable to return to work at full duties, full time because she was unable to use her right arm, but that she was capable of working in some capacity. He recommended light duties.

[12] On October 27, 2010, Dr. Smith, who was not the worker's regular physician, diagnosed the worker with right biceps tendonitis. He said the worker had injured her right shoulder while working with her arm overhead on a repetitive basis. The worker had a painful arch and was tender over the long head of the biceps. He recommended range of motion exercises and Advil. The worker had full range of motion. However, she was not able to work.

[13] The worker began physiotherapy on October 28, 2010.

[14] The worker completed an activity related soft tissue disorder pre-site questionnaire on September 30, 2010. She stated that the pain in her right shoulder started on Monday,

August 9, 2010 and got worse during the week while working with her arms above her head for the majority of the week. She stated that she did not normally work with her arms above her head for the amount of time that she did on the week of August 9, 2010. During that week, almost all of her work was overhead. She stated that that there was not one event that led to the symptoms; rather they occurred over the course of a week. She stated that when she was working on the pickup trucks, a lot of the work was done from underneath. She worked 40 hours a week plus 2 hours overtime to drive to the shop. She had two 15-minute breaks and a half hour lunch break. When she had to do heavy work, like using a "swing hammer", she would get help. When she was not at work, she groomed and rode her horse, and used a cat crawler to level her property and pile trees.

[15] On November 9, 2010 a Board case manager performed an activity related soft tissue disorder worksite evaluation report. She noted the worker had been employed with the employer for 2.5 years but had started to work in the employer's second shop to service fleet vehicles on August 9, 2010. She was covering for a co-worker who was ill and it was not her normal work duties. The case manager stated that while normally she would do 1 to 1.5 services per week, she performed about 7.5 services during the week of August 9, 2010. By the third day, her shoulder was very sore. The worker's contention was that the extra volume of work caused the right shoulder tendonitis.

[16] On November 9, 2010 the case manager attended the job site to assess the worker's job duties. The worker is an automotive service technician, level III which meant that she does a variety of repairs including regular service maintenance. The case manager wrote that the worker checked the engine oil, transmission fluid and differential fluid; she checked the ball and U-joints, shock and leaf springs. The worker would remove the truck tires and check the brake lines. The case manager noted that the time to do this work would vary depending on the amount of repairs that were required.

[17] The worker showed the case manager how she inspected ball joints while the truck was on the ground and after it was raised with a 5-ton pump jack. The worker would then raise the truck to her mid-torso to remove all tires and inspect the brakes. This process took about 1.5 hours to complete. She then raised the truck on the hoist to change fluids and inspect the vehicle.

[18] The case manager noted that:

> --in the interview stage of the JSV [job site visit], the worker stated she felt it was the changing of the transmission oil that really started the symptoms in her shoulder and then really bothered here whenever she had to do this work. In the changing of the transmission oil, there are approx 20 bolts to undo that hold on the oil pain. This needs to be done carefully and in a certain method as the pan is heavy with fluid and the idea is to have the weight of the pain evenly distrubuted on the bolts as it is lowered (and put on as well). This then prevents any warping of the pan. Once the pan is

> ready to be lowered, she typically will use her left hand to support the pan while the right hand will do the work to free by hand the remaining 4 bolts..[.] the fluid is tipped out into the engine oil pan and the pan is inspected/cleaned. The filter is replaced and the process to put the pan back on is repeated. All 20 bolts are stared by hand to ensure none are cross threaded and that the pan goes on evenly around the pan gasket. Again the left and right hands are above shoulder height to do the work and the worker will interchange hands on the pain and in threading the bolts on and down. When she is satisfied that the pan is on correctly, she...will use a wrench with a long extension to tighten to bolts down (still photos and video taken of the tightening process). The worker states that this is the longest process of the fluid changes and typically takes 1+ hours to complete.
>
> [all quotations reproduced as written save for changes noted]

[19] The case manager wrote that the worker was only able to do an oil change during the job site visit and demonstrated the rest of the service. The case manager pointed out that:

> --the last fluid change occurs with the differential fluid change which involves taking off the casing on the differential, scraping out and removing the silicone gasket, doing the inspection and replacing the filter. This change takes approximately 40 min to complete.

