WCAT Decision Number: WCAT-2013-00001
WCAT Decision Date: January 02, 2013
Panel: Cathy Agnew, Vice Chair

Introduction

[1] This appeal concerns the worker's claim with the Workers' Compensation Board (Board), operating as WorkSafeBC, for injuries he sustained in a work incident on March 3, 2011. The Board accepted his claim for a low back strain/sprain injury.

[2] On September 8, 2011, a case manager wrote to the worker to advise him that his claim would not be accepted for a right inguinal hernia. This decision was confirmed in a February 6, 2012 decision of a review officer in the Board's Review Division, which the worker has appealed to the Workers' Compensation Appeal Tribunal (WCAT) (*Review Reference #R0136736*).

[3] The worker was represented in his appeal by his union. The employer did not participate in the appeal, although invited to do so.

Issue(s)

[4] Should the worker's diagnosed right inguinal hernia be accepted as compensable?

Jurisdiction

[5] WCAT has jurisdiction to consider this appeal under section 239(1) of the *Workers Compensation Act* (Act) as an appeal from a final decision made by a review officer under section 96.2 of the Act.

Background and Evidence

[6] The worker was injured on March 3, 2011 while pulling and lifting an 85-pound lashing bar in the course of his employment as a longshoreman.

[7] Hospital reports from the date of injury show that the worker reported that he felt a pop in the coccyx area of his back after the incident and he experienced pain in his back and in his right hip flexor area. Examination of the worker's abdomen was reported as normal.

[8] In a teleclaim application on March 4, 2011, the worker described discomfort in his low back and right hip area as well as numbness in his legs. By letter dated March 16, 2011, the Board advised the worker that his claim had been accepted for a low back sprain/strain.

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[9] The worker's family physician, Dr. Sommi, reported to the Board following his examination of the worker on March 5, 2011 that the worker had complained of lower back pain as a result of the March 3, 2011 work incident.

[10] A nurse advisor discussed the worker's claim with him on March 16, 2011. The worker reported ongoing pain in his low back and sacral area.

[11] The worker was assessed at a medical and return-to-work planning (MARP) program on May 4, 2011 for diagnostic clarification regarding his low back injury. Medical consultant, Dr. Barron, noted that the worker recorded the following mechanism of injury in the assessment report:

> On March 3, 2011, he was lashing and apparently the lashing bar fell. He attempted to pull it back up. It weighs approximately 75 to 100 lb. With the strain of pulling the bar back up he felt severe pain in the low back region in the midline and also in the left inguinal region.

[12] Dr. Sommi still did not mention inguinal pain in his report to the Board following his examination of the worker on May 9, 2011, although he had referred the worker for investigation of a possible inguinal hernia. A bilateral inguinal ultrasound on May 13, 2011 revealed a right inguinal hernia.

[13] Board medical advisor, Dr. Hunter, provided his opinion on May 25, 2011 that the worker's recently diagnosed right inguinal hernia was unlikely related to the work incident on March 3, 2011. Dr. Hunter noted the absence of right lower abdominal/groin symptoms in the medical documentation until the MARP assessment on May 4, 2011. He felt that there was therefore a paucity of medical evidence to support a traumatic inguinal hernia since he would have expected quite severe continued right lower quadrant/inguinal pain after the injury and likely for days to weeks afterwards. Dr. Hunter felt that the worker's inguinal hernia likely appeared spontaneously as they are very common in the general population. He noted that the statistical likelihood of a male having an inguinal hernia in his lifetime was between 27% and 30%, reflecting the slow deterioration of abdominal wall muscles, which results in protrusion of abdominal contents through the inguinal canal.

[14] The Board obtained chart notes from the worker's family physician, Dr. Sommi, which show that he had recorded left groin pain and swelling on March 21, 2011, although Dr. Sommi had not noted this finding in his report to the Board for this date.

[15] Chart notes from the worker's physiotherapist show that the worker complained of pain in his left inguinal area at the time of the first assessment on March 29, 2011.

[16] Dr. Hunter provided his further opinion on September 7, 2011 that the chart notes that were now on file did not change his clinical opinion as previously provided.

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[17] Dr. Kamitakara provided a consultation report to Dr. Sommi on June 22, 2011, which was submitted to the Board in support of the worker's request for review. Dr. Kamitakara noted that the worker had a tender right inguinal hernia that was reducible. He noted the worker reported having right groin pain on and off since the March 3, 2011 work incident and Dr. Kamitakara felt that the hernia had resulted from it. Dr. Kamitakara recommended surgical repair of the hernia as soon as possible and he undertook this surgery on September 1, 2011.

[18] A further report from Dr. Kamitakara dated October 23, 2012 was submitted in support of the worker's appeal. Dr. Kamitakara noted the worker's statement that he had developed right groin pain and swelling at the time of the March 3, 2011 work incident and that his symptoms had persisted until the hernia was surgically repaired. Dr. Kamitakara stated that there was a continuity of symptoms and he stated his belief that the worker's right inguinal hernia had been caused by the incident at work on March 3, 2011, noting that he had not had symptoms prior to that date and the pain had begun immediately after the work incident. He stated his belief that the worker would not have suffered a right inguinal hernia had it not been for the workplace incident on March 3, 2011.

