



WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL

DECISION NO. 406/16

BEFORE: I.R. Mackenzie : Vice-Chair
B.M. Young : Member Representative of Employers
C. Salama : Member Representative of Workers

HEARING: February 11, 2016 at Ottawa
Oral
Post-hearing activity completed on November 1, 2016

DATE OF DECISION: February 16, 2017

NEUTRAL CITATION: 2017 ONWSIAT 519

DECISION(S) UNDER APPEAL: WSIB Appeals Resolution Officer (ARO) decision dated
January 26, 2012

APPEARANCES:

For the worker: J. Pasel, Union Representative

For the employer: Not participating

Interpreter: N/A

Workplace Safety and Insurance
Appeals Tribunal

505 University Avenue 7th Floor
Toronto ON M5G 2P2

Tribunal d'appel de la sécurité professionnelle
et de l'assurance contre les accidents du travail

505, avenue University, 7^e étage
Toronto ON M5G 2P2

REASONS

(i) Introduction

[1] At the commencement of the hearing, the worker's representative requested an adjournment of the hearing in order to obtain further medical information as well as an expert report. The Panel denied the request for the adjournment and heard the evidence of the worker. We then sought further medical information. The representative was given an opportunity to make submissions on the new medical information but made no submissions.

(ii) Issue

[2] The issue under appeal is entitlement to include the low back, left hip, left thigh, and left foot as injured on December 10, 2008 and/or as secondary conditions to the compensable left knee injury.

(iii) Context of the appeal

[3] The now 51-year-old worker worked as a ramp agent with the accident employer. He was injured on December 10, 2008, when he was removing an engine cover from an aircraft and lost his footing on the way down from the step. Initial entitlement was granted for the left knee.

[4] The maximum medical recovery (MMR) of the left knee was determined to be April 9, 2009. The worker received a Non-economic Loss (NEL) award of 16%. It was noted by the ARO that the NEL award was for the left knee and left hip. Noting that there was only entitlement for the left knee, the ARO ordered the operating area to review the NEL award. The NEL award was subsequently reduced to 7% for the left knee only.

(iv) Law and policy

[5] The *Workplace Safety and Insurance Act, 1997* (the "WSIA") is applicable to this appeal.

[6] Pursuant to section 126 of the WSIA, the Board stated that the following policy packages, Revision #9, would apply to the subject matter of this appeal: Initial Entitlement; Secondary Entitlement – decisions prior to February 15, 2013; and Decision Making/Benefit of Doubt/Merits and Justice. We have considered these policies as necessary in deciding the issues in this appeal.

(v) Summary of evidence

[7] The worker was injured on December 10, 2008. There had been freezing rain before his shift. The worker was removing an engine cover while standing on top of a tug. He testified that he was approximately three feet off the ground. He lost his footing and twisted his knee as he fell off the tug. His left leg hit the step of the tug as he fell and he landed on the ground onto his left side. He testified that he felt immediate pain in the left side going from the back into the hip all the way down to the knee. He also testified that he felt pain in his left foot. A co-worker helped him up off the ground. None of his co-workers observed the fall.

[8] The worker drove himself to the local hospital that day. According to the triage report, the worker reported pain outside the left knee. He was diagnosed with a strained knee. The worker testified that he also told the emergency doctor that he had leg pain into the buttock. X-

rays of the foot and knee on that day were normal. The Health Professional's Report (Form 8) from the hospital visit indicated a strained left knee with no other area of injury mentioned.

[9] The worker was seen by Dr. E. Biggs, his family doctor, on December 12, 2008. She diagnosed the worker with a knee strain. She did not mention any other areas of injury.

[10] The worker completed a report of his injury (Form 6) on December 19, 2008. He indicated the areas of injury as the left hip, left thigh, and left knee. He indicated that he hit his left knee and whole left side on the ground.

[11] Dr. Biggs reported on January 13, 2009, that the worker was not able to bear weight and had pain in the left knee as well as swelling in the left thigh.

[12] An occupational therapy intake report of January 19, 2009 stated that the worker reported pain of the left knee and the anterior aspect of the thigh and noted swelling of those areas.

[13] Dr. M. Charles, orthopaedic surgeon, examined the worker on February 18, 2009 and noted that the worker reported mild discomfort in the thigh region with extremes of internal/external rotation. He also noted that the worker had an antalgic gait on the left side and was using a cane.

[14] The worker had an MRI of the left hip on March 1, 2009. The left hip was reported as normal. The worker was assessed by a physiotherapist on March 20, 2009 and left knee and left hip symptoms were noted.

[15] The worker received an assessment from Dr. Brunet, orthopaedic surgeon, on April 9, 2009. Pain was reported by the worker in the left knee, left thigh and left trochanteric region. Pain was also reported to extend to the left SI joint region. There was tenderness of left greater trochanter as well as tightness of the IT band. A diagnosis of post contusion to the left hip and sprain to the left knee with residual contracture in flexion of the hip and knee was provided. In addition, Dr. Brunet diagnosed chronic SI joint sprains, left trochanteric bursitis and IT tendonitis.