[20] The case manager wrote that the total time to do the inspections and fluid changes was 3.5 hours a day.

[21] After this, the worker lowers the truck and adds engine oil, checks the fluid levels, checks and changes the air filter and inspects the remaining engine components including hoses, belts, and plugs and so on. The worker may have to repair or replace an engine component. She assists the heavy-duty mechanics. The worker would drive a loader to move or load equipment. She usually uses small tools; if she needs to use a heavy tool, she will ask for assistance. Further:

> Products used such as fluids typically are in 4L containers and if larger they are in 5gallon pails (40+lb). It is not common to have to move this type of product around. Most product used by this worker is again in the sedentary category.

[22] In the worksite evaluation report, the case manager evaluated the risk factors. When assessing repetition, she wrote that “there was an acknowledgement” that every day of the week in question the worker’s shoulder was moving in and out of awkward postures. When writing about postures, the case manager wrote the same observation. She

wrote that the worker was exposed to frequent sedentary level forces, infrequent light/medium forces and infrequent heavy forces. She wrote that the worker was exposed to some cold temperatures and that there was good task variability.

[23] The case manager also recorded a video of the worker at the job site demonstrating how she serviced a truck while she did the job site analysis. While there were no trucks needing service at the time, the worker explained and demonstrated many of the movements involved.

[24] On November 10, 2010, Board medical advisor, Dr. Robinson, wrote that it was "less than 50% likely that right shoulder tendon condition was one caused or aggravated by the work duties as described by the Board Officer following the job site visit and as demonstrated on the images". She noted that the worker's symptoms had started the first day of work and before the work had "hardly got underway". She stated that while the worker had awkward shoulder movements, her shoulder had sufficient periods of time where the shoulder rested by her side; the awkward shoulder motions were intermittent. Exposure to force was light, or medium. The worker could request help for heavier work. Given the onset of symptoms was in the summer, the worker was not exposed to the cold; further, she was not exposed to vibration, static load, and mechanical stress. The job duties were not much different than the ones she previously did. Even over the entire week of work, there was insufficient time for "sufficient compressive movements to have caused or aggravated a shoulder tendon condition."

[25] On December 7, 2010, the case manager wrote that she had reviewed the claim file with Dr. Robinson. She agreed with Dr. Robinson and denied the claim.

[26] On January 24, 2011, the worker had an ultrasound of her shoulders. It demonstrated that she had bilateral subacromial bursitis and that she probably had bicep tendonitis on the right shoulder.

[27] On March 8, 2011, Dr. Venter diagnosed the worker with right shoulder rotator cuff tendonitis. He stated that the worker would not be capable of working for more than 20 days.

Submissions

[28] The employer's submission to WCAT is dated November 17, 2011. In it, the employer's representative noted that the worker had returned to work for a month in November 2010 and went on medical employment insurance in December 2010. The worker had tried to work again for one week in February 2011 but returned to medical employment insurance.

[29] The employer argued that there was not a lot of medical information on record, and the medical information that was on record did not explain how the worker's duties led to right shoulder tendonitis. The Board medical advisor's opinion is a well-informed and

balanced opinion. While the worker was working at a different shop when she experienced symptoms, the work at her regular shop was the same type of work. The tasks are variable.

[30] The employer attached an e-mail to the submission. In it, a representative from its operations notes that the work was the same in both shops but that there was more work in the second shop.

[31] The worker's submission is dated December 1, 2011. She noted that when she tried to return to work, the pain came back. She did a lot more work in the second shop than she had done in the regular shop. The pictures and the video from the work site evaluation were not accurate and did not show all of the awkward postures. She still has symptoms. Her tendonitis and bursitis are the result of increased, repetitive overhead work, excessive awkward positions and few breaks. She is having an MRI in February 2012.