[19] At the oral hearing of this matter on October 31, 2012, the worker testified that he had complained of groin pain in the ambulance and at the hospital on March 3, 2011. He said that he could not stand up straight due to the pain which was in the whole of the core of his body, front and back. He said that he was provided with strong pain medication, which made it difficult for him to be sure of where the pain was coming from at first.

[20] The worker was not sure when he first noticed swelling in his groin area. He said that the swelling increased when he did the physiotherapy exercises for his back and therefore his program had been adjusted accordingly.

Reasons and Findings

[21] Section 250(2) of the Act provides that I must base my decision on the merits and justice of the case but, in doing so, I must apply a policy of the board of directors of the Board that is applicable in this case.

[22] The policies applicable to this appeal are found in the *Rehabilitation Services and Claims Manual, Volume ll* (RSCM ll).

[23] 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 to this appeal.

[24] Section 250(4) of the Act provides that, if the evidence supporting different findings on an issue is evenly weighted, I must resolve that issue in a manner that favours the worker.

[25] The Board is authorized by section 5(1) of the Act to provide compensation for a personal injury if it arose out of and in the course of a worker's employment.

[26] A personal injury is defined in policy item #13.00 as any physiological change arising from some cause. Policy item #15.00 reinforces the notion that an injury is not compensable simply because it happened at work. In addition, there must be something in the employment that had causative significance in producing the injury in order to establish that the injury arose "out of" the employment and not only "in the course of" it.

[27] The Board has developed policy in item #C3-16.10(B) to be applied to the adjudication of hernia claims. The policy provides that, in order to be compensable, there must be evidence of increased intra-abdominal pressure or severe direct trauma preceding the appearance of the hernia. Symptoms of a hernia generally appear shortly after the incident.

[28] Herniae are regarded as multi-factorial in development and therefore, if accepted as compensable, they are considered to be an aggravation of a pre-existing condition. Surgery will be recognized as an attempt to correct the aggravation. In most cases, there is no need to stop working while awaiting surgery.

[29] It is clear from the description of the injury incident that it involved sufficient effort to have caused increased intra-abdominal pressure. The lashing bar was 14 feet long and it weighed approximately 85 pounds. It had fallen as the worker pulled it out of a container and he had to struggle to maintain control of it in order to position it safely without it hitting him or someone else.

[30] I am satisfied by the evidence that the worker's right inguinal hernia should be accepted as compensable.

[31] I note that there are references in the medical evidence to the worker having discomfort in his left inguinal area as well as on the right side. The worker's representative suggested that this might be due to inaccurate recording of symptoms by the medical practitioners. In that regard, I note, for example, that in his May 25, 2011 report to the Board Dr. Sommi reported that the worker had pain and swelling in his left groin area. In the area of the report where Dr. Sommi recorded his diagnosis, he initially wrote "left" inguinal hernia and then he changed it to "right" inguinal hernia. The inconsistency in this report about what side the worker's symptoms were on tends to support the submission that there was some inaccuracy of reporting involved.

[32] Another possibility suggested by the worker in his testimony is that it was difficult for him to identify the precise location of his groin discomfort, in part because of the strong pain medication that he had been prescribed, and in part because the whole of his core area was painful, both front and back.

[33] The confusion about what side the worker had inguinal pain could have been due to either or both of these explanations. In any case, I am satisfied by the evidence that the worker did have right-sided symptoms at least some of the time commencing with the date of injury.

[34] I agree with the worker's representative's submission that the worker's complaint of pain in the area of his right hip flexor at the hospital following the incident on March 3, 2011 represents a symptom that can reasonably be associated with the right inguinal hernia he was later diagnosed with. Although this aspect of the worker's pain complaint was not described as groin pain or inguinal pain, it was reported as being present in approximately the same anatomic area, at the front of the lower right hip area. I am satisfied by the evidence of the worker's symptoms in the period immediately following the March 3, 2011 work incident that he had pain in his right inguinal area at that time.

[35] I find support for the worker's appeal in Dr. Kamitakara's October 23, 2012 report in which he stated his opinion that the worker's right inguinal hernia had likely been caused by the March 3, 2011 work incident.

[36] I acknowledge Dr. Hunter's opinion that the worker's inguinal hernia had likely appeared spontaneously, but I am not persuaded by it since I do not agree with his factual conclusion that there was no evidence of lower abdominal/groin pain until the MARP assessment on May 4, 2011. Given the close temporal connection between the March 3, 2011 work incident that likely involved increased abdominal pressure and the presence of pain in the right lower front abdominal area when the worker attended at hospital immediately afterwards, I consider it likely that the worker's inguinal hernia was caused by his work.

Conclusion

[37] I allow the worker's appeal and vary *Review Reference #R0136736* by finding that the worker's right inguinal hernia ought to be accepted as compensable.

Expenses

[38] Section 7(1)(b) of the *Workers Compensation Act Appeal Regulation,* B.C., Reg. 321/2002 authorizes WCAT to order the Board to reimburse a party to an appeal for certain expenses including expenses associated with obtaining or producing evidence submitted to WCAT. I found Dr. Kamitakara's September 17, 2012 report to be useful in my deliberations and I consider it reasonable for the worker to have obtained this evidence. Therefore, in accordance with the guidance contained in item #16.1.3 of WCAT's MRPP, I direct the Board to reimburse the worker for the expense of obtaining this evidence in accordance with Dr. Kamitakara's invoice in the amount of $765.00.

[39] No other appeal expenses were requested and I make no order in that regard.

Cathy Agnew
Vice Chair

CA/jkw