[16] The worker was examined by Dr. A. McKee, a physiatrist, on June 24, 2009. Dr. McKee noted "complex issues with regard to the work-related injury." He found evidence of lower lumbosacral and left sacroiliac dysfunction with muscular ligamentous involvement. He also noted that the worker had involvement of the left sacral iliolumbar ligaments and myofascial pain syndrome in the left lower quadrant. The worker was given a prescription for a sacroiliac stability belt.

[17] An MRI was done of the lumbar spine and SI joints on July 28, 2009. The lumbar spine was relatively normal with early osteoarthritic changes of the L4-S1 facet joints. The SI joints indicated a small area of edema of the proximal left iliac bone.

[18] The worker had a follow up with Dr. McKee on September 1, 2009. The worker was tender on the left L4-S1 and over to the SI joint. Extension and rotation seemed to aggravate the pain. Dr. McKee recommended facet joint injections.

[19] Dr. Charles reported on September, 28, 2009 that the worker had plateaued and no further follow up was scheduled.

[20] The worker was examined by Dr. McKee on April 14, 2011. He reported restricted range of motion of the lumbar area with pain in the left lower back. On June 21, 2011, Dr. McKee

noted that “it is quite clear that some of his left hip and knee symptoms are due to the original injury to his lumbopelvic region.”

[21] The worker was examined by Dr. M. Pysklywec, an occupational medicine specialist, in June of 2016. He noted that the worker had ongoing pain of the left low back and buttock into the hip, lateral thigh, and to the outside of the knee. Dr. Pysklywec made the following observations on examining the worker:

On examination the patient walks with an antalgic gait. He shows significant apprehension about palpation of the low back area. He will not let me touch the sacroiliac region. There is diffuse tenderness of the left lateral thigh from the greater trochanteric area all the way down the lateral aspect of the thigh indicating a tight IT band. Range of motion of the lumbar spine, hip, and knee are restricted in active motion.

[22] Based on his examination and his review of the medical reports in the Case Record, Dr. Pysklywec diagnosed the worker with left SI joint dysfunction, left greater trochanteric bursitis, left IT band tendonitis, and overall myofascial left parapelvic pain.

[23] Dr. Pysklywec came to the following conclusion on the connection between the work accident and the hip and back:

It is quite biomechanically conceivable that a 4 foot fall off a tug may lead to hip and back issues. [The worker] described a twisting of his leg as well as a direct blow to the left side. This would have led to a compressive force across the hip and pelvis including the SI joints. The direct blow to the hip and IT region could similarly cause injury.

...

Given the history, I would be left to conclude that the accident played the most important role in causing his sacroiliac and left hip issues. He has no other reasonable explanation for the development of these conditions. He had trauma that would be biomechanically compatible with his injury. While there are gaps in the physician reporting, [the worker] describes ongoing symptoms from the time of the accident.

...

From a biomechanical point of view, it is conceivable that the injury he had on December 10, 2008 could have caused all of these injuries. I could identify no other important factors or explanations for the development of his issues.

[24] Dr. Biggs provided a report on March 3, 2016 stating that the worker continued to have difficulty with full weight bearing on the left lower limb. He had tenderness of the left lateral knee, atrophy of the anterior muscles of the thigh, and ultrasound evidence of thickening of the IT band at the level of the greater trochanter.

[25] The worker testified that his left foot feels as if it is constantly swollen and sore on the bottom.

[26] The worker testified that he pulled a muscle in his lower back as an 18-year-old but that at the time of the accident “there was nothing to the back itself.” In his report of June 2016, Dr. Pysklywec noted that the worker recalled no prior history of significant issues with regard to his back other than the low back strain he had as an 18 -ear-old which resolved “with no residual effect.”

[27] However, the Case Record shows that the worker had a prior claim for the lower back as a result of a compensable injury in 1986. The worker was interviewed by a WSIB investigator in November of 1995 with regards to establishing a continuity of his lower back condition from

1986 until 1995. The worker told the investigator that sitting, lifting and walking would aggravate his condition and that he had regular stiffness and swelling in his lower back area. He reported continuous ongoing pain, almost on an everyday basis.

(vi) Analysis

[28] The appeal is allowed in part for the reasons set out in this section.

[29] As a result of an accident on December 10, 2008, the worker was granted initial entitlement for his left knee. The worker has also claimed entitlement for his left foot, left thigh, left hip, and low back as a result of the same accident. General entitlement to benefits is governed by section 13 of the WSIA:

13(1) A worker who sustains a personal injury by accident arising out of and in the course of his or her employment is entitled to benefits under the insurance plan.