[32] She was "perfectly healthy" until she worked at the second shop. She attached a page from her doctor's chart notes with entries on March 8 and August 25 2011. In it, her doctor recorded that she had ongoing disability and pain in both shoulders and had referred her for an MRI on August 25, 2011. The notation for March 8, 2011 was simply "wcb form".

[33] The employer's rebuttal consists of e-mail correspondence between the employer and its representative. The employer's representative asked several company employees to comment on the worker's submission. One employee noted that there was an offer of light duties. They were sorry that she was not returning to the company. They disputed the worker's statement that the company did not care and that it did not offer light duties.

[34] Two other employees argued that the worker's workload did not increase at the second shop. One noted that the worker had doctors' notes from August 2010 and January and May 2011 that she was not supposed to use her arms and the worker still tried to return to work; further there was no ultra sound. However, he would leave the determination of the relevance of these issues with the employer's representative.

Reasons and Findings

Law and Policy

[35] Section 5(1) of the Act provides that a worker is entitled to compensation for a personal injury arising out of and in the course of his or her employment.

[36] Section 6(1) of the Act provides that where a worker suffers from an occupational disease which is due to the nature of any employment in which the worker was

employed, compensation is payable as if the disease were a personal injury arising out of and in the course of employment.

[37] Section 6(3) of the Act provides that, where the process identified in Schedule B of the Act is present and the worker has been diagnosed with the corresponding occupational disease, it is presumed that the disease is due to the nature of the worker's employment, unless the contrary is shown.

[38] Schedule B of the Act identifies shoulder tendinitis as an occupational disease. The process or industry described opposite to it is as follows:

> Where there is frequently repeated or sustained abduction or flexion of the shoulder joint greater than sixty degrees and where such activity represents a significant component of the employment.

[39] Policy item #27.12 of the RSCM II explains the terms that are used in Schedule B. It refers to the definitions in policy item #27.11 which states that in determining whether the work activities involve frequently repeated abductions or flexion of the shoulder joint, a decision-maker should consider:

> • the frequency of the work cycle for the tasks being performed (how often there is abduction or flexion of the shoulder joint greater than sixty degrees);
>
> • the amount of time during a work cycle that the affected muscle/tendon groups of the shoulder are working compared to the amount of time such tissues have to return to a relaxed or resting state;
>
> • the amount of time between work cycles that the affected muscle/tendon groups of the shoulder have to return to a relaxed or resting state;
>
> • whether other activities are performed between work cycles that require motions or muscle contractions that affect the ability of the affected muscle/tendon groups of the shoulder to return to a relaxed or resting state, and if so whether such activities are repetitive in nature.

[40] Tasks that involve frequently repeated abduction or flexion of the shoulder joint include:

> • ones that involve abduction or flexion of the shoulder joint greater than sixty degrees at least once every thirty seconds; or
>
> • ones that are repeated and where at least 50 percent of the work cycle involves abduction or flexion of the shoulder joint greater than sixty

> degrees and where the muscle/tendon groups of that shoulder have less than 50 percent of the work cycle to return to a relaxed or resting state.

[41] Decision-makers should use their judgement to determine whether lower work cycle frequencies or greater periods of rest and recovery time lead to a conclusion that the work task does not involve frequently repeated abduction or flexion of the shoulder joint.

[42] The policy also defines sustained abduction or flexion of the shoulder joint as when a shoulder joint is held in a static position of abduction or flexion greater than 60 degrees. It states that the longer the shoulder joint is held in this static position during the work cycle, and the less time the affected muscle/tendon groups of the shoulder have to return to a relaxed or resting state, leads to the conclusion that it is more likely that the work involves sustained abduction or flexion of the shoulder joint. Also, it is less likely that the work involves sustained abduction or flexion of the shoulder joint where the muscle/tendon groups have more of an opportunity to return to a relaxed or resting state.

[43] The policy defines a significant component of the employment as when a worker performs work activities as described above for a period of time where it is biologically plausible that the work activities could lead to the inflammation. It does not refer to a minimal or trivial use of the shoulder joint

[44] Policy item #27.20 of the RSCM II establishes that, where work activities do not meet the criteria under Schedule B, the worker may still be eligible for compensation for an occupational disease under section 6(1) of the Act. The evidence must be weighed to determine if there were sufficient risk factors to conclude the disease was due to the nature of the employment. Although the risk of developing tendonitis/tenosynovitis may be significantly greater where two or more risk factors are present at the same time, these inflammatory disorders may result from a particularly frequent, intense or prolonged exposure to a single risk factor.

[45] The risk factors to be considered for an activity related soft tissue disorder are set out in policy item #27.40 of the RSCM II. The policy directs the decision-maker to consider the location, magnitude/ intensity, frequency, and duration of the activity. Risk factors include the amount of repetition, force, static load, task variability, awkward postures, mechanical stresses, shock, grip type, vibration, extremes of temperature, and whether the activity was unaccustomed. The policy also notes that poor ergonomics, work organization in the form of regular overtime or piecework, and rest breaks must also be considered, in addition to non-occupational risk factors such as age, health, and smoking habits. The principle risk factors are repetition, force, posture and vibration.

Analysis

[46] At the outset, I note that the worker has argued that her bursitis was a compensable condition; however, this condition has not been adjudicated by the Board or the Review

Division. I do not have jurisdiction over this condition and will not be addressing it in this decision. The worker may request that the Board adjudicate any entitlement to bursitis.

A) Did the worker's shoulder tendonitis arise out of and in the course of her employment?

[47] Policy item #25.10 of the RSCM II provides that a disease that is attributed to or is the consequence of a specific event or trauma, or a series of specific events or traumas, will be treated as a personal injury and will be adjudicated in accordance with the policies set out in Chapter 3. Although the absence of a specific incident or accident is not a bar to compensation, the worker states that there was no specific incident or accident to cause her shoulder tendonitis. Also, the worker does not argue that the onset of her shoulder symptoms occurred during the course of a shift. Rather, the worker has stated in the activity-related soft tissue disorder (ASTD) questionnaire and in her submission to WCAT that her symptoms arose over the course of several shifts.

[48] It is the worker's evidence that there was a gradual onset of symptoms without any specific event or trauma or series of events or traumas. I am satisfied that the worker's evidence in this regard is consistent with the evidence on file. I am also unable to find any evidence of a specific event or trauma, or a series of events or traumas that caused the worker's shoulder tendonitis. Therefore, I conclude the worker did not sustain an "injury" arising out of and in the course of her employment, as contemplated by section 5(1) of the Act.

[49] Instead, her claim should be adjudicated as an occupational disease in accordance with section 6 of the Act.

B) Is the worker's tendonitis due to the nature of her employment?

Is the worker entitled to the presumption in section 6(3) of the Act?

[50] As stated before, the presumption in section 6(3) applies if the evidence satisfies the requirements of Schedule B of the Act. In this case, I find that it does for the following reasons.

The worker's job duties

[51] In order to assess whether the worker's tendonitis is due to the nature of her employment, I must examine the worker's job duties.

[52] Having considered the activity related soft tissue disorder worksite evaluation report, the video taken on the day of the job site visit, and the activity related soft tissue disorder questionnaire, I accept as fact the following aspects of the worker's work duties.

[53] When the worker serviced a truck, she would use a 5-ton pump jack to raise the truck to inspect the ball joints. This involves pushing down on a lever using both hands.

[54] She would then raise the truck with a hoist to torso level to do the brake and tire inspection. Her arms would be raised to loosen bolts, remove tires, and used as needed during the inspection. Her shoulder would be flexed at more than 60 degrees while using her hands as the truck was raised.