(2) If the accident arises out of the worker's employment, it is presumed to have occurred in the course of the employment unless the contrary is shown. If it occurs in the course of the worker's employment, it is presumed to have arisen out of the employment unless the contrary is shown.

[30] *Operational Policy Manual (OPM) Document No. 11-01-01, "Adjudicative Process"*, states that an allowable claim must have five points: an employer, a worker, personal work-related injury, proof of accident, and compatibility of diagnosis to accident history. OPM Document No. 11-01-01 provides the following guidelines for determining proof of accident:

Proof of accident

Decision-makers may consider the following when examining proof of accident,

- Does an accident or disablement situation exist?
- Are there any witnesses?
- Are there discrepancies in the date of accident and the date the worker stopped working?
- Was there any delay in the onset of symptoms or in seeking health care attention?

[31] In this case, the WSIB has accepted that there was an accident on December 10, 2008. On December 19, 2008, the worker reported on his Form 6, an injury to his left hip, left thigh, and left knee. Accordingly, there was no delay in the onset of reported symptoms of pain to these areas. The Panel therefore finds that there is proof of accident.

[32] The issue in this appeal is the compatibility of the diagnosis to the accident history.

[33] Although the worker testified that he had left foot pain, there is no medical information in the Case Record to support compatibility between an injury to the left foot and the accident. In fact, there is no diagnosis for the left foot. Accordingly, the Panel rejects the claim for initial entitlement for the left foot.

[34] The worker does have a pre-existing lower back condition that caused him significant discomfort between 1986 and 1995, according to his statement to the WSIB investigator in 1995. Dr. Pysklywec came to his conclusion on the work-relatedness of the lower back injury on the basis of the worker's report that he had no previous back condition. Accordingly, we can give no weight to his medical opinion with regards to the lower back.

- [35] In his Form 6, the worker did not mention an injury to his low back on December 10, 2008. The first diagnosis of a lower back condition after the accident is not made until April of 2009, approximately four months after the accident. Because of this delay in reporting of pain in the lower back, the delay in diagnosis and the existence of a pre-existing back condition, the Panel finds that there is no compatibility between the lower back condition and the accident history.
- [36] The worker reported an injury to his left hip shortly after the accident (in his Form 6 report). The first mention of the left hip in the medical reporting is in March of 2009, where it is noted that the left hip is normal. There are reports of left hip discomfort later in March of 2009. The Panel finds that the delay in diagnosis and treatment demonstrates, on a balance of probabilities, a lack of compatibility between the diagnosis of the left hip and the accident history. Accordingly, entitlement for the left hip is denied.
- [37] The worker reported an injury to his left thigh shortly after the accident (in his Form 6 report). The Panel accepts that the knee was the most serious of the injuries and was the focus of medical attention in the weeks following the injury. However, by January of 2009, the worker's family doctor noted swelling of the left thigh. Dr. Brunet provided a diagnosis of left trochanteric bursitis and IT tendonitis in April of 2009. Dr. Pysklywec also noted tenderness of the left lateral thigh from the greater trochanteric area to the lateral aspect of the thigh indicating a tight IT band. The Panel finds that there is compatibility between the diagnoses of left greater trochanteric bursitis and left IT band tendonitis and the accident history.
- [38] The worker's representative made no submissions on the issue of injuries to the low back, left hip, left thigh and left foot as secondary conditions. Since we have granted entitlement for the left thigh, we only need to address the low back, left hip and left foot as secondary conditions.
- [39] OPM Document No. 15-05-01, "Resulting from Work-Related Disability" provides:
Workers sustaining secondary conditions that are causally linked to the work-related injury will derive benefits to compensate for the further aggravation of the work-related impairment or for new injuries.
- [40] The issue is whether the compensable knee condition is causally linked to the worker's claimed low back, left hip and left foot problems. Dr. McKee's report of June 21, 2011 stated that some of the worker's left hip and knee symptoms were due to the original injury to his lumbopelvic region. However, the Panel has already determined that the low back was not injured as a result of the accident. Although there are some reports referring to the worker's altered gait, there is no medical evidence to support a connection to any ongoing foot or hip problems. As already noted, the worker had extensive lower back problems prior to the December 10, 2008 accident and there is no medical evidence of a connection between the lower back and the left knee and/or left thigh condition.
- [41] The Panel concludes that there is no medical support for a finding of a causal relationship between the left knee and thigh injury and the problems related to the low back, left hip and left foot.

DISPOSITION

[42] The appeal is allowed in part as follows:

1. The worker has initial entitlement for the left thigh, specifically greater trochanteric bursitis and IT band tendonitis
2. The worker does not have entitlement for the left foot, left hip or the lower back

[43] The nature and duration of benefits flowing from this decision will be returned to the WSIB for further adjudication, subject to the usual rights of appeal.

DATED: February 16, 2017

SIGNED: I.R. Mackenzie, B.M. Young, C. Salama