[55] She would then work on the truck while it was raised over her head. She would change the engine oil, change transmission fluid and differential fluid. In order to do so, she would have to raise her hands over her head to reach the components, unfasten bolts, put in an oil filter, check the drive shaft, remove the gasket, check the shocks, *et cetera*. For example, to change the transmission fluid she had to remove and put on 20 bolts (which required some reaching overhead although she also used a wrench with an extension) and carefully remove the pan. She spent a considerable amount of time working with her hands over her head while working under the truck with her shoulder flexed at more than 60 degrees.

[56] The tasks up to this point took her about 3.5 hours to complete.

[57] She would then lower the truck and work under the hood. She changed the air filter and did a visual inspection of the remaining components. At times, she would do minor repairs if needed. This might take her more than an hour to do so. During this time, her arm was outstretched for most of time that it took to do these tasks and her shoulder was flexed at more than 60 degrees.

[58] Even when the worker was not working with her shoulder flexed at more than 60 degrees, her shoulder was not resting but in constant movement as she put away tools, set up for the next part of the service, *et cetera*…

> *Was there frequently repeated abduction or flexion of the shoulder joint greater than 60 degrees?*

[59] As stated before, when a decision-maker considers if a worker's shoulder is flexed repeatedly in accordance with Schedule B, he or she should consider the frequency of the work cycle as well as the amount of time during and in between work cycles that the shoulder can return to a relaxed or resting state. In this case, I find that there was repeated flexion of the worker's shoulder.

[60] During the time that the worker was reaching forward to work on the truck while it was at her torso level, reaching overhead and reaching over the hood of the truck, the worker's should was flexed at more than 60 degrees. I find the evidence establishes that it is more likely than not that her shoulder was flexed at more than a 60-degree posture for over half of her shift. Having viewed the video of the job site evaluation, it is apparent that while the worker was removing tires, working under the truck and under the hood

that her outstretched arm resulted in a shoulder that is flexed at more than 60 degrees for most of her workday. I find that it was done so on a continual and frequent basis.

[61] This finding is consistent with the activity related soft tissue disorder evaluation report. In the report, the case manager wrote that it was acknowledged that through the entire day, for every day of the week, the worker was moving her shoulder in and out of an awkward shoulder posture.

[62] Certainly, I find that the worker's tasks involved flexion of her shoulder of more than 60 degrees for over 50% of her work shift, and that she did not have an opportunity to rest or relax her shoulder in between the work activities as set out in policy item #27.11. Rather, the worker's arm and shoulder were in frequent motion as she set up the tools for the next part of the service, put them away and other tasks.

[63] I find that it is more likely than not that the worker used her right hand most of the time given that she is right hand dominant. While the worker said in the video that she used both arms, she did not comment on how often she did so. Further, while taking the tires off the truck, working underneath it, and reaching over to work under the hood, the worker's arm is in an outstretched position and her shoulder is flexed more than 60 degrees, or in an awkward position. For these reasons, I find that the worker frequently flexed her shoulder more than 60 degrees and has met the requirement in Schedule B.

Was there sustained flexion of the right shoulder joint greater than 60 degrees?

[64] The policy states that sustained flexion occurs when the shoulder joint is held in a static position of flexion of over 60 degrees. The longer the shoulder is held in the position, and the less time the shoulder is able to return to a relaxed or resting state, the greater the likelihood that the worker will develop tendonitis.

[65] Again, given that I find the worker's right shoulder was flexed at more than 60 degrees while she performed most of the tasks servicing the trucks, I find that her right shoulder was in a sustained flexed position in accordance with policy.

Was the abduction or flexion of the right shoulder joint a significant component of the worker's employment?

[66] I find that the length of time that the worker's shoulder was flexed was sufficiently long that it is biologically plausible that the inflammation affecting the shoulder resulted from the work activities. The worker's shoulder was in an awkward position for a substantial portion of the day and did not return to a resting state. Certainly, the worker's work activities did not require a minimal or trivial use of her shoulder. This is confirmed by the medical reports that link the tendonitis to the worker's work duties.

Is there sufficient evidence to rebut the presumption in section 6(3) of the Act?

[67] I find that there is insufficient evidence to rebut the presumption that the work duties caused the worker's tendonitis. I do so for the following reasons.

[68] The employer has argued that the worker was not doing different job tasks, but it does acknowledge that there was more work at the second shop. I find that the fact that there was a substantial increase in the worker's workload is evidence that there was a significant change in her duties and supports a conclusion that the work duties would lead to tendonitis.

[69] Further, while the worker acknowledged that she rode horses and the employer pointed out that she was a competitive horse rider in her teens, I do not find that there is sufficient evidence to conclude that riding a horse or grooming would cause tendonitis. This is a medical question and the medical evidence does not link the horseback riding to the shoulder tendonitis.

[70] I also considered whether the Board medical advisor's opinion is sufficient evidence to rebut the presumption. I disagree with the Board medical advisor's characterization of the worker's activities. She described the worker's exposure to an awkward posture as "rare, intermittent, awkward shoulder postures." The video and the work site evaluation report confirm that the worker's right shoulder was flexed at more than 60 degrees for a significant portion of her workday. Given that this flexion is defined in policy as awkward, the exposure to awkward posture was not rare or intermittent. I give the Board medical advisor's opinion little weight. I do not find that the Board medical advisor's opinion is based on an accurate description of the facts and it does not address "frequent repetition" as outlined in Schedule B. It is not compelling evidence to find that the tendonitis was not due to the nature of the worker's employment.

[71] Another reason that I am unable to give the Board medical advisor's opinion significant weight is because I find that she considered the wrong test when addressing whether the work duties caused the tendonitis. The Board medical advisor wrote that there was less than 50% likelihood that the work activities caused or aggravated the shoulder tendonitis. However, the test is not whether the work activities likely caused the tendonitis; rather, the test is whether the work activities, and their risk factors, were of causative significance, or a significant cause, of the condition. I draw guidance for this principle from policy item #27.20, which addresses circumstances where the presumption does not apply. While I have found that the presumption does apply, I find that this policy provides guidance on causative significance and occupational diseases. It states that the work activities need not be the predominant or only cause. I note that in general, the test for causative significance is not that it is a likely cause; rather, it is whether the work activities were of a minimal or more than trivial or *de minimis* cause of the condition. The Board medical advisor considered whether there was a 50% likelihood that the work caused tendonitis, instead of whether the work activities were of

causative significance, or more than a trivial cause. I am unable to give this opinion significant weight. I do not find that it is sufficient evidence to rebut the presumption in section 6(3) of the Act.

[72] In fact, I find that the exposure to repetitive awkward postures was more than trivial; it was significant. The exposure to awkward postures is sufficient to meet the criteria in the policy and Schedule B.

[73] Even if I consider all of these factors together, I do not find that they provide sufficient evidence to rebut the presumption in favour of the worker and to prove that the tendonitis was not due to the nature of the worker's employment. I must consider them in the context of a worker who experienced the onset of symptoms at work and reported them in a timely fashion to her doctor and to the employer. I have considered the biological plausibility and the nature of the worker's duties. I find that the evidence satisfies the criteria in Schedule B, as described in policy item #27.12, and the worker is, therefore, entitled to the benefit of the presumption in section 6(3) of the Act. For these reasons, I find that the worker's tendonitis is due to the nature of her employment and she is entitled to compensation for it.

[74] The worker is entitled to the presumption under section 6(3) of the Act. I find it is not necessary to consider her entitlement under policy item #27.40 which examines the risk factors that can lead to tendonitis. However, I note that even if I did so, the risk factors of repetition, awkward posture, and unaccustomed duties in the form of a substantial increase in workload, would be sufficient to find in favour of the worker.

Conclusion

[75] I confirm the Review Division decision (*Review Reference #R0125974*), although for different reasons. I deny the employer's appeal. The worker's right shoulder tendonitis is due to the nature of her employment.

[76] No expenses were requested or apparent; consequently, I make no order regarding expenses.

Patricia Broad
Vice Chair

PB/cv